

Approved 3/2/87
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Sen. Bill Morris at
Chairperson

9:00 a.m. ~~p.m.~~ on February 26, 1987 in room 254-E of the Capitol.

All members were present except:

Sen. Doyen

Committee staff present:

Hank Avila, Legislative Research Department
Ben Barrett, Legislative Research Department
Bruce Kinzie, Revisor
Louise Cunningham, Committee Secretary

Conferees appearing before the committee:

Sen. R. Ehrlich
Rep. Larry Turnquist
Pat Hubbell, Public Affairs, Kansas Railroad Association
Leroy Jones, Brotherhood of Locomotive Engineers
Ron Calbert, United Transportation Union
Harland Priddle, Secretary, Department of Commerce
Ed DeSoignie, KDOT

HEARING ON S.B. 184 - Kansas rail passenger preservation act.

Sen. Ehrlich explained the bill and said it would set up a study under the Department of Transportation and the Department of Commerce to make a feasibility study to run Amtrak through Kansas. Last year it was brought to the Kansas voters and it did pass.

Rep. Turnquist, said he introduced the same thing on the House side and he was not concerned which bill gets passed. Different routes would be studied. He asked the Committee to support the bill and look at the feasibility. A copy of his statement is attached. (Att. 1).

Pat Hubbell, Kansas Railroad Association, said they were neither for nor against the bill but he urged caution. This could be a very costly proposition in corridors with sparse population. Some states have stopped their subsidies to Amtrak. A copy of his statement is attached. (Att. 2).

Leroy Jones, Brotherhood of Locomotive Engineers, spoke in favor of S.B. 184 and said that the state is now losing its bus service in many communities and many cities have lost their air service. The citizens should have access to affordable, reliable and convenient transportation. It would also be helpful in economic development. A copy of his statement is attached. (Att. 3).

Ron Calbert, United Transportation Union, also spoke in favor of S.B. 184. He said the railroads virtually eliminated passenger service when Congress passed the Transportation Act of 1958. When Trailways discontinues service if the application is approved, 29 cities in Kansas will be without any form of public transportation. He urged passage of S.B. 184. A copy of his statement is attached. (Att. 4).

Harland Priddle, Secretary, Department of Commerce, said they support the bill and welcome the opportunity to take part in it. As we open up corridors of transportation we will also open up corridors of economic development.

Ed DeSoignie, KDOT, said they would first have to make a market study to study the feasibility. Then the decision would have to be made on whether to subsidize. It would cost approximately \$50,000 to find out whether we want to do it or not. If it would be feasible decision would have to be made on where the money would come from. The same question was before the Colorado Legislature and it did not make it through the Legislature. If we

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,
room 254-E, Statehouse, at 9:00 a.m./~~p.m.~~ on February 26, 1987

were to get involved they might also be in favor. A copy of his statement is attached. (Att. 5).

A motion was made by Sen. Hayden and was seconded by Sen. Thiessen to approve the Minutes of February 24, 1987. Motion carried.

DISCUSSION ON S.B. 192 - Sun Screening

The Chairman briefed the Committee on the informal meeting that was held on the previous day with some members of the Committee and the Highway Patrol to view a demonstration car with the 35% light transmission. He said the Highway Patrol felt some standard would be better than what they now have.

The Committee discussed having stickers made up for people with Lupus so the Highway Patrol could identify their cars but it was brought out that imitation stickers could be printed up and this system might not work.

Meeting was adjourned at 10:00 a.m.

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Date 2-26 Place 254-E Time 9⁰⁰

GUEST LIST

NAME

ADDRESS

ORGANIZATION

Leroy Jones

Overland Park

B.L.E.

RICH DAME

HOISINGTON

B.L.E.

Don Detwiler

Pratt

B.L.E.

RON CALBERT

NEWTON

U.J.U.

Walter Pielgr

PCKG

BLE

Mark Behrman

Emporia

Sen. Burke

Pat Habbell

Topeka

Kans. RR Assn.

Del Miel

Topeka

KDOT

Ed DeSoignie

Topeka

KDOT

John A. Mills, Director-Region 9
National Association of Railroad Passengers
2825 Burnett Road
Topeka, Kansas 66614

February 22, 1987

Representative Larry Turnquist
State Capitol Building, Room 278-W
Topeka, Kansas 66612

Most Honorable Representative Turnquist,

I have received a copy of ^{Senate Bill 184} House Bill No. 2367, AN ACT enacting the Kansas rail passenger preservation act, hereafter referred to as the ACT.

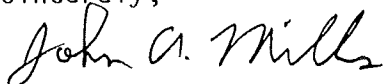
The National Association of Railroad Passengers, a nation wide rail passenger service advocacy organization, was founded in 1967. Membership presently is about 12,000. Region 9, which includes the states of Kansas, Oklahoma, Texas, Arkansas and Missouri, and from which I serve on the Board of Directors of NARP, is a very active and progressive segment of the NARP membership.

