The original documents are located in Box 67, folder "1976/10/19 S3131 Amtrak and ConRail Amendments (1)" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

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APPROVED
OCT 19 1976

S 10/19/76 statement unapproved

THE WHITE HOUSE

WASHINGTON

October 19, 1976

ACTION

Last Day: October 19

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Enrolled Bill S. 3131--Amtrak and ConRail Amendments

Posted 10/20/76

archives 10/20/76

This is to present for your action S. 3131, which authorizes additional appropriations for Amtrak for 1977, amends provisions of law relating to Amtrak, increases loan authorities for ConRail and makes a number of changes in the law affecting ConRail.

BACKGROUND

S. 3131 was originally proposed to Congress by the Department of Transportation; as enrolled, however, it is substantially amended and expanded. Title I applies to the National Railroad Passenger Corporation (Amtrak). Title II amends laws relating to the Consolidated Railroad Corporation (ConRail), the private corporation which was created from six bankrupt railroads in the northeast and midwest. Title III authorizes studies of Amtrak operations and rail service in the northeast to be undertaken.

BUDGETARY IMPACT

S. 3131 authorizes total appropriations of $1.328 billion for Amtrak for FY 1977 and FY 1978. The Administration requested $1.156 billion, a $172 million difference. The difference is distributed in the following manner:

> S. 3131 provides $52 million more for Amtrak operating expenses;
>
> $70 million more for operating costs; and
>
> $50 million more for capital expenses.

S. 3131 increases USRA's maximum loan authority from $230 million to $350 million. More importantly, the bill makes Section 211(h) a revolving fund, rather than the current one-time loan authorization. This could make the Government's potential liability open-ended.

A detailed analysis of the fiscal considerations is contained in the OMB enrolled bill memorandum of October 14, 1976, attached at Tab A.

ARGUMENTS FOR APPROVAL

1. DOT is of the view that the bill as a whole provides net benefits, particularly to the Northeast Corridor program, which are consistent with Administration policy.

2. OMB reluctantly concurs with DOT in recommending approval of the bill because it contains provisions which are desirable to the Administration which would be lost or diluted if the bill is disapproved. These provisions are:

   - An assurance that the Government's investment in the Northeast Corridor is protected;

   - A more flexible administrative procedure for loan guarantees in ConRail loans;

   - An increased authorization for Amtrak (at the current rate of obligations, funds will run out in August 1977 and operations will cease).

ARGUMENTS FOR DISAPPROVAL

1. The bill provides authorizations for operating grants for Amtrak in FY 1978 which place an unreasonably high burden on the taxpayer.

2. The limit on the ability of Cabinet officers to designate their representatives to work with USRA runs counter to your Administration's attempts to curb excessive waste of the taxpayer's money. Treasury finds this provision alone sufficiently objectionable to require veto of the bill.

AGENCY RECOMMENDATIONS

OMB, DOT, HEW, and the National Railroad Passenger Corporation recommend approval. The Department of Justice defers to DOT. The United States Railway Association has no recommendation. Treasury recommends disapproval. (See Secretary Simon's letter to you at Tab B).

STAFF RECOMMENDATIONS

Max Friedersdorf, Bill Seidman, and the Counsel's Office (Lazarus) recommend approval.

I recommend approval of S. 3131. I concur with DOT and OMB that the pros outweigh the cons, and the beneficial impact on the Northeast Corridor cannot be overestimated. Moreover, your signing statement can indicate the problems with this bill and signal your intention to seek legislation in January to correct them.

RECOMMENDATION

Sign S. 3131 at Tab C.

Issue signing statement at Tab D which has been cleared by Doug Smith. (Note: OMB recommends that no signing statement be issued because of the marginal acceptability of this bill.)

Approve ________ Disapprove ________

A

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

OCT 14 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3131 - Amtrak and ConRail Amendments
Sponsors - Sen. Hartke (D) Indiana and Sen. Pearson (R) Kansas

Last Day for Action

October 19, 1976 - Tuesday

Purpose

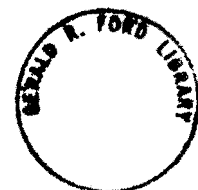
Authorizes additional appropriations for Amtrak for 1977; amends various provisions of law relating to Amtrak; and increases loan authorities for and makes numerous changes to law affecting ConRail.

Agency Recommendations

Office of Management and Budget	Approval
Department of Transportation	Approval
National Railroad Passenger Corporation	Approval
Department of Health, Education, and Welfare	Approval (Sections 105 and 301)(Informally)
Department of Justice	Defers
United States Railway Association	No recommendation
Department of the Treasury	Disapproval

Discussion

S. 3131 would make numerous amendments to current law affecting the rail industry. Title I would apply to the National Railroad Passenger Corporation (Amtrak). Title II would amend laws relating to the Consolidated Railroad



Corporation (ConRail), a private corporation which was created from six bankrupt railroads in the Northeast and the Midwest. Title III would authorize studies of Amtrak operations and rail service in the Northeast to be undertaken.

S. 3131 was originally proposed to the Congress by the Department of Transportation (DOT), but as enrolled, it is substantially amended and expanded. This memorandum will discuss only the major provisions of the enrolled bill. DOT's and Treasury's attached views letters discuss these and other provisions in more depth.

Title I - Amtrak

S. 3131 would authorize total appropriations of $1.328 billion for Amtrak for fiscal years 1977 and 1978, as compared to an Administration request of $1.156 billion. This is a difference of $172 million as follows:

- S. 3131 would authorize appropriations of $430 million for Amtrak's operating expenses in 1977, which is $52 million over what the Administration requested. We would note that the Transportation Appropriations Act (P.L. 94-387) provides $420 million for operating expenses in 1977, only $10 million less than the authorization in the bill.

- The difference between the Administration request and the enrolled bill for 1978 operating costs is $70 million ($400 million vs. $470 million).

- For capital expenses, the Administration requested $110 million for 1977 and $100 million for 1978, as compared to $130 million each year in the enrolled bill, a difference of $50 million.

- The other Amtrak authorization items in the enrolled bill are identical to Administration requests.

A table is attached showing a comparison of the authorizations in the enrolled bill, the Administration's request, and the Appropriations Act for 1977.

Title I would allow Amtrak to use its capital grant appropriations to temporarily retire its outstanding loans, including those guaranteed by DOT. It would also require that one-fourth of the appropriations for capital grants be advanced to Amtrak at the beginning of each fiscal quarter, rather than as it is needed. This would decrease Amtrak's interest costs and lower its apparent deficit by approximately $8-10 million per year. This provision was opposed by DOT and OMB because Amtrak's savings would be offset by increased interest expense to the Federal government resulting from its being forced to borrow the funds earlier than otherwise would be necessary. In an attempt to compromise on this point and lessen the financial impact, the conference committee decided that Amtrak would receive the funds quarterly, rather than annually as originally proposed.

While the impact on the Treasury of this hidden subsidy for Amtrak is small, it could set a precedent for ConRail, where the total impact could be over $100 million. While we do not expect to receive such a proposal from ConRail, it is possible that Congress would attach such an amendment for ConRail to the next rail bill that passes Congress.

S. 3131 would increase the Federal share of Amtrak's operating costs in providing passenger services of direct benefit to a State or local government. Currently, a State or locality receiving service is required to pay 50 percent of Amtrak's total operating losses and associated capital costs of providing that service. Under current law, where "solely related" costs can be determined, the State/local share is 75 percent. The enrolled bill would merge these standards and provide that the State or locality pay only 50 percent of the losses of the "solely related" costs, rather than the total costs. DOT opposed this provision because it would increase Amtrak's deficit by $5-7 million per year and encourage the States and localities to perpetuate uneconomic routes and services.

Title I would also make several amendments to Amtrak's role in upgrading passenger service in the Northeast Corridor between Washington, D.C., and Boston. The provisions in the enrolled bill are the Administration's proposals or were agreed to by DOT in negotiations. The bill would provide for increased authorizations for Amtrak to purchase the Corridor from ConRail.

