

Public Law 95-565

95th Congress

An Act

To amend the Regional Rail Reorganization Act of 1973 to authorize the purchase of an additional \$1,200,000,000 of the series A preferred stock of the Corporation, and for other purposes.

Nov. 1, 1978
[S. 2788]

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 "United States Railway Association Amendments Act of 1978".

SEC. 2. (a) Section 216(a) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(a)) is amended by striking out "\$1,100,000,000" and inserting in lieu thereof "\$2,300,000,000".

(b) Section 216(b)(2) of such Act (45 U.S.C. 716(b)(2)) is amended by striking out "\$1,100,000,000" and inserting in lieu thereof "\$2,300,000,000".

(c) Section 216(f) of such Act (45 U.S.C. 726(f)) is amended by striking out "\$2,100,000,000" and inserting in lieu thereof "\$3,300,000,000".

SEC. 3. Section 216 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726) is further amended by redesignating subsection (f) thereof as subsection (g) and by inserting immediately after subsection (e) thereof a new subsection as follows:

"(f) (1) The Association shall not invest the final \$345,000,000 of the additional investment in the Corporation authorized by the Regional Rail Reorganization Act Amendments of 1978 unless and until (A) the Corporation has in effect an employee stock ownership plan which satisfies the requirements of paragraphs (2) and (3), and (B) the requirements of the other paragraphs of this subsection have been satisfied.

"(2) The employee stock ownership plan shall:

"(A) provide:

"(i) for a transfer to the plan and allocation to the accounts of plan participants in periodic installments of Series A preferred stock of the Corporation with a stated redemption value of at least \$345,000,000 or any other securities in an amount determined by the Association, with the concurrence of the Finance Committee, as constituting a meaningful interest in the Corporation, or any combination thereof so determined by the Association, with the concurrence of the Finance Committee. The use of Series A preferred stock to fund the Employee Stock Ownership Plan shall not be interpreted to relieve ConRail of the responsibility for repaying in full to the United States Railway Association its indebtedness as represented by all shares originally issued under Public Law 94-210 and this Act;

"(ii) for immediate vesting of the rights of participants to such securities upon allocation, subject to defeasance as a result of the plan's termination which termination shall occur in the event that, by the end of the 120th month beginning after the month in which securities or interests therein are first allocated to participants' accounts, the Corporation has not

United States
Railway
Association
Amendments
Act of 1978.
45 USC 701 note.

45 USC 726.

Employee stock
ownership plan.

attained for two consecutive quarters positive net income and a freight labor cost to freight revenue ratio equal to the average such ratio for all Class I railroads in 1977, as determined pursuant to procedures adopted by the Corporation pursuant to regulations promulgated by the Association with the concurrence of the Finance Committee;

“(B) be an employee benefit plan which is designed to invest primarily in employer securities;

26 USC 4975.

“(C) meets such other requirements (similar to requirements applicable to employee stock ownership plans as defined in section 4975(e)(7) of the Internal Revenue Code of 1954) as the Secretary of the Treasury or his delegate may describe;

“(D) have been approved by the Board of Directors of the Corporation to the extent and in the manner which may be required by the Corporation's articles of incorporation and bylaws then in effect; and

“(E) have been prepared in consultation with, and been approved by, the Association and the Finance Committee.

26 USC 401.

“(3) Notwithstanding any other provision of law, if a plan does not meet the requirements of section 401 of the Internal Revenue Code of 1954—

“(A) stock transferred under paragraph (2) and allocated to the account of any participant under paragraph (2) shall not be considered income of the participant or his beneficiary under the Internal Revenue Code of 1954 until such stock or dividends are actually distributed or made available to the participant or his beneficiary and, at such time, shall be taxable under section 72 of the Internal Revenue Code of 1954 (treating the participant or his beneficiary as having a basis of 0 in the stock);

26 USC 72.

“(B) no amount shall be allocated to any participant under the plan in excess of the amount which might be allocated if the plan met the requirements of section 401 of the Internal Revenue Code of 1954; and

26 USC 410,
415.

“(C) the plan must meet the requirements of sections 410 and 415 of the Internal Revenue Code of 1954.

“(4) The Corporation shall adopt such terms and conditions governing the securities or interests therein to be transferred to the plan (including limitations on voting rights) as the Association, with the concurrence of the Finance Committee, determines are necessary to protect reasonably the interests of the United States in the litigation pursuant to section 303(c) of this Act and in the event of any action to further reorganize or restructure the Corporation's assets or capital structure.

45 USC 743.

“(5) The Corporation, the Association, and a representative appointed by the Chairman of the Railway Labor Executives' Association as representative of all the classes or crafts of employees of the Corporation shall engage in negotiations to agree upon a plan in accordance with the provisions of this subsection. The parties shall incorporate their agreement into a written plan instrument specifying

the terms and conditions set forth in this subsection and such other terms and conditions as they may decide upon, with the concurrence of the Finance Committee, unless the parties are unable to reach on an agreement on the plan following the exertion of every reasonable effort to do so, in accordance with the Railway Labor Act, in which event, the Corporation and the Association, with the concurrence of the Finance Committee, shall establish a written plan with such terms and conditions as they may agree upon in accordance with this subsection. Within one year after the effective date of this subsection, the Corporation shall transmit a draft of such plan to the Congress and shall report on its progress in establishing and administering the plan. The report shall include recommendations of contractual and statutory provisions necessary to reasonably (A) exempt any Trustee of the plan, the Corporation, the Association, any member of the Finance Committee, and any other person from any fiduciary duty, responsibility or liability for the acquisition of, investment in, or retention of any security or interest therein of the Corporation or for any other transaction contemplated by this subsection and (B) provide for the United States to indemnify, defend, and hold harmless such persons against any and all liabilities, claims, actions, judgments, amounts paid in settlement, and costs and expenses actually incurred in connection with any matter so exempted in which it is determined that such persons were acting in good faith and in a manner they believed to not be opposed to the best interests of the plan.

