

105TH CONGRESS
1ST SESSION

H. R. 1939

To modernize and improve Federal railroad infrastructure financing programs,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 1997

Ms. MOLINARI introduced the following bill; which was referred to the
Committee on Transportation and Infrastructure

A BILL

To modernize and improve Federal railroad infrastructure
financing programs, and for other purposes.

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 “Railroad Infrastruc-
5 ture Financing Improvement Act of 1997”.

6 **SEC. 2. RAIL INFRASTRUCTURE AND EQUIPMENT LOANS.**

7 (a) AMENDMENT TO TITLE 49, UNITED STATES
8 CODE.—Part B of subtitle V of title 49, United States
9 Code, is amended by inserting after chapter 221 the fol-
10 lowing new chapter:

1 **“CHAPTER 223—RAIL INFRASTRUCTURE**
2 **AND EQUIPMENT LOANS**

“Sec.

“22301. Definitions.

“22302. Direct loans and loan guarantees.

“22303. Administration of direct loans and loan guarantees.

3 **“SEC. 22301. DEFINITIONS.**

4 “For purposes of this chapter:

5 “(1)(A) The term ‘cost’ means the estimated
6 long-term cost to the Government of a direct loan or
7 loan guarantee, calculated on a net present value
8 basis, excluding administrative costs and any inci-
9 dental effects on governmental receipts or outlays.

10 “(B) The cost of a direct loan shall be the net
11 present value, at the time when the direct loan is
12 disbursed, of the following cash flows:

13 “(i) Loan disbursements.

14 “(ii) Repayments of principal.

15 “(iii) Payments of interest and other pay-
16 ments by or to the Government over the life of
17 the loan after adjusting for estimated defaults,
18 prepayments, fees, penalties, and other recover-
19 ies.

20 “(C) The cost of a loan guarantee shall be the
21 net present value when a guaranteed loan is dis-
22 bursed, of the following cash flows:

1 “(i) Estimated payments by the Govern-
2 ment to cover defaults and delinquencies, inter-
3 est subsidies, or other payments.

4 “(ii) Estimated payments to the Govern-
5 ment, including origination and other fees, pen-
6 alties, and recoveries.

7 “(D) Any Government action that alters the es-
8 timated net present value of an outstanding direct
9 loan or loan guarantee (except modifications within
10 the terms of existing contracts or through other ex-
11 isting authorities) shall be counted as a change in
12 the cost of that direct loan or loan guarantee. The
13 calculation of such changes shall be based on the es-
14 timated present value of the direct loan or loan
15 guarantee at the time of modification.

16 “(E) In estimating net present values, the dis-
17 count rate shall be the average interest rate on mar-
18 ketable Treasury securities of similar maturity to
19 the direct loan or loan guarantee for which the esti-
20 mate is being made.

21 “(2) The term ‘direct loan’ means a disburse-
22 ment of funds by the Government to a non-Federal
23 borrower under a contract that requires the repay-
24 ment of such funds. The term includes the purchase
25 of, or participation in, a loan made by another lend-

1 er. The term does not include the acquisition of a
 2 federally guaranteed loan in satisfaction of default
 3 claims.

4 “(3) The term ‘direct loan obligation’ means a
 5 binding agreement by the Secretary of Transpor-
 6 tation to make a direct loan when specified condi-
 7 tions are fulfilled by the borrower.

8 “(4) The term ‘loan guarantee’ means any
 9 guarantee, insurance, or other pledge with respect to
 10 the payment of all or a part of the principal or inter-
 11 est on any debt obligation of a non-Federal borrower
 12 to a non-Federal lender, but does not include the in-
 13 surance of deposits, shares, or other withdrawable
 14 accounts in financial institutions.

15 “(5) The term ‘loan guarantee commitment’
 16 means a binding agreement by the Secretary to
 17 make a loan guarantee when specified conditions are
 18 fulfilled by the borrower, the lender, or any other
 19 party to the guarantee agreement.

20 “(6) The term ‘railroad carrier’ has the mean-
 21 ing given that term in section 20102.

22 **“SEC. 22302. DIRECT LOANS AND LOAN GUARANTEES.**

23 “(a) GENERAL AUTHORITY.—The Secretary of
 24 Transportation may provide direct loans and loan guaran-

tees to State and local governments, government sponsored authorities and corporations, and railroad carriers.

