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APPROVED
MAR 25 1976

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THE WHITE HOUSE
WASHINGTON
March 25, 1976

ACTION
LAST DAY: April 3

*Posted
3/26/76
Jo Archives
3/26/76*

MEMORANDUM FOR THE PRESIDENT
FROM: JIM CANNON ~~✗~~
SUBJECT: S.J. Res. 184 - Regional
Rail Reorganization Act Amendments

Attached for your consideration is S.J. Res. 184, sponsored by Senators Byrd and Hartke, which would amend the Regional Rail Reorganization Act relating to the issuance and distribution of stocks by the Consolidated Rail Corporation, its State of incorporation and the availability of employee protection benefits.

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

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign S.J. Res. 184 at Tab B.





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

MAR 25 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Resolution S.J. Res. 184 - Regional Rail
Reorganization Act Amendments
Sponsor - Sen. Robert Byrd (D) W. Va. for Sen. Hartke (D)
Ind.

Last Day for Action

April 3, 1976 - Saturday

Because of special circumstances, it is recommended that this bill be signed by Friday, March 26, 1976.

Purpose

To make amendments to the Regional Rail Reorganization Act relating to the issuance and distribution of stocks by the Consolidated Rail Corporation, its State of incorporation, and the availability of employee protection benefits.

Agency Recommendations

Office of Management and Budget

Approval

Department of Transportation
U.S. Railway Association

Approval (Informally)
Approval

Discussion

S.J. Res. 184 would make technical amendments to the Regional Rail Reorganization Act (P.L. 93-236) as it was recently amended by the Railroad Revitalization and Regulatory Reform Act (P.L. 94-210). These Acts provided for the implementation of the final system plan (FSP) developed by the U.S. Railway Association (USRA), a government corporation, for the reorganization of the bankrupt railroads in the Northeast and Midwest. They also provided for the establishment of a new private corporation, the Consolidated Rail Corporation (ConRail), to operate the new rail system. Since

P.L. 94-210 was signed into law, however, two railroads, the Chessie System and the Southern Railway, have declined to take part in the restructured system as was originally envisioned in the FSP. Accordingly, the size and scope of ConRail will have to be expanded. The enrolled bill would provide legal authority for this expansion.

S.J. Res. 184 would increase the amount of stocks which ConRail may issue. This amendment is necessary to clarify a portion of the Act which could be construed to preclude the issuance of stock in an amount greater than envisioned in the FSP, without an order of the Special Court having jurisdiction over the reorganization. The enrolled bill would also provide for technical amendments in the manner of distribution of the stock.

The enrolled bill would also amend the Act to permit ConRail to incorporate in another State. ConRail currently is incorporated in Delaware, but has decided that it would be better to be organized in Pennsylvania since its main offices are there. As a Delaware corporation, ConRail would have to pay a substantially higher tax as an out-of-state corporation in order to function in Pennsylvania. There is a legal question as to whether ConRail could reincorporate in Pennsylvania under the Act unless this provision is enacted.

In the final days of Congressional action on P.L. 94-210, an amendment made State governments eligible to acquire mainline railroads. However, the rest of the Act was not completely amended to conform to this provision and there is a question as to whether employees of a State-owned railroad would be eligible for employment protection benefits of the Act. S.J. Res. 184 would amend the Act to make clear that employees of a State-owned railroad are eligible for such benefits.

* * * * *

On March 22, 1976, ConRail and USRA filed various papers with the Special Court which would implement the bankrupt railroad restructuring. Those papers exceeded their authority as it currently exists in P.L. 93-236 and P.L. 94-210 as it relates

to stock issuance and incorporation. Thus, we recommend that you sign this bill by Friday, March 26, so that the filings will not be subject to a court action. In no event should the bill be signed later than April 1, the scheduled date of conveyance of property to ConRail and other participating railroads.

