

Calendar No. 548

107TH CONGRESS }
2d Session }

SENATE

{ REPORT
107-238 }

**RAILROAD TRACK MODERNIZATION ACT
OF 2002**

R E P O R T

OF THE

**COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION**

ON

S. 1220



AUGUST 1, 2002.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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RAILROAD TRACK MODERNIZATION ACT OF 2002

AUGUST 1, 2002.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 1220]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1220) “A Bill To authorize the Secretary of Transportation to establish a grant program for the rehabilitation, preservation, or improvements of railroad track”, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

The purposes of this bill, as reported, are to assist smaller railroads in upgrading their tracks and roadbed, including the ability to accommodate newer, heavier freight cars on their lines, and to provide financial assistance to States to relocate rail lines or construct grade separations to mitigate traffic congestion.

BACKGROUND AND NEEDS

Class II and Class III rail carriers are classified by the Surface Transportation Board based on their annual revenues. Class II railroads are regional carriers that operate at least 350 miles of track and/or earned revenues between \$40 million and \$261.9 million in 2000. Class III railroads are small line haul or switching and terminal carriers, generally known as short lines, that operate less than 350 miles of track and earned less than \$40 million in 2000. Although some smaller Class II and Class III railroads have existed for decades, several hundred new short line and regional railroads have been created since the enactment of the Staggers Rail Act of 1980 (Staggers Act).

Prior to the Staggers Act reforms that permitted large railroads (Class I rail carriers with revenues in 2000 exceeding \$261.9 million) to abandon unproductive lines more easily, deterioration of the rail network, especially on light-density lines serving smaller towns and rural areas, was widespread. The generally higher operating costs of the Class I carriers, combined with low traffic levels, made many light-density lines money-losing enterprises for the large railroads. Prior to 1980, most such lines were shed by Class I carriers (which the Interstate Commerce Commission (ICC) regulatory process permitted) through outright abandonment, removing the lines permanently from the rail network.

The Staggers Act encouraged railroads to sell rather than abandon branch lines by establishing a new feeder line development program and by requiring that railroads make lines to be abandoned available for subsidy or sale. This made it easier for Class I railroads to sell or lease light density lines to smaller or start-up operations. In addition, Class I carriers quickly came to realize the benefits to their own systems of selling off high-cost, low-utilization lines to lower-cost operators, while retaining the customers on those lines. Together, these circumstances led to a boom in the formation of Class II and Class III railroads. In 1980, there were 220 short line railroads in the United States; today there are over 500.

Short line and regional railroads are an important and growing component of the railroad industry. Today, they operate and maintain nearly one-third of the American railroad industry's route mileage, and account for 9 percent of the rail industry's freight revenue and 12 percent of railroad employment. Since 1982, short lines and regional railroads have assumed operations in areas where rail service would have been abandoned by the Class I railroads. Today, more than one quarter of rail freight carloads in the United States originate or terminate on short line or regional railroads.

Some smaller railroads have succeeded financially, while others have not. In the majority of cases, the infrastructure acquired by the new smaller operators was already severely deteriorated by Class I standards, but still sufficiently sound to allow low-density (and often low-speed) freight operations. Besides attracting sufficient revenue, a secondary struggle by the smaller freight railroads involves acquiring sufficient capital to maintain and possibly upgrade the quality of the infrastructure inherited from the former owners of these lines.

Further complicating the capital needs of smaller railroads has been the introduction of the new generation of heavier, higher-capacity freight cars, now built to a 286,000-pound weight standard. Used increasingly by the Class I railroads, these heavier cars require upgrade of tracks, ties, ballast, and bridges. A recent study funded in part by the Federal Railroad Administration and conducted under contract by the American Short Line and Regional Railroad Association established a need of \$6.8 billion for small railroads to upgrade their track and facilities to handle these new, heavier 286,000-pound freight cars. Because short lines typically receive and move freight in carloads, not in 100-car unit trains, they are not realizing the productivity benefits of these larger,

heavier cars, yet the cost to upgrade their track to handle these cars is no less expensive.