We wish to congratulate you and your colleagues in the Kansas Legislature for your efforts on the part of the user of rail passenger service in Kansas. Enactment of the ACT will be the first of many steps we hope toward the revitalization and improvement of rail passenger service in the state. Our whole-hearted support is herewith rendered. If at any time I or other members of NARP can be of any assistance to you or the State of Kansas in reaching the goals of the ACT, please let us hear from you.

Our next regional meeting will be in St Louis on March 21, 1987. At that time I will relay to our membership the current status of the ACT in the Kansas Legislature.

Again, congratulations and you have NARP's full support.

Sincerely,



John A. Mills

CC: NARP-Washington, DC

ATT. 1
T&U 2/26/87

KANSAS RAILROAD ASSOCIATION

920 S.E. QUINCY
P.O. BOX 1738
TOPEKA, KANSAS 66628

913-357-3392

PATRICK R. HUBBELL
SPECIAL REPRESENTATIVE-PUBLIC AFFAIRS

MICHAEL C. GERMANN, J. D.
LEGISLATIVE REPRESENTATIVE

Statement of the Kansas Railroad Association

Presented to the Senate Committee
on Transportation and Utilities
The Honorable Bill Morris, Chairman

Statehouse
Topeka, Kansas
February 26, 1987

* * * * *

Mr. Chairman and Members of the Committee:

My name is Pat Hubbell. I am the Special Representative - Public Affairs for the Kansas Railroad Association. I would like to thank you for giving me the opportunity to express the Kansas Railroad Association's position on Senate Bill No. 184.

The Railroad Association is neither a proponent nor an opponent of this legislation. We appear before the Committee to offer our cooperation, but at the same time we want to urge you to proceed with caution.

With the advent of commercial air travel and the building of the interstate highway system, a precipitous decline in the number of riders using intercity rail service led to the enactment of the Rail Passenger Service Act of 1970 (45 U.S.C. §501 et seq.). The federal operating subsidy for Amtrak in the current fiscal year exceeds \$600 million dollars.

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Intercity rail passenger service can be a costly proposition in rail corridors with light population densities. Under Section 403(b) of the Rail Passenger Service Act of 1970 (45 U.S.C. §563), states can agree to subsidize Amtrak service. In fiscal year 1985 California provided subsidy payments of approximately \$3.8 million; Illinois - \$2.5 million; Michigan - \$1.5 million; Missouri - \$2.9 million; New York - \$1.2 million; and Pennsylvania - \$1.2 million. Florida, Louisiana, Alabama, Mississippi, Minnesota and North Carolina stopped their subsidies to Amtrak in 1985.

Thank you for the opportunity to present our statement on Senate Bill No. 184. I will try to respond to any questions which you may have.

#

Brotherhood of Locomotive Engineers

Kansas State Legislative Board



LEROY D. JONES
Chairman
12601 W. 105th
Overland Park, Kansas 66215
(913) 492-4096

DONALD E. DETWILER
1st Vice Chairman
1001 E. 6th Street
Pratt, Kansas 67124
(316) 672-2551

JAMES R. DAME
2nd Vice Chairman
466 W. 7th Street
Holsington, Kansas 67544
(316) 653-7524

LEO M. SRUBAS
Secretary-Treasurer
5005 Georgia
Kansas City, Kansas 66104
(913) 287-8280

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STATEMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

PRESENTED TO THE SENATE COMMITTEE
ON TRANSPORTATION AND UTILITIES

THE HONORABLE BILL MORRIS, CHAIRMAN

STATEHOUSE
TOPEKA, KANSAS
FEBRUARY 24, 1987

Mr. Chairman and Members of the committee, I am Leroy Jones, Chairman of the Kansas Legislative Board for the Brotherhood of Locomotive Engineers. I am here today to testify in favor of Senate Bill 184.

I would like to thank Senator Ehrlich and Senator Burke for helping me get this bill introduced in the Senate. Also, I would like to thank Representative Turnquist and Representative Fox for introducing House Bill 2367 on the House side.

Senate Bill 184 allows the Department of Transportation, along with a cooperative effort with the Kansas Department of Commerce, to establish a rail passenger plan for our state. It allows our state to work with the federal government to preserve or add to the Amtrak service in Kansas.

I believe that now is the time for our state to start looking

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into the feasibility of having more Amtrak passenger trains serving our state. I believe that the citizens of Kansas should have access to affordable, reliable and convenient transportation. With the recent Trailways Bus case, which means the loss of service to many of our communities, we need to look at other alternative means of transportation for our citizens.

Many cities have or are about to lose their air service. Not all of our citizens are able to fly anyway. A wife of one of our State Senators is unable to fly. He was able to take a vacation with his wife because of the Amtrak train that presently serves our state. Along this line, not all of our citizens own a car or are able to drive them for long distances. Amtrak service allows these citizens, along with the elderly and the handicapped, an alternative means of transportation.

One area that I think we should discuss is the fuel efficiency of rail passenger service. We can all remember the energy crisis of the early 1970's. Today we are still reliant on foreign oil. I believe that because of the domestic oil supply and the unrest in the Middle East, the United States will see another energy crisis. Trains are the only energy efficient mode of transportation able to attract large numbers of Americans out of their automobiles.

