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H. R. 2095

# One Hundred Tenth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Thursday,  
the third day of January, two thousand and eight*

## An Act

To amend title 49, United States Code, to prevent railroad fatalities, injuries, and hazardous materials releases, to authorize the Federal Railroad Safety Administration, and for other purposes.

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

## DIVISION A—RAIL SAFETY

### SEC. 1. SHORT TITLE; TABLE OF CONTENTS; AMENDMENT OF TITLE 49.

(a) SHORT TITLE.—This division may be cited as the “Rail Safety Improvement Act of 2008”.

(b) TABLE OF CONTENTS.—The table of contents for this division is as follows:

- Sec. 1. Short title; table of contents; amendment of title 49.
- Sec. 2. Definitions.
- Sec. 3. Authorization of appropriations.

#### TITLE I—RAILROAD SAFETY IMPROVEMENTS

- Sec. 101. Federal Railroad Administration officers and duties.
- Sec. 102. Railroad safety strategy.
- Sec. 103. Railroad safety risk reduction program.
- Sec. 104. Implementation of positive train control.
- Sec. 105. Railroad safety technology grants.
- Sec. 106. Reports on statutory mandates and recommendations.
- Sec. 107. Rulemaking process.
- Sec. 108. Hours-of-service reform.
- Sec. 109. Protection of railroad safety risk analyses information.
- Sec. 110. Pilot projects.

#### TITLE II—HIGHWAY-RAIL GRADE CROSSING AND PEDESTRIAN SAFETY AND TRESPASSER PREVENTION

- Sec. 201. Pedestrian crossing safety.
- Sec. 202. State action plans.
- Sec. 203. Improvements to sight distance at highway-rail grade crossings.
- Sec. 204. National crossing inventory.
- Sec. 205. Telephone number to report grade crossing problems.
- Sec. 206. Operation Lifesaver.
- Sec. 207. Federal grants to States for highway-rail grade crossing safety.
- Sec. 208. Trespasser prevention and highway-rail grade crossing safety.
- Sec. 209. Accident and incident reporting.
- Sec. 210. Fostering introduction of new technology to improve safety at highway-rail grade crossings.

#### TITLE III—FEDERAL RAILROAD ADMINISTRATION

- Sec. 301. Human capital increases.
- Sec. 302. Civil penalty increases.
- Sec. 303. Enforcement report.

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- Sec. 304. Expansion of emergency order authority.
- Sec. 305. Prohibition of individuals from performing safety-sensitive functions for a violation of hazardous materials transportation law.
- Sec. 306. Railroad radio monitoring authority.
- Sec. 307. Update of Federal Railroad Administration's website.
- Sec. 308. Emergency waivers.
- Sec. 309. Enforcement by the Attorney General.
- Sec. 310. Criminal penalties.

### TITLE IV—RAILROAD SAFETY ENHANCEMENTS

- Sec. 401. Minimum training standards and plans.
- Sec. 402. Certification of certain crafts or classes of employees.
- Sec. 403. Track inspection time study.
- Sec. 404. Study of methods to improve or correct station platform gaps.
- Sec. 405. Locomotive cab studies.
- Sec. 406. Development and use of rail safety technology.
- Sec. 407. Unified treatment of families of railroad carriers.
- Sec. 408. Study of repeal of Conrail provision.
- Sec. 409. Limitations on non-Federal alcohol and drug testing by railroad carriers.
- Sec. 410. Critical incident stress plan.
- Sec. 411. Railroad carrier employee exposure to radiation study.
- Sec. 412. Alcohol and controlled substance testing for maintenance-of-way employees.
- Sec. 413. Emergency escape breathing apparatus.
- Sec. 414. Tunnel information.
- Sec. 415. Museum locomotive study.
- Sec. 416. Safety inspections in Mexico.
- Sec. 417. Railroad bridge safety assurance.
- Sec. 418. Railroad safety infrastructure improvement grants.
- Sec. 419. Prompt medical attention.
- Sec. 420. Employee sleeping quarters.

### TITLE V—RAIL PASSENGER DISASTER FAMILY ASSISTANCE

- Sec. 501. Assistance by National Transportation Safety Board to families of passengers involved in rail passenger accidents.
- Sec. 502. Rail passenger carrier plan to assist families of passengers involved in rail passenger accidents.
- Sec. 503. Establishment of task force.

### TITLE VI—CLARIFICATION OF FEDERAL JURISDICTION OVER SOLID WASTE FACILITIES

- Sec. 601. Short title.
- Sec. 602. Clarification of general jurisdiction over solid waste transfer facilities.
- Sec. 603. Regulation of solid waste rail transfer facilities.
- Sec. 604. Solid waste rail transfer facility land-use exemption authority.
- Sec. 605. Effect on other statutes and authorities.

### TITLE VII—TECHNICAL CORRECTIONS

- Sec. 701. Technical corrections.

(c) AMENDMENT OF TITLE 49.—Except as otherwise expressly provided, whenever in this division an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

#### SEC. 2. DEFINITIONS.

(a) IN GENERAL.—In this division:

- (1) CROSSING.—The term “crossing” means a location within a State, other than a location where one or more railroad tracks cross one or more railroad tracks at grade where—
  - (A) a public highway, road, or street, or a private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks either at grade or grade-separated; or
  - (B) a pathway explicitly authorized by a public authority or a railroad carrier that is dedicated for the

use of nonvehicular traffic, including pedestrians, bicyclists, and others, that is not associated with a public highway, road, or street, or a private roadway, crosses one or more railroad tracks either at grade or grade-separated.

(2) DEPARTMENT.—The term “Department” means the Department of Transportation.

(3) RAILROAD.—The term “railroad” has the meaning given that term by section 20102 of title 49, United States Code.

(4) RAILROAD CARRIER.—The term “railroad carrier” has the meaning given that term by section 20102 of title 49, United States Code.

(5) SECRETARY.—The term “Secretary” means the Secretary of Transportation.

(6) STATE.—The term “State” means a State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) IN TITLE 49.—Section 20102 is amended—

(1) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively;

(2) by inserting before paragraph (2), as redesignated, the following:

“(1) ‘Class I railroad’, ‘Class II railroad’, and ‘Class III railroad’ mean railroad carriers that have annual carrier operating revenues that meet the threshold amount for Class I carriers, Class II carriers, and Class III carriers, respectively, as determined by the Surface Transportation Board under section 1201.1-1 of title 49, Code of Federal Regulations.”; and

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

“(4) ‘safety-related railroad employee’ means—

“(A) a railroad employee who is subject to chapter 211;

“(B) another operating railroad employee who is not subject to chapter 211;

“(C) an employee who maintains the right of way of a railroad;

“(D) an employee of a railroad carrier who is a hazmat employee as defined in section 5102(3) of this title;

“(E) an employee who inspects, repairs, or maintains locomotives, passenger cars, or freight cars; and

“(F) any other employee of a railroad carrier who directly affects railroad safety, as determined by the Secretary.”.

### SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

Section 20117(a) of title 49, United States Code, is amended to read as follows:

“(a) IN GENERAL.—(1) There are authorized to be appropriated to the Secretary of Transportation to carry out this part and to carry out responsibilities under chapter 51 as delegated or authorized by the Secretary—

“(A) \$225,000,000 for fiscal year 2009;

“(B) \$245,000,000 for fiscal year 2010;

“(C) \$266,000,000 for fiscal year 2011;

“(D) \$289,000,000 for fiscal year 2012; and

“(E) \$293,000,000 for fiscal year 2013.

“(2) With amounts appropriated pursuant to paragraph (1), the Secretary shall purchase Gage Restraint Measurement System

vehicles and track geometry vehicles or other comparable technology as needed to assess track safety consistent with the results of the track inspection study required by section 403 of the Rail Safety Improvement Act of 2008.

“(3) There are authorized to be appropriated to the Secretary \$18,000,000 for the period encompassing fiscal years 2009 through 2013 to design, develop, and construct the Facility for Underground Rail Station and Tunnel at the Transportation Technology Center in Pueblo, Colorado. The facility shall be used to test and evaluate the vulnerabilities of above-ground and underground rail tunnels to prevent accidents and incidents in such tunnels, to mitigate and remediate the consequences of any such accidents or incidents, and to provide a realistic scenario for training emergency responders.

“(4) Such sums as may be necessary from the amount appropriated pursuant to paragraph (1) for each of the fiscal years 2009 through 2013 shall be made available to the Secretary for personnel in regional offices and in Washington, D.C., whose duties primarily involve rail security.”

## **TITLE I—RAILROAD SAFETY IMPROVEMENTS**

### **SEC. 101. FEDERAL RAILROAD ADMINISTRATION OFFICERS AND DUTIES.**

Section 103 is amended by striking subsections (b) through (e) and inserting the following:

“(c) SAFETY AS HIGHEST PRIORITY.—In carrying out its duties, the Administration shall consider the assignment and maintenance of safety as the highest priority, recognizing the clear intent, encouragement, and dedication of Congress to the furtherance of the highest degree of safety in railroad transportation.

“(d) ADMINISTRATOR.—The head of the Administration shall be the Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be an individual with professional experience in railroad safety, hazardous materials safety, or other transportation safety. The Administrator shall report directly to the Secretary of Transportation.

“(e) DEPUTY ADMINISTRATOR.—The Administration shall have a Deputy Administrator who shall be appointed by the Secretary. The Deputy Administrator shall carry out duties and powers prescribed by the Administrator.

“(f) CHIEF SAFETY OFFICER.—The Administration shall have an Associate Administrator for Railroad Safety appointed in the career service by the Secretary. The Associate Administrator shall be the Chief Safety Officer of the Administration. The Associate Administrator shall carry out the duties and powers prescribed by the Administrator.

“(g) DUTIES AND POWERS OF THE ADMINISTRATOR.—The Administrator shall carry out—

“(1) duties and powers related to railroad safety vested in the Secretary by section 20134(c) and chapters 203 through 211 of this title, and by chapter 213 of this title for carrying out chapters 203 through 211;

“(2) the duties and powers related to railroad policy and development under subsection (j); and

“(3) other duties and powers prescribed by the Secretary.

“(h) LIMITATION.—A duty or power specified in subsection (g)(1) may be transferred to another part of the Department of Transportation or another Federal Government entity only when specifically provided by law. A decision of the Administrator in carrying out the duties or powers of the Administration and involving notice and hearing required by law is administratively final.

“(i) AUTHORITIES.—Subject to the provisions of subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), the Secretary of Transportation may make, enter into, and perform such contracts, grants, leases, cooperative agreements, and other similar transactions with Federal or other public agencies (including State and local governments) and private organizations and persons, and make such payments, by way of advance or reimbursement, as the Secretary may determine to be necessary or appropriate to carry out functions at the Administration. The authority of the Secretary granted by this subsection shall be carried out by the Administrator. Notwithstanding any other provision of this chapter, no authority to enter into contracts or to make payments under this subsection shall be effective, except as provided for in appropriations Acts.”.

#### **SEC. 102. RAILROAD SAFETY STRATEGY.**

(a) SAFETY GOALS.—In conjunction with existing federally-required and voluntary strategic planning efforts ongoing at the Department and the Federal Railroad Administration as of the date of enactment of this Act, the Secretary shall develop a long-term strategy for improving railroad safety to cover a period of not less than 5 years. The strategy shall include an annual plan and schedule for achieving, at a minimum, the following goals:

(1) Reducing the number and rates of accidents, incidents, injuries, and fatalities involving railroads including train collisions, derailments, and human factors.

(2) Improving the consistency and effectiveness of enforcement and compliance programs.

(3) Improving the identification of high-risk highway-rail grade crossings and strengthening enforcement and other methods to increase grade crossing safety.

(4) Improving research efforts to enhance and promote railroad safety and performance.

(5) Preventing railroad trespasser accidents, incidents, injuries, and fatalities.

(6) Improving the safety of railroad bridges, tunnels, and related infrastructure to prevent accidents, incidents, injuries, and fatalities caused by catastrophic failures and other bridge and tunnel failures.

(b) RESOURCE NEEDS.—The strategy and annual plan shall include estimates of the funds and staff resources needed to accomplish the goals established by subsection (a). Such estimates shall also include the staff skills and training required for timely and effective accomplishment of each such goal.

(c) SUBMISSION WITH THE PRESIDENT’S BUDGET.—The Secretary shall submit the strategy and annual plan to the Senate Committee

on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure at the same time as the President's budget submission.

(d) ACHIEVEMENT OF GOALS.—

(1) PROGRESS ASSESSMENT.—No less frequently than annually, the Secretary shall assess the progress of the Department toward achieving the strategic goals described in subsection (a). The Secretary shall identify any deficiencies in achieving the goals within the strategy and develop and institute measures to remediate such deficiencies. The Secretary and the Administrator shall convey their assessment to the employees of the Federal Railroad Administration and shall identify any deficiencies that should be remediated before the next progress assessment.

(2) REPORT TO CONGRESS.—Beginning in 2009, not later than November 1 of each year, the Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the performance of the Federal Railroad Administration containing the progress assessment required by paragraph (1) toward achieving the goals of the railroad safety strategy and annual plans under subsection (a).

**SEC. 103. RAILROAD SAFETY RISK REDUCTION PROGRAM.**

(a) IN GENERAL.—Subchapter II of chapter 201 is amended by adding at end thereof the following:

**“§ 20156. Railroad safety risk reduction program**

“(a) IN GENERAL.—

“(1) PROGRAM REQUIREMENT.—Not later than 4 years after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary of Transportation, by regulation, shall require each railroad carrier that is a Class I railroad, a railroad carrier that has inadequate safety performance (as determined by the Secretary), or a railroad carrier that provides intercity rail passenger or commuter rail passenger transportation—

“(A) to develop a railroad safety risk reduction program under subsection (d) that systematically evaluates railroad safety risks on its system and manages those risks in order to reduce the numbers and rates of railroad accidents, incidents, injuries, and fatalities;

“(B) to submit its program, including any required plans, to the Secretary for review and approval; and

“(C) to implement the program and plans approved by the Secretary.

“(2) RELIANCE ON PILOT PROGRAM.—The Secretary may conduct behavior-based safety and other research, including pilot programs, before promulgating regulations under this subsection and thereafter. The Secretary shall use any information and experience gathered through such research and pilot programs under this subsection in developing regulations under this section.

“(3) REVIEW AND APPROVAL.—The Secretary shall review and approve or disapprove railroad safety risk reduction program plans within a reasonable period of time. If the proposed plan is not approved, the Secretary shall notify the affected

railroad carrier as to the specific areas in which the proposed plan is deficient, and the railroad carrier shall correct all deficiencies within a reasonable period of time following receipt of written notice from the Secretary. The Secretary shall annually conduct a review to ensure that the railroad carriers are complying with their plans.

“(4) VOLUNTARY COMPLIANCE.—A railroad carrier that is not required to submit a railroad safety risk reduction program under this section may voluntarily submit a program that meets the requirements of this section to the Secretary. The Secretary shall approve or disapprove any program submitted under this paragraph.

“(b) CERTIFICATION.—The chief official responsible for safety of each railroad carrier required to submit a railroad safety risk reduction program under subsection (a) shall certify that the contents of the program are accurate and that the railroad carrier will implement the contents of the program as approved by the Secretary.

“(c) RISK ANALYSIS.—In developing its railroad safety risk reduction program each railroad carrier required to submit such a program pursuant to subsection (a) shall identify and analyze the aspects of its railroad, including operating rules and practices, infrastructure, equipment, employee levels and schedules, safety culture, management structure, employee training, and other matters, including those not covered by railroad safety regulations or other Federal regulations, that impact railroad safety.

“(d) PROGRAM ELEMENTS.—

“(1) IN GENERAL.—Each railroad carrier required to submit a railroad safety risk reduction program under subsection (a) shall develop a comprehensive safety risk reduction program to improve safety by reducing the number and rates of accidents, incidents, injuries, and fatalities that is based on the risk analysis required by subsection (c) through—

“(A) the mitigation of aspects that increase risks to railroad safety; and

“(B) the enhancement of aspects that decrease risks to railroad safety.

“(2) REQUIRED COMPONENTS.—Each railroad carrier’s safety risk reduction program shall include a risk mitigation plan in accordance with this section, a technology implementation plan that meets the requirements of subsection (e), and a fatigue management plan that meets the requirements of subsection (f).

“(e) TECHNOLOGY IMPLEMENTATION PLAN.—

“(1) IN GENERAL.—As part of its railroad safety risk reduction program, a railroad carrier required to submit a railroad safety risk reduction program under subsection (a) shall develop, and periodically update as necessary, a 10-year technology implementation plan that describes the railroad carrier’s plan for development, adoption, implementation, maintenance, and use of current, new, or novel technologies on its system over a 10-year period to reduce safety risks identified under the railroad safety risk reduction program. Any updates to the plan are subject to review and approval by the Secretary.

“(2) TECHNOLOGY ANALYSIS.—A railroad carrier’s technology implementation plan shall include an analysis of the safety impact, feasibility, and cost and benefits of implementing



technologies, including processor-based technologies, positive train control systems (as defined in section 20157(i)), electronically controlled pneumatic brakes, rail integrity inspection systems, rail integrity warning systems, switch position monitors and indicators, trespasser prevention technology, highway-rail grade crossing technology, and other new or novel railroad safety technology, as appropriate, that may mitigate risks to railroad safety identified in the risk analysis required by subsection (c).

“(3) IMPLEMENTATION SCHEDULE.—A railroad carrier’s technology implementation plan shall contain a prioritized implementation schedule for the development, adoption, implementation, and use of current, new, or novel technologies on its system to reduce safety risks identified under the railroad safety risk reduction program.

“(4) POSITIVE TRAIN CONTROL.—Except as required by section 20157 (relating to the requirements for implementation of positive train control systems), the Secretary shall ensure that—

“(A) each railroad carrier’s technology implementation plan required under paragraph (1) that includes a schedule for implementation of a positive train control system complies with that schedule; and

“(B) each railroad carrier required to submit such a plan implements a positive train control system pursuant to such plan by December 31, 2018.

“(f) FATIGUE MANAGEMENT PLAN.—

“(1) IN GENERAL.—As part of its railroad safety risk reduction program, a railroad carrier required to submit a railroad safety risk reduction program under subsection (a) shall develop and update at least once every 2 years a fatigue management plan that is designed to reduce the fatigue experienced by safety-related railroad employees and to reduce the likelihood of accidents, incidents, injuries, and fatalities caused by fatigue. Any such update shall be subject to review and approval by the Secretary.

“(2) TARGETED FATIGUE COUNTERMEASURES.—A railroad carrier’s fatigue management plan shall take into account the varying circumstances of operations by the railroad on different parts of its system, and shall prescribe appropriate fatigue countermeasures to address those varying circumstances.

“(3) ADDITIONAL ELEMENTS.—A railroad shall consider the need to include in its fatigue management plan elements addressing each of the following items, as applicable:

“(A) Employee education and training on the physiological and human factors that affect fatigue, as well as strategies to reduce or mitigate the effects of fatigue, based on the most current scientific and medical research and literature.

“(B) Opportunities for identification, diagnosis, and treatment of any medical condition that may affect alertness or fatigue, including sleep disorders.

“(C) Effects on employee fatigue of an employee’s short-term or sustained response to emergency situations, such as derailments and natural disasters, or engagement in other intensive working conditions.

“(D) Scheduling practices for employees, including innovative scheduling practices, on-duty call practices, work and rest cycles, increased consecutive days off for employees, changes in shift patterns, appropriate scheduling practices for varying types of work, and other aspects of employee scheduling that would reduce employee fatigue and cumulative sleep loss.

“(E) Methods to minimize accidents and incidents that occur as a result of working at times when scientific and medical research have shown increased fatigue disrupts employees’ circadian rhythm.

“(F) Alertness strategies, such as policies on napping, to address acute drowsiness and fatigue while an employee is on duty.

“(G) Opportunities to obtain restful sleep at lodging facilities, including employee sleeping quarters provided by the railroad carrier.

“(H) The increase of the number of consecutive hours of off-duty rest, during which an employee receives no communication from the employing railroad carrier or its managers, supervisors, officers, or agents.

“(I) Avoidance of abrupt changes in rest cycles for employees.

“(J) Additional elements that the Secretary considers appropriate.

“(g) CONSENSUS.—

“(1) IN GENERAL.—Each railroad carrier required to submit a railroad safety risk reduction program under subsection (a) shall consult with, employ good faith and use its best efforts to reach agreement with, all of its directly affected employees, including any non-profit employee labor organization representing a class or craft of directly affected employees of the railroad carrier, on the contents of the safety risk reduction program.

“(2) STATEMENT.—If the railroad carrier and its directly affected employees, including any nonprofit employee labor organization representing a class or craft of directly affected employees of the railroad carrier, cannot reach consensus on the proposed contents of the plan, then directly affected employees and such organization may file a statement with the Secretary explaining their views on the plan on which consensus was not reached. The Secretary shall consider such views during review and approval of the program.

“(h) ENFORCEMENT.—The Secretary shall have the authority to assess civil penalties pursuant to chapter 213 for a violation of this section, including the failure to submit, certify, or comply with a safety risk reduction program, risk mitigation plan, technology implementation plan, or fatigue management plan.”

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201 is amended by inserting after the item relating to section 20155 the following:

“20156. Railroad safety risk reduction program.”

**SEC. 104. IMPLEMENTATION OF POSITIVE TRAIN CONTROL.**

(a) IN GENERAL.—Subchapter II of chapter 201, as amended by section 103 of this division, is further amended by adding at the end thereof the following:

**“§ 20157. Implementation of positive train control systems**

“(a) IN GENERAL.—

“(1) PLAN REQUIRED.—Not later than 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, each Class I railroad carrier and each entity providing regularly scheduled intercity or commuter rail passenger transportation shall develop and submit to the Secretary of Transportation a plan for implementing a positive train control system by December 31, 2015, governing operations on—

“(A) its main line over which intercity rail passenger transportation or commuter rail passenger transportation, as defined in section 24102, is regularly provided;

“(B) its main line over which poison- or toxic-by-inhalation hazardous materials, as defined in parts 171.8, 173.115, and 173.132 of title 49, Code of Federal Regulations, are transported; and

“(C) such other tracks as the Secretary may prescribe by regulation or order.

“(2) IMPLEMENTATION.—The plan shall describe how it will provide for interoperability of the system with movements of trains of other railroad carriers over its lines and shall, to the extent practical, implement the system in a manner that addresses areas of greater risk before areas of lesser risk. The railroad carrier shall implement a positive train control system in accordance with the plan.

“(b) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance and guidance to railroad carriers in developing the plans required under subsection (a).

“(c) REVIEW AND APPROVAL.—Not later than 90 days after the Secretary receives a plan, the Secretary shall review and approve or disapprove it. If the proposed plan is not approved, the Secretary shall notify the affected railroad carrier or other entity as to the specific areas in which the proposed plan is deficient, and the railroad carrier or other entity shall correct all deficiencies within 30 days following receipt of written notice from the Secretary. The Secretary shall annually conduct a review to ensure that the railroad carriers are complying with their plans.

“(d) REPORT.—Not later than December 31, 2012, the Secretary shall transmit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the progress of the railroad carriers in implementing such positive train control systems.

“(e) ENFORCEMENT.—The Secretary is authorized to assess civil penalties pursuant to chapter 213 for a violation of this section, including the failure to submit or comply with a plan for implementing positive train control under subsection (a).

“(f) OTHER RAILROAD CARRIERS.—Nothing in this section restricts the discretion of the Secretary to require railroad carriers other than those specified in subsection (a) to implement a positive train control system pursuant to this section or section 20156, or to specify the period by which implementation shall occur that does not exceed the time limits established in this section or section 20156. In exercising such discretion, the Secretary shall, at a minimum, consider the risk to railroad employees and the public associated with the operations of the railroad carrier.

“(g) REGULATIONS.—The Secretary shall prescribe regulations or issue orders necessary to implement this section, including regulations specifying in appropriate technical detail the essential functionalities of positive train control systems, and the means by which those systems will be qualified.

“(h) CERTIFICATION.—The Secretary shall not permit the installation of any positive train control system or component in revenue service unless the Secretary has certified that any such system or component has been approved through the approval process set forth in part 236 of title 49, Code of Federal Regulations, and complies with the requirements of that part.

“(i) DEFINITIONS.—In this section:

“(1) INTEROPERABILITY.—The term ‘interoperability’ means the ability to control locomotives of the host railroad and tenant railroad to communicate with and respond to the positive train control system, including uninterrupted movements over property boundaries.

“(2) MAIN LINE.—The term ‘main line’ means a segment or route of railroad tracks over which 5,000,000 or more gross tons of railroad traffic is transported annually, except that—

“(A) the Secretary may, through regulations under subsection (g), designate additional tracks as main line as appropriate for this section; and

“(B) for intercity rail passenger transportation or commuter rail passenger transportation routes or segments over which limited or no freight railroad operations occur, the Secretary shall define the term ‘main line’ by regulation.

“(3) POSITIVE TRAIN CONTROL SYSTEM.—The term ‘positive train control system’ means a system designed to prevent train-to-train collisions, over-speed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position.”

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201, as amended by section 103 of this division, is amended by inserting after the item relating to section 20156 the following:

“20157. Implementation of positive train control systems.”

#### **SEC. 105. RAILROAD SAFETY TECHNOLOGY GRANTS.**

(a) IN GENERAL.—Subchapter II of chapter 201, as amended by section 104 of this division, is further amended by adding at the end thereof the following:

#### **“§ 20158. Railroad safety technology grants**

“(a) GRANT PROGRAM.—The Secretary of Transportation shall establish a grant program for the deployment of train control technologies, train control component technologies, processor-based technologies, electronically controlled pneumatic brakes, rail integrity inspection systems, rail integrity warning systems, switch position indicators and monitors, remote control power switch technologies, track integrity circuit technologies, and other new or novel railroad safety technology.

“(b) GRANT CRITERIA.—

“(1) ELIGIBILITY.—Grants shall be made under this section to eligible passenger and freight railroad carriers, railroad suppliers, and State and local governments for projects described

in subsection (a) that have a public benefit of improved safety and network efficiency.

“(2) CONSIDERATIONS.—Priority shall be given to projects that—

“(A) focus on making technologies interoperable between railroad systems, such as train control technologies;

“(B) accelerate train control technology deployment on high-risk corridors, such as those that have high volumes of hazardous materials shipments or over which commuter or passenger trains operate; or

“(C) benefit both passenger and freight safety and efficiency.

“(3) IMPLEMENTATION PLANS.—Grants may not be awarded under this section to entities that fail to develop and submit to the Secretary the plans required by sections 20156(e)(2) and 20157.

“(4) MATCHING REQUIREMENTS.—Federal funds for any eligible project under this section shall not exceed 80 percent of the total cost of such project.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation \$50,000,000 for each of fiscal years 2009 through 2013 to carry out this section. Amounts appropriated pursuant to this section shall remain available until expended.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201, as amended by section 104 of this division, is further amended by inserting after the item relating to section 20157 the following:

“20158. Railroad safety technology grants.”.

#### **SEC. 106. REPORTS ON STATUTORY MANDATES AND RECOMMENDATIONS.**

Not later than December 31, 2008, and annually thereafter, the Secretary shall transmit a report to the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation on the specific actions taken to implement unmet statutory mandates regarding railroad safety and each open railroad safety recommendation made by the National Transportation Safety Board or the Department’s Inspector General.

#### **SEC. 107. RULEMAKING PROCESS.**

(a) AMENDMENT.—Subchapter I of chapter 201 is amended by inserting after section 20115 the following new section:

##### **“§ 20116. Rulemaking process**

“No rule or order issued by the Secretary under this part shall be effective if it incorporates by reference a code, rule, standard, requirement, or practice issued by an association or other entity that is not an agency of the Federal Government, unless the date on which the code, rule, standard, requirement, or practice was adopted is specifically cited in the rule or order, or the code, rule, standard, requirement, or practice has been subject to notice and comment under a rule or order issued under this part.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201 is amended by inserting after the item relating to section 20115 the following:

“20116. Rulemaking process.”.

**SEC. 108. HOURS-OF-SERVICE REFORM.**

(a) CHANGE IN DEFINITION OF SIGNAL EMPLOYEE.—Section 21101(4) is amended by striking “employed by a railroad carrier”.

(b) LIMITATION ON DUTY HOURS OF TRAIN EMPLOYEES.—Section 21103 is amended—

(1) by striking subsection (a) and inserting the following:

“(a) IN GENERAL.—Except as provided in subsection (d) of this section, a railroad carrier and its officers and agents may not require or allow a train employee to—

“(1) remain on duty, go on duty, wait for deadhead transportation, be in deadhead transportation from a duty assignment to the place of final release, or be in any other mandatory service for the carrier in any calendar month where the employee has spent a total of 276 hours—

“(A) on duty;

“(B) waiting for deadhead transportation, or in deadhead transportation from a duty assignment to the place of final release; or

“(C) in any other mandatory service for the carrier;

“(2) remain or go on duty for a period in excess of 12 consecutive hours;

“(3) remain or go on duty unless that employee has had at least 10 consecutive hours off duty during the prior 24 hours; or

“(4) remain or go on duty after that employee has initiated an on-duty period each day for—

“(A) 6 consecutive days, unless that employee has had at least 48 consecutive hours off duty at the employee’s home terminal during which time the employee is unavailable for any service for any railroad carrier except that—

“(i) an employee may work a seventh consecutive day if that employee completed his or her final period of on-duty time on his or her sixth consecutive day at a terminal other than his or her home terminal; and

“(ii) any employee who works a seventh consecutive day pursuant to subparagraph (i) shall have at least 72 consecutive hours off duty at the employee’s home terminal during which time the employee is unavailable for any service for any railroad carrier; or

“(B) except as provided in subparagraph (A), 7 consecutive days, unless that employee has had at least 72 consecutive hours off duty at the employee’s home terminal during which time the employee is unavailable for any service for any railroad carrier, if—

“(i) for a period of 18 months following the date of enactment of the Rail Safety Improvement Act of 2008, an existing collective bargaining agreement expressly provides for such a schedule or, following the expiration of 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, collective

bargaining agreements entered into during such period expressly provide for such a schedule;

“(ii) such a schedule is provided for by a pilot program authorized by a collective bargaining agreement; or

“(iii) such a schedule is provided for by a pilot program under section 21108 of this chapter related to employees’ work and rest cycles.

The Secretary may waive paragraph (4), consistent with the procedural requirements of section 20103, if a collective bargaining agreement provides a different arrangement and such an arrangement is in the public interest and consistent with railroad safety.”;

(2) by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following:

“(c) LIMBO TIME LIMITATION AND ADDITIONAL REST REQUIREMENT.—

“(1) A railroad carrier may not require or allow an employee—

“(A) to exceed a total of 40 hours per calendar month spent—

“(i) waiting for deadhead transportation; or

“(ii) in deadhead transportation from a duty assignment to the place of final release, following a period of 12 consecutive hours on duty that is neither time on duty nor time off duty, not including interim rest periods, during the period from the date of enactment of the Rail Safety Improvement Act of 2008 to one year after such date of enactment; and

“(B) to exceed a total of 30 hours per calendar month spent—

“(i) waiting for deadhead transportation; or

“(ii) in deadhead transportation from a duty assignment to the place of final release, following a period of 12 consecutive hours on duty that is neither time on duty nor time off duty, not including interim rest periods, during the period beginning one year after the date of enactment of the Rail Safety Improvement Act of 2008 except that the Secretary may further limit the monthly limitation pursuant to regulations prescribed under section 21109.

“(2) The limitations in paragraph (1) shall apply unless the train carrying the employee is directly delayed by—

“(A) a casualty;

“(B) an accident;

“(C) an act of God;

“(D) a derailment;

“(E) a major equipment failure that prevents the train from advancing; or

“(F) a delay resulting from a cause unknown and unforeseeable to a railroad carrier or its officer or agent in charge of the employee when the employee left a terminal.

“(3) Each railroad carrier shall report to the Secretary, in accordance with procedures established by the Secretary, each instance where an employee subject to this section spends time waiting for deadhead transportation or in deadhead

transportation from a duty assignment to the place of final release in excess of the requirements of paragraph (1).

“(4) If—

“(A) the time spent waiting for deadhead transportation or in deadhead transportation from a duty assignment to the place of final release that is not time on duty, plus

“(B) the time on duty, exceeds 12 consecutive hours, the railroad carrier and its officers and agents shall provide the employee with additional time off duty equal to the number of hours by which such sum exceeds 12 hours.”; and

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

“(e) COMMUNICATION DURING TIME OFF DUTY.—During a train employee’s minimum off-duty period of 10 consecutive hours, as provided under subsection (a) or during an interim period of at least 4 consecutive hours available for rest under subsection (b)(7) or during additional off-duty hours under subsection (c)(4), a railroad carrier, and its officers and agents, shall not communicate with the train employee by telephone, by pager, or in any other manner that could reasonably be expected to disrupt the employee’s rest. Nothing in this subsection shall prohibit communication necessary to notify an employee of an emergency situation, as defined by the Secretary. The Secretary may waive the requirements of this paragraph for commuter or intercity passenger railroads if the Secretary determines that such a waiver will not reduce safety and is necessary to maintain such railroads’ efficient operations and on-time performance of its trains.”.

(c) LIMITATION ON DUTY HOURS OF SIGNAL EMPLOYEES.—Section 21104 is amended—

(1) by striking subsection (a) and inserting the following:

“(a) IN GENERAL.—Except as provided in subsection (c) of this section, a railroad carrier and its officers and agents may not require or allow its signal employees to remain or go on duty and a contractor or subcontractor to a railroad carrier and its officers and agents may not require or allow its signal employees to remain or go on duty —

“(1) for a period in excess of 12 consecutive hours; or

“(2) unless that employee has had at least 10 consecutive hours off duty during the prior 24 hours.”;

(2) by striking “duty, except that up to one hour of that time spent returning from the final trouble call of a period of continuous or broken service is time off duty.” in subsection (b)(3) and inserting “duty.”;

(3) by inserting “A signal employee may not be allowed to remain or go on duty under the emergency authority provided under this subsection to conduct routine repairs, routine maintenance, or routine inspection of signal systems.” after “service.” in subsection (c); and

(4) by adding at the end the following:

“(d) COMMUNICATION DURING TIME OFF DUTY.—During a signal employee’s minimum off-duty period of 10 consecutive hours, as provided under subsection (a), a railroad carrier or a contractor or subcontractor to a railroad carrier, and its officers and agents, shall not communicate with the signal employee by telephone, by pager, or in any other manner that could reasonably be expected to disrupt the employee’s rest. Nothing in this subsection shall



prohibit communication necessary to notify an employee of an emergency situation, as defined by the Secretary.

