
THE LIBRARY OF CONGRESS

LOCAL RAIL SERVICE CONTINUATION ASSISTANCE

HEARINGS

BEFORE THE

SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.R. 6739, H.R. 6792, H.R. 8393, H.R. 9398, H.R. 7370, H.R. 3672, H.R. 2156, H.R. 1538, H.R. 6871, H.R. 8225, and all similar and identical bills

BILLS TO AMEND THE DEPARTMENT OF TRANSPORTATION ACT AND THE REGIONAL RAIL REORGANIZATION ACT OF 1973 TO EXTEND THE ELIGIBILITY FOR FINANCIAL ASSISTANCE UNDER THE RAIL SERVICE ASSISTANCE PROGRAMS, AND FOR OTHER PURPOSES

JULY 27 AND 28, OCTOBER 19, 1977

Serial No. 95–74

Printed for the use of the
Committee on Interstate and Foreign Commerce

LOCAL RAIL SERVICE CONTINUATION ASSISTANCE

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
TRANSPORTATION AND COMMERCE

OF THE

COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE.

HOUSE OF REPRESENTATIVES

U.S. Congress.

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.R. 6739, H.R. 6792, H.R. 8393, H.R. 9398, H.R. 7370, H.R. 3672, H.R. 2156, H.R. 1538, H.R. 6871, H.R. 8225, and all similar and identical bills

BILLS TO AMEND THE DEPARTMENT OF TRANSPORTATION ACT AND THE REGIONAL RAIL REORGANIZATION ACT OF 1973 TO EXTEND THE ELIGIBILITY FOR FINANCIAL ASSISTANCE UNDER THE RAIL SERVICE ASSISTANCE PROGRAMS, AND FOR OTHER PURPOSES

JULY 27 AND 28, OCTOBER 19, 1977

Serial No. 95–74

Printed for the use of the
Committee on Interstate and Foreign Commerce

U.S. GOVERNMENT PRINTING OFFICE
21-684 O WASHINGTON : 1978

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HARLEY O. STAGGERS, West Virginia, *Chairman*

JOHN E. MOSS, California
JOHN D. DINGELL, Michigan
PAUL G. ROGERS, Florida
LIONEL VAN DEERLIN, California
FRED B. ROONEY, Pennsylvania
JOHN M. MURPHY, New York
DAVID E. SATTERFIELD III, Virginia
BOB ECKHARDT, Texas
RICHARDSON PREYER, North Carolina
CHARLES J. CARNEY, Ohio
RALPH H. METCALFE, Illinois
JAMES H. SCHEUER, New York
RICHARD L. OTTINGER, New York
HENRY A. WAXMAN, California
ROBERT (BOB) KRUEGER, Texas
TIMOTHY E. WIRTH, Colorado
PHILIP R. SHARP, Indiana
JAMES J. FLORIO, New Jersey
ANTHONY TOBY MOFFETT, Connecticut
JIM SANTINI, Nevada
ANDREW MAGUIRE, New Jersey
MARTY RUSSO, Illinois
EDWARD J. MARKEY, Massachusetts
THOMAS A. LUKEN, Ohio
DOUG WALGREN, Pennsylvania
BOB GAMMAGE, Texas
ALBERT GORE, Jr., Tennessee
BARBARA A. MIKULSKI, Maryland

SAMUEL L. DEVINE, Ohio
JAMES T. BROYHILL, North Carolina
TIM LEE CARTER, Kentucky
CLARENCE J. BROWN, Ohio
JOE SKUBITZ, Kansas
JAMES M. COLLINS, Texas
LOUIS FREY, Jr., Florida
NORMAN F. LENT, New York
EDWARD R. MADIGAN, Illinois
CARLOS R. MOORHEAD, California
MATTHEW J. RINALDO, New Jersey
W. HENSON MOORE, Louisiana
DAVE STOCKMAN, Michigan
MARC L. MARKS, Pennsylvania

W. E. Williamson, *Chief Clerk and Staff Director*
Kenneth J. Painter, *First Assistant Clerk*
Eleanor A. Dinkins, *Assistant Clerk*
Frank W. Mahon, *Printing Editor*

Professional Staff

Elizabeth Harrison
Jeffrey H. Schwartz
Brian R. Moir
Karen Nelson
Ross David Ain

Christopher E. Dunne
William M. Kitzmiller
Mark J. Raabe
Thomas M. Ryan
Richard D. Lindsay, M.D.

J. Paul Molloy, *Associate Minority Counsel*

Subcommittee on Transportation and Commerce

FRED B. ROONEY, Pennsylvania, *Chairman*

RALPH H. METCALFE, Illinois
BARBARA A. MIKULSKI, Maryland
JAMES J. FLORIO, New Jersey
JIM SANTINI, Nevada
MARTY RUSSO, Illinois
BOB GAMMAGE, Texas
JOHN M. MURPHY, New York
HARLEY O. STAGGERS, West Virginia (Ex Officio)

JOE SKUBITZ, Kansas
EDWARD R. MADIGAN, Illinois
NORMAN F. LENT, New York
SAMUEL L. DEVINE, Ohio (Ex Officio)

William T. Druhan, *Staff Director*

CONTENTS

Statement of—Continued

ORGANIZATIONS REPRESENTED AT THE HEARINGS

American Road and Transportation Builders Association:
Hirschman, Robert E., representing.
Russell, Randolph, assistant to the executive vice president.
Arizona Department of Transportation, John A. Bivens, assistant director.
Association of American Railroads:
Dempsey, William H., president.
Freeman, Richard M., attorney.
Norton, John B., legal staff.
Welsh, Philip F., general solicitor.
Boston and Maine Railroad:
Chambers, Ray B., Federal representative.
Rennicke, William J., assistant to the president.
Consolidated Rail Corp.:
Cunningham, Paul, special counsel.
Sweeney, John L., vice president, Government affairs.

ORGANIZATIONS REPRESENTED AT THE HEARINGS—Continued

Illinois Department of Transportation, Kevin B. McCarthy, first assistant chief counsel.
Interstate Commerce Commission:
Fitzwater, Alan, Director, Rail Services Planning Office.
O'Neal, Hon. Daniel, Chairman.
Iowa Department of Transportation, Raymond L. Kassel, deputy director.
Maryland Department of Transportation, Charles H. Smith, assistant director rail systems.
Massachusetts Department of Transportation, Peter J. Metz, assistant secretary.
Railway Labor Executives' Association:
Mahoney, William G., attorney.
Snyder, James R., national legislative director, United Transportation Union.
Railroad Task Force for Northeast Region, Inc., Barbara Adams, legislative vice chairperson.
Transportation Department of
Bloom, Madeleine S., director, Office of State Rail Assistance Programs.
James, Raymond K., chief counsel.
Sullivan, John M., Administrator, Federal Railroad Administration.
Swinburn, Charles, Associate Administrator for Federal Assistance.
United States Railway Association:
Cole, Donald C., president.
Francese, Albert J., secretary and legislative counsel.
Rector, Edwin, assistant general counsel.
United Transportation Union:
Chamberlain, C. J., chairman, Railway Labor Executives.
Friedman, Edward D., attorney.
Snyder, James R., national legislative director.
Virginia Department of Highways and Transportation, Robert G. Corder, coordinator.
West Virginia Railroad Maintenance Authority, John P. Killoran, director.

LOCAL RAIL SERVICE CONTINUATION ASSISTANCE

WEDNESDAY, JULY 27, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2128, Rayburn House Office Building, Hon. Fred B. Rooney, chairman, presiding.

Mr. ROONEY. This morning we are commencing hearings on a number of proposed changes to the local rail service continuation assistance programs for the Northeast/Midwest region, originally provided in the Regional Rail Reorganization Act of 1973, and for the nationwide program provided in the Railroad Revitalization and Regulatory Reform Act of 1976. These changes have been proposed in H.R. 2156, H.R. 3672, H.R. 6739, H.R. 6792, H.R. 6871, H.R. 7370, H.R. 7486, H.R. 7715, H.R. 8172, H.R. 8225, H.R. 8278, H.R. 8393, H.R. 8420, and H.R. 8474 and other related bills.

These bills propose a number of different types of changes to the local rail service continuation assistance programs. For example, it is proposed that there be a 1-year extension to the existing 1-year period during which the Federal Government pays 100 percent of the cost of rail service assistance programs both in the Northeast/Midwest region, and the nationwide program. Similarly, another bill would extend the period during which the Federal Government pays 100 percent of the cost of these programs for 15 months, whereas another bill would extend this period of full subsidy for 3 months. Another bill would extend for 1 year the period during which the Federal Government pays 100 percent of the cost involving rehabilitation, maintenance, and improvement of rail properties, but by its omission would not extend the period during which the Federal Government pays 100 percent of the cost for operations. Some of the other bills provide that the criteria for the eligibility of a branch line for assistance be expanded to include any line subject to an abandonment proceeding before the Interstate Commerce Commission, and any line of a railroad classified as potentially subject to abandonment. Concomitantly, these bills permit States to carry over in-kind benefits from the currently required 1 year to a multiple of years. Another bill would permit two

or more States eligible for local rail assistance to combine their respective Federal entitlement. One bill would provide financial assistance for a line which the Commission has concluded that the public convenience and necessity do not permit the abandonment or discontinuance of a line of railroad, but the line is losing money. In addition, there are several other proposals in these bills, which I am sure will be discussed thoroughly during the hearings.

Before evaluating the necessity for changes to the rail services continuation programs, I believe it would be in order to briefly recall the genesis of these programs.

In proposing a plan to restructure the bankrupt railroads in the Northeast, the United States Railway Association indicated that in order for the newly established ConRail to become a viable railroad, among other things, it would be necessary to reduce the size of the system by not including a number of light density lines which had contributed to the heavy losses previously suffered by the bankrupt railroads. Consequently, the final system plan excluded about 5,750 miles of light density lines then currently in service.

Congress was aware of the fact that the abandonment of this many miles of railroad would cause considerable hardship to many shippers and local communities in the region. Therefore, it was proposed in the original act that a Federal subsidy be provided in order to ease many of the negative effects of the proposed abandonments. The act provided a 2-year program in which the Federal share of the subsidy for operating losses would amount to 70 percent with the State and/or local government contributing the remaining 30 percent of the cost. As you are all aware, after considerable negotiations, the 1976 act amended the 1973 act by expanding the subsidy program to the point whereby it is now for 5 years with the Federal share of the cost being 100 percent during the first year, 90 percent during the second year, 80 percent during the third year, and 70 percent during the fourth and fifth years. Moreover, the program was expanded beyond the Northeast/Midwest region, to include the rest of the States in the nation.

I believe, therefore, that in considering the desirability of changing the local rail service assistance programs, we must evaluate the effectiveness of these programs, including whether or not the various entities involved have performed their duties in accordance with the congressional intent and whether the moneys expended have accomplished the desired results.

I recognize that the question of whether or not light density lines operate is of great concern to many shippers and communities. Of the almost 200,000 miles of class I railroad track in this country, over 25 percent consists of light density lines. Whether or to these lines continue in operation and the manner in which they continue in operation are questions that we will have to settle in the near future. I read with interest in a recently issued Department of Transportation report the fact that the Association of American Railroads predicts that the existing railroad line mileage will be reduced by 20 percent over the next decade. Abandoning approximately 40,000 miles of rail lines in the next 10 years would be a considerable increase over the past 6 years when more than 15,000

miles were abandoned and most certainly have a considerable impact on the affected economies. The accuracy of the AAR prediction in many respects will depend on the decisions that we will make as a result of these hearings.

Without objection the text of H.R. 1538, H.R. 2156, H.R. 3672, H.R. 6739, H.R. 6792, H.R. 6871, H.R. 7370, H.R. 7486, H.R. 7715, H.R. 8172, H.R. 8225, H.R. 8278, H.R. 8393, H.R. 8420, H.R. 8474, and H.R. 9398 will be printed at this point in the record.

[Testimony resumes on p. 59]

[The text of the bills referred to follow:]

95TH CONGRESS
1ST SESSION

H. R. 6739

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 1977

Mr. STAGGERS (for himself and Mr. ROONEY) introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Regional Rail Reorganization Act of 1973 and the Department of Transportation Act to extend for fifteen months the period during which the Federal share of the cost of rail service continuation assistance is 100 percent.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) section 402 (a) of the Regional Rail Reorganiza-
4 tion Act of 1973 (45 U.S.C. 762 (a)) is amended by strik-
5 ing out "(A) 100 percent for the 12-month period" and
6 inserting in lieu thereof "(A) 100 percent for the 27-month
7 period".
8 (b) Section 806 of the Railroad Revitalization and
9 Regulatory Reform Act of 1976 (90 Stat. 143) is amended

1 by striking out "Effective on the date of the second anni-
2 versary of" and inserting in lieu thereof "Effective at the
3 end of the 39-month period beginning on".

4 SEC. 2. (a) Section 5 (g) of the Department of Trans-
5 portation Act (49 U.S.C. 1654 (g)) is amended by striking
6 out the first sentence thereof and inserting in lieu thereof
7 the following new sentence: "The Federal share of the costs
8 of any rail service assistance program shall be (1) 100 per-
9 cent for the period beginning July 1, 1976, and ending Sep-
10 tember 30, 1978, (2) 90 percent for the period begin-
11 ning October 1, 1978, and ending September 30, 1979,
12 (3) 80 percent for the period beginning October 1, 1979,
13 and ending September 30, 1980, and (4) 70 percent for the
14 period beginning October 1, 1980, and ending September 30,
15 1982.".

16 (b) The second sentence of section 5 (g) of the Depart-
17 ment of Transportation Act (49 U.S.C. 1654 (g)) is
18 amended by striking out "from July 1, 1979, to June 30,
19 1981," and inserting in lieu thereof "beginning October 1,
20 1980, and ending September 30, 1982,".

21 (c) Section 5 (n) of the Department of Transportation
22 Act (49 U.S.C. 1654 (n)) is amended—

23 (1) in paragraph (1) thereof, by striking out "from
24 the date of enactment of this subsection through the sec-
25 ond anniversary of" and inserting in lieu thereof "begin-

1 ning on the date of enactment of this subsection and
2 ending 39 months after"; and
3 (2) in paragraph (2) thereof, by striking out "the
4 second anniversary of the date on which rail properties
5 are conveyed pursuant to such section 303 (b) (1),"
6 and inserting in lieu thereof "the period described in
7 paragraph (1) of this subsection,".

95TH CONGRESS
1ST SESSION

H. R. 6792

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 1977

Mr. ROONEY (for himself, Mr. METCALFE, Ms. MIKULSKI, Mr. SANTINI, Mr. FLORIO, Mr. HOWARD, and Mr. SKUBITZ) introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Regional Rail Reorganization Act of 1973 and the Department of Transportation Act to extend for one year the period during which the Federal Government pays 100 percent of the cost of rail service assistance programs involving rehabilitation, maintenance, and improvement of rail properties.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 402 (a) (1) of the Regional Rail Reorganiza-
4 tion Act of 1973 (45 U.S.C. 762 (a) (1)) is amended by
5 striking out the last sentence thereof and inserting in lieu
6 thereof the following: "The Federal share of the cost of any
7 such assistance for the rehabilitation and maintenance of rail

1 properties shall be 100 percent for the 24-month period
2 following the date on which rail properties are conveyed
3 pursuant to section 303(b)(1) of this Act. The Federal
4 share of the cost of any such assistance for purposes other
5 than the rehabilitation and maintenance of rail properties
6 shall be (A) 100 for the 12-month period following such
7 date of conveyance, and (B) 90 percent for the succeeding
8 12-month period.".

9 SEC. 2. Section 5(g) of the Department of Transporta-
10 tion Act (49 U.S.C. 1654(g)) is amended to read as
11 follows:

12 "(g)(1) The Federal share of the cost of any rail
13 service assistance program described in paragraph (3) of
14 subsection (f) of this section shall be (A) 100 percent for
15 the period beginning July 1, 1976, and ending June 30,
16 1978, (B) 90 percent for the period beginning July 1,
17 1978, and ending June 30, 1979, (C) 80 percent for the
18 period beginning July 1, 1979, and ending June 30, 1980,
19 and (D) 70 percent for the period beginning July 1, 1980,
20 and ending June 30, 1981.

21 "(2) The Federal share of the cost of any rail service
22 assistance program described in paragraph (1), (2), or
23 (4) of subsection (f) of this section shall be (A) 100 per-
24 cent for the period beginning July 1, 1976, and ending June
25 30, 1977, (B) 90 percent for the period beginning July 1,

1977, and ending June 30, 1978, (C) 80 percent for the period beginning July 1, 1978, and ending June 30, 1979, and (D) 70 percent for the period beginning July 1, 1979, and ending June 30, 1981.

"(3) For the period beginning on July 1, 1979, and ending June 30, 1981, the Secretary may make such adjustments in the percentage level of the Federal share as may be necessary and appropriate so as not to exceed the maximum amount of funds authorized under subsection (o) of this section. The Secretary shall, within one year after the date of enactment of this subsection, promulgate standards and procedures under which the State share of the cost of any rail service assistance program may be provided through in-kind benefits such as forgiveness of taxes, trackage rights, and facilities which would not otherwise be provided.".

95TH CONGRESS
1ST SESSION

H. R. 8393

IN THE HOUSE OF REPRESENTATIVES

JULY 18, 1977

Mr. STAGGERS (for himself and Mr. ROONEY) introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Department of Transportation Act and the Regional Rail Reorganization Act of 1973 to extend the eligibility for financial assistance under the rail service assistance programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "State Rail Freight Assist-
4 ance Act of 1977".

5 SEC. 2. (a) The first sentence of section 5 (g) of the
6 Department of Transportation Act (49 U.S.C. 1654 (g)) is
7 amended to read as follows: "The Federal share of the costs
8 of any rail service assistance program shall be as follows:
9 (1) 100 percent for the period from July 1, 1976, to March

1 30, 1978; (2) 90 percent for the period from April 1, 1978,
2 to September 30, 1978; (3) 80 percent for the period from
3 October 1, 1978, to September 30, 1979; and (4) 70 per-
4 cent for the period from October 1, 1979, to September 30,
5 1981.".

6 (b) The second sentence of section 5 (g) of the Depart-
7 ment of Transportation Act (49 U.S.C. 1654 (g)) is
8 amended by striking out "July 1, 1979 to June 30, 1981,"
9 and inserting in lieu thereof "October 1, 1979, to Septem-
10 ber 30, 1981,".

11 (c) Section 5 (g) of the Department of Transportation
12 Act (49 U.S.C. 1654 (g)) is further amended by adding at
13 the end thereof the following new sentences: "In-kind bene-
14 fits which a State provides for any period in excess of such
15 State's share of project costs for such period shall be applied
16 toward such State's share in any subsequent period. The date
17 of initiation of any maintenance, rehabilitation, improvement,
18 or acquisition project shall determine the period from which
19 rail freight assistance to which a State is entitled shall be
20 provided for such project. Whenever the costs of an ap-
21 proved maintenance, rehabilitation, improvement, or acquisi-
22 tion project exceed the amount of unobligated rail freight
23 service assistance to which a State is entitled for the period
24 in which such project is initiated, the Secretary may provide
25 assistance in any subsequent period to cover the costs of such

1 project, at the percentage level and from the Federal share
2 established by this subsection for such subsequent period.".
3 SEC. 3. Section 5 (k) of the Department of Transporta-
4 tion Act (49 U.S.C. 1654 (k)) is amended—
5 (1) by striking out "or" immediately after "proj-
6 ect"; and
7 (2) by inserting immediately after "1973" the fol-
8 lowing: ", (C) the line of railroad is subject to an
9 abandonment proceeding before the Commission, or (D)
10 the line of railroad is classified as 'potentially subject to
11 abandonment' pursuant to section 1a (5) (a) of the In-
12 terstate Commerce Act (49 U.S.C. 1a (5) (a))"; and
13 (3) by adding at the end thereof, without para-
14 graph indentation, the following new sentence:
15 "Financial assistance with respect to rail services described
16 in subparagraphs (C) and (D) of paragraph (1) of this
17 subsection shall be available to cover those costs of rehabilitat-
18 ing and improving rail properties which are necessary to per-
19 mit adequate and efficient rail service, including, as a mini-
20 mum, the upgrading of all track to class II standards, as
21 defined by the Administrator of the Federal Railroad Admin-
22 istration.".
23 SEC. 4. Section 5 (l) of the Department of Transporta-
24 tion Act (49 U.S.C. 1654 (l)) is amended by adding at the
25 end thereof the following new sentence: "Nothing in this

1 section shall be construed to require, as a condition to finan-
2 cial assistance under subsections (f) through (o) of this
3 section, the approval of the Secretary prior to the initiation
4 of a State rail freight program or project, or to authorize the
5 Secretary either to approve or to withhold approval of any
6 such program or project on the grounds that such program
7 or project was initiated without the prior approval of the
8 Secretary.".

9 SEC. 5. (a) Section 5(o) of the Department of Trans-
10 portation Act (49 U.S.C. 1645(o)) is amended by
11 striking out "$360,000,000" and inserting in lieu thereof
12 "$450,000,000".

13 (b) The second sentence of section 5(o) of the De-
14 partment of Transportation Act (49 U.S.C. 1654(o)) is
15 amended to read as follows: "Of the foregoing sums, not to
16 exceed $10,000,000 shall be made available for planning
17 grants during each of the five fiscal years ending June 30,
18 1976, September 30, 1977, September 30, 1978, Septem-
19 ber 30, 1979, and September 30, 1980.".

20 SEC. 6. The second sentence of section 402(a)(1) of
21 the Regional Rail Reorganization Act of 1973 (45 U.S.C.
22 762(a)(1)) is amended to read as follows: "The Federal
23 share of the costs of any such assistance shall be 100 per
24 centum for the 24-month period following the date that rail

1 properties are conveyed pursuant to section 303 (b) (1) of
2 this Act.".

3 SEC. 7. Section 402 (a) (2) of the Regional Rail Re-
4 organization Act of 1973 (45 U.S.C. 762 (a) (2)) is
5 amended by adding at the end thereof the following new
6 sentences: "In-kind benefits which a State provides for any
7 period in excess of such State's share of project costs for
8 such period shall be applied toward such State's share in any
9 subsequent period. The date of initiation of any maintenance,
10 rehabilitation, improvement, or acquisition project shall de-
11 termine the period from which rail freight assistance to
12 which a State is entitled shall be provided for such project.
13 Whenever the costs of an approved maintenance, rehabilita-
14 tion, improvement, or acquisition project exceed the amount
15 of rail freight service assistance to which a State is entitled
16 for the period in which such project is initiated, the Secre-
17 tary may provide assistance in any subsequent period to
18 cover the costs of such project at the percentage level and
19 from the Federal share established by this subsection for
20 such subsequent period.".

21 SEC. 8. Section 402 (e) (2) of the Regional Rail Re-
22 organization Act of 1973 (45 U.S.C. 762 (e) (2)) is
23 amended—

1 (1) by striking out "or" at the end of subpara-
2 graph (C) thereof;
3 (2) by striking out the period at the end of sub-
4 paragraph (D) thereof and inserting in lieu thereof a
5 semicolon;
6 (3) by adding at the end thereof the following:
7 "(E) those rail services on a line of railroad
8 subject to an abandonment proceeding before the
9 Commission; or
10 "(F) those rail services on a line of railroad
11 classified as 'potentially subject to abandonment'
12 pursuant to section 1a(5) (a) of the Interstate Com-
13 merce Act (49 U.S.C. 1a(5) (a)).
14 Financial assistance with respect to rail services described
15 in subparagraphs (E) and (F) of this paragraph shall be
16 available to cover those costs of rehabilitating and improving
17 rail properties which are necessary to permit adequate and
18 efficient rail service, including, as a minimum, the upgrading
19 of all track to Class II standards, as defined by the Adminis-
20 trator of the Federal Railroad Administration.".
21 SEC. 9. Section 402(e) of the Regional Rail Reorgani-
22 zation Act of 1973 (45 U.S.C. 762(e)) is amended by
23 adding at the end thereof the following new sentence: "Noth-
24 ing in this section shall be construed to require, as a condi-
25 tion to rail service continuation assistance under this section,

1 the approval of the Secretary prior to the initiation of a State
2 rail freight program or project, or to authorize the Secretary
3 either to approve or to withhold approval of any such pro-
4 gram or project on the grounds that such program or project
5 was initiated without the prior approval of the Secretary.".
6 SEC. 10. Section 1a (4) of the Interstate Commerce Act
7 (49 U.S.C. 1a (4)) is amended by adding at the end thereof
8 the following new sentences: "The terms and conditions
9 referred to in subdivision (b) of this paragraph may include
10 a direction awarding trackage rights to another common car-
11 rier by railroad or to a State or political subdivision thereof
12 for all or any portion of the lines of the applicant's railroad
13 located within such State which the Commission determines
14 are needed solely for purposes of providing rail freight serv-
15 ice which otherwise would no longer be available due to an
16 abandonment or discontinuance. In making such determina-
17 tion, the Commission shall consider the views of any State
18 or other party directly affected by such abandonment or dis-
19 continuance and shall fix just and reasonable compensation,
20 in accordance with section 3 (5) of this part, for such track-
21 age rights.".

H.R. 7370, introduced by Mr. Rooney (by request) May 23, 1977, and

H.R. 8420, introduced by Mr. Rooney (by request) July 19, 1977, and

H.R. 8172, introduced by Mr. Russo on June 30, 1977, and

H.R. 8474, introduced by Mr. Russo (for himself, Mr. Abdnor, Mr. Madigan, Mr. Santini, and Mr. Smith of Iowa) on July 21, 1977, and

H.R. 7715, introduced by Mr. Bowen on June 10, 1977, and

H.R. 8278, introduced by Mr. Whitten on July 13, 1977,
are identical as follows:]

A BILL

To amend the Department of Transportation Act and the Regional Rail Reorganization Act of 1973 to extend the eligibility for financial assistance under the rail service assistance programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "State Rail Freight Assist-
4 ance Act of 1977".

5 SEC. 2. (a) The first sentence of section 5(g) of the
6 Department of Transportation Act (49 U.S.C. 1654(g)) is
7 amended to read as follows: "The Federal share of the costs
8 of any rail service assistance program shall be as follows:
9 (1) 100 percent for the period from July 1, 1976, to Sep-

1 March 30, 1978; (2) 90 percent for the period from April 1,
2 1978, to September 30, 1978; (3) 80 percent for the period
3 from October 1, 1978, to September 30, 1979; and (4) 70
4 percent for the period from October 1, 1979, to Septem-
5 ber 30, 1981.".

6 (b) The second sentence of section 5 (g) of the Depart-
7 ment of Transportation Act (49 U.S.C. 1654 (g)) is
8 amended by striking out "July 1, 1979 to June 30, 1981,"
9 and inserting in lieu thereof "October 1, 1979, to Septem-
10 ber 30, 1981,".

11 (c) Section 5 (g) of the Department of Transportation
12 Act (49 U.S.C. 1654 (g)) is further amended by adding at
13 the end thereof the following new sentences: "In-kind bene-
14 fits which a State provides for any period in excess of such
15 State's share of project costs for such period shall be applied
16 toward such State's share in any subsequent period. The date
17 of initiation of any maintenance, rehabilitation, improvement,
18 or acquisition project shall determine the period from which
19 rail freight assistance to which a State is entitled shall be
20 provided for such project. Whenever the costs of an ap-
21 proved maintenance, rehabilitation, improvement, or acquisi-
22 tion project exceed the amount of unobligated rail freight
23 service assistance to which a State is entitled for the period
24 in which such project is initiated, the Secretary may provide
25 assistance in any subsequent period to cover the costs of such

1 project, at the percentage level and from the Federal share
2 established by this subsection for such subsequent period.".
3 SEC. 3. Section 5(k) of the Department of Trans-
4 portation Act (49 U.S.C. 1654(k)) is amended—
5 (1) by striking out "or" immediately after "proj-
6 ect"; and
7 (2) by inserting immediately after "1973" the fol-
8 lowing: ", (C) the line of railroad is subject to an
9 abandonment proceeding before the Commission, or (D)
10 the line of railroad is classified as 'potentially subject to
11 abandonment' pursuant to section 1a(5)(a) of the In-
12 terstate Commerce Act (49 U.S.C. 1a(5)(a))".
13 SEC. 4. Section 5(l) of the Department of Transporta-
14 tion Act (49 U.S.C. 1654(l)) is amended by adding at the
15 end thereof the following new sentences: "The authoriza-
16 tion of the appropriation of Federal funds or their avail-
17 ability for expenditure for purposes of subsections (f)
18 through (o) of this section shall in no way infringe on the
19 sovereign rights of the States to determine which projects
20 shall be federally financed. The Secretary shall not with-
21 hold approval of a State rail freight program or project solely
22 on the grounds that the State initiated the program or project
23 without the prior approval of the Secretary. The provisions
24 of subsections (f) through (o) of this section provide for a
25 federally assisted State program.".

1 SEC. 5. The second sentence of section 5 (o) of the De-
2 partment of Transportation Act (49 U.S.C. 1654 (o)) is
3 amended to read as follows: "Of the foregoing sums, not to
4 exceed $10,000,000 shall be made available for planning
5 grants during each of the 5 fiscal years ending June 30,
6 1976, September 30, 1977, September 30, 1978, Septem-
7 ber 30, 1979, and September 30, 1980.".

8 SEC. 6. The second sentence of section 402 (a) (1) of
9 the Regional Rail Reorganization Act of 1973 (45 U.S.C.
10 762 (a) (1)) is amended to read as follows: "The Federal
11 share of the costs of any such assistance shall be as follows:
12 (A) 100 percent for the 18-month period following the
13 date that rail properties are conveyed pursuant to section
14 303 (b) (1) of this Act; and (B) 90 percent for the suc-
15 ceeding 6-month period.".

16 SEC. 7. Section 402 (a) (2) of the Regional Rail Re-
17 organization Act of 1973 (45 U.S.C. 762 (a) (2)) is
18 amended by adding at the end thereof the following new
19 sentences: "In-kind benefits which a State provides for any
20 period in excess of such State's share of project costs for
21 such period shall be applied toward such State's share in any
22 subsequent period. The date of initiation of any maintenance,
23 rehabilitation, improvement, or acquisition project shall deter-
24 mine the period from which rail freight assistance to which
25 a State is entitled shall be provided for such project. When-

1 ever the costs of an approved maintenance, rehabilitation,
2 improvement, or acquisition project exceed the amount of
3 rail freight service assistance to which a State is entitled for
4 the period in which such project is initiated, the Secretary
5 may provide assistance in any subsequent period to cover
6 the costs of such project at the percentage level and from
7 the Federal share established by this subsection for such
8 subsequent period.".

9 SEC. 8. Section 402 (c) (2) of the Regional Rail Reor-
10 ganization Act of 1973 (45 U.S.C. 762 (c) (2)) is
11 amended—

12 (1) by striking out "or" at the end of subpara-
13 graph (C) thereof;

14 (2) by striking out the period at the end of sub-
15 paragraph (D) thereof and inserting in lieu thereof a
16 semicolon;

17 (3) by adding at the end thereof the following new
18 subparagraphs:

19 "(E) those rail services on a line of railroad
20 subject to an abandonment proceeding before the
21 Commission; or

22 "(F) those rail services on a line of railroad
23 classified as 'potentially subject to abandonment'
24 pursuant to section 1a (5) (a) of the Interstate
25 Commerce Act (49 U.S.C. 1a (5) (a)).".

1 SEC. 9. Section 402(e) of the Regional Rail Reorga-
2 nization Act of 1973 (45 U.S.C. 762(e)) is amended by
3 adding at the end thereof the following new sentences: "The
4 authorization of the appropriation of Federal funds or their
5 availability for expenditure for the purpose of this section
6 shall in no way infringe on the sovereign rights of the States
7 to determine which projects shall be federally financed. The
8 Secretary shall not withhold approval of a State rail freight
9 program or project solely on the grounds that the State
10 initiated the program or project without the prior approval
11 of the Secretary. The provisions of this section provide for a
12 federally assisted State program.".
13 SEC. 10. Section 1a(4) of the Interstate Commerce
14 Act (49 U.S.C. 1a(4)) is amended by adding at the end
15 thereof the following new sentences: "The terms and condi-
16 tions referred to in subdivision (b) of this paragraph may
17 include authorization for another common carrier by railroad
18 subject to this part to operate rail service over all or any
19 portion of the lines subject to abandonment or discontin-
20 uance and over such additional lines of the applicant's
21 railroad, as determined by the Commission to be necessary
22 to meet the present or future public convenience and neces-
23 sity. In making such determination, the Commission shall

1 consider the views of any State directly affected by such
2 abandonment or discontinuance and shall fix just and rea-
3 sonable compensation, in accordance with section 3 (5) of
4 this part, for the use of the applicant's rail lines.".

H.R. 3672, introduced by Mr. McDade on February 17, 1977, and H.R. 7486, introduced by Mr. Trible on May 26, 1977, are identical as follows:]

A BILL

To amend the "Railroad Revitalization and Regulatory Reform Act of 1976" and the "Regional Rail Reorganization Act of 1973".

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 SEC. 101. Section 803 of the Railroad Revitalization and
4 Regulatory Reform Act of 1976 (which amends section 5
5 of the Department of Transportation Act as added by sec-
6 tion 401 of this Act (49 U.S.C. 1654)), is amended by strik-
7 ing out "(g) The Federal share of the costs of any rail
8 service assistance program shall be as follows: (1) 100 per-
9 cent for the period from July 1, 1976, to June 30, 1977;
10 (2) 90 percent for the period from July 1, 1977, to June 30,

1 1978; (3) 80 percent for the period from July 1, 1978, to
2 June 30, 1979; and (4) 70 percent for the period from
3 July 1, 1979, to June 30, 1981" and inserting in lieu thereof
4 "(g) The Federal share of the costs of any rail service
5 assistance program shall be as follows: (1) 100 percent for
6 the period from July 1, 1976, to June 30, 1978; (2) 90
7 percent for the period from July 1, 1978, to June 30, 1979;
8 (3) 80 percent for the period from July 1, 1979, to June 30,
9 1970; and (4) 70 percent for the period from July 1, 1980,
10 to June 30, 1982".

11 SEC. 102. Section 402 (a) of the Regional Rail Reor-
12 ganization Act of 1973 (45 U.S.C. 762) is amended by
13 striking out "(A) 100 percent for the 12-month period" and
14 inserting in lieu thereof "(A) 100 percent for the 24-month
15 period".

16 SEC. 103. Section 808 of the Railroad Revitalization and
17 Regulatory Reform Act of 1976 which amends the Urban
18 Mass Transportation Act of 1964 is amended by striking out
19 in section 17 (d):

20 "(3) 90 percent for the 12-month period succeeding
21 the period specified in subparagraph (2) of this subsec-
22 tion; and

1 "(4) 50 percent for the 180-day period succeeding
2 the period specified in subparagraph (3) of this
3 subsection.",
4 and inserting in lieu thereof
5 "(3) 100 percent for the 12-month period succeed-
6 ing the period specified in subparagraph (2) of this
7 subsection;
8 "(4) 90 percent for the 12-month period succeeding
9 the period specified in subparagraph (3) of this subsec-
10 tion; and
11 "(5) 50 percent for the 180-day period succeeding
12 the period specified in subparagraph (4) of this sub-
13 section.".

95TH CONGRESS
1ST SESSION

H. R. 2156

IN THE HOUSE OF REPRESENTATIVES

JANUARY 19, 1977

Mr. ROE introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To provide preemptive option and financial assistance to States to purchase abandoned rail lines for transportation and utility purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That in any case where any department, agency, or instru-
4 mentality of the Federal, a State, or a local government
5 requires, approves, acquiesces in, or otherwise provides for,
6 directly or indirectly, the abandonment of any rail line, such
7 abandonment shall be on the condition that the owner of
8 such rail line give the State in which such rail line is located
9 a reasonable opportunity, but no less than one year, to pur-
10 chase such rail line at the fair market value for use for trans-

1 portation and public utility purposes prior to its sale to any
2 other person. The acquisition by the State of such a rail
3 line shall be a project for which a grant may be made under
4 current Federal financial assistance programs for transporta-
5 tion and public utility purposes and the Federal share of the
6 cost of such a project shall be reimbursable to the State.

95TH CONGRESS
1ST SESSION

H. R. 1538

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1977

Mr. TRAXLER introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

---

A BILL

To amend the Regional Rail Reorganization Act of 1973 to provide for the equitable distribution of rail service continuation assistance in the Region.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 402 (b) (1) of the Regional Rail Reorganiza-
4 tion Act of 1973 (45 U.S.C. 762 (b) (1)) is amended by
5 striking the sentence "Notwithstanding the preceding sen-
6 tence, the entitlement of each State shall not be less than
7 3 percent of the funds appropriated.".

95TH CONGRESS
1ST SESSION

H. R. 6871

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 1977

Mr. TRAXLER introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Interstate Commerce Act to provide financial assistance to common carriers by railroad to cover the cost of operation and rehabilitation of certain lines of railroad.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) section 1a (6) of the Interstate Commerce Act
4 (49 U.S.C. 1a (6)) is amended by redesignating subdivision
5 (b) thereof as subdivision (c) and by inserting immediately
6 after subdivision (a) thereof the following new subdivision:
7 "(b) Whenever the Commission makes a finding—
8 "(i) in accordance with this section, that the public
9 convenience and necessity do not permit the abandon-
10 ment or discontinuance of a line of railroad; and

1 "(ii) that the avoidable cost of providing rail serv-
2 ice on such line plus a reasonable return on the value of
3 the rail properties involved exceeds the revenues attribut-
4 able to such line,
5 the common carrier by railroad which operates such line of
6 railroad shall be eligible for financial assistance with respect
7 to such line under section 1b of this part.".
8 (b) Section 1a(8) of the Interstate Commerce Act is
9 amended by striking out "paragraphs (6)" and inserting
10 in lieu thereof "paragraphs (6) (a), (6) (c),".
11 (c) Section 1a(11) (a) of the Interstate Commerce Act
12 is amended—
13 (1) by inserting "(i)" immediately before
14 "means";
15 (2) by redesignating clauses (i), (ii), and (iii)
16 thereof as clauses (A), (B), and (C), respectively;
17 and
18 (3) by striking out the period at the end thereof
19 and inserting in lieu thereof the following: "; and (ii)
20 for purposes of paragraph (6) (b) of this section, such
21 term includes the cost of rehabilitating a line of railroad
22 to a level capable of handling rail traffic over the entire
23 length of such line at a speed equal to the greater of
24 (A) the maximum speed which may be continuously
25 maintained over the longest single segment of such line

1 (without regard to any reductions in speed, at curves or
2 bridges, which are necessary for safety), or (B) 30 miles
3 per hour.".

4 SEC. 2. The Interstate Commerce Act (49 U.S.C. 1 et
5 seq.) is amended by inserting immediately after section 1a
6 thereof the following new section:

7 "FINANCIAL ASSISTANCE FOR OPERATION AND
8 REHABILITATION

9 "SEC. 1b. (1) (a) Upon the application of a common
10 carrier by railroad which is eligible, under section 1a (6) (b)
11 of this part, for financial assistance with respect to a particu-
12 lar line of railroad, the Administrator of the Federal Rail-
13 road Administration shall enter into a contract with such
14 carrier for the provision of such financial assistance.

15 "(b) Each eligible carrier shall include in its applica-
16 tion to the Administrator, pursuant to subdivision (a) of
17 this paragraph, reports and data of the type described in
18 paragraph (6) (c) of section 1a of this part.

19 "(c) Each contract entered into pursuant to this para-
20 graph shall be for a period of 5 years, and no such contract
21 may be entered into after 10 years after the date of enact-
22 ment of this section.

23 "(2) The Federal share of the cost of financial assist-
24 ance under this section shall be—

1 "(a) 100 percent for the first year of the contract
2 described in paragraph (1) of this section;
3 "(b) 90 percent for the second year of such
4 contract;
5 "(c) 80 percent for the third year of such contract;
6 "(d) 70 percent for the fourth year of such con-
7 tract; and
8 "(e) 60 percent for the fifth year of such contract.
9 "(3) (a) Financial assistance provided pursuant to this
10 section with respect to a line of railroad may be used—
11 "(i) to cover the cost of operating rail services over
12 such line of railroad; and
13 "(ii) to cover the cost of rehabilitation of such line
14 to the maximum level described in subdivision (b) of
15 this paragraph.
16 "(b) For purposes of subdivision (a) of this paragraph,
17 a line of railroad may be rehabilitated to a level capable of
18 handling rail traffic over the entire length of such line at a
19 speed equal to the greater of—
20 "(i) the maximum speed which may be continu-
21 ously maintained over the longest single segment of such
22 line (without regard to any reductions in speed, at
23 curves or bridges, which are necessary for safety); or
24 "(ii) 30 miles per hour.
25 "(4) There are authorized to be appropriated to carry

1 out the provisions of this section $20,000,000 for each of the
2 fiscal years 1978 through 1992.".
3 SEC. 3. The amendments made by this Act shall take
4 effect on the date of the enactment of this Act, and shall
5 apply with respect to any application for a certificate of
6 abandonment or discontinuance which is denied by the Inter-
7 state Commerce Commission, pursuant to section 1a of the
8 Interstate Commerce Act, after January 1, 1977.

95TH CONGRESS
1ST SESSION

H. R. 8225

IN THE HOUSE OF REPRESENTATIVES

JULY 12, 1977

Mr. EVANS of Delaware (for himself, Mr. BAUMAN, and Mr. TRIBLE) introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Regional Rail Reorganization Act of 1973 to permit States to combine funds for the maintenance and improvement of rail service continuation programs established under such Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the fifth sentence of section 402 (b) (1) of the Regional
4 Rail Reorganization Act of 1973 (45 U.S.C. 762 (b) (1))
5 is amended by striking out the period at the end thereof and
6 inserting in lieu thereof the following: ", except that two or
7 more States that are eligible for local rail assistance under this
8 subsection may, subject to agreement between or among
9 them, combine any portion of their respective Federal entitle-

1 ments under subsection (b) of this section in order to im-
2 prove rail properties within their respective States or regions.
3 Such combination of entitlements, where not violative of
4 State law, shall be permitted, except that—
5 "(A) combined funds may be expended only for
6 purposes listed in this section; and
7 "(B) combined funds that are expended in one
8 State subject to the agreement entered into by the in-
9 volved States, and which exceed what the State could
10 have expended absent any agreement, must be found by
11 the Secretary to provide benefits to eligible freight
12 services within one or more of the other States which is
13 party to the agreement.".

This morning, our first witness will be the distinguished gentleman from the State of Delaware, the Honorable Congressman Evans, who introduced H.R. 8225, a bill which would permit two or more States to combine their respective Federal entitlement to assistance in order to improve rail properties within their respective States.

Congressman Evans, we welcome you to the committee this morning.

STATEMENT OF HON. THOMAS B. EVANS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF DELAWARE

Mr. EVANS. First of all, I would like to thank you for scheduling these hearings on our rail service assistance program. The maintenance of adequate rail service is of utmost economic importance to our State of Delaware and certainly to many States throughout the nation, and I am very pleased that the committee is taking the time to consider improvements in our rail service program.

I know that the committee has many bills before it, so I will be very brief and hopefully take less than 5 minutes of your time.

I support the extension of the 100 percent subsidy program and hope that you will favorably act upon such a proposal. However, my

21-684 O - 78 - 5

primary reason for appearing before you today is to discuss my legislation, H.R. 8225.

This measure, which has been cosponsored by Congressman Bauman of Maryland and Congressman Trible of Virginia, would permit States to combine or pool their allocation under the rail service continuation program of the Regional Rail Reorganization Act of 1973.

As you know, under current law, a State which does not use or commit its entire entitlement must return the unused portion to the Secretary, who then reallocates money to other States based on the formula. This requirement completely ignores the regional, multi-State nature of rail transportation by prohibiting States from pooling their resources for projects of mutual interest which lie outside one State's boundaries.

Although I am sure many States have similar problems and could thus benefit from the legislation, I am particularly familiar with the situation as it affects the Delmarva Peninsula. The Delmarva Peninsula is made up of three States—Delaware, Maryland and Virginia—each of which receives an entitlement under section 402 of the Regional Rail Reorganization Act. The main line between Norfolk and major eastern cities, such as Wilmington, Philadelphia and New York, passes up the peninsula through each State, and the maintenance of this north-south artery is of extreme importance to each of those three States.

However, that continued service is jeopardized by the inability of the State of Virginia to fully subsidize their portion of the line. This inability is due to the fact that the Virginia portion of the line contains high-cost operations such as a car float across the mouth of the Chesapeake Bay. Should service on the Virginia portion of the line be curtailed or eliminated completely, then operations in Delaware and Maryland would be severely impacted. In short, the Delaware line would cease to be a major transportation artery and instead become a long spur line with no direct access to the South.

Fortunately, the State of Delaware receives more Federal funding than it needs to operate their subsidized lines. We want to be able to contribute the excess to the maintenance of rail service on the Delmarva Peninsula, but are prevented solely because the high-cost portions of the line which are so important to Delaware farms and businesses happen to lie outside of the boundaries of our State.

Thus, money which could and should help Delmarva must be returned to Washington.

The Delmarva Peninsula is an integrated economic community. I am sure there are other equally valid examples of the economic interdependence throughout the Northeast and across the country.

I believe that our Federal rail program should help, not hinder, interstate cooperation. My legislation is designed to help foster a multi-State approach to rail transportation. I hope that the committee will agree with me that such an approach is good not only for the States involved but for the nation as well.

Under the bill, combined funds may be expended only for the purposes listed in section 402 of the act. Additionally, prior to any transfer or combination, the Secretary of Transportation must find that combined funds that are expended in one State provide benefit to one or more other States which are party to the agreement.

Mr. Chairman, H.R. 8225 will permit multi-State cooperation in rail service programs. I hope the committee will look favorably on this proposal, and I appreciate your kindness in allowing me to testify this morning.

Mr. ROONEY. Thank you very much, Congressman Evans. You have delivered a very fine statement, and I commend you for your efforts.

I wonder if you can tell the subcommittee how your pooling benefits permit Virginia to contribute its share as the Federal share decreases?

Mr. EVANS. Under this bill, we would be allowed to contribute part of our unused portion to the State of Virginia. What was your question, Mr. Chairman?

Mr. ROONEY. How Virginia could contribute when the Federal moneys decrease?

Mr. EVANS. How could Virginia contribute?

Mr. ROONEY. Right. Would they continue to contribute as the Federal subsidies decrease?

Mr. EVANS. In this instance, from a practical standpoint—under the bill Virginia could contribute to us to help maintain the line, but, practically speaking, we will be contributing to Virginia, because Virginia has the high-cost operation.

Mr. ROONEY. Could you explain where is that high-cost operation?

Mr. EVANS. I have a map here of the Delmarva Peninsula. Delaware takes up half of the peninsula, Maryland, this part; and Virginia, a very narrow strip at the bottom. The mouth of the Chesapeake Bay is here, and there is a car float operation from the tip of the southernmost part of the Delmarva Peninsula that goes across to Little Creek, Virginia, and interconnects with the Southern Railroad and others.

So what happens is if you are for example, in Seaford, Delaware, in the lower part of the State of Delaware, there is some industry there, but most of this is agricultural, most of it is rural. But the nylon plant, duPont's plant there, that employs about 5,000 people. In many instances they would prefer to go south than north. Farmers here in the Maryland area or in the Virginia area would prefer to go south rather than north and around because it is less expensive.

What happens if they go north, about 20 miles south of the northernmost tip, there is a bridge that is a single-rail bridge across the Chesapeake-Delaware Canal, and that has been out on more than one occasion. When that goes out, it disrupts service tremendously, and you have to go south. Now if you can't go north and you can't go south, you are in a pretty bad fix. As far as industrial development, as far as the development of a number of farms in Delaware, Maryland and Virginia, we would be in one heck of a bad situation.

Mr. ROONEY. Mr. Florio.

Mr. FLORIO. I think your plan is infinitely sensible and certainly deserving of consideration by the committee.

Just on another subject for a moment, I have had brought to my attention the suggestion that Amtrak is giving consideration to

phasing out a maintenance facility in Wilmington, Delaware. Are you conversant with this?

Mr. EVANS. I am, Mr. Florio. I spoke to representatives from Amtrak, and the indication was that the board was meeting today to consider that, but they told me they are not going to do that, today, and probably are not going to do it in the foreseeable future.

We have the Wilmington yards, and I know some of your constituents, particularly in the Camden area, work at those yards and constituents of others surrounding Delaware. We have an electric capacity in the Wilmington yards to work with electric motors, and the people in Massachusetts don't have that. I was told for at least 5 to 10 years they certainly would not consider moving that facility.

Mr. FLORIO. I am planning on staying on top of it and would appreciate your cooperation.

Mr. EVANS. You have my complete cooperation.

Mr. FLORIO. Thank you.

Mr. ROONEY. Thank you very much.

Mr. EVANS. Thank you, Mr. Chairman. I appreciate your kindness.

Mr. ROONEY. Our next witness is the Honorable Daniel O'Neal, Chairman of the Interstate Commerce Commission, 12th and Constitution Avenue, Washington, D.C.

I understand, Mr. Chairman, this is your first visit to the subcommittee as Chairman, although you have been on the Commission for the past 3 years. I want to commend you for the contributions you have made to the ICC and wish you well in the future as chairman.

STATEMENT OF HON. DANIEL O'NEAL, CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY ALAN FITZWATER, DIRECTOR, RAIL SERVICES PLANNING OFFICE

Mr. O'NEAL. Thank you, Mr. Chairman. With me today is Alan Fitzwater, who is the director of the Rail Services Planning Office. I am sure you know him well.

We appreciate, of course, the opportunity to present our views on the various bills which would modify the State rail assistance programs established by the 3-R and the 4-R acts.

I have a fairly long written statement, which bears a table at the end of it, which I would like to submit for the record.

Mr. ROONEY. Without objection it will be included in the record.

Mr. O'NEAL. I have here a short statement I will go through, and I will be happy to try to answer any questions at the conclusion.

As I mentioned, because of the large number of bills dealing with this subject, and because most of them have similar features, I will not try to go through a section-by-section analysis of each. Instead, I will address what we believe to be the principal features of the various bills and explain the Commission's position and recommendation on each of them.

The Commission has prepared, as I mentioned, a summary chart of each of the bills, which is attached to the more lengthy statement. Also attached is a proposed bill which incorporates our recommendations on each of the issues that are raised herein.

The principal feature contained in all of the subject bills is an extension of the 100 percent Federal assistance period. Different

periods of time for this extension are set forth in the different bills. The Commission believes it was clearly the intent of Congress that rehabilitation and maintenance be performed under 100 percent subsidy for a 1-year period. However, very little maintenance and rehabilitation was performed during this period due to the slow start-up of the programs and certain difficulties experienced in executing leases with the trustees of the bankrupt railroads. We believe, as did the Congress, that the States need a minimum 1-year period of 100 percent subsidy for rehabilitation and maintenance. Accordingly, we support the extension of the 100 percent subsidy for that purpose.

However, we support this extension only for rehabilitation and maintenance, not for the operating portion of the subsidy. We believe that requiring a State to contribute to the operating subsidy has resulted in beneficial modifications to the subsidized operations, which might not have been achieved without such a requirement. Thus, we do not suggest changing this aspect of the Federal assistance.

In addition to supporting an extension of the 100 percent Federal subsidy, we support changing the subsidy funding years to coincide with the Federal fiscal year. This, we feel, will help avoid confusion and lead to improved planning.

Four of the subject bills, H.R. 7370, H.R. 7715, H.R. 8172, and H.R. 8393, propose changes to the formula for determining each State's entitlement to subsidy funds. In each case, the formula for determining each State's entitlement to subsidy funds would be broadened to include consideration of lines pending abandonment in a proceeding before the Commission, and also those lines identified on the railroads' system diagram maps as candidates for abandonment. Under the present law, as you know, the entitlement formula is based on lines which have been authorized for abandonment by the Commission.

These bills also would provide that these types of lines are eligible for subsidy assistance. The proposed change in entitlement, we believe, could lead to a more accurate assessment of the individual State's needs for subsidy funds. Also, we believe that expanding the type of line eligible for subsidy is a necessary adjunct to that set forth in the present law. Currently, only those lines already authorized for abandonment, as I mentioned, are eligible for subsidy. We believe, as some States do, that in certain circumstances it makes sense to provide one-time assistance, perhaps through rehabilitation, to a marginally profitable line, instead of permanently subsidizing a line which is so hopelessly unprofitable that it has been authorized for abandonment. We would suggest, however, that a third type of line be eligible for subsidy, too—those lines which the railroads intend to abandon within the next 3 years.

With regard to these eligible lines, three of the bills, H.R. 7370, H.R. 7715, and H.R. 8172, would allow subsidy assistance for operating costs as well as for rehabilitation projects. In contrast, H.R. 8393 would allow a subsidy only for rehabilitation, not for operating costs. It must be remembered that the lines under discussion have not been authorized for abandonment. Thus, the carriers are still obligated to provide service. We believe that the payment of operat-

ing costs to a carrier for the operation of a line which it is required by law to operate is not desirable. Accordingly, we support the concept of H.R. 8393, which limits the eligibility of projects on lines which are candidates for abandonment or are pending abandonment, to rehabilitation and improvement projects.

In addition, the Commission supports those bills which provide that these projects are to be reimbursed at the level of Federal participation in effect at the time a project is initiated. This would be consistent with normal government financial control procedures which provide that once a commitment of funds has been made, the funds shall be obligated against the appropriation in effect at the time of the commitment.

The Commission also supports the provisions which would allow States which provide in-kind benefits to the subsidized operator to carry forward the unexpended portion of the in-kind benefits to subsequent years. The Commission also endorses those bills which provide for an increase in State rail planning funds from $5 million per year for 3 years to $10 million per year for 5 years.

Finally, we support those bills which would amend the Interstate Commerce Act to declare specifically that the Commission could condition an abandonment authorization so as to require the owning railroad to allow a different operator to operate over the owning railroads tracks in order to provide subsidized service to the abandoned line.

That concludes the prepared statement.

[Mr. O'Neal's prepared statement follows:]

STATEMENT
OF
A. DANIEL O'NEAL,
CHAIRMAN, INTERSTATE COMMERCE COMMISSION
BEFORE THE SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE
OF THE HOUSE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
ON
STATE RAIL SERVICE ASSISTANCE PROGRAMS

July 27, 1977

Mr. Chairman, Members of the Subcommittee:

Good Morning. I want to thank the Chairman and members of the Transportation Subcommittee for giving the Commission this opportunity to present its views on the State Rail Assistance Programs established by the Regional Rail Reorganization Act of 1973 (3-R Act) and the Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act).

Because of the number of State Rail Freight Assistance Bills which have been introduced and because most of these bills contain similar features, I will not attempt to review each bill section-by-section. Instead, I will adress the principal features of the various bills and will explain the Commission's position and recommendation on each of the program elements for which amendments have been proposed.

The Commission has prepared a summary chart which compares the principal features of each of the bills. We have also drafted a proposed bill which incorporates our comments and recommendations on each of the issues raised herein, along with a section-by-section analysis of the proposed

bill. The summary chart and draft bill are included as attachments to this statement.

Federal Subsidy Participation Levels

The first subsidy program feature addressed by each of the bills deals with changes to the schedule for Federal assistance in the Regional and National freight subsidy assistance programs. The alternatives presented in the bills are numerous, including one-year extensions of the 100 percent Federal assistance period; adjustments of the subsidy years to coincide with the new Federal fiscal year; extensions of the Federal participation in rehabilitation and maintenance costs with no change in the percentage participation in the operating costs; and combinations of these alternatives.

Under present law, the subsidy year for the 17 Northeastern States begins on April 1, while the subsidy year for the remaining States begins on July 1. Prior to the recent change in the Federal fiscal year, the National subsidy funding years coincided with the fiscal year. The subsidy program dates for the Northeast Region correspond with the start-up date for ConRail. We believe that changing the appropriate dates to coincide with the Federal fiscal year will help avoid confusion and lead to improved planning. Accordingly, we support such a change.

In addition, we recommend that the Federal participation provisions of both the National and the Regional

subsidy programs be modified to permit an additional year of 100 percent Federal assistance for rehabilitation of subsidized lines. We believe this is necessary because rehabilitation which should have been performed during the 100- percent Federal assistance year could not be performed because of the slow start-up of the programs and the difficulties experienced in executing leases with the trustees of the bankrupt railroads. As a result, much necessary rehabilitation and maintenance was not performed, despite the Congressional intent that some of this rehabilitation and maintenance should have been performed under 100 percent subsidy.

However, we are not recommending any change in the level of Federal assistance for the operating portion of the subsidy payment. We believe that the current requirement that a State contribute to the subsidy payment in the second subsidy year has resulted in many beneficial modifications to the subsidized operations. For instance, several States have successfully switched from ConRail to short line railroads as operators of subsidized branch lines, resulting in the same service being provided at significantly less public expense. Absent the requirement that the State provide a portion of the subsidy, this beneficial result might not have occurred.

State Entitlement Formulas and Subsidy Eligibility

Four of the bills (H.R. 7370, 7715, 8172, and 8393) propose changes to the formula for determining each State's

entitlement to subsidy funds, and include more lines as being eligible for subsidy assistance. In each case, the formula for determining each State's entitlement to subsidy funds would be broadened to include consideration of lines pending abandonment in a proceeding before the Commission and also those lines which are identified on the railroads' system diagram maps as candidates for abandonment. Currently, only those lines already abandoned are so included. Thus, the opportunity to subsidize a line has often passed before a State becomes entitled to funds which could have been used to subsidize the line. The proposed change, we believe, could lead to a more accurate assessment of the individual States' needs for subsidy funds. Further, some of the States involved in the subsidy programs have expressed serious concern about the wisdom of subsidizing only those lines which are so hopelessly unprofitable that they have been authorized for abandonment. These States have expressed the belief that providing one-time assistance to a marginally profitable line, perhaps through rehabilitation, represents more rational planning than permanently subsidizing an unprofitable line which has been authorized for abandonment. The proposed change in eligibility for subsidy funds would allow such one-time rehabilitation assistance to be performed under the subsidy program. We would suggest, however, that all three of these bills require a technical change to correct the inadvertent exclusion of those lines which the railroads intend to abandon within the next three years.

Three of the bills (H.R. 7370, 7715, and 8172) would make the lines pending abandonment and the lines which are candidates for abandonment eligible for subsidy assistance for operating costs as well as for rehabilitation and improvement projects. In contrast, H.R. 8393 would make these lines eligible only for assistance on rehabilitation and improvement projects, excluding them from assistance for operating costs. The Commission supports the concept of H.R. 8393 which limits the eligibility of projects on lines included on the system diagram maps as candidates for abandonment or as pending abandonments to rehabilitation and improvement projects only. We believe that the payment of operating and administrative costs to a railroad for the operation of a line which the railroad is required by law to operate is not desirable. Accordingly, we feel that the system diagram lines should be specifically excluded from receiving operating subsidies.

In-Kind Benefits

The Commission also supports the provisions which would allow States which provide in-kind benefits to the subsidized operator to carry forward the "unexpended" portion of the in-kind benefits to subsequent subsidy years in both the Regional and National programs.

In addition, the Commission supports the provisions which provide that maintenance and rehabilitation projects are to be reimbursed at the level of Federal participation

which was applicable at the time a project is initiated. This would be consistent with normal government financial control procedures which provide that once a commitment of funds has been made, the funds be obligated against the appropriation in effect at the time of the commitment. Under the current FRA regulations for the Regional program, only that portion of a project which was completed prior to April 1, 1977, was eligible for 100 percent reimbursement. Because the track working season in the Northeast was just beginning in April, very little work qualified for full 100 percent reimbursement.

State Rail Planning Funds

Four of the bills (H.R. 7370, 7715, 8172, and 8393) provide for an increase in State rail planning funds from $5 million per year for three years to $10 million per year for five years. The Commission supports this change and wishes to point out that this represents a re-allocation of funds already included within the total authorization of the subsidy program and does not represent a new authorization for expenditures. We believe that additional funds for planning will result in the more effective use of the funds available.

Service Continuation by Other Operators

Four of the bills (H.R. 7370, 7715, 8172, and 8393) would amend the Interstate Commerce Act to declare specifi-

cally that one of the conditions which the Commission could place on a discontinuance or abandonment authorization could be a requirement that the owning railroad allow a different operator (probably either a connecting railroad or a short line railroad) to operate over the owning railroad's tracks in order to provide subsidized service to the abandoned line.

Although the Commission believes that the existing authority in section 1a(4) of the Interstate Commerce Act is broad enough to encompass such a condition, we support this proposed amendment. We believe that this change would emphasize the Commission's authority in this area and would specifically declare that the National subsidy program incorporates the concept of a "designated operator" originally developed in the Regional subsidy program. As was the case in the Regional program, the introduction of "designated operators" in the National subsidy program will require the addition of a "reasonable management fee" to the costs for which a designated subsidy operator must be reimbursed.

Of the three bills incorporating this provision, we believe that the wording of H.R. 8393 (in section 10) is the most comprehensive.

Thank you for this opportunity to present the Commission's views on the State Rail Assistance Programs. I will be glad to attempt to respond to any questions you may have.

A BILL

To amend the Regional Rail Reorganization Act of 1973, the Department of Transportation Act, and the Interstate Commerce Act to extend for one year the period during which the Federal Government pays 100 percent of the cost of rail service assistance programs involving rehabilitation, maintenance, and improvement of rail properties, to extend the States' entitlement for financial assistance under the rail service assistance program, and to extend eligibility for financial assistance to include the rehabilitation of certain rail lines.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Rail Freight Service Continuation Amendments of 1977".

SEC. 1. (a) Section 402(a)(1) of the Regional Rail Reorganization Act of 1973 is amended by striking out the last sentence thereof and inserting in lieu thereof the following: "The Federal share of the cost of any such assistance for the rehabilitation and maintenance of rail properties shall be 100 percent for the 24-month period following the date on which rail properties are conveyed pursuant to section 303(b)(1) of this Act. The Federal share of the cost of any such assistance for purposes other then the rehabilitation and maintenance of rail properties shall be (A) 100 percent for the 12-month period following such date of conveyance, and (B) 90 percent for the succeeding 12-month.".

(b) Section 402(a)(2) of the Regional Rail Reorganization Act of 1973 is amended by adding at the end thereof the following new sentences: "In-kind benefits which a State provides for any period in excess of such State's share of project costs for such period shall be applied toward such State's share in any subsequent period. The date of initiation of any maintenance, rehabilitation, improvement, or acquisition project shall determine the period from which rail freight assistance to which a State is entitled shall be provided for such project. Whenever the costs of an approved maintenance, rehabilitation, improvement, or acquisition project exceed the amount of rail freight service assistance to which a State is entitled for the period in which such project is initiated, the Secretary may provide assistance in any subsequent period to cover the costs of such project at the percentage level and from the Federal share established by this subsection for such subsequent period.".

(c) The first sentence of section 402(b) of the Regional Rail Reorganization Act of 1973 is amended to read as follows:

"ENTITLEMENT. - (1) Each State in the region which is, pursuant to subsection (c) of this section, eligible to receive rail service continuation assistance is entitled to the total amount authorized and appropriated for such purpose multiplied by a fraction whose numerator is the sum of the rail mileage in such state which are (A) those rail services of railroads in reorganization in the region, or persons leased, operated or controlled by any such railroad, which the final system plan does not designate to be continued; (B) those rail services on rail properties referred to in section 304(a)(2) of this Act; (C) those rail services in the region which have been, at any time during the 5-year period prior to the date of enactment of this Act, or which, are subsequent to the date of enactment of this Act, owned, leased, or operated by a State agency or by a local or regional transportation authority, or with respect to which a State, a political subdivision thereof, or a local or regional transportation authority has invested (at any time during the 5-year period prior to the date of enactment of this Act), or invests (subsequent to the date of enactment of this Act), substantial sums for improvement or maintenance of rail service;

(D) those rail services in the region with respect to which the Commission authorizes the discontinuance of rail services or the abandonment of rail properties, effective on or after the date of enactment of this Act; (E) those rail services which are identified as 'potentially subject to abandonment' or as lines for which a carrier plans to submit an application for a certificate of abandonment or discontinuance as those terms are used in Section 1a (5)(a) of the Interstate Commerce Act; and (F) lines for which an abandonment or discontinuance application is pending before the Commission; and whose denominator is the sum of all such rail mileages in all of the States which are eligible for rail service assistance under this section, provided however, that the mileage of any line or portion of line of railroad shall not be included more than once in the calculation of the numerator or in the calculation of the denominator of the fraction."

(d) Section 402(c)(2) of the Regional Rail Reorganization Act of 1973 is amended by deleting the word "or" at the end of subparagraph (C) and by deleting the period at the end of subparagraph (D) and by inserting immediately after the end of subparagraph (D) the following:

"; or (E) those rail services which are identified as 'potentially subject to abandonment' or as lines for which a carrier plans to submit an application for a certificate of abandonment of discontinuance as those terms are used in Section 1a (5)(a) of the Inter-State Commerce Act or those lines for which an abandonment or

discontinuance application is pending before the Commission; in which case, the eligibility for financial assistance shall be limited to projects which have as their principal objectives the elimination of deferred maintenance or the rehabilitation of such rail line, with such rail line being ineligible for rail service continuation assistance unless and until such line becomes eligible pursuant to subparagraph (B), (C), or (D) of this subsection."

SEC. 2. (a)Section 5 (g) of the Department of Transportation Act is amended to read as follows:

"(g) (1) The Federal share of the cost of any rail service assistance program described in paragraph (3) of subsection (f) of this section shall be (A) 100 percent for the period beginning July 1, 1976, and ending September 30, 1978, (B) 90 percent for the period beginning October 1, 1978 and ending September 30, 1979, (C) 80 percent for the period beginning October 1, 1979, and ending September 30, 1980, and (D) 70 percent for the period beginning October 1, 1980, and ending September 30, 1981.

"(2) The Federal share of the cost of any rail service assistance program described in paragraph (1), (2), or (4) of subsection (f) of this section shall be (A) 100 percent for the period beginning July 1, 1976, and ending June 30, 1977, (B) 90 percent for the period beginning July 1, 1977, and ending

September 30, 1978, (C) 80 percent for the period beginning October 1, 1978, and ending September 30, 1979, and (D) 70 percent for the period beginning October 1, 1979, and ending September 30, 1981.

"(3) For the period beginning on October 1, 1979, and ending September 30, 1981, the Secretary may make such adjustments in the percentage level of the Federal share ss may be necessary and sppropriate so as not to exceed the maximum amount of funds authorized under subsection (o) of this section. The Secretary shall, within one year sfter the date of enactment of this subsection, promulgate standards and procedures under which the State share of the cost of any rail service sssistance progrsm msy be provided through in-kind benefits such as forgiveness of taxes, trsckage rights, and facilities which would not otherwise be provided.".

(b) Section 5(g) of the Department of Transportation Act is amended by adding at the end thereof the following:

"In-kind benefits which a state provides for any period in excess of that state's share of project costs for that particular period shall be applied towsrd that state's shsre in any subsequent period. The date of initiation of any maintenance, rehabilitation, improvement

or acquisition project shall establish the period from which rail freight assistance to which a state is entitled shall be provided. Whenever the costs of an approved maintenance, rehabilitation, improvement or acquisition project exceed the amount of rail freight service assistance to which a state is entitled for the period in which such project is initiated, the Secretary may provide assistance in any subsequent period to cover the costs of such project, at the percentage level and from the Federal share established by this subsection for such subsequent period.".

(c) The first sentence of section 5(h) of the Department of Transportation Act is amended to read as follows:

"Each State which is, pursuant to subsection (j) of this section, eligible to receive rail service assistance is entitled to an amount equal to the total amount authorized and appropriated for such purposes, multiplied by a fraction whose numerator is the sum of the rail mileage in such state (A) for which the Commission has found that the public convenience and necessity permit the abandonment of, or the discontinuance of rail service on the line of railroad (B) which was eligible for assistance under Title IV of the Regional Rail Reorganization Act of 1973; (C) which is identified as 'potentially subject to abandonment' or as a line for which a carrier plans to submit an application for a certificate of abandonment or discontinuance as

those terms are used in Section 1a(5)(a) of the Interstate Commerce Act; and (D) lines for which an abandonment or discontinuance application is pending before the Commission; and whose denominator is the sum of all such rail mileages in all of the States which are eligible for rail service assistance under this section; provided however, that the mileage of any line or portion of line of railroad shall not be included more than once in the calculation of the numerator or in the calculation of the denominator of the fraction."

(d) Section 5(k) of the Department of Transportation Act is amended by deleting the word "and" at the end of paragraph (1) and renumbering paragraph (2) as paragraph (3) and inserting immediately after the end of paragraph (1) the following:

"(2) the line of railroad which is related to the project is identified as 'potentially subject to abandonment' or as a line for which a carrier plans to submit an application for a certificate of abandonment or discontinuance as those terms are used in Section 1a(5)(a) of the Interstate Commerce Act or is a line for which an abandonment or discontinuance application is pending before the Commission; in which case, the eligibility for financial assistance shall be limited to projects which have

as their principal objectives the elimination of deferred maintenance or the rehabilitation of such rail line, with such line being ineligible for rail serivce continuation assistance unless and until such line becomes eligible pursuant to paragraph (i) of this subsection; and"

(e) The second sentence of Section 5(o) of the Department of Transportation Act is amended to read as follows:

"Of the foregoing sums, not to exceed $10,000,000 shall be made available for planning grants during each of the 5 fiscal years ending June 30, 1976; September 30, 1977; September 30, 1978; September 30, 1979; and September 30, 1980."

SECTION 3. Section 1a(4) of the Interstate Commerce Act is amended by adding at the end thereof the following new sentences: "The terms and conditions referred to in subdivision (b) of this paragraph may include a direction awarding trackage rights to another common carrier by railroad or to a State or political subdivision thereof for all or any portion of the lines of the applicant's railroad located within such State which the Commission determines are needed solely for purposes of providing rail freight service which otherwise would no longer be available due to an abandonment or discontinuance. In making such determination, the Commission shall consider the views of any State or other party directly affected by such abandonment or discontinuance and shall fix just and reasonable compensation, in accordance with section 3 (5) of this part, for such trackage rights."

Section-by-Section Analysis

Section 1(a) - Amends the Regional Rail Reorganization Act of 1973 (3R Act) to extend 100 percent Federal funding of rehabilitation and maintenance to the second year of the Regional subsidy program (to March 31, 1978). Does not change the Federal participation in the operating cost portion of the subsidy program (100 percent to March 31, 1977 and 90 percent April 1, 1977 to March 31, 1978).

This section would permit implementation of the 100 percent Federal assistance for rehabilitation and maintenance of subsidized lines which was originally intended, but was not realized because of problems in executing lease agreements with the estates of the bankrupt railroads for use of the subsidized lines. At the same time, by not changing the Federal participation percentages for the operating portion of the subsidy costs, this section recognizes the cost-effective approaches taken by many of the States in the second year of the subsidy program when a 10 percent State contribution was required.

Section 1(b) - Amends the 3R Act to declare that in-kind benefits provided to the subsidized operator as the State's portion of the subsidy payments can be carried forward to following subsidy years to the extent that the in-kind benefits exceed the State's required payment in a year. This section also declares that maintenance and rehabilitation projects are to be reimbursed at the Federal participation percentage applicable when a project is initiated. Thus a rehabilitation project initiated during a 100 Federal contribution subsidy year would be fully reimbursed by Federal funds, although the project may extend into and be completed in a subsequent 90 percent Federal contribution year.

Section 1(c) - Amends the 3R Act to change the Regional State subsidy entitlement formula to include the lines identified on the railroads' System Diagram Maps as "potentially subject to abandonment", as lines for which an abandonment application will be filed within the next three years, and as lines on which abandonment applications are currently filed and pending decision; these categories are not included in the current entitlement formula for the Northeast region.

This section also makes a distinction between lines considered in calculating the entitlement formula and lines which are eligible for subsidy assistance. Federal funds are made available for rehabilitation and improvement on any lines included in the entitlement formula (basically abandoned lines and System Diagram lines), but operating subsidy payments are available only for those lines which have been authorized for abandonment.

By prohibiting the use of Federal subsidy funds for reimbursing losses on lines which have not been abandoned, the section avoids the payment of operating, administration, and management costs to a railroad for operating a line which the railroad is already required to operate under public convenience and necessity.

Section 2(a) - Amends the Department of Transportation Act (DOT Act) to include a second year of 100 Federal assistance in the national program for rehabilitation and improvement projects only, resulting in two years at 100 percent, and one year each at 90, 80, and 70 percent. This section does not change the Federal reimbursement percentage for the operating portion of the subsidy payments.

This section adjusts the subsidy years (after the first year which is already completed) to coincide with the Federal fiscal year. This is done by extending the 90 percent year by three months to September 30, 1978 and thus extending the entire program by three months.

This section basically does for the national program what Section 1(a) does for the regional program.

Section 2(b) - Amends DOT Act to assure carry-forward of excess in-kind benefits and to define the Federal participation in rebabilitation and improvement projects by the date the project is initiated. Does the same things to the national program that section 1(b) does for the regional program.

Sections 2(c) and 2(d) - Amend Dot Act to change the entitlement formula for the national program to include System Diagram Map lines and to permit only rehabilitation and improvement assistance for any lines which are not abandoned. Same as changes made to the regional program by section 1(c).

Section 2(e) - Amends DOT Act to increase annual authorizations for State rail planning grants from $5 million to $10 million. This is a reallocation of funds within the total authorization for the subsidy programs and does not represent a new authorization.

Section 3 - Amends the Interstate Commerce Act to declare specifically that one of the conditions the Interstate Commerce Commission could place on an abandonment authorization could be a requirement that the railroad allow a different railroad (probably a short line) to operate over its tracks in order to provide subsidized service to the abandoned line.

INTERSTATE COMMERCE COMMISSION
COMPARISON OF STATE RAIL ASSISTANCE BILLS

JULY 27, 1977

Program Feature		Existing 4R Act	H.R. 6792		H.R. 6739	H.R. 3672 H.R. 7486	H.R. 7715 H.R. 7370	H.R. 8172	H.R. 8393	I.C.C. Recommendations	
	Percent		Operating	Rehab.						Operating	Rehab.
National	100	7/76-6/77	No change	7/76-6/78	7/76-9/78	7/76-6/78	7/76-9/77	7/76-9/77	7/76-3/78	7/76-6/77	7/76-9/78
	90	7/77-6/78		7/78-6/79	10/78-9/79	7/78-6/79	10/77-9/78	10/77-9/78	4/78-9/78	7/77-9/78	10/78-9/79
	80	7/78-6/79		7/79-6/80	10/79-9/80	7/79-6/80	10/78-9/79	10/78-9/79	10/78-9/79	10/78-9/79	10/80-9/80
	70	7/79-6/81		7/80-6/81	10/80-9/82	7/80-6/82	10/79-9/81	10/79-9/81	10/79-9/81	10/79-9/81	10/80-9/81
Regional	100	4/76-3/77	No change	4/76-3/78	4/76-9/78	4/76-3/78	4/76-9/77	4/76-9/77	4/76-3/78	4/76-3/77	4/76-3/78
	90	4/77-3/78		---	10/78-9/79	---	10/77-3/78	10/77-3/78	---	4/77-3/78	---
Commuter	100	4/76-3/77	No change		No change	4/76-3/78	No change	No change	No change	No change	No change
	90	4/77-3/78				4/78-3/79					
	50	4/78-9/78				4/79-9/79					
Entitlement (Freight Programs)		Regional-Lines excluded in FSP; Lines abandoned after Jan. 2, 1974; Lines with public investment. National-Lines abandoned after Feb. 5, 1976; Lines in regional program (after 2 years).	No change		No change	No change	Regional & National 1/	Regional & National 1/	Regional & National 1/	Regional & National 2/	
Eligibility (Freight Programs)		Same as entitlement.	No change		No change	No change	Same as entitlement.	Same as entitlement	Same as entitlement, except 3/	Same as entitlement, except that 4/	
Funds for State Rail Planning		$5 million/year (3 years)	No change		No change	No change	$10 million/ year (5 yrs.)	$10 million per yr. (5 yrs.)	$10 million per yr. (5 yrs.)	$10 million/year (5 years)	
Funding - National Regional Commuter		$350 million $180 million $125 million	No change		No change	No change	No change	No change	$450 mil. $180 mil. $125 mil.	No change	

1/ Adds pending abandonment and "potentially subject to abandonment" line; technically excludes "lines to be abandoned within 3 years."
2/ Adds pending abandonments, "lines to be abandoned within 3 years" and "potentially subject to abandonment" lines.
3/ that new categories are eligible only for rehabilitation and improvement.
4/ new categories are eligible only for rehabilitation and elimination of deferred maintenance.

Mr. ROONEY. Thank you very much, Mr. Chairman.

Recognizing the difficulties we experienced in constituting the Office of Rail Public Counsel, I wonder if you could state what, if anything, the ICC has done to make the regulations pertaining to the abandonments, subsidies, and Federal subsidy assistance understandable to the affected communities, shippers and the general public?

Mr. O'NEAL. One thing the Rail Services Planning Office has done is prepare a brochure or collection of papers in a hand-out form which has been made available to the members of the public who request information about line abandonment problems. We are considering some expansion of that program. And also in some individual cases we have authorized people from the Rail Services Planning Office to go out and assist individuals and, in particular communities, in preparing their cases, in a line abandonment hearing. This is done so they will be able to have the best, or at least a better presentation that sets forth their best arguments with regard to the line abandonment, which is usually against the line abandonment.

Would you like to add to that, Alan?

Mr. FITZWATER. We have also provided almost on a daily basis advice to the State officials that are involved and to many of the local shippers and concerned citizens as to what they might do, what the ICC procedures are, and what their options are. So while we haven't been able to provide the massive on-site participation that public counsel performed in the reorganization of the Midwest and Northeast railroads, we think that we have provided a satisfactory service in the interim in connection with most of the serious problems that have arisen.

We are in almost daily contact with many of the members of the different State organizations, and we are in a position from a staff standpoint of providing assistance. We are not in a position to provide legal assistance at the actual proceeding, and that is what I think the establishment of Rail Public Counsel could provide.

Mr. ROONEY. I have heard stories that ConRail is planning to abandon additional trackage in the Northeast. Have they been in contact with you in this respect?

Mr. O'NEAL. Yes, they have. We have written to the president of ConRail and asked for an explanation of just what they are considering in the way of abandoning track, and they have supplied us with a list of lines, and we are now trying to decide how best to make that information available.

The carrier doesn't feel that the lines that they have listed should be considered as necessarily under study for abandonment. They are lines that they are reviewing, and they categorize them as something less than under study. They are in a screening process, I guess.

They have indicated that in September they intend to give us the list of lines that they consider to be under study.

At the moment, we are in the process of publishing state-by-state maps of the lines that are listed in the maps that have been provided to the Commission by the carriers. These maps are presently listed only by carrier and not by State. We are probably going

to include the ConRail lines in those maps. It will be published, we hope, by the middle of August.

Mr. ROONEY. How many miles are we talking about with respect to ConRail?

Mr. O'NEAL. The numbers that we have now are 2,900 miles. The numbers of miles actually under study could be less than that, though, using again the ConRail terminology as to what is under study and what is not.

Mr. ROONEY. The map that you discussed, can you tell the subcommittee what the specific advantage to the general public is in receiving this advanced abandonment information from the railroads?

Mr. O'NEAL. The way the information exists today it is not of that much use, because the carriers have, of course, published their maps based on their own systems. Thus, if you happen to be in the State of Pennsylvania, and want to know what lines are likely to be abandoned in your State, you would have to go to the maps of each carrier and put it altogether. The Commission is going to do that, ourselves. We are going to publish a map of each State which will show the location of all lines that are proposed for abandonment within that State.

Again, that will be, we hope, by the middle of August, and I think that should help each State and the individuals in each State have a much better idea of just how this might impact on them.

Mr. ROONEY. But the 2,900 miles of lines you say that ConRail is going to submit to you, this necessarily will not be abandoned; it is just under study?

Mr. O'NEAL. Now we have several different categories that we are talking about that have to be indicated on the map that they have to submit. Category 1 are those lines they plan to abandon within three years. Category 2 are those lines that are under study for possible abandonment. And category 3 are lines that are pending abandonment, where the application has been made to the Commission. Any lines that fall into those categories, I think, are of interest, but that doesn't mean that any of them actually are going to be abandoned.

Mr. FLORIO [PRESIDING]. The Chairman has asked me to proceed with questions. I didn't get a chance to read your entire statement, but do you support or not support the idea that we should not have to wait for the approval of the abandonment?

Mr. O'NEAL. We do support that idea. We indicate in our written statement that lines falling into any of the three categories I just mentioned should be put into the formula. In other words, you shouldn't have to wait until the Commission has decided the lines should be abandoned. However, we feel that subsidies for operations should not be extended on that basis. In other words, we support subsidies for maintenance and rehabilitation purposes based on this kind of formula, but not for actual operations by the railroad.

Mr. FLORIO. Are you familiar with a plan that is in operation in the State of Iowa, with regard to involving the States as well as carriers in the maintenance of lines that are proposed to be abandoned?

Mr. O'NEAL. Well, not completely.

Mr. FLORIO. I will get you some information on that, and I would like your thoughts on how it is operating.

Mr. O'NEAL. We would be happy to look into that and give you a report back.

Mr. FLORIO. On page 6 of your testimony, you say you favor extending the provision for planning funds from $5 million per year for 3 years to $10 million per year for 5 years. Could you indicate why such an extended planning period is necessary? It seems to me that the assistance program will be completed prior to a number of states completing their planning process and, as a consequence, will not be in a position to receive any of the funds made available.

Mr. O'NEAL. Well, I think I will ask Alan to elaborate on this a little bit, but I don't know that you can limit the need for planning to a period of 3 years. I think we would want to ensure that the States are able to make adjustments for a longer period of time, and 5 years seems to be an appropriate period.

I think we have learned from experience in this whole process of trying to put the Northeast carriers back on their feet that it sometimes takes a lot longer than you think originally and you need additional time to make some adjustments.

Mr. FITZWATER. The other thing is to make the planning funds consistent with the overall program. The program is set up on a 5-year basis, and we believe the planning function should continue on the same basis that the Federal matching grant funds are made available.

Mr. FLORIO. You also state on page 4 that the States believe providing one-time assistance to a marginally profitable line is better than permanently subsidizing an unprofitable line authorized for abandonment. Could you elaborate on that? To my knowledge, there have been no proposals to permanently subsidize such lines. Rather, it has been proposed that the present 5-year subsidy period be extended at a maximum to 6½ years.

Mr. O'NEAL. I think the reference there is to the choice of waiting for the Commission to determine that a line should be abandoned and then making that the point at which you decide whether there should be a subsidy. And under that situation you could end up subsidizing a line only after you determine that line is a total loser. Whereas, if you allow some subsidy on a maintenance and rehabilitation basis before that time, you may be able to rescue a service that is going downhill before it goes too far downhill.

We think in the long run it may result in fewer losses to the Federal Government and less subsidy payments and hopefully better service to the users of the system.

Mr. FLORIO. With regard to waiting until a railroad has been approved for abandonment, aren't you talking about a self-fulfilling prophecy, that once it starts to lose traffic, people can see at that point it is almost counterproductive to start putting money in the railroad that you have almost ensured by statute that is going to go under?

Mr. O'NEAL. Yes, that is what I am saying. I think you are absolutely right that if you can infuse some funds into the system before you reach that point, you might maintain a much higher level of service.

Mr. FLORIO. I suppose I am making the academic point that it seems to me that is only the approach that should be used, and, if you go to the point of following the existing procedure, you are almost wasting money because you are ensuring that by waiting until it is approved, that the line is not going to be very successful, even if you do upgrade the facilities.

Mr. O'NEAL. I think you could make the argument that the costs are likely to be a little higher, because you may have lost the opportunity to improve or maintain a line at much less cost earlier in its existence. After abandonment you may be faced with a very expensive rehabilitation program you could have avoided earlier.

Again, as you say, I think you also have the possibility of losing a lot more service. Once shippers shift from one mode of transportation—if they shift away from railroads to motor carriers—they are not likely to move back very easily, even if the line is eventually brought back to a higher level of performance.

There are a lot of factors to keep in mind, and we believe very strongly that it is a good idea to arrest the deterioration process a little earlier than is possible now.

Mr. FLORIO. Just a last question. You state on page 5 of your testimony that you support an amendment that would provide for reimbursement at the level of Federal participation applicable at the time a project is initiated as compared to when the project is completed.

You further state that very little work qualified for the full 100 percent reimbursement due to the short working season in the Northeast. Could you comment on the effect of this amendment for the remaining years of the assistance program?

Mr. O'NEAL. I don't know. Alan, can you?

Mr. FITZWATER. Yes, the problem that arose was since there were not leases in place with the trustees, it was impossible to start rehabilitating many of the lines in the Northeast. The leases were finally signed after the 4-R Act was passed, which provided that the information used in negotiating the leases could not be used in the case-in-chief in determining the values of the properties that had been transferred to ConRail. This all came about in the winter, early, I guess, January or February, and it was too late in the year for any rehabilitation work to be performed. The regional subsidy program ran from April to April and by the time contracts were let and work could commence, you were into a situation that projects had been approved, but the work could not be completed. So you had a situation with one level of funding until the end of a particular fiscal year, and then another level of funding from that point on.

We don't believe it is consistent or good planning to permit a change in the matching funds in the middle of a project. In most government obligation situations, once a project is approved, it is approved at a given level for the entire project. We believe it makes for better planning throughout if all concerned know the exact amount of the funding for each project before the project is initiated. Since each year there is a lesser amount of Federal matching funds available, you will have the same problem each time if there isn't a change in the procedure that requires a different funding rate when the new fiscal year begins.

Mr. FLORIO. Thank you both for appearing. We appreciate your testimony.

Mr. O'NEAL. Thank you.

Mr. FLORIO. Mr. Richard Freeman. Mr. Freeman is the vice president of Chicago & North Western Railroad, representing the Association of American Railroads.

STATEMENT OF RICHARD M. FREEMAN, ON BEHALF OF THE ASSOCIATION OF AMERICAN RAILROADS, ACCOMPANIED BY PHILIP F. WELSH, GENERAL SOLICITOR

Mr. WELSH. Mr. Chairman, my name is Philip Welsh, General Solicitor of the Association of American Railroads, and I am here to introduce Mr. Richard Freeman, who is Vice President of the Chicago & North Western Transportation Company. Mr. Freeman has had a great deal of experience in dealing with abandonments and discontinuances on his own railroad and is a highly qualified witness on behalf of the members of our association in testifying on the bills that are pending before your committee.

STATEMENT OF RICHARD M. FREEMAN

Mr. FREEMAN. I am Richard M. Freeman, 400 West Madison, Chicago, Illinois, 60606.

As Mr. Welsh indicated, I do have some knowledge of the subject matter before the committee, since my railroad has abandoned some 2,000 miles of railroad over the past several years. Today, we have 9,850 miles of railroad. Of that 9,850 miles, we have 962 miles pending before the ICC for abandonment, 984 miles listed in category 1, that is, lines subject to abandonment in 3 years, and 313 miles listed in category 2, that is, lines potentially subject to abandonment.

We in the industry have followed the proposals which have been made over the last several months to change the Federal assistance program applicable to branch lines. We welcome this chance to comment on some of the proposals. Clearly some of the proposals are outside of the expertise or purview of our association, and I shall not comment on those.

It is our understanding that the Federal 5-year branch line assistance program was designed as a short-term program to cushion any effects of branch-line abandonment or service discontinuance on local communities and shippers. We believe that it is wise to keep this purpose in mind in evaluating proposals to change the program.