Another area we should look at is what passenger service means to economic development. In my opinion, with passenger train service, many of our communities would have more of a chance to attract new businesses and industries that require alternate means of transportation. I think that this is especially of interest

to our communities in Western Kansas.

This bill does not mention a particular route, but there has been a great amount of interest in the possible Kansas City to Denver route over the Union Pacific tracks. Interest on this route has been around a long time. There was so much interest in 1973 and 1974 that a schedule was drafted. Please see attachment #I. Also, the Governor of Kansas at that time, Robert B. Docking, tried to persuade Amtrak to put a train on over this route. Please see attachment #II & III.

In closing, this bill is the first step that Kansas needs to take to see if passenger rail service is feasible in our state. I hope the committee will look at this piece of legislation as a building block for the future needs of transportation in our state.

Thank you for allowing me the opportunity to testify before your committee.

DRAFT SCHEDULE¹⁾

Kansas City - Denver

DAILY SERVICE

<u>New</u>	<u>#15</u>					<u>#16</u>	<u>New</u>
(#31) 440p	1245a	Ar	Kansas City		Lv	450a	940a (#30)
700p	100a	Lv	Kansas City	(507)	Ar	435a	915a
			40				
750p	146a*		Lawrence	(46)		340a*	805a
			28				
820p	225a*		Topeka**	(125)		310a*	730a
			21				
920p			Manhattan				630a
			21				
950p			Junction City	(19)			600a
			47				
1050p		Ar	Salina	(38)	Lv		455a
1100p		Lv	Salina		Ar		445
			103				
1250a			Hayes	(15)			240a
			13				
125a		Ar	Ellis CST	(2)	Lv		215a
1235a		Lv	Ellis		Ar		105a
			74				
Flag			Oakley	(2)			Flag
			53				
315a		Ar	Sharon Springs	(1)	Lv		1040p
325a		Lv	Sharon Springs		Ar		1035p
			121				
Flag			Limon	(2)			Flag
			89				
730a		Ar	Denver		Lv		700p
1000a (#5)		Lv	Denver	(515)	Ar	(#6)	430p

1) Schedule prepared by the Operations Department, but not reviewed with the carrier nor intermediate stops confirmed by the Marketing Department.

* ATSF/Amtrak Station

** UP Station is in North Topeka

Note: Numbers between stations are mileages; numbers in parenthesis are 1970 populations to nearest thousand.

1/18/74



OFFICE OF THE GOVERNOR
State Capitol
Topeka

ROBERT B. DOCKING
Governor

December 18, 1973

Honorable Claude S. Brinegar
The Secretary
Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Dear Mr. Brinegar:

I am enclosing a copy of a letter which I recently sent to Mr. Roger D. Lewis, President of Amtrak, discussing the possibility of a new Amtrak route on the Union Pacific Railroad between Kansas City and Denver.

In reply, Mr. David A. Watts, Jr., Director, State and Local Affairs, Amtrak, pointed out the two ways in which this expansion might be accomplished.

Before consideration could be given by the Kansas and Colorado Legislatures under Section 403 (b) of the Rail Passenger Service Act of 1970 for requesting additional service with the agreement to reimburse Amtrak two-thirds of the losses, we feel that the Kansas City-Denver route should be earmarked as an experimental route under the Amtrak Improvement Act of 1973 which was signed into law on November 3.

We are greatly concerned with the lack of service by Amtrak in the Midwest. Amtrak should re-evaluate the national rail transportation service between Kansas City and the Pacific Northwest. Kansas City and Denver are left abandoned with no connecting passenger service. Such a service would also provide persons residing in the St. Louis area with rail transportation to Denver. It is inconceivable that there is no direct passenger service between such cities as St. Louis-Kansas City-Denver.

Honorable Claude S. Brinegar

December 18, 1973

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Americans are becoming more responsive to rail transportation because of the gasoline shortage. There would be no need for delay in institution of this service due to repair or replacement of trackage as the track facilities between Kansas City and Denver are in excellent condition.

We are recommending to you, as Secretary of Transportation, that the Kansas City to Denver route be initiated as an experimental route as provided in Amtrak Improvement Act of 1973, that was signed into law on November 3. We believe that such a route would attract sufficient patronage and would help strengthen Amtrak efforts on more intense development of the potential in their existing route structure.

We are recommending that the Kansas City-Denver route be earmarked under the Amtrak Improvement Act of 1973 as the experimental route for a period of two years. After such two year period, you would terminate such route if you find it has attracted insufficient patronage to serve the public convenience and necessity, or you may designate such route as part of the basic system.

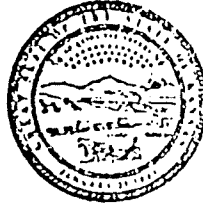
With every good wish.