“(e) EXCLUSIVITY.—The hours of service, duty hours, and rest periods of signal employees shall be governed exclusively by this chapter. Signal employees operating motor vehicles shall not be subject to any hours of service rules, duty hours or rest period rules promulgated by any Federal authority, including the Federal Motor Carrier Safety Administration, other than the Federal Railroad Administration.”

(d) ALTERNATE HOURS OF SERVICE REGIME.—

(1) APPLICATION OF HOURS OF SERVICE REGIME.—Section 21102 is amended—

(A) by striking the section caption and inserting the following:

**“§ 21102. Nonapplication, exemption, and alternate hours of service regime”; and**

(B) by adding at the end thereof the following:

“(c) APPLICATION OF HOURS OF SERVICE REGIME TO COMMUTER AND INTERCITY PASSENGER RAILROAD TRAIN EMPLOYEES.—

“(1) When providing commuter rail passenger transportation or intercity rail passenger transportation, the limitations on duty hours for train employees of railroad carriers, including public authorities operating passenger service, shall be solely governed by old section 21103 until the earlier of—

“(A) the effective date of regulations prescribed by the Secretary under section 21109(b) of this chapter; or

“(B) the date that is 3 years following the date of enactment of the Rail Safety Improvement Act of 2008.

“(2) After the date on which old section 21103 ceases to apply, pursuant to paragraph (1), to the limitations on duty hours for train employees of railroad carriers with respect to the provision of commuter rail passenger transportation or intercity rail passenger transportation, the limitations on duty hours for train employees of such railroad carriers shall be governed by new section 21103, except as provided in paragraph (3).

“(3) After the effective date of the regulations prescribed by the Secretary under section 21109(b) of this title, such carriers shall—

“(A) comply with the limitations on duty hours for train employees with respect to the provision of commuter rail passenger transportation or intercity rail passenger transportation as prescribed by such regulations; and

“(B) be exempt from complying with the provisions of old section 21103 and new section 21103 for such employees.

“(4) In this subsection:

“(A) The terms ‘commuter rail passenger transportation’ and ‘intercity rail passenger transportation’ have the meaning given those terms in section 24102 of this title.

“(C) The term ‘new section 21103’ means section 21103 of this chapter as amended by the Rail Safety Improvement Act of 2008.

“(D) The term ‘old section 21103’ means section 21103 of this chapter as it was in effect on the day before the enactment of that Act.”.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 211 is amended by striking the item relating to section 21102 and inserting the following:

“21102. Nonapplication, exemption, and alternate hours of service regime.”.

(e) REGULATORY AUTHORITY.—

(1) IN GENERAL.—Chapter 211 is amended by adding at the end thereof the following:

**“§ 21109. Regulatory authority**

“(a) IN GENERAL.—In order to improve safety and reduce employee fatigue, the Secretary may prescribe regulations—

“(1) to reduce the maximum hours an employee may be required or allowed to go or remain on duty to a level less than the level established under this chapter;

“(2) to increase the minimum hours an employee may be required or allowed to rest to a level greater than the level established under this chapter;

“(3) to limit or eliminate the amount of time an employee spends waiting for deadhead transportation or in deadhead transportation from a duty assignment to the place of final release that is considered neither on duty nor off duty under this chapter;

“(4) for signal employees—

“(A) to limit or eliminate the amount of time that is considered to be neither on duty nor off duty under this chapter that an employee spends returning from an outlying worksite after scheduled duty hours or returning from a trouble call to the employee’s headquarters or directly to the employee’s residence; and

“(B) to increase the amount of time that constitutes a release period, that does not break the continuity of service and is considered time off duty; and

“(5) to require other changes to railroad operating and scheduling practices, including unscheduled duty calls, that could affect employee fatigue and railroad safety.

“(b) REGULATIONS GOVERNING THE HOURS OF SERVICE OF TRAIN EMPLOYEES OF COMMUTER AND INTERCITY PASSENGER RAILROAD CARRIERS.—Within 3 years after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary shall prescribe regulations and issue orders to establish hours of service requirements for train employees engaged in commuter rail passenger transportation and intercity rail passenger transportation (as defined in section 24102 of this title) that may differ from the requirements of this chapter. Such regulations and orders may address railroad operating and scheduling practices, including unscheduled duty calls, communications during time off duty, and time spent waiting for deadhead transportation or in deadhead transportation from a duty assignment to the place of final release, that could affect employee fatigue and railroad safety.

“(c) CONSIDERATIONS.—In issuing regulations under subsection (a) the Secretary shall consider scientific and medical research related to fatigue and fatigue abatement, railroad scheduling and operating practices that improve safety or reduce employee fatigue,

a railroad's use of new or novel technology intended to reduce or eliminate human error, the variations in freight and passenger railroad scheduling practices and operating conditions, the variations in duties and operating conditions for employees subject to this chapter, a railroad's required or voluntary use of fatigue management plans covering employees subject to this chapter, and any other relevant factors.

“(d) TIME LIMITS.—

“(1) If the Secretary determines that regulations are necessary under subsection (a), the Secretary shall first request that the Railroad Safety Advisory Committee develop proposed regulations and, if the Committee accepts the task, provide the Committee with a reasonable time period in which to complete the task.

“(2) If the Secretary requests that the Railroad Safety Advisory Committee accept the task of developing regulations under subsection (b) and the Committee accepts the task, the Committee shall reach consensus on the rulemaking within 18 months after accepting the task. If the Committee does not reach consensus within 18 months after the Secretary makes the request, the Secretary shall prescribe appropriate regulations within 18 months.

“(3) If the Secretary does not request that the Railroad Safety Advisory Committee accept the task of developing regulations under subsection (b), the Secretary shall prescribe regulations within 3 years after the date of enactment of the Rail Safety Improvement Act of 2008.

“(e) PILOT PROJECTS.—

“(1) IN GENERAL.—Not later than 2 years after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary shall conduct at least 2 pilot projects of sufficient size and scope to analyze specific practices which may be used to reduce fatigue for train and engine and other railroad employees as follows:

“(A) A pilot project at a railroad or railroad facility to evaluate the efficacy of communicating to employees notice of their assigned shift time 10 hours prior to the beginning of their assigned shift as a method for reducing employee fatigue.

“(B) A pilot project at a railroad or railroad facility to evaluate the efficacy of requiring railroads who use employee scheduling practices that subject employees to periods of unscheduled duty calls to assign employees to defined or specific unscheduled call shifts that are followed by shifts not subject to call, as a method for reducing employee fatigue.

“(2) WAIVER.—The Secretary may temporarily waive the requirements of this section, if necessary, to complete a pilot project under this subsection.

“(f) DUTY CALL DEFINED.—In this section the term ‘duty call’ means a telephone call that a railroad places to an employee to notify the employee of his or her assigned shift time.”.

(2) CONFORMING AMENDMENTS.—

(A) The chapter analysis for chapter 211 is amended by adding at the end thereof the following:

(B) The first sentence of section 21303(a)(1) is amended by inserting “including section 21103 (as such section was in effect on the day before the date of enactment of the Rail Safety Improvement Act of 2008),” after “this title,” the second place it appears.

(f) RECORD KEEPING AND REPORTING.—

(1) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall prescribe a regulation revising the requirements for recordkeeping and reporting for Hours of Service of Railroad Employees contained in part 228 of title 49, Code of Federal Regulations—

(A) to adjust record keeping and reporting requirements to support compliance with chapter 211 of title 49, United States Code, as amended by this Act;

(B) to authorize electronic record keeping, and reporting of excess service, consistent with appropriate considerations for user interface; and

(C) to require training of affected employees and supervisors, including training of employees in the entry of hours of service data.

(2) PROCEDURE.—In lieu of issuing a notice of proposed rulemaking as contemplated by section 553 of title 5, United States Code, the Secretary may utilize the Railroad Safety Advisory Committee to assist in development of the regulation. The Secretary may propose and adopt amendments to the revised regulations thereafter as may be necessary in light of experience under the revised requirements.

(g) DELAY IN IMPLEMENTATION OF DUTY HOURS LIMITATION CHANGES.—The amendments made by subsections (a), (b), and (c) shall take effect 9 months after the date of enactment of this Act.

**SEC. 109. PROTECTION OF RAILROAD SAFETY RISK ANALYSES INFORMATION.**

(a) AMENDMENT.—Subchapter I of chapter 201 is amended by adding at the end thereof the following:

**“§ 20118. Prohibition on public disclosure of railroad safety analysis records**

“(a) IN GENERAL.—Except as necessary for the Secretary of Transportation or another Federal agency to enforce or carry out any provision of Federal law, any part of any record (including, but not limited to, a railroad carrier’s analysis of its safety risks and its statement of the mitigation measures it has identified with which to address those risks) that the Secretary has obtained pursuant to a provision of, or regulation or order under, this chapter related to the establishment, implementation, or modification of a railroad safety risk reduction program or pilot program is exempt from the requirements of section 552 of title 5 if the record is—

“(1) supplied to the Secretary pursuant to that safety risk reduction program or pilot program; or

“(2) made available for inspection and copying by an officer, employee, or agent of the Secretary pursuant to that safety risk reduction program or pilot program.

“(b) EXCEPTION.—Notwithstanding subsection (a), the Secretary may disclose any part of any record comprised of facts otherwise available to the public if, in the Secretary’s sole discretion, the

Secretary determines that disclosure would be consistent with the confidentiality needed for that safety risk reduction program or pilot program.

“(c) DISCRETIONARY PROHIBITION OF DISCLOSURE.—The Secretary may prohibit the public disclosure of risk analyses or risk mitigation analyses that the Secretary has obtained under other provisions of, or regulations or orders under, this chapter if the Secretary determines that the prohibition of public disclosure is necessary to promote railroad safety.

**“§ 20119. Study on use of certain reports and surveys**

“(a) STUDY.—The Federal Railroad Administration shall complete a study to evaluate whether it is in the public interest, including public safety and the legal rights of persons injured in railroad accidents, to withhold from discovery or admission into evidence in a Federal or State court proceeding for damages involving personal injury or wrongful death against a carrier any report, survey, schedule, list, or data compiled or collected for the purpose of evaluating, planning, or implementing a railroad safety risk reduction program required under this chapter, including a railroad carrier’s analysis of its safety risks and its statement of the mitigation measures with which it will address those risks. In conducting this study, the Secretary shall solicit input from the railroads, railroad non-profit employee labor organizations, railroad accident victims and their families, and the general public.

“(b) AUTHORITY.—Following completion of the study required under subsection (a), the Secretary, if in the public interest, including public safety and the legal rights of persons injured in railroad accidents, may prescribe a rule subject to notice and comment to address the results of the study. Any such rule prescribed pursuant to this subsection shall not become effective until 1 year after its adoption.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201 is amended by inserting after the item relating to section 20117 the following:

“20118. Prohibition on public disclosure of railroad safety analysis records.

“20119. Study on use of certain reports and surveys.”.

**SEC. 110. PILOT PROJECTS.**

Section 21108 is amended to read as follows:

**“§ 21108. Pilot projects**

“(a) IN GENERAL.—As of the date of enactment of the Rail Safety Improvement Act of 2008, a railroad carrier or railroad carriers and all nonprofit employee labor organizations representing any class or craft of directly affected covered service employees of the railroad carrier or railroad carriers, may jointly petition the Secretary of Transportation for approval of—

“(1) a waiver of compliance with this chapter as in effect on the date of enactment of the Rail Safety Improvement Act of 2008; or

“(2) a waiver of compliance with this chapter as it will be effective 9 months after the enactment of the Rail Safety Improvement Act of 2008,

to enable the establishment of one or more pilot projects to demonstrate the possible benefits of implementing alternatives to the strict application of the requirements of this chapter, including

requirements concerning maximum on-duty and minimum off-duty periods.

“(b) GRANTING OF WAIVERS.—The Secretary may, after notice and opportunity for comment, approve such waivers described in subsection (a) for a period not to exceed two years, if the Secretary determines that such a waiver of compliance is in the public interest and is consistent with railroad safety.

“(c) EXTENSIONS.—Any such waiver, based on a new petition, may be extended for additional periods of up to two years, after notice and opportunity for comment. An explanation of any waiver granted under this section shall be published in the Federal Register.

“(d) REPORT.—The Secretary of Transportation shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives, no later than December 31, 2012, or, if no projects are completed prior to December 31, 2012, no later than 6 months after the completion of a pilot project, a report that—

“(1) explains and analyzes the effectiveness of any pilot project established pursuant to a waiver granted under subsection (a);

“(2) describes the status of all other waivers granted under subsection (a) and their related pilot projects, if any; and

“(3) recommends any appropriate legislative changes to this chapter.

“(e) DEFINITION.—For purposes of this section, the term ‘directly affected covered service employees’ means covered service employees to whose hours of service the terms of the waiver petitioned for specifically apply.”.

## **TITLE II—HIGHWAY-RAIL GRADE CROSSING AND PEDESTRIAN SAFETY AND TRESPASSER PREVENTION**

### **SEC. 201. PEDESTRIAN CROSSING SAFETY.**

Not later than 1 year after the date of enactment of this Act, the Secretary shall provide guidance to railroads on strategies and methods to prevent pedestrian accidents, incidents, injuries, and fatalities at or near passenger stations, including—

(1) providing audible warning of approaching trains to the pedestrians at railroad passenger stations;

(2) using signs, signals, or other visual devices to warn pedestrians of approaching trains;

(3) installing infrastructure at pedestrian crossings to improve the safety of pedestrians crossing railroad tracks;

(4) installing fences to prohibit access to railroad tracks; and

(5) other strategies or methods as determined by the Secretary.

### **SEC. 202. STATE ACTION PLANS.**

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall identify the 10 States that

have had the most highway-rail grade crossing collisions, on average, over the past 3 years and require those States to develop a State grade crossing action plan within a reasonable period of time, as determined by the Secretary. The plan shall identify specific solutions for improving safety at crossings, including highway-rail grade crossing closures or grade separations, and shall focus on crossings that have experienced multiple accidents or are at high risk for such accidents. The Secretary shall provide assistance to the States in developing and carrying out, as appropriate, the plan. The plan may be coordinated with other State or Federal planning requirements and shall cover a period of time determined to be appropriate by the Secretary. The Secretary may condition the awarding of any grants under section 20158, 20167, or 22501 of title 49, United States Code, to a State identified under this section on the development of such State's plan.

(b) REVIEW AND APPROVAL.—Not later than 60 days after the Secretary receives a plan under subsection (a), the Secretary shall review and approve or disapprove it. If the proposed plan is disapproved, the Secretary shall notify the affected State as to the specific areas in which the proposed plan is deficient, and the State shall correct all deficiencies within 30 days following receipt of written notice from the Secretary.

**SEC. 203. IMPROVEMENTS TO SIGHT DISTANCE AT HIGHWAY-RAIL GRADE CROSSINGS.**

(a) IN GENERAL.—Subchapter II of chapter 201, as amended by section 105 of this division, is further amended by inserting after section 20158 the following:

**“§ 20159. Roadway user sight distance at highway-rail grade crossings**

“Not later than 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary, after consultation with the Federal Railroad Administration, the Federal Highway Administration, and States, shall develop and make available to States model legislation providing for improving safety by addressing sight obstructions, including vegetation growth, topographic features, structures, and standing railroad equipment, at highway-rail grade crossings that are equipped solely with passive warnings, as recommended by the Inspector General of the Department of Transportation in Report No. MH–2007–044.”

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201, as amended by section 105 of this division, is amended by inserting after the item relating to section 20158 the following new item:

“20159. Roadway user sight distance at highway-rail grade crossings.”

**SEC. 204. NATIONAL CROSSING INVENTORY.**

(a) IN GENERAL.—Subchapter II of chapter 201, as amended by section 203 of this division, is further amended by adding at the end the following new section:

**“§ 20160. National crossing inventory**

“(a) INITIAL REPORTING OF INFORMATION ABOUT PREVIOUSLY UNREPORTED CROSSINGS.—Not later than 1 year after the date of enactment of the Rail Safety Improvement Act of 2008 or 6

months after a new crossing becomes operational, whichever occurs later, each railroad carrier shall—

“(1) report to the Secretary of Transportation current information, including information about warning devices and signage, as specified by the Secretary, concerning each previously unreported crossing through which it operates or with respect to the trackage over which it operates; or

“(2) ensure that the information has been reported to the Secretary by another railroad carrier that operates through the crossing.

“(b) UPDATING OF CROSSING INFORMATION.—

“(1) On a periodic basis beginning not later than 2 years after the date of enactment of the Rail Safety Improvement Act of 2008 and on or before September 30 of every year thereafter, or as otherwise specified by the Secretary, each railroad carrier shall—

“(A) report to the Secretary current information, including information about warning devices and signage, as specified by the Secretary, concerning each crossing through which it operates or with respect to the trackage over which it operates; or

“(B) ensure that the information has been reported to the Secretary by another railroad carrier that operates through the crossing.

“(2) A railroad carrier that sells a crossing or any part of a crossing on or after the date of enactment of the Rail Safety Improvement Act of 2008 shall, not later than the date that is 18 months after the date of enactment of that Act or 3 months after the sale, whichever occurs later, or as otherwise specified by the Secretary, report to the Secretary current information, as specified by the Secretary, concerning the change in ownership of the crossing or part of the crossing.

“(c) RULEMAKING AUTHORITY.—The Secretary shall prescribe the regulations necessary to implement this section. The Secretary may enforce each provision of the Department of Transportation’s statement of the national highway-rail crossing inventory policy, procedures, and instruction for States and railroads that is in effect on the date of enactment of the Rail Safety Improvement Act of 2008, until such provision is superseded by a regulation issued under this section.

“(d) DEFINITIONS.—In this section:

“(1) CROSSING.—The term ‘crossing’ means a location within a State, other than a location where one or more railroad tracks cross one or more railroad tracks either at grade or grade-separated, where—

“(A) a public highway, road, or street, or a private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks either at grade or grade-separated; or

“(B) a pathway explicitly authorized by a public authority or a railroad carrier that is dedicated for the use of nonvehicular traffic, including pedestrians, bicyclists, and others, that is not associated with a public highway, road, or street, or a private roadway, crosses one or more railroad tracks either at grade or grade-separated.



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“(2) STATE.—The term ‘State’ means a State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201, as amended by section 203 of this division, is amended by inserting after the item relating to section 20159 the following:

“20160. National crossing inventory.”.

(c) REPORTING AND UPDATING.—Section 130 of title 23, United States Code, is amended by adding at the end the following:

“(1) NATIONAL CROSSING INVENTORY.—

“(1) INITIAL REPORTING OF CROSSING INFORMATION.—Not later than 1 year after the date of enactment of the Rail Safety Improvement Act of 2008 or within 6 months of a new crossing becoming operational, whichever occurs later, each State shall report to the Secretary of Transportation current information, including information about warning devices and signage, as specified by the Secretary, concerning each previously unreported public crossing located within its borders.

“(2) PERIODIC UPDATING OF CROSSING INFORMATION.—On a periodic basis beginning not later than 2 years after the date of enactment of the Rail Safety Improvement Act of 2008 and on or before September 30 of every year thereafter, or as otherwise specified by the Secretary, each State shall report to the Secretary current information, including information about warning devices and signage, as specified by the Secretary, concerning each public crossing located within its borders.

“(3) RULEMAKING AUTHORITY.—The Secretary shall prescribe the regulations necessary to implement this subsection. The Secretary may enforce each provision of the Department of Transportation’s statement of the national highway-rail crossing inventory policy, procedures, and instructions for States and railroads that is in effect on the date of enactment of the Rail Safety Improvement Act of 2008, until such provision is superseded by a regulation issued under this subsection.

“(4) DEFINITIONS.—In this subsection—

“(A) ‘public crossing’ means a location within a State, other than a location where one or more railroad tracks cross one or more railroad tracks either at grade or grade-separated, where—

“(i) a public highway, road, or street, including associated sidewalks and pathways, crosses one or more railroad tracks either at grade or grade-separated; or

“(ii) a publicly owned pathway explicitly authorized by a public authority or a railroad carrier and dedicated for the use of non-vehicular traffic, including pedestrians, bicyclists, and others, that is not associated with a public highway, road, or street, or a private roadway, crosses one or more railroad tracks either at grade or grade-separated; and

“(B) ‘State’ means a State of the United States, the District of Columbia, or Puerto Rico.”.

(d) CIVIL PENALTIES.—

(1) Section 21301(a)(1) is amended—

(A) by inserting “with section 20160 or” after “comply” in the first sentence; and

(B) by inserting “section 20160 of this title or” after “violating” in the second sentence.

(2) Section 21301(a)(2) is amended by inserting “The Secretary shall impose a civil penalty for a violation of section 20160 of this title.” after the first sentence.

**SEC. 205. TELEPHONE NUMBER TO REPORT GRADE CROSSING PROBLEMS.**

(a) IN GENERAL.—Section 20152 is amended to read as follows:

**“§ 20152. Notification of grade crossing problems**

“(a) IN GENERAL.—Not later than 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary of Transportation shall require each railroad carrier to—

“(1) establish and maintain a toll-free telephone service for rights-of-way over which it dispatches trains, to directly receive calls reporting—

“(A) malfunctions of signals, crossing gates, and other devices to promote safety at the grade crossing of railroad tracks on those rights-of-way and public or private roads;

“(B) disabled vehicles blocking railroad tracks at such grade crossings;

“(C) obstructions to the view of a pedestrian or a vehicle operator for a reasonable distance in either direction of a train’s approach; or

“(D) other safety information involving such grade crossings;

“(2) upon receiving a report pursuant to paragraph (1)(A) or (B), immediately contact trains operating near the grade crossing to warn them of the malfunction or disabled vehicle;

“(3) upon receiving a report pursuant to paragraph (1)(A) or (B), and after contacting trains pursuant to paragraph (2), contact, as necessary, appropriate public safety officials having jurisdiction over the grade crossing to provide them with the information necessary for them to direct traffic, assist in the removal of the disabled vehicle, or carry out other activities as appropriate;

“(4) upon receiving a report pursuant to paragraph (1)(C) or (D), timely investigate the report, remove the obstruction if possible, or correct the unsafe circumstance; and

“(5) ensure the placement at each grade crossing on rights-of-way that it owns of appropriately located signs, on which shall appear, at a minimum—

“(A) a toll-free telephone number to be used for placing calls described in paragraph (1) to the railroad carrier dispatching trains on that right-of-way;

“(B) an explanation of the purpose of that toll-free telephone number; and

“(C) the grade crossing number assigned for that crossing by the National Highway-Rail Crossing Inventory established by the Department of Transportation.

“(b) WAIVER.—The Secretary may waive the requirement that the telephone service be toll-free for Class II and Class III rail carriers if the Secretary determines that toll-free service would be cost prohibitive or unnecessary.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201 is amended by striking the item relating to section 20152 and inserting the following:

“20152. Notification of grade crossing problems.”.

**SEC. 206. OPERATION LIFESAVER.**

(a) GRANT.—The Federal Railroad Administration shall make a grant or grants to Operation Lifesaver to carry out a public information and education program to help prevent and reduce pedestrian, motor vehicle, and other accidents, incidents, injuries, and fatalities, and to improve awareness along railroad rights-of-way and at highway-rail grade crossings. The program shall include, as appropriate, development, placement, and dissemination of Public Service Announcements in newspaper, radio, television, and other media. The program shall also include, as appropriate, school presentations, brochures and materials, support for public awareness campaigns, and related support for the activities of Operation Lifesaver’s member organizations. As part of an educational program funded by grants awarded under this section, Operation Lifesaver shall provide information to the public on how to identify and report to the appropriate authorities unsafe or malfunctioning highway-rail grade crossings.

(b) PILOT PROGRAM.—The Secretary may allow funds provided under subsection (a) also to be used by Operation Lifesaver to implement a pilot program, to be known as the Railroad Safety Public Awareness Program, that addresses the need for targeted and sustained community outreach on the subjects described in subsection (a). Such a pilot program shall be established in 1 or more States identified under section 202 of this division. In carrying out such a pilot program Operation Lifesaver shall work with the State, community leaders, school districts, and public and private partners to identify the communities at greatest risk, to develop appropriate measures to reduce such risks, and shall coordinate the pilot program with the State grade crossing action plan.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Federal Railroad Administration for carrying out this section—

- (1) \$2,000,000 for each of fiscal years 2010 and 2011; and
- (2) \$1,500,000 for each of fiscal years 2012 and 2013.

**SEC. 207. FEDERAL GRANTS TO STATES FOR HIGHWAY-RAIL GRADE CROSSING SAFETY.**

(a) IN GENERAL.—Part B of subtitle V is amended by adding at the end thereof the following:

**“CHAPTER 225—FEDERAL GRANTS TO STATES FOR HIGHWAY-RAIL GRADE CROSSING SAFETY**

“Sec.

“22501. Financial assistance to States for certain projects.

“22502. Distribution.

“22503. Standards for awarding grants.

“22504. Use of funds.

“22505. Authorization of appropriations.

**“§ 22501. Financial assistance to States for certain projects**

“The Secretary of Transportation shall make grants—

“(1) to a maximum of 3 States per year for development or continuance of enhanced public education and awareness activities, in combination with targeted law enforcement, to significantly reduce violations of traffic laws at highway-rail grade crossings and to help prevent and reduce injuries and fatalities along railroad rights-of-way; and

“(2) to provide for priority highway-rail grade crossing safety improvements, including the installation, repair, or improvement of—

“(A) railroad crossing signals, gates, and related technologies, including median barriers and four quadrant gates;

“(B) highway traffic signalization, including highway signals tied to railroad signal systems;

“(C) highway lighting and crossing approach signage;

“(D) roadway improvements, including railroad crossing panels and surfaces; and

“(E) related work to mitigate dangerous conditions.

**“§ 22502. Distribution**

“The Secretary shall provide the grants to the State agency or agencies responsible for highway-rail grade crossing safety.

**“§ 22503. Standards for awarding grants**

“(a) SECTION 22501(1) GRANTS.—The Secretary shall provide grants under section 22501(1) based upon the merits of the proposed program of activities provided by the State and upon a determination of where the grants will provide the greatest safety benefits. The Secretary may give priority to States that have developed and implemented a State grade crossing action plan, as described under section 202 of the Rail Safety Improvement Act of 2008.

“(b) SECTION 22501(2) GRANTS.—The Secretary shall provide grants to State and local governments under section 22501(2) to provide priority grade crossing safety improvements on an expedited basis at a location where there has been a highway-rail grade crossing collision within the previous two years involving major loss of life or multiple serious bodily injuries.

**“§ 22504. Use of funds**

“(a) IN GENERAL.—Any State receiving a grant under section 22501(1) shall use the funds to develop, implement, and continue to measure the effectiveness of a dedicated program of public education and enforcement of highway-rail crossing safety laws and to prevent casualties along railroad rights-of-way. The Secretary may not make a grant under this chapter available to assist a State or political subdivision thereof in establishing or continuing a quiet zone pursuant to part 222 of title 49, Code of Federal Regulations.

“(b) MAXIMUM GRANT AMOUNT UNDER SECTION 22501(2).—No grant awarded under section 22501(2) may exceed \$250,000.

**“§ 22505. Authorization of appropriations**

“There are authorized to be appropriated to the Secretary \$1,500,000 for each of fiscal years 2010 through 2013 to carry out the provisions of section 22501(1) of this chapter. There are authorized to be appropriated to the Secretary \$1,500,000 for each of fiscal years 2010 through 2013 to carry out the provisions of

section 22501(2) of this chapter. Amounts appropriated pursuant to this section shall remain available until expended.”.

(b) CONFORMING AMENDMENT.—The subtitle analysis for subtitle V is amended by inserting after the item relating to chapter 223 the following:

“225. Federal grants to States for highway-rail grade crossing safety .....22501”.

**SEC. 208. TRESPASSER PREVENTION AND HIGHWAY-RAIL GRADE CROSSING SAFETY.**

(a) TRESPASSER PREVENTION AND HIGHWAY-RAIL GRADE CROSSING WARNING SIGN VIOLATIONS.—Section 20151 is amended—

(1) by striking the section heading and inserting the following:

**“§ 20151. Railroad trespassing, vandalism, and highway-rail grade crossing warning sign violation prevention strategy”;**

(2) by striking subsection (a) and inserting the following:

“(a) EVALUATION OF EXISTING LAWS.—In consultation with affected parties, the Secretary of Transportation shall evaluate and review current local, State, and Federal laws regarding trespassing on railroad property, vandalism affecting railroad safety, and violations of highway-rail grade crossing signs, signals, markings, or other warning devices and develop model prevention strategies and enforcement laws to be used for the consideration of State and local legislatures and governmental entities. The first such evaluation and review shall be completed within 1 year after the date of enactment of the Rail Safety Improvement Act of 2008. The Secretary shall revise the model prevention strategies and enforcement codes periodically.”;

(3) by inserting “FOR TRESPASSING AND VANDALISM PREVENTION” in the subsection heading of subsection (b) after “OUT-REACH PROGRAM”;

(4) in subsection (c)—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(B) by inserting “(1)” after “MODEL LEGISLATION.—”; and

(C) by adding at the end the following new paragraph:

“(2) Not later than 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary, after consultation with State and local governments and railroad carriers, shall develop and make available to State and local governments model State legislation providing for civil or criminal penalties, or both, for violations of highway-rail grade crossing signs, signals, markings, or other warning devices.”; and

(5) by adding at the end the following new subsection:

“(d) DEFINITION.—In this section, the term ‘violation of highway-rail grade crossing signs, signals, markings, or other warning devices’ includes any action by a motorist, unless directed by an authorized safety officer—

“(1) to drive around a grade crossing gate in a position intended to block passage over railroad tracks;

“(2) to drive through a flashing grade crossing signal;

“(3) to drive through a grade crossing with passive warning signs without ensuring that the grade crossing could be safely crossed before any train arrived; and

“(4) in the vicinity of a grade crossing, who creates a hazard of an accident involving injury or property damage at the grade crossing.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201 is amended by striking the item relating to section 20151 and inserting the following:

“20151. Railroad trespassing, vandalism, and highway-rail grade crossing warning sign violation prevention strategy.”.

(c) EDUCATIONAL OR AWARENESS PROGRAM ITEMS FOR DISTRIBUTION.—Section 20134(a) is amended by adding at the end the following: “The Secretary may purchase items of nominal value and distribute them to the public without charge as part of an educational or awareness program to accomplish the purposes of this section and of any other sections of this title related to improving the safety of highway-rail crossings and to preventing trespass on railroad rights of way, and the Secretary shall prescribe guidelines for the administration of this authority.”.

**SEC. 209. ACCIDENT AND INCIDENT REPORTING.**

The Federal Railroad Administration shall conduct an audit of each Class I railroad at least once every 2 years and conduct an audit of each non-Class I railroad at least once every 5 years to ensure that all grade crossing collisions and fatalities are reported to any Federal national accident database.

**SEC. 210. FOSTERING INTRODUCTION OF NEW TECHNOLOGY TO IMPROVE SAFETY AT HIGHWAY-RAIL GRADE CROSSINGS.**

(a) AMENDMENT.—Subchapter II of chapter 201, as amended by section 204 of this division, is further amended by adding at the end the following:

**“§ 20161. Fostering introduction of new technology to improve safety at highway-rail grade crossings**

“(a) FINDINGS.—

“(1) Collisions between highway users and trains at highway-rail grade crossings continue to cause an unacceptable loss of life, serious personal injury, and property damage.

“(2) While elimination of at-grade crossings through consolidation of crossings and grade separations offers the greatest long-term promise for optimizing the safety and efficiency of the two modes of transportation, over 140,000 public grade crossings remain on the general rail system—approximately one for each route mile on the general rail system.

“(3) Conventional highway traffic control devices such as flashing lights and gates are often effective in warning motorists of a train’s approach to an equipped crossing.

“(4) Since enactment of the Highway Safety Act of 1973, over \$4,200,000,000 of Federal funding has been invested in safety improvements at highway-rail grade crossings, yet a majority of public highway-rail grade crossings are not yet equipped with active warning systems.

“(5) The emergence of new technologies presents opportunities for more effective and affordable warnings and safer passage of highway users and trains at remaining highway-rail grade crossings.

“(6) Implementation of new crossing safety technology will require extensive cooperation between highway authorities and railroad carriers.

“(7) Federal Railroad Administration regulations establishing performance standards for processor-based signal and train control systems provide a suitable framework for qualification of new or novel technology at highway-rail grade crossings, and the Federal Highway Administration’s Manual on Uniform Traffic Control Devices provides an appropriate means of determining highway user interface with such new technology.

“(b) POLICY.—It is the policy of the United States to encourage the development of new technology that can prevent loss of life and injuries at highway-rail grade crossings. The Secretary of Transportation is designated to carry out this policy in consultation with States and necessary public and private entities.

“(c) SUBMISSION OF NEW TECHNOLOGY PROPOSALS.—Railroad carriers and railroad suppliers may submit for review and approval to the Secretary such new technology designed to improve safety at highway-rail grade crossings. The Secretary shall approve by order the new technology designed to improve safety at highway-rail grade crossings in accordance with Federal Railroad Administration standards for the development and use of processor-based signal and train control systems and shall consider the effects on safety of highway-user interface with the new technology.

“(d) EFFECT OF SECRETARIAL APPROVAL.—If the Secretary approves by order new technology to provide warning to highway users at a highway-rail grade crossing and such technology is installed at a highway-rail grade crossing in accordance with the conditions of the approval, this determination preempts any State statute or regulation concerning the adequacy of the technology in providing warning at the crossing.”

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201, as amended by section 204 of this division, is further amended by inserting after the item relating to section 20160, the following:

“20161. Fostering introduction of new technology to improve safety at highway-rail grade crossings.”