More importantly, the bill would ratify an agreement between DOT and Amtrak which protects the government's investment of $1.75 billion in the Corridor. Essentially, this agreement provides a lien on the Corridor to the Federal government. In the event of an Amtrak bankruptcy, the government would not have to pay a second time for a Corridor it built at such expense. An earlier version of the bill would have had the opposite effect, and would have made the government's investment in the Corridor subject to the claims of Amtrak's common stockholders -- four privately owned railroads, including the Penn Central. DOT considers this the most important issue of the enrolled bill.

In addition, Title I would authorize Amtrak to establish through routes and joint fares with motor carriers, and would relax the requirement to provide food service outside of regular dining hours.

Title II - ConRail

The Regional Rail Reorganization Act of 1973 (RRRA - P.L. 93-236) provided for the restructuring of bankrupt railroads in the Northeast and Midwest; established ConRail as a for-profit private corporation to operate the restructured system; and established the United States Railway Association (USRA), a governmental non-profit corporation, to oversee ConRail.

USRA Loans to ConRail

Section 211(h) of the RRRA authorizes USRA to make loans to ConRail or Amtrak to pay off certain preconveyance debts of the bankrupt railroads, in order to provide a smooth and orderly transition to ConRail by ensuring that the unpaid debts do not force a halt in service. Once

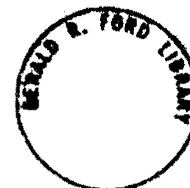
the debts are paid, ConRail has a claim against the estate of the bankrupt railroads for repayment. Should ConRail be unable to collect within 3 years, the loan to ConRail may be forgiven by USRA, which would then replace ConRail in the claim against the estate. This authority is off-budget, and thus does not show up as part of the total budget authority and outlays for the U.S.

S. 3131 would amend Section 211(h) to increase the maximum loan authority by $120 million, from $230 million to $350 million. More importantly, the bill would make Section 211(h) a revolving fund, rather than the current one-time loan authorization. This would have the effect of making the government's potential liability open-ended, significantly increasing the chance of default. S. 3131 would also expand the kinds of debts which can be paid for by these loans, mainly in the employees' benefits area. We believe these expanded uses are less secure and therefore the estates are more likely to default on repaying ConRail. Once a loan defaults, of course, the probability of full repayment to the government is lessened.

In a letter to the conferees on the enrolled bill, DOT strongly opposed this provision and said that an increase of $70 million would be "minimally acceptable ... any higher figure will not be acceptable, particularly when such authority is revolving..." Dot also opposed this provision because it could lessen pressure on the courts having jurisdiction over the reorganization to see that the estates did not ignore their debts and obligations because of the increased Federal loans. This provision is somewhat improved over an earlier Senate version, however, which would have raised the total authority to $450 million on a revolving basis. The conference committee compromised between the $300 million recommended and the $450 million in the Senate bill. In addition, the bill would amend the financial reporting requirements of Section 211(h) and would improve USRA's flexibility to administer the program.

Redeemable Preference Shares

S. 3131 would require that funds used for deferred maintenance projects which are advanced to the industry in the form of redeemable preference shares must carry a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maximum interest rate no greater than the railroad's rate of return, determined under a formula defined in the bill, but in no event at a rate less than 2 percent. This would provide funds to much of the industry at an interest rate below the cost of capital to the government, since the average rate of return for the industry is 4.9 percent. While this provision would result in a substantial hidden subsidy to the industry, DOT believes it will be able to control this program because of its authority to weigh the benefits of a project against the public costs and thus deny any application which is unacceptable because of the interest rate the applicant would pay. In its views letter, DOT states that any such application would be a likely candidate for a loan guarantee rather than redeemable preference shares.

Loan Guarantees

S. 3131 would eliminate the current requirement that DOT consider the financial viability of a railroad in reviewing its application for the guarantee of obligations, as long as sufficient unencumbered assets exist to adequately secure the obligation. Should the railroad file for bankruptcy, this could result in the government's claim being delayed or partially or fully denied as a result of a bankruptcy proceeding. The bill would, however, also make a number of changes to the loan guarantee program which would improve it and increase DOT's flexibility in administering it. For example, DOT is given more discretion in determining the eligibility for a loan guarantee. Also, the full faith and credit of the United States would be given these guarantees. DOT believes these provisions are necessary for the railroads to even apply for loan guarantees.

USRA Board Members

S. 3131 would also restrict the ability of the Secretaries of DOT and the Treasury and the Chairman of the Interstate Commerce Commission (ICC) to designate someone to represent them on the USRA Board of Directors. Currently, there is no restriction on whom these agencies may appoint to fill their seats on the Board. S. 3131 would provide that only the Secretaries of DOT and Treasury and the Chairman of ICC or their deputies may sit on the Board. This

amendment, introduced by Senator Hartke, apparently is intended to remove Treasury Under Secretary Thomas from the Board. He has been a critic of alleged wasteful expenditures by the Board, including payment of private country club fees for Board members. Treasury points out that this could result in the three government agencies not being represented at numerous Board meetings if the two top officials are busy on other matters.

In a memorandum sent to you, a copy of which is attached, Secretary Simon states that,

> "The inconceivable attempt to replace a director who speaks out against excessive spending and improvident use of tax dollars, runs counter to everything your Administration has attempted to do in curbing excessive waste in Washington. The unwarranted expenditure of the taxpayer's money for the social pleasures of USRA officers involves an important issue of principle.
>
> "If the Hartke Amendment prevails, then it will be a further frustration and discouragement to those of us in your Administration who take pride in assisting you in eliminating unnecessary and unprincipled waste in government."

In its views letter, DOT states that "The Department strongly opposed this provision and feels it is, in principle, the most objectionable provision in this bill."

Title II does make some desirable changes to current law (discussed in DOT's views letter, attached), but these are far outweighed by the undesirable provisions mentioned above.

Title III - Studies

Title III would require the Department of Health, Education, and Welfare (HEW) to conduct an 18-month study of the effect of waste and sewage disposal by Amtrak along train tracks. Current law prohibits regulations designed to prevent toilets on board a train from flushing on the rail right-of-way. When this provision was enacted, it

also inadvertently exempted Amtrak food services from HEW enforcement standards. S. 3131 would amend the provision to make clear that the food services are subject to HEW standards, but would continue to exempt its waste disposal. While HEW would have preferred that Amtrak also be made subject to the waste disposal standards, it supports the provision as an improvement over the current situation.

Title III would also call for a 6 month study of rail transportation services on the Delaware-Maryland-Virginia Peninsula. This is a result of a failure of the Chessie System and the Southern Railroad to acquire properties of the bankrupt railroads on the Delaware Peninsula because of objections by some of the labor unions involved. The result of their failure to acquire these properties is that ConRail is larger and faces less competition than originally planned.

Agency Views

In its attached views letter, DOT states that, "Reviewing the bill as a whole, we are of the opinion that net benefits provided in the form of a Northeast Corridor program that is consistent with Administration policy and a railroad assistance program capable of meeting the railroads' needs in a manner that is largely consistent with Administration policy outweigh this bill's negative features, many of which can be corrected in legislation next year."

Accordingly, DOT recommends that the enrolled bill be approved.

Treasury recommends disapproval of the enrolled bill for three reasons: (1) the potential increased liability of the Federal government under the loan program to ConRail; (2) the provision allowing loans to railroads at a rate below the government's cost of capital; and (3) the provision limiting the government's representatives on the USRA Board of Directors. In addition, Treasury points out a number of other objectionable provisions.

Recommendations

As noted above, there are a number of undesirable provisions in S. 3131. They include an increase in loans to ConRail, an artificial ceiling on the interest rate of redeemable preference shares, and an unnecessary restriction on the membership of the USRA Board of Directors. The bill does contain, however, provisions desirable to the Administration which would be lost or diluted if the bill were disapproved. These provisions are:

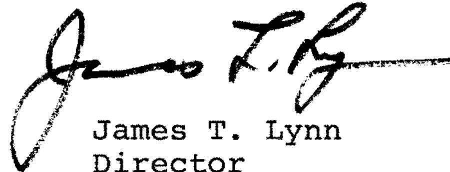
- an assurance that the government's investment in the Northeast Corridor is protected (Secretary Coleman has said that unless there is legislative endorsement of the DOT-Amtrak agreement on the Corridor, he will not guarantee any more loans to Amtrak for its purchase. At the current rate of obligations, Amtrak's funds for this purpose will expire in January 1977);

- a more flexible administrative procedure for loan guarantees and ConRail loans; and

- an increased authorization for Amtrak (at the current rate of obligations, funds will run out in August 1977 and operations will cease).