Yours sincerely,

Robert Docking
Governor of Kansas

RD:jr

Enclosure



KANSAS LEGISLATIVE BOARD
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
LEO M. SRUBAS SECY-TREAS.
5005 GEORGIA
KANSAS CITY, KANSAS 66104

OFFICE OF THE GOVERNOR

State Capitol
Topeka

ROBERT B. DOCKING
Governor

December 18, 1973

Mr. David A. Watts, Jr.
Director, State and Local Affairs
National Railroad Passenger Corporation
955 L'Epfant Plaza North, S.W.
Washington, D.C. 20024

Dear Mr. Watts:

Thank you for your letter of November 28 which is in reply to my correspondence of November 7 to Mr. Roger D. Lewis, President of Amtrak, concerning the possibility of a new Amtrak route over the Union Pacific trackage between Kansas City and Denver.

I am, as of this date, recommending to the Honorable Claude S. Brinegar, Secretary of Transportation, that the Kansas City to Denver route over the Union Pacific trackage be earmarked as an experimental route under the Amtrak Improvement Act of 1973, signed into law on November 3.

You are aware, from correspondence from this office during the past several years since the termination of the Union Pacific line between Kansas City and Denver on May 1, 1971, which was the beginning of Amtrak, that substantial use was made of this route by people of this state, as well as other states. Amtrak now has the opportunity to return America to rail transportation by offering convenient service.

The trackage between Kansas City and Denver on the Union Pacific line is excellent and is not in need of repair or replacement as many of the eastern lines. Furthermore, this trackage would provide for the speeds required for today's service.

Mr. David A. Watts, Jr.

December 18, 1973
Page 2

Your office knows that the statistics released last summer show that people are again resorting to train travel in great numbers between Denver and San Francisco. We honestly believe that the adding of this service between Kansas City and Denver would increase the efficiency and the over-all operation of Amtrak.

While I agree that efforts should move forward and be concentrated on intense development of the potential in the existing route structure, I feel that there is a need for this service to develop such potential.

With every good wish.

Yours sincerely,

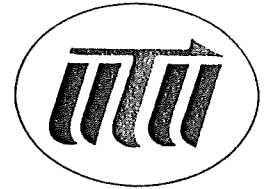
Robert Docking
Governor of Kansas

RD:jr

cc: Hon. James B. Pearson
Hon. Robert Dole
Hon. Keith G. Sebelius
Hon. William R. Roy
Hon. Larry Winn, Jr.
Hon. Garner E. Shriver
Hon. Joe Skubitz

R. E. (RON) CALBERT
DIRECTOR/CHAIRMAN

united
transportation
union



OAK STREET PLACE SUITE A
130 EAST FIFTH STREET
P.O. BOX 726
NEWTON, KANSAS 67114-0726
TELEPHONE (316) 283-8041

KANSAS STATE LEGISLATIVE BOARD

Statement Re: Senate Bill No. 184
An act enacting the Kansas rail passenger preservation act.

Presented to: Senate Transportation and Utilities Committee

February 26, 1987

Mr. Chairman, and members of the Committee, thank you for the opportunity to appear before you today on Senate Bill No. 184. I am Ron Calbert, Director, Kansas State Legislative Board, **United Transportation Union**. Mr. Chairman, I am authorized to speak for our some seven thousand (7,000) active and retired railroad and bus members and their families who reside in Kansas. I have worked as an engine foreman, yard master, and brakeman, with thirty-three (33) years service with the Santa Fe Railroad at Newton, Kansas. The **United Transportation Union** is a strong supporter of all public transportation in our State, and that is why I appear today in support of Senate Bill No. 184, enacting the Kansas rail passenger preservation act.

In 1958 the passenger carrying railroads of the United States told Congress that the individual state commissions, with jurisdiction over the discontinuance of passenger trains, were preventing the railroads from removing all of the passenger trains the railroads desired to remove. The railroads admitted those commissions granted 85% of their applications to discontinue passenger trains, but contended that the remaining 15% which they denied were denied because of politics. The railroads pleaded their situation was desperate. Congress believed them and passed the Transportation Act of 1958 which gave the railroads a virtual free hand in the elimination of passenger service throughout this country. Not

ATT. 4
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only was the "15%" immediately discontinued, but over the following twelve (12) years the remaining passenger train service in the United States was reduced by over 60%.

In 1971 it became clear that the railroads were going to abandon all rail passenger service in the United States as attested by their claims of a loss of some \$700 million annually because of passenger service and their total neglect of every aspect of that service. The result of Congress' effort was the creation of Amtrak. Amtrak is a quasi-public, federally funded National Railroad Passenger Corporation which on May 1, 1971 took over most United States intercity passenger service from the railroads. In order to create Amtrak, many more passenger trains had to be discontinued. Amtrak was created by Congress to insure, among other things, "that the traveler in America should to the maximum extent feasible, have freedom to choose the mode of travel most convenient to his needs."

I can attest to the public that transportation services in our State have greatly diminished both passenger trains and buses. In the November election of 1986, the people of Kansas voted to repeal internal improvements found in Chapter 9, Article 11 of the Constitution of Kansas. As a representative of Trailways, Inc. bus drivers, I'm involved in Trailways' application to discontinue several bus routes on April 1, 1987, which is currently before the Interstate Commerce Commission; twenty-nine (29) cities in Kansas will be without any form of public transportation. This could mean that Kansas will have to begin supplementing monies to fund, or partially fund, public transportation in our State.