The heavier fleets increase the operating stresses and wear and tear on track systems, and depending on the level of deterioration, could prevent entirely operation of 286,000-pound cars on certain light density lines. On a system-wide basis, this effect would impact the interoperability of equipment on the United States freight rail system.

SUMMARY OF MAJOR PROVISIONS

S. 1220 contains three main components. First, it amends title 49 of the United States Code to establish a program of capital grants to Class II and Class III railroads, or alternatively, with the concurrence of such railroads, to a State or local government to rehabilitate, preserve, and improve railroad tracks. This grant program would be available to short lines and regional carriers to improve railroad track (including roadbeds, bridges, and track structures) to a standard ensuring safe and efficient operation, including safe and efficient handling of 286,000-pound rail cars. Under this program, the Secretary of Transportation would be authorized to make grants to supplement direct loans or loan guarantees under the Railroad Rehabilitation Improvement Financing (RRIF) program (including grants for paying credit risk premiums, lowering rates of interest, or providing for a holiday on principal payments) for certain projects. With respect to projects financed by such grants, the bill would require implementation of certain employee protections and prevailing wage requirements. Second, the bill would direct the Secretary to study and report to Congress on such projects to determine the public interest benefits associated with the light density railroad networks in the States and their contribution to a multi-modal transportation system. Third, the bill would establish a grant program to relocate rail lines or construct grade separations to alleviate traffic congestion. Projects receiving grants under this program would be required to meet a cost-benefit standard. The Federal share for these projects would be 90 percent of the costs of the project.

LEGISLATIVE HISTORY

On May 9, 2001, the Subcommittee on Surface Transportation and Merchant Marine held an oversight hearing on the state of the railroad industry. In addition to testimony provided by a number of witnesses, Mr. Walter Brickwedel, President of the Oregon Short Line Railroad Association and Assistant to the General Manager, Central Oregon & Pacific Railroad, testified about the needs of Class II and Class III railroads and discussed the 286,000-pound car impact on smaller railroads.

Senators Breaux and Smith (OR) introduced S. 1220 on July 23, 2001; it is co-sponsored by Senators Brownback, Snowe, Wyden, Durbin, Grassley, Lincoln, Miller, Schumer, and Specter.

On November 1, 2001, the Full Committee held a hearing on S. 1530, the Railroad Advancement and Infrastructure Law of the 21st Century (RAIL-21), introduced by Senator Hollings on October 11, 2001. Mr. Frank Turner, President and CEO of the American Short Line and Regional Railroad Association, testified in sup-

port of S. 1530. S. 1530 incorporated the provisions of S. 1220 in its entirety into section 5.

On April 18, 2002, the Committee met in executive session and ordered S. 1220 to be reported with amendments.

Senators Breaux and Smith (OR) offered an amendment that was adopted to update the applicable years of appropriations and the deadlines before which the Secretary must take regulatory action. The amendment would also require the Secretary to develop criteria for awarding grants. The criteria include ensuring awards are made on a competitive basis, ensuring consideration is given to projects which are part of a State-sponsored rail plan, and the economic justifications for the project.

Senator Lott offered an amendment that was also adopted to authorize the Secretary of Transportation to provide grants to States and communities to relocate rail lines. The amendment provides \$350 million annually for FY 2003–2007 to States and political subdivisions to build a railroad tunnel, underpass, or overpass, or re-route rail lines to relieve traffic congestion.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 3, 2002.

Hon. ERNEST F. HOLLINGS,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1220, the Railroad Track Modernization Act of 2002.

If you wish further details on this estimate we will be pleased to provide them. The CBO staff contact is Rachel Milberg.

Sincerely,

BARRY B. ANDERSON,
(For Dan L. Crippen, Director.)