Earlier versions of the bill in both the Senate and the House were demonstrably worse than the enrolled bill. DOT threatened a veto recommendation to gain significant concessions from the Senate, House, and conference committee. DOT was successful because the Congress was under pressure from rail interests to produce a bill this session. Disapproval of this bill and the reintroduction of the Administration bill next Congress would, in our view, raise the same issues with no assurance of a more favorable outcome.

After a full review of all these issues, we must reluctantly concur with DOT in recommending that you approve this bill. Because of its marginal acceptability, however, we recommend that no signing statement be issued.



James T. Lynn
Director

Enclosures

FUNDING COMPARISON
($ in millions)

	Administration proposal		S. 3131		Appropriations Act (P.L. 94-387)
	1977	1978	1977	1978	1977
Operating Subsidies	378	400	430	470	420.0
Capital Grants	110	100	130	130	93.1
Northeast Corridor Subsidy	68	75	68	75	62.6
Payment of Amtrak Debt	--	25	--	25	--
TOTAL	556	600	628	700	575.7
	1,156		1,328		

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

October 9, 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 the views of the Department of Transportation concerning S. 3131, an enrolled bill

> To amend the Rail Passenger Service Act to provide financing for the National Railroad Passenger Corporation, to amend the Regional Rail Reorganization Act of 1973 to increase the amount of loan authority under seection 211(h)(1) of such Act, and for other purposes.

The enrolled bill would amend four acts--the Rail Passenger Service Act ("RPSA"), the Regional Rail Reorganization Act of 1973 ("RRRA"), the Railroad Revitalization and Regulatory Reform Act of 1976 ("RRRRA") and the Interstate Commerce Act ("ICA")--and would mandate two new studies. Our comments on the bill fall into four categories: Amtrak and the Northeast Corridor ("NEC"), regional rail reorganization, railroad financial assistance, and miscellaneous and technical amendments. We have not discussed sections of the bill that are not either significantly positive or negative features.

<u>Amtrak and the Northeast Corridor</u>

Section 102 of the bill would amend section 601 of the RPSA to authorize appropriations to Amtrak for fiscal years 1977 and 1978. The authorization for operating expenses for FY 77 (exclusive of NEC operations) is $52 million over the amount recommended by the Administration, although it is only $10 million over the amount already appropriated for that purpose (P.L. 94-387). The authorization for operating expenses in FY 78 (exclusive of NEC operations) is $60 million over the amount originally recommended by the Administration. However, this recommendation must now be reexamined in the light of the acceptance of $420 million in appropriations for FY 77, and

can be reconsidered in the context of Amtrak's appropriations next year. The capital expense authorizations exceed Administration recommendations by $20 million and $30 million respectively for those two fiscal years. While each of these authorizations exceed the Administration's recommendations, they are not unreasonable under the circumstances.

This section would also provide for repayment of $25 million of Amtrak's loans guaranteed under section 602 of the RPSA. This provision, which was proposed by the Administration, is a step in the right direction of terminating the loan guarantee program and placing Amtrak on an exclusively grant basis in recognition of the fact that it will never be able to repay its loans from internally generated funds.

Finally, this section under the least favorable legal interpretation would require payment of Amtrak's appropriated capital grants on a quarterly basis, which may result in Amtrak receiving in each quarter one-fourth of its apportioned capital appropriation rather than just those funds that actually will be spent in the quarter. In addition, it allows Amtrak to use the funds it does receive to reduce temporarily its outstanding loan balances. The effect of this provision would be to reduce Amtrak's interest cost in FY 77 by an amount that is about equal to the government's added interest expense due to the early payment of the appropriated funds. However, in the next fiscal year Amtrak's interest cost saving would cause a corresponding subsidy saving to the government. From that point forward, this would constitute a small hidden subsidy to Amtrak, contrary to Administration policy in this regard, but would not be an added cost to the taxpayer generally.

It should be noted that the Senate version of S. 3131 considered at conference contained three provisions that were strongly opposed by the Department and were changed or deleted at conference. First, the provision concerning use of capital grants to reduce capital loans originally required payment of all appropriated capital grants for use for this purpose. This provision was limited at conference to apply only to capital grants paid in each quarter, thereby reducing significantly the cost impact of the provision. Second, the Senate version removed the requirement that Amtrak grant funds be used in accordance with "spending plans" approved by Congress at the time of appropriation. This requirement has been very important in preventing Amtrak's use of funds for purposes different from those established at the time of appropriation. The proposed amendment was deleted at conference. Third and most important, the Senate version required the Secretary to guarantee leverage lease transactions. This provision was also deleted at conference.

Section 106 of the bill would amend the RPSA to allow Amtrak to establish through routes and joint fares with motor carriers and to require the ICC to conduct a study concerning such routes and fares. This provision, although different from the Administration's proposal which would have partially exempted such routes from ICC requirements, is consistent with our proposal and should provide Amtrak an opportunity to offer the traveling public better service and thereby attract greater ridership and possibly reduce its operating deficit.

Section 107 of the bill would amend section 403(b) of the RPSA concerning State-requested intercity services (a) to reduce Amtrak's discretion concerning scheduling, marketing or operating such services and (b) to reduce the cost base that the States must share from Amtrak's "total" costs to its "solely related" costs in providing such services. The effect of the first change is to reduce Amtrak's prerogatives in modifying these services since it would have to obtain the State's consent to the modifications. The other change, which is described in the Conference Report as a reversion to the cost basis existing at the time of the adoption of the RRRRA, results in increasing Amtrak's share of the cost burden in providing these services. This amendment would likely increase the States' incentives to perpetuate uneconomic services and for that reason has been strongly opposed by the Department.

Section 108 of the bill would amend the RPSA to prohibit the ICC from requiring Amtrak to provide food service other than during customary dining hours. The Department supports this amendment since it should help to reduce Amtrak's operating expenses and does not significantly affect Amtrak's public service responsibilities.

The amended basis for State payments on section 403(b) routes under section 107 of the bill would decrease state payments and increase Amtrak costs by approximately $0.5 million per year. However, the savings from exemption from "Hours of Food Service Regulations" under section 108 of the bill would more than offset these costs. In any event the net difference will be included in the authorization provided by section 102(a)(1) of the bill.

Section 217 of the bill would amend title VII of the RRRRA concerning the Northeast Corridor. These amendments would increase the authorization for purchase of the NEC by Amtrak and provide for implementation of that purchase and of the agreement protecting the public investment in those properties.

They are virtually the same as those proposed by the Department (after clearance with OMB) and Amtrak. Each change to the proposed language was approved by the Department in the course of the legislative process. In addition, the Conference Report language concerning this provision strongly supports the Department's position concerning control of the NEC improvement project. Thus, this provision is extremely important to achieving the Administration's objectives with respect to the NEC since it would result in both protecting the public investment and assuring appropriate government monitoring and control of the project. Without this amendment, the improvement work on the NEC properties cannot begin and Amtrak's deficits on account of its purchase arrangement with ConRail (presently about $17 million) will increase by $3 million per month. By early 1977 it is likely that Amtrak's cash deficit after receipt of operating grants would be so large as to require cessation of operations unless legislative relief were granted.

In sum, we must compare the excessive but not unreasonable authorization and the possible limited constraint on payment of capital grants with the adoption of the NEC implementation amendments and the authorization of through routes and joint fares. We must also consider the fact that several significant and adverse provisions relating to Amtrak were deleted from the final bill. Because of the great importance we place on implementation of the NEC project now on terms most favorable to the Administration--terms that would not likely prevail next year if this bill were vetoed--and because we find the unfavorable provisions of this portion of the bill mitigated by other factors as discussed or subject to future change, we feel that these provisions are clearly favorable to the Administration, and are, taken as a whole, the best obtainable.

