

## **SECTION BY SECTION ANALYSIS OF COMPETITION FOR INTERCITY PASSENGER RAIL IN AMERICA ACT**

*Transportation and Infrastructure Committee Chairman John Mica and Railroads Subcommittee Chairman Bill Shuster have developed a three-tiered initiative to take American passenger rail in a bold new direction. The Competition for Intercity Passenger Rail in America Act does more with less by leveraging private sector investment and increasing competition. Specifically, the plan includes:*

### **Title I – Northeast Corridor Passenger Rail Competition**

In the next decade, the Northeast Corridor Passenger Rail Competition Initiative will bring real high-speed rail to and double intercity passenger rail service on the nation's Northeast Corridor (NEC) between Washington, DC, New York City, and Boston through a private sector partnership and competitive bid process.

### **Title II – Intercity Passenger Rail Competition**

The Intercity Passenger Rail Competition Initiative will give States greater control and authority over their passenger rail services. The plan incentivizes these States to competitively bid passenger rail services, which will save money and improve passenger rail service.

### **Title III – Long-Distance Passenger Rail Competition**

The Long-Distance Passenger Rail Competition Initiative will bring competition to Amtrak's least successful lines, long-distance routes. Allowing head-to-head competition will give the private sector the opportunity to revive these money losing routes.

## **Title I – Northeast Corridor Passenger Rail Competition**

### **Section 101. Purposes**

This section lays out the purposes of the title, which are to:

1. Expand intercity passenger rail service in the Northeast Corridor (NEC) in a manner driven by sound economics
2. Develop real high-speed rail service in the NEC to decrease road and air congestion and delay
3. Encourage intermodal connections at intercity rail stations to transit, airports, and other modes of transportation, to make rail service more effective and attractive to riders
4. Leverage Federal financial support with private sector investment, both for construction of rail infrastructure and development around rail stations, using revenue-producing value capture strategies
5. Create an effective public-private partnership (PPP) to manage NEC capital assets and intercity passenger rail operations

### **Section 102. Redemption of Common Stock**

Subsection (a) directs the Secretary of Transportation to arrange a valuation of all assets and liabilities of Amtrak within 1 month of enactment

Subsection (b) directs Amtrak to redeem all common stock at the value determined by the Secretary within 3 months of enactment. Outstanding claims on Amtrak's assets by shareholders must be cleared before NEC assets can be transferred from Amtrak ownership to the U.S. Department of Transportation (DOT)

Subsection (c) authorizes Amtrak to exercise its eminent domain provisions to acquire outstanding common stock shares if Amtrak is unable to successfully redeem its common stock from shareholders before the deadline

Subsection (d) amends Amtrak's eminent domain authority in 49 U.S.C. 24311 to clarify that such authority extends to the redemption of common stock

Subsection (e) directs the Secretary, after Amtrak has redeemed all common stock, to convert one share of preferred stock (held by DOT) to 10 shares of common stock. After NEC assets have been transferred to DOT, these 10 shares of common stock will be the only remaining Amtrak stock shares, and DOT will be the single shareholder of Amtrak and owner of record of the NEC

### **Section 103. Transfer of Assets**

Subsection (a) directs Amtrak to transfer all NEC assets to DOT 90 days after the redemption of common stock, or 180 days after enactment. The assets of the NEC include the portions of the Corridor owned by Amtrak between Washington, DC and Boston, MA, including the routes stemming from the NEC main line to Springfield, MA, to Harrisburg, PA, and portions of the route to Albany, NY. The assets to be transferred are: rail right-of-way, stations, track, signal equipment, electric traction facilities, bridges, tunnels, rolling stock, and other equipment necessary to support intercity passenger service on the NEC. The subsection provides for a negotiated determination of what rolling stock and equipment are necessary for NEC operations, with any dispute to be resolved by the DOT Inspector General. Within 1 year of enactment, DOT is required to provide a report to Congress that details an inventory of all assets transferred from Amtrak to the Secretary under this section

Subsection (b) clarifies that Amtrak remains responsible for any outstanding debt, even if such debt has been collateralized with NEC assets

