APPROVED
FEB 5 - 1976

ceremony + statement issued 2/5/76 in the East Room

To archives 2/5/76

THE WHITE HOUSE

WASHINGTON

ACTION

Last Day: February 9

February 5, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Enrolled Bill S. 2718 - Railroad Revitalization and Regulatory Reform Act of 1976

Attached for your consideration is S. 2718, sponsored by Senator Hartke, which authorizes $6.4 billion in appropriations and loan guarantees in order to:

-- implement the final system plan for the bankrupt railroads in the Northeast and Midwest,

-- improve rail passenger service in the Northeast Corridor,

-- improve the Nation's rail system through financial assistance, and

-- provide for rail regulatory reform.

A detailed discussion of the provisions of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

OMB, Jack Marsh, Max Friedersdorf, Counsel's Office (Lazarus), Bill Seidman and I recommend approval of the enrolled bill and the proposed signing statement which has been cleared by Bob Hartmann.

RECOMMENDATION

That you sign S. 2718 at Tab C. (IN SIGNING CEREMONY)

That you approve the signing statement at Tab B.

Approve JRC Disapprove _____

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

FEB 4 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2718 - Railroad Revitalization and Regulatory Reform Act of 1976
Sponsor - Sen. Hartke (D) Indiana

Last Day for Action

February 13, 1976 - Friday

Purpose

Authorizes $6.4 billion in appropriations and loan guarantees in order to: implement the final system plan for the bankrupt railroads in the Northeast and Midwest, improve rail passenger service in the Northeast Corridor, improve the nation's rail system through financial assistance, and provide for rail regulatory reform.

Agency Recommendations

Office of Management and Budget	Approval
Department of Transportation	Approval
Interstate Commerce Commission	Approval
Department of Justice	Approval
United States Railway Association	Approval
National Railroad Passenger Corporation (AMTRAK)	Approval
Council of Economic Advisers	Approval
Council on Wage and Price Stability	Approval
Department of the Interior	Approval (Sections 809-810 only)
Department of the Treasury	No objection
Office of Telecommunications Policy	No objection
Department of Labor	No objection

Discussion

This bill is a revised product of the Senate-House conference on the subject, resulting from negotiations between the Department of Transportation and congressional representatives. It would implement the final system plan proposed by the U.S. Railway Association (USRA) to reorganize the bankrupt railroads in the Northeast and Midwest, provide financing for improved rail passenger service in the Northeast Corridor and for rail improvements nationwide, and revise the rail regulatory powers of the Interstate Commerce Commission (ICC), although not to the extent proposed by the Administration.

The bill's major provisions are summarized below.

Financing

S. 2718 would authorize $6.4 billion ($5.1 billion in appropriations and $1.3 billion in loan guarantees) for financing the Northeast and Midwest railroad reorganization, providing assistance to railroads throughout the country for rail rehabilitation and branch line subsidies, and for upgrading rail passenger service in the Northeast Corridor. The Administration had proposed a total of $5.6 billion ($3.6 billion in appropriations and $2.0 billion in loan guarantees) for these programs. While these figures represent a difference not only in levels but also of mix, they represent a considerable compromise from the initial conference committee version of $7.6 billion. Attached is a table which shows the financing authorizations by major category and compares them to the initial Administration proposal and the original conference committee version.

Control over Financing and Conditions

This is the area of greatest compromise by the Congress. The initial conference version would have given total control of most of the funds authorized by the bill to USRA. The enrolled bill would place most of the control of ConRail funding in the Finance Committee of the USRA Board of Directors, composed of the Secretary of Transportation, the Secretary of the Treasury, and the USRA Board Chairman. All other funds would be under the control of the Secretary of Transportation. The Finance Committee and its composition were Administration recommendations.

The bill provides that funds would be made available as requested by ConRail unless the Finance Committee found that ConRail (1) had not met its agreements with USRA; (2) had

failed substantially to meet the financial goals set for it in the final system plan (as set by USRA); or (3) would need substantially more funds to become financially self-sufficient than the $2.1 billion authorized in this bill. If any of these three findings are made, the Finance Committee could either set a limit on future USRA purchases of ConRail securities or terminate such purchases. Although this would give the Executive a strong measure of control, it is tempered by the fact that all such findings would be subject to a constitutionally objectionable one-House congressional veto within 30 legislative days.

USRA would have control over the initial terms and conditions of its purchase of ConRail securities and of the terms and conditions of those securities themselves; the Administration had proposed that this responsibility be shared jointly with the Finance Committee. However, the bill does provide that joint USRA - Finance Committee approval would be needed in the future to change those terms or conditions. Additionally, the Finance Committee alone would have authority to waive any of those terms or conditions, including complete forgiveness of repayment of the loans.

Bankrupt Railroad Reorganization Financing

S. 2718 would provide for Federal financing of the reorganization of the bankrupt Northeast and Midwest railroads by authorizing USRA to purchase up to $2.1 billion in ConRail securities (consisting of $1 billion in debentures and $1.1 billion in series A preferred stock). This coincides with what the Administration had recommended, with the exception that it had proposed that $250 million of the preferred stock funds be set aside as a contingency fund under the control of the Finance Committee rather than USRA's Board.

Under S. 2718, dividends on the Federal investment in ConRail preferred stock would be automatically forgiven until ConRail retained earnings in excess of $500 million and at that time would apply only to those earnings in excess of $500 million, thus resulting in a substantial subsidy. The Administration had proposed that interest and dividends accumulate on the Federal investment but not be payable in cash until ConRail had retained earnings of $500 million. In this way, the government would receive interest for the full period of its investment, but not actually be paid until ConRail was strong enough financially to bear the burden. However, the enrolled

bill is an improvement over the original conference version which would have applied the forgiveness of interest and dividends to both the debentures and preferred stock instead of only to preferred stock, an alternative which the Administration had earlier agreed to in the House-passed version of the bill.

Northeast Corridor Passenger Service

S. 2718 would authorize $1.75 billion for grants by DOT to the National Railroad Passenger Corporation (AMTRAK) to upgrade rail passenger service in the Northeast Corridor between Washington, D.C., New York and Boston, and $85 million for AMTRAK to acquire the Corridor rail properties by lease or purchase. The upgrading would be a 5-year program designed to provide travel time of 3 hours, 40 minutes between Boston and New York and 2 hours, 40 minutes between New York and Washington. Two years after enactment of the bill, DOT would be required to submit a report to Congress on the future feasibility of establishing a 3-hour Boston-New York service and 2 1/2-hour New York-Washington service. Part of the $1.75 billion would be used for a joint Federal-State program of refurbishing stations and other nonoperational facilities.

The Administration had proposed a $1.1 billion grant program designed to ensure travel times of 4 hours between Boston and New York and 3 hours between New York and Washington. The enrolled version is, however, a major improvement over the initial conference committee version, which would have authorized a $2.4 billion program, with control in USRA rather than DOT, and with goals of 3-hour service between Boston and New York and 2 1/2 hours between New York and Washington.

Regulatory Reform

The enrolled bill would provide a measure of regulatory reform in ICC's authority over railroads, the first lessening of ICC controls since 1887. The bill leaves the ICC more discretion in certain areas than the Administration's bill would have provided. Accordingly, the success of the reform measures relies to some degree on the way in which the ICC chooses to administer them.

S. 2718 would facilitate railroad price flexibility by limiting ICC's authority to suspend rates, by permitting use of incentive rates for new services and seasonal demand pricing, and by authorizing a 2-year experiment with rate flexibility. The experiment provides that rates which were increased or decreased by no more than 7% over the rate in effect on January 1 of a year could not be suspended by the ICC except

under limited conditions. While these changes are an improvement over current conditions, they do not provide permanent rate flexibility authority as did the Administration's proposal.

S. 2718 would also lessen the authority of railroad rate bureaus to engage in price fixing activities, although the ICC retains authority to grant antitrust immunity and may exercise considerable discretion in the use of this power. The Administration had proposed placing stricter limitations on rate bureau activities and would have restricted their antitrust immunity.

The bill would provide for improved ICC procedures in other matters, such as setting time limits for ICC decisions. In addition, it would require ICC to study its rules and make changes based on the study within one year of enactment of this bill. The bill would also, however, authorize a one-House veto of such proposed rule changes.

You have proposed similar reforms in the aviation and motor carrier industries. This enrolled bill may generate renewed interest in these proposals.

Other Desirable Provisions

The bill would also make a number of other changes in current law which are desirable, including:

(1) Prohibiting State taxes which discriminate against railroads,

(2) Providing for ICC action on intrastate rail rates if the State fails to act within 120 days,

(3) Improving procedures for abandonment of rail lines, and

(4) Providing incentives for innovative capital investments by easing rate adjustments.

Other Undesirable Provisions

Branch Line Subsidies. S. 2718 would authorize appropriations of $360 million for a nationwide program, in addition to an existing authorization of $180 million for the Northeast/ Midwest railroads, to provide a five-year Federal subsidy program for light density rail freight lines which would be

eligible for service discontinuance. The Regional Rail Reorganization Act of 1973 (P.L. 93-236) envisioned that States and localities in the Northeast region would make decisions as to whether such rail lines were important to them and if so would agree to subsidize the net loss which the rail line was experiencing in order to maintain its service. S. 2718 largely abandons this principle, both in the region and nationwide, authorizing 100% Federal financing in the first year, 90% the second year and, in the nationwide program, 80% the third year, and 70% in the fourth and fifth years.

Fossil Fuel Rail Bank. S. 2718 would authorize $6 million for DOT to acquire, by purchase or lease, rail track and properties which are not included in the USRA's final system plan for the Northeast and which would provide access to areas of fossil fuel natural resources or agricultural production. The Administration opposed this proposal because of the precedent it would set for Federal ownership of rail lines.

ICC Budget and Legislation. S. 2718 would require the submission to Congress of all ICC budget or legislative recommendations at the same time they are submitted to the President or OMB. The Administration has opposed such provisions because of the limits they place on the Executive's ability to present coordinated budget and legislative programs to the Congress. It should be noted, however, that the ICC has never submitted its proposed legislation for review through the legislative clearance process.

