

**49 U.S.C. § 10904. Offers of financial assistance to avoid abandonment and discontinuance**

**(a)** In this section--

**(1)** the term “avoidable cost” means all expenses that would be incurred by a rail carrier in providing transportation that would not be incurred if the railroad line over which the transportation was provided were abandoned or if the transportation were discontinued. Expenses include cash inflows foregone and cash outflows incurred by the rail carrier as a result of not abandoning or discontinuing the transportation. Cash inflows foregone and cash outflows incurred include--

**(A)** working capital and required capital expenditure;

**(B)** expenditures to eliminate deferred maintenance;

**(C)** the current cost of freight cars, locomotives, and other equipment; and

**(D)** the foregone tax benefits from not retiring properties from rail service and other effects of applicable Federal and State income taxes; and

**(2)** the term “reasonable return” means--

**(A)** if a rail carrier is not in reorganization, the cost of capital to the rail carrier, as determined by the Board; and

**(B)** if a rail carrier is in reorganization, the mean cost of capital of rail carriers not in reorganization, as determined by the Board.

**(b)** Any rail carrier which has filed an application for abandonment or discontinuance shall provide promptly to a party considering an offer of financial assistance and shall provide concurrently to the Board--

**(1)** an estimate of the annual subsidy and minimum purchase price required to keep the line or a portion of the line in operation;

**(2)** its most recent reports on the physical condition of that part of the railroad line involved in the proposed abandonment or discontinuance;

**(3)** traffic, revenue, and other data necessary to determine the amount of annual financial assistance which would be required to continue rail transportation over that part of the railroad

line; and

**(4)** any other information that the Board considers necessary to allow a potential offeror to calculate an adequate subsidy or purchase offer.

**(c)** Within 4 months after an application is filed under [section 10903](#), any person may offer to subsidize or purchase the railroad line that is the subject of such application. Such offer shall be filed concurrently with the Board. If the offer to subsidize or purchase is less than the carrier's estimate stated pursuant to subsection (b)(1), the offer shall explain the basis of the disparity, and the manner in which the offer is calculated.

**(d)(1)** Unless the Board, within 15 days after the expiration of the 4-month period described in subsection (c), finds that one or more financially responsible persons (including a governmental authority) have offered financial assistance regarding that part of the railroad line to be abandoned or over which all rail transportation is to be discontinued, abandonment or discontinuance may be carried out in accordance with [section 10903](#).

**(2)** If the Board finds that such an offer or offers of financial assistance has been made within such period, abandonment or discontinuance shall be postponed until--

**(A)** the carrier and a financially responsible person have reached agreement on a transaction for subsidy or sale of the line; or

**(B)** the conditions and amount of compensation are established under subsection (f).

**(e)** Except as provided in subsection (f)(3), if the rail carrier and a financially responsible person (including a governmental authority) fail to agree on the amount or terms of the subsidy or purchase, either party may, within 30 days after the offer is made, request that the Board establish the conditions and amount of compensation.

**(f)(1)** Whenever the Board is requested to establish the conditions and amount of compensation under this section--

**(A)** the Board shall render its decision within 30 days;

**(B)** for proposed sales, the Board shall determine the price and other terms of sale, except that in no case shall the Board set a price which is below the fair market value of the line (including, unless otherwise mutually agreed, all facilities on the line or portion necessary to provide effective transportation services); and

**(C)** for proposed subsidies, the Board shall establish the compensation as the difference between the revenues attributable to that part of the railroad line and the avoidable cost of providing rail

freight transportation on the line, plus a reasonable return on the value of the line.

**(2)** The decision of the Board shall be binding on both parties, except that the person who has offered to subsidize or purchase the line may withdraw his offer within 10 days of the Board's decision. In such a case, the abandonment or discontinuance may be carried out immediately, unless other offers are being considered pursuant to paragraph (3) of this subsection.

**(3)** If a rail carrier receives more than one offer to subsidize or purchase, it shall select the offeror with whom it wishes to transact business, and complete the subsidy or sale agreement, or request that the Board establish the conditions and amount of compensation before the 40th day after the expiration of the 4-month period described in subsection (c). If no agreement on subsidy or sale is reached within such 40-day period and the Board has not been requested to establish the conditions and amount of compensation, any other offeror whose offer was made within the 4-month period described in subsection (c) may request that the Board establish the conditions and amount of compensation. If the Board has established the conditions and amount of compensation, and the original offer has been withdrawn, any other offeror whose offer was made within the 4-month period described in subsection (c) may accept the Board's decision within 20 days after such decision, and the Board shall require the carrier to enter into a subsidy or sale agreement with such offeror, if such subsidy or sale agreement incorporates the Board's decision.