“(b) ELIGIBLE PURPOSES.—

“(1) IN GENERAL.—Direct loans and loan guarantees under this section shall be used to—

“(A) acquire, improve, or rehabilitate rail equipment or facilities, including track, components of track, bridges, yards, buildings, and shops;

“(B) refinance outstanding debt incurred for the purposes described in subparagraph (A); or

“(C) develop or establish new railroad facilities.

“(2) OPERATING EXPENSES NOT ELIGIBLE.—Direct loans and loan guarantees under this section shall not be used for railroad operating expenses.

“(c) PRIORITY PROJECTS.—In granting applications for direct loans or guaranteed loans under this section, the Secretary shall give priority to projects that—

“(1) enhance public safety;

“(2) enhance the environment;

“(3) promote economic development;

“(4) enable United States companies to be more competitive in international markets;

1 “(5) are endorsed by the plans prepared under
2 section 135 of title 23 by the State or States in
3 which they are located; or

4 “(6) preserve rail service to small communities
5 or rural areas.

6 “(d) EXTENT OF AUTHORITY.—The aggregate un-
7 paid principal amounts of obligations under direct loans
8 and loan guarantees made under this section shall not ex-
9 ceed \$5,000,000,000 at any one time.

10 “(e) RATES OF INTEREST.—

11 “(1) DIRECT LOANS.—The Secretary shall re-
12 quire interest to be paid on a direct loan made
13 under this section at a rate not less than that nec-
14 essary to recover the cost of making the loan.

15 “(2) LOAN GUARANTEES.—The Secretary shall
16 not make a loan guarantee under this section if the
17 interest rate for the loan exceeds that which the Sec-
18 retary determines to be reasonable, taking into con-
19 sideration the prevailing interest rates and cus-
20 tomary fees incurred under similar obligations in the
21 private capital market.

22 “(f) INFRASTRUCTURE PARTNERS.—

23 “(1) AUTHORITY OF SECRETARY.—In lieu of or
24 in combination with appropriations of budget au-
25 thority to cover the costs of direct loans and loan

1 guarantees as required under section 504(b)(1) of
2 the Federal Credit Reform Act of 1990, the Sec-
3 retary may accept on behalf of an applicant for as-
4 sistance under this section a commitment from a
5 non-Federal source to fund in whole or in part credit
6 risk premiums with respect to the loan that is the
7 subject of the application. In no event shall the ag-
8 gregate of appropriations of budget authority and
9 credit risk premiums described in this paragraph
10 with respect to a direct loan or loan guarantee be
11 less than the cost of that direct loan or loan guaran-
12 tee.

13 “(2) CREDIT RISK PREMIUM AMOUNT.—The
14 Secretary shall determine the amount required for
15 credit risk premiums under this subsection on the
16 basis of—

17 “(A) the circumstances of the applicant,
18 including the amount of collateral offered;

19 “(B) the proposed schedule of loan dis-
20 bursements;

21 “(C) historical data on the repayment his-
22 tory of similar borrowers;

23 “(D) consultation with the Congressional
24 Budget Office; and

1 “(E) any other factors the Secretary con-
2 siders relevant.

3 “(3) PAYMENT OF PREMIUMS.—Credit risk pre-
4 miums under this subsection shall be paid to the
5 Secretary before the disbursement of loan amounts.

6 “(4) COHORTS OF LOANS.—In order to main-
7 tain sufficient balances of credit risk premiums to
8 adequately protect the Federal Government from
9 risk of default, while minimizing the length of time
10 the Government retains possession of those balances,
11 the Secretary shall establish cohorts of loans. When
12 all obligations attached to a cohort of loans have
13 been satisfied, credit risk premiums paid for the co-
14 hort, and interest accrued thereon, which were not
15 used to mitigate losses shall be returned to the origi-
16 nal source on a pro rata basis.

17 “(g) PREREQUISITES FOR ASSISTANCE.—The Sec-
18 retary shall not make a direct loan or loan guarantee
19 under this section unless the Secretary has made a finding
20 in writing that—

21 “(1) repayment of the obligation is required to
22 be made within a term of not more than 25 years
23 from the date of its execution;

1 “(2) the direct loan or loan guarantee is justi-
2 fied by the present and probable future demand for
3 rail services;

4 “(3) the applicant has given reasonable assur-
5 ances that the facilities or equipment to be acquired,
6 rehabilitated, improved, developed, or established
7 with the proceeds of the obligation will be economi-
8 cally and efficiently utilized;

9 “(4) the obligation can reasonably be repaid,
10 using an appropriate combination of credit risk pre-
11 miums and collateral offered by the applicant to pro-
12 tect the Federal Government; and

13 “(5) the purposes of the direct loan or loan
14 guarantee are consistent with subsection (b).

