The original documents are located in Box 23, folder "2/28/75 S281 Regional Rail Reorganization Act Amendments of 1975" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

FEB 26 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 281 - Regional Rail Reorganization Act Amendments of 1975
Sponsors - Sen. Hartke (D) Indiana and Sen. Pearson (R) Kansas

Last Day for Action

Immediate action is recommended since the Penn Central Railroad has advised that without assistance it will run out of money and have to shut down operations by February 28.

Purpose

Provides for increases totaling $347 million in authorizations for grants and loan guarantees to bankrupt railroads in the Northeast; authorizes the use of such funds for railroad maintenance and improvement programs; and provides for the inclusion of certain other bankrupt Northeast railroads under the Regional Rail Reorganization Act of 1973.

Agency Recommendations

Office of Management and Budget	Approval
Department of Transportation	Approval
Interstate Commerce Commission	Approval (informal)
National Railroad Passenger Corporation	Approval (informal)
U.S. Railway Association	Approval (informal)
Department of the Treasury	No objection (informal)
Department of Justice	No objection (informal)

Discussion

The Regional Rail Reorganization Act of 1973 (RRR Act) was enacted to help revitalize and reorganize insolvent railroads in the Northeast region (P.L. 93-236). Under that Act, the

U.S. Railway Association (USRA), a nonprofit Government corporation, was charged with responsibility to plan and finance a new rail system for the region. That planning is currently going on and will be subject to Congressional review. (If the plan is not rejected by either House of Congress within 60 days of its submission to Congress, it would go into effect.) A new private corporation, the Consolidated Rail Corporation (ConRail), would acquire and operate the new rail system designated by the USRA plan.

The RRR Act authorized funds of $85 million in grants and $150 million in loan guarantees for the upgrading of plant and equipment before the planned transfer of rail properties to ConRail, in January 1976 at the earliest. Because of the recent coal strike, the economic downturn, and greatly increased operating costs, however, these funds are now insufficient. Less than $4 million of the grant funds remain to be committed, and plans have been agreed upon by DOT and USRA for commitment of all $150 million of the authorized loan guarantees.

The Penn Central Railroad trustees have stated that the railroad will exhaust its resources by February 28 and will be required to cease all operations on that date if no Federal aid is forthcoming. Other bankrupt railroads are experiencing similar cash problems.

S. 281 would authorize financial resources to enable the Penn Central and other railroads in the region to continue transportation services until ConRail assumes operation in 1976. It would increase the grant authorizations by $197 million and the loan guarantee authorizations by $150 million.

Administration draft legislation to deal with this problem had requested that the grant authorization be increased by $155 million, and the loan guarantee authority by $150 million. While the enrolled bill thus increases the grant authorization by $42 million more than the Administration had requested, it does not create a serious problem since not all the funds authorized need be requested for appropriation.

Other major provisions of the bill are:

AMTRAK Improvements -- provides $25 million of the grant authority, requested by the Administration, to repair and improve tracks and roadbeds to ensure safe operation of Metroliners in the Northeast Corridor.

ICC Rate Increase Denials -- earmarks $50 million of the grant authority, $20 million over the Administration request, to cover loss of anticipated revenue increases as a result of denials by the Interstate Commerce Commission of rate increases requested by some of the railroads, including a recent 7% increase denial. This difference in authorization levels is not a serious budgetary problem since the bill would give the Secretary of DOT authority to determine whether the payments are to be made to the railroads.

Loan Guarantee Uses -- provides that the loan guarantees could be used for two additional purposes:

1. permits DOT and USRA to take over, in whole or in part, the regular track and roadway maintenance program of a railroad thereby reducing a railroad's forecasted cash needs. In times of financial difficulty, this is one of the areas the railroads have cut back on. Such deferred maintenance over a number of years has resulted in dangerous track and roadbed conditions in many areas.

2. permits DOT and USRA to acquire railroad facilities and equipment for ConRail that it will need when it assumes operations, thus allowing preordering of initial items which require a long wait for delivery.

Valuation of Railroad Property -- clarifies the RRR Act to ensure that any increased value in a railroad's assets which results from Federally financed maintenance or improvement work would benefit ConRail or be returned to the Government, and would not accrue to the bankrupt estates.

Cancellation of Loans to ConRail -- authorizes USRA, with the approval of the Secretary of DOT, to indicate in its final system plan which part of the loan guarantee obligations would be assumed by ConRail and which would be cancelled, resulting in the equivalent of a grant. Under the RRR Act, funds provided under the loan guarantee section ultimately constitute obligations which must be assumed by ConRail. This provision was requested in the Administration bill on the premise that the burden of carrying such debt might threaten the financial viability of ConRail.

Erie Lackawanna/Boston and Maine Railroads -- allows the Erie Lackawanna and the Boston and Maine Railroads to file for reorganization, with court approval, under the RRR Act and includes $25 million of grant authority for this purpose. Under the RRR Act, only these two of the bankrupt Northeast railroads decided they could reorganize under Section 77 of the Bankruptcy Act and thus elected not to be included in the RRR Act. Recently, however, the Erie announced that it could not reorganize under Section 77 within a reasonable time, and would like to be included in the RRR Act. The Administration had requested that these two railroads be treated separately under the RRR Act because there is some feeling that such late filing may give a technical basis for further court challenges to the Act. It was the Administration's position that separate treatment would insulate the balance of the program from such litigation. S. 281, however, does not separate out these two railroads but rather adds them to the bill as originally enacted. DOT feels it can implement the program even as the bill is enrolled with all railroads treated alike.

*****

The appropriation bill for this program, H.J. Res. 210, has passed the House. Final Senate committee and floor action is expected the week of February 24.

In general, S. 281 as enrolled contains the essential elements of what the Administration requested. Letting the bankrupt Northeast railroads shut down would have an intolerable impact on the Nation's economy. For this reason, your signature is recommended as soon as possible.

Enclosures

Director

Please make certain that 5.28' reserve the lowest PL.

APPROVED
FEB 28 1975

ACTION

THE WHITE HOUSE

WASHINGTON

Last Day: March 11

February 27, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CAVANAUGH

SUBJECT: Enrolled Bill S. 281 - Regional Rail Reorganization Act Amendments of 1975

Attached for your consideration is S. 281, sponsored by Senators Hartke and Pearson, which:

-- Provides for increases totaling $347 million in authorizations for grants and loan guarantees to bankrupt railroads in the Northeast:

-- authorizes the use of such funds for railroad maintenance and improvement programs;

-- provides for the inclusion of certain other bankrupt railroads under the Regional Rail Reorganization Act of 1973.

Additional information is provided in OMB's enrolled bill report at Tab A.

Immediate action is recommended since the Penn Central has advised that it will run out of money and will have to shut down operations on February 28 if no Federal aid is forthcoming.

DOT, OMB, Max Friedersdorf and Phil Areeda recommend approval.

RECOMMENDATION

That you sign S. 281 at Tab B.

THE GENERAL COUNSEL OF THE TREASURY

WASHINGTON, D.C. 20220

FEB 27 1975

Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of S. 281, "Regional Rail Reorganization Act Amendments of 1975."

The enrolled enactment, among other things, would provide (1) for a study of express service by the United States Railway Association, (2) a process for reconsideration of a decision that the reorganization of a railroad under section 77 of the Bankruptcy Act shall not be proceeded with, (3) an increased authorization for appropriations for emergency assistance to railroads in reorganization from $85,000,000 to $282,000,000, and (4) an increase in the amount of obligations which the Association may issue to finance interim maintenance until the rail properties are conveyed to the Consolidated Rail Corporation from $150,000,000 to $300,000,000.

The Department would have no objection to a recommendation that the enrolled enactment be approved by the President.

Sincerely yours,

General Counsel

Richard R. Albrecht

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE CHAIRMAN

February 28, 1975

Mr. J. F. C. Hyde, Jr.
Acting Assistant Director
for Legislative Reference
Office of Management and Budget
Washington, DC 20503

Dear Mr. Hyde:

This replies to your request of February 27, 1975 for the Commission's recommendations concerning enrolled bill, S. 281, "Regional Rail Reorganization Act Amendments of 1975."

Because of the well established need of the Northeastern railroads in reorganization for the emergency financial aid made available by this bill, the Commission recommends that the President sign it into law. As indicated in our testimony before the House Interstate and Foreign Commerce Committee on H. R. 2051, which in its final form, is identical to S. 281, we do not support all provisions of the bill; however, in light of the financial crisis facing the Northeastern railroads, we do recommend that S. 281 be signed.

Thank you for the opportunity to comment on this bill.

Sincerely yours,

George M. Stafford
Chairman

To- Warren Hendriks
2-27-75
11:15 a.m.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

FEB 26 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 281 - Regional Rail Reorganization Act Amendments of 1975
Sponsors - Sen. Hartke (D) Indiana and Sen. Pearson (R) Kansas

Last Day for Action

Immediate action is recommended since the Penn Central Railroad has advised that without assistance it will run out of money and have to shut down operations by February 28.

Purpose

Provides for increases totaling $347 million in authorizations for grants and loan guarantees to bankrupt railroads in the Northeast; authorizes the use of such funds for railroad maintenance and improvement programs; and provides for the inclusion of certain other bankrupt Northeast railroads under the Regional Rail Reorganization Act of 1973.

Agency Recommendations

Office of Management and Budget	Approval
Department of Transportation	Approval
Interstate Commerce Commission	Approval (informal)
National Railroad Passenger Corporation	Approval (informal)
U.S. Railway Association	Approval (informal)
Department of the Treasury	No objection (informal)
Department of Justice	No objection (informal)

Discussion

The Regional Rail Reorganization Act of 1973 (RRR Act) was enacted to help revitalize and reorganize insolvent railroads in the Northeast region (P.L. 93-236). Under that Act, the

U.S. Railway Association (USRA), a nonprofit Government corporation, was charged with responsibility to plan and finance a new rail system for the region. That planning is currently going on and will be subject to Congressional review. (If the plan is not rejected by either House of Congress within 60 days of its submission to Congress, it would go into effect.) A new private corporation, the Consolidated Rail Corporation (ConRail), would acquire and operate the new rail system designated by the USRA plan.

The RRR Act authorized funds of $85 million in grants and $150 million in loan guarantees for the upgrading of plant and equipment before the planned transfer of rail properties to ConRail, in January 1976 at the earliest. Because of the recent coal strike, the economic downturn, and greatly increased operating costs, however, these funds are now insufficient. Less than $4 million of the grant funds remain to be committed, and plans have been agreed upon by DOT and USRA for commitment of all $150 million of the authorized loan guarantees.

The Penn Central Railroad trustees have stated that the railroad will exhaust its resources by February 28 and will be required to cease all operations on that date if no Federal aid is forthcoming. Other bankrupt railroads are experiencing similar cash problems.

S. 281 would authorize financial resources to enable the Penn Central and other railroads in the region to continue transportation services until ConRail assumes operation in 1976. It would increase the grant authorizations by $197 million and the loan guarantee authorizations by $150 million.

Administration draft legislation to deal with this problem had requested that the grant authorization be increased by $155 million, and the loan guarantee authority by $150 million. While the enrolled bill thus increases the grant authorization by $42 million more than the Administration had requested, it does not create a serious problem since not all the funds authorized need be requested for appropriation.

Other major provisions of the bill are:

AMTRAK Improvements -- provides $25 million of the grant authority, requested by the Administration, to repair and improve tracks and roadbeds to ensure safe operation of Metroliners in the Northeast Corridor.

ICC Rate Increase Denials -- earmarks $50 million of the grant authority, $20 million over the Administration request, to cover loss of anticipated revenue increases as a result of denials by the Interstate Commerce Commission of rate increases requested by some of the railroads, including a recent 7% increase denial. This difference in authorization levels is not a serious budgetary problem since the bill would give the Secretary of DOT authority to determine whether the payments are to be made to the railroads.

Loan Guarantee Uses -- provides that the loan guarantees could be used for two additional purposes:

1. permits DOT and USRA to take over, in whole or in part, the regular track and roadway maintenance program of a railroad thereby reducing a railroad's forecasted cash needs. In times of financial difficulty, this is one of the areas the railroads have cut back on. Such deferred maintenance over a number of years has resulted in dangerous track and roadbed conditions in many areas.

2. permits DOT and USRA to acquire railroad facilities and equipment for ConRail that it will need when it assumes operations, thus allowing preordering of initial items which require a long wait for delivery.

Valuation of Railroad Property -- clarifies the RRR Act to ensure that any increased value in a railroad's assets which results from Federally financed maintenance or improvement work would benefit ConRail or be returned to the Government, and would not accrue to the bankrupt estates.

Cancellation of Loans to ConRail -- authorizes USRA, with the approval of the Secretary of DOT, to indicate in its final system plan which part of the loan guarantee obligations would be assumed by ConRail and which would be cancelled, resulting in the equivalent of a grant. Under the RRR Act, funds provided under the loan guarantee section ultimately constitute obligations which must be assumed by ConRail. This provision was requested in the Administration bill on the premise that the burden of carrying such debt might threaten the financial viability of ConRail.

Erie Lackawanna/Boston and Maine Railroads -- allows the Erie Lackawanna and the Boston and Maine Railroads to file for reorganization, with court approval, under the RRR Act and includes $25 million of grant authority for this purpose. Under the RRR Act, only these two of the bankrupt Northeast railroads decided they could reorganize under Section 77 of the Bankruptcy Act and thus elected not to be included in the RRR Act. Recently, however, the Erie announced that it could not reorganize under Section 77 within a reasonable time, and would like to be included in the RRR Act. The Administration had requested that these two railroads be treated separately under the RRR Act because there is some feeling that such late filing may give a technical basis for further court challenges to the Act. It was the Administration's position that separate treatment would insulate the balance of the program from such litigation. S. 281, however, does not separate out these two railroads but rather adds them to the bill as originally enacted. DOT feels it can implement the program even as the bill is enrolled with all railroads treated alike.

*****

The appropriation bill for this program, H.J. Res. 210, has passed the House. Final Senate committee and floor action is expected the week of February 24.

In general, S. 281 as enrolled contains the essential elements of what the Administration requested. Letting the bankrupt Northeast railroads shut down would have an intolerable impact on the Nation's economy. For this reason, your signature is recommended as soon as possible.

Enclosures

Director

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 80

Date: February 27, 1975 Time: 12:30 p.m.

FOR ACTION: Mike Duval
Max Friedersdorf
Phil Areeda

cc (for information): Warren Hendriks
Jerry Jones
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: February 27, 1975 Time: 3:30 pm.

SUBJECT:

Enrolled Bill S. 281 - Regional Rail Reorganization Act Amendments of 1975

ACTION REQUESTED:

____ For Necessary Action

____ Prepare Agenda and Brief

x ____ For Your Comments

x ____ For Your Recommendations

____ Draft Reply

____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

WASHINGTON

February 27, 1975

MEMORANDUM FOR: WARREN HENDRIKS

FROM: MAX L. FRIEDERSDORF M.L.

SUBJECT: Action Memorandum - Log No. 80

Enrolled Bill S. 281 - Regional Rail Reorganization Act Amendments of 1975

The Office of Legislative Affairs concurs with the Agencies that the subject enrolled bill should be signed.

Attachments

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 80

Date: February 27, 1975 Time: 12:30 p.m.

FOR ACTION: Mike Duval
Max Friedersdorf
Phil Areeda

cc (for information): Warren Hendriks
Jerry Jones
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: February 27, 1975 Time: 3:30 pm.

SUBJECT:

Enrolled Bill S. 281 - Regional Rail Reorganization Act Amendments of 1975

ACTION REQUESTED:

____ For Necessary Action

____ Prepare Agenda and Brief

x ____ For Your Comments

x ____ For Your Recommendations

____ Draft Reply

____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Approve P. Areeda

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

FEB 24 1975

Honorable James T. Lynn
Director
Office of Management and Budget
Executive Office Building
Washington, D. C. 20503

Dear Mr. Lynn:

This is in response to your request for the views of the Department on S.281, an enrolled bill:

> To amend the Regional Rail Reorganization Act of 1973 to increase the financial assistance available under section 213 and section 215, and for other purposes.

Background

Under the Regional Rail Reorganization Act of 1973, the Secretary is authorized to provide financial assistance to railroads in reorganization under that Act to ensure the continued operation of essential rail services pending the implementation of a final system plan for restructuring rail services in the Northeast and Midwest. In late November, the Department was informed of the critical nature of the railroads' financial posture and took steps to ensure that the railroads exhausted all practical means available to them to avoid a shutdown of operations and also to make use of the existing financial-aid provisions of the Act in a manner which would maximize our ability to keep the trains running. We soon recognized, however, that additional funding authority would have to be obtained from the Congress or some railroads would soon run out of cash and the shutdown would follow.

On January 17, 1975, the Department submitted a bill to the Congress designed to provide adequate funds to help keep the bankrupt railroads operating pending the implementation of the

final system plan and also to improve the procedures for making the funds available to the railroads. The enrolled bill is an outgrowth of that proposal. While it has taken Congress a little over a month to pass the bill, thereby pressing to the limit the ability of some of the railroads to keep in operation, the positive action of the Commerce Committees in both Houses has already helped to avoid the imposition of traffic embargoes pending enactment of this legislation. It is now clear that unless the bill is signed into law immediately, essential service will be shutdown in the Northeast and Midwest and there will ensue a number of intolerable economic consequences including significantly increased unemployment, higher prices for products, and shortages of essential goods.

Description of the Bill

S. 281 contains a number of changes to the Regional Rail Reorganization Act of 1973 and the enclosure to this letter outlines those changes in detail. In brief, however, the most important amendments to the Act are the following:

(1) Sections 213 and 215 are amended to increase the financial assistance that may be provided to railroads in reorganization under the Act pending implementation of the final system plan. Under revised section 213, the authorization to make grants is increased by $197 million (from $85 million to $282 million). However, $50 million of that amount could be made available only to the extent necessary to offset the loss of revenues attributable to suspension by the ICC of tariff increases proposed by the railroads. Under revised section 215, the ceiling on obligations which may be issued by the United States Railway Association (USRA) is increased by $150 million (from $150 million to $300 million) which will, among other things, maximize the potential for getting a head start on rehabilitating the rail system.