**(4)(A)** No purchaser of a line or portion of line sold under this section may transfer or discontinue service on such line prior to the end of the second year after consummation of the sale, nor may such purchaser transfer such line, except to the rail carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale.

**(B)** No subsidy arrangement approved under this section shall remain in effect for more than one year, unless otherwise mutually agreed by the parties.

**(g)** Upon abandonment of a railroad line under this chapter, the obligation of the rail carrier abandoning the line to provide transportation on that line, as required by [section 11101\(a\)](#), is extinguished.

CREDIT(S)

(Added [Pub.L. 104-88, Title I, § 102\(a\)](#), Dec. 29, 1995, 109 Stat. 825.)

#### **49 U.S.C. § 10905. Offering abandoned rail properties for sale for public purposes**

When the Board approves an application to abandon or discontinue under [section 10903](#), the Board shall find whether the rail properties that are involved in the proposed abandonment or discontinuance are appropriate for use for public purposes, including highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the Board finds that the rail properties proposed to be abandoned are appropriate for public purposes and not required for continued rail operations, the properties may be sold, leased, exchanged, or otherwise disposed of only under conditions provided in the order of the Board. The conditions may include a prohibition on any such disposal for a period of not more than 180 days after the effective date of the order, unless the properties have first been offered, on reasonable terms, for sale for public purposes.

CREDIT(S)

(Added [Pub.L. 104-88, Title I, § 102\(a\)](#), Dec. 29, 1995, 109 Stat. 827.)

#### **49 U.S.C. § 10907. Railroad development**

**(a)** In this section, the term “financially responsible person” means a person who--

**(1)** is capable of paying the constitutional minimum value of the railroad line proposed to be acquired; and

**(2)** is able to assure that adequate transportation will be provided over such line for a period of not less than 3 years.

Such term includes a governmental authority but does not include a Class I or Class II rail carrier.

**(b)(1)** When the Board finds that--

**(A)(i)** the public convenience and necessity require or permit the sale of a particular railroad line under this section; or

**(ii)** a railroad line is on a system diagram map as required under [section 10903](#) of this title, but the rail carrier owning such line has not filed an application to abandon such line under [section 10903](#) of this title before an application to purchase such line, or any required preliminary filing with respect to such application, is filed under this section; and

**(B)** an application to purchase such line has been filed by a financially responsible person,

the Board shall require the rail carrier owning the railroad line to sell such line to such financially responsible person at a price not less than the constitutional minimum value.

**(2)** For purposes of this subsection, the constitutional minimum value of a particular railroad line shall be presumed to be not less than the net liquidation value of such line or the going concern value of such line, whichever is greater.

**(c)(1)** For purposes of this section, the Board may determine that the public convenience and necessity require or permit the sale of a railroad line if the Board determines, after a hearing on the record, that--

**(A)** the rail carrier operating such line refuses within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over such line;

**(B)** the transportation over such line is inadequate for the majority of shippers who transport traffic over such line;

**(C)** the sale of such line will not have a significantly adverse financial effect on the rail carrier operating such line;

**(D)** the sale of such line will not have an adverse effect on the overall operational performance of the rail carrier operating such line; and

**(E)** the sale of such line will be likely to result in improved railroad transportation for shippers that transport traffic over such line.

**(2)** In a proceeding under this subsection, the burden of proving that the public convenience and necessity require or permit the sale of a particular railroad line is on the person filing the application to acquire such line. If the Board finds under this subsection that the public convenience and necessity require or permit the sale of a particular railroad line, the Board shall concurrently notify the parties of such finding and publish such finding in the Federal Register.

**(d)** In the case of any railroad line subject to sale under subsection (a) of this section, the Board shall, upon the request of the acquiring carrier, require the selling carrier to provide to the acquiring carrier trackage rights to allow a reasonable interchange with the selling carrier or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by the acquiring carrier. The Board shall require the acquiring carrier to provide the selling carrier reasonable compensation for any such trackage rights.

(e) The Board shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with a railroad line subject to a sale under this section.

(f) In the case of a railroad line which carried less than 3,000,000 gross ton miles of traffic per mile in the preceding calendar year, whenever a purchasing carrier under this section petitions the Board for joint rates applicable to traffic moving over through routes in which the purchasing carrier may practicably participate, the Board shall, within 30 days after the date such petition is filed and pursuant to [section 10705\(a\)](#) of this title, require the establishment of reasonable joint rates and divisions over such route.