Subsection (c) directs the Secretary to release Amtrak from all mortgages and liens and delivers to Amtrak the preferred stock held by DOT, in consideration for transfer of NEC assets

Subsection (d) directs the Secretary and Amtrak to enter into an agreement for Amtrak to continue care, custody, and control of the NEC assets until the PPP contract described in section 108(b) takes effect. Amtrak is required to include information in this agreement that identifies in detail the specific number of employees and equipment that will be needed to ensure continued freight and commuter rail operations after the transfer of NEC assets

Subsection (e) authorizes the Secretary to enter into negotiations to determine appropriate consideration for the transfer of real estate property previously owned by Amtrak on the routes from New Haven, Connecticut to Springfield, Massachusetts, from Philadelphia to Harrisburg, Pennsylvania, and portions of the route from New York City to Albany, New York, to the underlying States

## **Section 104. Northeast Corridor Executive Committee**

Subsection (a) amends chapter 249 of 49 U.S.C. to insert a new section 24903, which establishes the Northeast Corridor Executive Committee, a 5-member public-interest body that will manage the infrastructure and intercity passenger rail operations of the main line of the Northeast Corridor, and will promote mutual cooperation and planning with Northeast Corridor States, planning organizations, commuter rail operators, freight operators, local elected officials, and other stakeholders

The NEC Executive Committee is made up of the Secretary of Transportation, one member representing Northeast Corridor States, two members appointed by the United States Congress (the majority leader of the Senate and Speaker of the House of Representatives make the appointments), and one member who is an expert in public-private partnerships. Members of the NEC Executive Committee serve for 5-year terms, and the Committee is supported by administrative support from the DOT until the PPP contract takes effect, at which time such administrative support will be built into the PPP contract

The NEC Executive Committee is given the same general authorities in managing the infrastructure and intercity passenger rail operations of the main line of the Northeast Corridor that Amtrak has historically been given under 49 USC 24902. Freight and commuter rail services over the NEC are to be provided under compensatory agreements with the responsible service providers. The current compensation for access provision is maintained, providing for reasonable reimbursement of costs. If the parties are in disagreement regarding compensation, the Surface Transportation Board is authorized to determine appropriate compensation

Subsection (b) amends 49 USC 24902 to detail the goals and requirements of the NEC Executive Committee in managing costs and revenues of NEC intercity passenger rail services, requiring that such service be managed in a way that returns an operating profit, which shall be reinvested in capital improvements on the NEC. Priorities are laid out for selecting and scheduling capital improvement projects, focusing first on safety, then on projects that benefit the greatest number of passengers, reduce trip times, increase reliability, and lower the operating and maintenance costs

The Secretary is directed to coordinate transportation programs, including other modes of transportation, in the NEC region to ensure that these programs are consistent and integrated with high-speed and intercity passenger rail operations on the NEC

The effective date of these amendments to 49 US 24902 is delayed until the NEC property is leased by the Secretary to the NEC Executive Committee under a 99-year lease, as described in section 108(a)

### **Section 105. Phase-Out of Amtrak's General Authority for the Northeast Corridor**

This section repeals 49 USC 24904, but allows Amtrak to continue its general authority to manage and operate NEC intercity passenger rail operations until the PPP contract described in section 108(b) takes effect

### **Section 106. Performance Standards.**

This section details the performance standards for the competitive expressions of interest and detailed proposals for managing the infrastructure of and operating intercity passenger rail on the NEC. The following standards are to be met or exceeded:

1. All current commuter rail services on NEC continued at current levels
2. All current freight rail services on NEC continued at current levels
3. 2 hours or less high-speed rail service between Washington, DC and New York, and 2.5 hours or less between New York and Boston
4. Double the number of trains on the NEC, including both high-speed and regional service
5. Complete the entire proposed project within 10 years

### **Section 107. Solicitation and Selection of Proposals.**

Subsection (a) directs the Secretary within 30 days of enactment to issue a request for expressions of interest (RFEI) from entities. The RFEI's shall demonstrate the entity's technical and financial capacity to submit a substantive and responsive detailed proposal to design, build, operate and maintain intercity passenger rail service, including high-speed rail, on the NEC, in a manner that meets or exceeds the performance standards in section 106. Entities can be consortia or teams of private companies. RFEI's are due to be submitted to the Secretary within 150 days of enactment

