

B - Agile Freight and Passenger Railroad Infrastructure Investment for Domestic Mobility

Goals:

This act consolidates the majority of annual federal appropriations for intercity railroad infrastructure in a fungible manner so that the most efficient combination of rebuilding existing assets and new construction is advanced paired with regulatory flexibility. The expectation is for the operator then to use consumer revenue, state and locality sponsorship, and federal capital grants made through competitive programs in that order to support the provision of General Railroad System transportation.

The amounts in the schedule are approximately equal on a person-mile or freight container/trailer-mile basis to the gap between incremental fuel tax and fee revenues and the long-run average cost of the Dwight D. Eisenhower System of Interstate and Defense Highways. This gap has previously been supported by funds leveraged toward highways from fuel tax collections generated during the unrelated daily use of locally financed streets and roadways thus obscuring this revenue gap.

As highway funding needs now require even greater federal general fund spending than even the leveraging is able to produce a reasonably equivalent federal investment in railroad infrastructure is warranted for transportation resource efficiency and the support of national manufacturing, defense, and surface transportation mobility goals.

Transferrable Federal Tax Credits:

In addition to any grants enumerated by this act the Internal Revenue Service shall amend 26 CFR § 1.45G-1 - Railroad track maintenance credit – to permanently add the Transferrable Tax Credits in Table 1 for railroad infrastructure and the operation of such. The Internal Revenue Service shall make available a one page filing form each taxable year for use by any railroad to claim such at the rates given in Table 1 for the first year of this act. For each subsequent year the rates in Table 1 are to be adjusted for inflation annually by the Secretary of Transportation and transmitted thereafter to the Internal Revenue Service with such credits remaining in force until rescinded.

Table 1: Schedule of Transferrable Tax Credits:

1. \$17.20 per each Train-Mile operated of an Intercity Passenger Train
2. \$21.00 per each Train-Mile operated of an Intermodal Freight Train
3. \$0.008 per each Industry Access Preservation Railroad Ton-Mile operated
4. 100% of State and Locality Property Taxes or Assessments on Linehaul Facilities Infrastructure
5. \$3,400 Million annually prorated by the Weighted Railroad Passengers Ratio by the Secretary of Transportation and distributed at the beginning of each quarter to those railroads who own or lease Large MSA Facilities Infrastructure used by more than one rail carrier

Agile Investment Conditions:

The Secretary of Transportation is to suspend any metrics or rules conflicting with this act that are set forward under Title 49—TRANSPORTATION, SUBTITLE V—RAIL PROGRAMS for any railroad who claims the Transferable Tax Credits in Table 1 while enacted who shall in turn be governed by the following conditions:

1. Any railroad may claim the Tax Credits set out in this act for activities under their direction over either their own lines or over lines of another host railroad with a written agreement with the owning host railroad and when doing so shall agree to abide by the requirements of this act only for the year in which the Tax Credit is claimed
2. Any railroad may claim credits for State or Locality Taxes or Assessments only on Linehaul Facilities Infrastructure under their ownership or controlling lease paid in the preceding tax year