15 “(h) CONDITIONS OF ASSISTANCE.—The Secretary
16 shall, before granting assistance under this section, re-
17 quire the applicant to agree to such terms and conditions
18 as are sufficient, in the judgment of the Secretary, to en-
19 sure that, as long as any principal or interest is due and
20 payable on such obligation, the applicant, and any railroad
21 carrier for whose benefit the assistance is intended—

22 “(1) will not use any funds or assets from rail-
23 road operations for nonrail purposes, if such use
24 would impair the ability of the applicant or railroad
25 carrier to provide rail services in an efficient and

1 economic manner, or would adversely affect the abil-
2 ity of the applicant or railroad carrier to perform
3 any obligation entered into by the applicant under
4 this section;

5 “(2) will, consistent with its capital resources,
6 maintain its capital program, equipment, facilities,
7 and operations on a continuing basis; and

8 “(3) will not make any discretionary dividend
9 payments that unreasonably conflict with the pur-
10 poses stated in subsection (b).

11 **“SEC. 22303. ADMINISTRATION OF DIRECT LOANS AND**
12 **LOAN GUARANTEES.**

13 “(a) APPLICATIONS.—The Secretary of Transpor-
14 tation shall prescribe the form and contents required of
15 applications for assistance under section 22302, to enable
16 the Secretary to determine the eligibility of the applicant’s
17 proposal, and shall establish terms and conditions for di-
18 rect loans and loan guarantees made under that section.

19 “(b) FULL FAITH AND CREDIT.—Loan guarantees
20 made under section 22302 shall constitute general obliga-
21 tions of the United States backed by the full faith and
22 credit of the United States.

23 “(c) ASSIGNMENT OF LOAN GUARANTEES.—The
24 holder of a loan guarantee made under section 22302 may

1 assign the loan guarantee in whole or in part, subject to
2 such requirements as the Secretary may prescribe.

3 “(d) MODIFICATIONS.—The Secretary may approve
4 the modification of any term or condition of a direct loan,
5 loan guarantee, direct loan obligation, or loan guarantee
6 commitment, including the rate of interest, time of pay-
7 ment of interest or principal, or security requirements, if
8 the Secretary finds in writing that—

9 “(1) the modification is equitable and is in the
10 overall best interests of the United States; and

11 “(2) consent has been obtained from the appli-
12 cant and, in the case of a loan guarantee or loan
13 guarantee commitment, the holder of the obligation.

14 “(e) COMPLIANCE.—The Secretary shall assure com-
15 pliance, by an applicant, any other party to the loan, and
16 any railroad carrier for whose benefit assistance is in-
17 tended, with the provisions of this Act, regulations issued
18 hereunder, and the terms and conditions of the direct loan
19 or loan guarantee, including through regular periodic in-
20 spections.

21 “(f) COMMERCIAL VALIDITY.—For purposes of
22 claims by any party other than the Secretary, a loan guar-
23 antee or loan guarantee commitment shall be conclusive
24 evidence that the underlying obligation is in compliance
25 with the provisions of this Act, and that such obligation

1 has been approved and is legal as to principal, interest,
2 and other terms. Such a guarantee or commitment shall
3 be valid and incontestable in the hands of a holder thereof,
4 including the original lender or any other holder, as of
5 the date when the Secretary granted the application there-
6 for, except as to fraud or material misrepresentation by
7 such holder.

8 “(g) DEFAULT.—The Secretary shall prescribe regu-
9 lations setting forth procedures in the event of default on
10 a loan made or guaranteed under section 22302. The Sec-
11 retary shall ensure that each loan guarantee made under
12 that section contains terms and conditions that provide
13 that—

14 “(1) if a payment of principal or interest under
15 the loan is in default for more than 30 days, the
16 Secretary shall pay to the holder of the obligation,
17 or the holder’s agent, the amount of unpaid guaran-
18 teed interest;

19 “(2) if the default has continued for more than
20 90 days, the Secretary shall pay to the holder of the
21 obligation, or the holder’s agent, 90 percent of the
22 unpaid guaranteed principal;

23 “(3) after final resolution of the default,
24 through liquidation or otherwise, the Secretary shall
25 pay to the holder of the obligation, or the holder’s

1 agent, any remaining amounts guaranteed but which
2 were not recovered through the default's resolution;

3 “(4) the Secretary shall not be required to
4 make any payment under paragraphs (1) through
5 (3) if the Secretary finds, before the expiration of
6 the periods described in such paragraphs, that the
7 default has been remedied; and

8 “(5) the holder of the obligation shall not re-
9 ceive payment or be entitled to retain payment in a
10 total amount which, together with all other recover-
11 ies (including any recovery based upon a security in-
12 terest in equipment or facilities) exceeds the actual
13 loss of such holder.