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1220—Railroad Track Modernization Act of 2002

Summary: S. 1220 would authorize the Secretary of Transportation to administer two new grant programs. Under the first program, the Secretary would provide grants to states and to class II and class III railroads for improving railroad track. Under the second program, the Secretary would provide grants to states for relocating rail lines. The bill would authorize the appropriation of \$2.8 billion over the 2003–2007 period for these programs.

CBO estimates that implementing S. 1220 would cost \$1.9 billion over the 2003–2007 period, and another \$0.9 billion after 2007. S. 1220 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

S. 1220 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Any costs to states that receive grants under this bill would be incurred voluntarily.

Estimated costs to the Federal Government: The estimated budgetary impact of S. 1220 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By Fiscal Year, in Millions of Dollars—					
	2002	2003	2004	2005	2006	2007
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law for Railroad Track Grants:						
Budget Authority	0	0	0	0	0	0
Estimated Outlays ¹	1	0	0	0	0	0
Proposed Changes:						
Authorization Level	0	700	700	700	350	350
Estimated Outlays	0	70	350	420	490	560
Spending Under S. 1220 for Railroad Track Grants:						
Authorization Level	0	700	700	700	350	350
Estimated Outlays ¹	1	70	350	420	490	560

¹ Outlays in 2002 are from prior appropriations for railroad capital improvement grants.

Basis of Estimate: For this estimate, CBO assumes that S. 1220 will be enacted in fiscal year 2002 and that the authorized amounts will be appropriated for each year. Estimates of spending are based on information from the Federal Railroad Administration and historical spending patterns of similar programs.

S. 1220 would repeal the existing authority of the Secretary of Transportation to provide grants to states for capital improvements to railroads. No appropriations have been made for these grants since 1995. Instead the bill would authorize the Secretary to make improvement grants directly to certain railroads, or to states with the concurrence of a class II and class III railroad.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: S. 1220 contains no intergovernmental or private-sector mandates as defined in UMRA. States and railroads that receive funds under the programs authorized by the bill would be required to contribute up to 20 percent of the project's total cost. Any resulting costs to state or local governments would be incurred voluntarily.

Previous CBO estimate: On June 6, 2001, CBO transmitted a cost estimate for H.R. 1020, the Rail Track Modernization Act of 2001, as ordered reported by the House Committee on Transportation and Infrastructure on May 16, 2001. The House bill would not authorize a grant program for the relocation of rail lines, and it would authorize appropriations for the track improvement grants over the 2002–2004 period rather than the 2003–2007 period. The cost estimates reflect these differences.

Estimate prepared by: Federal costs: Rachel Milberg; impact on state, local and tribal governments: Susan Sieg Tompkins; impact on the private sector: Jean Talarico.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

S. 1220 establishes two direct grant programs, both of which will involve paperwork associated with grant applications. The legislation would have no further effect on the number or types of individuals and businesses regulated or the personal privacy of affected individuals.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This Act may be cited as the “Railroad Track Modernization Act of 2002.”

Section 2. Capital grants for railroad track.

This section would amend title 49, section 22301, to establish a program of capital grants for railroad track infrastructure.

Subsection (a)(1) would direct the Secretary of Transportation to establish the grant program, and specifies that the grants may be used for rehabilitation, preservation, or improvement of railroad track (including roadbed, bridges, and related track structures) of short lines and regional railroads. Grants may specifically be used to rehabilitate, preserve, or improve track to handle 286,000-pound rail cars. The paragraph also specifies that grants may be awarded directly to a short line railroad, or, with the concurrence of the short line railroad, to a State or local government.

Subsection (a)(2) would encourage short line railroads to utilize the expertise of State transportation officials in applying for and administering grants.

Subsections (a)(3) and (a)(4) would require the Secretary to promulgate an interim final rule to implement the grant program by December 31, 2002, and a final regulation by October 1, 2003.