(g)(1) Any person operating a railroad line acquired under this section may elect to be exempt from any of the provisions of this part, except that such a person may not be exempt from the provisions of chapter 107 of this title with respect to transportation under a joint rate.

(2) The provisions of paragraph (1) of this subsection shall apply to any line of railroad which was abandoned during the 18-month period immediately prior to October 1, 1980, and was subsequently purchased by a financially responsible person.

(h) If a purchasing carrier under this section proposes to sell or abandon all or any portion of a purchased railroad line, such purchasing carrier shall offer the right of first refusal with respect to such line or portion thereof to the carrier which sold such line under this section. Such offer shall be made at a price equal to the sum of the price paid by such purchasing carrier to such selling carrier for such line or portion thereof and the fair market value (less deterioration) of any improvements made, as adjusted to reflect inflation.

(i) Any person operating a railroad line acquired under this section may determine preconditions, such as payment of a subsidy, which must be met by shippers in order to obtain service over such lines, but such operator must notify the shippers on the line of its intention to impose such preconditions.

CREDIT(S)

(Added [Pub.L. 104-88, Title I, § 102\(a\)](#), Dec. 29, 1995, 109 Stat. 828.)

## **1247. State and local area recreation and historic trails**

(a) Secretary of the Interior to encourage States, political subdivisions, and private interests; financial assistance for State and local projects

The Secretary of the Interior is directed to encourage States to consider, in their comprehensive statewide outdoor recreation plans and proposals for financial assistance for State and local projects submitted pursuant to the Land and Water Conservation Fund Act [[16 U.S.C.A. § 4601-4 et seq.](#)], needs and opportunities for establishing park, forest, and other recreation and historic trails on lands owned or administered by States, and recreation and historic trails on lands in or near urban areas. The Secretary is also directed to encourage States to consider, in their comprehensive statewide historic preservation plans and proposals for financial assistance for State, local, and private projects submitted pursuant to the Act of October 15, 1966 (80 Stat. 915), as amended [[16 U.S.C.A. § 470 et seq.](#)], needs and opportunities for establishing historic trails. He is further directed, in accordance with the authority contained in the Act of May 28, 1963 (77 Stat. 49) [[16 U.S.C.A. § 4601 et seq.](#)], to encourage States, political subdivisions, and private interests, including nonprofit organizations, to establish such trails.

(b) Secretary of Housing and Urban Development to encourage metropolitan and other urban areas; administrative and financial assistance in connection with recreation and transportation planning; administration of urban open-space program

The Secretary of Housing and Urban Development is directed, in administering the program of comprehensive urban planning and assistance under section 701 of the Housing Act of 1954 [[40 U.S.C.A. § 461](#)], to encourage the planning of recreation trails in connection with the recreation and transportation planning for metropolitan and other urban areas. He is further directed, in administering the urban open-space program under title VII of the Housing Act of 1961 [[42 U.S.C.A. § 1500 et seq.](#)], to encourage such recreation trails.

(c) Secretary of Agriculture to encourage States, local agencies, and private interests

The Secretary of Agriculture is directed, in accordance with authority vested in him, to encourage States and local agencies and private interests to establish such trails.

(d) Interim use of railroad rights-of-way

The Secretary of Transportation, the Chairman of the Surface Transportation Board, and the Secretary of the Interior, in administering the Railroad Revitalization and Regulatory Reform Act of 1976 [[45 U.S.C.A. § 801 et seq.](#)], shall encourage State and local agencies and private interests to establish appropriate trails using the provisions of such programs. Consistent with the purposes of that Act, and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with this chapter, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes. If a State, political subdivision, or qualified private organization is prepared to assume full responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use,

and for the payment of any and all taxes that may be levied or assessed against such rights-of-way, then the Board shall impose such terms and conditions as a requirement of any transfer or conveyance for interim use in a manner consistent with this chapter, and shall not permit abandonment or discontinuance inconsistent or disruptive of such use.

(e) Designation and marking of trails; approval of Secretary of the Interior

Such trails may be designated and suitably marked as parts of the nationwide system of trails by the States, their political subdivisions, or other appropriate administering agencies with the approval of the Secretary of the Interior.

CREDIT(S)

(Pub.L. 90-543, § 8, Oct. 2, 1968, 82 Stat. 925; [Pub.L. 95-625, Title V, § 551\(22\)](#), Nov. 10, 1978, 92 Stat. 3516; [Pub.L. 98-11, Title II, § 208](#), Mar. 28, 1983, 97 Stat. 48; [Pub.L. 104-88, Title III, § 317\(1\)](#), Dec. 29, 1995, 109 Stat. 949.)