* * * * * *

The enrolled bill is the product of extended negotiations between the Administration and the Congress. While its provisions depart from the Administration's initial recommendations in some instances and while it still contains, as noted above, some undesirable features, it is an acceptable resolution of a complex and important set of issues.

Finally, it should be noted that the Commerce Committees were advised that the amount and rate of appropriations to implement the bill would be handled separately and that agreement to the authorized levels in S. 2718 did not imply a commitment for full funding. It is likely, however, that some supplemental appropriations (for which modest contingency allowances were made) might be proposed in the coming weeks or months.

A proposed signing statement, which was worked on by DOT, OMB and White House staff, has been submitted separately for your consideration.

James T. Lynn
Director

Enclosures

Attachment

COMPARISON OF AUTHORIZATIONS
(Dollars in Millions)

	Original Administration Proposal	Original Conference Bill 1/	Enrolled S. 2718
I. ConRail			
. Purchase of securities	$1,850	$2,100	$2,100
. Contingency Fund	250	--	--
. Electrification (loan guarantees)	--	--	-- 2/
. Pre-conveyance claims (loan guarantees)	--	400	275
II. Rail Passenger			
. Northeast Corridor Project	1,080	2,400	1,750
. Passenger improvements nationwide	--	200	--
. Acquisition of Northeast Corridor by AMTRAK	--	85	85
. Acquisition of other corridors by AMTRAK	--	20	20
. Other related expenses	--	151	11
III. Nationwide Rail Freight			
. Loan guarantees	2,000	800	1,000
. Loans/grants/redeemable preference shares	--	600	600
IV. Continuation Subsidies			
. Branchline	--	400	360
. Right-of-way for recreation	--	75	20
. Fossil Fuel Rail Bank	--	6	6
. Commuter	--	125	125
V. Other			
. Controlled Transfer Assistance	400	--	--
. Miscellaneous	--	29	20
TOTAL AUTHORIZATIONS	$5,580	$7,591	$6,372

1/ Passed by both Houses - Dec. 19, 1975
2/ Included under other accounts

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

February 5, 1976

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

Dear Mr. Lynn:

I have just discussed the Department's letter concerning S. 2718 with my General Counsel, and we are agreed that the last two sentences on page 24 thereof should be changed to read as follows:

> The chance that the creditors will succeed in their extravagent claims for a "reproduction cost less depreciation" measure are slight. There is, however, some chance in light of the confused and conflicting state of the law here that the courts will settle on some theory that compromises, probably closer to our theory, between the theory we are asserting and that the creditors are asserting. We seriously doubt, however, there will be massive liability. In any event, whatever danger does exist is not the creation of this bill, but has existed since the passage of the RRRA: the risk is one that is a necessary concommitant of a desire to create a ConRail.

Sincerely,

Bill

William T. Coleman, Jr.

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

FEB 4 1976

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

Dear Mr. Lynn:

This is in response to your request for the views of the Department on S.2718, an enrolled bill:

> To improve the quality of rail services in the United States through regulatory reform, coordination of rail services and facilities, and rehabilitation and improvement financing, and for other purposes.

GENERAL

The basic purposes of S.2718 are (1) to establish a financing mechanism and other procedures applicable to the transfer and rehabilitation of rail properties under the Final System Plan adopted under the Regional Rail Reorganization Act of 1973, as amended (RRRA); (2) to establish a program for upgrading rail passenger service in the Northeast Corridor; (3) to modernize various provisions of the Interstate Commerce Act as they apply to the economic regulation of railroads; (4) to establish a program of financial aid for the railroads; and (5) to provide for the continuation through subsidy of rail service that would otherwise be discontinued in the Northeast and Midwest Region and in other parts of the country.

The various provisions of the bill designed to carry out these basic purposes are discussed below. In each case, there is a discussion of the chief differences between those provisions

and the provisions of the following four Administration or Administration-backed bills on these subjects submitted to the Congress during 1975: (1) the proposed Second Regional Rail Reorganization Act Amendments of 1975 (jointly prepared by USRA and the Department and submitted to the Congress by USRA in September 1975); (2) the proposed Departmental bill submitted to the Congress in November 1975 providing for the improvement of intercity rail passenger service in the Northeast Corridor; (3) the proposed Railroad Revitalization Act submitted to the Congress by the President in May 1975; and (4) the proposed Local Rail Service Amendments of 1975 submitted to the Congress by the Department in October 1975.

IMPLEMENTATION OF THE FINAL SYSTEM PLAN

Title VI of the enrolled bill amends the RRRA (1) by establishing revised funding levels and procedures pertaining to the Federal investment in ConRail; (2) by authorizing conveyances of rail properties in a manner supplementary to the final system plan; and (3) by revising provisions pertaining to the compensation for rail property transferred under the RRRA.

Funding Levels

The enrolled bill authorizes the appropriation of $2.1 billion to USRA to enable USRA to purchase $1 billion of ConRail debentures and, after the acquisition of those debentures, up to $1.1 billion of the series A preferred stock of ConRail. It also authorizes the Secretary to guarantee in conjunction with the loan guarantee authority in title V of the bill up to $200 million of ConRail obligations for the purpose of electrifying high-density mainline routes. Consonant with that funding, the obligational authority available to USRA under section 210(b) of the RRRA is reduced from $1.5 billion to $275 million. The funding authority in section 210(b) would be used to provide startup money to ConRail and otherwise enable ConRail to purchase inventories prior to the availability of funds from the sale of their securities in order to permit orderly and efficient implementation of the final system plan (section 211(g)); to provide loans to ConRail, Amtrak, or profitable railroads

to permit those loan recipients to meet obligations of bankrupt railroads which should be paid to avoid disruptions in ordinary business relationships (not more than $230 million of the $275 million could be used for this purpose) (section 211(h)); and to cover other loans or loan commitments, existing or potential, made or applied for under section 211 of the RRRA prior to January 1, 1976. Any loans to ConRail for the purchase of inventories would be made on the condition they be refinanced by the issuance of debentures to USRA.

The Administration also proposed that USRA's authority to acquire ConRail securities be limited to $2.1 billion ($1 billion of debentures and $1.1 billion of series A preferred stock). However, the Administration proposed that the $1.1 billion authorization for the purchase of series A preferred stock be separated into an $850 million fund under the control of the USRA Board and a separate $250 million contingency fund controlled by a Government Investment Committee which would be established as a Committee of the USRA Board. No proposal was made by the Administration for Federal financial aid for the electrification of ConRail lines. The Department originally proposed a more severe reduction in the obligational authority available to USRA under section 210(b) of the RRRA, but later indicated that the funding level of $275 million would be appropriate to cover the various purposes stated above.

In summary, the overall funding in title VI of the enrolled bill is reasonably close to the level proposed by the Administration. The total dollar level applicable to the purchase of ConRail securities is right on the mark. The $200 million authorization for the electrification of ConRail lines is not appropriate at this time. However, the $200 million in loan guarantees is in the control of the Secretary and counts against the $1 billion ceiling placed upon loan guarantees made available under section 511 of the bill. As indicated above, the new dollar limit placed on the obligational authority available to USRA under section 210(b) of the RRRA is satisfactory. It also should be noted that the enrolled bill does not contain a specific authorization of funds to help finance supplemental transactions. The joint USRA-DOT legislation authorized $400 million for this purpose. It appears, however, that financial assistance available under title V of the enrolled bill

can be used by the Secretary to facilitate supplemental transactions.

Funding Controls and Conditions

Among the most important provisions of the enrolled bill are those outlining the circumstances and conditions under which funding may be provided to ConRail. These provisions were also among the most controversial parts of the bill and remained a substantial roadblock to obtaining an acceptable bill until the adoption by the Conference Committee of its second recommended bill. Under the enrolled bill USRA would be empowered to purchase up to $1 billion in ConRail debentures and, after the acquisition of such debentures, up to $1.1 billion of ConRail series A preferred stock. Purchases would be made as required and requested by ConRail unless the Finance Committee of the USRA Board of Directors (composed of the USRA Board Chairman and the Secretaries of Transportation and the Treasury) found that ConRail (1) had breached its covenants to USRA; (2) had failed substantially (as determined by performance within margins prescribed by the USRA Board) to meet financial results projected for ConRail in the Final System Plan; or (3) would need funds substantially in excess of $2.1 billion in order to become financially self-sustaining. Upon making any such finding, the Finance Committee could direct USRA to refrain from purchasing any further securities of the Corporation or to refrain from purchasing additional securities in amounts in excess of, or upon terms and conditions contrary to, those specified by the Finance Committee. The bill also provides, however, for Congressional review of any such affirmative finding by the Finance Committee. Within ten days after an affirmative finding by the Finance Committee, the USRA Board would be required to forward to the Congress a copy of the finding and recommendations thereon of the Board. The finding would stand if 30 legislative days elapsed and neither the House nor Senate disapproved the finding. (USRA would continue necessary funding pending Congressional action.)

The enrolled bill empowers USRA to establish the terms and conditions governing USRA's purchase of ConRail securities as well as the terms and conditions of the debentures and series A preferred stock themselves. The bill specifically provides, however, that dividends payable on series A preferred stock shall not be cumulative and shall be paid in cash when and to the extent that there is "cash available for restricted cash payments" as that

term is defined in the Final System Plan. After USRA calls for redemption of the certificates of value, no shares would be issued in lieu of interest on ConRail's debentures and to the extent such interest is not payable in cash because of the absence of sufficient cash, ConRail is to deliver to debenture holders contingent interest notes in a face value amount equal to the unpaid interest. The USRA Board and the Finance Committee would act jointly in modifying any terms or conditions governing USRA's purchase of ConRail securities. The Finance Committee alone would be empowered to waive compliance with the terms and conditions of the securities, including those applicable to redemption of principal or issuance price or the payment of interest or dividends.