One proposal which is before you would make Federal funds available for operating assistance payments for lines which are before the ICC for abandonment, or which are in categories 1 or 2, rather than as under the present law only for lines which are authorized for abandonment.

We oppose this change, and we are pleased to see that the Interstate Commerce Commission opposes it as well.

The present law encourages everyone concerned to get on with the otherwise laboriously slow abandonment process. We are reluctant to see that spur to expeditious action removed.

There is another proposal to provide financial assistance for a line as to which the ICC has concluded that the public interest and necessity do not permit abandonment, but the line is losing money.

We support that proposal. It would cure the evil of cross-subsidization, that is, the inequity of requiring other shippers using rail service over the balance of the railroad system to make up for deficits on lines of railroads not paying their way.

There is another proposal which would permit the ICC to grant another railroad or the State the right to operate over an abandoned line and—this is the important part—over other lines of the abandoning railroad. We oppose this change. We can see no need for giving another railroad or the State the right to operate over segments of the railroad system which are not abandoned. Such operations could only create substantial operating confusion which would not serve the public interest.

In this connection, however, I should add that the provisions of section 10 of H.R. 8393 and H.R. 19420 are an improvement over the provisions of section 10 in H.R. 7370. If, contrary to our views, the committee believes that the present law must be changed in this respect, we should like an opportunity to submit alternative language to avoid the kinds of operating problems which we fear.

If the committee please, those are all of my comments. I have a statement which has been submitted for the record. I would be delighted to try to answer questions.

[Mr. Freeman's prepared statement follows:]

STATEMENT OF RICHARD M. FREEMAN
IN BEHALF OF THE ASSOCIATION OF AMERICAN RAILROADS
ON
H.R. 3672, H.R. 6739, H.R. 6792, H.R. 7370
H.R. 7486, H.R. 7715, H.R. 8172, H.R. 8393,
H.R. 8420, and related bills

BEFORE THE
SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
U.S. HOUSE OF REPRESENTATIVES
July 27, 1977

My name is Richard M. Freeman. My business address is 400 West Madison Street, Chicago, Illinois 60606. I am Vice President-Law of the Chicago and North Western Transportation Company (CNW). I appear today in behalf of the member lines of the Association of American Railroads (AAR) with headquarters in Washington, D.C. I am Chairman of the AAR's Rail Services Group. The railroads which are members of this Association operate 96 percent of the trackage, employ 94 percent of the workers, and produce 97 percent of the freight revenues of all railroads in the United States. My company, which is a member of the AAR, currently operates 9,851 miles of railroad, and has 962 miles pending before the Interstate Commerce Commission (ICC) for abandonment, 984 miles listed in ICC Category 1 (lines subject to abandonment within three years) and 313 miles listed in ICC Category 2 (lines potentially subject to abandonment).

There are a number of proposals which have been made over the last several months to change the federal

21-684 O - 78 - 7

assistance program applicable to branch lines. After giving consideration to these proposals, the Association of American Railroads is pleased to have an opportunity to state the rail industry's views.

It is our understanding that the purpose of the federal five-year branch line assistance program was to cushion any effects of branch line abandonment or service discontinuance on local communities and shippers. The general approach was to provide a declining level of federal assistance from 100% to 70% over the five-year period for branch lines which the Interstate Commerce Commission had authorized for abandonment or discontinuance. The assistance for a branch line could be either (1) in the form of payments to the railroad to make up the difference between revenues and avoidable costs plus a reasonable return, to rehabilitate the line, or to purchase the line; or (2) in the form of payments to those adversely affected for easing the costs of lost rail service in a manner less expensive than continuing rail service. The legislative changes suggested in the program have dealt with the former -- that is, payments to railroads -- and have not dealt with the latter alternative. We have been disappointed that the Department of Transportation has not encouraged the approach of payments to communities and shippers to ease the loss of rail service where that is a cost effective approach.

Many of the proposed changes involve matters of interest primarily to the states and, while we find the proposals reasonable, we believe that the rail industry has neither adequate knowledge nor expertise to express an opinion useful to this subcommittee. In this category are proposals to modify the timing of the reduction in the federal share of rail assistance costs to match the federal fiscal year, permit states to carry over in-kind benefits, change the allocation of federal funds among the states, give discretion to the states to determine which projects should be federally financed, and increase the monies assigned for planning and lengthen the period during which those monies are available.

There are substantive proposals, however, in which we believe this subcommittee may wish to hear from our industry.

One proposal would make federal funds available in the form of payments for operating assistance for lines which are before the Commission for abandonment or which have been designated by the railroads as abandonment candidates, rather than as under the present law, only for lines which have been authorized for abandonment. (Section 3 of H.R. 7370, H.R. 7715, H.R. 8172 and H.R. 8393). The existing provision has a salutary effect on all parties, including the governmental agencies. Since federal subsidy monies

cannot be made available until the Commission has authorized abandonment, everyone involved has an incentive to expedite the decision-making process. We are reluctant to see that incentive removed, given the inherently slow pace of that process. If the decision-making process is properly expedited, there is little or no need to provide the interim operating financial assistance, pending the decision. Accordingly, we oppose this change.

There is another proposal which would provide financial assistance for a line as to which the Interstate Commerce Commission has concluded that the public interest and necessity does not permit abandonment, but the line is losing money (H.R. 6871). Financial assistance would cover both operating deficits and rehabilitation expenses, with the federal contribution to such assistance beginning at 100% and declining annually to 60% over 5 years. Although not entirely clear, we believe that the drafters of this proposal intended to make the carrier whole, with the states or financially responsible local interests making up the non-federal share. With this understanding, we support this proposal. It would cure the basic inequity of requiring other shippers using rail service over the balance of the carrier's system to make up deficits on lines of railroad which do not pay their way.

Another proposal would permit the Interstate Commerce Commission to authorize another railroad the right to operate over an abandoned line and over other lines of the abandoning railroad (Section 10 of H.R. 7370, H.R. 7715, H.R. 8172, H.R. 8393, and H.R. 8420). Such a provision would encourage the establishment of short lines which could operate not only over the abandoned lines, but over other lines of the abandoning railroad. There is no public need for short lines to operate over other lines of a trunk-line railroad. On the contrary, such operations could only create substantial operating confusion which would not serve the public interest. For good reason, the Congress has heretofore refrained from giving this power to the Commission, except in limited terminal and related areas where that power could facilitate coordination of operations (Sec. 3(5) of the Interstate Commerce Act). The proposal here would not serve to facilitate efficient service, but rather would interfere with efficient service. For this reason, we oppose this proposal.

Finally, the rail industry believes that the regulations of the Interstate Commerce Commission designed to implement the abandonment provisions of the 4-R Act are not consistent with the provisions of the 4-R Act. The adversely affected railroads have brought an action in the U.S. Court of Appeals for the Seventh Circuit to have the offending regulations set aside. It is inappropriate, however, to bring those issues before this subcommittee until the courts have had an opportunity to rule on those issues.

Mr. FLORIO. Thank you.

As part of your testimony, you stated you are reluctant to support the proposal to make Federal funds available for lines before the Commission has approved abandonment, because you believe it will eliminate the incentive to expedite the decisionmaking process. Could you please explain why you believe this would occur? It is my understanding that the time in which decisions for abandonment must be made were very specific in the 4-R Act in light of some of the comments of the gentlemen from the ICC.

Mr. FREEMAN. The reason is, I think, quite simple. Everyone at the present time now appreciates, and that is true of the ICC as well as shippers and communities, that Federal funds will not flow to a line until there is a certificate of convenience and public necessity issued, so, at the present time, no one has any incentive to delay the process. There are indeed statutory limitations on the time which the ICC can take to process a case, and there are statutory limitations on the time the subsidy agreement must be worked out. Those are outside limits and are still far too long as far as we are concerned, and anything that has the impact of encouraging everyone to move this along and not delay it, we believe, is a plus.

Mr. FLORIO. Do you differ with the suggestion that I made and the previous speaker made that, in fact, by waiting until we have abandoned a railroad that we are almost certainly pouring money into a dead railroad?

Mr. FREEMAN. I am sorry, sir, I missed the comments because my plane was late.

Mr. FLORIO. I had made the observation that by following the existing procedure whereby we have to wait until a line is approved for abandonment before considering putting subsidies into the railroad for purposes of improving the maintenance and improving the line, that by virtue of the abandonment approval carriers start going to other railroads, making arrangements for transfer of their materials to other lines, we are ensuring the fact that the railroad will go under, and it is that much more difficult, if possible, to bring the line back, notwithstanding the infusion of Federal funds to improve the railroad.

Mr. FREEMAN. I guess I would have to say I doubt that would be the impact, although certainly it is possible. I think at least in the part of the country where we live, the 11 Midwestern States in which we operate, the plans for abandonment have been so well known for so long that if that is the process, it has long since occurred.

Now the situation may be different in other parts of the country, but at least in the Midwest, between the Mississippi and the Missouri Rivers, I think that probably would not be the case, because the plans for abandonment have been long known.

Mr. FLORIO. In your statement you state operation of a short-line railroad would create substantial operating confusion. Would you explain why you believe this confusion would be created? I am not sure I understand what the difference is between an operator, other than the abandoning railroad being designated by the ICC and the normal conditions where a railroad voluntarily grants trackage rights to another railroad.

Mr. FREEMAN. I will be glad to try. In the case of a voluntary trackage rights operation, the railroads are able to coordinate their operations on a voluntary basis, and in the contracts that they work out, which, of course, are voluntary contracts, they are able to provide who shall have priority in the case of conflict, how that will work. I might add that doesn't always work very well, but at least under a voluntary circumstance there is the opportunity to try to foresee problems and work them out on a voluntary basis.

I might say there is one other significant fact, I think. In those cases, the operators, the people operating the trains and maintaining the right-of-way, are all union people. In the case of the authority that would be given to establish short lines in many cases, they would be nonunion people, or at least not members of the railroad brotherhood, and we could have a very serious conflict over labor issues, and that is something we certainly don't need.

Mr. FLORIO. In your testimony you also state there is no public need for short lines to operate over the lines of a trunkline railroad. By the fact there is a subsidy being paid for a branch line, would it not be true there was a public need for someone to operate over the lines, or are you objecting to the operation of short-line railroads, or would you agree that the designated operator should always be the abandoning railroad?

Mr. FREEMAN. Let me take that in pieces, since there are several questions there, if I may.

To begin with, in the present law there is no subsidy until it has been determined that there is no public need for the line, that is, the Commission has issued a certificate saying there is no public convenience and necessity; therefore, there is no public need. There may be a local need. So Congress has said, to cushion the effect on the communities and the shippers, we will make Federal subsidies available for a short period of time on a declining basis. The railroads didn't seek that legislation, but we accept it as a fact of life that there is a need for some kind of cushioning effect.

We suggested to the Congress, and the Congress put it in the bill, but it has not been used at all and has not been encouraged by the DOT as yet, that instead of making subsidies available to the railroads, which is an indirect subsidy to the community and shippers, make the subsidy directly to the people adversely affected, the shippers and the communities. And the law so provides, but nothing has been done in that respect.

So I guess, to begin with, we don't accept the assumption that there is a public need. As to the question of once it is determined to subsidize the line, are the railroads prepared to accept that subsidy and operate, the answer is yes, we are.

Mr. FLORIO. I have no further questions.

Mr. ROONEY [PRESIDING]. The Chair must apologize for having had to leave. When we originally scheduled these hearings, the House was not to meet on Tuesday and Wednesday mornings, but, unfortunately, the House is meeting on the Agricultural Act of 1977, and, if we continue to operate the way we are operating over there, I am afraid the Agricultural Act of 1977 will become the Agricultural Act of 1978.

Nevertheless, we will be interrupted this morning from time to time with votes, so the Chair must apologize.

One question, Mr. Freeman. You say, on page 2, "We have been disappointed that the Department of Transportation has not encouraged the approach of payments to communities and shippers to ease the loss of rail service where that is a cost-effective approach."

When was that matter discussed with the Secretary of Transportation?

Mr. FREEMAN. They have issued regulations, Mr. Chairman, as you provided in the 4-R act. That provided they could issue regulations to implement the provisions in the act that direct payments could be made to communities and shippers and those regulations do no more or barely more than simply recite the act, and the Secretary——

Mr. ROONEY. Have you discussed this with the Secretary?

Mr. FREEMAN. I have not discussed it with him, Mr. Chairman. I would hope that this administration might be more interested in that subject, but I don't know. There is no evidence of it at the moment.

Mr. ROONEY. Thank you very much.

Our next witness will be Mr. William G. Mahoney, representing the Railway Labor Executives' Association. You may proceed, Mr. Mahoney, and would you introduce your colleague for the record?

STATEMENT OF WILLIAM G. MAHONEY, ATTORNEY, ON BEHALF OF THE RAILWAY LABOR EXECUTIVES' ASSOCIATION, ACCOMPANIED BY JAMES R. SNYDER, NATIONAL LEGISLATIVE DIRECTOR, UNITED TRANSPORTATION UNION

Mr. MAHONEY. I am accompanied this morning, Mr. Chairman, by James R. Snyder, the Associate Chairman of the Railway Labor Executives' Association Legislative committee and also the National Legislative Director of the United Transportation Union.

My name is William G. Mahoney. I am a partner in the law firm of Highsaw, Mahoney & Friedman, with offices in Washington, D.C. I appear before you today on behalf of the Railway Labor Executives' Association, an association of chief executive officers of all of the standard national and international railway labor unions representing virtually all of the railroad employees in the United States.

The unions whose chief executives belong to the RLEA are as follows: American Railway Supervisors' Association; American Train Dispatchers' Association; Brotherhood of Locomotive Engineers; Brotherhood of Maintenance of Way Employes; Brotherhood of Railroad Signalmen; Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes; Brotherhood Railway Carmen of the United States and Canada; Brotherhood of Sleeping Car Porters; Hotel & Restaurant Employees and Bartenders International Union; International Association of Machinists and Aerospace Workers; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; International Brotherhood of Firemen & Oilers; International Organization of Masters, Mates & Pilots of America; National Marine Engineers'

Beneficial Association; Railroad Yardmasters of America; Railway Employes' Dept., AFL-CIO; Seafarers' International Union of North America; Sheet Metal Workers' International Association; Transport Workers Union of America; and United Transportation Union.

We appear before you today to present the views of the members of the RLEA with regard to H.R. 8393, H.R. 8420 and other related bills to change the criteria and to extend the period during which the Federal Government pays 100 percent of the cost of rail service assistance programs involving rehabilitation, maintenance, and improvement of rail properties.

As we know you are most aware, titles III and IV of the Regional Rail Reorganization Act were designed and enacted because of the imminent threat of economic catastrophe in the northeastern United States—to be followed by similar effects throughout the country—brought about by the collapse of the Penn Central Railroad after the merger. It was emergency legislation, experimental in nature, innovative in design.

Parts of that statute have been implemented effectively and have enabled rail service in the Northeast to begin to rebound from what had been an almost hopeless operational as well as financial situation.

We proceeded beyond the States of the Northeast with the enactment of the Railroad Revitalization and Regulatory Reform Act of 1976. It was hoped that this law would permit a long step to be taken toward the revitalization of the railroad industry. I emphasize the word industry. We do not believe the Congress was interested in making rich the owners and managers of individual rail corporations. What was desired was a healthy, viable rail network capable of serving our present and future needs.

One of the methods designed to accomplish this end was the creation of the local rail assistance or continuing subsidy program. Ideally, this program would permit the railroads to divest themselves of economically marginal or burdensome lines which, however, were needed by shippers within the various States. The States would be able to take over these lines for the benefit of their citizens with substantial assistance from the Federal Government.

Only rarely is the ideal realized in the real world. It appears from the various railroads' designations of lines potentially subject to abandonment that the branch lines and even some secondary main lines of the private railroad corporations will go the way of the passenger train.

Twenty years ago, the Congress was told that State regulatory agencies were thwarting the discontinuance of uneconomic and unneeded passenger trains. It was contended that passenger train service resulted in losses to the rail industry of some $600 million or $700 million a year. The evidence developed before Congress demonstrated that State agencies granted 85 percent of all applications for passenger train discontinuance applications. Of the remaining 15 percent, a small percentage of discontinuance authority was improperly withheld. In order to permit elimination of that small percentage of unreasonably burdensome passenger trains, the Congress enacted section 5 of the Transportation Act of 1958, which became section 13a of the Interstate Commerce Act.

Described by a U.S. Court of Appeals as "an invitation to the railroads to abandon passenger service," section 13a was used to that end.

Passenger trains, which at the enactment of section 13a were first-class trains operating at a small profit or on a breakeven basis, were deliberately downgraded by the railroads—as the Interstate Commerce Commission so found—and passengers were literally driven from the use of the rails. Amtrak is the desperate result of section 13a.

Like the local branch line subsidy provisions of the 3-R act, section 13a was emergency legislation. However, it was permitted to apply to an entire industry without term, destroying the very thing it was designed to save. We fear the branch line subsidy program may have the same result.

As the railroads are encouraged to list more and more lines subject to abandonment, as the States become more and more desperate to retain service for their citizens, as the Federal subsidies eventually wane, what will be the result? Surely, not a Federal branch and secondary main line corporation patterned after Amtrak or ConRail. Perhaps, hundreds upon hundreds of short-line railroads will be created, operated by so-called designated operators who under the rules set up by the Commission have virtually free entry and exit privileges.

The local rail assistance program in the Northeast and Midwest has resulted in the creation of numerous short-line railroad operations, particularly in the States of Indiana, Pennsylvania, Michigan, Maryland and New York. A major problem with these operations is that they are performed under special designated operator certificates issued by the Interstate Commerce Commission. In March 1976, the Commission decided it was too much trouble to require designated operators to meet the requirements of a certificate of public convenience and necessity to operate a railroad and provided virtual instant authority to operate the short-line segments as designated operators.

One of the great problems presented by this situation is the uncertainty of the continued existence of any particular short line. Presumably, the designated operator can cease operations as summarily as he began them.

The railway labor organizations are convinced that the 3-R plan should not be extended throughout the United States. There are several reasons for this: First, unlike the situation in the Northeast, there is no similar railroad emeregency in the nation generally; second, many States would be virtually stripped of effective rail service in summary fashion; third, the protections available to employees to counter in some part the effects of the Northeast abandonment program are not present in the 4-R act—indeed, present indications are that the Commission will join with railroad managements in providing the employees with effectively less protection than provided by Congress in the 4-R act, which means months or years of litigation during which individual employees will not be protected; fourth, and finally, the present and continuing crisis the world faces in the diminution of fossil fuel reserves makes imperative the preservation, where at all possible, of the

most fuel-efficient mode of transport available today or in the foreseeable future—railroad transportation. Destruction of the means of serving most of the areas of this country by rail at this time within full view of this fuel crisis would, we respectfully submit, be irresponsible in the extreme. A way must be found to preserve the rail network since it must eventually be restored to its position as our prime means of transportation.

H.R. 8393 and H.R. 8420 would extend the 100 percent local rail subsidies. The RLEA supports such extension because without it there will be destroyed hundreds upon hundreds of miles of track that may be needed by only a few now, but may well be vital to this nation's future transportation requirements. We are only buying time with these provisions, but such time is essential if we are to find a permanent solution to the branch line dilemma.

The RLEA supports sections 3 and 8 of these bills, which would require Federal financial assistance to be used to improve track to the class II level of maintenance, that is, to a level which would transport safely a train at speeds up to 25 miles per hour. Certainly, it makes little sense to spend our tax dollars on rail line maintenance unless the rehabilitated line will be a useful part of our rail network. The class II level is the minimum useful level for a railroad line.

The RLEA would be agreeable to the enactment of H.R. 8393 or H.R. 8420 with, perhaps, a slight preference for H.R. 8393, as it would provide a subsidy extended a bit beyond that provided by H.R. 8420. The RLEA support of these bills is somewhat reluctant because it is becoming daily more apparent to each of its members that the 4-R act is not being directed toward revitalizing our rail network, but toward decimating it in the hope that that which remains will be financially viable and of some service to the nation.

We believe much care is needed in resolving this most complex and vital problem. We cannot afford to lose our branch lines as we lost our passenger trains. However, we are losing them as the railroads now rid themselves of branch lines as they once rid themselves of passenger trains. Will such lines survive as State—or designated operator—operated short lines? Probably not. The answer will be difficult to find. But it must be found.

Thank you.

Mr. ROONEY. Thank you very much, Mr. Mahoney, for that fine statement.

Th Chair will now declare a 5-minute recess. Mr. Florio will be back and continue. I will leave questions for him to ask you, and I will try to get back as quickly as I can.

[Brief recess.]

Mr. FLORIO [PRESIDING]. The Chairman has asked me to continue with what appears to be my assigned role this morning of asking questions relative to testimony I don't hear.

I read a portion of your testimony before I left, so I will ask questions relative to that which I did hear.

You state that you are convinced that the 3-R plan shold not extend throughout the United States. I am not clear as to what you mean by this as the 4-R act did extend the program to the remainder of the country outside of the Northeast-Midwest region.

Mr. MAHONEY. What I meant by that, Mr. Florio, is that in the Northeast the situation was so bad that we permitted or Congress permitted, those railroads to abandon lines very freely as a result of the study by the USRA, and thousands of miles of lines were agreed to be taken off the map.

I am afraid that what we are heading for in the rest of the country is precisely the same thing. By freeing up the abandonment provision, by making it easier to abandon, by setting up a situation in which we will subsidize lines that may be potentially abandoned, the railroads could be encouraged to put up all the branch lines of the United States like they once did the passenger trains of the United States to get rid of them.

As long as they have a means of saying they will be taken care of because public moneys will come in and these lines will be subsidized, they can get out from under. They can give them to a short-line operator and let him operate, and perhaps go down the tubes. The railroads couldn't care less after they get rid of the lines. They will then have only the main-line, high-income, profitable lines to operate, which would be great for them as corporations. I don't think it will be very good for the country, because all of the rest of the lines would be subject to the whim of the State and the Federal Government in terms of subsidy.

Mr. FLORIO. Let me play the devil's advocate. Assuming that the procedures on line for evaluating abandonments is a good procedure that does, in fact, designate lines for abandonment that are appropriately to be abandoned, and that the rationale for the procedure is to make sure that what is left is going to be a viable transportation system that serves the needs of the people as well as the employees of the system; therefore, wouldn't it be in the interest of the rest of the nation as opposed to just the Northeast in order to ensure that we continue having a system that is meat rather than fat, that we have a system whereby there is going to be some Federal participation or governmental participation in providing those branch lines that may not be able to make it as part of a viable system but have some value, to provide them with the financial assistance to allow them to continue, and the ultimate outcome of probably strengthening the rail system across the country?

Mr. MAHONEY. There is no question you are correct if we can assume that the lines that are listed should be abandoned and there is nothing that you can do about it, and, assume further, the only way these lines can or should be continued, even if part of the rail system, is through a subsidy program.

Mr. FLORIO. You are putting into question the whole process whereby lines are being listed for abandonment?

Mr. MAHONEY. That is correct. It is not just those being listed for abandonment. The railroads are encouraged to put more up for abandonment, perhaps do as they did with the passenger trains, downgrade the service so they can get rid of them because they are not making enough on line A when they can put the money in line B, where they can get more return on the dollar. This is what happened with the passenger service, and that is what I compare it to.

I think there is an identical parallel with what the railroads did deliberately to the passenger service in this country and what they might be encouraged to do through branch-line abandonment or subsidization programs; that is, actually be encouraged to take lines that are now profitable lines and downgrade them servicewise to the point where they would no longer be profitable, put them up for abandonment and let the government take care of it. They could care less about it; let them take their money and put it into something more profitable. That is what I am concerned about, and that is where we may be heading.

You will recall, Mr. Florio, when the 4-R act was before the Congress, I think then Secretary Coleman made a suggestion that what he was really interested in was a mainline railroad system consisting of a few lines east and west and a few north and south, and I think that is where we are heading with this now.

Mr. FLORIO. You obviously don't feel that is a desirable direction to go?

Mr. MAHONEY. No, because one of the things that will happen is that one of these days we will find that we will be using tons and tons and tons of diesel fuel and gasoline that we shouldn't have to be using; we are going to run out of it, and the railroad which uses so much less fuel and is much more easily converted to coal, as a matter of fact, won't be serving anything, except main terminal points.

Mr. FLORIO. You don't see, then, a future in the railroad system which has mainline railroads that operate in conjunction with branch-line subsidy systems, notwithstanding the previous speaker's objections to trackage rights that are either partially or entirely subsidized by combinations of Federal Government, State government, maybe carrier associations?

Mr. MAHONEY. That is probably what would happen. I don't think it should. I think what we should try to do is to keep a rail system within the private enterprise economic system, because I can't see a practical way of having a federally-maintained, and that is basically what it would be, branch-line and secondary mainline systems in this country which would complement or supplement a privately-owned mainline railroad system. I just don't think that would work. Eventually, one or the other would break down, and I think that probably would cause the nationalization of the railroads.

Mr. FLORIO. And your thoughts on that?

Mr. MAHONEY. I am against it.

Mr. FLORIO. For the record, I have introduced legislation that is designed to inquire into the feasibility of that. We have talked about it for years and years. I think it is appropriate that we find a good list of the reasons for and against rather than just discussing it in a vacuum, that we have a specific indication as a result of hopefully a comprehensive definitive study as to the liabilities and the assets of proposing that, and hopefully we will get some information on that subject.

Mr. MAHONEY. As I say, I am against nationalization. I think such a study should be made, and, who knows, it may turn out that nationalization is what we should have, that it is the only feasible alternative left to us and is down the road somewhere, and we

might as well get to it now rather than later. I hope that isn't the case.

Mr. FLORIO. I share your views.

You state that one of the reasons for not wanting to extend the program is the continuing crisis the world faces with regard to fossil fuel reserves, and so on.

Are you referring to the possibility of abandoning branch lines which connect with non-operating coal mines? Isn't it true that the 4-R act already provides for banking such branch lines?

Mr. MAHONEY. No. What I meant there, is that many of these branch lines, and secondary mains serve substantial economic areas, relatively large cities with industry. If we remove the branch lines from all of these places, you are going to have to increase the truck traffic. That is what I meant.

Mr. FLORIO. Do you see any implications with regard to abandonment in the field of greater coal usage? A number of publications have indicated that coal, in a sense, is the hope of the railroad industry in the next number of years, and abandonment of lines that perhaps have not been as highly trafficked as they could be, because of the reduction in coal production over the last number of years, as contrasted with the new emphasis on coal production as a result of the Carter administration policies, may very well result in the need for reevaluation as to some of those lines' viability if, in fact, we are going to restore coal production to a new and important place in our nation's economy.

Mr. MAHONEY. I think that is correct. Anytime you have a situation in which business may increase substantially over the line because of increased industry use of that line, you should take a long look at that and see whether it should be abandoned, or whether you should take extra efforts to hold on to it.

Mr. FLORIO. I thank you.

Mr. ROONEY [PRESIDING]. Mr. Mahoney, you were talking, when I went out, about short lines, and I believe the AAR testified they are taking the same position you are taking. Is that correct?

Mr. MAHONEY. I am not sure I heard you.

Mr. ROONEY. The AAR is taking the same position on the short lines as you are. Is that correct?

Mr. MAHONEY. I am not sure of that. I don't know what their position is on the short lines. I am not sure I heard all of it when I was in the back of the room. I know they are against certain authority that the Commission would be given under the pending bills, which we support in this particular case. In 8393, for example, of conditioning an abandonment, when another purchaser is going to buy it, on that purchaser being able to have trackage rights within the State of that abandoned line over the owning railroad, that is, the railroad that is seeking abandonment.

We support that, and I understand AAR is against it. As to the designated operators' position, I am not sure what their position is.

Mr. FLORIO. Mr. Chairman, I think the concern was that with some of the short lines, the anticipation was labor disputes with regard to granting trackage rights on the abandoned lines by the operators of the abandoned lines onto short-line railroads, anticipating labor disputes, and the representation was made that no one

needs labor disputes, and therefore the position that was taken was in opposition to the provisions in some of these bills that would talk about granting trackage rights to abandoned line operators.

Mr. MAHONEY. I think Mr. Snyder might answer that question.

Mr. SNYDER. I think what he referred to—this is a problem that presented itself to the States, and we have discussed the proposed legislation of the States—was the New Hampshire problem. As to the protection, certainly our position is very clear on this for the employees. We think that the contract and the work should follow the employees of the railroad brotherhoods in this position, and we think it is a more peaceful operation in that way, and it is more valid for the railroad industry to do this and to follow this type of pattern which it has not followed.

This is of great concern to us, particularly in the Northeast, some of the ham operators picking up pieces of track here with inexperienced personnel and reduced sizes of crews and that type of operation. It does not provide real good service or a safe operation.

Mr. MAHONEY. There would be any problem, I might mention, that came to mind as Mr. Snyder was speaking. That is where you have a trackage right situation, where railroad A is going to go over the tracks of railroad B, there are agreements permitting the employees of railroad B to operate the trains of railroad A when those trains are going over its tracks.

Now, if you were to bring on railroad A, we will say the type of operation described by Mr. Snyder, onto the tracks of railroad B, it is quite possible these people wouldn't know the rules of the road—I am talking about the safety rules, not the union working rules, but the safety rules of the road—that they are operating over. They might well be extremely inexperienced people that would know their 3 or 4 or 5 miles of branch line, but that is all. So there would be some serious safety problems.

They could be worked out, I think, if the interchange was made with the cars and the crews at the point where railroads A and B meet. Other than that, you might have safety problems as well as labor problems.

Mr. FLORIO. If I could proceed, certainly those are problems, but it seems to me that the problems that could be raised hopefully could be resolved in the countervailing social significance of granting trackage rights. You would be giving to the abandoned railroad that is being subsidized a much greater opportunity of ultimately becoming profitable and ultimately becoming viable, which is desirable, rather than restricting it to the abandoned line which, by definition, was a line that had problems before that. So enhancing the possibility of the scope of the railroad transportation system seems to me desirable as long as the problems that you enumerate in terms of safety and labor problems can be resolved, but I think just because there are potential problems should not be an argument to discourage the use of trackage rights to expand the opportunities to make the system into a better system.

Mr. MAHONEY. As long as the problems are resolvable, I agree.

Mr. ROONEY. The gentleman from West Virginia, Mr. Staggers.

Mr. STAGGERS. Thank you, Mr. Chairman.

First, I want to say thanks to you and to the committee for having these hearings. I think they are very important to the whole nation and to the railroad industry.

I am delighted Mr. Mahoney and Mr. Snyder are here to give their testimony, and thank all who have appeared before.

I am a strong supporter of this legislation for the bill. I am a cosponsor of both H.R. 8393 and H.R. 6739. I think this legislation is highly desirable. I think that if we don't enact it, a lot of branch lines that are essential to industry in this nation will be abandoned. I have one in particular in my district where new industry came in and put up a $1.5 million plant on the strength of the fact that these branch lines will be kept running. Another industry is moving in, starting construction in October or November. We have several industries already on that line, and the railroad wants to abandon that line and has filed a petition with the ICC to abandon it.

I think this type of action is completely contrary to and against the principles under which the railroads got their licenses and permits in the first place. Certainly they ought not to do this. This railroad might not be making a profit, but if it isn't, it is not losing very much. If it is losing, it is the fault of the railroad, itself. They have not done anything in the past 12 to 15 years to improve the tracks at all. They have let them run down so they can only make 10 miles an hour over the whole system, and they can't use large cars at all. They can use only 80-ton cars, and not 100-ton cars, which several of the industries would prefer for reasons of economy. The railroad has also let the bridges run down.

This general picture for the branch lines begins to look a little like it was with passenger service, that the railroads just let it go to pot; they didn't want it because maybe it wasn't profitable. They only took the profitable lines. They got the permit to run because the Federal Government helped to start with. The Federal Government still has a strong interest in what the railroads are doing, and I think this is a very necessary bill. We should give the States an opportunity to participate to the fullest advantage in securing local rail service and a lot of them didn't have that opportunity last year.

So I think the renewal of this program, Mr. Chairman, is highly appropriate. Again I want to say thanks to all of you for having the hearings. I think it is important to a great segment of America, not just my segment, but all over America.

Mr. SNYDER. Mr. Chairman, could I make just a short comment here? I do appreciate being here on behalf of the railroad brotherhoods today. On several occasions in the past several years, it has been my privilege to sit down with members of this committee, both of the chairmen, Mr. Staggers and Mr. Rooney, and other members of the committee, as to this problem of the branch lines in this country.

As Mr. Mahoney pointed out here very adequately, the 1958 Transportation Act was a disaster for this country. It was unfortunate you were not chairman of the committee at that time, Mr. Staggers, nor you, Mr. Rooney. I don't think we would have had the burden of the taxpayers today paying for the cost of Amtrak, because the record showed then that, as has been pointed out here in testimony by Mr. Mahoney, certainly we do not want to go down

this same path with approximately 70,000 miles of track in this country, perhaps the railroads, as we understand, a lot of them would like to get rid of. It affects our entire rail system.

For example, in the Midwest out here, they are having hearings on the Senate side out there, the chairman of the Subcommittee on Agriculture, as to how it affects the farmers and all. With the Midwest States, like Kansas, where Mr. Skubitz comes from, Iowa, Minnesota, where half of the rail mileage in a State is branch line, it is very important. We support the whole concept. We think this ties in with the present administration's energy program. It has been pointed out, and you have seen it on television, I am sure, in the State of Pennsylvania, the Chairman's State up there, where it takes over 8 hours to go 36 miles strictly on a coal-carrying branch line. This is ridiculous. I think this legislation will prevent a lot of that.

It is certainly our intention here to support this type of legislation and work with this committee whether the railroad wants it or not. I think they are playing a game here. They want to get rid of most of these lines, but I don't think the Congress should let them. I think provision should be made for it, and we stand ready to do this and provide work for the railroad employees where they are entitled to it.

Thank you very much.

Mr. ROONEY. Ms. Mikulski.

Ms. MIKULSKI. Mr. Chairman, I would like to associate myself with the remarks of Congressman Thomas Evans, particularly in support of H.R. 8225, which the committee will be considering, because of its tremendous impact on the Delmarva Peninsula. Maryland is, as you know, not only a State with big cities in it, but an agricultural State, a seafood State, and we need our shipping. It is my opinion, in light of the present energy crisis, that rail in this country should be upgraded and maintained. I think we need it for national security. I think we need it for environmental and employment purposes.

I am glad this legislation is being considered today, and I am happy to lend my support and be associated with it.

Mr. ROONEY. Thank you.

I have one final question. Since the passage of the 4-R act, have many short lines come into existence?

Mr. MAHONEY. I don't know the number, but in the States I mentioned in my testimony there have been quite a few. Pennsylvania had a number of them. There are two, three or four now going into Michigan. These gentlemen sitting behind me who follow me to the stand here, I am sure would have the statistics on that coming from the states.

Mr. ROONEY. Thank you very much, gentlemen. We appreciate your testimony.

Mr. MAHONEY. Thank you, Mr. Chairman.

Mr. ROONEY. Our next witnesses will be a panel. The panel will consist of Mr. Killoran, Mr. Metz, Mr. Kassel, Mr. Bivens, and Mr. McCarthy.

21-684 O - 78 - 8

STATEMENTS OF PETER J. METZ, ASSISTANT SECRETARY, EXECUTIVE OFFICE OF TRANSPORTATION & CONSTRUCTION, COMMONWEALTH OF MASSACHUSETTS; JOHN A. BIVENS, ASSISTANT DIRECTOR, ARIZONA DEPARTMENT OF TRANSPORTATION; RAYMOND L. KASSEL, DEPUTY DIRECTOR, IOWA DEPARTMENT OF TRANSPORTATION; JOHN P. KILLORAN, DIRECTOR, WEST VIRGINIA RAILROAD MAINTENANCE AUTHORITY, AND KEVIN B. MC CARTHY, FIRST ASSISTANT CHIEF COUNSEL, ILLINOIS DEPARTMENT OF TRANSPORTATION

The Chair recognizes the gentleman from West Virginia, Mr. Staggers.

Mr. STAGGERS. Thank you, Mr. Chairman. I appreciate your yielding to me to introduce the gentleman from West Virginia, Mr. Killoran, because he is the Director of the West Virginia Railroad Maintenance Authority and has a tremendous responsibility not only for our part of the State but the whole State. We have different segments of the State in which the railroads are trying to abandon some of the lines which would certainly hurt industry a great deal, to the point where a lot of it would probably have to close. Some companies have said they would move if some of these branch lines are dispensed with, and those industries would probably move to some other State.

Some of them would close down, and those that did not would have to use trucks, consuming a lot more energy and gasoline, and clogging up the roads. I just think it would be a great mistake.

I want to welcome you here in behalf of the State of West Virginia, because I know what you have to say will reflect some of the questions across the nation. As for the rest of the panel with you, I am sure that the Chairman will introduce all of them. I am happy they are here, too, showing the interest of their States. The problem facing us is not peculiar to West Virginia; it is a national problem. Mr. Chairman, thank you.

Mr. ROONEY. Thank you, Mr. Chairman.

You may proceed, gentlemen, in any manner which you feel is proper.

STATEMENT OF PETER J. METZ

Mr. METZ. Thank you. I am Peter Metz, Aassistant Secretary for Transportation for Massachusetts, and this panel is here on behalf of all of the States' transportation departments administering rail programs.

I would like to more formally introduce them to you, if I may.

We are constituted, as you know, as the National Conference of State Rail Officials. Ordinarily we would have our executive director here, but he could not make it today, unfortunately.

On my left is John Bivens; John is Assistant Director of the Arizona Department of Transportation, and with me as co-chairman of the National Conference of State Rail Officials.

You have met John Killoran, the Executive Director of the West Virginia Railroad Maintenance Authority. Next to him is Mr. Raymond Kassel, Deputy Director of the Iowa Department of Trans-

portation, and accompanying us is Keven McCarthy, the First Assistant Chief Counsel for the Illinois Department of Transportation and Chairman of our Legislative Committee.

Mr. Chairman, we are very pleased to be able to testify before the committee today. We are very happy that you are holding this hearing. We think it is especially fortunate. The number of bills that are before you are bills that we have reviewed as closely as we can, and we are pleased very much with the direction and trend of things.

Unfortunately, we do not have formal prepared testimony. As you probably understand, it is difficult for States to get together, and several of the bills we have only seen in the last couple of days. So we will be submitting a formal statement to you after our testimony today.

But I must point out the most recent bills, the one sponsored by yourself and the Chairman and the ones that have come out recently, seem to be getting better and better, so we want to encourage the committee in its work, and I hope we can help you with the work this morning in our testimony.

I would like to begin our testimony by briefly touching on the items that we think are important in this legislation. First, I must say that our perspective in this comes from the fact we are in our second year in the Northeast and Midwest of operating programs designed to save branch lines. In the rest of the country the States have been getting underway their planning efforts to respond to the 4-R act, and we bring to you some of the lessons we have learned and a sense of frustration. I think both things have played a key role in the bills.

We need to change some elements of the program based on lessons we have learned and extend some elements of the program, because the programs have been slow in getting off the ground. In particular, we are in support of changing the annual program years around to fiscal years. This would simply rationalize our planning and rationalize the administration.

We are in strong support of extension of the 100 percent Federal assistance, including those for passenger service on commuter territories in the Northeast. As I mentioned, most of the programs have gotten to a slow start, and those items, planning, in particular, in the West and South and rehabilitation and maintenance in the Northwest and Midwest, which we had expected to get underway in the first year, have not gotten underway in the first year. So that extension of 100 percent authority is important to us. We are in support of the provisions which define project eligibility as determined by the date of initiation. That is very important for rational planning and for budgetary planning and is a clarification we badly need in our dealings with the Federal Railroad Administration.

We are in support of the provisions which provide for multi-year carryover of in-kind benefits such as shipper contributions and other State services to match the Federal share. That multi-year carryover would help us considerably in our program.

We are in support of the provisions which better define the Federal-State relationship and the authority of the States and clearly give to the States some considerable flexibility in determining a program that best meets local and State needs.

We are in support of the provisions which provide assistance to deal with branch lines prior to their reaching abandonment. This is one of the most important lessons I think the States have learned, that if we wait until abandonment, many lines are lost, and many of the untoward economic impacts that we are trying to avoid have already occurred. We really must be able to deal with lines before they reach abandonment.

We are in support of the trackage rights authority to the ICC for dealing with branch-line abandonments and substitute carriers that you have already engaged in some considerable discussion of this morning.

We are also in very strong support of the provisions allowing for multi-State cooperation that Ms. Mikulski and Representative Evans have spoken about. We are in support of extending the time period for planning funds and the amount of funds for planning that is very necessary for the States to develop rational programs, and continuity of planning is particularly important to us.

We have had considerable concern about the level of rehabilitation and maintenance we would go to, and we are pleased to see that the committee is addressing the concept of allowing, perhaps mandating, class II level of rehabilitation. The States generally feel that class I, the 10-mile-an-hour standard, is insufficient for the type of project we are undertaking.

In that vein, I point out that the States are generally trying to use this program not for the purposes that some apparently conceived of it, which is a program to let down softly the impact of abandonment; rather, the States are trying to resuscitate lines that have been long neglected by railroads, and, in fact, we are engaging in what we consider to be primarily an economic development and economic revitalization program with the rail assistance programs under the 3-R and 4-R acts.

For instance, we bit, in the Northeast and Midwest, the hard bullet in the beginning and have only chosen to continue about half the lines that were available for subsidy and concentrate our resources on the other half, where we thought there was a good chance of returning those lines to a solid status as contributors to the rail system and permanent contractors to our local economy. For that reason we need to do very adequate level of rehabilitation.

There is one other issue that I would bring to the committee's attention, which has not been addressed in any of the bills so far, and perhaps it is not appropriate this year, and perhaps it is, but I want to recommend it to the committee's attention. We see that most of the other Federal assistance programs for transportation are either now zeroed in or are zeroing in on 80 percent funding level. We think this may be appropriate as the long-term funding level for the State rail assistance program as well.

I would also like to point out one thing that the States have a grave concern about, and while it has not yet surfaced in the House, we see it in the Senate, and that is a proposal to in fact make abandonment easier and to give the railroads considerable more flexibility for abandonment and make abandonment happen faster. We don't think that is appropriate and think it is counterproductive, and we must oppose it.

With that, Mr. Chairman, I would like to turn to Mr. Bivens, so he may bring you a western perspective.

Mr. ROONEY. Before we get to Mr. Bivens, I have to leave here in 10 minutes. I want to ask any one of the five panelists a question.

One of the reasons given to justifying the extension of the 100 percent Federal participation in the subsidy program is the fact that the program was extremely slow in getting started the first year. Is it not true that some of this fault also lies with a number of individual States?

It is my understanding that some of the States were late in getting their State railway plan to the FRA, which is a prerequisite for receiving assistance, and I wonder if you gentlemen would explain why the States delayed in submitting their plans?

You tell me there is great cooperation between the States, so can you tell me why the States couldn't get these plans forward?

Mr. METZ. There is a 2-part answer to that, and I will try the first part, if I may.

In the Midwest and Northeast, the States had the plans in pretty much on time, and the problem with getting rehabilitation underway in the first year was not with State rail planning but more a problem as the gentleman from ICC addressed, getting leases with Penn Central and some Federal bureaucracy.

The problem you allude to on State rail plans is the problem that the Western and Southern States are facing, but there is a different perspective on it. I think Mr. Bivens can answer it.

Mr. BIVENS. I would be pleased to answer that particular question, because it has been very frustrating from our standpoint in the State of Arizona and all of the Western States, frankly—the preparation of a planning work statement that determines what it is that we are going to develop in terms of the plans. This one happens to be from Kentucky, and it is that level of frustration in terms of developing the program.

As you know, the 4-R act was passed in February of 1976. We were promised at a spring meeting in Springfield, Illinois—the National Conference got together, and I think the month was April—we were promised that regulations guiding the program would be out in May. We received those regulations in August of 1976.

From my State we submitted an application for a planning grant in November of 1976, and I received my funds in July of 1977. So it is almost impossible in terms of that kind of effort to carry forth a program. We have gone ahead with the State planning effort. We have a plan that is developed. We are going to public hearing shortly on it and will be submitting it to FRA. But with those kinds of year-and-a-half-to-2-1/2-year delays in terms of getting the funds out to the States to do an effective job, it is impossible for us to get on with the job that is necessary to be done in terms of actually rehabilitating and improving lines in terms of that service.

Mr. METZ. Basically the problem is the States have not been able to get their hands on the 100 percent Federal funds to start their planning efforts. You can't get other projects underway until the plan is in.

Mr. KILLORAN. Mr. Chairman, an additional problem: I know in our case we made submission of our phase 2 State rail plans in the Northern States and went 5-1/2 months before any comment was received back from the Department of Transportation.

Mr. ROONEY. When did you submit it?

Mr. KILLORAN. We submitted our plan—this is the first time around—we submitted it in March of 1976; in August of 1976 they came back and said the plan was deficient. We had to go back and start over again from home plate to get around the bases again, and at this point we have not submitted a final plan. We are submitting that final plan this month or early August. I would subscribe it was not a financial problem, but a problem in the time it took to turn around comments; that went 5 months, 2 months; these add up to a lot of time. We moved as fast as we could, based on getting a reaction from those who must approve the plan.

Mr. ROONEY. There has been some talk about the abandonments with respect to ConRail. Does anybody want to comment on that? I understand there is some talk in the Commonwealth of Massachusetts with respect to ConRail abandonments.

Mr. METZ. Mr. Chairman, there is a grave concern now over all of the Northeast and Midwest States served by ConRail about their apparently building abandonment plans. We have received a list of some 2,900 miles of their system, nearly a fifth of the system that is under study. While they maintain it is not under study, but being screened, it is under study. We have met with them, and they have described it, and it is under study.

Apparently we will receive the first study sometime in late September and have a month to comment before they make final decisions. They appear to be moving headlong toward a sizeable abandonment program, and it has us all very much alarmed. We do not think this is the appropriate time for ConRail to begin abandonment. In fact, our view is that ConRail was charged with saving the rail system and not preparing more for abandonment. The level of effort that ConRail has put in, from our point of view, on many lines they now have under analysis, the level of effort they put in the last year and a half has not been the kind of effort that would save a line. In fact, they are concentrating most resources on the main lines and doing little about the branch lines. They still know very little about their branch lines.

The administration of branch lines under the State assistance program that we are getting from ConRail is not adequate. There is no greater level of efforts on their own branch lines. We think it is entirely inappropriate that ConRail would be considering massive abandonments at this point. Generally the State point of view is that once the 2-year prohibition against abandonment in the 3-R act is lifted, that ConRail should be allowed to abandon only those lines where it has demonstrated that it has tried hard to save them, and the case is clearly against the need to continue service.

Mr. ROONEY. Thank you very much.

Now you may proceed.

STATEMENT OF JOHN A. BIVENS

Mr. BIVENS. I, too, want to thank you, coming from the State of Arizona and the western region, for the opportunity to be with you.

I think you have a copy of my prepared testimony, and I would appreciate it if that could be entered into the record.

Mr. FLORIO [PRESIDING]. Without objection, it is so ordered.

Mr. BIVENS. Thank you. I would like to summarize and make a couple of additional comments in relationship to the program from a western perspective.

We also favor the extension of the 100 percent year, and I think I have mentioned part of our reason for asking for that extension. The delays we have encountered have been, in part, a State responsibility, too, because we have been caught with the responsibility of trying to find appropriate rail officials who can work at the State level and to get our State legislatures and legislators, themselves, all geared up in terms of this type of a program. That has taken an educational job on our part to deal with that effort.

In addition to that, we are very much concerned about the current situation in the 4-R act as it pertains to the requirement for abandonment prior to being made eligible for utilization of rail assistance funds.

This seems to me that this is a self-fulfilling prophecy, and we have experienced in the West railroads that are interested in minimum line abandonment. We don't face the same degree nor severity of line abandonments that are faced in the Northeast and parts of the Midwest, at least, in the Far West we don't face that, but at the same time we do have other kinds of problems, and we are concerned about industrial development and marginal lines and protecting the investment that the private sector is making along those marginal lines and in terms of utilizing rail services, and therefore we strongly support the approach toward potentially subject to abandonment of lines as the criteria associated with this program.

In addition to that effort, we would certainly support our friends from Delaware and Maryland in terms of the ability for States to get together and to share their entitlement funds in terms of this effort. But we in the Western States would like to see that extended on a national basis, and this is going to be particularly important as we see this program moving forth with a 1 percent minimum for each State, and this is particularly true as it relates to coal trains and unit coal trains that are terribly important in States like Colorado and Wyoming, that cross multi-State areas, and we do have branch-line problems associated with some of those programs, and we think that makes a lot of sense in terms of a total national energy problem.

I would also plead with you for substantial flexibility in terms of this program, and we think we have some in the 4-R act, but in the proposed legislation before you, we see increased flexibility on the part of the States, and we certainly support that. Let me cite an example. Within our region we have a State like South Dakota in which 52 percent of their lines are potentially available for abandonment, and we have a state like the State of Nevada that has 6 miles of railroad lines, and the problems that these two States and others in the United States, as a whole—if we are going to have a strong rail program, we must have some flexibility of dealing with those programs of States being able to get together and individual

States reaching their own individual decisions in terms of how to deal with particular problems that are peculiar to them alone.

I would like to summarize my pitch by telling you that we are very supportive of your efforts. We appreciate very much the far-sighted approach that you are using in terms of your legislation and the revisions to the legislation. We are all relatively new from a State standpoint in terms of dealing with the problems of State relatgionships with the Federal Railway Administration and with the railroads, themselves. We think we are learning. We think we are staffed up and the States have a let's-get-on-with-it attitude, and we are anxious to carry out your intent in whatever way possible. We appreciate your support on that.

[Mr. Bivens' prepared statement follows:]

TESTIMONY OF
JOHN A. BIVENS, JR., ASSISTANT DIRECTOR
ARIZONA DEPARTMENT OF TRANSPORTATION
ON THE
STATE RAIL FREIGHT ASSISTANCE ACT OF 1977
BEFORE THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

Gentlemen:

I am John A. Bivens, Jr., Assistant Director, Arizona Department of Transportation in Phoenix, Arizona where I head the Transportation Planning Division. My responsibilities with the Department include the development of Arizona's Statewide Transportation Systems Plan for all modes of transportation including railroads, highways, aeronautics, and public transit. I sincerely appreciate the honor of appearing before you today to discuss the State Rail Freight Assistance Act of 1977 and the existing programs which vitally affect each American.

In addition to my responsibilities with the Arizona Department of Transportation, I also am priviledged to serve as the Co-Chairman of the American Association of State Highway and Transportation Officials Standing Committee on Railroads (the Co-Chairman of the National Conference of State Railway Officials), and the Chairman of the Western Region Conference of State Railway Officials. These are State organizations and my views of our national railroad situation is from a State perspective.

Those of us in State government are pleased that you in the Congress provided for a strong State role in previous railroad legislation -- in the Regional Rail Reorganization Act of 1973 (3R Act) and in the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act). Since the passage of these landmark bills, State officials nationwide have been

struggling in cooperation with railroads, the labor leaders, the shippers and receivers, our communities, and the Federal Railroad Administration to carry out the programs embodied therein. Our efforts have had mixed results; some successes and some failures, frequent frustrations and continuous challenges.

There are numerous outstanding features in existing legislation and you are to be commended on providing for a significant State role in the railroad assistance program, for recognizing that it takes time for States to "gear up" for full participation -- clearly seen in the graduated matching fund provisions, for requiring State Rail Plans, and for requiring these rail plans to be integrated with other transportation systems planning.

I am pleased to report that the States with few exceptions have effectively responded by full and active participation in the railroad programs provided by your legislation. Governors have designated a State agency to administer the program. State agencies have obtained the needed qualified staff. State Rail Planning Work Statements and applications for planning grants have been prepared and submitted in accordance with the legislation and FRA regulations. I regret to report that at this point in the process damaging delays have been encountered. Numerous States outside the Northeast and Midwest Region have expeditiously initiated their State Rail Plans in an effort to obtain the needed rail service assistance program funds. Very few States have actually received their planning grant funds. Without the planning grant funds and a Federally approved State Rail Plan, the States have been unable to assist the railroads with the necessary funds for branch line improvements. We are concerned that as of today, no grants have been given to any State outside the Northwest and Midwest for actual railroad improvements. In spite of a "let's get on with it" attitude by the States, we have been helpless to effectively use the

program. The appointment of Mr. Sullivan as the FRA Administrator offers great promise in getting the program moving.

Those of us in the states outside the 17 state Northeast and Midwest Region covered by the 3R Act are fortunate in at least two ways. First, the states within this region have shared with us their experience, knowledge, and expertise. Secondly, the railroad problems we face in the remainder of the nation are less severe and of a different nature. Our railroads are generally financially stronger and less likely to be faced with immediate bankruptcy. I do not want to leave you, however, with the false impression that we are problem free and without deep concern. Such an impression would not be accurate.

This nation is blessed with an extensive interconnected railroad network which is important to everyone regardless of residency location. Agricultural products, mined resources, fuels and energy resources, lumber and construction materials, and manufactured products must be distributed by rail nationwide. Branch lines as well as main lines must be maintained and improved if the distribution of products transported by rail are to safely reach their destinations. Weak links in our national rail network must be strengthened. It is our understanding that this is the purpose of the rail service assistance program.

In the Western states, which are also an essential part of the national rail network, rail abandonments are less of a problem than in the Northeast and Midwest and parts of the Southeast. We do have a number of marginal lines, desperately in need of rehabilitation and improvement. In many instances we are vigorously pursuing industrial expansion and new development along the rail lines worthy of continuing. In order to convince

businesses that private investments in locations on these potentially subject to abandonment lines are sound, the State must be able to assure the relative permanence of rail service. We believe the best way to do this is to rehabilitate the lines to a standard compatible with permanent service.

We are pleased to strongly support the provisions of the State Rail Freight Assistance Act of 1977 which extends the rail service assistance program to lines that are designated as "potentially subject to abandonment".

Several of our Western States would like to see the eligibility extended further -- perhaps even to new construction. The renewed interest in domestic energy resources and their effective utilization at facilities such as coal fired generation plants may warrant consideration of new construction. This is of special interest to States such as Utah and Arizona. For example, the Salt River Project in Arizona is constructing a billion dollar new coal fired generation facility at St. Johns. In cooperation witn the Santa Fe Railroad, they propose the construction of a new 45 miles rail line to assure the rail delivery of coal to the plant site. Unit coal trains are also a major problem in States like Colorado and Wyoming. The frequency and length of these trains without grade separations at highway intersections keep sections of the communities divided for extended periods of the day and night.

The States are actively working together in an attempt to increase the effectiveness of the rail service assistance program and to improve the working relationship with Federal rail officials. Perhaps you would want to consider a new provision in the State Rail Freight Assistance Act of 1977 permitting States to combine their Federal entitlements to improve rail properties within their respective States or regions, similar to the provision of S. 1793 recently introduced in the Senate by Senator Long. Such a provision should be extended nationwide.

In Section 803 (h) of the 4R Act of 1976 the following statement appears: "Notwithstanding the provisions of the preceeding sentence, the entitlement of each State shall not be less than 1 percent of the funds appropriated." There are several States which will be unable to participate in the rail service assistance program without this or a similar provision in the 1977 Act. We urge that such a provision in the new Act be retained thereby assuring meaningful participation by all States in the program.

We are pleased to see the adjustment in the 4R Act of 1976 making the fiscal years of eligibility correspond with the Federal fiscal years. Since the 33 States outside the Northeast and Midwest Region have been delayed through no fault of their own, we are encouraged to see the 100 percent year extended.

The States which I represent are pleased with most of the provisions in the State Rail Freight Assistance Act of 1977. We are interested in seeing that vaible branch lines of our railroads are rehabilitated, improved, and continued. We are convinced that with adequate and timely Federal financial assistance -- prior to the lengthy and costly abandonment proceedings -- selected branch lines can be made useful and productive components of our national railroad network. We assure you that the States are working diligently with the railroads to provide the nation with this essential private component of our integrated national transportation system.

In summary, the States strongly support an extension of the 100 percent year, the adjustment of the program years to the Federal fiscal year, the provisions for full utilization of in-kind behefits, the retention of a 1 percent minimum for each State, multi-year funding, and increased flexibility in response to specific State and railroad needs.

Thank you for the opportunity you have given me to appear before you. With your assistance, we can make our railroads even more useful. I will be pleased to answer any questions you may have.

Mr. METZ. I would now like to introduce Mr. Raymond Kassel, from Iowa. Mr. Kassel will give you Iowa's perspective and answer some of your questions about that program, too, which is a far-sighted one.

STATEMENT OF RAYMOND L. KASSEL

Mr. KASSEL. I have a few charts. I am going to take them in different order and ignore some of them in view of the time and get to some questions.

As you know, Iowa does have a branch-line assistance program in our State to assist the railroads, and it comes about from the fact that in 1974 that 73 percent of the mileage in our State was railroads that were in marginal conditions. The Rock Island was one which went under.

In looking at our program of how to preserve branch lines and essential rail systems in the State, in 1975, we determined that we at least 50 percent of our lines that we actually needed at all cost in the State of Iowa, and we had to make sure they stayed in service. Since then, we have refined the process by a detailed study of the economic impact of branch-line abandonments on the community, shippers, general economy, and well being of the State.

The program developed is quite simple and free of bureaucratic red tape—and it works well. It calls for the State providing approximately one-third the cost of the project, the shippers' one-third, and the railroads' one-third of the rehabilitation costs. The railroads, in turn, repay the shippers and the State based on the amount of traffic moving over the line. At the outset, the railroads were reluctant to participate in the program, fearing that it would lead to rehabilitation of branch lines that could not be economically viable. This problem was so resolved that we have been able to obtain the railroad's participation. The whole crunch is it is flexible. When the legislature gave us $3 million in the first year to start the program, they gave us no constraints on how to do it, but simply said you have to save branch lines. We want the shippers involved, so we tell the shippers, if you put your money there, than you are going to use the line, you get paid back on the basis of increased traffic. They have certain base traffic we know exists there. They put in their money and get the money back.

The railroads obviously have to put money into it because they will participate in the increased traffic and increased revenue, so they should put up part of the cost. The State sits there and says it is only for our own well being. In essence, what we provide to the railroad is an interest-free loan from these two sources.

Our contract provides there is a payback based on the number of increased cars operated, or so much that operate over the lines after it is improved.

With that, what have we accomplished? As we say in Iowa, we have roughly 10,000 miles of line that we are faced with. We have so far completed work on 310 miles of branch lines, upgraded them, and gone into operation. We have Class II as the standard because we want to operate 100-ton hopper cars at 25 miles an hour. We have 385 miles in progress, or a total of 700 miles with $20 million.

So with seed money our legislature gave us of about $8 million, we now have $20 million in program improvements that either are completed or are underway, and we have about $2 million yet to put under contract, and by the fact the money comes back to us, we reinvest it in the branch lines. The money the railroads invest, they are putting back into the lines, also.

You can see the lines we have completed. This is the grain area of our State. About 16 million tons of agricultural products come in and out of this portion of the State each year on rail. It is too far from the river to truck. The yellow lines are the ones under progress, and eventually we will have all this under progress as well as addressing ourselves to the movements down this way as to what is accomplished.

After we accomplish it, we are also concerned with the contracts which normally run 10 years on a payback operation, that the railroads maintain it in the level we upgrade it to. How do we address ourselves to that? We have developed in Iowa a little simple car that measures conditions of the track. It is not like one of the sophisticated big machines the railroad companies have. We spent only $100,000. It measures conditions of the track for us and also tells us some safety aspects, but it measures basically the gauge and the difference in elevation between the tracks.

When you get through with upgrading, we have a certain condition of that line, and we are able to rate that line the same as the old theory of highway sufficiency rating type of concept. Here is our track geometry ratings, to the class of track, one, two, three, or four. Four is the highest we have in the State. We operate that car over it after the upgrading, and every year after that we will operate that car over the track to see if it is being maintained.

Red is critical. That means it is in very bad shape and shouldn't be operating. As an example, this particular line has not been abandoned. We supported that in this particular case because the shippers in this area had facilities up here; this road had been upgraded and there were shipping facilities there for the 100-ton-hopper-car unit train operation.

Where is much of our money being spent today. You notice we have green on another map where there is a yellow line here of projects underway. That project is partially completed to good conditions, and we will raise it higher. We measure that every year to make sure the railroad is maintaining it as the contract specifies over the 10-year period.

That briefly gives you an idea of what the program is, why it is, and how successful it is.

I want to emphasize that is not for every State in the nation or the nation as a whole. What I am trying to say is the railroad companies couldn't afford that in every State if that was done, nor do you have similar conditions in every State, so I plead with you, in any program you adopt, flexibility is the key word. You have to have some flexibility. Because we have flexibility, in some cases we will put up 70 percent State money if conditions warrant it. In other cases, we will put up 20 percent, depending on the condition of the railroad, the shippers and the essentialities to Iowa.

Mr. FLORIO. Is there anything in these bills that provide reinforcement to that type of program?

Mr. KASSEL. Yes, the in-kind benefits do that. Also, I have a more detailed explanation of the branch-line program I will leave with you for distribution. The in-kind benefits are a viable part of it.

[The information referred to follows:]

IOWA BRANCHLINE ASSISTANCE PROGRAM

Since 1974, the State of Iowa, Iowa shippers and the railroads have negotiated contracts for the upgrading of 695 miles of the 4000 miles of branchlines -- representing a total investment of $20 million to date in the Iowa program.

Several years ago a culmination of factors surfaced which promoted the Iowa legislature to pass the Iowa Rail Assistance Act. At that time grain production in the state had greatly increased primarily in response to foreign demand. Also, because of poor rail service -- specifically the inability of railroads to provide cars to ship grain in 1972 and 1973 and because of the condition of the track -- the shippers and agricultural producers were unable to take full advantage of the potential benefits of the export market. The final factor was the emergence of the energy shortage.

At that time a number of potential programs were considered, including state ownership of railroads. Following considerable discussion and review of the railroads' aliments, the legislature appropriated $3 million from the general fund for the purpose of branchline upgrading -- not railroad acquisition and ownership.

The new legislation was very general and gave the DOT necessary flexibility and latitude to develop a program. The program developed is quite simple and free of bureaucratic red tape -- and it works well. It calls for the state providing approximately 1/3 the cost of the project, the shippers 1/3, and the railroads 1/3 of the rehabilitation costs. The railroads in turn repay the shippers and the state based on the amount of traffic moving over the line. At the outset the railroads were reluctant to participate in the program, fearing that it would lead to rehabilitation of branchlines that could not be economically viable. This problem was so resolved and we have been able to obtain the railroad's participation.

In 1975 and 1976, the Iowa legislature appropriated an additional $3 million. In 1977, due to repayments by railroads and potential for Federal Assistance, the Iowa legislature appropriated $2 million.

The Iowa Department of Transportation has determined that for effective administration of the Branchline Assistance Program, a priority rating system is essential. A system was developed for the purpose of rating the many branchline assistance projects proposed. Six different criteria were incorporated in the priority rating:

1. Historic viability -- the average cars per mile over the line, based on the previous three years of traffic.

2. Potential viability -- the projected increase in traffic over the line if the line was upgraded.

3. Track Structure -- including the condition of the rails, ties, ballast and current load limit.

4. Safety -- the history of accidents and derailments on the line over the previous three years.

5.6. Shipper and rail company participation -- the amount of financial participation or inkind benefits provided by the railroad. (The greater the amount of participation by the railroad or shippers, the higher the priority.)

The six-factor formula assigns percentage points to each criteria equaling 100 points. Projects showing less than 50 points are not considered as viable candidates for state funding.

How does a line become a candidate for rail assistance? The requests for assistance of upgrading a line are made by the shippers or railroads interested in pursuing a project. Necessary information is obtained from the shippers and the railroads and the candidate project is then prioritized and compared to all other projects under consideration.

During the course of obtaining the preliminary data, the Railroad Division staff meets with the shippers to outline their responsibilities and requirements as set out in the law. Because no individual shipper has the needed financial resources available, they are urged to consider forming an association or nonprofit corporation. Forming as association or nonprofit corporation has a two-fold benefit. It makes it easier to deal and negotiate with a small group of association officers instead of a large number of separate shippers. Also, if the shippers find it necessary to secure a loan for their portion of the upgrading costs, it is much simpler as a group to borrow funds.

Once the preliminary terms are agreed upon, the Railroad Division staff begins negotiations with the railroad company. During the negotiations, it is the state's objective to get the best possible terms for the state and the shoppers. After final terms have been agreed upon, a contract is prepared and submitted to both the shippers and the railroads for their review and approval. The state's approval must be obtained from the seven member DOT Commission.

The main provisions of the contract spell out the FRA classification to which the line is to be upgraded and maintained and the terms by which the state and the shippers will be repaid. In most instances, the shippers are paid a specified amount for each car originating and terminating on the line. The shippers are repaid in full on all cars originating and terminating on the line. The state is repaid a specified amount for each car originating and terminating over and above the previous three year average after completion of the project. In addition, most contracts provide for the upgrading of all at grade rail-highway crossings during the rehabilitation process.

We in Iowa feel the program has been effective. Many elevators, for example, are able to move grain to market that otherwise would have been shifted to trucks or other more costly transportation modes. In addition to the lines that have already been contracted, we are currently negotiating additional lines totaling 602 miles. As you can see, the Iowa program stretches a limited amount of state appropriations into a significant track improvement activity and helps preserve a vital transportation service.

The key to the success of the program is the participation of the shippers who must use the line in order to get their investment back.

The Branchline Assistance Program is very simple to administer, it involves a minimum of red tape and it's workable.

Complete details of the Branchline Assistance Program are available in a Council of State Governments publication entitled, "Railroad Rehabilitation: A Program to Upgrade Selected Branch Lines in Iowa."

Projects to Date

No. of Projects	Miles	Avg. Cost Per Mile	Total Cost	State 50%	Shippers 36%	Railroads 14%
12	695	$29,076	$20M	$10M	$7M	$3M

21-684 O - 78 - 9

BRANCHLINE RAILROAD UPGRADING PROJECTS NEGOTIATED

Branchline	Miles	Total Cost	State (000 omitted)	Shipper	Railroad
1. Ida Grove-Maple River	38	$ 176,000	$ 80	$ 80	$ 16
2. Indianola-Carlisle	11	600,000	400	200	0
3. Spencer-Herndon	101	2,083,000	1,598	385	100
4. Creston-Orient	12	441,000	291	0	150
5. Humboldt-Eagle Grove	26	1,800,000	800	500	500
6. Mona Jct.-Minn. Border	83	557,000	191	178	188
7. Orient-Fontanelle	20	750,000	250	250	250
8. Atlantic-Audubon	26	1,008,000	356	380	272
9. Iowa Falls Gateway	302	8,960,000	3,971	3,950	1,039
10. Alden-Eldora	20	1,239,000	826	413	0
11. Milwaukee North Line	32	1,521,000	553	554	414
12. Kanawha-Belmond-Clarion	24	1,073,000	713	360	0
TOTAL	695	20,208,000	10,029	7,250	2,929
			(49.6%)	(35.8%)	(14.5%)

Ms. MIKULSKI. That is a very impressive get-it-done program that you have there. You use the term flexibility, Could you elaborate on that? In addition to the in-kind aspects of the legislation, are there any other recommendations that you might have as we try to improve our railroad legislation?

Mr. KASSEL. Yes, when I was talking about flexibility, I am talking about flexibility in how you negotiate the length of the term of the contract, whether you want a payback or grant program. In some cases there would be no choice, but you should grant the money to the railroads for that line. One of the things we have done in one case with part of the money is that you pay us back once, we will come back; the second time you don't pay us back. Another thing is we have said you don't have to pay; it cash in the pocket, but put an account in the railroad company ledger, and we will specify at a certain time where it will be spent in the State on your line. We only do that once or twice, and then you can get the benefits across the land.

So it is that type of flexibility that you tailor for the individual circumstance and the importance of each individual branch line.

Ms. MIKULSKI. Thank you.

Mr. BIVENS. May I speak to the point of flexibility? One of our concerns is that we are able to utilize from a State's perspective in concert with shippers and labor unions and the railroads, themselves, which of the branch lines really deserve the highest priority instead of this being determined through an abandonment proceeding which one gets through the ICC first, and I think you have already made a substantial step in that direction in terms of some of the legislation that is before you by permitting us to go prior to abandonment to facilitate service to these lines.

Ms. MIKULSKI. Well, I have another question in line with that. As you deal with the Federal Railroad people, particularly in areas of freight, what is the attitude that you find? Do you find them willing to work with you? Do you find there is opportunity for input? Do you find there is desire to have a Federal-State partnership, which was really the legislative intent?

Mr. BIVENS. In all honesty, we have not experienced a very favorable relationship from a State's perspective. I think we would like very much to be brought in and make the program workable prior to the time that rules and regulations are promulgated, and the first time we see them is when they appear in the Federal Register, and they may or may not work from the various States' perspective. That is what we mean by the term flexibility. We would like that kind of State-Federal partnership that is geared to really getting the program going in a unified and cogent kind of way.

Mr. METZ. I would say that the attitude among railroads varies from railroad to railroad. Certainly from Massachusetts' point of view, the attitude of ConRail is one of toleration, but that is it. We don't find them marketing their services or trying to promote use of rail on our subsidized lines. We don't find them making service calls and sale calls on our shippers. They don't respond.

We have had trouble getting our rehabilitation program going because they have different priorities elsewhere in the system. On the other hand, I know dealing with other railroads——

Ms. MIKULSKI. I don't know what the priorities are. They tell me because I need the same bucks you need. It is the same kind of thing. I am just trying to find out if your experience is the same as mine?

Mr. METZ. It sounds like some of it is, at least. I know dealing with some other New Englanders, as the program enlarges and more lines are going to have to be dealt with, I expect to have a more cooperative attitude with the railroads.

Mr. KASSEL. I would say in the State of Iowa we have a good relationship. They are open with us and cooperative with us. I think it is because of the fact they don't fear us. They see we are honestly trying to help them improve their line. The ICC has provided a form for us to enter into the abandonments in advising type of position that we didn't use to have. The ICC has recognized our rail planning process and our economic analysis process. So we have a good relationship in that aspect. I think it can be improved, but it is an honest relationship that now exists between the State of Iowa and other elements involved in the rail process.

Mr. KILLORAN. Ours is the same. It is like Mr. Metz said; it is a situation as to which railroad you are talking to as to the degree of cooperation you have back and forth.

Ms. MIKULSKI. Thank you.

Mr. METZ. Mr. Killoran had testimony he wanted to present.

STATEMENT OF JOHN KILLORAN

Mr. KILLORAN. First, Mr. Chairman, I have a set of remarks I brought today, and I would like to summarize from them, and could they be left in the record?

Mr. FLORIO. Without objection, it is so ordered.

Mr. KILLORAN. Thank you. Just as a matter of wrap-up and talking to a couple of points I know we have been involved with, which are part of the overall goal we all represent here today, I think that the situation of the qualification for assistance, waiting for a line to be completely dead and buried before we can get Federal assistance, by having to have an ICC certificate of abandonment, is certainly, for our State and a number of other States, one of the key, if not the key, problems we face today.

We have a line in West Virginia that I discuss in some detail in our statement which has, I think, taken us through all of the matters of experience as to what happens to a railroad when the threat of abandonment is over it for 5 to 7 years.

In addition, a railroad company has allocated its resources so that maintenance has gone down to the point of barely being class I at this point, and the economic development of the area has completely stagnated. We have been able to at least stop that decline at this point. But we could have gotten into that situation if we had had this kind of qualification sometime ago, and we would not have had the problem that is going to cost more in terms of State effort and State dollars and in terms of more Federal dollars involved. We would be able to solve the uncertainty that exists in existing industry and in the problem of seeking new industry.

As Mr. Staggers mentioned earlier—this is the same line we were talking about, called the South Branch Line in West Virginia. It has been exceedingly difficult to keep what economy is going there going on, and the addition of a $1.5 million feed mill there was done strictly on the faith by that company that the line would somehow be saved, but I think that is the exception and not the rule in these cases throughout the country, and this is the problem that makes me speak very strongly to the term of getting the assistance qualification situation straightened out in this legislation for us. I think it would be helpful.

The other party would like to make additional comments on the in-kind benefits. Certainly if the in-kind benefits are limited to 1 year, the year in which you earn them, I think it would be grossly unfair to the States, to the railroads, themselves, the shippers and everybody else involved, because the nature of railroad rehabilitation, which is the major user of dollars, is such that you are weather-tuned to doing it in season, and projects many times go over two funding periods. I know in the case of one carrier in our State, we have what I call a very good recognition of the problem, so that between the carrier, the private community, and the State, we intend and feel that we will be able to come up with a significant amount of in-kind qualification and in-kind benefits that are real, substantial, and legitimate in-kind qualification.

If we are prohibited from utilizing that in-kind rehabilitation except in the year it is earned, we are going to lose almost 80 or 90 percent of that money that would become available to us, which would go toward purely rehabilitating that line into service.

I just don't see that in-kind qualification is going to be worth very much to us if we simply cannot utilize it but for 1 year. So I want to elaborate on the point.

Those are the two points I wanted to get across.

The bill H.R. 8393, I know, and perhaps one of the other bills, takes care of that problem. I am really underlining the fact that I am supportive of that language in H.R. 8393 and perhaps in other bills which will take care of that problem on in-kind as well as the assistance qualification.

[Mr. Killoran's prepared statement follows:]

West Virginia Railroad Maintenance Authority

John P. Killoran,
Executive Director

922 Quarrier Street
Charleston, West Virginia 25301
(304) 348-3980

TESTIMONY OF
JOHN P. KILLORAN,
Executive Director

Before the Committee oo loterstate and Fnreign Commerce
United States House of Representatives
July 27, 1977

Thank you fnr the opportuoity of appearing today to present testimnoy oo behalf nf the State nf West Virginia.

I am John P. Killnran, Executive Director of the Weat Virginia Railroad Maintenance Authnrity. My ageocy is the "designated state agency" for rail traoaportstion matters under provisioos of the "3R" legialatioo. My testimony, is no behalf of Governnr John D. Rockefeller IV and Mr. Donald D. Moyer - Special Assistsnt tn the Governor and Director nf the Governnr'a Office nf Economic and Community Development, and my ageocy. Mr. Moyer has been active for snme years io the field nf rsilroad reorganizatinn snd the ecooomic effects of railroad service changes, both in our State snd in the State of Pennsylvsnia.

The importaoce of having new legialation from Coogress which will asaist the several states in their ability to perform locsl rsil sasistance prngrams under the "3R" and "4R" acts is paramnuot.

West Virginia has been active in the rail transportation field for only two years. This is a short time. Yet in that time we have become convinced that substantial problems exist which affect our ability to discharge our obligations.

I understand that a number of bills are before the House of Representatives on the subject of state assistance for railroad matters. Of these, many simply concern themselves with extension of the time period for 100% federal funding of projects.

100% Assistance

We believe that states should be given a reasonable opportunity to avail themselves of 100% federal assistance. Such opportunity would be for a period of perhaps three to five months after enactment of comprehensive legislation this year.

Our reasoning is that we have been prevented from utilizing any federal assistance funding at the 100% level except for planning purposes. States seem to have wisely exercised their responsibilities since the federal acts were passed and, therefore, it seems logical to remove the serious restrictions to our doing what our state rail plans say we will do.

While the extension of 100% funding from the federal level has been the most quoted "problem," there are a number of companion issues which, unless resolved concurrently, will prevent our state and others from effectively participating in the programs that Congress enacted as long ago as 1973.

Qualification for Assistance

One of the most striking limitations to effective state initiative is that language in both the 3-R and 4-R acts prevents us from utilizing any sort of federal assistance until the rail line in question has received a certificate of abandonment from the Interstate Commerce Commission(ICC).

Under terms of the 4-R act, railroads now forecast their potential abandonments to the ICC. Dozens of other cases are pending. Many other lines are threatened by downgrading and disuse by the present owning railroad.

Let me project a hypothetical case.....rather let me tell you about a key case now before our agency.

The rail line through the South Branch Valley of West Virginia has been publicly threatened by abandonment by the carrier since about 1970. It was applied for abandonment before the ICC by the carrier in 1975, then withdrawn in a few months. It was then reapplied before the commission just days before the new ICC abandonment regulations became effective last November first. The line has been deferred from all but the bare minimum maintenance for years. It was deliberately taken out of service for seven weeks last fall due to a slight amount of damage due to floods. Yet it was embargoed against traffic for another seven weeks and only returned to full service after our agency complained.

In the interim there has been no effective industrial development on the line. No industry has expanded their rail-oriented facilities.

When an abandonment is first applied for by the carrier, the general pattern is that all expansion of industry and location of new industry is halted. That happened to us on the South Branch.

Even with the limitations of law and regulation, our agency plunged into the case and attempted to keep momentum positively going.

One industry, which has not used rail previously, contacted us and said that they would have 7,000 tons of fertilizer product to ship onto the branch from a plant expansion. (Incidentally, this product would move from 600-to-800 miles on the abandoning carrier's main lines to get to the branch).

The carrier had attempted to convince this shipper to relocate elsewhere. Thankfully, the industry decided to stay and expand - upon our assurances that the line would continue to serve them.

These jobs are now secure, and the branch line has 7,000 tons of "new" traffic - which I might add is scheduled to double within two years.

The traffic drops... Yet, on the strength of hope alone a local feed mill established a plant which cost millions and will double the line's freight traffic (that incidentally will move about 600 miles off the branch over the present owner's mainlines also). But the abandonment action goes on.

Governor Rockefeller acted positively to insure the shippers that our state would not abandon them as the railroad was trying to do. Our State Rail Plan adequately assures that line of a future. A federally financed study was completed only weeks ago which delved into the future of the branch and its communities. That study urged us to use federal assistance to purchase the tracks, rehabilitate them, and improve service. If this is done, the consulting firm stated, the line will be profitable within five years.

We are ready to do that. We want to do that. But we cannot.

Why? Because the ICC procedures may take another year or two! And that is another year or two of uncertainty, poor service, delay. And, also it is another year or two that we forfait our entitlement of federal assistance for this service.

We forfeited $1.4 million dollars this past year. We will probably forfeit another $1.9 million this year. We do not intend to use federal assistance except where we need it. But we are stymied from using it when we need it by the simple problem of not being able to use it because the law says the railroad has to have that ICC certificate!

What we propose is simply that the law be changed.

That change should provide that if a line is identified within the state rail plan as being eligible for assistance and has a priority for using that assistance; and if the line is presently under application by a common carrier for abandonment before the ICC or if the line is listed as "potentially subject to abandonment" in the carriers abandonment documents before the ICC —— then the state should

be free to effect a project to save that railroad then and there.

The fact that we have to see a railroad die a slow death, be buried, and almost forgotten before we - the states - can act is causing a lot of grief to our communities that really do need rail.

It's also a hard thing to tell a local shipper, a small manufacturer, or a county official that they must support an abandonment and see it legally authorized before their state can do anything to save it. That takes a lot of faith in the state and federal governments by a lot of people who should not have to put that kind of trust "on the line."

A companion problem is with roadblocks before our agencies due to interpretation of law and regulations by Federal agencies administering the assistance program.

In-Kind Benefits & Per-Cent of Federal Assistance

There are two particularly onerous decisions which render us almost at a standstill. These are, first, a regulatory interpretation that in-kind benefits accruing from a project cannot be claimed as part of the program except for the sole fiscal year they are first earned; and second, that the percentage of federal share of a project changes if a capital project is not concluded in a single "share year."

To elaborate briefly.

Carrying-forward any in-kind benefits is a reasonable method of assuring that everybody's tax dollars are spent wisely. Railroad projects by their own definition are such that a donation from a private source or a governmental body results in major dollar benefits.

On the other hand, such major donation or in-kind sharing benefits presently have to be used up in one year or lost forever. Such an interpretation is contrary to all other federal assistance programs with which I am familiar. Yet we have to face it on the railroads.

I'll again use a personal example from West Virginia.

We believe that all areas of concern must share in the responsibility of providing future rail service if it is genuinely needed. This includes the railroads themselves who are - lest we forget - also taxpayers and citizens. Consequently, we have as much as $4 million dolers in possible in-kind benefit qualification which we are likely to receive in the federal fiscal year beginning on October first.

On the other hand, our total entitlement of federal assistance will be only $ 2 million dollers, approximately.

Even counting the entire year as an 80% federal funding year - which it isn't - would mean that only about $200,000 of these in-kind benefits can be used in the corresponding year.

On just one case in our state, the carrier plans to donate the entire physical plant and real estate to us. This donation will be valued at over $2.5 million dollars. Under present law, we lose the right to program that benefit unless we spend it all now.

Thus, we will not only lose almost all our potential in-kind qualifications, but we will have no such benefits in the next fiscal year, or the next.

The matter of determination of the proper share of Federal assistance in a project was one which we all assumed would be fixed by the amount of share in effect at the time the capital project was applied-for by the State.

Not so. The Federal Railroad Administration legal staff felt the law was vague, and appealed to the Comptroller General of the United States for determination. That opinion is still not rendered.

I personally do not believe that Congress intended to set up this program in that manner. How can the Federal or State governments project budget estimates

on capital programs that drop 10 per cent in the sharing ratio each year; when the completion of such complex jobs as track rehabilitation is as unpradictable as the weather - on which such jobs depend so much.

On all but planning and operating subsidy projects - where the share is not in question - we are at a standstill. Unless, of course, we can accept the uncertainty of shifting budgets, etc.

In our state, as elsewhere, we prepare budget requests eleven months in advance of the time that the fiscal year begins. That alone is reason, I believe, for asking you to consider action to correct this problem by stating that the year of the contract for a capital project sets the per-centage of the Federal share of costs.

I appreciate the opportunity of presenting testimony on behalf of the State of West Virginia, and the National Conference of State Railway Officials.

Let me again reassure you that West Virginia needs a strong Federal assistance program to assist us in solving our branch line rail problems. In addition, the future of all our railroad lines - and in particular the main lines - may well hinge on enlightened state agencies working with the Congress and the Federal government. If railroads are to continue to serve their vital role in commerce, we all must work hand-in-hand to solve the problems.

Thank you.

Mr. KASSEL. Could I have one more brief comment? In Iowa, we can solve our problem, and we are solving it. We aren't waiting for someone to solve it for us. But our railroads go across the State border, and in order to go to Houston we have to have other States viable. So provide some program; do something that we can move ahead with our rail system.

Mr. METZ. I think I need to clarify one thing, Mr. Chairman, and that is the States, in supporting a program which would deal with rail lines' pre-abandonments, are seeking capital assistance, not operating subsidy assistance, but funds that would allow for rehabilitation, repair, modernization of the facilities.

Mr. FLORIO. You did talk about operating assistance for passengers as contained in only one of the bills. Would you elaborate on your feeling about that?

Mr. METZ. The 4-R act provided in the Northeast and Midwest that commuter authority would receive operating assistance to help compensate them for the increase in costs they were going to incur by ConRail operation of their lines, and that is a declining percentage. It has been proposed in one of the bills, whose number I must confess escapes me, that the time period for that operating assistance be extended, and we are supporting that.

Mr. FLORIO. It has been my experience in our State that with regard to the passenger subsidies, at one point there was real dispute between ConRail and the State over the continuation of the arrangement unless the State was willing to come in and agree to pick up the deficit of the operating expenditures regardless of what they were. ConRail was asking for a blank check, so to speak. Has this been the experience in your State?

Mr. METZ. It was the experience in Massachusetts, and we resolved it by getting rid of them, and have the Boston and Maine operate our commuter service instead of ConRail.

Mr. FLORIO. You were fortunate in having an option.

Mr. METZ. Yes, it is not available in New York, Philadelphia——

Mr. FLORIO. It is clear that the proposal in one bill even for extending the ratio is not going to solve the problem on a long-term basis, and you may well be back here in another year asking for another continuation of 100 percent funding.

Mr. METZ. The reason for asking is so hopefully those States in this position can find out what is at the bottom of that blank check. The fact was that ConRail couldn't give a definitive decision of what it would cost, and the States couldn't determine it, and the year's operating experience, all the auditing that will come after that is necessary before you can figure out what it is going to be under the new formulas.

Mr. FLORIO. Another dispute that has arisen with regard to passenger service is ConRail insurance premium. Have you had experience with regard to this problem?

Mr. METZ. In Massachusetts we have worked this out with the Boston and Maine, and I must confess I am not up to date on the insurance problem as it affects the rest of the States. It probably affects us as well in the long term. I would be pleased to get you some information on it.

Mr. FLORIO. I would appreciate it, because I am considering introducing legislation to deal with the problem. ConRail says it can't insure, asking the States to become insurers.

I have no further questions.

Ms. MIKULSKI. Neither do I.

Mr. FLORIO. We will adjourn until 10 a.m. tomorrow morning, at which time hearings on this subject will continue in room 2218, which is this room.

Thank you very much.

[Whereupon, at 12:07 p.m., the committee adjourned, to reconvene at 10 a.m., Thursday, July 28, 1977.]

LOCAL RAIL SERVICE CONTINUATION ASSISTANCE

THURSDAY, JULY 28, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2218, Rayburn House Office Building, Hon. Fred B. Rooney, chairman, presiding.

Mr. ROONEY. The Chair recognizes the distinguished gentleman from Pennsylvania, the Honorable Joseph M. McDade.

I want to commend you for your promptness, Mr. McDade.

STATEMENT OF HON. JOSEPH M. MC DADE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. MCDADE. Thank you very much. I am following the example set by the Chairman and members of the committee.

I appreciate greatly the opportunity to appear this morning to testify on a bill that you have jointly introduced and one which I have introduced that is similar. I want to say at the outset that I like your bill a lot better, so I am for your bill, and I hope you will pass it.

I wanted to talk, first of all, about the tremendously important need we have for the continuation of the concept of subsidies on these light density lines. In 1976, the FRA allocated $6.5 million to Pennsylvania, for abandoned line operation and accelerated maintenance. About $3.25 million, roughly half, was used for abandoned line operation subsidy, and not one penny, due to FRA regulations, was expended as planned for unaccomplished rehabilitation. So it is clear that the intent of what this committee and the Congress wanted to do in the 4-R act wasn't met.

As an example, the first applicant for these funds was approved just 1 month ago. The need for accelerated maintenance funds, think, has been so documented none of us need argue about it. We have to create, by this bill, the opportunity for congressionally planned rehabilitation work to go further. Otherwise, in my State alone, $55 million in payroll, which is directly and intimately connected to the operation of 46 light density lines, is probably lost.

Now, the bill that you have, I submit, is economically sound. In Pennsylvania, for example, 5,700 jobs depend on the operation of these lines. The Federal investment last year was $3.25 million. That is all they spent out of what you authorized, $6 million. That generated about $17 million in State and Federal income tax and precluded or saved the Federal Government the potential expenditure of about $29 million which would have been the cost in unemployment compensation alone had these jobs been lost. We would be fortunate if every bill which passed Congress was as cost-effective as this bill.

This bill also has very positive effects upon the socioeconomic factors of the Northeast.

Although it is true light density lines are largely responsible for the retention of much of the industry that might have been forced to flee to other areas, the operation has an even greater value in the number of jobs it helps create. For every car that travels to or from a light density line, additional railroad crews, clerks, maintenance-of-way personnel, signalmen and engineers have to be employed. On these little lines 12,000 carloads a year are generated. That is the equivalent of 120 full trains. The revenue earned by the solvent railroads, the railroad employment you create by keeping the lines going, the local jobs saved and the Federal income taxes generated, all of them provide sufficient justification for this bill. In fact, in my judgment, any one of them standing alone would be of sufficient economic benefit for us to say this bill should be enacted unanimously.