3. The Secretary of Transportation may review the claimed amounts for accuracy but shall not hold offsetting budget authority for such amounts.
4. The Federal Railroad Administration may tabulate the claimed amounts but shall not advocate or require consumer revenue to offset these amounts in analysis procedures or studies as they are meant to balance infrastructure investment.
5. The Surface Transportation Board shall consider credits in this act in the analysis of financial viability of railroad lines under the present owner and their benefit toward opening routes or keeping routes open for through traffic from Connecting Railroads even should the present owner decline to claim the credits in which case the board may order a sale to other owners.
6. Improvements or construction of Linehaul Facilities Infrastructure made by any class of railroad dedicated to through movement of trains, additional sidings, and staging tracks shall have a categorical exemption from any federal, state, or locality review reaffirmed for work in the existing railroad right of way as well as work on any parcel of land adjacent to such right of way less than 120 feet wide on each side of and running along an existing railroad line when acquired by mutual agreement from the parcel owner.
7. Any railroad claiming the Tax Credits shall agree to provide enhanced freight service in that year according to the terms of this act and shall –
 - a. Maintain an office to promote through operations across their own lines of scheduled trains marketed and sold by Connecting Railroads through infrastructure access, interchange, and scheduling agreements that shall be free of federal, state, or locality anti-trust enforcement when no more than 180% of variable cost so as to promote shorter lengths of freight haulage in support of domestic manufacturing and relief of highway congestion
 - b. Provide Demurrage Charge Billing Credits to a consignee of freight to ensure a competitive feedback exists for freight service quality
 - c. Exclude any increased infrastructure spending due to this act from Variable Costs when providing information to the Surface Transportation Board
8. Any railroad claiming the Tax Credits shall agree to provide enhanced access to Passenger Trains according to the terms of this act, reaffirming the existing provision of preference at any junction or siding and shall –
 - a. Agree that the Existing Negotiated Rates and other credits set forward in this act are valid compensation for the use of the tracks, facilities, and services of the host railroad by the National Railroad Passenger Corporation (Amtrak) and shall agree to-
 - i. Periodically adjust such the Existing Negotiated Rates only for inflation in future years should they continue to claim the credits
 - ii. Provide from railroad funds after the other credits authorized and payments required in this act any and all improvements to any host railroad mainline infrastructure that benefits both freight and passenger traffic in any way made necessary to meet the Common Carrier Host Infrastructure Baseline.
 - iii. Charge for the use of lines with less freight traffic than set in the Common Carrier Host Infrastructure Baseline no more for their use by Passenger Trains than the share of all infrastructure costs prorated by each class of train-mile according to a Track Weighted System Average Cost with no charge allowed to Passenger Trains for line capacity.
 - iv. Charge for the use of lines with more Passenger Trains than the maximum number required to be hosted in the Common Carrier Host Infrastructure Baseline no more than the share of infrastructure cost incrementally above that needed for a line to host trains up to the Common Carrier Host Infrastructure Baseline.

- v. Consent that any dispute in costs for hosting Passenger Trains is to be scheduled to be decided by the Surface Transportation board within 364 days of a notice of dispute filed by either the National Railroad Passenger Corporation (Amtrak) or the host railroad inclusive of no more than 182 days to conduct modeling and studies
 - vi. Contract with Amtrak when requested for any required host railroad services inclusive of qualified Train and Engine crew personnel to include at least one engineer and one conductor per train from existing host railroad crew bases for which the host railroad may charge Amtrak up to 109% of the short-run avoidable cost of wages and benefits for such personnel and their supervision prorated by on-duty hour needed relative to all on-duty hours in a crew base.
 - vii. When requested coordinate construction of a higher speed bypass segment connecting to a segment of the General Railway System operated by the railroad according to Amtrak specifications when the curvature and grades specified are suitable for dual use by Intermodal Freight Trains and Passenger Trains and when Amtrak or the state where the bypass is located agrees to pay the initial capital cost and complete land parcel acquisition, sealed plans, grading, drainage, and bridge work while the host railroad shall complete track, signal, communications, commissioning, and any and all remaining work within 364 days of completion of the subgrade and assume all responsibility thereafter
 - viii. Consent to a modification to Track Class 4, to be known as Track Class 4A, which would support a 10% increase to Intermodal Freight Train and Passenger Train maximum speeds following a study, which the Federal Railroad Administration shall conduct from their existing budget to set a track geometry that is more obtainable than Track Class 5 due to the dependency on geometry to the square of the velocity, if the overall infrastructure costs increase less than 10% due to such that this class would become the default standard required by the Common Carrier Host Infrastructure Baseline.
- b. Develop a system of automatic coordination at junctions between lines under control of different parties to alert each railroad dispatcher of a Passenger Train preparing to enter their line such that sufficient preparation is made automatically in the dispatching plan to meet this standard.
 - c. Dispatch their line and operate trains according to a plan such that under normal circumstances the planned sequence of movements allows Intercity Passenger Trains to expeditiously pass, meet, or overtake trains other than Passenger Trains and shall -
 - i. Be absolved of enforcement or penalty under this measure should railroad equipment become unable to proceed at speed due to a defect after departing the initial terminal or upon a collision with an unauthorized person or vehicle
 - ii. Authorize movement of Intercity Passenger Trains with less average delay than the Acceptable Quarterly Average Delay
 - iii. Modify schedules such that Intercity Passenger Trains need not overtake Passenger Trains on commuter routes except where current practice provides for such or three or more mainline tracks are present
 - iv. Plan to authorize movement of Intercity Passenger Trains with less than 16 minutes of maximum delay at any one junction or point of conflict with another train relative to otherwise operating at the Passenger Train Pure Running Time for that segment of line
9. The National Railroad Passenger Corporation (Amtrak) shall offer and have the right to serve as the nationwide default Lead Railroad Carrier for the operation of Passenger Trains upon request over any railroad under either their own direction or the direction of any railroad carrier acting for themselves or a non-railroad carrier state or private person other than when another railroad carrier voluntarily elects to be the Lead Railroad Carrier and shall –