The above-mentioned provisions of the enrolled bill contain many features proposed in the USRA-DOT bill. However, they do not go as far as the Administration proposal with respect to enabling the Executive Branch to protect the Federal investment in the Corporation. The composition of the Finance Committee (the USRA Board Chairman and the Secretaries of Transportation and of the Treasury) is the same as proposed by the Administration and the three crucial findings that may be made by the Committee are nearly the same as those in the USRA-DOT bill. In addition, the enrolled bill adopted the Administration's proposal that the Committee alone be empowered to waive compliance with terms and conditions of ConRail securities held by USRA. In contrast, the enrolled bill permits USRA to act independently of the Committee in prescribing the terms and conditions governing purchases of ConRail securities by USRA and determining the margins with respect to ConRail's attainment of the overall operating and financial results projected in the Final System Plan. (As a practical matter, the margins have already been established by USRA with our concurrence.) In addition, it injects the Congress directly and immediately into the decision-making respecting any cutoff of USRA's purchase of ConRail securities or any change to the terms and conditions of such purchase. The section providing that dividends on ConRail series A preferred stock shall not be cumulative also reduces somewhat both the protection and the financial return provided the Government by the USRA-DOT bill.

On balance, we believe that the protective provisions contained in the enrolled bill are satisfactory. Earlier versions of the bill threatened to provide USRA sole authority to control the flow of Federal funds to ConRail and to forgive any part or all of ConRail's payments of interest, dividends or principal. Such an arrangement clearly would have been contrary to the interests of the taxpayer and fortunately it was avoided.

SUPPLEMENTAL TRANSACTIONS

Title VI of the enrolled bill establishes a procedure for effecting transfers of rail properties in the Midwest and Northeast Regions supplementary to those prescribed by the final system plan. Such transactions could be proposed by the Secretary or USRA at any time within six years after the date on which rail properties are initially conveyed under the RRRA. The Secretary would submit such proposals to USRA. Such proposals, and those proposed by USRA itself, would be evaluated by USRA after affording an opportunity for public comment, and USRA would make findings as to whether the transactions are (1) in the public interest and consistent with the purposes of the RRRA and the goals of the final system plan, and (2) fair and equitable. At this point, however, all further administrative and judicial proceedings regarding the proposal would be terminated if any proposed transferor (other than ConRail) or transferee of rail properties failed to indicate to USRA that the proposal was acceptable to it. If acceptable, the proposals would be sent to the ICC for review and approval. However, the ICC's disapproval of a proposal would not automatically block a proposal. Instead, the ICC's determination would be forwarded to the Special Court for consideration. Following the aforementioned proceedings conducted by USRA and the ICC, USRA would petition the Special Court for review of any proposal USRA found to be in the public interest. In a case where USRA found a DOT proposal not to be in the public interest, the Secretary could file such a petition. If the Special Court found a proposal to be in the public interest and fair and equitable, it would direct ConRail to consummate the transactions. If the findings of the Special Court are negative, provision is made for the modification of proposals and their resubmission to the Court for review.

As mentioned above, there is no provision in title VI of the bill specifically designed to provide financial assistance for the purpose of facilitating the implementation of a supplemental transaction. However, it appears that the Secretary could make such assistance available under the financial aid provisions in title V of the bill.

The bill to implement the final system plan jointly prepared by USRA and DOT contained procedures for processing supplemental transactions similar to those in the enrolled bill. In addition, it authorized the appropriation to the Secretary of $400 million, among other things, to facilitate the implementation of supplemental transactions. Unlike the enrolled bill, the USRA-DOT bill permitted the ICC to propose supplemental transactions, but did not provide for any ICC review of these transactions.

The important features sought by the Department are contained in the enrolled bill. First, ConRail is not permitted to veto proposals for the transfer of its properties to other railroads. This is important to keeping open the option for additional restructuring which will promote the establishment of a financially self-sustaining rail service system in the Midwest and Northeast Region adequate to meet the needs of the Region. Secondly, the ICC cannot veto any such proposals. We would have preferred that the ICC review function be more severely limited, however. Notwithstanding a negative ICC stand on a Departmental proposal, the Secretary can still petition the Special Court for a favorable ruling with respect to one of his proposals but the Court will also have before it for consideration the negative ICC determination. Finally, USRA cannot block a proposal advanced by the Secretary. Again, the bill permits the Secretary to petition the Special Court for a favorable ruling on one of his proposals despite a negative USRA determination.

NORTHEAST CORRIDOR IMPROVEMENTS

Title VII of the enrolled bill mandates the execution of a program for upgrading intercity rail passenger service in the Northeast Corridor. On the date of the conveyance of rail properties under section 303 of the RRRA, ConRail would be required to transfer

by purchase or lease to the National Railroad Passenger Corporation (Amtrak) the rail properties designated in the final system plan for improved Corridor operations and, within 180 days after the date of enactment of the bill, agreements would have to be executed providing for the assumption by Amtrak of all operational responsibility for intercity services along the Corridor and of the responsibility for control and maintenance of the transferred properties. The bill requires the establishment within five years after the date of enactment of the bill of regularly scheduled, dependable service between Boston and New York operating on a three-hour and 40-minute schedule, including stops, and between New York and Washington on a two-hour and 40-minute schedule, including stops. Amtrak would make improvements at its option and in accordance with route criteria approved by the Congress to service on routes to Harrisburg and to Albany from the Corridor main line, and from New Haven to Boston via Springfield.

The bill authorizes appropriations to the Secretary of $1.6 billion to effectuate the goals for improvement of Corridor service. (Funds would not be available for improvement of the off-mainline routes mentioned above until after the five-year goals for the mainline have been achieved.) In addition, the bill authorizes $150 million for the improvement of nonoperational portions of stations, related facilities, and fencing. Fifty percent of the cost of those improvements would be borne by the States or by local or regional transportation authorities. Approximately $96 million is authorized to cover Amtrak's startup costs, the cost of acquiring the Corridor properties, and the cost of developing and utilizing mobile radio frequencies for rail passenger radio telephone service. Another $20 million is authorized for the acquisition and improvement of passenger lines outside of the Corridor.

The Secretary is required to coordinate all transportation programs related to the Corridor so that they are integrated and consistent with implementation of the Corridor project. The Secretary may deny funding if he finds any significant noncompliance with the implementation of the goals for the Corridor. The bill provides, however, that Amtrak will acquire the properties by purchase or lease and it authorizes Amtrak to enter into appropriate agreements with other railroads and commuter agencies for the provision of freight and commuter service over the rights-of-way. A five-member Operations Review Panel would be established to resolve differences of opinion

concerning operations between Amtrak and such other railroads and commuter agencies. The Panel would be comprised of one member selected by Amtrak, one selected by commuter authorities, one selected by ConRail, and two selected by the Chairman of the National Mediation Board.

Within two years after the enactment of the bill, the Secretary is required to report to Congress on the results of the passenger service established in the Corridor under the bill and on the feasibility of establishing regularly scheduled intercity rail passenger service between Boston and New York on a three-hour schedule and between New York and Washington on a two and one-half hour schedule.

The Department's bill for upgrading service along the Northeast Corridor proposed a $1.2 billion program in which the Federal share was 90 percent ($1.08 billion) and the share of the States along the Corridor was 10 percent ($120 million). An additional $200 million in local station improvements not essential to train operations would have been assumed by the appropriate State and local governments. The goal of that program was to provide reliable trip times (with stops) of four hours between Boston and New York and three hours between New York and Washington.

Title VII of the bill represents a compromise between the Department's proposal and a proposal in the bill first reported by the Conference Committee, which established a $2.4 billion, four-year Corridor improvement program calling for a three-hour schedule between Boston and New York and a two and one-half hour schedule between New York and Washington. The crucial change to the Corridor provisions in the first bill reported by the Conferees is the establishment of initial service levels similar to those proposed by the Administration. It appears at this point that achievement of the higher service levels originally sought by the Conferees (and included in the bill as a prospective second step in Corridor improvements) would have cost nearly $4.5 billion. We believe the authorizations in the enrolled bill are higher than necessary but nevertheless they represent a substantial reduction from the earlier levels.

The enrolled bill contains other improvements over the previous bill reported by the Conferees in that it authorizes the appropriation

of funds to the Secretary, rather than to USRA, and places in an optional category the improvement of lines which join the main Corridor route. Moreover, the Secretary is charged with the responsibility for implementing the improvement project in order to achieve the goals of title VII. However, a number of negative features remain in title VII. For example, there is no flexibility with respect to who should acquire the Corridor properties or the timing of that acquisition. Amtrak will acquire the properties by purchase or lease on the date that properties are transferred to ConRail under the RRRA. In addition, Amtrak will have the authority to operate under contract freight and commuter service on the Corridor. Also, we would have preferred a delay in providing the authorizations to Amtrak for functions other than upgrading the Corridor. It would have been preferable if authorizations for Amtrak operations could be considered in the context of the normal budget process for Amtrak. Also, the separate $20 million authorization for the acquisition and improvement of rail properties outside of the Corridor cannot be justified in the light of (1) competing needs for the improvement of rail services, and (2) the existence of the extensive rail service continuation subsidy program contained in title VIII.

To complete the funding picture with respect to intercity rail passenger service, it should be noted that under title V, the Secretary can provide up to $150 million in loan guarantees for the rehabilitation of Northeast Corridor properties. In addition, $200 million may be made available under title V to improve intercity rail passenger services outside of the Northeast Corridor. The relationship of this funding to the title V program for financial aid is discussed further below.

REGULATORY REFORM

Pricing Flexibility

Section 202 of the enrolled bill provides significant pricing flexibility, both with respect to increases and decreases. It also prohibits umbrella ratemaking. Specifically, with respect to minimum ratemaking the bill provides that no rate can be found to be too low if it contributes to the going concern value of the proponent carrier. A rate which equals or exceeds variable costs is presumed, unless rebutted by "clear and convincing evidence", to contribute to the going concern value. At the suggestion of the Administration, the

bill directs the Commission in determining variable costs to look only to the variable costs of the carrier in question. Average and industry costs cannot be used unless the carrier so requests and the specific data is not available. Also at the suggestion of the Administration, certain language was inserted in the conference report to clarify the meaning of "going concern value". This language indicates that in determining such value the Commission is to inquire whether the rate change improves the going concern value of the carrier as compared to what it would have been had the rate not been changed. In other words the carrier need not prove that the rate change resulted in a net increase in the going concern value. Such a showing would not be possible where the carrier is decreasing his rate to counter a rate decrease of a competitor. The conference language is helpful in clarifying this ambiguous area.

