

## EMERGENCY RAIL SERVICES ACT OF 1970

[Public Law 91-633]

[As Amended Through P.L. 104-88, Enacted December 29, 1995]

【Currency: This publication is a compilation of the text of Public Law 91-633. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

AN ACT To authorize the Secretary of Transportation to provide financial assistance to certain railroads in order to preserve essential rail services, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Emergency Rail Services Act of 1970”.*

### DEFINITIONS

SEC. 2. For the purposes of this Act—

- (1) “Secretary” means the Secretary of Transportation.
- (2) “Board” means the Surface Transportation Board.
- (3) “Railroad” means any rail carrier subject to part A of sub-title IV of title 49, United States Code.
- (4) “Certificate” means certificates issued by trustees of a railroad pursuant to subsection 77(c)(3) of the Bankruptcy Act, as amended (11 U.S.C. 205(c)(3)).

【45 U.S.C. 661】

### FINANCIAL ASSISTANCE

SEC. 3. (a) The trustees of any railroad undergoing reorganization under section 77 of the Bankruptcy Act, as amended (11 U.S.C. 205), upon approval of the court, may apply to the Secretary for the guarantee of certificates. The Secretary, after consultation with the Board, is authorized to guarantee such certificates upon findings in writing that—

- (1) cessation of essential transportation services by the railroad would endanger the public welfare;
- (2) cessation of such services is imminent;
- (3) there is no other practicable means of obtaining funds to meet payroll and other expenses necessary to provide such services than the issuance of such certificates;

- (4) such certificates cannot be sold without a guarantee;
- (5) the railroad can reasonably be expected to become self-sustaining; and
- (6) the probable value of the assets of the railroad in the event of liquidation provides reasonable protection to the United States.

The Secretary shall publish notice of his intention to make such finding in the Federal Register not less than fifteen days prior to such finding, give interested persons, including agencies of the Federal Government, an opportunity to submit written data, views, or arguments (with or without opportunity for oral presentation), and give consideration to the relevant matter presented. The Secretary for good cause shown and upon a finding that extraordinary circumstances warrant doing so may waive the requirements of the preceding sentence. Notwithstanding any other provision of this section, the Secretary, in guaranteeing certificates under this section, is authorized to waive the findings required by paragraphs (1), (5), and (6) of this subsection.

(b) As a condition to a guarantee, the Secretary, after consultation with the Board, shall require that:

- (1) the proceeds of the sale of certificates guaranteed under this Act will be used solely for meeting payroll and other expenses which, if not met, would preclude continued provision of essential transportation services by the railroad;
- (2) other revenues of the railroad will be used to the fullest extent possible, for such expenses;
- (3) proceeds from the sale of assets will be devoted to the fullest extent possible to the provision of essential transportation services by the railroad; and

(4) in the event of actual or threatened cessation of essential transportation services by the railroad, the Secretary shall have the option to procure by purchase or lease trackage rights over the lines of the railroad and such equipment as may be necessary to provide such services by the Secretary or his assignee, and, in the event of a default in the payment of principal or interest as provided by the certificates, the money paid or expenses incurred by the United States as a result thereof shall be deemed to have been applied to the purchase or lease price. The terms of purchase or lease shall be subject to the approval of the reorganization court and the operation over the lines shall be subject to the approval of the Board pursuant to subchapter II of chapter 113 of title 49, United States Code, but in no event shall the rendition of services by the Secretary or his assignee await the outcome of proceedings before the reorganization court or the Board.

(c) The Secretary shall not guarantee any certificate under this section unless such certificate is treated as an expense of administration and receives the highest lien on the railroad's property and priority in payment under the Bankruptcy Act, except that this subsection shall not apply to certificates guaranteed for a railroad that is actively engaged in restructuring, as defined by the Secretary. For purposes of this subsection, the term "restructuring" includes an employee ownership plan or an employee-shipper ownership plan.

