

Public Law 105-178
105th Congress

An Act

To authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes. <<NOTE: June 9, 1998 - [H.R. 2400]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, <<NOTE: Transportation Equity Act for the 21st Century. Grants. Inter- governmental relations. Loans.>>

Subtitle B--Railroads

Sec. 7201. High-speed rail.
Sec. 7202. Light density rail line pilot projects.
Sec. 7203. Railroad rehabilitation and improvement financing.
Sec. 7204. Alaska Railroad.

Subtitle B--Railroads

SEC. 7203. RAILROAD REHABILITATION AND IMPROVEMENT FINANCING.

(a) Amendments.--Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 is amended--

(1) by striking sections 501 through 504 <<NOTE: 45 USC 821-824.>> and inserting the following new sections:

``SEC. 501. DEFINITIONS. <<NOTE: 45 USC 821.>>

``For purposes of this title:

``(1)(A) The term `cost' means the estimated long-term cost to the Government of a direct loan or loan guarantee or modification thereof, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays.

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

``(i) Loan disbursements.

``(ii) Repayments of principal.

``(iii) Payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties, and other recoveries.

Calculation of the cost of a direct loan shall include the effects of changes in loan terms resulting from the exercise by the borrower of an option included in the loan contract.

``(C) The cost of a loan guarantee shall be the net present value, at the time when the guaranteed loan is disbursed, of the following estimated cash flows:

``(i) Payments by the Government to cover defaults and delinquencies, interest subsidies, or other payments.

``(ii) Payments to the Government, including origination and other fees, penalties, and recoveries.

Calculation of the cost of a loan guarantee shall include the effects of changes in loan terms resulting from the exercise by the guaranteed lender of an option included in the loan

[[Page 112 STAT. 472]]

guarantee contract, or by the borrower of an option included in the guaranteed loan contract.

``(D) The cost of a modification is the difference between the current estimate of the net present value of the remaining cash flows under the terms of a direct loan or loan guarantee contract, and the current estimate of the net present value of the remaining cash flows under the terms of the contract, as modified.

``(E) In estimating net present values, the discount rate shall be the average interest rate on marketable Treasury securities of similar maturity to the cash flows of the direct loan or loan guarantee for which the estimate is being made.

``(F) When funds are obligated for a direct loan or loan guarantee, the estimated cost shall be based on the current assumptions, adjusted to incorporate the terms of the loan contract, for the fiscal year in which the funds are obligated.

``(2) The term `current' has the same meaning as in section 250(c)(9) of the Balanced Budget and Emergency Deficit Control Act of 1985.

``(3) The term `direct loan' means a disbursement of funds by the Government to a non-Federal borrower under a contract that requires the repayment of such funds. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a Government asset on credit terms.

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

“(4) The term ‘direct loan obligation’ means a binding agreement by the Secretary to make a direct loan when specified conditions are fulfilled by the borrower.

“(5) The term ‘intermodal’ means of or relating to the connection between rail service and other modes of transportation, including all parts of facilities at which such connection is made.

“(6) The term ‘loan guarantee’ means any guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

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

“(8) The term ‘modification’ means any Government action that alters the estimated cost of an outstanding direct loan (or direct loan obligation) or an outstanding loan guarantee (or loan guarantee commitment) from the current estimate of cash flows. This includes the sale of loan assets, with or without recourse, and the purchase of guaranteed loans. This also includes any action resulting from new legislation, or from the exercise of administrative discretion under existing law, that directly or indirectly alters the estimated cost of outstanding direct loans (or direct loan obligations) or loan guarantees (or loan guarantee commitments) such as a change in collection procedures.

[[Page 112 STAT. 473]]

“SEC. 502. DIRECT LOANS AND <<NOTE: 45 USC 822.>> LOAN GUARANTEES.

“(a) General Authority.--The Secretary may provide direct loans and loan guarantees to State and local governments, government sponsored authorities and corporations, railroads, and joint ventures that include at least 1 railroad.

“(b) Eligible Purposes.--

“(1) In general.--Direct loans and loan guarantees under this section shall be used to--

“(A) acquire, improve, or rehabilitate intermodal or 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 intermodal or 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;

``(5) are endorsed by the plans prepared under section 135 of title 23, United States Code, by the State or States in which they are located; or

``(6) preserve or enhance rail or intermodal service to small communities or rural areas.

``(d) Extent of Authority.--The aggregate unpaid principal amounts of obligations under direct loans and loan guarantees made under this section shall not exceed \$3,500,000,000 at any one time. Of this amount, not less than \$1,000,000,000 shall be available solely for projects primarily benefiting freight railroads other than Class I carriers.