With respect to maximum rates, the bill provides that the Commission may not find a rate unlawful on the ground that it exceeds a just and reasonable maximum unless it has found that a carrier has market dominance over the service rendered under such rate. Market dominance is defined in the bill simply as the absence of effective competition from other carriers or modes of transportation. The earlier presumptions of market dominance contained in the House and Senate bill, which were confusing, were deleted in the final bill. The bill also provides that carriers may raise their below-cost rates to a level equal to their "incremental costs". This term is not defined in the bill, but the legislative history indicates it refers to the carrier's specific out-of-pocket costs. This term was used in place of "variable cost" because in the earlier drafts of the bill the term variable cost was not restricted to a particular carrier's cost and industry averages could have been used. With the Administration's suggested language added to the definition of variable cost in the final bill as referred to above, incremental and variable costs are substantially the same.

The bill makes many procedural changes which also greatly add to pricing flexibility. The Commission must make a final determination of rate cases within seven months of the date the rate was scheduled to go into effect, unless the Commission makes a report to Congress. In that event, the time period is extended to 10 months.

At the end of the applicable time period the rate must go into effect regardless of whether the Commission has reached a decision. Pending completion of an investigation in a rate case, the Commission may suspend a rate for a period of seven months, or 10 months if a report is given to Congress. However, the suspension powers of the Commission have been drastically curtailed in several ways. First, all suspensions may be made only upon a verified complaint that "(i) without the suspension the proposed rate change will cause substantial injury to the complainant or the party represented by such complainant; and (ii) it is likely that such complainant will prevail on the merits." The burden of proof is upon the complainant to establish the matters set forth in clauses (i) and (ii). Such a burden is a very significant change from the present standard of the Commission, which in effect requires the complainant only to show that there are reasonable grounds for believing the rate to be unlawful. In addition, present practice in law does not require a showing of "substantial injury".

Second, the bill does provide for a limited two-year no suspend zone. In the two years following the adoption of the bill carriers may raise or lower their rates 7 percent each year without suspension within certain limits. The two-year no suspend zone sets a good precedent, but it is somewhat redundant in light of the very significant limitations that were made upon the Commission's general suspension power.

The bill also provides for an escrow provision for rate increases which are investigated but not suspended.

Finally, the Secretary and the Commission are each to study the effects of the ratemaking amendments and to separately report to Congress within 20 months of the enactment of the bill.

In the area of umbrella ratemaking, section 205 of the bill coupled with the earlier referenced amendments to section 202 remove the power of the Commission to engage in umbrella ratemaking. Section 205 then goes on to describe a new standard for adequacy of revenue for the railroads, and then reconfirms that the Commission is not to engage in umbrella ratemaking by specifically stating that the rates of a railroad may not be held up to protect the traffic of

another carrier unless the Commission finds that the railroad rate reduces the going concern value of the railroad, i.e., the rate is not compensatory.

The enrolled bill also adopted almost word for word the Administration's "Big John" proposal, which provided expedited and special procedures for large capital investments and the Administration's intrastate rate provisions. Provisions relating to per diem and demurrage, which are really hortatory in nature, were also adopted.

The Administration's bill provided much of the language and ideas for the rate flexibility sections of the enrolled bill. The Administration proposed that rates above variable cost could not be found by the Commission to be unreasonable on the basis that they were too low and that carriers could increase rates that were below cost to the variable cost level. Furthermore, the Administration bill prohibited umbrella ratemaking.

The Administration proposed a permanent no suspend zone which would be phased in over a period of three years allowing 7 percent, 12 percent, and 15 percent changes, respectively, in those years. Starting with the fourth year and thereafter carriers would be allowed to increase their rates 15 percent without fear of suspension. There would have been no suspension for rate decreases. The Administration's bill would also have required that in all suspension cases there would have to be a finding of substantial injury and a likelihood of success. Finally, time limits would have been placed on Commission decisions concerning the ultimate legality of rates.

The enrolled bill differs in form from the Administration's proposal, but the effect of the two bills is much the same. In both bills carriers may reduce their rates to levelswhich essentially cover their own costs. The enrolled bill uses a "going concern value" approach, but "going concern value" is closely tied to variable costs by the specific presumption in the enrolled bill. Both bills definitely prohibit umbrella ratemaking. In addition both put very stringent limitations upon the Commission's power to suspend rates. The enrolled bill has a very limited no suspend zone, but this is mostly a symbolic defect in light of the very broad restrictions on the general suspension power of the Commission.

The bill's use of the market dominance test was not proposed by the Administration but it is consistent with our general rate flexibility philosophy. Both bills place time limits on ICC ratemaking decisions. The only question in the rate flexibility sections of the enrolled bill is the language in subsection (f) of section 202 which preserves the Commission's ability to defend against so-called "predatory" rates and to engage in certain activities with respect to ports. That subsection (f) provides a general proviso to the ratemaking section that states that nothing in section 202 is to be construed (1) to modify the application of sections 2, 3, or 4 of the Interstate Commerce Act in rate cases; (2) to make lawful any competitive practice which is unfair, destructive, predatory or otherwise undermines competition; (3) to affect existing law or authority of the Commission with respect to rate relationships between ports; or (4) to affect the authority and responsibility of the Commission "to guarantee the equalization of rates within the same port". This language would be troublesome were it not for the strong language in the Senate and House reports which indicates that predatory conduct is to be equated with below-cost ratemaking except in exceptional cases. The reports also indicate that the language relating to the "rate relations between ports" preserves existing authority of the ICC but does not grant new authority. It is only with respect to rates within the same port that the Commission may have obtained new authority. A somewhat similar problem was raised by language in the last part of section 202(e) which required the Commission to consider if any rate change had a "significantly adverse effect" on the competitive posture of shippers. This language raised the question of whether new authority had been given to the Commission to adjust rates artificially, but the enrolled bill clarified this by inserting the language "(in violation of section 2 or 3 of this part)" directly after the language quoted above. This insertion makes clear that new authority is not being given to the Commission, but rather the Commission is being reminded of an existing duty.

In summary the enrolled bill accomplishes most of the reform sought by the Administration in the area of pricing flexibility.

Tariff Modification

Section 203 of the enrolled bill made certain minimal changes to section 15(3) of the Interstate Commerce Act. In addition the original Conference bill proposed an ambiguous change to section 15a, which raised questions whether increased standing was being granted to certain shippers. It also raised questions of whether the substantive power of the ICC was being enlarged. In the enrolled bill language was inserted to ensure that new standing was not being included. In addition the final Conference Report specifically states that the amendment to section 15a "is intended to deal with a procedural problem...it does not expand existing ICC jurisdiction, but rather assures that the ICC will consider, at the time a rate is proposed, allegations regarding the effects of the proposed rate change".

The Administration did not propose any changes similar to those made by section 203. The previous version of section 203 was ambiguous but in light of the changes made in the final bill and the language in the final Conference Report, the problem should be minimal.

Rate Bureaus

The enrolled bill contains a great deal of language concerning rate bureaus. However, only minimal changes have been effected. The bill prohibits agreements and voting for single line rates and also with respect to non-participants in joint line rates. However, the bill also provides that these prohibitions do not apply to general rate increases and "broad tariff changes". The bill does prohibit rate bureaus from protesting independent action of their own mode.

The Administration proposed changes of much greater significance. Our bill would have prohibited discussions, agreements and voting with respect to single line rates and for all joint line rates. After three years, similar prohibitions would have been applied to all general rate increases, except those relating solely to labor and fuel increases. Rate bureau protests of any action, regardless of mode, would have been prohibited.

Clearly, in the regulatory reform area, the least progress was

made with respect to rate bureaus. The provisions of section 208 are not a step backwards, but they advance the needed reform very little. There will be cost constraints placed upon single and joint line rates, but general rate increases and group rates will not be affected.

REFORM OF THE ICC

Title III of the enrolled bill makes many significant and beneficial changes in the procedures and practices to be followed by the Commission in the processing of cases. The specific provisions included in the bill relating to procedure were not submitted by the Administration, but they do serve the Administration's goal of expediting Commission proceedings and make them more intelligible to the public.

In addition Title III substantially incorporates the Administration's proposal with respect to prohibiting discriminatory State taxes on railroads. We note that the Senate proviso which would have grandfathered certain States from the effect of this prohibition was not included in the enrolled bill. Title III also contains for the most part the Administration's proposal for a new uniform cost and revenue accounting system. Unfortunately the bill gives this responsibility solely to the Commission and does not include the Department, but we believe the direction of section 307 to the Commission is quite clear.

Section 310 of the bill was not introduced by the Administration, but this section would facilitate the use of unit train service, a cost in energy efficient type of service, and we would support section 310.

On the negative side, section 304 would establish an office of Rail Public Counsel, with a director appointed by the President, by and with the advice and consent of the Senate. We recommended against the establishment of such an office, for we consider it an unnecessary layer of bureaucracy. The same comment applies to the establishing on a permanent basis of the Rail Services Planning Office, as provided in section 309. Although we view section 304 and 309 as objectionable, we believe that the problems they cause are outweighed by the other beneficial parts of Titles II and III.

MERGERS

The Administration proposed very significant changes with respect to the present merger standards and procedures used by the Commission. In particular, the Administration proposed a new procedure involving the participation of the Secretary of Transportation and the Attorney General. In addition very stringent time limits were placed upon ICC decisions relating to mergers. Our proposal provided that if the Commission failed to meet these time limits, the decision would be returned to the Secretary and the Attorney General for ultimate resolution. Of equal importance, our proposal would have changed the ambiguous test which the Commission now uses to decide merger cases.