(2) Sections 213 and 215 are amended to require the imposition of conditions on financial assistance used for program maintenance or improvement which will ensure that the value added by that maintenance or improvement will go to the Consolidated Railroad Corporation (ConRail) or to the Secretary. Amendments to

section 215 will also broaden somewhat the purposes for which financial assistance can be used in order to maximize the potential use of such funds to create equity for ConRail, and will provide USRA and the Secretary flexibility to provide in the final system plan which loans can be refinanced and on what terms, and the extent to which ConRail shall be released from the requirement to satisfy such obligations.

(3) Section 207(b) is amended to permit the reconsideration by bankruptcy courts of negative decisions, previously made by them under that section, as to whether a railroad is reorganizable on an income basis under section 77 of the Bankruptcy Act and thus should be reorganized under the Regional Rail Act. This amendment will permit the Erie Lackawanna to reverse its position in this regard and, among other things, thereby become eligible for financial assistance under sections 213 and 215, as well as the labor protection benefits under Title V.

Comparison with Administration Bill

The bill submitted by the Department on January 17, 1975, laid the groundwork for the enrolled bill. (The Department also submitted amendments to the bill during the course of the House hearings which provided additional funding to offset losses of revenue anticipated from tariff increases suspended by the ICC and to accommodate the needs of the Erie Lackawanna.)

There are important differences, however, between the Department's proposal and the enrolled bill. First, the funding authorized by the enrolled bill for grants under section 213 exceeds by $42 million the revised funding level proposed by the Department. Secondly, the enrolled bill establishes in section 207(b) of the Act a procedure whereby the Erie Lackawanna may become classified as a railroad in reorganization under the Act. Under the amendments we proposed in the House hearings, the Erie could have become eligible for financial aid under sections 213 and 215, and its employees would have come under the labor protection provisions of Title V of the Act. However, the Department's amendments omitted the establishment of procedure under which the Erie could become a railroad in reorganization for all purposes of the Act.

In the House hearings, the Department opposed the amendment to section 207(b) because (1) it held out the possibility of subjecting the Government to liability to the Erie's estate under the Tucker Act for both interim erosion of the estate pending implementation of the final system plan and for any court-determined shortfall in the adequacy of compensation Erie receives for its rail assets conveyed under the final system plan, and (2) it might lead to time-consuming litigation by creditors or trustees of railroads already reorganizing under the Act which could impede the implementation of the final system plan and aggravate the need of these railroads for interim financial aid. While we continue to believe that these risks are substantial and that they could have been side-stepped by the adoption of our amendments, we believe that there is not any choice but to accept the provisions of the enrolled bill. Both the Senate and House insisted on the Erie provisions in the enrolled bill. In addition, in view of the immediate need to supply funds to the Penn Central and other bankrupt railroads, there is not any time to seek reconsideration of the measure.

The additional funding in the enrolled bill also should not stand in the way of approval of the bill. First, the bill does not make it mandatory that the Secretary use all of the funds authorized under section 213. Secondly, there is a benefit in having additional funding available under section 213 for use in case our estimates of railroad costs and revenues are thrown off by additional changes in the economy or by such factors as a prolonged failure on the part of the ICC to permit increased tariffs to go into effect.

Recommendation

The Department submitted its bill to the Congress on January 17 to meet a major crisis among the bankrupt railroads in the Northeast and Midwest. The enrolled bill added undesirable features to the bill as discussed above. However, the problems presented by those provisions are greatly outweighed by the need to provide adequate means to assure continuation of service by these railroads until the planning process is completed and on terms which will accelerate rehabilitation of the plant as well as provide equity for ConRail. Therefore, I recommend that the President sign the enrolled bill, and that he do so without delay.

Sincerely,

John W. Barnum
Acting Secretary

Attachment

Description of S. 281

Section 213 of the Regional Rail Reorganization Act of 1973 authorizes the Secretary to make payments to railroads in reorganization under the Act to ensure the continued provision of essential transportation services by those railroads pending implementation of the final system plan under the Act. Section 213 authorizes the appropriation of $85 million to carry out the purposes of the section.

Section 215 of the Act authorizes the Secretary, with the approval of the United States Railway Association (USRA), to enter into agreements with railroads in reorganization under the Act for the acquisition, maintenance, or improvement of railroad facilities and equipment necessary to improve property that will be in the final system plan. It authorizes USRA to issue obligations in an aggregate amount not in excess of $150 million to finance such agreements.

The Consolidated Railroad Corporation (ConRail) is required to assume any such obligations and, under section 210(c) of the Act, the Secretary, upon the request of USRA, is required to guarantee the payment of the principal and interest on the obligations.

Section 6 of S. 281 amends section 213 of the Act to increase the authorization from $85 million to $282 million. However, the amendment states that $50 million of the $282 million is available solely to make grants to railroads in reorganization under the Act as may be necessary to provide them funds equal to revenues attributable to tariff increases proposed by the railroads and suspended by the ICC during 1975. Section 6 also amends section 213 to require that agreements involving the use of section 213 funds to perform program maintenance on designated rail properties until the date rail properties are conveyed under the Act or to improve such designated properties, contain the same conditions as are set forth in the amendments to section 215 discussed below.

Section 7 of S. 281 revises section 215 of the Act in a number of ways. First, it specifies that the Secretary may enter into agreements with railroads in reorganization under the Act to acquire rail properties for lease or loan to such railroads until the date such rail properties are conveyed under the Act, and subsequently for

conveyance under the final system plan, or to acquire interests in such rail properties owned or leased to such railroads or in purchase money obligations therefor. (As in the case of existing law, the Secretary may continue to enter into agreements with railroads in reorganization under the Act to maintain or improve rail properties of such railroads). Secondly, it requires the inclusion in section 215 agreements of the following two conditions:

(A) to the extent that physical condition is used as a basis for determining, in the final system plan or in post-transfer proceedings of the special court, the value of properties subject to such an agreement and designated for transfer to ConRail under the final system plan, the physical condition of the properties on the effective date of the agreement shall be used; and

(B) in the event that property subject to the agreement is sold, leased, or transferred to an entity other than ConRail, the railroad shall pay or assign to the Secretary that portion of the proceeds of the sale, lease, or transfer that reflects value attributable to the maintenance and improvement provided pursuant to the agreement.

Section 7 also revises section 215 to increase from $150 million to $300 million the amount of obligations that may be outstanding at any one time, and to empower USRA, with the approval of the Secretary, to designate in the final system plan that portion of obligations issued which shall be refinanced and the terms of such refinancing, and that portion from which the Corporation shall be released of its obligations.

Section 4 of S.281 amends section 207(b) of the Act to permit a court having jurisdiction over a railroad subject to reorganization under section 77 of the Bankruptcy Act to reconsider any negative decision previously issued by the court under section 207(b) of the Regional Rail Act as to whether the railroad is reorganizable under section 77 and therefore should be reorganized under the Regional Rail Act. The court is compelled to issue an order that the reorganization of such a railroad be proceeded with under the Regional Rail Act unless it finds that the Act does not provide a process which would be fair and equitable. A tight schedule is established for the completion of proceedings by the reorganization courts under

the amendment and for appeals to the special court. In addition, USRA is empowered to take necessary steps to effectuate the consequences of a revised order under the amendments, including the preparation of any necessary supplements to the preliminary system plan.

Other amendments to the Act include the following:

(1) Section 5 of the bill amends section 211 of the Act to clarify that USRA loans under section 211 may be made prior to the implementation of the final system plan;

(2) Section 8 of the bill amends section 303(c)(1) of the Act to add to the duties of the special court that it decide what portion of the proceeds received by a railroad in reorganization from an entity other than ConRail for the sale, lease, or transfer of property subject to an agreement under section 213 or section 215(a)(1) or (2) reflects value attributable to the maintenance or improvement provided pursuant to the agreement;

(3) Section 9 of the bill adds a new section 605 to the Act prohibiting a railroad in reorganization from withholding from a State or a political subdivision of a State the payment of the portion of any tax owned by such railroad to the State or subdivision, which portion has been collected by the railroad from one of its tenants;

(4) Section 3 of the bill amends section 205(d)(2) of the Act to require the Rail Services Planning Office to employ attorneys as required, to properly protect the interests of communities and users of rail service which might not otherwise be adequately represented in the course of the reorganization process provided by the Act. Such attorneys are now limited to representing such parties in the course of hearings and evaluations conducted by the office itself;

(5) Section 2 of the bill amends section 202(b) of the Act to expand the scope of studies to be conducted by USRA to take into account express service; and

(6) Section 4 of the bill amends section 207(a)(2) of the Act to authorize the Rail Services Planning Office to hold hearings on any supplement to the preliminary system plan and to make available to USRA an analysis of the evidence it receives in such hearings not later than 30 days after the release of such a supplement.

Calendar No. 11

94TH CONGRESS
1st Session

SENATE

REPORT
No. 94-5

REGIONAL RAIL REORGANIZATION ACT AMENDMENTS OF 1975

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE

ON

S. 281

A BILL TO AMEND THE REGIONAL RAIL REORGANIZATION ACT OF 1973 TO INCREASE THE FINANCIAL ASSISTANCE AVAILABLE UNDER SECTION 213 AND SECTION 215, AND FOR OTHER PURPOSES

JANUARY 27, 1975.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

38-010 WASHINGTON : 1975

CONTENTS

Calendar No. 11

94TH CONGRESS
1st Session

SENATE

REPORT
No. 94–5

REGIONAL RAIL REORGANIZATION ACT AMENDMENTS OF 1975

JANUARY 27, 1975.—Ordered to be printed

Mr. MAGNUSON, from the Committee on Commerce, submitted the following

REPORT

[To accompany S. 281]

The Committee on Commerce, to which was referred the bill (S. 281) to amend the Regional Rail Reorganization Act of 1973 to increase the financial assistance available under section 213 and section 215, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

PURPOSE AND DESCRIPTION

It is the purpose of this bill to insure the continuation of essential rail services in the Northeast and Midwest and to enhance the reorganization process that will lead to the creation of a unified and modernized rail system in those parts of the country.

In the short-term, this bill insures the continuation of vital rail services in the Midwest and Northeast by authorizing the appropriation of an additional $125 million for the section 213 program and $150 million for the section 215 program, which were created by the Regional Rail Reorganization Act (Public Law 93–236).

The interim financing originally authorized by the Regional Rail Reorganization Act has been exhausted, and the economic downturn and other adverse economic factors have brought the affected railroads once again to the point where a complete termination of service is a distinct possibility. This bill aims at preventing such service disruption.

With regard to long-term programs, this bill enlarges and increases the flexibility of the loan-guarantee program in the Regional Rail Reorganization Act which allowed the Secretary of Transportation to facilitate the rehabilitation of those parts and facilities of the bank-

rupt railroads which will become part of the consolidated system. This bill authorizes an increase in the money available under that program to $300 million from $150 million and sets down new groundrues for the use of that money which will give the Secretary more flexibility in deciding how and when the guarantees will be used so that needed repair and rehabilitation activities on crucial parts of the railroads are no longer delayed. The bill makes it explicitly clear, however, that when the consolidated rail system is created, neither that system nor the federal government is to reimburse railroads in reorganizations for increases in value of their property caused by improvements made at government expense.

It is also the purpose of this bill to provide a mechanism for allowing a federal district court overseeing a reorganization to reconsider the decision that a bankrupt railroad was capable of reorganization on an income basis and thus outside of many parts of the Regional Rail Reorganization Act. At the time that act was passed, there were eight bankrupt railroads in the Northeast and Midwest. Subsequently, courts decided that two of them were capable of income-based reorganization. They were thus ineligible for the two maintenance aid programs and were treated differently in the planning for the comprehensive system. Since those determinations, in at least one of the cases, subsequent events have made income-based reorganization impossible. This bill amends the Regional Rail Reorganization Act to make reconsideration of that decision possible and allows those railroads, if necessary, to be brought fully under the act.

Finally, in collateral matters, the bill clarifies the position of the Interstate Commerce Commission's Rail Services Planning Office during the reorganization period with regard to representing the interests of the small communities and users during that process. This bill makes it explicit that that role is to continue throughout the whole reorganizing process. In a different area, this bill amends the Rail Passenger Service Act (Public Law 91–518) to allow the Board of Directors of the National Rail Passenger Corporation (Amtrak) to offer a salary in excess of level I of the Executive schedule if it is necessary to attract quality corporate officers. The salary which can be offered is limited by the general level of salaries paid in comparable positions in private railroads.

Background and Needs

On January 2, 1974, the President signed the Regional Rail Reorganization Act (Public Law 93–236). That act provided a framework for reorganizing eight major bankrupt Midwest and Northeast railroads into a modernized, efficient rail system that could ensure the continuation of essential rail service in the region. Its enactment was prompted by the possibility that the financial distress of the railroads would cause a breakdown of service throughout the area which would, in turn, trigger economic disaster on a grand scale. The eight railroads serve an area in which 42 percent of this country's people live and in which 50 percent of this country's industrial goods are produced. Railroad service is so intertwined with that industrial pro-

duction that it was estimated that a one-month termination of service in one state—Indiana—would mean a jobless rate in that state of at least 24 percent. An eight-week shutdown would reduce the gross national product by 2.7 percent and reduce the nation's overall economic activity by 4 percent.

The adverse impact would not be limited to the Midwest and the Northeast. The eight affected railroads are part of an indivisible network which ties the country together. The Northeast railroads, for example, receive over 300 cars a day from Alabama, over 640 cars a day from California, and over 520 cars a day from Minnesota. In return, the same railroads send over 680 cars a day to Texas, over 200 a day to Washington State, and over 550 cars a day to Tennessee.

To avert the threatened economic disaster, the Regional Rail Reorganization Act required the Department of Transportation to provide short-term aid in the form of grants to ensure that essential services were not disrupted. At the same time, a newly-created planning body—the United States Railway Association—was charged with identifying the essential parts of the bankrupt railroads and fashioning a consolidated rail system, the Consolidated Railway Corporation, to take over from the bankrupt railroads. The Secretary of Transportation was required to aid this process by guaranteeing loans to the railroads for the improvement and reorganization of those parts of their operations which would be included as part of the consolidated system. $85 million was authorized for the section 213 program; $150 million was authorized for improvements pursuant to section 215.

Eight class I railroads were in bankruptcy proceedings at the time of passage of the Act: the Penn Central, Reading, Erie Lackawanna, Lehigh Valley, Central of New Jersey, Boston and Maine, Ann Arbor, and Lehigh and Hudson River. Reorganization courts subsequently determined that two, the Boston and Maine and the Erie Lackawanna, were capable of income-based reorganization and thus were not "railroads in reorganization" for the purposes of the Act and, although they probably would be involved in the final system, they were not eligible for the interim grants or loan guarantees.

The twelve months following the passage and signing of the Regional Rail Reorganization Act brought further economic difficulties to the railroads. The difficulties have jeopardized the planning process and have renewed the spectre of total termination of service in the Midwest and Northeast. Inflation, increased costs and diminished revenues eroded the railroads already precarious cash-flow positions. For example, the Penn Central's fuel costs rose 100 percent during the course of 1974. On top of inflation, the coal strike and then the sharp economic down-turn reduced the amount of freight being hauled and eroded the companies' financial conditions still further. In 1975, the Penn Central's estimated revenues will be running at a level at least 7 percent below those of 1974. The Department of Transportation, at hearings on S. 281, testified that this estimate may prove "optimistic" as the recession deepens.

Since the passage of the Act, the loan guarantee mechanism which was created to facilitate the rehabilitation of those rail segments and

facilities to be included in the Consolidated Railway Corporation has had little impact on the deteriorating condition of the railroads' facilities. Until very recently, the Department of Transportation had only obligated $4 million of the available $150 million. The remaining $146 million is now committed in over 150 projects on which work should be beginning shortly. The United States Railway Association is to produce its preliminary plan on February 26 and as that emerges, the Department of Transportation will need more money to undertake more necessary projects and will need more flexibility in undertaking projects so they can be started without waiting for the approved emergence of the final system plan. In the interim, the delay has made the condition of the rail facilities worse and has contributed to driving business away because of the inconvenience and lost time caused by slow orders and rail mishaps. At the same time, inflation has added to the cost of rehabilitation.

At the same time as the Penn Central has been sliding once again toward total collapse, declining economic conditions have eroded the position of the Erie-Lackawanna Railroad. The E–L's trustees and the Department of Transportation are convinced it is now impossible to reorganize that railroad on an income basis. As a result, it may no longer make sense to consider the Erie Lackawanna apart from the six railroads which have been held to be "railroads in reorganization" under the Act. At present moment, there is no way that the Erie Lackawanna can be reorganized as a "railroad in reorganization" under the act. In addition the planning work of the United States Railway Association has been hampered because different considerations apply to the process of bringing significant parts of the Erie Lackawanna system into the final comprehensive rail system. A changeover to the status of a "railroad in reorganization" would alleviate these planning problems and streamline the process.

The impending disaster has been building during the past autumn and now the Penn Central stands once again at the brink of total collapse, with the other seven railroads not far behind. If nothing is done, the Penn Central will be unable to meet its payroll on February 25 and, in anticipation of the fact that it is unlikely its employees will work without pay, it plans to embargo all traffic beginning on February 14. Such an embargo would set in motion a chain of events that could bring industry in the Northeast and Midwest to a virtual standstill and prolong and intensify the current recession.

In addition, termination of service now would jeopardize all efforts to create a more energy efficient national transportation system at a time when the country is beginning to seek ways to reduce its dependence on costly imported oil. A shutdown would cripple attempts to get shippers to reverse the flow of freight away from the railroads. Finally, termination of service in the Midwest and Northeast would disrupt the flow of vitally needed coal and would prevent any economic upturn by severely restricting the amount of transportation available for the shipment of industrial goods.

Amtrak Salary Change

The Rail Passenger Services Act contains a limitation on the compensation of corporate officers of the National Railroad Passenger

Corporation—the corporation which runs Amtrak (45 U.S.C. 543(d)). The limitation is level I of the Executive Schedule of salaries, $60,000 per annum at the current time. That level of compensation is far below the average salary paid to people in equivalent positions in private railroads. The Committee recommends removal of the ceiling so that the Amtrak Board of Directors may offer a greater salary than is currently possible if such an increase is necessary to secure the services of qualified officers.

