Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Railroads, Pipelines, and Hazardous Materials
FROM: Staff, Subcommittee on Railroads, Pipelines, and Hazardous Materials
RE: Subcommittee Hearing on "National Rail Policy: Examining Goals, Objectives, and Responsibilities"

PURPOSE

The Subcommittee on Railroads, Pipelines, and Hazardous Materials will meet on Thursday, June 27, 2013 at 10:00 a.m. in 2167 Rayburn House Office Building to receive testimony from major stakeholders on developing the nation's rail policy for the next reauthorization. At this hearing, the Subcommittee will hear from the Federal Railroad Administration, the American Public Transportation Association, the Association of American Railroads, the American Association of State Highway and Transporation Officials, and the Brotherhood of Locomotive Engineers and Trainmen.

BACKGROUND

The Passenger Rail Investment and Improvement Act of 2008 (PRIIA) (P.L. 110-432) expires on September 30, 2013. PRIIA was the first reauthorization of intercity passenger rail activities since the Amtrak Reform and Accountability Act of 1997, and its major provisions focused on Federal support for intercity passenger rail, improving Amtrak's financial position, and improving intercity passenger rail performance. While some of these provisions have had a positive impact on intercity rail services, others have fallen short of their intended goals. The overriding goals of the next rail reauthorization will be to build upon PRIIA's successes and to make revisions to the provisions that did not fulfill their intent. The hearing's witnesses will inform the committee on the policies and reforms they believe are important to include in the next rail bill.

Federal Support for Passenger Rail

Amtrak Capital, Debt, and Operating Grants: PRIIA authorized a total of $9.8 billion for Fiscal Year 2009 through Fiscal Year 2013, including $2.9 billion in operating grants and $6.7 billion in capital and debt service funding. However, actual annual appropriations for Amtrak from 2009 through 2013 were significantly lower -- $7.3 billion. Amtrak was also required to provide a five-year financial plan and an annual budget that detailed projected revenues and expenditures, projected ridership, estimates of debt, and labor productivity statistics.

New Intercity Passenger Rail Grant Programs. PRIIA authorized two new grant programs for the costs of intercity passenger rail capital investments, including the capital costs of intercity passenger rail facilities, infrastructure, and equipment. Capital projects are broadly defined to include typical activities in support of acquiring, constructing, or improving rail structures and equipment. The $8 billion included in the Recovery Act for High Speed Rail projects was provided under these new authorities. Because the grant programs were structured within a primarily safety-oriented agency, grantees have raised concerns about project delivery process. Further, given the broad underlying PRIIA language, the Recovery Act funding was spread throughout the country, and mixed projects that were focused on incremental upgrades along with green-field high speed rail projects. These competing needs resulted in an unfocused program that satisfied few.

Furthermore, prior to PRIIA, the Federal Railroad Administration (FRA) was primarily a safety agency. In PRIIA and the Recovery Act, FRA was given grant making authority. While FRA was required to distribute funding expeditiously, it did not have regulations in place to guide stakeholders on environmental review, only a Federal Register notice from May 1999. Stakeholders have expressed concerns with the lack of guidance and dissimilarity with other modal administrations within Department of Transportation. Last Congress project streamlining provisions were proposed for rail that were similar to those proposed for highways and transit programs.

PRIIA Financing Improvements

A major goal of PRIIA was to improve the financial condition of Amtrak and create more investment in passenger rail through partnerships with states and the private sector. These provisions could be the foundation for further financial reforms to passenger rail.

Improved Financial Accounting: Section 203 required the Amtrak Board to implement a modern financial accounting and reporting system within three years of enactment. The Department of Transportation Inspector General (IG) reviewed the system and found in a March 23 report that Amtrak is better able to capture its financial performance by route, line of business, and major activity, as PRIIA requires. However, the IG also found that since Amtrak customized the system rather than using an off-the-shelf system, the system is more complex and costly to maintain, raising concerns regarding its long-term utility. The IG also found that Amtrak's heavy reliance on cost allocation reduces the precision of performance reporting. While many companies use cost allocation to an extent, Amtrak allocates (rather than assigns) 80 percent of its costs because it does not collect sufficiently detailed cost data. For example, Amtrak does not measure and record each train journey's fuel consumption, but rather relies on a formula that estimates a journey's fuel consumption.