Title IV of the enrolled bill falls far short of the objectives of the Administration. It does not involve the Secretary to the extent proposed by the Administration, nor does it reform the procedure as we had proposed. Most importantly the standard for mergers is left untouched. The most basic change accomplished by Title IV is the time limit imposed on merger proceedings. This is a beneficial change, but its value is somewhat diminished by the uncertainty as to what will happen if the Commission does not comply with the deadline. It would seem under the "ordinary" procedures of section 402 that the Commission could simply avoid the deadline by giving notice to Congress. Under section 403 the Congressional notice provision is omitted but there is no mechanism to force the Commission to make the required decision. Most likely, resort would have to be made to the courts, itself a potentially lengthy process. The conferees expressly rejected imposing any effective time limit.

We note in section 401 that the Secretary is given a so-called catalyst role in proposing mergers and we support this provision.

In summary we regret that Title IV does not reflect the provisions sought by the Administration, but we believe that the time limits placed upon the Commission together with the increased recognition given to the Secretary by section 401 will be beneficial. Therefore we support Title IV.

RAIL CONTINUATION SUBSIDIES

Title VIII of the enrolled bill modifies the program for rail service continuation subsidies applicable to the Northeast and Midwest Region which was established by the RRRA and establishes a similar program for the Nation as a whole. Under the amendments to the program for the Midwest and Northeast, (1) the Federal share of rail continuation assistance is enlarged to 100 percent for the first year and 90 percent for the second year; (2) all funds would be available for the acquisition and modernization of rail properties, and no restriction would be imposed upon the provision of continuation subsidies for properties so acquired or modernized; (3) funds would be distributed to each State under an entitlement formula based upon the amount of rail mileage in the State eligible for continuation assistance; (4) $180 million would continue to be authorized but without fiscal year limitation; (5) up to five percent of the funds received by a State could be used for planning activities; (6) provision is made for funding the construction or improvement of transportation facilities other than rail where rail service will no longer be available; and (7) funds are available for acquiring certain rail properties for intercity passenger and commuter service.

Under an amendment to section 4 of the Department of Transportation Act, the Secretary could make available to all of the States financial assistance to cover the cost of rail continuation payments, the cost of purchasing and improving rail properties, and the cost of reducing the costs of lost rail service in a manner less expensive than continuing rail service. During the period between the date of enactment of the bill and the second anniversary of the conveyance of rail properties under the final system plan, only those States outside the Midwest and Northeast Region would be eligible for funds under this program. After that period, all States could participate in the program. The Federal share of costs would be 100 percent from July 1, 1976 to June 30, 1977. Thereafter, the Federal share would be reduced to 90 percent for the next twelve months; 80 percent for the following twelve months; and 70 percent for the next 24 months (through June 30, 1981). For the last two years, the Secretary could adjust the amount of the Federal share so as not to exceed the maximum funding authorization. $360 million is authorized without fiscal year limitation for the nationwide program. Funds would be provided under an entitlement formula similar to the one described above for the Midwest and Northeast Region.

Title VIII of the enrolled bill also establishes three other programs of Federal financial assistance. Under the first program, the Secretary is required to reimburse ConRail, Amtrak, and other railroads for losses attributable to commuter operations continued under revised section 304(e) of the RRRA. The Federal share of the costs are 100 percent for the first year, 90 percent for the second year, and 50 percent for any 180-day period of operations thereafter. Federal assistance could not be made available for more than two years unless assurances were made by the recipients that the services would be continued after the subsidy is terminated. $125 million in obligational authority is provided. The obligations would be liquidated as follows: not to exceed $40 million during the transition period; not to exceed $95 million by September 30, 1977; and not to exceed $125 million by September 30, 1978.

Under the second program a total of $20 million is authorized for the fiscal years 1976, 1977, and 1978 for (1) the preparation by the Secretary of a report on the future use of abandoned rail rights-of-way for rail or other purposes; and (2) the funding by the Secretary of the Interior of State, local, and Federal programs for the conversion of abandoned rights-of-way to recreational and conservational purposes. Eighty percent of the funds appropriated would be made available to the Secretary of the Interior.

Under the third program, $6 million is authorized for the establishment by the Secretary of a fossil fuel rail bank for the purpose of preserving existing service in areas in which fossil fuel natural resources or agricultural production is located.

The Department believes that the Nationwide program for rail service continuation subsidies is inappropriate. The subsidy program for the Midwest and Northeast established by the RRRA will serve a special need arising out of the extensive rationalization of the rail plant provided for by the final system plan. There is no similar need, however, for a program for the rest of the Nation. In fact, the availability of the large amount of funds for the nationwide program and the high percentage of the Federal contribution will only discourage the switch to more efficient means of moving freight to and from branch line communities. With respect to the program for the Midwest and Northeast, we are pleased that the bill contains

a number of provisions proposed by the Department providing increased flexibility with respect to the use of funds, but we disagree with the provisions increasing the Federal share and requiring the allocation of funds solely under an entitlement formula.

The bill submitted to the Congress by the Department on October 2, 1976 confined the subsidy program to the Midwest and Northeast region and did not provide any increase in the authorization. It also proposed the retention of the existing cost-sharing and distribution mechanisms. We continue to believe that a program of that form and scope would be the best way to ensure that State and local decision-making vis-a-vis the retention of service will make economic sense. The large Federal shares of the costs and the wide range of uses prescribed by the enrolled bill will tend to promote the operation of this program on a permanent basis.

With respect to the program for the subsidization of commuter service, we agree that Federal assistance should be provided on an interim basis to enable States and regional transportation authorities to determine their response to the increased cost of commuter rail service.

However, we believe that the Federal funding should not be a new authorization, but should be provided out of the existing $11.8 billion contract authority available under the Urban Mass Transportation Act of 1964. In addition, since the States have had the balance of the present fiscal year in which to make provisions for future subsidies, we believe the Federal share should be the 50 percent applicable to other transit operating subsidies under the UMT Act.

The Department also opposes the expenditures contained in the bill for the conversion of abandoned rail rights-of-way and for a fossil fuel rail bank. While relatively small, these authorizations cannot be justified in the context of the pressing need for financial assistance for other railroad programs.

FINANCIAL ASSISTANCE FOR ALL RAILROADS

Title V of the enrolled bill authorizes a total of $1.6 billion in Federal financial assistance for the rehabilitation and acquisition of rail facilities and equipment.

This Federal assistance is provided through two separate funds, the Rail Fund and the Obligation Guarantee Fund. The Rail Fund is administered by the Secretary and provides up to $600 million in Federal funds to the railroads for the rehabilitation, improvement and acquisition of fixed facilities. This Federal assistance is provided through the purchase by the Secretary of redeemable preference shares from the railroads with general Treasury revenues received by the Secretary from his sale of fund anticipation notes to the Secretary of the Treasury. The redeemable preference shares are in effect low interest loans to the railroads which return a minimum of 150 percent of their par value to the Fund over the last 20 years of their 30-year term, an annual interest rate of less than two percent. (The Secretary may use a shorter term, which would increase the effective rate of interest.)

The Obligation Guarantee Fund is also administered by the Secretary and provides up to $1 billion in authority for the guarantee of the principal of railroad obligations for the acquisition or rehabilitation of rail facilities or equipment. The provisions of the bill with respect to the guarantee of railroad obligations are similar to the loan guarantee program which the Administration first proposed last May in its Railroad Revitalization Act, with the important exception that the Administration bill authorized up to $2 billion in loan guarantee authority.

Two sections of Title V provide for additional specific uses for the Federal funds authorized. Section 511(e) provides that up to $150 million of the $1 billion in loan guarantee authority may be used by the Secretary to guarantee obligations for the rehabilitation of Northeast Corridor rail properties which are purchased or leased by Amtrak. Section 517 provides that up to $200 million of the total $1.6 billion of Title V authorizations can be used by the Secretary to improve intercity rail passenger services outside of the Northeast Corridor. In addition, as pointed out above, if the

Secretary guarantees any ConRail obligations for the purpose of electrifying high-density mainline routes (see section 606 of the bill), the amount of the obligations so guaranteed will count against the $1 billion ceiling placed upon loan guarantees made available under section 511.

Title V also mandates two rail studies to be carried out by the Secretary: (1) a 360-day classification of the rail lines of each of the Nation's Class I railroads into at least three categories of main and branch lines based upon the level of usage and the probable economic viability of each line; and (2) a 540-day determination of, and recommendation of Federal financial assistance for, the deferred maintenance and delayed capital expenditures of each Class I railroad from the present through the year 1985.

Departmental objections to the provisions of Title V have centered on two areas. First, we have objected to the awkward financing mechanism of the redeemable preference shares, a mechanism which serves to obscure the fact that general tax revenues are being provided to the railroads on extremely soft interest terms. Second, we have opposed both of the studies mandated by Title V on the grounds that they are intended to force Congressional action on further Federal financial assistance for the railroad industry, and on the provision of a portion of such additional assistance through the sale to the public of Fund bonds of questionable marketability.

TOTAL AUTHORIZATIONS

From the standpoint of total authorizations, the enrolled bill compares reasonably well with the Administration's position. As the enclosed chart indicates, the various Administration proposals would have authorized a total of $5,829 million. The enrolled bill, on the other hand, authorizes a total of $6,372 million, $543 million more than the Administration's total. To place this in the proper context, one should take into account that the bill originally adopted by the Conference Committee on December 19, 1975, authorized $7,587 million and the bill originally passed by the Senate authorized over $10 billion. The funding in the enrolled bill for the Northeast Corridor and for rail service continuation subsidies are the principal causes for the excess authorizations.

CONTINGENT LIABILITY

It should be pointed out that the enrolled bill subjects the Treasury to a contingent liability that could be significant. Along with ConRail securities, the railraods transferring properties to ConRail will receive certificates of value. These certificates of value are full faith and credit obligations of the United States containing a guarantee by the Secretary of Transportation that the certificates will be paid in cash according to their terms.