Regional Rail Reorganization

Section 202 would expand the deficiency judgment protection afforded by the RRRA to cover rail marine freight floating equipment acquired by ConRail for pass through to a profitable railroad, State or a responsible person. These amendments to sections 206 and 303 of the RRRA are designed to allow ConRail to purchase, for pass through to two New York City terminal and dock railroads, four tugs and nine car floats owned by Penn Central. The Final System Plan provided that ConRail would have a thirty-day option period following the date of conveyance to acquire these properties. The option was not exercised but Penn Central and ConRail did enter into an agreement which would allow ConRail to purchase the properties at a negotiated price. The proposed amendment is objectionable since there is no logical reason why the government

should afford deficiency judgment protection in connection with a negotiated purchase price.

Section 203 of the bill would amend section 211(h) of the RRRA to accomplish several objectives. First, it increases the loan authorization by $120 million (such loans being provided from proceeds of USRA loans guaranteed by the Department) and allows that authorization to be used on a revolving basis. This provision was strongly opposed by the Department because it will increase substantially the government's financial position as a creditor of each of the railroads in reorganization. Although this bill increases the categories of claims that may be paid with guaranteed loan proceeds, this increase would not affect significantly the total demand for loans (see Attachment A).

On the other hand, this amendment will facilitate the administration of this program by both USRA and ConRail and correct some alleged "inequities" in treatment of various claimants against the bankrupt estates. In addition, it is consistent with the positions of the USRA and the U.S. concerning treatment of vacation pay and other employee obligations in appeals of reorganization court decisions, and in particular will assure maximum benefits to the government from those funds if the appeals are won. It will also provide important additional leverage to the Department in negotiating settlement of the government's claims against an estate as part of a plan of reorganization.

Section 204 of the bill would amend section 303(b)(6) of the RRRA to require ConRail to guarantee the payment of accrued pension benefits of certain plans terminated by ConRail within one year after conveyance and entitles ConRail to a loan under section 211(h) to meet those payments. Those benefits (at least $10 million and possibly $17 million) are deemed to be administrative claims against the various estates. While we recognize that this provision will assure continued payment of pension benefits under approximately 14 pension plans that might otherwise go unpaid, we have opposed the provision because it could be found to constitute a condemnation of estates' assets to the extent such benefits are determined ultimately not to be administrative claims. Since ConRail is entitled to a section 211(h) loan to fund these pensions, that loan would become a grant if the condemnation argument were sustained.

Section 205(a) of the bill would amend section 304(d) of the RRRA to prohibit the use of property value determinations, made in connection with the local rail services program funded

by the Department, from being used in the main valuation case involving the ConRail properties. The purpose of the provision is to allow the local rail services program to proceed without affecting in any way the litigation positions of the parties in the valuation case before the special court. Although we recognize that the provision ultimately may be unenforceable,we favor its inclusion in the hope that it will prevent any valuations agreed to by trustees and the estates from being harmful to the valuation case.

Section 205(b) would amend section 304(e)(5) of the RRRA to provide that (a) for purposes of determining the Department's obligation to pay commuter "losses" pursuant to section 17(a)(1) and (2) of the Urban Mass Transportation Act, the level of service shall be based on train miles, car miles, or some other appropriate indicia of scheduled train movements, and (b) programs (and costs incurred incident thereto) to correct deferred maintenance on rolling stock, right-of-way, and other facilities which are designed to maintain service, meet on-time performance, and maintain a reasonable degree of passenger comfort shall be included within the meaning of such "losses" to be paid by the Department. The purpose of the amendment is to assure that ConRail does not place itself in the position of cross subsidizing commuter service where it makes repairs to restore service and that it is paid by commuter agencies (which are reimbursed by the Department under section 17 of its Act) for repairs and maintenance actions needed to restore reasonable quality of service where service by former bankrupt estates had deteriorated. New authorizations are not expected to be needed to enable the Department to make such payments. The actual costs are incapable of being estimated, but are not expected to be excessive for the remaining two years of the section 17 program. Nevertheless, the inclusion of payments to overcome deferred maintenance as part of the Department's commuter subsidy could have significant long-run implications. However, we believe that the limited purpose of the amendment, together with the discretion contained in section 17 to impose terms and conditions, will provide adequate controls for the Department.

Section 206 of the bill would amend section 304(j) of the RRRA to provide that (a) the exemption from regulation of interstate rates by the ICC granted therein to local public bodies for mass transportation services applied only to such services by rail, and (b) such exemption applied only where the governor of the State in which the rate applied has approval or disapproval authority over it. The Department feels that this defeats the original purpose of the exemption which was to provide for local control over both fare and service policies on a system-wide basis. Limiting the exemption to only rail service effectively prevents localities from being

able to develop this control on a system-wide basis.

Section 208 of the bill would amend subsections (e) and (g) of section 504 of the RRRA. Both of these amendments are beneficial in that they improve the ability of ConRail, Amtrak or an acquiring carrier to obtain reimbursement from the bankrupt estates for claims paid. Moreover, the section limits the right of ConRail, Amtrak or the acquiring carrier to obtain a section 211(h) loan for temporary reimbursement for payment of those claims by making eligible for such loans only those claims that are determined by USRA to be an obligation of the estate, thereby maximizing the likelihood that such loans will be repaid.

Section 209(a) of the bill would amend section 505(b) of the RRRA to give full effect to the 10 percent general wage increase received by railroad employees as of January 1, 1975, in computing the monthly displacement allowance of any protected employee adversely affected by the Act's processes. This amendment would result in increasing by 8.3 percent the base amount on which such allowances would be calculated and paid, and was strongly opposed by the Department for this reason. Based on figures received from ConRail and the Railroad Retirement Board, our estimate is that the ultimate cost of this provision will be between $10 million and $25 million. Because of the very limited claims experience for such allowances, this estimate is very soft. There are also not any firm estimates of the total amount of such claims payable under title V of the RRRA, but it is our understanding that the amount of such claims presented to date is substantially below what was expected. Thus, even with this increase in the displacement allowance, it is reasonable to conclude that the total $250 million authorized under title V remains adequate.

Section 211 of the bill would amend the RRRA to allow only the Deputy Secretaries of this Department and the Treasury and the Vice Chairman of the ICC to serve as representatives of their respective Secretaries and the Chairman in their capacities as members of the USRA Board and, for the Secretaries, its Finance Committee. While justified by the Conference Report on different grounds, this provision was, in our view, designed solely at removing Under Secretary Thomas of the Treasury from these positions on account of his vigorous efforts to assure responsible expenditure of public funds by USRA. The Department strongly opposed this provision and feels it is, in principle, the most objectionable provision in this bill.

In sum, the benefits provided by this part of the bill are the substantial improvement in the administration of the section 211(h) program, the beneficial support for our litigation position in the reorganization courts and on appeal from those courts, the clarification of congressional intent regarding treatment of employee claims, the correction of certain inequities among various claimants against the bankrupt estates and the possible improvement in the administration of the local rail service assistance program. In our opinion, these benefits are outweighed, though not substantially, by the increased commitment of guarantee authority under section 211(h), permitting use of that authority on a revolving basis, adding additional claims to those eligible for section 211(h) funding, the possible condemnation of certain assets to the extent of the unfunded pension liability, the increase in the employee displacement allowance, and the limitation on alternates to government members of the USRA Board.

Railroad Financial Assistance

Section 212 of the bill would amend section 505(a) of the RRRRA to remove the restriction against approval of applications for facilities rehabilitation and improvement financing until after the final classification and designation of rail lines pursuant to section 503 of the RRRRA. It would also require the Department to issue regulations setting specific and detailed standards that will be used in making the findings under section 505(b)(2). The first amendment does not have any practical effect since applications received now do not have to be acted upon for six months, which is after completion of the section 503 report. The second amendment is consistent with our intent (to which OMB has agreed) to publish detailed guidelines concerning administration of the program.

Section 213 of the bill would amend section 506 of the RRRRA to permit (but not require) the Secretary to subordinate to certain interests the redeemable preference shares issued by two presently bankrupt railroads. While this will likely encourage these railroads to apply for this financing, it does not require explicitly or by implication that these railroads receive any funding.

Section 214 of the bill would also amend section 506 to require a minimum 21-year term on redeemable preference shares and to establish for deferred maintenance projects a minimum yield of 150 percent of the aggregate par value over the life of the share and a maximum yield on such shares equal to the

return on investment of the issuing carrier determined in accordance with a formula established by the amendment. This will result in requiring that, to the extent that such financings are provided for marginal carriers, they be done at the minimum permissible yield since their return on investment is below that yield. In fact, such financings for some of the best of the class I carriers would, if approved, be at yields below the government's cost of money. In addition, this program would, as a result of this amendment, be more attractive to marginal carriers because of the low yield ceiling.