James M. Frey

Assistant Director for
Legislative Reference

Enclosures

United States Railway Association

2100 Second St., S.W.
Washington, D.C. 20595
(202) 426-2257

James A. Hagen
President

March 24, 1976

Honorable James Frey
Assistant Director for Legislative Reference
Office of Management and Budget
Executive Office Building
17th and Pennsylvania Avenue
Washington, D. C. 20503

Dear Mr. Frey:

In response to your inquiry relative to S.J. Res. 184, as recently passed by the Senate and House, which resolution makes certain technical amendments to the Regional Rail Reorganization Act of 1973, as amended by the Railroad Revitalization and Regulatory Reform Act of 1976, such amendments were requested by the Association, in its own behalf and in behalf of the Consolidated Rail Corporation (ConRail), with the support of the Department of Transportation, and are needed in connection with the filing of certain documents by the Association with the Special Court reviewing the railroad reorganization process now reaching a conclusion.

Accordingly, the Association recommends Presidential signature and enactment of this measure at the earliest convenient date.

Sincerely,



James A. Hagen
President



GENERAL COUNSEL

OFFICE OF THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

MAR 25 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 departmental views on S. J. Res. 184, an enrolled bill to amend the Regional Rail Reorganization Act of 1973, as amended (RRRA).

Section 1 of the joint resolution amends section 102(3) of the RRRA, which defines the statutory term "Corporation" to mean the Consolidated Rail Corporation established, under provisions of the RRRA, within 300 days after the approval of the original Act. In conformity with the statute, ConRail was incorporated in Delaware. It now appears that substantial state tax savings can be obtained if ConRail is reincorporated in Pennsylvania. ConRail's counsel proposes to accomplish this by merging the present ConRail into a ConRail Pennsylvania subsidiary incorporated strictly for this purpose. After the merger, the subsidiary will change its name to ConRail and the reincorporation in Pennsylvania will have been accomplished. It is unclear, however, that a successor corporation of ConRail fits the statutory definition of "Corporation," which contemplates only that particular corporation formed within 300 days of the approval of the initial RRRA. To remove any ambiguity, the proposed language gives express approval to mergers, consolidations, and other forms of succession when carried out for the purpose of reincorporation. The Department has no objection to this section.

Sections 2 and 3 of the joint resolution change both the language and the formula for calculating the redemption amount of the certificates of value under section 306 of the RRRA. In calculating the redemption amount, the certificate of value formula has always provided that the fair market value of the series B preferred stock and the fair market value of the common stock applicable to each certificate of value be subtracted from the base value of each certificate in order to calculate the redemption value. In the amendments

to the RRRRA passed as part of the Railroad Revitalization and Regulatory Reform Act of 1976, USRA and the Department were concerned that the definition of the series B preferred stock applicable to each certificate of value did not completely remove the possibility of miscalculation or manipulation. USRA's original proposal defined the series B applicable to each certificate as "one share of series B preferred stock" but did not specify as of what time period the number of shares would be determined. On conveyance day there will be one share of series B preferred stock for each certificate of value, and if that ratio continued to hold the redemption value formula would work. If, however, the series B were split three for one, for example, it would make no sense to continue to use the formula subtracting the value of only one series B share from each certificate of value. Language was added to the bill, therefore, providing that the shares of series B applicable to each certificate would be calculated "without regard to any stock splits, stock combinations ... affecting the number of shares of outstanding series B preferred stock following the date of distribution pursuant to section 303(c)(4) of this title." Unfortunately, the phrase "without regard to" does not express the intent of the draftsmen. We want those using the formula to take account of later stock splits and recalculate the number of series B preferred shares, not to ignore later stock splits. The proper language to use would be "adjusted to reflect" rather than "without regard to", and the language in section 2 accomplishes this clarifying change in language.

The draftsmen also neglected to add the same recalculation feature to the formula with regard to the number of ConRail common shares applicable to each certificate of value, though the problem of stock splits affects the common every bit as much as the series B preferred. The joint resolution, therefore, contains in section 3 a redraft of section 306(c)(3)(B) to add the same adjusting language for the common stock as is used for the series B preferred. The Department feels that both of the above changes are very helpful and necessary.