The certificates are a promise that on December 31, 1987 (or any earlier date determined by USRA and the Finance Committee) the holder of the certificate will be paid in cash an amount equal to what the Special Court decides is the net liquidation value of the assets transferred by the railroads to ConRail less certain amounts calculated under a formula set out in the enrolled bill. The formula subtracts from net liquidation value the value of the "other benefits" provided by the RRRA to the bankrupts (e.g., aid under section 213), the value of the ConRail securities distributed to the bankrupt railroads, and any sums paid to the bankrupts as the result of sales or leases by ConRail of transferred properties (e.g., sale of the Northeast Corridor properties to Amtrak). The formula also adds back in to the net liquidation value any amounts the Special Court finds to be due to the railroads because of so-called "unconstitutional erosion" in their properties - the de facto taking that results from the legal constraints under the RRRA and all other laws which require the railroad to continue operations at a loss - and the formula further adds interest at 8 percent compounded annually from the date of conveyance of the properties.

The Administration's original proposal had put a ceiling on the contingent liability represented by the certificates. USRA estimated in the Final System Plan that the net liquidation value of the properties ConRail will acquire is $422 million (plus $85 million for the Northeast Corridor). This figure was used as a ceiling on the certificates in the administration's bill, but the Administration suggested at a later date as a compromise that the ceiling be partially lifted by permitting the Special Court to determine the figure for net liquidation value. The compromise forestalled a much worse suggestion - that the certificates have a ceiling equal to what the Special Court determined to be the constitutional minimum value to which the railroads were entitled for their properties. Such a ceiling would have been interpreted by some as a repudiation

of USRA's valuation theory and opened a Government liability of potentially many billions of dollars.

At the present time it is impossible to estimate what the Special Court will decide is the correct figure for net liquidation value. Estimates run as high as $1 billion to $2 billion. The figure is pushed up further by the addition of erosion damages. Recently filed complaints by creditors of the bankrupts indicate that claims for erosion could be as high as $10 billion or more. On the other hand, Judge Friendly's opinion in the Special Court was extremely skeptical about the validity of any erosion claim. While the maximum exposure on erosion is large, realistic analysis suggests the final figure will be far short of the claims of the bankrupts and possibly zero. If the securities of ConRail, the "other benefits" of the Act, and the sums paid the bankrupts as a result of sales or leases are sufficiently high, the entire amount of net liquidation value and erosion damages could be offset, and the Government could be left with no net liability. On the other hand, the maximum exposure of the United States is several billion dollars.

At the same time, the United States faces another contingent liability of unknown amount. In the earlier litigation on the RRRA, the Special Court and the Supreme Court found the Act constitutional because they held that, to the extent that the bankrupts received from ConRail less than the constitutional minimum due them for the value of their transferred assets, the bankrupts had a cause of action for damages against the United States under the Tucker Act. USRA has determined that the constitutional minimum is net liquidation value, and the combination of the ConRail securities and the certificates of value guarantee the bankrupts at least that. If the Special Court and the Supreme Court, however, decide that net liquidation value is not the proper valuation theory, the bankrupts will be able to proceed against the United States in the Court of Claims for the difference between the constitutional minimum and net liquidation value. The potential liability here is great - up to perhaps as much as $7 or $8 billion. The chance is not very great, however, that the bankrupts will succeed in their argument that net liquidation value is not the proper constitutional theory. While the potential for massive liability, therefore, is present, the Department's legal opinion is that it is not a matter of any grave concern.

Still another contingent liability of unknown amount stems from provisions of section 303 of the RRRA (as revised by section 612 of the bill) which require the United States to pay any judgment entered against any profitable railroad, State, or responsible person arising from the transfer to such entities of rail properties of railroads in reorganization. The largest portion of these particular properties would be acquired by the Chessie. Again, if the Special Court and the Supreme Court decide that net liquidation value is not the proper valuation theory, the bankrupts will be able to proceed against the United States for the difference between the constitutional minimum and net liquidation value.

These various contingent, and potentially large, liabilities should be viewed in light of the alternatives. Nationalization of the railroads would be an astronomically expensive project. An income-based reorganization was selected as the means for rejuvenating the bankrupt lines because it was thought to be cheaper than nationalization. If, as a result of litigation, the bill for the reorganization becomes too high, a different course can be selected at that time. The Government, therefore, still retains significant control over the most significant contingent liabilities.

SUMMARY

As a whole, the Department believes the enrolled bill is acceptable. It is a wide-ranging piece of legislation which has produced a great deal of interest among many people inside and outside of the railroad industry. There has been considerable conflict over various provisions of the bill and it was inevitable that any bill passed by the Congress would contain provisions deemed unsatisfactory by the Department as well as other parties.

The bill also followed a very unusual path on its way to the President for signature. On the final day of the first session of the 94th Congress, the original bill reported by the Committee of Conference was passed by the House and Senate. Upon an indication that the President would veto the bill, however, the Senate prevented the bill from becoming enrolled and sent to the President. Subsequently, the Department negotiated changes to the bill at great length with Committee staff personnel and, following the opening of the second session of the 94th Congress, the Senate and House

voted to vacate the Conference bill. Thereafter, the matter was recommitted to the Conference and the Committee reported a revised bill on January 22, 1976.

The Department was most concerned about the following provisions of the first Conference bill:

(1) The total authorizations were excessive.

(2) The goals for improvement of intercity rail passenger service along the Northeast Corridor were too ambitious, the funding for Corridor improvements was too high, and the control over Corridor improvements was to be lodged in USRA and Amtrak.

(3) There was insufficient protection of the Federal Government's interests in the provisions establishing procedures and guidelines for the investment of Federal money in ConRail.

(4) Procedures for the processing of supplemental transactions threatened to hamstring any attempt the Executive Branch might make in the future to bring about important changes to the rail system in the Midwest and Northeast.

(5) The mechanism for providing financial aid to railroads other than ConRail was unnecessarily complex and costly.

(6) The program for rail continuation subsidies was too expensive and failed to come to grips with a basic tenet of the RRRA, namely, that barring the willingness of State and local governments to provide significant financial support for their continued operation, there must be a reduction in uneconomic lines.

(7) The regulatory reform was inadequate and in some respects confusing.

Substantial gains were made in most of these areas upon the adoption of the second Conference bill:

(1) As indicated above, the funding levels were reduced substantially and now are reasonably close to the overall level proposed by the Administration.

(2) The immediate goals for the improvement of intercity rail passenger service along the Northeast Corridor were cut back, the funding was reduced, and the Secretary, rather than USRA, was designated to receive the funds authorized for Corridor improvements.

(3) The bill establishes a Finance Committee of the USRA Board to carry out crucial oversight functions respecting the acquisition of ConRail securities by USRA. In addition, interest on debentures was made cumulative.

(4) Amendments were adopted making it clear that ConRail could not block proposals for supplemental transactions in cases where it is the transferor of properties and that the ICC could not block any proposals for supplemental transactions.

(5) The regulatory reform provisions were strengthened and most of the potential confusion eliminated.

Little improvement was achieved respecting the mechanisms for providing financial aid to railroads other than ConRail or for subsidizing the continuation of freight and commuter service. However, a $40 million reduction was made in the authorization for rail continuation subsidies.

All in all, we believe that the changes that were achieved were most significant. The bill provides a reasonable means for financing the restructuring of the decayed rail system in the Midwest and Northeast, it provides substantial and flexible means

for assisting rail rehabilitation in other areas of the country, it will permit a significant upgrading of intercity rail passenger service in the busy Northeast Corridor, and it provides for meaningful economic regulatory reform of the railroad industry.

RECOMMENDATION

The Department recommends that the President sign the enrolled bill.

Sincerely,

William T. Coleman, Jr.

Attachment

COMPARISON OF NEW AUTHORIZATIONS FOR FEDERAL ASSISTANCE TO THE RAILROADS

(Dollars in Millions)

	THE ADMINISTRATION		S. 2718 AS PASSED BY THE SENATE DECEMBER 4, 1975		S. 2718 AS PASSED BY BOTH HOUSES DECEMBER 19, 1975		S. 2718 AS PASSED BY BOTH HOUSES JANUARY 28, 1976	
I. ConRail								
Debentures	$1,000		$1,000		$1,000		$1,000	
Preferred Stock	850		2,200		1,100		1,100	
Finance Committee Discretionary	250		--		--		--	
Loan Guarantees	--		--		200		--*	
ConRail Total		$2,100		$3,200		$2,300		$2,100
II. USRA Section 210 Authority		235		500		400		275
III. Supplemental Transactions		400		--		--		--
IV. Railroad Rehabilitation								
Loan Guarantees	2,000		1,000		800		1,000	
Redeemable Preference Shares	--		1,200		600		600	
Rehabilitation Total		2,000		2,200		1,400		1,600

* Up to $200 million for electrification of ConRail mainlines is contained within the loan guarantee program in Title V of S. 2718.

(Dollars in Millions)

	THE ADMINISTRATION	S. 2718 AS PASSED BY THE SENATE DECEMBER 4, 1975	S. 2718 AS PASSED BY BOTH HOUSES DECEMBER 19, 1975	S. 2718 AS PASSED BY BOTH HOUSES JANUARY 28, 1976
V. Intercity Rail Passenger Services				
Northeast Corridor Project	$1,080	$3,000	$2,400	$1,600*
NEC Stations and Fencing	--	--	--	150
NEC Startup, Acquisition, & Telephones	--	236	236	96
Acquisition of Other Lines	--	20	20	20
Passenger Services Outside NEC	--	--	200	--**
Passenger Total	$1,080	$3,256	$2,856	$1,866
VI. Rail Service Continuation Subsidies				
Branchline	--	677	400	360
Commuter	--	125	125	125
Continuation Total	--	802	525	485
VII. Other				
Conversion of Rail Rights-of-Way	--	75	75	20
Fossil Fuel Rail Bank	--	--	6	6
USRA	14	17	17	14
Office of Rail Public Counsel	--	3	3	3

*In addition to this amount, up to $150 million in obligations for NEC rehabilitation may be guaranteed under the loan guarantee program in Title V of S. 2718.

**Up to $200 million for intercity rail passenger services outside the NEC is contained within the authorizations in Title V of S. 2718.