Subsection (a)(5) would direct the Secretary, in developing regulations, to condition the award of a grant on reasonable assurances that the facilities to be rehabilitated and improved will be economically utilized; that the grant is justified by demand for rail services by the railroad; and that consideration is given to projects that are part of a State-sponsored rail plan and that all grants are awarded on a competitive basis.

Subsection (b) would specify the maximum Federal share of any project receiving funds under this section to be 80 percent of the total project cost. The non-Federal share may be provided by any non-Federal source, including cash, equipment, supplies, or any other in-kind contribution approved by the Secretary.

Subsection (c) would specify that for a project to be eligible to receive a grant award, it must be owned or operated by a Class II or Class III railroad as of the date of enactment of this Act.

Subsection (d) would provide that grant funds must be contractually obligated within three years after the grant is awarded.

Subsection (e) would allow grant funds to be used to supplement the existing Federal direct loan or loan guarantee program made under the RRIF program under section 502(d) of the Railroad Revitalization and Regulatory Reform Act of 1976. This subsection also

specifies that grants may be used for paying credit risk premiums, lowering rates of interest, or providing for a holiday on principal payments associated with a section 502(d) loan.

Subsection (f) would require that grant recipients provide for fair labor arrangements, at least as protective as the terms imposed under section 11326(a) of title 49, United States Code.

Subsection (g) would specify that Davis-Bacon Act requirements apply to projects using funds awarded by a grant under this section, and that wage rates in a collective bargained agreement negotiated under the Railway Labor Act are deemed to satisfy Davis-Bacon Act requirements.

Subsection (h) would require that the Secretary undertake a study of the projects carried out under the new grant program to determine the public interest benefits associated with the light density railroad networks in the States and their contribution to a multi-modal transportation system. The Secretary is directed to report to Congress any recommendations regarding the eligibility of light density rail networks for Federal infrastructure financing by March 31, 2003.

Subsection (i) would authorize appropriations of \$350 million for each of fiscal years 2003, 2004, and 2005.

The section also would add a new section 22302 to chapter 223 of title 49, United States Code, authorizing a new Department of Transportation capital grant program for rail line relocation projects.

New section 22302(a) would establish a new capital grant program to provide financial assistance for local rail line relocation projects.

New section 22302(b) would set eligibility standards for States making grant applications. Proposed rail line relocation projects for the improvement of a route or structure passing through a municipality must: (1) mitigate the adverse effects of rail traffic on safety or motor vehicle traffic flow in the municipality; (2) involve a lateral or vertical relocation of the rail line to avoid the closing of a grade crossing or the relocation of a road; and (3) meet a costs-benefits test.

New section 22302(c) would require that for a project to be eligible for funding, the projected benefits of the project must exceed the project costs. In determining project benefits and costs, the Secretary is to consider: (1) the effects of the rail line and the rail traffic on motor vehicle and pedestrian traffic, safety, and area commerce, before and after the rail line relocation; and (2) the effects of the rail line relocation on freight and rail passenger operations on the rail line.

New section 22302(d) would require the Secretary to consider, in addition to benefits and costs, the following factors in making grant award decisions: (1) the capability of the State to fund the relocation project without Federal grant funding; (2) the equitable treatment of various regions of the United States; and (3) certain allocation requirements described below in section 22302(e).

New section 22302(e) would prescribe two allocation requirements for rail line relocation grants: (1) at least 50 percent of all grant funding available in a fiscal year must be provided as grant awards of less than \$20 million each; and (2) not more than 25 per-

cent of the grant funding available in a fiscal year may be provided for any single project.

New section 22302(f) would establish the Federal share for grants awarded under this authority at 90 percent of the costs.

New section 22302(g) would establish the State share for grants awarded under this authority at 10 percent of the shared costs. The State share may be paid in the form of cash, the contribution of real or tangible property (including property provided by a person on behalf of the State), or the services of State employees (excluding overhead and administrative costs). State in-kind costs may include certain pre-application contributions. The shared costs of a project may not include any cost that is defrayed with any funds or in-kind contribution that a source (other than the municipality) makes available unless the contribution is conditioned on the municipality using the funds only for the project and the execution of the project. The Secretary is to determine which project costs are shared costs and which are not.

