

Public Law 101-213
101st Congress

An Act

To amend the Department of Transportation Act to reauthorize local rail service assistance.

Dec. 11, 1989

[H.R. 422]

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Local Rail Service Reauthorizing Act".

Local Rail
Service
Reauthorizing
Act.
49 USC app.
1651 note.

SEC. 2. LOCAL RAIL FREIGHT ASSISTANCE.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 5(q) of the Department of Transportation Act (49 U.S.C. App. 1654(q)) is amended—

(1) by striking "and not to exceed \$8,000,000 for the fiscal year ending September 30, 1988" and inserting in lieu thereof "not to exceed \$8,000,000 for the fiscal year ending September 30, 1988, not to exceed \$10,000,000 for the fiscal year ending September 30, 1989, and not to exceed \$15,000,000 for the fiscal year ending September 30, 1990"; and

(2) by striking "after September 30, 1988" and inserting in lieu thereof "after September 30, 1990".

(b) FISCAL YEAR 1990 FUNDS.—(1) With respect to funds appropriated for carrying out section 5(i) of the Department of Transportation Act for fiscal year 1990, each State must apply for such funds within 60 days after the date of enactment of legislation authorizing appropriations for that fiscal year. Upon receipt of an application under such subsection, the Secretary shall consider the application and notify the State submitting such an application as to its approval or disapproval within 60 days. Funds provided under this subsection shall remain available to a State for obligation for the first 3 months after the end of the fiscal year for which such funds have been made available. Any funds which have not been timely applied for under this subsection, or which have remained unobligated after the expiration of the period described in the previous sentence, shall be made available to the Secretary for rail freight assistance projects meeting the requirements of this section.

(2) With respect to funds appropriated for carrying out section 5(h) of the Department of Transportation Act for fiscal year 1990, the Secretary shall establish such procedures as are necessary to ensure that funds available to the Secretary for use for rail service assistance projects are distributed by April 1, 1990. If any funds are not distributed by that date, the Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the status of such funds and the reasons for the delay in distribution.

Reports.

(3) Section 4021(a)(2) of Public Law 99-509 is repealed.

45 USC 1321.

(c) LOCAL RAIL FREIGHT ASSISTANCE PROGRAM.—Section 5 of the Department of Transportation Act (49 U.S.C. App. 1654) is amended to read as follows:

“LOCAL RAIL FREIGHT ASSISTANCE

“SEC. 5. (a) A State is eligible to receive rail freight assistance under this section if—

“(1) such State has established an adequate plan for rail services in such State, including a suitable process for updating, revising, and amending such plan;

“(2) such State plan is administered or coordinated by a designated State agency and provides for the equitable distribution of resources;

“(3) such State agency—

“(A) has authority and administrative jurisdiction to develop, promote, supervise, and support safe, adequate, and efficient rail transportation services;

“(B) employs or will employ, directly or indirectly, sufficient trained and qualified personnel;

“(C) maintains or will maintain adequate programs of investigation, research, promotion, and development, with provisions for public participation; and

“(D) is designated and directed solely, or in cooperation with other State agencies, to take all practicable steps to improve rail transportation safety and to reduce transportation-related energy utilization and pollution;

“(4) such State provides satisfactory assurance that it has or will adopt and maintain adequate procedures for financial control, accounting, and performance evaluation in order to assure proper use of Federal funds; and

“(5) such State complies with regulations of the Secretary issued under this section and the Secretary determines that such State meets or exceeds the requirements of paragraphs (1) through (4) of this subsection.

“(b) The Secretary shall, in accordance with this section, provide financial assistance to States for rail freight assistance projects that are designed to cover—

“(1) the cost of 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, to maintain existing or provide for future rail freight service, but only if the Interstate Commerce Commission has authorized, or has exempted from the requirements of such authorization, the abandonment of, or the discontinuance of rail service on, the line of railroad related to the project;

“(2) the cost of rehabilitating or improving rail properties on a line of railroad to the extent necessary to permit adequate and efficient rail freight service on such line, but only if the line of railroad related to the project is certified by the railroad as having carried 5 million gross ton miles of freight or less per mile during the prior year; and

“(3) the cost of constructing rail or rail related facilities (including new connections between two or more existing lines of railroad, intermodal freight terminals, sidings, bridges, and relocation of existing lines) for the purpose of improving the quality and efficiency of rail freight service, but only if the line

of railroad related to the project is certified by the railroad as having carried 5 million gross ton miles of freight or less per mile during the prior year.