Rail Services Planning Office

One of the most important and successful parts of the Regional Rail Reorganization Act was section 205(d)(2), which required the Rail Services Planning office of the ICC to hire attorneys to help represent the interests of small communities and other rail users who might not otherwise be heard during the planning process for the consolidated system. To fulfill its duty, the Rail Services Planning Office created the Office of Public Counsel. This Public Counsel has helped numerous communities, companies, and individuals express their views on the plans developed by the United States Railway Association. Its efforts have focused attention on the problem and will probably help shape the final system plan in the best interests of the region. However, the original bill was vague on the Rail Services Planning Office attorney's monitoring role once the preliminary plan was produced and, to ensure continuing representation of the interests of small communities and users during the whole reorganization process, a further definition of the mandated role is necessary. The proposed amendment makes it explicit that the interests of small communities and users is to receive continual representation throughout the whole reorganizational process.

Meeting the Needs

These amendments are designed to alleviate the short-term cash shortages of the Midwest and Northeast railroads and enhance the ability of the United States Railway Association to improve the physical plant of the rail system in this area in the following ways:

Increase of Aid for Interim Operations and Improvements

This Act authorizes a $125 million appropriation to increase the amount of money available for agreements to ensure continuation of essential rail services. This money would be disbursed in section 213 of the Regional Rail Reorganization Act by the Secretary of Transportation to ensure the continuation of essential rail services until the planned Consolidated Railway Corporation takes over. The Department of Transportation requested an authorization of $100 million for this purpose but the Committee believes that the new eligibility of the Erie Lackawanna will add about $10 million in needs, while the economic turn-down is likely to be sharper than the Department of Transportation estimates, necessitating the additional $25 million authorization. The committee wished to emphasize that it hopes that the predictions of the Department and USRA regarding the costs of reorganization and rehabilitation are more accurate in the future. Recent predictions of the ultimate cost of rehabilitation underscores the

need for a more accurate prediction of costs by the Department and USRA. For instance, the Department testified that the predictions of the Penn Central trustees regarding the projected decrease in traffic in the next year was "optimistic."

Increasing Flexibility of and Money for Loan Guaranteeing Program

To improve and speed the facility rehabilitation program for those parts of the railroads in reorganization which will become part of the consolidated system, this Act authorizes an additional $150 million to be used for the section 215 loan guarantee program and alters the existing provisions of section 211 in order to allow the loan guarantee authority of USRA under section 211 to be used to "implement the goals of the Act". This will permit section 211 to be utilized upon enactment of this Act. To make more explicit the existing legislative intent of sections 213 and 215, these sections would be amended.

The agreements that are to be negotiated under the amended provisions of sections 213 and 215 will not attempt to fix the valuation of the properties covered by the agreement; instead they will merely assure that Conrail will not be required to compensate a railroad in reorganization for any portion of the value of the properties subject to the agreement and designated in the final system plan for transfer to it which is in excess of the value of the property determined on the basis of its physical condition on the date of the agreement. While the valuation will be made by the Association and the Special Court, the condition of the properties as of the date of the agreement will be a touchstone for determining that value.

If an improved section does not enter the system but is sold off to another interest, the bill provides that the government will be reimbursed for that part of the value attributable to improvements it financed.

Providing a mechanism for Reconsideration of the Status of the Erie Lakawanna

In order to solve the particular problems facing the Erie Lackawanna, this Act provides for a reconsideration of the original Reorganization Court decisions under section 207.

Amtrak Salary

The Act allows the Board of Directors of the National Railroad Passenger Corporation to offer a salary in excess of the current ceiling if it finds it necessary to secure the services of good corporate officers. The Board, however, is not to offer a salary in excess of the general level of compensation paid officers of railroads in positions of comparable responsibility. The Committee wished to emphasize that this standard is an upper limit and is not to be taken as a guide in fixing compensation for corporate officers.

Rail Services Planning Office

The Act clarifies the representation duties of the Rail Services Planning Office by specifying that the Office continue its representation of communities and rail service users which might not otherwise be adequately represented through the effective date of the final system plan.

TEXT OF S. 281, AS REPORTED

To amend the Regional Rail Reorganization Act of 1973 to increase the financial assistance available under section 213 and section 215, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Regional Rail Reorganization Act Amendments of 1975".

SEC. 2. (a) Section 211(a) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(a)) is amended by deleting the phrase "for purposes of assisting in the implementation of the final system plan;" and inserting in its place "for purposes of achieving the goals of this Act;".

(b) Section 211(e) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(e)(1)) is amended by deleting the phrase "carry out the final system plan" and inserting in its place "achieve the goals of this Act".

(c) Section 211(f) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(f)) is amended by deleting the phrase "goals of the final system plan" and inserting in its place "goals of this Act".

SEC. 3. (a) Section 213(a) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 723(a)) is amended by adding the following at the end thereof:

"Where the Secretary and the trustees agree that funds provided pursuant to this section are to be used (together with funds provided pursuant to section 215 of this Act, if any) to perform program maintenance on designated rail properties until the date rail properties are conveyed under this Act or to improve such designated properties, such agreement shall contain the conditions set forth in section 215(b) of this Act."

(b) Section 213(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 723(b)) is amended by striking out "$85,000,000" and inserting in lieu thereof "$210,000,000."

SEC. 4. Section 215 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 725) is amended to read as follows:

"INTERIM AGREEMENTS

"SEC. 215. (a) PURPOSE.—Prior to the date upon which rail properties are conveyed to the Corporation under this Act, the Secretary, with the approval of the Association, is authorized to enter into agreements with the trustees of the railroads in reorganization in the region (or railroads leased, operated, or controlled by railroads in reorganization)—

"(1) to perform the program maintenance on designated rail properties of such railroads until the date rail properties are conveyed under this Act;

"(2) to improve railroad facilities and equipment of such railroads; and

"(3) to acquire railroad facilities or equipment for lease or loan to any such railroads until the date rail properties are conveyed

under this Act, and subsequently for conveyance pursuant to the final system plan, or to acquire interests in such facilities or equipment owned by or leased to any such railroads or in purchase money obligations therefor.

"(b) CONDITIONS.—Agreements pursuant to subsection (a) of this section shall contain such reasonable terms and conditions as the Secretary may prescribe. In addition, agreements under paragraphs (1) and (2) of subsection (a) of this section shall provide that—

"(1) the Corporation shall not be required under title III of this Act to compensate a railroad in reorganization for any portion of the value of the properties subject to the agreement and designated under the final system plan for transfer to the Corporation which is attributable to the maintenance or improvement performed pursuant to the agreement. The Association and the Special Court shall, in determining value pursuant to section 303, take into account the physical condition as of the effective date of the agreement; and

"(2) in the event that property subject to the agreement is sold, leased or transferred to an entity other than the Corporation, the trustees or railroad shall pay or assign to the Secretary that portion of the proceeds of such sale, lease or transfer which reflects value attributable to the maintenance and improvement provided pursuant to the agreements.

"(c) OBLIGATIONS.—Notwithstanding section 210(b) of this title, the Association shall issue obligations under section 210(a) of this title in an amount sufficient to finance such agreements and shall require the Corporation to assume any such obligations. The aggregate amount of obligations issued under this section and outstanding at any one time shall not exceeed $300,000,000. The Association, with the approval of the Secretary, shall designate in the final system plan that portion of such obligations issued or to be issued which shall be refinanced and the terms thereof, and that portion from which the Corporation shall be released of its obligations.

"(d) CONVEYANCE.—The Secretary may convey to the Corporation, with or without receipt of consideration, any property or interests acquired by, transferred to, or otherwise held by the Secretary pursuant to this section or section 213 of this Act."

SEC. 5. Section 303(c)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 745(c)(1)) is amended by deleting the last word of paragraph (A); by deleting the period at the end of paragraph (B) and inserting "; and" in its place; and by inserting after paragraph (B) the following new paragraph:

"(C) what portion of the proceeds receievd by a railroad in reorganization from an entity other than the Corporation for the sale, lease or transfer of property subject to an agreement under section 213 or section 215(a)(1) or (2) of this Act reflects value attributable to the maintenance or improvement provided pursuant to the agreement."

SEC. 6. Section 303(d) of the Rail Passenger Service Act (45 U.S.C. 543(d)) is amended by inserting immediately after the third sentence the following:

"This limitation on compensation shall not apply, however, if the Board determines with respect to a particular position or positions

that: (1) a higher level of compensation is necessary, and (2) is not in excess of the general level of compensation paid officers of railroads in positions of comparable responsibility.".

SEC. 7. Subsection (b) of section 207 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 717(b)) is amended (1) by inserting "(1)" immediately before the first sentence thereof, and (2) by adding at the end thereof the following two new paragraphs:

"(2) Whenever a court having jurisdiction over a railroad subject to reorganization under section 77 of the Bankruptcy Act (11 U.S.C. 205) has found, pursuant to a final order under paragraph (1) of this subsection, that the reorganization of such railroad shall not be proceeded with pursuant to this Act, such reorganization court may, upon a petition which is filed within 10 days after the date of enactment of this subsection by the trustees of such railroad, reconsider such order. Such reorganization court shall (i) affirm its previous order or (ii) issue an order that the reorganization of such railroad be proceeded with pursuant to this Act unless it find that this Act does not provide a process which would be fair and equitable. The provisions of paragraph (1) of this subsection are applicable in such reconsideration, except that (A) such reorganization court shall make its decision within 30 days after such petition is filed, and (B) any decision by the Special Court on appeal from such a decision shall be rendered within 30 days after such reorganization court decision is made. There shall be no review of the decision of the Special Court. The Association shall take any steps it finds necessary, consistent with time limitations and other provisions of this Act, to effectuate the consequences of such a revised order, including the preparation and submission of any necessary or appropriate supplements to the preliminary system plan."

"(3) The Office is authorized to hold public hearings on the preliminary system plan and to make available to the Association a summary and analysis of the evidence received in the course of such proceedings, together with its critique and evaluation of the preliminary system plan, not later than 60 days after the date of release of such plan. The Office is authorized to hold public hearings on the supplement and to make available to the Association a summary and analysis of the evidence received in the course of such proceedings, together with its critique and evaluation of the supplement, not later than 30 days after the date of release of such supplement."

SEC. 8. Paragraph (2) of subsection (d) of Section 205 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 715(d)(2)) is amended to read as follows:

"(2) employ and utilize the services of attorneys and such other personnel as may be required in order properly to protect the interests of those communities and users of rail service which, for whatever reason, such as their size or location, might not otherwise be adequately represented in the course of the reorganization process as provided by this Act.".

SECTION-BY-SECTION ANALYSIS

Section 1. This section states that the bill may be cited as the "Regional Rail Reorganization Act Amendments of 1975".

Section 2. Subsection (a) amends section 211(a) of the Regional Rail Reorganization Act of 1973 ("Rail Act") (45 U.S.C. 721(a)) to make clear that loans to carry out the goals of the Act can be made prior to the effective date of the final system plan. Subsections (b) and (c) would amend sections 211(e)(1) and 211(f) of the Rail Act to conform with the amended language in subsection (a).

Section 3. Subsection (a) amends subsection 213(a) of the Rail Act to provide that where the Secretary of Transportation ("Secretary") and the trustees agree that funds provided under section 213 are to be applied to improve or to conduct program maintenance on designated rail properties, such assistance must be conditioned on the increase in value of those properties attributable to such maintenance going to the Consolidated Rail Corporation ("Conrail") or returning to the Secretary.

Subsection 2(b) amends subsection 213(b) of the Rail Act to increase the current authorization by $125 million (from $85 million to $210 million).

Section 4. This section revises section 215 of the Rail Act by dividing the section into four subsections. Subsection (a) would expand the purposes for which section 215 funding can be used by authorizing the Secretary, with the approval of the U.S. Railway Association ("Association"), to enter into agreements with the trustees of the railroads in reorganization (or railroads leased, operated, or controlled by railroads in reorganization) to: (1) perform program maintenance on designated rail properties of such railroads; (2) improve railroad facilities or equipment; and (3) acquire railroad facilities or equipment for lease or loan to any such railroads or acquire interests in such facilities or equipment owned by or leased to any such railroads or in purchase money obligations therefor.

The new subsection (b) provides that all agreements pursuant to subsection (a) shall contain such reasonable terms and conditions as the Secretary may prescribe. Agreements relating to purposes (1) and (2) of subsection (a) shall, in addition, provide that: (a) Conrail shall not be required under title III of the Rail Act to compensate the railroad in reorganization for any portion of the value of the properties subject to the agreement and designated for transfer to Conrail which is in excess of the value of such properties determined as of the effective date of the agreement and on the basis of its physical condition on that date; and (b) in the event that property subject to the agreement is sold, leased or transferred to an entity other than Conrail, the trustees or railroad shall pay or assign to the Secretary that portion of the proceeds of such sale, lease or transfer which reflects value attributable to the maintenance and improvement provided pursuant to the agreement.

The new subsection (c) increases the current authorization of section 215 by $150 million (from $150 million to $300 million). While the subsection provides that the Association shall require Conrail to assume any obligations issued by the Association to finance the section 215 agreements, it also provides that the Association, with the approval of the Secretary, shall have the expanded authority to designate in the final system plan which loans can be refinanced, and on what terms, and to designate the extent to which Conrail shall be released from the requirement to satisfy such obligations.

The new subsection (d) provides that the Secretary may convey to Conrail, with or without receipt of consideration, any property or interests which are held by the Secretary pursuant to section 213 or section 215.

Section 5. This section amends section 303(c)(1) of the Rail Act by adding a new paragraph (C) which gives the Special Court jurisdiction to decide, in situations where property maintained or improved with section 213 or section 215 funds is sold, leased or transferred pursuant to the final system plan to an entity other than Conrail, what portion of the proceeds is value attributable to such maintenance or improvement.

Section 6. This section amends section 303 of the Rail Passenger Service Act to allow the Board of Directors of the National Railroad Passenger Corporation, under certain circumstances, to make exceptions to the existing limitation on compensation of corporate officers where such an exception is necessary to attract competent management. The level of compensation may not exceed the general level of compensation paid officers of railroads in positions of comparable responsibility.

Section 7. This section provides the trustees of railroads subject to reorganization under section 77 of the Bankruptcy Act with a mechanism to allow the federal district court supervising that reorganization to reconsider a decision of income based reorganizability under section 207 of the Regional Rail Reorganization Act of 1973.

Section 8. This section clarifies the role of the Office of Public Counsel within the Interstate Commerce Commission's Rail Services Planning Office to make clear that the Public Counsel is to participate in the reorganization process through the effective date of the final system plan.

Changes in Existing Law

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic and existing law in which no change is proposed is shown in roman.

Regional Rail Reorganization Act of 1973
(45 U.S.C. 701 et seq.)

RAIL SERVICE PLANNING OFFICE

Sec. 205. * * *

(d) Duties.—In addition to its duties, and responsibilities under other provisions of this Act, the Office shall—

(1) study and evaluate the Secretary's report on rail services in the region required under section 204(a) of this Act and submit its report thereon to the Association within 120 days after the date of enactment of this Act. The Office shall also solicit, study, and evaluate the views with respect to present and future rail service needs of the region from Governors of States within the region; mayors and chief executives of political subdivisions within such States; shippers; the Secretary of Defense; manufac-

turers, wholesalers, and retailers within the region; consumers of goods and products shipped by rail; and all other interested persons. The Office shall conduct public hearings to solicit comments on such report and to receive such views;

(2) employ and utilize the services of attorneys and such other personnel as may be required in order properly to protect the interests of those communities and users of rail service which, for whatever reason, such as their size or location, might not otherwise be adequately represented in the course of [the hearings and evaluations which the Office is required to conduct and perform under other provisions of this Act] *the reorganization process as provided by this Act;*

ADOPTION OF FINAL SYSTEM PLAN

SEC. 207. (a) PRELIMINARY SYSTEM PLAN.—(1) Within 300 days after the date of enactment of this Act, the Association shall adopt and release a preliminary system plan prepared by it on the basis of reports and other information submitted to it by the Secretary, the Office, and interested persons in accordance with this Act and on the basis of its own investigations, consultations, research, evaluation, and analysis pursuant to this Act. Copies of the preliminary system plan shall be transmitted by the Association to the Secretary, the Office, the Governor and public utility commission of each State in the region, the Congress, each court having jurisdiction over a railroad in reorganization in the region, the special court, and interested persons, and a copy shall be published in the Federal Register. The Association shall invite and afford interested persons an opportunity to submit comments on the preliminary system plan to the Association within 60 days after the date of its release.

(2) The Office is authorized and directed to hold public hearings on the preliminary system plan and to make available to the Association a summary and analysis of the evidence received in the course of such proceedings, together with its critique and evaluation of the preliminary system plan, not later than 60 days after the date of release of such plan.

(b) APPROVAL.—(*1*) Within 120 days after the date of enactment of this Act each United States district court or other court having jurisdiction over a railroad in reorganization shall decide whether the railroad is reorganizable on an income basis within a reasonable time under section 77 of the Bankruptcy Act (11 U.S.C. 205) and that the public interest would be better served by continuing the present reorganization proceedings than by a reorganization under this Act. Within 60 days after the submission of the report by the Office, under section 205(d)(1) of this title, on the Secretary's report on rail services in the region, each United States district court or other court having jurisdiction over a railroad in reorganization shall decide whether or not such railroad shall be reorganized by means of transferring some of its rail properties to the Corporation pursuant to the provisions of this Act. Because of the strong public interest in the continuance of rail transportation in the region pursuant to a system plan devised under the provisions of this Act, each such court shall order that the reorganization be proceeded with pursuant to this Act

unless it (1) has found that the railroad is reorganizable on an income basis within a reasonable time under section 77 of the Bankruptcy Act (11 U.S.C. 205) and that the public interest would be better served by such a reorganization than by a reorganization under this Act, or (2) finds that this Act does not provide a process which would be fair and equitable to the estate of the railroad in reorganization in which case it shall dismiss the reorganization proceeding. If a court does not enter an order or make a finding as required by this subsection, the reorganization shall be proceeded with pursuant to this Act. An appeal from an order made under this section may be made only to the special court. Appeal to the special court shall be taken within 10 days following entry of an order pursuant to this subsection, and the special court shall complete its review and render its decision within 80 days after such appeal is taken. There shall be no review of the decision of the special court.