The **United Transportation Union** strongly supports the passage of Senate Bill No. 184, the Kansas rail passenger preservation act.

Thank you, Mr. Chairman, for furnishing me the opportunity to appear before your Committee and express the concerns of the Kansans I represent. I will attempt to answer any questions at this time.

KANSAS DEPARTMENT OF TRANSPORTATION

DOCKING STATE OFFICE BUILDING — TOPEKA, KANSAS 66612-1568
(913) 296 — 3566



HORACE B. EDWARDS, Secretary of Transportation

MIKE HAYDEN, Governor

February 26, 1987

MEMORANDUM TO: The Honorable Bill Morris, Chairman
Senate Transportation and Utilities Committee

FROM: Edward R. DeSoignie
Policy Coordinator

REGARDING: Senate Bill 184

Thank you Mr. Chairman, members of the Committee. My name is Ed DeSoignie and I represent the Kansas Department of Transportation.

Senate Bill 184 authorizes the Kansas Department of Transportation to exercise those powers necessary for the State to qualify for rail service preservation subsidies or other assistance pursuant to the provisions of any federal act. The Department shall:

- a) establish a state plan for rail passenger transportation;
- b) administer and coordinate the state rail passenger plan;
- c) provide in the state rail passenger plan, for the distribution of federal rail service preservation subsidies or other federal assistance;
- d) provide satisfactory assurances on behalf of the state that such fiscal control and fund accounting procedures will be adopted by the state as may be necessary to assure proper disbursement of and account for federal funds paid to the state; and
- e) cooperate with the State Department of Commerce for the purpose of enhancing economic development.

The Kansas Department of Transportation is also authorized to provide financial assistance, within the limits of the funds appropriated for the preservation of operations and maintenance of any rail service within the state as provided for in relevant federal legislation. In addition, the Department may enter into general contractual arrangements with other states in connection with the preservation of passenger rail service in Kansas.

This act, if enacted into law, shall take effect, and be in force from and after July 1, 1987.

Section 403 of the Rail Passenger Service Act (45 U.S.C. 563) and amendments provides the process for states to be involved in a subsidization program for rail passenger service. (A copy of this legislation is attached to my testimony.)

ATT. 5
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Preliminary estimates indicate that it may take up to \$50,000 to begin the process - that is, Amtrak inspection, planning, marketing and feasibility study. If Amtrak accepts the application and the decision to add passenger routes is approved, then the State would provide 45 percent of the short-term avoidable losses of operating such service in the first year, and 65 percent of these costs in each year thereafter. In addition, the State would have to provide 50 percent of associated capital costs in each year of operation. The avoidable losses are based on a complex formula involving several factors.

It is difficult to estimate the annual costs to the Department, since it is unknown what tracks or additional lines would be involved at this time. A survey of Missouri and Illinois was made to obtain some idea of the costs. It must be noted that the costs in these states should not be taken as typical costs that Kansas would incur since conditions are different between the states.

Survey:

Missouri - Section 403 B Program:

Track: Kansas City to St. Louis - 283 miles of track
Schedule: Two trains daily: 1 in the morning and 1 in the evening
Stations: Six stops between Kansas City and St. Louis; seventh stop is currently being planned.
Total Costs Per Year: Approximately \$3 million
Funded: 83% by State General Fund and 17% by State Transportation Fund.
Average Speed: 75 mph

Illinois - Section 403 Program:

Track: Chicago to Champaign - 140 miles
Chicago to Springfield - 200 miles
Chicago to Quincy - 280 miles
Schedule: 2 daily trains: Chicago to Champaign
4 daily trains: Chicago to Springfield
2 daily trains: Chicago to Quincy
Average Speed: 56 miles per hour
Stations: 22 Stations
Total Costs Per Year: \$3.5 million
Funded: State General Fund

The Department respectfully submits that it is unopposed to the provisions of Senate Bill 184.

Thank you.

Attachment

SANCTIONS

SEC. 1179. Section 307(a) of the Rail Passenger Service Act (45 U.S.C. 547(a)) is amended by adding at the end thereof the following: "Any discontinuance of routes, trains, or services or reduction in frequency of service, which is made by the Corporation shall not be reviewable in any court except on petition of the Attorney General of the United States."

ELIMINATION OF UNNECESSARY REPORTS

SEC. 1180. (a) Section 308(a)(1) of the Rail Passenger Service Act (45 U.S.C. 548(a)(1)) is amended by striking out subparagraph (C).

(b) Section 308(c) of the Rail Passenger Service Act (45 U.S.C. 548(c)) is amended—

- (1) by striking out "and the Commission"; and
- (2) by striking out "reports (or, in their discretion, a joint report)" and inserting in lieu thereof "a report".

FACILITY AND SERVICE AGREEMENTS

SEC. 1181. The first sentence of section 402(a) of the Rail Passenger Service Act is amended by inserting ", which terms shall include a penalty for untimely performance" before the period.