Clearly this provision limits the government's flexibility in administering the program. However, the conferees recognized that this limitation would result in denial of applications where the public benefits of the proposed project do not outweigh the public costs as a result of such yield limitations, particularly in the case of financially sound carriers. Thus, deferred maintenance projects that would under existing law and policy be candidates for redeemable preference share funding at yields in excess of the carrier's return on investment, would as a result of this bill be rejected on account of their excessive public costs, but would likely become candidates for loan guarantee financing under the section 511 program.

Section 215 of the bill would amend section 511 of the RRRRA to make certain changes in the obligation guarantee program that had been urged by the Administration. While the bill, for the most part, makes the changes we desired to make the program more attractive and workable, it also limits the application of one prerequisite finding so as to allow guarantee of an obligation that could not be paid but was adequately secured. Though such a provision is clearly undesirable, we believe that it will not necessarily hamper administration of the program since the project to be funded still has to meet the other findings and adequate protections could probably be built into the financing agreement.

Section 216(a)(3) of the bill would amend section 505(b)(2) to give the highest priority, in determining public benefits, to projects that will "enhance the ability of the applicant carrier or other carriers to provide essential freight services." Establishing such a broad "priority" category is not helpful to administration of the program. However, significant discretion remains to continue the policy of encouraging restructuring of the rail system. The required promulgation of standards for evaluating public benefits of proposed projects will provide a safeguard against funding unworthy projects. In addition, "essential freight services" can be strictly construed. Finally, even if a project reaches

the "highest priority" category, funding would be made available in the order of net public benefits as presently conceived by us.

Section 216(b) through (e) would amend various sections of the RRRRA to extend the time limits for completion of certain studies by the Department by three to six months, and to broaden the subject matter to be covered by the section 504 study. These changes were not sought by the Department but will facilitate production of a better product. While subsection (d) would extend the redeemable preference share program for six months into FY 79, failure to amend section 507(d) of the RRRRA negates the effect of this change.

In sum, analysis of these amendments essentially amounts to weighing the gains made in achieving an attractive and workable section 511 program against the restrictions on our ability to administer the section 505 program. For several reasons, we conclude that the gains that are realized by these provisions in the aggregate outweigh the negative effects. First, it has always been the Administration's policy to emphasize and utilize loan guarantees as the primary means of providing financial assistance to the rail industry. Without these amendments, this policy will be largely blunted because the section 511 program will be virtually a dead letter due to the onerous conditions and impossible findings required in the statute. Second, without the loan guarantee program, it is unlikely that any meaningful amount of assistance can be provided to the rail industry at a time when it is clearly needed. The Administration has repeatedly recognized that need. Third, the changes to the section 505 program, while clearly troublesome and undesirable, do not so limit our flexibility as to impair completely our ability to achieve our desired goals for this program.

Miscellaneous and Technical Amendments

Section 218 would, among other things, amend the ICA to allow abandonments to take place in accordance with the certificate of abandonment, rather than 120 days after its issuance. This is a desirable change since it will reduce railroad losses on properties that should be abandoned promptly.

Section 219 of the bill would correct an administrative and budgetary inconvenience in connection with section 4(i)(9) of the DOT Act, as amended (the program for the preservation of historic rail facilities). Under existing law not to exceed $2,500,000 in appropriations under both paragraphs 4(i)(9)(A)(i) and (ii) of that Act are to be transferred by the Department to the National Endowment on the Arts to enable it to carry out its duties under the program. Section 219

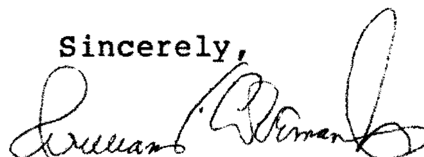
would simply reduce the Department's authorization limitations under both provisions from $5,000,000 to $2,500,000 and authorize direct appropriations to the National Endowment on the Arts of not to exceed $2,500,000 under each of the provisions, and, in addition, authorize $250,000 to that agency for administrative expenses. The amendment, which we support, would simplify budgetary and administrative problems, clarify the amounts available to the respective agencies, and provide new authorization to the National Endowment on the Arts under the program of $250,000 for administrative expenses.

Section 220 would add a number of technical amendments. Two of those amendments, subsections (g) and (h), were sought by the Department and the balance are truly technical.

Reviewing the bill as a whole, we are of the opinion that net benefits provided in the form of a Northeast Corridor program that is consistent with Administration policy and a railroad assistance program capable of meeting the railroads' needs in a manner that is largely consistent with Administration policy outweigh this bill's negative features, many of which can be corrected in legislation next year. The known impact on Federal expenditures of appropriations authorized by the bill is set forth in Attachment B. We do not feel this impact is unreasonable. With respect to the guaranteed loans used to fund section 211(h), there will not be any outlays for at least two and one-half years. It is our judgment that most, if not all, of these will be repaid within ten years because most will go to pay obligations of the Penn Central estate which has the assets to assure repayment. Loans to pay obligations of other estates are more questionable, and loans to fund certain pensions may become a grant for the reasons stated above.

On the basis of this analysis, we recommend that the enrolled bill be signed by the President. We further recommend that, if the bill is signed, the President's signing statement strongly condemn the action of the Congress in limiting the alternates that can serve on the USRA board and urge a prompt repeal of this provision in the next Congress. A proposed signing statement will be provided early next week.

Sincerely,



William T. Coleman, Jr.

SECTION 211(h)

	Veto	Enactment
Total estate liabilities 1/	719	736 2/
Total estate assets		
maximum use of escrowed funds 3/	471	471
minimum use of escrowed funds 3/	371	371
Net demand for sec. 211(h) loans		
maximum use of escrowed funds 3/	248	265
minimum use of escrowed funds 3/	348	365
Shortfall		
maximum use of escrowed funds 3/	20	(83) 4/
minimum use of escrowed funds 3/	120	15 4/

1/ Assumes vacation pay for 1975 only will be obligation of estates regardless of this bill.

2/ Increase of $17 million attributable to unfunded pensions. Cost of Columbus, Ohio, passenger terminal not included because not likely to be obligation of Penn Central estate.

3/ Estimate of USRA counsel handling section 211(h) litigation.

4/ Shows amount above or below $350 million authorized loan level.

Attachment B

Analysis of Potential Increases in Federal Appropriations Associated with Increased Authorizations in S.3131
($ millions)

Title I	Currently Available or Proposed Existing Act	Admin. Proposal	Authorized in S.3131	Potential Increased Appropriations S.3131
Section 102(a)(1) Amtrak Operating Grant				
FY 1977	420.0	(378.0)	430.0	+ 10.0 1/
FY 1978	--	410.0	470.0	+ 60.0 2/
Section 102(a)(2) Amtrak Capital Grant				
FY 1977	93.1	(110.0)	130.0	+ 36.9 1/
FY 1978	--	100.0	130.0	+ 30.0 2/
Section 102(a)(3) Amtrak Corridor Mgmt.				
FY 1977	62.6	"such sums as	68.0	+ 5.4 1/
FY 1978	--	may be required"	75.0	--
Section 102(a)(4) Amtrak Debt Retirement				
FY 1978	--	25.0	25.0	--
Section 102(b)(2) Advance Payment of Capital Grants (Treasury Interest)				
FY 1977	--	--	[12.5]	[+ 12.5]
FY 1978	--	--	--	--
Title II				
Section 219(b) National Foundation on the Arts Administrative Expense (1977)	--	--	0.25	0.25
Title III				
Sections 301 and 302 HEW and ICC Studies (1977)	--	--	--	0.2
Total				
FY 1977	575.7	(488.0)	628.25	+ 52.75 1/
FY 1978	--	535.0	700.0	+ 90.0 2/

Notes 1/ Since 1977 Appropriations already enacted, these appropriations are contingent on approval of a supplemental and are not likely to be requested.

2/ These totals represent upper limits. Actual increases would depend upon FY 1978 Appropriation Act.