There is one problem I want to bring to the attention of the committee, and the bells have sounded, and I will file the statement——

Mr. ROONEY. Without objection, your statement will become part of the record.

[Mr. McDade's prepared statement follows:]

REMARKS OF
CONGRESSMAN JOSEPH M. McDADE
BEFORE THE
HOUSE COMMERCE COMMITTEE
TRANSPORTATION SUBCOMMITTEE
IN RE: H.R. 8393
JULY 28, 1977

Mr. Chairman:

I want to thank you for the opportunity to testify before you on H.R. 8393. As you know, I submitted a somewhat similar bill in February of this year. I must say that I am significantly more pleased with your bill. The bill, as drafted, is an excellent piece of legislation that will meet the present and future needs of many of America's subsidized line shippers. The bill will remedy some of the problems that have appeared during this first year of ConRail operation.

In 1976, the Federal Railroad Administration allocated 6.5 million dollars to Pennsylvania for abandoned line operation and for accelerated maintenance. About 3.25 million dollars were used for abandoned line operation subsidy, while no funds, due to FRA regulations, were expended, as planned, for unaccomplished rehabilitation. It is clear that the intent of the 4R Act has not been met and without the passage of H.R. 8393, the intent of Congress will be frustrated. As an example, the first applicant for these funds was approved only a month ago. The need for accelerated maintenance funds has already been documented. We must create, by this bill, the opportunities for the Congressionally planned rehabilitation work to go forward. Otherwise, the 55 million dollars of payroll in Pennsylvania which is directly related to the operation of 46 light density lines may be lost.

21-684 O - 78 - 10

This bill is an economically sound one. In Pennsylvania, for example, 5700 jobs depend upon the operation of the light density lines. The Federal investment in these light density lines last year was about 3.25 million dollars, which generated about 17 million dollars in State and Federal income taxes and precluded the expenditure of more than 29 million dollars in unemployment compensation alone, which would be required to replace these jobs. We would be very fortunate if all Federal legislation were as cost effective.

Further, the bill has very positive effects upon the socioeconomic factors of the Northeast. Although it is true that light density lines are largely responsible for the retention of much of the industry that might have fled to other areas, the operation of the line has an even greater value in the number of jobs it helps to create. For every car that travels to or from a light density line, additional railroad crews, clerks, maintenance of way personnel, signalmen, engineers and other trainmen must be employed. In Pennsylvania alone, more than 12,000 carloads per year are generated by only 350 miles of light density track. Mr. Chairman, that equates to 120 full size trains per year.

The revenue earned by solvent railroads, the railroad employment created, the local jobs saved, and the income taxes generated provide justification for this bill. Any one of these, standing alone, would be enough.

There is one current rail problem that this bill does not address. As you know, Mr. Chairman, the 4R Act of 1976 authorized funds for the creation of a fossil fuel rail bank. Unfortunately, no funds have been requested for appropriation by

the Secretary of Transportation. The Committee wisely authorized the acquisition of rail rights of way for the creation of new recreational opportunities and the rail bank program. The Interior Subcommittee of the Appropriations Committee on which I serve felt so strongly about the wisdom of your Committee's inclusion of these programs that we added 5 million dollars to get the recreation program going this year. I believe we need to get the railbank program going this year too. The importance of this railbank is much greater than expected and I cite two situations to illustrate my point.

The Final System Plan, as we all know, is not a perfect document. It is also fair to say that after the "Chessie" negotiations fell through, very little time was available to plan for "unified ConRail". The subsequent abandonments caused by the Final System Plan reveals possible needs other than the original purpose of preserving energy options.

Recently we noted with dismay that Johnstown, Pennsylvania, was once again devastated by flooding. Unfortunately, for ConRail and the residents of the area, all the secondary lines around the Johnstown area had been abandoned. Consequently, ConRail could neither-service the residents of the area who badly needed disaster assistance material, but also lost the use of its main east-west route. Perhaps if ConRail could use the railbank funds it might acquire those secondary lines. During the Agnes flooding of 1972, four Northeast railroads agreed to exchange trackage rights over unflooded lines so that disaster aid could be quickly moved in to the Wilkes-Barre and Harrisburg areas. In addition, because of this exchange agreement, through traffic did not stop. Although ConRail now has no need for exchange

agreements, it apparently does need additional capital for light density line acquisition to provide similar flexibility during natural disasters.

In another part of the State, I am advised that 15 miles of abandoned tract requires ConRail to travel over 6 million car miles of unnecessary circuity. In Clearfield County, Pennsylvania, coal is mined for the Portland power plant at the Delaware Water Gap. Instead of shipping the coal from Clearfield, Pennsylvania, to Portland, Pennsylvania, a distance of about 171 miles, ConRail must move coal out of Pennsylvania to New York (either Buffalo or Corning) or to New Jersey (Port Morris) before it can bring the coal back into Pennsyvlanai where it will be used to fuel an electric generation plant. This detour forces ConRail to add about 6 million car miles per year at a cost of about 6 million dollars, all for the lack of a 15 mile long piece of track called the "Bloom Division" (USRA line number 1228).

This kind of circuitous routing definintely adds to the long standing shortage of coal cars and motive power, unnecessary train crew use (5 instead of 3) and creates a situation where ConRail loses the revenue equivalent to 23,725 truck loads of coal per year that are now being lost for just one coal power plant, because the plant must resort to trucks. Diesel fuel is wasted and highways are further deteriorated. The Subcommittee may wish to direct ConRail and other solvent railroads to study the ways by which these private corporations might use the railbank for preserving operating flexibility and future access to coal producing properties. Most of all, the railbank must be funded.

Mr. Chairman, I congratulate you and the Subcommittee for the creation of this excellent bill. I promise to provide whatever assistance you feel is necessary to bring this bill to a speedy and successful decision on the House floor.

Mr. McDADE. Thank you, Mr. Chairman.

The 4-R act authorizes the creation of fossil fuel rail banks to try to preserve the lines going into the fossil fuel areas. Unfortunately, not a penny has been requested by any administration to try to implement the fossil fuel bank. The same was true of another section you wisely included in the act to permit rail right-of-way to be acquired for recreational purposes. Not a penny has been requested for that either.

Now, I serve, on the Appropriations Committee, and we thought so highly of what you did with respect to the right-of-way for recreational purposes that despite the fact that there, was no budget amendment requested we busted the budget and added $5 million to implement what we thought was your wise decision.

Now, if we don't get the rail bank program going, I think we are going to encounter additional problems. The tragedy in Johnstown is an example. Here was a city where every light density line had been abandoned. There was no way to use what might have been good assets to move cargo into the area. In addition, the main east-west line of ConRail was down for at least 3 days because of funding.

I know from my own experiences during Hurricane Agnes that because the light density lines were there and able to be used, the railroads able to make exchange agreements among themselves and relief could get in and out of disaster areas. They weren't just cut off.

So I hope your committee, will think about the rail banking sections and think of this new wrinkle about whether or not there aren't other justifications besides fossil fuel rail banking for keeping these lines open.

Let me point out another anomaly that is unbelievable. In another part of the State I am advised that 15 miles of abandoned track requires ConRail to travel over 6 million car miles of unnecessary circuity. There is a county in Pennsylvania called Clearfield, where they mine coal to send to a power plant that my friend, the Chairman, would recognize, the Portland Power Plant, near the Delawater Water Gap in Pennsylvania. Instead of being able to ship the coal from Clearfield to Portland, about 170 miles, ConRail has to move the coal out of Pennsylvania, up to New York, either to Buffalo or Corning, or to New Jersey, before it can deliver the coal back into the power plant.

It just boggles the mind to think they let 15 miles go because of that, and the cost to them, 6 million car-miles, and I think the rule-of-thumb is a dollar per car-mile, so it is $6 million a year, and they could have kept this 15-mile piece of track going without difficulty. It is identified as USRA Line No. 1228.

This kind of routing just adds to all kinds of problems. As a matter of fact, this power plant is now using roughly 24,000 truckloads of coal——

Mr. SKUBITZ. Would you yield?

Mr. McDADE. Sure.

Mr. SKUBITZ. Was this line abandoned; is that what you are saying, and that has caused this?

Mr. McDADE. Yes.

Mr. SKUBITZ. It would be interesting to find out how much they are losing on that 15 miles.

Mr. ROONEY. We have just developed that question for the FRA.

Mr. MCDADE. We think it is costing $6 million, and we think it is worth looking into.

I sum up, Mr. Chairman, and thank you for the opportunity to appear. It is good legislation, and we think what you are trying to do is important.

Mr. ROONEY. I want to commend you for your very fine statement. Thank you very much. We appreciate your appearance before the committee.

The committee stands adjourned for 10 minutes for the purpose of voting.

[Brief recess.]

Mr. ROONEY. In the interest of time I think we will continue with the next witness, the Honorable John M. Sullivan, FRA Administrator, Department of Transportation.

STATEMENT OF JOHN M. SULLIVAN, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY RAYMOND K. JAMES, CHIEF COUNSEL; CHARLES SWINBURN, ASSOCIATE ADMINISTRATOR FOR FEDERAL ASSISTANCE; AND MADELEINE S. BLOOM, DIRECTOR OF THE OFFICE OF STATE RAIL ASSISTANCE PROGRAMS

Mr. SULLIVAN. We brought with us today, Mr. Ray James, our Chief Counsel; Mr. Charles Swinburn, our Associate Administrator for Federal Assistance; and Ms. Madeleine Bloom, who is in charge of the State programs to help the administrator be responsive.

Mr. ROONEY. I wish the administrator would be responsive to the Chairman of this committee with more prompt notice of your testimony. It arrived last night at a quarter to seven.

Mr. SULLIVAN. Yes, sir; I was just talking to Mr. Druhan about that. We will do our utmost to remedy those defects.

Mr. ROONEY. Thank you very much. You may proceed.

STATEMENT OF JOHN M. SULLIVAN

Mr. SULLIVAN. Mr. Chairman, it is a pleasure to appear here today to testify on the progress of the local rail services program and to provide the administration's position on H.R. 8393, the proposed State Rail Freight Assistance Act of 1977, and related bills.

Before I discuss the specific legislative changes which are proposed in H.R. 8393, I would like to review briefly the status of the local rail services program.

We are really dealing with two distinct programs, at the present time. The first, in terms of when it was enacted, is the regional program initially authorized by section 402 of the Regional Rail Reorganization Act of 1973.

The 402 program became effective on April 1, 1976, and applies to 18 States in the Northeast and Midwest. These are the States in which certain light density lines are located which were previously

owned by the bankrupt railroads but which were not transferred to ConRail or to other operating railroads.

The regional program will terminate, under existing provisions of law, after 2 years, on April 1, 1978. At that time, the States in the program will become eligible to participate in the national program, authorized by section 803 of the Railroad Revitalization and Regulatory Reform Act of 1976. The national program became effective on July 1, 1976, and is scheduled, under current law, to terminate after 5 years, on July 1, 1981.

All 18 States are participating in the 402 regional program, although one State, West Virginia, has not yet moved beyond the planning stage. Of the potential 7,700 miles of lines currently eligible for assistance under the program, lines totaling approximately 3,000 miles are being assisted. The lines eligible for assistance under 402 fall into three categories:

One, lines formerly used by the railroads in reorganization but which were not designated for continued use in the Final System Plan or which were allowed to be discontinued because of the approval of a coordination project;

Two, lines that have been authorized to be abandoned or service discontinued by the Interstate Commerce Commission after Januaqry 3, 1974; and

Three, lines owned, operated or leased by a State within 5 years of the enactment of the act or with respect to which a State invests substantial sums for improvement or maintenance of service.

Most of the 3,000 miles of line designated for assistance to date have fallen within the first category; that is, lines not designated for use in the Final System Plan. This category comprises the bulk of lines which are eligible—approximately 6,000 miles.

To be eligible for 402 assistance, a State must first develop a plan for rail transportation and local rail services. The costs of preparing this plan can be funded by up to 5 percent of a State's 402 share. Seventeen States have established such a plan. The total amount of funds, to date, allocated for planning is $2.8 million.

In addition to planning, States may use 402 funds for three other key activities: operating subsidies to maintain rail service and supporting facilities, modernization or acquisition of rail properties, and the construction or improvement of nonrailroad-related facilities to accommodate freight previously moved by rail service.

Of the $180 million authorized for the program, $112 million has been appropriated through fiscal year 1977. Another $54 million has just cleared the Congress for use in fiscal year 1978. As of July 1, 1977, $66 million of the appropriations has been obligated. Funds are allocated to each State in accordance with a single factor formula based on the proportion of mileage eligible for 402 assistance located in that State. For the first year of the program—April 1, 1976, to April 1, 1977—the Federal share of program costs was 100 percent, and in the second year, 90 percent.

Under the 5-year national program, $360 million has been authorized. $11.75 million has been appropriated through fiscal year 1977 and $3.6 million obligated, all for planning activities. Thirty-two States are eligible for assistance under the 803 program and, as of July 1, 1977, all 31 States which applied for planning grants have had their applications approved.

These States contain approximately 2,100 miles of lines now eligible for assistance. Under the national program, eligible lines are those which the ICC has authorized to be abandoned or lines on which it has approved a discontinuance of service. After the regional program is merged with the 803 program, on April 1, 1978, lines which were eligible under the regional program would continue to be eligible for assistance under the national program.

The 803 program is otherwise similar to the 402 program, including a phasing down of the Federal share, from 100 percent in the first year, to 70 percent during the final 2 years. More detailed State-by-State information is contained in attachment A to my statement [see p. 150].

H.R. 8393 and the related bills make several changes to both the regional and national rail services programs. Some of these changes would improve the programs. The major thrust of these bills, however, is to significantly expand the types of lines eligible for rehabilitation and maintenance assistance and to extend the period of 100 percent Federal funding for varying periods ranging from 3 months to 15 months. H.R. 8393 proposes to extend 100 percent funding under the 402 program for 1 year, and under the 803 program for 9 months. The 90 percent period for both programs would then last 6 months.

Specifically, H.R. 8393 would extend coverage to lines subject to an abandonment proceeding before the Commission and those which a railroad has merely designated as potentially subject to abandonment. In terms of mileage, we estimate that approximately 17,000 miles would be added to the 9,800 miles now eligible for assistance.

We do not support such a major revision to the local rail services program at this time. It is our position that these programs should retain their initial purpose—which was to provide temporary assistance to ease the disruption to shippers and communities of discontinued rail service—until studies and planning now underway can better define the kind of freight transportation, rail or otherwise, the local area should receive.

At the State level, the studies and planning are in the form of the State rail plans required by the act. For many States it is their first opportunity to survey their rail needs and to establish a comprehensive plan to meet those needs. The States under the national program are still in the process of designing their rail plans. These plans will address much more than just the lines now eligible for Federal assistance. Major new directions to the Federal program ought to wait on the results of this State planning effort.

We are also at the planning stage, at the Federal level, of determining the proper Federal-State role in preserving essential rail services.

The issue of the scope, extent, and impact of the uneconomic branch line problem is part of the Comprehensive Study of the American Railway System mandated by section 901 of the 4-R act. The financial impact of uneconomic branch lines on the railroads will be examined as part of the Railroad Capital Needs Study being conducted under section 504 of the 4-R act. A key element in the analysis involves a look at the likelihood that traffic originating or

terminating on branch lines will continue to travel by rail for the line-haul portion of the shipment in the event service is discontinued on the branch line.

The basic purpose of these studies is to determine the importance of this matter to the overall financial health of the railroads, not on a line-by-line basis, but for the system as a whole. Doing this will enable us to examine the adequacy of the local rail services program in the light of a comprehensive picture of the branch line problem, and will shed additional insight as well on the appropriate Federal-State role in defining and preserving essential rail services. Any fundamental changes in the program prior to this time would be, in my opinion, premature.

Pending completion of these studies and plans, the 4-R act title V railroad financial assistance programs, combined with the protection afforded by the local rail services program, should provide the right mix of incentives. Railroads are encouraged to revitalize the economically viable parts of their systems and States have the means to preserve local services on those portions of the unprofitable lines which are abandoned until long-term solutions to the local freight problem can be designed.

The second major aim of the bills is to extend the period of 100 percent Federal funding.

We see no need or justification for the extension. We have now been operating some 4 months at the 90 percent level under the 402 program. Most of the operating subsidy grants have been made and the States are agreeing to provide the 10 percent matching share required. In addition, a large number of accelerated maintenance and related projects have been undertaken, with the States agreeing to provide the matching share. In two of these States, Ohio and Virginia, shippers have committed themselves to providing the matching share and are doing so now. We have no indication that any activities have been eliminated because of the inability of the States to provide the matching share. In addition, the availability of in-kind benefits have been useful to the States in meeting the matching requirements.

With respect to the national program, we do not believe that it is necessary to extend the 100 percent period. Most of the national States applied for and were allocated planning grants during the period from December 1, 1976, to May 1, 1977. In no instance did they fail to participate for lack of matching funds.

The bill also increases the total authorization for the national program from $360 million to $450 million. This increase is apparently intended to cover the added costs resulting from the expansion of the program and the extension of the 100 percent Federal funding period. We support neither of these proposals, nor do we support an increase in authorization. We believe that both the 402 and the national programs are adequately funded.

Now let me turn to those portions of the bill which are aimed at expanding State flexibility, and which, except for the extension of the 100 percent period, we generally favor. For clarity, I will refer only to the changes in the national program because those affecting the section 402 program are identical changes.

Sections 2(a) and (b) of the bill change the matching ratio period to provide 100 percent Federal funding until March 30, 1978, and 90 percent for the next 6 months to September 30, 1978. The remaining periods would then coincide with the Federal fiscal year through September 30, 1981. We agree that the program years should coincide with the Federal fiscal years. As noted above, however, we believe that the 100 percent year should not be extended, but that the 90 percent period be extended 3 months until September 30, 1978. This would promote smoother administration of the program.

Section 2(c) permits a State to use excess in-kind benefits earned in one program year to match the State's share in a subsequent year's program. This provision is desirable in that it recognizes the multi-year aspects of a State's program.

We agree with the intent of the provisions of section 2(c) which change the way the State matching share is determined. The amount of the State share increases from one program year to another. Projects begun in one program year may extend into the next program year. The way the statute is now written, the matching share is determined as of the date work is actually performed. We agree that this result is undesirable, but prefer a solution other than the one contained in H.R. 8393. H.R. 8393 fixes the time for determining the matching share as the initiation of any project. Since some projects would be funded with more than a single year's entitlement, we feel it would be unfair to continue a lower matching share throughout the life of a project. Instead, we recommend that the matching share for any annual entitlement be the one in effect at the time the funds are obligated to the State.

We have difficulty with the last two sentences of section 2(c) and section 4. The apparent intent is to authorize multi-year projects and to permit States to initiate projects in advance of the Federal appropriation and approval process. We are opposed to these provisions. Based on our reading, States could initiate projects with their own resources and would subsequently receive Federal reimbursement. This would make it extremely difficult to control the program's funding level since State-initiated projects would tend to set a floor for Federal reimbursement.

Similarly, if the project were already undertaken by the State, we could not review applications to determine whether a proposed improvement is cost-effective. In addition, reimbursement for past activities has long been disfavored in Federal programs generally because it would be impossible to ensure compliance with a number of Federal policies which are prerequisites to all Federal grants-in-aid. Rare exceptions have been made only in the most unusual cases. These policies include competitive procurement, civil rights and affirmative action measures, and recordkeeping for audit purposes. All of these are reviewed when the final audit of any federally-assisted project is made. If they are not followed, costs may be disallowed. Consequently, the State should agree to comply with these Federal policies at the beginning of the activity to protect against disallowance of costs.

Turning to rail planning, section 5(b) would establish a $10 million ceiling on planning grants for each fiscal year through September 30, 1980. Under existing law, $5 million a year is

available for planning, through September 30, 1978. Planning is a highly essential component of the State involvement in rail transportation. However, we see no need for a specific authorization with a dollar ceiling. Rather, the law could specify that a percentage of each State's entitlement would be available for planning, the percentage to be set either by law or by the secretary. The 402 regional program now contains such language, setting a 5 percent ceiling on planning. We favor this approach. In addition, we see no need to increase the limit on planning funds for the first two fiscal years of the program since they have already passed. There is no apparent need to reimburse States for work done during those years in excess of the amounts granted to them under their entitlements.

There are two provisions of the existing statutes which we believe should be changed. These are the companion reallocation provisions of sections 402 of the 3-R act and 803 of the 4-R act.

The reallocation provisions do not provide the flexibility that the States need to commit funds during the fiscal year. Under existing law, we are required under both programs to reallocate funds not used or committed by a State, immediately to the extent practicable, after the original allocation to the State.

In practice, this requirement for expedited reallocations has not worked well. We recommend that funds be reallocated only if the State cannot use those funds by the end of the fiscal year. Proposed language to achieve this objective is attached to my statement as attachment B [see p. 155].

Section 10 of the bill would amend section 1a(4) of the Interstate Commerce Act to permit the Commission, in setting terms and conditions for abandonment or discontinuance of service, to require the applicant to grant trackage rights to another carrier or to the State or a locality to provide the service which would no longer be available due to an abandonment or discontinuance.

The apparent purpose of the provision is to provide the State with the flexibility to obtain carriers other than the applicant. We recognize the value of this option to the States, and we support it. We will be pleased to work with the committee to tighten the language of the provision to assure that the viable portion of the applicant's system is not adversely affected.

Further views on those portions of the bill dealing with the State rail assistance programs can be found in a section-by-section analysis of the bill under attachment C [see p. 156].

This concludes my prepared statement, Mr. Chairman, and I would be pleased to answer any questions.

[Attachments A, B and C to Mr. Sullivan's statement, follow:]

ATTACHMENT A

July 1, ✓

Mileage Eligible Under Title IV,
Regional Rail Reorganization Act of 1973, as amended

STATE	TOTAL ELIGIBLE MILES IN THE STATE*	STATE'S PERCENTAGE OF ELIGIBLE MILES IN REGION	STATE'S PERCENTAGE OF TITLE IV FUNDS	OBLIGATIONS AS OF 9/30/76	FUNDS AVAILABLE FROM FY 1976 APPROPRIATION	FUNDS AVAILABLE FROM FY 1977 APPROPRIATION	TOTAL FUNDS AVAILABLE IN FY 1977
Connecticut	86.8	1.13	3	1,073,008	$ 115,536	$ 1,897,500	$ 2,013,036
Delaware	55.3	.72	3	1,226,675	115,536	1,897,500	2,013,500
Illinois	370.9	4.81	3.82	1,811,894	147,251	2,418,349	2,652,028
Indiana	776.2	10.06	8	4,031,794	308,158	5,060,992	5,550,024
Maine	48.6	.63	3	812,278	115,536	1,897,500	498,504
Maryland	307.4	3.99	3.17	1,551,384	122,041	2,004,315	2,197,988
Massachusetts	125.1	1.62	3	1,462,500	115,536	1,897,500	2,013,036
Michigan	1242.9	16.11	12.81	6,546,160	493,440	8,103,978	8,887,045
New Hampshire	133.8	1.73	3	1,462,500	115,536	1,897,500	2,013,036
New Jersey	175.1	2.27	3	1,462,500	115,536	1,897,500	2,013,036
New York	1487.1	19.28	15.33	7,641,255	590,386	9,696,215	10,633,137
Ohio	1007.9	13.07	10.39	4,354,630	400,144	6,571,727	7,206,740
Pennsylvania	1307.0	16.95	13.48	5,783,165	518,889	8,521,924	9,345,379
Rhode Island	11.0	.14	3	1,191,053	115,536	1,897,500	2,013,036
Vermont	280.3	3.63	3	1,489,874	115,536	1,897,500	2,013,036
Virginia	181.3	2.35	3	1,462,500	115,536	1,897,500	2,013,036
West Virginia	40.7	.53	3	73,125	115,536	1,897,500	2,013,036
Wisconsin	75.6	.98	3	1,462,500	115,536	1,897,500	2,013,036
	7713.0	100.00	100.00	44,898,795	$3,851,205	$63,250,000	$67,101,205

* Determined in conjunction with Rail Services Planning Office

TITLE IV - RAIL SERVICE CONTINUATION ASSISTANCE

ESTIMATED NEW OBLIGATIONS CURRENTLY IN PIPELINE

July 1, 1977

	Accelerated Maintenance/ Subsidy	Alternate Facility	Acquisition	Rehabilitation	Lease & Taxes	Planning & Program	TOTAL
CONNECTICUT	258,180		750,436		127,107	97,797	1,233,520
DELAWARE	289,264				86,082	146,469	521,815
ILLINOIS	2,734,977				420,672	202,782	3,358,431
INDIANA	4,004,358				732,060	190,022	4,926,440
MAINE	435,177					63,227	498,404
MARYLAND	1,177,364		13,674		410,217		1,601,255
MASSACHUSETTS							
MICHIGAN	4,913,398				1,010,500		5,923,898
NEW HAMPSHIRE	1,514,127						1,514,127
NEW JERSEY			1,300,000				1,300,000
NEW YORK	2,527,881	108,833	51,000	1,814,000	974,678	272,603	5,748,995
OHIO			7,256,872				7,256,872
PENNSYLVANIA	2,558,921				642,006	599,249	3,800,176
RHODE ISLAND			1,000,000				1,000,000
VERMONT							
VIRGINIA							
WEST VIRGINIA			1,788,333			23,400	1,811,733
WISCONSIN	1,568,474					112,578	1,681,052
TOTAL	23,360,944	108,833	12,160,315	1,814,000	4,403,322	1,698,127	42,176,718

May 1, 1977

Mileage Eligible Under Section 803
Railroad Revitalization and Regulatory Reform Act of 1976

STATE	MILEAGE ELIGIBLE AS OF 2/1/77	FY 76-FY 77 TOTAL FUNDS AS OF 9/30/76	TOTAL FUNDS REALLOCATED TO THE STATE AS OF 5/30/77	FUNDS COMMITTED AS OF 7/1/77	FY 76-FY 77 FUNDS TOTAL AVAILABLE TO THE STATE AS OF 7/1/77
Alabama	50.16	$ 450,600	$ 97,618	$ 383,490	$ 481,108
Alaska	0	117,500	0	0	0
Arizona	0	117,500	0	100,000	100,000
Arkansas	32.17	288,780	62,965	244,552	307,517
California	79.43	272,910	155,565	232,262	387,827
Colorado	31.02	117,500	61,107	100,000	161,107
Florida	68.54	856,469	119,539	370,835	490,374
Georgia	97.50	117,500	190,383	65,212	255,595
Idaho	18.87	117,500	36,676	44,000	80,676
Iowa	437.48	2,017,960	652,833	1,189,320	1,842,153
Kansas	30.93	289,029	60,545	245,991	306,536
Kentucky	28.0	199,933	54,995	170,156	225,151
Louisiana	73.98	494,837	143,713	421,137	564,850
Minnesota	218.70	916,570	391,649	556,000	947,649
Mississippi	63.70	309,023	122,133	182,400	304,533
Missouri	72.58	117,500	142,965	100,000	242,965
Montana	27.11	117,500	53,405	100,000	153,405
Nebraska	133.70	883,459	230,486	372,550	603,036
Nevada	0	117,500	0	100,000	100,000
New Mexico	14.42	180,189	28,337	152,219	180,556
North Carolina	44.65	149,951	87,852	127,614	215,466
North Dakota	10.08	125,958	19,851	107,198	127,049
Oklahoma	30.00	374,877	56,817	196,800	253,617
Oregon	17.58	219,678	34,507	186,960	221,467
South Carolina	22.61	117,500	44,541	100,000	144,541
South Dakota	147.76	117,500	291,004	100,000	391,004
Tennessee	111.79	162,571	218,825	120,428	339,253
Texas	235.41	1,836,144	407,291	1,363,000	1,770,291
Utah	4.36	117,500	8,590	100,000	108,590
Washington	15.49	193,562	30,433	164,732	195,165
Wisconsin	24.63	117,500	48,519	100,000	148,519
Wyoming	0	117,500	0	100,000	100,000
TOTAL	2142.65	$11,750,000	$3,853,144	$7,896,856	$11,750,000

Obligations as of July 1, 1977
Section 803 RRRR Act of 1976

	Section 803*
AL	$383,490
AZ	100,000
AR	244,552
FL	192,000
ID	44,000
KY	170,156
MN	50,000
NV	100,000
NM	152,219
ND	107,198
OK	196,800
OR	186,960
SD	100,000
TN	18,200
TX	1,363,000
WA	164,732
	$3,573,307

Title IV Funds Obligated or Committed
as of Jul , 1977

	Subsidy	Accelerated Maintenance	Alternate Facility	Acquisition	Rehabilitation	Lease & Taxes	Planning & Program	TOTAL
CONNECTICUT	139,385	698,695		41,109		73,080	120,739	1,073,008
DELAWARE	379,137	589,685				176,456	81,447	1,226,725
ILLINOIS	1,976,043	789,068				338,312	245,767	3,349,190
INDIANA	1,759,514	2,592,411				1,275,496	366,448	5,993,869
MAINE					747,100		65,178	812,278
MARYLAND	1,124,114	484,083				351,180	76,090	2,035,467
MASSACHUSETTS	1,314,250	1,339,492				230,839	321,564	3,206,145
MICHIGAN	7,190,212	724,120				1,305,348		9,219,680
NEW HAMPSHIRE	82,804	1,893,296		1,313,245			186,190	3,475,535
NEW JERSEY	603,407	283,670	36,720			556,225	242,274	1,722,296
NEW YORK	4,289,414	2,089,135	1,643,090		78,683	3,102,518	1,378,861	12,581,701
OHIO	2,152,215	2,194,692	107,580			712,540	816,568	5,983,595
PENNSYLVANIA	2,177,518	2,072,214				929,547	603,886	5,783,165
RHODE ISLAND	151,316	255,490		41,400	344,817	181,825	112,123	1,086,971
VERMONT	160,917	745,065		1,244,000	1,259,175		93,753	3,502,910
VIRGINIA	2,049,972	525,633				829,508	42,000	3,447,113
WEST VIRGINIA							73,125	73,125
WISCONSIN	1,540,802						148,911	1,689,713
TOTAL	27,091,020	17,276,749	1,787,390	2,639,754	2,429,775	10,062,874	4,974,924	66,262,486

ATTACHMENT B

Strike the fourth sentence of Section 402(b)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 762(b)(1), and the last sentence of Section 5(h) of the Department of Transportation Act (49 U.S.C. 1654 (R)), and insert in lieu thereof in each section the following:

> "As soon as practicable after the close of each fiscal year, the Secretary shall redistribute among all States except ineligible States and any State which chooses not to participate, the portion of the entitlement of any State which has not been approved for obligation by the Secretary during the previous fiscal year.

21-684 O - 78 - 11

ATTACHMENT C

SECTION BY SECTION ANALYSIS OF H.R. 8393
(Staggers, for himself and Mr. Rooney)

H.R. 8393 would amend Section 5 of the Department of Transportation Act (49 U.S.C. 1658), Section 402 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 762), and Section 1a of the Interstate Commerce Act (49 U.S.C. 1a) to make a number of changes in the local rail services programs administered by the FRA, the most significant of which are the expansion of the eligibility provisions to include two additional types of lines and to extend 100% Federal funding for an extra year.

Sections 2(a) and (b) revise the program year to conform in part to the Federal fiscal year. In addition, they extend the 100% period to March 30, 1978 (i.e., until the Northeast Regional States become eligible for assistance under the National program), and reduce the 90% period to six months from April 1, 1978 to September 30, 1978. The remaining periods coincide with the fiscal years.

Section 2(c) permits a State to carry forward to future years in-kind benefits credits which exceed the State's matching share for the year in which the benefits are provided.

The meaning of the remaining sentences of subsection 2(c) is not entirely clear, but the bill can be interpreted as offering a compromise between the positions of

the States and the FRA on the problem of how Federal/ State cost sharing is determined from year to year. The FRA has ruled that the program year during which work is performed determines a State's matching share. The bill could be construed to mean that the date on which work begins would determine the appropriate State share for the entire project regardless of when the work is completed or funds are obligated. This should be clarified. The bill also appears to provide that whenever a project exceeds the unobligated portion of a State's entitlement, the State may complete the project at its own expense and seek reimbursement from future entitlement funds as they are appropriated and at the then prevailing matching share. The apparent result of this provision is that a State's share could be different if it sought reimbursement rather than obtaining the funds front-end. Thus, if a State starts a multi-year project and obtains funds front-end each year, it obtains such funds at the original matching share level. If however a State does a project in one year which exceeds its entitlement, and it obtains reimbursement the following year, such reimbursement is at the matching share ratio then in effect. Because the provision reads "the Secretary may provide" (instead of "the Secretary shall provide"), the bill appears to grant the Secretary discretion to refuse to reimburse a State for costs incurred during a

prior program year. The bill does not, however, provide the Secretary with any guidance. This discretion may not have been intended by the drafters and would be inconsistent with the entitlement approach. In any event, it should be clarified.

Section 3 amends section 5(k) of the Department of Transportation Act ("D.O.T. Act") (49 U.S.C. 1654 § (5) (k)) to expand the categories of lines eligible to assistance to include lines presently subject to abandonment proceedings before the ICC and lines which a railroad identifies as "potentially subject to abandonment" pursuant to section 1a (5) (a) of the Interstate Commerce Act ("I.C.A.") (45 U.S.C. 1a (5) (a)). It is unclear whether the newly eligible lines are eligible only for rehabilitation and improvement to the level "necessary to permit adequate and efficient rail service" but as a minimum to FRA class II track safety standards, or whether the reference simply requires that all rehabilitation and improvement must be at least to class II FRA track standards. Since rehabilitation and improvement constitute a major portion of operating costs, any limitation of this nature, if this is the intent, could be of relatively minor significance.

Section 4 forbids FRA from witholding funding for a project solely because it did not have prior FRA approval. This could prevent FRA from assuring the Grantee complies with a number of Federally mandated policies. For example, we could not insure that competitive

procurement practices were followed, that civil rights affirmative action programs were implemented, or that adequate records were kept. We do not have the resources to examine State practices on a current basis and must rely on prior State committments and subsequent Federal audits. In addition, traditional Federal policy in the awarding of grants is to provide assistance prospectively under the theory that scarce Federal funds should not be expended to reimburse recipients for the performance of an activity they have the capacity to do themselves.

Section 5 increases the authorization for the National program (§ 5(f) of the D.O.T. Act) from $360,000,000 to $450,000,000. The available planning funds are also doubled to $10,000,000 and their availability is extended from three to five years. As two fiscal years have been funded since the program began (FY '76 and FY '77), there is no need to provide an extra $5 million per year for those two years.

Sections 6, 7, 8, and 9 amend section 402 of the Railroad Revitalization Regulatory Reform Act ("RRRA") (45 U.S.C. 762) to conform to the changes made to § 5 of the D.O.T. Act.

Section 10 amends Section 1a (4) of the I.C.A. to permit the ICC to include as a condition to the authorization of an abandonment or a discontinuance a directive awarding

trackage rights to another common carrier by railroad or to a State or a political subdivision for all or any portion of the applicant's railroad located within the State which the ICC determines to be needed in order to provide rail freight services which would otherwise be unavailable due to the abandonment or discontinuance. While preserving the States' flexibility to utilize different carriers, we do not believe that the provision is drawn sufficiently restrictive to assure that the viable portion of a carriers lines are not adversely affected by the entry of another carrier. In addition, the provision should be modified to recognize that the abandonment or discontinuance certificate is not actually issued where a subsidy is offered and that such offers can be made to the carrier being granted the trackage rights.

Mr. ROONEY. Thank you very much for that very fine statement, Mr. Sullivan.

It was contended in testimony yesterday that one of the reasons necessary to extend the 100 percent subsidy for another year is that it took almost all of the first year to formulate the procedures.

Could you please comment on this statement? Explain why there was such a delay in initiating the program, you or any of your colleagues.

Mr. SULLIVAN. I would like Mr. Swinburn, our Associate Administrator for Federal Assistance, to comment on that, as he worked through this period.

Mr. SWINBURN. Thank you, sir.

I presume, Mr. Chairman, that the comment is relevant to the national program which in the year and one-half it has been in existence has so far provided primarily for planning funds to flow and not for any project funds to flow. The primary cause of that is the statutory requirement that a State must have a statewide rail transportation plan in place and approved before we can award any project funds.

The procedures and regulations for the planning funds were preliminarily published in August of 1976, and the States were told to go ahead and use those preliminary procedures and regulations to pattern their State rail planning process.

We began to receive applications for planning funds, several of them, in the fall of 1976. The bulk of the applications we received from December through March of 1976 and 1977, and we processed those 30-some applications in that 3- or 4-month period and approved them all by May 1. The 31 States are now all actively in the planning process, using planning funds, and we would expect around September or October to begin to receive the first plans from the States for approval so the States can then move into the project process. But the plan is a statutory prerequisite to the process.

Mr. ROONEY. How long does it take you to approve a State plan, generally?

Mr. SULLIVAN. Well, sir, we would naturally say that it varies with how many we have arriving at once, but our goal for such things is 4 to 6 weeks.

Mr. FLORIO. Would the Chairman yield?

Mr. ROONEY. I would be happy to yield.

Mr. FLORIO. I would commend you for reading the testimony of representatives from various State transportation departments that was presented to the committee yesterday. It was a cross-section of not only those taking part in the national program, but those taking part in the regional program. The gentleman from West Virginia who was here was particularly forceful in feeling that FRA had not been dealing in an expeditious manner with the applications. I think it is fair to say their general conclusion was the need for this bill resulted from FRA's delays in going forth with the rules and regulations and even more importantly than that, in the interchange of information going back and forth, that even after the rules and regulations had been published, that trying to get information and trying to get approvals for the various modifications of the plan had dragged out to the point that they were far behind their own timetables.

So I would just suggest that if you get a chance, you might take a look at that in order to address any of the legitimate criticisms that might be made.

Mr. SULLIVAN. Yes, sir, we will.

Mr. FLORIO. Thank you, Mr. Chairman.

Mr. ROONEY. There has been no money spent for rehabilitation in the Northeast; is that correct?

Mr. SULLIVAN. No, sir, that is not my understanding. The moneys are essentially planning moneys. Enclosed with our submission to you is a summary table for the Northeast which includes, as I see here, $747,100 for the State of Maine, $78,683 for the State of New York, totaling $2,429,775 for rehabilitation. That would be Title IV funds obligated or committed as of July 1977.

Mr. ROONEY. In other words, you have only expended——

Mr. SULLIVAN. As you can see to the left, accelerated maintenance funds have been obligated to the total of $17,276,749.

Mr. SWINBURN. One can get into quite an argument, Mr. Chairman, with railroad people as to what actually constitutes rehabilitation, but as far as the simplest definition, that is putting money into railroad track to improve it so that operations can be conducted at a faster and safer speed. Both the accelerated maintenance column

and the rehabilitation column in this chart would represent that kind of investment.

Mr. ROONEY. Yesterday we heard testimony that Delaware, Maryland, and Virginia find it necessary to combine their eligible funds in order to continue operations of the lines in the Delmarva Peninsula. Would you favor such a proposal?

Mr. SULLIVAN. Yes, and I would like Mr. Swinburn to comment because we have had recent discussions on that subject.

Mr. SWINBURN. That is an avenue of funding those States have been pursuing probably for about three quarters of a year. In January, we presented Delaware with an outline of the economic case that should be made to allow such fundings. We asked them to prove that in making the investment of their money in Virginia there would be benefits which would accrue to Delaware and to Delaware's branch line program.

About 3 weeks ago, Delaware presented us with such evidence. We have been analyzing it for the past 3 weeks. As of now, it looks to be satisfactory evidence, and we anticipate approving very, very shortly the transfer of $200,000 from Delaware's account to Virginia's account to maintain service on the Delmarva Peninsula.

Mr. ROONEY. On page 3 of your testimony, you state, as of July 1, 1977, only $66 million of the $112 million appropriated has been obligated. I wonder if you can explain why this amount of obligation appears to be so small?

Mr. SULLIVAN. Well, we don't feel that the obligations are that small. Within the next 3 weeks, there will be an additional $37 million of obligations, and it is very likely at this point that by September 30 we will have obligated the full $112 million.

There are some of the things that involve title searches, metes and bounds surveys and appraisal work that necessarily delay the obligations, but those are all in the natural course of business. So I guess I would say we would have these funds all obligated by September 30.

Mr. ROONEY. In other words, it wasn't a bad estimate; it was just a matter of delaying getting the program under way?

Mr. SULLIVAN. Well, certain things are amenable to moving ahead more quickly, such as the accelerated maintenance projects, but where there is more extensive planning or complex planning involved, it just naturally takes longer to get that done and get the funds obligated.

Mr. SWINBURN. Additionally, Mr. Chairman, if I may, the railroad work, as you know, is particularly seasonal, particularly in the northeast part of the country, and the funds that became available on October 1, at the beginning of fiscal year 1977, in most of the States in the Northeast, could not be put into full construction work until perhaps May, when the ground began to thaw; so we are now in the active construction season.

There is a chart attached to the testimony entitled, Title IV Rail Service Continuation Assistance, Estimated New Obligations Currently in the Pipeline, and you will see there are $2 million in obligations which we are actively processing, the bulk of which we expect to get out in the next 3 to 4 weeks, and large amounts of those are for maintenance or rehabilitation-type work.

Mr. ROONEY. Most of the money you have obligated has been at 90 percent, with the 10 percent coming from the State or shippers, as you pointed out in the testimony. Isn't the purpose of the bill we have to give the States additional time so they can participate in 100 percent of the funds?

Mr. SULLIVAN. Subject to Mr. Swinburn's description of the statutory sequence, I would say that the intent is to provide a bridge for the discontinuance of lines subject to abandonment and then in that timing, it has an increasing State share.

Mr. ROONEY. On page 4 of your statement, you state that approximately 2,100 miles of lines are now eligible for assistance in the nationwide program. In your judgment, do you anticipate that this number of miles will increase substantially as more lines are designated for abandonment?

Mr. SULLIVAN. Yes, sir, actually at the first count on this we had 800 miles—I think that was August 1, 1976—which was the initiation point of the program. Then in February, following February 2, we had gone up to the 2,100 period, so that, depending on the particular abandonment circumstances, we feel there may have been a rush of this because of the 4-R act. It is logical this might taper off under the indicated 2,000-a-year level, but eventually supposedly up to the full 17,000 that we see there.

Mr. ROONEY. Of the 2,100 miles eligible for assistance, how many of the miles are presently being subsidized?

Mr. SULLIVAN. Those 2,100 miles, Mr. Chairman, I don't believe we have even seen activity on. In other words, these were subsequent to a cutoff date so that I don't think the States involved have even come to us with plans affecting these 2,100 miles.

Mr. SWINBURN. Technically, because the States are in the planning process, none of the 2,100 miles could be subsidized. In additional conversation with the States, as far as we know, it appears that very little, if any, of that 2,100 miles is desired to be subsidized by the States. We don't have any major readings that the States want to subsidize a significant number of that 2,100 miles.

Mr. FLORIO. Would the gentleman yield?

Mr. ROONEY. I would be happy to yield.

Mr. FLORIO. I find it difficult to understand how you can make that evaluation if the prerequisite is the planning, and the planning hasn't been completed, of the 2,100 miles. Is this on the national plan?

Mr. SWINBURN. Yes, sir, outside the Northeast.

Mr. FLORIO. How do you ascertain what the initial inclination of the State is if, in fact, the planning hasn't gone forth?

Mr. SWINBURN. No. 1, all of these 2,100 did get through the process in 1 year, which indicates they probably were not seriously opposed at the ICC. Additionally, even though the 4-R act, as passed, allows for an offer of subsidy to be made to keep a line going, notwithstanding our program, but the new procedures allow for that to happen, none were made on these lines.

Additionally, we are in constant contact with most of the planners in the national program. Most of them, even though they have not gotten to putting a plan on paper, do know and are generally aware of what is going on in their state rail environment, and, in

conversations with them, we haven't gotten any indications that the lines that have been abandoned have been bothersome to them.

I think it may be a phenomenon that we could have anticipated and expected because the fact they came up quickly, went through without opposition, means there is nobody out there—I shouldn't say nobody, but a significant number of people out there—suffering by virtue of it.

Mr. FLORIO. I understand. Thank you very much.

Mr. ROONEY. On page 4 of your statement, you state that $3.6 million of the national program has been obligated for planning activities. Since no funds have been obligated for operational cost or maintenance rehabilitation, is it not true that these States will not receive any subsidy at 100 percent?

Mr. SULLIVAN. I would like Mr. Swinburn to reply to that.

Mr. SWINBURN. That is correct, Mr. Chairman. The way the law now reads, when the work is done determines the matching share, and since most of the planning statements were approved by May 1, and the planning is now going on and being paid for, it will be at a 90-10 share, and any additional projects will also be at 90-10 share or less.

Mr. ROONEY. This is the purpose of the bill, to give the States the benefit of the 100 percent funding by the Federal Government.

Mr. SWINBURN. We believe that the reason 100 percent funding on a program which benefits primarily the local community and the States should exist is because at the initiation of any program, particularly in this program, the States haven't had time to find any share of their own. That is why I believe the first year was made 100 percent, because the program came so quickly that the States wouldn't have time to put in place the budget appropriation mechanisms to come up with 10 percent, wouldn't have time to find matching shares.

We don't have any indication that the States in the Northeast or the States in the nationwide program are having great difficulties in coming up with the 10 percent shares. Our matching share regulations we believe to be very liberal. Any State which has turned its mind to it has——

Ms. MIKULSKI. I didn't hear that. Did you say they do or do not have difficulty in coming up with the 10 percent?

Mr. SWINBURN. Our experience so far is that inasmuch as the planning process is going, the States have come up with their 10 percent. They are using it now; nor have we heard of any serious difficulties in States coming up with their 10 percent for subsequent projects which will be coming up after the planning phase.

Mr. FLORIO. If the gentlelady would yield, you are not into subsequent projects yet in any massive way? You mentioned three or four States that have preliminarily become involved in rehabilitation. Again, on the basis of what? Do you have applications in for actual rehabilitation?

Mr. SWINBURN. In the Northeast we are funding and will have funded by September 30, $112 million worth of projects, and the States in the Northeast are providing their 10 percent matching share and have been since April 1 on a day-to-day basis for a large part of that and are not having difficulty.

Again, sir, our in-kind benefit regulations are quite liberal , and a lot of States are using the in-kind benefit regulations to provide the 10 percent match.

Mr. FLORIO. Your assumption before about the 100 percent, I think you make just as adequate a countervailing argument that the intent of the Congress was to provide for the 100 percent for the rehabilitation, and inasmuch as it has taken perhaps an inordinately long period of time for the application procedures, the rules and regulations and plans to be approved, it was clearly not the intention to use up the period of time when the 100 percent would be available putting plan formulas together.

The clear intent of the Congress was to make the 100 percent financing period available during the actual rehabilitation. It is a rehabilitation bill; it is a maintenance bill. I am just not sure I accept your philosophy as to why you would oppose the 100 percent extension period because now we are getting into the actual rehabilitation when the Congress wanted to have the first year of that to be provided at the 100 percent ratio.

Thank you.

Mr. ROONEY. I received, 72 hours in advance of this meeting, a statement which will be delivered following you by Ms. Barbara Adams, Legislative Vice-Chairperson of the Railroad Task Force for the Northeast Region, and, as I recall, in her testimony she is saying that the States throughout the Northeast Region of the United States support this legislation, and she has copies of letters from the Departments of Transportation of 12 States in support of the extension of this legislation. Are you telling this committee that you haven't heard from the States with respect to 100 percent funding?

Mr. SWINBURN. Mr. Chairman, I am sure the States support this bill, and just as a point of fact, I am not sure whether she is specifically saying they support the 100 percent extension or the expansion of the bill into nonabandoned lines.

Mr. ROONEY. They do support both. But they also support the extension of the 100 percent.

The Chair recognizes the gentleman from New Jersey.

Mr. FLORIO. Thank you.

Most of the questions I had were asked and dealt with in the dialogue.

One point, as a courtesy to the Chairman of the full committee, reference was made to West Virginia as being the only State that has not had plans that have been approved yet. I would appreciate it, not necessarily now, but for the record as soon as possible, if you could provide to the committee a detailed statement as to the obstacles and problems that have presented themselves and your expectation with regard to West Virginia's planning proposal with regard to when it is going to be approved.

Mr. SWINBURN. May I speak to that now?

Mr. FLORIO. Certainly.

Mr. SWINBURN. The State of West Virginia, for reasons of its own, chose to take the planning process very carefully and apparently not to try to expedite the planning process, I think, in large part because they only had 40 miles in the State eligible for the program.

The State submitted to us a plan on the 20th of July, about 2 weeks ago. We have looked at it, have conducted a large part of our preliminary analysis of that plan, think it is a good plan, and would expect to approve that plan within the next several weeks. But the plan was received only 2 weeks ago.

Mr. FLORIO. I am sure the Chairman will be happy to hear that.

On page 7 of your testimony, you make reference to the fact that "railroads are encouraged to revitalize the economically viable parts of their systems and States have the means to preserve local services on those portions of the unprofitable lines which are abandoned until long-term solutions to the local freight problem can be designed."

Are you talking about general revenues? You are confident the States can go into general revenues to provide for the maintenance of these lines until long-term solutions are worked out, or do you know something with regard to specific alternative sources of funding?

Mr. SULLIVAN. It is really the essence of the two programs, as I understand it, that this provides the State the mechanism to receive Federal assistance funds for lines which they determine to be economically viable to keep alive.

Mr. FLORIO. You are making reference within the framework of the program?

Mr. SULLIVAN. Of the existing legislation; yes, sir.

Mr. FLORIO. Is it my understanding that you do not support the intent of these bills which is to, I suppose, liberalize the ability of railroads that are not yet approved for abandonment to take part in the subsidy program?

Mr. SULLIVAN. Yes, sir; that is correct.

Mr. FLORIO. Are you familiar with the argument that has been raised by a number of people that by waiting for actual approval of a line to be abandoned, we are almost ensuring that the line will never come back because the process of abandonment almost requires that people who are on the line go look for alternative modes of transportation, you lose carriers, and therefore by the time the Federal Government under this program comes in to upgrade the tracks, potential business is gone, that the rationale for this being, well, if we can see that a line is having a problem, rather than wait until we lose all the potential business off of the line as a result of total abandonment, maybe we should become involved in upgrading the track and making a marginal track able to be viable by the improvement?

Mr. SULLIVAN. I am aware of all that. I think what we are addressing ourselves to is that we see that we are looking at an extremely expansionary effect on budget requirements which we don't support. We feel it would be setting a precedent for funneling public grant funds into private sector rail operations, which we don't support, and there are the obvious possibilities for collusion between a State and a railroad which are undesirable, so I would say we have examined these things all extremely carefully in arriving at the position that we are informing you of.

Mr. FLORIO. I don't follow exactly why you say we are talking about an expansionary impact upon the allocations. All we are

doing is providing an alternative method for getting the fixed amount of moneys that are authorized and appropriated to the appropriate railroads. We are not talking about, by definition, increasing the amount of money. We are talking about saying that the amount of money that is fixed, whatever it happens to be, should not be just available to go to railroads that have already been proved to be abandoned. Rather, before we get to that point when the railroad is effectively gone, maybe we should allow moneys to go to those railroads that are marginal, that are on their way to go, that have not yet been approved and thereby probably save some money and certainly save the business.

Mr. SULLIVAN. I understand what you are saying. Let me have Mr. Swinburn address himself to that.

Mr. SWINBURN. I think the budget effects that bother us, Congressman Florio, are that you are talking about expanding the program from approximately 9,800 miles now, to an additional 17,000 miles, to about a 27,000-mile program instantly.

Mr. FLORIO. Let me follow what you are saying. You are saying that as a result of the change in methodology, conceivably more lines would be eligible for the money that is available under this program?

Mr. SWINBURN. That is right; not just conceivably, but the definitions contained in the bill do incorporate that many lines.

Mr. FLORIO. Isn't it the case that all that you are going to have to do is you will have to pick and choose with more discretion and hopefully put the money into those lines that can be saved in a more effective way than by waiting for a line to go through the whole abandonment process? So we are opening, perhaps, more lines that are eligible for the money, but hopefully will be using that money towards those lines that are more effectively able to be assisted?

All I am trying to point out is you are implying there is a certain inevitability of higher amount of money to go for larger amounts of lines. I don't think that follows.

Mr. SWINBURN. It would obviously be foolish to say that it is inevitable. I think it leads in that direction. There is, as I understand, in several of the bills already an expansion of authorizations from $360 million to $450 million accompanying this expansion of eligible lines. Potentially, the bill could be much, much more.

The northeast lines which are presently being operated under subsidy by the States, and that is 3,000 miles, presumably are serving some legitimate local economic purpose. Those lines presumably those States would continue to subsidize under this program, and then we are going to add in those States a universe of lines on top of that program.

It seems to me that the demand just in the northeast region, itself, would have to be greater than the existing funds which are already being used to keep 3,000 miles of line operating to serve shippers and local communities' economic needs. The same we would expect would happen to the nation. There is some core of lines which, when abandoned, the States may choose to continue to operate under subsidy. We are going to add to that core of lines 17,000 more which are still in the system.

Now what bothers us about the 17,000 miles that we are going to add, which are still in the system, as they are in the private sector system, they are the responsibility of the railroads to maintain and provide service over.

We all know throughout history in the past a lot of those types of lines have not gotten that proper treatment, which is why we have the problem facing us today. But the 4-R act was passed in February 1976, with the intent of changing that situation, returning the railroads to viability, so they could maintain all of their system. We are providing financial assistance to the railroads in the form of loans and loan guarantees to support the main-line sections of their system.

Mr. FLORIO. Are you talking about title III?

Mr. SWINBURN. Yes, sir. And this program would come in and provide grants to the private sector to support other parts of the system. And we are saying that in 504 and 901 studies we are looking at the whole system and would propose to present to the Congress proposals to deal with financial needs and Federal and State lending relationships vis-a-vis the railroad industry, which would address the whole system, the main lines and the branch lines, but we feel it would be premature now to put Federal grant money into private sector railroad pockets to maintain lines they should be maintaining themselves if they were profitable and were functioning as they are supposed to function, as the 4-R act meant them to function.

Mr. FLORIO. The only observation I would make is that you are late. The Congress made the decision that the key point is the public interest; that we are aware of the fact that the abandonment or potential abandonment of lines does have an adverse impact upon the economies of our States, particularly in the Northeast, and, therefore, to say that it is a private sector obligation or responsibility, the whole involvement of the Federal Government came notwithstanding our realization of the private sector involvement and responsibility, because we felt that the private sector was not doing what it should be doing in certain areas.

The branch line area is one that is clearly a problem with regard to the economies of our States, and so I think the argument and the whole discussion has to be dealt with not so much on private sector, public sector, not so much on what potentially may be the amount of money that is required to deal with these 17,000 miles of lines, but we are going to have to make a decision as of now on this particular point as to whether it is cost-effective to wait until a line is abandoned before we put any money into upgrading the maintenance.

I would suggest to you, in my opinion, it is not cost-effective to wait to that point; that we should make the decision that if a line is in jeopardy, marginal, and it is important to the area's economy, that it is much more cost-effective to put the money in at an earlier stage and then make a determination with regard to the limited amount of dollars that we have as to where the priorities should be.

Making decisions on priorities is what we are all supposed to be doing. I don't think it is appropriate just to reject the methodology that is contained in this bill because it may lead to more demands

on the limited dollars. We will deal with the more demands at a later time whether they are justified or not.

You did touch on title V. Let me ask you a question. How is that going? Are the applications being expeditiously considered, hopefully in a more expeditious fashion than some of the plans were under this title?

Mr. SULLIVAN. Yes, sir, they are. Actually under both section 505 and 511 actual obligation guarantees and preference share funds are being put out.

Mr. FLORIO. Have agreements been signed with any railroads?

Mr. SULLIVAN. Yes, sir.

Mr. FLORIO. What railroads?

Mr. SWINBURN. A loan guarantee agreement has been signed with the Missouri-Kansas-Texas Railroad, a preference share agreement with the Milwaukee Railroad, and we are shooting for, by the end of this month, to sign preference share agreements with three other railroads.

Mr. FLORIO. How many railroad applications have been submitted to take part in the program?

Mr. SWINBURN. We have applications probably in the vicinity of six or seven railroads. Some of them have multiple applications in. We are actively negotiating now with two railroads, in addition to the two that are out, and are just about to commence negotiations with the other railroads.

Mr. FLORIO. What is the breakdown between preference share agreements and loan guarantee agreements?

Mr. SWINBURN. In applications there are about $450 million worth of preference share applications, about $175 million worth of loan guarantee applications.

Mr. FLORIO. Have there been difficulties in negotiations on the preference share agreements with regard to disputes, as to what the authority of FRA is in matters that are traditionally regarded as managerial prerogatives?

It has been brought to my attention there is some feeling that the statutory requirements are being exceeded in terms of the demands that FRA is making as to managerial prerogatives that the companies are used to exercising. Has this been brought to your attention?

Mr. SULLIVAN. I would like to respond to that, if I may, Congressman Florio. We addressed ourselves to that early on, and actually with Mr. James, our Chief Counsel, and Mr. Price, the Special Assistant to the Secretary, and Mr. Swinburn, an exhaustive amount of time was put into going over, line by line, these regulations, to be sure that they were softened in every way possible, and we actually conferred with the principals of some of the major railroads who are applying for help with the Secretary, and we have, I think, put these agreements out in a way that we have answered most of the severe problems that they were bringing up, and I think we have workable agreements that will be landmark assistance to railroads that require it.

Mr. FLORIO. Thank you very much, Mr. Chairman.

Mr. ROONEY. Ms. Mikulski.

Ms. MIKULSKI. Mr. Sullivan, I would like to go to page 5 of your testimony for a second and to paragraph 3, in which you say, "We

do not support major revision to the local rail services at this time," and you go on to say, "until studies and planning now underway can better define our needs."

That sounds terrific, but when do you think these studies will be done. I find one of the problems in the Federal Government is everybody says we want to study the problem, and then we study the studies, and then we study the people who did the studies, and I just wonder what kind of time we have here, if you have a time line where you think they are going to be completed?

Mr. SULLIVAN. Actually the completion dates were mandated by the legislation. We currently have, for the 504 study requested, and our request is at OMB now for extension of the deadline so the 504 and 901 studies will be completed simultaneously, and the date for that is the middle of January of 1978.

So these studies are, I guess, very comprehensive and having gone through the section 503 classification studies, and so forth, I can assure you that they are not nebulous; they are extremely detailed and getting into voluminous amounts of detail that when properly analyzed I am sure will be very beneficial. These studies mandated by the act are what we are talking about, and they will be available to us in January.

Ms. MIKULSKI. The study will be done by January, and when will the analysis be done?

Mr. SULLIVAN. The analysis is part of the study.

Ms. MIKULSKI. So it will all be completed and available for us for our review and oversight in January 1978?

Mr. SULLIVAN. Yes.

Ms. MIKULSKI. When the States were here yesterday, they were quite positive in discussing the work with you, particularly the criteria in which there has been a great deal of flexibility regarding matching in-kind. They thought that was terrific, but they had other problems. They kept talking about the need for flexibility, that one of the things we should emphasize legislatively and encourage administratively, was flexibility, and the other was the issue of input.

They felt in many instances they learned about rules and regulations that will affect State planning decisionmaking and State legislative priorities when they read the Federal Register.

The success of this program really depends upon a very close collaborative relationship with States. I wonder what processes and procedures have been established for States to be involved in input and to participate in setting up the rules and regulations so they can be workable. Could you elaborate on that?

Mr. SULLIVAN. I would like Mr. Swinburn to address himself to that.

Ms. MIKULSKI. Who is this lady with you?

Mr. SWINBURN. Ms. Bloom is in charge of our State assistance program.

Ms. MIKULSKI. I would like to hear from Ms. Bloom, in addition.

Mr. SWINBURN. That is a very appropriate question for Ms. Bloom to deal with.

Ms. BLOOM. I would be glad to respond.

There are several ways we have involved the States in addition to allowing for comment on proposed rules and regulations. When we do go out in the Federal Register, the pieces are not final, of course, and the States do respond if they want to. At this point, we are going out with advanced notice on a point to allow States and others that are interested in the program such as AAR, labor, et cetera, to respond long in advance to an actual proposed rule, even.

Another way we work with the States is informally we will sit down and have meetings with the National Conference of State Railway Officials, which, I believe, was represented before you by Mr. Clifford Elkins. I am not sure. But he is a professional staff member for the group there, associated with the American Association of State Highway and Transportation Officials. We work with them informally before we go out with definitive notices on rules and regulations.

Another way that we deal with the States is that in my office we have a professional staff member who is assigned a number of States individually to work with. They are continuously on the phone with the States, answering their problems, helping them expedite the application process from the State end, and each State that deals with the project phase of the program subsidy or rehab is aware there is a specific person assigned and working with this intimately.

We have established a field position, what we call directors of Federal assistance in the field.

Ms. MIKULSKI. Could you tell me how many people you have in your office, how many are in Washington, and how many in the field?

Ms. BLOOM. In the State office there are a total of 17 people that actually have something to do with the State subsidy program. There are six, approximately, handling the project.

Ms. MIKULSKI. Is that six of the 17?

Ms. BLOOM. Yes, that handle project work, and then there are approximately four heads of division that handle planning activities and provide technical assistance to the States. We also have directors of Federal assistance in the field, one for each of the five Federal Railroad Administration regions, and they are available right out where the problems are to meet with States and to help them on any questions that come up.

Ms. MIKULSKI. Do you think that is adequate?

Ms. BLOOM. That is a difficult question to answer. I think we are getting the most out of the existing staff.

Ms. MIKULSKI. I would be disappointed if you didn't say that, Ms. Bloom.

Ms. BLOOM. We do feel, especially as the program moves into the national States, which are only in planning now, but are going to be developing their plans and needing more technical assistance, that we need more help in the field, and the Department of Transportation has a very large field staff in its Federal Highway Administration, and as a source of economy, to use people that are already there, we have agreed from Federal railroads to reimburse Federal highways to give us assistance in the field on general grant procedures.

21-684 O - 78 - 12

Ms. MIKULSKI. You are thinking about changing, using them?

Ms. BLOOM. Yes, for some grant work assistance.

Ms. MIKULSKI. Is that something that is going to have to come before us for approval?

Ms. BLOOM. No, I don't believe so.

Ms. MIKULSKI. I would like to go on record saying I have very serious reservations about that, Mr. Sullivan and Ms. Bloom, because I find people who work with highways, and that is essentially what it has been, have a very different attitude than railroads.

Ms. BLOOM. Let me qualify. They will have no authority over the program. What they are going to be doing is the general type of grant work, answering questions about how to fill out forms, get things cleared that are the same in all grant programs. They will not be handling the substantive portion of the work which will be retained by the Federal Railroads totally.

Ms. MIKULSKI. It comes down to a question of priorities, and I happen to think railroads are a priority, particularly in the Northeast Corridor. They are absolutely critical to our whole energy program, and to the economic development of the Northeast Corridor. One of the things that has been my observation over the past 20 years is that the whole transportation industry has been captured by the highway lobby. It has dominated our transportation thinking. One of the reasons we paved over America is because of that thinking. One of the reasons our railroads are neglected is because we capitulated into that kind of thinking and then to say we are going to delegate technical assistance to the very people who never gave us priority in the first place, I just wonder.

Ms. BLOOM. It won't be technical assistance even, and they will have no authority over our program. I might add—

Ms. MIKULSKI. Then why give it to them?

Ms. BLOOM. Because we need more people to answer questions how to fill out forms, what is affirmative action, what is a civil rights form, what do I do on this, what does competitive procurement mean? These are things anyone who is associated with a grant program can answer without telling you to build a highway or to build an airport.

Ms. MIKULSKI. I just wonder what priority we are going to end up with. If a person has 15 phone calls, who gets what? I just want you to know, without dragging out this hearing, that I really have very serious reservations about it.

What do you do in your programmatic activity that encourages States to collaborate with each other? A State like Iowa, or Massachusetts, could come up with its own railroad plan, but it ultimately has to connect to Connecticut, New Jersey. How do we encourage cooperation and collaboration?

Ms. BLOOM. I think the States get at that through their development of the State rail plans. They are free to coordinate with other States on lines that are both interstate or problems that are intrastate through the planning process.

Mr. FLORIO. Will the gentlelady yield?

Ms. MIKULSKI. Yes.

Mr. FLORIO. On the same vein, what, if anything, does FRA do or require themselves or regard themselves as required to do to en-

courage the States to negotiate with the railroads, and I have specifically in mind some of the comments that were made yesterday by some of the State representatives, particularly the representatives in the region who have been dealing with Conrail. All of the comments universally were that ConRail was not cooperating, that ConRail didn't seem to be doing anything to encourage business to go to the branch lines; it wasn't out canvassing, looking for business in any way, and, in effect, Conrail had effectively—and I don't think it was a misstatement—written off the branch lines and was concentrating effort on the main line.

Do you regard it as part of your responsibility to urge or to get ConRail involved in attempting to make the branch lines viable, such that they can be saved, and that we don't have to ultimately go to abandonment and have the Federal Government come in and subsidize?

Mr. SULLIVAN. I think ConRail, by their mandate, is a quasi-private corporation, and, as such, of course, are struggling to get to at least a breakeven position. I would think as a part of their marketing and economic analysis it would be to their great self-interest to be interested in the branch lines and specifically where there would be traffic originating or terminating on branch lines so that they specifically avoid situations where they would end up losing business if specific branch lines were put out of service. I just think it is their business judgment.

Mr. FLORIO. You would say it is not your business then?

Mr. SULLIVAN. As an interested citizen, user of the Northeast Corridor——

Mr. FLORIO. Even above that, as someone who has something to do with the parceling out of money under this program, I would think it would be in FRA's interest to attempt to encourage the maximum development of potentially abandonable lines so they don't get to the point of being abandoned so as to be able to take part in the process.

The argument of the gentleman from Massachusetts yesterday was that ConRail was doing nothing to perhaps help preserve a marginal line from going over that tipping point where it no longer was marginal and ultimately would fall into the responsibility of the Federal Government and the State under this particular program. So if one reads that as perhaps not being too tortured an interpretation of what your responsibility is, it might be something that you would want to consider becoming involved with.

Mr. SULLIVAN. I think Mr. Swinburn would like to address that.

Mr. SWINBURN. We are, the Federal Government and the Congress, involved at both ends of ConRail, that is, in putting in over a 5-year period $2.1 billion into keeping the corporation running, into upgrading the physical facilities of the corporation, and hopefully returning it completely to the private sector as an ongoing corporation.

At the other end, we are involved in subsidizing a branch line program of which in the Northeast ConRail is the major operator. We do watch ConRail's performance on the branch lines program that we pay for. We are satisfied that they are meeting their responsibilities at least vis-a-vis the Federal funds which are flowing.

There is, of course, the in-between area, the lines that Federal funds are not yet flowing to, that cause the States concerns and which are the subject about which you are speaking. ConRail does devote the large part of its attention now to getting its mainline system back in shape. If ConRail didn't get that mainline system back in shape, we would never have a private sector railroad with $2.1 billion of Federal money invested in it. It would be more money and maybe never get to the private sector. I think ConRail has set priorities. I don't think they are ignoring the branchline problem, but they have limited resources, $2.1 billion, and limited people, and it is a case of priority. I don't think it would be fair to characterize them as ignoring the State needs or branchline problems, but I can see from the State side where they look at the local rail problem, and not the mainline problem, and get a little impatient.

I think it is a matter of time and of ConRail getting through its highest priorities and then getting to the next level of fixing up its track structure and its system.

Mr. FLORIO. Thank you.

Ms. MIKULSKI. Mr. Chairman, I have one other question, and that comes back to the legislation specifically. Could you tell me how much we have expended under the accelerated maintenance program at the 100 percent level and how much we have expended at the 90 percent level, both for accelerated maintenance and for rehabilitation?

Mr. SWINBURN. I think we will have to supply it for the record, because we don't normally keep statistics like that, but we can do it.

Ms. MIKULSKI. Fine. Could you give us, also, a State-by-State breakdown?

Mr. SWINBURN. Yes.

Ms. MIKULSKI. Thank you.

Mr. Chairman, I ask that be accepted for the record.

I have no other questions.

Mr. ROONEY. The Chair recognizes the gentleman from Kansas, Mr. Skubitz.

Mr. SKUBITZ. Thank you, Mr. Chairman. I am sorry I wasn't here, Mr. Sullivan, in the beginning. I hoped to get back, but I have a little problem in Kansas called Fort Scott. They are building a fort there, and I was interested in meeting the Park people and trying to get some money for it. That is as important to me as the Northeast Corridor.

Mr. Sullivan, when this legislation first came up, I happened to be on the other side of the fence from the Chairman. I was trying to help the Ford administration, and, as I recall, we set aside $180 million for expenditures in the Northeast Corridor and another $360 million nationwide.

Can you tell me how much money you have spent to date subsidizing the branch lines?

Mr. SULLIVAN. The answer is that so far in the Northeast we have spent $66 million, and, of course, the initial 402 program was in the Northeast; the $360 million national program, section 803 program, we are really just getting into.

Mr. SKUBITZ. Have you even gotten into it? Have you spent a nickel yet outside of the Northeast Corridor?

Mr. SULLIVAN. Yes, sir; $3.5 million.

Mr. SKUBITZ. Where?

Mr. SULLIVAN. I will ask Mr. Swinburn to answer that.

Mr. SWINBURN. Across all of the States for planning funds, sir.

Mr. SKUBITZ. All of the States for planning money?

Mr. SWINBURN. Yes, sir.

Mr. SKUBITZ. Actually no money to subsidize?

Mr. SWINBURN. That is correct.

Mr. SKUBITZ. The second point, Mr. Sullivan, when we established the program so we could keep within our dollar limit, we made it a limited program for five years and the payments would go from 100 percent, and so on, down. My question to you is, if we had a permanent plan, how would you feel about that, a permanent subsidy program based on a 90-50 percent program?

What I am saying is this: A road might be perfectly good at this particular time, and maybe a year from now. But all at once things start hitting and the road finds itself in bad straits. Wouldn't it be much better to have a permanent program that a road at any time that it becomes in bad straits 10 years from now, 15 years from now, that at that time it could apply for subsidies and the 90 percent figure would come into force and then 80, 70, and so on?

Mr. ROONEY. Will the gentleman yield?

Mr. SKUBITZ. Yes.

Mr. ROONEY. There is a live quorum. The Chairman would like to suggest we take a 10-minute break. I think he will need 10 minutes to digest that question, anyway.

[Brief recess.]

Mr. FLORIO [presiding]. Mr. Rooney asked me to reconvene the meeting, and we will take up where we left off.

Mr. Skubitz might want to rephrase his question.

Mr. SKUBITZ. Restating my question—I hope I will restate it correctly—under the existing law we have a 5-year program that goes from 100 to 90, and so on. At the end of that period, it goes out of existence.

Now, my point is, why not a program that would start at 90, and go down to 50, that would be effective at any time so that railroads would not be placed in a position of coming in and trying to take care of a program in the next 5 years when it may be in a position to go on, on its own.

And I make the point, suppose I have a suit of clothes, and they come along and say we will give you $50 for your suit today; next year, nothing. But this suit still has 2 years in it.

I don't know whether this one has. But I am going to get my pay raise and then I am going to get a new suit.

My point is if they put it to you that way, $50 this year but nothing next year, I am liable to trade in this year, whereas I could carry on for another 2 years and maybe things would break right that I could keep going and not ever have to come under the program.

How do you feel about such a program?

Mr. SULLIVAN. After 10 minutes, I now know how I feel.

Mr. SKUBITZ. You are going to support your position vigorously.

Mr. SULLIVAN. Of course this all started with the northern bankruptcies and actually the 4-R act, which followed on, facilitated abandonments and, of course, the State assistance, the intent, as we see it, is to minimize the impact of the abandonment on the shippers and/or local conmmunity.

So that with that we have looked to the States, of course, with their ongoing rail plans, to address themselves to all corners of the State and see where they might have problems, but, as the administrator, I guess the overriding long-range goal that I see is the desire for a viable national system, and the studies that we referred to earlier, 504 and 901 studies, which will be available in January 1978, will address themselves to this question, and, as a part of that, I am sure would address the idea that you are proposing.

Mr. SKUBITZ. Well, I had hoped that we would start thinking about it. When we put this program into effect, we were under the gun. We had to do something in a hurry or disaster would hit the country. But now that we have things moving, I think it is important that we look ahead to what we will do in the future and how we can keep these branch lines running as long as they possibly can on their own, without forcing any of them by saying in the next 5 years, brother, you have to get in, or else.

Mr. FLORIO. Would the gentleman yield?

Mr. SKUBITZ. Yes, I yield.

Mr. FLORIO. Just an observation: I think the difficulty is that we have to walk that narrow point between facilitating assistance for legitimate situations where the railroads are to be abandoned and establishing a long-term program that may provide an incentive for people to get out from under when there may be no cause.

I am aware of what the gentleman is talking about, but I would suggest that the original program was adopted as a result of an emergency situation in the Northeast. We have now expanded it to the entire United States, and I would just be concerned.

Mr. SKUBITZ. It has always been the whole——

Mr. FLORIO. We are folding the one program into the national program, and the gentleman is suggesting maybe we should have an ongoing program, and there is some merit, perhaps, to that, but I would be concerned about almost announcing it as a national policy that people can start looking and counting upon the Federal Government to bail them out, so to speak, from their responsibilities to preserve lines that are perhaps not the most profitable lines and the distinction between one that has no profit, not the most profit, and some that are marginal.

I would not want the Federal Government to be announcing, by the adoption of such a policy, that the Federal Government is now going to finance lines that are not the most profitable lines.

Mr. SKUBITZ. If I may have my time, my point is that under this 100-90-80-70, we will finance abandonments for the next 5 years. You may have some roads that are in good condition, branch lines that are making maybe just on a breakeven or just a little below. I recall during the hearings when they said companies were going to move into certain areas and they would be able to survive when these companies came in. There was a lot of testimony on that. A

line would be forced at this time to say, well, if it is five years, I guess we had just as well go under and get out from under or take advantage of the 100-90, and so forth. Under my suggestion that line can keep going and maybe survive without any government assistance, and it wouldn't force the line to take advantage of the law today. They could wait until they reached the circumstance that required that they take it. That may be 10 years down the line, or 20 years down the line, or maybe never down the line.

I listened to Mr. McDade here, where he was talking about this one company. My guess is during the rush we fed figures into the computers and said, hey, this line has to go because it is losing too much money, and yet I am just wondering whether or not we are paying out more money by making this big circular drive to get the coal from mine A to the company or the utility that needs it.

Incidentally, can you answer that question?

Mr. SULLIVAN. This particular line—in fact, yesterday I was in the Johnstown area in a helicopter reviewing the whole rail situation, and I am familiar with that part of the country because I am from Pennsylvania, and have traveled the State widely. I think there could have been some mistake at the time of the drawing up of the final system plan which would have allowed this 15-mile segment to drop out, and certainly as a good management type of thing, I am sure that again ConRail would want to do whatever they would have to do to shorten the route in delivering coal to Portland, Pennsylvania. I would be very much in agreement in finding out what is behind that.

Mr. SKUBITZ. I think we ought to find out, because it may be costing us more money because we closed it down, and the losses are greater this way than they would be otherwise.

Mr. SULLIVAN. I would say this: one of the State plans that has come to my attention, and which was very impressive, was the Iowa plan, where they get shippers and railroads and States involved in a cooperative assessment of what is there and how it can be used better, and, as a result, say if a shipper does contribute to the thinking and planning and even perhaps putting a share of the money up for a project, they then find themselves a part of it, and they tend to ship more and stay with it over a longer period of time, and I would think in State planning that type of plan would have merit and would give the added flexibility of the local people being involved, and it is something that certainly is a desirable aspect.

Mr. SKUBITZ. That might work in the Northeast area, for example. I don't think that is going to help out in my section at all. I don't think the State is going to get into much of that. They don't have enough money as it is, much less starting to subsidize railroads. If they know that down the road they can take advantage of this program, I think this would be a better deal.

I am glad our Chairman is back. He stayed out of the room until I finished my question.

I have one other question. The gentlelady from Maryland raised the question and asked for some statistics relating to the amount of money that is being spent by States.

Now, I don't know exactly what she was driving at, but I am wondering, do you think that money ought to be prorated out of this

on the basis of States, or are we interested in the national transportation system?

Mr. SULLIVAN. We're interested in the national transportation——

Mr. SKUBITZ. Are you going to say, all right, we are giving Maryland so much money and therefore should give Massachusetts so much? We in Kansas say, if you are going to give them that amount of money, we want it in Kansas, too. I don't think rail program money for branch lines ought to be based on a State problem. It is a national problem.

Mr. SULLIVAN. Yes, sir. Perhaps Madeleine can give us the formula for eligible mileage.

Ms. BLOOM. It is specified in section 402 and section 803 of the law now that each State is entitled to an amount of money that equates with their share of the mileage that is eligible on the branch lines.

Mr. SKUBITZ. I can understand that, but it is based on mileage in the law rather than on the basis of States.

Ms. BLOOM. It is based on mileage within the State.

Mr. SKUBITZ. Thank you, Mr. Chairman.

Mr. ROONEY. I will have no objection if my distinguished colleague from Kansas comments on the question, but I have asked the previous FRA administrator on numerous occasions whether or not some of the decisions made by the Secretary of Transportation were based upon statements coming from OMB.

Has OMB dominated any of your thinking in this respect?

Mr. SULLIVAN. Not mine, Mr. Chairman.

Mr. ROONEY. I have one final question, Mr. Sullivan. Section 810 of the 4-R act calls for the establishment of a rail bank program which was provided in the 4-R Act. It is needed for various reasons. I don't have to get into them. They talk about the coal, when we rely on coal so heavily, and the many lines going into the coal areas now that have practically been abandoned for several years. What do you propose to do about this rail bank problem?

Mr. SULLIVAN. We have, I believe, Mr. Chairman, regulations that will be due in about 5 months on this question, and I believe the States have this capacity to identify as part of their State plans, rail bank areas, too, but we will have regulations on this question in 5 months.

Mr. ROONEY. Thank you very much for your fine presentation and your candid responses to some of the questions.

I would like to, at this point, enter into the record,as though read, the statement of one of our colleagues, the Honorable Bob Traxler, of the Eighth Congressional District of the State of Michigan.

STATEMENT OF HON. BOB TRAXLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. TRAXLER. Mr. Chairman, members of the subcommittee, I would like to thank you for providing me with this opportunity to discuss with you the continuing need to upgrade our nation's rail system.

Many people here today are very well aware of the excellent job that Chairman Rooney and the members of this subcommittee have

done in the past several years in their preparation of legislation that has led to the successful operations of ConRail and the continuation of rail service on lines of railroad that had been granted abandonment applications by the Interstate Commerce Commission.

Few people have taken the time and interest in the problems of railroads that has been demonstrated by Congressman Rooney, and I certainly hope that for the benefit of our Nation's railroad system and the shippers that depend upon it, he remains Chairman of this subcommittee for some time to come.

I would also like to emphasize that with the new administration, we have a new attitude towards the most essential part of railroads the branch lines. Our former Secretary of Transportation made no secret of the fact that he believed that branch lines should be phased out of operation, and that the railroads should be consolidated into a limited number of main lines. Our new Secretary of Transportation, Brock Adams, has a completely different attitude. As a former member of this subcommittee and as one of the original authors of the Regional Rail Reorganization Act of 1973, he knows that branch lines are essential for the shipment of agricultural products and farm equipment from sparsely populated areas into out urban centers. Without these branch lines, many of our farmers would be unable to market their goods, causing an increase in food prices to consumers, or they would have to utilize more expensive forms of transportation which would also lead to an increase in food prices.

We are at a point in our transportation history when we are trying to put together all phases of our transportation. We are finally realizing as a nation that we cannot pay attention to just one mode of transportation at a time, allowing all others to fall into disrepair until an emergency condition arises.

The Congress made substantial efforts at improving our rail systems with the 3R and 4R acts, but at that time our interest was more in tune with the ability to guarantee the continued operation of rail service, and not necessarily the improvement of ur rail system.

Today you are considering legislation which will be the start of what I hope will be the type of transportation program that our nation will follow in the future. The provisions of H.R. 8420, the State Rail Freight Assistance Act of 1977, provide the ability to deal with the most critical problem faced on our railroads—the condition of rail systems.

Over the past 3 years, I have become acquainted with many people in the rail industry, both labor and management. These knowledgeable people universally agree that the largest problem railroads face is the inability to upgrade track to realistic operating conditions which will allow them to offer lower rates to shippers along with vastly improved service.

The philosophy behind the 3R act was to keep railroads in operation. Rail lines could be upgraded to a FRA Class I standard of ten miles per hour under the existing subsidy program, but such a low speed is purely ludicrous in light of the fact that operations at that speed will waste fuel and lead to much higher crew costs, which can only result in higher rates to shippers and slower service.

I am extremely pleased that we have the existing subsidy provision because it has helped to keep all lines that were not conveyed to ConRail or a solvent carrier under operation. The shippers in my area need rail service, and the subsidy program has allowed the communities of the rural portion of the Eight Congressional District of Michigan to continue to prosper.

An illustration might be helpful at his point in the record. I provided a statement to this subcommittee 2 years ago when it was holding oversight hearings on the Preliminary System Plant of the U.S. Railway Association. In that statement I described to you the problems that the district I represent would have should both the Penn Central trackage be shut down and the ICC grant an abandonment application of the Grand Trunk Western Railroad Company. A district rail map was attached to my statement, and I again attach that map to indicate what the shippers in my area faced.

Since that time, the ICC has completed consideration of the GTW abandonment petition, and has issued an initial decision holding that the line must remain in operation for the public convenience and necessity to be upheld. I concur wholeheartedly in that decision, but have some serious reservations about certain factors in the decision of the Administrative Law Judge. His decision was based on a study of the case in order to determine what hardship would be worked on the railroad if it were to continue to operate the line as it has done in recent years. I do not in any way disagree with the fact that service should be maintained at at least the levels experienced in the last 2 or 3 years, but I am very disturbed by the fact that by losing the abandonment case the railroad has lost access to money that might have helped it improve its service.

John Burdakin, the President of the Grand Trunk Railroad, testified on the first day of the hearings on this case that he would like to improve the quality of service on the line, but that in order to do it, he would have to extensively repair some bridges and replace a large number of ties and several miles of rail along the line. A second attachent to my statement more clearly demonstrates the area served by this 66 mile line [see p 185].

As is the story with so many branch lines, the railroad has found that the amount of traffic on the line would not justify the expenditure of company funds to rehabilitate the line. The end result of the rehabilitation would be to allow the operation of unit trains, which you know can help shippers in the area save money. Under current conditions, GTW is forced to use empty spacer cars between loaded hopper cars. This area is the prime Agricultural producing area in the State of Michigan, and rail shipment is essential to help our farmers remain competitive with those outside of the area.

When the shippers lose rail service, the consumer will pay more for his food. The National Farmers Organization, which maintains a grain elevator along this line at Cass City, Michigan, testified that to ship grain from Cass City to Buffalo, New York, by truck would cost almost 33 cents per bushel more than by train. Truck shipment to Norfolk, Virginia, would cost slightly more than 70 cents per bushel more than by rail, and truck shipment would out distance rail shipment from Cass City to Portland, Maine, by $1.13 per bushel?

While the shippers won this case and can expect to keep rail service, I and my constituents must question the kind of service they will be keeping. I know that Grand Trunk will do all that it can to maintain good service, but there is no way in the world we can expect the railroad to upgrade this line when its own cost estimates indicate that the expense would force the railroad to lose nearly $230,000 on the line annually.

My point, ladies and gentlemen, is a simple one. We need rail service. We need this service the most in those areas that do not have ready access to class I highways, as is the case in my example involving the Thumb of Michigan. Unless we enact legislation that can rectify this problem, we will only see all of our rail lines continue to deteriorate to such a point that we will no longer have a rail system.

The provisions of H.R. 8420 ar a realistic attempt to rectify the worn condition of our railroads, and to do so within the framework of State priorities as we have done with the 3R and 4R subsidy programs. The Chairman's bill goes towards a realistic rehabilitation program which will provide for a minimum speed of 25 miles per hour so that we can avoid the expense and waste of slow trains. I applaud your efforts and certainly support them.

But I do believe that a crucial fact is being overlooked. We are currently providing needed subsidies to lines which have received abandonment permission, and are perhaphs allowing the ICC to squeeze out of the issue of whether or not the line is needed by the public. Under the current law, the ICC can grant abandonment, and the honor of Bad Guy falls upon the State if it decides not to include the line in its subsidy program. Like it or not, the availability of subsidies has become an issue in an abandonment proceeding. Anyone who would read the transcript of the Grand Trunk case—Docket AB 31 Sub No. 3—would find that extensive testimony was presented regarding the desire for a subsidy and a commitment that the State of Michigan had made some time before the hearing to continue the line under a subsidized operation.

We were fortunate that the Administrative Law Judge wa careful to avoid the issue of subsidy in his decision. But we may have been unfair to both the shippers and the railroad by expecting it to put money into a potentially losing operation. The judge modified the cost estimates reported by Grand Trunk in its financial satements for the proceeding which demonstrated tht with the inclusion of rehabilitation expense, the line would lose money. So the Judge decided tht if you do not include rehabilitation, yu have a rail line that will not lose money.

But what about the need for rehabilitation? What about the long term need to improve the track? Can we realistically expect the railroad to spend millions of dollars on track improvement when their competition on the highways has a system that is maintained by the government?

H.R. 8420 attempts to solve this problem by making pre-abandonment subsidies possible. However, I do not believe that the bill goes far enough. Nowhere in the legislation is the subject of how do we handle lines of railroad that have been ordered to remain in operation by the ICC. The government has ordered the railroad to

keep operating, and to perhaps lose money, while doing nothing about the problem faced jointly by the railroad and the shippers.

I would certainly recommend that in yur deliberations yo take a careful look at the provisions of a bill I have introduced, H.R. 6871. We have to look at how we are going to handle lines of railroad ordered to remain in operation following an abandonment proceeding. My bill proposes a subsidy program for theselines when two findings are made by the ICC in the course of an abandonment proceeding. When, first, it is determined that the public convenience and necessity mandate the continued operation of the line, and, secondly, that with the inclusion of rehabilitation expense the line would lose money, then the line would become eligible for a subsidy. The philosophy behind my bill is my extremely simple one. If the government is going to order a railroad to take a loss, then the government should help the railroad absorb that loss.

This legislation that I have introduced would create a direct subsidy between the railroad and the Federal Railroad Administration. This has been done because of the limited number of lines that may fall into this category, and for the fact that eligibility for the subsidy is automatic once the criteria are met. The decision to keep the line in operation was a Federal and not a State decision, and the program does not involve any State funding.

This subsidy will be made available for a period of 5 years, during which time it will be used to cover operating losses and rehabilitation up to a level of 30 miles per hour, or the highest consistent operating speed over the length of the track. If there is a line which is 70 miles long, and over 40 miles on that line the carrier can operate at a speed of 35 miles per hour, then the carrier should have the ability to upgrade the rest of the line to a consistent standard. The 30-mile an hour limit, then, would become the slowest speed on a track, without respect to necessary slowdowns at bridges and curves.