## **TITLE III—FEDERAL RAILROAD ADMINISTRATION**

### **SEC. 301. HUMAN CAPITAL INCREASES.**

(a) IN GENERAL.—The Secretary shall increase the number of Federal Railroad Administration employees by—

- (1) 50 employees in fiscal year 2009;
- (2) 50 employees in fiscal year 2010;
- (3) 50 employees in fiscal year 2011;
- (4) 25 employees in fiscal year 2012; and
- (5) 25 employees in fiscal year 2013.

(b) FUNCTIONS.—In increasing the number of employees pursuant to subsection (a), the Secretary shall focus on hiring employees—

- (1) specifically trained to conduct on-site railroad and highway-rail grade crossing accident investigations;
- (2) to implement the Railroad Safety Strategy;

(3) to administer and implement section 20156 of title 49, United States Code, relating to the Railroad Safety Risk Reduction Program;

(4) to conduct routine inspections and audits of railroad and hazardous materials facilities and records for compliance with railroad safety laws and regulations;

(5) to inspect railroad bridges, tunnels, and related infrastructure, and to review or analyze railroad bridge, tunnel, and related infrastructure inspection reports;

(6) to prevent or respond to natural or manmade emergency situations or events involving rail infrastructure or employees;

(7) to implement section 20157 of title 49, United States Code, relating to positive train control systems;

(8) to implement section 20164 of title 49, United States Code, relating to the development and use of rail safety technology; and

(9) to support the Federal Railroad Administration's safety mission.

**SEC. 302. CIVIL PENALTY INCREASES.**

(a) GENERAL VIOLATIONS OF CHAPTER 201.—Section 21301(a)(2) is amended—

(1) by striking “\$10,000.” and inserting “\$25,000.”; and

(2) by striking “\$20,000.” and inserting “\$100,000.”.

(b) ACCIDENT AND INCIDENT VIOLATIONS OF CHAPTER 201; VIOLATIONS OF CHAPTERS 203 THROUGH 209.—Section 21302(a)(2) is amended—

(1) by striking “\$10,000.” and inserting “\$25,000.”; and

(2) by striking “\$20,000.” and inserting “\$100,000.”.

(c) VIOLATIONS OF CHAPTER 211.—Section 21303(a)(2) is amended—

(1) by striking “\$10,000.” and inserting “\$25,000.”; and

(2) by striking “\$20,000.” and inserting “\$100,000.”.

**SEC. 303. ENFORCEMENT REPORT.**

(a) IN GENERAL.—Subchapter I of chapter 201, as amended by section 109 of this division, is amended by adding at the end the following:

**“§ 20120. Enforcement report**

“(a) IN GENERAL.—Beginning not later than December 31, 2009, the Secretary of Transportation shall make available to the public and publish on its public website an annual report that—

“(1) provides a summary of railroad safety and hazardous materials compliance inspections and audits that Federal or State inspectors conducted in the prior fiscal year organized by type of alleged violation, including track, motive power and equipment, signal, grade crossing, operating practices, accident and incidence reporting, and hazardous materials;

“(2) provides a summary of all enforcement actions taken by the Secretary or the Federal Railroad Administration during the prior fiscal year, including—

“(A) the number of civil penalties assessed;

“(B) the initial amount of civil penalties assessed;

“(C) the number of civil penalty cases settled;

“(D) the final amount of civil penalties assessed;

“(E) the difference between the initial and final amounts of civil penalties assessed;



“(F) the number of administrative hearings requested and completed related to hazardous materials transportation law violations or enforcement actions against individuals;

“(G) the number of cases referred to the Attorney General for civil or criminal prosecution;

“(H) the number and subject matter of all compliance orders, emergency orders, or precursor agreements;

“(3) analyzes the effect of the number of inspections conducted and enforcement actions taken on the number and rate of reported accidents and incidents and railroad safety;

“(4) provide the information required by paragraphs (2) and (3)—

“(A) for each Class I railroad individually; and

“(B) in the aggregate for—

“(i) Class II railroads;

“(ii) Class III railroads;

“(iii) hazardous materials shippers; and

“(iv) individuals;

“(5) identifies the number of locomotive engineer certification denial or revocation cases appealed to and the average length of time it took to be decided by—

“(A) the Locomotive Engineer Review Board;

“(B) an Administrative Hearing Officer or Administrative Law Judge; or

“(C) the Administrator of the Federal Railroad Administration;

“(6) provides an explanation regarding any changes in the Secretary’s or the Federal Railroad Administration’s enforcement programs or policies that may substantially affect the information reported; and

“(7) includes any additional information that the Secretary determines is useful to improve the transparency of its enforcement program.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201, as amended by section 109 of this division, is amended by inserting after the item relating to section 20119 the following:

“20120. Enforcement report.”.

**SEC. 304. EXPANSION OF EMERGENCY ORDER AUTHORITY.**

Section 20104(a)(1) is amended by striking “death or personal injury” and inserting “death, personal injury, or significant harm to the environment”.

**SEC. 305. PROHIBITION OF INDIVIDUALS FROM PERFORMING SAFETY-SENSITIVE FUNCTIONS FOR A VIOLATION OF HAZARDOUS MATERIALS TRANSPORTATION LAW.**

Section 20111(c) is amended to read as follows:

“(c) ORDERS PROHIBITING INDIVIDUALS FROM PERFORMING SAFETY-SENSITIVE FUNCTIONS.—

“(1) If an individual’s violation of this part, chapter 51 of this title, or a regulation prescribed, or an order issued, by the Secretary under this part or chapter 51 of this title is shown to make that individual unfit for the performance of safety-sensitive functions, the Secretary, after providing notice and an opportunity for a hearing, may issue an order prohibiting the individual from performing safety-sensitive

functions in the railroad industry for a specified period of time or until specified conditions are met.

“(2) This subsection does not affect the Secretary’s authority under section 20104 of this title to act on an emergency basis.”.

**SEC. 306. RAILROAD RADIO MONITORING AUTHORITY.**

Section 20107 is amended by inserting at the end the following:

“(c) RAILROAD RADIO COMMUNICATIONS.—

“(1) IN GENERAL.—To carry out the Secretary’s responsibilities under this part and under chapter 51, the Secretary may authorize officers, employees, or agents of the Secretary to conduct, with or without making their presence known, the following activities in circumstances the Secretary finds to be reasonable:

“(A) Intercepting a radio communication, with or without the consent of the sender or other receivers of the communication, but only where such communication is broadcast or transmitted over a radio frequency which is—

“(i) authorized for use by one or more railroad carriers by the Federal Communications Commission; and

“(ii) primarily used by such railroad carriers for communications in connection with railroad operations.

“(B) Communicating the existence, contents, substance, purport, effect, or meaning of the communication, subject to the restrictions in paragraph (3).

“(C) Receiving or assisting in receiving the communication (or any information therein contained).

“(D) Disclosing the contents, substance, purport, effect, or meaning of the communication (or any part thereof of such communication) or using the communication (or any information contained therein), subject to the restrictions in paragraph (3), after having received the communication or acquired knowledge of the contents, substance, purport, effect, or meaning of the communication (or any part thereof).

“(E) Recording the communication by any means, including writing and tape recording.

“(2) ACCIDENT AND INCIDENT PREVENTION AND INVESTIGATION.—The Secretary, and officers, employees, and agents of the Department of Transportation authorized by the Secretary, may engage in the activities authorized by paragraph (1) for the purpose of accident and incident prevention and investigation.

“(3) USE OF INFORMATION.—(A) Information obtained through activities authorized by paragraphs (1) and (2) shall not be admitted into evidence in any administrative or judicial proceeding except—

“(i) in a prosecution of a felony under Federal or State criminal law; or

“(ii) to impeach evidence offered by a party other than the Federal Government regarding the existence, electronic characteristics, content, substance, purport, effect, meaning, or timing of, or identity of parties to, a communication intercepted pursuant to paragraphs (1) and (2) in proceedings pursuant to section 5122, 5123, 20702(b), 20111, 20112, 20113, or 20114 of this title.

“(B) If information obtained through activities set forth in paragraphs (1) and (2) is admitted into evidence for impeachment purposes in accordance with subparagraph (A), the court, administrative law judge, or other officer before whom the proceeding is conducted may make such protective orders regarding the confidentiality or use of the information as may be appropriate in the circumstances to protect privacy and administer justice.

“(C) No evidence shall be excluded in an administrative or judicial proceeding solely because the government would not have learned of the existence of or obtained such evidence but for the interception of information that is not admissible in such proceeding under subparagraph (A).

“(D) Information obtained through activities set forth in paragraphs (1) and (2) shall not be subject to publication or disclosure, or search or review in connection therewith, under section 552 of title 5.

“(E) Nothing in this subsection shall be construed to impair or otherwise affect the authority of the United States to intercept a communication, and collect, retain, analyze, use, and disseminate the information obtained thereby, under a provision of law other than this subsection.

“(4) APPLICATION WITH OTHER LAW.—Section 705 of the Communications Act of 1934 (47 U.S.C. 605) and chapter 119 of title 18 shall not apply to conduct authorized by and pursuant to this subsection.”.

**SEC. 307. UPDATE OF FEDERAL RAILROAD ADMINISTRATION'S WEBSITE.**

(a) IN GENERAL.—The Secretary shall update the Federal Railroad Administration's public website to better facilitate the ability of the public, including those individuals who are not regular users of the public website, to find current information regarding the Federal Railroad Administration's activities.

(b) PUBLIC REPORTING OF VIOLATIONS.—On the Federal Railroad Administration's public website's home page, the Secretary shall provide a mechanism for the public to submit written reports of potential violations of Federal railroad safety and hazardous materials transportation laws, regulations, and orders to the Federal Railroad Administration.

**SEC. 308. EMERGENCY WAIVERS.**

Section 20103 is amended—

(1) by striking “WAIVERS.—” in subsection (d) and inserting “NONEMERGENCY WAIVERS.—”;

(2) by striking subsection (e) and inserting the following:

“(e) HEARINGS.—The Secretary shall conduct a hearing as provided by section 553 of title 5 when prescribing a regulation or issuing an order under this part, including a regulation or order establishing, amending, or providing a waiver, described in subsection (d), of compliance with a railroad safety regulation prescribed or order issued under this part. An opportunity for an oral presentation shall be provided.”; and

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

“(g) EMERGENCY WAIVERS.—

“(1) IN GENERAL.—The Secretary may waive compliance with any part of a regulation prescribed or order issued under

this part without prior notice and comment if the Secretary determines that—

“(A) it is in the public interest to grant the waiver;

“(B) the waiver is not inconsistent with railroad safety;

and

“(C) the waiver is necessary to address an actual or impending emergency situation or emergency event.

“(2) PERIOD OF WAIVER.—A waiver under this subsection may be issued for a period of not more than 60 days and may be renewed upon application to the Secretary only after notice and an opportunity for a hearing on the waiver. The Secretary shall immediately revoke the waiver if continuation of the waiver would not be consistent with the goals and objectives of this part.

“(3) STATEMENT OF REASONS.—The Secretary shall state in the decision issued under this subsection the reasons for granting the waiver.

“(4) CONSULTATION.—In granting a waiver under this subsection, the Secretary shall consult and coordinate with other Federal agencies, as appropriate, for matters that may impact such agencies.

“(5) EMERGENCY SITUATION; EMERGENCY EVENT.—In this subsection, the terms ‘emergency situation’ and ‘emergency event’ mean a natural or manmade disaster, such as a hurricane, flood, earthquake, mudslide, forest fire, snowstorm, terrorist act, biological outbreak, release of a dangerous radiological, chemical, explosive, or biological material, or a war-related activity, that poses a risk of death, serious illness, severe injury, or substantial property damage. The disaster may be local, regional, or national in scope.”

#### **SEC. 309. ENFORCEMENT BY THE ATTORNEY GENERAL.**

Section 20112(a) is amended—

(1) by inserting “this part, except for section 20109 of this title, or” in paragraph (1) after “enforce,”;

(2) by striking “21301” in paragraph (2) and inserting “21301, 21302, or 21303”;

(3) by striking “subpena” in paragraph (3) and inserting “subpoena, request for admissions, request for production of documents or other tangible things, or request for testimony by deposition”; and

(4) by striking “chapter.” in paragraph (3) and inserting “part.”.

#### **SEC. 310. CRIMINAL PENALTIES.**

Section 21311(b) is amended to read as follows:

“(b) ACCIDENT AND INCIDENT REPORTS.—A railroad carrier not filing a report in violation of section 20901 of this title shall be fined not more than \$2,500. A separate violation occurs for each day the violation continues.”.

## TITLE IV—RAILROAD SAFETY ENHANCEMENTS

### SEC. 401. MINIMUM TRAINING STANDARDS AND PLANS.

(a) AMENDMENT.—Subchapter II of chapter 201, as amended by section 210 of this division, is further amended by adding at the end the following new section:

#### “§ 20162. Minimum training standards and plans

“(a) IN GENERAL.—The Secretary of Transportation shall, not later than 1 year after the date of enactment of the Rail Safety Improvement Act of 2008, establish—

“(1) minimum training standards for each class and craft of safety-related railroad employee (as defined in section 20102) and equivalent railroad carrier contractor and subcontractor employees, which shall require railroad carriers, contractors, and subcontractors to qualify or otherwise document the proficiency of such employees in each such class and craft regarding their knowledge of, and ability to comply with, Federal railroad safety laws and regulations and railroad carrier rules and procedures promulgated to implement those Federal railroad safety laws and regulations;

“(2) a requirement that railroad carriers, contractors, and subcontractors develop and submit training and qualification plans to the Secretary for approval, including training programs and information deemed necessary by the Secretary to ensure that all safety-related railroad employees receive appropriate training in a timely manner; and

“(3) a minimum training curriculum, and ongoing training criteria, testing, and skills evaluation measures to ensure that safety-related railroad employees, and contractor and subcontractor employees, charged with the inspection of track or railroad equipment are qualified to assess railroad compliance with Federal standards to identify defective conditions and initiate immediate remedial action to correct critical safety defects that are known to contribute to derailments, accidents, incidents, or injuries, and, in implementing the requirements of this paragraph, take into consideration existing training programs of railroad carriers.

“(b) APPROVAL.—The Secretary shall review and approve the plans required under subsection (a)(2) utilizing an approval process required for programs to certify the qualification of locomotive engineers pursuant to part 240 of title 49, Code of Federal Regulations.

“(c) EXEMPTION.—The Secretary may exempt railroad carriers and railroad carrier contractors and subcontractors from submitting training plans for which the Secretary has issued training regulations before the date of enactment of the Rail Safety Improvement Act of 2008.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201, as amended by section 210 of this division, is amended by inserting after the item relating to section 20161 the following:

“20162. Minimum training standards and plans.”.

**SEC. 402. CERTIFICATION OF CERTAIN CRAFTS OR CLASSES OF EMPLOYEES.**

(a) AMENDMENT.—Subchapter II of chapter 201, as amended by section 401 of this division, is further amended by adding at the end the following new section:

**“§ 20163. Certification of train conductors**

“(a) REGULATIONS.—Not later than 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary of Transportation shall prescribe regulations to establish a program requiring the certification of train conductors. In prescribing such regulations, the Secretary shall require that train conductors be trained, in accordance with the training standards developed pursuant to section 20162.

“(b) PROGRAM REQUIREMENTS.—In developing the regulations required by subsection (a), the Secretary may consider the requirements of section 20135(b) through (e).”

(b) REPORT.—Not later than 6 months after promulgating regulations under section 20162 of title 49, United States Code, the Secretary shall issue a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure about whether the certification of certain crafts or classes of railroad carrier or railroad carrier contractor or subcontractor employees is necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.

(c) CRAFTS AND CLASSES TO BE CONSIDERED.—As part of the report, the Secretary shall consider—

- (1) car repair and maintenance employees;
- (2) onboard service workers;
- (3) rail welders;
- (4) dispatchers;
- (5) signal repair and maintenance employees; and
- (6) any other craft or class of employees that the Secretary determines appropriate.

(d) REGULATIONS.—The Secretary may prescribe regulations requiring the certification of certain crafts or classes of employees that the Secretary determines pursuant to the report required by paragraph (1) are necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.

(e) CONFORMING AMENDMENT.—The chapter analysis for chapter 201, as amended by section 401 of this division, is amended by inserting after the item relating to section 20162 the following:

“20163. Certification of train conductors.”

**SEC. 403. TRACK INSPECTION TIME STUDY.**

(a) STUDY.—Not later than 2 years after the date of enactment of this Act, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing the results of a study to determine whether—

- (1) the required intervals of track inspections for each class of track should be amended;
- (2) track remedial action requirements should be amended;
- (3) different track inspection and repair priorities or methods should be required; and

(4) the speed at which railroad track inspection vehicles operate and the scope of the territory they generally cover allow for proper inspection of the track and whether such speed and appropriate scope should be regulated by the Secretary.

(b) CONSIDERATIONS.—In conducting the study the Secretary shall consider—

(1) the most current rail flaw, rail defect growth, rail fatigue, and other relevant track- or rail-related research and studies;

(2) the availability and feasibility of developing and implementing new or novel rail inspection technology for routine track inspections;

(3) information from National Transportation Safety Board or Federal Railroad Administration accident investigations where track defects were the cause or a contributing cause; and

(4) other relevant information, as determined by the Secretary.

(c) UPDATE OF REGULATIONS.—Not later than 2 years after the completion of the study required by subsection (a), the Secretary shall prescribe regulations based on the results of the study conducted under subsection (a).

(d) CONCRETE CROSS TIES.—Not later than 18 months after the date of enactment of this Act, the Secretary shall promulgate regulations for concrete cross ties. In developing the regulations for class 1 through 5 track, the Secretary may address, as appropriate—

- (1) limits for rail seat abrasion;
- (2) concrete cross tie pad wear limits;
- (3) missing or broken rail fasteners;
- (4) loss of appropriate toeload pressure;
- (5) improper fastener configurations; and
- (6) excessive lateral rail movement.

#### **SEC. 404. STUDY OF METHODS TO IMPROVE OR CORRECT STATION PLATFORM GAPS.**

Not later than 2 years after the enactment of this Act, the Secretary shall complete a study to determine the most safe, efficient, and cost-effective way to improve the safety of rail passenger station platforms gaps in order to increase compliance with the requirements under the Americans with Disabilities Act (42 U.S.C. 12101 et seq.), including regulations issued pursuant to section 504 of such Act (42 U.S.C. 12204) and to minimize the safety risks associated with such gaps for railroad passengers and employees.

#### **SEC. 405. LOCOMOTIVE CAB STUDIES.**

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, through the Railroad Safety Advisory Committee if the Secretary makes such a request, shall complete a study on the safety impact of the use of personal electronic devices, including cell phones, video games, and other distracting devices, by safety-related railroad employees (as defined in section 20102(4) of title 49, United States Code), during the performance of such employees' duties. The study shall consider the prevalence of the use of such devices.

(b) **LOCOMOTIVE CAB ENVIRONMENT.**—The Secretary may also study other elements of the locomotive cab environment and their effect on an employee’s health and safety.

(c) **REPORT.**—Not later than 6 months after the completion of any study under this section, the Secretary shall issue a report on the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(d) **AUTHORITY.**—Based on the conclusions of the study required under (a), the Secretary of Transportation may prohibit the use of personal electronic devices, such as cell phones, video games, or other electronic devices that may distract employees from safely performing their duties, unless those devices are being used according to railroad operating rules or for other work purposes. Based on the conclusions of other studies conducted under subsection (b), the Secretary may prescribe regulations to improve elements of the cab environment to protect an employee’s health and safety.

**SEC. 406. DEVELOPMENT AND USE OF RAIL SAFETY TECHNOLOGY.**

(a) **IN GENERAL.**—Subchapter II of chapter 201, as amended by section 402 of this division, is further amended by adding at the end the following new section:

**“§ 20164. Development and use of rail safety technology**

“(a) **IN GENERAL.**—Not later than 1 year after enactment of the Railroad Safety Enhancement Act of 2008, the Secretary of Transportation shall prescribe standards, guidance, regulations, or orders governing the development, use, and implementation of rail safety technology in dark territory, in arrangements not defined in section 20501 or otherwise not covered by Federal standards, guidance, regulations, or orders that ensure the safe operation of such technology, such as—

- “(1) switch position monitoring devices or indicators;
- “(2) radio, remote control, or other power-assisted switches;
- “(3) hot box, high water, or earthquake detectors;
- “(4) remote control locomotive zone limiting devices;
- “(5) slide fences;
- “(6) grade crossing video monitors;
- “(7) track integrity warning systems; or
- “(8) other similar rail safety technologies, as determined

by the Secretary.

“(b) **DARK TERRITORY DEFINED.**—In this section, the term ‘dark territory’ means any territory in a railroad system that does not have a signal or train control system installed or operational.”.

(b) **CONFORMING AMENDMENT.**—The chapter analysis for chapter 201, as amended by section 402 of this division, is amended by inserting after the item relating to section 20163 the following:

“20164. Development and use of rail safety technology.”.

**SEC. 407. UNIFIED TREATMENT OF FAMILIES OF RAILROAD CARRIERS.**

Section 20102(3), as redesignated by section 2(b) of this division, is amended to read as follows:

- “(3) ‘railroad carrier’ means a person providing railroad transportation, except that, upon petition by a group of commonly controlled railroad carriers that the Secretary determines is operating within the United States as a single, integrated



rail system, the Secretary may by order treat the group of railroad carriers as a single railroad carrier for purposes of one or more provisions of part A, subtitle V of this title and implementing regulations and order, subject to any appropriate conditions that the Secretary may impose.”.

**SEC. 408. STUDY OF REPEAL OF CONRAIL PROVISION.**

Not later than 1 year after the date of enactment of this Act, the Secretary shall complete a study of the impacts of repealing section 711 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 797j). Not later than 6 months after completing the study, the Secretary shall transmit a report with the Secretary’s findings, conclusions, and recommendations to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

**SEC. 409. LIMITATIONS ON NON-FEDERAL ALCOHOL AND DRUG TESTING BY RAILROAD CARRIERS.**

(a) IN GENERAL.—Chapter 201, as amended by section 406 of this division, is further amended by adding at the end the following:

**“§ 20165. Limitations on non-Federal alcohol and drug testing**

“(a) TESTING REQUIREMENTS.—Any non-Federal alcohol and drug testing program of a railroad carrier must provide that all post-employment tests of the specimens of employees who are subject to both the program and chapter 211 of this title be conducted using a scientifically recognized method of testing capable of determining the presence of the specific analyte at a level above the cut-off level established by the carrier.

“(b) REDRESS PROCESS.—Each railroad carrier that has a non-Federal alcohol and drug testing program must provide a redress process to its employees who are subject to both the alcohol and drug testing program and chapter 211 of this title for such an employee to petition for and receive a carrier hearing to review his or her specimen test results that were determined to be in violation of the program. A dispute or grievance raised by a railroad carrier or its employee, except a probationary employee, in connection with the carrier’s alcohol and drug testing program and the application of this section is subject to resolution under section 3 of the Railway Labor Act (45 U.S.C. 153).”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201, as amended by section 406 of this division, is further amended by inserting after the item relating to section 20164 the following:

“20165. Limitations on non-Federal alcohol and drug testing by railroad carriers.”.

**SEC. 410. CRITICAL INCIDENT STRESS PLAN.**

(a) IN GENERAL.—The Secretary of Transportation, in consultation with the Secretary of Labor and the Secretary of Health and Human Services, as appropriate, shall require each Class I railroad carrier, each intercity passenger railroad carrier, and each commuter railroad carrier to develop and submit for approval to the Secretary a critical incident stress plan that provides for debriefing, counseling, guidance, and other appropriate support services to be offered to an employee affected by a critical incident.

(b) **PLAN REQUIREMENTS.**—Each such plan shall include provisions for—

(1) relieving an employee who was involved in a critical incident of his or her duties for the balance of the duty tour, following any actions necessary for the safety of persons and contemporaneous documentation of the incident;

(2) upon the employee's request, relieving an employee who witnessed a critical incident of his or her duties following any actions necessary for the safety of persons and contemporaneous documentation of the incident; and

(3) providing such leave from normal duties as may be necessary and reasonable to receive preventive services, treatment, or both, related to the incident.

(c) **SECRETARY TO DEFINE WHAT CONSTITUTES A CRITICAL INCIDENT.**—Within 30 days after the date of enactment of this Act, the Secretary shall initiate a rulemaking proceeding to define the term “critical incident” for the purposes of this section.

**SEC. 411. RAILROAD CARRIER EMPLOYEE EXPOSURE TO RADIATION STUDY.**

(a) **STUDY.**—The Secretary of Transportation shall, in consultation with the Secretary of Energy, the Secretary of Labor, the Administrator of the Environmental Protection Agency, and the Chairman of the Nuclear Regulatory Commission, as appropriate, conduct a study of the potential hazards to which employees of railroad carriers and railroad contractors or subcontractors are exposed during the transportation of high-level radioactive waste and spent nuclear fuel (as defined in section 5101(a) of title 49, United States Code), supplementing the report submitted under section 5101(b) of that title, which may include—

(1) an analysis of the potential application of “as low as reasonably achievable” principles for exposure to radiation to such employees with an emphasis on the need for special protection from radiation exposure for such employees during the first trimester of pregnancy or who are undergoing or have recently undergone radiation therapy;

(2) the feasibility of requiring real-time dosimetry monitoring for such employees;

(3) the feasibility of requiring routine radiation exposure monitoring in fixed railroad locations, such as yards and repair facilities; and

(4) a review of the effectiveness of the Department's packaging requirements for radioactive materials.

(b) **REPORT.**—Not later than 18 months after the date of enactment of this Act, the Secretary of Transportation shall transmit a report on the results of the study required by subsection (a) and any recommendations to further protect employees of a railroad carrier or of a contractor or subcontractor to a railroad carrier from unsafe exposure to radiation during the transportation of high-level radioactive waste and spent nuclear fuel to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(c) **REGULATORY AUTHORITY.**—The Secretary of Transportation may issue regulations that the Secretary determines appropriate, pursuant to the report required by subsection (b), to protect railroad

employees from unsafe exposure to radiation during the transportation of radioactive materials.

**SEC. 412. ALCOHOL AND CONTROLLED SUBSTANCE TESTING FOR MAINTENANCE-OF-WAY EMPLOYEES.**

Not later than 2 years following the date of enactment of this Act, the Secretary of Transportation shall complete a rule-making proceeding to revise the regulations prescribed under section 20140 of title 49, United States Code, to cover all employees of railroad carriers and contractors or subcontractors to railroad carriers who perform maintenance-of-way activities.

**SEC. 413. EMERGENCY ESCAPE BREATHING APPARATUS.**

(a) AMENDMENT.—Subchapter II of chapter 201, as amended by section 409 of this division, is further amended by adding at the end the following new section:

**“§ 20166. Emergency escape breathing apparatus**

“Not later than 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary of Transportation shall prescribe regulations that require railroad carriers—

“(1) to provide emergency escape breathing apparatus suitable to provide head and neck coverage with respiratory protection for all crewmembers in locomotive cabs on freight trains carrying hazardous materials that would pose an inhalation hazard in the event of release;

“(2) to provide convenient storage in each freight train locomotive to enable crewmembers to access such apparatus quickly;

“(3) to maintain such equipment in proper working condition; and

“(4) to provide their crewmembers with appropriate training for using the breathing apparatus.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201, as amended by section 409 of this division, is amended by inserting after the item relating to section 20165 the following:

“20166. Emergency escape breathing apparatus.”.

**SEC. 414. TUNNEL INFORMATION.**

Not later than 120 days after the date of enactment of this Act, each railroad carrier shall, with respect to each of its tunnels which—

(1) are longer than 1000 feet and located under a city with a population of 400,000 or greater; or

(2) carry 5 or more scheduled passenger trains per day, or 500 or more carloads of poison- or toxic-by-inhalation hazardous materials (as defined in parts 171.8, 173.115, and 173.132 of title 49, Code of Federal Regulations) per year, maintain, for at least two years, historical documentation of structural inspection and maintenance activities for such tunnels, including information on the methods of ingress and egress into and out of the tunnel, the types of cargos typically transported through the tunnel, and schematics or blueprints for the tunnel, when available. Upon request, a railroad carrier shall provide periodic briefings on such information to the governments of the local jurisdiction in which the tunnel is located, including updates whenever a repair or rehabilitation project substantially alters the

methods of ingress and egress. Such governments shall use appropriate means to protect and restrict the distribution of any security sensitive information (as defined in part 1520.5 of title 49, Code of Federal Regulations) provided by the railroad carrier under this section, consistent with national security interests.

**SEC. 415. MUSEUM LOCOMOTIVE STUDY.**

(a) **STUDY.**—The Secretary shall conduct a study of the requirements relating to safety inspections of diesel-electric locomotives and equipment that are operated in limited service by railroad-related museums, historical societies, and tourist or scenic railroads. The study shall include an analysis of the safety consequences of requiring less frequent inspections of such locomotives and equipment, including periodic inspections or inspections based on service days and air brake inspections.

(b) **REPORT.**—Not later than 2 years after the date of enactment of this Act, the Secretary shall transmit a report on the results of the study conducted under subsection (a) to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

**SEC. 416. SAFETY INSPECTIONS IN MEXICO.**

Mechanical and brake inspections of rail cars performed in Mexico shall not be treated as satisfying United States rail safety laws or regulations unless the Secretary of Transportation certifies that—

(1) such inspections are being performed under regulations and standards equivalent to those applicable in the United States;

(2) the inspections are being performed by employees that have received training similar to the training received by similar railroad employees in the United States;

(3) inspection records that are required to be available to the crewmembers on board the train, including air slips and blue cards, are maintained in both English and Spanish, and such records are available to the Federal Railroad Administration for review; and

(4) the Federal Railroad Administration is permitted to perform onsite inspections for the purpose of ensuring compliance with the requirements of this subsection.

**SEC. 417. RAILROAD BRIDGE SAFETY ASSURANCE.**

(a) **IN GENERAL.**—Not later than 12 months after the date of enactment of this Act, the Secretary shall promulgate a regulation requiring owners of track carried on one or more railroad bridges to adopt a bridge safety management program to prevent the deterioration of railroad bridges and reduce the risk of human casualties, environmental damage, and disruption to the Nation's railroad transportation system that would result from a catastrophic bridge failure.

(b) **REQUIREMENTS.**—The regulations shall, at a minimum, require each track owner to—

(1) to develop and maintain an accurate inventory of its railroad bridges, which shall identify the location of each bridge, its configuration, type of construction, number of spans, span lengths, and all other information necessary to provide for the safe management of the bridges;

(2) to ensure that a professional engineer competent in the field of railroad bridge engineering, or a qualified person under the supervision of the track owner, determines bridge capacity;

(3) to maintain, and update as appropriate, a record of the safe capacity of each bridge which carries its track and, if available, maintain the original design documents of each bridge and a documentation of all repairs, modifications, and inspections of the bridge;

(4) to develop, maintain, and enforce a written procedure that will ensure that its bridges are not loaded beyond their capacities;

(5) to conduct regular comprehensive inspections of each bridge, at least once every year, and maintain records of those inspections that include the date on which the inspection was performed, the precise identification of the bridge inspected, the items inspected, an accurate description of the condition of those items, and a narrative of any inspection item that is found by the inspector to be a potential problem;

(6) to ensure that the level of detail and the inspection procedures are appropriate to the configuration of the bridge, conditions found during previous inspections, and the nature of the railroad traffic moved over the bridge, including car weights, train frequency and length, levels of passenger and hazardous materials traffic, and vulnerability of the bridge to damage;

(7) to ensure that an engineer who is competent in the field of railroad bridge engineering—

(A) is responsible for the development of all inspection procedures;

(B) reviews all inspection reports; and

(C) determines whether bridges are being inspected according to the applicable procedures and frequency, and reviews any items noted by an inspector as exceptions; and

(8) to designate qualified bridge inspectors or maintenance personnel to authorize the operation of trains on bridges following repairs, damage, or indications of potential structural problems.

(c) **USE OF BRIDGE MANAGEMENT PROGRAMS REQUIRED.**—The Secretary shall instruct bridge experts to obtain copies of the most recent bridge management programs of each railroad within the expert's areas of responsibility, and require that experts use those programs when conducting bridge observations.

(d) **REVIEW OF DATA.**—The Secretary shall establish a program to periodically review bridge inspection and maintenance data from railroad carrier bridge inspectors and Federal Railroad Administration bridge experts.

**SEC. 418. RAILROAD SAFETY INFRASTRUCTURE IMPROVEMENT GRANTS.**

(a) **IN GENERAL.**—Subchapter II of chapter 201, as amended by section 413 of this division, is further amended by adding at the end thereof the following:

**“§ 20167. Railroad safety infrastructure improvement grants**

“(a) GRANT PROGRAM.—The Secretary of Transportation shall establish a grant program for safety improvements to railroad infrastructure, including the acquisition, improvement, or rehabilitation of intermodal or rail equipment or facilities, including track, bridges, tunnels, yards, buildings, passenger stations, facilities, and maintenance and repair shops.

“(b) ELIGIBILITY.—Grants shall be made under this section to eligible passenger and freight railroad carriers, and State and local governments for projects described in subsection (a). Grants shall also be made available to assist a State or political subdivision thereof in establishing a quiet zone pursuant to part 222 of title 49, Code of Federal Regulations.

“(c) CONSIDERATIONS.—In awarding grants, the Secretary shall consider, at a minimum—

“(1) the age and condition of the rail infrastructure of the applicant;

“(2) the railroad carrier’s safety record, including accident and incident numbers and rates;

“(3) the volume of hazardous materials transported by the railroad;

“(4) the operation of passenger trains over the railroad; and

“(5) whether the railroad carrier has submitted a railroad safety risk reduction program, as required by section 20156.

“(d) MATCHING REQUIREMENTS.—Federal funds for any eligible project under this section shall not exceed 50 percent of the total cost of such project.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation \$5,000,000 for each of fiscal years 2010 through 2013 to carry out this section. Amounts appropriated pursuant to this subsection shall remain available until expended.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201, as amended by section 413 of this division, is amended by inserting after the item relating to section 20166 the following:

“20167. Railroad safety infrastructure improvement grants.”.