Subsection (b) details the contents of the RFEI's, which shall include:

1. Information about the persons or companies, their technical qualifications and experience
2. Description of the proposed intercity passenger rail services, including possible routes, required infrastructure improvements, peak and average operating speeds, and trip times

3. Description of how the proposed rail services would comply with Federal rail safety laws and regulations, including those governing high-speed operations
4. Financing plan identifying federal funding, amount and proposed source of private financing, and anticipated annual operating and capital costs for the project, including expected farebox recovery, value capture strategies for station development, and other uses of infrastructure
5. Statement describing the preferred PPP structure, including supporting reasons for such preference. RFEI's may outline a PPP structure that separates infrastructure management from operations, or may be a turnkey design-build-operate-maintain and finance structure

Subsection (c) directs the Secretary to evaluate the RFEI's and down-select 2 or 3 of the best proposals. These entities will receive stipends of \$2 million each for the purpose of preparing detailed proposals. The Secretary is also directed to select and describe the PPP structure that will best be utilized to finance, design, build, operate, and maintain intercity passenger rail service, including high-speed rail, on the NEC. These decisions are to be detailed in a report and submitted to Congress within 240 days of enactment. The evaluation criteria the Secretary shall use are that the RFEI:

1. meets or exceeds the performance standards in section 106;
2. includes greatest amount of private sector financing;
3. includes least amount of Federal support;
4. the proposed PPP structure closely aligns with the PPP structure selected by the Secretary

Subsection (d) provides for the entities to prepare detailed proposals to finance, design, build, operate, and maintain intercity passenger rail service, including high-speed rail, on the NEC. These detailed proposals are submitted to the NEC Executive Committee 1 year after enactment

Subsection (e) directs the NEC Executive Committee to evaluate the detailed proposals and select the best proposal, then to submit a report to the House T&I Committee and the Senate Commerce Committee that identifies the selected proposal, lays out an implementation plan to put the selected PPP structure in place, and explains why the proposal was selected over the other submittals. This report is to be submitted 90 days after receiving the detailed proposals for evaluation, 15 months after enactment

## **Section 108. Lease Agreement**

Subsection (a) directs the Secretary to implement the selected PPP structure and to enter into a 99-year lease agreement with the NEC Executive Committee for management of the infrastructure of and intercity passenger rail operations on the NEC. This lease shall be executed not later than 90 days after the NEC Executive Committee's selection report, or 18 months after enactment

Subsection (b) directs the NEC Executive Committee to enter into the selected PPP contract once the NEC property lease has been executed

## **Section 109. Funding.**

Subsection (a) terminates all Federal funding authorized for Amtrak capital and operating expenses on the NEC after the lease agreement with NEC Executive Committee has been executed

Subsection (b) provides that any funds already appropriated for Amtrak NEC capital expenses or operations in the fiscal year in which the lease agreement is executed shall be transferred to the Secretary, for purposes of carrying out this title

## **Section 110. Employees.**

Subsection (a) deems that persons carrying out NEC capital improvements and operations under the PPP structure in this title are deemed to be rail carriers, and shall enter into negotiations with labor representatives to establish appropriate labor protections and collective bargaining rights

Subsection (b) directs that displaced Amtrak employees have preference for hiring for NEC capital improvements and operations under the PPP structure in this title

## **Section 111. Applicability of Subtitle IV.**

This section allows the person conducting operations under the PPP structure to step into the shoes of Amtrak for the purpose of STB-related authorizations for such operations

## **Title II – Intercity Passenger Rail Competition**

### **Section 201. Definitions.**

This section defines the terms used in the title

Eligible participants include:

1. A State (including the District of Columbia) that has participated in the process to develop and implement a cost allocation methodology under Section 209(a) of the Passenger Rail Investment and Improvement Act of 2008;
2. Group of such states;
3. An Interstate Compact consisting of some or all of such states; or
4. A public agency established by one or more of such States and having responsibility for providing intercity passenger rail service