Section 4 of the joint resolution provides explicit language specifying the authorized number of series B preferred shares that ConRail may have. The final system plan specified 30 million shares, of which 21 million would initially be issued to the railroad transferors in exchange for the rail properties transferred to ConRail. When the offers to the Chessie and Southern lapsed because of inability to reach labor agreements, the additional and alternate designations in the final system plan provided that ConRail would receive the bulk of the properties that would have gone to those two profitable railroads. The greatly expanded "unified" ConRail

requires that more series B preferred shares be issued to rail transferors reflecting the additional assets that ConRail will receive. USRA calculated that the number of series B preferred shares required for "unified" ConRail is 31,740,373. USRA is concerned that because language in the present section 301(e)(2) of the RRRRA explicitly approves the final system plan provisions for the terms and conditions of the series B preferred, this could be read as a legislative adoption of the final system plan's limit of 30 million authorized series B preferred shares. Such a limit would make it impossible to issue the number of series B preferred shares necessary. To avoid ambiguity and a later challenge to the power of ConRail to issue series B preferred, USRA requests the explicit congressional pronouncement on the number of series B preferred shares ConRail may issue. While the language of section 4 of the joint resolution may result from an excess of caution by USRA, the Department believes the provision is helpful and clarifying.

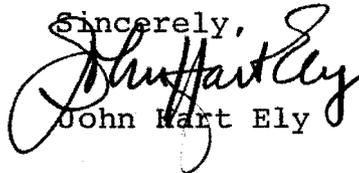
Section 5 of the joint resolution adds language to the definition of "employee of a railroad in reorganization" to include persons employed on properties that are transferred to States. The final system plan did not designate any properties to be acquired by States because the original RRRRA did not give USRA authority to make such a designation. Section 208(d)(2) of the RRRRA, as added by the Railroad Revitalization and Regulatory Reform Act of 1976, however, empowers USRA to make additional designations to States from properties originally designated in the final system plan to be transferred to ConRail. The State of Michigan will, under section 208(d)(2), be acquiring part of the Ann Arbor Railroad that was designated to ConRail. ConRail will be operating the Michigan-owned lines under an agreement with Michigan. The language in section 5 of the joint resolution makes employees on the Ann Arbor "employees of a railroad in reorganization" and thus eligible for the employee protections in the RRRRA. The language has the virtue of avoiding an alternate suggested solution to the Michigan acquisition problem, which was to define an "acquiring railroad" to include a State. Such an approach could have entangled the State of Michigan in the complex reimbursement provisions of the RRRRA labor protection provisions. The Department supports this section since it stops a gap in the law created by subsequent developments, yet avoids a broader approach that could have had unintended and unanticipated side effects.

Sections 1, 2, 3, and 5 of the joint resolution are offered in large part as a result of suggestions by the Department, and the language of sections 2, 3, and 5 was drafted by the Department.

The joint resolution should be signed by the end of the week to allow ConRail time to file the necessary paper to effect the merger and reincorporation contemplated by section 1 before conveyance day, April 1, 1976. In addition, when USRA and ConRail deposited securities with the special court on March 22, 1976, pursuant to the RRRRA, they represented that while the terms of the certificates of value and the number series B preferred might not conform with the statute and the final system plan, these were technical problems that would be solved by the passage and signing of this joint resolution, which it was claimed would take place as quickly as possible. An expeditious signing of the joint resolution would lend credence to USRA's statements to the special court.

None of the provisions of this joint resolution will entail any additional expenditures by the federal government over those provided for or contemplated in the RRRRA as already signed into law.

The Department recommends that the President sign the joint resolution by the close of business Friday.

Sincerely,

John Hart Ely

THE WHITE HOUSE

WASHINGTON

March 25, 1976

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *mf*
SUBJECT: S. J. Res. 184 - Regional Rail Reorganization
Act Amendments

The Office of Legislative Affairs concurs with the agencies
that the subject bill be signed.

Attachments

10-
C...
3-25-76
noon



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

MAR 25 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Resolution S.J. Res. 184 - Regional Rail
Reorganization Act Amendments
Sponsor - Sen. Robert Byrd (D) W. Va. for Sen. Hartke (D)
Ind.

