Public Law 95-607
95th Congress

An Act

To amend section 5 of the Department of Transportation Act, relating to rail service assistance, and for other purposes.

Nov. 8, 1978
[S. 2981]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Department of Transportation Act, amendment. Local Rail Service Assistance Act of 1978. 49 USC 1651 note.

TITLE I—LOCAL RAIL SERVICE ASSISTANCE

SHORT TITLE

SEC. 101. This title may be cited as the "Local Rail Service Assistance Act of 1978".

EXPANSION OF ASSISTANCE

SEC. 102. Section 5(f) of the Department of Transportation Act (49 U.S.C. 1654(f)) is amended—

(1) in paragraph (2), by striking out "purchasing a line of railroad or other rail properties" and inserting in lieu thereof "acquiring, by purchase, lease, or in such other manner as the State considers appropriate, a line of railroad or other rail properties, or any interest therein,";

(2) in paragraph (3), by striking out "and" immediately after the semicolon;

(3) in paragraph (4), by striking out the period and inserting in lieu thereof "; and"; and

(4) by adding at the end thereof the following new paragraph:

"(5) the cost of constructing rail or rail related facilities (including new connections between two or more existing lines of railroad, intermodal freight terminals, sidings, and relocation of existing lines) for the purpose of improving the quality and efficiency of rail freight service.".

COST SHARING

SEC. 103. Section 5(g) of the Department of Transportation Act (49 U.S.C. 1654(g)) is amended to read as follows:

"(g) The Federal share of the costs of any rail service assistance program shall be 80 per centum, except that the Federal share of costs for financial assistance under paragraph (1) of subsection (f) of this section for any project described in subsection (k)(1) of this section shall be 80 per centum for the first and second years such project is conducted and 70 per centum for the third year such project is conducted. The State share of the costs may be provided in cash or through any of the following benefits, to the extent that such benefits would not otherwise be provided: (1) forgiveness of taxes imposed on a common carrier by railroad or on its properties; (2) the provision by the State or by any person or entity on behalf of such State, for use in its rail service assistance program, of real property or tangible personal property of the kind necessary for the safe and efficient operation of rail freight service; (3) trackage rights secured by the State for a common carrier by railroad; or (4) the cash equivalent of State

Federal share.

State share.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

salaries for State public employees working in the State rail service assistance program, but not including overhead and general administrative costs. If a State, or any person or entity on behalf of a State, provides more than such State's percentage share of the cost of its rail service assistance program during any fiscal year, the amount in excess of such share shall be applied toward such State's share of the costs of its program for subsequent fiscal years.".

FORMULA ALLOCATION

SEC. 104. Section 5(h) of the Department of Transportation Act (49 U.S.C. 1654(h)) is amended to read as follows:

"(h)(1) For the period beginning October 1, 1978, and ending September 30, 1979, each State which is eligible to receive rail service assistance under this section is entitled to an amount equal to the total amount authorized and appropriated for such purposes, multiplied by a fraction the numerator of which is the rail mileage in such State which was eligible for rail service assistance under this section prior to October 1, 1978, and the denominator of which is the rail mileage in all of the States which was eligible for rail service assistance under this section prior to such date. Notwithstanding the provisions of the preceding sentence, the entitlement of each State shall not be less than 1 percent of the funds appropriated.

"(2) Effective October 1, 1979, each State which is eligible to receive rail service assistance under this section is entitled annually to a sum from available funds as determined pursuant to this subsection. Available funds are funds appropriated for rail service assistance for that fiscal year and any funds to be reallocated for that fiscal year in accordance with this subsection. Subject to the limitations set forth in paragraph (3) of this subsection, the Secretary shall calculate each State's entitlement as follows:

"(A) two-thirds of the available funds, multiplied by a fraction (i) the numerator of which is the sum of the rail mileage in the State which, in accordance with section 1a(5)(a) of the Interstate Commerce Act (49 U.S.C. 1a(5)(a)), is either 'potentially subject to abandonment' or with respect to which a carrier plans to submit, but has not yet submitted, an application for a certificate of abandonment or discontinuance, and (ii) the denominator of which is the total of such rail mileage in all the States; and

"(B) one-third of available funds, multiplied by a fraction (i) the numerator of which is the rail mileage in the State with respect to which the Interstate Commerce Commission, within 3 years prior to the first day of the fiscal year for which funds are allocated or reallocated under this section, has found that the public convenience and necessity permit the abandonment of, or the discontinuance of rail service on, such rail mileage (including, until September 30, 1981, the rail mileage which was eligible for assistance under section 402 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 762), and all rail mileage in the State which has, prior to October 1, 1978, been included for formula allocation purposes under this section); and (ii) the denominator of which is the total rail mileage in all the States eligible for rail

service assistance under this section which the Interstate Commerce Commission has made such a finding (including, until September 30, 1981, the rail mileage in all the States which was eligible for financial assistance under section 402 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 762), and the rail mileage in all the States which has, prior to October 1, 1978, been included for formula allocation purposes under this section).