**SEC. 419. PROMPT MEDICAL ATTENTION.**

(a) IN GENERAL.—Section 20109 is amended—

(1) by redesignating subsections (c) through (i) as subsections (d) through (j), respectively; and

(2) by inserting after subsection (b) the following:

“(c) PROMPT MEDICAL ATTENTION.—

“(1) PROHIBITION.—A railroad carrier or person covered under this section may not deny, delay, or interfere with the medical or first aid treatment of an employee who is injured during the course of employment. If transportation to a hospital is requested by an employee who is injured during the course of employment, the railroad shall promptly arrange to have the injured employee transported to the nearest hospital where the employee can receive safe and appropriate medical care.

“(2) DISCIPLINE.—A railroad carrier or person covered under this section may not discipline, or threaten discipline to, an employee for requesting medical or first aid treatment,

or for following orders or a treatment plan of a treating physician, except that a railroad carrier's refusal to permit an employee to return to work following medical treatment shall not be considered a violation of this section if the refusal is pursuant to Federal Railroad Administration medical standards for fitness of duty or, if there are no pertinent Federal Railroad Administration standards, a carrier's medical standards for fitness of duty. For purposes of this paragraph, the term 'discipline' means to bring charges against a person in a disciplinary proceeding, suspend, terminate, place on probation, or make note of reprimand on an employee's record."

(b) CONFORMING AMENDMENTS.—Section 20109 is amended—

(1) in subsection (d), as redesignated by subsection (a) of this section—

(A) by striking "(a) or (b)" in paragraph (1) and inserting "(a), (b), or (c)";

(B) by striking "(c)(1)" in paragraph (2)(A)(i) and inserting "(d)(1)";

(C) by striking "(a) or (b)" in paragraph (2)(A)(ii) and inserting "(a), (b), or (c)"; and

(2) in subsection (e), as so redesignated—

(A) by striking "(c)" in paragraph (1) and inserting "(d)";

(B) by striking "(c)" in paragraph (2) and inserting "(d)";

(C) by striking "(c)(3)" in paragraph (2) and inserting "(d)(3)"; and

(D) by striking "(c)" in paragraph (3) and inserting "(d)".

**SEC. 420. EMPLOYEE SLEEPING QUARTERS.**

Section 21106 is amended—

(1) by inserting "(a) IN GENERAL.—" before "A railroad carrier";

(2) by striking "sanitary and give those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the carrier;" in paragraph (1) and inserting "sanitary, give those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the carrier, and provide indoor toilet facilities, potable water, and other features to protect the health of employees;" and

(3) by adding at the end the following:

"(b) CAMP CARS.—Not later than December 31, 2009, any railroad carrier that uses camp cars shall fully retrofit or replace such cars in compliance with subsection (a).

"(c) REGULATIONS.—Not later than April 1, 2010, the Secretary of Transportation, in coordination with the Secretary of Labor, shall prescribe regulations to implement subsection (a)(1) to protect the safety and health of any employees and individuals employed to maintain the right of way of a railroad carrier that uses camp cars, which shall require that all camp cars comply with those regulations by December 31, 2010. In prescribing the regulations, the Secretary shall assess the action taken by any railroad carrier to fully retrofit or replace its camp cars pursuant to this section.

"(d) COMPLIANCE AND ENFORCEMENT.—The Secretary shall determine whether a railroad carrier has fully retrofitted or replaced

a camp car pursuant to subsection (b) and shall prohibit the use of any non-compliant camp car. The Secretary may assess civil penalties pursuant to chapter 213 for violations of this section.”.

## **TITLE V—RAIL PASSENGER DISASTER FAMILY ASSISTANCE**

### **SEC. 501. ASSISTANCE BY NATIONAL TRANSPORTATION SAFETY BOARD TO FAMILIES OF PASSENGERS INVOLVED IN RAIL PAS- SENGER ACCIDENTS.**

(a) IN GENERAL.—Chapter 11 is amended by adding at the end of subchapter III the following:

#### **“§ 1139. Assistance to families of passengers involved in rail passenger accidents**

“(a) IN GENERAL.—As soon as practicable after being notified of a rail passenger accident within the United States involving a rail passenger carrier and resulting in a major loss of life, the Chairman of the National Transportation Safety Board shall—

“(1) designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the rail passenger carrier and the families; and

“(2) designate an independent nonprofit organization, with experience in disasters and post trauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.

“(b) RESPONSIBILITIES OF THE BOARD.—The Board shall have primary Federal responsibility for—

“(1) facilitating the recovery and identification of fatally injured passengers involved in an accident described in subsection (a); and

“(2) communicating with the families of passengers involved in the accident as to the roles, with respect to the accident and the post-accident activities, of—

“(A) the organization designated for an accident under subsection (a)(2);

“(B) Government agencies; and

“(C) the rail passenger carrier involved.

“(c) RESPONSIBILITIES OF DESIGNATED ORGANIZATION.—The organization designated for an accident under subsection (a)(2) shall have the following responsibilities with respect to the families of passengers involved in the accident:

“(1) To provide mental health and counseling services, in coordination with the disaster response team of the rail passenger carrier involved.

“(2) To take such actions as may be necessary to provide an environment in which the families may grieve in private.

“(3) To meet with the families who have traveled to the location of the accident, to contact the families unable to travel to such location, and to contact all affected families periodically thereafter until such time as the organization, in consultation with the director of family support services designated for the



accident under subsection (a)(1), determines that further assistance is no longer needed.

“(4) To arrange a suitable memorial service, in consultation with the families.

“(d) PASSENGER LISTS.—

“(1) REQUESTS FOR PASSENGER LISTS.—

“(A) REQUESTS BY DIRECTOR OF FAMILY SUPPORT SERVICES.—It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the rail passenger carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the rail passenger carrier’s train involved in the accident. A rail passenger carrier shall use reasonable efforts, with respect to its unreserved trains, and passengers not holding reservations on its other trains, to ascertain the names of passengers aboard a train involved in an accident.

“(B) REQUESTS BY DESIGNATED ORGANIZATION.—The organization designated for an accident under subsection (a)(2) may request from the rail passenger carrier involved in the accident a list described in subparagraph (A).

“(2) USE OF INFORMATION.—Except as provided in subsection (k), the director of family support services and the organization may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.

“(e) CONTINUING RESPONSIBILITIES OF THE BOARD.—In the course of its investigation of an accident described in subsection (a), the Board shall, to the maximum extent practicable, ensure that the families of passengers involved in the accident—

“(1) are briefed, prior to any public briefing, about the accident and any other findings from the investigation; and

“(2) are individually informed of and allowed to attend any public hearings and meetings of the Board about the accident.

“(f) USE OF RAIL PASSENGER CARRIER RESOURCES.—To the extent practicable, the organization designated for an accident under subsection (a)(2) shall coordinate its activities with the rail passenger carrier involved in the accident to facilitate the reasonable use of the resources of the carrier.

“(g) PROHIBITED ACTIONS.—

“(1) ACTIONS TO IMPEDE THE BOARD.—No person (including a State or political subdivision thereof) may impede the ability of the Board (including the director of family support services designated for an accident under subsection (a)(1)), or an organization designated for an accident under subsection (a)(2), to carry out its responsibilities under this section or the ability of the families of passengers involved in the accident to have contact with one another.

“(2) UNSOLICITED COMMUNICATIONS.—No unsolicited communication concerning a potential action or settlement offer for personal injury or wrongful death may be made by an attorney (including any associate, agent, employee, or other

representative of an attorney) or any potential party to the litigation, including the railroad carrier or rail passenger carrier, to an individual (other than an employee of the rail passenger carrier) injured in the accident, or to a relative of an individual involved in the accident, before the 45th day following the date of the accident.

“(3) PROHIBITION ON ACTIONS TO PREVENT MENTAL HEALTH AND COUNSELING SERVICES.—No State or political subdivision thereof may prevent the employees, agents, or volunteers of an organization designated for an accident under subsection (a)(2) from providing mental health and counseling services under subsection (c)(1) in the 30-day period beginning on the date of the accident. The director of family support services designated for the accident under subsection (a)(1) may extend such period for not to exceed an additional 30 days if the director determines that the extension is necessary to meet the needs of the families and if State and local authorities are notified of the determination.

“(h) DEFINITIONS.—In this section:

“(1) RAIL PASSENGER ACCIDENT.—The term ‘rail passenger accident’ means any rail passenger disaster resulting in a major loss of life occurring in the provision of—

“(A) interstate intercity rail passenger transportation (as such term is defined in section 24102); or

“(B) interstate or intrastate high-speed rail (as such term is defined in section 26105) transportation, regardless of its cause or suspected cause.

“(2) RAIL PASSENGER CARRIER.—The term ‘rail passenger carrier’ means a rail carrier providing—

“(A) interstate intercity rail passenger transportation (as such term is defined in section 24102); or

“(B) interstate or intrastate high-speed rail (as such term is defined in section 26105) transportation, except that such term does not include a tourist, historic, scenic, or excursion rail carrier.

“(3) PASSENGER.—The term ‘passenger’ includes—

“(A) an employee of a rail passenger carrier aboard a train;

“(B) any other person aboard the train without regard to whether the person paid for the transportation, occupied a seat, or held a reservation for the rail transportation; and

“(C) any other person injured or killed in a rail passenger accident, as determined appropriate by the Board.

“(i) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed as limiting the actions that a rail passenger carrier may take, or the obligations that a rail passenger carrier may have, in providing assistance to the families of passengers involved in a rail passenger accident.

“(j) RELINQUISHMENT OF INVESTIGATIVE PRIORITY.—

“(1) GENERAL RULE.—This section (other than subsection (g)) shall not apply to a railroad passenger accident if the Board has relinquished investigative priority under section 1131(a)(2)(B) and the Federal agency to which the Board relinquished investigative priority is willing and able to provide assistance to the victims and families of the passengers involved in the accident.

“(2) BOARD ASSISTANCE.—If this section does not apply to a railroad passenger accident because the Board has relinquished investigative priority with respect to the accident, the Board shall assist, to the maximum extent possible, the agency to which the Board has relinquished investigative priority in assisting families with respect to the accident.

“(k) SAVINGS CLAUSE.—Nothing in this section shall be construed to abridge the authority of the Board or the Secretary of Transportation to investigate the causes or circumstances of any rail accident, including development of information regarding the nature of injuries sustained and the manner in which they were sustained for the purposes of determining compliance with existing laws and regulations or for identifying means of preventing similar injuries in the future, or both.”

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 11 is amended by inserting after the item relating to section 1138 the following:

“1139. Assistance to families of passengers involved in rail passenger accidents.”

**SEC. 502. RAIL PASSENGER CARRIER PLAN TO ASSIST FAMILIES OF PASSENGERS INVOLVED IN RAIL PASSENGER ACCIDENTS.**

(a) IN GENERAL.—Chapter 243 is amended by adding at the end the following:

**“§ 24316. Plans to address needs of families of passengers involved in rail passenger accidents**

“(a) SUBMISSION OF PLAN.—Not later than 6 months after the date of the enactment of the Rail Safety Improvement Act of 2008, a rail passenger carrier shall submit to the Chairman of the National Transportation Safety Board, the Secretary of Transportation, and the Secretary of Homeland Security a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving a rail passenger carrier intercity train and resulting in a major loss of life.

“(b) CONTENTS OF PLANS.—A plan to be submitted by a rail passenger carrier under subsection (a) shall include, at a minimum, the following:

“(1) A process by which a rail passenger carrier will maintain and provide to the National Transportation Safety Board, the Secretary of Transportation, and the Secretary of Homeland Security immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the train (whether or not such names have been verified), and will periodically update the list. The plan shall include a procedure, with respect to unreserved trains and passengers not holding reservations on other trains, for the rail passenger carrier to use reasonable efforts to ascertain the names of passengers aboard a train involved in an accident.

“(2) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, either by utilizing the services of the organization designated for the accident under section 1139(a)(2) of this title or the services of other suitably trained individuals.

“(3) A plan for creating and publicizing a reliable, toll-free telephone number within 4 hours after such an accident

occurs, and for providing staff, to handle calls from the families of the passengers.

“(4) A process for providing the notice described in paragraph (2) to the family of a passenger as soon as the rail passenger carrier has verified that the passenger was aboard the train (whether or not the names of all of the passengers have been verified).

“(5) An assurance that, upon request of the family of a passenger, the rail passenger carrier will inform the family of whether the passenger’s name appeared on any preliminary passenger manifest for the train involved in the accident.

“(6) A process by which the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within the control of the rail passenger carrier and by which any possession of the passenger within the control of the rail passenger carrier (regardless of its condition)—

“(A) will be retained by the rail passenger carrier for at least 18 months; and

“(B) will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation.

“(7) A process by which the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

“(8) An assurance that the rail passenger carrier will provide adequate training to the employees and agents of the carrier to meet the needs of survivors and family members following an accident.

“(9) An assurance that the family of each passenger or other person killed in the accident will be consulted about construction by the rail passenger carrier of any monument to the passengers, including any inscription on the monument.

“(10) An assurance that the rail passenger carrier will work with any organization designated under section 1139(a)(2) of this title on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following each accident.

“(11) An assurance that the rail passenger carrier will provide reasonable compensation to any organization designated under section 1139(a)(2) of this title for services provided by the organization.

“(c) USE OF INFORMATION.—Neither the National Transportation Safety Board, the Secretary of Transportation, the Secretary of Homeland Security, nor a rail passenger carrier may release to the public any personal information on a list obtained under subsection (b)(1), but may provide information on the list about a passenger to the passenger’s family members to the extent that the Board or a rail passenger carrier considers appropriate.

“(d) LIMITATION ON STATUTORY CONSTRUCTION.—

“(1) RAIL PASSENGER CARRIERS.—Nothing in this section may be construed as limiting the actions that a rail passenger carrier may take, or the obligations that a rail passenger carrier may have, in providing assistance to the families of passengers involved in a rail passenger accident.

“(2) INVESTIGATIONAL AUTHORITY OF BOARD AND SECRETARY.—Nothing in this section shall be construed to abridge

the authority of the Board or the Secretary of Transportation to investigate the causes or circumstances of any rail accident, including the development of information regarding the nature of injuries sustained and the manner in which they were sustained, for the purpose of determining compliance with existing laws and regulations or identifying means of preventing similar injuries in the future.

“(e) LIMITATION ON LIABILITY.—A rail passenger carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of the rail passenger carrier in preparing or providing a passenger list, or in providing information concerning a train reservation, pursuant to a plan submitted by the rail passenger carrier under subsection (b), unless such liability was caused by conduct of the rail passenger carrier which was grossly negligent or which constituted intentional misconduct.

“(f) DEFINITIONS.—In this section, the terms ‘passenger’ and ‘rail passenger accident’ have the meaning given those terms by section 1139 of this title.

“(g) FUNDING.—Out of funds appropriated pursuant to section 20117(a)(1)(A), there shall be made available to the Secretary of Transportation \$500,000 for fiscal year 2010 to carry out this section. Amounts made available pursuant to this subsection shall remain available until expended.”

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 243 is amended by inserting after the item relating to section 24315 the following:

“24316. Plan to assist families of passengers involved in rail passenger accidents.”.

**SEC. 503. ESTABLISHMENT OF TASK FORCE.**

(a) ESTABLISHMENT.—The Secretary, in cooperation with the National Transportation Safety Board, organizations potentially designated under section 1139(a)(2) of title 49, United States Code, rail passenger carriers (as defined in section 1139(h)(2) of title 49, United States Code), and families which have been involved in rail accidents, shall establish a task force consisting of representatives of such entities and families, representatives of rail passenger carrier employees, and representatives of such other entities as the Secretary considers appropriate.

(b) MODEL PLAN AND RECOMMENDATIONS.—The task force established pursuant to subsection (a) shall develop—

(1) a model plan to assist rail passenger carriers in responding to passenger rail accidents;

(2) recommendations on methods to improve the timeliness of the notification provided by passenger rail carriers to the families of passengers involved in a passenger rail accident;

(3) recommendations on methods to ensure that the families of passengers involved in a passenger rail accident who are not citizens of the United States receive appropriate assistance; and

(4) recommendations on methods to ensure that emergency services personnel have as immediate and accurate a count of the number of passengers onboard the train as possible.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit a report to the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and

Transportation containing the model plan and recommendations developed by the task force under subsection (b).

## **TITLE VI—CLARIFICATION OF FEDERAL JURISDICTION OVER SOLID WASTE FACILITIES**

### **SEC. 601. SHORT TITLE.**

This title may be cited as the “Clean Railroads Act of 2008”.

### **SEC. 602. CLARIFICATION OF GENERAL JURISDICTION OVER SOLID WASTE TRANSFER FACILITIES.**

Section 10501(c)(2) is amended to read as follows:

“(2) Except as provided in paragraph (3), the Board does not have jurisdiction under this part over—

“(A) mass transportation provided by a local government authority; or

“(B) a solid waste rail transfer facility as defined in section 10908 of this title, except as provided under sections 10908 and 10909 of this title.”.

### **SEC. 603. REGULATION OF SOLID WASTE RAIL TRANSFER FACILITIES.**

(a) **IN GENERAL.**—Chapter 109 is amended by adding at the end thereof the following:

#### **“§ 10908. Regulation of solid waste rail transfer facilities**

“(a) **IN GENERAL.**—Each solid waste rail transfer facility shall be subject to and shall comply with all applicable Federal and State requirements, both substantive and procedural, including judicial and administrative orders and fines, respecting the prevention and abatement of pollution, the protection and restoration of the environment, and the protection of public health and safety, including laws governing solid waste, to the same extent as required for any similar solid waste management facility, as defined in section 1004(29) of the Solid Waste Disposal Act (42 U.S.C. 6903(29)) that is not owned or operated by or on behalf of a rail carrier, except as provided for in section 10909 of this chapter.

“(b) **EXISTING FACILITIES.**—

“(1) **STATE LAWS AND STANDARDS.**—Not later than 90 days after the date of enactment of the Clean Railroads Act of 2008, a solid waste rail transfer facility operating as of such date of enactment shall comply with all Federal and State requirements pursuant to subsection (a) other than those provisions requiring permits.

“(2) **PERMIT REQUIREMENTS.**—

“(A) **STATE NON-SITING PERMITS.**—Any solid waste rail transfer facility operating as of the date of enactment of the Clean Railroads Act of 2008 that does not possess a permit required pursuant to subsection (a), other than a siting permit for the facility, as of the date of enactment of the Clean Railroads Act of 2008 shall not be required to possess any such permits in order to operate the facility—

“(i) if, within 180 days after such date of enactment, the solid waste rail transfer facility has submitted, in good faith, a complete application for all

permits, except siting permits, required pursuant to subsection (a) to the appropriate permitting agency authorized to grant such permits; and

“(ii) until the permitting agency has either approved or denied the solid waste rail transfer facility’s application for each permit.

“(B) SITING PERMITS AND REQUIREMENTS.—A solid waste rail transfer facility operating as of the date of enactment of the Clean Railroads Act of 2008 that does not possess a State siting permit required pursuant to subsection (a) as of such date of enactment shall not be required to possess any siting permit to continue to operate or comply with any State land use requirements. The Governor of a State in which the facility is located, or his or her designee, may petition the Board to require the facility to apply for a land-use exemption pursuant to section 10909 of this chapter. The Board shall accept the petition, and the facility shall be required to have a Board-issued land-use exemption in order to continue to operate, pursuant to section 10909 of this chapter.

“(c) COMMON CARRIER OBLIGATION.—No prospective or current rail carrier customer may demand solid waste rail transfer service from a rail carrier at a solid waste rail transfer facility that does not already possess the necessary Federal land-use exemption and State permits at the location where service is requested.

“(d) NON-WASTE COMMODITIES.—Nothing in this section or section 10909 of this chapter shall affect a rail carrier’s ability to conduct transportation-related activities with respect to commodities other than solid waste.

“(e) DEFINITIONS.—

“(1) IN GENERAL.—In this section:

“(A) COMMERCIAL AND RETAIL WASTE.—The term ‘commercial and retail waste’ means material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities.

“(B) CONSTRUCTION AND DEMOLITION DEBRIS.—The term ‘construction and demolition debris’ means waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures.

“(C) HOUSEHOLD WASTE.—The term ‘household waste’ means material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing establishments or facilities.

“(D) INDUSTRIAL WASTE.—The term ‘industrial waste’ means the solid waste generated by manufacturing and industrial and research and development processes and operations, including contaminated soil, nonhazardous oil spill cleanup waste and dry nonhazardous pesticides and chemical waste, but does not include hazardous waste regulated under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.), mining or oil and gas waste.

“(E) INSTITUTIONAL WASTE.—The term ‘institutional waste’ means material discarded by schools, nonmedical

waste discarded by hospitals, material discarded by non-manufacturing activities at prisons and government facilities, and material discarded by other similar establishments or facilities.

“(F) MUNICIPAL SOLID WASTE.—The term ‘municipal solid waste’ means—

- “(i) household waste;
- “(ii) commercial and retail waste; and
- “(iii) institutional waste.

“(G) SOLID WASTE.—With the exception of waste generated by a rail carrier during track, track structure, or right-of-way construction, maintenance, or repair (including railroad ties and line-side poles) or waste generated as a result of a railroad accident, incident, or derailment, the term ‘solid waste’ means—

- “(i) construction and demolition debris;
- “(ii) municipal solid waste;
- “(iii) household waste;
- “(iv) commercial and retail waste;
- “(v) institutional waste;
- “(vi) sludge;
- “(vii) industrial waste; and
- “(viii) other solid waste, as determined appropriate by the Board.

“(H) SOLID WASTE RAIL TRANSFER FACILITY.—The term ‘solid waste rail transfer facility’—

“(i) means the portion of a facility owned or operated by or on behalf of a rail carrier (as defined in section 10102 of this title) where solid waste, as a commodity to be transported for a charge, is collected, stored, separated, processed, treated, managed, disposed of, or transferred, when the activity takes place outside of original shipping containers; but

“(ii) does not include—

“(I) the portion of a facility to the extent that activities taking place at such portion are comprised solely of the railroad transportation of solid waste after the solid waste is loaded for shipment on or in a rail car, including railroad transportation for the purpose of interchanging railroad cars containing solid waste shipments; or

“(II) a facility where solid waste is solely transferred or transloaded from a tank truck directly to a rail tank car.

“(I) SLUDGE.—The term ‘sludge’ means any solid, semi-solid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

“(2) EXCEPTIONS.—Notwithstanding paragraph (1), the terms ‘household waste’, ‘commercial and retail waste’, and ‘institutional waste’ do not include—

- “(A) yard waste and refuse-derived fuel;
- “(B) used oil;
- “(C) wood pallets;
- “(D) clean wood;



“(E) medical or infectious waste; or

“(F) motor vehicles (including motor vehicle parts or vehicle fluff).

“(3) STATE REQUIREMENTS.—In this section the term ‘State requirements’ does not include the laws, regulations, ordinances, orders, or other requirements of a political subdivision of a State, including a locality or municipality, unless a State expressly delegates such authority to such political subdivision.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 109 is amended by inserting after the item relating to section 10907 the following:

“10908. Regulation of solid waste rail transfer facilities.”.

**SEC. 604. SOLID WASTE RAIL TRANSFER FACILITY LAND-USE EXEMPTION AUTHORITY.**

(a) IN GENERAL.—Chapter 109 is further amended by adding at the end thereof the following:

**“§ 10909. Solid waste rail transfer facility land-use exemption**

“(a) AUTHORITY.—The Board may issue a land-use exemption for a solid waste rail transfer facility that is or is proposed to be operated by or on behalf of a rail carrier if—

“(1) the Board finds that a State, local, or municipal law, regulation, order, or other requirement affecting the siting of such facility unreasonably burdens the interstate transportation of solid waste by railroad, discriminates against the railroad transportation of solid waste and a solid waste rail transfer facility, or a rail carrier that owns or operates such a facility petitions the Board for such an exemption; or

“(2) the Governor of a State in which a facility that is operating as of the date of enactment of the Clean Railroads Act of 2008 is located, or his or her designee, petitions the Board to initiate a permit proceeding for that particular facility.

“(b) LAND-USE EXEMPTION PROCEDURES.—Not later than 90 days after the date of enactment of the Clean Railroad Act of 2008, the Board shall publish procedures governing the submission and review of applications for solid waste rail transfer facility land-use exemptions. At a minimum, the procedures shall address—

“(1) the information that each application should contain to explain how the solid waste rail transfer facility will not pose an unreasonable risk to public health, safety, or the environment;

“(2) the opportunity for public notice and comment including notification of the municipality, the State, and any relevant Federal or State regional planning entity in the jurisdiction of which the solid waste rail transfer facility is proposed to be located;

“(3) the timeline for Board review, including a requirement that the Board approve or deny an exemption within 90 days after the full record for the application is developed;

“(4) the expedited review timelines for petitions for modifications, amendments, or revocations of granted exemptions;

“(5) the process for a State to petition the Board to require a solid waste transfer facility or a rail carrier that owns or operates such a facility to apply for a siting permit; and

“(6) the process for a solid waste transfer facility or a rail carrier that owns or operates such a facility to petition the Board for a land-use exemption.

“(c) STANDARD FOR REVIEW.—

“(1) The Board may only issue a land-use exemption if it determines that the facility at the existing or proposed location does not pose an unreasonable risk to public health, safety, or the environment. In deciding whether a solid waste rail transfer facility that is or proposed to be constructed or operated by or on behalf of a rail carrier poses an unreasonable risk to public health, safety, or the environment, the Board shall weigh the particular facility’s potential benefits to and the adverse impacts on public health, public safety, the environment, interstate commerce, and transportation of solid waste by rail.

“(2) The Board may not grant a land-use exemption for a solid waste rail transfer facility proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, a National Monument, or lands referenced in Public Law 108–421 for which a State has implemented a conservation management plan, if operation of the facility would be inconsistent with restrictions placed on such land.

“(d) CONSIDERATIONS.—When evaluating an application under this section, the Board shall consider and give due weight to the following, as applicable:

“(1) the land-use, zoning, and siting regulations or solid waste planning requirements of the State or State subdivision in which the facility is or will be located that are applicable to solid waste transfer facilities, including those that are not owned or operated by or on behalf of a rail carrier;

“(2) the land-use, zoning, and siting regulations or solid waste planning requirements applicable to the property where the solid waste rail transfer facility is proposed to be located;

“(3) regional transportation planning requirements developed pursuant to Federal and State law;

“(4) regional solid waste disposal plans developed pursuant to State or Federal law;

“(5) any Federal and State environmental protection laws or regulations applicable to the site;

“(6) any unreasonable burdens imposed on the interstate transportation of solid waste by railroad, or the potential for discrimination against the railroad transportation of solid waste, a solid waste rail transfer facility, or a rail carrier that owns or operates such a facility; and

“(7) any other relevant factors, as determined by the Board.

“(e) EXISTING FACILITIES.—Upon the granting of petition from the State in which a solid waste rail transfer facility is operating as of the date of enactment of the Clean Railroads Act of 2008 by the Board, the facility shall submit a complete application for a siting permit to the Board pursuant to the procedures issued pursuant to subsection (b). No State may enforce a law, regulation, order, or other requirement affecting the siting of a facility that is operating as of the date of enactment of the Clean Railroads

Act of 2008 until the Board has approved or denied a permit pursuant to subsection (c).

“(f) EFFECT OF LAND-USE EXEMPTION.—If the Board grants a land-use exemption to a solid waste rail transfer facility, all State laws, regulations, orders, or other requirements affecting the siting of a facility are preempted with regard to that facility. An exemption may require compliance with such State laws, regulations, orders, or other requirements.

“(g) INJUNCTIVE RELIEF.—Nothing in this section precludes a person from seeking an injunction to enjoin a solid waste rail transfer facility from being constructed or operated by or on behalf of a rail carrier if that facility has materially violated, or will materially violate, its land-use exemption or if it failed to receive a valid land-use exemption under this section.

“(h) FEES.—The Board may charge permit applicants reasonable fees to implement this section, including the costs of third-party consultants.

“(i) DEFINITIONS.—In this section the terms ‘solid waste’, ‘solid waste rail transfer facility’, and ‘State requirements’ have the meaning given such terms in section 10908(e).”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 109, as amended by section 603 of this division, is amended by inserting after the item relating to section 10908 the following:

“10909. Solid waste rail transfer facility land-use exemption.”.

#### **SEC. 605. EFFECT ON OTHER STATUTES AND AUTHORITIES.**

(a) IN GENERAL.—Chapter 109, as amended by section 604, is further amended by adding at the end thereof the following:

##### **“§ 10910. Effect on other statutes and authorities**

“Nothing in section 10908 or 10909 is intended to affect the traditional police powers of the State to require a rail carrier to comply with State and local environmental, public health, and public safety standards that are not unreasonably burdensome to interstate commerce and do not discriminate against rail carriers.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 109, as amended by section 604 of this division, is amended by inserting after the item relating to section 10909 the following:

“10910. Effect on other statutes and authorities.”.

## **TITLE VII—TECHNICAL CORRECTIONS**

#### **SEC. 701. TECHNICAL CORRECTIONS.**

(a) LIMITATIONS ON FINANCIAL ASSISTANCE.—Section 22106 is amended—

(1) by striking the second sentence of subsection (a);

(2) by striking subsection (b) and inserting the following:

“(b) STATE USE OF REPAID FUNDS AND CONTINGENT INTEREST RECOVERIES.—The State shall place the United States Government’s share of money that is repaid and any contingent interest that is recovered in an interest-bearing account. The repaid money, contingent interest, and any interest thereof shall be considered to be State funds. The State shall use such funds to make other grants and loans, consistent with the purposes for which financial

assistance may be used under subsection (a), as the State considers to be appropriate.”; and

(3) by striking subsections (c) and (e) and redesignating subsection (d) as subsection (c).

(b) GRANTS FOR CLASS II AND III RAILROADS.—Section 22301(a)(1)(A)(iii) is amended by striking “and” and inserting “or”.

(c) RAIL TRANSPORTATION OF RENEWABLE FUEL STUDY.—Section 245(a)(1) of the Energy Independence and Security Act of 2007 is amended by striking “Secretary, in coordination with the Secretary of Transportation,” and inserting “Secretary and the Secretary of Transportation”.

(d) MOTOR CARRIER DEFINITION.—

Section 14504a is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by inserting “(except as provided in paragraph (5))” after “14506”;

(B) in paragraph (1), by striking subparagraph (A) and inserting the following:

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘commercial motor vehicle’—

“(i) for calendar years 2008 and 2009, has the meaning given the term in section 31101; and

“(ii) for years beginning after December 31, 2009, means a self-propelled vehicle described in section 31101.”; and

(C) by striking paragraph (5) and inserting the following:

“(5) MOTOR CARRIER.—

“(A) THIS SECTION.—In this section:

“(i) IN GENERAL.—The term ‘motor carrier’ includes all carriers that are otherwise exempt from this part—

“(I) under subchapter I of chapter 135; or

“(II) through exemption actions by the former Interstate Commerce Commission under this title.

“(ii) EXCLUSIONS.—In this section, the term ‘motor carrier’ does not include—

“(I) any carrier subject to section 13504; or

“(II) any other carrier that the board of directors of the unified carrier registration plan determines to be appropriate pursuant to subsection (d)(4)(C).

“(B) SECTION 14506.—In section 14506, the term ‘motor carrier’ includes all carriers that are otherwise exempt from this part—

“(i) under subchapter I of chapter 135; or

“(ii) through exemption actions by the former Interstate Commerce Commission under this title.”; and

(2) in subsection (d)(4)(C), by inserting before the period at the end the following: “, except that a decision to approve the exclusion of carriers from the definition of the term ‘motor carrier’ under subsection (a)(5) shall require an affirmative vote of  $\frac{3}{4}$  of all such directors.”.

(e) EXTENSION OF LOAN PERIOD.—Section 502(g)(1) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(g)(1)) is amended by striking “25 years” and inserting “35 years”.

## DIVISION B—AMTRAK

### SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This division may be cited as the “Passenger Rail Investment and Improvement Act of 2008”.

(b) TABLE OF CONTENTS.—The table of contents for this division is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Amendment of title 49, United States Code.
- Sec. 3. Definition.

#### TITLE I—AUTHORIZATIONS

- Sec. 101. Authorization for Amtrak capital and operating expenses.
- Sec. 102. Repayment of long-term debt and capital leases.
- Sec. 103. Authorization for the Federal Railroad Administration.

#### TITLE II—AMTRAK REFORM AND OPERATIONAL IMPROVEMENTS

- Sec. 201. National railroad passenger transportation system defined.
- Sec. 202. Amtrak board of directors.
- Sec. 203. Establishment of improved financial accounting system.
- Sec. 204. Development of 5-year financial plan.
- Sec. 205. Restructuring long-term debt and capital leases.
- Sec. 206. Establishment of grant process.
- Sec. 207. Metrics and standards.
- Sec. 208. Methodologies for Amtrak route and service planning decisions.
- Sec. 209. State-supported routes.
- Sec. 210. Long-distance routes.
- Sec. 211. Northeast Corridor state-of-good-repair plan.
- Sec. 212. Northeast Corridor infrastructure and operations improvements.
- Sec. 213. Passenger train performance.
- Sec. 214. Alternate passenger rail service pilot program.
- Sec. 215. Employee transition assistance.
- Sec. 216. Special passenger trains.
- Sec. 217. Access to Amtrak equipment and services.
- Sec. 218. General Amtrak provisions.
- Sec. 219. Study of compliance requirements at existing intercity rail stations.
- Sec. 220. Oversight of Amtrak’s compliance with accessibility requirements.
- Sec. 221. Amtrak management accountability.
- Sec. 222. On-board service improvements.
- Sec. 223. Incentive pay.
- Sec. 224. Passenger rail service studies.
- Sec. 225. Report on service delays on certain passenger rail routes.
- Sec. 226. Plan for restoration of service.
- Sec. 227. Maintenance and repair facility utilization study.
- Sec. 228. Sense of the Congress regarding the need to maintain Amtrak as a national passenger rail system.

#### TITLE III—INTERCITY PASSENGER RAIL POLICY

- Sec. 301. Capital assistance for intercity passenger rail service.
- Sec. 302. Congestion grants.
- Sec. 303. State rail plans.
- Sec. 304. Tunnel project.
- Sec. 305. Next generation corridor train equipment pool.
- Sec. 306. Rail cooperative research program.
- Sec. 307. Federal rail policy.

#### TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. Commuter rail mediation.
- Sec. 402. Routing efficiency discussions with Amtrak.
- Sec. 403. Sense of Congress regarding commuter rail expansion.
- Sec. 404. Locomotive biofuel study.
- Sec. 405. Study of the use of biobased technologies.
- Sec. 406. Cross-border passenger rail service.
- Sec. 407. Historic preservation of railroads.

#### TITLE V—HIGH-SPEED RAIL

- Sec. 501. High-speed rail corridor program.

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Sec. 502. Additional high-speed rail projects.

TITLE VI—CAPITAL AND PREVENTIVE MAINTENANCE PROJECTS FOR  
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Sec. 601. Authorization for capital and preventive maintenance projects for Washington Metropolitan Area Transit Authority.

**SEC. 2. AMENDMENT OF TITLE 49, UNITED STATES CODE.**

Except as otherwise specifically provided, whenever in this division an amendment is expressed in terms of an amendment to a section or other provision of law, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

**SEC. 3. DEFINITION.**

In this division, the term “Secretary” means the Secretary of Transportation.

**TITLE I—AUTHORIZATIONS**

**SEC. 101. AUTHORIZATION FOR AMTRAK CAPITAL AND OPERATING EXPENSES.**

(a) OPERATING GRANTS.—There are authorized to be appropriated to the Secretary for the use of Amtrak for operating costs the following amounts:

- (1) For fiscal year 2009, \$530,000,000.
- (2) For fiscal year 2010, \$580,000,000.
- (3) For fiscal year 2011, \$592,000,000.
- (4) For fiscal year 2012, \$616,000,000.
- (5) For fiscal year 2013, \$631,000,000.

(b) INSPECTOR GENERAL.—There are authorized to be appropriated to the Secretary for the Office of the Inspector General of Amtrak the following amounts:

- (1) For fiscal year 2009, \$20,000,000.
- (2) For fiscal year 2010, \$21,000,000.
- (3) For fiscal year 2011, \$22,000,000.
- (4) For fiscal year 2012, \$22,000,000.
- (5) For fiscal year 2013, \$23,000,000.

(c) CAPITAL GRANTS.—There are authorized to be appropriated to the Secretary for the use of Amtrak for capital projects (as defined in subparagraphs (A) and (B) of section 24401(2) of title 49, United States Code) to bring the Northeast Corridor (as defined in section 24102 of such title) to a state-of-good-repair and for capital expenses of the national rail passenger transportation system the following amounts:

- (1) For fiscal year 2009, \$715,000,000.
- (2) For fiscal year 2010, \$975,000,000.
- (3) For fiscal year 2011, \$1,025,000,000.
- (4) For fiscal year 2012, \$1,275,000,000.
- (5) For fiscal year 2013, \$1,325,000,000.

(d) PROJECT MANAGEMENT OVERSIGHT.—The Secretary may withhold up to ½ of 1 percent of amounts appropriated pursuant to subsection (c) for the costs of project management oversight of capital projects carried out by Amtrak.

**SEC. 102. REPAYMENT OF LONG-TERM DEBT AND CAPITAL LEASES.**

(a) PRINCIPAL AND INTEREST ON DEBT SERVICE.—There are authorized to be appropriated to the Secretary for the use of Amtrak

for retirement of principal and payment of interest on loans for capital equipment, or capital leases, not more than the following amounts:

- (1) For fiscal year 2009, \$285,000,000.
- (2) For fiscal year 2010, \$264,000,000.
- (3) For fiscal year 2011, \$288,000,000.
- (4) For fiscal year 2012, \$290,000,000.
- (5) For fiscal year 2013, \$277,000,000.

(b) EARLY BUYOUT OPTION.—There are authorized to be appropriated to the Secretary such sums as may be necessary for the use of Amtrak for the payment of costs associated with early buyout options if the exercise of those options is determined to be advantageous to Amtrak.

(c) LEGAL EFFECT OF PAYMENTS UNDER THIS SECTION.—The payment of principal and interest on secured debt, with the proceeds of grants authorized by this section shall not—

- (1) modify the extent or nature of any indebtedness of Amtrak to the United States in existence as of the date of enactment of this Act;
- (2) change the private nature of Amtrak's or its successors' liabilities; or
- (3) imply any Federal guarantee or commitment to amortize Amtrak's outstanding indebtedness.

**SEC. 103. AUTHORIZATION FOR THE FEDERAL RAILROAD ADMINISTRATION.**

There are authorized to be appropriated to the Secretary for the use of the Federal Railroad Administration such sums as necessary to implement the provisions required under this division for fiscal years 2009 through 2013.

## **TITLE II—AMTRAK REFORM AND OPERATIONAL IMPROVEMENTS**

**SEC. 201. NATIONAL RAILROAD PASSENGER TRANSPORTATION SYSTEM DEFINED.**

(a) IN GENERAL.—Section 24102 is amended—

- (1) by striking paragraph (2);
- (2) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively; and
- (3) by inserting after paragraph (4) as so redesignated the following:

“(5) ‘national rail passenger transportation system’ means—

“(A) the segment of the continuous Northeast Corridor railroad line between Boston, Massachusetts, and Washington, District of Columbia;

“(B) rail corridors that have been designated by the Secretary of Transportation as high-speed rail corridors (other than corridors described in subparagraph (A)), but only after regularly scheduled intercity service over a corridor has been established;

“(C) long-distance routes of more than 750 miles between endpoints operated by Amtrak as of the date of enactment of the Passenger Rail Investment and Improvement Act of 2008; and

“(D) short-distance corridors, or routes of not more than 750 miles between endpoints, operated by—

“(i) Amtrak; or

“(ii) another rail carrier that receives funds under chapter 244.”.

(b) AMTRAK ROUTES WITH STATE FUNDING.—

(1) IN GENERAL.—Chapter 247 is amended by inserting after section 24701 the following:

**“§ 24702. Transportation requested by States, authorities, and other persons**

“(a) CONTRACTS FOR TRANSPORTATION.—Amtrak may enter into a contract with a State, a regional or local authority, or another person for Amtrak to operate an intercity rail service or route not included in the national rail passenger transportation system upon such terms as the parties thereto may agree.

“(b) DISCONTINUANCE.—Upon termination of a contract entered into under this section, or the cessation of financial support under such a contract by either party, Amtrak may discontinue such service or route, notwithstanding any other provision of law.”.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 247 is amended by inserting after the item relating to section 24701 the following:

“24702. Transportation requested by States, authorities, and other persons”.

(c) AMTRAK TO CONTINUE TO PROVIDE NON-HIGH-SPEED SERVICES.—Nothing in this division is intended to preclude Amtrak from restoring, improving, or developing non-high-speed intercity passenger rail service.

(d) APPLICABILITY OF SECTION 24706.—Section 24706 is amended by adding at the end the following:

“(c) APPLICABILITY.—This section applies to all service over routes provided by Amtrak, notwithstanding any provision of section 24701 of this title or any other provision of this title except section 24702(b).”.

(e) AMTRAK’S MISSION.—

(1) AMENDMENTS.—Section 24101 is amended—

(A) by striking “**purpose**” in the section heading and inserting “**mission**”;

(B) by striking subsection (b) and inserting the following:

“(b) MISSION.—The mission of Amtrak is to provide efficient and effective intercity passenger rail mobility consisting of high quality service that is trip-time competitive with other intercity travel options and that is consistent with the goals of subsection (d).”;

(C) by redesignating paragraphs (9) through (11) in subsection (c) as paragraphs (10) through (12), respectively, and inserting after paragraph (8) the following:

“(9) provide additional or complementary intercity transportation service to ensure mobility in times of national disaster or other instances where other travel options are not adequately available;”;

(D) in subsection (d), by striking “subsection (c)(11)” and inserting “subsection (c)(12)”.



(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 241 is amended by striking the item relating to section 24101 and inserting the following:

“24101. Findings, mission, and goals.”.

**SEC. 202. AMTRAK BOARD OF DIRECTORS.**

(a) IN GENERAL.—Section 24302 is amended to read as follows:

**“§ 24302. Board of directors**

“(a) COMPOSITION AND TERMS.—

“(1) The Amtrak Board of Directors (referred to in this section as the ‘Board’) is composed of the following 9 directors, each of whom must be a citizen of the United States:

“(A) The Secretary of Transportation.

“(B) The President of Amtrak.

“(C) 7 individuals appointed by the President of the United States, by and with the advice and consent of the Senate, with general business and financial experience, experience or qualifications in transportation, freight and passenger rail transportation, travel, hospitality, cruise line, or passenger air transportation businesses, or representatives of employees or users of passenger rail transportation or a State government.

“(2) In selecting individuals described in paragraph (1) for nominations for appointments to the Board, the President shall consult with the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate and try to provide adequate and balanced representation of the major geographic regions of the United States served by Amtrak.

“(3) An individual appointed under paragraph (1)(C) of this subsection shall be appointed for a term of 5 years. Such term may be extended until the individual’s successor is appointed and qualified. Not more than 5 individuals appointed under paragraph (1)(C) may be members of the same political party.

“(4) The Board shall elect a chairman and a vice chairman, other than the President of Amtrak, from among its membership. The vice chairman shall serve as chairman in the absence of the chairman.

“(5) The Secretary may be represented at Board meetings by the Secretary’s designee.

“(b) PAY AND EXPENSES.—Each director not employed by the United States Government or Amtrak is entitled to reasonable pay when performing Board duties. Each director not employed by the United States Government is entitled to reimbursement from Amtrak for necessary travel, reasonable secretarial and professional staff support, and subsistence expenses incurred in attending Board meetings.

“(c) TRAVEL.—(1) Each director not employed by the United States Government shall be subject to the same travel and reimbursable business travel expense policies and guidelines that apply to Amtrak’s executive management when performing Board duties.

“(2) Not later than 60 days after the end of each fiscal year, the Board shall submit a report describing all travel and reimbursable business travel expenses paid to each director when performing Board duties to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

“(3) The report submitted under paragraph (2) shall include a detailed justification for any travel or reimbursable business travel expense that deviates from Amtrak’s travel and reimbursable business travel expense policies and guidelines.

“(d) VACANCIES.—A vacancy on the Board is filled in the same way as the original selection, except that an individual appointed by the President of the United States under subsection (a)(1)(C) of this section to fill a vacancy occurring before the end of the term for which the predecessor of that individual was appointed is appointed for the remainder of that term. A vacancy required to be filled by appointment under subsection (a)(1)(C) must be filled not later than 120 days after the vacancy occurs.

“(e) QUORUM.—A majority of the members serving shall constitute a quorum for doing business.

“(f) BYLAWS.—The Board may adopt and amend bylaws governing the operation of Amtrak. The bylaws shall be consistent with this part and the articles of incorporation.”

(b) EFFECTIVE DATE FOR DIRECTORS’ PROVISION.—The amendment made by subsection (a) shall take effect 6 months after the date of enactment of this Act. The members of the Amtrak Board of Directors serving as of the date of enactment of this Act may continue to serve for the remainder of the term to which they were appointed.

### **SEC. 203. ESTABLISHMENT OF IMPROVED FINANCIAL ACCOUNTING SYSTEM.**

(a) IN GENERAL.—The Amtrak Board of Directors—

(1) may employ an independent financial consultant with experience in railroad accounting to assist Amtrak in improving Amtrak’s financial accounting and reporting system and practices;

(2) shall implement a modern financial accounting and reporting system not later than 3 years after the date of enactment of this Act; and

(3) shall, not later than 90 days after the end of each fiscal year through fiscal year 2013—

(A) submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a comprehensive report that allocates all of Amtrak’s revenues and costs to each of its routes, each of its lines of business, and each major activity within each route and line of business activity, including—

- (i) train operations;
- (ii) equipment maintenance;
- (iii) food service;
- (iv) sleeping cars;
- (v) ticketing;
- (vi) reservations; and
- (vii) unallocated fixed overhead costs;

(B) include the report described in subparagraph (A) in Amtrak's annual report; and

(C) post such report on Amtrak's website.

(b) **VERIFICATION OF SYSTEM; REPORT.**—The Inspector General of the Department of Transportation shall review the accounting system designed and implemented under subsection (a) to ensure that it accomplishes the purposes for which it is intended. The Inspector General shall report his or her findings and conclusions, together with any recommendations, to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(c) **CATEGORIZATION OF REVENUES AND EXPENSES.**—In carrying out subsection (a), the Amtrak Board of Directors shall separately categorize assigned revenues and attributable expenses by type of service, including long-distance routes, State-sponsored routes, commuter contract routes, and Northeast Corridor routes.

**SEC. 204. DEVELOPMENT OF 5-YEAR FINANCIAL PLAN.**

(a) **DEVELOPMENT OF 5-YEAR FINANCIAL PLAN.**—The Amtrak Board of Directors shall submit an annual budget and business plan for Amtrak, and a 5-year financial plan for the fiscal year to which that budget and business plan relate and the subsequent 4 years, prepared in accordance with this section, to the Secretary and the Inspector General of the Department of Transportation no later than—

(1) the first day of each fiscal year beginning after the date of enactment of this Act; or

(2) the date that is 60 days after the date of enactment of an appropriations Act for the fiscal year, if later.

(b) **CONTENTS OF 5-YEAR FINANCIAL PLAN.**—The 5-year financial plan for Amtrak shall include, at a minimum—

(1) all projected revenues and expenditures for Amtrak, including governmental funding sources;

(2) projected ridership levels for all Amtrak passenger operations;

(3) revenue and expenditure forecasts for non-passenger operations;

(4) capital funding requirements and expenditures necessary to maintain passenger service in order to accommodate predicted ridership levels and predicted sources of capital funding;

(5) operational funding needs, if any, to maintain current and projected levels of passenger service, including State-supported routes and predicted funding sources;

(6) projected capital and operating requirements, ridership, and revenue for any new passenger service operations or service expansions;

(7) an assessment of the continuing financial stability of Amtrak, as indicated by factors such as anticipated Federal funding of capital and operating costs, Amtrak's ability to efficiently recruit, retain, and manage its workforce, and Amtrak's ability to effectively provide passenger rail service;

(8) estimates of long-term and short-term debt and associated principal and interest payments (both current and anticipated);

(9) annual cash flow forecasts;

(10) a statement describing methods of estimation and significant assumptions;

(11) specific measures that demonstrate measurable improvement year over year in the financial results of Amtrak's operations;

(12) prior fiscal year and projected operating ratio, cash operating loss, and cash operating loss per passenger on a route, business line, and corporate basis;

(13) prior fiscal year and projected specific costs and savings estimates resulting from reform initiatives;

(14) prior fiscal year and projected labor productivity statistics on a route, business line, and corporate basis;

(15) prior fiscal year and projected equipment reliability statistics; and

(16) capital and operating expenditures for anticipated security needs.

(c) **STANDARDS TO PROMOTE FINANCIAL STABILITY.**—In meeting the requirements of subsection (b), Amtrak shall—

(1) apply sound budgetary practices, including reducing costs and other expenditures, improving productivity, increasing revenues, or combinations of such practices;

(2) use the categories specified in the financial accounting and reporting system developed under section 203 when preparing its 5-year financial plan; and

(3) ensure that the plan is consistent with the authorizations of appropriations under title I of this division.

(d) **REVIEW BY DOT INSPECTOR GENERAL.**—Within 60 days after their submission by Amtrak, the Inspector General of the Department of Transportation shall review the annual budget and the 5-year financial plans prepared by Amtrak under this section to determine whether they meet the requirements of subsection (b) and shall furnish any relevant findings to the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Appropriations of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Appropriations of the Senate.

**SEC. 205. RESTRUCTURING LONG-TERM DEBT AND CAPITAL LEASES.**

(a) **IN GENERAL.**—The Secretary of the Treasury, in consultation with the Secretary and Amtrak, may make agreements to restructure Amtrak's indebtedness as of the date of enactment of this Act. This authorization expires 2 years after the date of enactment of this Act.

(b) **DEBT RESTRUCTURING.**—The Secretary of the Treasury, in consultation with the Secretary and Amtrak, shall enter into negotiations with the holders of Amtrak debt, including leases, outstanding as of the date of enactment of this Act for the purpose of restructuring (including repayment) and repaying that debt. The Secretary of the Treasury may secure agreements for restructuring or repayment on such terms as the Secretary of the Treasury deems favorable to the interests of the United States Government.

(c) **CRITERIA.**—In restructuring Amtrak's indebtedness, the Secretary of the Treasury and Amtrak—

(1) shall take into consideration repayment costs, the term of any loan or loans, and market conditions; and

(2) shall ensure that the restructuring results in significant savings to Amtrak and the United States Government.

(d) PAYMENT OF RENEGOTIATED DEBT.—If the criteria under subsection (c) are met, the Secretary of the Treasury may assume or repay the restructured debt, as appropriate.

(e) AMTRAK PRINCIPAL AND INTEREST PAYMENTS.—

(1) PRINCIPAL ON DEBT SERVICE.—Unless the Secretary of the Treasury makes sufficient payments to creditors under subsection (d) so that Amtrak is required to make no payments to creditors in a fiscal year, the Secretary shall use funds authorized by section 102 of this division for the use of Amtrak for retirement of principal or payment of interest on loans for capital equipment, or capital leases.

(2) REDUCTIONS IN AUTHORIZATION LEVELS.—Whenever action taken by the Secretary of the Treasury under subsection (a) results in reductions in amounts of principal or interest that Amtrak must service on existing debt, the corresponding amounts authorized by section 102 shall be reduced accordingly.

(f) LEGAL EFFECT OF PAYMENTS UNDER THIS SECTION.—The payment of principal and interest on secured debt, other than debt assumed under subsection (d), with the proceeds of grants under subsection (e) shall not—

(1) modify the extent or nature of any indebtedness of Amtrak to the United States in existence as of the date of enactment of this Act;

(2) change the private nature of Amtrak's or its successors' liabilities; or

(3) imply any Federal guarantee or commitment to amortize Amtrak's outstanding indebtedness.

(g) SECRETARY APPROVAL.—Amtrak may not incur more debt after the date of enactment of this Act without the express advance approval of the Secretary.

(h) REPORT.—The Secretary of the Treasury shall transmit a report to the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Appropriations of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Appropriations of the Senate, by June 1, 2010—

(1) describing in detail any agreements to restructure the Amtrak debt; and

(2) providing an estimate of the savings to Amtrak and the United States Government.

#### SEC. 206. ESTABLISHMENT OF GRANT PROCESS.

(a) GRANT REQUESTS.—Amtrak shall submit grant requests (including a schedule for the disbursement of funds), consistent with the requirements of this division, to the Secretary for funds authorized to be appropriated to the Secretary for the use of Amtrak under sections 101(a), (b), and (c), 102, 219(b), and 302.

(b) PROCEDURES FOR GRANT REQUESTS.—The Secretary shall establish substantive and procedural requirements, including schedules, for grant requests under this section not later than 30 days after the date of enactment of this Act and shall transmit copies of such requirements and schedules to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. As part of those requirements, the Secretary shall require, at a minimum, that Amtrak deposit grant funds, consistent with

the appropriated amounts for each area of expenditure in a given fiscal year, in the following 2 accounts:

- (1) The Amtrak Operating account.
- (2) The Amtrak General Capital account.

Amtrak may not transfer such funds to another account or expend such funds for any purpose other than the purposes covered by the account in which the funds are deposited without approval by the Secretary.

(c) REVIEW AND APPROVAL.—

(1) 30-DAY APPROVAL PROCESS.—The Secretary shall complete the review of a grant request (including the disbursement schedule) and approve or disapprove the request within 30 days after the date on which Amtrak submits the grant request. If the Secretary disapproves the request or determines that the request is incomplete or deficient, the Secretary shall include the reason for disapproval or the incomplete items or deficiencies in a notice to Amtrak.

(2) 15-DAY MODIFICATION PERIOD.—Within 15 days after receiving notification from the Secretary under the preceding sentence, Amtrak shall submit a modified request for the Secretary's review.

(3) REVISED REQUESTS.—Within 15 days after receiving a modified request from Amtrak, the Secretary shall either approve the modified request, or, if the Secretary finds that the request is still incomplete or deficient, the Secretary shall identify in writing to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate the remaining deficiencies and recommend a process for resolving the outstanding portions of the request.

**SEC. 207. METRICS AND STANDARDS.**

(a) IN GENERAL.—Within 180 days after the date of enactment of this Act, the Federal Railroad Administration and Amtrak shall jointly, in consultation with the Surface Transportation Board, rail carriers over whose rail lines Amtrak trains operate, States, Amtrak employees, nonprofit employee organizations representing Amtrak employees, and groups representing Amtrak passengers, as appropriate, develop new or improve existing metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations, including cost recovery, on-time performance and minutes of delay, ridership, on-board services, stations, facilities, equipment, and other services. Such metrics, at a minimum, shall include the percentage of avoidable and fully allocated operating costs covered by passenger revenues on each route, ridership per train mile operated, measures of on-time performance and delays incurred by intercity passenger trains on the rail lines of each rail carrier and, for long-distance routes, measures of connectivity with other routes in all regions currently receiving Amtrak service and the transportation needs of communities and populations that are not well-served by other forms of intercity transportation. Amtrak shall provide reasonable access to the Federal Railroad Administration in order to enable the Administration to carry out its duty under this section.

(b) QUARTERLY REPORTS.—The Administrator of the Federal Railroad Administration shall collect the necessary data and publish

a quarterly report on the performance and service quality of intercity passenger train operations, including Amtrak's cost recovery, ridership, on-time performance and minutes of delay, causes of delay, on-board services, stations, facilities, equipment, and other services.

(c) **CONTRACTS WITH HOST RAIL CARRIERS.**—To the extent practicable, Amtrak and its host rail carriers shall incorporate the metrics and standards developed under subsection (a) into their access and service agreements.

(d) **ARBITRATION.**—If the development of the metrics and standards is not completed within the 180-day period required by subsection (a), any party involved in the development of those standards may petition the Surface Transportation Board to appoint an arbitrator to assist the parties in resolving their disputes through binding arbitration.

**SEC. 208. METHODOLOGIES FOR AMTRAK ROUTE AND SERVICE PLANNING DECISIONS.**

(a) **METHODOLOGY DEVELOPMENT.**—Within 180 days after the date of enactment of this Act, the Federal Railroad Administration shall obtain the services of a qualified independent entity to develop and recommend objective methodologies for Amtrak to use in determining what intercity passenger routes and services it will provide, including the establishment of new routes, the elimination of existing routes, and the contraction or expansion of services or frequencies over such routes. In developing such methodologies, the entity shall consider—

(1) the current or expected performance and service quality of intercity passenger train operations, including cost recovery, on-time performance and minutes of delay, ridership, on-board services, stations, facilities, equipment, and other services;

(2) connectivity of a route with other routes;

(3) the transportation needs of communities and populations that are not well served by intercity passenger rail service or by other forms of intercity transportation;

(4) Amtrak's and other major intercity passenger rail service providers in other countries' methodologies for determining intercity passenger rail routes and services; and

(5) the views of the States and other interested parties.

(b) **SUBMITTAL TO CONGRESS.**—Within 1 year after the date of enactment of this Act, the entity shall submit recommendations developed under subsection (a) to Amtrak, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

(c) **CONSIDERATION OF RECOMMENDATIONS.**—Within 90 days after receiving the recommendations developed under subsection (a) by the entity, the Amtrak Board of Directors shall consider the adoption of those recommendations. The Board shall transmit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate explaining its reasons for adopting or not adopting the recommendations.

**SEC. 209. STATE-SUPPORTED ROUTES.**

(a) **IN GENERAL.**—Within 2 years after the date of enactment of this Act, the Amtrak Board of Directors, in consultation with the Secretary, the governors of each relevant State, and the Mayor

of the District of Columbia, or entities representing those officials, shall develop and implement a single, nationwide standardized methodology for establishing and allocating the operating and capital costs among the States and Amtrak associated with trains operated on each of the routes described in section 24102(5)(B) and (D) and section 24702 that—

(1) ensures, within 5 years after the date of enactment of this Act, equal treatment in the provision of like services of all States and groups of States (including the District of Columbia); and

(2) allocates to each route the costs incurred only for the benefit of that route and a proportionate share, based upon factors that reasonably reflect relative use, of costs incurred for the common benefit of more than 1 route.

(b) REVISIONS.—The Amtrak Board of Directors, in consultation with the Secretary, the governors of each relevant State, and the Mayor of the District of Columbia, or entities representing those officials, may revise or amend the methodology established under subsection (a) as necessary, consistent with the intent of this section, including revisions or modifications based on Amtrak’s financial accounting system developed pursuant to section 203 of this division.

(c) REVIEW.—If Amtrak and the States (including the District of Columbia) in which Amtrak operates such routes do not voluntarily adopt and implement the methodology developed under subsection (a) in allocating costs and determining compensation for the provision of service in accordance with the date established therein, the Surface Transportation Board shall determine the appropriate methodology required under subsection (a) for such services in accordance with the procedures and procedural schedule applicable to a proceeding under section 24904(c) of title 49, United States Code, and require the full implementation of this methodology with regards to the provision of such service within 1 year after the Board’s determination of the appropriate methodology.

(d) USE OF CHAPTER 244 FUNDS.—Funds provided to a State under chapter 244 of title 49, United States Code, may be used, as provided in that chapter, to pay capital costs determined in accordance with this section.

**SEC. 210. LONG-DISTANCE ROUTES.**

(a) IN GENERAL.—Chapter 247 is amended by adding at the end thereof the following:

**“§ 24710. Long-distance routes**

“(a) ANNUAL EVALUATION.—Using the financial and performance metrics developed under section 207 of the Passenger Rail Investment and Improvement Act of 2008, Amtrak shall—

“(1) evaluate annually the financial and operating performance of each long-distance passenger rail route operated by Amtrak; and

“(2) rank the overall performance of such routes for 2008 and identify each long-distance passenger rail route operated by Amtrak in 2008 according to its overall performance as belonging to the best performing third of such routes, the second best performing third of such routes, or the worst performing third of such routes.



“(b) PERFORMANCE IMPROVEMENT PLAN.—Amtrak shall develop and post on its website a performance improvement plan for its long-distance passenger rail routes to achieve financial and operating improvements based on the data collected through the application of the financial and performance metrics developed under section 207 of that Act. The plan shall address—

- “(1) on-time performance;
- “(2) scheduling, frequency, routes, and stops;
- “(3) the feasibility of restructuring service into connected corridor service;
- “(4) performance-related equipment changes and capital improvements;
- “(5) on-board amenities and service, including food, first class, and sleeping car service;
- “(6) State or other non-Federal financial contributions;
- “(7) improving financial performance;
- “(8) anticipated Federal funding of operating and capital costs; and
- “(9) other aspects of Amtrak’s long-distance passenger rail routes that affect the financial, competitive, and functional performance of service on Amtrak’s long-distance passenger rail routes.

“(c) IMPLEMENTATION.—Amtrak shall implement the performance improvement plan developed under subsection (b)—

- “(1) beginning in fiscal year 2010 for those routes identified as being in the worst performing third under subsection (a)(2);
- “(2) beginning in fiscal year 2011 for those routes identified as being in the second best performing third under subsection (a)(2); and
- “(3) beginning in fiscal year 2012 for those routes identified as being in the best performing third under subsection (a)(2).

“(d) ENFORCEMENT.—The Federal Railroad Administration shall monitor the development, implementation, and outcome of improvement plans under this section. If the Federal Railroad Administration determines that Amtrak is not making reasonable progress in implementing its performance improvement plan or, after the performance improvement plan is implemented under subsection (c)(1) in accordance with the terms of that plan, Amtrak has not achieved the outcomes it has established for such routes, under the plan for any calendar year, the Federal Railroad Administration—

- “(1) shall notify Amtrak, the Inspector General of the Department of Transportation, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate of its determination under this subsection;
- “(2) shall provide Amtrak with an opportunity for a hearing with respect to that determination; and
- “(3) may withhold appropriated funds otherwise available to Amtrak for the operation of a route or routes from among the worst performing third of routes currently served by Amtrak on which Amtrak is not making reasonable progress, other than funds made available for passenger safety or security measures.”.

(b) **CONFORMING AMENDMENT.**—The chapter analysis for chapter 247 is amended by inserting after the item relating to section 24709 the following:

“24710. Long distance routes.”.

**SEC. 211. NORTHEAST CORRIDOR STATE-OF-GOOD-REPAIR PLAN.**

(a) **IN GENERAL.**—Within 6 months after the date of enactment of this Act, Amtrak, in consultation with the Secretary and the States (including the District of Columbia) that make up the Northeast Corridor (as defined in section 24102 of title 49, United States Code), shall prepare a capital spending plan for capital projects required to return the railroad right-of-way (including track, signals, and auxiliary structures), facilities, stations, and equipment, of the Northeast Corridor main line to a state-of-good-repair by the end of fiscal year 2018, consistent with the funding levels authorized in this division, and shall submit the plan to the Secretary.

(b) **REVIEW AND APPROVAL BY THE SECRETARY.**—

(1) **60-DAY APPROVAL PROCESS.**—The Secretary shall complete the review of the capital spending plan and approve or disapprove the plan within 60 days after the date on which Amtrak submits the plan. During review, the Secretary may seek comments from the Commission established under section 24905 of title 49, United States Code, and other Northeast Corridor users regarding the plan. If the Secretary disapproves the plan or determines that the plan is incomplete or deficient, the Secretary shall include the reason for disapproval or the incomplete items or deficiencies in a notice to Amtrak.

(2) **15-DAY MODIFICATION PERIOD.**—Within 15 days after receiving notification from the Secretary under paragraph (1), Amtrak shall submit a modified plan for the Secretary's review.

(3) **REVISED REQUESTS.**—Within 15 days after receiving a modified plan from Amtrak, the Secretary shall either approve the modified plan, or, if the Secretary finds that the plan is still incomplete or deficient, the Secretary shall identify in writing to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate the remaining deficiencies and recommend a process for resolving the outstanding portions of the plan.

(c) **PLAN UPDATES.**—The plan shall be updated at least annually and the Secretary shall review and approve such updates, in accordance with the procedures described in subsection (b).

(d) **GRANTS.**—The Secretary shall make grants to Amtrak with funds authorized by section 101(c) for Northeast Corridor capital investments contained within the capital spending plan prepared by Amtrak and approved by the Secretary.

(e) **OVERSIGHT.**—Using the funds authorized by section 101(d), the Secretary shall review Amtrak's capital expenditures funded by this section to ensure that such expenditures are consistent with the capital spending plan and that Amtrak is providing adequate project management oversight and fiscal controls.

(f) **ELIGIBILITY OF EXPENDITURES.**—The Federal share of expenditures for capital improvements under this section may not exceed 100 percent.

**SEC. 212. NORTHEAST CORRIDOR INFRASTRUCTURE AND OPERATIONS IMPROVEMENTS.**

(a) IN GENERAL.—Section 24905 is amended to read as follows:

**“§ 24905. Northeast Corridor Infrastructure and Operations Advisory Commission; Safety Committee**

“(a) NORTHEAST CORRIDOR INFRASTRUCTURE AND OPERATIONS ADVISORY COMMISSION.—

“(1) Within 180 days after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008, the Secretary of Transportation shall establish a Northeast Corridor Infrastructure and Operations Advisory Commission (referred to in this section as the ‘Commission’) to promote mutual cooperation and planning pertaining to the rail operations and related activities of the Northeast Corridor. The Commission shall be made up of—

“(A) members representing Amtrak;

“(B) members representing the Department of Transportation, including the Federal Railroad Administration;

“(C) 1 member from each of the States (including the District of Columbia) that constitute the Northeast Corridor as defined in section 24102, designated by, and serving at the pleasure of, the chief executive officer thereof; and

“(D) non-voting representatives of freight railroad carriers using the Northeast Corridor selected by the Secretary.

“(2) The Secretary shall ensure that the membership belonging to any of the groups enumerated under paragraph (1) shall not constitute a majority of the Commission’s memberships.

“(3) The Commission shall establish a schedule and location for convening meetings, but shall meet no less than four times per fiscal year, and the Commission shall develop rules and procedures to govern the Commission’s proceedings.

“(4) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

“(5) Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

“(6) The Chairman of the Commission shall be elected by the members.

“(7) The Commission may appoint and fix the pay of such personnel as it considers appropriate.

“(8) Upon request of the Commission, the head of any department or agency of the United States may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this section.

“(9) Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

“(10) The Commission shall consult with other entities as appropriate.

“(b) STATEMENT OF GOALS AND RECOMMENDATIONS.—

“(1) STATEMENT OF GOALS.—The Commission shall develop a statement of goals concerning the future of Northeast Corridor rail infrastructure and operations based on achieving expanded and improved intercity, commuter, and freight rail services operating with greater safety and reliability, reduced travel times, increased frequencies and enhanced intermodal connections designed to address airport and highway congestion, reduce transportation energy consumption, improve air quality, and increase economic development of the Northeast Corridor region.

“(2) RECOMMENDATIONS.—The Commission shall develop recommendations based on the statement developed under this section addressing, as appropriate—

“(A) short-term and long-term capital investment needs beyond those specified in the state-of-good-repair plan under section 211 of the Passenger Rail Investment and Improvement Act of 2008;

“(B) future funding requirements for capital improvements and maintenance;

“(C) operational improvements of intercity passenger rail, commuter rail, and freight rail services;

“(D) opportunities for additional non-rail uses of the Northeast Corridor;

“(E) scheduling and dispatching;

“(F) safety and security enhancements;

“(G) equipment design;

“(H) marketing of rail services;

“(I) future capacity requirements; and

“(J) potential funding and financing mechanisms for projects of corridor-wide significance.

“(c) ACCESS COSTS.—

“(1) DEVELOPMENT OF FORMULA.—Within 2 years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008, the Commission shall—

“(A) develop a standardized formula for determining and allocating costs, revenues, and compensation for Northeast Corridor commuter rail passenger transportation, as defined in section 24102 of this title, on the Northeast Corridor main line between Boston, Massachusetts, and Washington, District of Columbia, and the Northeast Corridor branch lines connecting to Harrisburg, Pennsylvania, Springfield, Massachusetts, and Spuyten Duyvil, New York, that use Amtrak facilities or services or that provide such facilities or services to Amtrak that ensures that—

“(i) there is no cross-subsidization of commuter rail passenger, intercity rail passenger, or freight rail transportation;

“(ii) each service is assigned the costs incurred only for the benefit of that service, and a proportionate share, based upon factors that reasonably reflect relative use, of costs incurred for the common benefit of more than 1 service; and

“(iii) all financial contributions made by an operator of a service that benefit an infrastructure owner other than the operator are considered, including but not limited to, any capital infrastructure investments and in-kind services;

“(B) develop a proposed timetable for implementing the formula before the end of the 6th year following the date of enactment of that Act;

“(C) transmit the proposed timetable to the Surface Transportation Board; and

“(D) at the request of a Commission member, petition the Surface Transportation Board to appoint a mediator to assist the Commission members through non-binding mediation to reach an agreement under this section.

