



DOING BUSINESS WITH AMTRAK

FEDERAL BAR ASSOCIATION
PASSENGER RAIL SEMINAR

CHRISTINE E. LANZON

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WHAT DOES AMTRAK DO

- Nation's only intercity passenger rail provider
- Over 500 destinations in 46 states, DC, and 3 Canadian provinces
- Over 21,000 miles of rail
- Over 87,000 trips on more than 300 Amtrak trains per day
- More than 3x riders between DC and NYC than all airlines combined
- Owns and operates 363 miles of the 457-mile NEC spine between DC and Boston



- ❑ Creature of federal statute
- ❑ Mission: “provide efficient and effective intercity passenger rail mobility consisting of high-quality service that is trip-time competitive with other intercity travel options” and is consistent with a list of “goals”
- ❑ “Intercity rail passenger transportation” means all rail passenger transportation except commuters

CREATING THE AMTRAK SYSTEM

❑ Rail Passenger Service Act (RPSA) (1970)

- Created National Railroad Passenger Corporation (Amtrak)

❑ Created to save intercity rail passenger service

- Air and highway competition leading to massive losses
- Penn Central in bankruptcy
- The “Public Bargain” with railroads – they unload their unprofitable intercity passenger service and Amtrak is given access to their tracks and facilities at incremental cost

- ❑ **Regional Rail Reorganization Act (3R Act) (1973)**
 - Created system for transferring rail lines to Conrail, other freights, commuter authorities, and Amtrak
- ❑ **Railroad Revitalization and Regulatory Reform Act (4R Act) (1976)**
 - Amtrak's acquisition of the NEC rail line and spurs
- ❑ **Passenger Rail Investment and Improvement Act (PRIIA) (2008)**
 - Transferred jurisdiction over certain passenger issues to STB
 - Cost sharing with states and commuters
- ❑ **Fixing America's Surface Transportation Act (FAST Act) (2015)**
 - New infrastructure grant programs
 - Cooperation among NEC users

STATUTORY FRAMEWORK TODAY

□ 49 USC §§ 24101 et seq.

- Legislative history
- ICC or STB decisions
- Federal courts

□ How Amtrak is governed, what it can and can't do, and its relationships with:

- Freight railroads
- States with intercity passenger service
- Commuter railroads

WHAT IS AMTRAK

- Federally chartered corporation
- Operated and managed as a for-profit corporation
- Not a department, agency, or instrumentality of the federal government
- Board of Directors appointed by the President and confirmed by the Senate
 - DOT representative sits on the Board

PRIVATE v. GOVERNMENTAL

□ **Lebron v. Amtrak (Supreme Court 1995)**

- Amtrak is a private corporation “for purposes of matters that are within Congress’ control – for example, whether it is subject to statutes that impose obligations or confer powers upon Government entities...”
- BUT Amtrak is “an agency or instrumentality of the United States for the purpose of individual rights guaranteed against the Government by the Constitution.”

□ **Dept. of Transportation v. Association of American Railroads (Supreme Court 2015)**

- “For purposes of Amtrak’s status as a federal actor or instrumentality under the Constitution, the practical reality of federal control and supervision prevails over Congress’ disclaimer of Amtrak’s governmental status.”

PRIVATE v. GOVERNMENTAL

- ❑ Amtrak is not an “autonomous private enterprise” because “its priorities, operations and decisions are extensively supervised and substantially funded by the political branches.”
 - Secretary of Transportation holds all of Amtrak preferred stock and most of its common stock
 - Congressional oversight hearings into Amtrak’s budget, routes and prices
 - Required to pursue specific statutory goals, including to “minimize Government subsidies”
 - Federal financial support - grant agreements with the Federal Rail Administration
 - Buy America requirements
 - Flowdowns to contractors

SPECIFIC STATUTORY RIGHTS/OBLIGATIONS

Amtrak Partners:

- Host Railroads
- States with intercity passenger service
- Commuter authorities

HOST RAILROADS

- 72% of the miles travelled by Amtrak trains are on tracks owned and dispatched by other railroads (“host” railroads)
- Governed by bilateral Operating Agreements
- **49 USC § 24308:**
 - “Amtrak may make an agreement with a rail carrier or regional transportation authority to **use facilities of, and have services provided by, the carrier** or authority under terms on which the parties agree. The terms shall include a penalty for untimely performance.”
 - STB can prescribe reasonable terms and compensation
 - Incremental cost

HOST RAILROADS

- § 24308(b): **emergencies**
- § 24308(c): **preference over freight transportation**
- § 24308(d): **accelerated speeds**
- § 24308(e): **additional trains**
- § 24308(f): **investigation of substandard performance**

STATE PARTNERS

- 17 states contribute funds to the operation of 28 short-distances routes (less than 750 miles)
- PRIIA § 209 - jointly develop a single, nationwide, standardized cost-sharing methodology
- Methodology approved by STB
- Annual Operating Agreements