(2) Whenever a court having jurisdiction over a railroad subject to reorganization under section 77 of the Bankruptcy Act (11 U.S.C. 205) has found, pursuant to a final order under paragraph (1) of this subsection, that the reorganization of such railroad shall not be proceeded with pursuant to this Act, such reorganization court may, upon a petition which is filed within 10 days after the date of enactment of this subsection by the trustees of such railroad, reconsider such order. Such reorganization court shall (i) affirm its previous order or (ii) issue an order that the reorganization of such railroad be proceeded with pursuant to this Act unless it finds that this Act does not provide a process which would be fair and equitable. The provisions of paragraph (1) of this subsection are applicable in such reconsideration, except that (A) such reorganization court shall make its decision within 30 days after such petition is filed, and (B) any decision by the Special Court on appeal from such a decision shall be rendered within 30 days after such reorganization court decision is made. There shall be no review of the decision of the Special Court. The Association shall take any steps it finds necessary, consistent with time limitations and other provisions of this Act, to effectuate the consequences of such a revised order, including the preparation and submission of any necessary or appropriate supplements to the preliminary system plan.

(3) The Office is authorized to hold public hearings on the preliminary system plan and to make available to the Association a summary and analysis of the evidence received in the course of such proceedings, together with its critique and evaluation of the preliminary system plan, not later than 60 days after the date of release of such plan. The Office is authorized to hold public hearings on the supplement and to make available to the Association a summary and analysis of the evidence received in the course of such proceedings, together with its critique and evaluation of the supplement, not later than 30 days after the date of release of such supplement.

LOANS

SEC. 211. (a) GENERAL.—The Association is authorized, in accordance with the provisions of this section and such rules and regulations as it shall prescribe, to make loans to the Corporation, the National Railroad Passenger Corporation, and other railroads (including a

railroad in reorganization which has been found to be reorganizable under section 77 of the Bankruptcy Act pursuant to section 207(b) of this title) in the region, [for purposes of assisting in the implementation of the final system plan;] *for purposes of achieving the goals of this Act;* to a State or local or regional transportation authority pursuant to section 403 of this Act; and to provide assistance in the form of loans to any railroad which (A) connects with a railroad in reorganization, and (B) is in need of financial assistance to avoid reorganization proceedings under section 77 of the Bankruptcy Act (11 U.S.C. 205). No such loan shall be made by the Association to a railroad unless such loans shall, where applicable, be treated as an expense of administration. The rights referred to in the last sentence of section 77(j) of the Bankruptcy Act (11 U.S.C. 205(j)) shall in no way be affected by this Act.

* * * * * * *

(e) PREREQUISITES.—The Association shall make a finding in writing, before making a loan to any applicant under this section, that—

(1) the loan is necessary to [carry out the final system plan] *achieve the goals of this act* or to prevent insolvency;

(2) it is satisfied that the business affairs of the applicant will be conducted in a reasonable and prudent manner; and

(3) the applicant has offered such security as the Association deems necessary to protect reasonably the interests of the United States.

(f) POLICY.—It is the intent of Congress that loans made under this section shall be made on terms and conditions which furnish reasonable assurance that the Corporation or the railroads to which such loans are granted will be able to repay them within the time fixed and that the [goals of the final system plan] *goals of this act* are reasonably likely to be achieved.

* * * * * * *

EMERGENCY ASSISTANCE PENDING IMPLEMENTATION

SEC. 213. (a) EMERGENCY ASSISTANCE.—The Secretary is authorized, pending the implementation of the final system plan, to pay to the trustees of railroads in reorganization such sums as are necessary for the continued provision of essential transportation services by such railroads. Such payments shall be made by the Secretary upon such reasonable terms and conditions as the Secretary establishes, except that recipients must agree to maintain and provide service at a level no less than that in effect on the date of enactment of this Act. *Where the Secretary and the trustees agree that funds provided pursuant to this section are to be used (together with funds provided pursuant to section 215 of this Act, if any) to perform program maintenance on designated rail properties until the date rail properties are conveyed under this Act or to improve such designated properties, such agreement shall contain the conditions set forth in section 215(b) of this Act.*

(b) AUTHORIZATION FOR APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for carrying out this section such sums as are necessary, not to exceed [$85,000,000] *$210,000,000*, to remain available until expended.

* * * * * * *

[MAINTENANCE AND IMPROVEMENT OF PLANT

[SEC. 215. Prior to the date upon which rail properties are conveyed to the Corporation under this Act, the Secretary, with the approval of the Association, is authorized to enter into agreements with railroads in reorganization in the region (or railroads leased, operated, or controlled by railroads in reorganization) for the acquisition, maintenance, or improvement of railroad facilities and equipment necessary to improve property that will be in the final system plan. Agreements entered into pursuant to this section shall specifically identify the type and quality of improvements to be made pursuant to such agreements. Notwithstanding section 210(b) of this title, the Association shall issue obligations under section 210(a) of this title in an amount sufficient to finance such agreements and shall require the Corporation to assume any such obligations. However, the Association may not issue obligations under this section in an aggregate amount in excess of $150,000,000. The Secretary may not enter into any agreements under this section until he issues regulations setting forth procedures and guidelines for the administration of this section. The Corporation shall not be required under title III of this Act to compensate any railroad in reorganization for that portion of the value of rail properties transferred to it under this Act which is attributable to the acquisition, maintenance, or improvement of such properties under this section.]

INTERIM AGREEMENTS

SEC. 215. (a) PURPOSES.—Prior to the date upon which rail properties are conveyed to the Corporation under this Act, the Secretary, with the approval of the Association, is authorized to enter into agreements with the trustees of the railroads in reorganization in the region (or railroads leased, operated, or controlled by railroads in reorganization)—

(1) to perform the program maintenance on designated rail properties of such railroads until the date rail properties are conveyed under this Act;

(2) to improve railroad facilities and equipment of such railroads; and

(3) to acquire railroad facilities or equipment for lease or loan to any such railroads until the date rail properties are conveyed under this Act, and subsequently for conveyance pursuant to the final system plan, or to acquire interests in such facilities or equipment owned by or leased to any such railroads or in purchase money obligations therefor.

(b) CONDITIONS.—Agreements pursuant to subsection (a) of this section shall contain such reasonable terms and conditions as the Secretary may prescribe. In addition, agreements under paragraphs (1) and (2) of subsection (a) of this section shall provide that—

(1) the Corporation shall not be required under title III of this Act to compensate a railroad in reorganization for any portion of the value of the properties subject to the agreement and designated under the final system plan for transfer to the Corporation which is attributable to the maintenance or improvement performed pursuant to the agreement. The Association and the Special Court shall, in determining value pursuant to section 303, take into account the physical condition as of the effective date of the agreement; and

(2) in the event that property subject to the agreement is sold, leased or transferred to an entity other than the Corporation, the trustees or railroad shall pay or assign to the Secretary that portion of the proceeds of such sale, lease or transfer which reflects value attributable to the maintenance and improvement provided pursuant to the agreements.

(c) OBLIGATIONS.—Notwithstanding section 210(b) of this title, the Association shall issue obligations under section 210(a) of this title in an amount sufficient to finance such agreements and shall require the Corporation to assume any such obligations. The aggregate amount of obligations issued under this section and outstanding at any one time shall not exceed $300,000,000. The Association, with the approval of the Secretary, shall designate in the final system plan that portion of such obligations issued or to be issued which shall be refinanced and the terms thereof, and that portion from which the Corporation shall be released of its obligations.

(d) CONVEYANCE.—The Secretary may convey to the Corporation, tion, with or without receipt of consideration, any property or interests acquired by, transferred to, or otherwise held by the Secretary pursuant to this section or section 213 of this Act.

VALUATION AND CONVEYANCE OF RAIL PROPERTIES

SEC. 303. * * *

(c) FINDINGS AND DISTRIBUTION.—(1) After the rail properties have been conveyed to the Corporation and profitable railroads operating in the region under subsection (b) of this section, the special court, giving due consideration to the findings contained in the final system plan, shall decide—

(A) whether the transfers or conveyances—

(i) of rail properties of each railroad in reorganization, or of each railroad leased, operated, or controlled by a railroad in reorganization, to the Corporation in exchange for the securities and the other benefits accruing to such railroad as a result of such exchange, as provided in the final system plan and this Act, and

(ii) of rail properties of each railroad in reorganization, or of each railroad leased, operated, or controlled by a railroad in reorganization, to a profitable railroad operating in the region, in accordance with the final system plan,

are in the public interest and are fair and equitable to the estate of each railroad in reorganization in accordance with the standard of fairness and equity applicable to the approval of a plan of reorganization or a step in such a plan under section 77 of the Bankruptcy Act (11 U.S.C. 205), or fair and equitable to a railroad that is not itself in reorganization but which is leased, operated, or controlled by a railroad in reorganization; [and]

(B) whether the transfers or conveyances are more fair and equitable than is required as a constitutional minimum[.] *; and*

(C) what portion of the proceeds received by a railroad in reorganization from an entity other than the Corporation for the sale, lease or transfer of property subject to an agreement under section 213 or section 215 (a) (1) or (2) of this Act reflects value attributable to the maintenance or improvement provided pursuant to the agreement.

(2) If the special court finds that the terms of one or more exchanges for securities and other benefits are not fair and equitable to an estate of a railroad in reorganization, or to a railroad leased, operated, or controlled by a railroad in reorganization, which has transferred rail properties pursuant to the final system plan, it shall—

(A) enter a judgment reallocating the securities of the Corporation in a fair and equitable manner if it has not been fairly allocated among the railroads transferring rail properties to the Corporation; and

(B) if the lack of fairness and equity cannot be completely cured by a reallocation of the Corporation's securities, order the Corporation to provide for the transfer to the railroad of other securities of the Corporation or obligations of the Association as designated in the final system plan in such nature and amount as would make the exchange or exchanges fair and equitable; and

(C) if the lack of fairness and equity cannot be completely cured by reallocation of the Corporation's securities or by providing for the transfer of other securities of the Corporation or obligations of the Association as designated in the final system plan, enter a judgment against the Corporation.

(3) If the special court finds that the terms of one or more conveyances of rail properties to a profitable railroad operating in the region in accordance with the final system plan are not fair and equitable, it shall enter a judgment against such profitable railroad. If the special court finds that the terms of one or more conveyances or exchanges for securities or other benefits are fairer and more equitable than is required as a constitutional minimum, then it shall order the return of any excess securities, obligations, or compensation to the Corporation or a profitable railroad so as not to exceed the constitutional minimum standard of fairness and equity.

(4) Upon making the findings referred to in this subsection, the special court shall order distribution of the securities, obligations, and compensation deposited with it under subsection (b) of this section to the trustee or trustees of each railroad in reorganization in the region who conveyed right, title, and interest in rail properties to the Corporation and the respective profitable railroads under such subsection.

RAIL PASSENGER SERVICE ACT (45 U.S.C. 501 et seq.)

* * * * * * *

DIRECTORS AND OFFICERS

SEC. 543. * * *

(d) APPOINTMENT; TENURE; DUTIES OF PRESIDENT AND OTHER OFFICERS.—The Corporation shall have a president and such other officers as may be named and appointed by the board. The rates of compensation of all officers shall be fixed by the board. No officer of the Corporation shall receive compensation at a rate in excess of that prescribed for level I of the Executive Schedule under section 5312 of Title 5.

This limitation on compensation shall not apply, however, if the Board determines with respect to a particular position or positions that: (1) a higher level of compensation is necessary, and (2) is not in excess of the general level of compensation paid officers of railroads in positions of comparable responsibility. Officers shall serve at the pleasure of the board. No individual other than a citizen of the United States may be an officer of the Corporation. No officer of the Corporation may have any direct or indirect employment or financial relationship with any railroad during the time of his employment by the Corporation.

○

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-7

REGIONAL, RAIL REORGANIZATION ACT AMENDMENTS OF 1975

FEBRUARY 10, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 2051]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 2051) to amend the Regional Rail Reorganization Act of 1973 to increase the financial assistance available under section 213 and section 215, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike out after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Regional Rail Reorganization Act Amendments of 1975".

SEC. 2. (a) Section 202(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 712(1)) is amended—

(1) in paragraph (2) by inserting "and express" immediately after "rail" each time it appears;

(2) by striking out the period at the end of paragraph (7) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(8) study the feasibility of coordinating rail and express service in the region.".

(b) Section 206(a)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716) is amended by inserting "and express" immediately after "rail".

38-006—75——1

SEC. 3. Section 205(d)(2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 715(d)(2)) is amended to read as follows:

"(2) employ and utilize the services of attorneys and such other personnel as may be required in order to properly protect the interests of those communities and users of rail service which, for whatever reason, such as their size or location, might not otherwise be adequately represented in the course of the reorganization process as provided by this Act;".

SEC. 4. Section 207(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 717(b) is amended by inserting "(1)" immediately before the first sentence thereof, and by adding at the end thereof the following new paragraph:

"(2) Whenever it has been finally determined pursuant to the procedures of paragraph (1) of this subsection, that the reorganization of a railroad subject to reorganization under section 77 of the Bankruptcy Act (11 U.S.C. 205) shall not be proceeded with pursuant to this Act, the court having jurisdiction over such railroad may, upon a petition which is filed within 10 days after the date of enactment of the subsection by the trustees of such railroad, reconsider such order. Such reorganization court shall (i) affirm its previous order or (ii) issue an order that the reorganization of such railroad be proceeded with pursuant to this Act unless if finds that this Act does not provide a process which would be fair and equitable. The provisions of paragraph (1) of this subsection are applicable in such reconsideration, except that (A) such reorganization court shall make its decision within 30 days after such petition is filed, and (B) any decision by the special court on appeal from such a decision shall be rendered within 30 days after such reorganization court decision is made. There shall be no review of the decision of the special court. The Association shall take any steps it finds necessary, consistent with time limitations and other provisions of this Act, to effectuate the consequences of such a revised order, including the preparation and submission of any necessary or appropriate supplements to the preliminary system plan.".

SEC. 5. (a) Section 211(a) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(a)) is amended by striking out "for purposes of assisting in the implementation of the final system plan;" and inserting in lieu thereof "for purposes of achieving the goals of this Act;".

(b) Section 211(e)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(e)(1)) is amended by striking out "carry out the final system plan" and inserting in lieu thereof "achieve the goals of this Act".

(c) Section 211(f) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(f)) is amended by striking out "goals of the final system plan" and inserting in lieu thereof "goals of this Act".

SEC. 6. (a) Section 213(a) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 723(a)) is amended by adding the following at the end thereof: "Where the Secretary and the trustees agree that funds provided pursuant to this section are to be used (together with funds provided pursuant to section 215 of this Act, if any) to perform program maintenance on designated rail properties until the date rail properties are conveyed under this Act or to improve such designated properties, such agreement shall contain the conditions set forth in section 215(b) of this Act.".

(b) Section 213(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 723(b)) is amended—

(1) by striking out "$85,000,000" and inserting in lieu thereof "$282,000,000"; and

(2) by adding at the end thereof the following new sentence: "Of amounts authorized to be appropriated under this subsection, $50,000,000 shall be available solely to pay to the trustees of railroads in reorganization such sums as may be necessary to provide such railroads with amounts equal to revenues attributable to tariff increases proposed by such railroads and suspended by the Interstate Commerce Commission during the calendar year 1975, if the Secretary determines that such payments are necessary to carry out this section.".

SEC. 7. Section 215 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 725) is amended to read as follows:

"INTERIM AGREEMENTS

"SEC. 215. (a) PURPOSES.—Prior to the date upon which rail properties are conveyed to the Corporation under this Act, the Secretary, with the approval of the Association, is authorized to enter into agreements with the trustees of the

railroads in reorganization in the region (or railroads leased, operated, or controlled by railroads in reorganization)—

"(1) to perform the program maintenance on designated rail properties of such railroads until the date rail properties are conveyed under this Act;

"(2) to improve rail properties of such railroads; and

"(3) to acquire rail properties for lease or loan to any such railroads until the date such rail properties are conveyed under this Act, and subsequently for conveyance pursuant to the final system plan, or to acquire interests in such rail properties owned by or leased to any such railroads or in purchase money obligations therefor.

"(b) CONDITIONS.—Agreements pursuant to subsection (a) of this section shall contain such reasonable terms and conditions as the Secretary may prescribe. In addition, agreements under paragraphs (1) and (2) of subsection (a) of this section shall provide that—

"(1) the Corporation shall not be required under title III of this Act to compensate a railroad in reorganization for any portion of the value of the properties subject to the agreement and designated under the final system plan for transfer to the Corporation which is attributable to the maintenance or improvement performed pursuant to the agreement. The Association and the special court shall, in determining value pursuant to section 303 of this Act, take into account the physical condition as of the effective date of the agreement; and

"(2) in the event that property subject to the agreement is sold, leased, or transferred to an entity other than the Corporation, the trustees or railroad shall pay or assign to the Secretary that portion of the proceeds of such sale, lease, or transfer which reflects value attributable to the maintenance and improvement provided pursuant to the agreement.

"(c) OBLIGATIONS.—Notwithstanding section 110(b) of this title, the Association shall issue obligations under section 210(a) of this title in an amount sufficient to finance such agreements and shall require the Corporation to assume any such obligations. The aggregate amount of obligations issued under this section and outstanding at any one time shall not exceed $300,000,000. The Association, with the approval of the Secretary, shall designate in the final system plan that portion of such obligations issued or to be issued which shall be refinanced and the terms thereof, and that portion from which the Corporation shall be released of its obligations.

"(d) CONVEYANCE.—The Secretary may convey to the Corporation, with or without receipt of consideration, any property or interests acquired by, transferred to, or otherwise held by the Secretary pursuant to this section or section 213 of this Act.".

SEC. 8. Section 303(c)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 745(c)(1)) is amended by striking out the last word of paragraph (A), by striking out the period at the end of paragraph (B) and inserting "; and" in lieu thereof, and by inserting after paragraph (B) the following new paragraph:

"(C) what portion of the proceeds received by a railroad in reorganization from an entity other than the Corporation for the sale, lease, or transfer of property subject to an agreement under section 213 or section 215(a) (1) or (2) of this Act reflects value attributable to the maintenance or improvement provided pursuant to the agreement.".

SEC. 9. Title VI of the Regional Rail Reorganization Act of 1973 is amended by adding at the end thereof the following new section:

"TAX PAYMENTS TO STATES

"SEC. 605. (a) Notwithstanding any other provision of law, no railroad in reorganization shall withhold from any State, or any political subdivision thereof, the payment of the portion of any tax owed by such railroad to such State or subdivision, which portion has been collected by such railroad from any tenant thereof.