B

THE SECRETARY OF THE TREASURY
WASHINGTON 20220

OCT 8 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Recommendation for Veto of the Rail Transportation Improvement Act, S.3131

We strongly believe that the captioned legislation should not receive your signature for a number of reasons. First is that the legislation would significantly increase the exposure of the government in indemnifying creditors of the bankrupt Northeast railroad beyond reasonable levels. Secondly, the manner in which the bill commits the government's funds for the rehabilitation of the railroad industry is contrary to prudent fiscal management. Thirdly, we are opposed to that provision in S.3131 which eliminates the ability of the Secretaries of Treasury and Transportation to designate officers other than the Deputy Secretaries of their Departments to represent them on the United States Railway Association Board of Directors.

The bill, which was passed in the waning hours of the 94th Congress, increases the funding under Section 211(h) of the Regional Rail Reorganization Act by $120 million (or 52 percent) from its current level of $230 million to $350 million. This program authorizes Federal loans to ConRail to pay off certain kinds of outstanding pre-conveyence debts of the bankrupt Northeastern railroads. The loans to ConRail are to be forgiven at the end of three years and the government is to succeed to ConRail's claims for repayment against the trustees of the bankrupt estates. It is probable that a significant portion of these claims will not be honored. There is grave question whether any increase in this program is advisable. Secretary Coleman in his memorandum of September 29th to the Senate and House conferees stated that the government has provided more than $680 million over the past few years to the bankrupt railroads in addition to the 211(h) funds, much of it on a grant basis. Secretary Coleman noted that an increase of $70 million is "minimally acceptable in an otherwise satisfactory bill. Any higher figure will not be acceptable . . ."

Even more troublesome than the increase in the ceiling is the provision in S.3131 which creates a mechanism to circumvent the ceiling. This is accomplished by

GERALD R. FORD LIBRARY

establishing a revolving fund, whereby additional loans are to be extended as outstanding loans are repaid. The effect of this will be to retire those loans which are extended to the more viable estates, and replace those committments with new loans to other estates which have little hope of becoming liquid. This provision not only excessively increases the government's potential involvement beyond the $350 million ceiling, but also reduces its chances of recovering the taxpayer funds committed to the 211(h) program.

The initial statutory premise of 211(h) was to allow money to be loaned by the government to ConRail to "avoid disruptions in [its] ordinary business relationships." Adequate funding is already committed under the program to obtain that result. If, for unforseen reasons, further funds are required they can be authorized next year. There is no need to raise the government stake by making "loans" to ConRail (which will be forgiven with the government succeeding to ConRail's claims against the estates) and thus further expose the taxpayer to the possibility that the bankruptcy courts may determine that the estates do not have to reimburse the government in cash to the full extent of the sums paid out under 211(h).

The second serious fiscal objection with respect to S.3131 is that it provides funds to the railroad industry to rehabilitate certain facilities at a cost that is well below the cost of capital to the government. Funds used for deferred maintenance projects will be advanced to the industry in the form of preference shares which would carry an interest rate of no less than approximately 3 percent and no greater than the borrower's current rate of return on total capital. Since many railroads earn little, if any, return on capital, the majority of loans can be expected to carry the minimum interest rate. This provision would remove the Secretary of Transportation's broad discretion in setting a realistic interest rate on these instruments. Currently, the government's costs of borrowing capital is well in excess of the projected interest rate on the preference shares under the proposed amendment. Moreover, since the government's cost of capital is not a fixed rate and the interest rate on these preference shares is to be set, the government will be forced to absorb a higher cost if the cost of capital further increases.

An amendment to Section 511 contained in S.3131 provides that the Secretary of Transportation can no longer consider the financial viability of a railroad in guaranteeing obligations under Section 511 as long as sufficient assets exist to back the government claim. This could require the Secretary to make loans to financially distressed railroads with some unencumbered assets and result in the government's claim being delayed, and even compromised, as a result of a bankruptcy proceeding.

The following additional aspects of S.3131 are also objectionable to the Treasury Department:

(1) The Amtrak authorizations for capital and operating purposes are $72 million over the level the Administration has requested for FY 1977 and $90 million over our suggested level for FY 1978. If the bill is vetoed, Amtrak can continue to operate comfortably since it already has the $350 million originally appropriated for its use during FY 1977. DOT can seek a supplemental appropriation next year if more funds are required.

(2) Funding to Amtrak must be advanced at the beginning of a quarter, rather than as needed, and Amtrak thus will be indirectly subsidized at the cost of an unnecessary interest expense to the taxpayer.

(3) The Federal share of operating costs for State and local passenger service is increased relative to that of State and local governments.

(4) The provision which equates highest priority with the concept of "essential freight services" undercuts the power of the Secretary of Transportation to provide funding for Section 505 rail rehabilitation projects which he feels are of the highest priority. The terminology "essential freight services" already has a rather broad technical definition and Congress can be expected to legislate coverage for specific rail lines in order to include them under the definition for political reasons.

(5) Another section of S.3131 relating to the 211(h) program concerns the "reimbusement procedures agreement" that the Finance Committee of USRA and ConRail must enter pursuant to the Regional Rail Act. S.3131 requires that the agreement, which the parties are in the process of negotiating, spell out the "exact procedures" that ConRail should undertake in trying to recover funds from the bankrupt estates and requires a "due diligence" finding, entitling ConRail to forgiveness of the loans if these procedures are met.

This provision undercuts the USRA Finance Committee's negotiating position of requiring ConRail to exercise the same prudence with the taxpayer's money under the 211(h) program as it would were its own funds involved. We do not believe it good law to attempt to spell out what procedures ConRail should follow under every eventuality. "Due diligence" is a broad term and the test of whether it was exercised should be properly applied after the fact.

S.3131 would also require the government to pay ConRail's costs of seeking reimbursement from the trustees. Our position is that since the loans are made to ConRail for its benefit, i.e. to avoid business disruptions, ConRail and <u>not</u> the taxpayer should incur ConRail's administrative costs.

The non-fiscal issue of concern to the Department involves my right as Secretary of the Treasury to name a designee to represent me as a director of the United States Railway Association. A floor amendment introduced by Senator Hartke, without benefit of Committee hearing or an opporutnity for the Administration to comment, requires that the Secretaries of the Treasury and Trasportation can only authorize their Deputy Secretaries, and no one else, as their USRA representatives.

This is contrary to the practice the Treasury Department and DOT has followed since the inception of USRA. This amendment could result in Treasury and the DOT, because of the press of business, not being represented at a board meeting with the Administration losing its two votes as to how a $2 billion Federal investment is administered.

There is strong evidence, and this is supported by the press (see attached articles), that the Hartke Amendment was initiated to silence Treasury Under Secretary Jerry Thomas as a critic of the waste and self-dealing that has evidenced itself in regard to certain of the activities undertaken by the management of the United States Railway Association--outside of the knowledge of the board of directors.

Examples of questionable activities include the expenditure of public funds to finance memberships for USRA officers in country and dinner clubs, the awarding of consulting contracts to former officers, payment of unusual commuting expenses and living expenses in Washington for top officials.

Congressman Broyhill of North Carolina properly questioned the issue of the Hartke Amendment on the floor of the House. A proponent of the bill agreed that the Hartke Amendment was improper, but stated because of the late hour, it would be corrected in legislation next year. It is uncertain whether the Hartke Amendment would be repealed by a new Congress.

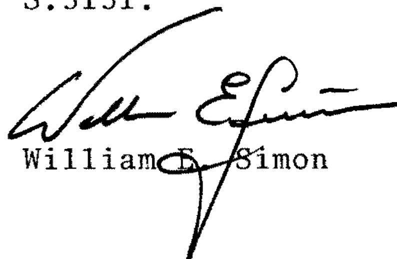
The inconceivable attempt to replace a director who speaks out against excessive spending and improvident use of tax dollars, runs counter to everything your Administration has attempted to do in curbing excessive waste in Washington. The unwarranted expenditure of the taxpayers' money for the social pleasures of USRA officers involves an important issue of principle.

If the Hartke Amendment prevails, then it will be a further frustration and discouragement to those of us in your Administration who take pride in assisting you in eliminating unnecessary and unprincipled waste in government.

Finally, Mr. President, you must also weigh the provisions of the legislation that have merit. In doing so, it is my hope that you will arrive at our conclusion: the undesirable provisions outweigh the argument for signing the measure.