The most essential part of my proposal is it creates a more equitable program for the individual rail line. Under the current program and H.R. 8420, the entire subsidy program lasts for five years. That means that unless a line comes under the program virtually on the first day, it will not receive the full benefits of the program. Under my bill, H.R. 6871, the subsidy is designed to last for a period fo 5 years on each line. Rehabilitation takes time, and no line that enters the program within the last 2 years will have an adequate opportunity to be rehabilitated. I would propose that the life of the program be 15 years, and that the only lines that would be considered eligible for the subsidy would be those that met the criteria for eligibility within the first 10 years. This would mean that the line that comes into the program on the last day of the 10th year would still have the potential benefits of the entire subsidy program.

We need to provide an upgrading program for our entire rail system, and we have to take care that the program is a cautious one. For tht reason, the program I envision will be one in which the Federal share of the subsidy will be 100 percent in the first year, and decline by 10% each year the subsidy is in operation on the particular line. The remaining portion of the subsidy will be picked

up by the railroad itself. In this fashion, the railroad will have a strong incentive to complete rehabilitation as soon as possible, and to solicit additional traffic for the line so that it will earn a profit.

I certainly hope that you will move quickly on this legislation. There can be no doubt that we need to increase our development of rail shipment in a time when we are looking for fuel-efficient methods of transportation. We now have a chance to create a sound, equitable rail transportation program, and I look forward to our meeting the needs that are before us today.

I thank you for your kind and immediate attention to this matter.

[Exhibits I and II of Mr. Traxler's prepared statement follows:]

EXHIBIT 1

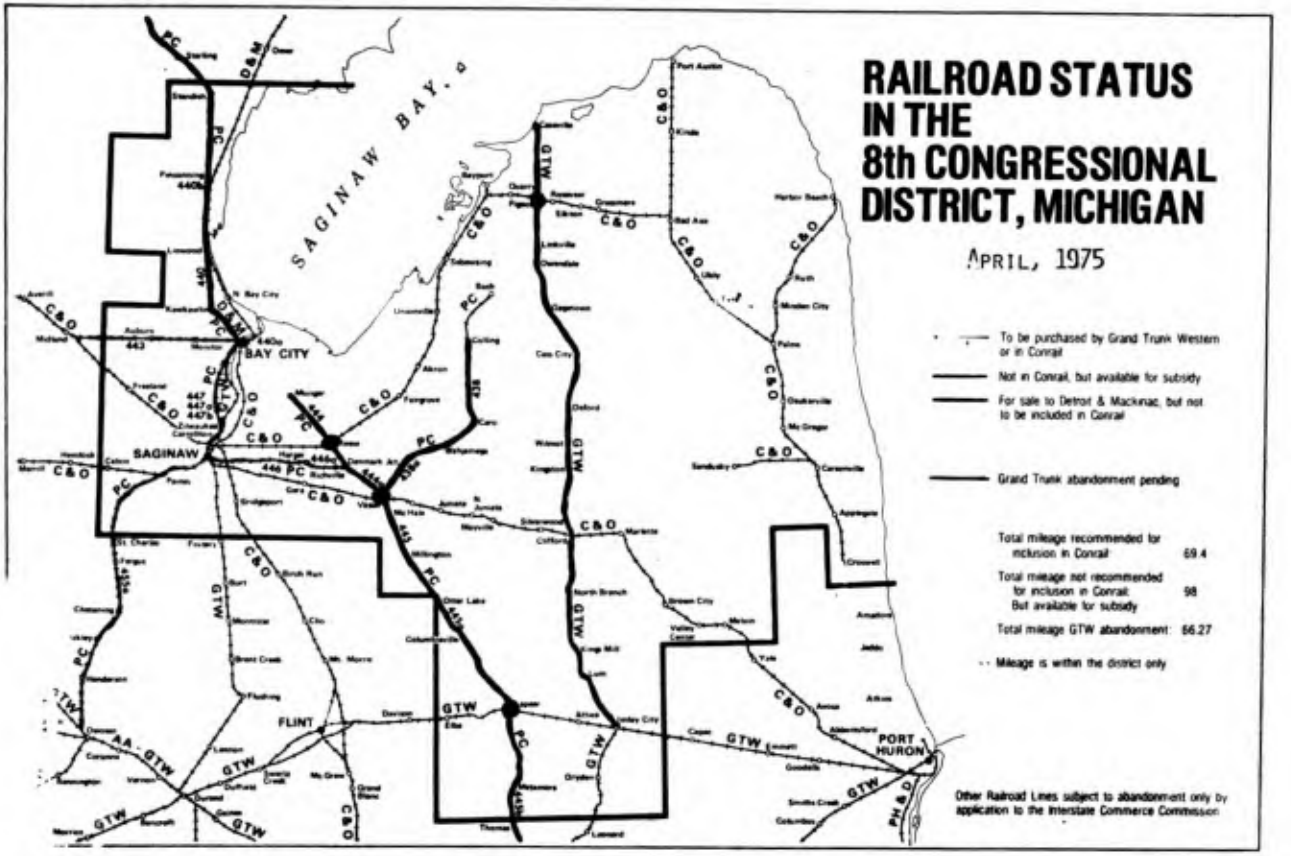

RAILROAD STATUS IN THE 8th CONGRESSIONAL DISTRICT, MICHIGAN
APRIL, 1975
To be purchased by Grand Trunk Western or in Conrail
Not in Conrail, but available for subsidy
For sale to Detroit & Mackinac, but not to be included in Conrail
Grand Trunk abandonment pending
Total mileage recommended for inclusion in Conrail 69.4
Total mileage not recommended for inclusion in Conrail But available for subsidy 98
Total mileage GTW abandonment: 66.27
-- Mileage is within the district only
Other Railroad Lines subject to abandonment only by application to the Interstate Commerce Commission
SAGINAW BAY
BAY CITY
SAGINAW
FLINT
PORT HURON
PC
GTW
C&O
D&M
PM&D

EXHIBIT 2


GRAND TRUNK WESTERN ABANDONMENT IN THE 8th CONGRESSIONAL DISTRICT, MICHIGAN
JUNE. 1977
Port Austin
C & O
Kinde
Caseville
GTW
Quarry
Pigeon
Rosevear
Grassmere
Elkton
C & O
Bad Axe
Harbor Beach
C & O
Linkville
Owendale
C & O
Ubly
Ruth
Tyre
Minden City
Gagetown
Palms
Cass City
C & O
Deckerville
Deford
McGregor
Wilmot
GTW
C & O
Kingston
Sandusky
Carsonville
Applegate
Silverwood
C & O
Marlette
Clifford
Croswell
North Branch
Brown City
GTW
Melvin
Amadore
Valley Center
Jeddo
Kings Mill
Yale
Lum
C & O
Avoca
Atkins
Attica
Imlay City
Abbottsford
Capac
GTW
Emmett
PORT HURON
GTW
Goodells
Dryden
GTW
Smiths Creek
Columbus
PH & D
Leonard
Grand Trunk abandonment pending
Total mileage GTW abandonment: 66.27
Mileage is within the district only
Other Railroad Lines subject to abandonment only by application to the Interstate Commerce Commission

Mr. ROONEY. And in addition, without objection the Chair wishes to place in the record, as though read, the statements of Congressmen Jamie L. Whitten of Mississippi, James J. Howard of New Jersey, Gus Yatron of Pennsylvania, David R. Bowen of Mississippi, James Abdnor of South Dakota, and Paul S. Trible, Jr. of Virginia.

STATEMENT OF HON. JAMIE L. WHITTEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Mr. WHITTEN. Mr. Chairman, I would like to thank the distinguished members of this subcommittee for allowing me to voice support for a bill—H.R. 8278—that will correct some of the shortcomings of the Department of Transportation Act and the Regional Rail Reorganization Act of 1973.

My bill, along with several similar pieces of legislation submitted by my colleagues, extends the eligibility for financial assistance under the rail service assistance programs, thereby allowing Mississippi and many other states in our region to utilize fully the provisions of the acts. I, therefore, hope this body will view them in a favorable light.

I understand from officials in my State that when the act was originally set up, it provided for federal assistance on a diminishing scale with 100 per cent Federal funding during the first year of the program which ended June 30 of this year. But, apparently because of a backlog of applications, it took most of the year just to obligate the funds causing my State and others to lose needed assistance.

H.R. 8278 would correct this by extending the 100 per cent Federal assistance to September 30, 1977 and push back the remaining funding periods to September 30 of each year.

Other provision of the bill would allow states to provide assistance to lines where the railroad has indicated some intention to abandon, thus avoiding the deterioration of service and physical plant normally accompanying abandonment.

In short, my proposal is designed to allow the states to insure our people needed rail transportation; and on their behalf, I ask your kind consideration of this matter.

STATEMENT OF HON. JAMES J. HOWARD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. HOWARD. Mr. Chairman, initially, I wish to thank you for scheduling these hearings. As Chairman of the Subcommittee on Surface Transportation of the Committee on Public Works and Transportation, I am acutely aware of the need for a balanced and efficient national transportation system.

Being cognizant of that need, I joined with you and others in sponsoring a bill, H.R. 6792 which, in effect, would provide for an additional year of full Federal funding of accelerated maintenance on light density branch lines.

This is accomplished by amending the Regional Rail Reorganization Act of 1973, as amended, and the Department of Transportation Act, as amended by section 803 of the Railroad Revitalization and Regulatory Reform Act of 1976. The regional and national

programs established therein were for the purpose of preserving service on rail lines where service was in jeopardy of being terminated permanently. The two programs created a mechanism whereby the Federal Government and the States could provide funds to maintain rail service and rehabilitate rail lines that were deemed necessary for a balanced transportation system.

Clearly, the Congressional intent was to provide full Federal financing for the first year of the programs. However, because of bad weather and the time that was required by the Federal Rail Administration to formulate regulations for the distribution of funds to provide accelerated maintenance, many projects were stalled. Thus, much of the first year had elapsed before funds became available or could be utilized.

As a direct result of this, service on at least five rail light density freight lines in the State of New Jersey is in jeopardy of being terminated permanently. These are lines which the State of New Jersey, along with segments of the shipping industry and local governments, believe should be maintained and improved.

I strongly believe that the Congress should act to correct this situation. Plainly, frustration of these programs can be overcome by favorably acting upon H.R. 6792 so as to provide full Federal funding for accelerated maintenance for one additional year.

Therefore, I urge that the Subcommittee support H.R. 6792, and that it be favorably reported as soon as possible.

STATEMENT OF HON. GUS YATRON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. Yatron. Mr Chairman, members of the subcommittee, my name is Gus Yatron. I serve as the Member of Congress for the Sixth Congressional District which includes Schuylkill and Berks Counties in Pennsylvania. Schuylkill County had more miles of existing operating trackage excluded from the ConRail System than any other county in the 17-state region directly affected by the rail reorganization. I therefore appreciate the opportunity to preent this statement in support of legislation pending before this Subcommittee which would extend the rail continuation subsidies at th 100% level, particularly H.R. 6792. My area is also acutely affected by the lack of implementation of Section 810 of the Rail Revitalization and Regulatory Reform Act and I would deeply appreciate this Subcommittee's consideration of an amendment to presently pending legislation, which would assure the establishment of a Fossil Fuel Rail Bank as authorized by Section 810.

1. *Extension of Rail Service Continuation Subsidies at the 100% Level*

Subsidized service has been provided to Schuylkill County over eight branch lines, including one former Penn Central Line, four former Reading Railroad Lines, and three former Lehigh Valley Railroad Lines. Two of these lines will not be receiving subsidized operations or accelerated maintenance and shortly will be abandoned. One of the subsidized lines, the Frackville Branch, is profitable according to ConRail figures, and one of the lines, the Nesquehoning Branch, incurs only a small loss. Of the lines to

21-684 O - 78 - 13

remain in service under subsidy the following branches have been approved by the Federal Railroad Administration to receive accelerated maintenance funds: the Nesquehoning Branch (USRA #1009); the New Boston Branch (USRA #1007); the Schuylkill Secondary Track (USRA #196); and possibly the Lebanon-Tremont Branch (USRA #935), depending on the relocation decision of a coal shipper whose track is to be abandoned.

Almost 1,000 jobs in Schuylkill County, an area with over 13% unemployment, are in industries dependent upon rail service. Most of these companies have located in industrial parks developed along branch lines that *#nce led to thriving anthracite coal mines. In an attempt to diversify the economy from a single commodity for which there had been a declining demand, communities in Schuylkill County, with the help of state and federal funds, have been developing a broader industrial base. Continued rail service is essential to the long term success of this effort. One thousand jobs mean over $9 million in payroll in Schuylkill County and a saving of $5 million in costs of unemployment. Therefore, it is most important that rail service in this area continue.

The 100% subsidy level must be maintained to continue service on these branch lines. While the local industries are willing to contribute a share of the cost of continued service, it is impossible for them to determine their ability to provide their proportion of costs without having actual cost and usage data for their lines. This information must be provided by ConRail. Because such information has not been available for most of the period when the 100% subsidy level was in effect, the source of the local share of funds has not yet been determined. Now that figures on the costs of a year of subsidized service are available, cost-sharing agreements can be devised. It would be an unfortunate waste if service were discontinued on these lines pending the outcome of these negotiations. For this reason also, the subsidy level must remain at 100% for the next year.

The need to continue the subsidy for accelerated maintenance derives from still another delay. For a variety of reasons, the Federal Railroad Administration has been unable to process and approve projects, contracts, and funding applications for making improvements in branch line road beds during a *de facto* repeal of a portion of the 4R Act, through FRA procedures, the subsidy for accelerated maintenance should be continued at the 100% level and the applicable level should be determined by the time at which a contract is let, rather than when the work is completed.

2. *The Fossil Fuel Rail Bank*

In addition to emphasizing the need for extension of the rail service continuation subsidies, I would like to explore a second point with the Subcommittee. Most of the lines in Pennsylvania's Sixth District that presently are used for industrial shipments, also lead to areas of recoverable anthracite coal. Both the 3R Act and the 4R Act recognize the need to preserve trackage in areas where fossil fuel resources are located. In the Final System Plan, USRA recommended that a total of 52 rail lines, (37 in Pennsylvania, 6 in Ohio, 5 in Illinois, and 2 in Indiana), be included in a Fossil Fuel Rail Bank. Section 810 of the 4R Act explicitly provided for the

establishment of a Fossil Fuel Rail Bank to preserve this trackage. The rail bank was to have been established by August, 1976. Instead, a contract was let to make a study of the rail bank concept in addition to the one that had been undertaken by the USRA. That study was authorized by Section 809, not Section 810, and has recently been released. It concludes that a rail bank might not be necessary to facilitate the recovery of coal potential *except* in the Western portion of the United States and other *special areas like the Schuylkill County area of Pennsylvania.* The results of the study indicate what Congress knew in 1976: that a rail bank is necessary for tracks extending to fossil fuel areas, (hence Section 810), and that the concept should be explored as it relates to abandoned rights-of-way in other areas, (hence the study proposed in Section 809).

No doubt, part of the difficulty in implementing the rail bank concept has resulted from the confusing language in the 4R Act. In addition to an explicit distinction between the Fossil Fuel Rail Bank and the other kinds of rail banks, the Act contains authorizations for two rail banks, one to be administered and partially funded by the states under Section 803 and one to be funded by the federal government and jointly administered by the Departments of Interior and Transportation under Section 809. I believe the Subcommittee can best promote the development of Fossil Fuel Rail Banks by clearly designating one department and one level of government to administer the rail bank, at least insofar as it relates to strategic resources such as fossil fuels.

Again, I would like to express to the Subcommittee my genuine appreciation for this opportunity to share with you my thoughts on these important matters.

Thank you.

STATEMENT OF HON. DAVID R. BOWEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Mr. BOWEN. Mr. Chairman, the Subcommittee is certainly to be commended today for holding these rail hearings since the problems that the States are facing in rail transportation are still severe and have not yet been fuly remedied by passage of the 3 and 4R Acts. Indeed, Congress saw the necessity to act quickly and decisively when the Acts were passed. This legislation is good, but I believe it can be made more effective with several basic changes. In this regard, I have introduced H.R. 7715 which in my opinion will help solve many of the problems which the States are experiencing at this time.

I would like to bring to your attention the absolute necessity that States be given the authority to place their entitlement funds into rail lines prior to official abandonment proceedings. Once a line has been issued a certificate of abandonment by the Interstate Commerce Commission, it is often too late to then rehabilitate and place such a line back into the rail system as a useful contribution to the national rail system as well as th state's economy. By providing a line with a chance to qualify for assistance at an early stage, the shipper, state and rail industry can work together to take a poten-

tially unprofitable branch line and place needed capital in this line to make it a viable candidate.

Another important aspect of my proposed legislation is the necessity to extend the 100% federal subsidy and make the participation amounts change on the fiscal year date. The southern and western states have had problems in trying to obtain necessary planning funds under the requirements established by the Federal Railroad Administration, and this has served to delay the flow of these funds to the States. As a result, no States have benefited under the 100% year.

An essential provision of this legislation, as well, is a section which will allow funds to go to projects without prior Federal approval. It is my understanding that State witnesses will fully document the delays that have been incurred in moving projects to completion. By allowing the States to start on projects without prior approval, the bureaucratic logjam will be broken and urgently needed funds for the projects may move forward expeditiously.

I again commend the Committee for their comprehensive look at rail problems and particularly the problems that are facing States such as Mississippi.

STATEMENT OF HON. JAMES ABDNOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH DAKOTA

Mr. ABDNOR. Mr. Chairman, it is a pleasure for me to present testimony today before the Transportation and Commerce Subcommittee in support of the 1977 State Rail Freight Legislation that is being considered.

I represent three-fourths of South Dakota, and Agriculture represents the major industry. Most of the wheat, corn, barley, rye, oats, flax, sorghum, and soybeans, among other products produced in South Dakota, are transported out of the state to other markets located primarily in Iowa and Minnesota. Since my state does not have a barge system it must rely on either rail or trucks to transport these products.

The trend of rail transportation in South Dakota is indicated by the recent escalation toward rail abandonment which is of obvious concern among farmers, shippers, communities and those affected by the potential impact associated with abandonments. Prior to 1940 only 188 miles of track were allowed to be abandoned. Between 1940 and 1974, an additional 856 miles of track line were abandoned. Currently there are four pending abandonments representing 155 miles of track between Iroquois, South Dakota and Wren, Iowa, 174 miles between Winner, South Dakota and Norfolk, Nebraska, 48.2 miles between Watertown and Doland, 71.4 miles between Watertown and Stratford, and 13 miles of track between Faulkton and Orient for a total of 461.6 miles.

The reasons for these abandonments stem from allegations by the railroad companies that the revenues from its operations of these branch lines fall far below the costs of its operation. The reason for this is because most of the rail lines were built in the first quarter of this century at a time when this mode of transportation provided the only means of travelling and shipping. The access to the

modern, more efficient methods of transportation currently existing was not possible. Therefore it resulted in overextension and duplicating of trackage that is no longer economical.

Also, current innovations in the railroad industry extend the problems just mentioned. Innovations such as the use of multiple car or unit train shipments, and the use of jumbo covered hopper cars signal the demise of branch line service because many of the lines are not able to adopt these changes without increased investment to improve these existing lines.

In order to gain a better understanding of the railroad situation in South Dakota today, an historical account of its development is the best means of providing this cause and effect analysis. I acknowledge a study undertaken by the Economics Department of South Dakota State University investigating efficient grain transportation and marketing systems for South Dakota for providing the following information.

The first rail service in South Dakota began in 1872. By 1887 when the Interstate Commerce Act was passed there were over 2,400 miles of track in the state and by 1891 there were seventeen railroad companies operating in South Dakota. When first introduced in 1887, railroad regulation was supported by South Dakotans. Regulation was desired to place limits on the economic power of the railroads over rates, routes, and depot locations and to encourage the settlement of the area by ensuring relatively low freight rates on South Dakota's exports. Regulation would institutionalize and legalize the practice of value-of-service pricing whereby low-value agricultural products and raw materials were shipped at rates lower that high-value manufactured goods. The relatively low rates on South Dakota exports allowed South Dakotans to compete in the large eastern markets and supported farm incomes in the state.

To some degree, value-of-service pricing evolved out of transportation market conditions which were not representative of South Dakota. In much of the eastern part of the country, railroads faced a relatively elastic demand for the transportation of bulk commodities. This high elasticity was due not only to the high proportion of freight costs in the final goods price (which was also true for South Dakota's commodities), but also to availability of water transportation and alternative sources of supply (which were not available to South Dakotans). Thus, the institutionalization of value-of-service rates tied South Dakota's commodities to the relatively low rates charged on such commodities nationally even though South Dakota's demand for rail transportation was much less elastic.

There was another related advantage of regulation to South Dakotans. Prior to regulation, eastern railroads had engaged in rate wars where two or more lines faced each other in direct competition for traffic. Since railroads incur heavy fixed costs relative to variable costs, these rate wars caused heavy losses to the railroads on the competitive lines where rates could be cut to cover only the variable costs. To survive, each railroad was forced to charge much higher rates where demand was inelastic - rates sufficient to cover the traffic's variable costs plus all of the railroad's heavy fixed costs. South Dakota was potentially one of these areas with few or

no alternatives to rail service. Such high rates on South Dakota's products would place South Dakota producers at a severe competitive disadvantage in national markets. Regulation, by tying rates on South Dakota products to those elsewhere, allowed South Dakota to develop and to compete in national markets.

The Interstate Commerce Act of 1887 prohibited several discriminatory railroad practices: undue preference based on persons, companies, or localities; charging higher rates for short hauls than long hauls than long hauls along a common line; and, pooling of revenues. The Act did not prohibit commodity price discrimination. In its early reports the Interstate Commerce Commission not only approved of this form of discrimination but also encouraged it through valueof-service pricing because by charging high value commodities more than their share of costs and low value commodities less, trade and national development were encouraged. South Dakota was one of the beneficiaries of that encouragement.

The first track abandonment in South Dakota occurred as early as 1909 and the state's rail system was virtually completed before the First World War. Following the nationalization of railroads during the war, Congress attempted to revise the regulatory environment in 1920. The Transportation Act of 1920 established "fair return on fair value" as the rule to be fllowed by the ICC in its rate making decisions. Under such a rule railroads would have raised the rates charged on commodities moving out of South Dakota and lowered rates on incoming manufactured goods. This shift would have occurred because of a post war imbalance in freight movements with a shortage of cars for east bound agricultural commodities and a surplus of cars for west bound manufactured goods. Thus, the railroads, if allowed, would use the new rate-making rule to abandon value-of-service pricing and was supported by the Hoch-Smith Resolution of Congress in 1925 which was intended to retain low rates on agricultural commodities. This advantage given to agricultural products was reflected in ICC rate-making decisions well into the 1950's and South Dakota was a beneficiary of the continued policy.

In the 1920's minor changes in South Dakota resulted in a rail system of 5,095 miles of track of which 4,289 miles were main line track. In the post war period railroads were faced with new competition from trucks. Trucks tended to take away the high value eastern traffic. In response to this traffic loss the railroads tried to raise rates on agricultural commodities where rail still maintained a decided technological advantage over trucks. In addition, the depression of the 1930's resulted in substantial excess capacity of both railroads and trucks. With an inelastic short-run supply of agricultural commodities and railroads' technological advantage any increased rates on agricultural commodities would benefit railroad profits as the higher rates would be passed back to producers. The ICC opposed this desire of the rilroads and the Transportation Act of 1933 supported the ICC by requiring the "lowest charges consistent with the cost of providing service". Thus, value-of-service pricing was retained to South Dakota's advantage.

Traffic losses due to truck competition and the depression and the inability to raise rates on their remaining traffic brought many

railroads close to bankruptcy. In an attempt to stabilize the transportation system and rail and truck profit levels, Congress passed the Transportation Act of 1935. This brought trucks under the regulatory umbrella and preserved the excess capacity of the transportation industry by preventing rate wars which would have benefitted shippers. Thus, shippers were to pay rates above market determined rates. Once again, however, South Dakota shippers were protected as the 1935 Act, in an effort to retain low rates on agricultural commodities, exempted these commodities from trucking regulation. This allowed the excess cpacity in trucks and railroads to exert downward pressure on agricultural commodity rates and retained the principle of value-of-service pricing. This result was reinforced by the Transportation Act of 1940 which brought water carriers under the regulatory scheme but largely exempted agricultural commodities by exempting bulk movements with less than four commodities to a tow.

Up until World War II South Dakota had consistently benefitted from the rulings of the ICC and the laws passed by Congress. Value-of-service pricing was retained by rule and law on the low-value bulk commodities shipped from South Dakota. Where competition would provide greater benefit to South Dakota shippers than would regulation, competition was allowed to prevail.

These benefits and the cost advantages of rail over truck transportation for the long hauls from South Dakota to eastern markets meant that sufficient traffic used the rail system to avoid abandonments before World War II even though there was a general excess capacity in transportation. Less than 190 miles of track were abandoned before 1940 and only about half of this occurred in the 1930's.

After World War II the situation changed. The railroads sought rate reductions to meet the competition of truck and water carriers. The ICC allowed such reductions to meet water competition but did not generally allow the railroads to use price competition to retain the traffic being lost to trucks. With no interior water transportation, South Dakota shippers received only part of these rate advantages - that part reflecting the commodity movement which paralleled the river routes beginning at the Twin Cities on the Mississippi and Sioux City on the Missouri. There were no such advantages on the movement from South Dakota to these river terminals. Thus, while South Dakota shippers gained in an absolute sense, they lost in a relative sense and their competitive position with respect to producers elsewhere was eroded.

Thus the nation historically employed a transportation policy which redistributed income in favor of South Dakotans. This favoritism lasted well into the post war period. The redistribution of population, the subsequent reapportionment of political power and the increasing number and severity of urban problems caused an ongoing fundamental shift in the nation's policy toward income distribution beginning in the late 1950's and 1960's. This shift gained momentum in the 1970's and one result has been a change in the national transportation policy.

The new policy is reflected in institutional changes such as: new track safety standards and the "34-car rule" which have provided

the basis for railroad companies to seek abandonment of substantial amounts of branchline trackage; construction of a nationwide system of free access interstate highways facilitating the competitive position of trucks; and, Federal loans and subsidies to Eastern and Midwestern railroads tying together larger centers of population while allowing light density rural branchlines representing excess capacity in the transportation system to be abandoned.

On profitable lines railroads have rebuilt rights-of-way to carry larger shipments faster thereby reducing costs and increasing profits. On light density branchlines where losses are incurred railroads have deliberately allowed short-run losses to increase by letting right-of-way and equipment, and therefore service, to deteriorate and business to be lost. Thus greater than necessary short-run losses are incurred in order to maximize long-run profit by abandonment of lines which would otherwise be permanenetly unprofitable lines.

In recent years Congress has tried to solve some of the economic problems that the railroad industry was facing by passing two pieces of legislation known as the 3R and the 4R acts. The Regional Rail Reorganization Act of 1973 dealt with the problems of light density freight lines in the Northeast and upper Midwest region. The Railroad Revitalization and Regulatory Reform Act of 1976 further extended this policy of government subsidies for essential services to the entire nation. South Dakota is included in this latter act but, unfortunately, the 4R Act does not have South Dakota in mind as presently written. The part of this act most pertinent to this state is Section 803, Local Rail Service Assistance, which provides financial assistance to states for Rail Freight Assistance programs. A sum not to exceed 360million dollars is authorized to be appropriatyed which is to be divided among each state for such assistance in continuing rail services on equivalent measures. Of the foregoing sums, a total of 5 million dollars shall be made available for states' rail planning programs.

Problems presented with this act include the limited federal assistance provided, the limited number of years this program can operate, the declingin federal share of funding, the restrictive language regarding in-kind benefits, and—what I believe to be one of the major items—the classification of lines that have filed for abandonment to be the main criteria in determining the amount of funds allocated to a state.

I have co-sponsored legislation which you are presently considering that resolves these problems by extending the time and increasing both the share and amount of federal funding, providing flexible use of each state's entitlement program, expanding the class of eligible lines to include those classified as potentially subject to abandonment and providing that the date that a capital project is initiated shall establish the period from which it is funded.

These amendments will provide states with the necessary arsenal in order to combat against closing of branch lines by allowing economic assistance early enough to avoid deterioration of service which usually occurs on pre-abandoned lines.

As a result, railroads will continue to provide a fast, economical and energy-efficient method of transportation, and I urge your support.

Thank you.

STATEMENT OF HON. PAUL S. TRIBLE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. TRIBLE. Mr. Chairman, I am grateful for this opportunity to urge the subcommittee's consideration of my bill, H.R. 7486, extending the 100% federal subsidy of rail service assistance programs for one year. In addition, I welcome the chance to endorse legislation introduced by my good friend and colleague Congressman Tom Evans of Delaware which would permit states to combine or pool their allocations under the rail service continuation program of the Regional Rail Reorganization Act of 1973 (RRRA).

First, I would like to address the extension of the 100% subsidy. This simple extension could mean the difference between continuation and termination of vital rail service throughout the country. On Virginia's Eastern Shore, for example, the Virginia and Maryland Railroad is struggling to come into its own as a viable, self-sufficient freight carrier. The railroad is struggling because of an apparent inability to gain better than an arbitrary ten percent revenue division from ConRail; It is struggling because its track is in a condition so poor that its engines cannot run faster than ten miles an hour on some stretches.

Let me put the present situation into perspective. In February of this year, the Commonwealth of Virginia decided it could not support further operation by ConRail of the line between Norfolk, Virginia, and Pocomoke City, Maryland. This line had been operated by ConRail under a subsidy contract that went into effect in April of 1976. ConRail's large cost overrun could not be supported by the Commonwealth after April 1 of this year and the contract was terminated.

To preserve the operation, including the car float across the Chesapeake Bay from Cape Charles, Virginia, to Norfolk, the Commonwealth sought another operator who might be able to run the line under provisions of Section 304 of the RRRA as a private operator with a new contract.

On March 1 of this year, and in accordance with Virginia Law, the Transportation District Commission for the counties of Accomack and Northampton selected rail service associates of New York States as the new operator. On March 10, the Virginia and Maryland railroad was incorporated and an operating contract signed on March 27. Service began on April 2 and by April 12, the car float operation had been resumed. None of this could have been accomplished in so timely a manner without the energetic support and effort of many local and state officials.

Mr. Chairman, the continued operation of this line means everything to the people of the Delmarva Peninsula. It is the main link with major markets in the rest of the country, and literally hundreds of businesses and thousands of jobs in Virginia, alone, would be lost without this rail service.

The Virginia and Maryland railroad is striving to sever its dependency on State and Federal subsidies altogether. This is certainly an achievable and a desirable goal, but like a child that

depends upon its mother for its early sustenance, the Virginia and Maryland railroad depends upon the Federal Government for a limited but reasonable period of nurturing until the railroad can stand alone.

Remember, Mr. Chairman, the Virginia and Maryland railroad inherited track that had belonged first to the Penn Central System and then to ConRail. For the past 25 years, virtually no maintenance has been performed on the track—17 miles of which fails to meet the minimum Class I Safety Regulations of the Federal Railroad Administration. Ties literally crumble underfoot and spikes can be removed without any effort whatsoever. There have been two major derailments in the past three months. Fortunately, there were no injuries, but there was extensive property damage and the possibility of injuries or even loss of life grows greater every day.

The extension of 100% subsidy will allow Virginia and Maryland railroad to make the desperately needed repairs and permit the line—which is entering dire financial straits at this time—to continue operating until it no longer needs Government support.

The second bill which I commend to you for serious consideration is H.R. 8225, introduced by Tom Evans and cosponsored by Congressman Robert Bauman of Maryland and myself.

Present Federal Law requires that the unused portion of a State's RRRA allocation reverts to the Secretary of Transportation for redistribution to other States. While this concept is good, it has a major flaw in that States that share a common rail line are prohibited from pooling their resources for their mutual benefit. At this time, the State of Delaware is fortunate to have a surplus of Federal funds in its RRRA allocation. Delaware has generously offered to share those monies with Virginia and Maryland for the continued maintenance of rail service on the Delmarva Peninsula, but cannot until current laws are amended.

The rail line on the Delmarva Peninsula extends from Kiptopeke, Virginia, to Wilmington, Delaware, Traversing Maryland. This line is probably the most important mode of commercial transportation on the Peninsula. If one link of this line is weak, then the entire line is in jeopardy. Each State and each county on the Peninsula depends on its neighbor for its economic viability. H.R. 8225 is legislation which would encourage interstate cooperation and perhaps make a significant contribution toward improving the multistate approach to rail transportation.

Mr. Chairman, I call upon the subcommittee to restore a measure of hope to 40,000 Virginians and countless others in Maryland and Delaware that depend upon this rail line for their livelihoods.

Thank you.

Our next witness is Ms. Barbara M. Adams, Vice-Chairperson for Legislation of the Railroad Task Force for Northeast Region, Inc., Avoca, Pennsylvania.

I might say Ms. Adams testified before the committee before, and she proved to be a very fine witness, and we welcome her back today.

I might also say, that the last time she appeared before this committee, she was a resident of Avoca, but now I am pleased to say she is one of my constituents in Bethlehem, Pennsylvania.

We welcome you to the committee today.

STATEMENT OF BARBARA ADAMS, LEGISLATIVE VICE-CHAIRPERSON, RAILROAD TASK FORCE FOR NORTHEAST REGION, INC.

Ms. ADAMS. Thank you very much, Mr. Chairman. I wish to thank all of the Members of the subcommittee for allowing me to appear here to day.

As the Chairman has stated to you, my name is Barbara Adams, and I am the Legislative Vice-Chairperson for the Railroad Task Force for the Northeast Region, Inc., a group founded by former Governor William W. Scranton of Pennsylvania over 5 years ago. I have been working for the past 3 years with the shippers, labor unions, community leaders and other interested citizens of the 22-county region of northeastern Pennsylvania represented by the Task Force. The purpose for the Railroad Task Force and its task since its founding has been to preserve rail freight service to northeastern Pennsylvania, an area that became depressed because demand declined towards the middle of the century for the single commodity at the base of the region's economy—ironically in light of present shortage of a fossil fuel, anthracite coal. In an effort to revive its economic base, the region began to capitalize on its railroad and general transportation system using this as an attraction to conduct extensive industrial development campaigns. The fruits of 20 years of industrial development and public investment are a large proportion of the 2,500 jobs in 58 companies generating an annual payroll of over $18 million dollars located along 13 branch lines, in the Task Force Region excluded from ConRail and presently under subsidy in order to continue operation.

I should like to highlight the most significant considerations to northeastern Pennsylvania in the legislation before this subcommittee today, that is, the importance of maintaining branchline operations subsidies and rail roadbed rehabilitation or accelerated maintenance funds at the 100 percent level until September 1978 as proposed in H.R. 6739, introduced by Mr. Staggers. It is encouraging to note that in most of the bills under consideration the importance of extending rail service continuation subsidies at 100 percent is recognized.

No doubt this clearly indicates that not only the members of this subcommittee, but many Members of Congress, understand the economic justification for the 100 percent subsidy for branch lines excluded from the reorganized northeast railroad system.

The results of a recent study announced by the Pennsylvania Department of Transportation Secretary indicate tha $55 million in payrolls were preserved by the continued operation of branch lines in Pennsylvania. The direct unemployment cost of the loss of these jobs for 1 year would have been $26 million. Eight million dollars in social security payments would have been lost to the Federal Government should these jobs have been eliminated. Thus the economic benefit of retained railroad service is over 13 times the $6.5 million in rail service continuation subsidies expended. This, in Pennsylvania.

Secondly, the actual cost of the rail service continuation subsidy program is much less than originally anticipated by Congress. The Rail Reorganization and Regulatory Reform Act authorized $360 million for rail service continuation subsidies. This is the nationwide program. The first year of subsidy cost $70 million. This is the regional 402 program. Assuming expenditures continue at the same rate, the 100 percent subsidy can be extended until September 1978 and then percentages decline as H.R. 6739 projects until 1982 with no additional authorization over the original $360 million. Therefore, in addition to the economic benefits of the 100 percent rail service continuation subsidy, the continuation of the project seems quite feasible under present planning.

ConRail, too, benefits from the local rail service continuation subsidies as ConRail provides the vast majority of the service over branch lines excluded from its system under operating agreements that have netted ConRail about $1.75 million of income, frankly an unusual feature of one of ConRail's operations. Furthermore, in the Railroad Task Force Region during the first year of subsidy, 3500 cars were originated and terminated on the 13 branch lines excluded from ConRail by the reorganization planning and approximately 13,000 cars were generated statewide in Pennsylvania. Without the branch lines under service through operating subsidies at 100 percent, all of the mainline revenues from this traffic would have been lost to ConRail. Assuming freight revenues of $300 per carload, this traffic was worth $4 million to ConRail from Pennsylvania lines alone.

Finally, there are adverse strategic implications to reducing the rail system in an area to a point where there are no alternative routes to be used in times of war or natural disaster. The Johnstown flood has most recently indicated the importance of retaining in serviceable condition alternate rail routes, and you had the reference to the Johnstown flood mentioned by the FRA Administrator.

While you may agree that the economic benefits of the rail service continuation subsidy program compare favorably with its costs, there remains the question of why the rail service continuation subsidy program should be continued at the 100 percent level until September 1978 instead of at 90 percent. There are two principal reasons for this:

First, as startling as this statement may seem, the difference between a 100 percent rail subsidy and a 90 percent rail subsidy is more than 10 percent. Aside from the cost differential involved, there is a concomitant shift in the party responsible for providing the subsidy. No private shipper can afford to commit himself to providing 10 percent or a proportion thereof of a subsidy whose extent is unknown. The 1 year period of subsidy at 100 percent was designed to avoid industrial displacement by permitting shippers to negotiate among themselves and with a carrier to continue rail service. Nevertheless, throughout this period ConRail, too, was adjusting to the new rail environment with the result that actual cost and revenue data to enable planning to meet the 90 percent subsidy level was unavailable. In addition to making impossible the concluding of subsidy agreements, this has severely restricted the

ability of a state and a shipper and a carrier to evaluate and adjust services to meet shipper needs. Therefore, the 100 percent operating subsidy needs to be extended in order that it perform the function it was originally designed to do.

The second reason for the extension of the rail service continuation subsidy is that the process of the FRA in formulating regulations to guide the distribution of funds to provide accelerated maintenance on lines badly deteriorated from years of neglect by the bankrupt carriers consumed most of the entire year for which subsidy for accelerated maintenance at the 100 percent level was available. FRA compounded the problem by ruling that subsidies for accelerated maintenance would be considered spent during the year when the work is accomplished, rather than when the contract is let. This effectively precludes any utilization of the accelerated maintenance funds at the 100 percent subsidy level and therefore makes a mockery of the structure of that program. Therefore, in order to provide 1 year of 100 percent subsidy of accelerated maintenance for branch lines, the 100 percent level of funding of rail service continuation subsidies must be continued.

The benefits of extending rail service continuation subsidies at the 100 percent level have merited not only the support of the sponsors of the bills before this subcommittee, but also support throughout the Northeast Region of the United States. I have brought with me copies of letters from the Departments of Transportation of 12 States in support of the extension of rail service continuation subsidies for rail operations and accelerated maintenance at a rate of 100 percent. Departments in New York, Virginia, Delaware, Pennsylvania, Connecticut, Michigan, West Virginia, Maryland, Rhode Island, Ohio, Vermont and Massachusetts applaud the concept of the 100 percent subsidy and deplore the inevitable delays that have restricted utilization of the program.

I would like to end by briefly commending two excellent points in H.R. 8393 before you and to point out a significant omission of all the bills. The Railroad Task Force for Northeast Region, Inc. strongly supports the use of proportionate mileage of qualifying branch lines as a basis for determining subsidy allocations to the States. While that is in present legislation, there are maximums, as I recall, for a State. No State can receive more than 10 percent even though it may have mileage that is greater than 10 percent of all the excluded lines. This is eliminated by the provision of H.R. 8393, the maximums.

Secondly, the Task Force applauds the recognition of the effectiveness of trackage rights as a flexible means to enable States and municipalities to continue operation of subsidized service. I would like to point out that is something we strongly agree with the FRA on.

The significant omission from the legislation is a means to make effective sections 809 and 810 of the Rail Revitalization and Regulatory Reform Act. These sections provide for the establishment of rail banks, the fossil fuel rail bank to have been established by August 1976. The Railroad Task Force believes that ConRail and Amtrak should be directed to bank any line in the region, presently included within the ConRail or Amtrak systems or operated under subsidy, for which there is a foreseeable future need.

Thank you for your consideration of these points and I will accept any questions.

Mr. ROONEY. Thank you, Ms. Adams. You have just given a very fine statement as to why we should pass this legislation. I only regret very much that our friends from the Transportation Department were not here to hear your very fine statement.

Ms. ADAMS. Mr. Chairman, I would like to provide the subcommittee with an additional copy of the letters from the 12 States to give to the FRA.

Mr. ROONEY. Without objection, we would be very happy to have that.

Ms. Adams, on Page 2 of your testimony you state that there is a justification for extension of the program another year at 100 percent Federal subsidy because the program does not cost as much as originally estimated.

It is my understanding that the costs were low because the program was delayed in getting started; is that correct?

Ms. ADAMS. That is probably part of the reason.

Mr. ROONEY. Am I correct in assuming that you would be satisfied if we did not increase the authorized funds but merely just extended the period for the 100 percent Federal subsidy?

Ms. ADAMS. Yes, sir, we have calculated that $380 million of 803 funds, when this program is melded into the nationwide program, should be enough to cover the needs.

Mr. ROONEY. Mr. Florio.

Mr. FLORIO. I would like to comment on the last point, which is a valid one and a good observation, and I was impressed with the statement, particularly the succinct way in which the justification for the bill was put forth on page 3.

The organization of which you are a member, is that northeast Pennsylvania or the northeast portion of the country?

Ms. ADAMS. It is 22 counties of northeast Pennsylvania. It is within one State. The reason we knew of the support in other States was that we communicated with them.

Mr. FLORIO. I understand. Thank you.

Mr. ROONEY. Including the State of New Jersey, of course.

Ms. ADAMS. Of course.

Mr. ROONEY. Although Kansas is far removed from the Northeast, would you like to comment?

Mr. SKUBITZ. Yes, I would.

If we were to extend this 100 percent, then will you be back the following year for another 100 percent? Or are you telling us, give it now to us and next year I will be back and every year? I want you to be honest about this.

Ms. ADAMS. The justification we see for extending this another year from your perspective, because we can't just come down every year and ask for 100 percent, is that you have to know when you have to come up with 10 percent, and States do not have freely available money to cover the 10 percent, and in Pennsylvania, for example, the proposal that has been made to shippers is for the State to cover 5 percent and the shipper to cover 5 percent. He has to come to two decisions. How much will it cost, 5 percent of what, and the best way to determine 5 percent of something is last year,

and last year ConRail operated these lines at X cost, so 5 percent of that is my cost as a shipper, and can I afford to pay it? If so, I pay it, or, if not, I move, or use trucks, or whatever.

ConRail, because it was in its first year, too, and because it is concentrating resources and time on the main lines, just did not make this data available, and it is available now on a half year and then third quarter basis.

However, the full year's data is not fully available and certainly isn't available in time for the shippers to do the second decision, which is to negotiate among themselves. You have two shippers using a line; should you pay 3 percent and me 2, or do I use it exclusively and you really don't need rail service, you move to truck and I should be glad to use railrail service because it decreases my subsidy amount.

There are a lot of different points these shippers have to negotiate among themselves, all of which is going to take some time and they have to know at least the figures they are negotiating on.

This is why next year we will have this year's experience with ConRail, and its costs, and then hopefully, I trust by the end of next year we should know exactly what kind of cost we are taking about.

Mr. SKUBITZ. I thought you were talking about the end of next year we meld in so now Pennsylvania starts getting a little bit out of the nation. You used that $360 million.

Ms. ADAMS. That is where the money is going to come from. The 402 program that applied only to the 17 States will end, and then where does this money for any rail service continuation subsidy come from; from the 803 program, and that applies to the nation.

Mr. SKUBITZ. This next question has nothing to do with railroads. Do you pay income taxes in Pennsylvania or not?

Ms. ADAMS. Yes. Very definitely.

Mr. SKUBITZ. What about sales taxes?

Ms. ADAMS. Six percent. It is one of the highest.

Mr. SKUBITZ. You answered my question. I was hoping that you didn't, so I could take a jab at the Chairman.

Mr. ROONEY. Are there any further questions?

Thank you very much. We appreciate your coming here today, Ms. Adams. You have been a very fine withess and I am going to send this testimony directly to the FRA administration, along with the letters you are going to supply to the committee. Thank you very much.

The committee stands adjourned subject to the call of the Chair.

[Whereupon, at 12:18 P.M., the subcommittee adjourned, subject to the call of the Chair.]

LOCAL RAIL SERVICE CONTINUATION ASSISTANCE

WEDNESDAY, OCTOBER 19, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2218, Rayburn House Office Building, Hon. Fred B. Rooney, chairman, presiding.

Mr. ROONEY. On July 27 and 28 of this year we held hearings on a number of proposed changes to the local rail service continuation assistance programs for the Northeast/Midwest region, originally provided in the Regional Rail Reorganization Act of 1973, and for the nationwide program provided in the Railroad Revitalization and Regulatory Reform Act of 1976. These changes were proposed in a number of bills.

At the conclusion of these hearings it was the consensus of the members of the subcommittee that as there were a great number of bills, many of which appeared to be agreeable either in their entirety or partially, it directed a new bill be drafted in order to combine the tentatively agreed upon provisions into one markup vehicle.

The bill we are considering today, H.R. 9398, is not as inclusive as was originally contemplated. Nevertheless, it does contain a number of the provisions which were tentatively agreed upon. I intend to propose a number of amendments to this bill when we mark it up tomorrow afternoon, so as to conform to the recommendations of the previous hearings. For example, among other things, I intend to propose amendments to include the provisions contained in H.R. 8225 and H.R. 9049.

The primary purpose of the hearings today is to consider a number of new provisions included in H.R. 9398 which were not included in any of the bills we considered during our hearings in July. For example, section 6 of this bill contains an optional 5-year demonstration corrective action program as an alternative to abandonment for rail lines with respect to which avoidable costs of operation plus a reasonable return on investment exceed revenues. Matters such as this are a new concept of assistance which appear to have tremendous potential to solving a long-standing problem but obviously needs careful consideration.

21-684 O - 78 - 14

Our first witness will be our honorable colleague, Thomas B. Evans.

You may proceed.

STATEMENT OF HON. THOMAS B. EVANS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF DELAWARE

Mr. EVANS. Thank you, Mr. Chairman. I appreciate very much the opportunity to discuss today a portion of H.R. 9398, the Rail Freight Assistance Act of 1977.

This morning I shall confine my remarks to the sections of the bill which would require as a condition of Federal assistance that the States or any designated operator or carrier should continue the bargaining agreements, employment and working conditions in effect prior to the effective date of the final system plan under the Rail Reorgnaization Act of 1973.

Mr. Chairman, if this section of the legislation is allowed to be enacted into law, it will mean the end of shortline operations throughout the country, and particularly on the Delmarva Peninsula.

As this committee knows, the three States of Delaware, Maryland and Virignia have been working together since January 1974 to prevent rail service from disappearing in our region. That road has been a rocky one, and I shall not take the committee's time to recite the many crises that have occurred in the last 4 years on Delmarva with respect to continued rail service.

But one thing is certain. If the language in this bill forcing shortlines to meet the same antiquated and inefficient reuirements which helped put Penn Central into bankruptcy is passed by the Congress, it will lead not only to the immediate termination of shortline srevice on Delmarva, thus snapping the vital north-south artery, but will create a domino effect which will place in jeopardy all rail service in the three-State area. If that happens, then everything that has been done over the past 4 years will have been for nothing.

At the present time, approximately 10-12,000 cars per year utilize the main Delmarva line from Norfolk to Wilmington on a thru-traffic basis. This is a significant portion of the entire traffic on the line. If the shortline is put out of business—as would surely happen under this bill—these cars would have to be re-routed away from Delmarva. Just last week, President Spence of ConRail assured us that the Delmarva ConRail line met the cars-per-mile viability test, and would thus not be abandoned. But if these same 12,000 cars are taken away from the Delmarva, then ConRail would have no choice but to reevaluate its service to the entire region.

Mr. Chairman, this language also smacks of taxation without represetnation. In effect, it forces upon the States and shortline operators agreements to which none of them were party. You are asking the States to accept an agreement negotiated between two private parties and that is simply unfair.

Let me give this committee an idea, in dollar and cents, or just what this proposal means. ConRail, with the same labor provisions we are talking about in this bill, operated the line from Pocomoke

City, Maryland to Norfolk, Virginia at a cost of $6.7 million a year. The shortline, without the feather-bedding and inefficiency of ConRail, will operate that same line with the same or even better service for $2.8 million this year, less than half the ConRail cost.

Let me put the same question on a broader scale. Southern Railway, at the time it was seeking to purchase the Delmarva line, said that if it was forced to use Penn Central's 1974 work rules and rates of pay, Southern's $88 million net profit that year would have turned into a $37 million loss.

In fact, ConRail itself admits that a large portion of its $700 million loss this year will be due to current operating and work conditions.

Faced with this kind of evidence, I find it unbelievable that the committee would want to saddle these same outmoded work rules on the financially struggling shortlines.

Mr. Chairman, the shortlines and independent carriers and operators of this country serve a vital public need. They have sought to provide rail transportation on lines which the Federal Government itself has said are unprofitable. Don't put them out of business before they even get started.

Mr. ROONEY. Thank you very much, Mr. Evans. We appreciate your testimony.

The Chair notes that there is a quorum call on the floor so we will take a 10 minute break.

[Brief recess.]

Mr. ROONEY. The committee will come to order.

Our next witness is our colleague, Mr. Bauman. We recognize the gentleman from Maryland.

STATEMENT OF HON. ROBERT E. BAUMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. BAUMAN. Thank you, Mr. Chairman. I will be very brief. I don't have a prepared statement. I did want to come before the committee today on behalf of the people I represent in the First Congressional District of Maryland.

I should say a word of thanks to the chairman for making possible last week a meeting with Mr. Richard Spence, the Chief Operating Officer of ConRail. We discussed at great length the problems of the Delmarva rail situation. This bill is one of them, although that was not covered. But I owe a personal debt of thanks to the chairman for arranging that meeting. I think ConRail has a much better understanding of our problems congressional and otherwise, as a result of our intervention.

Mr. ROONEY. I am pleased to know that you finally met a railroad president.

Mr. BAUMAN. That is right. I may even see a train move in my district at some time.

Mr. Chairman, I want to direct my comments to the sections of this legislation which as I understand it will impose upon the shortline carriers or other carriers receiving Federal subsidy the existing or prior work rules apparently imposed by agreements or

otherwise by previous railroad companies which had previously owned or operated rail lines.

In our case this is, of course, the Penn Central. I have discussed this matter great length with officials of the Virginia and Maryland railroad and the Maryland and Delaware Railroad, both of them incorporated shortline operators. One operates the stretch of line on the Delmarva Peninsula which runs from Pocomoke City down to Cape Charles and across to Norfolk. This section of track was not included in the final system plan.

The other, the Maryland and Delaware, operates a number of spur routes off the main line which runs from Pocomoke Md. up to Salisbury Md. and Wilmington Del. The Maryland and Delaware also operates a number of spur routes into cities in the State of Maryland.

It is not an understatement to say that if these work rule provisions of the proposed legislation are enacted and the Virginia and Maryland and the Maryland and Delaware Railroads are forced to live up to previous agreements between the unions and Penn Central, they will go out of business, pure and simple.

I give you just a few examples: According to the Virginia and Maryland Railroad, on the main line their present wages are $106,000 and under the proposed law, they will go up to $151,500. That might not sound like much to ConRail, but it means the shortline will have to increase their employees on that segment from four to at least six and perhaps more, with the resultant expense.

If the Congress of the United States wants to get into the business of forcing private railroads into welfare, that is one thing. But in this case it will mean that these rail lines will simply have to fold up. We have struggled for 2 years to keep the little rail service that we have. Every obstacle possible has been thrown into our way.

The chairman will recall months and months of negotiations between Southern Railway, the USRA and union officials for the acquisition of all the Delmarva lines. I do not think it is unfair to say that the intransigence of the unions in the final analysis is what caused Southern to back out. It could not economically meet the demands of the unions.

At this point, if we are to come in and change the grounds rules, I can assure you that not only will this force the short line operators out of business in my district, but because of the delicate nature of the overall economic picture on the Delmarva Peninsula as far as rail service by ConRail is concerned, I suspect ConRail will also eventually curtail its service because it will not have the feeder routes coming into the main line.

Mr. Spence made very plain the other day that all lines currently in service are needed to conduct profitable operation. I can leave you with the statistics that have been provided to me by the shortline operators. I know I can speak for the State officials, although they might not have taken a formal stand, from Delaware, Virginia and Maryland and Congressman Trible joins me in my statement though he is not able to be here, in saying that we hope you will delete these sections and at the very least make some allowances for areas where this proposal would wipe out rail service.

I hope if the committee moves this legislation you will take that into account.

Mr. ROONEY. Thank you very much, Mr. Bauman. I know your great concern about the rail service on the Delmarva Peninsula. We appreciate your appearance today.

Our next witness will be the Honorable John M. Sullivan, the Administrator of the Federal Railway Administration.

Mr. SKUBITZ. Mr. Chairman, I have another full committee meeting of the Committee on Interior. I have a little brief statement that will only take about 2 minutes. I wonder if I could give my statement at this time and then I have to go over to a markup?

Mr. ROONEY. The gentleman is recognized.

Mr. SKUBITZ. Mr. Chairman, here we are again, 11th hour, rushing about as though the place is on fire—there is simply no fire—ever since the provisions in H.R. 9398 which were just introduced a little over 2 weeks ago and can wait until the next session of this Congress without doing any harm to anybody.

I realize that in some quarters we have become famous for pulling the fat out of the fire and rushing through important rail legislation. Remember, Mr. Chairman, 2 years ago you and I were struggling to get time before the full committee in order to report out the former act. We succeeded and we managed to get the Senate conferees to reconsider our Christmas Eve conference and agreed to a February conference in which the glaring errors that grew out of that 1975 rush were corrected.

Last year we were again in the thralls of a year-end rail legislation with the so-called son of ConRail. Many thought that our 11th hour piece of art in 1976 would have been best undone. Nevertheless, I supported you because I realized that the comprehensive 4-R act required a certain polishing which can only come after due consideration and deliberation.

Mr. Chairman, this year I have to get off of the year-end bandwagon. H.R. 9398 represents an early Christmas tree for my good friends in the railroad brotherhoods. I don't begrudge them an early Christmas present. They are dedicated, hard working men who deserve a full share in the benefits of a strong rail system. But unfortunately most of the provisions they have suggested in H.R. 9398 would deny them benefits by making the very railroad system on which they are dependent weaker and more vulnerable to competition from barges and truck lines.

Mr. Chairman, we should give full consideration to corrective action, labor protection on subsidized branch lines, restrictions on contracting out, and ICC allocation of trackage rights to subsidize carriers. I say we should give those matters consideration, but I do not mean that we should chat about them over the weekend while we are watching the Redskins go down to defeat. I mean we should direct our staff to dig out the necessary information which will demonstrate whether we need these new provisions or not, whether they are in the public interest, whether they are going to help or whether they are going to come back here again right after Christmas and we are going to be stuck with another piece of legislation trying to undo what we are doing now.

The bottom line, Mr. Chairman, for all of us, labor, railroad management, shippers, politicans and the general public is that our national railroad system must be financially viable. If it is to provide either good jobs or good transportation, we had better tend to the priority before we begin to keep special interest provisions upon our already overworked railroad system.

Mr. Chairman, what I am trying to say to you rather loud and clear——

Mr. ROONEY. It has been clear.

Mr. SKUBITZ. Is that I think these hearings should adjourn and that no further action be taken on this legislation until the beginning of the new session. I can assure my chairman at that time I shall be ready and willing to listen to all the witnesses. I shall be ready and willing to sit down with him as I have in the past trying to work out these things in an equitable way.

But I understand that it is going to be an effort to try to push this thing along through the full committee too and I am in no mood to do that sort of thing if we are going to have to come back for a Christmas session to try to undo some of these things.

I thank you for the time.

Mr. ROONEY. I appreciate very much the cooperation you have given this committee over the past and I am sure it will continue in the future.

I might say that just because we are coming to the closing days of this session is no reason for us not to do anything. You said you are going to go to another committee meeting. Why are you going to do that?

Mr. SKUBITZ. It happens I am the ranking Republican on the Interior Committee and we just succeeded in holding the coal slurry bill up until after January 20 and we are trying to make an effort to hold up another one until after January 20. Do you understand, Mr. Chairman? That is my reason for going over there. I wanted to come over and make it clear to you that I am hoping that you will hold this thing until then.

Mr. ROONEY. There is only one part of your statement that I agree with and that is the Redskins.

Mr. SKUBITZ. I think you will probably agree with the whole thing. I am sure if you read the statement over again that I recited history to you and we are falling into the same path again.

Thank you, Mr. Chairman.

Mr. ROONEY. Mr. John M. Sullivan, Administrator of the Federal Railroad Administration.

STATEMENT OF JOHN M. SULLIVAN, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION, ACCOMPANIED BY ROBERT E. GALLAMORE, DEPUTY ADMINISTRATOR AND CHARLES SWINBURN, ASSISTANT ADMINISTRATOR FOR FEDERAL ASSISTANCE

Mr. SULLIVAN. I have with me today Bob Gallamore, our Deputy Administrator and Charlie Swinburn, our Assistant Administrator for Federal Assistance.

In view of the fact that you have such a workload ahead of you, I would like to summarize my statement and submit the balance for the record.

Mr. ROONEY Without objection.

Mr. SULLIVAN. I apprecite the opportunity to appear here today to testify on H.R. 9398, a bill to extend the eligibility for financial assistance under the rail service assistance programs and for other purposes. My testimony today will concentrate on three important provisions of the bill: expansion of eligibility of rail lines for local service subsidy, employment conditions and employee representation on subsidized lines, and the proposed corrective action procedure.

The provisions of the proposed bill which greatly expand the rail service assistance program are similar or identical to provisions in H.R. 8393, upon which I testified before this committee on July 28, 1977. As you know, I testified then against expansion of the classes of rail lines which would be eligible for Federal financial assistance. The Department remains opposed to extension of the rail service assistance programs in the manner proposed in the bill currently under consideration.

Let me provide you with a few examples of the basic concerns which we have with the expansion of eligibility provisions in the pending bill.

The bill advances the concept of pre-abandonment eligibility without establishing a satisfactory means of defining which lines should be eligible.

The bill does not provide explicit criteria for costs and benefits of rail services to be continued or revitalized.

The bill gives inadequate recognition to the budget consequences of expanded eligibility.

The bill reflects insufficient concern for the potential problemn of granting Federal funds to private rail companies—another consequence of the pre-abandonment concept. Different arrangements, perhaps involving the States as lessees, should be developed.

In the case of rehabilitation assistance, the bill does not contain any cost-recovery principles such as are contained in the Iowa plan. Nor does it require that selection of lines for rehabilitation purposes be based upon sound economic analysis.

In summary, we believe very strongly that H.R. 9398 falls far short of an adequate and responsible approach to the problem. We all need to take another close and unhurried look at ways to better administer the program. I say that in part because we take no satisfaction in administering a program that causes dissatisfaction among our colleagues in State government, and because I think we have it within our power to aid the Congress in developing a far more satisfactory approach.

There are other provisions affecting the rail service assistance program which are primarily administrative in nature and on which we have already testified. We will be happy to go over our previous positions with the committee staff. In addition, the bill contains one new administrative provision which presents us with real problems and which we believe demands specific comment. Section 3 of the bill, in amending section 5(k) of the DOT Act,

provides that all assistance under the rail service assistance program must include upgrading track to class II safety standards. We oppose that provision since there is no apparent need to bring all subsidized lines to class II standards. Many railroads routinely operate branch lines efficiently and safely at class I as the basic level and there is little logic in requiring subsidized lines to be maintained at a higher level than unsubsidized lines.

The second and third portions of my testimony today concern two new provisions in H.R. 9398 which would affect the rail service assistance programs significantly and on which we have not expressed a position previously.

The first of those relates to employment conditions and employee representation on lines for which financial assistance is being provided under the rail program. The bill would require that whatever entity is performing rail services on a subsidized branch line must agree to maintain the collective bargaining agreements and employment and working conditions in effect on such line, with such modifications as may be negotiated between that entity and whatever union represented the employees prior to April 1, 1976.

Additionally, the provision would require that all work done on the line, whether of an operating or construction nature, be done by the crafts or classes of employees presently performing the work. Only in the event that sufficient such employees were not available or could not be hired could the work be subcontracted, in which case the subcontractor would be deemed to be a carrier and the subcontractor's employees would be deemed to be railroad employees. I should note that the designation of the subcontractor as a carrier is limited to the purposes of the provision. However, the provision itself is so broad that the restriction may be of little value.

Based on our review of existing employee protection provisions, we believe that they adequately protect these employees. Therefore, we do not believe there is a need for the provisions in H.R. 9398. Accordingly, the Department opposes these labor-related provisions. While we strongly support labor's rights to pursue its collective bargaining interests, we cannot support such an unwarranted and serious intrusion of the Federal Government into matters which are more properly handled directly by labor and management. These provisions would have Federal law establish the collective bargaining status of a group of workers and in effect favor one collective bargaining process over another.

It is extremely difficult to understand how the provisions requiring the use of existing work force personnel or of furloughed employees before permitting contracting out would, in practice, work. Where the operator of the federally-assisted line contines to be the entity operating prior to the provision of suc assistance, there will be no difficulty in locating such personnel. However, where the operator is some other entity, it is completely unclear as to where the crafts or classes of employees presently performing such work, including employees on furlough, will be found. Further, we cannot tell from reading the provisions how they would affect the many and complex existing relationships among ConRail, the States, the employees, the shortline operators, and the subcontractors in the northeast program.

Nor do we know what the effect of these provisions would be on minority business opportunities. Regulations issued pursuant to section 905 of the 4-R act require that all recipients of financial assistance under the rail service assistance programs take affirmative action to achieve minority hiring and minority business goals. It is possible that the provisions of H.R. 9398 would seriously hinder States in complying with those regulations.

Further, and related to that point, these provisions could place intolerable burdens on any subcontractors, be they minority or otherwise, who were able to perform any work under the program. Also it is possible that the provisions making the subcontractor a carrier and the subcontactor's employees railroad employees, would require the subcontractors to pay both social security and railroad retirement on behalf of the employees. It is difficult to see how any subcontractor could make a profit at competitive rates under such onerous conditions.

Further, it is possible that the employees of the subcontractor would have to pay dues to the railroad unions involved, as well as to their own unions, hardly a fair requirement.

I should point out one pertinent piece of background coming out of the northeastern program which has been underway for a year-and-a-half. The designated carrier for much of that service, ConRail, was not able to perform much of the maintenance work requested during the first program year, due to lack of personnel and resources. In those cases the States had to obtain other contractors to perform the work. The option of the States to subcontract such work to other than the operators of service has proven to be a necessary and proper tool for the branch line program. It should not be foreclosed.

The third major area I would like to cover today concerns the provisions in H.R. 9398 which would create a corrective action procedure. The procedure is apparently designed to encourage the elimination of losses on light density lines by submitting certain issues to binding arbitration among all parties with an interest in the line carriers, States, shippers and labor.

While we see some merit in the idea of getting together the parties who have the most direct interest in the continued use of a branch line, and having them work out their problems themselves, we are opposed to this corrective action procedure.

First, the procedure would, in and of itself, expand the eligible light density lines to include lines which have not yet been abandoned by the private sector. In that respect it suffers from many of the same deficiencies as the direct expansion in the earlier provisions, my opposition to which I have outlined above.

Second, the procedure is very elaborate and might be too complex to be workable.

Third, because the provision contemplates 100 percent Federal funding of whatever solution involving financial assistance the parties agree on, or have imposed upon them in arbitration, it is difficult to see that it will have any positive and corrective effects. When the parties get together, rather than negotiate a reasonable solution which involves each party giving a little, they will be under pressure simply to agree on how to use the taxpayers' money to

avoid anyone being hurt. It is unlikely that as a result of this procedure there will be any real correction of the problems which caused the line to be a money loser in the first place. Rather, the status quo likely will be maintained and funded with Federal subsidy funds.

There are several other provisions of H.R. 9398 which are not related to the rail service assistance programs and on which I would like to comment briefly. Of major interest are sections 13 and 14 of the bill which would combine the section 504/901 studies required by the 4-R act and establish new dates for those studies. As I have testified previously before this committee, the administration supports those provisions.

Finally, we would like to express our suport for an amendment to the assistance program which is not included in H.R. 9398. The amendment would extend the termination date of the section 505 preference share program from September 30, 1978 to September 30, 1979, and would permit subsequent expenditure of funds against obligations incurred through that date. Without such a modification, only $320 million of the $600 million which is authorized for that program could be obligated before the program ends and all funds obligated but not expended on September 30, 1978 would lapse.

Thank you, Mr. Chairman. That concludes my prepared testimony. I will be happy to answer any questions which you and other members of the committee might have.

[Mr. Sullivan's prepared statement follows:]

STATEMENT OF JOHN M. SULLIVAN
ADMINISTRATOR OF THE FEDERAL RAILROAD ADMINISTRATION
HEARINGS BEFORE THE SUBCOMMITTEE ON
TRANSPORTATION AND COMMERCE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
U.S. HOUSE OF REPRESENTATIVES
OCTOBER 19, 1977

I appreciate the opportunity to appear here today to testify on H.R. 9398, a bill to extend the eligibility for financial assistance under the rail service assistance programs and for other purposes. My testimony today will concentrate on three important provisions of the bill: expansion of eligibility of rail lines for local service subsidy, employment conditions and employee representation on subsidized lines, and the proposed "corrective action procedure."

Extension of Eligibility

The provisions of the proposed bill which greatly expand the rail service assistance program are similar or identical to provisions in H.R. 8393, upon which I testified before this Committee on July 28, 1977. As you know, I testified then against expansion of the classes of rail lines which would be eligible for Federal financial assistance. The Department remains opposed to extension of the rail service assistance programs in the manner proposed in the bill currently under consideration.

Let me provide you with a few examples of the basic concerns which we have with the expansion of eligibility provisions in the pending bill.

- The bill advances the concept of pre-abandonment eligibility without establishing a satisfactory means of defining which lines should be eligible. Initially the bill leaves this determination completely in the hands of the rail carriers themselves--though States would be able to choose which lines actually receive subsidy.

- Having transferred the authority for determining eligibility to the carriers (who create eligibility by notifying the ICC of their intent to abandon or the initiation of abandonment procedures), the bill does not provide explicit criteria for costs and benefits of rail services to be continued or revitalized except in the special situation where a "corrective action procedure" is initiated.

- The bill gives inadequate recognition to the budget consequences of expanded eligibility. We have a limited budget for all transportation services and improvements--and we are faced with large claims against those resources from all sides. Expansion of eligibility could raise the claims of the rail service assistance programs, unless basic understandings as to budget constraints are reached at the outset. The Department does not believe that the case has been made for local service lines warranting a larger share of tax resources, now or in the future.

- Similarly, the case for rail service assistance being on a higher matching ratio than pertains for other transportation programs is questionable. While the higher ratio may have been necessary at initiation of the Northeast program, under conditions of emergency reorganization of the bankrupt Northeastern carriers, the same circumstance does not prevail for expansion of the program nationwide.

- The bill reflects insufficient concern for the potential problem of granting Federal funds to private rail companies--another consequence of the pre-abandonment concept. Different arrangements, perhaps involving the States as lessees, should be developed.

- In the case of rehabilitation assistance, the bill does not contain any cost-recovery principles such as are contained in the "Iowa plan." Nor does it require that selection of lines for rehabilitation purposes be based upon sound economic analysis.

In summary, we believe very strongly that H.R. 9398 falls far short of an adequate and responsible approach to the problem. We all need to take another close and unhurried look at ways to better administer the program. I say that in part because we take no satisfaction in administering a program that causes dissatisfaction among our colleagues in State government, and because I think we have it within our power to aid the Congress in developing a far more satisfactory approach.

There are other provisions affecting the rail service assistance program which are primarily administrative in nature and on which we have already testified. We will be happy to go over our previous positions with the Committee staff. In addition the bill contains one new administrative provision which presents us with real problems and which we believe demands specific comment. Section 3 of the bill, in amending section 5(k) of the DOT Act, provides that all assistance under the rail service

assistance program must include upgrading track to Class II safety standards. We oppose that provision since there is no apparent need to bring all subsidized lines to Class II standards. Many railroads routinely operate branch lines efficiently and safely at Class I as the basic level and there is little logic in requiring subsidized lines to be maintained at a higher level than unsubsidized lines.

Employment Conditions

The second and third portions of my testimony today concern two new provisions in H.R. 9398 which would affect the rail service assistance programs significantly and on which we have not expressed a position previously. The first of those relates to employment conditions and employee representation on lines for which financial assistance is being provided under the rail program. The bill would require that whatever entity is performing rail services on a subsidized branch line must agree to maintain the collective bargaining agreements and employment and working conditions in effect on such line, with such modifications as may be negotiated between that entity and whatever union represented the employees prior to April 1, 1976. Additionally, the provision would require that all work done on the line, whether of an operating or construction nature, be done by the crafts or classes of employees presently performing the work. Only in the event that sufficient such employees were not available or could not be hired could the work be subcontracted, in which case the subcontractor would be deemed to be a carrier and the subcontractor's employees would be deemed to be railroad employees. I should note that the designation of the subcontractor as a carrier is limited to the purposes of the provision. However, the provision itself is so broad that the restriction may be of little value.

Based on our review of existing employee protection provisions, we believe that they adequately protect these employees. Therefore, we do not believe

there is a need for the provisions in H.R. 9398. Accordingly, the Department opposes these labor-related provisions. While we strongly support labor's right to pursue its collective bargaining interests, we cannot support such an unwarranted and serious intrusion of the Federal Government into matters which are more properly handled directly by labor and management. These provisions would have Federal law establish the collective bargaining status of a group of workers and in effect favor one collective bargaining process over another.

It is extremely difficult to understand how the provisions requiring the use of existing work force personnel or of furloughed employees before permitting contracting out would, in practice, work. Where the operator of the Federally assisted line continues to be the entity operating prior to the provision of such assistance, there will be no difficulty in locating such personnel. However, where the operator is some other entity, it is completely unclear as to where the "crafts or classes of employees presently performing such work, including employees on furlough," will be found. Further, we cannot tell from reading the provisions how they would affect the many and complex existing relationships among Conrail, the States, the employees, the shortline operators, and the subcontractors in the Northeast program.

Nor do we know what the effect of these provisions would be on minority business opportunities. Regulations issued pursuant to section 905 of the 4R Act require that all recipients of financial assistance under the rail service assistance programs take affirmative action to achieve minority hiring and minority business goals. It is possible that the provisions of H.R. 9398 would seriously hinder States in complying with those regulations. Further, and related to that point, these provisions could place intolerable burdens on any subcontractors, be they minority or otherwise, who were able to perform any work under the program. Also

it is possible that the provisions making the subcontractor a carrier and the subcontractor's employees railroad employees, would require the subcontractors to pay both social security and railroad retirement on behalf of the employees. It is difficult to see how any subcontractor could make a profit at competitive rates under such onerous conditions. Further, it is possible that the employees of the subcontractor would have to pay dues to the railroad unions involved, as well as to their own unions, hardly a fair requirement.

I should point out one pertinent piece of background coming out of the Northeastern program, which has been underway for a year and a half. The designated carrier for much of that service, Conrail, was not able to perform much of the maintenance work requested during the first program year, due to lack of personnel and resources. In those cases the States had to obtain other contractors to perform the work. The option of the States to subcontract such work to other than the operators of service has proven to be a necessary and proper tool for the branch line program. It should not be foreclosed.

Corrective Action Procedure

The third major area I would like to cover today concerns the provisions in H.R. 9398 which would create a "corrective action procedure." The procedure is apparently designed to encourage the elimination of losses on light density lines by submitting certain issues to binding arbitration among all parties with an interest in the line (carriers, States, shippers and labor).

While we see some merit in the idea of getting together the parties who have the most direct interest in the continued use of a branch line, and having them work out their problems themselves, we are opposed to this "corrective action procedure." First, the procedure would, in and of

itself, expand the eligible light density lines to include lines which have not yet been abandoned by the private sector. In that respect it suffers from many of the same deficiencies as the direct expansion in the earlier provisions, my opposition to which I have outlined above. Second, the procedure is very elaborate and might be too complex to be workable. Third, because the provision contemplates 100 percent Federal funding of whatever solution involving financial assistance the parties agree on, or have imposed upon them in arbitration, it is difficult to see that it will have any positive and "corrective" effects. When the parties get together, rather than negotiate a reasonable solution which involves each party giving a little, they will be under pressure simply to agree on how to use the taxpayers' money to avoid anyone being hurt. It is unlikely that as a result of this procedure there will be any real correction of the problems which caused the line to be a money-loser in the first place. Rather, the status quo likely will be maintained and funded with Federal subsidy funds.

Conclusion

There are several other provisions of H.R. 9398 which are not related to the rail service assistance programs and on which I would like to comment briefly. Of major interest are sections 13 and 14 of the bill, which would combine the section 504/901 studies required by the 4R Act and establish new dates for those studies. As I have testified previously before this Committee, the Administration supports those provisions.

Finally, we would like to express our support for an amendment to the assistance program which is not included in H.R. 9398. The amendment would extend the termination date of the section 505 preference share program from September 30, 1978, to September 30, 1979, and would permit subsequent expenditure of funds against obligations incurred through that date. Without such a modification, only $320 million of the $600

million which is authorized for that program could be obligated before the program ends and all funds obligated but not expended on September 30, 1978, would lapse.

Thank you Mr. Chairman. That concludes my prepared testimony. I will be happy to answer any questions which you and other members of the Committee might have.

Mr. ROONEY. Thank you very much, Mr. Sullivan.

On page 2 of your testimony you state with regard to the expansion of eligibility for branch line subsidies that we all need to take another close and unhurried look at the possibilities for a better program.

I wonder, Mr. Sullivan, if you can give us any estimate as to when you believe the Department will be in a position to put forth its proposals as to how this program can be alleviated?

Mr. SULLIVAN. I think that early in the next session we could have the necessary communication with the committee and also with the States to try to resolve some of the differences which have been expressed and come up with something positive and acceptable to all.

Mr. ROONEY. In this regard, could you indicate to the committee what in your opinion would be the effect of delaying enactment of this expansion of eligibility until the next session?

Mr. SULLIVAN. I will ask Mr. Swinburn to comment on that.

Mr. SWINBURN. I don't see that it would have a serious effect on anything, Mr. Chairman. The branch lines which would become eligible under the proposed expansion are realistically branch lines that have been deteriorating for many, many years. Incrementally, I don't think our adding a few more months to our deliberation process will seriously enhance that deterioration.

Mr. ROONEY. Are all the States taking advantage of the branch line subsidies?

Mr. SULLIVAN. We have in the State assistance program some 30 or 31 States. I will have Mr. Swinburn give you an up-to-date description.

Mr. SWINBURN. That is correct for the national program. All the States with the exception of Alaska and Hawaii are in some form using the assistance program. In the northeast they are using it actively for operating subsidy and rehabilitation purposes. By March most States will have submitted their plans and will have entered into the program phase.

Mr. ROONEY. Mr. Russo?

Mr. RUSSO. On page 3 of your statement you talked about some of your objections as a result of this legislation. You object to the fact that we maintain the collective bargaining agreements in the event that this bill were to pass.

21-684 O - 78 - 15

Do you feel that the present existing protection provisions are sufficient to handle that particular problem?

Mr. SULLIVAN. Yes, sir, I do.

Mr. RUSSO. Would you explain that a little more clearly for the record?

Mr. SULLIVAN. I think under title V of the 3-R act any employee with 5 years of service has full labor protection. I believe in the national program under the 4-R act an abandonment triggers similar protection clauses so that the people are protected.

Mr. RUSSO. Do you think that is a hinderance to making the line a profitable line, this particular provision?

Mr. SULLIVAN. I think that is a case-by-case thing that I would have no overall comment on.

Mr. RUSSO. I don't have any further questions, Mr. Chairman.

Mr. ROONEY. Mr. Madigan?

Mr. MADIGAN. I am still in the process, as I am each time that someone comes from the FRA, of trying to determine exactly what your role is in all of this. The last time that someone was here I understood the FRA to be a spokesman for the Department of Transportation with regard to the particular issue before us then.

Would that be the case today also?

Mr. SULLIVAN. Yes, sir, we are speaking for the Department of Transportation.

Mr. MADIGAN. Then your position is the position of the Department of Transportation and does that reflect the wishes of the administration?

Mr. SULLIVAN. It is the position of the Department of Transportation, sir.

Mr. MADIGAN. Is that the position of the administration?

Mr. SULLIVAN. Not to my knowledge.

Mr. MADIGAN. Does the administration have any position on this piece of legislation?

Mr. SULLIVAN. This testimony has been cleared with OMB, but I believe the administration would wait for the Labor Department to have enough time to express their view. Therefore, it is restricted for now to the opinion of the Department.

Mr. MADIGAN. When you say it has been cleared with OMB, does that mean OMB thinks this it is all right for you to testify or do they agree with what you are saying?

Mr. SULLIVAN. Yes.

Mr. MADIGAN. They agree?

Mr. SULLIVAN. Yes, sir.

Mr. MADIGAN. So your testimony is the testimony of the Department of Transportation and of the Office of Management and Budget?

Mr. SWINBURN. I think a qualifiction is in order. A specific problem we face with this bill now is that due to the short period of time between when we became aware of the bill and knew we had to testify and today we have not been able to get the Labor Department to fully focus upon the labor provisions of this bill.

Therefore, I think it would be inappropriate for us to say that the Labor Department and therefore the entire administration endorses

our testimony vis-a-vis the labor provisions because they simply have not had time to focus on them and come up with an opinion.

The rest of our testimony, yes, represents unanimously the administration's position.

Mr. MADIGAN. In summary is the administration's position that we should not act right now on this bill? Would that be a fair capsulation of where the administration stands?

Mr. SULLIVAN. I think so. There are certain provisions of the bill that we have on the record supported. I think I would have to say that there are sections we oppose and sections we support and as Mr. Swinburn says, if it is necessary to go into the next session, we don't see any disaster to taking the time to look into it more thoroughly.

Mr. MADIGAN. Thank you.

Mr. ROONEY. The Chair now recognizes the distinguished ranking minority member of this committee, Mr. Devine.

Mr. DEVINE. Thank you, Mr. Chairman.

Mr. Sullivan, would I be inaccurate if I summarized your position on behalf of the FRA, the DOT and the OMB is there is no compelling need for action by this committee or this Congress at this particular session?

Mr. SULLIVAN. Yes, sir.

Mr. DEVINE. Mr. Chairman, with your indulgence I have a short statement.

Mr. ROONEY. Without objection.

Mr. DEVINE. I think the bill raises a number of issues which need to be aired and fully considered as ways and means for improving our nation's railroads. I must add, however, that the changes in existing law as contemplated in the bill are of significant importance so that I hope that this subcommittee will utilize whatever time there is between this session of Congress and the next to fully examine all fo the ramifications of each change contemplated by the bill.

Mr. Chairman, this session has been one in which Congress has assumed a position of watchful waiting as the full impact of the 4-R act has begun to be felt. I think our position has been a correct one. We have seen ConRail come into being and I, for one, have been concerned about whether or not ConRail will make it.

We have continued to authorize large sums of money for Amtrak. We have continued to be disappointed by the performance of Amtrak's management.

We have watched the Interstate Commerce Commission implement the regulatory changes contained in the 4-R act. In most cases, we have found that the commission has tried too hard to cling to the past and in many ways has failed to provide the necessary changes in regulations so as to help the railroads. For example, the Commission in my judgment misconstrued the so-called market dominance provisions. In my judgment, it was the intention of Congress to give railroads great freedom with respect to pricing. The Commission did not fully utilize the opportunity presented by the market dominance provisions of the 4-R act.

I have heard many who are concerned about freight rates for recycled materials complain about the results of the study which we

mandated to the ICC in that area. In addition, I continue to hear from shippers and rail carriers who are dissatisfied with the pace at which the Interstate Commerce Commission moves.

Mr. Chairman, I have mentioned a few of the general areas of our concern simply to illustrate that the problems facing our nation's railroads and indeed facing this committee are truly significant problems that present a great challenge for positive action by the Congress and the administration. During this first year of the Carter administration, our former colleague, Brock Adams, has presided over the Department of Transportation with thoroughness and caution. The administration and Secretary Adams have had much to learn during their first year in office. I anticipate that next year will find a number of proposals coming from the administration in order to deal with some of the major problems I have alluded to.

I am certain that high on the list of actions to be recommended by the administration will be an updating of the branch line subsidy program. I would suggest that the Department of Transportation carefully study the approach used in H.R. 9398 as one of the ways for improving the branch line program.

I will not be able to sit through all of today's hearings because of the rush of business which is a part of this Speaker's rush toward recess. I know that many of my colleagues will find themselves faced with the same demands on their time as I do. Nevertheless, I know that the record created by these hearings will be most helpful as we begin to grapple with the transportation problems which will face us next year. I know that everyone in this room shares my belief that much remains to be done to improve our nation's railroads. I hope that we will proceed in an orderly manner to achieve our goals.

As one member I would agree with Mr. Sullivan that there is no compelling need to take action on this bill this particular session of Congress.

Thank you, Mr. Chairman.

Mr. ROONEY. Thank you, Mr. Devine. I appreciate your comments.

Mr. Sullivan, in your discussion of the corrective action procedures on page 5 and 6 of your testimony, I note that you do not make any comment with regard to the funding provisions for this procedure. As you know, the bill provides an additional $20 million for fiscal year 1979 and 1980 and $15 million for fiscal years 1980 and 1981.

I also understand that it is assumed that the program would cost approximatly $20 million in this current fiscal year, but this amount cannot be provided in the bill because of the budget restrictions.

In your opinion, do you believe that this additional funding is adequate for the program as presently designed?

Mr. SULLIVAN. Mr. Chairman, since we oppose the procedure, why, naturally we would oppose the amount of money for funding. I have no opinion as to the amounts involved.

Mr. ROONEY. In your testimony in July you objected to our increasing the funding for branch line subsidies from the current

$360 million to $450 million. Am I correct in assuming that although not mentioned in your testimony, that your position still remains the same?

Mr. SULLIVAN. Yes, sir, we still oppose that.

Mr. ROONEY. Are there any further questions?

Thank you, Mr. Sullivan.

Our next witness is the Honorable Charles L. Clapp, Acting Chairman of the Interstate Commerce Commission.

STATEMENT OF HON. CHARLES L. CLAPP, ACTING CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY ALAN FITZWATER, DIRECTOR, RAIL SERVICES PLANNING OFFICE

Mr. ROONEY. I wonder if inasmuch as we do have several more witnesses, if the witnesses could contain their remarks to somewhere in the neighborhood of 10 to 15 minutes. Perhaps you can summarize and make your statement a part of the record.

Mr. CLAPP. Thank you. I am accompanied by Alan Fitzwater, Director of the Rail Services Planning Office of the Commission.

I want to thank the Chairman and members of the Transportation Subcommittee for giving the Commission this opportunity to present its views on this bill. On July 27, 1977, Chairman O'Neal made a statement before this subcommittee regarding various proposed amendments to the State Rail Freight Service Assistance Programs. H.R. 9398 incorporates many of the provisions of the earlier bills and adds new provisions which were not addressed in our earlier statement. Although the Commission favors much of this bill, we do have serious concerns about certain provisions which I would like to bring to your attention at this time.

FEDERAL ASSISTANCE LEVELS

Section 2(a) would extend by 9 months, to March 30, 1978, the period of 100 percent Federal subsidy assistance in the national program. Section 9 of the bill would also extend the 100 percent Federal assistance period in the regional program to March 30, 1978, an extension of 1 year. The Commission supports extending subsidy assistance only for rehabilitation projects, but not for operating expenses. We recognize that the slow startup of the program and the difficulties experienced in executing leases with trustees of the bankrupt railroads prevented completion of many rehabilitation projects within the year allowed, thus negating congressional intent.

On the other hand, the current requirement with respect to operating expenses that the State contribute to the subsidy payment in the second subsidy year has provided incentive for developing efficiencies leading to the same service being provided at less cost to the public such as occurred in several States where shortline railroads have replaced ConRail as operators of subsidized branch lines. We think that might not have happened absent the requirement that the State provide a portion of the subsidy.

IN-KIND BENEFITS AND REHABILITATION ASSISTANCE

Section 2(c) and section 10 of H.R. 9398 make several changes in the national and regional programs respectively. The Commission believes these changes are necessary to give the States increased flexibility in designing long-term rail transportation programs.

PROJECT ELIGIBILITY AND LABOR PROVISIONS

Section 3 of H.R. 9398 would amend the national program (1) to make certain additional lines eligible for subsidy assistance, (2) to make certain labor conditions appliable to subsidized operations, and (3) to specify minimum levels of rehabilitation on subsidized lines. Section 11 of the bill would make similar amendments to the regional program.

These amendments would make lines which are the subject of an abandonment proceeding and lines which are potentially subject to abandonment eligible only for assistance for rehabilitation and improvement projects. The Commission supports these provisions in the belief that providing one-time rehabilitation or improvement assistance to a marginally profitable line represents a more rational solution than permanently subsidizing an unprofitable line which has already been authorized for abandonment. The proposed changes in eligibility for subsidy funds would allow this one-time assistance to be provided under the subsidy program.

The Commission recommends two technical corrections to these provisions. First, the bill refers to lines which are subject to an abandonment proceeding. We recommend substitution of the words the subject of an abandonment proceeding. This change would be consistent with the language of the system diagram map requirements of the regulations issued by the Commission under the new abandonment provisions established by section 802 of the Railroad Revitalization and Regulatory Reform Act of 1976, 4-R Act.

Second, the bill defines as eligible those lines classified as potentially subject to abandonment pursuant to section 1a(5)(a) of the Interstate Commerce Act [IC Act]. Both section 1a(5)(a) and the Commission's abandonment regulations explicitly distinguish lines potentially subject to abandonment from lines for which a carrier plans to submit an abandonment application. This latter category has been inadvertently excluded from eligibility by the wording of sections 3 and 11 of H.R. 9398. We recommend the addition of lines for which a carrier plans to submit an abandonment application to the categories of lines eligible for subsidy assistance.

Sections 3 and 11 of the bill would also make agricultural and fossil fuel resource lines eligible for subsidy assistance if certain conditions are met. First, the line must either be shown on the railroad's system diagram map or it must be included in either the agricultural or fossil fuel rail bank established by the Secretary of Transportation. Second, the line must currently provide, or will provide in the future, services which either the Secretary of Agriculture or the Secretary of the Interior has found should be maintained or restored to provide for agricultural or energy needs.

The Commission supports this concept in part and recommends that several changes be made to the proposed provisions. Any

agricultural or fossil fuel line which is identified on a system diagram map would already be eligible for subsidy assistance by virtue of the provision making lines potentially subject to abandonment eligible for subsidy. If an agricultural or fossil fuel line is not identified under existing categories on the system diagram map, it is not in immediate jeopardy of being abandoned because a line must be identified on the system diagram map for four months before an abandonment application can be filed.

Section 4 of H.R. 9398 would require that railroads identify on their system diagram maps those lines which serve either agricultural producing and marketing activities or fossil fuel natural resource areas and which sustain an operating loss. Although advance notification of possible abandonments in agricultural and fossil fuel resource areas is desirable, an additional system diagram map category is not necessary.