"(b) Any railroad which violates the provisions of subsection (a) of this section by withholding any portion of a tax referred to in such subsection shall be fined not more than $10,000 for each such violation.".

PURPOSE AND SUMMARY OF THIS LEGISLATION

The purpose of this bill is to provide emergency financial assistance to bankrupt rail carriers in the Northeast and Midwest in order to continue essential rail services. In addition, changes are made in the

Regional Rail Reorganization Act of 1973 (Public Law 93–236) to enhance the reorganization process.

The interim financing provided by Public Law 93–236, designed to maintain essential rail services at 1974 levels, has now been exhausted. A complete cessation of service throughout the Northeast is possible because of a lack of cash to meet the payroll costs of the Penn Central. The reported bill provides an authorization of up to $197 million in new emergency grants, and $150 million in new Federal guaranteed loans, in order that the rail carriers can continue operations until the first quarter of fiscal year 1976.

In addition, certain changes are made in the Regional Rail Reorganization Act which will give the Secretary of Transportation more flexibility in regard to operation of the loan-guarantee program, particularly in requiring conditions on the use of the loans to assure that neither the government nor the new Consolidated Rail Corporation will reimburse railroads for increases in value of their property attributable to improvements made at government expense.

The reported bill also provides a means by which a Federal court overseeing a railroad reorganizing under section 77 of the Bankruptcy Act can reconsider the decision that a railroad was capable of reorganization on an income basis and did not need to be reorganized under the Regional Rail Reorganization Act. This provision will benefit the Erie-Lackawanna Railroad, presently undergoing court-ordered reorganization outside the provisions of P.L. 93–236.

Another provision of the reported bill makes sure that if a railroad in reorganization collects a tax from a tenant of its property, such tax shall not be withheld from any state or subdivision thereof.

Another provision of the reported bill allows the Interstate Commerce Commission's Rail Services Planning Office to employ and utilize attorneys to represent communities and users of rail service throughout the reorganization process.

The reported bill also mandates the United States Railway Association to study express companies in the region.

Several technical amendments are also made to the 1973 Act.

History and Need

In the early months of 1973, this Committee originated the long and arduous task of finding a legislative solution to the critical rail problems which plagued the Northeastern United States. Since 1970, Congress has been passing emergency measures to prevent the region's carriers from stopping essential rail service which would virtually cripple the economy in this densely populated area (e.g., Public Law 92–591, 86 STAT 1304, "The Agnes Act", 1972; Public Law 91–663, "Emergency Rail Services Act of 1970").

Your Committee initiated H.R. 9142, and in the fall of 1973, after seven months of intensive work, reported the measure to the House, where it passed and was sent to the Senate. The measure became Public Law 93–236 on January 2, 1974.

The Regional Rail Reorganization Act of 1973 was designed to supplement section 7 of the Bankruptcy Act (11 U.S.C. 204) and to provide a means of reorganizing a number of rail carriers in the region into a profitable system. The Congress realized that existing bankruptcy statutes were inadequate to deal with multiple rail bankruptcies. No one Federal judge could coordinate with others to plan a single network of rail carriers. Thus the 1973 Act provided Federal

assistance and several new Federal agencies to coordinate the planning and implementation of a new rail system. The Committee envisaged a new for-profit railroad, Consolidated Rail Corporation, merged from at least six of the then eight bankrupt carriers.

At the time of the enactment of the Regional Rail Reorganization Act of 1973, eight Class I railroads were in bankruptcy proceedings. These included the Penn Central, the nation's largest transportation company—with 20,000 miles of track and over 100,000 employees; the Reading, the Lehigh Valley, the Central of New Jersey, the Erie-Lackawanna, the Boston and Maine, the Ann Arbor, and the Lehigh and Hudson Valley. The Federal judges in charge of the reorganization proceedings of all but two of these carriers (Erie-Lackawanna and the Boston and Maine) subsequently ruled that reorganization on an income basis under section 77 of the Bankruptcy Act was impossible, and that these carriers should be reorganized under Public Law 93–236. Thus the Erie-Lackawanna and the Boston and Maine, while certainly involved in the final planning process, would not be eligible for the special features of Public Law 93–236, including emergency Federal grants and loan guarantees.

The constitutionality of the Act was challenged by creditors of some of the carriers involved, and the Supreme Court upheld Public Law 93–236 on December 16, 1974.

One feature of the Act (section 213 and section 215) provided Federal grants and loans to be made available to the trustees of the bankrupt carriers during the interim planning period (i.e., between enactment of Public Law 93–236 and the first quarter of fiscal year 1976, when Consolidated Rail Corporation would take over operation of the rail services mandated in a Congressionally approved "Final System Plan" devised by a new government agency, the United States Railway Association). The Act authorized $85 million in grants and $150 million in loan guarantees for interim operating expenses.

No one could foresee the severe downturn in the nation's economy which directly affected the bankrupt carriers in the Northeast and Midwest, particularly in the late fall of 1974. Penn Central, for instance, paid almost 100 percent more for fuel in 1974 because of price hikes. The coal strike sharply reduced revenue, and the economic slump in the automobile manufacturing business had a serious impact on the railroads during the last quarter of 1974. Projections for 1975 indicate revenues will be down sharply for all the bankrupt carriers.

The interim financing provided by Public Law 93–236 has been exhausted and Penn Central has run out of cash. The trustees indicated that they would be unable to meet the end-of-the-month (February) payroll without a new infusion of cash. The Interstate Commerce Commission, the Department of Transportation and the United States Railway Association all conducted independent audits and investigations of the situation and verified the financial needs of the carriers. H.R. 2051 is the Administration-sponsored bill.

Consequences of a Shutdown

The consequences of a shutdown of the Penn Central and other carriers are enormous. Together, these railroads employ more than 100,000 workers. The Penn Central alone operates in 16 states, the District of Columbia and two Canadian provinces. The area served by this carrier includes 55 percent of the nation's manufacturing plants and 60 percent of the manufacturing employees. More than one million tons of freight and more than 300,000 passengers move on Penn Central

track every 24 hours. More than 20 percent of all freight cars loaded in the United States pass over Penn Central track. The nation's railroads all inter-connect, and a shutdown in the Northeast would affect shippers even on the West Coast. For instance, more than 640 freight cars a day arrive on Penn Central track from California. In return, the shipment of commodities and goods from the industrial Northeast to the remainder of the nation is at stake. There are simply not enough barges and trucks in the United States to handle the freight needs in the Northeast—even if the material could be diverted to other modes of traffic (and some of it simply cannot move by any other means). In addition, the Penn Central alone provides service to more than fifty U.S. military installations in the Northeast and Midwest.

The Interstate Commerce Commission estimates that a complete and abrupt shutdown of the Penn Central would result in a 5.2 percent decrease in the rate of economic activity in the Northeast, and a 4 percent decrease in the rest of the nation. An eight-week shutdown would cause the real Gross National Product, in view of the current recession, to fall at a rate of between −9.3 and −9.6 percent (annualized rate) as compared to the −9.1 percent decline (annualized rate) recorded in the 4th quarter of 1974. The GNP growth rate would therefore be expected to fall by an additional 3–5 percent, due to an eight-week shutdown.

The following chart indicates the ICC estimate of the effect of an eight-week shutdown of the Penn Central alone on the industries in the Northeast:

EFFECTS OF PENN CENTRAL SHUTDOWN [1]

Industrial sector	Percent reduction within sector	Reduction in value add factor (in millions of deflated (1958) dollars)
Wholesale and retail trade	13	142
Chemicals and products	31	24
Primary nonferrous metals	38	23
Primary iron and steel	10	20
Electric energy	13	17
Motor vehicles	7	15
New construction	6	14
Printing and publishing	9	12
Food products	5	9
Rubber and plastics	8	7

[1] Source: Interstate Commerce Commission.

[2] Value added is a generally used indicator of economic activity. It is comprised of wages and salaries, interest, and rental payments originating in that industry.

Note: In calculating these figures, the following factors were taken into account. It is difficult to completely substitute other modes for some heavy bulk commodities, mainly coal, iron ore, nonmetallic minerals (sand and gravel), chlorine, lumber, and grain, by nonrail modes; however, these commodities do move at present both by truck and by barge in varying quantities. It is, for example, technically feasible and quite common to move both lumber and grain by truck although such moves are increasingly uneconomical compared to rail as size of shipment and length of haul increases. With the water mode, the limiting factor is accessibility to the waterways. Special analyses were made of mode substitution for coal and iron ore in the northeast. There was found to be relatively limited substitution of water for rail on coal movements. In the North-central States where coal is used most extensively, there are few waterways adjacent to generating plants. In New England where many power plants are on the water, they now use oil (or receive coal by water already); there remain only 4 plants in New England which use coal as the principal fuel. There would appear to be some possibility for barge substitution on iron ore although at the expense of increased circuity. It should be mentioned that most lines carrying these heavy bulk commodities over long distances are densely patronized lines which would continue to operate. In the analysis, it was not assumed that any of these commodities would be impossible to carry by nonrail modes but rather that a significant proportion could not be carried in the short run because of a lack of suitable equipment.

Technically, substitution of intermodal moves for current all rail moves in low volume lots, i.e., 2 or 3 cars per day per shipper, is practical today for both merchandise and bulk materials. This would substitute largely motor carrier moves for that portion of the all rail currently occurring on light density lines. Merchandise traffic is currently moved in piggyback service by utilizing efficient mainline rail line haul service with truck pickup and delivery into light density areas. Intermodal service for bulk commodities, while not as well developed commercially as merchandise traffic, is currently being provided and expanded. The major constraint to short term implementation of greater increased use of either merchandise or bulk intermodal service exists in the need to expand both terminal and equipment capacity.

The Cash Flow Crisis

The slump in the automobile manufacturing market, and the coal strike of late fall adversely affected the precarious cash flow position of the Penn Central. Traffic volume, which was originally projected to decline 7 percent from 1974 levels, is now expected to decline even further in 1975 due to further large drops in automobiles and coal. Heavy stockpiling of coal by shippers, in anticipation of a strike in November, 1974, has resulted in lesser than anticipated coal traffic in early 1975. Traffic volume, as measured by carloadings, was down 15 percent in January, 1975 from January, 1974.

The Penn Central originally projected an ordinary loss of $341.2 million for the year 1975, but it is now expected to be larger. This would be the largest ordinary loss in the carrier's history and substantially larger than the operating deficits reported for 1972, $197.9 million; 1973, $189.0 million and almost $200 million for 1974.

Four railway unions tentatively agreed to a new contract with the railroad industry, covering three years beginning January 1, 1975. The agreement (retroactive to January 1, 1975) calls for wage increases of 10 percent; 5 percent on October 1, 1975; 3 percent on April 1, 1976, and 4 percent on July 1, 1977. In addition, cost of living adjustments would be paid on January 1 and July 1, of 1976 and 1977. Fringe benefits are also included in the settlement. Penn Central estimates that its labor costs in 1975 alone will increase $130 million. The retroactive wage settlement will result in a $9 million lump sum payment for January.

The severe cash flow problems of all the railroads in reorganization has affected maintenance programs. Under the 1973 Act, the companies are required to maintain service at 1974 levels throughout the calendar year 1975.

The Penn Central has simply been unable to generate a positive cash flow since its bankruptcy in 1970 despite substantial deferment of maintenance and capital expenditures, court-ordered deferment of payments on pre-bankruptcy debt principal and interest (excluding equipment obligations), leased line rentals and property taxes.

Cash from the federal government has virtually kept the Penn Central from grinding to a halt (e.g., $100 million in government-guaranteed trustees certificates in 1971 and 1972; $50.5 million received from DOT under the 1973 Act).

In 1971, Penn Central had a year-end cash balance of $40.3 million; in 1972, $24.1 million; in 1973, $40.2 million, and in 1974, $17.3 million.

Powers of the Interstate Commerce Commission

The Penn Central trustees, during questioning before this Committee, stated that an embargo on all new shipments would be instituted after February 24 if their cash needs could not be met.

One provision of Public Law 93–236 would give the Interstate Commerce Commission authority to direct other rail carriers to operate over the lines of any carrier which has shut down its services in an emergency. Section 601(c) of the Act added section 1(16)(b) to the Interstate Commerce Act to give the ICC power to keep essential rail service operating by the use of this power to order other railroads to operate. The Commission is currently exercising this authority over a small area of the Lehigh and Hudson River Railroad.

The Commission, however, testified that it does not feel the exercise of 1(16)(b) powers can be used effectively over the giant Penn Central system. While contingency plans are available to order several outside, non-bankrupt carriers to run over some Penn Central lines in the event of a cessation of services, the I.C.C. contends the expense and administrative problems involved make such a tactic not feasible. It is likely only a few strategic and critical services could be maintained.

The Commission has been asked by the Committee to comment on the legality of the trustees' threat to embargo shipments. Committee Members expressed concern that an embargo on traffic amounts to a de facto discontinuance of service, and as such, violates provisions of the Interstate Commerce Act since the railroads, even though bankrupt, are not relieved of applicable statutory requirements regarding certificates of convenience and public necessity. Further, under section 304(f) of the Regional Rail Reorganization Act, no railroad in reorganization may discontinue or abandon service without permission of the United States Railway Association. Moreover, the Committee did not receive an adequate answer to queries whether the trustees must seek permission from the Federal court overseeing their reorganization for an embargo.

A letter from the General Counsel of the Interstate Commerce Commission on this matter leaves the basic questions unanswered. There is no doubt that this matter needs to be resolved, because to leave the issue without a definitive answer would subject the Congress and the taxpayers to virtual blackmail if trustees of any railroad wanted to exercise unfettered embargo powers.

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., February 6, 1975.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CHAIRMAN STAGGERS: In response to the telephone call yesterday afternoon from Mr. John L. Gamble of the staff of the House Committee on Interstate and Foreign Commerce, I am pleased to submit the following brief synopsis on the law pertaining to embargoes invoked by carriers subject to the jurisdiction of the Interstate Commerce Commission.

The law imposes a duty upon a common carrier railroad to render service. Section 1(4) of the Interstate Commerce Act, 49 U.S.C. 1(4), expressly provides "it shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor."

As broad as that declaration appears to be, the railroads long have been recognized to have an inherent right to refuse to handle shipments in an emergency situation. As the Commission noted, in *Coal from Arkansas and Other States*, 49 I.C.C. 727, 731, "Where physical disabilities prevent the carriers from handling certain kinds of traffic for destinations, or where the consignees are unable promptly to accept delivery, the embargo is properly invoked."

An embargo is an emergency measure imposed normally because of a physical inability by the carrier to perform the transportation. *Powell-Meyers Lumber Co.* v. *St. Louis, I. M. & S. Ry. Co.*, 45 I.C.C. 594; *Murray* v. *Director General*, 69 I.C.C. 477; *Missouri & Illinois Coal Co.* v. *Illinois Central R. Co.*, 22 I.C.C. 39.

An embargo may not be employed as a device for effecting a discriminatory practice. *Prudential Oil Corp.* v. *Merchants & Miners Transp. Co.*, 43 I.C.C. 696; *E. L. Rogers & Co.* v. *Philadelphia & R. Ry. Co.*, 12 I.C.C. 308. Neither may an embargo be imposed to accomplish results which the law requires shall be effected only by means of published tariffs. *Powell-Meyers Lumber Co., supra.*

The carrier must give notice of an embargo. *Eastern Ry. Co.* v. *Littlefield*, 237 U.S. 140, 145. The law does not require that the embargo notice be published as schedules are published, *American Wholesale Lumber Assn.* v. *Director General*, 66 I.C.C. 393, although it has been the practice for such notices to be published through the Association of American Railroads as if they were tariffs.

Since 1973, the Commission has had in effect regulations governing the giving of notice of an embargo. 49 C.F.R. 1006. In essence, they require that written notification, specifying the extent of the embargo, the date on which it is to become effective and the reasons therefor, shall be posted at each of the affected offices of the carrier and served upon connecting railroads, as well as being mailed to the main and regional offices of the ICC.

The leading and most recent case is *New York Central Railroad Co.* v. *United States*, 201 F. Supp. 958 (S.D. N.Y. 1962), remanded for mootness, 301 U.S. 805 (1962). That case arose from the efforts of the New York Central Railroad to terminate less-than-carload service. Frustrated by its unsuccessful efforts to obtain Commission authorization therefor, the railroad by an embargo notice announced that it would no longer accept less-than-carload shipments. The Commission, without hearing, entered an order, Service Order No. 638, of its Safety and Service Board No. 1, setting aside the embargo for the reason that the embargo was not valid and that there was presently a need for the service. The railroad brought suit to challenge the Commission's action, alleging, among other things, that the Commission did not have the statutory authority to annul the embargo and that the Commission's order constituted unlawful interference with the carrier's managerial discretion. The court rejected these contentions, saying,

> The right of carriers to limit their duty to provide transportation by the issuance of embargoes in the time of emergency is not disputed. The question in this case is whether the fact that a railroad is losing money on the operation of a particular service justifies the issuance of an embargo suspending that service. In almost all cases in which the laying of an embargo has been approved, the embargoes were issued because whether conditions, traffic congestion or other physical or operation conditions made it impossible for the carrier to provide transportation to a particular area. Holt Motor Co. v. Nicholson Universal S.S. Co., 56 F. Supp. 585, D. Minn. 1944; Baltimore Chamber of Commerce v. Baltimore & Ohio R.R. Co., 45 I.C.C. 40 (1917); Krauss Brothers Lumber Co. v. Director General, 66 I.C.C. 637 (1922);

Murray v. Director General, 69 I.C.C. 477 (1922); American Mfg. Co. v. Director General, 77 I.C.C. 52 (1922). The Railroad cites only one case in which an embargo issued because of financial conditions was upheld and in that case, Gross v. Director General, 58 I.C.C. 604 (1920), the carrier, with the approval of the Commission, was terminating its entire operation. New Orleans Traffic & Transp. Bureau v. Mississippi Valley Barge Line Co., 280 I.C.C. 105 (1951), specifically held that financial losses on a carrier's less-than-bargeload operation did not justify the imposition of an embargo on that operation. We agree with the decision in New Orleans Traffic that the unauthorized imposition of an embargo on a particular service because the continuation of that service would result in a financial loss is an unlawful practice and that the Commission can annul such and embargo. Cf. Meyers v. Jay Street Connecting Railroad, 2 Cir., 1958, 259 F. 2d 532.