``(e) Rates of Interest.--

``(1) Direct loans.--The Secretary shall require interest to be paid on a direct loan made under this section at a rate not less than that necessary to recover the cost of making the loan.

``(2) Loan guarantees.--The Secretary shall not make a loan guarantee under this section if the interest rate for the loan exceeds that which the Secretary determines to be reasonable, taking into consideration the prevailing interest rates and customary fees incurred under similar obligations in the private capital market.

``(f) Infrastructure Partners.--

``(1) Authority of secretary.--In lieu of or in combination with appropriations of budget authority to cover the costs of direct loans and loan guarantees as required under section 504(b)(1) of the Federal Credit Reform Act of 1990, the Secretary may accept on behalf of an applicant for assistance under this section a commitment from a non-Federal source to

fund in whole or in part credit risk premiums with respect to the loan that is the subject of the application. In no event

[[Page 112 STAT. 474]]

shall the aggregate of appropriations of budget authority and credit risk premiums described in this paragraph with respect to a direct loan or loan guarantee be less than the cost of that direct loan or loan guarantee.

“(2) Credit risk premium amount.--The Secretary shall determine the amount required for credit risk premiums under this subsection on the basis of--

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

“(B) the proposed schedule of loan disbursements;

“(C) historical data on the repayment history of similar borrowers;

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

“(E) any other factors the Secretary considers relevant.

“(3) Payment of premiums.--Credit risk premiums under this subsection shall be paid to the Secretary before the disbursement of loan amounts.

“(4) Cohorts of loans.--In order to maintain sufficient balances of credit risk premiums to adequately protect the Federal Government from risk of default, while minimizing the length of time the Government retains possession of those balances, the Secretary shall establish cohorts of loans. When all obligations attached to a cohort of loans have been satisfied, credit risk premiums paid for the cohort, and interest accrued thereon, which were not used to mitigate losses shall be returned to the original source on a pro rata basis.

“(g) Prerequisites for Assistance.--The Secretary shall not make a direct loan or loan guarantee under this section unless the Secretary has made a finding in writing that--

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

“(2) the direct loan or loan guarantee is justified by the present and probable future demand for rail services or intermodal facilities;

“(3) the applicant has given reasonable assurances that the facilities or equipment to be acquired, rehabilitated, improved, developed, or established with the proceeds of the obligation

will be economically and efficiently utilized;

((4) the obligation can reasonably be repaid, using an appropriate combination of credit risk premiums and collateral offered by the applicant to protect the Federal Government; and

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

((h) Conditions of Assistance.--The Secretary shall, before granting assistance under this section, require the applicant to agree to such terms and conditions as are sufficient, in the judgment of the Secretary, to ensure that, as long as any principal or interest is due and payable on such obligation, the applicant, and any railroad or railroad partner for whose benefit the assistance is intended--

((1) will not use any funds or assets from railroad or intermodal operations for purposes not related to such operations, if such use would impair the ability of the applicant,

[[Page 112 STAT. 475]]

railroad, or railroad partner to provide rail or intermodal services in an efficient and economic manner, or would adversely affect the ability of the applicant, railroad, or railroad partner to perform any obligation entered into by the applicant under this section;

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

((3) will not make any discretionary dividend payments that unreasonably conflict with the purposes stated in subsection (b).

SEC. 503. <<NOTE: 45 USC 823 note.>> ADMINISTRATION OF DIRECT LOANS AND LOAN GUARANTEES.

((a) Applications.--The Secretary shall prescribe the form and contents required of applications for assistance under section 502, to enable the Secretary to determine the eligibility of the applicant's proposal, and shall establish terms and conditions for direct loans and loan guarantees made under that section.

((b) Assignment of Loan Guarantees.--The holder of a loan guarantee made under section 502 may assign the loan guarantee in whole or in part, subject to such requirements as the Secretary may prescribe.

((c) Modifications.--The Secretary may approve the modification of any term or condition of a direct loan, loan guarantee, direct loan obligation, or loan guarantee commitment, including the rate of

interest, time of payment of interest or principal, or security requirements, if the Secretary finds in writing that--

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

``(2) consent has been obtained from the applicant and, in the case of a loan guarantee or loan guarantee commitment, the holder of the obligation.

``(d) Compliance.--The Secretary shall assure compliance, by an applicant, any other party to the loan, and any railroad or railroad partner for whose benefit assistance is intended, with the provisions of this title, regulations issued hereunder, and the terms and conditions of the direct loan or loan guarantee, including through regular periodic inspections.

``(e) Commercial Validity.--For purposes of claims by any party other than the Secretary, a loan guarantee or loan guarantee commitment shall be conclusive evidence that the underlying obligation is in compliance with the provisions of this title, and that such obligation has been approved and is legal as to principal, interest, and other terms. Such a guarantee or commitment shall be valid and incontestable in the hands of a holder thereof, including the original lender or any other holder, as of the date when the Secretary granted the application therefor, except as to fraud or material misrepresentation by such holder.

