

116TH CONGRESS  
1ST SESSION

# S. 2922

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 SENATE OF THE UNITED STATES

NOVEMBER 20, 2019

Mr. DURBIN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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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,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Rail Passenger Fair-  
5       ness Act”.

1 **SEC. 2. FINDINGS.**

2 (1) Congress created Amtrak under the Rail  
3 Passenger Service Act of 1970 (Public Law 91–  
4 158).

5 (2) Amtrak began serving customers on May 1,  
6 1971, taking over the operation of most intercity  
7 passenger trains that private, freight railroads were  
8 previously required to operate. In exchange for as-  
9 suming these passenger rail operations, Amtrak was  
10 given access to the national rail network.

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

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

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

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

18           (6) According to Amtrak, 6,500,000 customers  
19      on State-supported and long-distance trains arrived  
20      at their destination late during fiscal year 2019.  
21      Nearly 70 percent of these delays were caused by  
22      host railroads, amounting to a total of 3,200,000  
23      minutes. The largest cause of these delays was  
24      freight train interference, which accounted for more  
25      than 1,000,000 minutes of delay for Amtrak pas-

1       sengers, or approximately 2 years, because host rail-  
2       roads chose to give freight trains priority.

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

14              (8) Historical data suggests that on-time per-  
15      formance on host railroads is driven by the existence  
16      of an effective means to enforce Amtrak's preference  
17      rights:

18                      (A) Two months after the date of the en-  
19                      actment of the Passenger Rail Investment and  
20                      Improvement Act of 2008 (division B of Public  
21                      Law 110-432), which included provisions for  
22                      the enforcement of these preference rights, was  
23                      enacted, the on-time performance of long-dis-  
24                      tance trains improved from 56 percent to 77

1           percent and Class I freight train interference  
2           delays across all routes declined by 40 percent.

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

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

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

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

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

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

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

16 **SEC. 3. AUTHORIZE AMTRAK TO BRING A CIVIL ACTION TO**  
17 **ENFORCE IT PREFERENCE RIGHTS.**

18          (a) IN GENERAL.—Section 24308(c) of title 49,  
19          United States Code, is amended, by adding at the end the  
20          following: “Notwithstanding sections 24103(a) and  
21          24308(f), Amtrak shall have the right to bring an action  
22          for equitable or other relief in the United States District  
23          Court for the District of Columbia, or in any jurisdiction  
24          in which Amtrak resides or is found, to enforce the pref-  
25          erence rights granted under this subsection.”.

1           (b)           CONFORMING           AMENDMENT.—Section  
2 24103(a)(1) of title 49, United States Code, is amended,  
3 in the matter preceding subparagraph (A), by striking “of  
4 this subsection” and inserting “and subsection 24308(e)”.

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