New section 22302(h) would authorize two or more States to combine grants for a common project that benefits such States, subject to State authority.

New section 22302(i) would direct the Secretary to prescribe regulations for carrying out this section.

New section 22302(j) would include political subdivisions of States in the definition of “State”.

New section 22302(k) would authorize appropriations for the grant program of \$350 million for each of fiscal years 2003 through 2007.

The section would also direct the Secretary of Transportation to issue temporary regulations to implement the grant program by October 1, 2002, and final regulations by April 1, 2003. Those regulations must ensure that grants are awarded on a competitive basis.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in *italic*, existing law in which no change is proposed is shown in roman):

TITLE 49. TRANSPORTATION

SUBTITLE V. RAIL PROGRAMS

PART B. ASSISTANCE

[CHAPTER 223. LIGHT DENSITY RAIL LINE PILOT PROJECTS

[§ 22301. Light density rail line pilot projects

[(a) GRANTS.—The Secretary of Transportation may make grants to States that have State rail plans described in section 22102 (1) and (2), to fund pilot projects that demonstrate the relationship of light density railroad services to the statutory responsibilities of the Secretary, including those under title 23.

[(b) LIMITATIONS.—Grants under this section may be made only for pilot projects for making capital improvements to, and rehabili-

tating, publicly and privately owned rail line structures, and may not be used for providing operating assistance.

[(c) PRIVATE OWNER CONTRIBUTIONS.—Grants made under this section for projects on privately owned rail line structures shall include contributions by the owner of the rail line structures, based on the benefit to those structures, as determined by the Secretary.

[(d) STUDY.—The Secretary shall conduct a study of the pilot projects carried out with grant assistance under this section to determine the public interest benefits associated with the light density railroad networks in the States and their contribution to a multimodal transportation system. Not later than March 31, 2003, the Secretary shall report to Congress any recommendations the Secretary considers appropriate regarding the eligibility of light density rail networks for Federal infrastructure financing.

[(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section \$17,500,000 for each of the fiscal years 1998, 1999, 2000, 2001, 2002, and 2003. Such funds shall remain available until expended.]

CHAPTER 223—CAPITAL GRANTS FOR RAILROAD TRACK

Sec.

22301. Capital grants for railroad track.

22302. Capital grants for rail line relocation projects.

§ 22301. Capital grants for railroad track

(a) *ESTABLISHMENT OF PROGRAM.*—

(1) *ESTABLISHMENT.*—*The Secretary of Transportation shall establish a program of capital grants for the rehabilitation, preservation, or improvement of railroad track (including roadbed, bridges, and related track structures) of class II and class III railroads. Such grants shall be for rehabilitating, preserving, or improving track used primarily for freight transportation to a standard ensuring that the track can be operated safely and efficiently, including grants for rehabilitating, preserving, or improving track to handle 286,000 pound rail cars. Grants may be provided under this chapter—*

(A) directly to the class II or class III railroad; or

(B) with the concurrence of the class II or class III railroad, to a State or local government.

(2) *STATE COOPERATION.*—*Class II and class III railroad applicants for a grant under this chapter are encouraged to utilize the expertise and assistance of State transportation agencies in applying for and administering such grants. State transportation agencies are encouraged to provide such expertise and assistance to such railroads.*

(3) *INTERIM REGULATIONS.*—*Not later than December 31, 2002, the Secretary shall issue temporary regulations to implement the program under this section. Subchapter II of chapter 5 of title 5 does not apply to a temporary regulation issued under this paragraph or to an amendment to such a temporary regulation.*

(4) *FINAL REGULATIONS.*—*Not later than October 1, 2003, the Secretary shall issue final regulations to implement the program under this section.*

(5) *CRITERIA.*—In developing interim and final regulations, the Secretary shall establish criteria that—

(A) condition the award of a grant to a railroad on reasonable assurances by the railroad that the facilities to be rehabilitated and improved will be economically and efficiently utilized;

(B) ensure that the award of a grant is justified by present and probable future demand for rail services by the railroad to which the grant is to be awarded;

(C) ensure that consideration is given to projects that are part of a State-sponsored rail plan; and

(D) ensure that all such grants are awarded on a competitive basis.