STATE SUPPORTED SERVICES

SEC. 1182. (a) Section 403 of the Rail Passenger Service Act (45 U.S.C. 563) is amended to read as follows:

"SEC. 403. SERVICE.

"(a) Except as otherwise provided in this Act, after the effective date of the Amtrak Improvement Act of 1981, all route additions shall be in accordance with the Route and Service Criteria.

"(b)(1)(A) Any State or group of States, any regional or local agency, or any other person may submit an application to the Corporation requesting the institution of rail passenger service or the retention of a route, train, or service, or some portion of such route, train, or service, which the Corporation intends to discontinue under section 407 of this Act.

"(B) Each application by a State, agency, or person for rail passenger service under this subsection shall contain—

"(i) adequate assurances by such State, agency, or person that it has sufficient resources to meet its share of the cost of such service for the period such service is to be provided;

"(ii) a market analysis acceptable to the Corporation to ensure that there is adequate demand to warrant such service; and

"(iii) a statement by such State, agency, or person that it agrees to pay in each year of operation of such service at least—

"(I) 45 percent in the first year of operation; and

"(II) 65 percent in each year of operation thereafter; of the short-term avoidable losses of operating such service and 50 percent of the associated capital costs.

"(2)(A) The Corporation shall review each application submitted by a State, agency, or person for the institution or retention of service under this subsection to determine whether—

"(i) the application complies with the requirements of paragraph (1)(B) of this subsection; and

“(ii) there is a reasonable probability that the service requested can be provided with the resources available to the Corporation.

“(B) Any application submitted by a group of States shall be considered in the same manner as an application submitted by a single State, and not on the basis of whether each State that is a party to such application meets the requirements of paragraph (1)(B) of this subsection.

“(3)(A) The Corporation may enter into an agreement with such State, agency, or person for the institution or retention of such service, in accordance with the funding formula set forth in paragraph (1)(B) of this subsection, if the Corporation determines that such service can be provided with resources available to the Corporation.

“(B) An agreement entered into pursuant to this subsection may by mutual agreement be renewed for one or more additional terms of not more than 2 years.

“(C) If more than one application is made for service and all applications are consistent with the requirements of this subsection, but all the services applied for cannot be provided with the available resources of the Corporation, the board of directors shall decide in its discretion which application or applications best serve the public interest and can be provided with the available resources of the Corporation.

“(4)(A) Any funds provided by the Corporation under an agreement with a State, an agency or a person pursuant to this subsection which are allocated for associated capital costs and which are not expended during the fiscal year for which they are provided shall remain available until expended.

“(B) The board of directors shall, after consultation with the appropriate officials of each State that contributes to the operation of service under this subsection, establish the basis for determining the short-term avoidable loss and associated capital costs of service operated under this subsection and the total revenues from such service. In addition, the Corporation shall provide appropriate State officials with the basis for determining such loss, costs, and revenues for each route on which service is operated under this subsection.

“(5)(A) Prior to instituting any fare increase that applies to service provided under this subsection and that represents an increase of more than 5 percent over a 6-month period, the Corporation shall consult with and obtain the views of the appropriate officials of each State to be affected by such fare increase. The Corporation shall provide the officials of each such State with an explanation of the circumstances warranting the proposed fare increase (such as the unique costs of or demand for the services involved).

“(B) A proposed fare increase described in subparagraph (A) shall take effect 90 days after the date the Corporation first consults with the affected States pursuant to such subparagraph. Within thirty days of the initial consultation, the affected State may submit proposals to the Corporation for reducing costs and increasing revenues in connection with service provided under this subsection. Following such thirty-day period, the Corporation, after taking into consideration such proposals as may be submitted by a State, shall decide whether to implement the proposed fare increase in whole or in part.

“(C) Notwithstanding the provision of subparagraph (B) of this paragraph, the Corporation may increase fares pursuant to this paragraph during the first month of a fiscal year if the authorization for appropriations or the appropriations for the benefit of the

Corporation for such fiscal year are not enacted at least 90 days prior to the beginning of such fiscal year, and the Corporation may increase fares pursuant to this paragraph during the 30 days following enactment of any appropriation for the benefit of the Corporation or rescission thereof. Notice of fare increases pursuant to the preceding sentence shall be given by the Corporation to any affected State as soon as possible following the decision to effect such fare increase.

"(6) At least 2 but not more than 5 percent of all revenues generated by each particular route operated under the authority of this subsection shall be dedicated to advertising and promotion of such service on a local level."

(b) The amendments made by subsection (a) of this section shall apply to any agreement entered into under section 403(b) of the Rail Passenger Service Act after October 1, 1981, and to any renewal after October 1, 1983, of any agreement entered into under such section 403(b) prior to October 1, 1981.