A “State-supported route” is defined as a corridor or route of not more than 750 miles between endpoints, operated by Amtrak or another rail carrier that receives funds under Chapter 244 of title 29, US Code, under a cost share agreement with a State, a group of States, and Interstate Compact, or a public agency established by one or more States and having responsibility for providing intercity passenger rail

### **Section 202. Authority to Participate in the Program.**

Subsection (a) allows eligible participants to enter into a competitive procurement process to select an entity to enter into a contract for the performance of one or more covered services (covered services may include operations, maintenance of way, maintenance of equipment, sales and marketing, scheduling, call centers, and on board services)

Subsection (b) amends Section 209 of the Passenger Rail Investment and Improvement Act of 2008 to require a report to Congress providing in detail operating and capital cost allocations for all State-supported routes, including all cost categories

Subsection (c) amends Section 209 of the Passenger Rail Investment and Improvement Act to clarify that at least 12 states must voluntarily adopt and implement the methodology developed in Section 209

### **Section 203. Disposition of Federal Subsidies.**

Subsection (a) establishes that upon entering into a competitive procurement process, program participants shall be transferred the portion of any Federal subsidy to Amtrak that is attributable to that State-supported route being competed

Subsection (b) allows program participants to retain any excess amounts of funding achieved from cost savings through competitive procurement, but only to be used for the purposes of improvements to the program participant's State-supported route

#### **Section 204. Competitive Procurement Process.**

Subsection (a) requires program participants to take into consideration recommendations of the Advisory Commission when carrying out a competitive procurement process, including deciding what covered services to include

Subsection (b) details the process through which applicants shall submit applications to program participants. Applications shall include:

1. A description of how the applicant intends to perform the covered services;
2. Materials demonstrating the capability of the applicant to perform the covered services;
3. An identification of any property owned by Amtrak that is or may be required for the performance of the covered services;
4. The amount and sources of all of non-Federal funding the applicant will use to support the performance of the covered services

Subsection (c) provides selection criteria for program participants to select winning applicants. Program participants shall take into consideration:

1. The financial and performance metrics developed pursuant to Section 207 of the Passenger Rail Investment and Improvement Act of 2008;
2. Selection criteria recommended by the Advisory Commission

Subsection (d) terminates and declares Amtrak the winning applicant if Amtrak is the only applicant in a competitive procurement process, but allows the program participant to retain amounts transferred to it under Section 203

#### **Section 205. Performance Standards; Access to Facilities and Equipment; Employees.**

Subsection (a) requires that passenger rail service on State-supported routes is no less frequent, nor over a shorter distance, than Amtrak provided on that route

Subsection (b) requires entities selected shall comply with the minimum standards established under Section 207 of the Passenger Rail Investment and Improvement Act of 2008, and that program participants may establish additional performance standards

Subsection (c) requires Amtrak:

1. To provide access to its reservation system, stations, and facilities directly related to operations to any rail carrier awarded a control through the competitive procurement process, in accordance with Section 217 of the Passenger Rail Investment and Improvement Act of 2008
2. To enter into an agreement with selected entities to purchase or lease Amtrak equipment or rolling stock identified by the selected entity to be required for the performance of covered services

Subsection (d) requires rail carriers (defined as an entity that provides covered services under a contract entered into pursuant to this title) to:

1. Enter into negotiations with representatives of its employees to establish appropriate labor protections and collective bargaining rights
2. Provides hiring preference to any qualified Amtrak employees displaced by the award of a contract through a competitive procurement process

#### **Section 206. Access Rights to Track.**

Ensures the right of access to track owned by another railroad that is necessary for the performance of covered services, and the cost of such access, shall be subject to contract negotiations with the owner of that track

#### **Section 207. Accounting of Costs.**

Requires each program participant providing for the performance of covered services through a competitive procurement process, and Amtrak, to no later than January 1, 2021 transmit to Congress a report providing a specific accounting of costs with respect to each State-supported route, including an accounting of any cost savings

#### **Section 208. Advisory Commission.**

Subsection (a) establishes a State-Supported Routes Passenger Rail Competition Advisory Commission.