(b) *MAXIMUM FEDERAL SHARE.*—The maximum Federal share for carrying out a project under this section shall be 80 percent of the project cost. The non-Federal share may be provided by any non-Federal source in cash, equipment, or supplies. Other in-kind contributions may be approved by the Secretary on a case by case basis consistent with this chapter.

(c) *PROJECT ELIGIBILITY.*—For a project to be eligible for assistance under this section the track must have been operated or owned by a class II or class III railroad as of the date of the enactment of the Railroad Track Modernization Act of 2002.

(d) *USE OF FUNDS.*—Grants provided under this section shall be used to implement track capital projects as soon as possible. In no event shall grant funds be contractually obligated for a project later than the end of the third Federal fiscal year following the year in which the grant was awarded. Any funds not so obligated by the end of such fiscal year shall be returned to the Secretary for reallocation.

(e) *ADDITIONAL PURPOSE.*—In addition to making grants for projects as provided in subsection (a), the Secretary may also make grants to supplement direct loans or loan guarantees made under title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(d)), for projects described in the last sentence of section 502(d) of such title. Grants made under this subsection may be used, in whole or in part, for paying credit risk premiums, lowering rates of interest, or providing for a holiday on principal payments.

(f) *EMPLOYEE PROTECTION.*—The Secretary shall require as a condition of any grant made under this section that the recipient railroad provide a fair arrangement at least as protective of the interests of employees who are affected by the project to be funded with the grant as the terms imposed under section 11326(a), as in effect on the date of the enactment of the Railroad Track Modernization Act of 2001.

(g) *LABOR STANDARDS.*—

(1) *PREVAILING WAGES.*—The Secretary shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed by a grant made under this section will be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a et seq.). The Secretary shall make a grant under this section only after being assured that

required labor standards will be maintained on the construction work.

(2) *WAGE RATES.*—Wage rates in a collective bargaining agreement negotiated under the Railway Labor Act (45 U.S.C. 151 et seq.) are deemed for purposes of this subsection to comply with the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a et seq.).

(h) *STUDY.*—The Secretary shall conduct a study of the projects carried out with grant assistance under this section to determine the public interest benefits associated with the light density railroad networks in the States and their contribution to a multimodal transportation system. Not later than March 31, 2003, the Secretary shall report to Congress any recommendations the Secretary considers appropriate regarding the eligibility of light density rail networks for Federal infrastructure financing.

(i) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated to the Secretary of Transportation \$350,000,000 for each of the fiscal years 2003 through 2005 for carrying out this section.

§22302. Capital grants for rail line relocation projects

(a) *ESTABLISHMENT OF PROGRAM.*—The Secretary of Transportation shall carry out a grant program to provide financial assistance for local rail line relocation projects.

(b) *ELIGIBILITY.*—A State is eligible for a grant under this section for any project for the improvement of the route or structure of a rail line passing through a municipality of the State that—

(1) is carried out for the purpose of mitigating the adverse effects of rail traffic on safety or motor vehicle traffic flow in the municipality;

(2) involves a lateral or vertical relocation of any portion of the rail line within the municipality to avoid a closing of a grade crossing or the construction of a road underpass or overpass; and

(3) meets the costs-benefits requirement set forth in subsection (c).