It would be beneficial for the Secretaries of Agriculture and Interior to identify all rail lines which serve agricultural and fossil fuel areas. If these lines were identified, then it would be a simple matter to compare each carrier's system diagram maps to the maps depicting agricultural and fossil fuel resource lines. This would provide sufficient notification.

Sections 3 and 11 of H.R. 9398 would also require that financially assisted programs include, as a minimum, the upgrading of all track to Federal Railroad Administration (FRA) Class II track standards. FRA Class II standards permit freight speeds up to 25 miles per hour and passenger speeds up to 30 miles per hour. While there are many subsidized branch lines that should be upgraded to class II standards to permit efficient operations, there are also subsidized lines which are so short or require service so infrequently that the additional expenditure to raise the line from class I—10 miles per hour—to class II could not be justified. Thus this provision should be modified to permit, rather than to require, upgrading to class II. The responsibiity for determining the appropriate level of upgrading should be placed on the State which is subsidizing continued rail service over the line.

Sections 3 and 11 of H.R. 9398 would require a subsidized operator to continue and maintian the agreement, employment, and working conditions in effect on the line prior to the commencement of subsidized operations. The provisions would require that any work on the line be performed by the crafts or classes presently performing the work, subject to existing agreements. If the work is subcontracted, the employees of the subcontractor would be deemed to be railroad employees and the existing agreements would apply to them also.

The Commission opposes these provisions. Seven of the States involved in the regional program have elected to continue the operation of some of the lines excluded from the ConRail system by designating short line railroads as subsidized operators. Many of these designated short line operators are able to provide subsidized services at reduced cost by using smaller train crews and special operating practices, and by contracting for maintenance and rehabilitation services. Several States are training State transportation

department employees to perform inspection and minor maintenance functions on lines subsidized by the State.

These labor provisions would substantially decrease the number of lines which would continue to receive service under the subsidy program. Many of the existing short line subsidized operations could be terminated because of the increased financial burden on the States if the costs of these operations increased.

CORRECTIVE ACTION PROCEEDING

Section 6 of H.R. 9398 would amend the Interstate Commerce Act to create a process identified as a corrective action proceeding. This process would permit ConRail, and any State or other railroads which elect to participate, to develop an operating and corrective action agreement on lines listed on the railroad's system diagram map which lose money on an avoidable cost basis. The lines which would be eligible for this program are those identified as lines for which the carrier intends to file an abandonment application. If the line incurs a loss, as determined by the Rail Services Planning Office, the railroad would be entitled to full payment of the losses starting from the date the line was submitted for a corrective action proceeding and continuing until the corrective action agreement was effective.

Although there is potential benefit in this program—including changes in marketing practices, rates, quality of service, taxes and maintenance—the commission cannot support it. If financial assistance is not provided and the subsidy agreement is terminated, the Commission would be required to grant any subsequent abandonment application relating to the line. This would reduce the Commission's consideration of public convenience and necessity to a calculation of revenues and costs in a subsequent application. Public convenience and necessity encompasses far more than a review of a carrier's statement of revenues and costs for a particular service. A recent Commission decision illustrates this point. This fall, the Commission denied an application of the Abilene and Southern Railway to abandon 39 miles of line in Texas—No. AB-21. The carrier filed the abandonment application in June 1975, based principally on losses sustained in 1974. The 1974 cost/revenue relationship on the line demonstrated a substantial loss. Nevertheless, when the carrier made service and car supply improvements in 1975, the line showed a turnaround and a profit. The Commission, after hearings, denied this abandonment application on the grounds that the traffic decrease experienced in 1974 was induced by the Abilene and Southern's actions, principally its failure to furnish cars to shippers, and that a minimum capital investment and improved service would eliminate any losses on the line. In this case, our examination of public convenience and necessity went beyond the loss sustained and examined the causes. Therefore we recommend that these provisions be deleted.

STATE RAIL PLANNING FUNDS

We support Section 8(b) of H.R. 9398 which would provide for an increase in State rail planning funds from $5 million per year for 3

years to $10 million per year for 5 years. This allows a reallocation of funds for planning and does not represent a new authorization for expenditures.

SERVICE CONTINUATION BY OTHER OPERATORS

Section 13 of H.R. 9398 would amend the Interstate Commerce Act to allow the commission to condition an abandonment by requiring the owning railroad to grant trackage rights to a connecting railroad or a short line railroad to provide subsidized service to the abandoned line.

Although section 1a(4) of the act is broad enough to encompass such a condition, we support the proposed amendment to emphasize the Commission's authority in this area and to endorse the concept of a designated operator.

We believe, however, that the language of this section is overly broad. Specifically, the language could be interpreted to allow the State's designated operators to transport freight for hire on the applicant's main line. We do not believe that this was the intention of the proponents of section 13. Rather, that section was meant to allow the movement of locomotives, crews, and other equipment in nonrevenue service in order to allow maximum use and efficiency of the connecting railroad's, or short line railroad's, equipment. We suggest that the language in appendix B be substituted for section 13 [see p. 228].

USRA BOARD OF DIRECTORS

Our last recommendation deals with a subject which should be added to the bill. As you know, the chairman of the Interstate Commerce Commission is a legislatively designated member of the USRA board of directors. The role of the board has changed considerably since the establishment of ConRail and implementation of the final system plan. Instead of being a planner, USRA is now a financier. As such, its concern is with the capacity of certain carriers to meet their financial obligations to the government. Frequently, USRA is called upon to review strategies before the Commission; many issues presented to the USRA board must later be considered by the Interstate Commerce Commission. Consequently, the Chairman is often in the position of having to abstain from participating in many important decisions which come before both bodies. This is not beneficial to the proper workings of either the USRA board or the Interstate Commerce Commission. As a result, the Commission recommends that the Regional Rail Reorganization Act of 1973 be amended to remove the Chairman of the Interstate Commerce Commission from membership on the USRA board of directors. We have included draft legislation to remove the chairman from the USRA board as an attachment to my prepared statement.

Thank you for this opportunity to present the commission's views on the State Rail Freight Assistance Act of 1977. I will be glad to attempt to respond to any questions you may have.

[Appendices A and B follow:]

APPENDIX A

(a) Section 201(d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 711(d)) is amended by striking "11" and inserting in lieu thereof "10".

(b) Section 201(d)(2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 711(d)(2)) is amended-

(1) by striking "three" and inserting in lieu thereof "two";

(2) by striking "the Chairman of the Commission"; and

(3) by striking "the Deputy Secretary of Transportation, the Vice Chairman of the Commission, or the Deputy Secretary of the Treasury, as the case may be", and inserting in lieu thereof "their duly authorized representatives".

(c) Section 201(f) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 711(f)) is amended by striking "six" and inserting in lieu thereof "five".

(d) Section 201(h) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 711(h)) is amended-

(1) by striking "Chairman of the Commission" and inserting in lieu thereof "Secretary of the Treasury"; and

APPENDIX B

Sec. 13. Section 1a(4) of the Interstate Commerce Act (49 U.S.C. 1a(4)) is amended by adding at the end thereof the following new sentence:

"The terms and conditions referred to in subdivision (b) of this paragraph may include a direction, where the Commission finds it to be in the public interest to do so, awarding trackage rights to another common carrier by railroad or to a State, or a political subdivision thereof, over all or any portion of the line for the purpose of moving locomotives, cabooses, other equipment and crews in non-revenue service between any lines operated by such other carrier. In making such determination, the Commission shall consider the views of any State or other party directly affected by such abandonment or discontinuance and shall fix just and reasonable compensation, for such trackage rights."

Mr. ROONEY. Thank you, Mr. Clapp.

Mr. Sullivan of DOT testified that his department does not favor leaving the determination of eligibility for assistance with the carriers by allowing them to create eligibility by notifying the Commission of an intent to initiate abandonment procedures.

Isn't that position directly opposed by the ICC?

Mr. FITZWATER. I guess the answer is yes. We see no difference in the position that the railroads are in in filing a system diagram map where they are allowed to designate the lines that are potentially subject to abandonment than they are when they file an application for the ICC. It is a voluntary act on the part of the railroad in both instances. So the railroad is under complete control in either situation to determine which lines would come under this program.

Mr. ROONEY. On page 4 of your statement you state any agricultural fossil fuel line which is identified on a system diagram map would already be eligible for subsidy assistance by virtue of the provision making lines potentially subject to abandonment eligible.

Is it the Commission's position that such a requirement would be a duplication and unnecessary?

Mr. CLAPP. Yes.

Mr. ROONEY. That is your position.

Mr. CLAPP. Yes.

Mr. ROONEY. Mr. Russo.

Mr. RUSSO. Thank you, Mr. Chairman.

In discussing removing the Chairman of the Commission from USRA board, it would then make it an even numbered board.

Do you consider it a proper measure? Wouldn't it be better to have an odd numbered board to be able to break a tie?

Mr. CLAPP. I am sure that Congress, in its wisdom, would take care of that, but we do feel that it is inappropriate for the Chairman to be a member in view of the kinds of issues which are now coming before the board. We had a recent situation, as you may know, with respect to the Delaware and Hudson Railroad, where the Chairman was very concerned that his participation in activities there might preclude him from participating as a member of the Commission.

Mr. RUSSO. Should we have another member in lieu of the Chairman or delete two members so we have an odd number?

Mr. CLAPP. We are concerned about deleting the Commissioner, and it may well be that an examination by this committee, by the Congress, of the membership of the board, would indicate that some other changes might also be made.

Mr. RUSSO. Can you explain to this committee why it is necessary to have the amendment that you have in appendix A? You recommend that we amend to permit duly authorized representatives to attend the board.

What is your reason for that?

Mr. CLAPP. With respect to that item No. 3 in appendix A, by striking certain designated officials, including myself, and inserting there, duly authorized representative, we were merely following proposals which had been advanced in both the House and the Senate, and expressing our lack of disagreement with those proposals. That language was taken from bills that have been submitted.

Mr. RUSSO. It wasn't something that you discussed in your testimony.

Mr. CLAPP. Yes.

Mr. RUSSO. It is a reverse position from what we took last year. What is the reason? What is the jsutification for doing that?

Mr. CLAPP. It gives more flexibility to the Chairman. If, for example, the Vice Chairman and the Chairman both were away for some reason, it would permit another duly authorized representative to appear.

Mr. RUSSO. We ran into some problems last year. That is one reason why we put the amendment in, which doesn't make sense after putting it out.

On page 7 of your statement you talked about the public convenience and necessity encompasses far more than a review of the carrier's statement of revenue cost for a particular service. Yet the example you give us stresses the fact that the railroad did turn a profit.

So when you talk about public convenience and necessity encompassing far more, what does it encompass other than revenue cost for a particular service?

You say it encompasses far more than that. It is on page 7.

Mr. CLAPP. In the example cited in the prepared statement but not presented here today, the application of the Abilene and Southern Railroad to abandon 38 miles of line in Texas, the carrier filed an abandonment application based principally on the losses which they had sustained. The Commission we felt that this loss was due in part to the failure of the railroad to provide the services necessary to shippers, that if more cars were available, more traffic would be carried, and there would be more profit.

During the course of our discussions and deliberations, the carriers decided to add more cars, and the situation turned around. What we are saying is that we must look not only at the present financial situation which obtains with respect to a railroad, but to the potential in an area.

Is there an opportunity for expanding service? Is there an opportunity, if there is coordination and cooperation within the community, that at some point in time this particular line will become a profitable line, therefore, maintaining service to areas of the country or the States which might not otherwise receive it?

What we are saying is that we should look beyond just the profit and loss situation and look and see whether there is any potential. What are the factors which led to this loss?

Mr. RUSSO. I don't have any further questions, Mr. Chairman.

Mr. ROONEY. Mr. Madigan.

Mr. MADIGAN. Mr. Clapp, I want to see if I understand what you said.

You indicated, with regard to the corrective action proceedings, that a railroad could short service to a particular line, equipment, for example, thereby reducing the traffic volume on that line for a given period of time, and then indicating that they wanted to abandon so that the State would take it over through this proceeding. The ICC would never really make a determination because they wouldn't have any responsibility to do that or opportunity to do

that, and what we would wind up with would be a rail line that could be profitable, that doesn't show as being profitable, that the State would be providing the maintenance and operation of, and the railroad would be using. In other words, they just simply transfer the responsibility for the line by cutting down on the equipment available to it for a while, and decreasing the revenues on it for a while.

Is that essentially what you said?

Mr. CLAPP. I would say that is an extreme situation, but it is possible. That could happen.

Mr. MADIGAN. You also testified that some of the short line operators have been able to operate these lines more profitably or more econmically through the use of smaller train crews and special operating practices.

Could you describe these special operating practices?

Mr. CLAPP. Seven of the States have tried to take advantage of the short line operation. These States are Michigan, Indiana, New York, Pennsylvania, Maryland, Delaware, and Ohio, and they have tried, it is my understanding, to restrict service so that they provide basic service, but no frills, and in addition cut down the train crews, so that costs are reduced, therefore making the difference between being able to continue service and not being able to continue a service.

Perhaps Mr. Fitzwater would like to expand.

Mr. FITZWATER. Some of the other work rules, I guess, do not have to be followed. For example, it is possible that a crew only work for a half day and only be paid for a half day, whereas, if they are working under the new union rules, if they come out on a shift at all, then they would be paid for the full day regardless of how many hours of actual work was performed. So, in effect, the short line operators are able to tailor the service to the community very specifically, providing service basically when needed and with crews that are available either on a part time or a full time basis, and are not caught up with some of the work rules that are normally associated with the main line carriers.

The etimates run from a savings in crew costs alone from 25 to 50 percent.

Mr. MADIGAN. Mr. Clapp, the scenario that I described to you, you said would be an extreme situation. Still in your testimony you describe the situation exactly like that, where the Cmmisison did not grant an abandonment because they felt that service had not been provided on the line, and that had resulted in a loss of volume.

What you are saying in this instance is that if we adopted this bill, there would be no procedure like the ICC performs now; is that correct? There would be no one making a determination as to whether or not there was some reason for that loss of volume?

Mr. CLAPP. As it stands now, I believe that would be true, but you might make provision for some other body perhaps to look at this.

Mr. MADIGAN. Thank you very much, Mr. Chairman.

Mr. ROONEY. Ms. Mikulski.

Ms. MIKULSKI. Yes.

Mr. Clapp, I would like to refer back to your testimony on pages 5 and 6, where you discuss s3 and 11 of H.R. 9398, or so-called labor rights provisions.

In your testimony you oppose these two sections. My question to you would be that if we strike these two sections, how would you see workers' rights being protected?

It is my feeling that really, historically, workers in this country have only had their right to an adequate income and their right to work in a decent, clean, safe place protected through the collective bargaining mechanism.

My concern is that if we follow your recommendation, workers would unduly suffer, and perhaps we could to 19th century labor practices.

Mr. CLAPP. This obviously is a serious problem. I don't believe in this day and age that would be permitted to happen. I am concerned about lines like the Delmarva Peninsula Line, which might really be eliminated if present requirements, the full-fledged requirements, were to be applied there, that is, if they couldn't operate with somewhat reduced crews. The cost would be so great that this would be not only marginal, it would go from the marginally survivable area to complete loss.

I do, of course, share your concern that we must insure that labor is not discriminated against.

Ms. MIKULSKI. How would that be done, Mr. Clapp? Who would do that? You said you don't think it would slip back.

I don't agree with you. I don't know of any mechanism, or structure, that would guarantee workers' protection.

Mr. FITZWATER. May I respond to that?

First of all, the lines that we have used as an example, and I am sure that the congressmen earlier have used as examples, are lines that have been abandoned under the 3R, reorganization of the railroads, in the Northeast. Title V of the 3R act gave full labor protection to all the employees that were involved. So for the 15 short line operations that are now underway, under moneys provided in the 3R act, labor protection has already been given under title V.

In addition, any application that is filed with the Interstate Commerce Commission, the Rail Labor can come in and the ICC in every case has offered labor protection to the employees that are involved in that particular traffic. So you are in a situation that either the ICC in future abandonments or the Congress through title V in the 3R act have provided full labor protection for those employees that are working at the time the action takes place.

Ms. MIKULSKI. When an application comes before the ICC on a matter such as this, how long does it take for a final decision to be made? If I am being protected by you, how long would it take for that protection to be in operation?

Mr. FITZWATER. Under the 4R act, there are new mandatory time frames. There are two different procedures that can be used. One is for an unprotested application for abandonment. Since the 4R act, regulations have been implemented, about half the cases filed with the ICC have come into this category, and a final decision has been issued in 60 days. This means someone comes in and there is no protest.

On the other hand, if a protest is filed, then you go into a hearing process, and an actual hearing will be conducted out at the location

where the service is currently being performed, and the Commission then, the administrative law judge that conducts the hearing would come back and prepare an initial report for the Commission. The Commission would then review it and finalize it. This all should take place within a 30-month period.

Ms. MIKULSKI. That should? How does it work? How has it worked?

Mr. FITZWATER. We are under 18 months now. I think probably 20 percent of the cases that are involved have already been decided. The remaining 80 percent have not been decided at this point. They have been filed with the Commission anywhere from a period of 2 or 3 months to a period of a year. I don't think any of the cases that have been filed since the 4R act have taken a period longer than 18 months.

Ms. MIKULSKI. Thank you.

Mr. ROONEY. Thank you, Ms. Mikulski.

Mr. Devine.

Mr. DEVINE. Thank you, Mr. Chairman.

The questions asked by Mr. Russo to Mr. Clapp responded to any inquiries that I might have.

I yield back the balance of my time.

Mr. ROONEY. Thank you.

We appreciate very much your appearance here today, gentlemen.

Our next witness will be Mr. Donald C. Cole, acting president, United States Railway Association.

You may proceed, Mr. Cole.

STATEMENT OF DONALD C. COLE, ACTING PRESIDENT, UNITED STATES RAILWAY ASSOCIATION, ACOMPANIED BY ALBERT J. FRANCESE, SECRETARY AND LEGISLATIVE COUNSEL; AND EDWIN RECTOR, ASSISTANT GENERAL COUNSEL

Mr. COLE. Mr. Chairman and fellow members of the committee:

I am pleased to be here to testify specifically this morning with respect to H.R. 9398 which would deal with catastrophic loss and indemnifications in commuter operations by ConRail.

I have with me, Mr. Ed Rector, assistant general counsel for finance, and Mr. Albert Francese, our legislative counsel and acting secretary.

Mr. ROONEY. Why is everybody acting over there?

Mr. COLE. Mr. Chairman, there was a sudden change last year following the departure of our chairman, Mr. Lewis. During the last year of Mr. Lewis' Chairmanship, USRA had no president. Until there is a presidential appointment of a chairman, there was no way to have a chairman. At this time I am acting president. Hopefully some action will be taken by our board, with the recommendation of the Secretary of Transportation, on the appointment of a president, at least by the end of this month.

Mr. ROONEY. And you have an outside chance.

Mr. COLE. Yes, outside. Possession may still be 9/10 of the law.

As proposed, H.R. 9398 would amend section 211 of the 3R act to establish a new loan program under proposed subsection (j) to be

administered by the association. The association would be authorized to indemnify ConRail or State or local transportation authorities for commuter rail casualty losses up to $50 million in excess of private insurance coverage or an established casualty reserve fund.

Such a proposed indemnification provision is put forth in order to deal with the unavailability of private insurance coverage for passenger rail catastrophic risks, and would establish a program of Federal assistance for such risks through the association's section 211 loan program.

It is my understanding that the necessity is driven by the fact that the 3R act as amended by the 4R act specifically precluded ConRail from assuming any losses for passenger commuter operations. On the other hand, certain commuter authorities in the States find that they cannot sign a contract with ConRail which has a form of an open ended liability for what may occur if a commuter train is involved in a very bad derailment or collision, and a number of damage claims and personal liability claims are filed against the carrier.

However, the association has a problem with section 211 as an appropriate vehicle for this proposed program. While as a short-term solution it may be useful, in the long term some other approach should be looked at.

Section 211 as it now stands is based on the expectation that loans would be repaid. The proposed section 211(j) would really be a grants program with no means provided for discharging the association's obligation. In addition, the association does not wish to institutionalize section 211 as it now stands. Most of the section 211 loan programs have been terminated in recognition of their special purpose and intended limited duration.

Expansion of this program over the long term to cover indemnities for catastrophic losses would be inconsistent with the congressional intent in enacting the section 211 program and subsequent amendments to that section.

Section 211 originated in the 3R act to provide loan funds to achieve in the goals of that act and to assist railroads connected with the railroad reorganization. Under that provision, the association loaned money to the M-K-T Railroad, and later made an additional loan to the Delaware and Hudson Railway Co. These provisions were essentially terminated by Congress in the 4R act because further loans could not be made to any railroad that did not have a loan application outstanding as of January 1, 1976. Other than periodic drawdowns, the association's section 211 program is now inactive.

The 4R act also amended section 211 to authorize new (g) and (h) programs. Section 211(g) loans were preconveyance loans to ConRail so that ConRail would be able to do planning and cover a startup costs before its actual conveyance and the provision of the regular Federal funds.

Section 211(h) loans were made to ConRail for the payment of certain preconveyance obligations of railroads in reorganization.

I would like to point out that the section 211 (h) program is currently the only active section 211 program administered by the association, and as a result of actions taken at our last board

meeting on September 28, the association has now committed its maximum obligational authority of $350 million of section 211(h). Because of certain rollover provisions in section 211(h), there will be additional loans made as repayments of the loaned funds are made by the trustees, particularly the Penn Central We feel we can loan out enough money to fully fund the section 211 (h) obligations.

Now we find proposed section 211(j) coming to us as a program of indemnification of ConRail rather than one that contemplates the repayment of USRA's loans by ConRail. We would have to, under this program, borrow from the Federal Financing Bank, but since we wouldn't have any repayment, we would immediately have a default on our part. This would trigger the Secretary of Transportation's guarantee, which stands behind all section 211 programs. The Treasury Department would then act on the Secretary's guarantee, and you would have the Federal Government then paying off everything with the Treasury or DOT coming back to Congress for appropriations to cover their payments.

This approach bypasses the normal appropriations budgetary process by utilizing the off-budget authority under section 211 of the 3R act. USRA's off-budget authority was utilized in the past only when there was an expectation of repayment and to avoid the delays inherent in the appropriations process which might have resulted in the bankruptcy of a railroad or in the delayed implementation of the final system plan.

Moreover, it was generally understood that USRA's off-budget authority would self-destruct. For example, both the Senate Budget Committee and the House Budget Committee have held hearings and issued reports on off-budget programs, and both have recommended that USRA's off-budget authority cease, putting USRA completely on budget.

The policy reasons for USRA's off-budget lending authority have largely disappeared. This is so because the loans and financial assistance for railroads have passed from USRA to the Department of Transportation, and ConRail is being supported by on-budget appropriations.

It is for these reasons that the association would be opposed to expanding the section 211 over the long term. If it is necessary as a short-term solution to solve some immediate problems, then put a deadline of, say, the end of this fiscal year, October 1, 1978, on a section 211(j) program, and next session of Congress could devise a long-term solution that would involve some type of insurance program.

That concludes my testimony regarding the proposed section 211(j). I would be pleased to answer any questions from the subcommittee.

[Mr. Coles' prepared statement follows:]

21-684 O - 78 - 16

TESTIMONY OF DONALD C. COLE
ACTING PRESIDENT, UNITED STATES RAILWAY ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON TRANSPORTATION
AND COMMERCE OF THE
HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
October 19, 1977, 10:00 a.m.

Mr. Chairman, I am pleased to have this opportunity to testify before your Subcommittee with respect to H.R. 9398 entitled in part a bill "to amend the Department of Transportation Act and the Regional Rail Act of 1973." My comments will address the provisions dealing with catastrophic loss indemnification. With me are Mr. Albert J. Francese, Legislative Counsel and Acting Secretary, and Mr. Edwin Rector, Assistant General Counsel-Finance.

As you are aware, the United States Railway Association ("Association") is a non-profit mixed-ownership government corporation incorporated under the laws of the District of Columbia. The Association was established to reorganize and rationalize the northeast rail system and to plan for the conveyance of rail properties to Consolidated Rail Corporation ("Conrail"). Consistent with the goals of the Regional Rail Reorganization Act of 1973, as amended (3R Act), the Association submitted a Final System Plan to Congress to facilitate the restructuring and reorganization process. The Association's post-conveyance responsibilities are to monitor the government's investment in Conrail and Conrail's financial performance and to conduct the on-going valuation litigation before the Special Court.

H.R. 9398 would amend Section 211 of the 3R Act to establish a new loan program under proposed subsection (j) to be administered by the Association. The Association would be authorized to indemnify Conrail or state or local transportation authorities for commuter-rail casualty losses up to $50 million in excess of private insurance coverage or an established casualty reserve fund. The indemnification provisions of H.R. 9398 deal with the unavailability of private insurance coverage for passenger-rail "catastrophic" risks and establish a program of federal assistance for such risks through the Section 211 program.

The Association is concerned that the public must be protected from accidents involving commuter-rail passengers. The Association believes, however, that Section 211 is an inappropriate vehicle for long term federal assistance for catastrophic losses. Section 211 as it now stands provides for loan programs created with the expectation that the loans would be repaid. Proposed Section 211(j), however, is a grant program with no means provided for discharging the Association's obligation. Moreover, the Association does not wish to institutionalize Section 211. Most of the Section 211 loan programs have been terminated in recognition of their special purpose and intended limited duration. Expansion of the Association's Section 211 loan authority over the long term to cover indemnities for catastrophic losses would be inconsistent with Congressional intent in enacting the Section 211 program and subsequent amendments to that section.

The Association's Section 211 loan authority originated in the 3R Act as enacted January 2, 1974 primarily to provide loan funds "to achieve the goals of the Act" and to assist railroads connecting with a railroad in reorganization. The objective of the 211 loan program was to permit the orderly continuation of railroad operations prior to conveyance on April 1, 1976. The Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act) amended Section 211, however, to limit the Association's loan authority for these purposes to loan applications outstanding on January 1, 1976. As a consequence, except for the Association's continuing loan monitoring responsibility and periodic drawdown requests, the Association's original Section 211 loan program is inactive.

The 4R Act also amended Section 211 to authorize the Association to provide loans pursuant to new subsections (g) and (h) of Section 211. Section 211 (g) loans were for pre-conveyance loans to Conrail for essential services, and 211(h) loans are made to Conrail for the payment of certain pre-conveyance obligations of the railroads in reorganization. It should be pointed out that the Section 211(h) program is currently the only active Section 211 program administered by the Association and that Section 211(h) was most recently amended in October 1976 with the Rail Transportation Improvement Act. As a result of 211(h) loans to Conrail which were approved on September 28, 1977, the Association has committed its maximum obligational authority of $350 million.

The proposed 211(j) program is a program of indemnification of Conrail rather than one which contemplates the repayment of USRA's loans by Conrail. In order to fund catastrophic losses, the Association would have to borrow under Section 210 of the 3R Act funds which are guaranteed by the Secretary of Transportation. Since 211(j) is a grant program, the Association would not be repaid and would automatically be in a default position, triggering DOT's guarantee obligation.

This approach bypasses the normal appropriations budgetary process by utilizing off-budget authority under Section 210 of the 3R Act. USRA's off-budget authority was utilized in the past only where there was an expectation of repayment and to avoid the delays inherent in the appropriations process which might have resulted in the bankruptcy of a railroad or in the delayed implementation of the Final System Plan. Moreover, it was generally understood that USRA's off-budget authority would self-destruct. For example, a March 23, 1977 Senate Budget Committee report on mixed-ownership corporations observed that "once USRA's off-budget loan authority has been used, USRA will be completely on-budget." (page 35) The House Budget Committee made a related recommendation. The September 30, 1976 report of the House Budget Committee concerning "Off-budget Activities of the Federal Government" recommended in part that USRA, an off-budget agency, should be included within the unified budget. (page 2)

Accordingly, the policy reasons for USRA's off-budget lending authority have for the most part disappeared, as the Senate and House Budget Committee reports recognize. This is so because conveyance of rail properties took place more than a year and a half ago, and the Final System Plan is largely implemented. USRA's limited purpose off-budget loan authority has accomplished its primary objective and should not be institutionalized through the addition of a new off-budget program.

For these reasons, the Association would be opposed to expanding the Section 211 program over the long term. If necessary as a short-term solution, the Association would have no objection to 211(j) as a funding mechanism for catastrophic passenger losses incurred prior to October 1, 1978, provided it was understood that any obligations incurred by the Association would have to be discharged by appropriations.

In so far as catastrophic losses incurred after September 30, 1978 are concerned, the Association suggests coverage through the establishment of a long term government program which is specially directed at the problem of catastrophic losses. An insurance program is a possible long-term solution. The particular nature of the long-term solution can be addressed during the next session of Congress.

Proposed statutory amendments are attached. That concludes my comments concerning H.R. 9398. I will be happy to answer any questions.

ATTACHMENT

PROPOSED STATUTORY AMENDMENTS TO H.R. 9398

Amendments to proposed Section 211(j)

1. Amend proposed Section 211(j) and other pertinent proposed sections, as appropriate, by adding the underscored language:

   to indemify "for losses incurred prior to October 1, 1978 in amounts not to exceed ...."

2. Further amend proposed Section 211(j) by adding at the end thereof:

   "No claim or claims for casualty loss indemnification shall be presented to the Association and the Association shall not accept any such claims under this section for losses incurred after September 30, 1978."

Mr. ROONEY. I wonder if you can tell me why the Congress must involve itself in catastrophic losses, and why do you pick $50 million?

Mr. COLE. We didn't propose this. I think that is sort of an outside guess of what damages an be expected as the result of a commuter train collision. I assume that is the outside limit. Why should Congress get involved? I think it is a decision for the commuting authorities who Congress has already said would bear the losses that would occur from the operation of commuter trains by ConRail.

Mr. ROONEY. Can't we do that at the time the loss occurs, instead of enacting it into legislation?

Mr. COLE. That would be one way, at that point to decide that Congress would come forward with a program and provide the appropriations. This proposed legislation would create an off-budget program in advance to cover possible losses in the future. Otherwise, ConRail may have difficulty signing contracts with certain commuter agencies.

What this does is to assure that the Federal Government will cover such catastrophic lossese so that ConRail and the commuter authorities can sign a contracts. That is why it is pushed forward now, Mr. Chairman.

Mr. ROONEY. Mr. Madigan.

Mr. MADIGAN. No questions.

Mr. ROONEY. Thank you very much.

Mr. COLE. Thank you very much.

Mr. ROONEY. There is a vote on the rule on the cargo preference bill, so the committee will adjourn for 10 minutes.

[Brief recess.]

Mr. ROONEY. The committee will come to order.

Chairman Staggers informed the chairman he regrets very much that he will be unable to attend the committee hearings today because of the conference committee on the energy bill.

Our next witness will be Mr. James R. Snyder, National Legislative Director, United Transportation Union.

Mr. Snyder will be accompanied by Mr. Edward D. Friedman.

STATEMENT OF J. R. (JIM) SNYDER, NATIONAL LEGISLATIVE DIRECTOR, UNITED TRANSPORTATION UNION, ACCOMPANIED BY EDWARD D. FRIEDMAN, ATTORNEY; AND C. J. CHAMBERLAIN, CHAIRMAN, RAILWAY LABOR EXECUTIVES' ASSOCIATION AND PRESIDENT, BROTHERHOOD OF RAILROAD SIGNALMEN

Mr. SNYDER. And Mr. Chuck Chamberlain, chairman of the Railway Labor Executives' Association. He is not on the list. He is just passing through the time.

With your permission, Mr. Ed Friedman will present the testimony on behalf of the Railway Labor Executives' Association.

Mr. FRIEDMAN. Mr. Chairman, I am going to attempt to abbreviate these prepared remarks. I should like to ask permission to have the statement incorporated in the record.

Mr. ROONEY. Without objection.

Mr. FRIEDMAN. I should also like to state our appreciation for the courtesies shown by the representatives of the various States, who are here as witnesses, to yield their time to us at this point, in response to an emergency which requires us to take the earliest possible plane that we can get to go up to New York.

We are here, of course, for the Railway Labor Executives' Association to support the bill H.R. 9398.

For the record, the Railway Labor Executivs' Association is an association of standard railway labor organizations, of which there are 21, whose function is to promote the common interest and the welfare of railroad employees and their families, representing virtually all of the organized work force employed by the railroads throughout the United States.

At the outset, I should like to address myself very briefly to some of the statements made earlier, in order to set the record straight on some important points.

Congressman Evans, Congressman Bauman, and others appear to be under the impression that the Delmarva short line and other similar short line railroads now operating would be required under the bill, H.R. 9398, to operate on the basis of contracts which existed prior to the effective date of the final rail system plan, and that is not correct. H.R. 9398 does not provide that at all.

In other words, Mr. Evans, and I am reading from his statement, in the second paragraph, says:

"The bill provides that the States or any designated carrier must continue and maintain the same collective bargaining agreements, employment and working conditions in effect prior to the effective date of the final system plan under the Rail Reorganization Act of 1973, and 9398 does not so provide."

If you turn to page 4 of H.R. 9398, line 23, it appears that the bill provides that the State carrier designated operator "which is or will be performing the rail services on such line, with the aid of Federal rail services assistance under this section, and throughout the period of such assistance, has agreed to continue and maintain in accordance with the provisions of the Railway Labor Act the agreements in effect on such line," which means as of the time of the effective date of the act following its enactment. Further, it proceeds to say "and with such modifications as may be developed in negotiations between such State carrier designated operator or successor carrier and the duly designated representative of the classes of employees."

Now the bill thus in effect provides for a status quo applying to a designated operator taking over a line. He takes the line as he finds it. There is no collective bargaining agreement on the Delmarva line today, as Congresswoman Mikulski indicated, and since there is no collective bargaining agreement on that line, there is nothing to maintain or continue with respect to that line.

The provision, however, does require it to negotiate a contact with a labor organization, to negotiate its own contract in good faith, like any other employer, as Congresswoman Mikulski indicated.

Also, in amplification of that, I would like to move to pages 6 and 7 of our prepared statement, and to read a letter which has been addressed by Al Chesser to the National Conference of State Railroad Officials. This letter appears as an attachment to the statement. I am reading this out of context from the statement to put to rest some of the remarks that have been made thus far by the earlier witnesses, and perhaps to assure the subsequent witnesses who are prepared to make simiar remarks that the organizations are reaching out to do everything possible to assist in the maintenance and continuation of these federally-assisted short lines.

Mr. Chesser addresses this letter to Mr. Elkins, the Director of the National Conference of Rail-State Officials, and I would like to just read it.

Mr. Chesser writes:

"Some weeks ago, in the course of our meeting discussing the structure of the State rail bill, now H.R. 9398, we explored in depth the critical concern of the railroad labor organizations, that there were growing indications that designated operators, sometimes called 'mom and pop' operators, were paying substandard wages and were drastically undercutting job standards in their management of federally-assisted branch lines under the branch line continuation program."

Let me digress at that point from the text of the letter and refer to the statements made by Congresswoman Mikulski that the

proposals by one of the earlier witnesses would make it possible to revert to the conditions of the 19th century, that is employment standards without collective bargaining, which as we all know are at the low end of the scale.

Mr. Chesser's letter continues:

"There was no disagreement among us, especially in view of the rapid expansion of the Federal branch line continuation program, that the problem was serious and that it was increasingly apparent that some measures must be developed to forestall the use of Federal funds to undermine the job standards in this part of the railroad industry.

"Our concern, briefly, was to work out some reasonable basis for maintaining job standards, established through collective bargaining under the Railway Labor Act, on federally-assisted branch lines, in accordance with long-established Federal policy. Or, stated another way, to work for the development of some procedure to eliminate the probability that investment groups organized as substandard designated operators could exploit the federally-assisted branch line continuation program through imposition of substandard empoyment conditions affecting wages, working conditions, hours and safety.

"The proposal in the bill which was discussed provides assurances that the designated operators of the assisted branch lines would have to agree to continue and maintain, in accordance with the procedures of the Railway Labor Act, the collective bargaining agreements and working conditions in effect on such lines," as of the enactment date, "with such modifications as may be developed in negotiations between the States, the operators, and the duly designated collective bargaining representatives of the classes and crafts of employees, employed on the branch line.

"The bill confirms the point that these agreements are subject to the Railway Labor Act and that the procedures of the Act must be observed in effecting changse. In response to suggestions from you, we proposed to expedite the process of working out with you such modifications as may be required by the special conditions on any given branch line which is the subject of a federally-financed continuation project.

"You will recall that we assured you that we shared your concern that the National Railroad System should be maintained as an intact transportation network prepared to carry a larger and larger share of the nation's freight as the most energy-efficient mode yet developed and gave you our assurance that we would continue to work with you in maintaining branch lines which are essential to the economic health and well-being of the communities and of the States served by them.

"Accordingly, we suggested to you that we would undertake with your concurrence the establishment of a labor-management standing committee, organized to deal immediately and effectively with any special problems confronting any such branch lines and to work out reasonable modifications of our agreements to adapt them to special conditions on these lines. The railway labor members of this committee wil be appointed by the president of the UTU and the management members of the committee will be appointed by you.

Adjustments of the composition of the committee can be made from time to time to reflect the particular situation with which the committee must deal.

"We have had experience in the past in establishing comparable committees in dealing with problems involving the establishment of the Consolidated Rail Corporation, and on the basis of this experience we are confident that this approach to work out such accommodations as may be required in particular situations will be effective.

I should think that that should put to rest the concerns expressed by Congressmen Evans and Bauman and by the Interstate Commerce Commission, among others.

Now, I should also like to clear up another point, and that is there has been some testimony by the Interstate Commerce Commission, I believe, in answer to a question by Congresswoman Mikulski, that title V took care of it all. That is not correct. Title V would apply only to protect employees adversely affected in consequences of action taken under the 3-R act.

It would apply to employees adversely affected as a result of the exclusion of branch lines from the final system plan. But we are not talking about that. We are talking about the federally-assisted rail continuation program which operates throughout the United States. Employees adversely affected as a consequence of abandonment on these lines which are maintained under the federally-assisted branch line program are not protected, under title V just as Congresswoman Mikulski said. That is why we regard it as very important to provide protection in this bill.

I should like to say that we support the bill and that it is important it be enacted as soon as possible. We feel that time is of the essence. The bill has been pending for a long period of time before the Congress; There were hearings early in the summer. Delay will simply postpone the problems which the States are attempting to solve in to maintain these branch lines which the carriers are abandoning, or planning to abandon, and trying to take steps at an early point to rehabilitate the lines and to eliminate or to minimize the shortfall in revenues.

We share the concern of the States with the need for establishing at an early point in time the expansion of the branch-line program to include branch lines which the carriers are proposing to abandon or which are subject to abandonment proceedings before the Interstate Commerce Commission.

Like the States, we recognize, of course, that there are some branch lines which are not serving any useful purpose and which should be abandoned, but, again, like the States, we are committed to the proposition that the national railroad system should be maintained as an intact transportation network capable of taking over an increasing share of the nation's freight as the most energy-efficient mode available.

No organization has a larger stake in restoring and maintaining and developing a healthy, competitive, effective rail system throughout the United States than the labor organizations on whose behalf we appear here today.

We feel that H.R. 9398 provides an important element in the program to retain and renew the nation's railroad system for precisely this purpose.

We expressed views in the earlier version of H.R. 9398 in July, and we will not restate any of these points at this time. We shall confine our remarks to the principal differences between H.R. 9398 and the earlier bills, all of which have been covered in one form or another, accurately in some cases and inaccurately in others by the preceding witnesses.

These points are: one, a further expansion of the preabandonment eligibility provision of the bills to include fossil fuel lines and to include agricultural lines but only in those cases where the Secretary of Agriculture, on the one hand, and the Secretary of Interior, on the other hand, have made a determination that restoration or maintenance of branch lines serving agriculture or serving the fossil fuel industry is required by the needs of the United States to be maintained.

Only in that event would the line become eligible for assistance. That is the fossil fuel and agriculture line.

Then, of course, the second point which we wish to address ourselves to is the establishment of a labor standards provision which is consistent with the labor policies applied by the Congress in previous legislation of this kind.

And, finally, we should like to say a few things about the establishment of the demonstration program in which any railroad and any State can elect to participate to explore the feasibility of a corrective action procedure, in which all the parties, the carrier, the State, the shippers, the towns, et cetera, may be required to negotiate the various means by which the deficiency between the costs and revenue on the eligible branch lines can be reduced.

The labor standards policy identified by the bill incorporates longstanding Federal policies which ensure that Federal funds available to the transportation industry should not be used to undermine or undercut labor standards established through collective bargaining. The absolute necessity for the reaffirmation of this policy in the branch-line continuation program becomes increasingly apparent as the carriers continue to expand upon their abandonment program.

As we stated in our testimony last July, more and more short-line railroads operating under this federally-assisted program, are beginning to appear. This point is confirmed by the testimony of FRA. They said all States except Alaska participated in some form, that more and more of these short lines are beginning to appear, particularly as far as we know, in Indiana, Pennsylvania, Michigan, Maryland, and New York. One of the developing problems with which this bill deals is that these short-line railroad operations are being taken over by designated operators running these systems under special certificates issued by the Interstate Commerce Commission. This system, initiated early last year, relieves these new operators on these federally-assisted short lines from the obligation to satisfy the requirements of a certificate of public convenience and necessity to operate a railroad, thereby providing instant authorizations for the benefit of these special groups to operate these short-line segments.

As the railroads proceed to expand their program to abandon branch lines, the rail branch-line continuation program will correspondingly expand into perhaps hundreds of short lines operated by these designated operators who, under the rules of the ICC, will have virtually free entry and free exit privileges.

As you know, the railroads thus far have shown no disposition to continue to operate these branch lines which they are so anxious to split off from their systems.

The single exception is ConRail, and that is a fact which undoubtedly underlines ConRail's particular interest in the third aspect of our testimony, the corrective action program, which we will touch on in a few minutes.

As for the others, including the Boston and Maine, so far as we know, there are no indications that they retain any interest in working with the States to maintain lines which the States consider to be essential to the economic health and well being of the communities which depend on these lines.

In a nutshell, this is why, to us, it becomes so essential to affirm the long-established Federal policy that Federal funds in the transportation industry should not be used to undermine labor standards or to destroy collective bargaining and to establish regressive labor conditions.

The jobs on these branch lines are railroad jobs. They are, and have always been, performed by railroad employees. Standards which have been established in every respect for job performance by the railroads and by the railroad labor organizations which have dealt with them for so long must be maintained by the designated operator under the federally-assisted continuation program, within the context of my earlier statement.

Section 3(2) of the bill provides that the designated operator of the assisted branch line, as a condition of the assistance, must agree to adhere to applicable collective bargaining agreements with such modifications as may be developed, et cetera, and I have discussed that.

I have also discussed at the outset our discussions with the National Conference of State Railroad Officials, during which discussions, as I stated earlier, we agreed to set up the special committee to deal with the problems of the branch lines, as set forth in Mr. Chesser's letter, which is incorporated in my statement, which I have already read.

There is a second and no less compelling point in the job standards provision of the bill, to which some comment has already been made, and this one deals with the fact that the designated operators, as a general rule, lack the means and the work force and perhaps the experience to deal with rehabilitation, repair, maintenance of equipment or the track. I think this has already been confirmed by some earlier witnesses in connection with Delmarva.

Among other things, the funds available under the bill for application of the expansion aspect of the continuation program, branch lines subject to, or potentially subject to, abandonment are limited to cost of rehabilitating and improving rail properties which are necessary to permit adequate and efficient rail service.

The necessary implication of this combination of factors, lack of experience, lack of know-how and the fact that the dollars in this

bill are limited or confined to rehab and to maintenance, simply underlines the point that there is going to be some very heavy contracting out of this work as this program expands, and the contracting provision becomes very important.

There is no dispute with the point that all of this work is and has been the work of railroad employees, and this bill, as a railroad bill, should not be used to subvert the long-standing practices and standards in this or any other respect. Accordingly, the bill provides that all work in connection with the operations or services on the line, maintenance, repair, rehab, must be performed by the crafts or class of employees presently performing such work. The designated operators have no such employees. They are just coming in as designated operators, and the bill deals with that. It provides if the designated operator or carrier lacks a sufficient number of employees to perform the work, it may subcontract that part of the work, in which event the subcontractor shall be deemed to be a carrier for purposes of this subcontract and its employees, while so employed, shall be deemed to be railroad employees subject to such agreements covering railroad employees of such class and craft and with all the rights, privileges, duties and obligations of such employees.

That is for the limited purpose of this paragraph and only for the duration of that subcontract. Only so long as they work shoulder to shoulder with employees covered by the railroad acts are they properly considered to be railroad employees.

We have examined all the alternatives to provide for this situation, which is developing rapidly under the impetus of the rail continuation program, and we are convinced that the policy covered by this paragraph is the only way in which the problem which we have described can be managed in an equitable manner. You may hear that this is an unusual or radical procedure. But that is not the fact.

Antecedents for the provision to which I have referred can be found in the status quo provision of the Urban Mass Transit Act, of the Rail Passenger Service Act, of the Emergency Rail Facilities Restoration Act of 1972, which are the most prominent ones that come to my mind.

Adaptation of the status quo to the special conditions on the federally-subsidized branch line is emphasized in the qualifying language in the bill, referring to such modifications as may be developed in negotiations.

We have already gone over the point covered by the letter from Mr. Chesser to Mr. Elkins.

ConRail, which is the only carrier which has shown disposition to operate federally-assisted branch lines under agreements with the States, has advised us that it has no objection to the approach which we have described. ConRail is the only carrier we know which is interested in working with the States in maintaining the branch lines. It is the only carrier that has a stake, so far as we know, in the application of these labor standards about which we speak, and it has had no objection to this provision of the bill. We should also state for the record that we have worked out these problems with the National Conference of State Railroad Officials, and while obviously there is division among them, as you shall hear

later, on this and other aspects of the bill, the Conference has taken a similar position in its advice to us that it will not express opposition to this point.

You may hear statements from railroads other than ConRail in opposition to the labor standards provision, but we must emphasize at this point that these conditions apply only to those branch lines which these railroads have stripped from their systems and are planning to strip from their systems.

The third point on which we should like to comment is the optional 5-year demonstration program, section 6 at page 7 of the bill. We regard this provision as a truly constructive proposal generated by suggestions from the State of New York. ConRail has shown considerable interest in developing this program as a purely optional alternative to the abandonment procedures under existing law, as a way of simulating affirmative efforts by all interested parties, ConRail, the States, shippers, communities, and others, to work out some program to increase revenues on branch lines and reduce, possibly eliminate, the difference between avoidable costs and revenues.

It is important to emphasize that the program is optional. Any State and any railroad may opt to participate in the plan or may opt not to participate. Only ConRail is mentioned in the bill and ConRail is mentioned because ConRail is interested in this proposal, helped develop it, and is anxious to try it out as a demonstration program. It is a modest demonstration program.

ConRail, under the bill, can initiate corrective action programs involving any State in which the eligible line is located and thereby can involve any interested parties. Thereafter ConRail, the State, shippers, and all other interested parties may be required to engage in good-faith negotiations to reach an agreement identifying a mix of measures by which the revenue on the line can be increased.

As pointed out earlier, these measures can include changes in marketing practices, measures to encourage new industry, rates, frequency of operation, quality of service, taxes, maintenance schedules, intermodal arrangements, and they supersede any pending abandonment proceeding.

In response to a question raised by Congressman Madigan, I can't conceive of the situation of a railroad deliberately reducing revenue by underservicing a branch line simply in order to make it eligible for this program for a Federal subsidy and thereafter restoring the service and the revenue. That cannot happen. The RSPO under the bill makes the analysis as to whether the shortfall between avoidable cost and operating revenues is as the carrier says it is, and whether it is as extensive as the carrier claims. If not, the proceeding is dismissed. If it is less than the carrier claims it so finds. The parties all have an opportunity to refute the representations of the carrier at that point in proceedings before RSPO. There is a record made on that; there is a proceeding by which you identify the shortfall. Then the parties get together, if there is a shortfall, and they negotiate, and if they can reach agreement, it is a voluntary agreement, and it may include a reduction in taxes, increase in rates, some outreach efforts by the municipalities to induce manufacturers or industry to come into the area, and anything possible, to generate more revenue on the line.

Nobody has to agree. It may be, as a result of that agreement, and the State really has control of this, because the State is controlling the subsidy, that the State will identify the amount of dollars which should be thrown into this mix, but those dollars are variable dollars from year to year. If the revenues increase, the amount of that subsidy is going to become smaller. That is not a firm, fixed, static proposition. It is a variable.

If the parties fail to agree, arbitration will be proffered. Unlike the earlier testimony, arbitration is purely optional. It is voluntary. Any necessary party can veto arbitration. If the necessary party vetoes arbitration any party considered by the other parties to be necessary should veto, then the proceeding is dismissed and back it goes to the ICC. If they are willing to take the chances with arbitration, they agree to become bound by the arbitrator's award.

In answer to the point made by Congressman Madigan, the award, although binding on the parties, is subject to change. If there are changed conditions, such as the conditions Mr. Madigan talked about, the State should go back to the RSPO to tell them that the revenues are larger than the carrier represented and the subsidy will be reduced. As I said, it is a variable. This would be so under an agreement, too.

There are timetables, then, 60 days for the negotiations; and if they want arbitration, 60 days for the arbitration.

Now, we feel this corrective action program, which is a demonstration limited to 5 years, may develop into a more realistic method for the maintenance and renewal of the nation's rail system, particularly in this period when it is so essential to preserve it.

That is the conclusion of our statement, Mr. Chairman. We express gratitude to you for allowing us time to testify before you.

[Mr. Friedman's prepared statement follows:]

STATEMENT OF

EDWARD D. FRIEDMAN

ON BEHALF OF

THE RAILWAY LABOR EXECUTIVES' ASSOCIATION

BEFORE THE

SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

U. S. HOUSE OF REPRESENTATIVES

OCTOBER 19, 1977

Mr. Chairman and members of the Committee:

My name is Edward D. Friedman. I am appearing here today with Mr. C. J. Chamberlain, Chairman of the Railway Labor Executives' Association and President of the Brotherhood of Railroad Signalmen, and with Mr. J. R. Snyder, Chairman of the Legislative Committee of the Railway Labor Executives' Association and National Legislative Representative of the United Transportation Union. We are appearing on behalf of the Railway Labor Executives' Association to support the bill H.R. 9398 to extend eligibility for financial assistance under the Rail Services Assistance Program to include specified pre-abandonment situations and for other purposes.

As you know, the Railway Labor Executives' Association is an association of standard railway labor organizations, twenty-one in number, whose function is to promote the common interest and welfare of railroad employees and their families. These twenty-one organizations together represent virtually all of the organized work force employed by railroads in this country, and as the

21-684 O - 78 - 17

representative of all of these employees, we urge that this bill be given favorable consideration by this Subcommittee.

I have listed the names of the railway labor organizations on whose behalf we speak in the attachment to this statement.

The bill, as a whole, responds to problems confronting the States and is appropriately entitled a "State Rail Freight Assistance Act."

We share the concern of the States with the need for establishing an earlier point of time for the initiation of the branch line rail continuation program by expanding it to include branch lines which the carriers are acting to abandon or are planning to abandon.

In saying this, we recognize with the States that there are some branch lines which are serving no useful purpose and should be abandoned.

But, like the States, we are committed to the point that the National railroad system should be maintained as an intact transportation network, capable of taking over an increasing share of the Nation's freight as the most energy efficient mode available. No organization has a larger stake in restoring, maintaining and developing a healthy, competitive and effective rail system throughout the United States than the labor organizations on whose behalf we appear here today.

To us, it is clearer than ever before that the considerations of energy, environment and safety point to the essentiality of the role of the railroads in carrying the Nation's freight. It is becoming more and more apparent that the railroad's share of transportation should be and will be heavily increased during

the next ten or twenty years.

H.R. 9398 provides an important element in the program to retain and to renew the Nation's railroad system for precisely this purpose.

The bill, which the Subcommittee now has before it, was preceded by a series of proposals in earlier bills on which hearings were held on July 27th of this year. As a consequence of those hearings, further work was required to perfect the State rail program, as originally proposed, and in the course of these efforts, we cooperated fully with the National Conference of State Railroad Officials to work out a number of these problems.

We expressed our views on the earlier version of H.R. 9398 during the hearings in July, and we will not restate any of the points made at that time covering those provisions in H.R. 9398 which remain substantially unchanged. We shall confine our remarks to the principal features of H.R. 9398 which have been developed since that time.

These provisions deal principally with the following three subjects:

(1) a further expansion of the pre-abandonment eligibility provision of the earlier bills;

(2) the establishment of a labor standards provision consistent with the railroad labor policies applied by the Congress in all previous legislation of this kind;

(3) and finally, the establishment of a demonstration program, five years in duration, in which any railroad and any State can elect to participate, to explore the feasibility of a

"corrective action procedure" in which the parties, (meaning the carrier, the State, the shippers, the towns, the cities and counties, the railroad labor organizations and others) may be required to negotiate the various means by which the deficiency between costs and revenue on these eligible branch lines can be reduced.

We will discuss each of these points.

The first point simply proposes to extend eligibility under the federally assisted branch line program to lines which are in the rail bank, maintained under Section 810 of the Railroad Revitalization and Regulatory Reform Act of 1976. These lines would become eligible for financial assistance under Section 5(k) of the Department of Transportation Act if the Secretary of Agriculture has found that they should be maintained or restored to serve the needs of the agricultural industry or if the Secretary of Interior has made similar findings with respect to fossil fuel branch lines in their relation to the energy needs of the United States.

The labor standards policy, identified by the bill, incorporates long-standing Federal policies which ensure that Federal funds, available to the transportation industry, should not be used to undermine or undercut labor standards established through collective bargaining. The absolute necessity for the reaffirmation of this policy in the branch line continuation program becomes increasingly apparent as the carriers continue to expand upon their abandonment programs.

As we stated in our testimony last July, more and more short line railroads operating under this federally assisted program are beginning to appear, particularly in Indiana, Pennsylvania,

Michigan, Maryland and New York. One of the developing problems with which this bill deals is that these short line railroad operations are being taken over by the "designated operators", running these systems under "special certificates" issued by the Interstate Commerce Commission. This system, initiated early last year, relieves these new operators on these federally assisted short line operations from the obligation to satisfy the requirements of a certificate of public convenience and necessity to operate a railroad, thereby providing instant authorizations for the benefit of these special groups to operate these short line segments.

As the railroads proceed to expand their programs to abandon branch lines, the continuation program will correspondingly expand into perhaps hundreds of short lines operated by these "designated operators" who, under the rules of the ICC, will have virtually free entry and exit privileges.

As you know, the railroads thus far have shown no disposition to continue to operate these branch lines which they are so anxious to split off from their systems.

The single exception may be ConRail, a fact which undoubtedly underlines ConRail's particular interest in the third aspect of our testimony, "the corrective action program", which we will consider in a few minutes.

But, as for the others, including the Boston and Maine, so far as we know, there are no indications that they retain any interest in working with the States to maintain lines which the States consider to be essential to the economic health and well being of the communities which depend upon them.

This, in a nutshell, is why it becomes so essential to affirm the long-established Federal policy that Federal funds in the transportation industry should not be used to undermine labor standards or to destroy collective bargaining and to establish regressive labor conditions.

The jobs on these branch lines are railroad jobs. They are and have always been performed by railroad employees. Standards which have been established in every respect for job performance must be maintained by the designated operator as a part of the federally assisted continuation program.

Section 3(2) of the bill provides that the designated operator of the assisted branch line, as a condition to the assistance, must agree to adhere to applicable collective bargaining agreements "with such modifications as may be developed in negotiations between" the State and the designated operator with the labor organizations as may be required by the conditions on the branch line.

In working out this program with the National Conference of State Railroad Officials, we agreed with them to set up a special labor management standing committee to deal immediately and effectively with any special problems confronting any branch line and to work out any modifications of the United Transportation Union agreements to adapt them to the special conditions on the line.

I should like to read into the record at this point the letter of understanding which UTU International President Al Chesser has supplied to the National Conference of State Railroad Officials.

Dear Mr. Elkins:

Some weeks ago, in the course of our meeting discussing the structure of the State Rail Bill (now H.R. 9398), we explored in depth the critical concern of the railroad labor organizations, that there were growing indications that designated operators, sometimes called "mom and pop" operators, were paying substandard wages and were drastically undercutting job standards in their management of federally assisted branch lines under the branch line continuation program. There was no disagreement among us, especially in view of the rapid expansion of the federal branch line continuation program, that the problem was serious and that it was increasingly apparent that some measures must be developed to forestall the use of federal funds to undermine the job standards in this part of the railroad industry.

Our concern, briefly, was to work out some reasonable basis for maintaining job standards, established through collective bargaining under the Railway Labor Act, on federally assisted branch lines, in accordance with long established federal policy. Or stated another way, to work for the development of some procedure to eliminate the probability that investment groups organized as substandard designated operators could exploit the federally assisted branch line continuation program through imposition of substandard employment conditions affecting wages, working conditions, hours and safety.

The proposal in the bill which was discussed provides assurances that the designated operators of the assisted branch lines would have to agree to continue and maintain, in accordance with the procedures of the Railway Labor Act, the collective bargaining agreements and working conditions in effect on such lines with such modifications as may be developed in negotiations between the States, the operators, and the duly designated collective bargaining representatives of the classes and crafts of employees, employed on the branch line.

The bill confirms the point that these agreements are subject to the Railway Labor Act and that the procedures of the Act must be observed in effecting changes. In response to suggestions from you, we proposed to expedite the process of working out with you such modifications as may be required by the special conditions on any given branch line which is the subject of a federally financed continuation project.

> You will recall that we assured you that we shared your concern that the National Railroad System should be maintained as an intact transportation network prepared to carry a larger and larger share of the nation's freight as the most energy efficient mode yet developed and gave you our assurance that we would continue to work with you in maintaining branch lines which are essential to the economic health and well-being of the communities and of the States served by them.
>
> Accordingly, we suggested to you that we would undertake with your concurrence, the establishment of a labor management standing committee, organized to deal immediately and effectively with any special problems confronting any such branch lines and to work out reasonable modifications of our agreements to adapt them to special conditions on these lines. The railway labor members of this committee will be appointed by the President of the UTU and the management members of the committee will be appointed by you. Adjustments of the composition of the committee can be made from time to time to reflect the particular situation with which the committee must deal.
>
> We have had experience in the past in establishing comparable committees in dealing with problems involving the establishment of the Consolidated Rail Corporation and on the basis of this experience we are confident that this approach to work out such accommodations as may be required in particular situations will be effective.

There is a second and no less compelling point in the job standards provision of the bill. It deals with the fact that the designated operators, as a general rule, lack the means, the work force and perhaps the experience to deal with rehabilitation, repair and maintenance of equipment and track. Among other things, the funds available under the bill for application to the expansion aspect of the continuation program (that is, branch lines "subject to"or "potentially subject to" abandonment) are limited to "costs of rehabilitating and improving rail properties which are necessary to permit adequate and efficient rail service, including, as a minimum, the upgrading of all

track to Class II standards, as defined by the Administrator of the Federal Railroad Administration." (Section 11(b)(3) and Section 3(3))

The necessary implication of this combination of factors is that there will be very heavy contracting out of this work as the branch line continuation program proliferates.

There can be no dispute with the point that all of this work is and always has been the work of railroad employees and this bill, as a railroad bill, should not be used to subvert the standards and practices of the railroad industry in this or in any other respect.

Accordingly, the bill provides that "all work in connection with the operations or services on such line, and the maintenance, repair, rehabilitation or modernization of such lines shall be performed by the crafts or classes of employees presently performing such work . . ." It further provides that should the "designated operator . . . lack a sufficient number of employees . . . to perform the work required, it may subcontract that part of such work . . . in which event the subcontractor shall be deemed to be a carrier for purposes of this subparagraph and its employees, while so employed, shall be deemed railroad employees subject to such agreements covering railroad employees of such class or craft and with all of the rights, privileges, duties, and obligations of such employees." (Section 3(2) and Section 11(a)(3)).

We have examined all of the alternatives to provide for this situation, and we are convinced that the policy covered by this paragraph is the only way in which the problem which we have described can be managed in an equitable manner.

Antecedents can be found in the status quo provisions of the Urban Mass Transit Act, of the Rail Passenger Service Act and the Emergency Rail Facilities Restoration Act of 1972, to mention the most prominent of the precedents.

Adaptation of the status quo to the special conditions on the federally subsidized branch line is emphasized in the qualifying language in the bill, referring to "such modifications as may be developed in negotiations" between the designated operator and the labor organization. This point is fully implemented by Mr. Chesser's letter to Mr. Elkins, which was read into the record and which is attached to our statement, in which he has proposed to establish, with Mr. Elkins' concurrence, a labor management standing committee, organized to deal immediately and effectively with any special problems confronting any such branch line and to work out reasonable modifications of our agreements to adapt them to special conditions on these lines."

ConRail, which is the only carrier which has shown a disposition to operate federally assisted branch lines under agreements with the States, has advised us that it has no objection to the approach which we have described. We should also state for the record that we have worked out these problems with the National Conference of State Railroad Officials and while there

is obviously some division among the States on this and other aspects of this bill, the Conference has taken a similar position in its advice to us that it will not express opposition to this point.

You may hear statements from railroads other than ConRail in opposition to the labor standards provision, but we must emphasize at this point that its conditions apply only to those branch lines which these railroads have stripped from their systems or are planning to strip from their systems.

The third point upon which we should like to comment briefly, is the optional five-year demonstration program, appearing in Section 6 at page 7 of the bill. This is a truly constructive proposal, generated by suggestions from the State of New York. ConRail has shown considerable interest in developing this program as a purely optional alternative to the long drawn out abandonment procedures under existing law, and as a way of stimulating affirmative efforts by all interested parties, ConRail, the States, the shippers, the communities and others, to work out some program to increase revenues on branch lines and to reduce, or possibly eliminate the difference between the avoidable costs and revenue.

The program is optional.

Any State or any railroad may elect to participate if it chooses to do so.

ConRail, under the bill, can initiate a corrective action program involving any State in which the eligible branch line is located and thereby involving all interested parties, shippers, towns, etc.

Thereafter, ConRail, the State, the shippers and all other interested parties may be required to engage in good faith negotiations to reach an agreement, identifying a mix of measures by which revenue on the line can be substantially increased. These measures can include changes in marketing practices, measures to encourage new industry, rates, frequency of operation and quality of service, taxes, maintenance, maintenance schedules, intermodal arrangements and a range of other matters affecting the economic health of the branch line. These proceeding supersede any pending abandonment proceeding.

The parties are given 60 days within which to conclude an agreement.

If they fail to agree within this limited time frame, the conciliator proffers arbitration. If arbitration is vetoed by any necessary party, the corrective action proceeding terminates and the carrier may then press an abandonment proceeding before the Interstate Commerce Commission.

If the parties agree to binding arbitration, the bill specifies a time schedule of 60 days.

It should be stressed again that the corrective action program is a demonstration program, five years in duration, and is optional for all States and for all railroads except ConRail.

This program may develop into a more realistic method for the maintenance and renewal of the Nation's rail network, particularly in this period when it is so essential to preserve railroad transportation as the most energy efficient mode available

We wish to express our appreciation to the Subcommittee for the time allotted to us in presenting these views.

Mr. ROONEY. Thank you very much.

Mr. Snyder, do you have any comments?

Mr. SNYDER. No, we do appreciate the opportunity to present this statement. It is a very important piece of legislation for the railroad industry and employees and shippers and the States. We appreciate the opportunity to be here.

Mr. ROONEY. Thank you.

How many short lines have started up in the last 2 years?

Mr. FRIEDMAN. The information we had in our discussions with the National Conference and with the short-line operators was about six or seven, possibly ten.

Mr. ROONEY. Does that include the Delmarva?

Mr. FRIEDMAN. Yes.

Mr. ROONEY. Let's get back to Delmarva. We have heard more about Delmarva in this committee in the last 6 months than any other area of the country.

Delmarva, as I understand it,serves Delaware, Maryland, and Virginia.

Now, Penn Central went bankrupt and from the information that I received, serving that area was a big loser.

Then we set up the final system plan, and, as I understand it, Chessie and/or the Southern couldn't enter into a contract with the unions because they couldn't take over the Penn Central working arrangements. Is that right?

Mr. FRIEDMAN. Yes, but the Delmarva line part was excluded from the final system. If it hadn't been, we wouldn't have been faced with the conditions that occurred.

Mr. ROONEY. So Delmarva now is without rail service?

Mr. FRIEDMAN. No, there is——

Mr. ROONEY. It would have been without rail service?

Mr. FRIEDMAN. Because of the exclusion in the final systems plan. The decision was made by the USRA and approved by the Congress. Congress could have vetoed the final system plan and insisted on the inclusion of Delmarva or any other excluded line. Apparently it was the judgment at the time, like so many other excluded lines, that Delmarva was one that didn't merit inclusion.

Mr. ROONEY. We had to accept it as a package deal, as I understand it.

But what is the alternative? How can there be service on abandoned lines? The railroad wants to abandon; they go before the ICC and prove their point. The ICC agrees they can abandon them, and now there is no service.

Mr. FRIEDMAN. We think that the answer is in the federally-assisted rail continuation program, this bill.

Mr. SNYDER. It is the only alternative.

Mr. FRIEDMAN. We think the railroads are short-sighted in stripping off the lines. We think from the information we have that the rail system is going to have more and more freight, become more and more important, involved more and more heavily in carrying freight in the next 10 years. The projections are that the increases are going to be very large.

There are differences on this, I know, but there is the energy problem, and it is the most energy-efficient mode.

We also understand, for example, that in many of these short lines the railroads want to abandon, there isn't any alternative system. The bridges are down. The bridges that would have to be used for the motor carriers simply can't carry the weight. They would have to be rebuilt in many areas of the country, I am told. But the rail continuation program is the answer to the problem that you have described so long as the railroads continue in their program to abandon, and the fact is, so far as we know, that the only carrier which wants to continue to operate the branch lines, and treat them specially, is ConRail. There may be other railroads, and Mr. Dempsey may identify them, but we haven't heard about them.

Mr. ROONEY. ConRail plans to eliminate 12,000 jobs in the next 3 years. Are they protected?

Mr. FRIEDMAN. ConRail employees will be protected, as I understand it, by title V, so long as the adverse impact is a consequence of the program.

Mr. ROONEY. That completes my questions. I thank you very much.

Mr. SNYDER. Mr. Chairman, I would like to insert just a short statement with regard to the Delmarva. There were long negotiations by the parties. The UTU entered into agreement on the Delmarva, and many other organizations did, so we don't want to leave the impression that serious negotiations didn't take place. They did.

Mr. ROONEY. Did you hear that statement—I don't know who made it this morning, whether it was Mr. Bauman or Mr. Evans—about $66,000 versus $150,000?

Mr. SNYDER. That is absolutely not true, as Mr. Friedman pointed out earlier, because he was looking at an earlier bill. This bill doesn't touch the Delmarva.

Mr. FRIEDMAN. They are not threatened by this bill. Their only threat is they have to sit down and negotiate a contract. If they consider that a threat, they don't want to discuss wage and hours and working conditions and safety; that apparently is their position. They simply don't want collective bargaining in any form or shape. At least that is the inference of it. This bill does not affect them except to the extent they must make an attempt to negotiate.

Mr. ROONEY. Then the bill does affect them?

Mr. FRIEDMAN. Only because it reauires collective bargaining if they reach a bonafide impasse there is no contract. They don't have to sign a contract so long as they are acting in good faith.

Mr. SNYDER. I would like to point out also we had several long sessions with the representatives of the States here. Delmarva was discussed at length, and there have been several requests here this morning to delay legislation. We don't think this would be a very good idea because the committee has had numerous hearings on this. This type of legislation on the branch line goes way back for 4 or 5 years ago and is becoming a more critical problem every day. It is a real critical problem for the States, and it is going to get worse, and I think at least some action by the Congress this session should be taken.

I realize that the Congress will be adjourning in a few days, but I think, Mr. Chairman, that it is important that the committee take a long look at this, and it is very important, as I say.

Mr. FRIEDMAN. One point, if I may, and that is we talked to some of the short-line operators, and they were in favor of the labor standards provisions as they appear. The reason they gave was that that will keep the undercutting operators out of it. There is going to be expansion of this.

There are opportunities here for short-line operators to expand their operations. They would like to keep out of the railroad industry the substandard undercutting operators who use their employees to subsidize their profits and to subsidize those lines, and they thought these provisions would operate to maintain the standards in the railroad industry both as far as the employees are concerned and as far as the carrier is concerned.

Mr. SNYDER. This was brought out by a short-line operator from your State that we spent all day with.

Mr. ROONEY. Of the six short-line operators in the country, are any of them organized under the UTU?

Mr. FRIEDMAN. The one in Pennsylvania, at least. I don't know about others.

Mr. SNYDER. We can get that information for you.

Mr. ROONEY. Thank you very much, gentlemen.

The committee stands adjourned until 2 p.m.

[Whereupon, at 12:30 p.m., the subcommittee adjourned until 2 p.m. this same day.]

AFTER RECESS

[The Subcommittee reconvened at 2 p.m., Hon. Fred B. Rooney, Presiding.]

Mr. ROONEY. The committee will come to order.

Our first witness will be Mr. Peter J. Metz, Assistant Secretary, Executive Office of Transportation and Construction, Massachusetts.

STATEMENT OF PETER J. METZ, ASSISTANT SECRETARY, EXECUTIVE OFFICE OF TRANSPORTATION AND CONSTRUCTION, MASSACHUSETTS

Mr. METZ. Thank you very much, Mr. Chairman.

I am Peter J. Metz, Assistant Secretary of Transportation for the Commonwealth of Massachusetts. In that capacity I serve as the director of the mass rail programs. I am also here as co-chairman of the National Conference of State Rail Officials, the 48-State organization of State rail officials who direct State rail programs in other States.

We appreciate very much, Mr. Chairman, the diligence of this committee in working on these issues which are in many ways essential to our local State concerns. In fact, I think we have to accept some blame for getting you into this whole thing.

We came to the committee, to both Houses of the Congress, early this year and said there were problems with the State assistance

program and we proposed some changes which your committee has very gratiously agreed to consider. We did not try to propose massive changes in the programs of things that we thought were terribly controversial. The fact that it has become in the words of some of the witnesses a Christmas tree bill was certainly not our intention and we are sorry for that.

There are a lot of pieces of Christmas tree that have been added on recently that the States cannot agree with. In particular I want to just very briefly make sure that the record is clear with respect to those technical provisions that the States are seeking to help us in the proper administration of this State assistance program and to achieve the benefits at the local and regional level within our States.

We are in strong support of rectifying the program in fiscal years so the program coincides in section 2(a). We are in favor of extending the State authorization. We are not, as some people have characterized it, looking for it to be 100 percent continued for operating subsidies. We want this continuation until at least October 1 of this year and we obviously would be benefited if it would stretch out longer than that. We very much need the multi-year use of in-kind benefits.

The States are doing many things up front to qualify for in-kind contributions and those provisions in section 2(c) and 10 of H.R. 9398 that give us multi-year authority for that we very much need.

We want to be able to use our entitlement in multiple years where in 1 year we don't entirely use it up. That is in section 2(c) and 10 again.

We need the language that defines the period in which the project becomes eligible for a specific Federal matching share as that in which the project is initiated. We hope your report will make it clear that project initiation refers to both contracting or a grant agreement from the Federal Railroad Administration. That language is in section 2(c) and section 10. We want the projects to be eligible if they are started before the Secretary has approved them. We are not asking to tie the Secretary's hands, but there are cases where we have to get going on a project for one reason or another and we don't want them disqualified because we have started.

The provisions in section 8(b) that would provide a 5-year program funded at $10 million a year out of the existing authorization are also very important to the State programs. I would emphasize here that the States see this as a continuing effort. So we cannot settle for just a couple of years of planning and then be done with it. We think we are in the business for some time to come and planning must be a continuing effort.

We very much want the trackage rights provisions that are in the current draft that would allow the ICC in an abandonment hearing to give the future operator the power to connect, for instance, multiple segments over the main line railroads right-of-way. There are a number of States who feel they cannot accept the ICC's proposals that those trackage rights would be only for moving equipment in locomotives.

We do feel we need to be able to haul revenue traffic, but not to do local service. We are simply looking to be able to interconnect short segments of railroads that would be operated by one carrier.

There are several technical amendments that are not in H.R.9398 that the States have for some time now asked. One is to empower the use of groups of States to share funds. We have a specific example of the Delmarva Peninsula and we think there are others. We need language that has been proposed in some of the earlier versions of the bills to better define the Federal-State relationship in language that is taken from the Highway Act and to make it clear that the States have considerable authority to determine how they will spend the moneys that are granted them according to the entitlement.

The one program change that the States have asked for this year is one we have seen as innovative but fairly simple and that is a preabandonment authority. I would note in particular that we did not ask for more money for this program, though the bill does have provision for more funds for various aspects. The States would be content if they were granted preabandonment authority on lines designated on the ICC's required maps for rehabilitation only within the existing authorizations. We need this because we want to deal with lines prior to the time they get to the decrepit condition of abandonment.

We want a flexible program, an experimental kind of effort with the States to see if we can work some things out. We are aware of the Department's opposition to this. We are aware of the Department's suggestions that we should wait until next year to work out a more elaborate program.

But, Mr. Chairman, we brought our suggestions to the Department early this year and either because of the transition or other difficulties, we have really not had a good ear with the Department. We don't feel we can wait another year to work out a preabandonment program with the Department of Transportation. We would like it authorized this year.

The States must be recorded as having grave difficulties with two provisions of H.R.9398. In particular, the labor protective provisions of section 3 and 11 will severely tie our hands and in many ways defeat the objectives we are trying to serve here.

Mr. ROONEY. Why?

Mr. METZ. The labor protective provisions in sections 3 and 11 freeze the status quo and force us to deal from a position where we could not change anything in the operation of these lines. We could not change the work practices, other aspects of labor arrangements, wages or the crafts we deal with unless we had the agreement of all the parties. We cannot afford to have our hands tied that way by national legislation.

I don't want to be characterized as an anti-labor point of view from the States. Far from it. In fact, the States are almost universally very much in favor of collective bargaining and would like to have the freedom to work out local collective bargaining that is best tuned to the needs of each of the lines and each of the localities, the best solutions for those lines.

But above all I would emphasize that the States' point of view is one of pro-jobs and pro-labor. That is our real concern.

A point I think the States have made consistently in this program is that we are in this program, we are involved in continuing

21-684 O - 78 - 18

branch lines because we are concerned for the jobs and local industry that is served by those branch lines. That is really why we are here, not because we like to run trains, not because we think we can make a profit running trains. That is not our business. We are here because of the industries that need to be served and the jobs we want to retain in those industries and hopefully win to those industries.

If we are to stretch our precious Federal assistance and local State dollars as far as we can in preserving those industries, we have to have maximum flexibility. That is why we are arguing for the technical corrections to the Federal assistance program and that is why we argue most strenuously that we cannot have our hands tied in labor negotiations with the protection provisions of sections 3 and 11.

I would point out, to take on just one point that was made in earlier testimony before the committee today, we must have the ability to deal not only with the railroad that is entitled to abandon the line or who is the adjacent operator or as ConRail is in lots of the northeast States. We must have the ability to deal with other prospective future railroad operators in a very flexible and timely fashion. You cannot, I believe, characterize in most cases the railroad that has abandoned the line or in the case of the northeast ConRail, you can't characterize them as willing operators of these lines.

One of the reasons the States are looking at shortline operators is because we do not find that ConRail is a willing and cooperative operator of the branch lines. They are not doing the quality of job we want. They are not able to effect the changes in service, the economies that we need. They really don't have terribly much interest in it. They have much bigger fish to fry. They don't make their reputation or money on local lines and they cannot afford and will not give our local branch lines much attention.

So we need the flexibility to be able to go to other operators and to work out our own solutions, even in some cases to use our own State forces for incidental maintenance and other kinds of arrangements. The States must also be recorded as having very serious problems with the corrective action provisions of section 6.

I think we favor flexibility. We have certainly said that. We favor trying to deal with lines before they get to the abandonment stage. But the provisions that are being labeled as corrective action are simply too complex for the States to be willing to agree to them at this point. They look like they will put on us some considerable burdens. We may be flooded with proposals for corrective actions and we face very short time deadlines in responding to them. We are not at all sure that that is the proper way to treat it.

So we have instead proposed a very simple mechanism of pre-abandonment authority for rehabilitation assistance on lines. In addition, until we have really tested the ICC abandonment procedures we don't think that we need any measures that appear to short circuit those abandonment procedures. The corrective action provisions that are in H.R.9398 could have that effect in certain cases.

I have one other comment that I would like to make about H.R.9398 before closing here. The provisions relating to the merger

of the 901 and 504 studies appear to us to be generally acceptable. I think the States would like to ask, though, that in addition to leaving time after the preliminary report comes in for comment and then a final set of recommendations, we believe it would be wise to insist that the Department issue a final report with its final recommendations, in other words, that it be required to reflect in its final report as well as its recommendation those things that it has learned from public comment. Otherwise, really the public comment may too easily go unrecognized by the Department.

Those are my prepared comments, Mr. Chairman. I want to thank you. I will be glad to answer questions if I can.

Mr. ROONEY. Thank you very much, Mr. Metz. We appreciate your appearing before the committee.

What effects do you expect for delaying the preabandonment provisions?

Mr. METZ. If the preabandonment provisions were not enacted this year?

Mr. ROONEY. Right.

Mr. METZ. I can't say they would be disastrous. We don't expect there are going to be many lines that will be utilized in the first year of the preabandonment program.

On the other hand, what we will have is another year's deterioration on those lines that would have been. That will bring a small number of lines much closer to abandonment and much closer to a situation where we have a harder time rescuing them. So I would not characterize it as disastrous, but I would characterize it, particularly where the Western States are now in a position to begin to work out their actual programs. They need to know that this authority is going to be there so that they can work out constructive programs now in the final stages of putting together their State rail programs.

Mr. ROONEY. Thank you. We appreciate very much your comments this afternoon.

Mr. METZ. Thank you.

Mr. ROONEY. Now we do have several witnesses from intercity rail services, the State Transportation Coordinator from Virginia and the Assistant Director of Rail Systems of Maryland. Would you gentlemen rather appear before the committee as a panel or would you like to come individually?

Mr. HARSH. Whatever would be most convenient to you.

Mr. ROONEY. I think we ought to hear from all of you at one time and if the committee has any questions, you can respond.

Is there much deviation between your statements?

STATEMENTS OF WILLIAM C. HARSH, JR., DIRECTOR, BUREAU OF INTERCITY RAIL SERVICES AND CHIEF, BUREAU OF RAILROADS, ILLINOIS DEPARTMENT OF TRANSPORTATION; ROBERT G. CORDER, STATE TRANSPORTATION COORDINATOR, VIRGINIA DEPARTMENT OF HIGHWAYS AND TRANSPORTATION; CLIFFORD ELKINS, DEPUTY DIRECTOR, NATIONAL CONFERENCE OF STATE RAILWAY OFFICIALS, AND CHARLES H. SMITH, ASSISTANT DIRECTOR RAIL SYSTEMS, MARYLAND DEPARTMENT OF TRANSPORTATION

Mr. HARSH. I am William Harsh of the Illinois Department of Transportation.

Mr. CORDER. I am Robert Corder, State Transportation Coordinator for the State of Virginia.

Mr. ELKINS. Clifford Elkins, Director of the National Conference of State Railway Officials.

Mr. SMITH. I am Charles Smith for the Maryland Department of Transportation.

Mr. ROONEY. You may proceed.

Mr. HARSH. Mr. Chairman, given the hour and the amount of testimony, I wonder if I could have my testimony appear in the record and summarize it?

Mr. ROONEY. Without objection.

Mr. HARSH. My name is William C. Harsh, Jr. I am Chief of the Bureau of Railroads of the Illinois Department of Transportation. The Department is the designated State agency for Illinois under the terms of the Regional Rail Reorganization Act of 1973, and the Bureau of Railroads has jurisdiction over the State's program for local railroad freight service continuation assistance. The Bureau is also responsible for assisting in the preparation of the State's position in Interstate Commerce Commission abandonment proceedings and for administering the State's Amtrak 403(b) program. I am also co-chairman of the Northeast Region of the National Conferrence of State Railway Officials.

I appreciate the opportunity to testify today on behalf of the National Conference of State Railway Officials with regard to those provisions of H.R. 9398 that address the relationship of existing collective bargaining agreements to oeprating and rehabilitation projects undertaken with public funds pursuant to the Regional Rail Reorganization Act of 1973 and the Railroad Revitalization and Regulatory Reform Act of 1976. I would like to preface my remarks by stating that we at the Illinois Department of Transportation are sympathetic to and supportive of the rights obtained through free collective bargaining by working men and women who have voluntarily joined together in labor organizations, including those who are represented by the railroad brotherhoods. As a former union local chairman who was elected to three terms of office, I believe I am especially sensitive to the rights and aspirations of organized employees. The Illinois Department of Transportation has maintained a continuous and, we believe, mutually productive dialogue with the railroad labor organizations in our State and we have worked together to enact and implement State legislation that has thus far preserved rail service on roughly 175 miles of railroad lines. However, we concur with the judgment of the National Conference of State Railway Officials that our responsibiulities to all parties involved in local railroad service continuation, including rail users, consumers and the taxpayers, require that we comment today on the provisions relating to collective bargaining agreements that are contained in sections 3 and 11 of H.R. 9398.

I believe it is important to emphasize at the outset that the collective bargaining provisions contained in sections 3 and 11, which concern conditions that exist on a railroad line after it has been abandoned and has entered the rail service continuation subsidy program, should be rendered relatively unimportant by other provisions contained in sections 3 and 11 that would permit

States to prevent the abandonment of railroad lines by rehabilitating them before they begin their way through the abandonment process. This program for the early interception and correction of potential abandonment cases should guarantee that all current collective bargaining agreements will be protected, since it will restore rail lines to viable, long-term operation by their current owners with their current employees under existing collective bargaiing agreements. We believe that this program, which has generally been referred to as the "preabandonment" program should render the concerns with regard to the status of collective bargaining agreements that we see expressed in sections 3 and 11 virtually moot. Thus, we believe that the preabandonment program embodied in H.R. 9398 will substantially satisfy what we know are the very real concerns of the railroad labor organizations, just as we strongly believe it will satisfy the various needs and interests of rail users, rail carriers, consumers and taxpayers.

While we believe that the provisions regarding collective bargaining contained in sections 3 and 11 will be found to have little application if a preabandonment program is enacted, we do have concerns that those provisions will have an immediate and substantial adverse impact on the efforts of the Illinois Department of Transportation and other state departments of transportation to preserve essential rail services on those portions of our railroad system for which a preabandonment program will come too late. The problem of preserving service on these rail lines in a manner that is not prohibitively expensive to the taxpayers is a most difficult one, and we in the National Conference of State Railway Officials believe that it is in the public interest to provide State departments of transportation with as many tools as possible to solve it. One tool that may prove to be important in fashioning a solution for some rail lines is the creation of new railroad companies, usually involving on-line shippers as owners or stockholders. We believe that the requirement contained in sections 3 and 11 that current collective bargaining agreements be inherited by these new railroad companies and that the agreements be expanded to encompass persons who may not even be employees of the new companies would often prove inappropriate and would likely lead either to a loss of rail service or a prohibitive cost to the taxpayers.

I have included in my prepared testimony a specific example in Illinois of how this problem would evolve. I don't want to recite it in detail, but I think it is important to indicate to you in general terms that the problem does go beyond the Delmarva Peninsula and can be expected to occur in other parts of the country. It concerns a line we operate in Illinois where because of a distinction between what used to be a big four mainline and what used to be a Michigan property, the State shipper had to pay $125 a trip in taxes for the crew, $65 in lodging and $500 per trip in excess rail wages.

I have characterized that by comparing it to the revenues that a new railroad could expect to earn on this railroad and find that in one instance the first 11 carloads per trip would be required just to take care of these extras as a result of this old arrangement and in another case the first four carloads.

We feel that given the fact this line was averaging about four carloads a trip, that would be a substantial discouragement to a

new operator on the line. I hope that when the committee has a chance to study this it will be helpful in illuminating the problem as we see it in Illinois.

Nonetheless, I want to indicate in closing that we are sympathetic at the Illinois Department of Transportation of the desires of some employees to continue to work on the lines that are conveyed from their current owners to new railroad companies. We find in many cases that this desire is related to a desire on their part to continue living in a particular town or geographic area. We believe it would be highly appropriate to address the desires of these employees by granting them an employment preference similar to the veterans preference to the jobs that become available on the new railroad company.

We beieve that providing employees this option to the protections customarily provided by the Interstate Commerce Commission in abandonment proceedings will satisfy the needs of the employees without unduly impairing the ability of State departments of transportation to fashion long-term solutions to railroad service continuation problems.

Once again, I would like to thank you, Mr. Chairman, for the opportunity to testify before you this morning.

[Mr. Harsh's prepared statement follows:]

TESTIMONY OF WILLIAM C. HARSH, JR.
CHIEF, BUREAU OF RAILROADS
ILLINOIS DEPARTMENT OF TRANSPORTATION

My name is William C. Harsh, Jr. I am Chief of the Bureau of Railroads of the Illinois Department of Transportation. The Department is the designated state agency for Illinois under the terms of the Regional Rail Reorganization Act of 1973, and the Bureau of Railroads has jurisdiction over the state's program for local railroad freight service continuation assistance. The Bureau is also responsible for assisting in the preparation of the state's position in Interstate Commerce Commission abandonment proceedings and for administering the state's Amtrak 403(b) program. I am also co-chairman of the Northeast Region of the National Conference of State Railway Officials.

I appreciate the opportunity to testify today on behalf of the National Conference of State Railway Officials with regard to those provisions of H.R. 9398 that address the relationship of existing collective bargaining agreements to operating and rehabilitation projects undertaken with public funds pursuant to the Regional Rail Reorganization Act of 1973 and the Railroad Revitalization and Regulatory Reform Act of 1976. I would like to preface my remarks by stating that we at the Illinois Department of Transportation are sympathetic to and supportive of the rights obtained through free collective bargaining by working men and women who have voluntarily joined together in labor organizations, including those who are represented by the railroad brotherhoods. As a former union

local chairman who was elected to three terms of office, I believe I am especially sensitive to the rights and aspirations of organized employees. The Illinois Department of Transportation has maintained a continuous and, we believe, mutually productive dialogue with the railroad labor organizations in our state and we have worked together to enact and implement state legislation that has thus far preserved rail service on roughly 175 miles of railroad lines. However, we concur with the judgment of the National Conference of State Railway Officials that our responsibilities to all parties involved in local railroad service continuation, including rail users, consumers and the taxpayers, require that we comment today on the provisions relating to collective bargaining agreements that are contained in sections 3 and 11 of H.R. 9398.

I believe it is important to emphasize at the outset that the collective bargaining provisions contained in sections 3 and 11, which concern conditions that exist on a railroad line after it has been been abandoned and has entered the rail service continuation subsidy program, should be rendered relatively unimportant by other provisions contained in sections 3 and 11 that would permit states to prevent the abandonment of railroad lines by rehabilitating them before they begin their way through the abandonment process. This program for the early interception and correction of potential abandonment cases should guarantee that all current collective bargaining agreements will be protected, since it will restore rail lines to

viable, long-term operation by their current owners with their current employees under existing collective bargaining agreements. We believe that this program, which has generally been referred to as the "preabandonment" program, should render the concerns with regard to the status of collective bargaining agreements that we see expressed in sections 3 and 11 virtually moot. Thus we believe that the "preabandonment" program embodied in H.R. 9398 will substantially satisfy what we know are the very real concerns of the railroad labor organizations, just as we strongly believe it will satisfy the various needs and interests of rail users, rail carriers, consumers and taxpayers.