“(c)(1) No project shall be provided rail freight assistance under this section unless the line of railroad related to the project is certified by the railroad as having carried more than 20 carloads per mile during the most recent year of operation of service on such line. In a case where the railroad is no longer in existence, the applicant shall provide such information in the manner prescribed by the Secretary. The Secretary may waive the requirement of this paragraph upon a determination that the line of railroad is contractually guaranteed at least 40 carloads per mile for each of the first 2 years of operation if the proposed project is carried out, and the Secretary finds that there is a reasonable expectation that such contractual guarantee will be fulfilled.

“(2) No project shall be provided rail freight assistance under this section unless the ratio of benefits to costs for such project, calculated in accordance with the methodology established by the Secretary under subsection (n), is greater than 1.0.

“(d) A State shall use assistance provided under subsection (b) of this section as follows:

“(1) The State may grant or loan funds to the owner of rail properties or operator of rail service related to the project.

“(2) 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 under this subsection shall be in accordance with Department of Treasury regulations.

“(3) 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 subsection (b) 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 freight assistance program established by this section, such State shall pay the Federal share of any unused funds and accumulated interest to the Secretary.

“(4) The State, to the maximum extent possible, shall encourage the participation of shippers, railroads, and local communities in providing the State share of rail freight assistance funds.

“(e) The Federal share of the costs of any rail freight assistance project shall be 50 percent, except that in the case of assistance provided under subsection (b)(2), the Federal share shall be 70 percent. 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 railroad or on its properties.

“(2) The provision by the State or by any person on behalf of such State, for use in its rail freight assistance program, of real

Grants.
Loans.

Loans.
Grants.

Taxes.

Real property.

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 railroad.

"(4) The cash equivalent of State salaries for State public employees working in the State rail freight assistance program, but not including overhead and general administrative costs. A State may provide more than its required percentage share of the cost of its rail freight assistance program. If a State, or any person on behalf of a State, provides more than such State's percentage share of the cost of its rail freight 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.

"(f) A State seeking financial assistance for rail freight assistance projects described in subsection (b) shall apply, in the form required by the Secretary, for such assistance by January 1 of the fiscal year for which the funds have been appropriated, except in fiscal years in which authorizations of appropriations have not been enacted as of the first day of the fiscal year, in which case application must be made within 90 days after the date of enactment of legislation authorizing appropriations for that fiscal year. In considering applications for rail freight assistance projects under subsection (b), the Secretary shall consider the following:

"(1) The percentage of lines identified to the Interstate Commerce Commission by rail carriers for abandonment or potential abandonment within a State.

"(2) The likelihood of future abandonments within a State.

"(3) The ratio of benefits to costs for a proposed project calculated in accordance with the methodology established by the Secretary under subsection (n).

"(4) The likelihood that the line will continue operating with rail freight assistance.

"(5) The impact of rail bankruptcies, rail restructuring, and rail mergers on the State applying for assistance.

"(g) On the first day of the fiscal year, each State shall be entitled to \$36,000 of the funds available for expenditure pursuant to subsection (q) of this section during the fiscal year to meet the cost of establishing, implementing, revising, and updating the State rail plan required by subsection (a) of this section, or to carry out projects described in subsection (b) (1), (2), or (3), as designated by the State, if such projects meet the requirements of subsection (c)(2). Each State must apply for such funds on or before the first day of the fiscal year, except in fiscal years in which authorizations of appropriations have not been enacted as of the first day of the fiscal year, in which case application must be made within 60 days after the date of enactment of legislation authorizing appropriations for that fiscal year. Upon receipt of an application under this subsection, the Secretary shall consider the application and notify the State submitting such an application as to its approval or disapproval within 60 days. Funds provided under this subsection shall remain available to a State for obligation for the first 3 months after the end of the fiscal year for which such funds have been made available. Any funds which have not been timely applied for under this subsection, or which have remained unobligated after the expiration of the period described in the previous sentence, shall be made available to the Secretary for rail freight assistance projects meeting the requirements of this section.