It seems appropriate to veto the bill with a message to Congress that the American taxpayer deserves a more responsible fiscal solution to the problems of the railroad industry and that you will resubmit to the 95th Congress in January those few provisions of the bill which are favorable for their early action.

For these reasons, I recommend that you exercise your power of veto with respect to S.3131.



William E. Simon

Attachment

STAR 10/2/76

Derailing a director

In the happy comedy of government, cause and effect often avoid being seen together in public. Intimate friends may know about the relationship but, well, it's not the sort of thing that *everybody* needs to be gabbing about.

The fascinating case, for instance, of Jerry Thomas, an undersecretary of the Treasury: Mr. Thomas wears a second hat, as a member of the U.S. Railway Association board of directors. Since last April he has represented Treasury Secretary Simon on the board of the government-financed corporation, formed to restructure and to help rehabilitate the bankrupt Northeastern railroads.

Shortly after Mr. Thomas became a board member, he saw some things that bothered him; he had an auditing team from Treasury come in and look around. The audit showed the association had used tax money to finance memberships for its top executives at lunching and country clubs, including a $5,000 initiation fee for USRA chairman Arthur D. Lewis at Burning Tree Country Club. And the audit disclosed also that the association had given lucrative consulting contracts to USRA officers after they left the corporation and had paid commuting expenses for some high-horsepowered officials who preferred not to live in Washington. Record-keeping was so sloppy that the auditors couldn't tell on whom some $35,000 in entertainment expenses had been spent during the first nine months of this year.

Mr. Thomas's initiative did not draw rave reviews. At the first board meeting after the audit, Mr. Thomas's fellow directors voted to censure him and, as well, refused to adopt his proposals for association documentation of who spent what on whom. In May, he was able to persuade the directors to stop paying club dues for USRA officers but since has gotten nowhere in urging that the association try to recoup the $5,000 paid Burning Tree on behalf of Mr. Lewis.

Well, clearly, an obstreperous fellow, this Thomas. Not at all good company on a tax-financed board of directors.

A funny thing happened after all this. An amendment was inserted in a railroad financial aid bill; it was introduced by Senator Vance Hartke, D-Ind., who is chairman of the Commerce Committee's surface transportation subcommittee which has jurisdiction over USRA. The unobtrusive amendment would disqualify Mr. Thomas as a member of the board of the U.S. Railway Association. The House-passed version of the legislation contained no such provision. On Wednesday, a House-Senate conference committee adopted the over-all bill, including the Hartke amendment.

Under this amendment, Secretary Simon could delegate his representation on the USRA board only to his second in command. This would include Undersecretary Thomas out.

Senator Hartke's role in the maneuvering is puzzling. An aide told *The Star's* Stephen M. Aug that Mr. Hartke didn't even know Mr. Thomas and introduced his amendment because Treasury's seat on the board has been filled by several officials and the senator wanted to be sure the Treasury board seat would be occupied only by the highest official below the secretary.

There are a couple of loose ends, however. Mr. Hartke last winter attempted, unsuccessfully, to raise the salary of the chairman of the board of USRA, Mr. Lewis, from $60,000 to $85,000 a year — at least Senator Hartke's name was on the bill. The Hartke aide said the pay raise was in the context of increasing USRA's responsibilities, but the association's responsiblities were not broadened and thus the salary was not increased. Whatever that means. It was also Senator Hartke who was principal author of a letter to the General Accounting Office complaining about Mr. Thomas's Treasury auditors peering at USRA.

The pattern that strikes a layman's eye in all this may be, of course, merely circumstantial. Perhaps Mr. Thomas and the other board members just don't get along; one of your institutional personality clashes. It has been implied that Mr. Thomas is politically motivated, for whatever light that casts. Perhaps, though, Mr. Thomas was merely offended at seeing taxpayers picking up $35,000 worth of anonymous entertainment tabs and paying for unusual executive perks.

Cause and effect? Coincidence? Curious.

Washington Star-News PG. A7 SEP 30 1976

Rail Official Whose Audit Stirred Anger Is Bill Target

By Stephen M. Aug
Washington Star Staff Writer

A director of the U.S. Railway Association who exposed questionable financial arrangements involving top USRA officers is about to be forced off the USRA board as the result of a little-noticed piece of legislation.

The legislation, in the form of an amendment to a railroad financial aid bill, was introduced by Sen. Vance Hartke, D-Ind.

Hartke, chairman of the Senate Commerce surface transportation subcommittee, which has jurisdiction over the railway association, also was a principal author of a letter to the General Accounting Office complaining about the director's audit of USRA that exposed the questionable practices.

Hartke also sought unsuccessfully last winter to raise the salary (from $60,000 to $85,000 a year) of the chairman of the board of directors of USRA, who was one of those criticized by the audit. Ironically, the increase was proposed at about the time USRA had substantially completed its work and was phasing down its activities.

THE DIRECTOR who soon may be forced off the board is Jerry Thomas, a Treasury undersecretary who has represented Treasury Secretary William E. Simon on the USRA board since April. Thomas had a Treasury auditing team examine some of USRA's financial records shortly after he joined the board.

The audit showed that the association — a federally financed corporation formed to restructure and help rehabilitate the bankrupt Northeastern railroads — had used taxpayer funds to finance memberships for its top executives at luncheon and country clubs (including a $5,000 initiation fee for USRA Chairman Arthur D. Lewis at Burning Tree Country Club).

The audit also disclosed that the association had given lucrative consulting contracts to USRA officers as they left the company, had paid commuting expenses for some top officials who didn't want to move to Washington, and had kept sloppy records that didn't show on whom about $35,000 in entertainment expenses was spent during the first nine months of this year.

IMMEDIATELY after the audit was presented to the USRA board at its July 29 meeting, the directors voted to censure Thomas because he had the audit conducted. At the same meeting, according to minutes made available to The Star, the directors refused to adopt a proposal by Thomas that would have required internal association records to include documentation on the names of individuals, other than association employes, on whom entertainment funds had been expended.

At the same meeting, the minutes show, substantially all of the reform measures Thomas proposed died for the lack of a second. Substitute proposals, essentially weaker versions of Thomas' recommendations, were adopted largely by 7-2 votes. The only two dissenting votes were cast by Thomas and the other Ford administration representative on the board, representing the Transportation Department.

In May, Thomas persuaded the directors to stop paying club dues for USRA officers. But at the July meeting, when Thomas sought to have the association seek a return of fees paid in advance for dues beyond May, and to recoup the $5,000 Burning Tree initiation fee for Lewis, the directors voted it down.

IN AN INTERVIEW last night, Thomas said that at the meeting he requested that the minutes reflect the names of the individuals casting votes on his proposals. "The reason for my insistence on the votes is I may seek judicial remedy," Thomas said, explaining that if a GAO audit of USRA does not back his position on returning more than $6,000 in club fees and dues, he will hire a lawyer at his own expense and file suit to have the money returned to the association.

Although the meeting was held at the end of July, nearly two months passed before Thomas received a draft set of minutes. The draft confirmed his recollection of the 7-2 votes.

Thomas recalled that Lewis, in answer to questions by a House Government Operations subcommittee this month, denied having voted on any of the resolutions resulting from the Treasury audit report.

The draft minutes showed only 7-2 votes, with no indication as to the names of those who voted. Thomas complained, and a final set of minutes showed Lewis abstaining in several instances in which a 7-2 vote was recorded.

BETWEEN THE July and September meetings, Hartke introduced legislation that would limit the ability of the Treasury secretary to delegate his representative on the USRA board. The secretary would be limited only to delegating this responsiblity to his second in command, the deputy secretary. This would exclude Thomas, who is one of two undersecretaries.

The measure was introduced as one short paragraph in a lengthy bill that includes substantial funding for Amtrak, as well as $350 million in loans for creditors of certain bankrupt Northeastern railroads.

No similar provision was included in a House bill on Amtrak funding.

House and Senate conferees yesterday adopted the overall bill, including Hartke's amendment, which by this time had been broadened to include similar limitations on the Transportation secretary's power to name his own representative on the USRA board.

Lewis was out of town and could not be reached for comment on the matter, and a USRA spokesman said, "I'd take Mr. Thomas' claims with a grain of salt. The legislation was something put together in the Congress."