While we believe that the provisions regarding collective bargaining contained in sections 3 and 11 will be found to have little application if a "preabandonment" program is enacted, we do have concerns that those provisions will have an immediate and substantial adverse impact on the efforts of the Illinois Department of Transportation and other state departments of transportation to preserve essential rail services on those portions of our railroad systems for which a "preabandonment" program will come too late. The problem of preserving service on these rail lines in a manner that is not prohibitively expensive to the taxpayers is a most difficult one, and we in the National Conference of State Railway Officials believe that it is in the public interest to provide state departments of transportation with as many tools as possible to solve it. One tool that may prove to be important in fashioning a solution for

some rail lines is the creation of new railroad companies, usually involving on-line shippers as owners or stockholders. We believe that the requirement, contained in sections 3 and 11, that current collective bargaining agreements be inherited by these new railroad companies and that the agreements be expanded to encompass persons who may not even be employees of the new companies would often prove inappropriate, and would likely lead either to a loss of rail service or a prohibitive cost to the taxpayers. Let me illustrate the reason for this belief with an example.

The Illinois Department of Transportation currently subsidizes rail service provided by Conrail on a line of railroad between Kankakee, Illinois and Sheldon, Illinois. This line, which at one time was part of the former Big Four mainline between Chicago and Cincinnati, connects with the Kankakee Belt Line, a former Michigan Central property, at Kankakee. Both the Big Four and the Michigan Central were railroads that were leased and controlled by the New York Central prior to World War II, and it is unlikely that anyone now employed on the lines in question ever worked for either company before the time that they were drawn into the New York Central System. However, because the Kankakee to Sheldon line was historically a Big Four property, crews based on the former Michigan Central at Kankakee are not permitted to work on it due to existing collective bargaining agreements. As a result, the Illinois Department of Transportation and Conrail have been compelled to operate the line

with Big Four crews based at Indianapolis. Fares to transport these crews to and from Kankakee in commercial taxicabs have averaged $125 per trip over the line and lodging required by the arrangement has averaged $63 per trip. Wages paid for the deadhead trips to and from Indianapolis have averaged $511 per trip over the line.

Should the Illinois Department of Transportation opt to establish a new railroad company owned by rail users on the Kankakee to Sheldon line who seek to provide themselves with more adequate rail service, that railroad would be entitled to a division of the revenue earned by Conrail for each car originated or terminated on the line. During the first year of operation, this revenue averaged $428 per car. While the divisions that have been offered to new railroad companies by Conrail vary with the length of the Conrail linehaul, they would generally yield to the new railroad companies about 15 per cent of Conrail revenues, or roughly $64 per car. Thus, if the provisions contained in sections 3 and 11 were enacted and the new railroad company inherited the existing collective bargaining agreement, the new railroad company would be forced to commit the revenue of one carload per trip for lodging costs, two carloads per trip for taxicab costs and eight carloads per trip for deadheading costs. Even if the improved service offered by the new railroad company substantially increased the current average of four carloads per

trip, we are forced to the conclusion that the requirement that it commit the revenues of the first 11 carloads per trip to the costs we have discussed would discourage the enterprise and would likely result in a loss of rail service to this important agricultural area of Illinois or a continued high cost to the taxpayers.

After five months of operations under the conditions I have just described during 1976, Conrail was able to achieve a revision in the collective bargaining arrangement under which it was permitted to base a Big Four crew at Kankakee. This solution has eliminated taxi fares, lodging and deadheading wage expenses, but it has required that the Kankakee-based crew be paid for six days work per week without regard to the level of service required. This has resulted in an average cost for wages for time not spent serving the line of $255, or the equivalent of the revenue from four carloads, per trip on the line. We believe that this cost would substantially inhibit the creation of a new railroad company, and thus would deny an important tool to the Illinois Department of Transportation in its efforts to preserve railroad service to Kankakee and Iroquois Counties at a reasonable cost to the taxpayers.

I hope this example helps to explain why we believe that the indiscriminate application of existing collective bargaining agreements to new railroad companies may be inappropriate and may well lead to a reduction in the preservation of rail service that was contemplated in the Regional Rail Reorganization Act of 1973 and the Railroad Revitalization and Regulatory Reform Act of 1976.

Nonetheless, we are sympathetic to the desire of some employees to continue to work on lines that are conveyed from their current employers to new railroad companies. In many cases, this desire is related to a desire on the part of the employees to continue living in a particular town or geographic area. We believe it would be entirely appropriate to address the desires of these employees through granting them an employment preference, similar to a veteran's preference, to jobs available in the new railroad company. We believe that providing employees this option to the protections customarily provided by the Interstate Commerce Commission in abandonment proceedings will satisfy the needs of the employees without unduly impairing the ability of state departments of transportation to fashion long-term solutions to railroad service continuation problems.

Once again, I would like to thank you, Mr. Chairman, for the opportunity to testify before you this morning.

STATEMENT OF ROBERT G. CORDER

Mr. CORDER. My name is Robert G. Corder, State Transportation Coordinator, Virginia Department of Highways and Transportation.

Mr. Chairman, I appreciate the opportunity to appear before the committee and address the labor protection provision currently contained in the proposed bill, H.R. 9398, to amend the Department of Transportation Act and the Regional Rail Reorganization Act of 1973.

Before I get into my prepared statement I would just like to point out that I am supportive of the comments that have been made by Mr. Metz and Mr. Harsh. I would like to address my comments specifically to the provision in the bill relating to labor protection.

The Commonwealth of Virginia has been working diligently for the past 21/2 years to help its two eastern shore counties retain the only rail service to those areas. A State rail plan was developed to qualify for Federal rail subsidies and two updates of this plan have subsequently been made. Also, the Commnwealth has administered the rather arduous funding requirements imposed by the Federal Railroad Administration since the program's inception.

Since the Commonwealth currently has a constitutional prohibition against direct financial aid to privately owned railroads, it has worked closely with its two counties on the Delmarva Peninsula to

cut the railroad operating costs wherever possible. The most dramatic action to date has been the curtailment of operations by ConRail in favor of a shortline railroad operator. It became apparent in the first year of operation by ConRail that the two counties could not afford the costs associated with the ConRail operation; consequently, the services of a shortline railroad operator were retained for the second year of the rail program. Employment of the shortline rail operator has enabled a reduction in the first year operation cost of ConRail by more than one-half while still providing the same or better level of service as we provided by ConRail in the first year. It is believed that such reductions in cost will permit this line to become self-sustaining after several years of rehabilitation, thereby terminating the need for Federal subsidy in the future.

This dramatic reduction in operating costs has been realized basically because the shortline railroad is non-union and therefore does not have to grant industry pay scales as do unionized railroads. Also, the shortline railroad does not have to impose work rules which require four or five-man crews on all trains; rules which prevent yard crews from doing the work of road crews, and vice versa; rules which prevent transportation employees from being assigned to maintenance or repair duties on non-operating days; or rules which prevent maintenance workers from runing locomotives. Also, the shortline railroad does not have to pay a full day's wages for a 100-mile run regardless of whether or not the run was completed in less than 8 hours.

Flexibility in crew assignments and work schedules are the bases for a shortline railroad's viability. The labor protection provision as currently worded in the proposed bill would appear to require that a shortline railroad pay union scales and abide by work rules which normally are associated with the unions. Such action would doubtlessly undo all that the Commonwealth, its two counties of Accomack and Northampton, the cities of Norfolk and Virignia Beach, the shortline railroad, and the FRA have done to date toward continuation of rail service in this area of the State. I might add that it was the stringent work rules of the Penn Central which prevented the Southern Railroad from purchasing the Delmarva line.

I would ask, therefore, that this provision of the proposed bill be abolished in view of its drastic adverse effect on continued rail service to a large segment of Virginia, not to mention the States of Delaware and Maryland. Should the foregoing, by some stretch of the imagination not be considered sufficient reason for abolishing the provision, I would suggest that the legality of the provision be investigated since it would appear to have the effect of imposing collective bargaining agreements on a nonunion entity.

Again, I would like to thank the committee for allowing me this opportunity to present the position of the Commonwealth of Virginia with respect to the labor protection provision of the proposed bill.

Mr. ROONEY. Thank you very much. The committee will recess for 10 minutes. There is a vote on the cargo preference bill. With your indulgence I will be right back.

[Brief recess.]

Mr. ROONEY. The committee will come to order.

Mr. SMITH. Mr. Chairman, I am Charles Smith of the Maryland Department of Transportation.

The Maryland Department of Transportation has been actively engaged for several years in efforts to continue essential rail service in the rural areas of our State. It was for this purpose that we supported the legislative initiative of the Congress in enacting the Regional Rail Reorganization Act of 1973—3R Act—and the Railroad Revitalization and Regulatory Reform Act of 1976—4R Act. We commend the Congress for its foresight in giving the States and local communities the opportunity and the financial means to work out long-term solutions to local rail service problems.

Several of the provisions in H.R. 9398 would obstruct the forward progress taken with the passage of the 3R and 4R acts and would jeopardize the state rail programs presently underway. We have arrived at this conclusion with considerable reluctance in that a number of provisions of this bill clarify and implement the original congressional intent in enacting the previous lcoal rail service continuation program. However, any benefits or advantages we perceive would be completely nullified by several of the provisions contained in H.R. 9398.

First, we object to the requirement that local rail operators adopt collective bargaining agreements and various work rules which were in effect before the effective date of the Final System Plan. What this means in Maryland, and many other States, is that our light density branch lines have to be operated under the old Penn Central labor agreements and work rules. Southern Railway, in its bid to acquire Delmarva lines, was unwilling to accept the same work rules and agreements this bill would impose upon local railroad operators.

Existing State and Federal laws and regulations, including those arising out of title V of the 3R act, provide more than adequate protection of an individual railroad employee's right to work in a safe place and to be reasonably certain that he will not lose his income as a result of abandonment of the rail service for which he was employed. The labor provisions in H.R. 9398 go far beyond the protection of the individual. The cost associated with the labor provisions in this bill would prevent State and local governments from using Federal entitlement funds for improvement and continuation of local rail service.

The labor provisions of H.R. 9398 would exacerbate this job loss because neither the State nor a local railroad could afford to operate these lines at the costs and in the same manner as a major rail carrier. The reduction in operating costs was the primary motivation in the Maryland Department of Transporation's recent decision to replace ConRail with a local railroad operator for the Delmarva branches. On one of these branches we have already cut operating costs in half. We expect similar savings on other branches. While all of these cost reductions are not attributable to labor costs, the local operator is able to provide the same level of service with a reduced labor content.

The savings generated by the local railroad's reduced employment and overhead costs will, at least, give these marginal lines a chance

to survive. The traffic generated by these branches, while too little to support a ConRail type of operation, can support a lower cost local rail operation. With the opportunity to reduce costs by using a local railroad removed or precluded, as it would be under the labor provisions of sections 3 and 11 of H.R. 9398, there is no way that any of these branch lines in Maryland could continue in operation.

While MDOT generally supports the important role of organized labor and labor unions we cannot endorse a Federal legislative mandate that imposes work rules and labor agreements on a local operator.

Let me comment on the corrective action program. Section 6 establishes the demonstration corrective action program for rail lines proposed for abandonment by rail carriers. While this concept of corrective action is worthy of serious consideration, we have some misgivings as to its workability. It would be an additional administrative burden to identify corrective action, develop consensus agreements and eventually use the $70 million in Federal funds proposed for this purpose. We would recommend that the Rail Services Planning Office or another Federal agency develop and issue criteria or regulations to govern application and use of funds provided by section 6.

Finally, it should not be mandatory to rehabilitate all light density branch lines to class II as prescribed in sections 3 and 11 of this bill. Many light density lines can be operated safely, efficiently and economically at class I—10 mph—standards. Setting the minimum upgrading at class II—25 mph—will be unnecessarily costly to the taxpayer.

I thank you for this opportunity to appear before the subcommittee and hope that these comments and our experience in Maryland will be helpful to you.

Mr. ROONEY. Thank you very much.

I would like to say that you are objecting to the preliminary plans with respect to work agreements. As pointed out by the labor people this morning, Mr. Snyder and Mr. Friedman, that provision was in an earlier draft, but it is not in 9398.

STATEMENT OF CHARLES H. SMITH

Mr. SMITH. Well, Mr. Chairman, section 3 and 11 of H.R. 9398 require that the labor or collective bargaining agreements that were in effect prior to the date of the final system plan would serve as the basis for establishing new collective bargaining agreements by the parties involved at that time with the crafts and unions that were in place prior to the final system plan, that is, the crafts and unions working for Penn Central.

Mr. ROONEY. That was in the previous bill, the draft that was not encompassed in H.R. 9398. Is this statement today approved by the Acting Governor?

Mr. SMITH. No, sir. This statement is the statement of the Maryland Department of Transportation approved by the Secretary of Transportation of Maryland. I don't know whether he requested any other approval.

[Mr. Smith's prepared statement follows:]

Maryland Department of Transportation
Office of the Secretary

Marvin Mandel
Governor
Hermann K. Intemann
Secretary

TESTIMONY ON H.R. 9398 BY
THE MARYLAND DEPARTMENT OF TRANSPORTATION
BEFORE THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE
OCTOBER 19, 1977

The Maryland Department of Transportation has been actively engaged for several years in efforts to continue essential rail service in the rural areas of our State. It was for this purpose that we supported the legislative initiative of the Congress in enacting the Regional Rail Reorganization Act of 1973 (3R Act) and the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act). We commend the Congress for its foresight in giving the states and local communities the opportunity and the financial means to work out long-term solutions to local rail service problems.

Several of the provisions you now have before you in the form of H.R. 9398 would destroy the forward progress taken with the passage of the 3R and 4R Acts and would jeopardize the state rail programs presently underway. We have arrived at this conclusion with considerable reluctance in that a number of provisions of this bill clarify and implement the original Congressional intent in enacting the previous local rail service continuation program. However, any benefits or advantages we perceive would be completely nullified by several of the provisions contained in H.R. 9398.

My telephone number is (301) – 787-7337

Post Office Box 8755, Baltimore-Washington International Airport, Maryland 21240

21-684 O - 78 - 19

First, we object to the requirement that local rail operators adopt collective bargaining agreements and various work rules which were in effect before the effective date of the Final System Plan. What this means in Maryland, and many other states, is that our light density branch lines have to be operated under the old Penn Central labor agreements and work rules. Southern Railway, in its bid to acquire Delmarva lines, was unwilling to accept the same work rules and agreements this Bill would impose upon local railroad operators. Existing state and federal laws and regulations, including those arising out of Title V of the 3R Act, provide more than adequate protection of an individual railroad employee's right to work in a safe place and to be reasonably certain that he will not lose his income as a result of abandonment of the rail service for which he was employed. The labor provisions in H.R. 9398 go far beyond the protection of the individual. The cost associated with the labor provisions in this Bill would prevent state and local governments from using federal entitlement funds for improvement and continuation of local rail service.

The labor provisions of H.R. 9398 would extend this job loss because no state or local railroad could afford to operate these lines at the costs and in the same manner as a major rail carrier. The reduction in operating costs was the primary motivation in the Maryland Department of Transportation's recent decision to replace Conrail with a local railroad operator for the Delmarva branches.

On one of these branches (Seaford-Cambridge) we have already cut operating costs in half - from $361,000 with Conrail to $175,000 for the Maryland and Delaware Railroad. We expect similar savings on other branches. While all of these cost reductions are not attributable to labor costs, the local operator is able to provide the same level of service with a reduced labor content.

The savings generated by the local railroad's reduced employment and overhead costs will, at least, give these marginal lines a chance to survive. The traffic generated by these branches, while too little to support a Conrail type of operation, can support a lower cost local rail operation. With the opportunity to reduce costs by using a local railroad removed or precluded, as it would be under the labor provisions of Sections 3 and 11 of H.R. 9398, there is no way that any of these branch lines in Maryland could continue in operation.

We recognize the important role of organized labor and labor unions and support the right of railroad employees and management to establish collective bargaining agreements. We do not believe government should assume this role and impose agreements on the local operator.

Section 6 of this Bill establishes a demonstration corrective action program for rail lines proposed for abandonment by rail carriers. While this concept of "corrective action" is worthy of serious consideration, we have some misgivings as to its workability. It would be an additional administrative burden to identify corrective action, develop consensus agreements and eventually use the $70 million

in federal funds proposed for this purpose. We would recommend that the Rail Services Planning Office or another federal agency develop and issue criteria or regulations to govern application and use of funds provided by Section 6.

Finally, it should not be mandatory to rehabilitate all light density branch lines to Class II as prescribed in Sections 3 and 11 of this Bill. Many light density lines can be operated safely, efficiently and economically at Class I (10 mph) standards. Setting the minimum upgrading at Class II (25 mph) will be unnecessarily costly to the taxpayer who must eventually pay the bill.

I thank you for this opportunity to appear before the Subcommittee and hope that these comments and our experience in Maryland will be helpful to you.

Statement presented by: Charles H. Smith
Rail Systems Group
Maryland Department of Transportation

Mr. ROONEY. How about the State of Illinois?

Mr. HARSH. I am authorized by the Secretary to speak on this matter. He knows I am here today. To my knowledge no testimony made by the Department is cleared by the Governor of Illinois.

Mr. ROONEY. How about Massachusetts?

Mr. METZ. The Governor is familiar with our position and supports it. He does not know that I am here today because he is not familiar with my detailed itinerary, but we have his support.

Mr. CORDER. The Secretary of Transportation does know I am here and approves my statement.

Mr. ROONEY. Does he support your statement?

Mr. CORDER Not officially because he has been out of town all week.

Mr. METZ. Our basic problem is if any work rules, arrangements or labor agreements are frozen upon us no matter from which date they apply.

Mr. ROONEY. Go ahead.

STATEMENT OF CLIFFORD ELKINS

Mr. ELKINS. Thank you.

I am Clifford Elkins, Deputy Director, National Conference of State Railway Officials.

I have particular emphasis on the preabandonment program. This is the No. 1 problem facing the State rail program today. The States are universally unhappy with the administration of the program, namely, no projects outside the Northeast region have moved forth and have become solutions to rail problems.

Indeed, we feel there is a very cumbersome and bureaucratic process to get a State program moving. The preabandonment program is essential. The sense of urgency is, as Mr. Metz mentioned, as each month goes by, that is one less shipper and line available to the rail system. I know in six States at the present time there were urgent decisions facing the States, but their hands are tied and they cannot address the rail problems until they get to the abandonment situation.

The most notable is the situation facing the State of California where a 168 mile stretch of a subsidiary to Southern Pacific is faced with needing some rehabilitation. The State has examined it and they know there are portions of the line that are urgently needed in the San Diego area. We are concerned with the arguments brought forth by FRA objecting to this. We are pleased at one point in their testimony. We see for the first time officially that Mr. Sullivan has indicated that there is light at the end of the tunnel and they will be addressing it.

Our concerns are some of the reasons for objecting to them in our opinion are not completely valid. For example, they indicate that the program would be railroad initiated. The remarks made by Mr. Fitzwater and Commissioner Clapp point out that under the present system, to get a line qualified in the abandonment process is indeed railroad initiated. In essence, there is no difference. The difference is that it is a State that would determine that that rail line would get aid. We think that is a major difference which would completely invalidate that argument.

Another point we think is of extreme concern is that they say the same circumstance that does not prevail to the non-Northeast region exists today. We think it is as severe as the kind that was facing the Northeast in this aspect. Many of the railroads in the Midwest were faced with severe economic realities. Branch lines are getting less and less attention. To prevent what we had in the Northeast we feel it is urgent that a preabandonment program be installed to forestall another disaster.

Another remark that the FRA has chosen to use is the fact that the proposed preabandonment program would not be based on sound economic analysis. We point out that the present system of project approval, what would be applicable to the Northeast program or to the present system would be no different. Indeed, when they mentioned the Iowa plan, Iowa is one of the States most urgently needing a preabandonment program.

I spoke late last night with Mr. Pricer there and his charge was that the most important problem facing him was to have a preabandonment program come into being so he can take priorities and use them in conjunction with his own plan. We strongly disagree. There will be no effect by having the program delayed.

The other points that are essential to us and we need at the present time, our last concluding remark, would be section 13, the trackage rights proposal. I would like to make a brief point that this proposal had lengthy discussion by the Conference. At our regional meeting several months ago in Morgantown, West Virginia, this was unanimously adopted by region 1 as a supportive item.

In discussing it with other States throughout the country, they are all supportive of this concept because they think it will have some applicability to their program. We see the only solution to our problems as coming from the committee's programs.

Thank you.

Mr. ROONEY. Thank you very much. We appreciate the very kind remarks.

I will direct this question to the gentleman from Illinois.

On page 4 of your statement you say that these agreements would be inherited, whereas, the United Transportation representative said this morning you would be negotiating new agreements.

Why is there this disparity? Why does it exist?

Mr. HARSH. I would say that is a matter of emphasis, I would suppose. The starting point of the negotiation would be the preexisting agreements, and if we were to set up a branch line of a new railroad company, it would be us that would have to obtain in advance a collective bargaining agreement with the union.

I would say that all of the chips in that situation would be on the union side.

Mr. ROONEY. Isn't there room for negotiations with the union?

Mr. HARSH. Surely, and one thing I hope we made clear was that I know, speaking for myself, and I think speaking for my colleagues, none of us is anti-union, and all of us support the efforts of the brotherhoods who testified here today. I think that our problem is starting with the current operating agreements, some of which are very difficult, and being placed in a position of having to reach an

agreement essentially within that same structure before we could set up a new railroad company.

Mr. ROONEY. Give me an example, and don't mention Delmarva.

Mr. HARSH. Thank heaven that is not in Illinois. Let me just allude to the example I discussed in my text. We have a line in Kankakee, Illinois.

Mr. ROONEY. Where?

Mr. HARSH. Kankakee. It is a wonderful town. You don't care to go there.

We had an agreement there originally when we took over the line on April 1, 1976 with ConRail, where we were having to taxi cruise from Indianapolis all the way to Kankakee three times a week round trip, and that was a very expensive proposition. It took us 5 months before we got any kind of relief from that at all, and when we did, and I think this is the point, all we were able to achieve was a situation in which we have a crew which we pay 6 days a week regardless of the amount of work available on the line, and the line is very seasonal, and it is still costing us the average of four revenue carloads a day just to service that one agreement. So from our point of view, it is not a perfect process. I think that is where our reluctance lies.

Mr. ROONEY. And who has that line?

Mr. HARSH. It is currently being operated by ConRail, and I guess there was testimony this morning that ConRail is the only railroad that is willing to operate branch lines, and I guess that is——

Mr. ROONEY. In Kankakee.

Mr. HARSH. In Kankakee. They are unwilling to operate a line in Kankakee in the way we want it operated. We entered into a set of negotiations with them that had to do with car supply on the line, and it was made very clear to us that they were not interested in supplying cars on the line in anywhere near the number that the shippers wanted. They all but invited us to fining of their operator. We have come to the conclusion you cannot compel good service and so we took them up on their invitation and are planning to come up with some sort of an alternative solution.

Mr. METZ. Mr. Chairman, there is an example in Massachusetts, now history that is very relevant, the Providence and Wooster Railroad. It is a short railroad. It is 150 miles long now but it started business 4 years ago as a little over 50 miles long. It has worked out a very innovative set of work arrangements with railway labor. It is fully unionized with the national labor organizations, but special work rule arrangements, pay arrangements, and all the rest, and it has worked very well. It has been a very successful railroad so that it is now about three times the size that it was.

If when it was taking over a line that Penn Central wanted to abandon, I feel sure that if at the time it had been constrained to the present at that time labor agreements, employment, pay scales and so on, it would not have been able to work out with railway labor the innovative arrangements it has now that in fact railway labor on that line finds so attractive.

Those sorts of tailored solutions would be extremely hindered, and in fact virtually vetoable by railway labor if the law freezes the

present collective bargaining agreements and says they can only be changed by agreement of all parties.

Mr. ROONEY. Thank you very much, gentlemen.

Are there any further comments?

It is unfortunate that I cannot call upon the labor representatives to answer some of the comments that you gentlemen made today. I would have had the testimony been here 48 hours in advance, which is required by the committee, but it is the intention of the Chair, to pursue this and get the answers to some of the allegations that you have made with respect to labor in the very near future. I would appreciate very much if I would hear from you after I receive their comments.

Mr. METZ. We would be glad to do that. I think we owe the committee an apology for not having had our testimony in advance. We have been laboring under some of the same burdens that members of Congress have. I, for instance, have beeen here in Washington at three separate hearings in the last 5 working days.

Mr. ROONEY. I can appreciate that.

Mr. METZ. As director of our State's program, it has exceeded my ability to produce at this time.

Mr. SMITH. That is hard to believe.

Mr. ROONEY. I am looking for a brighter 1978. Thank you.

Mr. METZ. Mr. Chairman, I think we should address the issue that has been raised by several that this whole matter can be put off until next year and is best put off until next year. The States really need some of the provisions this year, particularly those technical amendments that clean up the administration of the program, and that give us the authority for multiyear funding, because we are in the process of planning next year's programs already. If those provisions wait until next year to be acted on, then they can't be planned in until the following year, and delay costs us money, and it is costing us jobs at home in our local economies.

Mr. ROONEY. Thank you very much, Mr. Metz.

Our next witness will be Mr. Jack Curran, legislative director, Laborers International Union of North America, Washington, D.C.

Mr. Curran, we welcome you to the committee. We appreciate very much if you would introduce your colleagues.

STATEMENT OF JACK CURRAN, LEGISLATIVE DIRECTOR, LABORERS INTERNATIONAL UNION OF NORTH AMERICA, ACCOMPANIED BY JAMES R. SHEETS, RESEARCH DIRECTOR, LABORERS' INTERNATIONAL UNION; AND JOHN J. BROWN, LEGISLATIVE DIRECTOR, INTERNATIONAL UNION OF OPERATING ENGINEERS

Mr. CURRAN. I have with me this afternoon, Mr. Jim Sheets, research director for the Laborers International Union; on my right is John Brown.

Having gone through with the introduction, let me start with the second paragraph.

We have submitted our statement, I hope, on time.

On page 5, I would like to call attention to the reporter and those who have copies of the statement: Delete the last sentence starting with Certainly and ending with unions.

With that, I would like to proceed.

Mr. ROONEY. Yoy may proceed in any manner in which you desire.

Mr. CURRAN. Thank you, sir.

On behalf of our officers and members, I would like to thank all of you for the opportunity to appear today to discuss H.R. 9398 the State Rail Freight Assistance Act of 1977.

Let me say at the outset that our unions support the passage of H.R. 9398 with the exception which I shall presently note. The rehabilitation of American railroads to the level of an effective, viable transportation system, is an objective to which our unions have long given wholehearted support. We believe sincerely that H.R. 9398 will significantly contribute to that objective. However, we come before you today to bring to your attention portions of this proposed legislation which we believe are detrimental not only to our unions and their members, but to the efficient achievement of the bills' objective.

Our unions have for some time been concerned with the course of railroad legislation in this country. Our concern has been with provisions in the Railroad Reorganization Act of 1973 and the Railroad Rehabilitation and Regulatory Reform Act of 1976 that effectively excluded the possibility of members of the building trades doing any significant portion of the work being financed by the Federal Government.

Mr. ROONEY. Do you mean to tell me you are not doing any work on the Northeast railroads in the Northeast Corridor at the present, your unions?

Mr. CURRAN. To the best of my knowledge, Mr. Chairman, we are not.

Mr. BROWN. I can support that as far as the Operating Engineers, Mr. Chairman. We are doing absolutely no work.

Mr. ROONEY. You may continue.

Mr. CURRAN. Having built up a substantial record and adequately proving our case in the past, it is discouraging to us therefore, to find in the terms of this bill further exclusionary language which will operate to the complete detriment of our members and may I say, of the railroads and the economy as a whole.

Specifically, the objectionable language in ths legislation is contained in section 3(2) and 11(3)(E) of the bill. Those sections go far beyond any reasonable protection for railroad employees. I hasten to point out that our unions have never objected to legislative protection for the existing employees of the railroad or for those on furlough or layoff when federally-financed rehabilitation is begun. We do feel, however, that a positive requirement, legislatively enacted, that the railroads engage in new hiring to do this work is unduly restrictive on their freedom of action and their ability to contract out where such contracting is economically beneficial. That objectionable provision which has been characteristic of previous railroad legislation is contained in this bill. More important than that, however, and even more restrictive is the language proposed in this legislation which deals with the status of contractors and their employees when working on railroad rehabilitation projects. It is useful, I think, to quote at this point the language of the proposed subsection:

"Should the State, carrier, designated operator, or other successor carrier lack a sufficient number of employees including employees on furlough and be unable to hire additional employees to perform the work required, it may subcontract that part of such work, consistently with such agreements, in which event the subcontractor shall be deemed to be a carrier for purposes of this subparagraph and its employees, while so employed, shall be deemed to be railroad employees subject to such agreements covering railroad employees of such class or craft and with all of the rights, privileges, duties, and obligations of such employees."

Mr. ROONEY. Will you explain for the committee why you object to this?

Mr. CURRAN. Well, sir in the succeeding paragraphs we do that, and if I may be permitted, I will go on.

Mr. ROONEY. If you would have complied with the committee regulations and had this in 48 hours in advance, I would not have asked that question.

Mr. CURRAN. We were late by 24 hours, Mr. Chairman. We did have our testimony over late yesterday afternoon and I apologize for not having it here sooner.

Mr. ROONEY. You may proceed.

Mr. CURRAN. To a prospective contractor, this proposed legislation creates problems beyond any which we think Congress is really willing to impose on a businessman. As a temporary carrier for example, a contractor would be presumptively under the jurisdiction of the Interstate Commerce Commission with respect to his internal business operations and reporting requirements. Thus, he would, from the very outset, be subjected to entirely new and strange set of regulations and the possibility of having to revise his entire corporate structure for a single job with the railroads. His costs would be raised to the extent that legally required contributions to the railway retirement fund and the railway unemployment compensation fund are substantially higher than anything he would encounter under State programs.

Finally, he would be introduced unwittingly into a labor relations setup with which he and his employees are entirely unfamiliar. Under these circumstances, it is difficult to conceive of a sensible businessman who, in full possession of the facts, would even bother to bid on railroad work.

The act, as contemplated, sets up a deep and disturbing conflict with the National Labor Relations Act as it presently exists. Congress, in its wisdom, has long declared as a public policy of the United States that workers should be free to select the union of their choice. The vast apparatus and ceaseless activity of the National Labor Relations Board are established primarily to effectuate that policy. This proposed language on its face sets aside the congressional intent which governs labor relations throughout the rest of the economy. A contractor with only the most temporary relationship with the railroad industry is deemed to be a carrier, bringing him within the purview of the Railway Labor Act.

As most railroad labor is covered by union shop agreements his employees shall be deemed to be railroad employees and required to join the railroad union covering the work under contract, in spite of

the fact that they may have no permanent possibility of employment by the railroad and that they may, indeed be members of other unions and quite satisfied with the representation they are currently receiving.

Leaving aside for the moment the question of employee rights, the proposed legislation visits severe economic damage on affected workers unless, by some wild chance, they are able to find permanent employment on the railroads. If they are, previous to employment on a railroad job, members of building trades unions working in the construction industry they will temporarily, at least, lose coverage under their local health and welfare and pension plan. In some cases, this could result in permanent loss of pension coverage for which no replacement would be offered.

Mr. ROONEY. Could you explain that or give an example.

Mr. SHEETS. Yes, sir. If the job lasted long enough to take them out of coverage, out of participation in their building trades pension plan, and this period will vary. It can be as long as a year. According to one case that was just decided in the Supreme Court, it can be as short as a month. Most of our plans give some period of noncontribution time while they carry a man, but there is a terminal date.

Mr. ROONEY. You may proceed, Mr. Curran.

Mr. CURRAN. In addition to that, their employer would be making contributions at far higher than the usual rate to the railroad retirement and unemployment compensation funds interrupting their coverage under social security and State unemployment compensation. Since most of these jobs would be relatively short term, they will lose such coverage without building corresponding qualifications in the railroad programs. It is true, of course, that those that make less than a 3-year contribution to railroad retirement can transfer funds back to the social security program and thus, maintain their standing. Such employees will still suffer considerable losses. An employer under social security contributes 5.85 percent of the first $16,500 of salary for social security coverage compared to 15.35 percent of his total wage bill by a railroad or temporary carrier. Thus, in effect, employees of contractors under the terms of the legislation we are discussing will leave behind almost 10 percent of their gross pay to provide retirement benefits for others.

Lest anyone think that I am overstating my case, I would like to point out that this legislation applies mainly to rail abandonments and subsidized rehabilitation and operation of uneconomic rail services. Such lines are by their very nature isolated from the mainstream of railroad operations. Employees who find work on such a job in or near their community will not be able to establish the kind of relationship or presence in a railroad headquarters location that will lead to permanent employment with the operating company. Thus, while they may enjoy a brief period of employment, in the end they will return to their local labor market to seek further work with none of the railroad benefits for which they will have made contributions.

A potential further conflict is established by this language should the subcontractor be a construction employer already under agree-

ment to the building trades. Such an employer would have obligations on all of his work established by signed agreement with the laborers and other unions. His regular employees could not follow him into railroad work unless they were willing to pay dues to two unions or give up their status as members of building trades for the period fo time that they worked on the railroads. Even should they do that, the interruption in pension and health and welfare coverage cited above would still take place or the contractor could conceivably be forced to make dual contributions to two sets of plans. We strongly suspect, however, that it is the intention of those who proposed this language that union construction employers will be carefully excluded from any opportunity to do railroad work. We believe that such an exclusion would be in direct violation of the antitrust laws and would unhesitatingly seek appropriate legal remedies under those laws.

In recent years our unions have been vociferously protesting language in railroad legislation which has the effect of excluding contractors and contractor-employees from the massive amounts of work being financed by the Federal Government under the Rail Reorganization Act and the Railroad Rehabilitation and Regulatory Reform Act. We believe that we have demonstrated beyond question that such language works a hardship on our members, their employers and upon the tax paying public. The provisions in question here while they, at least, recognize the necessity for contracting out significant portions of this work represent to us the ultimate in exclusions. Forcing our members to join another union as a temporary expedient in order to find desperately needed work, while bestowing none of the benefits of union membership on them, is not only an illegal but an immoral action.

Contracting out the work financed by this and other railroad rehabilitation legislation makes good economic sense. Unemployment, which is practically nonexistent among railroad workers is still a severe problem in the construction industry. Equipment to do the work, which railroad will have to purchase, is idle and available in contractors' yards. Most important of all, the skills of the construction industry are exactly those which will be used to rehabilitate American railroads. I am sure that it will come as no surprise to the members of this committee to know that most of the new and revised rail work in recent decades has been done by contractors and their employees. Rail relocations, industrial spur lines and even major rehabilitation projects of the operating companies have long been the province of construction workers rather than railroad employees. So, in considering this legislation, we urge you to consider that there is a trained, experienced work force with competent management supervision willing, and to a distressing extent, immediately available to do this work.

It is the position of our unions that rehabilitation is not maintenance and is not within the exclusive jurisdiction of a maintenance labor organization. The great masses of employees necessary to bring our country's railroads up to modern standards cannot all expect to end up with permanent railroad employment. If they are torn from their traditional industry and union affiliation during the rehab process, we will, at the end of that process, find them again

unemployed and adrift on the economy. Such workers will, however, be much worse off than they are now. Their short stint on the railroad will have interrupted their normal contacts with the construction industry, stripped them of accumulated benefits and recompensed them with generally lower pay than their regular jobs. That result cannot be the intent of Congress.

It is demonstrable that rail and facilities rehabilitation can be done more quickly, efficiently and cheaply if the resources of contractors and the construction work force are called in to suplement the efforts of the railroad. We submit that Congress should abandon these attempts to limit contracting in favor of an active policy of encouragement of the practice.

Mr. Chairman, that concludes our remarks, and I want to again thank you for the opportunity for allowing us to appear before you today.

Mr. ROONEY. Thank you, Mr. Curran.

Mr. Curran, I only have one question, and perhaps you or your associates can answer it.

Many of the maintenance of way employees of the railway unions, are out of work. Many of them are looking for work, and you are coming in here telling me that your union can do a better job, a quicker job, a more efficient job, at less cost, is that correct, and your union wants to preempt them.

Mr. CURRAN. No, sir, we do not want to preempt any of the work that the maintenance of way employees have done in the past in maintaining the railroads. What I am saying is that there is work that we have done in the past under contract for union contractors with sophisticated equipment that the maintenance of way employees haven't handled before. If they have, it might have been out on loan and I am not too sure of that, but we are the ones who are being prohibited from participating om a Federal program to rehabilitate the railroads, because this restrictive language, and the same thing occurred in previous legislation.

Mr. ROONEY. How did that restrictive language get into the bill? Was there any compromise between labor and management?

Mr. CURRAN. I don't know how that language got in, Mr. Chairman, and indeed I was surprised this morning that Mr. Friedman, testifying for the United Transportation Union and the Railway Labor Executives' indeed supported that kind of language. Mr. Friewdman is a lawyer. Mr. Friedman is a person for whom I have the highest regard. I have been associated with him before. We have discussed the problem between the contracting unions and the maintenance of way employees, and we have not been able to resolve the jurisdictional problems, if you will, only because the maintenance of way employees have taken such a strong position in terms of this railroad work that our people should be doing and we say that we have done that work before, the Operating Engineers and the Laborers Union have worked for union contractors building the railroads, if you will, for the past 10 or 20 years.

Mr. SHEETS. Thirty or more.

Mr. CURRAN. Thirty or more years, and now we are being excluded. It is the other way around. They are not being excluded. They are there. We are the ones who the sidelines saying "Hey, give

us a little bit of the work. We did it before. We have the equipment. We have more unemployment than you do."

Mr. BROWN. In fact, Mr. Chairman, in your own home State of Pennsylvania, we have a case that I will gladly submit to the Chair on behalf of the operating engineers, where you have contractors with the right kind of equipment to do the job on the railroad. Yet we find nonunion contractors brought in from Georgia.

Mr. ROONEY. Nothing wrong with Georgia.

Mr. BROWN. Nothing wrong with Georgia but I thought, sir, you might have an interest in your own State. It all depends what side of the seat you are sitting on, Mr. Chairman.

Mr. ROONEY. I am a graduate of the University of Georgia, so you hit the wrong State.

Mr. CURRAN. I don't know what the unemployment rate is among the maintenance of way employees. I am of the impression that it is almost nil at this point in time. I can tell you what the construction industry is though. It is between 12 and 14 percent. In some areas it is as high as 25 and 30 percent.

Mr. SHEETS. Railroad unemployment for the past few months has been running at 1 percent or less total, if you assume that all of them were maintenance of way men. That still wouldn't be a very significant number of unemployed.

Mr. ROONEY. Thank you very much, Mr. Curran, Mr. Sheets, Mr. Brown, for your testimony here this afternoon.

Mr. CURRAN. Thank you sir.

Mr. ROONEY. Our next witness will be Mr. William H. Dempsey, president, Association of American Railroads, Washington D.C.

You may proceed.

STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS, ACCOMPANIED BY ROBERT E. LOOMIS, ASSISTANT VICE PRESIDENT, LABOR RELATIONS, SOUTHERN RAILWAY SYSTEM; AND JOHN B. NORTON, LEGAL STAFF, ASSOCIATION OF AMERICAN RAILROADS

Mr. DEMPSEY. Thank you, Mr. Chairman.

I have a prepared statement which I would like to ask be admitted into the record.

Mr. ROONEY. Without objection.

Mr. DEMPSEY. I am accompanied by Mr. Loomis, assistant vice president, Labor Relations, Southern Railway System, and Mr. John Norton, of the association's legal staff.

Mr. DEMPSEY. I will just try to touch the highlights of this rather lengthy statement, Mr. Chairman. There are a number of proposals in the various drafts that are the subject of this hearing. Many of them are complex. Some of them are quite controversial. I cannot say that we have had an adequate opportunity to examine each and every one of them, but I will do the very best I can to give at least our tentative conclusions on some of them.

I would like to begin with the labor protection provisions. As to that subject, I will have more than just a few words to say. I also think it fair to say that even if we had more time, all that I think

would happen would be that we would find more objections to raise than I have included in this litany in my statement.

The labor protection provisions—I may say there has been some confusion here and I would like to get to it a little bit later in terms of what Mr. Friedman said and in respect to what your questions were of the State witnesses. That confusion arises because there are two different drafts.

Mr. ROONEY. Let me say, Mr. Dempsey, you are one of the very important witnesses before this comimttee today, and don't try to hurry your testimony because we want everything on the record and we want to go through this very carefully.

Mr. DEMPSEY. Thank you very much, Mr. Chairman. I appreciate that.

The versions as they relate to subcontracting are not different. The versions as they relate to the imposition of the prior collective bargaining provisions are different, and I will get to that a little bit later.

I would like to begin with the subcontracting provisions, so that there can be some kind of connection between my testimony and that of Mr. Curran.

The provision on subcontracting we find objectionable for a variety of reasons. One is that it simply cannot work. The second is that if it could work, it would make subcontracting virtually impossible in circumstances in which subcontracting would have to be done in order to get the work done and in order, indeed, to operate the branch line.

First let me indicate why it cannot work. It cannot work because there really is not any rational way to apply the provision. Let me take an example of a subcontractor who has a clerk working in his office. Now that clerk is working part of the time on railroad work, part of the time on other work, and part of the time on, let's say, overhead work.

Now I just cannot imagine any way in which it could be decided what part of that time that clerk was supposed to be a railroad employee under the provisions of this act, and part of the time the clerk was supposed to be an employee of the subcontractor, subject to some other kind of collective bargaining agreement, presumably. That would be so with respect to supervisors and the shop mechanics of subcontractors, and I would like to point out at this time that the subcontracting provision, so far as I can tell in any draft that is here, does apply to every kind of work. It does not apply just to maintenance work.

What it does apply to is all work in connection with the operation of services on such line and the maintenance, repair and rehabilitation of the track, all work in connection with the operation of services on such line. The language is about as sweeping as I can imagine. It surely includes the operation of the trains, and apparently it includes all repair work on the locomotives and on the cars, all clerical work, anything that has to do with the operation of the branch line.

We have shop mechanics of a subcontractor working, in normal course, part of the time on railroad cars, part of the time on other kinds of equipment; again you would have this terrible problem of

trying to allocate their time, and trying to decide which retirement system they are being taxed under, which unemployment and sickness program they are under. Are they under the Railway Employment Insurance Act or under State plans of sickness compensation and unemployment compensation?

What are their wages? Do they fall under the railway contract for 15 minutes of the hour, and for 45 minutes of the hour under some other contract? Who represents them for degree advances under the collective bargaining agreements? Is it the railway union or is it the other union that represents them?

If they injure themselves, are they under the State Workmen's Compensation Act, or are they subject to the Federal Employees Liability Act, and so on through this broad range of issues that arises when you try to take an employee and cut him, in effect, into two pieces.

The employer now, the subcontractor, really from his perspective, and I believe you will be hearing, if I am not mistaken, from a subcontractor, from his perspective this would be a thoroughly undesirable situation. Obviously the emplpyee problems that I have adverted to would also be those of the employer.

He would have to figure out what in the world he was supposed to be doing under this system but, in addition to that, he would be obliged to pay railroad retirement taxes to begin with. Railroad retirement taxes are a lot higher than social security taxes. They run to about 17 percent of taxable payroll as compared with the 5.85 percent that that employer would otherwise pay to social security.

As the Chairman knows, that is because railroad retirement taxes pay not only for so-called tier I benefits, which are social security-equivalent benefits, but also for tier II benefits, which would be the equivalent of a private pension plan for any other employer in the country. So what we would have here then would be this heavy tax levied on the subcontractor, and at the same time he would have to fund his own private pension plan.

I do not think he would have to pay social security taxes in addition, although I am not an expert on that, but I doubt that he would. But he would have to pay double taxes in effect, one for funding the railroad retirement tier II program, and the other for funding his own retirement program, and its employees, as Mr. Curran indicated, would get no benefit out of this whatever. In order to qualify for railroad retirement benefits, the employees would have to serve as railroad employees for 10 years.

Then the employer would have to pay Railroad Unemployment Insurance Act taxes. Whether he would also have to make contributions to the State sickness and unemployment benefit system I am just not in a position to say, but that is another complication of the bill. That, I assume, depends on State law.

These kinds of burdens and these kinds of problems would make it most unlikely, it seems to us, that subcontractors would be interested in the kind of work that we often need subcontractors for.

Beyond that, I would make two more points with respect to railroad retirement.

In the first place, the tier II part of railroad retirement, the part on top of the social security equivalent, is supposed to be a subject of collective bargaining; that is to say, there is supposed to be collective bargaining on any changes in that program before the matter comes to this Congress or to this committee.

The Interstate and Foreign Commerce Committee said as much in 1974 when the whole act was restructured. I am going to quote from the committee report here. The committee said that tier II constitutes, and I am quoting on page 5 of my statement:

"in essence, a company pension program," even though "administered for historical reasons, by the Federal Government", Therefore the committee said, future changes "will arise out of collective bargaining between the carriers and the unions."

Indeed, in point of fact, railroad retirement is at this very moment the subject of collective bargaining in the railroad industry between management and the unions, and so I suggest that the action, any action by the Congress, in this area ought to be deferred pending the outcome of those negotiations at the very least.

I would make one further comment. It is not perhaps one that is within our purview to say very much about, but I think I should note for the benefit of the committee that what is proposed here would be changes in the railroad retirement tax system, not the railroad retirement system, and the railroad retirement tax system is within the jurisdiction not of this committee, but rather of the Ways and Means Committee.

Mr. ROONEY. And they can have it.

Mr. DEMPSEY. I may say that they have somewhat the same attitude.

Now the other matter that seems to us to be most dubious indeed, and which would make it very difficult for us to get subcontractors to do railroad work, is the provision that Mr. Curran spent a great deal of time on, and that is the fact that the subcontractor's employees would be, by being made subject to existing collective bargaining agreements, made subject to the existing union shop provisions in those agreements, and therefore would have to become members of the railroad union.

This is bad enough, I should think, with respect to nonrailroad employees who are not represented by any other organization, such as Mr. Curran's, because that might very well include employees who have affirmatively expressed the desire not to be represented by any organization, but when you get to employees who are currently represented by other labor organizations, it seems to us to pose just about an insuperable problem.

Let me give you an example. What you would have here would be two collective bargaining agreements which would specify different methods of compensation, different kinds of work rules.

Let me consider once again our shop craft unions.

In the railroad industry we have craft line demarcations, which have been relaxed in certain circumstances but that, by and large, are quite rigid. They are much, much more rigid than in most other industries, and so we are not able to have what is referred to as a composite mechanic, that is, a mechanic that can do the work of different crafts.

21-884 O - 78 - 20

In some industries, at least, where there are composite mechanics, because of the added efficiency therefore of the shop forces, those mechanics receive somewhat higher wage levels than in other circumstances. Well, now, let us say that we had a situation in which we are in a subcontractor's shop that is under collective bargaining agreement, where there are composite mechanics. Now what happens?

His employees, when they work on railroad work, presumably would have to be broken up into the railroad craft lines, and could not cross those lines. I do not even know how that could be done as a practical matter in a shop that is organized to do the work on quite a different basis. If it could be done, I wonder what the employees would think of it, because then they would be paid the noncomposite mechanic rates, which in many cases—sometimes they may be higher than other cases, but in this case it would be lower. It is this kind of mixing of oil and water that, it seems to me, this kind of provision results in inevitably.

I noted FELA. Railroad workers are different than other workers in this country. Personal injuries that occur to railroad employees in the course of their employment are not governed by State Workmen's Compensation plans. They are governed by the Federal Employees Liability Act, which is a fault kind of liability, so to speak, although from our perspective it comes pretty close to absolute liability. The awards the amounts of recovery are set by juries. Generally employers regard it as a burdensome kind of system to be under as compared with Workmen's Compensation plans.

I am very doubtful that employers would want to subject themselves to this brand new and, as I say, burdensome method of liability for personal injuries. Again, there would be that problem as to which kind of system would apply in the case of an employee who part of the time was doing railroad work and part of the time was doing some other kind of work. Indeed it seems to me that from an employee's point of view this is a risky business when you have to pursue the situation where the answer is not altogether clear.

Let me turn now to the restrictions on subcontracting. Those matters I have just been talking about are the things that happen when you can subcontract, that is, the subcontractor becomes a carrier for purposes of all relevant legislation, and the employees become railroad employees for the purposes of all relevant legislation. But now let me turn to the question of when a carrier could subcontract under the restrictions of any of these drafts.

These bills would, as a practical matter, pretty much cut out subcontracting, I think not only for the reasons that I have just indicated in terms of the onerous conditions that they would impose upon subcontractors and their employees, but also because of the standards that are set forth here as to when subcontracting can take place.

We have collective bargaining agreements in the railroad industry specifying when one can subcontract. For example, with respect to our shop craft unions, and I will just put this in general terms, we can subcontract when there is a significant cost advantage to subcontracting. We can subcontract if we do not have enough

employees. We can subcontract where we do not have the necessary facilities. We can subcontract when we do not have the necessary plant, the shop or whatever, and we can subcontract if it is necessary in order to meet an important time schedule.

These provisions have been hammered out over the years in, I may say, tough collective bargaining, because, as I am sure the chairman is aware, subcontracting is a very sensitive issue.

Under all of those conditions for permitting subcontracting, only one would remain and that only in part under these provisions, and that would be if we did not have enough employees, but it would not even remain in full, because in order to qualify for not having enough employees we would have to show that we could not even hire enough employees in the labor market.

Now I would say several things about that.

In the first place, what would happen would be that the Congress would be intruding in a very, very substantial way on a subject that has traditionally been a matter for collective bargaining. I would say, in addition to that, it would depart from the principles respecting subcontracting that the Congrses established just last year in the 4R act.

This question of subcontracting was debated between management and labor last year at length, for months, and indeed it was the last issue to be resolved between labor and management. The way it was resolved was that finally the unions agreed that subcontracting with respect to projects that are financed under the 4R act would be governed by the collective bargaining agreements then in effect, that is at the time of the subcontracting, on any railroad in the country.

We suggest that that is precedence that ought to be followed by the Congress, and not this sweeping away of these collective bargaining agreements that have been forged over the last many, many years of collective bargaining.

I add, although I suppose in a way it is not something that we have any particular stake in, but I add that it does seem to me to be incongruous that much greater restrictions would be imposed upon these new operators with respect to subcontracting than the unions have agreed would apply to the railroads, the railroads who presumably are better able to live with restrictions on subcontracting than at least some of these new short-line operators.

Let me say beyond all that, because of this construction of the ability to subcontract, you just could not operate a branch line, I mean quite literally. Since it would apply to repair of locomotives and repair of cars, I do not really see how any short-line operation could begin to operate. They would have to build the heavy repair shop, because the absence of facilities and plant is not an excuse for subcontacting under this provision as it is under our collective bargaining agreement. The railroads would find it exceedingly difficult to operate branch lines under these provisions.

For example, we subcontract when we have a serious wreck. We are likely to do some subcontracting. This I happen to be familiar with because it was a subject of a good deal of debate and discussion in our last round of negotiations by virtue of the attempts by the firemen's organization to restrict the subcontracting of wreck work.

The matter was carried to the Presidential Emergency Board, which recommended against constricting the railroads' right, except in some marginal way, because of the fact that the railroads simply do not have the equipment to handle some of these wrecks. The reason of course is that the equipment is terribly expensive, and you do not have, fortunately, wrecks every day, and you do not have them in the same place, so there is an operation called Hulcher, and I am sure it is the biggest though I am not sure it is the only one that is nationwide, west of the Rockies, that does a good deal of this work.

If they would use our employees that would be fine, but they will not use our employees to operate the heavy equipment. Understandably they want to use their own employees for that.

If had a wreck on a branch line and we could not clear it, it would be abandonment de facto. The only way you could get that branch line open would be by special resolution of the Congress to repeal this provision in the act.

I want to say in addition, this is not in my statement but it did occur to me last night, this is a hazardous business. We transport large quantities of hazardous materials. Our safety record I think is good, but of course you know that from time to time we do have derailments of shipments of hazardous materials, with some very disastrous consequences occasionally, and we work extremely hard to try to avert that sort of thing.

Now we use Hulcher and other specialized outside contractors when we have wrecks of this sort, because they have the equipment to deal with this kind of a terribly dangerous situation.

Under this provision, should we have that kind of a derailment, involving lading from a hazardous materials factory, plant or consignee on one of these branch lines, we could not turn to an expert to take care of that problem. All that we could do would be to make sure that the city was evacuated as soon as possible and stand around and look at it, I guess.

Now let me turn if I may, Mr. Chairman, to this question that has been discussed about the imposition of collective bargaining agreements upon the operators of these subsidized branch lines.

Mr. ROONEY. Before you continue, Mr. Dempsey, there is a vote on final passage, so that will give us at least an hour after this vote. I will return in 10 minutes.

[Brief recess.]

Mr. ROONEY. You may proceed, Mr. Dempsey.

Mr. DEMPSEY. Thank you, Mr. Chairman. I was about to turn to the parts of the proposals that would impose prior collective bargaining agreements upon the operators of subsidized branch lines and was about to try to see if I could unravel the problem that I was having with respect to Mr. Friedman's testimony and the testimony of some others, and I guess it is fairly clear that what has happened here is that different people have been looking at different versions of this bill.

Mr. Friedman testified that the bill would not, in effect, be retroactive, if I understood him correctly; that is to say, it would impose collective bargaining agreements only on those which are in existence on the effective date of the act, so that for an existing

short-line operation, he was saying, where there is no collective bargaining agreement on the effective date of the act, nothing would happen.

But, of course, future short-line operations taking over a short line from an existing railroad would have the collective bargaining agreement of the railroad imposed on them. Or if a railroad takes over operation of another railroad, it would have to take over that other collective bargaining agreement instead of its own.

What Mr. Friedman says, it seems to me, is true, if one looks at H.R. 9398. I think it was perhaps understandable that many were looking at the so-called Walnut draft, because that was subsequent to H.R. 9398. H.R. 9398 was introduced in September, and the Walnut draft was not available until October. Walnut provides that the new operator must agree to continue and maintain the collective bargaining agreement's employment and working conditions in effect on such line prior to the effective date of the final system plan pursuant to the provisions of the Rail Reorganization Act of 1973.

So under the Walnut draft, there would be, in effect, no grandfather; that is, existing short-line operations would have to assume the collective bargaining agreements of the railroads that were in effect as of the date of the final system plan.

Mr. ROONEY. May I ask, why are you so concerned about short-line operations?

Mr. DEMPSEY. As to this particular provision, I was trying to clear it up for my purposes as much as anything else, because my draft does speak to the Walnut draft. We are concerned about short lines for a couple of reasons. One is that we will conduct some ourselves, and so if we must take over the collective bargaining agreement of another railroad, we have real problems. Let's assume——

Mr. ROONEY. If one railroad can't service an area because of the problems, why would another railroad want to come in and take over that cancer?

Mr. DEMPSEY. Two railroads may be serving, and I think I may want to defer to Mr. Loomis for this, but two railroads may be serving the same community. It may be a situation in which one should be serving it, but there may be some industry that can't be hooked up to the operation of that single railroad. All he has to do is take over a relatively short spur of the railroad, and it can abandon service to that community. That doesn't mean an unprofitable operation for the remaining railroad. It may be of course. But if he takes over part of the lines of the abandoning road, this provision then comes into play and therefore he is bound, then, to apply the collective bargaining agreement of the other railroad with respect to all the employment in serving that 5- or 10-mile stretch. That, I suggest, is thoroughly undesirable from our standpoint.

Mr. ROONEY. How far do various railroad labor agreements vary?

Mr. DEMPSEY. Very considerably. I think it is fair to say that most of the industry would agree that the work rules provisions of the Penn Central were very much more restrictive than, let us say, the Southern, and you have heard testimony, and Mr. Loomis will verify, that that was the reason the Southern was unwilling in the end to operate Delmarva, because unions wouldn't operate under

the Southern agreement, but insisted on the old Penn Central agreement. It makes a good deal of difference.

For example, it can become impossible to put in a modern signal control system if you have a labor agreement that requires you to have block operators every 20 miles, and somehow you have to get rid of that obligation. That is one reason we are interested in it. We don't want to have our operations truncated with part of them under the collective bargaining agreement of some other railroad. It is inefficient because, presumably, you would have to have a crew dedicated to that service and not operating on the rest of the railroad or else have that crew operating under two collective bargaining agreements, which is really—from a personnel point of view and I think any objective observer would say—you shouldn't have your operators working under disparate agreements.

There is another reason, and that is that it isn't just that we would be obliged to operate under the collective bargaining agreement of another railroad, but this provision also requires that the new operator maintain employment. I don't know exactly what that means, but to me it looks like a job freeze. If it is, and I can't imagine what else it would mean, really, what we have is a very sharp departure from the kind of protection that the Congress has traditionally required in these kinds of situations.

I may say it is a departure in several respects. In the first place, it seems to impose the burden of protecting employees upon the new railroad that comes on to the scene rather than upon the abandoning railroad, which is the traditional method of providing protection.

Besides that, what it looks like is a full attrition kind of protection, and that is the kind of protection that the Congress has imposed only in the 3R act with respect to ConRail, and there, I suggest, only because the Penn Central had already agreed to that kind of protection in order to have its merger consummated.

I think it is pretty clear that the Congress intended that it be restricted to that kind of situation because in the 4R act last year, it declined to provide for full attrition protection or anything like it. It provides for the traditional kind of compensation guarantees for a specified period of time. That is what we have for abandonment cases. We have compensation guarantees for existing employees and for those adversely affected for a specific period of years.

Incidentally, if I understood Mr. Friedman correctly, he said in his view there was no protection for existing employees in this kind of abandonment situation. That is certainly not my understanding, and I am subject to correction when I look at the law, but there is, of course, prescribed protection for employees adversely affected by abandonment, and both Mr. Loomis and I and Mr. Norton are of the view that those standard protection provisions apply in this kind of situation. But whether or not they do, this employment freeze would apparently cut across that and require either maintenance of the same level of employment, or permanent retention of the preexisting employees in some fashion, or something else that we are not very clear about. But it obviously means something, and whatever it is, we don't think we like it.

I would say there is something else at stake here from our point of view, and I want to be careful when I talk about this, because we

are at the moment in negotiations with the labor organizations about work rules.

I should say, also, about the differences between the two drafts, while H.R. 9398 is not retroactive in the sense that we have been using that term, it does, as opposed to the Walnut draft, provide for compulsory unionization. The Walnut draft is unusual, to say the least, because what the Walnut draft does is to impose the old collective bargaining agreements upon the employers in circumstances where the employees might not be bargaining collectively. They may be unorganized, and I understand some of these branch-line operations are, and I don't know what it means to impose a collective bargaining agreement in circumstances where the employees are not collectively bargaining.

H.R. 9398 takes care of that, in a way that the Congress will have to decide whether it is in the public policy or not, by requiring that the new operator make and maintain agreements with a duly designated representative of the classes and craft of employees covered by collective bargaining agreements in effect on such line prior to the effective date of the final system plan.

What that does, then, is to do what Mr. Curran said; it provides for compulsory unionization of these employees, and, as I say, that is a matter that we have no stake in, but I point out there is that difference between the two drafts.

In any case, we do have a stake in the general subject, it seems to me. What we have here is, in substance, compulsory arbitration; that is to say, there would be no reason for the provision if all of the parties were willing to accept the provisions of the old railroad collective bargaining agreement. So we have the Congress thrusting upon an unwilling party all of the provisions of a contract.

I am not about to say that there is no circumstance in which that is required by public policy. I do feel, however, that the Congress has always been very circumspect about that, and a compelling need should be shown for it, and it is surprising to find some unions proposing compulsory arbitration. It may be because in this particular instance they know what the result of the arbitration would be; that is to say, it would be the imposition of the prior collective bargaining agreements.

Beyond that, I am concerned about the terms of the agreements, and this is of interest to us because we are right now attempting to change the terms of those agreements. Enough has been said about the character of our existing work rules here already, and, as I say, I want to be cautious about how I approach the problem because I do not want to embarrass the ongoing negotiations, but I am obliged to say something about it because these hearings are being held, and because this legislation is legislation that we oppose.

So let me simply say, and I don't suggest this is the design of this legislation or the aim of it, but one effect of it would be to put the imprimatur of the Congress on our existing workers. It has been suggested by Mr. Friedman that this is the only way to ensure that the employees of these short-line railroads would not be operating under substandard rules and wages.

To me, I am frank to say the notion that anything less than railroad wages and work rules is substandard, is just frivolous. Our

wages are high, as industry wages go. Our work rules, and here is where I want to be circumspect, let me say, and this is a matter of public record, that the railroads have repeatedly taken the position that our work rules substantially impair productivity, and let me say that the work rules in question——

Mr. ROONEY. Who involved themselves in the work rules? Were they imposed upon you by the Federal Government? Aren't they agreements between management and labor that you sat down and worked out?

Mr. DEMPSEY. Right.

Mr. ROONEY. Why do you say they are bad?

Mr. DEMPSEY. I am obliged to say some things in response to the question, Mr. Chairman. Let me take one of them, the basis of compensation for operating employees. That was agreed to. When you say imposed, it may have been imposed. I don't remember now whether it was agreed to by the Director of General Railroads in World War I or agreed to by the railroads shortly before World War I. In any case, it dates back to the turn of the century.

We pay our employees a day's pay for running 100 miles. Now in 1912, it took 10 to 12 hours to run 100 miles. There was nothing wrong with the rule at that time. The railroads didn't have control over the employees in the field, and it was an incentive to the employees to get the train across the road. There was nothing wrong with it at the inception, but technology has overtaken it; so now we have employees, particularly in the West, that operate 300, 400 miles in less than 8 hours, but are paid 3 to 4 days' pay now.

We have not been able to get that provision changed in collective bargaining. You may say, well, why haven't we? All I can say, in response to that, is that we haven't been able to. In 1959, the railroads opened a broad-scale campaign with respect to work rules. That led to compulsory arbitration prescribed by this Congress in 1964 with respect to the firemen question and the number of brakemen on the crew in question. There was a period of great hostility between labor and management during that whole decade of the 1960's. In the end, the firemen issue was settled to our satisfaction and to the union satisfaction in 1972.

I may say one reason the issue was settled is because the firemen's union merged into the transportation union. Those kinds of things do have a bearing on the settlements.

We did secure some significant work rules relief in 1971, prior to settlement of the firemen dispute, and some relaxation of the yard demarcation. That came after an 18-day strike, but nevertheless there were some substantial inroads made on the work rules.

We bypassed an opportunity to try again to change work rules for a variety of reasons which I would rather not go into, but which seemed to us to be sound at the time, and still seem, in retrospect, to be sound.

What I am saying, in response to your question, is the work rules were agreed to originally, and with respect to most of them there was nothing wrong with them originally. They were designed to deal with the times. But they were overtaken by technology, and the basis of pay has been overtaken by a variety of things which increase the speed of the train. The industry has been working since

1959 to change these rules so that service can be improved and productivity can be enhanced.

We have had some measure of success, and I am hopeful that in the future we will continue to have that success. But what I am saying now is that in our view much remains to be done, and I would respectfully request the Congress not to take an action that would embarrass or impair these negotiations by, in effect, saying the existing work rules in the railroad system are just the thing.

That is my answer to it.

Mr. ROONEY. Thank you.

Mr. DEMPSEY. I think that so far as the labor protection provisions are concerned, that would conclude what I have to say.

I would like to turn to Mr. Loomis now because the few remaining remarks I have do not bear on labor protection, and Mr. Loomis does have something to say about that.

[Mr. Dempsey's prepared statement follows:]

STATEMENT OF

WILLIAM H. DEMPSEY
PRESIDENT AND CHIEF EXECUTIVE OFFICER
ASSOCIATION OF AMERICAN RAILROADS

ON

H.R. 9398,
THE STATE RAIL FREIGHT ASSISTANCE ACT OF 1977,
AND RELATED BILLS

BEFORE THE
SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE
OF THE
HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

October 19, 1977

My name is William H. Dempsey. I am President and Chief Executive Officer of the Association of American Railroads (AAR), with headquarters in Washington, D. C. The railroads which are members of this Association operate 96 percent of the trackage, employ 94 percent of the workers, and produce 97 percent of the freight revenues of all railroads in the United States.

These hearings have been called to give interested persons an opportunity to testify on any and all proposals, many of which appear in H.R. 9398 and a later draft of H.R. 9398, now being considered which relate to amendments to a number of acts including the Interstate Commerce Act, the Department of Transportation Act, the Rail Passenger Service Act, the Regional Rail Reorganization Act of 1973 (3-R Act), and the Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act).

I will center my testimony on a few of the numerous proposals which are of special interest to the railroad industry contained in H.R. 9398, the State Rail Freight Assistance Act of 1977, introduced on September 30, 1977; a Senate Staff Working Draft of S. 1793, dated October 8, 1977; and an

unnumbered Committee Print of a House Staff Discussion Draft (Walnut), dated October 3, 1977.

A number of proposals are found in these three pieces of legislation which the railroad industry simply has not had an adequate opportunity to consider. Those sections of H.R. 9398 and the House and Senate Drafts dealing with "corrective action" programs, especially, are complex and require additional study. But, to the extent the industry has been able to review these and other proposals, my testimony will reflect the industry's preliminary thoughts, at least, on this legislation. I should state here that the railroads are more than willing to contribute their suggestions and recommendations, and to give deeper study to the issues raised in all three pieces of legislation, given an adequate opportunity to do so. Having said that, I will now proceed to comment on the specific proposals which are the subject of today's hearing.

A. LABOR PROTECTION

We urge the Subcommittee to reject the labor protection provisions in H.R. 9398.

The bill would provide federal financial assistance for the rehabilitation and operation of lines of railroad that otherwise might be abandoned. However, to receive such assistance the operator of the railroad would be required to agree to certain conditions relating to labor. There are basically three such conditions in the draft bill:

1. The operator would have to agree to rehabilitate and operate the line under the terms of collective bargaining agreements in effect on the line and to continue and maintain "employment" on the line.

2. The operator would have to agree not to subcontract work in connection with the operation and rehabilitation of the line unless (a) all

employees including furloughed employees presently performing such work are unable to perform the work, and (b) efforts to hire additional employees are unsuccessful.

3. Where work is subcontracted, the subcontractor is deemed to be a carrier and the subcontractor's employees are deemed to be railroad employees subject to existing railway labor contracts, "with all of the rights, privileges, duties, and obligations of such employees."

To help the Committee understand the significance of these provisions, I shall describe in fairly concrete terms just what they will require, starting first with the third condition I have just listed.

I. Deeming subcontractors to be railroads and their employees to be railroad employees.

A careful analysis is needed of the effects of the provision -- a provision that has no precedent in previous legislation -- that subcontractors shall be deemed to be carriers and their employees, "while so employed, shall be deemed to be railroad employees" subject to railway labor agreements in effect on such lines "and with all of the rights, privileges, duties, and obligations of such employees." Let me outline a few effects of that language.

1. In the first place, there is no rational way to apply the provision. Take, for example, the case of a clerk who works in the office of a subcontractor that has both railroad and nonrailroad contracts. Work one minute may relate to the railroad subcontract, work at another time may relate to nonrailroad contracts, and work at yet another time may not relate to either exclusively but instead may deal with matters that are properly overhead. The same is true with supervisors and shop mechanics. It may not be possible to determine when they are working on the railroad subcontract and when they are not. Yet that determination would have to be made to determine at any given moment whether the employee's work is subject to the railroad

retirement system or not; whether it is subject to the railroad unemployment and sickness insurance systems or not; whether it is governed by a railway labor contract or by a non-railway labor contract; whether the employee is represented for purposes of grievances and collective bargaining by railway labor officials or by non-railway labor organizations; whether the employee is subject to workmen's compensation or instead to FELA; and so on ad infinitum. And what of health and welfare programs? They are enormously expensive. Would contributions have to be made to two plans? Which set of benefits would govern? The scheme is simply unworkable.

2. Moreover, even if we assume that employees' work can rationally be separated in this fashion, other serious problems remain. Thus, the provision would require the subcontractor to pay railroad retirement taxes for his employees while they are employed on the subcontracted work. That includes both the basic "Tier I" taxes, which are equal to social security taxes, and also "Tier II" taxes, which fund a supplemental pension plan for railroad employees. There are several remarkable features to this requirement:

a. In all likelihood, the Tier II payments to railroad retirement would never provide any benefits for the subcontractor's own employees. Those employees must have ten years of covered railroad service to qualify for railroad retirement benefits, 45 U.S.C. §231a(a)(1), and would be credited with railroad service only while employed on the railroad subcontract. Thus, the subcontractor would be required to fund a pension plan not for his own employees, but for other employees, in addition to whatever plan he provides for his own employees. That is an added cost to be paid for as part of the cost of the subcontract, and would increase the amount of the federal financial assistance required for the project.

b. Beyond that, the funding of Tier II railroad retirement

benefits is a matter for collective bargaining, not for action by Congress at the unilateral request of one party.

i. This Committee took that very position in 1974 when the railroad retirement system was restructured. It stated that Tier II — the payments in excess of amounts equivalent to social security taxes — constitutes, "in essence, a company pension program," even though "administered, for historical reasons, by the Federal Government." Therefore, the Committee said, future changes "will arise out of collective bargaining between the carriers and the unions." H. Rept. No. 93-1345, 93d Cong., 2d Sess. (1974), at 16-17; accord, S. Rept. No. 93-1163, 93d Cong., 2d Sess. (1974), at 16-17.

ii. Moreover, railroad retirement is one of the subjects of the national negotiations currently in progress between the railroads and the unions representing their employees. There is no justification for Congress to make unprecedented changes in the railroad retirement system that would have a substantial impact on railroad labor negotiations when the parties are currently engaged in negotiations with respect to that very subject.

c. Finally, the bill would alter the structure of the Railroad Retirement Tax Act by adding employment not currently subject to that act to the coverage of the act and thereby removing that employment from coverage under the social security tax acts. Changes in the Railroad Retirement Tax Act are not even within the jurisdiction of this Committee.

3. The provision treating subcontractors' employees as railroad employees would also require subcontractors to make contributions under the Railroad Unemployment Insurance Act with respect to work on railroad subcontracts. The Railroad Unemployment Insurance Act funds unemployment and sickness benefits for railroad employees. However, as with railroad retirement contributions, this feature of the bill would fund benefits, not for the

subcontractor's own employees, but instead for railroad employees. This would mean either that benefits for the subcontractor's own employees would not be funded with respect to work on the railroad subcontract, or that the subcontractor would have to fund two systems of unemployment and sickness insurance -- at an added cost to the contracting operator and ultimately to the taxpayers who pay the subsidies.

4. Railroad industry collective bargaining agreements almost universally contain union shop or maintenance of membership provisions under Section 2 Eleventh of the Railway Labor Act (45 U.S.C. §152 Eleventh). Therefore, the provision that the subcontractor's employees will be "subject to" existing railway labor agreements would require those employees to join a railway labor union and to pay initiation fees and dues to that union. That would be true regardless of the employees' regular union membership and representation. Forcing the employees to join and pay dues to more than one union is unfair to the employees, and if the cost is paid by the subcontractor it will be passed on to the contracting operator and the taxpayers as an added cost of the subcontract.

5. In addition, the provision that subcontractors' employees shall be subject to railway labor agreements and shall have "all of the rights, privileges, duties and obligations" of railroad employees means that the subcontractors' employees will be represented by railway labor organizations for purposes of collective bargaining while working on railroad subcontracts. This is unsatisfactory enough with respect to non-railroad employees who are not currently represented by any other labor organization, including employees who may have expressed an affirmative preference not to be represented. But it is totally unworkable with respect to employees who <u>are</u> currently represented by other labor organizations. For example, suppose a railroad contracts

out repairs of equipment to a contractor whose shop also handles non-railroad work. An employee in the shop would work under conditions subject to establishment through negotiations with non-railway labor representatives while he worked on non-railroad jobs, while he would work under conditions subject to establishment through negotiations with railroad representatives while he worked on the railroad subcontract. And special problems would be encountered with respect to employees like foremen, who may be organized under the Railway Labor Act but not under the Labor Management Relations Act.

6. The absurdity of the arrangement is underscored by the fact that it cuts two ways. Craft demarcations have prevented the railroad industry -- unlike competing transportation industries -- from using composite mechanics skilled in several crafts. On the other hand, composite mechanics command somewhat higher pay because of their greater range of skills and the greater efficiency possible when it is not necessary to have a different mechanic for each different part of a job. In these circumstances, subjecting a subcontractor's employees to railway labor contracts would require the subcontractor to fragment his mechanical work force along the same inefficient craft lines found in the railroad industry -- which would increase the cost of the subcontract. But it would also mean that composite mechanics employed by the subcontractor would be paid railroad rates of pay -- which in some cases would be higher but in other cases would be lower.

7. Another consequence of treating the subcontractor's employees as railroad employees is that the language used in the bill may be claimed to make the employees subject to FELA instead of workmen's compensation while working on railroad industry subcontracts. From the point of view of the taxpayers, this involves one more added cost to be subsidized. But in terms of the interests of employees it creates the undesirable risk of loss of rights

through mistaken pursuit of the wrong remedy in situations where it is not clear whether workmen's compensation or FELA applies.

In short, the bill would create an unworkable or unnecessarily expensive dual status for subcontractors' employees, with respect to pension rights; unemployment and sickness insurance; union membership, fees and dues; union representation; and pay and working conditions.

II. Restrictions on subcontracting.

As stated above, the bill would prohibit contracting out of work unless (a) all employees, including furloughed employees, presently performing such work are unable to perform the work, and (b) efforts to hire additional employees are unsuccessful.

There are three aspects of this provision that deserve comment: (1) It deals with a matter that is a subject of collective bargaining in the railroad industry, one that is presently dealt with in collective bargaining agreements between railroads and railway labor organizations. (2) The restrictions -- particularly the prohibition against contracting out unless the railroad is unable to hire additional employees -- have no precedent in railway labor agreements and would abrogate rights of railroads to contract out work in certain circumstances under existing agreements. And, (3) the restrictions go beyond the protection of work performed by railroad employees in the past and accordingly would constitute an unfair labor practice under Section 8(a) of the National Labor Relations Act if they were included in a collective bargaining contract subject to that Act, and one that would require railroads to perform work they have neither the equipment nor expertise to perform. Let me deal with each point in greater detail.

1. Subcontracting has been the subject of collective bargaining in the railroad industry for years. Chicago, Burlington & Quincy R. R. v.

Railway Emp. Dept., 301 F.Supp. 603, 606-608 (D.D.C. 1969). More specifically, the conditions under which contracting out is and is not permitted are regulated by railway labor agreements. Generally, contracting out is permitted by contracts with the Maintenance of Way and Shopcraft employees in a number of different kinds of situations, such as (1) where the work is the kind of work which because of its nature or scope has not customarily been performed by railroad employees in the past; (2) where the present workforce is inadequate to perform the work, (3) where the work requires use of specialized machinery which the railroad does not have, or (4) where the work requires managerial or supervisory expertise which the railroad does not have.

Moreover, the provisions in the bill constitute a radical departure from principles established by Congress in 1976, when it enacted the 4-R Act. In that Act Congress in effect accepted the recommendation of both rail labor and management that subcontracting in connection with rehabilitation projects should be governed by collective bargaining and existing collective bargaining contracts.

No one has explained why it is necessary to remove the circumstances in which subcontracting is permitted from the realm of collective bargaining and to regulate them by Act of Congress.

2. Moreover, the restrictions that would be imposed by the bill are inconsistent with those that have been established by contract in the railroad industry. As stated above, existing collective bargaining contracts permit contracting out where that has been customary in the past or where the present work force is inadequate or the work requires specialized machinery or expertise which the railroad does not have. The bill would superimpose an additional requirement -- inability to hire the necessary work force -- and makes no exception for work requiring specialized machinery or expertise. Thus it would

abrogate the railroads' right under existing collective bargaining agreements to contract out certain work. Again, no one has explained why it is necessary for Congress to tamper with existing collective bargaining contracts in this fashion.

But more, the provision would have the incongruous result of imposing upon new operators much greater restrictions than those that had been applicable to the abandoning railroad, even though the new operator will presumably be less able to live with those restrictions.

3. The restrictions would make it impossible in many situations to operate the branch line. For example, since the provision applies to "all work in connection with the operation of services on such line", apparently it extends to the repair of cars and locomotives. And since the unavailability of repair facilities and equipment is not a justification of subcontracting under the provision, no operator that did not own a fully equipped heavy repair shop could operate a branch line. They would also have to own, for example, all of the specialized and extremely expensive equipment necessary to clear wrecks -- equipment that many railroads do not own today. And so, too, with respect to specialized track and bridge construction equipment. It is the unavailability of this type of equipment that is the most typical reason for the subcontracting of track and bridge work by existing railroads.

4. Finally, by prohibiting subcontracting of any work which cannot be performed by the existing work force unless additional employees cannot be hired to perform it, the bill would reach out beyond work which has been performed by railroad employees in the past, work which is "fairly claimable" by such employees, and would secure work which customarily has been subcontracted in the past. As the Supreme Court has held, such a provision in a collective bargaining agreement subject to the NLRA is an unfair labor practice under

Section 8(a) of that Act, 29 U.S.C. 158(e). National Woodwork Manufacturers Ass'n v. N.L.R.B., 386 U.S. 612 (1967). For Congress to enact such a requirement as an Act of Congress flies in the face of Congressionally-established labor policy that has been settled for years.

III. Maintenance of existing collective bargaining agreements, employment and working conditions.

A third feature of the labor protection provisions in the bill that deserves careful scrutiny is the provision requiring the operator of a federally assisted line to agree to continue and maintain "the collective bargaining agreements, employment, and working conditions in effect on such line," with such modifications as may be agreed to by the operator and the labor organizations. This provision has a number of thoroughly undesirable consequences:

1. First, the provision amounts to compulsory arbitration by legislation -- a step that the Congress has avoided except in cases of compelling national need. It amounts to compulsory arbitration because there is no point to the provision if the parties are willing to adopt the terms of the old collective bargaining agreement, and therefore the only purpose of the provision is to compel an unwilling party to accept an entire labor contract. It is unusual, to say the least, to find unions extolling the merit of compulsory arbitration.

2. Second, the result of this compulsory arbitration would be contrary to the public interest because of the terms of the agreements that would be fastened upon the operators of branch lines. I am reluctant to discuss this matter in detail because the railroads and the unions are at this very moment negotiating new collective bargaining agreements. But in view of the proposed legislative provision, I am obliged to at least outline the nature of the problem.

In deciding whether to impose terms upon an unwilling party, surely the Congress would want to be fully informed as to the character of those terms. If, for example, the terms included substandard wages, presumably the Congress would refrain from endorsing those terms.

Railroad contracts, I can assure you, do not include substandard wage provision. To the contrary. Railroad wages are high -- higher, I am sure, than short line operators of these branch lines would have to pay in many cases.

In addition, railroad contracts contain a broad range of restrictions on managerial discretion -- so-called "work rules". In general, these rules prescribe how many employees must be used and what sort of work they are to perform. I am saying nothing new when I note that the railroads for some years have maintained that these work rules unduly curtail productivity, or, to put it differently, unnecessarily increase costs and impede service. And it is a matter of public record that every neutral body that has ever examined these rules has come to the same conclusion. This includes the Presidential Railroad Commission appointed by President Kennedy, which devoted a year to this problem; the National Arbitration Board established pursuant to legislation in 1963; dozens of local arbitration boards also established pursuant to that legislation; and several Presidential Emergency Boards appointed under the Railway Labor Act.

By requiring the operator of the branch line to abide by all of these provisions of the old contract, the proposed provision would subject that operator to many of the costs that led to the necessity for abandonment in the first place. Unless the operator can be freed from some of those costs, the line will continue to be operated on an unprofitable basis. That means that as soon as the subsidy ends, the line will have to be abandoned. As we

understand it, the purpose of the legislation is to mske it possible to rehabilitate and operate these properties on an economically sound basis, not to continue their operation in circumstances that will require either a permanent drain on public funds or ultimate abandonment. Nor is it realistic to suppose that labor would agree to contract modifications in order to help reduce costs. Such modifications would constitute precedents for other negotiations.

As I noted at the outset of my remarks on this particular issue, I have not gone into detail with respect to the work rules dispute between railroad management and the unions simply because I do not wish to embarrass the current negotiations. But I certainly do suggest that Congress should not place its imprimatur upon these work rules, or any other features of railroad labor contracts, without examining them thoroughly to see if it would indeed be in the public interest to underwrite these rules with taxpayers' money.

2. Moreover, the provisions in the bill not only require the operator to continue and maintain existing collective bargaining contracts, but also to continue and maintain "employment...." That would appear to impose a job freeze, or, at a minimum, a requirement that the operator continue to employ those employees employed on the line prior to the rehabiligation project. Thus, the bill would freeze precisely those costs which must be reduced if the line is ever to be operated without a subsidy.

This represents a sharp departure from the kind of protection required by Congress in the past. To begin with, the purpose seems to be to sbift to the new operator protection obligations that are imposed on the abandoning carrier by existing legislation. Beyond that, in the past Congress has ordinarily required only compensatory protection and has specifically rejected job-freeze requirements. Maintenance Employes v. U.S., 366 U.S. 169 (1961). To be sure, in the 3-R Act, enacted in 1973, Congress departed from

that pattern of protection and imposed attrition-type protection because such protection was already required by the merger protection agreements into which the northeastern railroads had entered. However, Congress did not intend that action to be a precedent for imposition of attrition protection elsewhere, and the collapse of the northeastern railroads is reason enough not to follow any such precedent. Accordingly, when Congress enacted the 4-R Act in 1976, instead of requiring attrition protection it amended the Interstate Commerce Act to require compensatory protection of the kind customarily ordered by the Commission in the past. There is no reason at all to reverse that decision now.

3. Finally, the provision requiring an operator to assume previous collective bargaining agreements and to preserve existing employment and working conditions would require operation of the federally assisted branch line as virtually a separate entity. This will certainly be true where properties formerly owned by one carrier are to be rehabilitated and operated as part of a different carrier's system. In that situation, it is desirable for the carrier that operates the branch line to be able to operate it under agreements applicable to his entire system. Congress recognized this in Section 504(d) of the 3-R Act, which directed Conrail and the unions to negotiate system-wide agreements. Under this bill, however, the branch line would have to be operated under the agreements of its former owner, losing the possibility of conducting the operation of the line with other operations of the acquiring railroad.

Conclusion

In sum the labor protection provisions of the bill should be eliminated. Those provisions would create a kind of closed shop for certain railway labor organizations not only with respect to work performed by members of those organizations in the past but also with respect to work they have never performed,

work which existing collective bsrgaining contrscts give the railroads the right to contract out. They would thus abrogate the railroads' rights under existing collective bargsining contracts and aubstitute an Act of Congreaa for collective bargsining with respect to contracting practices, s mandatory subject of bargsining under numerous court decisions and an historical subject of bargsining in the rsilrosd industry. They would saddle federslly-assisted projects which csnnot be performed by the railroads themselves with the costs of duplicative penaion and unemployment insurance plans for which the subcontractors' employees will never qualify snd from which they will not benefit. They would saddle those employees with representstion by railway lsbor organizations snd with the obligation to join and pay dues and initistion fees to rail orgsnizstions, regardless of the employees' present labor representation and union membership. They would require thoae employeea to work under railway labor agreements instead of their own. By imposing s job freeze snd requiring operstors of federally sssiated projects to assume existing collective bsrgaining contracts and to preserve exiating working conditions, they would ssddle these projects not only with the costs that led to the proposal to absndon the property in the first place but with added non-productive protection costa, thua lesding to the need for a perpetual federsl subaidy if the properties continue to be operated.

There hss been no showing of any need for these provisions.

B. LOCAL RAIL SERVICE CONTINUATION: TRACKAGE RIGHTS.

H.R. 9398 and the October 3, 1977 Draft were preceded by a whole series of bills dealing with related issuea. Among those bills were H.R. 3672, H.R. 6739, H.R. 6792, H.R. 7370, H.R. 7486, H.R. 7715, H.R. 8172, H.R. 8393, snd H.R. 8420. A number of the sbova bills proposed the amendment of the Dapartment of Transportation Act snd the Regionsl Rail

Reorganization Act relating to federal assistance for local rail service continuation and amendment of the Interstate Commerce Act relating to an award of trackage rights as a condition of abandonment.

On July 27, 1977, Mr. Richard M. Freeman, Vice President-Law of the Chicago and North Western Transportation Company, appeared before this Subcommittee on behalf of the railroad members of the Association of American Railroads and testified on the above bills. That testimony accurately reflects the industry's positions on the matters discussed and is attached to my statement as an appendix. I will not repeat what was stated for the record at that time.

However, while we took no position on the last paragraph of Section 3 of H.R. 8393, which is similar to the last paragraph in Section 3 of H.R. 9398 and Section 102 of the October 3, 1977 Draft, setting forth a requirement that financial assistance programs shall include as a minimum the upgrading of track to Class II standards, questions have now been raised as to whether there should be any statutory standard in this regard. It would be better, we believe, to leave flexibility in the administrative agency on a case-by-case determination.

Mr. Freeman, in his July 27, 1977 testimony, clearly stated the industry's opposition to the provision permitting the Interstate Commerce Commission's award of trackage rights to another railroad or state or political subdivision to operate over an abandoned line and over other lines of the abandoning railroad as a condition of abandonment. This provision appears in Section 13 of H.R. 9398 and Section 303 of the October 3, 1977 Draft in slightly modified form. While we reiterate our opposition to any statutory provision calling for the authorization of trackage rights to other railroads, states, or political subdivisions, we do prefer the

modified provision over that contained in Section 10 of H.R. 8393.

The imposition of train operations over another railroad's lines by a holder of trsckage rights (another railroad, or a state or political subdivision) could give rise to problems of operating safety. Train operations over a railroad system are the responsibility of the unified management of the carrier owning the system. Its management prescribes operating rules in furtherance of safety and efficiency. Its employees have experience in operating under those rules, and they also have seasoned knowledge of the lines and the condition of such lines on their own system. The owning carrier fixes the qualifications of its own operating employees. All of these controls and safeguards could well be sbsent with respect to a new short line or a state or political subdivision thst would operate under trackage rights over lines of an abandoning carrier. A commingling of operations of the trains of the owning carrier and the holder of trackage rights imposed on the owning line by the Interstate Commerce Commission could give rise to confusion and an absence of centralized control that could imperil safety.

In addition, the limiting condition in the pending proposals -- that such trackage rights shall be granted only where they are required solely for purposes of providing freight service which would no longer be available due to issuance of authority permitting abandonment or discontinuance -- would be virtually impossible to enforce by the abandoning road. What would that road do when a holder of trackage rights arrives with a train of freight cars to be hauled over its lines -- main line or branch lines? How would it determine that each of the cars was entitled to move on its lines solely in order to provide service at some other place where freight service is no longer available because of abandonment or

discontinuance? How many employees -- and what kinds of employees -- of the abandoning railroad would be needed to police the use of such trackage rights to protect against unauthorized diversions of traffic from the abandoning railroad? The pending proposals do not assure an abandoning railroad that the trackage rights granted over its lines would not be abused. The relationship between the holder of trackage rights and the abandoning railroad with respect to operations over unabandoned lines of the latter would be rife with potential disputes and litigation.