“(h) The Secretary shall establish such procedures as are necessary to ensure that funds available to the Secretary for use for rail freight assistance projects under subsection (b) are distributed by April 1 of the fiscal year for which such funds are appropriated. If any funds are not distributed by that date, the Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the status of such funds and the reasons for the delay in distribution.

Reports.

“(i) Each State shall retain a contingent interest (redeemable preference shares) for the Federal share of funds in any line receiving rail freight assistance under this section and may exercise the right to collect its share of the funds used for a such a line, if an application for abandonment of such line is filed under chapter 109 of title 49, United States Code, or if such line is abandoned, discontinued, sold, or disposed of in any way after it has received Federal assistance.

“(j) Two or more States which are eligible to receive rail freight assistance under this section may, where not in violation of State law, enter into an agreement to combine any portion of such assistance for purposes of conducting any project which is eligible for assistance under this section and which will benefit each State which is a party to such agreement.

“(k)(1) Each recipient of funds provided under this section, whether in the form of grants, subgrants, contracts, subcontracts, or other arrangements, shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of such funds, the total cost of the project or undertaking in connection with which such funds were provided or used, the amount of that portion of the cost of the project which was supplied by other sources, and such other records as will facilitate an effective audit. Such records shall be maintained for 3 years after the completion of such a project or undertaking.

Records.

“(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of receipts which, in the opinion of the Secretary or of the Comptroller General, may be related or pertinent to the grants, contracts, or other arrangements referred to in paragraph (1) of this subsection.

“(3) The Secretary and the Comptroller General shall regularly conduct, or cause to be conducted—

“(A) a financial audit, in accordance with generally accepted auditing standards; and

“(B) a performance audit of the activities and transactions assisted under this section, in accordance with generally accepted management principles.

Such audits may be conducted by independent certified or licensed public accountants and management consultants approved by the Secretary and the Comptroller General, and they shall be conducted in accordance with such rules and regulations as may be prescribed by the Comptroller General.

“(l) The Interstate Commerce Commission shall provide the Secretary with such information as the Secretary requests to assist in administering the program authorized by this section. The Commission shall provide the requested information within 30 days after receipt of any such request.

“(m) On or before August 1 of each year, each rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of title 49, United States Code, shall prepare, update, and submit to the Secretary a listing of those rail lines of such carrier which, based on level of usage, carried 5 million gross ton miles of freight or less per mile during the prior year.

“(n) The Secretary, no later than July 1, 1990, shall establish a methodology for calculating the ratio of benefits to costs of projects proposed under subsection (b), taking into consideration the need for equitable treatment of different regions of the United States and different commodities transported by rail. The establishment of such methodology shall be a matter committed to the Secretary’s discretion.

“(o) No more than 15 percent of the funds provided under subsection (b) in any fiscal year shall be provided to any one State. No more than 20 percent of the funds provided under subsection (b) in any fiscal year shall be provided for any one project.

“(p) As used in this section, the term ‘State’ means any State in which a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of title 49, United States Code, maintains any line of railroad.

“(q) There are authorized to be appropriated to the Secretary for the purposes of this section not to exceed \$15,000,000 for fiscal year 1991. Such sums as are appropriated are authorized to remain available until expended. No funds are authorized to be appropriated under this subsection for any period after September 30, 1991.”.

(d) **EFFECTIVE DATE.**—The amendment made by subsection (c) shall take effect October 1, 1990.

Appropriation
authorization.

49 USC app.
1654 note.

Approved December 11, 1989.

LEGISLATIVE HISTORY—H.R. 422:

CONGRESSIONAL RECORD, Vol. 135 (1989):

Nov. 17, considered and passed House.

Nov. 19, considered and passed Senate.