“(2) IMPLEMENTATION.—Amtrak and public authorities providing commuter rail passenger transportation on the Northeast Corridor shall implement new agreements for usage of facilities or services based on the formula proposed in paragraph (1) in accordance with the timetable established therein. If the entities fail to implement such new agreements in accordance with the timetable, the Commission shall petition the Surface Transportation Board to determine the appropriate compensation amounts for such services in accordance with section 24904(c) of this title. The Surface Transportation Board shall enforce its determination on the party or parties involved.

“(3) REVISIONS.—The Commission may make necessary revisions to the formula developed under paragraph (1), including revisions based on Amtrak’s financial accounting system developed pursuant to section 203 of the Passenger Rail Investment and Improvement Act of 2008.

“(d) TRANSMISSION OF STATEMENT OF GOALS AND RECOMMENDATIONS.—The Commission shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—

“(1) the statement of goals developed under subsection (b) within 1 year after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008; and

“(2) the recommendations developed under subsection (b) and the formula and timetable developed under subsection (c)(1) annually.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as may be necessary for the period encompassing fiscal years 2009 through 2013 to carry out this section.

“(f) NORTHEAST CORRIDOR SAFETY COMMITTEE.—

“(1) IN GENERAL.—The Secretary shall establish a Northeast Corridor Safety Committee composed of members appointed by the Secretary. The members shall be representatives of—

“(A) the Department of Transportation, including the Federal Railroad Administration;

“(B) Amtrak;

“(C) freight carriers operating more than 150,000 train miles a year on the main line of the Northeast Corridor;

“(D) commuter rail agencies;

“(E) rail passengers;

“(F) rail labor; and

“(G) other individuals and organizations the Secretary decides have a significant interest in rail safety or security.

“(2) FUNCTION; MEETINGS.—The Secretary shall consult with the Committee about safety and security improvements

on the Northeast Corridor main line. The Committee shall meet at least two times per year to consider safety and security matters on the main line.

“(3) REPORT.—At the beginning of the first session of each Congress, the Secretary shall submit a report to the Commission and to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the status of efforts to improve safety and security on the Northeast Corridor main line. The report shall include the safety and security recommendations of the Committee and the comments of the Secretary on those recommendations.”

(b) CONFORMING AMENDMENTS.—(1) The item relating to section 24905 in the table of sections of chapter 249 is amended to read as follows:

“24905. Northeast Corridor Infrastructure and Operations Advisory Commission; Safety Committee.”

(2) Section 24904(c)(2) is amended by—

(A) inserting “commuter rail passenger and” after “between”; and

(B) striking “freight” in the second sentence.

(c) RIDOT ACCESS AGREEMENT.—

(1) IN GENERAL.—Not later than July 1, 2009, Amtrak and the Rhode Island Department of Transportation shall enter into an agreement governing access fees and other costs or charges related to the operation of the South County commuter rail service on the Northeast Corridor between Providence and Wickford Junction, Rhode Island.

(2) FAILURE TO REACH AGREEMENT.—If Amtrak and the Rhode Island Department of Transportation fail to reach the agreement specified under paragraph (1), the Administrator of the Federal Railroad Administration shall, after consultation with both parties, resolve any outstanding disagreements between the parties, including setting access fees and other costs or charges related to the operation of the South County commuter rail service that do not allow for the cross-subsidization of intercity rail passenger and commuter rail passenger service, not later than January 1, 2010.

(3) INTERIM ACCESS COSTS.—Any agreement between Amtrak and the Rhode Island Department of Transportation relating to access costs made under this subsection shall be superseded by any access cost formula developed by the Northeast Corridor Infrastructure and Operations Advisory Commission under section 24905(c)(1) of title 49, United States Code, as amended by subsection (a) of this section.

(d) HIGH-SPEED SERVICE STUDY.—

(1) IN GENERAL.—Amtrak shall submit a report detailing the infrastructure and equipment improvements necessary to provide regular high-speed service—

(A) between Washington, District of Columbia, and New York, New York, in 2 hours and 30 minutes; and

(B) between New York, New York, and Boston, Massachusetts, in 3 hours and 15 minutes.

(2) ISSUES.—The report shall include—

(A) an estimated time frame for achieving the trip time described in paragraph (1);

(B) an analysis of any significant obstacles that would hinder such an achievement;

(C) a detailed description and cost estimate of the specific infrastructure and equipment improvements necessary for such an achievement; and

(D) an initial assessment of the infrastructure and equipment improvements, including an order of magnitude cost estimate of such improvements, that would be necessary to provide regular high-speed service—

(i) between Washington, District of Columbia, and New York, New York, in 2 hours and 15 minutes; and

(ii) between New York, New York, and Boston, Massachusetts, in 3 hours.

(3) REPORT.—Within 1 year after the date of enactment of this Act, Amtrak shall submit the report required under this subsection to—

(A) the Committee on Commerce, Science, and Transportation of the Senate;

(B) the Committee on Appropriations of the Senate;

(C) the Committee on Transportation and Infrastructure of the House of Representatives;

(D) the Committee on Appropriations of the House of Representatives; and

(E) the Federal Railroad Administration.

(e) REPORT ON NORTHEAST CORRIDOR ECONOMIC DEVELOPMENT.—Within 2 years after the date of enactment of this Act, the Northeast Corridor Infrastructure and Operations Advisory Commission shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the role of Amtrak's Northeast Corridor service between Washington, District of Columbia, and New York, New York, in the economic development of the Northeast Corridor region. The report shall examine how to enhance the utilization of the Northeast Corridor for greater economic development, including improving—

(1) real estate utilization;

(2) improved intercity, commuter, and freight services; and

(3) optimum utility utilization.

#### **SEC. 213. PASSENGER TRAIN PERFORMANCE.**

(a) IN GENERAL.—Section 24308 is amended by adding at the end the following:

“(f) PASSENGER TRAIN PERFORMANCE AND OTHER STANDARDS.—

“(1) INVESTIGATION OF SUBSTANDARD PERFORMANCE.—If the on-time performance of any intercity passenger train averages less than 80 percent for any 2 consecutive calendar quarters, or the service quality of intercity passenger train operations for which minimum standards are established under section 207 of the Passenger Rail Investment and Improvement Act of 2008 fails to meet those standards for 2 consecutive calendar quarters, the Surface Transportation Board (referred to in this section as the ‘Board’) may initiate an investigation, or upon the filing of a complaint by Amtrak, an intercity passenger rail operator, a host freight railroad over which Amtrak operates, or an entity for which Amtrak operates intercity passenger rail service, the Board shall initiate such an investigation,

to determine whether and to what extent delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by a rail carrier over whose tracks the intercity passenger train operates or reasonably addressed by Amtrak or other intercity passenger rail operators. As part of its investigation, the Board has authority to review the accuracy of the train performance data and the extent to which scheduling and congestion contribute to delays. In making its determination or carrying out such an investigation, the Board shall obtain information from all parties involved and identify reasonable measures and make recommendations to improve the service, quality, and on-time performance of the train.

“(2) PROBLEMS CAUSED BY HOST RAIL CARRIER.—If the Board determines that delays or failures to achieve minimum standards investigated under paragraph (1) are attributable to a rail carrier’s failure to provide preference to Amtrak over freight transportation as required under subsection (c), the Board may award damages against the host rail carrier, including prescribing such other relief to Amtrak as it determines to be reasonable and appropriate pursuant to paragraph (3) of this subsection.

“(3) DAMAGES AND RELIEF.—In awarding damages and prescribing other relief under this subsection the Board shall consider such factors as—

“(A) the extent to which Amtrak suffers financial loss as a result of host rail carrier delays or failure to achieve minimum standards; and

“(B) what reasonable measures would adequately deter future actions which may reasonably be expected to be likely to result in delays to Amtrak on the route involved.

“(4) USE OF DAMAGES.—The Board shall, as it deems appropriate, order the host rail carrier to remit the damages awarded under this subsection to Amtrak or to an entity for which Amtrak operates intercity passenger rail service. Such damages shall be used for capital or operating expenditures on the routes over which delays or failures to achieve minimum standards were the result of a rail carrier’s failure to provide preference to Amtrak over freight transportation as determined in accordance with paragraph (2).”

(b) FEES.—The Surface Transportation Board may establish and collect filing fees from any entity that files a complaint under section 24308(f)(1) of title 49, United States Code, or otherwise requests or requires the Board’s services pursuant to this division. The Board shall establish such fees at levels that will fully or partially, as the Board determines to be appropriate, offset the costs of adjudicating complaints under that section and other requests or requirements for Board action under this division. The Board may waive any fee established under this subsection for any governmental entity as determined appropriate by the Board.

(c) AUTHORIZATION OF ADDITIONAL STAFF.—The Surface Transportation Board may increase the number of Board employees by up to 15 for the 5 fiscal year period beginning with fiscal year 2009 to carry out its responsibilities under section 24308 of title 49, United States Code, and this division.

(d) CHANGE OF REFERENCE.—Section 24308 is amended—

(1) by striking “Interstate Commerce Commission” in subsection (a)(2)(A) and inserting “Surface Transportation Board”;



(2) by striking “Commission” each place it appears and inserting “Board”;

(3) by striking “Secretary of Transportation” in subsection (c) and inserting “Board”; and

(4) by striking “Secretary” the last 3 places it appears in subsection (c) and each place it appears in subsections (d) and (e) and inserting “Board”.

**SEC. 214. ALTERNATE PASSENGER RAIL SERVICE PILOT PROGRAM.**

(a) IN GENERAL.—Chapter 247, as amended by section 210, is amended by adding at the end thereof the following:

**“§ 24711. Alternate passenger rail service pilot program**

“(a) IN GENERAL.—Within 1 year after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008, the Federal Railroad Administration shall complete a rulemaking proceeding to develop a pilot program that—

“(1) permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates a passenger rail service route described in subparagraph (B), (C), or (D) of section 24102(5) or in section 24702 to petition the Administration to be considered as a passenger rail service provider over that route in lieu of Amtrak for a period not to exceed 5 years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008;

“(2) requires the Administration to notify Amtrak within 30 days after receiving a petition under paragraph (1) and establish a deadline by which both the petitioner and Amtrak would be required to submit a bid to provide passenger rail service over the route to which the petition relates;

“(3) requires that each bid describe how the bidder would operate the route, what Amtrak passenger equipment would be needed, if any, what sources of non-Federal funding the bidder would use, including any State subsidy, among other things;

“(4) requires the Administration to select winning bidders by evaluating the bids against the financial and performance metrics developed under section 207 of the Passenger Rail Investment and Improvement Act of 2008 and to give preference in awarding contracts to bidders seeking to operate routes that have been identified as one of the five worst performing Amtrak routes under section 24710;

“(5) requires the Administration to execute a contract within a specified, limited time after the deadline established under paragraph (2) and award to the winning bidder—

“(A) the right and obligation to provide passenger rail service over that route subject to such performance standards as the Administration may require, consistent with the standards developed under section 207 of the Passenger Rail Investment and Improvement Act of 2008; and

“(B) an operating subsidy—

“(i) for the first year at a level not in excess of the level in effect during the fiscal year preceding the fiscal year in which the petition was received, adjusted for inflation;

“(ii) for any subsequent years at such level, adjusted for inflation; and

“(6) requires that each bid contain a staffing plan describing the number of employees needed to operate the service, the job assignments and requirements, and the terms of work for prospective and current employees of the bidder for the service outlined in the bid, and such staffing plan be made available by the winning bidder to the public after the bid award.

“(b) ROUTE LIMITATIONS.—The Administration may not make the program available with respect to more than 2 Amtrak intercity passenger rail routes.

“(c) PERFORMANCE STANDARDS; ACCESS TO FACILITIES; EMPLOYEES.—If the Administration awards the right and obligation to provide passenger rail service over a route under the program to a rail carrier or rail carriers—

“(1) it shall execute a contract with the rail carrier or rail carriers for rail passenger operations on that route that conditions the operating and subsidy rights upon—

“(A) the service provider continuing to provide passenger rail service on the route that is no less frequent, nor over a shorter distance, than Amtrak provided on that route before the award; and

“(B) the service provider’s compliance with the minimum standards established under section 207 of the Passenger Rail Investment and Improvement Act of 2008 and such additional performance standards as the Administration may establish;

“(2) it shall, if the award is made to a rail carrier other than Amtrak, require Amtrak to provide access to its reservation system, stations, and facilities directly related to operations to any rail carrier or rail carriers awarded a contract under this section, in accordance with section 217 of that Act, necessary to carry out the purposes of this section;

“(3) the employees of any person used by a rail carrier or rail carriers (as defined in section 10102(5) of this title) in the operation of a route under this section shall be considered an employee of that carrier or carriers and subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak, including provisions under section 121 of the Amtrak Reform and Accountability Act of 1997 relating to employees that provide food and beverage service; and

“(4) the winning bidder shall provide hiring preference to qualified Amtrak employees displaced by the award of the bid, consistent with the staffing plan submitted by the bidder and shall be subject to the grant conditions under section 24405 of this title.

“(d) CESSATION OF SERVICE.—If a rail carrier or rail carriers awarded a route under this section cease to operate the service or fail to fulfill their obligations under the contract required under subsection (c), the Administrator, in collaboration with the Surface Transportation Board, shall take any necessary action consistent with this title to enforce the contract and ensure the continued provision of service, including the installment of an interim service provider and re-bidding the contract to operate the service. The entity providing service shall either be Amtrak or a rail carrier defined in subsection (a)(1).

“(e) ADEQUATE RESOURCES.—Before taking any action allowed under this section, the Secretary shall certify that the Administrator

has sufficient resources that are adequate to undertake the program established under this section.”.

(b) **REPORT.**—Within 1 year after the conclusion of the pilot program established under subsection (a), the Federal Railroad Administration shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results on the pilot program established under section 24711, and any recommendations for further action.

(c) **CONFORMING AMENDMENT.**—The chapter analysis for chapter 247, as amended by section 210, is amended by inserting after the item relating to section 24710 the following:

“24711. Alternate passenger rail service pilot program.”.

**SEC. 215. EMPLOYEE TRANSITION ASSISTANCE.**

(a) **PROVISION OF FINANCIAL INCENTIVES.**—For Amtrak employees who are adversely affected by the cessation of the operation of a long-distance route or any other route under section 24711 of title 49, United States Code, previously operated by Amtrak, the Secretary shall develop a program under which the Secretary may, at the Secretary’s discretion, provide grants for financial incentives to be provided to Amtrak employees who voluntarily terminate their employment with Amtrak and relinquish any legal rights to receive termination-related payments under any contractual agreement with Amtrak.

(b) **CONDITIONS FOR FINANCIAL INCENTIVES.**—As a condition for receiving financial assistance grants under this section, Amtrak must certify that—

(1) a reasonable attempt was made to reassign an employee adversely affected under section 24711 of title 49, United States Code, or by the elimination of any route, to other positions within Amtrak in accordance with any contractual agreements;

(2) the financial assistance results in a net reduction in the total number of employees equal to the number receiving financial incentives;

(3) the financial assistance results in a net reduction in total employment expense equivalent to the total employment expenses associated with the employees receiving financial incentives; and

(4) the total number of employees eligible for termination-related payments will not be increased without the express written consent of the Secretary.

(c) **AMOUNT OF FINANCIAL INCENTIVES.**—The financial incentives authorized under this section may be no greater than \$100,000 per employee.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to make grants to Amtrak to provide financial incentives under subsection (a).

(e) **TERMINATION-RELATED PAYMENTS.**—If Amtrak employees adversely affected by the cessation of Amtrak service resulting from the awarding of a grant to an operator other than Amtrak for the operation of a route under section 24711 of title 49, United States Code, or any other route, previously operated by Amtrak do not receive financial incentives under subsection (a), then the Secretary shall make grants to Amtrak from funds authorized by

section 101 of this division for termination-related payments to employees under existing contractual agreements.

**SEC. 216. SPECIAL PASSENGER TRAINS.**

Amtrak is encouraged to increase the operation of special trains funded by, or in partnership with, private sector operators through competitive contracting to minimize the need for Federal subsidies. Amtrak shall utilize the provisions of section 24308 of title 49, United States Code, when necessary to obtain access to facilities, train and engine crews, or services of a rail carrier or regional transportation authority that are required to operate such trains.

**SEC. 217. ACCESS TO AMTRAK EQUIPMENT AND SERVICES.**

If a State desires to select or selects an entity other than Amtrak to provide services required for the operation of an intercity passenger train route described in section 24102(5)(D) or 24702 of title 49, United States Code, the State may make an agreement with Amtrak to use facilities and equipment of, or have services provided by, Amtrak under terms agreed to by the State and Amtrak to enable the State to utilize an entity other than Amtrak to provide services required for operation of the route. If the parties cannot agree upon terms, and the Surface Transportation Board finds that access to Amtrak's facilities or equipment, or the provision of services by Amtrak, is necessary to carry out this provision and that the operation of Amtrak's other services will not be impaired thereby, the Surface Transportation Board shall, within 120 days after submission of the dispute, issue an order that the facilities and equipment be made available, and that services be provided, by Amtrak, and shall determine reasonable compensation, liability, and other terms for use of the facilities and equipment and provision of the services. Compensation shall be determined, as appropriate, in accordance with the methodology established pursuant to section 209 of this division, if available.

**SEC. 218. GENERAL AMTRAK PROVISIONS.**

(a) CONFORMING CHANGES.—

(1) PLAN REQUIRED.—Section 24101(d) is amended—

(A) by striking “plan to operate within the funding levels authorized by section 24104 of this chapter, including the budgetary goals for fiscal years 1998 through 2002.” and inserting “plan, consistent with section 204 of the Passenger Rail Investment and Improvement Act of 2008, including the budgetary goals for fiscal years 2009 through 2013.”; and

(B) by striking the last sentence and inserting “Amtrak and its Board of Directors shall adopt a long-term plan that minimizes the need for Federal operating subsidies.”.

(2) AMTRAK REFORM AND ACCOUNTABILITY ACT AMENDMENTS.—Title II of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. 24101 nt) is amended by striking sections 204 and 205.

(b) LEASE ARRANGEMENTS AND OTHER PURCHASES.—Amtrak may obtain from the Administrator of General Services, and the Administrator may provide to Amtrak, services under sections 502(a) and 602 of title 40, United States Code.

**SEC. 219. STUDY OF COMPLIANCE REQUIREMENTS AT EXISTING INTERCITY RAIL STATIONS.**

(a) **IN GENERAL.**—Amtrak, in consultation with station owners and other railroads operating service through the existing stations that it serves, shall evaluate the improvements necessary to make these stations readily accessible to and usable by individuals with disabilities, as required by such section 242(e)(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12162(e)(2)). The evaluation shall include, for each applicable station, improvements required to bring it into compliance with the applicable parts of such section 242(e)(2), any potential barriers to achieving compliance, including issues related to passenger rail station platforms, the estimated cost of the improvements necessary, the identification of the responsible person (as defined in section 241(5) of that Act (42 U.S.C. 12161(5))), and the earliest practicable date when such improvements can be made. The evaluation shall also include a detailed plan and schedule for bringing all applicable stations into compliance with the applicable parts of section 242(e)(2) by the 2010 statutory deadline for station accessibility. Amtrak shall submit the evaluation to the Committee on Transportation and Infrastructure of the House of Representatives; the Committee on Commerce, Science, and Transportation of the Senate; the Department of Transportation; and the National Council on Disability by February 1, 2009, along with recommendations for funding the necessary improvements. Should the Department of Transportation issue any rule related to transportation for individuals with disabilities by intercity passenger rail after Amtrak submits its evaluation, Amtrak shall, within 120 days after the date that such rule is published, submit to the above parties a supplemental evaluation on any impact of the rule on its cost and schedule for achieving full compliance.

(b) **ACCESSIBILITY IMPROVEMENTS AND BARRIER REMOVAL FOR PEOPLE WITH DISABILITIES.**—There are authorized to be appropriated to the Secretary for the use of Amtrak such sums as may be necessary to improve the accessibility of facilities, including rail platforms, and services.

**SEC. 220. OVERSIGHT OF AMTRAK'S COMPLIANCE WITH ACCESSIBILITY REQUIREMENTS.**

Using the funds authorized by section 103 of this division, the Federal Railroad Administration shall monitor and conduct periodic reviews of Amtrak's compliance with applicable sections of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1974 to ensure that Amtrak's services and facilities are accessible to individuals with disabilities to the extent required by law.

**SEC. 221. AMTRAK MANAGEMENT ACCOUNTABILITY.**

(a) **IN GENERAL.**—Chapter 243 is amended by inserting after section 24309 the following:

**“§ 24310. Management accountability**

“(a) **IN GENERAL.**—Within 3 years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008, and 2 years thereafter, the Inspector General of the Department of Transportation shall complete an overall assessment of the

progress made by Amtrak management and the Department of Transportation in implementing the provisions of that Act.

“(b) ASSESSMENT.—The management assessment undertaken by the Inspector General may include a review of—

“(1) effectiveness in improving annual financial planning;

“(2) effectiveness in implementing improved financial accounting;

“(3) efforts to implement minimum train performance standards;

“(4) progress maximizing revenues, minimizing Federal subsidies, and improving financial results; and

“(5) any other aspect of Amtrak operations the Inspector General finds appropriate to review.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 243 is amended by inserting after the item relating to section 24309 the following:

“24310. Management accountability.”.

**SEC. 222. ON-BOARD SERVICE IMPROVEMENTS.**

(a) IN GENERAL.—Within 1 year after metrics and standards are established under section 207 of this division, Amtrak shall develop and implement a plan to improve on-board service pursuant to the metrics and standards for such service developed under that section.

(b) REPORT.—Amtrak shall provide a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the on-board service improvements proscribed in the plan and the timeline for implementing such improvements.

**SEC. 223. INCENTIVE PAY.**

The Amtrak Board of Directors is encouraged to develop an incentive pay program for Amtrak management employees.

**SEC. 224. PASSENGER RAIL SERVICE STUDIES.**

(a) INTERCITY RAIL SERVICE STUDIES.—Within 1 year after the date of enactment of this Act, Amtrak shall conduct studies of the following routes:

(1) The Pioneer Route between Seattle and Chicago, which was operated by Amtrak until 1997, to determine whether to reinstate passenger rail service along the route or along segments of the route.

(2) The North Coast Hiawatha Route between Chicago and Seattle, through southern Montana, which was operated by Amtrak until 1979, to determine whether to reinstate passenger rail service along the route or along segments of the route, provided that such service will not negatively impact existing Amtrak routes.

(3) Between Cornwells Heights, Pennsylvania, and New York, New York, to determine whether to expand passenger rail service by increasing the frequency of stops or reducing commuter ticket prices for this route.

(4) Between Princeton Junction, New Jersey, and Philadelphia, Pennsylvania, to determine whether to expand passenger rail service along the route.

(5) Between Harrisburg and Pittsburgh, Pennsylvania, to determine whether to increase frequency of passenger rail service along the route or along segments of the route.

(6) The Capitol Limited Route between Cumberland, Maryland, and Pittsburgh, Pennsylvania, to determine whether to reinstate a station stop at Rockwood, Pennsylvania.

(b) ASSISTANCE.—The Comptroller General of the General Accountability Office shall, upon request by Amtrak, assist Amtrak in conducting the studies under subsection (a).

(c) HIGH-SPEED RAIL CORRIDOR STUDIES.—(1) The Secretary shall conduct—

(A) an analysis of the Secretary's December 1, 1998, extension of the designation of the Southeast High-Speed Rail Corridor as authorized under section 104(d)(2) of title 23, United States Code, including an analysis of alternative routings for the corridor;

(B) a feasibility analysis regarding the expansion of the South Central High-Speed Rail Corridor—

(i) to Memphis, Tennessee;

(ii) to the Port of Houston, Texas;

(iii) through Killeen, Texas; and

(iv) south of San Antonio, Texas, to a location in far south Texas to be chosen at the discretion of the Secretary; and

(C) a feasibility analysis regarding the expansion of the Keystone Corridor to Cleveland, Ohio.

These analyses shall consider changes that have occurred in the region's population, anticipated patterns of population growth, connectivity with other modes of transportation, the ability of the proposed corridor to reduce regional traffic congestion, and the ability of current and proposed routings to enhance tourism. Within 1 year after the date of enactment of this Act, the Secretary shall submit a report on these analyses to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, and shall redesignate or modify corridor designations based on these analyses, if necessary.

(2) The Secretary shall establish a process for a State or group of States to petition the Secretary to redesignate or modify any designated high-speed rail corridors.

**SEC. 225. REPORT ON SERVICE DELAYS ON CERTAIN PASSENGER RAIL ROUTES.**

Within 6 months after the date of the enactment of this Act, the Inspector General of the Department of Transportation shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that—

(1) describes service delays and the sources of such delays on—

(A) the Amtrak passenger rail route between Seattle, Washington, and Los Angeles, California (commonly known as the "Coast Starlight"); and

(B) the Amtrak passenger rail route between Vancouver, British Columbia, Canada, and Eugene, Oregon (commonly known as "Amtrak Cascades"); and

(2) contains recommendations for improving the on-time performance of such routes.

**SEC. 226. PLAN FOR RESTORATION OF SERVICE.**

Within 9 months after the date of enactment of this Act, Amtrak shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a plan for restoring passenger rail service between New Orleans, Louisiana, and Sanford, Florida. The plan shall include a projected timeline for restoring such service, the costs associated with restoring such service, and any proposals for legislation necessary to support such restoration of service. In developing the plan, Amtrak shall consult with representatives from the States of Louisiana, Alabama, Mississippi, and Florida, railroad carriers whose tracks may be used for such service, rail passengers, rail labor, and other entities as appropriate.

**SEC. 227. MAINTENANCE AND REPAIR FACILITY UTILIZATION STUDY.**

Within 9 months after the date of enactment of this Act, the Inspector General of the Department of Transportation shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on Amtrak's utilization of its equipment maintenance and repair facilities, including the Beech Grove Mechanical Facility in Indiana. The report shall include an examination of Amtrak's utilization of its existing equipment maintenance and repair facilities, the productivity of such facilities, and the extent to which Amtrak is maximizing opportunities for utilizing each facility, including the provision of maintenance and repair to other rail carriers. In developing this report, the Inspector General shall consult with the Inspector General of Amtrak, Amtrak management, rail labor, and other railroad carriers, as it deems appropriate.

**SEC. 228. SENSE OF THE CONGRESS REGARDING THE NEED TO MAINTAIN AMTRAK AS A NATIONAL PASSENGER RAIL SYSTEM.**

(a) FINDINGS.—The Congress makes the following findings:

(1) In fiscal year 2007, 3,800,000 passengers traveled on Amtrak's long-distance trains, an increase of 2.4 percent over fiscal year 2006.

(2) Amtrak long-distance routes generated \$376,000,000 in revenue in fiscal year 2007, an increase of 5 percent over fiscal year 2006.

(3) Amtrak operates 15 long-distance trains over 18,500 route miles that serve 39 States and the District of Columbia. These trains provide the only rail passenger service to 23 States.

(4) Amtrak's long-distance trains provide an essential transportation service for many communities and to a significant percentage of the general public.

(5) Many long-distance trains serve small communities with limited or no significant air or bus service, especially in remote or isolated areas in the United States.

(6) As a result of airline deregulation and decisions by national bus carriers to leave many communities, rail transportation may provide the only feasible common carrier transportation option for a growing number of areas.



(7) If long-distance trains were eliminated, 23 States and 243 communities would be left with no intercity passenger rail service and 16 other States would lose some rail service. These trains provide a strong economic benefit for the States and communities that they serve.

(8) Long-distance trains also provide transportation during periods of severe weather or emergencies that stall other modes of transportation.

(9) Amtrak provided the only reliable long-distance transportation following the September 11, 2001, terrorist attacks that grounded air travel.

(10) The majority of passengers on long-distance trains do not travel between the endpoints, but rather between any combination of cities along the route.

(11) Passenger trains provide transportation options, mobility for underserved populations, congestion mitigation, and jobs in the areas they serve.

(12) Passenger rail has a positive impact on the environment compared to other modes of transportation by conserving energy, reducing greenhouse gas emissions, and cutting down on other airborne particulate and toxic emissions.

(13) Amtrak communities that are served use passenger rail and passenger rail stations as a significant source of economic development.

(14) This division makes meaningful and important reforms to increase the efficiency, profitability and on-time performance of Amtrak's long-distance routes.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) long-distance passenger rail is a vital and necessary part of our national transportation system and economy; and

(2) Amtrak should maintain a national passenger rail system, including long-distance routes, that connects the continental United States from coast to coast and from border to border.

## **TITLE III—INTERCITY PASSENGER RAIL POLICY**

### **SEC. 301. CAPITAL ASSISTANCE FOR INTERCITY PASSENGER RAIL SERVICE.**

(a) IN GENERAL.—Part C of subtitle V is amended by inserting the following after chapter 243:

#### **“CHAPTER 244—INTERCITY PASSENGER RAIL SERVICE CORRIDOR CAPITAL ASSISTANCE**

“Sec.

“24401. Definitions.

“24402. Capital investment grants to support intercity passenger rail service.

“24403. Project management oversight.

“24404. Use of capital grants to finance first-dollar liability of grant project.

“24405. Grant conditions.

“24406. Authorization of appropriations.

#### **“§ 24401. Definitions**

“In this chapter:

“(1) APPLICANT.—The term ‘applicant’ means a State (including the District of Columbia), a group of States, an Interstate Compact, or a public agency established by one or more States and having responsibility for providing intercity passenger rail service.

“(2) CAPITAL PROJECT.—The term ‘capital project’ means a project or program in a State rail plan developed under chapter 227 of this title for—

“(A) acquiring, constructing, improving, or inspecting equipment, track and track structures, or a facility for use in or for the primary benefit of intercity passenger rail service, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way), payments for the capital portions of rail trackage rights agreements, highway-rail grade crossing improvements related to intercity passenger rail service, mitigating environmental impacts, communication and signalization improvements, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;

“(B) rehabilitating, remanufacturing or overhauling rail rolling stock and facilities used primarily in intercity passenger rail service;

“(C) costs associated with developing State rail plans; and

“(D) the first-dollar liability costs for insurance related to the provision of intercity passenger rail service under section 24404.

“(3) INTERCITY PASSENGER RAIL SERVICE.—The term ‘intercity passenger rail service’ means intercity rail passenger transportation, as defined in section 24102 of this title.

**“§ 24402. Capital investment grants to support intercity passenger rail service**

“(a) GENERAL AUTHORITY.—

“(1) The Secretary of Transportation may make grants under this section to an applicant to assist in financing the capital costs of facilities, infrastructure, and equipment necessary to provide or improve intercity passenger rail transportation.

“(2) Consistent with the requirements of this chapter, the Secretary shall require that a grant under this section be subject to the terms, conditions, requirements, and provisions the Secretary decides are necessary or appropriate for the purposes of this section, including requirements for the disposition of net increases in value of real property resulting from the project assisted under this section and shall prescribe procedures and schedules for the awarding of grants under this title, including application and qualification procedures and a record of decision on applicant eligibility. The Secretary shall issue a final rule establishing such procedures not later than 2 years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008. For the period prior to the earlier of the issuance of such a rule or 2 years after the date of enactment of such Act, the Secretary shall issue interim guidance to applicants covering such procedures, and

administer the grant program authorized under this section pursuant to such guidance.

“(b) PROJECT AS PART OF STATE RAIL PLAN.—

“(1) The Secretary may not approve a grant for a project under this section unless the Secretary finds that the project is part of a State rail plan developed under chapter 227 of this title, or under the plan required by section 211 of the Passenger Rail Investment and Improvement Act of 2008, and that the applicant or recipient has or will have the legal, financial, and technical capacity to carry out the project, satisfactory continuing control over the use of the equipment or facilities, and the capability and willingness to maintain the equipment or facilities.

“(2) An applicant shall provide sufficient information upon which the Secretary can make the findings required by this subsection.

“(3) If an applicant has not selected the proposed operator of its service competitively, the applicant shall provide written justification to the Secretary showing why the proposed operator is the best, taking into account price and other factors, and that use of the proposed operator will not unnecessarily increase the cost of the project.