A provision added to H.R. 9398 as Section 4 and appearing as Section 102(d) of the October 3, 1977 Draft, but not found in H.R. 8393, adds an additional category of rail lines (relating to agricultural and fossil fuel locations) to be described (with detailed cost figures and other accounting data in the case of H.R. 9398) in each railroad's diagram of its transportation system under Section 1a(5)(a) of the Interstate Commerce Act. We, of course, recognize the importance of agriculture and fossil fuels to our nation, but we are concerned about the burdensome expense which would result from having to make detailed cost analyses on these additional lines as required under H.R. 9398.

C. CORRECTIVE ACTION PROGRAMS.

Another new section upon which the AAR has not previously testified is Section 6 of H.R. 9398 and Title II of the October 3, 1977 Draft, relating to Corrective Action Programs. This concept is altogether new and is so complex that the railroad industry is not prepared to take a position without having further opportunity to study it. Indeed, this provision is a good example of why we suggest that all interested persons be given more time to review that which is being proposed.

D. PROPOSALS BEFORE SENATE.

I would like to take this opportunity to comment briefly on certain proposals that appear in the Senate bill, S. 1793, the Railroad Improvement Act of 1977, and the Staff Working Draft of S. 1793 bearing date of October 8, 1977, which do not appear in H.R. 9398 or the October 3, 1977 House Draft. The scope of these hearings has been described as including any and all proposals now being considered, and I offer the industry's thoughts on the Senate proposals not now contained in the House legislation in an effort to supply this Subcommittee with as comprehensive a statement as may be useful.

1. Reporting and Accounting System.

Section 5(b) of S. 1793 and the same section of the Senate Staff Working Draft dated October 8, 1977 would amend Section 20(3) of the Interstate Commerce Act with regard to prescription by the Interstate Commerce Commission of a uniform accounting and reporting system for railroads, and more particularly as to determination of reil carriers' costs in connection therewith. We do not oppose the proposed amendment provided it be made clear, through the legislative history or otherwise, that the Commission will not be authorized to require the regular reporting of data in order to obtain costs particularized for less than system operations and further, that the language requiring the Commission to prescribe a rigid "format" for reporting cost data be removed.

2. Rates on Recylcables.

Section 7 of the Staff Working Draft of October 8, 1977 would reduce rates on many recyclable materials to an artificially low level. The railroads vigorously oppose any such legislation.

The ICC has just completed extensive hearings which lasted for

many weeks and involved testimony of thousands of pages, all concerning the reasonableness and lawfulness of rates on recyclables. Though some adjustments were ordered, the rates were largely found to ba justified. The recycling industry is challenging this decision in two suits which are pending in the U. S. Court of Appeals for the District of Columbia Circuit. A crucial finding by the Commission was that changes in freight rates usually do not affect recycling. In other words, reductions in freight rates only increase the recyclers' profits without benefit to the public. Indeed, recent rate cuts on recyclables, such as a ten percent reduction on wastepaper in the South last year, have been designed to meet truck competition. Increased recycling, as a result of the rate cut, is very unlikely. The present bill could seriously reduce railroad revenues from recyclables and stimulate demand for similar treatment of many other commodities which are socially affected. The supposedly offsetting subsidy provisions appear to be unworkable.

If Congress believes that economic incentives for recycling are necessary, it would involve far less red tape to make the subsidy payments directly to the recyclers. Congress should refrain from trying to redistribute revenue from one troubled industry to another.

Finally, I should point out that the proposed recycling provision is technically unworkable. Many of the computations contained in the legislation are not routinely carried out and would require expensive and complex studies likely to trigger further litigation and still further demands for legislation. The recycling proposal has nothing to recommend it and should be eliminated.

3. Department of Agriculture Study.

Still another section of the Senate Staff Draft of October 8, 1977 would require the Secretary of Agriculture, in consultation with the Secretary of Transportation and the Interstate Commerce Commission, to prepare a report with recommendations for a railroad transportation system adequate to meet the needs of the agricultural industry. The report would identify any impediments in meeting those needs and would include recommendations for legislative or other action necessary to remove those impediments. Revision of the report would be required at least every five years. The railroads oppose this provision on the grounds that it is unnecessary. The Secretary of Transportation, under Section 901 of the 4-R Act, is already required to prepare a comprehensive study of the rail system. Section 307 of the House Committee Print of October 3, 1977 proposes the merger of the 4-R Act's Section 901 study with the Section 504 Capital Needs Study. Provision is made for public comment. Agricultural interests as well as any other interests will be given an opportunity to state their views at that time.

This concludes my testimony. I will be glad to try to answer any questions.

Appendix

STATEMENT OF RICHARD M. FREEMAN
IN BEHALF OF THE ASSOCIATION OF AMERICAN RAILROADS
ON
H.R. 3672, H.R. 6739, H.R. 6792, H.R. 7370
H.R. 7486, H.R. 7715, H.R. 8172, H.R. 8393,
H.R. 8420, and related bills

BEFORE THE
SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
U.S. HOUSE OF REPRESENTATIVES
July 27, 1977

My name is Richard M. Freeman. My business address is 400 West Madison Street, Chicago, Illinois 60606. I am Vice President-Law of the Chicago and North Western Transportation Company (CNW). I appear today in behalf of the member lines of the Association of American Railroads (AAR) with headquarters in Washington, D.C. I am Chairman of the AAR's Rail Services Group. The railroads which are members of this Association operate 96 percent of the trackage, employ 94 percent of the workers, and produce 97 percent of the freight revenues of all railroads in the United States. My company, which is a member of the AAR, currently operates 9,851 miles of railroad, and has 962 miles pending before the Interstate Commerce Commission (ICC) for abandonment, 984 miles listed in ICC Category 1 (lines subject to abandonment within three years) and 313 miles listed in ICC Category 2 (lines potentially subject to abandonment).

There are a number of proposals which have been made over the last several months to change the federal

assistance program applicable to branch lines. After giving consideration to these proposals, the Association of American Railroads is pleased to have an opportunity to state the rail industry's views.

It is our understanding that the purpose of the federal five-year branch line assistance program was to cushion any effects of branch line abandonment or service discontinuance on local communities and shippers. The general approach was to provide a declining level of federal assistance from 100% to 70% over the five-year period for branch lines which the Interstate Commerce Commission had authorized for abandonment or discontinuance. The assistance for a branch line could be either (1) in the form of payments to the railroad to make up the difference between revenues and avoidable costs plus a reasonable return, to rehabilitate the line, or to purchase the line; or (2) in the form of payments to those adversely affected for easing the costs of lost rail service in a manner less expensive than continuing rail service. The legislative changes suggested in the program have dealt with the former -- that is, payments to railroads -- and have not dealt with the latter alternative. We have been disappointed that the Department of Transportation has not encouraged the approach of payments to communities and shippers to ease the loss of rail service where that is a cost effective approach.

Many of the proposed changes involve matters of interest primarily to the states and, while we find the proposals reasonable, we believe that the rail industry has neither adequate knowledge nor expertise to express an opinion useful to this subcommittee. In this category are proposals to modify the timing of the reduction in the federal share of rail assistance costs to match the federal fiscal year, permit states to carry over in-kind benefits, change the allocation of federal funds among the states, give discretion to the states to determine which projects should be federally financed, and increase the monies assigned for planning and lengthen the period during which those monies are available.

There are substantive proposals, however, in which we believe this subcommittee may wish to hear from our industry.

One proposal would make federal funds available in the form of payments for operating assistance for lines which are before the Commission for abandonment or which have been designated by the railroads as abandonment candidates, rather than as under the present law, only for lines which have been authorized for abandonment. (Section 3 of H.R. 7370, H.R. 7715, H.R. 8172 and H.R. 8393). The existing provision has a salutary effect on all parties, including the governmental agencies. Since federal subsidy monies

21-884 O - 78 - 22

cannot be made available until the Commission has authorized abandonment, everyone involved has an incentive to expedite the decision-making process. We are reluctant to see that incentive removed, given the inherently slow pace of that process. If the decision-making process is properly expedited, there is little or no need to provide the interim operating financial assistance, pending the decision. Accordingly, we oppose this change.

There is another proposal which would provide financial assistance for a line as to which the Interstate Commerce Commission has concluded that the public interest and necessity does not permit abandonment, but the line is losing money (H.R. 6871). Financial assistance would cover both operating deficits and rehabilitation expenses, with the federal contribution to such assistance beginning at 100% and declining annually to 60% over 5 years. Although not entirely clear, we believe that the drafters of this proposal intended to make the carrier whole, with the states or financially responsible local interests making up the non-federal share. With this understanding, we support this proposal. It would cure the basic inequity of requiring other shippers using rail service over the balance of the carrier's system to make up deficits on lines of railroad which do not pay their way.

Another proposal would permit the Interstate Commerce Commission to authorize another railroad the right to operate over an abandoned line and over other lines of the abandoning railroad (Section 10 of H.R. 7370, H.R. 7715, H.R. 8172, H.R. 8393, and H.R. 8420). Such a provision would encourage the establishment of short lines which could operate not only over the abandoned lines, but over other lines of the abandoning railroad. There is no public need for short lines to operate over other lines of a trunk-line railroad. On the contrary, such operations could only create substantial operating confusion which would not serve the public interest. For good reason, the Congress has heretofore refrained from giving this power to the Commission, except in limited terminal and related areas where that power could facilitate coordination of operations (Sec. 3(5) of the Interstate Commerce Act). The proposal here would not serve to facilitate efficient service, but rather would interfere with efficient service. For this reason, we oppose this proposal.

Finally, the rail industry believes that the regulations of the Interstate Commerce Commission designed to implement the abandonment provisions of the 4-R Act are not consistent with the provisions of the 4-R Act. The adversely affected railroads have brought an action in the U.S. Court of Appeals for the Seventh Circuit to have the offending regulations set aside. It is inappropriate, however, to bring those issues before this subcommittee until the courts have had an opportunity to rule on those issues.

STATEMENT OF ROBERT E. LOOMIS

Mr. LOOMIS. I am the assistant vice president of labor relations for the Southern Railway System. In that capacity, I participated in the negotiations with the labor organizations in seeking the agreements that were needed to satisfy the requirements of the 3-R act of 1973 for Southern's proposed acquisition of the Delmarva Lines of Penn Central.

I regret I can't honor your request that we not mention Delmarva again, but that is my area of expertise.

Mr. ROONEY. It is quite all right.

Mr. LOOMIS. The labor provisions of H.R. 9398 would have doomed that project from the start, and there would have been no such negotiations had those labor provisions been part of the 3-R act conditions.

Even today, the operation of those parts of the Delmarva Lines that were not transferred to ConRail are feasible only because of cost-saving practices and State subsidies. The labor conditions contained in H.R. 9398 will increase that cost to the point that their continued operations will probably not be feasible. These conditions even foreclose the shippers, themselves, from trying to maintain a rail connection with ConRail or other profitable railroads. A case example might help us see the effect this could have.

The south end of the Delmarva operations are in the city of Norfolk, Virginia. The Penn Central had a small yard in Norfolk that gathered cars from connecting lines to ship via barge across the Chesapeake Bay to the Delmarva Peninsula. That yard and a few miles of Penn Central track in Norfolk also served a few industries. Should H.R. 9398 cause the succeeding operator, the Virginia and Maryland Railroad Company, to abandon operations in Norfolk, those shippers would naturally look to other railroads covering that city for rail service, such as the Southern, the Norfolk and Western or the Family Lines. While any one of these carriers could absorb the work of serving these industries with their existing personnel and equipment, the conditions attached to such operations by H.R. 9398 would effectively bar any such consideration. I can assure you that Southern would be completely unwilling to offer to serve such industries if the legislation you are considering required that operation to be subject to the former Penn Central labor contracts, subcontracting conditions that are totally foreign to our own labor agreements or the absorption of unneeded personnel.

This is only one small example of the adverse impact that would be realized if the labor conditions contained in H.R. 9398 were allowed to become law. In reality, this example would be repeated time and again throughout the nation whenever these labor conditions became effective due to line abandonment.

On behalf of Southern Railway, I join Mr. Dempsey in urging the committee to eliminate the very objectionable labor provisions in H.R. 9398.

Mr. ROONEY. Thank you, Mr. Loomis.

Mr. DEMPSEY. Mr. Chairman, I would just like to say a few words on one or two or three other provisions here. We have testified with respect to some of the bills that have been considered before with

respect to local rail service continuation rights, and I have attached a copy of Mr. Freeman's testimony on behalf of the industry on those matters, which I certainly don't want to repeat [see p.329].

I will say that with respect to one matter we didn't mention before, namely, the requirement that branch lines be upgraded to class 2 standards, we join those who today have opposed imposing that as an inflexible standard. We think it is perfectly appropriate to leave that to case-by-case determination.

As to the provision which would permit the Interstate Commerce Commission to award trackage rights to another railroad or State to operate over the lines of the abandoning railroad, I repeat what we said before, and that is that we oppose that provision because it seems to us to present some rather substantial problems with respect to safety and efficiency of operation. But I think I will defer any further explanation on my part and rely on my statement, because there will be a witness from the Boston and Maine who will discuss that in more detail.

Corrective action programs present issues that are new to us. These proposals have been hammered out in discussions by other parties. They are very complex, and we simply have not had an adequate opportunity to examine the possible consequences of these proposals, and, accordingly, we simply are not prepared to take a position on them today. We think this is a good example of the difficulty of coming to grips with so many controversial, and if not controversial, complicated matters on such short notice.

We think it would be far better—if there are some things that have to be done—I am not prepared to say whether there are or not, but if there are any matters that have to be taken care of immediately, we would suggest those matters be taken care of and these other matters that reach so broadly, be considered in a more deliberate way.

There are some proposals that have been considered in the Senate which I do discuss in my statement. They are not in any of the drafts so far as I have seen in the House. I do discuss them in the event that they might be considered by the subcommittee, and I will not detail my remarks at all.

I just note quickly that we are opposed to the proposals that have surfaced from time to time to require the railroads to give artificially reduced rates to recyclables. That is not to say there may not be some public interest in providing incentives to the recyclable industry. I don't know anything about that. But if there is such a public interest, we would certainly hope that the subsidy come from some industry other than the railroad industry. We just can't afford it.

The Congress really took care of this last year in the quad-R act and directed the Interstate Commerce Commission to examine the whole matter. The Commission held prolonged hearings on recyclable rates. It held that most of them were justified. It required some modification in some, and now the recyclable industry has those matters in litigation, and we would suggest that that really is all that ought to be done about it, unless, as I say, the Congress thinks there is some need for some other form of subsidy.

There has been a suggestion made that there be a further study of the railroad industry by the Department of Agriculture, with a

particular eye toward agricultural interests, but the quad-R act requires the Secretary of Transportation to make a full-fledged study, and I am sure it would embrace all matters having to do with agriculture, so we would oppose that provision as well.

For the remaining provisions, Mr. Chairman, I rest upon my prepared statement.

Mr. ROONEY. I believe in your testimony somewhere, perhaps it was an observation, but I believe you said with regard to the railroad retirement that the bill would disturb the collective bargaining agreements, but would rather merely increase membership.

Mr. DEMPSEY. Could you give me a citation there?

Mr. ROONEY. "As I said, with regard to railroad retirement, the bill would disturb the collective bargaining agreements but rather merely increase membership."

Mr. DEMPSEY. It would disturb collective bargaining agreements?

Mr. ROONEY. Yes.

Mr. DEMPSEY. Well, it would surely do that, because it would superimpose the new collective bargaining agreement over the old one, if we are talking about railroads. Frankly, I don't remember making a statement that would identify with that. I am having some trouble, I am afraid.

Mr. ROONEY. Go back to page 5. "Therefore, the committee said future changes——

Mr. DEMPSEY. Oh.

Mr. ROONEY. Paragraph 1.

Mr. DEMPSEY. The one that begins, "This committee took that very position"?

Mr. ROONEY. Right.

Mr. DEMPSEY. Oh. I understand. Why would the bill be inconsistent with the notion that future changes should arise out of collective bargaining?

Mr. ROONEY. Yes.

Mr. DEMPSEY. Well, to begin with, of course, it is a change with respect to tier II, because it will put a new category of employees under tier II.

Now, you may say, well, what do you care about that? Won't that just increase the contributions to the railroad retirement system and doesn't that advantage you?

Mr. ROONEY. I think you also said that employees would have to pay railroad retirement on tier II. I thought it was the employers.

Mr. DEMPSEY. The employees would have to pay tier I railroad retirement taxes, but really they would get credit under social security if they went back to a social security-covered enterprise within a prescribed period of time.

Mr. ROONEY. Three years.

Mr. DEMPSEY. I think so. The employers, however, are under a different category. I don't think they would have to pay tier I and social security, but they most assuredly would have to pay tier II taxes, so that would be an extra 11 or 12 percent of taxable payroll. So that is the consequence to the employers.

Now, the thing that is disturbing about that from our perspective is that it would make subcontracting very difficult. I have to say quite candidly if I could be persuaded that this, I must say, raid on

the treasuries of subcontractors would substantially alleviate the financial problems of the railroad retirement system, I might take a different view of this, but I don't think it would have any measurable impact at all on the financial system.

I do feel it would have a very significant impact on curtailing necessary subcontracting, and that is my interest in it.

Mr. ROONEY. Supposing we would take the subcontracting provision out of H.R. 9398, could you then support it?

Mr. DEMPSEY. No, for the reasons that I present in the second part of my statement.

Mr. ROONEY. Thank you very much.

Mr. DEMPSEY. I could say if the Congress followed the precedent it established last year in the quad-R act by providing in substance that subcontracting should be governed by the collective bargaining agreements of the respective parties, I would have no difficulty with that.

Mr. ROONEY. Thank you very much.

Mr. DEMPSEY. Thank you, Mr. Chairman.

Mr. ROONEY. The next witness will be Mr. John L. Sweeney, vice president of government affairs, Consolidated Railroad Corporation. You may proceed, Mr. Sweeney.

STATEMENT OF JOHN L. SWEENEY, VICE PRESIDENT, GOVERNMENT AFFAIRS, CONSOLIDATED RAIL CORPORATION, ACCOMPANIED BY PAUL CUNNINGHAM, SPECIAL COUNSEL, CONRAIL

Mr. SWEENEY. Thank you, Mr. Chairman. I am joined today by Mr. Paul Cunningham, special counsel for ConRail, I think known to you from his previous activity with the Senate Committee.

Mr. ROONEY. Welcome to the committee, Mr. Cunningham. It is nice to see you on this side of the Hill for a change.

Mr. CUNNINGHAM. Thank you.

Mr. SWEENEY. Mr. Chairman, I have a short statement, and if you don't mind, I would like to read it in full, bcause I am going to touch on only two points in the bill.

I would like to begin by addressing the corrective action program that is proposed in H.R. 9398. As you know, ConRail has recently been the brunt of considerable criticism regarding the administration of our branch line program. It is alleged that we are planning the abandonment of many thousands of miles of branch lines. This has no basis in fact.

As Ed Jordan has made clear many times, it is our policy to seek every other possible means of eliminating the losses we suffer on a number of our lines before seeking abandonments. We are presently considering the abandonment of a maximum of 70 lines where there are major losses. As you know, the law prohibits us from abandoning any lines prior to April of next year, and we expect that in relation to the number of light density lines still operated within the ConRail system, we will be petitioning for abandonment of very few lines next spring. I think Mr. Jordan said the other day before the Government Operations committee that we expect to file for no more than 40.

The corrective action program proposed in the Staff Discussion Draft is strongly supported by ConRail. The conditions for our participation in this positive program are: (1) We are guaranteed a subsidy if we submit ourselves to binding arbitration which would restrict our right to operate the line or to seek abandonment, and (2) we are guaranteed the right to discontinue service under a corrective action agreement if a subsidy is withdrawn. The program assures the full participation of all interested parties and seeks to ameliorate the branch-line problem through a conciliatory rather than present adversary process.

However, while we believe the proposed program has considerable merit, we understand that there is a desire on the part of the administration to offer their own views on the program, although I believe they went rather significantly far this morning in perhaps suggesting they might have changed their original view that they thought there was merit in seeking a process by which a line did not have to be abandoned before it received Federal or State subsidy.

We also know there is concern on the part of the States as to its effect on their overall transportation programs. We would prefer to see the program adopted in the spirit of compromise rather than over the objection of those parties whose cooperation is essential to the success of this program. We, of course, are willing to work with any interested parties to perfect this program so that it can be advanced as quickly as possible by the subcommittee at the appropriate time.

This morning, you made reference to two amendments you propose to add to this bill which are of direct concern to ConRail. The first would require the extension of commuter rail passenger service by ConRail. While we generally support the purpose of this amendment, the Discussion Draft does not adequately protect either our existing rights to discontinue service if a subsidy payment is not made by a subsidizing agency or our right to be ensured that we will be fully reimbursed for capital and operating costs before the institution of a new service. We believe we will be able to reach agreement with the commuter authorities as to proper means of achieving these goals and hope to present you with an agreed to amendment for your consideration in the very near future. We have attached a copy of the bill as it is now being considered in the Senate which we would support if we are unable to reach agreement with the commuter authorities.

Your bill would provide indemnification to ConRail—or to the States or local or regional transportation authorities that subsidize ConRail commuter passenger services—for liabilities incurred for damages to persons or property which are not underwritten by private insurance carriers.

ConRail is now required to operate commuter passenger services pursuant to subsidy agreements for which private insurance is not available to cover certain levels of catastrophic loss. The 4-R act contemplates that ConRail not cross-subsidize the operation of commuter rail services. Thus, the commuter service provisions of the 4-R act require the States or the authorities to bear the costs of any uninsured catastrophic loss.

However, the Rail Services Planning Office has created exceptions to this requirement where a State law or constitution prohibits the State from accepting unpredictable contingent liabilities. Since insurance is not available, we are unable to quantify the present costs of any future liabilities, and therefore the States are unwilling to bear this cost. ConRail is presently operating these services without insurance and without any assurance that the States can cover the losses in case of a catastrophic loss.

Your amendment provides that the United States Railway Association would provide loans to indemnify ConRail for uninsured losses resulting from the operation of commuter services where the Rail Services Planning Office had found that ConRail had made good-faith efforts to secure insurance but had been unable to do so. Presently, ConRail is unable to secure insurance for losses up to $2 million and over $50 million. I might add parenthetically we are able, through a common railroad policy which we have our own separate version of, to protect ourselves for the losses between $2 million and $50 million.

The amendment would also limit the government's protection liability under any such amendment as yours to $50 million per accident.

While accidents of this magnitude are almost unheard of in the commuter passenger business, ConRail would not voluntarily operate these services without assurances from the contracting agency that it would cover all potential costs. Because we are required to operate the service, we should not be required to absorb any uninsurable losses which the States or local or regional transportation authorities are unwilling or are unable to guarantee, and we believe that the provision opposing cross-subsidization in the 3-R and 4-R acts support that view.

Accordingly, we gratefully support your proposals. We hope it can provide for direct indemnification rather than a loan program, which implies an ability to repay the loan that we do not have. The draft we submitted to the staff would achieve this goal.

That concludes my statement.

Mr. ROONEY. Thank you very much, Mr. Sweeney. Who carries the insurance that you now have which includes up to $50 million per accident?

Mr. SWEENEY. It is a syndicate partly comprised of London groups, but also some American carriers.

Mr. ROONEY. And is this on bid, or negotiated?

Mr. SWEENEY. By and large, I believe it would have to be negotiated since it is not the most attractive kind of insurance, and we have had to seek the best possible sources for it.

Mr. ROONEY. How much does it cost?

Mr. SWEENEY. It is a systemwide policy, an astronomical sum. We can get it for you and submit it for the record.

Mr. ROONEY. Mr. Friedman said this morning that you are not opposed to the labor provisions in this bill and you didn't comment in your statement regarding the provisions. Can I assume that this is a fact?

Mr. SWEENEY. Mr. Chairman, I would like to comment as follows on your question: Back in the early consideration of such proposals,

I had discussed with Mr. Friedman a draft which he had at the time, and which he read to me over the phone. That draft, as I heard it—it may be there was miscommunication between Ed Friedman and myself—seemed to parallel section 506 of the 3-R act.

That provision says that the corporation ConRail is prohibited from contracting out work except work which has been traditionally contracted out. And I think under that we have had some problems. We have to go back to the collective bargaining agreements with each one of our unions to determine which work has been traditionally agreed to, to contract out, but in most instances we resolved it amicably and continue to do a significant amount of contracting out on repair, on bridge and tunnel work and the rehabilitation of our system, and we think it would be absolutely unfortunate if that was not maintained.

My comment to Mr. Friedman at the time was such a provision would give us no problems, whatsoever. I did point out, and I think he would acknowledge that I thought it would create significant problems for other groups, the States, our colleague railroads, but that we, ourselves, living with such a provision in the present statute, could hardly oppose its inclusion as it applied to branch lines. That is the picture.

Mr. ROONEY. Thank you very much. I have no further questions. We appreciate your coming here today.

Mr. SWEENEY. Thank you, sir.

Mr. ROONEY. The next witness will be Robert Hirschman, president, H. J. Williams Co., of York, Pennsylvania.

STATEMENT OF ROBERT E. HIRSCHMAN, ON BEHALF OF THE AMERICAN ROAD AND TRANSPORTATION BUILDERS ASSOCIATION ACCOMPANIED BY RANDOLPH RUSSELL, ASSISTANT TO THE EXECUTIVE VICE PRESIDENT

Mr. HIRSCHMAN. I have with me today, Mr. Chairman, Mr. Andy Russell, assistant to the executive vice president of ARTBA.

I have a brief statement I would like to read.

My name is Robert E. Hirschman, president of the H. J. Williams Co. of York, Pennsylvania. We are contractors engaged in construction work of various types. We are deeply involved in transportation programs in Pennsylvania and adjacent States and are concerned with both highway and rail construction.

I am here today representing the American Road and Transportation Builders Association. This is a national association with about 5,400 members concerned with the planning, design and construction of transportation facilities.

We are principally interested in and concerned with the pending legislation, H.R. 9398, as it may affect opportunities in the railroad field for contractors and subcontractors.

This is an extremely important matter in the perspective of the national interest in revitalizing the railroad industry. The quad-R act of 1976 provided substantial Federal support for the rehabilitation and reconstruction of rail lines. Congress has recognized the vital importance of helping the railroads to modernize their physical facilities and improve service.

How can this task be accomplished? One key element, very clearly, is to utilize the capabilities that already exist within the construction industry. The highway/heavy construction industry—devoted to the construction of roads, bridges, dams, airports, and fixed guideways for railroads and public transit—is a highly competitive industry with substantial excess capacity. It is a large and diversified industry, with a large investment in construction equipment. The unemployment rate in the construction industry is about 12 percent.

Historically, the railroad industry has always done a substantial part of its construction work with its own maintenance-of-way labor forces. However, it is not unusual for railroad companies to call on contracting firms for projects of unusual size or complexity as, for example, a major bridge.

As the capital investment program is increased, we feel that it is important that greater reliance be placed on the capabilities that exist within the construction industry. The system of awarding contracts through open competitive bidding is the best assurance that the work will be done efficiently at the lowest possible price.

The alternative is for the railroads to do the work themselves, using their archaic work rules and regulations. This involves not only increasing their own work forces but also purchasing the necessary construction equipment. Developing an in-house capability to handle a temporary expansion of the capital investment program is expensive and duplicative.

H.R. 9398 contains so-called labor protective agreements intended to ensure that State governments or railroad companies maintain all of the prerogatives of the railroad labor unions in carrying out work financed by Federal grants or loans. As a condition for receiving Federal assistance, the State or railroad company must agree not to use outside contractors unless (a) the work is beyond the capability of existing railroad work forces and (b) efforts to hire existing employees are unsuccessful. This provision, in itself, would effectually bar any significant utilization of outside contractors. At the present rate of unemployment, it is highly unlikely that railroads would be unable to employ whatever additional employees might be needed.

However, H.R. 9398 goes even farther. Where work is contracted out, the contractor would be deemed to be a railroad and his employees deemed to be railroad employees, with respect to the pertinent labor agreements.

This is ludicrous on the face of it.

As railroad employees, the employees of the contractor would be covered by the provisions of the Railroad Retirement Act. The contractor would pay railroad retirement taxes, both the tier I taxes, which are equivalent to social security taxes, and the tier II taxes, which provide supplemental retirement benefits for railroad employees. However, very few employees of the contractor would ever benefit from these taxes, because an employee must have 10 years of service before becoming eligible for railroad retirement benefits. Contractors would also be required to contribute to the Railroad Unemployment Insurance Act, even though their employees would not likely derive any benefits from the act.

In the case of a contractor already working under a union agreement, the provisions of H.R. 9398 would essentially require the negotiation of a dual agreement, one with the railroad union and one with the building trades unions or other unions with which he may be affiliated. His employees would be subject to dual union dues.

In short, Mr. Chairman, we are concerned with a provision that would work to the disadvantage of the railroad companies, the contractor and his employees, and the governmental entities involved in the rail rehabilitation program.

Ever since 1966, when Congress passed the legislation organizing the Department of Transportation, both business and government have been working hard to pull together the various pieces of the transportation system. In the last few years, especially, we have been struggling to make the best possible use of energy-efficient transportation facilities. It is absolutely essential that we do this, and absolutely essential that we use our physical and manpower resources efficiently in the rail revitalization program.

Placing artifical barriers to prevent the full utilization of the construction industry is not sensible. We strongly urge that the so-called labor protective provisions of H.R. 9398 be deleted.

We very much appreciate this opportunity to present the views of the American Road and Transportation Builders Association.

Mr. ROONEY. Thank you very much, Mr. Hirschman. I just have a couple of questions.

You say that the contracting industry has substantial excess capacity?

Mr. HIRSCHMAN. That is correct.

Mr. ROONEY. In your judgment, can contractors handle the great volume of railroad work and have available the terms of management capability, equipment fleets, manpower?

Mr. HIRSCHMAN. No question about it. In Pennsylvania, for instance, I don't know of any contractor that has any work in Pennsylvania now. The whole plant is sitting idle, in the highway construction field.

Mr. ROONEY. I used to be the chairman of the Senate Highways Committee many years ago in Pennsylvania, and it was quite active in those days. What has happened?

Mr. HIRSCHMAN. We have had the system where we borrowed ourselves out of existence. Our debt service is now so large we can't match Federal funds, so we have a moratorium on all highway construction until the legislature can decide whether they are going to increase funds so we can have some kind of program. In Pennsylvania, particularly, you have a glut of construction equipment and personnel and management.

Mr. ROONEY. As you know, there are certain special kinds of work involved in railroad reconstruction.

Mr. HIRSCHMAN. Yes.

Mr. ROONEY. And you feel as though there would be no problem with your contractors association handling that?

Mr. HIRSCHMAN. No, there is no problem. In fact, our company right now is doing two jobs for ConRail in bridge rehabilitation, and we have done, prior to that, a considerable amount of work for

ConRail, various types of construction that we have done and hope to continue to do for ConRail.

Mr. ROONEY. Thank you very much. We appreciate your being here today.

Mr. HIRSCHMAN. Thank you.

Mr. ROONEY. Our next witness will be Mr. William J. Rennicke, assistant to the president, Boston & Maine Corporation.

STATEMENT OF WILLIAM J. RENNICKE, ASSISTANT TO THE PRESIDENT, BOSTON AND MAINE RAILROAD; ACCOMPANIED BY RAY B. CHAMBERS, FEDERAL REPRESENTATIVE

Mr. RENNICKE. Good afternoon. I am William Rennicke, assistant to the president of the Boston and Maine Railroad. Accompanying me is Ray Chambers, our Federal Representative from Washington. The Boston and Maine is a class 1 railroad in reorganization with freight revenues in excess of $80 million. The B&M, with its eastern connections, provides the only other competitive route to ConRail in the Northeast.

The Boston and Maine wishes to express its concern about the provisions in the House and Senate bills which would empower the Interstate Commerce Commission to grant trackage rights over the lines of an abandoning carrier for any carrier which becomes the designated operator of a short line on track which has been abandoned.

As the members of the committee may know, this language originated in the State of New Hampshire, which is served by the Boston and Maine. Mrs. Francis Shaine, Director of the New Hampshire State Transportation Authority, testified before the Senate about the thinking behind this amendment. In her testimony she said: "In essence, this would mean that States that have the problem of multiple abandonments, for instance in a pattern like the branches of a tree, could utilize one short line operator's equipment and crews on a number of lines which are connected only by an unabandoned main stem."

As the president of the Boston & Maine, Alan G. Dustin, wrote to Senator Durkin last week, "We understand the desire of the State to operate state-owned branchlines on an efficient and economic basis. We strongly support the concept of the State assistance program which keeps traffic on the rails." However, we are concerned about the language of the trackage rights amendment as it now appears in the House bill. We believe it is unduly broad and could create chaos if it were to be enacted in its present form.

As this bill is presently worded, any designated carrier or State could request trackage rights over the entire line of an abandoning carrier within a given State. This could create serious safety, scheduling and traffic problems.

For the most part, those who have been designated to operate branch lines do not have long experience in railroading. Many of their crew members are relatively inexperienced and, while competent to operate engines on light density lines, they have no training in reading the signals and operating on heavily used main line. There are no provisions in the language to require that designated

operators be fully trained in order to meet the safety standards set by the Federal Railroad Administration or by the railroad which operates the main line.

Second, under labor agreements which are standard throughout the industry, the abandoning carrier might be liable to pay its own employees for any freight hauled by another carrier across its lines. Under the seniority district concept, union members might make the argument that they have a right to payment for freight handling within their seniority district. They would be particularly likely to make such an argument in the case of freight which they had previously handled. They could come to the abandoning carrier with a request for penalty payment and thus any freight movement which might occur as a result of this amendment could involve double payment for labor.

Additionally, there is no provision in this legislation to indemnify the carrier against the costs of property or personal injury damage which might be caused by derailments or other accidents which result from the trackage rights given to another carrier.

We also fear that normal schedules might be interrupted by sporatic service with unreliable equipment of the shortline on our lines.

Frankly, Mr. Chairman, we are somewhat puzzled by the appearance of this language in the legislation. I know of no situation in the State of New Hampshire—which has been the primary sponsor of this legislation—where this legislation might apply under the situation which Mrs. Shaine has described. Further, there has never been an approach to the Boston and Maine to seek to work out any kind of trackage rights for State-operated lines. We believe that the ICC under present law already has the power to require limited trackage rights as a condition of its abandonment order.

We on the Boston and Maine believe that trackage rights can be negotiated under present law to allow the equipment and crew of one branch line to have access to another nearby branch line so that the equipment and crew can be used most efficiently. As in all present trackage rights negotiations, the questions of safety, scheduling and indemnification and trackage payments must be worked out between the carriers and must be specified in the agreement. The Boston and Maine is willing to enter into such negotiations with the State of New Hampshire. We believe that present law is adequate to cover the kind of trackage rights that the State has testified and stand ready to enter into negotiations at any time.

If it can be illustrated that there is some need for additional statutory language, we would not be opposed to language which made it very clear that the purpose of the language was to allow the awarding of restricted trackage rights solely for the purpose of moving locomotives, cabooses and other non-revenue creating rail equipment and crews between lines operated by a designated carrier. The language of the legislation—or of the ICC order—should include just compensation for trackage rights, indemnification and safety requirements as well.

While we would not be opposed to such limited language, we are deeply concerned at the implications of the trackage rights language now contained in the House bill. It is so ambiguous that

States could use it to create State-owned, statewide rail systems, taking traffic from main stem carriers and further eroding the health of railroads which are already in deep financial trouble. We believe it has been the purpose of the Congress to preserve the free enterprise railroad system and that the language in this bill moves in the wrong direction.

Mr. Chairman, I am submitting to the committee for its consideration a copy of the letter which Alan Dustin, President of the Boston and Maine, wrote to Senator John Durkin last week. This letter further discusses the specific New Hampshire situation and underlines our opposition to the broad language of the trackage rights provision in H.R. 8393.

Mr. ROONEY. Without objection that letter will become part of the record.

[The letter referred to follows:]

BOSTON AND MAINE CORPORATION

IRON HORSE PARK
NORTH BILLERICA, MASS.

The Honorable John A. Durkin
United State Senate
3230 Dirksen Building
Washington, D. C. 20510

Dear Senator Durkin:

Our Washington Representative, Ray Chambers, has told me of your interest in legislative language proposed by the State of New Hampshire to provide trackage rights over an abandoning carrier to a designated operator of an abandoned branch line.

As I understand it, Mrs. Francis Shaine, Director of the New Hampshire Transportation Authority, testified before the Senate Commerce Committee that the proposed amendment was for the following purpose:

> "In essence, this would mean that states that have the problem of multiple abandonments, for instance in a pattern like the branches of a tree, could utilize one shore line operator's equipment and crews on a number of lines which are connected only by an unabandoned main stem."

The Boston and Maine Railroad understands the desire of the State to operate state owned branchlines on an efficient and economic basis. We strongly support the concept of the state assistance program which keeps traffic on the rails and can make a contribution to the overall health of the railroad industry. We are certainly willing, under provisions of existing law, to enter into negotiations with the State for trackage rights to connect branch lines so that one crew, its engine and caboose could be used on several branchlines. I should note that I know of no existing circumstance in New Hampshire where the described situation would be applicable. Further, there has never been an approach by the State to the Boston ahd Maine to work out such an agreement.

However, at the State's request, the Boston and Maine will be willing to enter into such negotiations directly or through your good offices. We see no reason why reasonable trackage rights could not be negotiated by two willing parties. In fact, even failing a negotiated two party agreement, it would appear that the very new authority requested by New Hampshire already exists. There is no reason why the Commission could not order such trackage agreements as a condition of abandonment. Obviously, any such rights should include responsibility on the part of the designated carrier to meet safety requirements, indemnify against property and personal injury claims, protect from duplicative labor costs, and provide adequate compensation for the trackage rights.

Page two --

The Boston and Maine is ready to provide a freindly connection for all freight from designated carriers, and is ready to handle the freight in the most expeditious possible manner. We feel strongly that agreement could be reached and pledge to enter into any negotiations in full good faith.

As indicated, we see no reason for new legislation. However, if it can be demonstrated that legislation is necessary to meet the situation that Mrs. Shaine described in her testimony, we will be glad to work with your office in drafting a proposal. We feel strongly that proposals we have seen are not tightly drawn and could open a Pandora's Box of safety, revenue division and labor problems.

Sincerely,

Alan Dustin
by RC
Alan Dustin
President

AD:ac
(Dictated from Boston to the Washington Office for hand delivery.)

Mr. ROONEY. On page 3 of your statement, Mr. Rennicke, you state that you would not be opposed to language limiting the provisions of the trackage rights provisions to certain specifications. Were you here when Mr. Clapp of the ICC testified?

Mr. RENNICKE. Yes.

Mr. ROONEY. He submitted a proposed amendment to this section. I wonder if the amendment he proposed would satisfy your objections?

Mr. CHAMBERS. We have not read the amendment. However, it sounds like it probably would because they seem to have arrived at precisely the same conclusion that Boston and Maine did about the broad tracking rights language contained in H.R. 9398.

Mr. RENNICKE. The thing we are most deeply concerned about is that in an area where there is a dwindling economic situation, a further erosion of the small amount of traffic that is remaining or dividing of that pie between the trunkline railroad and shortline operators would only further continually reduce your operating economies. As a result I think this division the remaining trunkline system might have to be considered for abandonment in the future. As much as we are bothered by the financial consequences and would like to get out of some of these arrangements, there would be nothing that would please us more than to see growth in the area so we could economically justify all the lines we operate.

We are not asking for abandonment in any of the cases we are interested in to make our life easier. We are doing that because of the severe cash strain it has on the railroad which is in bankruptcy.

Mr. ROONEY. Thank you very much, gentlemen.

Our next witness will be Mr. Craig Burroughs, President of the Louisiana Midland Railway Company.

21-684 O - 78 - 23

STATEMENT OF CRAIG E. BURROUGHS, ON BEHALF OF THE AMERICAN SHORTLINE RAILROAD ASSOCIATION

Mr. BURROUGHS. Thank you, Mr. Chairman.

Having observed your penchant for pre-filed statements, I guess the first thing I ought to do is apologize for not having had the time to prepare one.

Mr. ROONEY. You are a welcome witness.

Mr. BURROUGHS. Thank you. I am here on behalf of the American Shortline Railroad Association. I guess I have been chosen to accept this task primarily because of the experience that I have in developing new shortline railroads as a professional carrier and also because I am affiliated with three existing and recently created shortline railroads, all of which fall into different categories as far as the Federal Government is concerned.

The Louisiana Midland Railway is a 77 mile line in central Louisiana which was created from a line which the Illinois Central Gulf wished to abandon. The creation of this railroad was done entirely as a private enterprise venture with private capital and no Federal assistance has or is expected to be involved in the operation of that railroad.

Mr. ROONEY. Do you have any local or State assistance?

Mr. BURROUGHS. No, sir, none whatsoever. The Columbus and Greenville Railway of which I am executive consultant and a member of the executive committee of the board of directors was formed with my assistance in 1975 and the C&G was formed with entirely private, locally raised capital, but the C&G has made application which was recently approved by the Federal Railroad Administration for Federal funding assistance for rehabilitation under the 4-R act redeemable preferernce share program to rehabilitate the railroad to class 111 standards in order to be more competitive and more efficient.

The most recent operation which we have become involved in is the Erie Western Railway which is the creation of a subsidized operation under the 3-R act to take over a segment serving northern Indiana of the old Erie Lackawanna mainline which had previously been operated by ConRail under the subsidy program.

Now I would like primarily to confine my remarks to the so-called labor protective provisions of the proposed bill simply because there are enough coments that I have on that subject to probably talk the rest of the evening and I don't want to get off on other subjects because I think this is the single most critical item in the bill as far as the efficient operation of designated operators under the Federal assistance program is concerned.

I would like to use the three railroad lines that I have just described as examples of what would happen if the imposition of prior existing labor agreements were insisted upon in the operation of these rail lines. I am going to confine that evaluation strictly to the Erie Western since it is the only one that falls under the Federal assistance program for operating subsidy.

Right now Erie Western has 35 employees. Erie Western began operation approximately 1 month ago, upon the cessation of ConRail operations. ConRail operations were cancelled by the State

of Indiana because ConRail's operations were too inefficient for the State to afford continued subsidy payments even under the minimal 10 percent increment which the State was obligated for at the time. The State canceled ConRail's agreement and went to the group of shippers who were served by the subsidized operation and told them that if they wanted continued rail service, they would both have to fund it themselves and have to find a responsible operator of their own in order to accomplish it. That operator would have to be approved by the State and would have to be demonstrably more efficient than ConRail.

With these 35 employees we are operating 50 percent more track than ConRail. We are operating 150 percent more service and our expected level of expense is approximately one-half of the level of expense which ConRail was incurring in the operation of the line.

The net effect just on operating employees alone, if the Erie Western were to be inflicted with the conditions of this proposed legislation, would be to increase the number of our operating employees, that is, on train crew people, from seven at the present time operating in three separate crews to a total of 22 operating in five separate crews in order to adhere to the craft line and work rule distinctions made under the pre-existing agreements.

In addition to that, instead of our existing projected payroll for on-train employees, including fringe benefits of approximately $175,00 a year, the expenses would go up to approximately $770,000 a year which is an increase of almost $600,000 a year.

Now we project the potential for break-even operations within 1 year, at the most 18 months. If we were saddled with an additional $600,000 a year of expenses, that would mean not only that the existing 10 percent share which has been funded prospectively by the local shippers served by the line would almost double, and if during the next year when under existing legislation the Federal share drops to 80 percent and the local share goes up to 20 percent, if we were able to break even on our projected operation at today's level of estimated costs instead of the imposed level by the pre-existing labor agreements, this would still leave us $600,000 short of break-even if this bill is passed in its present form. This would mean that instead of zero subsidy payments as we project at the end of a year, the local shippers would have to pick up $120,000 of local subsidy share and the Federal Government would still be on the hook for the remainder, $480,000. This has the net effect of making it virtually impossible to project profitable operations which are othewise quite easily attainable, at least we feel that they are easily attainable.

I would like to cover some of the reasons why a shortline railroad operating under the circumstances we do can attain profitability in a situation where ConRail cannot. There are three very good reasons why we can operate at a higher level of profitability than ConRail.

No. 1, we have local incentives. The local shippers are paying the local portion of the subsidy program. Therefore, they must cooperate because they have volunteered to. They have insisted that rail service be continued. It is to their benefit to continue rail service. We also have to depend on what is there locally. We do not have

system cross subsidization potential like a large railroad does. If the business can be generated logically, a logically managed and operated shortline will find the way to generate it.

My experience in the railroad business includes not only the development of shortline railroads but the evaluation of branch line abandonment situations for a major trunk line railroad in the Midwest which was vitally concerned with overcapacity. In both of these positions I have never seen a branch line situation that could not have generated more business than it was generating under the work rules that are imposed on the trunk line railroads.

Because of the restrictions in those work rules the railroad is prohibited from economically handling many types of business that a local operation without those restraints can justify handling and can efficiently handle.

Mr. ROONEY. Does your railroad comply with the previously agreed to safety rules?

Mr. BURROUGHS. Safety rules are imposed by the Federal Railroad Administration. Not only are we subject to the same safety rules of the Federal Railroad Administration and the larger carriers, but we are subject to the same public service commission regulations, both economic and safety by the States, we are subject to the same ICC regulations, we are subject to OSHA, EPA, EEOCA. We have a very affirmative action program that has to accompany any subsidized operation. We have all the burdens of service that a larger carrier does, but we have the incentive and capability of generating more business simply because we have a much more confined space within which to generate that business.

We must live on what is there. We cannot live on what is somewhere else and cross subsidize an unprofitable operation.

The second big advantage that a shortline railroad has is the flexibility of being small. Bigger is not necessarily better in the railroad business as presumably some people hopefully in positions as responsible as yours are beginning to recognize as a consequence of fiascoes like the Penn Central bankruptcy.

As a small carrier we have the capability of utilizing people much more efficiently because we can be responsive to the needs of our customers. We can make decisions in a much more rapid manner. We don't have to send a memo with copies to 32 people in order to get a decision to act on a request from a shipper. We have the ability to confine the acquisitions of equipment to the service of customers on our own line. We have the ability to acquire that equipment which in some cases has alluded the larger carriers apparently.

As an example of that, I would like to point out that when ConRail was operating this line, the local grain shippers who will provide approximately one-half the loadings in this line were able to get less than 300 jumbo covered hopper cars for the loading of last year's grain harvest. This year we expect to move 3,900 carloads of grain both from this harvest and from a carryover from last year that is in storage over the next 8-month period.

The reason we expect to be able to do that is because our own credit as a private enterprise we have been able to acquire through use, not under the guarantee of the subsidy program, but on our

own credibility, the lease of 200 jumbo covered hopper cars which will be confined entirely to the loadings on this line when needed and can be used in other areas of the country when not needed on this line by request from shippers.

Now we are requiring a total fleet almost as great as the total number of cars that ConRail was able to supply out of its much larger fleet for loadings on this line. If these cars are utilized efficiently which we intend to do, we will be able to handle all 390 originations that we expect in the next 8 months with our existing fleet or our in the process of being delivered fleet of 200 covered hopper cars.

We are also capable of acquiring other types of equipment, both general service and specialized equipment, to protect the loadings on this line which also ConRail was apparently unwilling or unable to supply to these people.

I am not trying to downgrade ConRail's efforts in any way. You must understand ConRail's difficult situation in operating a subsidized line. ConRail does not really have a great deal of incentive to operate a subsidized line efficiently simply because they are guaranteed to cover their costs. By the same token, ConRail is not particularly interested in competing for business originated by subsidized lines simply because they are only guaranteed of covering their costs. They are not guaranteed of making a reasonable profit.

In managerial decisionmaking, any responsible businessman is going to put his efforts where he can make profit instead of where they can only break even. Consequently, ConRail will put their valuable equipment where they can make money with it and not in subsidized line situations where all they are going to do is cover costs.

In addition, ConRail has very little incentive to subsidize these lines because if the line is closed, ConRail is the alternative source for rail movement and therefore they feel they are going to get a good portion of the business anyway so why worry about subsidized operations ot outlying points where the business could eventually through rotation or through intermodal alternatives, some of it could gravitate to their nonsubsidized lines where they would at least stand a chance of making some profit on it.

In addition to that, and, again, this is the most critical aspect of the whole shortline railroad operating philosophy, we can operate more economically because we can operate at local wage scales, locally competitive wage scales, without the restrictive work rules, restrictive crew sizes, craft line distinctions and arbitraries and all the things that have gone into the historical development of trunk line railroad labor contracts.

The whole difference as you can see from my example in operating crew costs comes down to labor productivity. If we had to pay a full day's pay for 100 miles work, that means on a train crew we presently have operating a 230 mile turn-around operation we would be paying 2½ days pay instead of what normally turns out to be about 10 hours pay.

I think it is obvious that no private enterprise is going to be interested in investing its money, time and talent in an operation which stands no chance of ever being profitable simply because it is saddled with arbitrary work rules rather than work rules that it was capable of negotiating on its own and that were negotiated with a duly-elected representative of its employees, not someone else's employees.

Mr. ROONEY. I appreciate very much, Mr. Burroughs, if you would just give a summary now of your statement. I think you have done very well.

Mr. BURROUGHS. If you don't mind my taking a few more minutes, I would like to have an opportunity to correct a couple of misconceptions that I think Mr. Friedman may have given this morning.

I know he mentioned discussions with shortline railroads and made some statements indicating that he knew how the shortline railroads felt. He also made some statements on behalf of ConRail and on behalf of some of the States, too, which I would personally take issue with.

Mr. ROONEY. We would be very happy to receive that in writing and it would become part of the record.

Mr. BURROUGHS. Thank you.

[Mr. Burroughs' supplemental statement follows:]

SUPPLEMENTAL STATEMENT OF CRAIG E. BURROUGHS
BEFORE THE HOUSE INTERSTATE AND FOREIGN COMMERCE SUBCOMMITTEE
ON BILL H. R. 9398

My name is Craig E. Burroughs and I am President of the Louisiana Midland Railway Company of Jena, Louisiana and the Erie Western Railway Company of Huntington, Indiana. I am also a member of the Board of Directors and Executive Consultant to the Columbus and Greenville Railway Company of Columbus, Mississippi.

Louisiana Midland operates seventy-seven miles of track in rural central Louisiana and was formed in 1974 to take over an abandoned Illinois Central branch line in a totally private enterprise venture. Columbus and Greenville operates one hundred eighty miles of track in Mississippi and was formed in 1975 to take over another Illinois Central Gulf branch line which was scheduled to be abandoned. C & G was purchased and has been operated entirely with private capital, but has recently been awarded a $3,750,000 redeemable preference share financing package by FRA which will enable the railroad to be upgraded to forty mile per hour operation. Erie Western is a 152-mile line operating the former Erie Lackawanna Main Line trackage in the state of Indiana. Erie Western is a designated operator under the subsidy provisions of the 3R Act and its operations commenced September 25, 1977, replacing a designated operator contract previously operated by Con Rail.

I have been asked to submit testimony by The American Short Line Railroad Association on behalf of its members as well as on

behalf of the three lines with which I am affiliated, all of whom are Short Line Association members. Although we support the over-all objectives of House Bill 9398, we are very concerned about the serious adverse effects of the so-called "labor protective provisions" in that proposed act.

In passing the 3R Act and later the 4R Act, which enabled the creation of designated operators to provide service with federal subsidy assistance on lines that would otherwise be abandoned, Congress established several incentives for private enterprise entities to provide efficient and prospectively viable service to these light-density lines. These incentives have worked so well that in the first year and a half of the program at least a dozen independent private enterprise short line railroad operations have been created, and at least four more are currently in the formation stages. Most of the operations recently begun or currently in the organizational process are being created by local shipper investment and continued shipper operating subsidy support. Also, many of these lines replaced or are in the process of replacing subsidized operations formerly contracted by Con Rail which have proved to be too inefficient for states or local shipper subsidizers to continue even the small percentage currently required from local agencies.

It would be fair to say that literally hundreds of private citizens (primarily local shippers and experienced railroad executives) have already invested millions of dollars in necessary organizational and start-up working capital to attempt to establish the viability under private enterprise management of light-density lines which were omitted from the Con Rail system by USRA's final

system plan. At least a thousand railroad employees, who would otherwise not have jobs in the industry, are now gainfully employed on independent short line railroads receiving financial assistance under the 3R and 4R Acts.

There are a number of good reasons for the proliferation of short line designated operators to serve the light-density lines which are eligible for federal subsidy. These justifications are not unique to the subsidy program, but have been justifying the existence of private enterprise local service short line railroads for over a century. Of primary concern is the ability to operate a short line railroad at lower cost than the same operation conducted under trunk line railroad practices. Short line railroads have historically been operated with fewer craft line distinctions, more flexible work rules, smaller crew consists, and fewer arbitrary contractual restrictions than trunk line railroads. In addition, many short lines have a different pay basis than their trunk line connections, competing favorably with local industrial wage rates instead of national rail union pay scales. The net effect of these differences is a level of employee productivity on short line railroads which allows them to operate on light-density lines at costs per ton mile comparable to those incurred on high-density trunk line railroads.

A second important advantage of small local service carriers is their flexibility to provide the services needed by their customers in a timely fashion. Short lines have the incentive to serve since they depend entirely on business which is generated at local stations which they serve, the responsible decision-making officers are locally headquartered thus making decisions

prompt and responsive, and their decisions can be more flexible since they are normally hampered by fewer work rule restrictions.

Short lines are also often capable of providing better service through greater frequency of operation due to the lower cost of individual train movements. In addition, short lines are normally able to provide more dependable equipment supply than most trunk lines because it can tailor its equipment fleet to the needs of a relatively small number of customers. If the short line connects with more than one trunk line, it can also offer its customers the competing equipment supply and routing alternatives of more than one trunk line, while a local firm served on a trunk line branch is usually restricted to the car supply and routing alternatives available via that single trunk line.

Considering the advantageous aspects of local service provided by short line railroads, there is one provision in Draft Bill H. R. 9398 which would seriously hamper the viability of the short line railroad alternative to total abandonment of light-density lines. It would also amount to a complete reversal of the congressional intent in the 3R and 4R Acts to provide private enterprise with the necessary incentives to find those solutions to the branch line problem that are least expensive to the taxpayer. The provision in question is the so-called labor protective conditions included in sections 3 and 11 of the proposed bill. The disastrous effects of the proposed labor conditions can be clearly forseen. First of all, the cost of imposing historic trunk line style labor agreements on short line operations

can be readily measured. As an example, on the Erie Western, continued operation at the current level of service under the prior union agreements means that the number of on-train employees would have to be increased from 7 to 22. The expected annual payroll and fringe costs of on-train employees would increase from the present $175,000 to an estimated $770,000 per year, or an increase of almost $600,000. The cost increases in non-train service classifications are harder to estimate because it is not clear how many currently unneeded job classifications would have to be restored. However, the differences in computing pay and assigning work would, by themselves, increase Erie Western's projected costs by at least $150,000 a year. Since Erie Western, under its current style of operation, projects break-even operations within eighteen months, the entire burden of this increase of at least $750,000 in expenses each year would have to be borne by the taxpayer and the local shipper subsidizers. Under these circumstances no projection of future profitability would be realistic, and the withdrawal of local shipper subsidy support would be inevitable.

The effects of restrictions on contracting work to outside firms would also be very expensive to an operation like Erie Western since we have no on-line locomotive maintenance or repair facilities. The proposed provision for restricting this work to rail union labor would require the construction of an expensive maintenance shop and the restoration of inefficient craft line distinctions which would mean hiring far more employees than necessary to maintain Erie Western's small fleet of locomotives. If labor conditions are interpretted literally, Erie Western

could be in a uniquely disastrous situation because it serves a former trunk line seniority district headquarters. There were over two hundred operating employees assigned to the seniority roster at this station, operating fourteen trains a day in each direction. Erie Western could hardly afford to restore these jobs, which were covered by the previously existing labor agreements, unless it could somehow miraculously generate traffic sufficient for fourteen trains a day in each direction.

The most certainly predictable result of the passage of this labor protective condition would be the rapid elimination of most of the existing subsidized short lines. This would result in: fewer railroad employees, not more; less traffic to support the protected jobs on main line non-subsidized railroads; less income for the already troubled Railroad Retirement System. Under these circumstances, the proposed language of Sections 3 and 11 of H. R. 9398 could hardly be characterized as "labor protective." It would seem much more appropriate to call them "rail union monopoly" provisions. The actual employees who were subject to the prior collective bargaining agreements are in reality the most highly protected people in the world. They already enjoy the protection of these collective bargaining agreements, plus the Penn Central or Erie Lackawanna merger agreements and the 3R and 4R Act labor protective conditions. Lines becoming abandoned in the future are subject to the standard ICC labor protective conditions which are similar to those in Section 5 of 3R. No union-represented employee of the former bankrupt railroads is out of work or earning less money because of lack of labor protective conditions.

This fact raises two very serious, possibly even monumental, moral questions. The first of these questions is whether it is appropriate for Congress to deny employees the right to elect their own representative for collecting bargaining purposes. The second is whether it is proper for Congress to impose a collective bargaining agreement on two parties who have not had an opportunity to participate in the bargaining negotiations. All previous federal legislation and case law precedents have insured and protected the rights of employees to determine their own collective bargaining representative or to reject any proposed collective bargaining representative. Congress has also consistently taken the position historically that it must not interfere in the free working of the collective bargaining system. The replacement of existing management employee agreements and relationships by an imposed contract with a representative not chosen by the employees and not bargained by the employer sounds very much like the moral code of a totalitarian dictatorship, not that of the greatest protector of democratic freedom on Earth.

Another certain and serious effect of the proposed union monopoly provisions would be the loss of substantial amounts of private capital already invested in the start-up of designated operator short lines. A common misconception, particularly among labor union people, is that designated operators are assuming no risk because their losses are theoretically covered by the subsidy program. In actual fact, a substantial amount of head-end capital is required to start any railroad, whether subsidized or not, because every operation requires working capital and long-term

assets which are not readily recoverable or which may never be recoverable under the subsidy program. Even those expenses which are recoverable can take more than fifteen months to be restored through subsidy payments to the operator. The amount of profit that an operator can earn is also severely restricted by the subsidy program regulations and the only way that a designated operator can realistically hope to make long-term profits is to plow back every available dollar into the eventual acquisition of his particular line for permanent non-subsidized operation. It would therefore seem extremely unfair for Congress to reverse its position on labor requirements at this point since it would cause the loss of substantial capital already invested and would eliminate many operations which are already well on their way to private enterprise viability. Finally, the penalty which the proposed labor conditions would impose on the taxpayer is substantial. He must either ante up greater and greater sums for the subsidization of less efficient light-density lines, or he must face the economic and environmental effects of their abandonment. These effects would include more highway truck traffic with less efficient fuel consumption and greater danger to public safety, higher costs of transportation service and highway maintenance in rural areas, and less potential for the future economic development of substantial geographical areas of the country.

All of the above detrimental effects of the proposed union protection provisions in H. R. 9398 require us to strongly oppose their inclusion in an otherwise desirable piece of legislation.

Before closing, I would like to correct some misconceptions that were presented to the subcommittee by United Transportation Union witnesses in the hearing held on October 19, 1977. In his answers to questions from members of the subcommittee, Mr. Friedman, representing Mr. Snyder of the United Transportation Union, made several representations concerning the feelings of other parties who were also presented at the hearings. UTU's representatives attempted to broadly characterize the feelings of ConRail, of State governments, and of short line railroads concerning the operation of light-density subsidized lines and the effects of the proposed union protective conditions thereon.

Our actual experience indicates that Mr. Friedman is either not very well informed or was engaging in intentional misstatement in order to put his client's position in the most favorable light. For example, Fr. Friedman stated that ConRail is the only willing operator of subsidized branch lines and that the system will therefore not be hurt if legislation makes it practical for ConRail to be the only operator of subsidized lines. This statement totally ignores the facts that there are already twenty short line railroad designated operators in the subsidy program (some of these railroads were in existence before April 1, 1976), and that ConRail is currently in the process of withdrawing from subsidized operations as quickly as it can. Mr. Friedman also indicated that ConRail was the best carrier to designate as operator of a subsidized line despite the fact that several witnesses from state agencies involved in administering the subsidy program testified that ConRail is the least efficient designated operator. The experience of our

formerly Con Rail served shippers on the Erie Western bears out this fact. Con Rail's expenses are not only unreasonably high in relation to the work accomplished, but they also have no incentive to try to develop traffic from the subsidized operations. Since all of their costs are guaranteed, no significant amount of profit can be earned by Con Rail from the operation of a subsidized line. They have an understandable managerial tendency to utilize their talent and their equipment on their non-subsidized lines where some hope of profit can be expected. In addition, if a subsidized line were no longer operated, Con Rail is normally the nearest source for alternative rail service, and it could therefore potentially benefit from the abandonment of the subsidized operation. The continued existence of independent short line designated operators is thus critical to the ultimate private enterprise success of the rail assistance program.

While Mr. Friedman also stated that state agencies should have little difficulty administering their program under the union protective provisions (a position that was soundly refuted by state agency testimony) I am most offended by his characterizations of short line railroad designated operators. The UTU testimony was liberally sprinkled with the allegation that short line operators are in some way "substandard", leaving the impression any operator who does not subscribe to trunk line labor agreements is an unscrupulous exploiter of oppressed labor. On the contrary, short line designated operators are subject to a

much higher degree of public scrutiny than any other category of carrier. In addition to being subject to all standard railroad environment, economic and safety regulations (including ICC, FRA, Public Service Commission, EPA, EEOC, OSHA, and others), a short line designated operator must pass careful scrutiny at the state agency level before receiving designation and must submit to detailed regular auditing review throughout the life of a subsidy contract. In addition, short line designated operators are investing private capital in order to begin such operations instead of simply recycling federal money as is the case with Con Rail. The level of integrity, dedication, and professionalism on these operations is very high simply because no operator could cope with the thoroughness and complexity of today's regulations without having high standards. These high standards extend to the earnings, fringe benefits, and working conditions of all employees. As a rule, the wages paid by independent short line designated operators are above the prevailing industrial wage scales in their area, and in fact most of these lines are being operated with experienced personnel recruited from the ranks of the so-called standard railway operating crafts. As an example, six of our seven on-train operating employees on the Erie Western were recruited from trunk line railroads (mostly Con Rail), and they are dues paying railroad brotherhood members. By no stretch of the imagination could our operations or the operations of most designated operator short lines be characterized as "substandard".

21-684 O - 78 - 24

There were also some very interesting inconsistencies in the UTU's testimony about what they themselves are willing to do. On one hand, Mr. Snyder testified that it was very desirable to maintain the status quo, yet on the other hand he indicated that UTU would have no difficulty reaching modified agreements reflecting the needs of short line operators. Our experience in dealing with UTU is that in a public statement they will admit a willingness to do almost anything, but when it comes down to hard bargaining, no change from the status quo will be made without extracting a pound of flesh. Since the wording of the proposed union protective condition is unequivical in its reinstatement of prior contracts and union representation designations, there would be no real incentive for the unions to bargain modified terms. Even if they were willing to bargain such terms, the mere existence of preexisting contracts during the period of renegotiation would have the effect of putting short line designated operators out of business. Another very real possibility is that economic consideration might keep the unions from even entering into bargaining in the first place since it is a money-losing proposition for them to have expensive bargainers tied up in special negotiations for a bargaining unit of less than ten member employees. There are in fact many non-union short lines in this country simply because small bargaining units are often too expensive to organize and represent.

Let me close by reiterating the strong opposition of short line railroads to the disastrous consequences of the proposed union protective provisions contained in H. R. 9398. I would also like to thank Chairman Rooney and all the subcommittee members for the opportunity which I had to present oral testimony and this written statement on behalf of the members of The American Short Line Railroad Association.

The next to last witness will be Mr. William L. Withuhn, Vice President of the Virginia and Maryland Railroad, Cape Charles, Virginia.

STATEMENTS OF WILLIAM L. WITHUHN, VICE PRESIDENT, VIRGINIA & MARYLAND RAILROAD COMPANY; AND MARYLAND & DELAWARE RAILROAD COMPANY; AND HAROLD WESCOAT, ACCOMACK-NORTHAMPTON TRANSPORTATION DISTRICT COMMISSION

Mr. WITHUHN. I would like to suggest the last two witnesses appear together in the interest of time. Mr. Wescoat is the member of the Commission that holds our contract to operate.

Mr. Chairman, I am William L. Withuhn, Vice President of the Virginia & Maryland Railroad Company and of the Maryland and Delaware Railroad Company. With me is Mr. Harold Wescoat representing the Accomack-Northampton Transportation District of the State of Virginia. Mr. Wescoat also represents and is a member of the board of supervisors for Northampton County and for the record a member of the Delmarva Advisory Council which has economic interests for the region as a whole.

I would like to apologize, sir, too, for the delay in getting our testimony prepared. We found out Monday morning about the hearing and about the language. With your indulgence I would like to paraphrase my statement.

Mr. ROONEY. Your statement will become part of the record.

Mr. WITHUHN. The lines I represent now provide essential rail freight services on the Delmarva Peninsula. I know you heard a lot about this this morning.

I would like to move to the second page of my testimony and begin at the second paragraph where we discuss our problems with H.R. 9398 in sections 3 and 11 as presently drafted.

As you can see in looking at my statement, I was using a version of the language which has been obsolete for at least a week. However, we had a chance this morning to study sections 3 and 11 and also to hear the remarks of Mr. Friedman. It still is our feeling that the result of this language, Mr. Chairman, will remove any hope of solvency for the lines we operate. Let me explain that.

We are operating track in Virginia which cost ConRail $6.7 million to run last year. We are doing it for $3 million a year and improving service at the same time. This severe cost reduction, over half, is just bearly enough to make the system affordable. We are still in the red and the people in two counties in Virginia are paying 10 percent of our deficit with their tax dollars. This subsidy cannot go on forever and local taxes will probably bear some burden during the life of the legislation.

Thus, local tax funding and an end to all subsidy in the long run is an integral part of our economics. I am sure a lot of people come before this subcommittee with a tin cup forward. We had hoped to do something rather different. We have been operating this line for 6 months. It is now very clear to us in the trends of the economic figures that we can be entirely self-sufficient after the Federal and local funding program expires. With wise spending of rehabilitation

money to upgrade right-of-way, with a marketing effort to attract new business to Delmarva and further business from the customers there now and with local management to provide better service, we see clearly we can turn the situation around and provide the kind of service that will allow Delmarva to grow and prosper.

H.R. 9398 would change all that. We feel it would do so, Mr. Chairman, because of the unclear language that is now in sections 3 and 11 of the bill. It is our feeling that the rights of any group of employees to bargain to have representation elections, to come to agreement with their employers are very well protected under the Railway Labor Act and under the National Labor Relations Act and in fact when we began discussions to operate the trackage on Delmarva prior to April 1, we contacted representatives of the UTU to ask what we in fact could do to work in cooperation to help keep the traffic flowing to the union men working north of Pocomoke City.

What we were informed of at that time by members of the UTU was that if we were to offer employment to men who were not protected under title V of the 3-R act, that this would be a good step forward in cooperation. We interviewed and tendered offers of employment to about 15 people who had formerly worked for ConRail who were not protected under title V and may not work for us today. We consider these valuable employees who come trained and provide service to us.

However, with the language in H.R. 9398 it is unclear to us how this will affect us when our contract is renewed at the end of the year. It is very unclear to us at what date the effect of whatever prior agreement is to be used as the basis of negotiations, what that date is to be. If by whatever language is chosen by this subcommittee, Mr. Chairman, if we are in fact forced under legislation to grant union style pay scales and would have to grant work rules such as has been elaborated by Mr. Burroughs, we would simply be forced to stop operations. There is no more money to run the system.

Mr. ROONEY. I think Mr. Burroughs said that his operation is within the confines of the FRA and he has to abide by those rules.

Mr. WITHUHN. There is no question with us about the FRA rules and all the various other rules by the others, the litany of organizations. We have had FRA inspectors visiting us to see our operations are safe and we are in full agreement with all Federal regulations. Our problem is with our cost. As I mentioned before, we took a piece of line in Virginia which cost ConRail $6.7 million to operate. We are doing it for $3 million. We are just to the point where it looks as if a few more years of rehabilitation to improve economies of operation will make us indeed self sufficient.

My own judgment of that statement, Mr. Chairman, comes from my experience of about 10 years with a shortline in New Jersey which is probably at this point the only profitable railroad in the State. It has never had any subsidy of any sort. It has a great deal of success.

Mr. ROONEY. Where is that?

Mr. WITHUHN. From Flemington, New Jersey down to Lambertville. It is a tourist style operation but now it derives the

preponderance of its operation from freight service. We have carefully analyzed the impact of proposed operated work rules and union style pay scales on our operation.

For the train service and office people our wage and benefit costs would escalate from $200,000 a year to over $683,000 a year for the Virginia and Maryland lines. That assumes 3-man crews on our main line work. We are trying to be very conservative. We suppose the union would first want us to have at least 4-man crews, but we don't want to be accused of overstating our case. The $683,000 a year is based on 3-man crews.

For the Maryland and Delaware line, the corresponding increase would be from $142,000 now to over $425,000 under the bill. The combined increase in our deficits for both lines would thus be over $669,000. And that does not include track repair people because of the jurisdictional dispute of the two lines that testified today. It appears to us that including track people that would add another $150,000 to $200,000 more to the deficit if they were covered by railroad style rules.

An important point is that these greatly increased costs could not all be passed on directly to shippers. Shippers' rates are fully regulated under the ICC. Therefore, the expanded costs can be paid from only one source: The State, local and Federal taxpayer.

The effect should be clear enough, when the subsidy stops or when the local share goes much over 10 percent of this inflated burden, our railroad stops.

That means some 80 railroad people and railroad car-float people lose their jobs, the 40 shippers we serve suffer severe loss or go out of business on Delmarva altogether.

Let me say, Mr. Chairman, a lot of people say businesses need railroads. The 40 shippers we serve on Delmarva are the last holdouts. Every particle of business that could possibly be hauled by trucks has gone that way a long time ago because of the long neglect by Penn Central.

These 40 shippers depend on rail service and would have to severely curtail operations without it. Numerous employees of these firms lose their jobs. This amounts to a body blow to the whole Delmarva economy. In addition, new rail-served businesses would no longer consider locating on Delmarva, and the economic downward spiral would accelerate.

A large number of United Transportation Union jobs would also be lost. Without our lines running south of Pocomo City, the ConRail mainline through Delaware would immediately lose some 10,000 to 12,000 cars a year of through traffic. This comes from our own car count experience. This loss to ConRail's Delaware traffic would mean that much of ConRail's line in Delaware would no longer meet the USRA viability test, and further abandonments in Delaware would be economically inevitable, with obvious impact on ConRail employees.

We pay our employees more than the prevailing industrial wage, plus a full health and accident insurance program for employees and families paid for fully by the employer with no employee contribution—the plan is identical to that on many large railroads today—plus full railroad retirement. As the president of AAR

pointed out, that retirement includes tier I as equivalent to social security, and tier II, which is really equivalent to having a pension plan in addition to social security for our employees, and we pay that as any railroad does, for a normal work day, with overtime over 8 hours.

We observe all employee hours-of-service limitations, grant paid holidays and vacations, and have employees participate in assigning work schedules. Strangely, we have no trouble attracting skilled personnel for a safe and professional operation, fully in compliance with all FRA regulations as determined by FRA inspectors visiting us on site.

As I mentioned previously, some of our key people in fact had worked for ConRail previously and had decided that we in fact had a better chance of future operations on Delmarva than ConRail did. Coming from an employee, I think that is a pretty strong endorsement.

From a standpoint of law, the thing we find most frightening about the language now in H.R. 9398, however it might be written, the ultimate effect of which would be to require some negotiations to begin with, some sort of imposed contract from the past, from whatever period in the past, is this: The bill attempts to legislate to nonunion businesses the results of collective bargaining in union businesses, without having to go through real, proper collective bargaining. The government is to impose the results of bargaining without real bargaining. This is wholly unprecedented in any labor legislation in this country to date.

Nowhere in any U.S. labor law to date are collective bargaining agreements imposed by law on an unorganized company. In all the nation's labor law—the National Labor Relations Act as well as the Railway Labor Act—the government takes the role of neutral who insures the rights of unions to organize, to hold representation elections, to bargain, and to maintain contracts.

We have no difficulty whatsoever with those laws. As I mentioned to you, we in fact contacted the union before we began to see how we might cooperate for the benefit of the region. The government protects an agreement, but first these parties have to work out an agreement; the government does not impose one unilaterally, except parenthetically perhaps under the current language of H.R. 9398.

The language now in H.R. 9398 was no doubt intended to attach a condition to granting of Federal funds, and certainly any reasonable condition can be attached to the spending of taxpayers' funds. But the language sets a new and dangerous precedent by taking the government out of the role of neutral in collective bargaining; the government now becomes a sponsor of one side of the bargaining. Therefore, there can no longer be bargaining; there is just unilateral imposition of contract provisions without any bargaining at all. Not even Britain has such a law.

I think too, Mr. Chairman, just as a quick aside, that this issue was probably made fairly clear about which we are testifying today.

In summary, Mr. Chairman, we beg the subcommittee to reconsider. It seems to us that the sponsors of the new labor provision have forgotten one key fact: this new labor section can only be supported if the U.S. taxpayers agree to foot the bill, forever. Only by never-

ending subsidy can such conditions on short-line railroads be supported.

The jobs of our 80 employees, plus many union jobs, plus the economy of an entire region, are threatened by this bill. The Federal money so far invested in us is put in jeopardy. Compounded on this is a dangerous legal precedent which we feel runs counter to the principles in all the nation's labor law.

We beg the subcommittee to reconsider and not destroy the very wise changes in H.R. 8393 and H.R. 8225, which we wholly support, which we feel are very timely and very well-considered.

I thank the chairman and members of the subcommittee for their kind attention. I will be happy to answer any questions, as will Mr. Wescoat.

[Mr. Withuhn's prepared statements on H.R. 9398 and H.R. 8225 follow:]

STATEMENT BY

WILLIAM L. WITHUHN

VIRGINIA & MARYLAND RAILROAD
MARYLAND & DELAWARE RAILROAD

before the

HOUSE SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE

October 19, 1977

ON H.R. 9398

Mr. Chairman; Members of the Subcommittee. I am William L. Withuhn, and I am a vice president of the Virginia & Maryland Railroad Co. and of the Maryland & Delaware Railroad Co. The lines I represent now provide essential rail freight services on the Delmarva Peninsula, under plans developed by Virginia, Maryland, and Delaware to provide themselves with a viable rail freight system for the Delmarva region.

We serve as contract operators of rail lines under Sec. 304 of the Regional Rail Reorganization Act. We serve some forty shippers on the Peninsula, most of them small, but all vital to the economy of the region. Nearly all these shippers — manufacturing companies, food processors, publishers, lumber yards, fertilizer companies, fish processing companies, building supply companies, export grain shippers, propane gas companies, chemical plants, contractors, farmers, seed companies, warehouses — simply cannot do business without rail service.

These people, together with their local government representatives, have struggled for years to preserve their rail service. After years of neglect under Penn Central, after the collapse of alternative plans for other carriers to extend into Delmarva, and after a year of unbearable cost overruns by Conrail, these people have finally put together their own railroad. Now we find that legislation is proposed which would literally sabotage this whole local effort.

This Subcommittee, and its Members, created the legislation which permitted the people of Delmarva to try one more time to save their rail system. The provisions for combined Federal and local funding in the "3R" Act provided the wherewithal. Now it appears that all this Federal, State, and local funding is to be wasted.

HR 9398, in its present form before this Subcommittee, contains a provision which would require us, "... to apply to [our] employees the practices and procedures maintained in the railroad industry pursuant to Section 2 First of the Railway Labor Act...." This language has but one clear effect: any hope of solvency for the lines we operate would be rendered utterly impossible.

Let me explain. We are operating track in Virginia, for example, which cost Conrail $6.7 million to run last year. We are doing it for $3 million a year, and improving service at the same time. But this severe cost reduction — over half — is just barely enough to make the system affordable. We are still in the red, and the people in two counties of Virginia are paying 10% of our deficit with their local tax dollars. Even with an extension of the Federal share of our subsidy, this subsidy cannot go on forever, and local taxes must bear some share of the burden during the life of the subsidy legislation. Thus local tax funding, and an eventual end to all subsidy over the long run, is an integral part of our economics.

I'm sure a lot of people come before this Subcommittee rattling the tin cup. We had hoped to do something rather different. After six months of operation, we now know that we can be completely self-sufficient after the Federal/local funding program expires. With wise spending of the rehabilitation money to upgrade the rights-of-way over the next few years, with a marketing effort to attract new business, and with local management to provide better service

tailored to local need, we see clearly now that we can turn the situation around and provide the kind of service which will allow Delmarva to grow and prosper.

But HR 9398 would change all that. As worded in the bill, designated operators like ourselves would have to grant union-style pay scales and we would have to grant "work rules" such as (a) four-man crews on all trains, regardless of circumstances; (b) rules which prevented "yard" crews from doing any work on the mainline, and vice versa; (c) rules which prevented transportation employees from being assigned to any other duties on days when trains don't run; (d) rules which prevented trained maintenance people from running locomotives; (e) payment of a full day's wages for a 100-mile run, regardless of whether the run was completed in less than eight hours; etc., etc.

We have carefully analyzed the impact all this would have on our operations. For train, equipment-maintenance, and office people, our wage and fringe-benefit costs would escalate from $297,000 per year to over $683,000 per year for the Virginia & Maryland line. For the Maryland & Delaware line, the corresponding increase would be from $142,000 now to over $425,000 under the bill. The combined increase in our deficits for both lines would thus be over $669,000. And that does not include track repair people. Including these people would add about $150,000 to $200,000 more to our annual deficits.

An important point is that these greatly increased costs could not all be passed on directly to shippers. Shippers' rates are fully regulated under the ICC. Therefore, the expanded costs can be paid from only one source: the State, local, and Federal taxpayer.

The effect should be clear enough: when the subsidy stops, or when the local share goes much over 10% of this inflated burden, our railroad stops.

That means some 80 railroad people and railroad car-float people lose their jobs, the forty shippers we serve suffer severe loss or go out of business on Delmarva altogether, and numerous employees of these firms lose their jobs. This amounts to a body blow to the whole Delmarva economy. In addition, new rail-served businesses would no longer consider locating on Delmarva, and the economic downward spiral would accelerate.

A large number of United Transportation Union jobs would also be lost. Without our lines running, the Conrail mainline through Delaware would immediately lose some 10,000 to 12,000 cars a year of through traffic. This loss to Conrail's Delaware traffic would mean that much of Conrail's line in Delaware would no longer meet the USRA viability test, and further abandonments in Delaware would be economically inevitable, with obvious impact on Conrail employees.

We pay our employees more than the prevailing industrial wage, plus a full health and accident insurance program for employees and families paid for by the employer with no employee contribution (the plan is identical to that on many large railroads today), plus full Railroad Retirement, for a normal workday, with overtime over eight hours. We observe all employee hours-of-service limitations, grant paid holidays and vacations, and have employees participate in assigning work schedules. Strangely, we have no trouble attracting skilled personnel for a safe and professional operation, fully in compliance with all FRA regulations as determined by FRA inspectors visiting us on site.

From a standpoint of law, the thing we find most frightening about the language now in HR 9398 is this: the bill attempts to legislate to non-union businesses the results of collective bargaining in union businesses, without having to go through collective bargaining. The government is to impose the results of bargaining without bargaining. This is wholly unprecedented in any

labor legislation in this country to date.

Nowhere in any U.S. labor law to date are collective bargaining agreements imposed by law on an unorganized company. In all the nation's labor law — the National Labor Relations Act as well as the Railway Labor Act — the government takes the role of neutral who insures the rights of unions to organize, to hold representation elections, to bargain, and to maintain contracts. The government protects an agreement, but first the parties have to work out an agreement; the government does not impose one unilaterally. The language now in HR 9398 was no doubt intended to attach a condition to granting of Federal funds, and certainly any reasonable condition can be attached to the spending of taxpayers' funds. But the language sets a new and dangerous precedent by taking the government out of the role of neutral in collective bargaining; the government now becomes a sponsor of one side of the bargaining. Therefore, there can no longer be "bargaining"; there is just unilateral imposition of contract provisions without any bargaining at all. Not even Britain has such a law.

In summary, we beg the Subcommittee to reconsider. It seems to us that the sponsors of the new labor provision have forgotten one key fact: this new labor section can only be supported if the U.S. taxpayers agree to foot the bill — forever. Only by never-ending subsidy can such conditions on shortline railroads be supported. The jobs of our 80 employees, plus many union jobs, plus the economy of an entire region are threatened by this bill. The Federal money so far invested in us is put in jeopardy. Compounded on this is a dangerous legal precedent which runs counter to the principles in all the nation's labor law. We beg the Subcommittee to reconsider and not destroy the wise changes in HR 8393 and HR 8225 by this new and controversial language.

I thank the Chairman and Members of the Subcommittee for their kind attention.

STATEMENT BY

WILLIAM L. WITHUHN

VIRGINIA & MARYLAND RAILROAD
MARYLAND & DELAWARE RAILROAD

ON H.R. 8225

Mr. Chairman; Members of the Subcommittee. I am William L. Withuhn, and I am a vice president of the Virginia & Maryland Railroad Co. and of the Maryland & Delaware Railroad Co. I thank the Chairman for permitting me to bring my statement to the attention of the Subcommittee. The lines I represent now provide essential rail freight services on the Delmarva Peninsula, under plans developed by the three Delmarva states to provide themselves with an alternative, low-cost, rail service system.

I come before you with two purposes in mind. First, I want to voice strong support for the bill recently introduced by Representatives Evans, Bauman, and Trible, HR 8225.

This bill, HR 8225, would facilitate interstate transfers of funds under the Regional Rail Reorganization Act, if such transfers are clearly in the interests of the requesting states. I regard such transfers as absolutely essential to the success of the rail rehabilitation program now in progress on Delmarva. The three state Secretaries of Transportation of Virginia, Maryland, and Delaware firmly share this view, and they have communicated this to the US Department of Transportation. Delmarva is a close-knit geographic region shared by three states. Without the ability of Delaware, for example, to be able to share its allocation of funds directly with Virginia, the state of Delaware may lose its rail connection to the south. This vital rail connection passes south through the Delmarva Peninsula via Virginia's Eastern Shore. This rail link passing through Virginia provides all of Delmarva with its only rail outlet south and

is indispensable to many Delmarva shippers. Virginia does not have sufficient funds to adequately rehabilitate its part of the Delmarva line, while Delaware has funds it cannot now use under the Act. In such a situation, Delaware's "excess" funds are not excess at all, but should be used on the Peninsula for the benefit of the people of Delaware, by preserving Delaware's southern connection.

My second purpose in coming before you is to bring something to your attention which may affect your writing of legislation for light density rail lines. I refer to the various proposals to extend the Federal subsidy for such lines.

Insofar as these proposals would ease the local rail subsidy burdens of states and localities, we are very much in favor of these proposals. In Virginia, for example, the raising of the local share of the Federal subsidy has worked severe hardship on local county finances. With the increase next year of the local share to 20 per cent, the affected counties in Virginia will be hard pressed to raise their share. In Maryland, where the Maryland & Delaware Railroad is scheduled to begin service under state contract in August, an extension of the Federal subsidy would greatly improve chances of long-term success.

However, the managers of the lines I represent know very well that prolonged or indefinite subsidy cannot be tolerated by either local or national taxpayers. We view it as essential to put the lines we operate on a self-supporting basis as rapidly as possible, and to eliminate the need for subsidy altogether by the end of a reasonable period.

To that end, we have cut operating costs on the 96-mile, Pocomoke (Md.) to Norfolk (Va.) line we now operate <u>by more than 50 per cent below Conrail's costs to operate the same line last year</u>, while we are providing the same level

of service. However, we now find, to our dismay, that the benefits of this cost reduction cannot accrue to us, nor accrue to the taxpayers of Virginia and Delmarva.

The issue is the diversion of funds identified by Congress for local rail operating costs. I cannot put this too strongly.

Let me explain what I mean by diversion of funds. Conrail, by giving up operation of the lines we now operate, has eliminated all of its on-branch costs of running these lines. Yet Conrail is insisting, for reasons of its own, on still keeping the preponderance of the revenues derived from these lines. Conrail does this by imposing inequitable formulas for the sharing of revenues on cars interchanged with us.

Under the revenue formulas imposed by Conrail, Conrail is keeping a share of the revenues derived on our traffic far beyond the share needed to cover its own costs. Conrail is keeping a share of interchange revenues far in excess of long-standing precedents for the railroad industry and in excess of precedents established in ICC rulings. Hence, under the Conrail revenue formulas, the share of the total revenues on interchanged cars going to us is so small that we cannot even meet basic expenses, while Conrail now obtains windfall profits on the rail traffic it derives from us.

While we now lose a net of $100 per car (and often more), Conrail this year will make a clear profit over costs of well over $1,000,000 on the very same traffic -- the traffic going to and from us.

We certainly do not deny Conrail's right to make a profit. In fact, we applaud it. But we do object to Conrail's making a profit purely at our expense and at our local taxpayers' expense. This profit is derived almost entirely by an artificial diversion of taxpayers' subsidy -- subsidy which the taxpayers thought was supporting us, not Conrail.

Specifically, the diversion of Federal and local funds works this way: Because our total revenues are artificially depressed by Conrail's revenue-share formulas, our net operating loss is far greater than it need be. Despite reducing costs on the line by over half, we still lose money, because revenues properly due us on our traffic are retained by Conrail. Since our net loss is thereby inflated, the difference must be made up by subsidy, and our required subsidy is far larger than it should be. In effect, then, a large portion of the Federal and local funds designed to help Delmarva's people preserve and improve their rail system are now merely cross-subsidizing Conrail.

Our subsidy level must be over-inflated in the exact amount that Conrail keeps revenues which should be properly due us on our own traffic. On the Virginia portion of the Delmarva line, the amount is $1,000,000. The net effect seems clear to us: One million dollars of our present annual subsidy is now merely flowing right to Conrail, and being used by Conrail to support losing operations elsewhere in its huge, multi-state system. For Conrail, that $1,000,000 is a drop in the bucket; for us, it is the difference between success and failure. Our chances of becoming self-sufficient over the long run are rendered practically nil; we cannot exist without proper revenues. If we fail, the end result will be a waste of those subsidy funds now committed and those subsidy funds now being considered.

Such a circumstance as described above requires substantiation and documentation. I would not expect any members of the Subcommittee to take what I say here on the basis of assertion.

In late June and early July of this year, Representatives Bauman, Evans, Trible, and Whitehurst, in whose districts we now -- or will -- operate, asked us to prepare a documented statement of our position with respect to our revenue

problems with Conrail. Since these problems are now jeopardizing the efforts of Virginia, Maryland, and Delaware to create a viable alternative rail system on Delmarva, and since these problems are resulting in the waste of Federal subsidy dollars, we feel that these problems should be explained to the Subcommittee.

Neither we, nor the three states, can afford the delay and expense of a long legal fight before the ICC, even if its procedures are streamlined. We do not have the resources for such a fight, and the delay entailed would just waste more subsidy dollars. We are now negotiating directly with Conrail on the revenue matter. However, if these negotiations fail, we feel that a legislative remedy may be required.

To that end, I am submitting to the Subcommittee an abbreviated version of the position paper prepared by us on July 11 at Congressional request. I ask that this version, here attached, be included in the record of these Hearings. In railroad industry terms, the area at issue is known as "revenue divisions". Revenue divisions are of such critical importance that any legislative effort which seeks to provide funds for saving essential rail lines will be a wasted effort unless the effect of divisions is taken directly into account. We urge the Subcommittee to take the effect of revenue divisions into account in its current legislation, lest its subsidy deliberations go for nothing.

