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Legislative Bulletin……………………………………….………July 22, 2008

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S. 294—Passenger Rail Investment and Improvement Act

Summary of the Bill Under Consideration Today:

Total Number of New Government Programs: Several.

Total Cost of Discretionary Authorizations: $16.4 billion over five years.

Effect on Revenue: $0

Total Change in Mandatory Spending: According to CBO, the bill authorizes the Treasury Secretary to repay more than $2 billion of Amtrak debt, which would score as increased mandatory spending.

Total New State & Local Government Mandates: None

Total New Private Sector Mandates: Several

Number of *Bills* Without Committee Reports: 0

Number of *Reported* Bills that Don't Cite Specific Clauses of Constitutional Authority: 1

S. 294— Passenger Rail Investment and Improvement Act (*Lautenburg, D-NJ*)

Order of Business: S. 294 is scheduled to be considered on Tuesday, July 22, 2008. It is the understanding of RSC staff that the legislative text to be considered on the House floor will substitute the text of the House-passed Amtrak bill (H.R. 6003) for the Senate-passed bill. In other words, this legislation will be the *same* as the House-passed Amtrak bill, H.R. 6003, which passed the House on June 11, 2008 (roll call vote 400).

The House is taking up the legislation again so that both Houses will have passed the same bill number, which will enable a conference between the two versions of the bill.

<u>Summary</u>: S. 294 authorizes spending for Amtrak programs over the FY 2009-2013 period. Below are highlights of the legislation.

<u>Authorized Discretionary Spending Levels:</u>

S. 294 Discretionary Authorizations
(Millions of Dollars)

Program	FY 08 Appropriation	FY 09 Request	S. 294, FY 09	S. 294, FY 09-13
Operating Costs	475	275	525	3,031
Inspector General	----	----	20	121
ADA Compliance	----	----	69	1,029
Capital Grants	880	625	1,202	6,698
Repayment of Debt	----	----	345	1,725
Grants for Rail Congestion	----	----	108	520
High Speed Rail Corridor	----	----	350	350
Other	----	----	62	1,208
TOTAL	**1,355**	**900**	**2,682**	**14,862**

- **Capital Grants:** Within the $6.7 billion total provided for Amtrak capital grants noted in the table above, S. 294 makes a portion of this funding available for capital grants to states in the following percentages:
  - FY 2009: 41.60%
  - FY 2010: 38%
  - FY 2011: 38%
  - FY 2012: 35%
  - FY 2013: 35%

- **Congestion Grants:** The bill provides an estimated authorization level of $520 million over five years for a new program to make grants to projects that the Secretary determines would reduce congestion, or facilitate ridership growth in intercity passenger rail transportation.

- **High Speed Rail Corridor Program.** The bill provides an authorization level of $350 million over five years for a high-speed rail corridor program. This new program would allow states, groups of states, Interstate Compacts, or Amtrak to apply for grants for projects to provide high speed rail (defined as at least 110 mph).

- **Studies and Reports.** S. 294 requires Amtrak to conduct numerous studies, reports, and oversight reports that CBO estimates will cost $55 million over five years.

- **$1.5 Billion for D.C. Transit.** During floor consideration of the bill, the House approved a Davis (R-VA)/Van Hollen (D-MD)/Hoyer (D-MD) amendment similar to H.R. 401, the National Capital Transportation Amendments Act of 2007. The amendment would authorize $1.5 billion in federal money for the DOT to fund 50% of Washington Metropolitan Area Transit Authority (WMATA) capital and preventative maintenance projects over the next ten years. The money would be used primarily for infrastructure upgrades and new rail cars and buses. Over the next decade, WMATA intends to replace nearly all of its Metrorail cars and a significant portion of its transit system's buses.

  Many House and Senate conservatives have mounted numerous attempts to block consideration of the National Capital Transportation Amendments Act. In 2006, RSC Chairman Jeb Hensarling and former Chairman Mike Pence sent a joint letter to House Leadership asking that the bill not be brought for floor. The letter expressed concerns that the legislation would undermine competition and incentivize mismanagement by taking $1.5 billion from taxpayers to bail out a poorly administered transit system in one metropolitan area.