Last Day for Action

April 3, 1976 - Saturday

Because of special circumstances, it is recommended that this bill
be signed by Friday, March 26, 1976.

Purpose

To make amendments to the Regional Rail Reorganization Act relating
to the issuance and distribution of stocks by the Consolidated
Rail Corporation, its State of incorporation, and the availability
of employee protection benefits.

Agency Recommendations

Office of Management and Budget	Approval
Department of Transportation	Approval (Informally)
U.S. Railway Association	Approval

Discussion

S.J. Res. 184 would make technical amendments to the Regional Rail
Reorganization Act (P.L. 93-236) as it was recently amended by the
Railroad Revitalization and Regulatory Reform Act (P.L. 94-210).
These Acts provided for the implementation of the final system
plan (FSP) developed by the U.S. Railway Association (USRA), a
government corporation, for the reorganization of the bankrupt
railroads in the Northeast and Midwest. They also provided for the
establishment of a new private corporation, the Consolidated Rail
Corporation (ConRail), to operate the new rail system. Since

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: March 25

Time: noon

FOR ACTION: Judy Hope
Max Friedersdorf
Ken Lazarus

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: March 25

Time: ~~5:00pm~~ ASAP

SUBJECT:

S.J. Res. 184 - Regional Rail Reorganization Act
Amendments

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

no objections.

K. Lazarus

3/25/74

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: March 25

Time: noon

FOR ACTION: Judy Hope
Max Friedersdorf
Ben Lazarus

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: March 26

Time: 500pm

SUBJECT:

S.J. Res. 184 - Regional Rail Reorganization Act
Amendments

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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

K. R. COLE, JR.
For the President

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

Joint Resolution

To amend the Regional Rail Reorganization Act of 1973, as amended.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 102(3) of the Regional Rail Reorganization Act of 1973, as amended, is amended by inserting after "Act" the phrase "or its successor by merger, consolidation or other form of succession carried out under applicable law for the purpose of changing the State of its incorporation".

SEC. 2. Subparagraph (A) of paragraph (3) of section 306(c) of the Regional Rail Reorganization Act of 1973, as amended, is amended by striking "without regard to" and by inserting in lieu thereof "adjusted to reflect".

SEC. 3. Subparagraph (B) of paragraph (3) of section 306(c) of the Regional Rail Reorganization Act of 1973, as amended, is amended to read as follows:

"(B) the number of shares of common stock determined by dividing the total number of shares of common stock distributed pursuant to section 303(c)(4) of this Act to the transferor receiving such series of certificates of value (adjusted to reflect any stock splits, stock combinations, reclassifications, or similar transactions affecting the number of shares of outstanding common stock following the date of distribution pursuant to section 303(c)(4) of this title) by the total number of certificates of value in the series so distributed to such transferor."

SEC. 4. Paragraph (2) of subsection (e) of section 301 of the Regional Rail Reorganization Act of 1973, as amended, is amended by adding thereto the following sentence: "Notwithstanding anything to the contrary in the final system plan, the initial authorized number of shares of series B preferred stock may be 35,000,000, and the Corporation may issue initially for the purpose of the deposit required under section 303(a)(1) of this Act such numbers of shares of series B preferred and common stock as the Association shall certify to the Special Court pursuant to section 209(c)(1)(3) of this Act, including any modifications in such numbers of shares as may be ordered by the Special Court for the purpose of, and in connection with, such deposit and certification."

SEC. 5. Section 501(2) of the Regional Rail Reorganization Act of 1973, as amended, is amended by striking "or to an acquiring railroad" and inserting in lieu thereof ", to an acquiring railroad, or to a State pursuant to section 208(d)(2) of this Act".

Speaker of the House of Representatives.

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

March 23, 1976

Dear Mr. Director:

The following bills were received at the White House on March 23rd:

- ✓ S.J. Res. 184 ✓
- ✓ H.R. 3427
- ✓ H.R. 12122

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

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