Debt Restructuring: Section 205 of PRIIA authorized the Secretary of the Treasury, in consultation with DOT and Amtrak, to make agreements to restructure Amtrak's debt, including the purchase of leases. Following enactment, the U.S. Treasury agreed to fund the exercise of the Early Buyout Options in the Amtrak leases that were eligible for exercise in Fiscal Year 2011, Fiscal Year 2012, and Fiscal Year 2013. The Treasury did buy out these leases creating a "savings" to Amtrak of $160 million in future interest charges.

State-Supported Routes. Section 209 of PRIIA required Amtrak to work with the States to develop and implement a single, nationwide standardized methodology for establishing and allocating the operating and capital costs of providing intercity rail service on corridors less than 750 miles in length. This section recognized that over time a patchwork of arrangements had developed between Amtrak and the States. Some States were contributing funding for additional rail service, while others were not. Amtrak and the States have agreed to a common methodology, and beginning on October 1, 2013, most will be required to start contributing additional funding to maintain those services. Amtrak has estimated that this will improve its bottom line by approximately $85 million, contingent on all States agreeing to the amounts. Once in place, approximately 88 percent of the cost of State-Supported Routes will be offset by revenue and State payments.

Northeast Corridor: Section 212 of PRIIA, among other things, established a Northeast Corridor (NEC) Infrastructure and Operations Advisory Commission (Commission) because of the unique structure and complexity of the NEC. One of the Commission's tasks is the creation of a standardized framework for allocating costs between commuter and intercity trains to ensure that all corridor users pay their fair share for their use of the infrastructure. For the majority of the NEC, commuter railroads will be required to pay access fees to Amtrak, to maintain the NEC infrastructure. While the development of the formula was to be completed within two years, the Commission is still working with the States and Amtrak to finalize the cost methodology, and significant issues have been raised by the States concerning governance changes they would like to see before paying new access fees.

Intercity Passenger Rail Performance and Enhanced Reforms

Rail Passenger Service Metrics: PRIIA required FRA and Amtrak to develop metrics for measuring the performance of intercity passenger train service. Furthermore, PRIIA charged the Surface Transportation Board (STB) with resolving disputes between Amtrak and the freight railroads regarding poor performance, and to determine whether the failure to achieve minimum standards are due to causes that could reasonably be addressed by the host freight railroad. If the STB determines such failure is attributable to the host railroad, it could award damages to be paid by the freight railroad to Amtrak. Currently pending before the STB is a proceeding brought by Amtrak against Canadian National that would be the first enforcement action under the new metrics and standards.

Long Distance Routes: PRIIA emphasized that Amtrak's long-distance routes are part of the US intercity passenger rail network. The Act required Amtrak to evaluate the performance of each long distance route, develop individual improvement plans, and FRA was authorized to hold back funds if Amtrak was not making reasonable progress in implementing the improvement plans. Section 208 of PRIIA required FRA to contract out with an independent entity for the development of objective methodologies for Amtrak to use in determining what routes and services it should providing, including the elimination of existing routes. To date, FRA has not complied with this provision. The committee will inquire about how FRA implemented these provisions.

Enhanced State Involvement: PRIIA tasks States with developing State rail plans to establish priorities and implementation strategies to enhance passenger and freight rail service and serve as the basis for Federal grants.

Next Generation Corridor Equipment Pool Committee: PRIIA required the creation of a Next Generation Corridor Equipment Pool Committee to design, develop specifications for, and procure standardized next-generation rail passenger equipment. This committee developed the specifications for roughly $800 million in locomotive and rolling stock procurements funded by the Recovery Act.

Historic Preservation and Section 4(f) Streamlining: Section 407 of PRIIA required the FRA to issue a report on streamlining compliance with Section 4(f) of title 49 and section 106 of the National Historic Preservation Act for federally funded railroad projects. FRA issued this report in March 2013, and recognized that there is no consistent approach to addressing eligibility of railroad corridors for historic preservation purposes. Furthermore, FRA noted that streamlining mechanisms addressing Section 4(f) compliance processes for railroad resources could benefit Section 106 analyses and the parties improving railroad infrastructure. FRA recommended a number of administrative and legislative measures that would help streamline the processes for railroad projects, including enacting an exemption similar to that provided for the Interstate Highway System, redefining the terms "use" and "historic site" under Section 4(f) to exclude most railroad facilities, exempting certain categories of railroad projects from review, and providing guidance on how to evaluate railroad properties for historic preservation.