On the basis of the foregoing, I am of the opinion that a railroad may not employ an embargo to effect abandonments that would require the advance authorization of the Commission or other public body. The Commission has the power to look into the lawfulness of an embargo and, even in the absence of a hearing, to order its revocation if determined to have been improperly imposed. On the other hand, I am of the view that, if a railroad foresees an imminent inability to perform transportation for reasons beyond its control, it has not only the right, but, as I perceive it, the duty to give notice of the impending shutdown to the shippers it serves and the railroads with which it connects.

I trust the foregoing will be of some aid to you and the Committee, but please let me know if I might be of further assistance.

Respectfully yours,

FRITZ R. KAHN,
General Counsel.

The Committee, in this regard, expressed dismay at the late date on which the trustees of the Penn Central contacted Congress with the facts of the latest emergency. The 94th Congress began on January 3, 1975, but the new Members were not sworn in until January 14, 1975. The Administration bill (H.R. 2051) was transmitted on January 17, 1975. Thus this Committee was forced to act on the basis of two days of testimony with little opportunity for a thorough, independent investigation of the facts. The Committee relied on the investigations of the Interstate Commerce Commission, the United States Railway Association, the Department of Transportation, and the information elicited in the testimony of these agencies and the trustees.

In regard to the crisis involving the Erie-Lackawanna, this Committee did not receive information concerning the plight of this railroad until January.

The Committee is aware that no one could have predicted the sudden downturn in the economy which occurred late in 1973—and that at best, the Penn Central is a month-to-month operation. However, the Committee is most disturbed by the attitude of the trustees in threatening to close down the railroad immediately if new Federal funds are not forthcoming.

Likewise, the Committee notes this body passed the Surface Transportation Act of 1974, which the other body did not. Upwards of $50 million in money authorized in this legislation (H.R. 2051) would be unnecessary if the S.T.A. had become law because the powers of the I.C.C. to suspend rates would be severely limited.

The Committee believes that continued "crises" of the nature we have in this situation can only promote a sentiment, both in the public and in the government, for nationalization—in one form or the other—of railroads. The Committee has always strived for free enterprise solutions with minimum governmental involvement in railroad problems, and will continue to do so. However, Congress cannot tolerate a public-be-damned attitude from any segment of the industry where services are so vital to the nation's well-being.

This Committee believes that the Regional Rail Reorganization Act of 1973 can solve the long run Northeast rail problem, and it hopes that further outlays of Federal funds will not be necessary.

Emergency Assistance

The Committee authorizes in the reported bill $347 million in new financial assistance to keep the railroads in reorganization operating at least at 1974 levels until the new Consolidated Rail Corporation assumes their operation.

Of this $347 million, $197 million will be in Federal grants, and $150 million will be in government-backed loans.

The $347 million figure contemplates $222 million in cash assistance to the Penn Central, roughly $25 million for other railroads in reorganization, $25 million for badly needed improvements on Northeast Corridor facilities, $20–$25 million for Erie-Lackawanna, and $50 million in revenue which the railroads would possibly receive but for a suspension of tariff increases by the Interstate Commerce Commission.

The funds are not earmarked except for a caveat which prohibits the Secretary from disbursing the $50 million for tariff increase revenues unless the I.C.C. in fact maintains the suspension of the rate increase proposal. Otherwise, the Secretary has discretion in the 1973 Act to disburse the funds on his judgment, subject to the 1973 Act and the Amendments to that Act contained in this legislation.

The Erie-Lckawanna

The trustees of the Erie-Lackawanna, a railroad which has been reorganizing under section 77 of the Bankruptcy Act since June 2, 1972, requested Congress to allow inclusion under provisions of the 1973 Act.

The Erie-Lackawanna claim that it will have to shut down its operations by the end of February unless Federal assistance is available.

The reported bill provides a mechanism for the Erie-Lackawanna to be included in the reorganization under the 1973 Act if the Federal court overseeing their section 77 reorganization makes a new finding. The Interstate Commerce Commission and the United States Railway Association both recommended allowing the Erie-Lackawanna to be a "railroad in reorganization" under provisions of the 1973 Act. The Department of Transportation opposed the proposal.

The Committee felt that the Erie-Lackawanna would be important to the planning process of the new Conrail system and that denial of their inclusion might complicate the planning process. The Committee does not feel there will be any legal complications from this amendment.

State Taxation

Many of the bankrupt roads in the region own real property which they lease to tenants. Some of their leases for such property contain so-called tax escalator clauses which provide that the lessor shall collect, in addition to the rental payment, an amount necessary to cover the property tax payments required to be made by the lessor.

In many cases, the money is collected by the lessor from his tenant and it is not transferred to the appropriate taxing entity to which it is due.

The Committee adopted an amendment to H.R. 5021 which would prohibit this practice and make violators subject to a $10,000 fine. The amendment in no way increases the tax liability of the bankrupt railroads, nor does it require them to pay any taxes that they are not paying now other than the amounts they collect from tenants to cover property taxes.

Rail Services Planning Office

The reported bill provides a clarification to the 1973 Act by making sure the I.C.C. Rail Services Planning Office continues to represent communities and users which might not be adequately represented through the effective date of the final system plan.

Express Study

The reported bill amends the 1973 Act to include express companies in studies made by the Association in developing to the final system plan. Express companies have traditionally been closely related to adequate rail service needs in the region. Due to the current recession, these companies are experiencing financial difficulties. It is not the intention of this Committee to mandate the USRA to do more than study the problem, since it relates to the overall transportation needs of the region.

Increase Flexibility of Loan Guarantees

H.R. 2051, as introduced, required two conditions to any agreement for program maintenance or improvement of rail properties under sections 213 or 215. First, the Corporation will not be required, in acquiring properties covered by such an agreement, to pay a value in excess of that determined on the basis of the property's physical condition on the date of the agreement. This condition has been clarified by the Committee to assure that only the physical condition component of the valuation process would be changed by the agreement. It will require that, to the extent physical condition is used in determining the value of a property subject to such an agreement and transferred to Conrail, the Association and the Special Court will use its physical condition on the effective date of the agreement. Using this valuation basis, the Association and the Special Court will, therefore, not be required to determine the value attributable to the maintenance and improvements since the valuation process required by this condition will not consider that work in determining the value to be paid by the Corporation.

The second condition required will apply to those properties transferred to an entity other than the Corporation. Since the amount paid by that entity would include the value attributable to the program maintenance and improvements performed under a section 213 or 215 agreement, the Trustees must return that portion of the proceeds

which reflects the value of the transferred properties attributable to such work.

Committee Consideration

The Committee on Interstate and Foreign Commerce held two days of hearings, February 4–5 on H.R. 2051 and S. 281.

Witnesses testifying before the committee included the Acting Secretary of the Department of Transportation, the Chairman of the Board of the United States Railway Association, and the Trustees in bankruptcy of the Penn Central Transportation Company and the Erie-Lackawana Railroad Co. In addition, written statements were filed by other interested parties.

The committee held a markup session on February 6, and reported H.R. 2051 by voice vote, with an amendment.

Cost Estimate

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made relative to the effect on the revenues of this bill.

The reported bill amends Sec. 213(b) of P.L. 93–236 by increasing grants available for expenditure by the Secretary of Transportation from $85 million to $282 million. As of January 31, 1974, $3,895,996.58 remained unexpended from the original authorized and appropriated $85 million. The reported bill authorizes $197,000,000 in new funds under section 213. Your committee anticipates that all of this money, if appropriated, will be disbursed by March, 1976.

In addition, the reported bill increases the maximum allowable obligations outstanding under section 215 of Public Law 93–236 by $150,000,000, to a new figure of $300,000,000. These loans become the obligation of the Consolidated Rail Corporation, a federal chartered but private rail operating company, which will assume rail services in the region in early 1976. Obligations issued under section 215 shall be used for maintenance and improvements of rail facilities and plant.

Matters Required for Discussion Under House Rules

The committee makes the following oversight finding pursuant to clause 2(l)(3)(A) of Rule XI of the Rules of the House of Representatives:

The Committee believes that the appropriate federal agencies have verified the need for emergency cash and loan assistance to various railroads in reorganization in the Northeast and Midwest, and that without such expenditure, the economy of the aforementioned region would be severely effected.

In regard to Rule XI, 2(l)(3)(D), no oversight findings have been submitted to the committee, and in regard to Rule XI 2(l)(3)(C) no cost estimate or comparison has been submitted by the Congressional Budget Office relative to the provisions of HR 2051.

Inflationary Impact Statement

With respect to Rule XI 2(l)(4), the committee makes the following statement:

> The reported bill provides a total of $347 million in additional financial assistance to ensure the continued operation of Penn Central and other railroads in reorganization in the Midwest and

Northeast, pending the implementation of the Final System Plan pursuant to the Regional Rail Reorganization Act of 1973 (the "Act"). The $347 million includes $197 million in grant authority under Section 213 of the Act, and $150 in loan authority under section 215. These amounts increase the total authorizations in these two sections to $282 million under section 213, and $300 million under section 215.

The financial assistance provided under sections 213 and 215 of the Act has no direct inflationary impact. The assistance that is provided under these sections represents normal day to day funds that the railroads in reorganization have to spend in order to be able to continue the provision of essential rail services. This includes expenditures for such requirements as payrolls, fuel, utilities, and interline settlements with other railroads—which have to be made to keep the railroads going.

A failure to provide the necessary financial assistance to keep the railroads in reorganization in operation would have a crippling effect on the economy of the country, already weakened by a severe downturn. Based on an earlier study by the Department of Transportation, a close down of the Penn Central alone would result in a 5.2 percent decrease in the rate of economic activity in the Northeast, and a 4 percent decrease for the rest of the country. Potentially, there would be a 2.7 percent decrease in the gross National Product after only two months of cessation of services, and unemployment would rise by 3 percent.

The program under which the additional assistance is to be provided under the Act has been designed to provide the necessary assistance at the least cost to the taxpayer while maximizing the benefits to the restructured rail system which is to be developed pursuant to the Act.

Section-by-Section Analysis

Section 1. This section provides a short title for the bill as the "Regional Rail Reorganization Act Amendments of 1975."

Section 2. Subsection (a) of this section amends section 202(b) of the Regional Rail Reorganization Act (the "Act") to include express companies in the provision relating to studies by the United States Railway Association. Further, the USRA will be mandated to specifically study the feasibility of coordinating rail and express service in the region.

Subsection (b) of this section mandates the USRA to include in the final system plan a recommendation, through a process of reorganization, for a self sustaining express company(s) system.

Section 3. This section amends section 205(d)(2) of the Act to insure that the Interstate Commerce Commission's Rail Services Planning Office employ attorneys within the office, and use these attorneys and such other personnel as may be required to protect the interests of communities and users of rail service in the region which cannot otherwise represent themselves in the course of the reorganization process (until the effective date of the final system plan).

Section 4. This section provides a mechanism by which the trustees of railroads subject to reorganization under section 77 of the Bankruptcy Act can petition their Reorganization Court for a reconsidera-

tion of earlier decisions by said Court to deny that railroad permission to reorganize under the provisions of Public Law 93–236. The trustees must petition the court within 10 days after enactment of this subsection for reconsideration of the original order. If the court finds that the Act provides a process which would be fair and equitable, it must do so within 30 days after the petition is filed. Any decision by the Special Court on appeal for such a decision shall be rendered within 30 days after the decision of the reorganization court is made. No appeals can be had from the Special Court's decision.

Section 5. Subsection (a) amends section 211(a) of the Act to make clear that loans to carry out the goals of the Act can be made prior to the effective date of the final system plan. Subsections (b) and (c) would amend sections 211(c)(1) and 211(f) of the Act to conform with the amended language in subsection (a).

Section 6. Subsection (a) amends subsection 213(a) of the Act to provide that where the Secretary of Transportation and the trustees agree that funds provided under section 213 are to be applied to improve or to conduct program maintenance on designated rail properties, such assistance must be conditioned on the increase in value of those properties attributable to such maintenance going to the Consolidated Rail Corporation or returning to the Secretary of Transportation.

Subsection (b) amends subsection 213(b) of the Act to increase the authorization by $197 million (from $85 million to $282 million). Further, this subsection ties $50 million of this authorization to revenues attributable to tariff increases proposals pending before the ICC during calendar year 1975. If the ICC grants such increases the money shall not be expended except on a basis which takes into account the revenue lost which can be attributed to the ICC suspension of the tariff proposal during calendar year 1975. The Secretary of Transportation is given discretion to determine if these payments are necessary to carry out section 213 of the Act.

Section 7. This section revises section 215 of the Rail Act by dividing the section into four subsections. Subsection (a) would expand the purposes for which section 215 funding can be used by authorizing the Secretary, with the approval of the U.S. Railway Association ("Association"), to enter into agreements with the trustees of the railroads in reorganization (or railroads leased, operated, or controlled by railroads in reorganization) to: (1) perform program maintenance on designated rail properties of such railroads; (2) improve railroad properties; and (3) acquire railroad properties for lease or loan to any such railroads or acquire interests in such properties owned by or leased to any such railroads or in purchase money obligations therefor.

The new subsection (b) provides that all agreements pursuant to subsection (a) shall contain such reasonable terms and conditions as the Secretary may prescribe. Agreements relating to purposes (1) and (2) of subsection (a) shall, in addition, provide that: (a) Conrail shall not be required under title III of the Rail Act to compensate the railroad in reorganization for any portion of the value of the properties subject to the agreement and designated for transfer to Conrail which is in excess of the value of such properties determined as of the effective date of the agreement and on the basis of its physical condition on that date; and (b) in the event that property subject to the agreement is sold, leased or transferred to an entity other than Conrail,

the trustees or railroad shall pay or assign to the Secretary that portion of the proceeds of such sale, lease or transfer which reflects value attributable to the maintenance and improvement provided pursuant to the agreement.

The new subsection (c) increases the current authorization of section 215 by $150 million (from $150 million to $300 million). While the subsection provides that the Association shall require Conrail to assume any obligations issued by the Association to finance the section 215 agreements, it also provides that the Association. with the approval of the Secretary, shall have the expanded authority to designate in the final system plan which loans can be refinanced, and on what terms, and to designate the extent to which Conrail shall be released from the requirement to satisfy such obligations.

The new subsection (d) provides that the Secretary may convey to Conrail, with or without receipt of consideration, any property or interests which are held by the Secretary pursuant to section 213 or section 215.

Section. 8. This section amends section 303(c)(1) of the Act by adding a new paragraph (C) which will give the Special Court jurisdiction to decide, in situations where property maintained or improved with section 213 or section 215 funds is sold, leased or transferred pursuant to the final system plan to an entity other than Conrail, what portion of the proceeds is value attributable to such maintenance or attributable to such maintance or improvement.

Section 9. This section provides that a railroad in reorganization shall not withhold from any state or political subdivision thereof, any payment of the portion of any tax owed by such railroad to the aforementioned taxing entity, if it collects such portion from a tenant of the railroad in reorganization. Violations of this subsection subject the railroad to a fine of not more than $10,000 for each such violation.

Agency Comments

H.R. 2051, as reported, is an amended version of legislation transmitted to the U.S. House of Representatives by the Department of Transportation.

Written communications commenting on the bill were received from the Department of Transportation and the Department of Justice. The Interstate Commerce Commission, the United States Railway Association and the Department of Transportation all testified in hearings before the committee on H.R. 2051 and S. 281.

The Secretary of Transportation,
Washington, D.C., January 17, 1975.

Hon. Carl B. Albert,
Speaker of the House of Representatives,
Washington, D.C.

Dear Mr. Speaker: There is transmitted herewith a proposed bill, entitled the "Regional Rail Reorganization Act Amendments of 1975", together with a section-by-section analysis of the bill.

This proposed bill is recommended by the Department to provide cash resources (a) to enable all railroads reorganizing under the Regional Rail Reorganization Act of 1973 ("Rail Act") to continue essential transportation services during the planning process called

for in the Rail Act, and (b) to perform maintenance and improvements which are necessary for safe and efficient operations.

The railroads reorganizing under the Rail Act have experienced significant losses in revenue and are facing serious cash shortages in 1975 and the first quarter of 1976 as a result of the recent coal strike and the general economic downturn, especially in the automobile industry. Although section 213 of the Rail Act authorized $85 million in financial assistance to meet the cash needs of these railroads, only $4.5 million remains uncommitted. The Department has been closely monitoring the financial condition of these railroads and our analysis reveals that as a minimum, an estimated $245.5 million will be required to enable these railroads to continue essential rail operations through the first quarter of 1976 when the Consolidated Rail Corporation ("Conrail") would begin operations. A breakdown of this estimate is shown in Attachment A.

Further, Penn Central and the other railroads reorganizing under the Rail Act are facing by February 25, 1975 an immediate cash shortage of at least $18.0 million beyond the $4.5 million available under section 213 (assuming no payments by then on a new labor contract). Urgent action is required to meet this need and avoid a complete shutdown of these railroads by the beginning of March.

In an attempt to forestall the cash problem arising from the decline in traffic, the Trustees of the Penn Central Transportation Company have implemented some cost-cutting measures which include reducing the number of employees and freight trains operated consistent with the reduced traffic levels. These management actions were not sufficient to offset revenue losses, and on December 31, 1974, the Penn Central Trustees informed the Department that unless a program for additional Federal assistance was developed, the railroad would be forced to implement severe cuts in its right-of-way and equipment maintenance programs and furlough a significant number of employees to avoid a complete cessation of operations by late February or early March. In letters dated December 30, 1974 and January 10, 1975, we informed the Trustees that the Department was concerned that the Trustees had not explored all cost-cutting measures which management should be employing; we indicated our intent to explore further with the Trustees alternative cost-cutting measures which management might be able to adopt to meet the railroad's cash needs. In the January 10 letter we also requested the Trustees not to institute their proposed cutbacks, indicating our intent to seek from Congress the additional resources necessary to sustain Penn Central through the first quarter of 1976. On January 13, the Trustees advised the Department that they would cancel their program for implementing the proposed cutbacks. However, the Trustees emphasized that if the aid contemplated by the Administration's program does not promptly make cash available to Penn Central it will be necessary for the Trustees to begin to embargo traffic in mid-February, in contemplation of a complete cessation of rail operations for lack of cash in early March.