OPERATION WITHIN AVAILABLE RESOURCES

SEC. 1183. (a) Section 404(c)(3) of the Rail Passenger Service Act (45 U.S.C. 564(c)(3)) is amended—

(1) by inserting "(A)" immediately after "(3)"; and

(2) by adding at the end thereof the following new subparagraph:

"(B) Beginning on the effective date of the Amtrak Improvement Act of 1981, if the Corporation determines that an amendment to the Route and Service Criteria is necessary or appropriate, it shall submit a draft of such amendment to the Congress. Such amendment shall take effect at the end of the first period of 60 calendar days of continuous session of the Congress after the date of its submission, unless either the Senate or the House of Representatives adopts a resolution during such period stating that it does not approve such amendment."

(b) Section 404(c)(4) of the Rail Passenger Service Act (45 U.S.C. 564(c)(4)) is amended to read as follows:

"(4)(A) The Corporation's annual total costs shall not exceed the funds, including grants made under section 601 of this Act, contributions provided by States, regional and local agencies and other persons, and revenues, available to the Corporation within the then-current fiscal year. Commencing in fiscal year 1982, the Corporation shall recover an amount sufficient that the ratio of its revenues, including contributions from States, agencies, and other persons, to costs, excluding capital costs, shall be at least 50 percent.

"(B) The Corporation shall conduct an annual review of each route in the basic system to determine if such route is projected to meet the criteria set forth in paragraph (1) or paragraph (2) of subsection (d), whichever is applicable to such route, as adjusted to reflect constant 1979 dollars. If the Corporation determines on the basis of such review that such route will not meet the criteria set forth in the appropriate paragraph, the Corporation shall discontinue, modify, or adjust the operation of rail passenger service over such route so that the criteria will be met.

"(C) The annual review conducted by the Corporation under subparagraph (B) shall include an evaluation of the potential market demand for, and the cost of providing service on routes or portions thereof, and the potential market demand for, and cost of providing service on, alternative routings. The Corporation shall transmit the results of the annual review to each House of the Congress and to the Secretary of Transportation.

403(b) SERVICE

Background

As a result of changes in the law, state and local governments may obtain service not included in the original system designated by the Department of Transportation by agreeing ultimately to assume 65 percent of the short term avoidable losses of operating the service, as well as 50 percent of related capital costs. Other cost supported arrangements have been used at different times prior to this recent change. To encourage and stimulate interest in supported routes, the burden has been phased over two years, with the local unit assuming 45 percent of the losses for the first year of operation, 65 percent in each succeeding year. The legislation provides an opportunity for state and local agencies to participate in expanded rail passenger service for their citizens and permits its initiation by sharing costs.

Summary of Procedures

Any state, group of states, regional or local agency, or any other person may apply for institution of additional rail passenger service or the retention of a route, train, or service, or some portion of such route, train, or service which Amtrak intends to discontinue. Such application must meet the following requirements:

- contain adequate assurances that the applicant has sufficient resources to meet its share of costs for the period such service is provided;
- include a market analysis acceptable to Amtrak to ensure that there is adequate demand to warrant such service;
- include a statement that the applicant agrees to provide 45 percent of the short term avoidable losses of operating such service in the first year, and 65 percent of these costs in each year thereafter, and that the applicant agrees to provide 50 percent of associated capital costs in each year of operation.

Amtrak must then review each application to determine whether:

- the application complies with the above requirements;
- there is reasonable probability that Amtrak can provide the service requested with the resources available to it.

Assuming an affirmative determination is made in both cases, Amtrak is authorized to enter into a contractual agreement with the applicant.

Any application submitted by a group of states shall be considered in the same manner as an application submitted by a single state and not on the basis of whether each state that is a party to such application meets the requirements state above.

If more than one application is made and all applications are consistent with the above requirements, but all services applied for cannot be provided by the resources of Amtrak, our Board of Directors shall determine which application(s) will best serve the public interest within our available resources. Applications for support of a service deleted from the basic system shall be given preference.

Applications may be submitted for service on new routes, discontinued routes, or for additional frequencies on existing routes. The applicant is also entitled to reimbursement for staff services in an amount equal to 1 1/2 percent of the operating losses and associated capital costs.

NOTES

Constitutional Prohibitions On The Giving Or
Lending Of State Funds Or Credit - Not Applicable
To Rail Passenger Service Under Section 403(b) of
the Rail Passenger Service Act, as amended.

Several states have expressed the belief that they are prohibited from participating in 403(b) services because certain provisions in their respective state constitutions prohibit the giving or lending of state funds or credit to or in aid of private enterprises. It should be pointed out to such states that many, if not all, state constitutions contain similar prohibitions. In particular, it should be noted that similar provisions are contained in the constitutions of the states of California, Illinois, Michigan, Minnesota, Missouri, New York and the Commonwealth of Pennsylvania, all of which participate in 403(b) services, thereby enjoying the public benefits of federal matching funds for rail passenger transportation.

The following quotations from the constitutions of the participating states demonstrate that the constitutional prohibition cited by non-participating states is, in fact, the rule rather than the exception.

California Article 4, § 22

. . . and no money shall ever be appropriated or drawn from the State Treasury for the purpose or benefit of any corporation, association, asylum, hospital, or any

other institution not under the exclusive management and control of the State as a state institution, nor shall any grant or donation of property ever be made thereto by the State; . . .