Plan, transmittal
to Congress.

“(6) Within fourteen months of the effective date of this subsection, the Association shall report to the Congress on the draft plan and on any legal obstacle to the ability of the Corporation to effectuate and implement an employee stock ownership plan of the nature contemplated by this subsection, including specific recommendations on amendments to this subsection and other relevant laws which would harmonize the requirements of this subsection with those other laws. The Department of Transportation and the Department of the Treasury, as each finds appropriate, shall provide separate comments to the Association for inclusion with such report.

Report to
Congress.

“(7) For the purposes of this subsection, the officers of each duly authorized representative of the crafts or classes of the employees of the Corporation who have been given leaves of absence by the Corporation to serve as such officers, are to be eligible to participate in such plan on the same basis as are employees whose employment is governed by a collective bargaining agreement with the Corporation.”

SEC. 4. (a) The first section of the Act entitled “An Act to authorize the President of the United States to locate, construct, and operate railroads in the Territory of Alaska, and for other purposes”, approved March 12, 1914 (38 Stat. 305; 43 U.S.C. 957), is amended by inserting after “to fix compensation of all officers, agents, or other employees designated by him;” the following: “and, notwithstanding any other provision of law or regulation, to fix relocation, travel and transportation expenses for the General Manager of the railroad designated under this Act”.

43 USC 975.

(b) This section shall apply to the General Manager serving on the date of enactment of this section with respect to relocation, travel,

43 USC 975 note.

or transportation expenses which were incurred before or after the date of enactment of this section.

SEC. 5. Section 505 of the Railroad Revitalization and Regulatory Reform Act (45 U.S.C. 825) is amended by (a) striking the last sentence of subsection (d)(3) thereof; and (b) striking "purchase under this title after September 30, 1978," and inserting in lieu thereof "after September 30, 1979, make commitments to purchase under this title" in subsection (e) thereof.

Railroad bridge,
reconstruction.

SEC. 6. (a) The Consolidated Rail Corporation shall (1) carry out such reconstruction of the railroad bridge over the Hudson River at Poughkeepsie, New York, as is necessary for the purposes of this section and make appropriate repairs and improvements in rail yards and tracks which service the rail system using such bridge, (2) restore freight service on such system at least to the extent provided prior to the fire damage to such bridge in 1974, and (3) take appropriate steps to promote the use of such system.

Appropriation
authorization.

(b) There is authorized to be appropriated to the Secretary of Transportation not to exceed \$9,000,000 for making payments to the Corporation to cover costs incurred pursuant to subsection (a)(1).

45 USC 747.

SEC. 7. Section 307 of the Regional Rail Reorganization Act is amended by inserting after subsection (b) a new subsection (c) as follows:

Report to
Congress.

"(c) MONITORING OF THE CORPORATION.—(1) The Association shall also report to the Congress, in accordance with this subsection, on the policies of the Corporation and the results of such policies with respect to operations, cost containment, and marketing.

Information,
submittal to
Congress.

"(2) Within 90 days after the date of enactment of this subsection, the Association shall (A) subdivide each such policy area into constituent parts or groups of parts which are specific and significant, (B) identify the most appropriate indicia to reflect accurately such parts or groups of parts, and (C) (i) determine any and all deficiencies in data used to compute the values of such indicia including consistency and clarity of definitions, timeliness of data entry, editing and validation of input data, and processing, and (ii) outline the efforts of the Association and Corporation to correct the deficiencies and the results of such efforts. On or before the end of such 90-day period, the Association shall submit to the Congress such methodological information and additional information which the Association deems necessary or appropriate to further the purpose of this title.

"(3) Using such indicia, the Association shall report on (A) the relationship of each constituent part or groups of parts to the Corporation's revenue and capital and operating expenses, (B) the extent to which such parts or group of parts contributes to profits or losses, (C) the efforts of management to contain or reduce the contribution of such part or group of parts to losses, (D) the results of such efforts, and (E) such other information as the Association deems necessary or appropriate.

Monitoring
report,
transmittal to
Congress.

"(4) The Association shall (A) transmit to the Congress the first such monitoring report pursuant to paragraph (3) at the end of the first calendar quarter which begins after the end of the 90-day period

for preparation and submission of the methodological information pursuant to paragraph (2), (B) report such monitoring information to the Congress at the end of the first quarter of each calendar year thereafter, (C) update methodological and monitoring information periodically as the Association deems necessary or appropriate, but in no case less frequently than once a year, and (D) where the results of such updating are statistically significant or relevant to Congressional policymaking, report them and the reasons for their significance at the end of the calendar quarter in which the updating occurred.”

Approved November 1, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1175, accompanying H.R. 12161 (Comm. on Interstate and Foreign Commerce).

SENATE REPORT No. 95-885 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 124 (1978):

Aug. 1, considered and passed Senate.

Oct. 6, 11, 15, H.R. 12161 considered and passed House; passage vacated, and S. 2788, amended, passed in lieu.