(c) *COSTS-BENEFITS REQUIREMENT.*—A grant may be awarded under this section for a project for the relocation of a rail line only if the benefits of the project for the period equal to the estimated economic life of the relocated rail line exceed the costs of the project for that period, as determined by the Secretary considering the following factors:

(1) The effects of the rail line and the rail traffic on motor vehicle and pedestrian traffic, safety, and area commerce if the rail line were not so relocated.

(2) The effects of the rail line, relocated as proposed, on motor vehicle and pedestrian traffic, safety, and area commerce.

(3) The effects of the rail line, relocated as proposed, on the freight and passenger rail operations on the rail line.

(d) *CONSIDERATIONS FOR APPROVAL OF GRANT APPLICATIONS.*—In addition to considering the relationship of benefits to costs in determining whether to award a grant to an eligible State under this section, the Secretary shall consider the following factors:

(1) The capability of the State to fund the rail line relocation project without Federal grant funding.

(2) *The requirement and limitation relating to allocation of grant funds provided in subsection (e).*

(3) *Equitable treatment of the various regions of the United States.*

(e) *ALLOCATION REQUIREMENTS.—*

(1) *GRANTS NOT GREATER THAN \$20,000,000.—At least 50 percent of all grant funds awarded under this section out of funds appropriated for a fiscal year shall be provided as grant awards of not more than \$20,000,000 each.*

(2) *LIMITATION PER PROJECT.—Not more than 25 percent of the total amount available for carrying out this section for a fiscal year may be provided for any one project in that fiscal year.*

(f) *FEDERAL SHARE.—The total amount of a grant awarded under this section for a rail line relocation project shall be 90 percent of the shared costs of the project, as determined under subsection (g)(4).*

(g) *STATE SHARE.—*

(1) *PERCENTAGE.—A State shall pay 10 percent of the shared costs of a project that is funded in part by a grant awarded under this section.*

(2) *FORMS OF CONTRIBUTIONS.—The share required by paragraph (1) may be paid in cash or in kind.*

(3) *IN-KIND CONTRIBUTIONS.—The in-kind contributions that are permitted to be counted under paragraph (2) for a project for a State are as follows:*

(A) *A contribution of real property or tangible personal property (whether provided by the State or a person for the State).*

(B) *A contribution of the services of employees of the State, calculated on the basis of costs incurred by the State for the pay and benefits of the employees, but excluding overhead and general administrative costs.*

(C) *A payment of any costs that were incurred for the project before the filing of an application for a grant for the project under this section, and any in-kind contributions that were made for the project before the filing of the application, if and to the extent that the costs were incurred or in-kind contributions were made, as the case may be, to comply with a provision of a statute required to be satisfied in order to carry out the project.*

(4) *COSTS NOT SHARED.—*

(A) *IN GENERAL.—For the purposes of subsection (f) and this subsection, the shared costs of a project in a municipality do not include any cost that is defrayed with any funds or in-kind contribution that a source other than the municipality makes available for the use of the municipality without imposing at least one of the following conditions:*

(i) *The condition that the municipality use the funds or contribution only for the project.*

(ii) *The condition that the availability of the funds or contribution to the municipality is contingent on the execution of the project.*

(B) *DETERMINATIONS OF THE SECRETARY.—The Secretary shall determine the amount of the costs, if any, that are not*

shared costs under this paragraph and the total amount of the shared costs. A determination of the Secretary shall be final.

(h) MULTISTATE AGREEMENTS TO COMBINE AMOUNTS.—Two or more States (not including political subdivisions of States) may, pursuant to an agreement entered into by the States, combine any part of the amounts provided through grants for a project under this section if—

(1) the project will benefit each of the States entering into the agreement; and

(2) the agreement is not a violation of a law of any such State.

(i) REGULATIONS.—The Secretary shall prescribe regulations for carrying out this section.

(j) STATE DEFINED.—In this section, the term ‘State’ includes, except as otherwise specifically provided, a political subdivision of a State.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for use in carrying out this section \$350,000,000 for each of the fiscal years 2003 through 2007.