Jack Anderson and Les Whitten

Full Steam Ahead on Squandering

The government overseers who administer the billions that Congress appropriated to rehabilitate bankrupt railroads are squandering the taxpayers'money on themselves.

They voted themselves so many fringe benefits that one overseer, Treasury Under secretary Jerry Thomas, raised a howl in the back rooms of the U.S. Railway Association. He shamed his colleagues into revoking permission to bill the government for their country club memberships. But they refused to repay the membership fees that the taxpayers had already shelled out.

The outraged Thomas, meanwhile, conducted a Treasury Department audit of the extravagances of the USRA administrators. Last week he confronted them behind closed doors with seven resolutions which would cut back their elaborate fringe benefits. All seven were defeated; four were never even seconded.

Then the offended board members passed a resolution, incredibly, chastising Thomas for trying to save the taxpayers' money. The resolution, adopted by a 7-2 vote, sharply rejected "the under secretary of treasury's allegation of 'carte blanche use of the taxpayers' money' or a 'cavalier attitude with the public's tax dollars.'"

The board also took action to prevent Thomas from ever auditing their extravagances again. They voted that "no member of the board of directors is to undertake an independent audit of the Association without the approval of the board."

Congress established the U.S. Railway Association in 1973 to revitalize the ailing railroads in the 17 Northeastern states. This is being accomplished with financial transfusions from the Treasury. But an excessive amount of money has been spent to maintain the lavish lifestyle of the administrators.

One of Chairman Arthur Lewis' first moves, for example, was to decree that the USRA's top brass should belong to "a private dining club in the Washington area." He also ruled, according to a May 21, 1974, confidential memo that USRA would pick up the membership fees and dues.

Lewis then set the example by enrolling in the exclusive Burning Tree Club. This set the taxpayers back $5,000 for initiation fees and $1,000 a year for dues. Seven other USRA officers happily joined the clubs of their choice to the tune of $13,550.

When Thomas joined the board in April, he was appalled at this misuse of taxpayers' money. He persuaded the board to rescind the club memberships. But when he followed up last week with a resolution requiring Lewis to pay back $5,000 for his Burning Tree membership, Thomas couldn't get anyone on the board to second the motion.

He also tried to cut back other extravagances that the Treasury Department audit had uncovered. The audit, written in the dull, factual language of the Treasury accountants, was circulated only to USRA bigwigs. But here are the highlights:

Representation Expenses—During the first nine months of the 1976 fiscal year, USRA's top executives collected more than $35,000 for wining, dining and entertaining VIPs. After citing six pages of abuses, the auditors recommended reconsidering "whether funds could continue to be spent for official reception and representation purposes."

One of the biggest spenders again was Chairman Lewis, who didn't even bother to explain 69 of the 79 charges he submitted. He spent $726.71, for example, on dinners for 12 on two consecutive nights at Washington's prestigious Metropolitan Club. No explanations were given for the dinners.

But he threw another $778.55 party at the same club, according to his voucher, to "honor a number of USRA employees who had worked a considerable amount of overtime."

Relocation Allowances—Lewis also authorized extravagant living expenses for USRA personnel who wanted to work in Washington, without giving up their homes elsewhere. These allowances were higher than it would have cost them to resettle in Washington.

As usual, Lewis was one of the first to take advantage of his own policy. He has collected $26,600 to cover the high cost of living in Washington. This was added to the $63,000 salary he is already drawing—the maximum, incidentally, allowed by Congress.

The living allowances are so lavish that 13 other USRA officers have also chosen to live in Washington at the taxpayers' expense and maintain separate homes elsewhere. This practice "would not have been allowed," the auditors noted, in other federal establishments. But Congress exempted USRA from the usual federal restrictions.

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STATEMENT BY THE PRESIDENT

I have today signed into law the Rail Transportation Improvement Act of 1976 (S. 3131) which makes several important amendments to the laws that affect our nation's railroads. First, it enacts several provisions that are necessary to assure that the public's $1.75 billion investment in improving the Northeast Corridor (Boston to Washington) rail passenger system can be fully protected. This protection is a necessary and critical step to undertaking the entire program and will permit the improvement program with its emphasis on providing efficient high-speed and reliable surface passenger transportation between the great urban centers located in the densely populated Northeast Corridor, to commence forthwith. This program will also have the effect of providing meaningful and much-needed jobs in this region.

Second, the Act makes important amendments to the loan guarantee program established by section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 (P.L. 94-210) which I signed this February. This program, which will provide $1 billion of guaranteed loans to enable the rail industry to acquire and rehabilitate facilities and equipment, is essential to assisting the railroads in obtaining the capital necessary to restore the national rail system to first-class condition. The amendments correct a number of deficiencies in the existing statute and will enable the program to be used to its fullest potential.

Third, the Act makes several amendments to the Regional Rail Reorganization Act of 1973 (P.L. 93-236) concerning the transfer of rail service from seven bankrupt carriers to the newly-formed Consolidated Rail Corporation. These amendments, among other things, will assure that all who continued to provide services and materials to, or continued to utilize

the services of, the bankrupt carriers in the days immediately preceding transfer to ConRail will be paid for their services or materials or have their claims processed promptly and equitably. In particular, it assures that all employee claims -- whether for wages or benefits or on account of personal injuries -- can be paid promptly and equitably so as to avoid any hardship. In matters as complex as a massive railroad reorganization of this type, it is essential that we not lose sight of the needs of all of the men and women whose lives are inextricably bound to the affairs of these companies.

Notwithstanding the clear benefits of this legislation, there are several provisions that give me great concern and that, I feel, must be redressed immediately in the next Congress. Among these, the following are most important.

First, the bill provides authorizations for operating grants for Amtrak in the 1978 fiscal year that I believe place an unreasonably high burden on the taxpayers. I will address this excessive authorization in my FY 78 budget. However, I would like to emphasize my concern as to the uncontrolled growth of the subsidy provided to Amtrak and my strong feeling that this growth must be stemmed if we are to have a responsible budget.

Second, there is a provision in the bill, added as a floor amendment to the Senate bill, which limits the ability of cabinet officers to designate their representatives to work on Amtrak business.

I know of no sound justification for this amendment. The provision was never considered at any public hearing and the House of Representatives at best recognized the improper nature of this amendment while considering the Conference Report but did not act to change it because of the pressure to adjourn the 94th Congress. Because I believe the

Congress will redress this unwarranted and ill-considered charge, I have signed this bill rather than veto it in order to allow important responsibilities to be carried out immediately. However, I intend to submit corrective legislation to the Congress immediately upon its convention in January and I trust the Congress will act with similar dispatch.

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

To- J Johnston
10-14-76
6:30 p.m.

OCT 14 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3131 - Amtrak and ConRail Amendments
Sponsors - Sen. Hartke (D) Indiana and Sen. Pearson (R) Kansas

Last Day for Action

October 19, 1976 - Tuesday

Purpose

Authorizes additional appropriations for Amtrak for 1977; amends various provisions of law relating to Amtrak; and increases loan authorities for and makes numerous changes to law affecting ConRail.

Agency Recommendations

Office of Management and Budget	Approval
Department of Transportation	Approval
National Railroad Passenger Corporation	Approval
Department of Health, Education, and Welfare	Approval (Sections 105 and 301)(Informally)
Department of Justice	Defers
United States Railway Association	No recommendation
Department of the Treasury	Disapproval

Discussion

S. 3131 would make numerous amendments to current law affecting the rail industry. Title I would apply to the National Railroad Passenger Corporation (Amtrak). Title II would amend laws relating to the Consolidated Railroad

Date: October 16 Time: 830pm

FOR ACTION: Judy Hope
Max Friedersdorf
Bobbie Kilberg
Robert Hartmann
Bill Seidman

cc (for information): Jack Marsh
Ed Schmults
Mike Duval

FROM THE STAFF SECRETARY

DUE: Date: October 18 Time: 200pm

SUBJECT:

SIgning Statement - S.3131-Amtrak and ConRail Amendments

ACTION REQUESTED:

___ For Necessary Action

___ For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

x For Your Comments

___ Draft Remarks

REMARKS:

please return to judy johnston,ground floor west wing

Recommend approval

Nmf

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