- a. Arrange for the provision and coordination when required by this act or requested of all aspects of Below-the-Rail track and facilities on both other host railroads or on their own lines inclusive of any fixed infrastructure for any Passenger Train operation, claim qualifying Transferrable Tax Credits for activities covered in Table 1 to avoid duplication, and shall-
 - i. Distribute a portion of the Train-Mile based credits to a host railroad when operating over their lines equal to both the Existing Negotiated Rates and additional Improvement Funds per Train-Mile whose funded work to improve capacity shall not be reviewable by federal, state, or locality
 - ii. Reserve the remainder of the Train-Mile based credits and the Large MSA Facilities Infrastructure credits to cover the costs of all remaining Below-the-Rail tracks and facilities and any fixed infrastructure or leases of such that are by necessity shared between railroads as needed primarily for Passenger Trains
 - iii. Provide access to infrastructure and terminals owned or leased by Amtrak and pass through costs of access acquired by Amtrak to facilities of host railroads with no requirement of additional funds from other railroad carriers or sponsoring parties for access other than those provided by the Transferable Tax Credits except –
 1. Amtrak may charge a congestion supplement by train-mile for Passenger Trains of other rail carriers operating during peak hours of passenger demand only on Amtrak owned or leased railroad lines at or above capacity to manage demand but shall expend such charges on facilities improvements and shall contribute the same prorated amount by train-mile to such improvements for its own operations.
 - iv. Freely allow any railroad carrier to voluntarily elect to be the Lead Railroad Carrier in regards to Below-the-rail provisions for the operation of Passenger Trains under their direction over the entire route in question in which case that electing carrier shall –
 1. Be eligible to claim all qualifying Transferrable Tax Credits and rights for activities covered in Table 1 to avoid duplication
 2. Possess the option to purchase from Amtrak by written agreement Large Loss Risk Coverage for the operation of Passenger Trains over their own lines or other host railroads at a rate of \$0.007 per passenger-mile to be adjusted for inflation annually by the Secretary of Transportation
 3. Distribute to Amtrak only the Train-Mile variable amount of the credits for those Train-Miles operated on any Amtrak owned or leased facilities and infrastructure and retain the responsibility to reach a separate agreement with any other host railroads for other lines
 4. Assume all other aspects of Below-the-Rail and Above-the-Rail provisions
 - v. Maintain financial accounts showing Below-the-Rail costs expressed by either per time unit or per train-mile by rational estimations when not directly assignable.
- b. Arrange for the provision and coordination when required by this act or requested of all aspects of Above-the-Rail Operations and shall –
 - i. Operate at least one train daily per direction over all routes operated by Amtrak in FY18 over 500 miles in length other than when another railroad carrier requests to the Federal Railroad Administration for Amtrak to perform portions of such work on these routes under a proposed net cost savings to the federal purse for a period of at least 3 years
 - ii. Develop plans to operate three trains daily per direction over a route network on existing railroad lines that is nearly the size of the Interstate Highway network and

seek to operate such where the Above-the-Rail costs are covered by consumer revenue, state, or private person sponsors in combination or separately