Notwithstanding the preceding provisions of this paragraph, the entitlement of each State in a fiscal year shall not be less than 1 percent of the funds appropriated for such fiscal year.

"(3)(A) For purposes of paragraphs (1) and (2) of this subsection, rail mileage shall be measured by the Secretary as of the first day of each fiscal year. In making calculations under this subsection, no rail mileage shall be included more than once in either the numerator or the denominator of a fraction.

"(B) Entitlement funds are available to a State during the fiscal year for which the funds are appropriated. In accordance with the formula stated in this subsection, the Secretary shall reallocate, to each State which is eligible to receive rail service assistance under this section, a share of any entitlement funds which have not been the subject of an executed grant agreement between the Secretary and the State before the end of the fiscal year for which the funds were appropriated. Reallocated funds are available to the State for the same purpose and for the same time period as an original allocation and are subject to reallocation if not made the subject of an executed grant agreement between the Secretary and the State before the end of the fiscal year for which the funds were reallocated. Funds appropriated in fiscal year 1978 and prior years which are not the subject of an executed grant agreement as of October 1, 1978, shall remain available to the States during fiscal year 1979.

Reallocation of funds.

"(4) Two or more States which are eligible to receive rail service assistance under this section may, where not in violation of State law, enter into an agreement to combine any portion of their respective Federal entitlements under this subsection for purposes of conducting any project which is eligible for assistance under subsection (k) of this section and which will benefit each State which is a party to such agreement.".

State agreements.

PLANNING ASSISTANCE

SEC. 105. Section 5(i) of the Department of Transportation Act (49 U.S.C. 1654(i)) is amended to read as follows:

"(i) During each fiscal year, a State may expend not to exceed $100,000, or 5 percent, whichever is greater, of its annual entitlement under subsection (h) of this section to meet the cost of establishing, implementing, revising, and updating the State rail plan required by subsection (j) of this section.".

Ante, p. 3060.

Infra.

STATE ELIGIBILITY

SEC. 106. (a) Paragraph (2) of section 5(j) of the Department of Transportation Act (49 U.S.C. 1654(j)(1)) is amended—

(1) by inserting "(A)" immediately after "(2)"; and

(2) by adding immediately before the semicolon at the end thereof the following: ", and (B) such State plan includes, as

Ante, p. 3059.

soon as practicable after the date of enactment of the Local Rail Service Assistance Act of 1978, a methodology for determining the ratio of benefits to costs of projects which are proposed to be initiated after such date of enactment and which are eligible for assistance under paragraphs (2) through (4) of subsection (k) of this section".

49 USC 1654 note.

(b) During the period prior to the inclusion in a State rail plan of the methodology referred to in the amendment made by subsection (a) of this section, the Secretary of Transportation shall continue to fund projects on a case-by-case basis where he has determined, based upon analysis performed and documented by the State, that the public benefits associated with the project outweigh the public costs of such project.

PROJECT ELIGIBILITY

SEC. 107. Section 5(k) of the Department of Transportation Act (49 U.S.C. 1654(k)) is amended to read as follows:

"(k)(1) A project is eligible for financial assistance under paragraph (1) of subsection (f) of this section only if—

"(A)(i) the Interstate Commerce Commission has found, since February 5, 1976, that the public convenience and necessity permit the abandonment of, or the discontinuance of rail service on, the line of railroad which is related to the project; or (ii) the line of railroad or related project was eligible for assistance under section 402 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 762); and

"(B) the line of railroad or related project has not previously received financial assistance under paragraph (1) of subsection (f) of this section for more than 36 months, except that a line of railroad or related project which was eligible for financial assistance under section 402 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 762) or under this section prior to October 1, 1978, shall be eligible only until September 30, 1981.

"(2) A project is eligible for financial assistance under paragraph (2) of subsection (f) of this section only if—

"(A) the Interstate Commerce Commission has found, since February 5, 1976, that the public convenience and necessity permit the abandonment of, or the discontinuance of rail service on, the line of railroad related to the project;

"(B) the line of railroad related to the project is listed for possible inclusion in a rail bank in part III, section C of the Final System Plan issued by the United States Railway Association under section 207 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 717); or

"(C) the line of railroad related to the project was eligible to be acquired under section 402(c)(3) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 762(c)(3)), except that a line of railroad or related project which was eligible for financial assistance under such section 402 or under this section prior to October 1, 1978, shall be eligible only until September 30, 1981.