It is clear that implementation by Penn Central of a severe cutback in its maintenance-of-way program would have been detrimental to the ability of Penn Central (or Conrail) to provide necessary transportation services in a safe and efficient manner. A group of Chief Engineers from six railroads from outside the region recently evaluated

the condition of the Penn Central property. The Chief Engineer's team found that Penn Central's rail and tie replacement rate over the past 17 years (deferred maintenance) implies a life which is five times longer than the normal life for rail and three times the normal expected life for ties. The Chief Engineers concluded that:

> The level of maintenance of Penn Central main and branch lines varies from good to very poor. Most yards are in poor condition; some are in a deplorable state. Some of the plant has deteriorated to the point where it must be completely rebuilt; the plant which can be repaired is deteriorating at an increasing rate. As a result, the cost of rehabilitating Penn Central is becoming greater as time passes.
>
> It should be in the public interest as well as in the interest of Conrail that rehabilitation of the essential properties begin as soon as possible, without waiting for Conrail to assume operational control. Interim financial assistance is required to augment the work which Penn Central is able to fund from its own resources, so that the deterioration of properties can be arrested, service improved, and economies realized.

The proposed bill provides for $250 million in additional funding under the Rail Act to cover impending cash shortages and to prevent cutbacks in critical maintenance programs of the Penn Central and other railroads reorganizing under the Rail Act. The proposed bill would accomplish these objectives by amending the Rail Act as follows:

(a) increase the current authorization in section 213 by $100 million (from $85 million to $185 million) and authorize the imposition of conditions on the assistance used for program maintenance or improvement which will assure that the value added by those improvements will go to Conrail or to the Secretary. Of this authorized amount, $25 million is planned for improvements in the Northeast Corridor to permit the National Railroad Passenger Corporation to sustain existing levels of service under safe operating conditions;

(b) increase the current authorization in section 215 by $150 million (from $150 million to $300 million); broaden the purposes for which section 215 funding can be used; establish conditions to the provision of such funds identical to those which would apply to grants under section 213; and provide the U.S. Railway Association, with the approval of the Secretary of Transportation, the flexibility to provide in the final system plan which loans can be refinanced and on what terms, and the extent to which Conrail shall be released from the requirement to satisfy such obligations;

(c) to provide in section 303 that the Special Court has jurisdiction to decide, in situations where property maintained or improved with section 213 or section 215 funds is sold, leased or transferred pursuant to the final system plan to an entity other than Conrail, what portion of the proceeds is value attributable to such maintenance or improvement.

The proposed bill would also amend section 211 to make clear that the U.S. Railway Association has the authority to make loans prior to the effective date of the final system plan, to carry out the goals of the Act.

Adoption of these proposed amendments should enable the Government to deal effectively with the projected financial problems and essential maintenance of the railroads reorganizing under the Rail

Act through the start-up of Conrail. I therefore urge favorable consideration of these proposed amendments as soon as possible in order to avoid a cessation of operations by March.

As these amendments are intended to sustain essential transportation services provided by the railroads which are reorganizing under the Rail Act, thereby avoiding the severe economic dislocations inherent in a shutdown, the inflationary impact of these amendments will be minimal.

The Office of Management and Budget has advised that enactment of this legislation would be in accord with the President's program.

Sincerely,

CLAUDE S. BRINEGAR.

ASSISTANT ATTORNEY GENERAL,
LEGISLATIVE AFFAIRS,
DEPARTMENT OF JUSTICE,
Washington, D.C., February 4, 1975.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On January 29, 1975, the Senate passed S. 281, entitled "Regional Rail Reorganization Act Amendments of 1975." Section 8 of S. 281 amends Section 205(d)(2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 715(d)(2)) to permit the Rail Services Planning Office of the Interstate Commerce Commission to

> (2) Employ and utilize the services of attorneys and such other personnel as may be requires to properly protect the interests of those communities and users of rail service which, for whatever reason, such as their size or location, might not otherwise be adequately represented in the course of the reorganization process as provided by this Act.

As presently written Section 205(d)(2) limits the use of RSPO attorneys to the "hearings and evaluations which the [Rail Services Planning] Office is required to conduct and perform under other provisions of this Act * * *."

We understand that the Committee will shortly be considering S. 281 or a similar proposal to amend 205(d)(2) of the RRRA of 1973.

We believe that the purpose of this amendment is to allow attorneys from the RSPO's Office of Public Counsel (OPC), an autonomous ombudsman-like unit, to appear before the reorganization courts in railroad reorganization proceedings and there to take whatever positions they think desirable in the interest of unnamed communities and shippers. The Department of Justice presently represents the United States Government (and the public interest) before the reorganization courts. We oppose the enactment of this amendment for the following reasons:

1. The amendment is unnecessary. Most interested communities and shippers can be and in fact already are well represented before the various reorganization courts by their own attorneys or by the Attorneys General of their respective states.

2. The reorganization courts have little to do with determinations of public interest under the RRRA reorganization process. Once the court determines that the railroad reorganizing subject to its jurisdic-

tion is not reorganizable on an income basis within a reasonable time under Section 77 of the Bankruptcy Act, 11 U.S.C. 205, it need no longer consider aspects of the public interest. See Section 207(b) of the RRRA, 45 U.S.C. 717(b); *In re Penn Central Transportation Co.*, Special Court, RRRA, September 30, 1974. Public interest considerations under the RRRA are more in the domain of the RSPO itself, which is required to hold hearings under the Act to consider these questions; in the deliberations, hearings, planning and reports of the United States Railway Association, which does the actual restructuring of the bankrupt railroads under the RRRA; in the various duties of the Department of Transportation under the RRRA; and ultimately in the congressional hearings and approval (or rejection) of the final system plan for the restructuring of the bankrupt railroads under the RRRA.

3. Allowing OPC attorneys to appear and argue before the reorganization courts invites either a diversion of RSPO's limited resources from the areas of its prime concern, discussed above, or will require an unnecessary increase in the RSPO budget to add more attorney and supporting personnel to the RSPO bureaucracy.

4. OPC personnel now have little or no expertise in reorganization court proceedings. They would be ill-matched against seasoned reorganization litigators who represent creditor and other possible adverse interests. For example, in the litigation concerning the constitutionality of the RRRA in 1974, OPC attorneys advocated that the Government not rely on the Tucker Act as an ultimate constitutional remedy for any uncompensated taking of private property which the RRRA might cause. In this position, the Office of Public Counsel followed closely the RRRA's opponents, the creditor banks and insurance companies, who also argued that the RRRA must stand or fall on its own, without regard to any possible defenses based on the Tucker Act. As the Supreme Court's decision in the Regional Rail Reorganization Act Cases, 43 U.S.L.W. 4031 (December 16, 1974) shows, our adoption of the position advocated by RSPO. would have resulted in the RRRA's being declared unconstitutional. Moreover, there will be little opportunity for RSPO attorneys to develop the needed expertise to litigate effectively before the reorganization courts, because the RRRA reorganization process, in terms of its effects on communities and shippers, will essentially be completed by February 1976.

5. The public interest is already well represented before the reorganization courts by the Department of Justice which has had long experience in litigation before reorganization courts, by the Attorneys General of affected states, as well as by counsel for various affected local governments.

6. One of the most frequently heard criticisms of the present reorganization process is that it is too complex, too lengthy, and involves too many parties. In short, there are already too many attorneys appearing before the reorganization courts. To allow OPC attorneys to appear, in addition to the number of attorneys already representing public interest and shipper groups, adds further potential for unnecessary delays in the litigative and appellate process.

For the reasons stated above, therefore, we recommend either:

1. That the following sentence be added to the proposed amendment to Section 205(d)(2):

> As used in this subsection, the term "reorganization process" shall not include proceedings before district courts supervising the reorganization of railroads under Section 77 of the Bankruptcy Act, the special court, the courts of appeal, or the Supreme Court.

2. That language be added to the Committee's report making clear that the authority conferred by Section 205(d)(2), as amended, does not include the right to appear or intervene in proceedings before district courts supervising the reorganization of railroads under Section 77 of the Bankruptcy Act, the special court, the courts of appeal, or the Supreme Court.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

A. MITCHELL MCCONNELL, JR.,
Acting Assistant Attorney General.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

REGIONAL RAIL REORGANIZATION ACT OF 1973

* * * * * * *

TITLE II—UNITED STATES RAILWAY ASSOCIATION

* * * * * * *

GENERAL POWERS AND DUTIES OF THE ASSOCIATION

* * * * * * *

SEC. 202. (a) * * *

* * * * * * *

(b) DUTIES.—In addition to its duties and responsibilities under other provisions of this Act, the Association shall—

(1) prepare a survey of existing rail services in the region, including patterns of traffic movement; traffic density over identified lines; pertinent costs and revenues of lines; and plant, equipment, and facilities (including yards and terminals);

(2) prepare an economic and operational study and analysis of present and future rail *and express* service needs in the region; the nature and volume of the traffic in the region now being moved by rail *express* or likely to be moved by rail *and express* in the future; the extent to which available alternative modes

of transportation could move such traffic as is now carried by railroads in reorganization; the relative economic, social, and environmental costs that would be involved in the use of such available alternative modes, including energy resource costs; and the competitive or other effects on profitable railroads;

(3) prepare a study of rail passenger services in the region, in terms of scope and quality;

(4) consider the views of the Office and of all government officials and persons who submit views, reports, or testimony under section 205(d)(1) of this title or in the course of proceedings conducted by the Office;

(5) consider methods of achieving economies in the cost of rail system operations in the region including consolidation, pooling, and joint use or operation of lines, facilities, and operating equipment; relocation; rehabilitation and modernization of equipment, track, and other facilities; and abandonment of lines consistent with meeting needs and service requirements; together with the anticipated economic, social, and environmental costs and benefits of each such method;

(6) consider the effect on railroad employees of any restructuring of rail services in the region;

(7) make available to the Secretary, the Director of the Office and appropriate committees of the Congress all studies, data, and other information acquired or developed by the Association[.]; *and (8) study the feasibility of coordinating rail and express service in the region.*

* * * * * * *

RAIL SERVICES PLANNING OFFICE

SEC. 205. (a) * * *

* * * * * * *

(d) DUTIES.—In addition to its duties and responsibilities under other provisions of this Act, the Office shall—

(1) study and evaluate the Secretary's report on rail services in the region required under section 204(a) of this Act and submit its report thereon to the Association within 120 days after the date of enactment of this Act. The Office shall also solicit, study, and evaluate the views with respect to present and future rail service needs of the region from Governors of States within the region; mayors and chief executives of political subdivisions within such States; shippers; the Secretary of Defense; manufacturers, wholesalers, and retailers within the region; consumers of goods and products shipped by rail; and all other interested persons. The Office shall conduct public hearings to solicit comments on such report and to receive such views;

(2) employ and utilize the services of attorneys and such other personnel as may be required in order *to* properly [to] protect the interests of those communities and users of rail service which, for whatever reason, such as their size or location, might not otherwise be adequately represented in the course of the [hearings and evaluations which the Office is required to conduct and perform under other provisions of] *reorganization process as provided by* this Act;

(3) within 180 days after the date of enactment of this Act, determine and publish standards for determining the "revenue attributable to the rail properties", the "avoidable costs of providing service", and "a reasonable return on the value", as those phrases are used in section 304 of this Act, after a proceeding in accordance with the provisions of section 553 of title 5, United States Code; and

(4) assist States and local and regional transportation agencies in making determinations whether to provide rail service continuation subsidies to maintain in operation particular rail properties by establishing criteria for determining whether particular rail properties are suitable for rail service continuation subsidies. Such criteria should include the following considerations: Rail properties are suitable if the cost of the required subsidy for such properties per year to the taxpayers is less than the cost of termination of rail service over such properties measured by increased fuel consumption and operational costs for alternative modes of transportation; the cost to the gross national product in terms of reduced output of goods and services; the cost of relocating or assisting through unemployment, retraining, and welfare benefits to individuals and firms adversely affected thereby; and the cost to the environment measured by danage caused by increased pollution.

FINAL SYSTEM PLAN

SEC. 206. (a) GOALS.—The final system plan shall be formulated in such a way as to effectuate the following goals:

(1) the creation, through a process of reorganization, of a financially self-sustaining rail *and express* service system in the region;

(2) the establishment and maintenance of a rail service system adequate to meet the rail transportation needs and service requirements of the region;

(3) the establishment of improved high-speed rail passenger service, consonant with the recommendations of the Secretary in his report of September 1971, entitled "Recommendations for Northeast Corridor Transportation";

(4) the preservation, to the extent consistent with other goals, of existing patterns of service by railroads (including short-line and terminal railroads), and of existing railroad trackage in areas in which fossil fuel natural resources are located, and the utilization of those modes of transportation in the region which require the smallest amount of scarce energy resources and which can most efficiently transport energy resources;

(5) the retention and promotion of competition in the provision of rail and other transportation services in the region;

(6) the attainment and maintenance of any environmental standards, particularly the applicable national ambient air quality standards and plans established under the Clean Air Act Amendments of 1970, taking into consideration the environmental impact of alternative choices of action;

(7) the movement of passengers and freight in rail transportation in the region in the most efficient manner consistent with safe operation, including the requirements of commuter and intercity

rail passenger service; the extent to which there should be coordination with the National Railroad Passenger Corporation and similar entities; and the identification of all short-to-medium distance corridors in densely populated areas in which the major upgrading of rail lines for high-speed passenger operation would return substantial public benefits; and

(8) the minimization of job losses and associated increases in unemployment and community benefit costs in areas in the region presently served by rail service.

* * * * * * *

ADOPTION OF FINAL SYSTEM PLAN

SEC. 207. (a) PRELIMINARY SYSTEM PLAN.—(1) Within 300 days after the date of enactment of this Act, the Association shall adopt and release a preliminary system plan prepared by it on the basis of reports and other information submitted to it by the Secretary, the Office, and interested persons in accordance with this Act and on the basis of its own investigations, consultations, research, evaluation, and analysis pursuant to this Act. Copies of the preliminary system plan shall be transmitted by the Association to the Secretary, the Office, the Governor and public utility commission of each State in the region, the Congress, each court having jurisdiction over a railroad in reorganization in the region, the special court, and interested persons, and a copy shall be published in the Federal Register. The Association shall invite and afford interested persons an opportunity to submit comments on the preliminary system plan to the Association within 60 days after the date of its release.

(2) The Office is authorized and directed to hold public hearings on the preliminary system plan and to make available to the Association a summary and analysis of the evidence received in the course of such proceedings, together with its critique and evaluation of the preliminary system plan, not later than 60 days after the date of release of such plan.

(b)(*1*) APPROVAL.—Within 120 days after the date of enactment of this Act each United States district court or other court having jurisdiction over a railroad in reorganization shall decide whether the railroad is reorganizable on an income basis within a reasonable time under section 77 of the Bankruptcy Act (11 U.S.C. 205) and that the public interest would be better served by continuing the present reorganization proceedings than by a reorganization under this Act. Within 60 days after the submission of the report by the Office, under section 205(d)(1) of this title, on the Secretary's report on rail services in the region, each United States district court or other court having jurisdiction over a railroad in reorganization shall decide whether or not such railroad shall be reorganized by means of transferring some of its rail properties to the Corporation pursuant to the provisions of this Act. Because of the strong public interest in the continuance of rail transportation in the region pursuant to a system plan devised under the provisions of this Act, each such court shall order that the reorganization be proceeded with pursuant to this Act unless it (1) has found that the railroad is reorganizable on an income basis within a reasonable time under section 77 of the Bankruptcy Act (11 U.S.C. 205) and that the public interest would be better served by such a reorganization than by a reorganization under this Act, or (2) finds that this

Act does not provide a process which would be fair and equitable to the estate of the railroad in reorganization in which case it shall dismiss the reorganization proceeding. If a court does not enter an order or make a finding as required by this subsection, the reorganization shall be proceeded with pursuant to this Act. An appeal from an order made under this section may be made only to the special court. Appeal to the special court shall be taken within 10 days following entry of an order pursuant to this subsection, and the special court shall complete its review and render its decision within 80 days after such appeal is taken. There shall be no review of the decision of the special court.

(2) Whenever it has been finally determined pursuant to the procedures of paragraph (1) of this subsection, that the reorganization of a railroad subject to reorganization under section 77 of the Bankruptcy Act (11 U.S.C. 205) shall not be proceeded with pursuant to this Act, the court having jurisdiction over such railroad may, upon a petition which is filed within 10 days after the date of enactment of this subsection by the trustees of such railroad, reconsider such order. Such reorganization court shall (i) affirm its previous order or (ii) issue an order that the reorganization of such railroad be proceeded with pursuant to this Act unless it finds that this Act does not provide a process which would be fair and equitable. The provisions of paragraph (1) of this subsection are applicable in such reconsideration, except that (A) such reorganization court shall make its decision within 30 days after such petition is filed, and (B) any decision by the special court on appeal from such a decision shall be rendered within 30 days after such reorganization court decision is made. There shall be no review of the decision of the special court. The Association shall take any steps it finds necessary, consistent with time limitations and other provisions of this Act, to effectuate the consequences of such a revised order, including the preparation and submission of any necessary or appropriate supplements to the preliminary system plan.

LOANS

SEC. 211. (a) GENERAL.—The Association is authorized, in accordance with the provisions of this section and such rules and regulations as it shall prescribe, to make loans to the Corporation, the National Railroad Passenger Corporation, and other railroads (including a railroad in reorganization which has been found to be reorganizable under section 77 of the Bankruptcy Act pursuant to section 207(b) of this title) in the region, for purposes of [assisting in the implementation of the final system plan] *achieving the goals of this Act*; to a State or local or regional transportation authority pursuant to section 403 of this Act; and to provide assistance in the form of loans to any railroad which (A) connects with a railroad in reorganization, and (B) is in need of financial assistance to avoid reorganization proceedings under section 77 of the Bankruptcy Act (11 U.S.C. 205). No such loan shall be made by the Association to a railroad unless such loans shall, where applicable, be treated as an expense of administration. The rights referred to in the last sentence of section 77(j) of the Bankruptcy Act (11 U.S.C. 205(j)) shall in no way be affected by this Act.