- iii. Make portions of these services available to other railroad carriers or agree to do so in the future in whole or the part who are either acting on their own accord or for a non-railroad carrier state or private person sponsor by binding written agreement when notified of a proposal to operate Passenger Trains on scheduled or excursion routes and movements of individual passenger cars on scheduled trains in which Amtrak operates when so requested and Amtrak shall –
 1. Make their own qualified Train and Engine crew personnel available to the extent that an existing crew base can cover the route or may be reasonably extended within the hours of service allowed
 2. Contract for host railroad services including qualified Train and Engine crew personnel from existing crew bases if requested
 3. Make available Amtrak owned equipment employed on the route or otherwise not used for leases of a term of at least 3 years on a cost basis based on its depreciated cost and the prorated cost of future overhauls unless the lessee is to overhaul equipment by mutual agreement prior to returning it to Amtrak
 4. Bill for services Amtrak provides or passes the cost through from another railroad carrier for these or any other types of requested services selected at a cost no more than 109% of the long-run avoidable cost except that movements of individual passenger cars in scheduled trains or separate excursion trains operating less than 3 months may be billed up to 180% of the short-run avoidable cost subject to review by the Surface Transportation Board
- iv. Maintain financial accounts showing Above-the-Rail costs per train-mile comprised of costs only when directly recorded through publically auditable cost centers or external bills with all other costs not directly identifiable recorded to a separate corporate cost center.

10. Should the owner or lessee of a Passenger Train serving terminal or station building suitable for human occupancy according to local laws that serves as the public access to a railroad in a Large MSA Facilities Infrastructure complex file for any portion of the Large MSA Facilities Infrastructure credit in that year they shall –
 - a. Charge a sub lessee only for areas of such a building controlled solely by the sub lessee in a reserved manner for their exclusive use such as ticket kiosks, agent stations, seated waiting areas and lounges, retail, restaurants, or non-public rooms.
 - b. Provide from the funds of the credit for all common and circulation areas needed for platform access, human occupancy, emergency services, corridors, or fire exit paths all of which shall not be chargeable to a sub lessee in proportion or in total.

Definitions:

Above-the-Rail – All portions of vehicle operations above the head of the rail including capital, maintenance, service turns, overhauls, fleet planning, consumables, inspections, scheduling, marketing, consumer transactions, fuel, safety planning and drills, and First Dollar Risk Coverage

Below-the-Rail – All portions of facilities and infrastructure below the head of the rail, both capital and operations including mainlines, sidings, staging yards, terminal buildings, platforms, terminal movements, signaling, junctions, dispatching, planning, safety planning and coordination with local officials, security, and Large Loss Risk Coverage

Connecting Railroads – Railroads with existing track connections or which may reasonably connect through a new junction of limited length or over a terminal railroad already serving more than one railroad.

Consumer Funded Toll Highway – A limited access point highway that the US Secretary of Transportation has certified by publically available letter and cash flow analysis showing it to be at least 90% funded by consumer revenue at the historical incremental rates consumers were charged for trips longer than 50 miles relative to the costs since inception whose sums are evaluated at the historical prime private business 1-year interest rates.

Dwell Time is the time designated by the Passenger Train operator at or near a station platform including any switching of cars from the consist and the acceleration or speed penalty from such station stops with nothing preventing the Passenger Train operator from offering the host railroad to shorten the dwell at certain times with mutual consent to run ahead of the target schedule till the next station

Existing Negotiated Rates – Those last agreed to by both parties at the time of the passage of this act adjusted for inflation taken should a conflict arise to be mediated by the Surface Transportation Board to be the incremental track and facilities cost according to the Track Weighted System Average Cost, Quality Based Compensation, and any services provided or quoted by the host railroad

First Dollar Risk Coverage - The provision by a rail carrier through binding contract to fully assume from all other parties, including the host railroad, other rail carriers, designers, contractors, or sponsors of service the liability risk of any accident occurring during the operation of a Passenger Train of the first \$2,000,000 of loss in a single accident event.