  During debate on the bill in 2006, the legislation was dubbed "the largest earmark in history" by the Heritage Foundation and various media sources. The Heritage Foundation's Ronald Utt warned that, "If enacted, this earmark would be one of the largest ever passed—seven times larger than Alaska's 'Bridge to Nowhere' and twice as large as Mississippi's 'Train to Nowhere.' This earmark would reward Metro's poor performance with an astounding sum of money while enabling the system to put off essential reforms." Such funding is particularly questionable given that it uses federal money to benefit a single transit system in an area with a median income of $78,978, while the median income of all American taxpayers is $48,201.

  For more information, see this RSC Policy Brief.

<u>Amtrak Debt Repayment:</u>

- **Repayment of Amtrak Debt.** Section 102 of the bill authorizes the Secretary of the Treasury to exercise early buyout options of Amtrak debt. According to the CBO score, "the bill could affect direct spending because it would authorize the Department of the Treasury to repay Amtrak debt—without further appropriation—if the department chooses to negotiate with Amtrak's creditors to restructure the debt. CBO does not expect that the Treasury would seek to restructure and repay Amtrak's debt. If, however, the Treasury did repay Amtrak's debt, ***that provision would increase direct spending by more than $2 billion over the next several years."*** *[emphasis added]*

<u>Other Provisions:</u>

- **Repeal of Self-Sufficiency Requirements:** Section 214 of the bill repeals the requirement that Amtrak operate without federal subsidies (the 1997 Amtrak authorization required this by the end of 2002), replacing this requirement with a statement that, "Amtrak and its Board of Directors shall adopt a long-term plan that minimizes the need for Federal operating subsidies."

- **Amtrak Board of Directors:** S. 294 expands the Amtrak Board of Directors to 10 Members including: the Secretary of Transportation, President of Amtrak (a non-voting member), and 8 other individuals appointed by the President and subject to confirmation by the Senate. Each appointment is for a five year term. The legislation requires the President to consult with Congressional leaders in making the appointments.

- **Accounting Standards:** S. 294 requires Amtrak to establish a "modern financial accounting and reporting system" within one year of enactment. The bill further requires Amtrak to submit annual reports (for every year from 2009 to 2013) that includes Amtrak's revenues and costs to each of its routes, lines of business, and each major activity within each route and line of business, and requires Amtrak to develop a "five-year financial plan" as outlined in pages 16-19 of the legislation.

- **Acela Service Study:** The legislation requires Amtrak to conduct a study to determine the infrastructure and equipment improvements necessary to provide Acela service between Washington, DC and New York in 2 hours and 30 minutes, 2 hours and 15 minutes, and in 2 hours, respectively. The bill also requires a similar study to be performed for the New York City-Boston route for 3 hours and 15 minutes, 3 hours, and 2 hours and 45 minutes, respectively.

- **Compliance with ADA:** S. 294 requires the Federal Railroad Administration to monitor Amtrak's compliance with the Americans with Disabilities Act.

- **State Rail Plans:** The bill authorizes the Secretary of Transportation to make capital grants to a state or group of states for intercity rail passenger transportation. The grants are capped at 80% of the capital costs of the project. Grants would be conditioned in part on a written agreement between the new rail operator and Amtrak labor organizations to "protect the rights of Amtrak employees who would otherwise be adversely affected."

- **Washington—New York High Speed Rail.** Directs the Secretary of Transportation to solicit proposals for the financing, design, construction, and operation of a high-speed rail system operating between DC and New York City of no more than two hours. If the Secretary determines that a proposal is cost-effective, S. 294 authorizes the Secretary to establish a commission to evaluate the proposal and report back with recommendations to Congress. Notably, the private-sector would be able to submit proposals for this project. Under current law, Amtrak has authority to contract many services to the private sector, but largely does not make use of this authority.

Additional Background: The last Amtrak authorization bill was enacted in 1997 (the Amtrak Reform and Accountability Act), and lapsed at the end of 2002. Notably, this legislation required Amtrak to begin operating without federal subsidies after 2002. Congress has provided funding every year since the 2002 deadline set by the Amtrak Reform and Accountability Act. Since 1970, federal subsidies to Amtrak have totaled more than $30 billion.

In 2008, Amtrak will receive $1.3 billion. For FY 2009, Amtrak's request is $1.67 billion, and the request the President submitted to Congress is $900 million. Amtrak spending currently accounts for 2% of all federal transportation spending ($1.3 billion out of a federal transportation budget of more than $70 billion), while carrying less than one percent of intercity traffic.