(b) APPLICATIONS.—Each application for such a loan shall be made in writing to the Association in such form and with such content and other submissions as the Association shall prescribe to protect reason-

ably the interests of the United States. The Association shall publish a notice of the receipt of each such application in the Federal Register and shall afford interested persons an opportunity to comment thereon.

(c) TERMS AND CONDITIONS.—Each loan shall be extended in such form, under such terms and conditions, and pursuant to such regulations as the Association deems appropriate. Such loan shall bear interest at a rate not less than the greater of a rate determined by the Secretary of the Treasury taking into consideration (1) the rate prevailing in the private market for similar loans as determined by the Secretary of the Treasury, or (2) the current average yield on outstanding marketable obligations of the Association with remaining periods of maturity comparable to the average maturities of such loans, plus such additional charge, if any, toward covering costs of the Association as the Association may determine to be consistent with the purposes of this Act.

(d) MODIFICATIONS.—The Association is authorized to approve any modification of any provision of a loan under this section, including the rate of interest, time of payment of interest or principal, security, or any other term or condition, upon agreement of the recipient of the loan and upon a finding by the Association that such modification is equitable and necessary or appropriate to achieve the policy declared in subsection (f) of this section.

(e) PREREQUISITES.—The Association shall make a finding in writing, before making a loan to any applicant under this section, that—

(1) the loan is necessary to [carry out the final system plan] *achieve the goals of this Act* or to prevent insolvency;

(2) it is satisfied that the business affairs of the applicant will be conducted in a reasonable and prudent manner; and

(3) the applicant has offered such security as the Association deems necessary to protect reasonably the interests of the United States.

(f) POLICY.—It is the intent of Congress that loans made under this section shall be made on terms and conditions which furnish reasonable assurance that the Corporation or the railroads to which such loans are granted will be able to repay them within the time fixed and that the goals of [the final system plan] *this Act* are reasonably likely to be achieved.

* * * * * * *

EMERGENCY ASSISTANCE PENDING IMPLEMENTATION

SEC. 213. (a) EMERGENCY ASSISTANCE.—The Secretary is authorized, pending the implementation of the final system plan, to pay to the trustees of railroads in reorganization such sums as are necessary for the continued provision of essential transportation services by such railroads. Such payments shall be made by the Secretary upon such reasonable terms and conditions as the Secretary establishes, except that recipients must agree to maintain and provide service at a level no less than that in effect on the date of enactment of this Act. *Where the Secretary and the trustees agree that funds provided pursuant to this section are to be used (together with funds provided pursuant to section 215 of this Act, if any) to perform program maintenance on designated rail properties until the date rail properties are conveyed under this*

Act or to improve such designated properties, such agreement shall contain the conditions set forth in section 215(b) of this Act.

* * * * * * *

(b) AUTHORIZATION FOR APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for carrying out this section such as are necessary, not to exceed [$85,000,000] *$282,000,000*, to remain available until expended. *Of amounts authorized to be appropriated under this subsection, $50,000,000 shall be available solely to pay to the trustees of railroads in reorganization such sums as may be necessary to provide such railroads with amounts equal to revenues attributable to tariff increases proposed by such railroads and suspended by the Interstate Commerce Commission during the calendar year 1975, if the Secretary determines that such payments are necessary to carry out this section.*

* * * * * * *

[MAINTENANCE AND IMPROVEMENT OF PLANT

[SEC. 215. Prior to the date upon which rail properties are conveyed to the Corporation under this Act, the Secretary, with the approval of the Association, is authorized to enter into agreements with railroads in reorganization in the region (or railroads leased, operated, or controlled by railroads in reorganization) for the acquisition, maintenance, or improvement of railroad facilities and equipment necessary to improve property that will be in the final system plan. Agreements entered into pursuant to this section shall specifically identify the type and quality of improvements to be made pursuant to such agreements. Notwithstanding section 210(b) of this title. the Association shall issue obligations under section 210(a) of this title in an amount sufficient to finance such agreements and shall require the Corporation to assume any such obligations. However, the Association may not issue obligations under this section in an aggregate amount in excess of $150,000,000. The Secretary may not enter into any agreements under this section until he issues regulations setting forth procedures and guidelines for the administration of this section. The Corporation shall not be required under title III of this Act to compensate any railroad in reorganization for that portion of the value of rail properties transferred to it under this Act which is attributable to the acquisition, maintenance, or improvement of such properties under this section.]

INTERIM AGREEMENTS

SEC. 215. (a) PURPOSES.—Prior to the date upon which rail properties are conveyed to the Corporation under this Act, the Secretary, with the approval of the Association, is authorized to enter into agreements with the trustees of the railroads in reorganization in the region (or railroads leased, operated, or controlled by railroads in reorganization)—

(1) to perform the program maintenance on designated rail properties of such railraods until the date rail properties are conveyed under this Act;

(2) to improve rail properties of such railroads; and

(3) to acquire rail properties for lease or loan to any such railroads until the date such rail properties are conveyed under this Act, and subsequently for conveyance pursuant to the final system plan, or to acquire interests in such rail properties owned by or leased to any such railroads or in purchase money obligations therefor.

(b) CONDITIONS.—Agreements pursuant to subsection (a) of this section shall contain such reasonable terms and conditions as the Secretary may prescribe. In addition, agreements under paragraphs (1) and (2) of subsection (a) of this section shall provide that—

(1) the Corporation shall not be required under title III of this Act to compensate a railroad in reorganization for any portion of the value of the properties subject to the agreement and designated under the final system plan for transfer to the Corporation which is attributable to the maintenance or improvement performed pursuant to the agreement. The Association and the special court shall, in determining value pursuant to section 303 of this Act, take into account the physical condition as of the effective date of the agreement; and

(2) in the event that property subject to the agreement is sold, leased, or transferred to an entity other than the Corporation, the trustees or railroad shall pay or assign to the Secretary that portion of the proceeds of such sale, lease, or transfer which reflects value attributable to the maintenance and improvement provided pursuant to the agreement.

(c) OBLIGATIONS.—Notwithstanding section 210(b) of this title, the Association shall issue obligations under section 210(a) of this title in an amount sufficient to finance such agreements and shall require the Corporation to assume any such obligations. The aggregate amount of obligations issued under this section and outstanding at any one time shall not exceed $300,000,000. The Association, with the approval of the Secretary, shall designate in the final system plan that portion of such obligations issued or to be issued which shall be refinanced and the terms thereof, and that portion from which the Corporation shall be released of its obligations.

(d) CONVEYANCE.—The Secretary may convey to the Corporation, with or without receipt of consideration, any property or interests acquired by, transferred to, or otherwise held by the Secretary pursuant to this section or section 213 of this Act.

TITLE III—CONSOLIDATED RAIL CORPORATION

* * * * * * *

VALUATION AND CONVEYANCE OF RAIL PROPERTIES

SEC. 303. (a) * * *

* * * * * * *

(c) FINDINGS AND DISTRIBUTION.—(1) After the rail properties have been conveyed to the Corporation and profitable railroads operating in the region under subsection (b) of this section, the special court, giving due consideration to the findings contained in the final system plan, shall decide—

(A) whether the transfers or conveyances—

(i) of rail properties of each railroad in reorganization, or of each railroad leased, operated, or controlled by a railroad in reorganization, to the Corporation in exchange for the securities and the other benefits accruing to such railroad as a result of such exchange, as provided in the final system plan and this Act, and

(ii) of rail properties of each railroad in reorganization, or of each railroad leased, operated, or controlled by a railroad in reorganization, to a profitable railroad operating in the region, in accordance with the final system plan.

are in the public interest and are fair and equitable to the estate of each railroad in reorganization in accordance with the standard of fairness and equity applicable to the approval of a plan of reorganization or a step in such a plan under section 77 of the Bankruptcy Act (11 U.S.C. 205), or fair and equitable to a railroad that is not itself in reorganization but which is leased, operated, or controlled by a railroad in reorganization; [and]

(B) whether the transfers or conveyances are more fair and equitable than is required as a constitutional minimum[.]; *and*

(C) what portion of the proceeds received by a railroad in reorganization from an entity other than the Corporation for the sale, lease, or transfer of property subject to an agreement under section 213 or section 215(a) (1) or (2) of this Act reflects value attributable to the maintenance or improvement provided pursuant to the agreement.

* * * * * * *

TITLE VI—MISCELLANEOUS PROVISIONS

* * * * * * *

TAX PAYMENTS TO STATES

SEC. 605. (a) Notwithstanding any other provision of law, no railroad in reorganization shall withhold from any State, or any political subdivision thereof, the payment of the portion of any tax owed by such railroad to such State or subdivision, which portion has been collected by such railroad from any tenant thereof.

(b) Any railroad which violates the provisions of subsection (a) of this section by withholding any portion of a tax referred to in such subsection shall be fined not more than $10,000 for each such violation.

MINORITY VIEWS OF THE HONORABLE JAMES M. COLLINS

The history of the Northeast Regional Rail Reorganization demonstrates the futility of fighting symptoms instead of the basic disease. When the original act was approved and the tortuous planning process launched, it was evident that the provision of the act intended to keep bankrupt railroads in operation until CONRAIL could take over the desirable parts was inadequate and unrealistic. It sidestepped the root causes of bankrupt railroads.

To demonstrate how futile this present exercise is, look at the figures which have been presented to the committee. It shows the greatest rate of inflation in the history of our government. The bill presented by the Department of Transportation indicated that $250 million would carry the bankrupt railroads through March of 1976, at which time CONRAIL should be ready to roll. The Penn-Central then came forth and said that the figures had been right when they were made up but things had changed so that now $371 million would be necessary. This is about 70 percent inflation in a week.

If Congress did not have the inclination to strike at the heart of the problem in the Regional Rail Reorganization Act, the present situation should be enough to demonstrate the necessity. As long as thousands of miles of marginal and uneconomic track are maintained and serviced, deficits will grow. As long as the federal government stands by and allows outmoded and burdening labor practices to be imposed upon the railroads, no intricate schemes of quasi-governmental corporations will save the railroads. The errors of the present approach are only too evident to even a casual observer and it behooves Congress to scrap this useless effort and move out in new directions.

This is now the third time that Congress is acting on emergency legislation to keep Penn-Central operating. And still it does not get to the cure.

The Trustees in Bankruptcy proposed to abandon many thousand miles of uneconomic trackage. The Court agreed. One hundred ninety-three applications affecting 2445.73 miles of track were filed with the Interstate Commerce Commission and there they languish.

The Trustees proposed the elimination of about 4,500 jobs. The Department of Transportation urged and persuaded them to retain them.

The Trustees proposed deferring the 1975 pay increases and again were urged and persuaded by the Department of Transportation to desist.

Duplication of facilities must be eliminated. Old, inefficient work practices must be changed. This bill requires nothing in the way of improvements or solutions but simply makes it possible to continue a disastrous railroad operation.

JAMES M. COLLINS.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DATE: 2-27-75

TO: Bob Linder

FROM: LRD (Hyde)

Attached is the facsimile on S. 281. Please have included in the enrolled bill file which was forwarded earlier today. Thanks.

OMB FORM 38
REV AUG 73

S. 281

Ninety-fourth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the fourteenth day of January, one thousand nine hundred and seventy-five

An Act

To amend the Regional Rail Reorganization Act of 1973 to increase the financial assistance available under section 213 and section 215, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Regional Rail Reorganization Act Amendments of 1975".

SEC. 2. (a) Section 202(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 712(b)) is amended—

(1) in paragraph (2) by inserting "and express" immediately after "rail" each time it appears;

(2) by striking out the period at the end of paragraph (7) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(8) study the feasibility of coordinating rail and express service in the region.".

(b) Section 206(a)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(a)(1)) is amended by inserting "and express" immediately after "rail".

SEC. 3. Section 205(d)(2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 715(d)(2)) is amended to read as follows:

"(2) employ and utilize the services of attorneys and such other personnel as may be required in order to properly protect the interests of those communities and users of rail service which, for whatever reason, such as their size or location, might not otherwise be adequately represented in the course of the reorganization process as provided by this Act;".

SEC. 4. (a) Section 207(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 717(b)) is amended by inserting "(1)" immediately before the first sentence thereof, and by adding at the end thereof the following new paragraph:

"(2) Whenever it has been finally determined pursuant to the procedures of paragraph (1) of this subsection, that the reorganization of a railroad subject to reorganization under section 77 of the Bankruptcy Act (11 U.S.C. 205) shall not be proceeded with pursuant to this Act, the court having jurisdiction over such railroad may, upon a petition which is filed within 10 days after the date of enactment of this subsection by the trustees of such railroad, reconsider such order. Such reorganization court shall (i) affirm its previous order or (ii) issue an order that the reorganization of such railroad be proceeded with pursuant to this Act unless it finds that this Act does not provide a process which would be fair and equitable. The provisions of paragraph (1) of this subsection are applicable in such reconsideration, except that (A) such reorganization court shall make its decision within 30 days after such petition is filed, and (B) any decision by the special court on appeal from such a decision shall be rendered within 30 days after such reorganization court decision is made. There shall be no review of the decision of the special court. The Association shall take any steps it finds necessary, consistent with time limitations and other provisions of this Act, to effectuate the consequences of such a revised order, including the preparation and submission of any necessary or appropriate supplements to the preliminary system plan.".

(b) Section 207(a)(2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 717(a)) is amended by adding at the end thereof the following new sentence: "The Office is authorized to hold public hearings on any supplement to the preliminary system plan and to make available to the Association a summary and analysis of the

evidence received in the course of such proceedings, together with its critique and evaluation of such supplement, not later than 30 days after the release of such supplement.".

SEC. 5. (a) Section 211(a) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(a)) is amended by striking out "for purposes of assisting in the implementation of the final system plan;" and inserting in lieu thereof "for purposes of achieving the goals of this Act;".

(b) Section 211(e)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(e)(1)) is amended by striking out "carry out the final system plan" and inserting in lieu thereof "achieve the goals of this Act".

(c) Section 211(f) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(f)) is amended by striking out "goals of the final system plan" and inserting in lieu thereof "goals of this Act".

SEC. 6. (a) Section 213(a) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 723(a)) is amended by adding the following at the end thereof: "Where the Secretary and the trustees agree that funds provided pursuant to this section are to be used (together with funds provided pursuant to section 215 of this Act, if any) to perform program maintenance on designated rail properties until the date rail properties are conveyed under this Act or to improve such designated properties, such agreement shall contain the conditions set forth in section 215(b) of this Act.".

(b) Section 213(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 723(b)) is amended—

(1) by striking out "$85,000,000" and inserting in lieu thereof "$282,000,000"; and

(2) by adding at the end thereof the following new sentence: "Of amounts authorized to be appropriated under this subsection, $50,000,000 shall be available solely to pay to the trustees of rail[redacted]nization [redacted] may be necessary to provide such railroads with amounts equal to revenues attributable to tariff increases proposed by such railroads and suspended by the Interstate Commerce Commission during the calendar year 1975, if the Secretary determines that such payments are necessary to carry out this section.".

SEC. 7. Section 215 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 725) is amended to read as follows:

"INTERIM AGREEMENTS

"SEC. 215. (a) PURPOSES.—Prior to the date upon which rail properties are conveyed to the Corporation under this Act, the Secretary, with the approval of the Association, is authorized to enter into agreements with the trustees of the railroads in reorganization in the region (or railroads leased, operated, or controlled by railroads in reorganization)—

"(1) to perform the program maintenance on designated rail properties of such railroads until the date rail properties are conveyed under this Act;

"(2) to improve rail properties of such railroads; and

"(3) to acquire rail properties for lease or loan to any such railroads until the date such rail properties are conveyed under this Act, and subsequently for conveyance pursuant to the final system plan, or to acquire interests in such rail properties owned by or leased to any such railroads or in purchase money obligations therefor.

"(b) CONDITIONS.—Agreements pursuant to subsection (a) of this section shall contain such reasonable terms and conditions as the Secretary may prescribe. In addition, agreements under paragraphs (1) and (2) of subsection (a) of this section shall provide that—

"(1) to the extent that physical condition is used as a basis for determining, under section 206(f) or 303(c) of this Act, the value of properties subject to such an agreement and designated for transfer to the Corporation under the final system plan, the physical condition of the properties on the effective date of the agreement shall be used; and

"(2) in the event that property subject to the agreement is sold, leased, or transferred to an entity other than the Corporation, the trustees or railroad shall pay or assign to the Secretary that portion of the proceeds of such sale, lease, or transfer which reflects value attributable to the maintenance and improvement provided pursuant to the agreement.

"(c) OBLIGATIONS.—Notwithstanding section 210(b) of this title, the Association shall issue obligations under section 210(a) of this title in an amount sufficient to finance such agreements and shall require the Corporation to assume any such obligations. The aggregate amount of obligations issued under this section and outstanding at any one time shall not exceed $300,000,000. The Association, with the approval of the Secretary, shall designate in the final system plan that portion of such obligations issued or to be issued which shall be refinanced and the terms thereof, and that portion from which the Corporation shall be released of its obligations.

"(d) CONVEYANCE.—The Secretary may convey to the Corporation, with or without receipt of consideration, any property or interests acquired by, transferred to, or otherwise held by the Secretary pursuant to this section or section 213 of this Act.".

SEC. 8. Section 303(c)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 745(c)(1)) is amended by striking out the last word of paragraph (A), by striking out the period at the end of paragraph (B) and inserting "; and" in lieu thereof, and by inserting after paragraph (B) the following new paragraph:

"(C) what portion of the proceeds received by a railroad in reorganization from an entity other than the Corporation for the sale, lease, or transfer of property subject to an agreement under section 213 or section 215 (a) (1) or (2) of this Act reflects value attributable to the maintenance or improvement provided pursuant to the agreement.".

SEC. 9. Title VI of the Regional Rail Reorganization Act of 1973 is amended by adding at the end thereof the following new section:

"TAX PAYMENTS TO STATES

"SEC. 605. (a) Notwithstanding any other provision of law, no railroad in reorganization shall withhold from any State, or any political subdivision thereof, the payment of the portion of any tax owed by such railroad to such State or subdivision, which portion has been collected by such railroad from any tenant thereof.

"(b) Any railroad which violates the provisions of subsection (a) of this section by withholding any portion of a tax referred to in such subsection shall be fined not more than $10,000 for each such violation.".

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.