"(3) A project is eligible for financial assistance under paragraphs (3) and (5) of subsection (f) of this section only if—

"(A) the line of railroad related to the project is certified by the railroad as having carried 3 million gross ton miles of freight or less per mile during the prior year;

"(B) the line of railroad related to the project is certified by the railroad as having carried less than 5 million gross ton miles of freight per mile during the prior year and the Secretary has determined that the project is essential to carry out proposals made under authority of subsections (a) through (e) of this section;

"(C) an application for a certificate of abandonment or discontinuance with respect to the line of railroad related to the project has been filed with the Interstate Commerce Commission prior to January 1, 1979 (whether or not such application has been granted);

"(D) the line of railroad related to the project is listed for possible inclusion in a rail bank in part III, section C of the Final System Plan issued by the United States Railway Association under section 207 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 717); or

"(E) the line of railroad related to the project was eligible to be acquired under section 402(c)(3) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 762(c)(3)).

Any project involving a line of railroad described in subparagraph (C), (D), or (E) of this paragraph shall only be eligible for financial assistance until September 30, 1981.

"(4) A project is eligible for financial assistance under paragraph (4) of subsection (f) of this section only if—

"(A) the Interstate Commerce Commission has found, since February 5, 1976, that the public convenience and necessity permit the abandonment of, or the discontinuance of rail service on, the line of railroad which is related to the project; or

"(B) the line of railroad or related project was eligible for financial assistance under section 402 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 762), except that a line of railroad or related project which was eligible for assistance under such section 402 or under this section prior to October 1, 1978, shall be eligible only until September 30, 1981.

"(5) On or before August 1 of each year, each common carrier by railroad subject to part I of the Interstate Commerce Act shall prepare, update, and submit to the Secretary a listing of those rail lines of such carrier which, based on level of usage, carried 3 million gross ton miles of freight or less per mile during the prior year.". *Ante*, p. 1337.

REHABILITATION ASSISTANCE

SEC. 108. Section 5 of the Department of Transportation Act (49 U.S.C. 1654) is amended by redesignating subsection (o) as subsection (p), and by inserting immediately after subsection (n) the following new subsection:

"(o) A State shall use financial assistance provided under paragraph (3) of subsection (f) of this section in accordance with the following provisions:

"(1) The financial assistance shall be used to rehabilitate or improve rail properties in order to improve rail freight service within the State.

"(2) The State shall, in its discretion, grant or loan funds to the owner of rail properties or operator of rail service related to the project.

"(3) The State shall determine all financial terms and conditions of a grant or loan, except that the timing of all advances with respect to grants in and under this subsection shall be in accordance with Department of Treasury regulations.

"(4) The State shall place the Federal share of repaid funds in an interest-bearing account or, with the approval of the Secretary, permit any borrower to place such funds, for the benefit and use of the State, in a bank which has been designated by the Secretary of the Treasury in accordance with section 10 of the Act of June 11, 1942 (12 U.S.C. 265). The State shall use such funds and all accumulated interest to make further loans or grants under paragraph (3) of subsection (f) of this section in the same manner and under the same conditions as if they were originally granted to the State by the Secretary. The State may, at any time, pay to the Secretary the Federal share of any unused funds and accumulated interest. After the termination of a State's participation in the rail service assistance program established by this section, such State shall pay the Federal share of any unused funds and accumulated interest to the Secretary.".

TECHNICAL AMENDMENTS

SEC. 109. (a) Section 5 of the Department of Transportation Act (49 U.S.C. 1654) is amended—

Ante, p. 3063.

(1) in subsection (g), subsection (m)(1), and the first sentence of subsection (p) (as redesignated by section 108 of this title), by striking out "(o)" each place it appears and inserting in lieu thereof "(p)"; and

(2) by amending the third sentence of subsection (p) (as so redesignated) to read as follows: "In addition, any appropriated sums remaining after the repeal of section 402 of the Regional Rail Reorganization Act of 1973 and of section 810 of the Railroad Revitalization and Regulatory Reform Act of 1976 are authorized to remain available to the Secretary for purposes of subsections (f) through (p) of this section.".

45 USC 762.
Infra.

Repeal.

(b)(1) Section 810 of the Railroad Revitalization and Regulatory Reform Act of 1976 (49 U.S.C. 1653a) is repealed.

(2) The table of contents for title VIII of the Railroad Revitalization and Regulatory Reform Act of 1976 is amended by striking out "Sec. 810. Rail bank.".