Intercity Passenger Train – A train offering transportation of persons operated by a Rail Carrier on any General Railroad System route whose total length is greater than 50 miles between end terminals, including commuter rail passenger transportation of this route length, meeting the accessibility criteria existing at the time of passage of this act in the Charter of Federal Regulations.

Improvement Funds – Payments by the National Railroad Passenger Corporation (Amtrak) of an additional \$3.00 per Intercity Passenger Train Train-Mile operated on a host railroad to that host railroad, adjusted annually for inflation, to fund improvements to the host railroad mainline infrastructure including additional sidings and staging tracks to be selected at the sole discretion of the host railroad in their best judgement to promote fluid and timely movement of all railroad traffic

Intermodal Freight Train – A train offering transportation to the public of at least 80 containers or trailers suitable for freight haulage of dimensions authorized to be moved nationwide in a single load on all National Highway System routes. Only the first 800 miles of each route segment between public terminals where freight may be transferred to or from road travel shall be counted for the credit.

Industry Access Preservation Railroad Ton-Mile – A ton of freight hauled over a mile upon any class of railroad carrier as defined by Title 49 CFR § 236.1003 not to exceed a claim of more than 2,400,000 revenue ton-miles per each route mile of railroad operated.

Large MSA Facilities Infrastructure - The railroad property, facilities, and improvements dedicated to terminating, turning, departing, and conveying a mix of Intercity Passenger Trains and other trains located in a Metropolitan Statistical Area (MSA) of over 1 million in population and with 10 or more Intercity Passenger Trains per day run from any public station in the MSA. Such funds shall be used for railroad facilities

infrastructure in the MSA as well as the common expenses needed to administer such. The Secretary of Transportation shall review the annual costs of the credit for these facilities every 4 years and compare such to the projected capital, accident, and maintenance long-run average cost needed to expand parallel highway and parking capacity to serve the peak hour transportation of persons served by operations on this infrastructure.

Large Loss Risk Coverage – The provision by Amtrak through binding contract to fully assume from all other parties, including the host railroad, other rail carriers, designers, contractors, or sponsors of service the liability risk of any accident occurring during the operation of a Passenger Train that in a single accident event exceeds a \$2,000,000 loss up to the statutory limit established by the Charter of Federal Regulations.

Lead Railroad Carrier – Any class of railroad carrier who is the primary operator of a Passenger Train, who shall be fully responsible for coordinating all aspects of the requirements of the Charter of Federal Regulations regarding the service even though various components of the service such as rail vehicle construction, maintenance, or staffing are provided by other parties.

Linehaul Facilities Infrastructure – The underlying railroad property, facilities, and improvements dedicated to through movements of passenger and freight traffic to include mainlines, sidings, staging tracks, storage yards, public terminals, and signaling equipment excluding only such property used to construct railroad vehicles or overhaul such when removed from service for more than a week.

Passenger Train - A train offering transportation of persons operated by a Rail Carrier on any General Railroad System between end terminals meeting the accessibility criteria existing at the time of passage of this act in the Charter of Federal Regulations.

Passenger Train Schedule – A public schedule set for a Passenger Train that is whose trip time is no more than either 110% of the Passenger Train Running Time or the existing scheduled trip time at the time of the passage of this act with makeup time distributed proportionately at permanent stops to receive passengers exclusive of non-permanent flag stops.

Passenger Train Running Time - the total time for a passenger train to traverse a route inclusive of the Pure Running Time and the Dwell Time

Pure Running Time - the time for a Passenger Train to traverse a line assuming a maximum speed that is calculated for a track class and an assumed outer rail elevation, not taken to be higher than 4 inches, which would at least allow a freight train to operate at 50 mph on the line and through a curve of the existing degree of curvature with no more than 1.5 inches of cant deficiency using the definitions and methods found in 49 CFR § 213.57 - Curves; Elevation and Speed Limitations not excluding any voluntary agreement for higher speeds

Quality Based Compensation – A rate per Train-Mile to compensate the host railroad for adherence to a Passenger Train Schedule taken as offsetting against a potential 30% increase in the Acceptable Quarterly Average Delay multiplied by the average passengers per train at the rate of time used by the United States Department of Transportation for economic studies. Should the railroad not meet the Acceptable Quarterly Average Delay for any month of the year due to operations on their own lines exempting any lateness caused by receiving a Passenger Train onto their line the amount shall not be owed by the National Railroad Passenger Corporation (Amtrak) for that full month while any agreement made between other parties may use any other standard.