14 “(h) RIGHTS OF THE SECRETARY.—

15 “(1) SUBROGATION.—If the Secretary makes
16 payment to a holder, or a holder's agent, under sub-
17 section (g) in connection with a loan guarantee made
18 under section 22302, the Secretary shall be sub-
19 rogated to all of the rights of the holder with respect
20 to the obligor under the loan.

21 “(2) DISPOSITION OF PROPERTY.—The Sec-
22 retary may complete, recondition, reconstruct, ren-
23 ovate, repair, maintain, operate, charter, rent, sell,
24 or otherwise dispose of any property or other inter-
25 ests obtained pursuant to this section. The Secretary

1 shall not be subject to any Federal or State regu-
2 latory requirements when carrying out this para-
3 graph.

4 “(i) ACTION AGAINST OBLIGOR.—The Secretary may
5 bring a civil action in an appropriate Federal court in the
6 name of the United States in the event of a default on
7 a direct loan made under section 22302, or in the name
8 of the United States or of the holder of the obligation in
9 the event of a default on a loan guaranteed under section
10 22302. The holder of a guarantee shall make available to
11 the Secretary all records and evidence necessary to pros-
12 ecute the civil action. The Secretary may accept property
13 in full or partial satisfaction of any sums owed as a result
14 of a default. If the Secretary receives, through the sale
15 or other disposition of such property, an amount greater
16 than the aggregate of—

17 “(1) the amount paid to the holder of a guaran-
18 tee under subsection (g) of this section; and

19 “(2) any other cost to the United States of
20 remedying the default,

21 the Secretary shall pay such excess to the obligor.

22 “(j) BREACH OF CONDITIONS.—The Attorney Gen-
23 eral shall commence a civil action in an appropriate Fed-
24 eral court to enjoin any activity which the Secretary finds
25 is in violation of this Act, regulations issued hereunder,

1 or any conditions which were duly agreed to, and to secure
2 any other appropriate relief.

3 “(k) ATTACHMENT.—No attachment or execution
4 may be issued against the Secretary, or any property in
5 the control of the Secretary, prior to the entry of final
6 judgment to such effect in any State, Federal, or other
7 court.

8 “(l) INVESTIGATION CHARGE.—The Secretary may
9 charge and collect from each applicant a reasonable charge
10 for appraisal of the value of the equipment or facilities
11 for which the direct loan or loan guarantee is sought, and
12 for making necessary determinations and findings. Such
13 charge shall not aggregate more than one-half of 1 percent
14 of the principal amount of the obligation.”.

15 (b) CONFORMING AMENDMENT.—The table of chap-
16 ters of subtitle V of title 49, United States Code, is
17 amended by inserting after the item relating to chapter
18 221 the following:

“223. RAIL INFRASTRUCTURE AND EQUIPMENT LOANS 22301”.

19 **SEC. 3. TECHNICAL AND CONFORMING PROVISIONS.**

20 (a) REPEAL.—Title V of the Railroad Revitalization
21 and Regulatory Reform Act of 1976 (45 U.S.C. 821 et
22 seq.) is repealed.

23 (b) SAVINGS PROVISION.—A transaction entered into
24 under the authority of title V of the Railroad Revitaliza-
25 tion and Regulatory Reform Act of 1976 before the date

1 of the enactment of this Act shall be administered until
2 completion under its terms as if subsection (a) of this sub-
3 section were not enacted.

4 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

5 (1) Section 211(i) of the Regional Rail Reorganization Act
6 of 1973 (45 U.S.C. 721(i)) is repealed.

7 (2) Section 306(b) of title 49, United States Code,
8 is amended by striking “title V of the Railroad Revitaliza-
9 tion and Regulatory Reform Act of 1976 (45 U.S.C. 821
10 et seq.)” and inserting in lieu thereof “chapter 223 of this
11 title”.