Amtrak has an annual deficit of more than $1 billion. Historically, some of the contributors to this deficit have been:

- **Long-distance service:** According to a recent CRS report, in 2004 alone, Amtrak lost $600 million from long-distance trains, which represent only 15% of total inter-city Amtrak ridership.

- **Sleeper car service:** According to the same CRS report noted above, Amtrak might be able to save between $75 million and $158 million a year by eliminating subsidized sleeper class service in long-distance trains. CRS notes that Amtrak has in the past spent some its subsidy to refurbish sleep car service instead of making other capital improvements, such as bridge repairs.

- **Food:** According to a Heritage Foundation paper authored by Dr. Ronald D. Utt, in 2003, Amtrak spent $158.8 million on food that it served to passengers for only $78.4 million—a loss of more than $80 million.

- **Labor costs:** According to this same analysis, one of the reasons that Amtrak loses money on food service is that it pays its food service workers an average of $54,800 a year.

Dr. Utt also notes that because demand for many Amtrak routes is low, particularly on some of the long-distance routes, in FY 2007 Amtrak filled 48.9% of its seats (compared to nearly 80% for airline passengers). Amtrak's on-time performance declined from 74.1% in FY 2003 to 67.8% in FY 2006.

Possible Conservative Concerns: S. 294 provides an annual, average authorized funding level of $3 billion. This is more than double the FY 2008 appropriation for Amtrak ($1.36 billion) and is more than triple the President's FY 2009 request ($900 million).

Historically, many conservatives have worked to either prevent the expansion of, reduce, or eliminate subsidies to Amtrak. For example, President Reagan reduced Amtrak subsidies in the 1980s, President Bush proposed to eliminate Amtrak subsidies in his FY 2006 budget submission, the FY 2007 RSC Contract with America Renewed budget alternative also proposed to eliminate Amtrak's subsidies, and many amendments have been offered by conservative Members during the Appropriations process to limit Amtrak funding.

Some conservatives may also have concerns with the Davis(VA)/Van Hollen (MD)/Hoyer (MD) amendment, added to the bill during House floor consideration, that authorizes $1.5 billion for DC transit. This amendment is similar to H.R. 401, the National Capital Transportation Amendments Act, which many conservatives have a history of opposing. For example, in 2006, RSC Chairman Jeb Hensarling and former Chairman Mike Pence sent a joint letter to House Leadership asking that the bill not be brought for floor.

Committee Action: S. 294 was approved by the Senate by a vote of 70-22 on October 30, 2007. H.R. 6003, the text of which will be substituted for the Senate-passed version of S. 294, was marked up and ordered to be reported, as amended, by the House Committee on Transportation and Infrastructure by voice vote on May 22, 2008. H.R. 6003, passed the House on June 11, 2008 (roll call vote 400).

Administration Position: The Statement of Administration Policy (SAP) for H.R. 6003 when it came before the House contained a veto threat and notes concerns regarding the funding levels in the bill and the lack of reforms to make spending decisions line up with demand for passenger rail.

Cost to Taxpayers: S. 294 authorizes $14.9 billion in discretionary spending over five years. Section 102 of the bill authorizes the Treasury Secretary to restructure and repay more than $2 billion of Amtrak debt. According to CBO: "If the Treasury did negotiate with Amtrak's creditors and restructure and repay this debt, CBO estimates that the repayment would increase direct spending by more than $2 billion over the next several years."

Does the Bill Expand the Size and Scope of the Federal Government? Yes. Specifically, the bill substantially increases the authorized funding level for the Amtrak program, removes the requirement that Amtrak become independent of federal operating subsidies, and creates several new programs.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? Yes. According to CBO, the bill contains no intergovernmental mandates on state, local, or tribal governments. However, the bill does include several private-sector mandates such as financial planning and accounting requirements, requirements on performance of train operations, and a requirement to buy American products. However, these mandates would not exceed the annual threshold established in the UMRA for private-sector mandates.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? The Committee on Transportation and Infrastructure, in House Report 110-690, states that "H.R. 6003, as amended, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI of the Rules of the House of Representatives."

Constitutional Authority: The Committee on Transportation and Infrastructure, in House Report 110-690, cites constitutional authority in Article I, Section 8 but does not cite a specific clause. House Rule XIII, Section 3(d)(1), requires that all committee reports contain a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution. *[Emphasis added]*

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