(d) A certificate under this Act shall bear interest at such per annum rate as the Secretary deems reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Federal Government; nor may its maturity date, including all extensions and renewals thereof, be later than fifteen years from the date of original issuance. The Secretary may prescribe such other terms and conditions as he deems appropriate. In each case, the Secretary shall consider the feasibility of requiring the railroad to dispose of non-railroad assets as a condition to a guarantee.

(e) At any one time the outstanding aggregate principal amount of all certificates guaranteed under this Act shall not exceed \$200,000,000.

(f) The Secretary shall issue such rules and regulations as are appropriate to carry out the authority granted by this Act.

【45 U.S.C. 662】

#### ACCESS TO CARRY RECORDS

SEC. 4. The Secretary is authorized to, and shall as necessary, inspect and copy all accounts, books, records, memorandums, correspondence, and other documents of any railroad which has received financial assistance under this Act concerning any matter which may bear upon (1) the ability of such railroad to repay the loan within the time fixed therefor, (2) the interest of the United States in the property of such railroad, and (3) to insure that the purpose of this Act is being carried out.

【45 U.S.C. 663】

#### AUTHORIZATION TO ISSUE OBLIGATIONS

SEC. 5. (a) To enable the Secretary to carry out his rights and responsibilities under section 3 of this Act, he is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. There are authorized to be appropriated to the Secretary such sums as may be necessary

to pay the principal and interest on the notes or obligations issued by him to the Secretary of the Treasury.

(b) Any guarantee made by the Secretary under this Act shall not be terminated, canceled, or otherwise revoked, except as provided by the terms and conditions prescribed by the Secretary under section 3(d) of this Act; shall be conclusive evidence that such guarantee complies fully with the provisions of this Act, and of the approval and legality of the principal amount, interest rate, and all other terms of the certificates and the guarantee; and shall be valid and incontestable in the hands of a holder of a guaranteed certificate except for fraud or material misrepresentation on the part of such holder.

(c) The Attorney General shall take such action as may be appropriate to enforce any right accruing to the United States by reason of its having paid money or incurred expenses as a result of making such guarantees.

【45 U.S.C. 664】

#### ASSISTANCE OF DEPARTMENTS AND OTHER AGENCIES

SEC. 6. (a) In carrying out the provisions of this Act the Secretary may use available services and facilities of other departments, agencies, and instrumentalities of the Federal Government with their consent and on a reimbursable basis, and shall consult with the Board in carrying out the provisions of this Act.

(b) Departments, agencies, and instrumentalities of the Federal Government shall exercise their powers, duties, and functions in such manner as will assist in carrying out the provisions of this Act.

【45 U.S.C. 665】

#### COURT SUPERVISION

SEC. 7. In addition to other duties prescribed by section 77 of the Bankruptcy Act, the court shall maintain supervision of the expenditure of funds obtained pursuant to section 3 for the purpose of assuring that such funds are used solely for purposes set forth in subsection (b) of such section, shall make periodic findings regarding such expenditures, and shall report those findings to the Secretary.

【45 U.S.C. 666】

#### AUDIT

SEC. 8. The Comptroller General of the United States, or any of his duly authorized representatives, shall have access to such information, books, records, and documents as he determines necessary effectively to audit financial transactions and operations carried out by the Secretary in the administration of this Act. The Comptroller General shall make such reports to the Congress on the results of any such audits as are appropriate.

【45 U.S.C. 667】

GUARANTEE FEES

SEC. 9. The Secretary shall prescribe a guarantee fee in connection with each loan guaranteed under this Act which shall be collected from the railroad upon repayment of the loan guaranteed. Such fee shall be in an amount that the Secretary estimates to be necessary to cover the administrative costs of carrying out the provisions of this Act with respect to such loan. Sums realized from such fees shall be deposited in the Treasury as miscellaneous receipts.

【45 U.S.C. 668】