



AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
FACT SHEET
H.R. 8870, THE BUILD AMERICA 250 ACT
COMMUTER RAIL
June 15, 2026

H.R. 8870, the “BUILD America 250 Act”, as amended, includes a series of policy reforms affecting commuter railroads. These reforms include changes to the passenger rail liability cap adjustment, increased requirements for track safety and inspections, and changes to specific grant and loan programs.

Summary

Passenger Rail Liability Cap

Consistent with *APTA’s 2026 Surface Transportation Authorization Recommendations*, section 10305 of H.R. 8870, as amended, extends the effective date for the passenger rail liability cap adjustment from 30 days to one year after the U.S. Department of Transportation provides public notice of the adjustment. Section 10305 also requires the Secretary of Transportation to form a Working Group to determine by what percent the liability cap should be adjusted.¹ The Secretary must convene the Working Group in the third year of the five-year period between cap adjustments.

Within 90 days of being convened, the Working Group shall submit a proposed liability cap adjustment to the Secretary, after taking into consideration:

- Any incidents or accidents for which the award reached the liability cap within the previous five-year period;
- the effect of safety technology or other changing risk factors on rail incidents or accidents; and
- The severity of each accident or incident examined.

The Secretary must then determine an appropriate adjustment amount, except that the adjustment may not be an increase of less than two percent or greater than 10 percent of the current liability cap.² The adjusted liability cap shall take effect one year after the Secretary provides public notice of the adjustment.

¹ The Working Group shall be composed of representatives from the Federal Railroad Administration (FRA), and two representatives each from: intercity passenger rail operators; commuter railroad operators; relevant insurance providers; advocates of victims of rail accidents; and organizations representing railroad employees.

² If the Working Group fails to recommend an adjustment amount or the Secretary fails to publish an amount, the liability cap is automatically increased by 10 percent.

Risk-Based Defect Detection System Plans

Section ____ of H.R. 8870 mandates that Class I railroads submit risk-based defect detection system plans to the FRA. The plans must include a summary of the proposed defect detector network; description of how the network will be implemented by the deadline; description of how the railroad's defect detection system meets or exceeds the defect detection performance standards; and risk-based approach on identifying overheated wheel bearings, safety alerts, data sharing, and employee training.

The plans must cover those routes or segments of commuter rail passenger networks over which Class I high-hazard freight trains operate. As part of the plans, these main line routes must have defect detectors installed:

- At least 10 miles before entering urbanized areas with 75,000 or more people;
- An average of every 15 miles for routes not equipped with acoustic bearing detectors or other similar technology; and
- An average of every 20 miles for routes equipped with acoustic bearing detectors or similar technology.

Railroads are permitted to use an alternative hot-bearing detection plan if it provides an equivalent or higher level of safety than the final performance standards that the Secretary is required to issue within two years. Railroads must implement their defect detection plans within three years after issuance of the final rule.

Importantly, the bill directs the FRA Administrator to establish a formula grant program to assist commuter railroads that are required by contract with a Class I railroad to install new defect detectors. However, the bill does not authorize or appropriate specific funding for this purpose.

Track Inspections

Section ____ of H.R. 8870 creates requirements for visual track inspections for main line track designated for operation at Class 3 speeds or higher (e.g., a passenger train operating at speeds greater than 30 miles per hour). The bill requires visual inspection of such track at least two times per week, with at least one calendar day between inspections.

The bill also updates requirements for the frequency of Track Geometry Measurement System (TGMS) track examinations. The new requirements follow a sliding scale that increases the required frequency of TGMS inspections based on the main line track class.³ Within one year of the date of enactment, the Secretary must update regulations to require immediate remediation of track deviations found by visual or machine inspections.

³ For instance, the bill requires TGMS inspection of Class 1 track once per calendar year; it requires TGMS inspections of Class 9 track twice per 30-day period.

Workforce Assault Prevention and Response Plans

Section 10205 of H.R. 8870 requires the Secretary to publish best practices and voluntary standards for the response to assault and harassment incidents on passenger railroads. Passenger rail operators (including commuter railroads) must submit a plan to the Secretary detailing procedures to prevent and respond to incidents of assault and harassment. The submissions must include procedures for employees on how to report incidents and plans to prohibit future travel for individuals who interfere with passenger rail personnel, among other items.

Grant and Loan Programs

H.R. 8870 alters the Railroad Crossing Elimination (RCE) grant program and Railroad Rehabilitation and Improvement Financing (RRIF) loan program. The bill also eliminates the Rail Vehicle Replacement grant program, an Infrastructure Investment and Jobs Act-created grant program that received \$300 million per fiscal year from the State of Good Repair grant program.

Railroad Crossing Elimination grant program

H.R. 8870 makes three changes to the Railroad Crossing Elimination grant program that are in line with [APTA's Recommendations](#). First, section 10501 expands pre-award authority for RCE grant recipients. Second, section 10502 expands the list of FRA projects that can receive Categorical Exclusions to include grade-crossing elimination projects that are located entirely within an existing operational right of way. Finally, section 10505 allows RCE project sponsors to be reimbursed for the acquisition of real property interests made during environmental reviews.

Railroad Rehabilitation and Improvement Financing loan program

H.R. 8870 makes two changes to the RRIF loan program that are relevant to commuter railroads. First, section 10512 allows RRIF loans to be used as interest-only refinancing loans. Interest-only RRIF loans cannot be used to refinance existing interest-only RRIF loans, or loans to finance economic development. Second, section 10514 expands the creditworthiness criteria the Secretary may use when determining the credit risk premium for a loan.⁴

APTA Position

On May 20, 2026, APTA sent a [letter](#) to leaders of the House Committee on Transportation and Infrastructure expressing its support for the legislation's reforms to passenger rail project delivery. Specifically, APTA noted its support for allowing the advance-acquisition of right-of-way and the expansion of Categorical Exclusions.

⁴ Expanded criteria include degree of local financial commitment, steps the project sponsor has already undergone for completion, credit risk assessments conducted by other participants in the capital structure of the project, and the due diligence and underwriting analysis carried out by qualified financial institutions involved in the project.