“(c) PROJECT SELECTION CRITERIA.—The Secretary, in selecting the recipients of financial assistance to be provided under subsection (a), shall—

“(1) require—

“(A) that the project be part of a State rail plan developed under chapter 227 of this title, or under the plan required by section 211 of the Passenger Rail Investment and Improvement Act of 2008;

“(B) that the applicant or recipient has or will have the legal, financial, and technical capacity to carry out the project, satisfactory continuing control over the use of the equipment or facilities, and the capability and willingness to maintain the equipment or facilities;

“(C) that the applicant provides sufficient information upon which the Secretary can make the findings required by this subsection;

“(D) that if an applicant has selected the proposed operator of its service competitively, that the applicant provide written justification to the Secretary showing why the proposed operator is the best, taking into account costs and other factors;

“(E) that each proposed project meet all safety and security requirements that are applicable to the project under law; and

“(F) that each project be compatible with, and operated in conformance with—

“(i) plans developed pursuant to the requirements of section 135 of title 23, United States Code; and

“(ii) the national rail plan (if it is available);

“(2) select projects—

“(A) that are anticipated to result in significant improvements to intercity rail passenger service, including, but not limited to, consideration of—

“(i) the project’s levels of estimated ridership, increased on-time performance, reduced trip time, additional service frequency to meet anticipated or existing demand, or other significant service enhancements as measured against minimum standards developed under section 207 of the Passenger Rail Investment and Improvement Act of 2008;

“(ii) the project’s anticipated favorable impact on air or highway traffic congestion, capacity, or safety; and

“(iii) identification of the project by the Surface Transportation Board as necessary to improve the on-time performance and reliability of intercity passenger rail under section 24308(f);

“(B) for which there is a high degree of confidence that the proposed project is feasible and will result in the anticipated benefits, as indicated by—

“(i) the project’s precommencement compliance with environmental protection requirements;

“(ii) the readiness of the project to be commenced;

“(iii) the timing and amount of the project’s future noncommitted investments;

“(iv) the commitment of any affected host rail carrier to ensure the realization of the anticipated benefits; and

“(v) other relevant factors as determined by the Secretary; and

“(C) for which the level of the anticipated benefits compares favorably to the amount of Federal funding requested under this chapter; and

“(3) give greater consideration to projects—

“(A) that are anticipated to result in benefits to other modes transportation and to the public at large, including, but not limited to, consideration of the project’s—

“(i) encouragement of intermodal connectivity through provision of direct connections between train stations, airports, bus terminals, subway stations, ferry ports, and other modes of transportation;

“(ii) anticipated improvement of freight or commuter rail operations;

“(iii) encouragement of the use of positive train control technologies;

“(iv) environmental benefits, including projects that involve the purchase of environmentally sensitive, fuel-efficient, and cost-effective passenger rail equipment;

“(v) anticipated positive economic and employment impacts;

“(vi) encouragement of State and private contributions toward station development, energy and environmental efficiency, and economic benefits; and

“(vii) falling under the description in section 5302(a)(1)(G) of this title as defined to support intercity passenger rail service; and

“(B) that incorporate equitable financial participation in the project’s financing, including, but not limited to, consideration of—

“(i) donated property interests or services;

“(ii) financial contributions by freight and commuter rail carriers commensurate with the benefit expected to their operations; and

“(iii) financial commitments from host railroads, non-Federal governmental entities, nongovernmental entities, and others.

“(d) STATE RAIL PLANS.—State rail plans completed before the date of enactment of the Passenger Rail Investment and Improvement Act of 2008 that substantially meet the requirements of chapter 227 of this title, as determined by the Secretary pursuant to section 22506 of this title, shall be deemed by the Secretary to have met the requirements of subsection (c)(1)(A) of this section.

“(e) AMTRAK ELIGIBILITY.—To receive a grant under this section, Amtrak may enter into a cooperative agreement with 1 or more States to carry out 1 or more projects on a State rail plan’s ranked list of rail capital projects developed under section 22504(a)(5) of this title. For such a grant, Amtrak may not use Federal funds authorized under section 101(a) or (c) of the Passenger Rail Investment and Improvement Act of 2008 to fulfill the non-Federal share requirements under subsection (g) of this section.

“(f) LETTERS OF INTENT AND EARLY SYSTEMS WORK AGREEMENTS.—

“(1) The Secretary may issue a letter of intent to an applicant announcing an intention to obligate, for a major capital project under this section, an amount from future available budget authority specified in law that is not more than the amount stipulated as the financial participation of the Secretary in the project.

“(2) At least 30 days before issuing a letter under paragraph (1) of this subsection, the Secretary shall notify in writing the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the House and Senate Committees on Appropriations of the proposed letter or agreement. The Secretary shall include with the notification a copy of the proposed letter or agreement, the criteria used in subsection (c) for selecting the project for a grant award, and a description of how the project meets such criteria.

“(3) An obligation or administrative commitment may be made only when amounts are appropriated. The letter of intent shall state that the contingent commitment is not an obligation of the Federal Government, and is subject to the availability of appropriations under Federal law and to Federal laws in force or enacted after the date of the contingent commitment.

“(g) FEDERAL SHARE OF NET PROJECT COST.—

“(1)(A) Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary shall estimate the net project cost.

“(B) A grant for the project shall not exceed 80 percent of the project net capital cost.

“(C) The Secretary shall give priority in allocating future obligations and contingent commitments to incur obligations to grant requests seeking a lower Federal share of the project net capital cost.

“(2) Up to an additional 20 percent of the required non-Federal funds may be funded from amounts appropriated to

or made available to a department or agency of the Federal Government that are eligible to be expended for transportation.

“(3) The following amounts, not to exceed \$15,000,000 per fiscal year, shall be available to each applicant as a credit toward an applicant’s matching requirement for a grant awarded under this section—

“(A) in each of fiscal years 2009, 2010, and 2011—

“(i) 50 percent of the average of amounts expended in fiscal years 2002 through 2008 by an applicant for capital projects related to intercity passenger rail service; and

“(ii) 50 percent of the average of amounts expended in fiscal years 2002 through 2008 by an applicant for operating costs of such service; and

“(B) in each of fiscal years 2010, 2011 and 2012, 50 percent of the amount by which the amounts expended for capital projects and operating costs related to intercity passenger rail service by an applicant in the prior fiscal year exceed the average capital and operating expenditures made for such service in fiscal years 2006, 2007, and 2008.

The Secretary may require such information as necessary to verify such expenditures. Credits made available to an applicant in a fiscal year under this paragraph may only be applied towards grants awarded in that fiscal year.

“(4) The Federal share of expenditures for capital improvements under this chapter may not exceed 100 percent.

“(h) 2-YEAR AVAILABILITY.—Funds appropriated under this section shall remain available until expended. If any amount provided as a grant under this section is not obligated or expended for the purposes described in subsection (a) within 2 years after the date on which the State received the grant, such sums shall be returned to the Secretary for other intercity passenger rail development projects under this section at the discretion of the Secretary.

“(i) COOPERATIVE AGREEMENTS.—

“(1) IN GENERAL.—A metropolitan planning organization, State transportation department, or other project sponsor may enter into an agreement with any public, private, or nonprofit entity to cooperatively implement any project funded with a grant under this chapter.

“(2) FORMS OF PARTICIPATION.—Participation by an entity under paragraph (1) may consist of—

“(A) ownership or operation of any land, facility, locomotive, rail car, vehicle, or other physical asset associated with the project;

“(B) cost-sharing of any project expense;

“(C) carrying out administration, construction management, project management, project operation, or any other management or operational duty associated with the project; and

“(D) any other form of participation approved by the Secretary.

“(3) SUBALLOCATION.—A State may allocate funds under this section to any entity described in paragraph (1).

“(j) SPECIAL TRANSPORTATION CIRCUMSTANCES.—In carrying out this section, the Secretary shall allocate an appropriate portion of the amounts available under this section to provide grants to States—

“(1) in which there is no intercity passenger rail service for the purpose of funding freight rail capital projects that are on a State rail plan developed under chapter 227 of this title that provide public benefits (as defined in chapter 227) as determined by the Secretary; or

“(2) in which the rail transportation system is not physically connected to rail systems in the continental United States or may not otherwise qualify for a grant under this section due to the unique characteristics of the geography of that State or other relevant considerations, for the purpose of funding transportation-related capital projects.

“(k) SMALL CAPITAL PROJECTS.—The Secretary shall make not less than 5 percent annually available from the amounts authorized under section 101(c) of the Passenger Rail Investment and Improvement Act of 2008 beginning in fiscal year 2009 for grants for capital projects eligible under this section not exceeding \$2,000,000, including costs eligible under section 209(d) of that Act. For grants awarded under this subsection, the Secretary may waive requirements of this section, including state rail plan requirements, as appropriate.

“(l) NONMOTORIZED TRANSPORTATION ACCESS AND STORAGE.—Grants under this chapter may be used to provide access to rolling stock for nonmotorized transportation, including bicycles, and recreational equipment, and to provide storage capacity in trains for such transportation, equipment, and other luggage, to ensure passenger safety.

### “§ 24403. Project management oversight

“(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—To receive Federal financial assistance for a major capital project under this chapter, an applicant must prepare and carry out a project management plan approved by the Secretary of Transportation. The plan shall provide for—

“(1) adequate recipient staff organization with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

“(2) a budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and miscellaneous payments the recipient may be prepared to justify;

“(3) a construction schedule for the project;

“(4) a document control procedure and recordkeeping system;

“(5) a change order procedure that includes a documented, systematic approach to handling the construction change orders;

“(6) organizational structures, management skills, and staffing levels required throughout the construction phase;

“(7) quality control and quality assurance functions, procedures, and responsibilities for construction, system installation, and integration of system components;

“(8) material testing policies and procedures;

“(9) internal plan implementation and reporting requirements;

“(10) criteria and procedures to be used for testing the operational system or its major components;

“(11) periodic updates of the plan, especially related to project budget and project schedule, financing, and ridership estimates; and

“(12) the recipient’s commitment to submit periodically a project budget and project schedule to the Secretary.

“(b) SECRETARIAL OVERSIGHT.—

“(1) The Secretary may use no more than 1 percent of amounts made available in a fiscal year for capital projects under this chapter to enter into contracts to oversee the construction of such projects.

“(2) The Secretary may use amounts available under paragraph (1) of this subsection to make contracts for safety, procurement, management, and financial compliance reviews and audits of a recipient of amounts under paragraph (1).

“(3) The Federal Government shall pay the entire cost of carrying out a contract under this subsection.

“(c) ACCESS TO SITES AND RECORDS.—Each recipient of assistance under this chapter shall provide the Secretary and a contractor the Secretary chooses under subsection (b) of this section with access to the construction sites and records of the recipient when reasonably necessary.

**“§ 24404. Use of capital grants to finance first-dollar liability of grant project**

“Notwithstanding the requirements of section 24402 of this chapter, the Secretary of Transportation may approve the use of a capital assistance grant under this chapter to fund self-insured retention of risk for the first tier of liability insurance coverage for rail passenger service associated with the grant, but the coverage may not exceed \$20,000,000 per occurrence or \$20,000,000 in aggregate per year.

**“§ 24405. Grant conditions**

“(a) BUY AMERICA.—(1) The Secretary of Transportation may obligate an amount that may be appropriated to carry out this chapter for a project only if the steel, iron, and manufactured goods used in the project are produced in the United States.

“(2) The Secretary of Transportation may waive paragraph (1) of this subsection if the Secretary finds that—

“(A) applying paragraph (1) would be inconsistent with the public interest;

“(B) the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;

“(C) rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time; or

“(D) including domestic material will increase the cost of the overall project by more than 25 percent.

“(3) For purposes of this subsection, in calculating the components’ costs, labor costs involved in final assembly shall not be included in the calculation.

“(4) If the Secretary determines that it is necessary to waive the application of paragraph (1) based on a finding under paragraph (2), the Secretary shall, before the date on which such finding takes effect—



“(A) publish in the Federal Register a detailed written justification as to why the waiver is needed; and

“(B) provide notice of such finding and an opportunity for public comment on such finding for a reasonable period of time not to exceed 15 days.

“(5) Not later than December 31, 2012, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on any waivers granted under paragraph (2).

“(6) The Secretary of Transportation may not make a waiver under paragraph (2) of this subsection for goods produced in a foreign country if the Secretary, in consultation with the United States Trade Representative, decides that the government of that foreign country—

“(A) has an agreement with the United States Government under which the Secretary has waived the requirement of this subsection; and

“(B) has violated the agreement by discriminating against goods to which this subsection applies that are produced in the United States and to which the agreement applies.

“(7) A person is ineligible to receive a contract or subcontract made with amounts authorized under this chapter if a court or department, agency, or instrumentality of the Government decides the person intentionally—

“(A) affixed a ‘Made in America’ label, or a label with an inscription having the same meaning, to goods sold in or shipped to the United States that are used in a project to which this subsection applies but not produced in the United States; or

“(B) represented that goods described in subparagraph (A) of this paragraph were produced in the United States.

“(8) The Secretary may not impose any limitation on assistance provided under this chapter that restricts a State from imposing more stringent requirements than this subsection on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries in projects carried out with that assistance or restricts a recipient of that assistance from complying with those State-imposed requirements.

“(9) The Secretary may allow a manufacturer or supplier of steel, iron, or manufactured goods to correct after bid opening any certification of noncompliance or failure to properly complete the certification (but not including failure to sign the certification) under this subsection if such manufacturer or supplier attests under penalty of perjury that such manufacturer or supplier submitted an incorrect certification as a result of an inadvertent or clerical error. The burden of establishing inadvertent or clerical error is on the manufacturer or supplier.

“(10) A party adversely affected by an agency action under this subsection shall have the right to seek review under section 702 of title 5.

“(11) The requirements of this subsection shall only apply to projects for which the costs exceed \$100,000.

“(b) OPERATORS DEEMED RAIL CARRIERS AND EMPLOYERS FOR CERTAIN PURPOSES.—A person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made under this chapter shall

be considered a rail carrier as defined in section 10102(5) of this title for purposes of this title and any other statute that adopts that definition or in which that definition applies, including—

“(1) the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.);

“(2) the Railway Labor Act (43 U.S.C. 151 et seq.); and

“(3) the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.).

“(c) GRANT CONDITIONS.—The Secretary shall require as a condition of making any grant under this chapter for a project that uses rights-of-way owned by a railroad that—

“(1) a written agreement exist between the applicant and the railroad regarding such use and ownership, including—

“(A) any compensation for such use;

“(B) assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations;

“(C) an assurance by the railroad that collective bargaining agreements with the railroad’s employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and

“(D) an assurance that an applicant complies with liability requirements consistent with section 28103 of this title; and

“(2) the applicant agrees to comply with—

“(A) the standards of section 24312 of this title, as such section was in effect on September 1, 2003, with respect to the project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under section 24308(a) of this title; and

“(B) the protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 836) with respect to employees affected by actions taken in connection with the project to be financed in whole or in part by grants under this chapter.

“(d) REPLACEMENT OF EXISTING INTERCITY PASSENGER RAIL SERVICE.—

“(1) COLLECTIVE BARGAINING AGREEMENT FOR INTERCITY PASSENGER RAIL PROJECTS.—Any entity providing intercity passenger railroad transportation that begins operations after the date of enactment of this Act on a project funded in whole or in part by grants made under this chapter and replaces intercity rail passenger service that was provided by Amtrak, unless such service was provided solely by Amtrak to another entity, as of such date shall enter into an agreement with the authorized bargaining agent or agents for adversely affected employees of the predecessor provider that—

“(A) gives each such qualified employee of the predecessor provider priority in hiring according to the employee’s seniority on the predecessor provider for each position with the replacing entity that is in the employee’s craft or class and is available within 3 years after the termination of the service being replaced;

“(B) establishes a procedure for notifying such an employee of such positions;

“(C) establishes a procedure for such an employee to apply for such positions; and

“(D) establishes rates of pay, rules, and working conditions.

“(2) IMMEDIATE REPLACEMENT SERVICE.—

“(A) NEGOTIATIONS.—If the replacement of preexisting intercity rail passenger service occurs concurrent with or within a reasonable time before the commencement of the replacing entity’s rail passenger service, the replacing entity shall give written notice of its plan to replace existing rail passenger service to the authorized collective bargaining agent or agents for the potentially adversely affected employees of the predecessor provider at least 90 days before the date on which it plans to commence service. Within 5 days after the date of receipt of such written notice, negotiations between the replacing entity and the collective bargaining agent or agents for the employees of the predecessor provider shall commence for the purpose of reaching agreement with respect to all matters set forth in subparagraphs (A) through (D) of paragraph (1). The negotiations shall continue for 30 days or until an agreement is reached, whichever is sooner. If at the end of 30 days the parties have not entered into an agreement with respect to all such matters, the unresolved issues shall be submitted for arbitration in accordance with the procedure set forth in subparagraph (B).

“(B) ARBITRATION.—If an agreement has not been entered into with respect to all matters set forth in subparagraphs (A) through (D) of paragraph (1) as described in subparagraph (A) of this paragraph, the parties shall select an arbitrator. If the parties are unable to agree upon the selection of such arbitrator within 5 days, either or both parties shall notify the National Mediation Board, which shall provide a list of seven arbitrators with experience in arbitrating rail labor protection disputes. Within 5 days after such notification, the parties shall alternately strike names from the list until only 1 name remains, and that person shall serve as the neutral arbitrator. Within 45 days after selection of the arbitrator, the arbitrator shall conduct a hearing on the dispute and shall render a decision with respect to the unresolved issues among the matters set forth in subparagraphs (A) through (D) of paragraph (1). The arbitrator shall be guided by prevailing national standard rates of pay, benefits, and working conditions for comparable work. This decision shall be final, binding, and conclusive upon the parties. The salary and expenses of the arbitrator shall be borne equally by the parties; all other expenses shall be paid by the party incurring them.

“(3) SERVICE COMMENCEMENT.—A replacing entity under this subsection shall commence service only after an agreement is entered into with respect to the matters set forth in subparagraphs (A) through (D) of paragraph (1) or the decision of the arbitrator has been rendered.

“(4) SUBSEQUENT REPLACEMENT OF SERVICE.—If the replacement of existing rail passenger service takes place within 3 years after the replacing entity commences intercity passenger rail service, the replacing entity and the collective bargaining agent or agents for the adversely affected employees of the predecessor provider shall enter into an agreement with respect to the matters set forth in subparagraphs (A) through (D) of paragraph (1). If the parties have not entered into an agreement with respect to all such matters within 60 days after the date on which the replacing entity replaces the predecessor provider, the parties shall select an arbitrator using the procedures set forth in paragraph (2)(B), who shall, within 20 days after the commencement of the arbitration, conduct a hearing and decide all unresolved issues. This decision shall be final, binding, and conclusive upon the parties.

“(e) INAPPLICABILITY TO CERTAIN RAIL OPERATIONS.—Nothing in this section applies to—

“(1) commuter rail passenger transportation (as defined in section 24102(4) of this title) operations of a State or local government authority (as those terms are defined in section 5302(11) and (6), respectively, of this title) eligible to receive financial assistance under section 5307 of this title, or to its contractor performing services in connection with commuter rail passenger operations (as so defined);

“(2) the Alaska Railroad or its contractors; or

“(3) Amtrak’s access rights to railroad rights of way and facilities under current law.

“(f) LIMITATION.—No grants shall be provided under this chapter for commuter rail passenger transportation, as defined in section 24102(4) of this title.

#### “§ 24406. Authorization of appropriations

“There are authorized to be appropriated to the Secretary of Transportation for capital grants under this chapter the following amounts:

“(1) For fiscal year 2009, \$100,000,000.

“(2) For fiscal year 2010, \$300,000,000.

“(3) For fiscal year 2011, \$400,000,000.

“(4) For fiscal year 2012, \$500,000,000.

“(5) For fiscal year 2013, \$600,000,000.”

(b) CONFORMING AMENDMENT.—The chapter analysis for subtitle V is amended by inserting the following after the item relating to chapter 243:

“244. INTERCITY PASSENGER RAIL SERVICE CORRIDOR CAPITAL ASSISTANCE .....24401”.

(c) ASSISTANCE.—In implementing section 24405(a) of title 49, United States Code, the Federal Highway Administration shall, upon request by the Federal Railroad Administration, assist the Federal Railroad Administration in developing a process for posting on its website or distributing via email notices of waiver requests received pursuant to such subsection and soliciting public comments on the intent to issue a waiver. The Federal Railroad Administration’s development of such a process does not relieve the Federal Railroad Administration of the requirements under paragraph (4) of such subsection.

**SEC. 302. CONGESTION GRANTS.**

(a) AMENDMENT.—Chapter 241 of title 49, United States Code, is amended by adding at the end the following new section:

**“§ 24105. Congestion grants**

“(a) AUTHORITY.—The Secretary of Transportation may make grants to States, or to Amtrak in cooperation with States, for financing the capital costs of facilities, infrastructure, and equipment for high priority rail corridor projects necessary to reduce congestion or facilitate ridership growth in intercity rail passenger transportation.

“(b) ELIGIBLE PROJECTS.—Projects eligible for grants under this section include projects—

“(1) identified by Amtrak as necessary to reduce congestion or facilitate ridership growth in intercity rail passenger transportation along heavily traveled rail corridors;

“(2) identified by the Surface Transportation Board as necessary to improve the on time performance and reliability of intercity rail passenger transportation under section 24308(f); and

“(3) designated by the Secretary as being sufficiently advanced in development to be capable of serving the purposes described in subsection (a) on an expedited schedule.

“(c) FEDERAL SHARE.—The Federal share of the cost of a project financed under this section shall not exceed 80 percent.

“(d) GRANT CONDITIONS.—The Secretary of Transportation shall require each recipient of a grant under this section to comply with the grant requirements of section 24405 of this title.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, from amounts made available under section 301 of the Passenger Rail Investment and Improvement Act of 2008, to the Secretary to carry out this section—

“(1) \$50,000,000 for fiscal year 2010;

“(2) \$75,000,000 for fiscal year 2011;

“(3) \$100,000,000 for fiscal year 2012; and

“(4) \$100,000,000 for fiscal year 2013.”.

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections for such chapter 241 is amended by adding at the end the following new item:

“24105. Congestion grants.”.

**SEC. 303. STATE RAIL PLANS.**

(a) IN GENERAL.—Part B of subtitle V is amended by adding at the end the following:

**“CHAPTER 227—STATE RAIL PLANS**

“Sec.

“22701. Definitions.

“22702. Authority.

“22703. Purposes.

“22704. Transparency; coordination; review.

“22705. Content.

“22706. Review.

**“§ 22701. Definitions**

“In this subchapter:

“(1) PRIVATE BENEFIT.—

“(A) IN GENERAL.—The term ‘private benefit’—

“(i) means a benefit accrued to a person or private entity, other than Amtrak, that directly improves the economic and competitive condition of that person or entity through improved assets, cost reductions, service improvements, or any other means as defined by the Secretary; and

“(ii) shall be determined on a project-by-project basis, based upon an agreement between the parties.

“(B) CONSULTATION.—The Secretary may seek the advice of the States and rail carriers in further defining this term.

“(2) PUBLIC BENEFIT.—

“(A) IN GENERAL.—The term ‘public benefit’—

“(i) means a benefit accrued to the public, including Amtrak, in the form of enhanced mobility of people or goods, environmental protection or enhancement, congestion mitigation, enhanced trade and economic development, improved air quality or land use, more efficient energy use, enhanced public safety or security, reduction of public expenditures due to improved transportation efficiency or infrastructure preservation, and any other positive community effects as defined by the Secretary; and

“(ii) shall be determined on a project-by-project basis, based upon an agreement between the parties.

“(B) CONSULTATION.—The Secretary may seek the advice of the States and rail carriers in further defining this term.

“(3) STATE.—The term ‘State’ means any of the 50 States and the District of Columbia.

“(4) STATE RAIL TRANSPORTATION AUTHORITY.—The term ‘State rail transportation authority’ means the State agency or official responsible under the direction of the Governor of the State or a State law for preparation, maintenance, coordination, and administration of the State rail plan.

#### “§ 22702. Authority

“(a) IN GENERAL.—Each State may prepare and maintain a State rail plan in accordance with the provisions of this chapter.

“(b) REQUIREMENTS.—The Secretary shall establish the minimum requirements for the preparation and periodic revision of a State rail plan, including that a State shall—

“(1) establish or designate a State rail transportation authority to prepare, maintain, coordinate, and administer the plan;

“(2) establish or designate a State rail plan approval authority to approve the plan;

“(3) submit the State’s approved plan to the Secretary of Transportation for review; and

“(4) revise and resubmit a State-approved plan no less frequently than once every 5 years for reapproval by the Secretary.

#### “§ 22703. Purposes

“(a) PURPOSES.—The purposes of a State rail plan are as follows:

“(1) To set forth State policy involving freight and passenger rail transportation, including commuter rail operations, in the State.

“(2) To establish the period covered by the State rail plan.

“(3) To present priorities and strategies to enhance rail service in the State that benefits the public.

“(4) To serve as the basis for Federal and State rail investments within the State.

“(b) COORDINATION.—A State rail plan shall be coordinated with other State transportation planning goals and programs, including the plan required under section 135 of title 23, and set forth rail transportation’s role within the State transportation system.

**“§ 22704. Transparency; coordination; review**

“(a) PREPARATION.—A State shall provide adequate and reasonable notice and opportunity for comment and other input to the public, rail carriers, commuter and transit authorities operating in, or affected by rail operations within the State, units of local government, and other interested parties in the preparation and review of its State rail plan.

“(b) INTERGOVERNMENTAL COORDINATION.—A State shall review the freight and passenger rail service activities and initiatives by regional planning agencies, regional transportation authorities, and municipalities within the State, or in the region in which the State is located, while preparing the plan, and shall include any recommendations made by such agencies, authorities, and municipalities as deemed appropriate by the State.

**“§ 22705. Content**

“(a) IN GENERAL.—Each State rail plan shall, at a minimum, contain the following:

“(1) An inventory of the existing overall rail transportation system and rail services and facilities within the State and an analysis of the role of rail transportation within the State’s surface transportation system.

“(2) A review of all rail lines within the State, including proposed high-speed rail corridors and significant rail line segments not currently in service.

“(3) A statement of the State’s passenger rail service objectives, including minimum service levels, for rail transportation routes in the State.

“(4) A general analysis of rail’s transportation, economic, and environmental impacts in the State, including congestion mitigation, trade and economic development, air quality, land-use, energy-use, and community impacts.

“(5) A long-range rail investment program for current and future freight and passenger infrastructure in the State that meets the requirements of subsection (b).

“(6) A statement of public financing issues for rail projects and service in the State, including a list of current and prospective public capital and operating funding resources, public subsidies, State taxation, and other financial policies relating to rail infrastructure development.

“(7) An identification of rail infrastructure issues within the State that reflects consultation with all relevant stakeholders.

“(8) A review of major passenger and freight intermodal rail connections and facilities within the State, including sea-ports, and prioritized options to maximize service integration and efficiency between rail and other modes of transportation within the State.

“(9) A review of publicly funded projects within the State to improve rail transportation safety and security, including all major projects funded under section 130 of title 23.

“(10) A performance evaluation of passenger rail services operating in the State, including possible improvements in those services, and a description of strategies to achieve those improvements.

“(11) A compilation of studies and reports on high-speed rail corridor development within the State not included in a previous plan under this subchapter, and a plan for funding any recommended development of such corridors in the State.

“(12) A statement that the State is in compliance with the requirements of section 22102.

“(b) LONG-RANGE SERVICE AND INVESTMENT PROGRAM.—

“(1) PROGRAM CONTENT.—A long-range rail investment program included in a State rail plan under subsection (a)(5) shall, at a minimum, include the following matters:

“(A) A list of any rail capital projects expected to be undertaken or supported in whole or in part by the State.

“(B) A detailed funding plan for those projects.

“(2) PROJECT LIST CONTENT.—The list of rail capital projects shall contain—

“(A) a description of the anticipated public and private benefits of each such project; and

“(B) a statement of the correlation between—

“(i) public funding contributions for the projects; and

“(ii) the public benefits.

“(3) CONSIDERATIONS FOR PROJECT LIST.—In preparing the list of freight and intercity passenger rail capital projects, a State rail transportation authority should take into consideration the following matters:

“(A) Contributions made by non-Federal and non-State sources through user fees, matching funds, or other private capital involvement.

“(B) Rail capacity and congestion effects.

“(C) Effects on highway, aviation, and maritime capacity, congestion, or safety.

“(D) Regional balance.

“(E) Environmental impact.

“(F) Economic and employment impacts.

“(G) Projected ridership and other service measures for passenger rail projects.

#### “§ 22706. Review

“The Secretary shall prescribe procedures for States to submit State rail plans for review under this title, including standardized format and data requirements. State rail plans completed before the date of enactment of the Passenger Rail Investment and Improvement Act of 2008 that substantially meet the requirements of this chapter, as determined by the Secretary, shall be deemed by the Secretary to have met the requirements of this chapter.”.



(b) CONFORMING AMENDMENT.—The chapter analysis for subtitle V is amended by inserting the following after the item relating to chapter 223:

“227. State rail plans .....22701”.

**SEC. 304. TUNNEL PROJECT.**

(a) NEW TUNNEL ALIGNMENT AND ENVIRONMENTAL REVIEW.—Not later than September 30, 2013, the Federal Railroad Administration, working with Amtrak, the Surface Transportation Board, the City of Baltimore, the State of Maryland, and rail operators described in subsection (b), as appropriate, shall—

- (1) select and approve, as applicable, a new rail tunnel alignment in Baltimore that will permit an increase in train speed and service reliability; and
- (2) ensure completion of the related environmental review process.

(b) AFFECTED RAIL OPERATORS.—Rail operators other than Amtrak may participate in activities described in subsection (a) to the extent that they can demonstrate the intention and ability to contribute to the construction of the new tunnel.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for carrying out this section \$60,000,000 for the period encompassing fiscal years 2009 through 2013.

**SEC. 305. NEXT GENERATION CORRIDOR TRAIN EQUIPMENT POOL.**

(a) IN GENERAL.—Within 180 days after the date of enactment of this Act, Amtrak shall establish a Next Generation Corridor Equipment Pool Committee, comprised of representatives of Amtrak, the Federal Railroad Administration, host freight railroad companies, passenger railroad equipment manufacturers, interested States, and, as appropriate, other passenger railroad operators. The purpose of the Committee shall be to design, develop specifications for, and procure standardized next-generation corridor equipment.

(b) FUNCTIONS.—The Committee may—

- (1) determine the number of different types of equipment required, taking into account variations in operational needs and corridor infrastructure;
- (2) establish a pool of equipment to be used on corridor routes funded by participating States; and
- (3) subject to agreements between Amtrak and States, utilize services provided by Amtrak to design, maintain and remanufacture equipment.

(c) COOPERATIVE AGREEMENTS.—Amtrak and States participating in the Committee may enter into agreements for the funding, procurement, remanufacture, ownership, and management of corridor equipment, including equipment currently owned or leased by Amtrak and next-generation corridor equipment acquired as a result of the Committee’s actions, and may establish a corporation, which may be owned or jointly-owned by Amtrak, participating States, or other entities, to perform these functions.

(d) FUNDING.—In addition to the authorizations provided in this section, capital projects to carry out the purposes of this section shall be eligible for grants made pursuant to chapter 244 of title 49, United States Code.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary \$5,000,000 for fiscal year 2010, to remain available until expended, for grants to Amtrak and States participating in the Next Generation Corridor Train Equipment Pool Committee established under this section for the purpose of designing, developing specifications for, and initiating the procurement of an initial order of 1 or more types of standardized next-generation corridor train equipment and establishing a jointly-owned corporation to manage that equipment.

**SEC. 306. RAIL COOPERATIVE RESEARCH PROGRAM.**

(a) ESTABLISHMENT AND CONTENT.—Chapter 249 is amended by adding at the end the following:

**“§ 24910. Rail cooperative research program**

“(a) IN GENERAL.—The Secretary shall establish and carry out a rail cooperative research program. The program shall—

“(1) address, among other matters, intercity rail passenger and freight rail services, including existing rail passenger and freight technologies and speeds, incrementally enhanced rail systems and infrastructure, and new high-speed wheel-on-rail systems;

“(2) address ways to expand the transportation of international trade traffic by rail, enhance the efficiency of intermodal interchange at ports and other intermodal terminals, and increase capacity and availability of rail service for seasonal freight needs;

“(3) consider research on the interconnectedness of commuter rail, passenger rail, freight rail, and other rail networks; and

“(4) give consideration to regional concerns regarding rail passenger and freight transportation, including meeting research needs common to designated high-speed corridors, long-distance rail services, and regional intercity rail corridors, projects, and entities.

“(b) CONTENT.—The program to be carried out under this section shall include research designed—

“(1) to identify the unique aspects and attributes of rail passenger and freight service;

“(2) to develop more accurate models for evaluating the impact of rail passenger and freight service, including the effects on highway and airport and airway congestion, environmental quality, and energy consumption;

“(3) to develop a better understanding of modal choice as it affects rail passenger and freight transportation, including development of better models to predict utilization;

“(4) to recommend priorities for technology demonstration and development;

“(5) to meet additional priorities as determined by the advisory board established under subsection (c), including any recommendations made by the National Research Council;

“(6) to explore improvements in management, financing, and institutional structures;

“(7) to address rail capacity constraints that affect passenger and freight rail service through a wide variety of options,

ranging from operating improvements to dedicated new infrastructure, taking into account the impact of such options on operations;

“(8) to improve maintenance, operations, customer service, or other aspects of intercity rail passenger and freight service;

“(9) to recommend objective methodologies for determining intercity passenger rail routes and services, including the establishment of new routes, the elimination of existing routes, and the contraction or expansion of services or frequencies over such routes;

“(10) to review the impact of equipment and operational safety standards on the further development of high-speed passenger rail operations connected to or integrated with non-high-speed freight or passenger rail operations;

“(11) to recommend any legislative or regulatory changes necessary to foster further development and implementation of high-speed passenger rail operations while ensuring the safety of such operations that are connected to or integrated with non-high-speed freight or passenger rail operations;

“(12) to review rail crossing safety improvements, including improvements using new safety technology; and

“(13) to review and develop technology designed to reduce train horn noise and its effect on communities, including broadband horn technology.

“(c) ADVISORY BOARD.—

“(1) ESTABLISHMENT.—In consultation with the heads of appropriate Federal departments and agencies, the Secretary shall establish an advisory board to recommend research, technology, and technology transfer activities related to rail passenger and freight transportation.

“(2) MEMBERSHIP.—The advisory board shall include—

“(A) representatives of State transportation agencies;

“(B) transportation and environmental economists, scientists, and engineers; and

“(C) representatives of Amtrak, the Alaska Railroad, freight railroads, transit operating agencies, intercity rail passenger agencies, railway labor organizations, and environmental organizations.

“(d) NATIONAL ACADEMY OF SCIENCES.—The Secretary may make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out such activities relating to the research, technology, and technology transfer activities described in subsection (b) as the Secretary deems appropriate.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation \$5,000,000 for each of fiscal years 2010 through 2013 for carrying out this section.”.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 249 is amended by adding at the end the following:

“24910. Rail cooperative research program.”.