``(f) Default.--The Secretary <<NOTE: Regulations.>> shall prescribe regulations setting forth procedures in the event of default on a loan made or guaranteed under section 502. The Secretary shall ensure that each loan guarantee made under that section contains terms and conditions that provide that--

``(1) if a payment of principal or interest under the loan is in default for more than 30 days, the Secretary shall pay

[[Page 112 STAT. 476]]

to the holder of the obligation, or the holder's agent, the amount of unpaid guaranteed interest;

``(2) if the default has continued for more than 90 days, the Secretary shall pay to the holder of the obligation, or the holder's agent, 90 percent of the unpaid guaranteed principal;

``(3) after final resolution of the default, through liquidation or otherwise, the Secretary shall pay to the holder of the obligation, or the holder's agent, any remaining amounts guaranteed but which were not recovered through the default's resolution;

``(4) the Secretary shall not be required to make any payment under paragraphs (1) through (3) if the Secretary finds,

before the expiration of the periods described in such paragraphs, that the default has been remedied; and

``(5) the holder of the obligation shall not receive payment or be entitled to retain payment in a total amount which, together with all other recoveries (including any recovery based upon a security interest in equipment or facilities) exceeds the actual loss of such holder.

``(g) Rights of the Secretary.--

``(1) Subrogation.--If the Secretary makes payment to a holder, or a holder's agent, under subsection (g) in connection with a loan guarantee made under section 502, the Secretary shall be subrogated to all of the rights of the holder with respect to the obligor under the loan.

``(2) Disposition of property.--The Secretary may complete, recondition, reconstruct, renovate, repair, maintain, operate, charter, rent, sell, or otherwise dispose of any property or other interests obtained pursuant to this section. The Secretary shall not be subject to any Federal or State regulatory requirements when carrying out this paragraph.

``(h) Action Against Obligor.--The Secretary may bring a civil action in an appropriate Federal court in the name of the United States in the event of a default on a direct loan made under section 502, or in the name of the United States or of the holder of the obligation in the event of a default on a loan guaranteed under section 502. The holder of a guarantee shall make available to the Secretary all records and evidence necessary to prosecute the civil action. The Secretary may accept property in full or partial satisfaction of any sums owed as a result of a default. If the Secretary receives, through the sale or other disposition of such property, an amount greater than the aggregate of--

``(1) the amount paid to the holder of a guarantee under subsection (g) of this section; and

``(2) any other cost to the United States of remedying the default,

the Secretary shall pay such excess to the obligor.

``(i) Breach of Conditions.--The Attorney General shall commence a civil action in an appropriate Federal court to enjoin any activity which the Secretary finds is in violation of this title, regulations issued hereunder, or any conditions which were duly agreed to, and to secure any other appropriate relief.

[[Page 112 STAT. 477]]

``(j) Attachment.--No attachment or execution may be issued against the Secretary, or any property in the control of the Secretary, prior to the entry of final judgment to such effect in any State, Federal, or other court.

``(k) Investigation Charge.--The Secretary may charge and collect from each applicant a reasonable charge for appraisal of the value of the equipment or facilities for which the direct loan or loan guarantee is sought, and for making necessary determinations and findings. Such charge shall not aggregate more than one-half of 1 percent of the principal amount of the obligation.";

(2) <<NOTE: 45 USC 8253et seq.>> by striking sections 505 through 515 (other than 511(c)), 517, and 518;

(3) in section 511(c) <<NOTE: 45 USC 831.>> by striking ``this section" and inserting ``section 502";

(4) by moving subsection (c) of section 511 (as amended by paragraph (3) of this section) from section 511 to section 503 (as inserted by paragraph (1) of this section), <<NOTE: 45 USC 831, 823.>> inserting it after subsection (a), and redesignating it as subsection (b); and

(5) by redesignating section 516 as section 504. <<NOTE: 45 USC 836.>>

(b) Technical and Conforming Provisions.--

(1) Table of contents.--The table of contents of title V of the Railroad Revitalization and Regulatory Reform Act of 1976 is amended by striking the items relating to sections 502 through 518 and inserting the following:

``Sec. 502. Direct loans and loan guarantees.

``Sec. 503. Administration of direct loans and loan guarantees.

``Sec. 504. Employee protection.".

(2) <<NOTE: 45 USC 821 note.>> Savings provision.--A transaction entered into under the authority of title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.) before the date of enactment of this Act shall be administered until completion under its terms as if this Act were not enacted.

(3) Repeal.--Section 211(i) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(i)) is repealed.