EFFECTIVE DATE

49 USC 1654 note.

SEC. 110. The provisions of this title shall take effect on October 1, 1978.

TITLE II—AMENDMENTS TO THE REGIONAL RAIL REORGANIZATION ACT OF 1973

AMENDMENTS TO THE REGIONAL RAIL REORGANIZATION ACT OF 1973

SEC. 201. Section 304(e) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 744(e)) is amended—

(1) by striking out the comma at the end of paragraph (4)(B) and inserting in lieu thereof "; or"; and

(2) by adding immediately after paragraph (4) (B) the following new subparagraph:

"(C) offers a rail service continuation payment, pursuant to subsection (c)(2)(A) of this section and regulations issued by the Office pursuant to section 205(d)(5) of this Act, for the operation of rail passenger service provided under an agreement or lease pursuant to section 303(b)(2) of this title or subsection (c)(2)(B) of this section where such offer is made for the continuation of the service beyond the period required by such agreement or lease, except that such services shall not be eligible for assistance under section 17(a)(2) of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1613(a)(2)),"; and

45 USC 715.

45 USC 743.

(3) by adding at the end thereof the following new paragraphs:

"(7)(A) If a State (or a local or regional transportation authority) in the region offers to provide payment for the provision of additional rail passenger service, the Corporation shall undertake to provide such service pursuant to this subsection (including the discontinuance provisions of paragraph (2) of this subsection). An offer to provide payment for the provision of additional rail passenger service shall be made in accordance with subsection (c)(2)(A) of this section and under regulations issued by the Office pursuant to section 205(d)(5) of this Act, and shall be designed to avoid any additional costs to the Corporation arising from the construction or modification of capital facilities or from any additional operating delays or costs arising from the absence of such construction or modification. The State (or local or regional transportation authority) shall demonstrate that it has acquired, leased, or otherwise obtained access to all rail properties, other than those designated for conveyance to the National Railroad Passenger Corporation pursuant to sections 206(c)(1)(C) and 206(c)(1)(D) of this Act and to the Corporation pursuant to section 303(b)(1) of this title, necessary to provide the additional rail passenger service and that it has completed, or will complete prior to the inception of the additional rail service, all capital improvements necessary to avoid significant costs which cannot be avoided by improved scheduling or other means on other existing rail services (including rail freight service) and to assure that the additional service will not detract from the level and quality of existing rail passenger and freight service.

45 USC 716.

45 USC 743.

"(B) As used in this paragraph, the term 'additional rail passenger service' means rail passenger service (other than rail passenger service provided pursuant to the provisions of paragraphs (2) and (4) of this subsection), including extended or expanded service and modified routings, which is to be provided over rail properties conveyed to the Corporation pursuant to section 303(b)(1) of this title, or over (i) rail properties contiguous thereto conveyed to the National Railroad Passenger Corporation pursuant to this Act, or (ii) any other rail properties contiguous thereto to which a State (or local or regional transportation authority) has obtained access.

"Additional rail passenger service."

"(C) Notwithstanding any other provision of this paragraph, the Corporation shall not be required to operate additional rail passenger service over rail properties leased or acquired from or owned or leased by a profitable railroad in the region.

Study.

"(8) The Secretary shall, in consultation with the Association, conduct a study to determine the best means of compensating the Corporation for liabilities which it may incur for damages to persons or property, resulting from the operation of rail passenger service required to be operated pursuant to this subsection or section 303 (b)(2) of this title, which are not underwritten by private insurance carriers or are not indemnified by a State (or local or regional transportation authority). Such study shall identify the nature of the risks to the Corporation, the probable degree of uninsurability of such risks, and the desirability and feasibility of various indemnification programs, including subsidy offers made pursuant to this section, self-insurance through a passenger tax or other mechanism, or government indemnification for such liabilities. Within one year after the date of enactment of this paragraph, the Secretary shall prepare a report with appropriate recommendations and shall submit such report to the Congress. Such report shall specify the most appropriate means of indemnifying the Corporation for such liabilities in a manner which shall prevent the cross-subsidization of passenger services with revenues from freight services operated by the Corporation.".

45 USC 743.

Report to Congress.

TITLE III—AMENDMENTS TO THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976; RELATED PROVISIONS

INCREASE IN FUNDING LIMITATION ON PURCHASE OF TRUSTEE CERTIFICATES; EXTENSION OF AUTHORITY TO ISSUE AND SELL FUND ANTICIPATION NOTES

SEC. 301. (a) Section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825) is amended—

(1) in subsection (d)(3), by striking out the last sentence; and

(2) in subsection (e), by striking out "purchase under this title after September 30, 1978," and inserting in lieu thereof ", after September 30, 1979, make commitments to purchase under this title,".