**SEC. 307. FEDERAL RAIL POLICY.**

Section 103 is amended—

(1) by inserting “IN GENERAL.—” before “The Federal” in subsection (a);

(2) by striking the second and third sentences of subsection (a);

(3) by inserting after subsection (a) the following:

“(b) SAFETY.—To carry out all railroad safety laws of the United States, the Administration is divided on a geographical basis into at least 8 safety offices. The Secretary of Transportation is responsible for all acts taken under those laws and for ensuring that the laws are uniformly administered and enforced among the safety offices.”; and

(4) by adding at the end the following:

“(j) ADDITIONAL DUTIES OF THE ADMINISTRATOR.—The Administrator shall—

“(1) provide assistance to States in developing State rail plans prepared under chapter 227 and review all State rail plans submitted under that section;

“(2) develop a long-range national rail plan that is consistent with approved State rail plans and the rail needs of the Nation, as determined by the Secretary in order to promote an integrated, cohesive, efficient, and optimized national rail system for the movement of goods and people;

“(3) develop a preliminary national rail plan within a year after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008;

“(4) develop and enhance partnerships with the freight and passenger railroad industry, States, and the public concerning rail development;

“(5) support rail intermodal development and high-speed rail development, including high speed rail planning;

“(6) ensure that programs and initiatives developed under this section benefit the public and work toward achieving regional and national transportation goals; and

“(7) facilitate and coordinate efforts to assist freight and passenger rail carriers, transit agencies and authorities, municipalities, and States in passenger-freight service integration on shared rights of way by providing neutral assistance at the joint request of affected rail service providers and infrastructure owners relating to operations and capacity analysis, capital requirements, operating costs, and other research and planning related to corridors shared by passenger or commuter rail service and freight rail operations.

“(k) PERFORMANCE GOALS AND REPORTS.—

“(1) PERFORMANCE GOALS.—In conjunction with the objectives established and activities undertaken under subsection (j) of this section, the Administrator shall develop a schedule for achieving specific, measurable performance goals.

“(2) RESOURCE NEEDS.—The strategy and annual plans shall include estimates of the funds and staff resources needed to accomplish each goal and the additional duties required under subsection (j).

“(3) SUBMISSION WITH PRESIDENT’S BUDGET.—Beginning with fiscal year 2010 and each fiscal year thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, at the same time as the President’s budget submission, the Administration’s performance goals and schedule developed under paragraph (1), including an assessment of the progress of the Administration toward achieving its performance goals.”.

## TITLE IV—MISCELLANEOUS PROVISIONS

### SEC. 401. COMMUTER RAIL MEDIATION.

(a) AMENDMENT.—Part E of subtitle V is amended by adding at the end the following:

#### “CHAPTER 285—COMMUTER RAIL MEDIATION

“Sec.

“28501. Definitions

“28502. Surface Transportation Board mediation of trackage use requests.

“28503. Surface Transportation Board mediation of rights-of-way use requests.

“28504. Applicability of other laws.

“28505. Rules and regulations.

#### “§ 28501. Definitions

“In this chapter—

“(1) the term ‘Board’ means the Surface Transportation Board;

“(2) the term ‘capital work’ means maintenance, restoration, reconstruction, capacity enhancement, or rehabilitation work on trackage that would be treated, in accordance with generally accepted accounting principles, as a capital item rather than an expense;

“(3) the term ‘commuter rail passenger transportation’ has the meaning given that term in section 24102;

“(4) the term ‘public transportation authority’ means a local governmental authority (as defined in section 5302(a)(6)) established to provide, or make a contract providing for, commuter rail passenger transportation;

“(5) the term ‘rail carrier’ means a person, other than a governmental authority, providing common carrier railroad transportation for compensation subject to the jurisdiction of the Board under chapter 105;

“(6) the term ‘segregated fixed guideway facility’ means a fixed guideway facility constructed within the railroad right-of-way of a rail carrier but physically separate from trackage, including relocated trackage, within the right-of-way used by a rail carrier for freight transportation purposes; and

“(7) the term ‘trackage’ means a railroad line of a rail carrier, including a spur, industrial, team, switching, side, yard, or station track, and a facility of a rail carrier.

#### “§ 28502. Surface Transportation Board mediation of trackage use requests

“If, after a reasonable period of negotiation, a public transportation authority cannot reach agreement with a rail carrier to use trackage of, and have related services provided by, the rail carrier for purposes of commuter rail passenger transportation, the public transportation authority or the rail carrier may apply to the Board for nonbinding mediation. The Board shall conduct the nonbinding mediation in accordance with the mediation process of section 1109.4 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this section.

**“§ 28503. Surface Transportation Board mediation of rights-of-way use requests**

“If, after a reasonable period of negotiation, a public transportation authority cannot reach agreement with a rail carrier to acquire an interest in a railroad right-of-way for the construction and operation of a segregated fixed guideway facility to provide commuter rail passenger transportation, the public transportation authority or the rail carrier may apply to the Board for nonbinding mediation. The Board shall conduct the nonbinding mediation in accordance with the mediation process of section 1109.4 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this section.

**“§ 28504. Applicability of other laws**

“Nothing in this chapter shall be construed to limit a rail transportation provider’s right under section 28103(b) to enter into contracts that allocate financial responsibility for claims.

**“§ 28505. Rules and regulations**

“Within 1 year after the date of enactment of this section, the Board shall issue such rules and regulations as may be necessary to carry out this chapter.”.

(b) CLERICAL AMENDMENT.—The table of chapters of such subtitle is amended by adding after the item relating to chapter 283 the following:

“285. COMMUTER RAIL MEDIATION .....28501”.

**SEC. 402. ROUTING EFFICIENCY DISCUSSIONS WITH AMTRAK.**

Amtrak, commuter rail entities, regional and State public transportation authorities, and freight railroad carriers are encouraged to engage in good faith discussions with respect to the routing and timing of trains to efficiently move a maximum number of commuter, intercity, and regional rail passengers, particularly during the peak times of commuter usage.

**SEC. 403. SENSE OF CONGRESS REGARDING COMMUTER RAIL EXPANSION.**

(a) FINDINGS.—The Congress find the following:

(1) In 2006, Americans took 10.1 billion trips on public transportation for the first time since 1949.

(2) The Northeast region is one of the Nation’s largest emerging transportation “megaregions” where infrastructure expansion and improvements are most needed.

(3) New England’s road traffic has increased two to three times faster than its population since 1990.

(4) Connecticut has one of the Nation’s longest average commute times according to the United States Census Bureau, and 80 percent of Connecticut commuters drive by themselves to work, demonstrating the need for expanded commuter rail access.

(5) The Connecticut Department of Transportation has pledged to modernize, repair, and strengthen the rail line infrastructure to provide for increased safety and security along a crucial transportation corridor in the Northeast.

(6) Expanded New Haven-Springfield rail service would improve access to Bradley International Airport, one the region’s busiest airports, as well as to Hartford, Connecticut,

and Springfield, Massachusetts, two of the region's commercial, residential, and industrial centers.

(7) Expanded commuter rail service on the New Haven-Springfield line could result in an estimated 630,000 additional trips per year and 2,215,384 passenger miles per year, helping to curb pollution and greenhouse gas emissions from road vehicle traffic.

(8) The MetroNorth New Haven Line and Shore Line East railways saw respective 3.43 percent and 4.93 percent increases in ridership over the course of 2007, demonstrating the need for expanded commuter rail service in Connecticut.

(9) Expanded New Haven-Springfield commuter rail service could provide transportation nearly 17 times more efficient in terms of average mileage versus road vehicles, alleviating road congestion and providing a significant savings to consumers during a time of high gas prices.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that expanded commuter rail service on the rail line between New Haven, Connecticut, and Springfield, Massachusetts, is an important transportation priority, and Amtrak should work cooperatively with the States of Connecticut and Massachusetts to enable expanded commuter rail service on such line.

(c) INFRASTRUCTURE MAINTENANCE REPORT.—Amtrak shall submit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, and to the State Departments of Transportation of Connecticut and Massachusetts, on the total cost of uncompleted infrastructure maintenance on the rail line between New Haven, Connecticut, and Springfield, Massachusetts.

#### **SEC. 404. LOCOMOTIVE BIOFUEL STUDY.**

(a) IN GENERAL.—The Secretary, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall conduct a study to determine the extent to which freight railroads, Amtrak, and other passenger rail operators could use biofuel blends to power locomotives and other vehicles that can operate on diesel fuel, as appropriate.

(b) DEFINITION.—In this section, the term “biofuel” has the meaning given such term by section 9001 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8101).

(c) FACTORS.—In conducting the study, the Secretary shall consider—

(1) the energy intensity of various biofuel blends compared to diesel fuel;

(2) environmental and energy effects of using various biofuel blends compared to diesel fuel, including emission effects;

(3) the cost of purchasing biofuel blends;

(4) whether sufficient biofuel is readily available;

(5) any public benefits derived from the use of such fuels; and

(6) the effect of biofuel use on locomotive and other vehicle performance and warranty specifications.

(d) LOCOMOTIVE TESTING.—As part of the study, the Secretary shall test locomotive engine performance and emissions using blends

of biofuel and diesel fuel in order to recommend premium locomotive biofuel blends.

(e) **REPORT.**—Within 1 year after the date of enactment of this Act, the Secretary shall issue the results of this study to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

**SEC. 405. STUDY OF THE USE OF BIOBASED TECHNOLOGIES.**

Within 1 year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing the results of a study of the feasibility of using readily biodegradable lubricants for freight and passenger railroad locomotives, rolling stock, or other equipment. The Secretary shall work with an agricultural-based lubricant testing facility or facilities to complete this study. The study shall include—

(1) an analysis of the potential use of soy-based grease and soy-based hydraulic fluids to perform according to railroad industry standards;

(2) an analysis of the potential use of other readily biodegradable lubricants to perform according to railroad industry standards;

(3) a comparison of the health and safety of petroleum-based lubricants with biobased lubricants, which shall include an analysis of fire safety; and

(4) a comparison of the environmental impact of petroleum-based lubricants with biobased lubricants, which shall include the rate and effects of biodegradability.

**SEC. 406. CROSS-BORDER PASSENGER RAIL SERVICE.**

(a) **PLAN.**—Not later than 1 year after the date of the enactment of this Act, Amtrak shall, in consultation with the Secretary, the Secretary of Homeland Security, the Washington State Department of Transportation, and the owners of the relevant railroad infrastructure—

(1) develop a strategic plan to facilitate expanded passenger rail service across the international border between the United States and Canada during the 2010 Olympic Games on the Amtrak passenger rail route between Vancouver, British Columbia, Canada, and Eugene, Oregon (commonly known as “Amtrak Cascades”);

(2) develop recommendations for the Department of Homeland Security to process efficiently rail passengers traveling on Amtrak Cascades across such international border during the 2010 Olympic Games; and

(3) submit to Congress a report containing the strategic plan described in paragraph (1) and the recommendations described in paragraph (2).

(b) **TRAVEL FACILITATION.**—Using existing authority or agreements, or upon reaching additional agreements with Canada, the Secretary and other Federal agencies, as appropriate, are authorized to establish facilities and procedures to conduct preclearance of passengers traveling on Amtrak trains from Canada to the United States. The Secretary shall seek to establish such facilities and procedures—



- (1) in Vancouver, Canada, no later than June 1, 2009; and
- (2) in other areas as determined appropriate by the Secretary.

**SEC. 407. HISTORIC PRESERVATION OF RAILROADS.**

(a) **STUDY; OTHER ACTIONS.**—The Secretary of Transportation shall—

(1) conduct a study, in consultation with the Advisory Council on Historic Preservation, the National Conference of State Historic Preservation Officers, the Department of the Interior, appropriate representatives of the railroad industry, and representative stakeholders, on ways to streamline compliance with the requirements of section 303 of title 49, United States Code, and section 106 of the National Historic Preservation Act (16 U.S.C. 470f) for federally funded railroad infrastructure repair and improvement projects;

(2) take immediate action to cooperate with the Alaska Railroad, the Alaska State Historic Preservation Office, the Advisory Council on Historic Preservation, and the Department of the Interior, in expediting the decisionmaking process for safety-related projects of the railroad involving property and facilities that have disputed historic significance; and

(3) take immediate action to cooperate with the North Carolina Department of Transportation, the North Carolina State Historic Preservation Office, the Virginia State Historic Preservation Office, the Advisory Council on Historic Preservation, and the Department of the Interior, in expediting the decisionmaking process for safety-related railroad projects of the North Carolina Department of Transportation and the Southeast High Speed Rail Corridor involving property and facilities that have disputed historic significance.

(b) **REPORT.**—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit, to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, a report on the results of the study conducted under subsection (a)(1) and the actions directed under subsection (a)(2) and (3). The report shall include recommendations for any regulatory or legislative amendments that may streamline compliance with the requirements described in subsection (a)(1) in a manner consistent with railroad safety and the policies and purposes of section 106 of the National Historic Preservation Act (16 U.S.C. 470f), section 303 of title 49, United States Code, and section 8(d) of Public Law 90–543 (16 U.S.C. 1247(d)).

## **TITLE V—HIGH-SPEED RAIL**

**SEC. 501. HIGH-SPEED RAIL CORRIDOR PROGRAM.**

(a) **CORRIDOR PLANNING.**—Section 26101 is amended—

(1) in the section heading, by striking “**Corridor development**” and inserting “**High-speed rail corridor planning**”;

(2) in the heading of subsection (a), by striking “CORRIDOR DEVELOPMENT” and inserting “CORRIDOR PLANNING”;

(3) by striking “corridor development” each place it appears and inserting “corridor planning”; and

(4) in subsection (c)(2), by striking “development” and inserting “planning”.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 26104 is amended in paragraph (1) of subsection (a) by striking “\$70,000,000” and inserting “\$30,000,000”.

(c) CONFORMING AMENDMENT.—The item relating to section 26101 in the table of sections of chapter 261 is amended by striking “Corridor development” and inserting “High-speed rail corridor planning”.

(d) HIGH-SPEED RAIL CORRIDOR DEVELOPMENT.—Chapter 261 is amended by adding at the end thereof the following:

**“§ 26106. High-speed rail corridor development**

“(a) IN GENERAL.—The Secretary of Transportation shall establish and implement a high-speed rail corridor development program.

“(b) DEFINITIONS.—In this section, the following definitions apply:

“(1) APPLICANT.—The term ‘applicant’ means a State, a group of States, an Interstate Compact, a public agency established by one or more States and having responsibility for providing high-speed rail service, or Amtrak.

“(2) CORRIDOR.—The term ‘corridor’ means a corridor designated by the Secretary pursuant to section 104(d)(2) of title 23.

“(3) CAPITAL PROJECT.—The term ‘capital project’ means a project or program in a State rail plan developed under chapter 227 of this title for acquiring, constructing, improving, or inspecting equipment, track, and track structures, or a facility of use in or for the primary benefit of high-speed rail service, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way), payments for the capital portions of rail trackage rights agreements, highway-rail grade crossing improvements related to high-speed rail service, mitigating environmental impacts, communication and signalization improvements, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing.

“(4) HIGH-SPEED RAIL.—The term ‘high-speed rail’ means intercity passenger rail service that is reasonably expected to reach speeds of at least 110 miles per hour.

“(5) INTERCITY PASSENGER RAIL SERVICE.—The term ‘intercity passenger rail service’ has the meaning given the term ‘intercity rail passenger transportation’ in section 24102 of this title.

“(6) STATE.—The term ‘State’ means any of the 50 States or the District of Columbia.

“(c) GENERAL AUTHORITY.—The Secretary may make grants under this section to an applicant to finance capital projects in high-speed rail corridors.

“(d) APPLICATIONS.—Each applicant seeking to receive a grant under this section to develop a high-speed rail corridor shall submit to the Secretary an application in such form and in accordance with such requirements as the Secretary shall establish.

“(e) COMPETITIVE GRANT SELECTION AND CRITERIA FOR GRANTS.—

“(1) IN GENERAL.—The Secretary shall—

“(A) establish criteria for selecting among projects that meet the criteria specified in paragraph (2);

“(B) conduct a national solicitation for applications; and

“(C) award grants on a competitive basis.

“(2) GRANT CRITERIA.—The Secretary, in selecting the recipients of high-speed rail development grants to be provided under subsection (c), shall—

“(A) require—

“(i) that the project be part of a State rail plan developed under chapter 227 of this title, or under the plan required by section 211 of the Passenger Rail Investment and Improvement Act of 2008;

“(ii) that the applicant or recipient has or will have the legal, financial, and technical capacity to carry out the project, satisfactory continuing control over the use of the equipment or facilities, and the capability and willingness to maintain the equipment or facilities;

“(iii) that the project be based on the results of preliminary engineering studies or other planning, including corridor planning activities funded under section 26101 of this title;

“(iv) that the applicant provides sufficient information upon which the Secretary can make the findings required by this subsection;

“(v) that if an applicant has selected the proposed operator of its service, that the applicant provide written justification to the Secretary showing why the proposed operator is the best, taking into account costs and other factors;

“(vi) that each proposed project meet all safety and security requirements that are applicable to the project under law; and

“(vii) that each project be compatible with, and operated in conformance with—

“(I) plans developed pursuant to the requirements of section 135 of title 23; and

“(II) the national rail plan (if it is available);

“(B) select high-speed rail projects—

“(i) that are anticipated to result in significant improvements to intercity rail passenger service, including, but not limited to, consideration of the project’s—

“(I) levels of estimated ridership, increased on-time performance, reduced trip time, additional service frequency to meet anticipated or existing demand, or other significant service enhancements as measured against minimum standards developed under section 207 of the Passenger Rail Investment and Improvement Act of 2008;

“(II) anticipated favorable impact on air or highway traffic congestion, capacity, or safety; and

“(ii) for which there is a high degree of confidence that the proposed project is feasible and will result in the anticipated benefits, as indicated by—

“(I) the project’s precommencement compliance with environmental protection requirements;

“(II) the readiness of the project to be commenced;

“(III) the commitment of any affected host rail carrier to ensure the realization of the anticipated benefits; and

“(IV) other relevant factors as determined by the Secretary;

“(iii) for which the level of the anticipated benefits compares favorably to the amount of Federal funding requested under this section; and

“(C) give greater consideration to projects—

“(i) that are anticipated to result in benefits to other modes of transportation and to the public at large, including, but not limited to, consideration of the project’s—

“(I) encouragement of intermodal connectivity through provision of direct connections between train stations, airports, bus terminals, subway stations, ferry ports, and other modes of transportation;

“(II) anticipated improvement of conventional intercity passenger, freight, or commuter rail operations;

“(III) use of positive train control technologies;

“(IV) environmental benefits, including projects that involve the purchase of environmentally sensitive, fuel-efficient, and cost-effective passenger rail equipment;

“(V) anticipated positive economic and employment impacts;

“(VI) encouragement of State and private contributions toward station development, energy and environmental efficiency, and economic benefits; and

“(VII) falling under the description in section 5302(a)(1)(G) of this title as defined to support intercity passenger rail service; and

“(ii) that incorporate equitable financial participation in the project’s financing, including, but not limited to, consideration of—

“(I) donated property interests or services;

“(II) financial contributions by intercity passenger, freight, and commuter rail carriers commensurate with the benefit expected to their operations; and

“(III) financial commitments from host railroads, non-Federal governmental entities, non-governmental entities, and others.

“(3) GRANT CONDITIONS.—The Secretary shall require each recipient of a grant under this chapter to comply with the grant requirements of section 24405 of this title.

“(4) STATE RAIL PLANS.—State rail plans completed before the date of enactment of the Passenger Rail Investment and Improvement Act of 2008 that substantially meet the requirements of chapter 227 of this title, as determined by the Secretary pursuant to section 22506 of this title, shall be deemed

by the Secretary to have met the requirements of paragraph (2)(A)(i) of this subsection.

“(f) FEDERAL SHARE.—The Federal share of the cost of a project financed under this section shall not exceed 80 percent of the project net capital cost.

“(g) ISSUANCE OF REGULATIONS.—Within 1 year after the date of enactment of this section, the Secretary shall issue regulations to carry out this section.

“(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section—

- “(1) \$150,000,000 for fiscal year 2009;
- “(2) \$300,000,000 for fiscal year 2010;
- “(3) \$350,000,000 for fiscal year 2011;
- “(4) \$350,000,000 for fiscal year 2012; and
- “(5) \$350,000,000 for fiscal year 2013.”.

(e) TABLE OF SECTIONS AMENDMENT.—The table of sections for chapter 261 is amended by adding after the item relating to section 26105 the following new item:

“26106. High-speed rail corridor development.”.

**SEC. 502. ADDITIONAL HIGH-SPEED RAIL PROJECTS.**

(a) SOLICITATION OF PROPOSALS.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall issue a request for proposals for projects for the financing, design, construction, operation, and maintenance of a high-speed intercity passenger rail system operating within a high-speed rail corridor, including—

- (A) the Northeast Corridor;
- (B) the California Corridor;
- (C) the Empire Corridor;
- (D) the Pacific Northwest Corridor;
- (E) the South Central Corridor;
- (F) the Gulf Coast Corridor;
- (G) the Chicago Hub Network;
- (H) the Florida Corridor;
- (I) the Keystone Corridor;
- (J) the Northern New England Corridor; and
- (K) the Southeast Corridor.

(2) SUBMISSION.—Proposals shall be submitted to the Secretary not later than 270 days after the publication of such request for proposals under paragraph (1).

(3) PERFORMANCE STANDARD.—Proposals submitted under paragraph (2) must meet any standards established by the Secretary. For corridors with existing intercity passenger rail service, proposals shall also be designed to achieve a reduction of existing minimum intercity rail service trip times between the main corridor city pairs by a minimum of 25 percent. In the case of a proposal submitted with respect to paragraph (1)(A), the proposal must be designed to achieve a 2-hour or less express service between Washington, District of Columbia, and New York City, New York.

(4) CONTENTS.—A proposal submitted under this subsection shall include—

- (A) the names and qualifications of the persons submitting the proposal and the entities proposed to finance,

design, construct, operate, and maintain the railroad, railroad equipment, and related facilities, stations, and infrastructure;

(B) a detailed description of the proposed rail service, including possible routes, required infrastructure investments and improvements, equipment needs and type, train frequencies, peak and average operating speeds, and trip times;

(C) a description of how the project would comply with Federal rail safety and security laws, orders, and regulations governing high-speed rail operations;

(D) the locations of proposed stations, which maximize the usage of existing infrastructure to the extent possible, and the populations such stations are intended to serve;

(E) the type of equipment to be used, including any technologies, to achieve trip time goals;

(F) a description of any proposed legislation needed to facilitate all aspects of the project;

(G) a financing plan identifying—

(i) projected revenue, and sources thereof;

(ii) the amount of any requested public contribution toward the project, and proposed sources;

(iii) projected annual ridership projections for the first 10 years of operations;

(iv) annual operations and capital costs;

(v) the projected levels of capital investments required both initially and in subsequent years to maintain a state-of-good-repair necessary to provide the initially proposed level of service or higher levels of service;

(vi) projected levels of private investment and sources thereof, including the identity of any person or entity that has made or is expected to make a commitment to provide or secure funding and the amount of such commitment; and

(vii) projected funding for the full fair market compensation for any asset, property right or interest, or service acquired from, owned, or held by a private person or Federal entity that would be acquired, impaired, or diminished in value as a result of a project, except as otherwise agreed to by the private person or entity;

(H) a description of how the project would contribute to the development of a national high-speed rail system and an intermodal plan describing how the system will facilitate convenient travel connections with other transportation services;

(I) a description of how the project will ensure compliance with Federal laws governing the rights and status of employees associated with the route and service, including those specified in section 24405 of title 49, United States Code;

(J) a description of how the design, construction, implementation, and operation of the project will accommodate and allow for future growth of existing and projected intercity, commuter, and freight rail service;

(K) a description of how the project would comply with Federal and State environmental laws and regulations, of what the environmental impacts would result from the project, and how any adverse impacts would be mitigated; and

(L) a description of the project's impacts on highway and aviation congestion, energy consumption, land use, and economic development in the service area.

(b) DETERMINATION AND ESTABLISHMENT OF COMMISSIONS.—Not later than 60 days after receipt of the proposals under subsection (a), the Secretary shall—

(1) make a determination as to whether any such proposals—

(A) contain the information required under subsection (a)(3) and (4);

(B) are sufficiently credible to warrant further consideration;

(C) are likely to result in a positive impact on the Nation's transportation system; and

(D) are cost-effective and in the public interest; and

(2) establish a commission under subsection (c) for each corridor with one or more proposals that the Secretary determines satisfies the requirements of paragraph (1), and forward to each commission such proposals for review and consideration.

(c) COMMISSIONS.—

(1) MEMBERS.—Each commission referred to in subsection (b)(2) shall include—

(A) the governors of the affected States, or their respective designees;

(B) mayors of appropriate municipalities along the proposed corridor, or their respective designees;

(C) a representative from each freight railroad carrier using the relevant corridor, if applicable;

(D) a representative from each transit authority using the relevant corridor, if applicable;

(E) representatives of nonprofit employee labor organizations representing affected railroad employees; and

(D) the President of Amtrak or his or her designee.

(2) APPOINTMENT AND SELECTION.—The Secretary shall appoint the members under paragraph (1). In selecting each commission's members to fulfill the requirements under paragraph (1)(B) and (E), the Secretary shall consult with the Chairmen and Ranking Members of the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(3) CHAIRPERSON AND VICE-CHAIRPERSON SELECTION.—The Chairperson and Vice-Chairperson shall be elected from among members of each commission.

(4) QUORUM AND VACANCY.—

(A) QUORUM.—A majority of the members of each commission shall constitute a quorum.

(B) VACANCY.—Any vacancy in each commission shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(5) APPLICATION OF LAW.—Except where otherwise provided by this section, the Federal Advisory Committee Act (P.L. 92–463) shall apply to each commission created under this section.

(d) COMMISSION CONSIDERATION.—

(1) IN GENERAL.—Each commission established under subsection (b)(2) shall be responsible for reviewing the proposal or proposals forwarded to it under that subsection and not later than 90 days after the establishment of the commission, shall transmit to the Secretary a report which includes—

(A) a summary of each proposal received;

(B) services to be provided under each proposal, including projected ridership, revenues, and costs;

(C) proposed public and private contributions for each proposal;

(D) the advantages offered by the proposal over existing intercity passenger rail services;

(E) public operating subsidies or assets needed for the proposed project;

(F) possible risks to the public associated with the proposal, including risks associated with project financing, implementation, completion, safety, and security;

(G) a ranked list of the proposals recommended for further consideration under subsection (e) in accordance with each proposal's projected positive impact on the Nation's transportation system;

(H) an identification of any proposed Federal legislation that would facilitate implementation of the projects and Federal legislation that would be required to implement the projects; and

(I) any other recommendations by the commission concerning the proposed projects.

(2) VERBAL PRESENTATION.—Proposers shall be given an opportunity to make a verbal presentation to the commission to explain their proposals.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for the use of each commission established under subsection (b)(2) such sums as are necessary to carry out this section.

(e) SELECTION BY SECRETARY.—

(1) Not later than 60 days after receiving the recommended proposals of the commissions established under subsection (b)(2), the Secretary shall—

(A) review such proposals and select any proposal which provides substantial benefits to the public and the national transportation system, is cost-effective, offers significant advantages over existing services, and meets other relevant factors determined appropriate by the Secretary; and

(B) issue a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate containing any proposal with respect to subsection (a)(1)(A) that is selected by the Secretary under subparagraph (A) of this paragraph, all the information regarding the proposal provided to the Secretary under subsection (d), and any other relevant information deemed appropriate.



(2) Following the submission of the report under paragraph (1)(B), the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing any proposal with respect to subparagraphs (B) through (K) of subsection (a)(1) that are selected by the Secretary under paragraph (1) of this subsection, all the information regarding the proposal provided to the Secretary under subsection (d), and any other relevant information deemed appropriate.

(3) The report required under paragraph (2) shall not be submitted by the Secretary until the report submitted under paragraph (1) has been considered through a hearing by the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the report submitted under paragraph (1)(B).

(f) PRELIMINARY ENGINEERING.—For planning and preliminary engineering activities that meet the criteria of section 26101 of title 49, United States Code, (other than subsections (a) and (b)(2)) that are undertaken after the Secretary submits reports to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate as required under subsection (e), not to exceed \$5,000,000 is authorized to be appropriated from funds made available under section 26104(a) of such title. Only 1 proposal for each corridor under subsection (a) shall be eligible for such funds.

(g) NO ACTIONS WITHOUT ADDITIONAL AUTHORITY.—No Federal agency may take any action to implement, establish, facilitate, or otherwise act upon any proposal submitted under this section, other than those actions specifically authorized by this section, without explicit statutory authority enacted after the date of enactment of this Act.

(h) DEFINITIONS.—In this section, the following definitions apply:

(1) INTERCITY PASSENGER RAIL.—The term “intercity passenger rail” means intercity rail passenger transportation as defined in section 24102 of title 49, United States Code.

(2) STATE.—The term “State” means any of the 50 States or the District of Columbia.

(3) NORTHEAST CORRIDOR.—The term “Northeast Corridor” has the meaning given under section 24102 of title 49, United States Code.

(4) HIGH-SPEED RAIL CORRIDOR.—The terms “high-speed rail corridor” and “corridor” mean a corridor designated by the Secretary pursuant to section 104(d)(2) of title 23, United States Code, and the Northeast Corridor.

## **TITLE VI—CAPITAL AND PREVENTIVE MAINTENANCE PROJECTS FOR WASH- INGTON METROPOLITAN AREA TRAN- SIT AUTHORITY**

### **SEC. 601. AUTHORIZATION FOR CAPITAL AND PREVENTIVE MAINTENANCE PROJECTS FOR WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY.**

(a) AUTHORIZATION.—

(1) IN GENERAL.—Subject to the succeeding provisions of this section, the Secretary of Transportation is authorized to make grants to the Transit Authority, in addition to the contributions authorized under sections 3, 14, and 17 of the National Capital Transportation Act of 1969 (sec. 9–1101.01 et seq., D.C. Official Code), for the purpose of financing in part the capital and preventive maintenance projects included in the Capital Improvement Program approved by the Board of Directors of the Transit Authority.

(2) DEFINITIONS.—In this section—

(A) the term “Transit Authority” means the Washington Metropolitan Area Transit Authority established under Article III of the Compact; and

(B) the term “Compact” means the Washington Metropolitan Area Transit Authority Compact (80 Stat. 1324; Public Law 89–774).

(b) USE OF FUNDS.—The Federal grants made pursuant to the authorization under this section shall be subject to the following limitations and conditions:

(1) The work for which such Federal grants are authorized shall be subject to the provisions of the Compact (consistent with the amendments to the Compact described in subsection (d)).

(2) Each such Federal grant shall be for 50 percent of the net project cost of the project involved, and shall be provided in cash from sources other than Federal funds or revenues from the operation of public mass transportation systems. Consistent with the terms of the amendment to the Compact described in subsection (d)(1), any funds so provided shall be solely from undistributed cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital.

(3) Such Federal grants may be used only for the maintenance and upkeep of the systems of the Transit Authority as of the date of the enactment of this Act and may not be used to increase the mileage of the rail system.

(c) APPLICABILITY OF REQUIREMENTS FOR MASS TRANSPORTATION CAPITAL PROJECTS RECEIVING FUNDS UNDER FEDERAL TRANSPORTATION LAW.—Except as specifically provided in this section, the use of any amounts appropriated pursuant to the authorization under this section shall be subject to the requirements applicable to capital projects for which funds are provided under chapter 53 of title 49, United States Code, except to the extent that the Secretary of Transportation determines that the requirements are inconsistent with the purposes of this section.

(d) AMENDMENTS TO COMPACT.—No amounts may be provided to the Transit Authority pursuant to the authorization under this section until the Transit Authority notifies the Secretary of Transportation that each of the following amendments to the Compact (and any further amendments which may be required to implement such amendments) have taken effect:

(1)(A) An amendment requiring that all payments by the local signatory governments for the Transit Authority for the purpose of matching any Federal funds appropriated in any given year authorized under subsection (a) for the cost of operating and maintaining the adopted regional system are made from amounts derived from dedicated funding sources.

(B) For purposes of this paragraph, the term “dedicated funding source” means any source of funding which is earmarked or required under State or local law to be used to match Federal appropriations authorized under this division for payments to the Transit Authority.

(2) An amendment establishing an Office of the Inspector General of the Transit Authority.

(3) An amendment expanding the Board of Directors of the Transit Authority to include 4 additional Directors appointed by the Administrator of General Services, of whom 2 shall be nonvoting and 2 shall be voting, and requiring one of the voting members so appointed to be a regular passenger and customer of the bus or rail service of the Transit Authority.

(e) ACCESS TO WIRELESS SERVICE IN METRORAIL SYSTEM.—

(1) REQUIRING TRANSIT AUTHORITY TO PROVIDE ACCESS TO SERVICE.—No amounts may be provided to the Transit Authority pursuant to the authorization under this section unless the Transit Authority ensures that customers of the rail service of the Transit Authority have access within the rail system to services provided by any licensed wireless provider that notifies the Transit Authority (in accordance with such procedures as the Transit Authority may adopt) of its intent to offer service to the public, in accordance with the following timetable:

(A) Not later than 1 year after the date of the enactment of this Act, in the 20 underground rail station platforms with the highest volume of passenger traffic.

(B) Not later than 4 years after such date, throughout the rail system.

(2) ACCESS OF WIRELESS PROVIDERS TO SYSTEM FOR UPGRADES AND MAINTENANCE.—No amounts may be provided to the Transit Authority pursuant to the authorization under this section unless the Transit Authority ensures that each licensed wireless provider who provides service to the public within the rail system pursuant to paragraph (1) has access to the system on an ongoing basis (subject to such restrictions as the Transit Authority may impose to ensure that such access will not unduly impact rail operations or threaten the safety of customers or employees of the rail system) to carry out emergency repairs, routine maintenance, and upgrades to the service.

(3) PERMITTING REASONABLE AND CUSTOMARY CHARGES.—Nothing in this subsection may be construed to prohibit the Transit Authority from requiring a licensed wireless provider

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to pay reasonable and customary charges for access granted under this subsection.

(4) REPORTS.—Not later than 1 year after the date of the enactment of this Act, and each of the 3 years thereafter, the Transit Authority shall submit to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the implementation of this subsection.

(5) DEFINITION.—In this subsection, the term “licensed wireless provider” means any provider of wireless services who is operating pursuant to a Federal license to offer such services to the public for profit.

(f) AMOUNT.—There are authorized to be appropriated to the Secretary of Transportation for grants under this section an aggregate amount not to exceed \$1,500,000,000 to be available in increments over 10 fiscal years beginning in fiscal year 2009, or until expended.

(g) AVAILABILITY.—Amounts appropriated pursuant to the authorization under this section shall remain available until expended.

*Speaker of the House of Representatives.*

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