The "bottom line" is straightforward, in our judgment. With equitable revenue divisions in force, based upon long-standing rail industry precedents, most of the Delmarva rail lines, and many other states' lines operated under the "3R" Act by private operators, can be entirely self-sufficient very soon, without need of any subsidy after the Federal program, as amended, runs its course.

In addition, equitable revenue divisions with Conrail can still provide Conrail with a profit on interchange traffic with us, while insuring that the

subsidy dollars now being applied will be productively used for the purposes intended by Congress. We feel sure that the artificial diversion of Federal and local rail subsidy funds was not the intent of Congress when it framed the "3R" and "4R" Acts.

Without equitable revenue divisions in force, long-run self-sufficiency of alternative, local rail operations is completely impossible. Thus the efforts of many states to preserve rail services under local auspices are doomed to failure in the long run, with the attendant waste of all the money intended by Congress for their rehabilitation. In the interim, increased Federal subsidy is essential for survival.

One final observation, if I may. There are proposals before the Subcommittee to extend only one portion of the Federal subsidy, as for example, maintenance. We feel that such an approach may be wise in some cases, such as in cases where operating costs are excessive. However, I have just described a situation on Delmarva where the reduction in operating costs below Conrail's costs is over 50 per cent, due to on-site management by a new contract operator. Yet, despite this 50 per cent reduction in operating costs, the subsidy requirement is artificially high, due to Conrail's diversion of rightful revenues. The deficit sheet is poor, not because of costs, but because of improper revenue divisions.

Hence, in this case, an attempt to restrict subsidy to only one form of expense is, at best, off the mark. The restriction would not get at the cause of the deficit: Diverted revenues. And if the total subsidy available falls short of the deficit, the line will fail soon after the maintenance funds already allocated are spent. If the total subsidy available falls short of the total deficit, it matters little what label was applied to the subsidy. Therefore,

we urge the Subcommittee to take into account the causes of deficits before proceeding to legislative attempts to alter the subsidy allocation. Otherwise, the result could be the opposite of the intention.

Our Congressionally-requested statement on revenue divisions follows, with an explanation of our severe problems in that area. I thank the Chairman and the Subcommittee for their time and attention.

(continued over)

VIRGINIA & MARYLAND RAILROAD
MARYLAND & DELAWARE RAILROAD

INTRODUCTION to STATEMENT on REVENUE DIVISIONS

On June 28, 1977, a briefing was held in the Rayburn House Office Building, Washington, concerning the rail service situation on Delmarva. Invited were Senators, Members of Congress, and their staffs, from Virginia, Maryland, and Delaware.

The briefing focused on the problem of obtaining equitable revenue divisions from Conrail. Giving the briefing were representatives from the Virginia & Maryland Railroad (which, since April 1, 1977, now provides the rail services from Pocomoke City, Md., to Norfolk, Va., including the railroad car float across Chesapeake Bay); a consultant working for the Maryland Department of Transportation in the area of rail economics; and officials of the Virginia Department of Highways & Transportation. The session was arranged and sponsored by Rep. Paul S. Trible, Jr. of Virginia.

Also participating in the meeting were officials from the Delaware Transportation Authority and from the Department of Economic Development of the City of Virginia Beach.

As a result of the briefing, it was suggested by several Congressmen that the Virginia & Maryland Railroad prepare a statement of its position with regard to revenue divisions with Conrail. This statement is presented in response to that suggestion.

REVENUE DIVISIONS: Why They Are Important ~~for Delmarva~~

It is the position of the Virginia & Maryland Railroad that with proper revenue divisions between it and Conrail -- that is, revenue divisions based on long-standing precedents in the railroad industry, and fair to both Conrail and the V&M -- the V&M RR could soon be self-sufficient.

Without adequate revenue divisions, long-term survival of the V&M will be impossible. In fact, as a result of the substandard divisions forced upon it by Conrail in March, the V&M faces an immediate cash crisis due to inadequate income.

Revenue divisions are important because they play a major role in determining the revenues obtainable by any rail line. Divisions are <u>not</u> rates or tariffs. Rates and tariffs which shippers pay are regulated by the ICC. Divisions are the <u>share</u> of rates apportioned among carriers participating in a rail haul. Each participating carrier in a particular rail shipment receives a share of the rate on the car, depending on the "divisions agreements" in force among the applicable railroads. For example, if the shipper pays $1000 to ship his product, and two railroads participate in a haul having a 90%/10% division, one railroad receives $900 and the other $100. The division does not affect the shipper's rate.

There are numerous precedents and bases for establishing revenue divisions between railroads. Some of these precedents

will be discussed later in this ~~paper~~ statement. In essence, divisions agreements can be put in place by negotiation, where the railroads settle the matter based on mutual interest, or the matter can go before the ICC. Unfortunately, the latter course (going to the ICC) involves great delay and great legal cost. In the case of a divisions agreement or dispute appealed to the ICC involving a large railroad and a small one, the combination of revenue loss (due to inadequate divisions), legal cost, and legal delay can sink the small railroad long before the ICC decides the case.

It is important to note that traffic volume alone does not determine income for a rail line. If revenue divisions are inadequate, each additional car can add to the line's deficit, rather than reduce it. If the revenue share received per car does not cover the cost of moving the car, each additional car adds to the railroad's net loss, and higher volume produces higher loss. Hence, for a rail line to break even, or prosper, both the traffic volume and the average division per car must be adequate.

REDUCING COST: What the V&M RR Has Done So Far

The economic success of any rail line depends on three factors: (1) adequate traffic volume, (2) adequate revenue divisions, and (3) low costs.

Building traffic volume takes months and years of patient effort by the railroad, working with shippers to provide good service. Achieving adequate revenue divisions requires the cooperation of connecting railroads (and is discussed in the following section of this ~~paper~~ statement). Cost reduction is the area where on-site management and a revamped operating approach can make the most immediate impact.

In the six weeks available in February and March to propose and create the Virginia & Maryland RR, time to do a full-scale economic analysis did not exist. Both ~~RSA~~ V&M and the Virginia Dept. of Highways & Transportation had to make do with the available data from Conrail and other sources on monthly car counts, revenues, and various costs. This data was highly inaccurate, unreliable, and varied from one source to another. No one could vouch, either to Virginia or to V&M, ~~RSA~~, for its validity. Virginia and V&M ~~RSA~~ did the best with what data they had.

V&M ~~RSA~~ took the contract for the Pocomoke-Norfolk line with two principal stated objectives: (1) To reduce costs, and (2) to develop timely and accurate accounting, so that good revenue

and cost data could be developed for future decisions.

The first three months of experience for the V&M (April through June) have produced reliable figures in regard to operating costs. The following comparison gives the results:

Conrail

Total 1976 On-Branch Operating Cost, including cost overrun: . . . $6,700,000

V&M RR

Estimated 1977 Operating Cost, based on Actual-Cost analysis for first three months, including insurance payments: . . . . . $3,150,000 to $3,300,000
(Not including track or marine rehabilitation separately funded.)

Operating Cost Savings: . . . . . $3,400,000 to $3,550,000

Hence, V&M 1977 operating costs are well under half of Conrail's 1976 operating costs.

Employment level has been reduced, from over 120 rail and barge employees, to 46 rail employees, to do the same work. On the employment-level reduction, the question has been raised as to impact on local employment. Under Title V of the "3R" Act, as amended, nearly all the Conrail railroad employees and all the Conrail marine employees were protected. Hence, nearly all these men took jobs elsewhere in Conrail, took severance pay, or took

early retirement. A few Conrail people, with less than five years of service as of the implementation of the "3R" Act, were not protected, and the V&M took applications from all these men. Of the latter, many were hired. Of the additional employees below the managerial level, only two were not residents of the local region when hired. Thus the V&M has increased the number of people native to the Eastern Shore having jobs, by approximately 30.

The cost of operating the barge has been reduced, from approximately $1,307,000 under Conrail as estimated by the Rail Services Planning Office (RSPO), to approximately $700,000 under the V&M, exclusive of extraordinary repairs. Thus the saving on the car float is about $607,000.

Numerous other areas of waste have been trimmed, no single one of which was "breaking the bank", but which together were producing a cumulative drain. As examples:

(1) In Norfolk, badly leaking water mains, which inflated the water bill, were repaired, and large errors in billing for power were corrected (Conrail had been paying the power bill for the wrong meter, and thus Conrail had been paying the bills for several other industrial power customers, as well as itself).

(2) In Cape Charles and up the line, a power-usage survey was requested from Delmarva Power & Light, to reduce wastage; several useless signals and pumps were cut off; excess telephone lines were removed; and expensive fixed-base radio gear as used by Conrail was not replaced.

For the RSPO line item known as "Management Fee" (a budget line item computed according to RSPO standards), the cost has been reduced from $36,000 per month under Conrail to $15,000 per month under the V&M.

Numerous other areas of cost are being pursued. The car float operation was sublet to a marine tug company, and further ways in which the tug operator can improve service and cut cost are now being discussed. During the current month, in which a cash shortage is rapidly developing due to the inadequate revenue divisions, the V&M has been forced to lay off some employees until the seasonal fall traffic increase materializes.

REVENUE DIVISIONS: The Virginia & Maryland's Case

The previous section ~~on recent history and~~ on cost-reducing efforts ~~were~~ was included to show that the V&M RR is doing everything in its power to make the Pocomoke-Norfolk line self-supporting. We view the present V&M contract operation of the line as a long-term effort leading eventually to a permanent solution -- a permanent solution based on providing improved rail service under local management, at a cost lower than any other rail carrier, and without need of any subsidy after the Federal matching-grant subsidy program expires.

But cost is not the full story. As mentioned previously, success in this venture also requires (1) adequate traffic volume, and (2) adequate revenue divisions. These two factors determine the revenue side of the picture for the railroad.

A. The Economic Picture for the V&M: With Present Divisions from Conrail, and With Equitable Divisions.

The first factor affecting total revenues -- traffic volume, in cars per year -- will take a few years to turn around. Decades of neglect and bad service under previous managements cannot be overcome overnight. In addition, last winter's freeze on the Chesapeake Bay, as well as Conrail's spring embargo on the line, have depressed current traffic levels. Nevertheless, the V&M is convinced that the potential for traffic development and

greater traffic volume is there. Otherwise, the V&M would not have been created.

The second factor affecting total revenues -- revenue divisions -- is the point at issue. At the divisions negotiation with Conrail in March, the V&M was forced to accept substandard divisions with Conrail. There was not time available to carry on an effective negotiation: Conrail operation on the line was to be suspended April 1, and the V&M had been designated March 1.

Assuming an annual traffic volume the first year of 9000 to 10,000 cars (which looks like an accurate first year's traffic estimate after the first three months of operation), present divisions will produce a total revenue of $1,900,000 to $2,000,000. With costs as described in the previous section, the first year's financial result will be as follows:

V&M, First Year, Present Conrail divisions

Operating Costs	$3,150,000 to $3,300,000
Operating Revenues	$1,900,000 to $2,000,000
Operating Deficit	($1,150,000 to $1,400,000)

This deficit is considerably in excess of the operating subsidy funds available in Virginia -- less than $600,000.

However, if the V&M had obtained revenue divisions from Conrail in March in line with long-standing railroad precedents, the V&M could have been very nearly self-supporting the first year, exclusive of rehabilitation work being separately funded under different contracts.

With an increase in divisions to an equitable level, the V&M income in the subsequent 12 months would be close to $3,000,000. The result is shown below:

V&M, After Obtaining Equitable Divisions from Conrail

Operating Costs	$3,150,000 to $3,300,000
Operating Revenues, First Year's Traffic . .	$2,900,000 to $3,000,000
Operating Deficit, First Year at Equitable Divisions	($150,000 to $400,000)

Hence, had equitable divisions been obtained for the first year, Virginia's operating subsidy funds of $600,000 would have been more than adequate, and some funds could have been returned to the state and the Accomack-Northampton Transportation District Commission to begin an acquisition program for the Eastern Shore trackage.

Equitable revenue divisions are thus indispensable to the V&M's success, to minimize and eventually eliminate the operating subsidy. Other funding, separate from the operating subsidy, is now being planned by the states for rehabilitation work on the deteriorated track and marine equipment. This separate rehabilitation work, together with an active effort by the railroad to seek additional traffic, could soon make the V&M a success story for Delmarva, of economic benefit to all three states.

B. Current Cash Crisis on the V&M

There is ample potential for long-range success for the V&M. Since last April, however, the impact of the totally inadequate Conrail divisions for the V&M has been serious. It appears that by fall, the V&M will be literally out of cash. Current cash-flow analysis, based on present revenue divisions and traffic, shows the V&M unable to pay bills by early September.

C. Revenue Divisions Negotiations with Conrail

Revenue divisions with the V&M's other connecting carriers in Norfolk are well above Conrail's and are not a problem. As will be detailed later, divisions from the trunk-line carriers connecting in Norfolk (Norfolk & Western, Chessie System, Southern Railway, and Seaboard Coast Line) are based on normal standards and are adequate. Much of the traffic from these carriers is profitable for the V&M.

Unfortunately, the great bulk of the V&M's loaded cars -- 85% to 90% -- are interchanged with Conrail. In the March talks,

21-684 O - 78 - 26

the V&M had to accept the present interim divisions agreement from Conrail due to lack of time, but the V&M insisted on a re-opener clause effective nine months later -- on January 1, 1978. However, as described above, the V&M cannot last until January at present divisions with Conrail.

Therefore, the V&M on July 5 requested that it be allowed to begin immediate renegotiations on divisions with Conrail. A letter was sent to J. E. Musslewhite, Assistant VP - Pricing, Conrail, asking that talks reopen on divisions for shipments of grain to Norfolk, as this grain traffic creates the most serious loss problem per car for the V&M. (See letter, which follows.)

In the letter, the discussion should be noted there (1) of the extra costs per car-mile of the float, and (2) of the extra costs resulting from the "absorbed switching" and other charges made by the Norfolk & Portsmouth Belt Line RR (NPBL). The V&M's costs per car for grain traffic are detailed in attachment 1 to the Musslewhite letter.

(Musslewhite letter follows
as next three pages)

VIRGINIA & MARYLAND RAILROAD
P.O. BOX 71 CAPE CHARLES, VA. 23310

5 July 1977

PLEASE REPLY TO
J. A. Hannold

J. E. Musslewhite
Assistant Vice-President - Pricing
Consolidated Rail Corporation
6 Penn Center Plaza
Philadelphia, PA 19104

Re: Adjusted Divisions on Grain

Dear Jim:

We realize that even an adequate general level of divisions will entail some movements which do not contribute to profits. On average, however, present revenues lees direct expenses do not bring the Virginia & Maryland operations within the limits of the subsidy funds available.

This unbalanced situation is due to the eection between Pocomoke City and Norfolk having two unusual coste: (1) the 26-mile car float operation together with associated float switching, which under the best conditions costs twice as much per mile in direct costs as the rail portion, and (2) the high absorbed switching and other charges of the Norfolk & Portsmouth Belt Line RR. These conditions are combined with Conrail providing divisions of revenue which are well below those given by our other connecting carriers and well below those given by other carriers in similar situations involving originating and terminating costs.

As you know, we plan to ask for a reopening of negotiations on our present interim agreement on general divisions in January, 1978. In the meantime, however, we have identified one area of divisions which requires immediate correction, due to the serious impact on our caeh flow.

The grain movements to Norfolk from midwestern points via Conrail stand out as the area most in need of adjustment. This grain, primarily for export, accounts for about one-fifth of our present annual traffic. Under conditions of high utilization of the float (giving the lowest unit costs), the floating, float-related classification, car hire, and Belt Line RR charges take up

approximately $186 to $218 of the average V&M revenue on grain cars of $203. On export cars, this leaves only $17 to defray the 64-mile rail haul costs. On non-export cars, our deficit is already $15 before the rail haul is considered. (See Atch 1.)

The above situation is not a deficiency resulting from our own costs being high. In fact, both our operating costs and our operating subsidy requirements are running under half of Conrail's 1976 operation of this section of track. However, the present amount of operating subsidy, including our contingency, is under $600,000. It appears that our annual operating deficit will be approximately $1 million, which is half of Conrail's 1976 deficit on the line. ($1,308,575 projected 1976 Conrail on-branch deficit, plus the cost overrun, said to be about $700,000.)

The Pocomoke-Norfolk line is now contributing to Conrail's cash flow and contributing to the viability of the Conrail line through Delaware. Thus the survival of the V&M is in the interests of Conrail. An equitable adjustment on Norfolk grain will still keep Conrail in a profitable situation on this traffic. Without such an adjustment, as soon as possible, our continued operation is doubtful.

In view of the above considerations, we request an immediate initiation of special negotiations leading to adjusted divisions on Conrail/V&M grain movements. We see such divisions in accord with long-standing railroad precedents for special divisions, which will be in our mutual interest.

I look forward to an early resolution of this problem.

Sincerely,

Tony

J. A. Hannold
President & General Manager

JAH/ww

1 Atch

VIRGINIA & MARYLAND RR

ACTUAL-COST ANALYSIS, 2 July 1977

OPERATING COSTS, NORFOLK GRAIN via FLOAT

COST PER CAR

(Unit costs based on 80%-85% of capacity, entailing the lowest unit costs at high utilization.)

Floating the Car	$60	
Switch/Class'n for Float	$30	($15 at each end)
Car Hire	$30	
Absorbed Switching, NPBL RR *	$66 or $98 *	
Total of Float-related costs, Car Hire, and NPBL charges	$186 or $218	
Direct Costs, Rail Haul	$27	
Other Costs, Rail Haul	$92	
Total Costs:	$305 or $337	
V&M Revenue per Car:	$203	
V&M Loss per Car of Grain	($102 or $134)	

* $66 if Export; $98 otherwise. Includes tariffs plus miscellaneous NPBL RR charges.

The grain traffic costs the V&M $305 to $337 per car, as opposed to the average V&M cost per car at high utilization of $270. The extra cost of the grain cars is due to the combination of (1) the float costs and (2) the NPBL absorbed switching charges. This creates an unusual double burden of per-mile cost concentrated on the relatively short mileage of the V&M. It should be pointed out, however, that this extra cost burden is really a part of the whole long-haul route of the grain from the Midwest to Norfolk.

Of course, high cost was the basic reason that Conrail pulled out of the Pocomoke-Norfolk line. But the V&M has cut the cost to half that of Conrail for the same service. With the inequitable divisions insisted upon by Conrail, however, the benefits of V&M's cost reduction cannot accrue to the V&M.

As will be shown later, Conrail makes a substantial profit on its business with the V&M at current divisions. Meanwhile, the V&M sustains large losses. Hence the subsidy money paid to the V&M is simply subsidizing Conrail. The way to eliminate this cross-subsidization is to obtain fair divisions from Conrail. Such divisions can put the V&M on its feet and still preserve some profit for Conrail.

The letter to Mr. Musslewhite concentrates on the grain traffic, which is about one-fifth of the V&M's cars. However, as pointed out above, the V&M will not remain solvent at present divisions for many more weeks, unless additional funding is found soon.

The difficulty with additional operating subsidy, in our view, is just that: it is subsidy funding. Such funding, while necessary in the short term, has the effect of postponing the long-term solution of putting the Pocomoke-Norfolk line on a self-sustaining basis via regular earnings from traffic. Therefore, if the three Delmarva states decide to pursue additional funding for operations, the states should couple this effort with support on the divisions matter. An organized effort to support the divisions negotiations will do more than anything else to reduce the subsidy burden in the future.

For the Maryland Eastern Shore lines, the Maryland Department of Transportation is taking an entirely different approach to the divisions with Conrail: Maryland DOT is taking the lead in the negotiations.

A leading consultant firm in the area of railroad economics -- L. E. Peabody & Associates -- has been engaged and the full case for the Maryland lines is being prepared. Initial talks with Conrail are now beginning, in advance of the startup of the Maryland & Delaware Railroad on August ~~6~~ 10. The preparation being done by Maryland DOT is extensive.

As all parties learned in March, however, a good case is essential, but not enough when talking to Conrail. The timely support of all persons and agencies interested in the future of the Delmarva lines will be required.

D. Case for Increased Divisions on the V&M

Revenue divisions are normally based on proportional mileage. That is, the carrier hauling a car the largest share of the total distance receives the largest division on that car.

For divisions purposes, the total mileage a freight car travels on a trip is often broken into 50-mile segments. Such 50-mile units are known as "mileage blocks", and each carrier participating in a haul receives a pro-rated division for each mileage block it carries the car. The more mileage blocks of the total the car is carried, the greater the revenue division.

Conrail's procedures for granting divisions to shortline railroads are based almost entirely on pro-rated mileage blocks. Therein lies the heart of the disagreement between Conrail and the V&M.

(1) Conrail's Divisions for Shortline Railroads

As confirmed in a statement by Conrail's J. E. Musslewhite at the Conference of States in July 1976, Conrail's basis for granting divisions to a shortline is that of mileage blocks, with the miles and geographic "basing points" developed from a key ICC Docket on rates, ICC No. 28300. The scale of divisions thus developed by Conrail is directly proportional to mileage, using the 50-mile mileage blocks, with a minimum division of 10%. (That is, the smallest division for each shortline is 10%, with 90% for Conrail.)

The percent scale of divisions for each shortline ranges

up from 10% as the shortline carries a car a larger proportional distance. But since the shortline railroad is just that -- short -- and Conrail is a major trunkline carrier, Conrail usually has most of the mileage on most cars. Thus Conrail usually keeps 85% to 90% of most cars' revenue, and gives the shortline only 10% to 15%.

(2) Originating and Terminating Costs

Unfortunately, the costs of moving a car of freight are not proportional to mileage alone. For carriers originating or terminating cars, there are large costs associated with waybilling, keeping and posting revenue accounts, keeping interline accounts, finding and delivering empty cars for loading, switching and spotting loaded cars at their final destination, taking care of claims, managing customer relations, etc., etc. Such costs are in addition to the mileage costs of car movement.

Furthermore, the costs of moving a car of freight are not proportional to route mileage alone if some of the miles involve high, unavoidable extra costs. Such extra costs on the V&M are (1) the cost of operating the car float, which is about twice as costly to operate per car mile as the rail movement, and (2) the high absorbed switching charges of the Norfolk & Portsmouth Belt Line RR in Norfolk, with which the V&M must interchange. (See the V&M letter to Mr. Musslewhite, July 5, 1977, for an indication of the costs resulting from the Belt Line RR charges. See attachment 1 to the letter for the V&M's float costs and other costs, on a cost-per-car basis.)

For the V&M, the absorbed switching and other charges of the Belt Line create an unusually high terminating cost on cars delivered to the Belt Line. The absorbed switching charges also affect all the other railroads in Norfolk interchanging cars for termination on the Belt Line. Before April 1, 1977, these absorbed switching charges were paid by Conrail and were a part of Conrail's cost of doing business, as they are now for the V&M.

(3) Precedents for Rates and Divisions

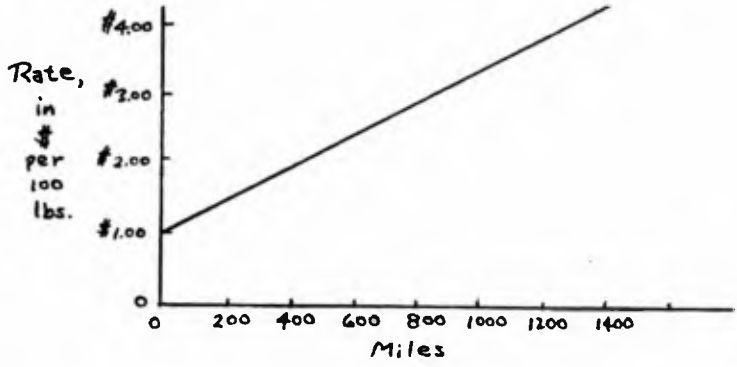
Conrail's procedures for granting divisions are not long-standing, dating only from 16 months ago, when Conrail first began operations. There are numerous other well-recognized precedents in the railroad industry for divisions agreements. Among these precedents is ICC Docket 28300, the very docket Conrail claims is the basis of its case.

Contrary to Conrail's use of the docket, the ICC Docket 28300 does indeed recognize the high extra costs associated with originating and terminating cars, and in the docket's scales for rates, these extra costs are built in.

The Docket 28300 Class Rate Investigation of 1939 (decided in 1951) was to set up a rate structure, based on costs. In interpreting the docket, Conrail's emphasis is only on the mileage basis, without considering the rate basis. Of the over 500 pages of the entire docket (appearing in two separate volumes), the vast majority deal with rates, not divisions. Of the remaining pages, a large majority deal with costs. Mileage blocks are only a small

part of the docket, and fit only in context.

Since Conrail continually points at Docket 28300, one must grasp Conrail's distortion of the full docket. To do so, one has only to look at the rate scales set up in the docket. For example, the scale of first-class rates set up by the docket, if put on a graph, look like this:



The point to note is that the rate structure does <u>not</u> start at zero dollars for zero miles, as Conrail often implies. At zero miles, the scale starts at a point well <u>above</u> zero dollars, to allow for all the various originating and terminating costs. The terminal factor -- i.e., the allowance for originating and terminating costs -- built into the scale at the origin is equivalent to 200 miles, or four 50-mile mileage blocks, for <u>each</u> terminal. If the cargo moves only a few route miles (even less than 50), the rate is equivalent to the cargo moving 200 miles at each end (the "terminal factor") <u>plus</u> the route miles. The rate scale is built

this way due to cost.

Since 1951, when the docket was decided, several general rate increases have occurred. However, the essential relationship of rates to miles, as depicted in the graph, has not changed. The "Appendix 18 rates", as shown in the graph, became effective in 1952.

(4) Conrail's Claims: Our Experience in March

When Conrail interprets Docket 28300 for mileage-block divisions, Conrail ignores the cost-based rate basis of the docket. Conrail claims either (1) that its 10% minimum divisions to short-lines, plus "other assistance" rendered, should be enough to satisfy the affected lines, or (2) that it (Conrail) will not recognize cost as a basis of divisions. Both positions by Conrail are wholly fallacious.

In the March negotiations, Conrail refused to see any validity in the V&M's divisions proposals. Furthermore, the Conrail people had no idea what their divisions proposals meant to them, nor any idea what their proposals meant to the V&M. The Conrail traffic accounting left out fully one-third of the cars carried in 1976. The only side in the negotiation with concrete figures as to Conrail's costs and revenues was the V&M side, and the Conrail people refused to acknowledge the missing traffic in their list until its absence was documented by the V&M negotiators. Despite the cost/revenue data prepared by the V&M, Conrail refused even to discuss it and merely held out for its "principle" of 10%.

After several hours of largely unproductive discussion, and after a recess in the meeting, Conrail agreed to add an additional 3% on the divisions applying to the car float traffic. (Previous to the divisions meeting, some expressions of support for the V&M had been sent to Conrail from the three states' transportation Secretaries and from two Delmarva Congressmen. There is reason to believe that this expression of support was a factor in Conrail's moving from its previously intractable position.)

The essential problem at the March meeting was lack of time. With startup of the V&M a little less than two weeks away, there was no time for the V&M to organize support and try again. Conrail could simply stall.

In March, Conrail proposed its version of divisions which, as described, were proportional only to mileage, with a floor of 10% for V&M. After the Conrail counterproposal and adjustment, an interim agreement was accepted, under duress. The floor is now still 10% on traffic originating or terminating on Delmarva, 14% on "overhead" through traffic, and 17% on float traffic originating or terminating in Norfolk. Each of these percentages is a minimum, with a scale of percentages ranging up according to relative mileage. On these divisions scales, the <u>average</u> divisions seen by the V&M are several percentage points higher than the minima. The average V&M revenue produced from these divisions is about $200 per car.

But these percentages, and the revenues produced, are completely inadequate.

(5) V&M's Loss per Car at Conrail's Divisions

At current Conrail divisions, the V&M RR is losing about $70 to $100 per average car, and losing from $102 to $134 per car of grain. This loss results because it costs the V&M from $270 to $300 to handle an average car (and up to $334 to handle a grain car), yet the V&M receives only about $200 in revenue division per car. The loss is despite the fact that the V&M has cut Conrail's costs on the line by more than half.

(6) Precedents for Increased Divisions

There are many ways to adjust divisions to reflect originating and terminating costs. Recognition of such costs is built into hundreds of divisions agreements. Dozens of different ICC dockets bear on divisions, and there is no single formula applicable to all cases, as Conrail implies.

Precedents can be found throughout the railroad industry for an equitable division of revenues, fair to both parties, in which there is recognition, express or implied, for terminal and other costs.

(a.) For example, 20% is a percentage often used for a minimum division for an originating or terminating carrier, when no other basis for divisions exists. Traffic Executive Association-Eastern Railroads Division Sheet 464A (adopted 1972) covers divisions on cargoes rerouted under emergencies. In this sheet, 20% is the minimum for originating and terminating carriers where their revenue is obtained off the normal routing on a rerouted car. The Traffic Executive Association-Eastern Railroads division sheet

drafted at the Joint Divisions Conference of Eastern Railroads and Canadian Lines in February, 1976 provided for a 20% minimum division for originating or terminating carriers. (However, the draft sheet was not adopted, since it would have cut the divisions of the railroads in New England. The New England railroads receive higher divisions than would be provided by a 20% general minimum.)

(b.) But the most telling precedents are existing divisions agreements which were negotiated between railroads having clout on both sides of the table.

The contract between Conrail and the Delaware & Hudson RR provides for divisions based on 50-mile mileage blocks, with a minimum of 20% for the originating or terminating carrier, where no other divisions agreements existed prior to the contract.

The existing divisions agreements between the V&M and each of its four major connecting carriers in Norfolk are all adequate agreements, based on prior agreements between the Pennsylvania RR/Penn Central and the four carriers. Seaboard Coast Line and Southern Railway divisions average 32% to 60% for the V&M; Southern Railway divisions on the old Norfolk Southern average 24% to 50% for the V&M; Chessie System (old C&O) divisions give a minimum of 27%, with average percentages ranging upward; Norfolk & Western divisions provide a minimum of 20% for the V&M, with the ecale up from 20%.

(c.) Minimum percentages are not the only way to adjust divi-

sions to reflect originating and terminating costs. The ICC Docket 28300 (the docket so frequently cited by Conrail) provides a basis for mileage-block terminal factors. That is, instead of a minimum percentage, a minimum number of mileage blocks can be recognized. Using Docket 28300 as the basis, one can establish four 50-mile blocks (or 200 miles) as the minimum terminal factor to be allocated to each originating or terminating carrier, with route miles in addition. That is, for a haul of 50 miles, for example, the originating and terminating carrier can each be given four mileage blocks, with the carrier handling the route miles receiving one additional mileage block. Such a division exactly parallels the rate basis for the shipment. This principle is ignored by Conrail in its selective interpretation of Docket 28300.

The mechanism of the docket, in fact, therefore supports far higher divisions percentages than Conrail admits. In the words of one analyst:

> ... the material provided by [Conrail] which is claimed by [Conrail] to be in accordance with Docket 28300 is grossly misleading. Docket 28300 not only identified mileage groups but also laid out terminal factors. [Conrail] has neglected to include this extremely important element of rates and divisions.

(d.) The divisions in use today for the vast majority of rail traffic moving between the northern and southern U.S. are known in the industry as the "north-south divisions". The bases of these divisions include a terminal factor equivalent to 221 miles,

to compensate for originating and terminating costs. Thus the north-south divisions terminal factor is even larger than that contained in Docket 28300.

(e.) Divisions can be adjusted to take care of unusual costs, if the parties so desire. In Docket 28300, the ICC concluded that while the costs of service are not the sole factor in the making of rates, costs are the basic factor in rates. The cost principle can be transferred to divisions, if the railroads making divisions agreements wish to do so.

For example, factors known as "arbitraries" and "deductions" are often used in divisions agreements, as adjustments in divisions to take care of unusual costs borne by one of the participating carriers. There are ICC dockets which recognize the equity of such special divisions.

In the words of a Norfolk & Western Rate School Notebook:

> There are numerous instances where it has been found that established percentages will not provide satisfactory divisions to the interested carriers, and it has become necessary to depart from established percentages and to establish special divisions. They are normally published in division sheets or division bases by the Rate Associations as well as the individual carriers.
>
> There are many methods used to arrive at special divisions. A mileage prorate similar to that used in the establishment of established percentages is sometimes used, and, in other cases, a prorate is figured by using actual miles or the shortline distance from and to the junction points.
>
> ...
>
> Percentage arrangements, as well as special divisions, often provide for minimum revenue for one or more

> of the participating carriers. These minima have been provided to insure that a carrier receives revenue sufficient to justify its participation in the haul. Minimum revenue provisions of this kind are often used to take care of high operating costs on branch lines, or high terminal expenses, or short hauls for intermediate carriers.
>
> (Emphasis added.)

(f) Obviously, there are ample grounds, in terms of precedent, for an equitable divisions agreement between Conrail and the V&M.

(7) Conrail's "Precedent"

Conrail usually cites its present agreements with several shortlines as its "precedent", dating from April 1, 1976. Effective that date, the 55-mile Hillsdale County RR, a subsidized line in southern Michigan, accepted the Conrail formula with the 10% minimum division. We understand that this 10% hae been subsequently raised to 12%. Similar agreements are in force, dating only from 1976, with several other shortlines.

The acceptance by the Hillsdale County RR of the Conrail formula was clearly done in artificial circumstances. The HC RR was under time pressure to start operations, but under no financial pressure, due to the 100% federal subsidy last year. With the government available to pick up all the HC RR's loss the first year, there was no incentive to work out a proper division. This perverse precedent is thus totally based on the subsidy cushion. Such a precedent should not be condoned by anyone having charge of public money.

In addition, it should be recognized that these small rail

carriers do not have a car float to operate, nor absorbed switching charges from a terminal Belt Line RR to pay for as a cost of doing business, nor in many cases, daily service to provide. At or near capacity, the V&M provides daily service, and trains normally run around the clock. V&M freight trains often run from 50 to 75 cars. This is contrasted with an average shortline train of 10 to 20 cars operating on a day shift only.

It seems basically erroneous for Conrail to class the V&M, which can carry 10,000 to 15,000 cars per year, with the usual shortline railroad, which may average only 1500 to 5000 cars per year. The V&M, with the float, is in fact a "bridgeline" carrier, not a shortline.

(8) Conrail's Costs and Revenues

In 1976, Conrail earned $8.6 million on the Pocomoke-Norfolk line. With the creation of the V&M in 1977, all of Conrail's costs on the line were eliminated. Conrail no longer has to run the line, and thus its "on-branch" costs are incurred no longer. Yet Conrail still derives revenue from the line, through the V&M.

Conrail still has "off-branch" costs associated with the V&M traffic. That is, Conrail incurs costs to deliver and receive cars to/from the V&M.

Note below:

Conrail 1976 Revenues,*	
Pocomoke-Norfolk	$8.6 million
Conrail Off-Branch Costs*	$3.9 million
Excess Revenue Remaining,	
Available to divide between V&M and Conrail, 1976 data . .	$4.7 million

* (Figures from State Rail Plan, as filed by Conrail with FRA, using ICC RSPO formula for Off-Branch costs)

Therefore, in terms of 1976 figures, if Conrail's off-branch costs are fully compensated out of the revenues derived from Pocomoke-Norfolk traffic, there is still $4.7 million left to divide between Conrail and the V&M.

Keeping the comparison constant in terms of 1976, the V&M would have received $2.8 million of the revenue remaining, based on the 1976 traffic level. That means, in term's of last year's traffic level, Conrail would still have made $1.9 million in clear profit over costs while interchanging with the V&M, at present divisions with the V&M. See below:

1976 Revenue Remaining, after covering all of Conrail's Off-Branch Costs (as above) . . .	$4.7 million (as above)
Less V&M Revenue at present divisions, 1976 traffic level . .	$2.8 million
Clear Profit for Conrail, Over Costs	$1.9 million

Nothing more clearly demonstrates the inequity of the V&M's present divisions than the size of Conrail's profit on the V&M traffic, while the V&M now loses from $70 to $134 per car.

If the figures are adjusted for 1977 traffic, and if allowance is made for the minor revenues lost to Conrail on cars interchanging strictly between V&M and the four carriers in Norfolk, Conrail's clear profit will decline to around $1.3 million. This still leaves considerable room for Conrail and the V&M to negotiate divisions in which the V&M can break even and Conrail can make a profit. Any expansion of traffic over 10,000 cars will expand Conrail's profits and make the V&M successful.

Because of the totally inadequate Conrail divisions, the V&M has been forced into a position of imminent insolvency, or else forced to increase its subsidy requirement. There is no need whatever for this situation. Public funds being paid to the V&M for operating subsidy are merely subsidizing Conrail, due to Conrail's ability to ignore its smaller neighbors. If we wish to expand Conrail's subsidy, there are other, more direct ways of doing so.

Based on 1976 experience, the average division percentage at which Conrail is made whole (i.e., no loss) is 39% V&M/ 61% Conrail.

However, Conrail often sidesteps the issue of its costs. If Conrail states now that its 1977 off-branch costs to deliver cars to the V&M are far higher, this would be inconsistent with

Conrail's stated 1976 off-branch costs. Furthermore, general rate increases and Conrail's off-branch costs should balance over the next several years.

But rather than off-branch cost, Conrail usually argues in terms of "full cost". By this, Conrail means that the cost of doing business in Delmarva must reflect Conrail's overhead costs throughout its 14-state system. That is, Delmarva profits are not really "profits" unless these pay for non self-supporting and unprofitable activities elsewhere. Hence, on this basis, Conrail would turn down business on Delmarva which could help reduce Conrail's total loss. Most economists will find Conrail's system of "full costing", as a means of deciding whether a particular traffic is profitable, a bit ludicrous.

(9) V&M's Divisions Proposal

To break even, the V&M requires an average revenue per car of approximately $300, as opposed to the present level of $200 per car. Such an increase is consistent with precedents throughout the railroad industry, other than Conrail's. As demonstrated above, there is room in Conrail's revenues derived from V&M traffic to provide such divieions, and still leave Conrail a profit.

A divisions agreement is primarily a contractual matter between two railroads. As such, both parties must see their best interests in the agreement if it is to succeed. Therefore, for a good agreement between Conrail and V&M, Conrail must see a profit in doing business with the V&M. Conrail should have a definite incentive to maintain its traffic with the V&M. The V&M proposal

starts, therefore, on the assumption that Conrail must first be made whole on the V&M traffic, and then the remaining revenues should be divided in such a way as to insure the survival and success of the V&M and provide some profit for Conrail.

(10) V&M's Survival is in the Interests of Conrail

The survival of the V&M is certainly in the interests of Conrail. Without the line from Pocomoke to Norfolk, with the car float, the rest of Conrail's line through Delaware will lose 8000 to 12,000 cars of bridgeline traffic each year. Thus, if the V&M folds, the rest of Conrail through Delaware could soon wither as well, especially south of Harrington, due to the sharp drop in traffic.

However, if Conrail should state that the survival of the V&M is not in its interests, then the three Delmarva states can make the inference that Delmarva will soon lose rail service entirely, as Conrail withdraws and the V&M disappears.

SUMMARY

We have shown that the V&M requires operating subsidy only because Conrail refuses to grant fair divisions. Conrail makes large profits on its business with the V&M, while the V&M will soon be insolvent due to the inadequate divisions, despite its operating subsidy.

Therefore, operating subsidy funds from taxpayers which are given to the V&M are simply cross-subsidizing Conrail.

The additional money needed to put the V&M on its feet can come either from (1) more subsidy, or (2) fair divisions from Conrail which still leave Conrail a profit on its business with the V&M. Rather than granting more subsidy, we would urge those persons and agencies interested in Delmarva's economic future to support the second choice.

Negotiations of any type generally produce a fair result if the clout on both sides of the table is roughly equal.

The intent of Congress, when it created Conrail, was surely not for Conrail to literally sabotage alternative solutions developed by states to solve their own rail problems.

Delmarva has a sound opportunity available to make its experiment in locally-managed rail operations a success, fully self-supporting within a few years. If this opportunity is taken, Delmarva can be an example to the nation in this form of economic foresight.

STATEMENT OF HAROLD WESCOAT,

Mr. WESCOAT. I have a statement I would like to make.

I am Harold Wescoat, member of the Accomack-Northampton Transportation District Commission, and am appearing here today as a representative of that commission, and also a representative of the Board of Supervisors of Northampton County.

The Accomack-Northampton Transportaton District Commission is making a valiant effort to save the Delmarva Rail Service on the Eastern Shore and to provide an essential alternative transportation service providing the only logical by-pass of the heavily-congested Baltimore-Washington rail corridor for traffic moving north and south.

The A-N Transportation District is not only concerned with the effect that a termination of rail service would bring on the area that it serves, but is also concerned for its neighbors in Delaware and Maryland. If the Virginia portion of this line does not survive and through traffic no longer reaches the ConRail lines in Maryland and Delaware, it is very unlikely that future rail service will continue south of Wilmington, Delaware. This would mean a large number of ConRail employees presently working in Maryland and Delware could be affected, along with the economic health of the tri-State area.

The Transportation District Commission also feels that this line has a vital national defense significance because it has the capacity to and does carry items which are too high or too wide to be moved north or south without being routed over very indirect routes, causing delivery delays of 2 weeks or longer [see attachment]. When the northeast corridor high-speed improvement project construction begins shortly, the need to move high and wide loads over the Delmarva line will become even more magnified.

The A-N Transportation District desperately needs the extension of time provided in H.R. 9398 to provide for the rehabilitation of the Delmarva line and to allow the Virginia-Maryland Railroad to become self-sufficient. We have a private operator under contract who is doing an excellent job. Operating cost are presently running about 50 percent of ConRail's operation of the same line a year ago. This line should not be allowed to die without a chance. A fair chance would be provided if the line could operate so that a round trip could be handled in one day. This is only going to be possible if the rehabilitation project can proceed and if H.R. 9398 can be passed prior to April 1, 1978.

The provisions of the proposed legislation which require union labor rates and work rules now being considered would be disastrous for us, and part of the reason we are in such bad shape now.

We plead with you to support the time extension provisions of H.R. 9398 and to reject the union labor and work rules requirements being considered.

Thank you.

[Attachment to Mr. Wescoat's statement follows:]

21-684 O - 78 - 28

Tank being moved north by Virginia-
Maryland Railroad - October 13, 1977
Destination - Aberdeen Testing Ground

High and wide loads being moved north
by Virginia-Maryland Railroad
October 13, 1977

Mr. ROONEY. Thank you very much.

Mr. WESCOAT. Incidentally, I have got some pictures here of wide and high loads that you couldn't carry on the other lines on account of the tunnels and so forth.

Mr. ROONEY. I am very well aware of those problems, because there are several companies in my district that have developed these large pieces of equipment, and then are unable to ship them.

Mr. WESCOAT. That is right.

Mr. ROONEY. So I can appreciate what great work you are doing for the community.

Mr. WESCOAT. Fine.

Mr. ROONEY. I just have one question. Either of you can answer. I guess, Mr. Withuhn.

You said in your statement that former members of the UTU are now working for your company and they are very happy because of the future outlook of the company, and then you go on to mention you pay sick benefits. You pay this, you pay that.

How does that fair with respect to UTU rates?

Mr. WITHUHN. As I mentioned I think just in passing, it is very hard to calculate an exact trade off between, say, the hourly basis. We pay strictly hourly with overtime provision. UTU contract provides for a minimum mileage requirement plus there is a daily rate that is figured in plus mileage. There is travel time, both deadhead and train service, so to try to come up with an hourly rate is very difficult, but I would say hourly, it is about double.

Mr. ROONEY. At the end of the month the UTU employee makes $1,000. How does that compare to your employee?

Mr. WITHUHN. In terms of our annual take-home pay for our employees in fact most of our employees have come to us and said in fact they are making just the same thing in total over the year than they did with ConRail but in fact are working more and are not being overworked.

Mr. ROONEY. Thank you very much, gentlemen. We appreciate very much your testimony this afternoon.

After 6 hours and 10 minutes, that will conclude the hearing.

[The following statements and letters were received for the record:]

Testimony Submitted to the Subcommittee on Transportation and Commerce of the House of Representatives Committee on Interstate and Foreign Commerce.

My name is Ray Chambers and I serve as Federal Representative of the Bangor and Aroostook Railroad. We come before you to support strongly legislation to expand, and make more flexible, the state rail assistance program.

We feel strongly that the federal and state governments should be able to help railroads and shipers who feel that a branch line should be rehabilitated before it reaches such a state of disrepair -- and subsequent disuse -- as to be subject for abandonment. I am convinced that railroads can work cooperatively with the states in improving lines now liable for eventual abandonment.

There are, of course, many lines for which economic sense does not dictate survival. A cooperative relationship between state rail planning groups and the railroads should help to isolate those cases and get them through the processes without the high costs which are now sometimes associated with such applications.

We in the Northeast are well aware of the benefit which can accrue from active state-railroad cooperation in dealing with transportation questions. We feel that several of the bills being considered by your Committee would be helpful in expanding that cooperation. It is not our intention at this point to go into any detail on the various provisions which have been proposed to you -- but rather to express our strong support for the general legislative goals that these bills share.

We believe that the transportation system of the nation will be well served by the continuation of a strong rail system and that the active cooperation between the states and the railroads is an asset in this regard. We urge you committee to give full consideration to this legislation.

STATEMENT OF ALAN G. DUSTIN
President and Chief Executive Officer
Boston and Maine Corporation

Submitted to: The House Committee on Interstate and Foreign Commerce

Subject: Testimony on a Proposal for a Local Rail Service Improvement Program of 1977.

The Commerce Committees of both Houses of Congress are currently considering a variety of bills to amend Title VIII of the Railroad Revitalization and Regulatory Reform Act and the State Assistance Program of the Regional Rail Reorganization Act.

Attached to this testimony is a proposal for a substantial alteration of the existing State Rail Assistance Program. It seems to me that the time is right to make the State program more flexible and to give it a permanent foundation.

In previous testimony, a number of issues have been raised. These involve such things as the Federal share, in-kind benefits, planning funds and FRA procedures. All of these are important, but, in my view, the overriding question is: What role should the States have in rail revitalization? Should it be limited to the abandonment question or should it be larger?

All of us dealing with this subject are aware of how the local rail service programs came into being through Section 402 of the 3-R Act and then Section 803 of the 4-R Act. Those two programs will become one on April 1, 1978. They are both similar in that they deal only with lines authorized to be discontinued. Section 802 has a 5 year life.

Despite the problems of start-up, the programs are off to a significant beginning. A small office in the FRA was established to get this new and complicated Federal/State/private activity underway. All 18 Northeast states are participating in the 402 program. About 3000 miles of line are under subsidy. Thirty-two States are eligible for 802 and 31 have had planning grant applications approved. While I know there has been some unhappiness with the Federal Railroad Administration, they have been involved in a difficult situation in the past. Mr. Hall and now Mr. Sullivan, and the FRA team have begun administration of a law that, in the case of 803 is not particularly rational. There have been major impediments in enviornmental law, civil rights law, the General Accounting Office, the ICC and USRA. There have been three Presidents, three Secretaries of Transportation and 48 states anxious to get underway with as little interference as possible. Program requirements and budget restrictions of OMB have needed to be overcome. Probably the managers of 803 deserve a medal rather than criticism.

It seems appropriate that before we get the existing 803 program, with its limitations, set in concrete we should move to establish a permanent State role. In the first instance, that role should be concerned with the local rail service problem. Working with the States, the rail industry should move away from the negative stance we have taken to the branch line question, and begin to view the branches as vital suppliers of our mainline traffic.

Despite the fact that we are re-organizing under the protections of Section 77 of the Bankruptcy Law, the Boston and Maine has not attempted to abandon a line since before passage of the 3-R Act. My experience has been that when a line is abandoned, the merchandise vanishes from rail. I feel that the traditional rail management view of branch lines has been harmful to the overall rail industry. However, in most circumstances it has been the only option available to stem individual losses.

The theory has been that if a line loses money--chop it off. The procedure has been long and complicated since communities and shippers often fight abandonments. The battles are expensive, costly to railroads also in terms of public image and generally drag out for years.

The real losers are generally the railroads. An example: Railroad A in Maine lost money on a branch line that had one factory producing widgits. The factory shipped only 300 carloads of widgits per year. A minimum of 400 carloads was need for the branch to break even. The railroad filed a petition for abandonment and, $110,000 in legal and consulting fees and two years later the line is abandoned. A paper manufacturing company consider a new plant on the branch, but rejected the idea as soon as they discovered the line was subject to an abandonment petition. The widgit factory then turned to the highway mode to transport widgits. The widgits are now permanently handled by truck. The fact is, that while the originating railroad was losing money, the Boston and Maine, the Delaware and Hudson, the Chessie and the Santa Fe all made money on their divisions of each carload of widgits that moved west. Now that revenue is gone forever.

Another example: Let's assume a profitable Western carrier is moving 100,000 carloads of bridge traffic to and from the far West and Northeast. If 10,000 carloads are lost to truck because of line abandonments on other carriers, that 10% drop in business could be devastating. While that Western carrier may have few abandonment problems of his own, he may be severely hurt by activity in the Northeast and Midwest. Thus, while some individual carriers are solving some immediate cash problems via abandonment the entire industry experiences continued erosion of financial viability.

It is a difficult problem because most individual railroads simply do not have the ability to subsidize losing lines for the greater good of the industry. Seeking an abandonment is the only alternative. Obviously some lines should be abandoned. But there are other lines that should be improved and kept operational. Now, with both the House and the Senate reviewing this subject there is opportunity for a new alternative. The railroad industry, labor and management, should work with Members of this Subcommittee to mold a good program that will address the national branchline problem in a comprehensive manner.

The States, in my view, are particularly suited to administer a national local rail service program. They are the closest to the problem. Both the 402 and the 803 programs have given them a beginning both in terms of planning and practice. Now before we become too tied down by the specific requirements of 803, we should design a permanent national program that is reasonable.

August, 1977

LOCAL RAIL SERVICE IMPROVEMENT PROGRAM OF 1977

A Proposal by Alan G. Dustin

BACKGROUND. This is a proposal for a new program for local rail service improvement to be administered by the States. It expands on the concepts of rail service assistance contained in Section 402 of the Regional Rail Reorganization Act of 1973 and Section 803 of the Rail Revitalization and Regulatory Reform Act of 1976.

This proposal is designed to give the States maximum flexibility. It creates a State Rail Fund which, based on a formula, is divided between the States. The money may be expended according to the State Plan which has been previously approved by the Secretary of Transportation. There are two categories within a State Plan. Each category, or Account, has a different Federal match and different rules. The first account allows operating subsidies for branch lines which are losing money but should be maintained in the State's rail system--whether or not the line has been approved for abandonment. The second Account is for rehabilitation.

THE STATE PLAN. Each year the State's designated Rail Official will submit, by June 30, the annual proposed State Rail Plan to the Secretary of Transportation. The Secretary must approve the Plan by September 30, and transmit the Federal funds to which the State is entitled within 30 days thereafter. Any disputes between the Secretary and the State Official should be resolved by binding arbitration (perhaps the ICC) and the plan should be approved and funded as soon as the arbitration decision is made. The States may then proceed to fund all Subsidy and Rehbilitation Projects contained in the Plan without further Federal approval.

Discussion. This seems a functional approach that should work over a period of time. Such questions as in-kind benefits, States pooling of resources and project by project funding levels should all be resolved up front in the Plan. Once the Plan is approved by the Secretary there should be no further Federal interference (unless there is a violation of Federal law). It should be possible for the State, with FRA approval, to amend the Plan from time to time.

Funds for the State portion of the State/Federal match must be indentified. They may include in-kind benefits, shipper funds or services, funds or services of other governmental units, of the railroad itself, or any other person approved in the State Plan. To give the Plan wider reach the Federal match for any project may be lowered, but it may not be raised above the maximum set in law.

THE RAIL SERVICE SUBSIDY ACCOUNT. This Account may only be utilized for operating subsidies on project lines. An operating subsidy in a Subsidy Project must cover 100% of the difference between operating revenues attributable to the line and the avoidable cost of providing rail service over the line. At the State's option, a Subsidy Project may last as long as 5 years. The Federal match may be as high as: Year 1-100%; Year 2-90%; Year 3-80%; Year 4-70%; Year 5-50%.

There are two kinds of subsidies available. The first is a Continuation Subsidy. When a line has been certified by the ICC for abandonment, the State, through the State Plan, may offer a Continuation Subsidy for up to five years. The ICC may require the line to be operated for that time. The second kind of subsidy is a Local Rail Service Subsidy. A Local Rail Service Subsidy Project may be undertaken on any line where there is an operating loss in accordance with the formula, but it is deemed by the carrier and the State that it is important for the line to remain in operation. This Subsidy may be offered whether or not the carrier has petitioned for abandonment. A Service Subsidy must be originally requested for inclusion in a State Plan by the carrier.

Discussion. The Local Rail Service Subsidy Account retains the 3-R and 4-R Act concept of providing assistance to maintain local rail service that is financially draining to a carrier. However, it makes substantial changes in the existing program. For example, the Account is made permanent. Clearly the branch line problem will be with us for a long time. Also, the declining Federal match is not tied in the statute to calendar years, but to project years. A new project can be intiated at 100% Federal regardless of the year it begins. This is adopted from the suggestion put forth by Congressman Joe Skubitz in the House Subcommittee hearings. The Subsidy Account may not be used for rehabilitation (however, the Rehabilitation Account may be used for work on lines under subsidy). This keeps the operating subsidy pure and clearly identified.

All projects in the Subsidy Account will be identified as either a "Continuation Subsidy" or a "Local Service Subsidy". The Continuation Subsidy is the most similar to the 3-R and 4-R Act programs in that this subsidy is made available only to those lines approved for abandonment. The Continuation Project funds may be used for operating subsidy or for the purchase of a line of railroad approved for abandonment.

Our recommendation is that the funds be used sparingly for line purchase. As a general policy the carrier requesting the abandonment should be required to continue operation of the line through the life of the project. Once a shortline operator takes hold he will have a vested interest in keeping the subsidized line going no matter what its viability. Or, as William G. Mahoney of the Railway Labor Executives pointed out in House hearings, "a 'designated operator' can cease operations as summarily as be began them. This could also prove destructive.

Under any circumstances, we are adamently opposed to creating shortlines

and allowing trackage rights over abandoning carriers to make the shortlines whole. This would be bad for management, bad for labor and would result in confusion and a great deal of hostility on all sides. It could, in fact, lead to a kind of "state nationalization" where the State takes over operations of all lines with Federal money. Efficiencies of private enterprise operations would be lost and, such a move would be a large step toward real nationalization.

The newest aspect of the proposal is the Local Service Subsidy which may be made available, on a project by project basis, to lines not listed for abandonment but which cost the carrier to provide service to shippers. This idea is in concert with proposals in various House and Senate bills that allow aid to lines "potentially subject to abandonment." As FRA Administrator Sullivan points out the language "offers railroads an incentive to allow lines to deteriorate and become eligible for the program." Mr. Mahoney, in his testimony, states, " It appears from the various railroads' designations of lines potentially subject to abandonment that the branch lines and even some secondary main lines of the private railroad corporations will go the way of the passenger train." Implicit in what Mr. Mahoney is saying, and I think he is correct on this point, is that if we get lines into a potentially abandonable stream in the first place, even if just to qualify them for subsidy, we will then push on to abandonment if we don't get the subsidy in a kind of self-fulfilling prophecy.

A major concern to me is that as soon as we list a line as "potentially abandonable" it becomes a doomed line in terms of attracting new business. In fact, existing business may turn to truck or any other alternative as a matter of protection. Thus, if we can get abandonment out of the language we will be far better off from day one of the initiation of a Local Service Subsidy Project. Hopefully, an agreement between a carrier and State to enter a Service Project will be seen as a positive commitment to the future of the line rather than a last ditch effort to side track an abandonment.

This proposal assumes certain good-will between the State and the carrier in agreeing to a Local Service Subsidy Project. The carrier must request the subsidy from the State and will be expected to make a good faith effort to make the line viable during the life of the Project. However, if a carrier requests a Project Agreement, and the State refuses to enter into such an agreement providing a full subsidy, then the State may not oppose any subsequent abandonment petition for the line in question.

This proposal does not address the very important question of the ICC process leading up to a Certificate of Abandonment and eligibility for a Continuation Subsidy. That should be considered.

RAIL REHABILITATION ACCOUNT. Any rail rehabilitation project approved for inclusion in the State Plan may be funded through this Account. The maximum Federal share may be: Jobs-100% Materials & Supplies-80%.

Page four--Dustin Proposal

Discussion. This proposal does not limit the kind of work that may be undertaken in a Rehabilitation Project. Emphasis should be on branch line rehabilitation, but State would not be prohibited from moving in an area where there is a high public interest. The greatest need in Colorado, for example, may be for railroad relocation around a town or grade separation to make way for new unit coal service. In New Hampshire, branch line rehabilitation is most appropriate.

The formula for the maximum Federal match is different from the Subsidy Account. In rehabilitation there is no advantage to a declining Federal share. This proposal allows for two maximum Federal shares in Rehabilitation--100% for employment costs and 80% for materials and supplies.

The 100% jobs subsidy is based on the fact that the Congress has already created a high priority for public funding for jobs. During the last two years Railroad Jobs legislation passed both the House and the Senate by overwhelming margins. Only an inter-union dispute over who would get the work caused Congress not to press that legislation to final enactment. However, the New England Regional Commission has run its own railroad jobs program, and it works well. This year, Congressmen led by Mr. Florio of New Jersey and Mr. Conte of Massachusetts and Senators led by Mr. Heinz of Pennsylvania have introduced new railroad jobs legislation and I am hopeful that it will be considered. However, there is no reason why that good and workable concept cannot be incorporated into this State administered program.

This proposal envisions a 80% Federal match for supplies and materials. While I am not wed to a specific percentage here it seemed appropriate to utilize the match available for UMTA capital projects. A Federal match that is lower will put rehabilitation projects out of reach for most States.

FUNDING FORMULA. Each State is entitled to an amount equal to the total amount appropriated, multiplied by a fraction whose enumerator is the "approved rail mileage with State subsidy" in each State Plan and whose demonator is the rail milage for all States eligible for assistance. Each State would receive a minimum of 1% of the total apprppriation.

"Approved rail mileage with State subsidy" for purposes of this formula is that mileage contained in a Subsidy or Rehabilitation Project for which the non-Federal share is at least 10%. No mile may be counted twice. As already indicated, before a Plan is approved by the Secretary, the non-Federal share must be identified.

Discussion. This formula attempts to give weight to States that have the greater problem and/or are willing to make the greater effort.

STATEMENT ON BEHALF OF ST. LAWRENCE RAILROAD
WITH RESPECT TO H. R. 8393.

Mr. Chairman and Sub-Committee Members. My name is Andrew P. Goldstein. I am an attorney, and I submit this statement on behalf of Mr. John H. Rees, President of National Railway Utilization Corporation, which does business under the name of St. Lawrence Railway. Mr. Rees could not appear today due to pre-existing commitments made before these hearings were announced.

The St. Lawrence Railroad operates various rail properties in New York State in the vicinity of Ogdensburg, a St. Lawrence seaway port. One of these properties is known as the "DeKalb Branch," extending some 27 miles from DeKalb Junction to Ogdensburg. The St. Lawrence Railway operates that branch as a "designated operator," and commenced such operations on April 1, 1977 pursuant to the request of the Ogdensburg Bridge and Port Authority (an authority created by the laws of the State of New York), which itself was the designated operator on these properties from April 1, 1976 through March 31, 1977.

The "DeKalb Branch", prior to April 1, 1976, was operated by Penn Central Transportation Company. When the Ogdensburg Bridge and Port Authority became the designated operator of that line, if offered employment to those Penn Central employees who formerly had been employed in providing service on the line; but none of them accepted. Accordingly, the Ogdensburg Bridge and Port Auth-

ority hired its own employees to provide service on the line. When the St. Lawrence Railroad became the designated operator of the line, on April 1, 1977, it retained the Ogdensburg Bridge and Port Authority employees. At the current time, there are seven employees devoting their full time to providing service on the DeKalb Branch, employed by the St. Lawrence Railroad as a "designated operator."

As the Committee knows, many states are encountering problems in determining which "designated operator" lines will receive subsidy payments in future years. The St. Lawrence Railroad has been informed by the State of New York that, as a matter of policy, the State will not be in a position, commencing April 1, 1978, to make any additional "subsidy" funds available to the DeKalb Branch. The State accordingly has placed the shippers on that Branch on notice that they must either agree to a "surcharge" on their ordinary freight bills in an amount sufficient to make up the subsidy payment, or see rail operations on the line terminate. The shippers have agreed to pay that surcharge -- amounting to some $110 per car -- rather than see their service be eliminated. This surcharge is based upon current operating conditions, which do not involve the employees in national railway labor agreements. If the surcharge arrangements are finalized, it would represent a tremendous concession by the shippers on the line toward contributing to the continued subsidized operations of the DeKalb Branch.

As we understand the legislation proposed in H. R. 8393, it would make operations, such as those conducted on the DeKalb Branch, subject to national railway union work rules and agreements, and possibly might require the St. Lawrence Railroad to offer employment to, and to employ, former Penn Central employees (with whom the St. Lawrence Railroad has never had any contact whatsoever). If the latter were to be the case, the current St. Lawrence Railroad employees, providing service and performing maintenance of way work on the DeKalb Branch, would have to be replaced, since the Branch cannot, under any stretch of the imagination or any circumstances presently known, operate with two sets of employees.

On the other hand, if the proposed legislation would simply have the effect of making present St. Lawrence Railroad employees subject to national labor agreements, very probably resulting in substantially increased wages and substantially altered work rules, labor costs associated with the operation of the DeKalb Branch would soar astronomicly. Shippers on the line would be faced with a substantially increased "surcharge" in order to continue to receive service, or would be faced with the alternative of seeing their railroad service terminated entirely.

We take no position whatsoever on the wisdom on legislation which establishes ground rules for the future in the form of requiring new railroad operations, provided with Federal financial assistance, to become subject to national railway labor work rule agreements.

However, where an existing subsidized operation already is in place, operating under conditions which reflect a negotiation of revenue divisions and operating costs based upon a non-work rule concept, a bill which would have retroactive application insofar as requiring employees to become, in effect, parties to national labor agreements, would be unjust, inequitable, and devastating to the future of continued rail operations.

It is our view that any legislation which would make "subsidized" carriers, operating with Federal financial assistance, automatically subject to national labor work rule agreements, should not apply to any subsidized operation currently in existence, since such operations, including the revenue division upon which they are predicated, were commenced without contemplation of any such requirement. However, if the Congress is going to legislate the retroactive adherence by subsidized short line carriers to national railway work rule agreements, then we respectfully suggest that it must couple that requirement with a requirement that the connecting trunk-line carriers, whose former branches are being operated under subsidy, be required to provide the "short line" connection with a division of joint revenue sufficient to cover the increased labor costs which will be incurred if adherence to national railway labor agreements is maindated. If that is not done, existing short line railroads, which have agreed to assume, at little or no profit, "designated operator" status, will be doomed to bankruptcy, and shippers, such as those on the DeKalb Branch, who have offered to subsidize existing operations, will be forced to terminate rail operations altogether. We cannot see how such a result would be in the public interest.

SUBMITTED TESTIMONY

TO THE

SUB-COMMITTEE ON TRANSPORTATION & COMMERCE

****

HOUSE OF REPRESENTATIVES

CONGRESS OF THE UNITED STATES

2125 RAYBURN BUILDING

WASHINGTON, D.C.

****

COMMENTS ON H.R. 9398

DATED SEPTEMBER 30, 1977

****

TESTIMONY OF J. EDWIN HOBBS

CHAIRMAN, RAILROAD COMMITTEE

DELMARVA ADVISORY COUNCIL

****

At page 15, line 12 --- continuing through page 16, ending with line 23. The section begins, "(3) by adding at the end thereof the following: '(E) the carrier as well as any designated operator'..."

These sections will pose an impossible burden on the short line operators now operating under contract to the State of Maryland and the Accomack-Northampton Transportation District in Virginia. Even with the subsidy funds available under present law, these operations, while rendering essential rail service, are at best marginal financially. The costs of observing rail craft union work rules will without a doubt force a cessation of operations and total loss of rail service on the branches they serve.

Passage of legislation mandating rail union agreements will not ensure preservation of any jobs, union or otherwise. The operations simply cannot carry any additional burdens and will eliminate those jobs still existing.

We urge you not to enact these provisions. No Act at all would be better than one containing these requirements.

My name is J. Edwin Hobbs. I am President for Delmarva Power & Light Companies of Maryland and Virginia, with office in Salisbury, Maryland.

Since January 1974, I have served as Chairman of the Railroad Committee of the Delmarva Advisory Council. DAC is an Economic Development District organization formed in 1964 by the Governors of Delaware, Maryland and Virginia. It has had continued support of the three states since that time and has had Economic Development Administration support since 1967. DAC's area of responsibility includes the Delmarva Peninsula south of the Chesapeake and Delaware Canal. My appearance is on behalf of the DAC Railroad Committee speaking for the Delmarva Region.

The stated mission of the Railroad Committee is "The preservation of viable rail service on the Delmarva Peninsula, including the through connection to Norfolk." The area situation remains such that nothing less will sustain the local economy.

We have reviewed the bill filed as H.R. 9398, September 30, 1977, to evaluate the effect on our region should it become law. Most sections of the bill would provide needed relief for rail service on the light density lines here.

There are, however, two sections which will have the effect of terminating all rail service on the Delmarva Peninsula except that owned and operated by Con Rail under the Final System Plan. We must strongly request the deletion of these sections.

They are as follows:

At page 4, line 15 --- continuing through page 5, ending with line 25. The section begins, "(3) The State, Carrier, or any designated operator..."

21-684 O - 78 - 29

STATEMENT OF DAVID SCOTT, CHAIRMAN OF THE BOARD
OF THE 1009 COMMITTEE REPRESENTING THE NESQUEHONING VALLEY BRANCH
BEFORE THE SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE COMMITTEE
ON INTERSTATE AND FOREIGN COMMERCE
OF THE UNITED STATES HOUSE OF REPRESENTATIVES

HEARINGS
ON
H.R. 3672, H.R. 6739, H.R. 6792, H.R. 7370, H.R. 8393,
and Related Measures

28 July 1977

My name is David Scott. I am the Chairman of the Board of the 1009 Committee representing the Nesquehoning Valley Branch (USRA #1009), which traverses Carbon and Schuylkill Counties. I am also the Facility Manager for the Air Products and Chemicals, Inc. Hometown Plant, located in Schuylkill County in the Sixth Congressional District in Pennsylvania.

Since the enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, our Branch Line Committee has been very active attempting to insure our branch line profitability, as well as insuring the proper cost effective methods of servicing this area. In the past year our committee's three technical rail experts have had difficulty in obtaining specific financial data from Conrail, operator of this subsidized line. In turn, our shippers have been unable to make financial judgements in regard to future rail shipments due to this uncertainty of specific costs. Certain shippers, faced with the uncertainty of specific service in the formulative

months of Conrail, were forced to back up continuing plant activities with truck shipments.

More importantly, even though Congress specifically provided for the accelerated maintenance under the 4R Act, for a multitude of reasons the Federal Railroad Administration has been unable to process and approve projects, contracts or funding applications for improvements in branch lines during that initial period when the subsidy level was 100%.

This is exemplified by the fact that even though proper approvals were obtained and technical evaluations completed on our line some six to ning months ago, the paperwork delays have resulted in a situation where no physical work has been started to date. These bureaucratic delays within the FRA have, therefore, essentially repealed this section of the 4R Act. It is for these reasons that our Committee supports HR 6739 introduced by Mr. Staggers which recommends that accelerated maintenance funds be maintained at the 100% level until September, 1978.

In summary, the first year of operation under the Conrail system has been a formulative process whereby both Conrail and shippers have been readjusting to this new reorganization. Financial data generated during this period has been somewhat questionable due to the lack of cars and new routings that

could tend to confuse individual customer usage data. This, together with the paperwork delays in getting the system set up and maintained, has created a situation that has not allowed the original intent of the 4R Act to be carried out. It is our opinion that the additional time provided in the HR 6739 would provide for these inadequacies and insure the intent of the original bill.

David J. Scott
Chairman of the Board
The Nesquehoning Valley Branch 1009, Inc.

(Facility Manager
Specialty Gas Department
Air Products and Chemicals, Inc.)

STATEMENT OF WILLIAM J. TAYLOR
IN BEHALF OF ILLINOIS CENTRAL GULF RAILROAD COMPANY
ON
H.R. 3672, H.R. 6739, H.R. 6792, H.R. 7370,
H.R. 7486, H.R. 7715, H.R. 8172, H.R. 8393,
H.R. 8420, and related bills

BEFORE THE
SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
U.S. HOUSE OF REPRESENTATIVES
August 2, 1977

Mr. Chairman, Members of the Committee, my name is William J. Taylor. I am President and Chief Operating Officer of Illinois Central Gulf Railroad Company (ICG).

ICG operates 9,044 route miles in 13 Midwestern states, extending from the Great Lakes on the north to the Gulf of Mexico on the south.

At the present time, ICG has applications pending before the Interstate Commerce Commission to abandon 21 different line segments totaling about 542 miles. These applications were filed prior to the promulgation of the new abandonment regulations under the "4-R" Act. Later this year we expect to file applications with the Interstate Commerce Commission to abandon 15 additional line segments, totaling about 629 miles. These 15 branchlines are identified on our system diagram map as lines subject to abandonment.

Section 3 of H.R. 7370, H.R. 7715, H.R. 8172, and H.R. 8393 would make federal funds available in the form of payments for operating assistance for lines which are before the Commission for abandonment or which have been designated by the railroads as

abandonment candidates, rather than as under the present law, only for lines which have been authorized for abandonment. ICG supports in principle this proposed change in the law.

When an abandonment application is filed, management has made the decision that the line will not support necessary expenditures for rehabilitation, and thus, while an abandonment case is pending before the Interstate Commerce Commission, it is natural to make only such expenditures as are absolutely essential to keep the line in operation under minimum standards until the abandonment is approved.

Political and economic disruptions often occur when an abandonment application is filed. Industry is not willing to expand a plant or locate a new facility in an area with the knowledge that rail service may be discontinued. If a branchline is deemed essential and is to be preserved pursuant to a decision of the state, reflected in its rail plan, every effort should be made to avoid these disruptions. It should be emphasized, however, that if rehabilitation of a branchline is to be accomplished through public funding, then upon completion of the work, the track must be in a condition materially above the minimum requirements set forth in the FRA Class I track standards. For satisfactory operating performance and a possible future return to profitable operation, the track should meet a 30-mile-per-hour standard.

The Illinois Central Gulf prefers Senate bill 1793, which would permit a railroad to make a proposal to a state for a continuation subsidy for a particular line in lieu of abandonment, and the state would be given the right to decide whether a continuation

subsidy would be made. A continuation subsidy should cover 100 percent of the difference between the revenues attributable to the line and the avoidable costs, plus a reasonable return. If the state decides that continuation of a line is not warranted, the railroad would be permitted to obtain abandonment approval without delay.

The provision for continuation subsidies, without obtaining an abandonment approval, has the advantage of offering improved and continued service to the public during the period that an abandonment application would otherwise be pending before the Interstate Commerce Commission.

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

PROMOTER OF SOUND ECONOMICAL TRANSPORTATION

Office of the President • 900 Long Ridge Road • Stamford, CT 06902

August 3, 1977

The Honorable Fred B. Rooney
Chairman
House Interstate and Foreign Commerce Committee's
Subcommittee on Transportation and Commerce
3364 House Office Building Annex No. 2
Washington, D.C. 20515

Dear Chairman Rooney:

The National Industrial Traffic League submits this statement for the record of hearings on H.R. 6792 and H.R. 7370, the "State Rail Freight Assistance Act of 1977."

The League is a voluntary organization of 1800 shippers, shippers' associations, boards of trade, chambers of commerce and other entities concerned with rates, traffic and transportation services of all carrier modes. It is the only shipper organization which represents all types of shippers nationwide. Its members include large, medium and small shippers who use all modes of transportation and who ship all types of commodities. The League is not a panel or committee of a trade group, or a spokesman for a particular commodity or transportation point of view, and does not permit carrier membership.

The League's primary concern is to provide for the nation and all its shippers a sound, efficient, well-managed transportation system, privately owned and operated.

To arrive at positions reflective of the broad range of shipper interests within the League, the League membership at its annual and special meetings considers, debates and votes on actions to be taken. During its seventy years of existence, the League has frequently been the spokesman for the nation's shippers before Congress on proposed transportation and regulatory reform legislation.

H.R. 6792 amends the Regional Rail Reorganization Act of 1973 and the Department of Transportation Act to extend for one year the period during which the Federal Government pays 100 percent of the cost of rail service assistance programs involving rehabilitation, maintenance, and improvement of rail properties. H.R. 7370 amends the Department of Transportation Act and the Regional Rail Reorganization Act of 1973 to extend the eligibility for financial assistance under the rail service assistance programs.

The National Industrial Traffic League has supported similar bills in Congress and has appeared before the Subcommittee on Transportation and Commerce in support of the 3R, 4R and Rail Transportation Improvement Act (Son of Conrail).

On January 30, 1975, then League President August Heist wrote the House Interstate and Foreign Commerce Committee urging the Committee to take prompt and favorable action on legislation to provide emergency grants and loan guarantees to finance operations of the Penn Central and other bankrupt railroads in the northeastern states. President Heist wrote, "I have heard from many, many League members who are concerned about any delay in enacting the pending financial aid plan. It has been indicated that the Penn Central will embargo shipments in mid-February and could possibly close down operations unless it receives some additional financial aid. It is extremely important to shippers that rail service be continued. Any disruption in the rail network as a result of a Penn Central shutdown would be disastrous in view of the current economic situation." Congress went on to pass the legislation (P.L. 94-5) and averted a northeast shutdown.

The League's Special Committee on Northeast Regional Rail Service, since 1974, has closely monitored and advised League members on the nation's very important rail service in the northeast United States. The committee has been involved in a number of activities of great importance to the northeast rail situation. These activities include: Ex Parte No. 293, *Standards for Determining Rail Service Continuation Subsidies; the U.S. Railway Association's Preliminary and Final System Plans;* Ex Parte No. 274 (Sub-No. 2), *Abandonment of Rail Lines and Discontinuance of Service;* and Ex Parte No. 329, *Review of the Department of Transportation's Preliminary Classification and Designation of Rail Lines of Class I Railroads in the United States.*

H.R. 6792 and H.R. 7370, as the League views them, are merely a realignment of the Federal government's funding and rehabilitation of the nation's beleaguered but improving northeast railroads. The League is already on record in Policy D-1, *Subsidies to Carriers*, as approving "rescue" operations such as subsidies to the northeast railroads. The League members believed in 1975 and still believe the entire United States could have been seriously affected by the cessation of rail service of bankrupt regional railroads. League Policy D-1, *Subsidies to Carriers*, reads:

> The government should not subsidize transportation agencies except during the development period or to achieve other social and governmental services on a basis approved by the Interstate Commerce Commission. When subsidies are provided, they shall be separated from transportation charges. This policy position does not apply to railroad passenger train services which are required to be performed by governmental order or mandate, and which cast a direct out-of-pocket cost burden on other users of the railroads involved.
>
> Where government subsidy is necessary to maintain essential rail public passenger train service, regulation and economic control in those circumstances should be with the funding agency or some other appropriate agency other than the Interstate Commerce Commission, except in cases where carrier and contracting agency cannot agree upon amount of compensation for required services.
>
> Passenger train services if required in the public interest should be paid by the public and not by freight shippers.

The League, however, opposes long term subsidies to carriers. The Interstate Commerce Commission and a number of states started late on the implementation of the rail service assistance programs involving rehabilitation, maintenance, and improvement of rail properties. The League recognizes this and therefore is supportive of an extension of the 100 percent Federal subsidy on *a short term basis*.

Thus, the League is pleased to offer its continued support for Federal assistance in rehabilitating the nation's railroads. The program is well under way and must be seen through to a satisfactory completion.

Thank you, Chairman Rooney, for including the League's statement in the record of hearings for H.R. 6792 and H.R. 7370.

Sincerely,

J. Robert Morton
President

JRM/jmh

cc: Members,
House Interstate and Foreign Commerce Committee

RECEIVED
OCT 26 1977
FRED B. ROONEY

THE COUNTY COMMISSIONERS OF DORCHESTER COUNTY

COUNTY OFFICE BUILDING
P. O. BOX 26
CAMBRIDGE, MARYLAND 21613
PHONE 228-1700

OCT 27 1977

October 20, 1977

The Honorable Fred B. Rooney
Chairman
Subcommittee on Transportation and Commerce
House Interstate and Foreign Commerce Committee
House Office Building
Room 2125 Rayburn Building
Washington, D.C. 20510

Sir:

We respectfully request that these comments with regard to H.R. 9398 and further described as the "State Rail Freight Assistance Act of 1977" be entered into the record.

"The County Commissioners of Dorchester County concur with that portion of this Bill which pertains to extension of subsidy for one year, and the financial assistance for rehabilitation of the tracks up to Class II standards, however, this is where our concurrence ends.

The portions of H.R. 9398 which would require any independent operator to abide by the same set of personnel rules, regulations and agreements, which we feel were the major contributing factors for the failure of the Penn Central Railroad, is most unrealistic and would be catastrophic. It would also place our shippers under the same conditions which existed prior to the 1973 Railroad Reorganization Act.

Providing such a bill passes and becomes law, it would make it virtually impossible to secure the services of a short line operator, such as the Maryland Delaware Railroad, which presently operate our 37 miles of track from Seaford to Cambridge and Hurlock to Preston in a satisfactory manner. In our opinion, one of the most important factors involved in their ability to manage successfully, and at a profit, is the fact that they do not have, at present, collective bargaining agreements and other contracts similar to the ones their predecessor was forced to operate under.

Specifically, we are appalled at the requirements imposed by the collective bargaining agreements etc. defined in the Bill on the pages and lines as follows:

Page 4, Lines 15 thru 25; Page 5, Lines 1 thru 25;
Page 15, Lines 13 thru 25; Page 16, Lines 1 thru 23."

Again, we respectfully request that these comments be entered into the record substantiating our disapproval of the indicated sections.

Thanking you for your consideration in this matter.

Sincerely,

THE COUNTY COMMISSIONERS
OF DORCHESTER COUNTY

L. W. Dayton

L. W. Dayton,
President

D:A:jh

STATEMENT OF THE HONORABLE PAUL S. TRIBLE, JR.
BEFORE THE SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE
RE: H.R. 9398, TO AMEND THE DEPARTMENT OF TRANSPORTATION ACT AND THE REGIONAL RAIL REORGANIZATION ACT OF 1973.
OCTOBER 19, 1977

MR. CHAIRMAN, I AM GRATEFUL FOR THIS OPPORTUNITY TO EXPRESS MY VIEWS ON H.R. 9398. THIS SIGNIFICANT LEGISLATION HAS SERIOUS, LONG-RANGE IMPLICATIONS THAT COULD AFFECT THE LIVES AND LIVELIHOODS OF LITERALLY THOUSANDS OF PEOPLE. THESE ARE NOT ONLY PEOPLE WHO RESIDE IN VIRGINIA'S FIRST CONGRESSIONAL DISTRICT, BUT IN OTHER PARTS OF THE STATE AND IN THE STATES OF MARYLAND AND DELAWARE AS WELL.

LET ME OUTLINE THE SITUATION BRIEFLY. THE PENN CENTRAL RAILROAD AT ONE TIME OPERATED A FREIGHT RAIL LINE FROM CAPE CHARLES, VIRGINIA, TO WILMINGTON, DELAWARE. THIS LINE TRAVERSED THE EASTERN SHORE OF MARYLAND AND WAS THE ONLY ALTERNATIVE SHIPPERS HAD TO THE CONGESTION AND DELAYS OF THE BALTIMORE AND WASHINGTON YARDS. WHEN THE PENN CENTRAL WENT OUT OF BUSINESS, IT APPEARED THAT THE RAIL LINE WOULD DIE. HOWEVER, CONRAIL STEPPED IN AND OPERATED THE SOUTHERNMOST PORTION OF THE LINE FOR ONE YEAR UNDER A SUBSIDY CONTRACT WITH THE STATE OF VIRGINIA. CONRAIL'S LARGE COST OVERRUN COULD NOT BE SUPPORTED BY THE STATE OF VIRGINIA AFTER APRIL 1 OF THIS YEAR AND THE CONTRACT WAS TERMINATED.

TO PERSERVE THE OPERATION, INCLUDING THE CAR FLOAT ACROSS THE CHESAPEAKE BAY FROM CAPE CHARLES TO NORFOLK,

THE STATE SOUGHT ANOTHER OPERATOR WHO MIGHT BE ABLE TO RUN THE LINE UNDER PROVISIONS OF SECTION 304 OF THE RRRA AS A PRIVATE OPERATOR WITH A NEW CONTRACT.

ON MARCH 1 OF THIS YEAR, THE TRANSPORTATION DISTRICT COMMISSION FOR THE COUNTIES OF ACCOMACK AND NORTHAMPTON SELECTED RAIL SERVICE ASSOCIATES OF NEW YORK STATE AS THE OPERATOR. ON MARCH 10 THE VIRGINIA AND MARYLAND RAILROAD WAS INCORPORATED, AND AN OPERATING CONTRACT SIGNED ON MARCH 27. SERVICE BEGAN ON APRIL 2 AND BY APRIL 12, THE CAR FLOAT OPERATION HAD BEEN RESUMED.

NONE OF THIS COULD HAVE BEEN ACCOMPLISHED IN SO TIMELY A MANNER WITHOUT THE ENERGETIC SUPPORT AND EFFORT OF MANY LOCAL AND STATE OFFICIALS.

MR. CHAIRMAN, THE CONTINUED OPERATION OF THIS LINE MEANS EVERYTHING TO THE PEOPLE OF THE DELMARVA PENINSULA. IT IS THE MAIN LINK WITH MAJOR MARKETS IN THE REST OF THE COUNTRY.

AT THIS TIME THE VIRGINIA AND MARYLAND RAILROAD IS OPERATING SUCCESSFULLY AT 50% OF CONRAIL'S COST. I THINK THIS SHOWS THAT THE OPERATORS OF THE VIRGINIA AND MARYLAND RAILROAD ARE MAKING A GOOD FAITH EFFORT TO BECOME AN INDEPENDENT, SELF-SUFFICIENT OPERATION RELYING ON NO GOVERNMENT SUBSIDIES.

THIS CERTAINLY IS AN ACHIEVABLE AND A DESIREABLE GOAL. BUT UNTIL THEN, THE VIRGINIA AND MARYLAND RAILROAD MUST DEPEND UPON THE FEDERAL GOVERNMENT FOR A LIMITED BUT REASONABLE PERIOD OF SUPPORT UNTIL THE RAILROAD CAN STAND ALONE.

THE VIRGINIA AND MARYLAND RAILROAD INHERITED THIRD-HAND TRACK. FOR 25 YEARS, VIRTUALLY NO MAINTENANCE WAS PERFORMED ON THE TRACK -- TIES LITERALLY CRUMBLED UNDER-FOOT AND SPIKES COULD BE REMOVED WITHOUT ANY EFFORT WHAT-SOEVER. THERE HAVE BEEN AT LEAST TWO MAJOR DERAILMENTS IN RECENT MONTHS. FORTUNATELY, THERE WERE NO INJURIES, BUT THERE WAS EXTENSIVE PROPERTY DAMAGE.

THE ONE-YEAR EXTENTION OF THE 100% FEDERAL SUBSIDY PROVIDED FOR IN H.R. 9398 WILL ALLOW VIRGINIA AND MARYLAND RAILROAD TO EFFECT NECESSARY MAINTENANCE AND MEET OPERATING COSTS IN THE FACE OF CURRENT FINANCIAL DIFFICULTIES WHICH ALL NEW OPERATORS INEVITABLY INCUR. THE SUBSIDY WILL HELP KEEP VIRGINIA AND MARYLAND RAILROAD ON THE PATH TOWARD IN-DEPENCE FROM FEDERAL SUPPORT.

HOWEVER, MR. CHAIRMAN, THERE IS A PROVISION IN H.R. 9398 THAT WOULD NEGATE EVERYTHING THAT COULD BE AC-COMPLISHED BY EXTENSION OF THE SUBSIDY. I REFER TO THE SEC-TION WHICH WOULD IMPOSE PROVISIONS OF THE RAILWAY LABOR ACT (45 U.S.C. 151) ON SHORTLINE RAIL OPERATORS ACROSS THE COUN-TRY. IF THIS PROVISION IS IMPOSED ON THE VIRGINIA AND MARY-LAND RAILROAD, THE LINE'S LABOR COSTS WILL INCREASE TO SUCH

A DEGREE THAT THE LINE WILL GO OUT OF BUSINESS. IT APPEARS TO ME, MR. CHAIRMAN, THAT AS FAR AS THE VIRGINIA AND MARYLAND RAILROAD IS CONCERNED, THIS PROVISION DEFEATS ONE OF THE MAJOR PURPOSES OF THE LEGISLATION.

OFFICIALS OF THE VIRGINIA AND MARYLAND RAILROAD WILL BE PRESENTING STATISTICAL DATA TO THE SUBCOMMITTEE THIS MORNING, SO I WILL NOT BELABOR THE POINT. BUT LET ME SAY I WAS SHOCKED BY PRELIMINARY FIGURES WHICH SHOW THAT LABOR AND BENEFIT COSTS FOR THREE MAJOR GROUPS OF VIRGINIA AND MARYLAND EMPLOYEES WILL MORE THAN DOUBLE.

ON THE MAINLINE, THE ANNUAL WAGE AND BENEFIT COST WOULD GO FROM $66,970 TO $151,515, AND THE NUMBER OF EMPLOYEES WOULD GO FROM THE PRESENT FOUR TO A MINIMUM OF SIX.

AT CAPE CHARLES YARD, COSTS WOULD GO FROM $46,700 TO $156,175 AND THE NUMBER OF WORKERS FROM THREE TO SIX.

AT NORFOLK YARD, COST WOULD RISE FROM $73,280 TO $156,175 AND THE NUMBER OF EMPLOYEES WOULD GO FROM FOUR TO SIX.

IF THESE PROJECTIONS ARE ACCURATE, THAT AMOUNTS TO AN INCREASE OF NEARLY 150 PER CENT A YEAR. I SUBMIT IT WOULD BE EXTREMELY DIFFICULT FOR ANY FLEDGLING BUSINESS TO SUSTAIN THAT KIND OF FINANCIAL BURDEN. I WOULD ALSO LIKE TO POINT OUT THAT THE VIRGINIA AND MARYLAND RAILROAD MAKES UP 80 PERCENT OF THE ENTIRE DELMARVA LINE.

ITS DEMISE WOULD EFFECTIVELY SEVER ALL POSSIBILITY OF CONTINUED RAIL SERVICE TO THE REST OF THE DELMARVA PENINSULA. THERE MAY BE OTHER SHORTLINE OPERATIONS THROUGHOUT THE NATION THAT WOULD SUFFER SIMILAR FATES IF THIS SECTION OF THE BILL IS PERMITTED TO STAND.

MR. CHAIRMAN, I URGE THE SUBCOMMITTEE TO REMOVE THIS DESTRUCTIVE LANGUAGE FROM H.R. 9398.

THANK YOU.

[Whereupon, at 5:40 p.m., the subcommittee was adjourned.]

○