Transferable Tax Credit – Deductions for the full amount which may be assigned to another party who is any class of federal taxpayer with each year's credits expiring after 10 years if not used.

Train-Mile – The scheduled operation for public purchase of transportation over a mile of either an Intercity Passenger Train or an Intermodal Freight Train. Train-Miles shall be fully deducted from the reported total of either category by the operator when scheduled miles are not actually operated and shall be counted at 30% for those segments operated within 25 miles of a Consumer Funded Toll Highway for 25 or more contiguous miles to then equalize only public accident cost responsibility.

Track Weighted System Average Cost – The methodology to be used for determining the incremental cost of a Passenger Train to use host railroad track following the ruling by the Interstate Commerce Commission

Decision, Finance Docket No. 32467, "National Railroad Passenger Corporation and Consolidated Rail Corporation: Application under Section 402(a) of the Rail Passenger Service Act for an order fixing just compensation". Decided December 29, 1995 and as described more fully by the Federal Railroad Administration "Technical Monograph: Estimating Maintenance Costs for Mixed High Speed Passenger and Freight Rail Corridors", Reported August 2004 with values adjusted for inflation.

Weighted Railroad Passengers Ratio – The total annual person-miles of purchased transportation operated by all rail carriers on a particular Large MSA Facilities Infrastructure railroad segment divided by the total annual person-miles of purchased transportation operated on all Large MSA Facilities Infrastructure railroads nationwide.

Definitions clarifying Common Carrier Obligations

Acceptable Quarterly Average Delay - In order to provide guidance over the acceptable tradeoffs inherent in a Railroad's Common Carrier responsibilities for general infrastructure this item is defined to be less than 900 minutes of delay per 10,000 train-miles averaged over a quarter of a year relative to a Passenger Train Schedule. Delays are to be understood to be those whose root cause is primarily attributable to decisions made in the prior 24 hours by the railroad hosting Intercity Passenger Trains in regards to dispatching and train configuration which produce delay on the mainline due to conflicts while running on the existing infrastructure. Should the most agreeable dispatching decisions be assumed in the prior 24 hours by modeling and the line still remains congested in the model prior to the observed delay then the investigation into the root cause of the delay shall include those attributable to changes in infrastructure and average train make up configurations made since 1995.

Common Carrier Host Infrastructure Baseline - In order to provide guidance over the acceptable tradeoffs inherent in a Railroad's Common Carrier responsibilities for general infrastructure this item is defined to be the level of railroad line infrastructure, understood to be at least Federal Railroad Administration Track Class 4 or the 10% speed increase to be studied in this act, suitable for operation of freight trains of a composition chosen by the owning railroad and for the hosting of up to three Passenger Trains per direction per day on a Passenger Train Schedule on any line exceeding the operational criteria for exemptions set in 49 CFR § 236.1005 - Requirements for Positive Train Control systems, (b) PTC system installation, (4) Exclusion or removal of track segments from PTC baseline, (iii) Freight lines with de minimis risk not used for regularly provided intercity or commuter rail passenger service, (B); regardless if Passenger Train service existed previously on the line segment.

Demurrage Charge Billing Credits – In order to provide guidance over the acceptable tradeoffs inherent in a Railroad's Common Carrier responsibilities for car service this item is established to provide monetary credits to a consignee of a freight load located reasonably upon a line meeting the definition of a Common Carrier Host Infrastructure Baseline for the extra demurrage charges that might otherwise be the consignee's responsibility and the prorated cost of goods shipped from the time when cars are not placed in transit or delivered according to an agreement for loading by the serving railroad within 30 hours of notification by the consignee, or 54 hours should the notice period include any part of a Saturday or Sunday, unless a special rate at less than 150% of variable cost is agreed to by the consignee and railroad in setting a longer time.