(Dollars in Millions)

	THE ADMINISTRATION	S. 2718 AS PASSED BY THE SENATE DECEMBER 4, 1975	S. 2718 AS PASSED BY BOTH HOUSES DECEMBER 19, 1975	S. 2718 AS PASSED BY BOTH HOUSES JANUARY 28, 1976
VII. Other (Continued)				
Rail Services Planning Office	--	$ 2	$ 2	$ 2
Railroad Minority Resource Center	--	1	--	--
National Transportation Program	--	5	--	--
Administration of Rail Fund	--	4	2	--
Revision of ICC Accounting System	--	1	1	1
Other Total	--	$ 108	$ 106	$ 46
Total New Authorizations	$5,829	$10,066	$7,587	$6,372

OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20504

February 2, 1976

DEPUTY DIRECTOR

Honorable James T. Lynn
Director, Office of Management and Budget
Attention: Assistant Director for
Legislative Reference
Executive Office of the President
Washington, D.C. 20503

Subject: Enrolled Bill, S. 2718 "Railroad Revitalization and Regulatory Reform Act of 1976"

Dear Mr. Lynn:

This is in response to the request of the Office of Management and Budget of January 27, 1976, for the views of the Office of Telecommunications Policy on the subject enrolled bill.

The Office of Telecommunications Policy has no objection to the subject bill, and specifically, has no objection to Sections 703(4) and 704(a)(C), as reported by the conference committee in H. Rept. 94-781, appearing in the Congressional Record, Friday, January 23, 1976, on pp. H 217-282.

Sincerely,

John Eger
Acting Director

THE GENERAL COUNSEL OF THE TREASURY

WASHINGTON, D.C. 20220

FEB 3 1976

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

Attention: Assistant Director for Legislative Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of S. 2718, the "Railroad Revitalization and Regulatory Reform Act of 1974."

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

Sincerely yours,

General Counsel

Richard R. Albrecht

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

FEB 2 - 1976

Dear Mr. Lynn:

This responds to your request for our views on the enrolled bill S. 2718, "To improve the quality of rail services in the United States through regulatory reform, coordination of rail services and facilities, and rehabilitation and improvement financing and for other purposes."

We recommend that the President approve the enrolled bill, as far as Sections 809 and 810 are concerned.

This Department is directly concerned with only two sections of S. 2718: Sections 809 and 810. Section 706 of an earlier draft of S. 2718 would have halted the construction of the National Visitor's Center at Union Station in Washington, D. C., but that specific provision was deleted in later action on the bill and no similar provision appears in the enrolled bill.

Section 809 of the bill provides that the Secretary of Transportation shall, within 360 days of the date of enactment, and in consultation with the Secretary of the Interior and others, prepare and submit a report on the conversion of railroad rights-of-way. Section 809 provides that this report to the Congress and the President shall evaluate, and make suggestions concerning potential alternate uses of, and public policy with respect to the conversion of railroad rights-of-way on which service has been discontinued.

Section 810 of S. 2718 would establish a Fossil Fuel Rail Bank as recommended under part III, section C of the Final System Plan of the United States Railway Association. The Secretary of Transportation would be authorized to acquire those rail properties deemed eligible to be included in the Rail Bank. He would be empowered to hold and dispose of these properties in a manner that would not adversely affect rail access or egress. Funds, not to exceed $6,000,000, are authorized to be appropriated for the purposes of carrying out the provisions of this section.

This Department reported to the Office of Management and Budget on a similar Department of Transportation proposal on September 23, 1975. At that time this Department objected to the proposed bill as then drafted because the Department of the Interior was the operating agency. We suggested that the Department of Transportation was the proper operating agency in view of its leadership role in general transporation matters. This change has been made in the enrolled bill with this Department serving in an advisory capacity to the Department of Transportation. We do not object to the provisions of Section 810 in the present form.

Sincerely yours,

Assistant Secretary of the Interior

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

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON WAGE AND PRICE STABILITY
726 JACKSON PLACE, N.W.
WASHINGTON, D.C. 20506

February 3, 1976

James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

This is in response to your request for the Council's views on S. 2718 (the "Railroad Revitalization and Regulatory Reform Act of 1976") an enrolled bill recently delivered to the President.

Although we have strong reservations about provisions of the bill establishing ConRail (the transition process, the resulting entity, and the extent of Federal funding), we believe that the regulatory reform provisions are very important and that this package would appear to represent the best compromise the Administration is likely to secure. Therefore, we recommend that the President sign the bill.

Sincerely,

Michael H. Moskow
Director

COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

ALAN GREENSPAN, CHAIRMAN
PAUL W. MACAVOY
BURTON G. MALKIEL

February 2, 1976

Dear Mr. Frey:

The Council of Economic Advisers recommends that the President sign S. 2718, a bill known as "The Railroad Revitalization and Regulatory Reform Act of 1976." The bill provides significant regulatory reform which we believe follows the President's leadership in this area. The funding of Conrail for improvements in Northeast corridor passenger service is costly, but still considerably less than originally proposed by Congress and now roughly in line with our national transportation goals.

The regulatory reform measures should make the railroads more efficient, profitable, and competitive with other modes of transportation. Section one of the ICC act is amended to make rates legal if they produce sufficient revenue to cover variable costs. Rates may be declared too high only if market power is shown and suspension of rates is made very difficult under section one. The ICC may still suspend rates under section two, three, and four, however. The Presidential statement at the time the bill is signed might explicitly discourage the use of this suspension power since it is contrary to overall administration policy and the main thrust of the Bill.

Another significant reform is the placing of strict limits on the activities of rate bureaus. The Bill provides that rate bureau members may choose not to follow any bureau policy without penality, and that agreements on rates for single line movements are illegal. However, the rate bureaus retain some power since agreements on general rate increases are allowed. The act also places time limits on ICC handling of rate cases and other matters.

There may be significant long-term problems with the funding provisions in the Bill. Conrail is unlikely to stay within its financial projections and likely will experience substantial losses which are not now made explicit.

Fortunately, two measures in the Bill provide means to deal with this situation. First, the Bill permits controlled transfer of Conrail facilities to private railroads and for some funding of such transfers. Either the Secretary of Transportation or USRA can develop plans for transfer and ultimately take them to the special court for a decision. The signing message should encourage efforts to effect controlled transfer. The Bill also creates a finance committee which can cut off funds to Conrail in the event that it is not viable although Congress can veto decisions reached by the committee.

It is important to note in the message that funding for work on the Northeast corridor has been reduced and that further study has been ordered before expenditures on high speed rail service are made. These were the results of strong Administration initiatives.

Sincerely,

Paul W. MacAvoy
Member

Mr. James Frey
Assistant Director
for Legislative Reference
Office of Management and Budget
Washington, D. C.

National Railroad Passenger Corporation, 955 L'Enfant Plaza North, S.W., Washington, D.C. 20024 Telephone (202) 484-7100

February 2, 1976

Amtrak

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

Dear Mr. Lynn:

The National Railroad Passenger Corporation recommends that S. 2718, as amended, the Railroad Revitalization and Regulatory Reform Act of 1976, be signed into law.

Sincerely,

Bruce Pike

Bruce Pike
Vice President
Government Affairs

BP/rfg

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DATE: 2-17-76

TO: Bob Linder

FROM: Jim Frey

Attached is the Labor views letter on S. 2718, the Rail bill. Please have it included in the enrolled bill file. Thanks.

OMB FOR
REV AUG

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

FEB 5 1976

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

Dear Mr. Lynn:

This is in response to your request for our views on the revised Conference Report on S. 2718, "Railroad Revitalization and Regulatory Reform Act of 1976 (H.Rept. 94-781).

The bill includes provisions which: reform certain procedures of the Interstate Commerce Commission; authorize finanical assistance to railroads for facilities, maintenance, rehabilitation, improvements and acquisitions; and provide a method of financing such programs by "the Rail Fund" for which $6,000,000,000 would be available for fiscal year 1977 from an authorization to the Secretary of the Treasury and open-ended authorizations for fiscal years 1978, 1979, and 1980.

The bill also provides protection for employees who may be affected by actions taken thereunder and explicitly extends protection for the first time to workers affected by railroad abandonments. The level of protection afforded workers in abandonment cases, as well as in merger and consolidation situations, is equivalent to that granted workers pursuant to section 5(2)(f) of the Interstate Commerce Act and section 405 of the Rail Passenger Service Act. In its "expedited" merger provisions, the bill requires the Secretary of Labor to provide the ICC with his views on the adequacy of the protection afforded employees.

We note with disappointment that the bill does not contain a labor standards provision providing for the application of the Davis-Bacon and other associated acts for the protection

of laborers and mechanics on federally assisted construction contracts that could be authorized under the bill.

Although we regret this omission, we pose no objection to Presidential approval of the bill.

Sincerely,

Robert C. Odle

Secretary of Labor

ACTING

United States Railway Association

2100 Second Street, S.W.
Washington, D.C. 20595
(202) 426-1991

Arthur D. Lewis
Chairman of the Board

January 30, 1976

Mr. James M. Frey
Assistant Director
Legislative Reference
Office of Management and Budget
17th & Pennsylvania Avenue, N.W.
Washington, D. C. 20503

Dear Mr. Frey:

This is in response to the request of the Office of Management and Budget for advice of the United States Railway Association with respect to the President's approval of S.2718, the Railroad Revitalization and Regulatory Reform Act of 1976.

The United States Railway Association regards this legislation as fully meeting the requirements of the Final System Plan and recommends its approval by the President.

It is the hope of the Association that the conveyances of rail properties can be certified to the Special Court on or about March 12, 1976 and that the conveyances to ConRail can be effected on March 31, 1976. Because of the urgency of this schedule we would urge that the President give his approval to S.2718 at the earliest feasible date.

Sincerely,

Arthur D. Lewis

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

February 2, 1976

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

Dear Mr. Lynn:

Pursuant to your request for the immediate views of the Department of Justice on the Railroad Revitalization and Regulatory Reform Act of 1976, S. 2718, we are endorsing its approval by the President.