Illinois Article 8, § 1

(a) Public funds, property or credit shall be used only for public purposes.

Michigan Article 9, § 18

The credit of the State shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution.

Minnesota Article 11, § 2

The credit of the state shall not be given or loaned in aid of any individual, association or corporation except as hereinafter provided.

Missouri Article 3, § 39

The General Assembly shall not have power:

- (1) To give or lend or to authorize the giving or lending of the credit of the state in aid or to any person, association, municipal or other corporation.
- (2) To pledge the credit of the state for the payment of the liabilities, present or prospective, of any individual, association, municipal or other corporation.

(3) _____

(4) To pay or to authorize the payment of any claim against the state or any county or municipal corporation of the state under any agreement or contract made without express authority of law.

New York Article 7, § 8

1. The money of the state shall not be given or loaned to or in aid of any private corporation or association, or private undertaking; nor shall the credit of the state be given or loaned to or in aid of any individual, or public or private corporation or association, or private undertaking . . .

Pennsylvania Article 8, § 8

The credit of the Commonwealth shall not be pledged or loaned to any individual, company, corporation or association nor shall the Commonwealth become a joint owner or stockholder in any company, corporation or association.

The foregoing constitutional provisions, as well as the comparable constitutional provisions recently cited by the non-participating states of Arizona, Ohio, Oklahoma, Virginia and Washington, are clearly intended to prohibit the use of state funds or credit for the benefit of private enterprises. However, there is nothing in the wording of any of them which suggests that a state could not lawfully enter into a contract for the

purchase of services from a private enterprise, including the purchase of rail passenger transportation services. Thus, even if Amtrak were a private enterprise, there would appear to be no reason why the non-participating states should not contract for the provision of 403(b) services. However, as noted below, there is significant statutory indicia to demonstrate that Amtrak is not a private enterprise within the meaning of any of the state constitutions referred to, but that it is an instrumentality of the Federal Government which acts as a conduit for the provision of matching funds to the states for the purpose of encouraging and developing a balanced national transportation system.

Although incorporated under the Business Corporation Act of the District of Columbia, Amtrak is subject to the provisions of that Act only to the extent that they are not inconsistent with the Rail Passenger Service Act, as amended, 45 U.S.C. § 501 et seq. which provides, inter alia:

1. Amtrak's basic route system is as designated by the Secretary of Transportation and approved by Congress. 45 U.S.C. § 521.
2. Amtrak is required to "be operated and managed as a for-profit corporation." 45 U.S.C. § 541. The legislative history of this 1978 amended provision makes it clear that it is intended as a directive to govern the policies and actions of management and that the original for-profit status of Amtrak was abandoned as unrealistic.

3. The purpose of Amtrak is to "develop the potential of modern rail service in meeting the Nation's intercity passenger transportation requirements." 45 U.S.C. § 541.
4. The President of the United States, with the advice and consent of the Senate, appointed the incorporators and original board of directors of Amtrak. Since then, the President has appointed eight of the thirteen members of the board. A ninth member is the Secretary of Transportation, ex officio. 45 U.S.C. §§ 542, 543.
5. The salaries of corporate officers are tied to Level 1 of the Executive Schedule under Section 5312 of Title 5 of the United States Code (with a relaxation of such limitation in the case of the Corporation's president). Only citizens of the United States may serve as corporate officers. 45 U.S.C. § 543.
6. Amtrak is subject to the Freedom of Information Act as though it were a government agency. 45 U.S.C. § 546. It is also subject to the Government in the Sunshine Act by legislative reference.
7. Amtrak may be sued for actions ultra vires the Rail Passenger Service Act only upon petition of the Attorney General of the United States. 45 U.S.C. § 547.
8. Amtrak is required to submit monthly operating reports to the Congress and annual reports to the President and the Congress. 45 U.S.C. § 548.
9. Any state, regional or local agency may request institution of intercity rail passenger service additional to that of the basic system. If certain statutory requirements are

met, Amtrak is required to provide such service in accordance with a funding formula which provides for the use of federal and state funds in prescribed proportions. 45 U.S.C. § 563.

Federal funds for this purpose have been authorized in the following amounts: not to exceed \$23,800,000 in fiscal year 1980; not to exceed \$29,000,000 in fiscal year 1981; not to exceed \$30,000,000 in fiscal year 1982. 45 U.S.C. § 601.

10. Amtrak is authorized to operate commuter rail passenger service under an agreement with a state if the latter agrees to pay the avoidable costs of operation. 45 U.S.C. § 563.
11. Amtrak is a mixed-ownership government corporation under the Government Corporation Control Act (31 U.S.C. § 856) and is subject to audit by the Comptroller General of the United States who reports his findings to the Congress. 45 U.S.C. § 644.
12. The Secretary of Transportation is required to conduct a study of the payment of taxes by Amtrak to the states, taking into account, inter alia, the demand by states for federally funded rail passenger service and the importance to the Nation of maintaining an efficient and reliable national rail transportation system. Pub.L. 96-73, § 125.

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