Subsection (b) establishes that the members of the Advisory Commission shall consist of:

1. The Governor (or a representative thereof) of each of the States with a State-supported route;
2. The Secretary of Transportation (or a representative thereof);
3. A Public-Private Partnership expert, appointed by the President;
4. An individual appointed by the Speaker of the House;
5. An individual appointed by the Minority Leader of the House;
6. An individual appointed by the Majority Leader of the Senate; and
7. An individual appointed by the Minority Leader of the Senate

Subsection (c) requires that the Advisory Committee shall have a chairman, who shall be an individual described in subsection (b), elected by a majority of the members of the Advisory Commission

Subsection (d) requires the Advisory Commission to consult with:

1. Owners of the track on State-supported routes and other freight railroads operating on such routes;
2. Representatives of rail operating labor;
3. Representatives of rail construction labor;
4. Potential applicants for a competitive procurement process under section 204; and
5. Amtrak

Subsection (e) requires the Advisory Commission to submit a report to Congress not later than 1 year after the date of enactment that includes:

1. Recommendations of the operations and services that should be eligible for competitive procurement;
2. Guidelines for model competitive procurement process procedures for program participants;
3. Recommendations of criteria for evaluating and selecting bids made through the competitive procurement process;
4. Recommendations on establishing public-private partnership equipment pools;
5. Identification of worldwide best practices for operations and services associated with intercity passenger rail service for corridors similar to the State-supported routes;
6. Criteria for evaluating the outcomes of the program, with a focus on improvements to operations and services and cost savings;
7. Accounting standards to assist in providing to Congress under Section 207 the accounting of the costs of each State-supported route

Subsection (f) terminates the Advisory Commission after transmitting its report to Congress

### **Section 209. Applicability of Subtitle IV.**

This section allows the entity selected to receive a contract for provision of covered services to step into the shoes of Amtrak for the purpose of STB-related authorizations for such services.

## **Title III – Long-Distance Passenger Rail Competition**

### **Section 301. Long-Distance Routes Alternative Passenger Rail Service.**

This section creates new statutory provision in title 49, section 24711 “Long-Distance Routes Alternative Passenger Rail Service”

Subsection (a) requires establishment of a program for long-distance passenger rail service within one year of the date of enactment:

1. Allows a rail carrier to petition the Secretary to open a specific long-distance route for competition
2. Requires the Secretary to notify Amtrak and the public within 30 days of receiving a petition and establishes a deadline for petitioner, Amtrak, and any other rail carrier to submit bids for service
3. Requires that each bid must describe how the bidder would operate the route, submit materials demonstrating the capability of the applicant to perform such operations, itemize what Amtrak property would be needed (if any), and details the source and amount of non-Federal funding the bidder would use to assist in such operations
4. Requires the Secretary of Transportation to select winning bidders by evaluating bids on the basis of:
  - a) Financial performance metrics under section 207 of PRIIA; and
  - b) Lowest possible Federal funding support
5. Requires the Secretary of Transportation to award to the winning bidder:
  - a) The right and obligation to provide passenger rail service over the long-distance route consistent with the standards developed under Section 207 of PRIIA; and
  - b) An operating subsidy that is less than Amtrak’s on average over the life of the contract

Subsection (b) requires the service provider to:

1. Continue to provide service at level no less frequent than Amtrak's; and
2. Comply with the standards established under section 207 of PRIIA

Subsection (c) requires Amtrak to provide access to its reservation system, stations, and facilities directly related to operations

Subsection (d) ensures the right of access to track owned by another railroad that is necessary for the performance of covered services, and the cost of such access, shall be subject to contract negotiations with the owner of that track

Subsection (e) provides process for resolution of cessation of service

Subsection (f) deems the winning bidder a rail carrier and requires that bidder to enter into negotiations with representatives of its employees to establish appropriate labor protections and collective bargaining rights, and to provide hiring preference to any qualified Amtrak employees displaced by the award of a contract through a competitive procurement process

Subsection (g) allows the winning bidder to step into the shoes of Amtrak for the purposes of STB-related authorizations