From the time S. 2718 was first reported out of Conference in late December, attorneys in the Antitrust Division of the Department of Justice have been working with the Department of Transportation in its effort to affect a revision of certain portions of S. 2718. Our coordinated effort related particularly to certain regulatory reform aspects of S. 2718 contained in Title II of the bill.

S. 2718, as first reported out of Conference, had several substantial defects from a regulatory reform perspective. Through a process of negotiation and compromise, the Department of Transportation has succeeded in obtaining a revision of some of the provisions of Title II of the Act. Although S. 2718, as secondly reported out by the Conference and passed by both Houses on January 28, 1976, is not as substantial a step toward regulatory reform as the President has sought, on balance S. 2718 as passed does further achievement of the President's goal of regulatory reform. Specifically, the bill, in part, creates a no-suspend zone for limited rate changes; designates a strict standard which must be met before temporary suspension of a rate is allowed; requires that the reasonableness (i.e. lawfulness) of a railroad's rate be measured by the variable costs of that individual railroad, not of the industry; and removes the antitrust immunity for agreements on single line rates. These aspects certainly create a potential for rate-making flexibility by the railroads and consequent increased competition.

Accordingly, the Department of Justice recommends approval of this bill.

Sincerely,

Michael M. Uhlmann

Michael M. Uhlmann
Assistant Attorney General

Interstate Commerce Commission

Washington, D.C. 20423

OFFICE OF THE CHAIRMAN

February 2, 1976

Mr. Bernard H. Martin
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Martin:

In reply to your request of January 28 for the Commission's recommendation on enrolled bill S. 2718, the "Railroad Revitalization and Regulatory Reform Act of 1976," the Commission recommends that the President sign this bill.

S. 2718 provides funding for revitalization of railroad freight and passenger service in the Northeast and throughout the country. It also contains substantial regulatory reform including greater ratemaking flexibility for the railroads, new methods for accomplishing railroad mergers in an expedited manner, provisions designed to speed up Commission procedures, and a new policy for railroad abandonment of light-density lines.

Although we have heretofore expressed substantial disagreement with many of the regulatory reforms contained in the Act and still question the need for some of these provisions, it is our view that this legislation is necessary to prevent chaos in the Northeast railroad system. Without the funding provisions and the implementing amendments contained in this Act, we do not believe that the essential services formerly furnished by the bankrupt railroads can be maintained in the Northeast. Moreover, the rehabilitation funding contained in the Act is essential to the revitalization of rail service throughout the rest of the Nation.

Mr. Bernard H. Martin
Assistant Director for Legislative Reference

In sum, although we do not support all provisions of the bill, we recognize that much of the bill is necessary and thus, we recommend that it be signed. Moreover, we should emphasize that although we would have preferred a different form of legislation in some respects, we are prepared to implement fully the provisions of the legislation to the extent of our responsibility.

Sincerely yours,

George M. Stafford

George M. Stafford
Chairman

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

January 29, 1976

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Omnibus Rail Legislation

INTRODUCTION

Yesterday, January 28, the Congress approved a new conference report on S. 2718, The Railroad Revitalization and Regulatory Reform Act of 1976, authorizing a total Federal expenditure of $6.37 billion. The bill is probably the most far-reaching railroad legislation of this century and contains a number of provisions with political implications for the election year.

REVITALIZATION OF THE RAIL FREIGHT SYSTEM

S. 2718 provides for a complete revitalization, over the next 5 years, of the Nation's private enterprise freight railroad system. The bill authorizes up to $4.1 billion in Federal assistance for freight service, of which a minimum of $2.1 billion will go to ConRail to reorganize and rebuild the bankrupt railroads in the Northeast and Midwest. This financial assistance, used in combination with expedited merger procedures to facilitate a restructuring of the Nation's railroads, will, I believe, permit a private sector solution to our national railroad crisis and prevent nationalization of the rail system.

NORTHEAST CORRIDOR IMPROVEMENT PROJECT

The legislation also mandates a swift and substantial upgrading of rail passenger service along the Northeast Corridor between Washington, D.C., and Boston. Within 5 years after the date of enactment, the Secretary of Transportation will be required to establish reliable 120 mph passenger service in the Corridor, refurbish the passenger stations, and install protective fencing

along the rights-of-way. The eight States (and the District of Columbia) served by the Northeast Corridor project contain approximately 24 percent of the population of the United States and represent 127 electoral votes.

REGULATORY REFORM

The revitalization of the railroads will occur not only as a consequence of Federal financial assistance but also as a consequence of the landmark regulatory reform legislation contained in this bill. S. 2718 will inaugurate a new era of regulatory policy toward the rail industry which will enable railroads to compete more effectively with other modes of transportation and provide better and more efficient service to consumers. It is fair to say that the provisions contained in this bill are the most significant transportation regulatory reforms since the establishment of the Interstate Commerce Commission in 1887. Every Administration since President Eisenhower's has called for such reforms without success until now. (Attached is a list of the proposals made over the last quarter century calling for reform of transportation regulation.) The Railroad Revitalization and Regulatory Reform Act is thus the first significant success that any Administration has had in seeking transportation regulatory reform.

CREATION OF JOBS

The Federal expenditure provided for in S. 2718 will create, based on DOT estimates, between 30,000 and 40,000 new jobs over the next 5 years. If the release of funds for rehabilitation projects is accelerated to the maximum extent possible through a concerted effort by DOT and the rail industry, between 9,000 and 15,000 new jobs could be created this year. These figures assume that all the new employees will be paid at the prevailing union rate of approximately $6.50 per hour. However, the section of the bill providing for improvement of the Northeast Corridor contains a provision which might permit a lower rate to be paid in order that more unemployed people could be hired for the same amount of Federal money. If, for example, the new workers for the Northeast Corridor project were to be paid $4.00 per hour, rather than $6.50, the new jobs created

by that project alone would increase from 8,000 - 9,000 to 11,000 - 12,000. Of course, such a policy might meet with opposition from the labor unions who are, to date, very pleased with the labor protection provisions in the bill.

Bill

William T. Coleman, Jr.

Attachment

LIST OF LEGISLATIVE PROPOSALS OR GOVERNMENT REPORTS CALLING FOR REFORM OF TRANSPORTATION REGULATION

The Report to the President from the Secretary of Commerce (Sawyer Report), 1949

Cabinet Committee on Transport Policy and Organization (Weeks Report), 1955

Report of the Secretary of Commerce (Mueller Report on Transport Policy), 1960

Report of the Senate Committee on Commerce (Doyle Report), 1961

Report on Regulatory Agencies to the President-Elect (Landis Report), 1961

The Kennedy Administration Proposal, 1962

The Ash Report

The Hilton Study on Transport Policy prepared for President Johnson, 1965

The Transportation Regulatory Modernization Act of 1971 - Nixon Administration Proposal

The Transportation Improvement Act of 1974 - Nixon Administration Proposal

The Railroad Revitalization Act of 1975 - Ford Administration Proposal

COMPARISON OF NEW AUTHORIZATIONS FOR FEDERAL ASSISTANCE TO THE RAILROADS

(Dollars in Millions)

	THE ADMINISTRATION		S. 2718 AS PASSED BY THE SENATE DECEMBER 4, 1975		S. 2718 AS PASSED BY BOTH HOUSES DECEMBER 19, 1975		S. 2718 AS PASSED BY BOTH HOUSES JANUARY 28, 1976	
I. ConRail								
Debentures	$1,000		$1,000		$1,000		$1,000	
Preferred Stock	850		2,200		1,100		1,100	
Finance Committee Discretionary	250		--		--		--	
Loan Guarantees	--		--		200		--*	
ConRail Total		$2,100		$3,200		$2,300		$2,100
II. USRA Section 210 Authority		235		500		400		275
III. Supplemental Transactions		400		--		--		--
IV. Railroad Rehabilitation								
Loan Guarantees	2,000		1,000		800		1,000	
Redeemable Preference Shares	--		1,200		600		600	
Rehabilitation Total		2,000		2,200		1,400		1,600

*Up to $200 million for electrification of ConRail mainlines is contained within the loan guarantee program in Title V of S. 2718.

(Dollars in Millions)

	THE ADMINISTRATION		S. 2718 AS PASSED BY THE SENATE DECEMBER 4, 1975		S. 2718 AS PASSED BY BOTH HOUSES DECEMBER 19, 1975		S. 2718 AS PASSED BY BOTH HOUSES JANUARY 28, 1976	
V. Intercity Rail Passenger Services								
Northeast Corridor Project	$1,080		$3,000		$2,400		$1,600*	
NEC Stations and Fencing	--		--		--		150	
NEC Startup, Acquisition, & Telephones	--		236		236		96	
Acquisition of Other Lines	--		20		20		20	
Passenger Services Outside NEC	--		--		200		--**	
Passenger Total		$1,080		$3,256		$2,856		$1,866
VI. Rail Service Continuation Subsidies								
Branchline	--		677		400		360	
Commuter	--		125		125		125	
Continuation Total		--		802		525		485
VII. Other								
Conversion of Rail Rights-of-Way	--		75		75		20	
Fossil Fuel Rail Bank	--		--		6		6	
USRA	--		17		17		14	
Office of Rail Public Counsel	--		3		3		3	

*In addition to this amount, up to $150 million in obligations for NEC rehabilitation may be guaranteed under the loan guarantee program in Title V of S. 2718.

**Up to $200 million for intercity rail passenger services outside the NEC is contained within the authorizations in Title V of S. 2718.

(Dollars in Millions)

	THE ADMINISTRATION		S. 2718 AS PASSED BY THE SENATE DECEMBER 4, 1975		S. 2718 AS PASSED BY BOTH HOUSES DECEMBER 19, 1975		S. 2718 AS PASSED BY BOTH HOUSES JANUARY 28, 1976	
VII. Other (Continued)								
Rail Services Planning Office	--		$ 2		$ 2		$ 2	
Railroad Minority Resource Center	--		1		--		--	
National Transportation Program	--		5		--		--	
Administration of Rail Fund	--		4		2		--	
Revision of ICC Accounting System	--		1		1		1	
Other Total		--		$ 108		$ 106		$ 46
Total New Authorizations		$5,815		$10,066		$7,587		$6,372