(b) Sections 507(a) and 507(d) of the Railroad Revitalization and Regulatory Reform Act of 1976 (7 U.S.C. 827 (a) and (d)) are amended by striking out "1978" and inserting in lieu thereof "1979".

45 USC 827.

(c) Section 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 829) is amended by striking out "March 31" each place it appears and inserting in lieu thereof "September 30".

SECURITY FOR TRUSTEE CERTIFICATES

SEC. 302. Section 505(d)(2) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(d)(2)) is amended—

(1) in the last sentence of subparagraph (B), by striking out "No certificate" and inserting in lieu thereof "Except as provided in subparagraph (C) of this paragraph, no certificate"; and

(2) by adding at the end thereof the following new subparagraph:

"(C) The Secretary may purchase certificates under this section without making the finding referred to in clause (iii) of subparagraph (B) only if such certificates are senior in rights to all outstanding capital stock, common and preferred, of the debtor corporation, and all unsecured debt incurred before the date of commencement of railroad reorganization proceedings pursuant to section 77 of the Bankruptcy Act, but subordinate to all senior debt of the debtor corporation whenever such senior debt is incurred. As used in this subparagraph, the term 'senior debt' means— 11 USC 205. "Senior debt."

"(i) all costs of administration, incurred or to be incurred by a trustee, and secured debt assumed by a trustee, in connection with the reorganization proceedings and the operation of a debtor's business by a trustee during the pendency of such proceedings; and

"(ii) all secured debt incurred before the date of commencement of railroad reorganization proceedings pursuant to section 77 of the Bankruptcy Act and determined by the court to be a proper claim against the estate and an obligation of the debtor corporation.".

FRA REVIEW

SEC. 303. The Federal Railroad Administration shall promptly review the condition of the Chicago, Milwaukee, and Saint Paul Railroad and consider assisting such railroad with loans for roadbed and track improvement. 45 USC 825 note.

TITLE IV—AMENDMENTS TO THE INTERSTATE COMMERCE ACT

RENEWAL

SEC. 401. (a) Section 15(8)(c) of the Interstate Commerce Act (49 U.S.C. 15(8)(c)) is amended—

(1) in clause (i), by striking out "within 2 years after the date of the enactment of this subdivision" and inserting in lieu thereof "prior to July 1, 1980";

(2) in clause (ii), by inserting "and" after the semicolon; and

(3) by striking out clauses (iii) and (iv) and inserting in lieu thereof a new clause (iii) to read as follows:

"(iii) the aggregate of increases or decreases in any rate filed pursuant to clause (i) or (ii) of this subdivision during any calendar year is not greater than 7 per centum of the rate in effect on January 1 of that year.".

(b) The last sentence of section 15(8)(d) of the Interstate Commerce Act (49 U.S.C. 25(8)(d)) is amended by striking out "clauses (iii) or (iv)" and inserting in lieu thereof "clause (iii)". 49 USC 15.

CAR SERVICE

SEC. 402. Section 1(14) of the Interstate Commerce Act (49 U.S.C. 1(14)) is amended by redesignating subdivision (b) as subdivision (c), and by inserting immediately after subdivision (a) the following new subdivision:

Petition.
Notice
and hearing.

"(b) If the Commission finds, upon the petition of an interested party and after notice and a hearing on the record, that a common carrier by railroad subject to this part has materially failed to furnish safe and adequate car service as required by paragraph (11) of this section, the Commission may require such carrier to provide itself with such facilities and equipment as may be reasonably necessary to furnish such service, if the evidence of record establishes, and the Commission affirmatively finds, that—

"(i) the provision of such facilities or equipment will not materially and adversely affect the ability of such carrier to otherwise provide safe and adequate transportation services;

"(ii) the expenditure required for such facilities or equipment, including a return which equals such carrier's current cost of capital, will be recovered; and

"(iii) the provision of such facilities or equipment will not impair the ability of such carrier to attract adequate capital.".

Approved November 8, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1482 accompanying H.R. 11979 (Comm. on Interstate and Foreign Commerce).
SENATE REPORT No. 95-1159 (Comm. on Commerce, Science, and Transportation).
CONGRESSIONAL RECORD, Vol. 124 (1978):
Sept. 23, considered and passed Senate.
Oct. 11, 13, H.R. 11979 considered and passed House; passage vacated, and S. 2981, amended, passed in lieu.
Oct. 15, Senate concurred in House amendments.