

# Congress of the United States

Washington, DC 20515

June 9, 2004

The Honorable Norman Y. Mineta  
Secretary of Transportation  
U.S. Department of Transportation  
400 Seventh Street, S.W.  
Washington, DC 20590

Dear Mr. Secretary:

It is with considerable concern that we write to you regarding an April 13, 2004 notice of request for comment and statement of interest issued by the Federal Railroad Administration (FRA) pertaining to competitive bidding of operators for state-supported intercity passenger rail routes. This notice stems from section 151 of the FY2004 Transportation, Treasury, and Independent Agencies Appropriations Act (Division F of the Consolidated Appropriations Act, P.L. 108-199). The Senate and House Appropriations Committees included this provision in the FY2004 Consolidated Appropriations Act without consulting the Democratic Members of the authorizing Committees. We strongly oppose the provision and urge you to exercise your discretion to not reprogram any of Amtrak's FY2004 appropriation to implement the competitive bid procedure and any associated demonstration projects.

Section 151 requires the Secretary of Transportation to develop and implement a procedure by January 1, 2004, for the competitive bidding by Amtrak and non-Amtrak operators for State-supported intercity passenger routes. Section 151 also authorizes the Secretary, under certain circumstances, to dictate the terms by which non-Amtrak operators will have access to facilities, equipment, and services provided by Amtrak. Specifically, if a State selects a non-Amtrak operator for a route, and if Amtrak and the State cannot agree on contract terms for provisions of equipment, facilities, or services for the new operator, the Secretary is empowered to order Amtrak to provide the necessary facilities, equipment, and services for compensation to be determined by the Secretary. In prescribing terms of compensation to Amtrak, the Secretary is required to consider the "quality of service" provided by Amtrak as a major factor in determining whether and to what extent compensation should exceed Amtrak's incremental costs. Finally, section 151 authorizes the Secretary, at his discretion, to use approximately \$2.5 million of Amtrak's FY2004 appropriation to implement the competitive bid procedure and demonstration.

This provision appears specifically designed to encourage States to procure intercity passenger rail services from operators other than Amtrak and we oppose it for the following reasons. First, under current law, States may contract with any qualified entity to operate intercity passenger service and we question the need for or the appropriateness of the Secretary establishing the procedure for the states to use in such an effort. If a State is contracting for a service to be funded without federal financial assistance, it is unclear why the Secretary should prescribe and fund the procurement process or set compensation limitations on the terms of such a contract. Furthermore, funds provided to a State by the Secretary to facilitate competitive bidding are funds that would otherwise be provided to Amtrak for the urgent capital expenditures needed to maintain and improve the Nation's current intercity passenger rail system.

Second, we are concerned about the financial impact that the implementation of these provisions could have on Amtrak. Amtrak currently receives compensation from States for the use of stations, reservations call centers, and equipment servicing facilities by state-supported trains and other Amtrak trains per terms negotiated by the state and Amtrak. If a non-Amtrak operator could utilize these facilities and services on an incremental cost basis rather than on a fully allocated or direct cost basis as set by the Secretary, Amtrak's operating losses would necessarily increase, thereby increasing the need for federal operating subsidy for Amtrak's other intercity train services. Similarly, use of "quality of service" by the Secretary as an Amtrak compensation factor is inappropriate in situations where Amtrak is not providing "services" to a State, but rather is making available equipment or access to its facilities.

Third, we do not believe that section 151 provides any authority permitting States and their non-Amtrak operators to assume Amtrak's statutory access rights to freight railroads' tracks and facilities. Amtrak's access rights are a unique historical arrangement, with attendant agreements on safety, liability, and operations that have been developed through years of cooperation. This issue is of great concern to our Committees, Amtrak, and the Association of American Railroads and should only be addressed within the context of comprehensive Amtrak reauthorization proposal.

Finally, we believe that section 151 raises significant Amtrak authorization issues that must be considered in a comprehensive reauthorization effort. Given that the Senate Committee on Commerce, Science and Transportation and the House Committee on Transportation and Infrastructure are actively considering the reauthorization of Amtrak, we believe that efforts pertaining to competitive bidding or any privatization of Amtrak services should only be considered in that context.

For these reasons, we strongly oppose the provision and urge you to exercise your discretion to not reprogram any of Amtrak's FY2004 appropriation to implement the competitive bid procedure and demonstration. Moreover, we request information on the competitive bid procedure that DOT has developed to date, and the status of any ongoing development, implementation, or other related activity regarding section 151. In particular, we urge the Department of Transportation to immediately complete its report on insurance pooling options for states and passenger rail operators that was due on February 23, 2004, as directed by the Conference Report accompanying the FY2004 Consolidated Appropriations Act, and to ensure that the report on the competitive bid procedure is completed by July 1, 2004.

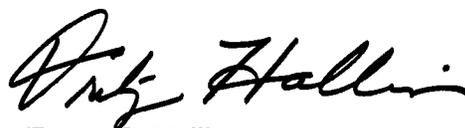
Thank you for your consideration.

Sincerely,



James L. Oberstar  
Ranking Democratic Member  
House Committee on

Transportation and Infrastructure



Ernest F. Hollings  
Ranking Democratic Member  
Senate Committee on Commerce,  
Science, and Transportation