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SERVICE DATE – LATE RELEASE DECEMBER 23, 2008

SURFACE TRANSPORTATION BOARD

NOTICE

STB Ex Parte No. 683

PASSENGER RAIL INVESTMENT
AND IMPROVEMENT ACT OF 2008

AGENCY: Surface Transportation Board.

ACTION: Notice of Public Hearing.

SUMMARY: The Surface Transportation Board will hold a public hearing beginning at 10:00 a.m. on Wednesday, February 11, 2009, at its headquarters in Washington, DC. The purpose of the public hearing will be allow interested persons to comment on the Board's new responsibilities in the recently passed Passenger Rail Investment and Improvement Act of 2008 [Pub. L. 110-432], and thereby assist the Board in effectively implementing these important new provisions of law.

DATES: The public hearing will take place on Wednesday, February 11, 2009. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should identify the party, the proposed speaker, and the time requested, as soon as possible but no later than January 28, 2009. Each speaker should also file with the Board his/her written testimony in that same document. Written submissions by interested persons who do not wish to appear at the hearing will also be due by January 28, 2009.

ADDRESSES: All notices of intent to participate and testimony may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the Board's "www.stb.dot.gov" website, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to: Surface Transportation Board, Attn: STB Ex Parte No. 683, 395 E Street, S.W., Washington, DC 20423-0001.

FOR FURTHER INFORMATION, CONTACT: Timothy Strafford, (202) 245-0356.
[Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877-8339.]

SUPPLEMENTARY INFORMATION: On October 16, 2008, the Passenger Rail Investment and Improvement Act of 2008 became law. The Act enhances the Board's role with regard to the National Railroad Passenger Corporation (Amtrak) and commuter rail operators. The Board is holding this public hearing to allow interested persons to comment on the Board's new responsibilities and to advise the Board on how to effectively implement them. While interested

persons may comment on any aspect of the Act as it pertains to the Board, the Board is particularly interested in the following areas.

Section 207 instructs the Federal Railroad Administration and Amtrak, in consultation with the Board and others, to establish standards and metrics to measure the performance and service quality of intercity passenger trains. Section 213 amends 49 U.S.C. 24308 to give the Board power to investigate, in certain circumstances, failures by Amtrak to meet on-time performance standards or service quality standards established pursuant to section 207. The Board “may initiate an investigation, or upon the filing of a complaint by Amtrak, an intercity passenger rail operator, a host freight railroad over which Amtrak operates, or an entity for which Amtrak operates intercity passenger rail service, the Board shall initiate such an investigation, to determine whether and to what extent delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by a rail carrier over whose tracks the intercity passenger train operates or reasonably addressed by Amtrak or other intercity passenger rail operators.” 49 U.S.C. 24308(f)(1).

If, after investigation, the Board determines that delays or failures to achieve minimum standards are attributable to a rail carrier’s failure to provide preference to Amtrak over freight transportation, the Board may award damages against the host rail carrier, including prescribing such other relief to Amtrak as it determines to be reasonable. 49 U.S.C. 24308(f)(2). In awarding damages and prescribing other relief, the Board shall consider such factors as: (1) the extent to which Amtrak suffers financial loss as a result of host rail carrier delays or failure to achieve minimum standards; and (2) what reasonable measures would adequately deter future actions which may reasonably be expected to be likely to result in delays to Amtrak on the route involved. The Act instructs the Board, as it deems appropriate, to order the host rail carrier to remit the damages awarded to Amtrak or to an entity for which Amtrak operates intercity passenger rail service. Such damages shall be used for capital or operating expenditures on the routes over which delays or failures to achieve minimum standards were the result of a rail carrier’s failure to provide preference to Amtrak over freight transportation. 49 U.S.C. 24308(f)(3).

Section 401 provides for confidential, non-binding mediation of certain access disputes between commuter rail providers and rail carriers subject to the Board’s jurisdiction under chapter 105. Chapter 285 is added to Part E of subtitle V of title 49. Disputes between rail carriers and public transportation authorities regarding track or rights-of-way usage may be brought to the Board for mediation in accordance with the mediation process for rail rate disputes at 49 CFR 1109.4. 49 U.S.C. 28505 instructs the Board to issue rules and regulations as may be necessary to carry out chapter 285.

Section 217 provides for access to Amtrak equipment and services by a State that desires to select or selects an entity other than Amtrak to provide services required for the operation of an intercity passenger train route described in 49 U.S.C. 24102(5)(D) or 24702. The State may make an agreement with Amtrak to use facilities and equipment of, or have services provided by, Amtrak. If the parties cannot agree upon terms, and the Board finds that access to Amtrak’s facilities or equipment, or the provision of services by Amtrak, is necessary to carry out this provision and that the operation of Amtrak’s other services will not be impaired thereby, the

Board shall, within 120 days after submission of the dispute, issue an order that the facilities and equipment be made available, and that services be provided, by Amtrak, and shall determine reasonable compensation, liability, and other terms for use of the facilities and equipment and provision of the services. Compensation shall be determined, as appropriate, in accordance with the methodology established pursuant to section 209. Section 209 directs Amtrak and the States to establish a methodology that allocates to each route the costs incurred only for the benefit of that route and a proportionate share, based upon factors that reasonably reflect relative use, of costs incurred for the common benefit of more than one route. If Amtrak and the States do not develop and implement the required methodology within 2 years from the date of enactment, Section 209(c) requires the Board to determine and implement an appropriate methodology.

Interested parties are invited to comment on these provisions of the Act, on the need for regulations or policy guidance to implement them, and what such regulations or guidance should entail. It is the Board's objective to effectively implement the new provisions of Pub. L. 110-432 that relate to the STB. Stakeholder input at this hearing will assist the Board in this important endeavor.

Date of Hearing. The hearing will begin at 10:00 am on Wednesday, February 11, 2009, in the 1st floor hearing room at the Board's headquarters at 395 E Street, S.W., in Washington, DC, and will continue, with short breaks if necessary, until every person scheduled to speak has been heard.

Notice of Intent To Participate. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should identify the party, the proposed speaker, and the time requested, as soon as possible, but no later than January 28, 2009.

Testimony. Each speaker should file with the Board his/her written testimony with his/her notice of intent to participate (by January 28, 2009). Also, any interested person who wishes to submit a written statement without appearing at the February 11 hearing should file that statement by January 28, 2009.

Board Releases and Live Video Available Via the Internet. Decisions and notices of the Board, including this notice, are available on the Board's website at "www.stb.dot.gov." This hearing will be available on the Board's website by live video streaming. To access the hearing, click on the "Live Video" link under "Information Center" at the left side of the home page beginning at 10:00 a.m. on February 11, 2009.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: December 23, 2008.

Anne K. Quinlan
Acting Secretary