COMMUTER AGENCIES

- Amtrak provides access to its tracks to 10 commuter agencies
 - 9 on the NEC
 - Metra in Chicago

- Northeast Corridor (NEC)
 - Main line between Boston MA and DC, and branch lines connecting to Harrisburg PA; Springfield MA; and Spuyten Duyvil NY, plus the facilities and services used to operate and maintain those lines
 - Busiest railroad in North America: 2200 Amtrak, commuter and freight trains operating over some portion each day

COMMUTER AGENCIES cont'd

- 49 USC § 24903 - 24905
 - Agreements to permit freight and commuter transportation over Amtrak rights of way and facilities
 - STB may set terms and compensation
 - NEC Corridor Commission
 - Allocation of costs, revenues and compensation
 - Implemented in bilateral agreements
 - May request STB to conduct dispute resolution
- Contract commuter services
 - Operates 3 commuter train services for state and regional authorities
 - Provides services such as MOE for 6 agencies

Some unique attributes to bear in mind
when doing business with Amtrak

EXEMPT FROM SUBTITLE IV

49 USC § 24301(c)

- Amtrak exempt from provisions of subtitle IV of 49 USC (with some exceptions) and STB jurisdiction over enforcement of those provisions
- Rates, interchange, abandonment, discontinuance, etc.

EXEMPT FROM STATE AND LOCAL LAWS

49 USC § 24301(g)

- “A State or other law related to rates, routes, or service does not apply to Amtrak in connection with rail passenger transportation.”
 - Regulation of right-of-way
 - Zoning and permitting
 - Bridge maintenance

- Amtrak can choose voluntarily to comply with some local laws – e.g. fire and safety codes; local operator licenses

EXEMPT FROM STATE AND LOCAL TAXES

49 USC § 24301(I)

- Applies to taxes, fees, head charges or other charges
 - Broad interpretation - property taxes, income and franchise taxes, sales taxes, gross revenue taxes, fuel taxes, licenses and other fees to the same extent as the United States is exempt
 - Must pay for services received if charges are metered or reasonably allocated to usage
- Only available to Amtrak
 - Where does the incidence of the tax fall in the first instance
 - Procurement contracts – prices in contract do not include any state or local taxes, surcharges or fees

FEDERAL ENCLAVE PROTECTION FOR AMTRAK PROJECTS

49 USC § 24902(j)

- ❑ Exemption from state and local building, zoning, subdivision and similar laws for the construction, ownership, use, operation, financing, leasing, conveying, mortgaging of any improvement undertaken by or for the benefit of Amtrak relating to various Amtrak undertakings and goals to the same extent as a project by the federal government or federal agency within a federal enclave wherein federal jurisdiction is exclusive
- ❑ Federal enclave = military bases, national parks
- ❑ Very little law construing

INSPECTOR GENERAL

5 USC App. § 8G(a)(2)

- ❑ Amtrak is a “designated Federal entity” under the Inspector General Act of 1978

- ❑ Audits private contracts

- ❑ Investigations into fraud, waste, abuse and misconduct and findings may be referred to the Department of Justice for criminal prosecution or civil litigation
 - federal program bribery
 - false claims in connection with contract award

FREEDOM OF INFORMATION ACT

49 USC § 24301(e)

- ❑ FOIA (4 USC § 522) applies to Amtrak

- ❑ Typical exemptions apply
 - Bid proposals not incorporated into contracts
 - Trade secrets and other proprietary information
 - Personal information

- ❑ Amtrak.com – info, reports, stats

EMINENT DOMAIN

49 USC § 24311

- ❑ Amtrak may acquire by eminent domain interests in property necessary for intercity rail transportation if it cannot acquire the property by contract or agree on a purchase price
 - Federal “quick take” authority for non-rail property
 - Proceed through STB for rail property

- ❑ “Necessary” is construed very broadly
 - “significant relationship” with provision of transportation
 - “direct nexus to Amtrak’s goals,” including minimizing Federal subsidies

SPECIAL PROVISIONS REGARDING LIABILITY

49 USC § 28103

- Cap on damages in a claim for personal injury – aggregate allowable award to all rail passengers against all defendants for all claims arising from a single accident or incident may not exceed \$200 million
- Amtrak must maintain total liability coverage for claims through insurance and self-insurance of at least \$295 million per accident or incident
- Providers of rail passenger transportation may enter into contracts that allocate financial responsibility for claims

SPECIAL PROVISIONS RE DISPUTES

- ❑ **28 USC § 1349** - Federal district courts have original jurisdiction of civil actions by or against Amtrak because the United States owns more than one-half its capital stock
- ❑ **45 USC § 701** – Special Court (now D.C. District Court) has exclusive jurisdiction over any dispute regarding the property rights and obligations Amtrak acquired under the 3R Act



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