

117TH CONGRESS  
1ST SESSION

# H. R. 2937

To permit Amtrak to bring civil actions in Federal district court to enforce the right set forth in section 24308(c) of title 49, United States Code, which gives intercity and commuter rail passenger transportation preference over freight transportation in using a rail line, junction, or crossing.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 2021

Mr. PAYNE introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To permit Amtrak to bring civil actions in Federal district court to enforce the right set forth in section 24308(c) of title 49, United States Code, which gives intercity and commuter rail passenger transportation preference over freight transportation in using a rail line, junction, or crossing.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Rail Passenger Fair-  
3 ness Act”.

4 **SEC. 2. FINDINGS.**

5 (1) Congress created Amtrak under the Rail  
6 Passenger Service Act of 1970 (Public Law 91-  
7 158).

8 (2) Amtrak began serving customers on May 1,  
9 1971, taking over the operation of most intercity  
10 passenger trains that private, freight railroads were  
11 previously required to operate. In exchange for as-  
12 suming these passenger rail operations, Amtrak was  
13 given access to the national rail network.

14 (3) In return for relief from the obligation to  
15 provide intercity passenger service, railroads over  
16 which Amtrak operated (referred to in this section  
17 as “host railroads”) were expected to give Amtrak  
18 passenger trains preference over freight trains when  
19 using the national rail network.

20 (4) In 1973, Congress passed the Amtrak Im-  
21 provement Act of 1973 (Public Law 93-146), which  
22 gives intercity and commuter rail passenger trans-  
23 portation preference over freight transportation in  
24 using a rail line, junction, or crossing. This right,  
25 which is now codified as section 24308(c) of title 49,  
26 United States Code, states, “Except in an emer-

1 agency, intercity and commuter rail passenger trans-  
2 portation provided by or for Amtrak has preference  
3 over freight transportation in using a rail line, junc-  
4 tion, or crossing unless the Board orders otherwise  
5 under this subsection. A rail carrier affected by this  
6 subsection may apply to the Board for relief. If the  
7 Board, after an opportunity for a hearing under sec-  
8 tion 553 of title 5, decides that preference for inter-  
9 city and commuter rail passenger transportation ma-  
10 terially will lessen the quality of freight transpor-  
11 tation provided to shippers, the Board shall establish  
12 the rights of the carrier and Amtrak on reasonable  
13 terms.”.

14 (5) Many host railroads have ignored the law  
15 referred to in paragraph (4) by refusing to give pas-  
16 senger rail the priority to which it is statutorily enti-  
17 tled and giving freight transportation the higher pri-  
18 ority. As a result, Amtrak’s on time performance on  
19 most host railroads is poor, has declined between  
20 2014 through 2019, and continues to decline.

21 (6) According to Amtrak, 6,500,000 customers  
22 on State-supported and long-distance trains arrived  
23 at their destination late during fiscal year 2019.  
24 Nearly 70 percent of these delays were caused by  
25 host railroads, amounting to a total of 3,200,000

1 minutes. The largest cause of these delays was  
2 freight train interference, which accounted for more  
3 than 1,000,000 minutes of delay for Amtrak pas-  
4 sengers, or approximately 2 years, because host rail-  
5 roads chose to give freight trains priority.

6 (7) Poor on-time performance wastes taxpayer  
7 dollars. According to a 2019 report by Amtrak’s Of-  
8 fice of Inspector General, a 5 percent improvement  
9 of on-time performance on all Amtrak routes would  
10 result in \$12,100,000 in cost savings to Amtrak in  
11 the first year. If on-time performance on long-dis-  
12 tance routes reached 75 percent for a year, Amtrak  
13 would realize an estimated \$41,900,000 in operating  
14 cost savings, with a one-time savings of  
15 \$336,000,000 due to a reduction in equipment re-  
16 placement needs.

17 (8) Historical data suggests that on-time per-  
18 formance on host railroads is driven by the existence  
19 of an effective means to enforce Amtrak’s preference  
20 rights:

21 (A) Two months after the date of the en-  
22 actment of the Passenger Rail Investment and  
23 Improvement Act of 2008 (division B of Public  
24 Law 110–432), which included provisions for  
25 the enforcement of these preference rights, was

1           enacted, the on-time performance of long-dis-  
2           tance trains improved from 56 percent to 77  
3           percent and Class I freight train interference  
4           delays across all routes declined by 40 percent.

5           (B) One year after such date of enactment,  
6           freight train interference delays had declined by  
7           54 percent and the on-time performance of  
8           long-distance trains reached 85 percent.

9           (C) In 2014, after some of the provisions  
10          in the Passenger Rail Investment and Improve-  
11          ment Act of 2008 related to enforcement of  
12          preference were ruled unconstitutional by a  
13          D.C. Circuit Court, long-distance train on-time  
14          performance declined from 72 percent to 50  
15          percent, and freight train interference delays in-  
16          creased 59 percent.

17          (D) The last time long-distance trains  
18          achieved an on-time rate of more than 80 per-  
19          cent in a given month was February 2012.

20          (9) As a result of violations of Amtrak's right  
21          to preference, Amtrak has been consistently unable  
22          on host railroad networks to meet its congressionally  
23          mandated mission and goals, which are codified in  
24          section 24101 of title 49, United States Code (relat-

1 ing to providing on-time and trip-time competitive  
2 service to its passengers).

3 (10) Amtrak does not have an effective mecha-  
4 nism to enforce its statutory preference right in  
5 order to fulfill its mission and goals. Only the Attor-  
6 ney General can bring a civil action for equitable re-  
7 lief in a district court of the United States to en-  
8 force Amtrak's preference rights.

9 (11) In Amtrak's entire history, the only en-  
10 forcement action initiated by the Attorney General  
11 was against the Southern Pacific Transportation  
12 Company in 1979.

13 (12) Congress supports continued authority for  
14 the Attorney General to initiate an action, but Am-  
15 trak should also be entitled to bring a civil action be-  
16 fore a Federal district court to enforce its statutory  
17 preference rights.

18 **SEC. 3. AUTHORIZE AMTRAK TO BRING A CIVIL ACTION TO**

19 **ENFORCE ITS PREFERENCE RIGHTS.**

20 (a) IN GENERAL.—Section 24308(c) of title 49,  
21 United States Code, is amended, by adding at the end the  
22 following: “Notwithstanding sections 24103(a) and  
23 24308(f), Amtrak shall have the right to bring an action  
24 for equitable or other relief in the United States District

1 Court for the District of Columbia to enforce the pref-  
2 erence rights granted under this subsection.”.

3 (b) CONFORMING AMENDMENT.—Section 24103 of  
4 title 49, United States Code, is amended by inserting “and  
5 section 24308(e)” before “, only the Attorney General”.

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