Safety Provisions

Safety, Generally: The Rail Safety Improvement Act of 2008 (RSIA), the companion to PRIIA, reauthorized the Federal Railroad Administration's passenger and freight rail oversight activities. Since enactment of RSIA, significant improvements in safety have been realized. 2012 was the safest year on record. Train accidents (excluding grade crossing incidents) have decreased significantly from 2,482 accidents with 27 fatalities and 323 injuries in 2008 to 1,718 train accidents with 9 fatalities and 285 injuries in 2012. Human factors and track defects remain the main causes of those accidents. Grade crossing incidents have also decreased; from 2,429 incidents with 290 fatalities and 990 injuries in 2008 to 1,958 incidents with 233 fatalities and 929 injuries in 2012. Grade crossing and trespassing incidents account for 95 percent of ***all*** rail fatalities.

Positive Train Control: Section 104 of RSIA requires Class I, commuter, and intercity passenger railroads to install positive train control (PTC) on all tracks where toxic-by-inhalation hazardous materials and passengers are transported by December 31, 2015. In 2012, Class I railroads operated over almost 162,000 miles of track, 60,000 miles of which potentially requires the installation of PTC under the law. The intercity passenger and commuter railroads account for an additional estimated 8,400 miles of track required to be equipped with PTC.

Most railroads have reported to the Committee that they will not be able to meet the 2015 deadline due to technological difficulties, lack of spectrum and radio, difficulties with FRA's interpretation of the law, and financial constraints. FRA estimates the total cost for implementation in excess of $10 billion.

In December 2010, the U.S. Government Accountability Office (GAO) published a report expressing concerns about the ability of the freight and passenger railroads to meet the December 31, 2015 deadline. In August 2012, as mandated by RSIA, the FRA issued a report to Congress on the status of implementation, which stated that partial deployment of PTC could only be achieved by the deadline, and even that was "dependent upon the successful resolution of known and emergent issues."

FRA has recommended that Congress consider legislation allowing the FRA to extend the mandate for PTC installation on specified line segments and to allow FRA to approve the use of alternative technologies in lieu of PTC on specified line segments, and to allow FRA to approve provisional certification of PTC under controlled conditions before final system certification is complete. Meanwhile, other stakeholders have requested that Congress consider an extension of the mandate to December 31, 2018 with the ability of FRA to authorize an additional extension of two-years on a case-by-case basis.

Major Issues for Upcoming Reauthorization

Some of the major policy issues the Committee will discuss at the hearing include:

- What reforms to Amtrak's structure could be undertaken to provide more transparency into its operations, both for its customers and for the federal taxpayer?

- What governance structures can be put in place between Amtrak, commuter railroads, freight railroads, the states, and the federal government to focus investment on the Northeast Corridor?

- How can the next bill build on the progress to strengthen the federal-state partnership for state-supported routes?

- What options exist to improve the financial performance on Amtrak's long distance services?

- How can innovative finance, private sector funding, and the Railroad Rehabilitation and Improvement Financing (RRIF) loan program be leveraged to accelerate important capital projects?

- What policies can be implemented to encourage private-sector participation in the provision of passenger rail services, including food and beverage service?

- What policies can be put in place to accelerate project delivery, to cut down on delays and get projects done?

- What legislative changes to the Positive Train Control mandate should the Committee consider?

INVITED WITNESSES

Hon. Joseph Szabo
Administrator
Federal Railroad Administration

Mr. Michael P. Melaniphy
President and Chief Executive Officer
American Public Transportation Association

Mr. Edward Hamberger
President and Chief Executive Officer
Association of American Railroads

Mr. Mike Lewis
Director
Rhode Island Department of Transportation
on behalf of American Association of State Highway & Transportation Officials

Mr. John P. Tolman
Vice President & National Legislative Representative
Brotherhood of Locomotive Engineers and Trainmen