

(2) The Commission shall, within 30 days after the date of submission of a plan under paragraph (1) of this subsection, approve the proposed plan if it finds that such plan is feasible. The finding of the Commission with respect to the feasibility of the plan shall be made pursuant to section 554 of title 5.

(3) The Commission shall make a finding that the plan submitted under this section is feasible if it determines that—

(A) adequate public and private financing is available to the proponents of such plan;

(B) such plan is fair and equitable to the estate of the Milwaukee Railroad;

(C) implementation of such plan will occur by April 1, 1980;

(D) the railroad proposed to be operated under the plan can be operated on a self-sustaining basis; and

(E) the plan contains an assessment of all operating practices, and includes agreements by labor and management to make implementing changes designed to achieve labor productivity increases (which may include changes in work rules to increase productivity) consistent with safe operations and adequate service.

For purposes of the determinations under this paragraph, adequate financing shall include all sources of private funds, the probable value and priority of valid claims against the estate, and Federal, State, or local funds available under programs (in existence as of January 1, 1980) which are or will be available to the proponent and which the proponent is likely to obtain.

(b) Submission of findings to bankruptcy court

If the Commission finds that the plan submitted under this section is feasible, it shall submit its finding to the bankruptcy court. Within 10 days after the date of such submission, the bankruptcy court shall, after a hearing, determine whether such plan is fair and equitable to the estate of the Milwaukee Railroad. The Commission's determination with respect to that issue shall be rebutted only by clear and convincing evidence.

(c) Implementation of plan

If the Commission finds that the plan is feasible and the bankruptcy court determines that the plan is fair and equitable to the estate of the Milwaukee Railroad, the proponents of such plan shall implement the plan no later than April 1, 1980.

(d) Judicial review

Except as provided in this section, the findings of the Commission with respect to the plan shall not be subject to review.

(e) Furnishing of reports and other information for preparation of plan

(1) The trustee of the Milwaukee Railroad shall promptly provide to the person engaged in developing the employee or employee and shipper ownership plan under this section—

(A) its most recent reports on the physical condition of the railroad; and

(B) traffic, revenue, marketing, and other data necessary to determine the amount of the acquisition cost of the railroad or portion of the railroad that would be required to con-

tinue rail transportation over the railroad line.

(2) Information provided pursuant to this subsection shall be used only for purposes of preparing a plan and shall not be disclosed to any competitor or, unless necessary in connection with the preparation of the plan, to any customer of the Milwaukee Railroad.

(Pub. L. 96-101, § 6, Nov. 4, 1979, 93 Stat. 738.)

**ABOLITION OF INTERSTATE COMMERCE COMMISSION AND
TRANSFER OF FUNCTIONS**

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 701 of Title 49.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 920 of this title.

§ 906. Guarantee of trustee certificates

(a) to (c) Omitted

(d) Authorization

The Secretary of Transportation shall, under the authority of the Emergency Rail Services Act of 1970 [45 U.S.C. 661 et seq.], immediately guarantee trustee certificates of the Milwaukee Railroad, on the basis of an estimate of the amount required to be provided under subsection (e) of this section, for purposes of allowing the Milwaukee Railroad, commencing November 1, 1979, to maintain its entire railroad system in accordance with section 920 of this title, and as required to finance operations which the Milwaukee Railroad continues for the 60-day period beginning on the date of the occurrence of an event described in section 920(b) of this title or on April 1, 1980, whichever first occurs. Such guarantee shall be made without regard to the findings set forth in section 3(a) of the Emergency Rail Services Act of 1970 [45 U.S.C. 662(a)], and the provisions of section 3(b)(3) [45 U.S.C. 662(b)(3)] and the last two sentences of section 3(d) of such Act [45 U.S.C. 662(d)] shall not apply to such guarantee.

(e) Amount of guarantee

The Secretary shall guarantee trustee certificates of the Milwaukee Railroad pursuant to this section in an amount equal to the difference between (1) the total expenses incurred by such railroad attributable to the maintenance and the continuation of service in accordance with subsection (d) of this section, and (2) the revenues of such railroad.

(f) Subordination of claims

Notwithstanding the provisions of section 3(c) of the Emergency Rail Services Act of 1970 [45 U.S.C. 662(c)], certificates guaranteed under this chapter shall be subordinated to the claims of any creditors of the Milwaukee Railroad as of November 4, 1979.

(g) Availability of funds

The Commission shall immediately make available to the Secretary of Transportation the sum of \$10,000,000, out of funds available for directed service under title 49. The Secretary of Transportation shall immediately make such funds available to the trustee of the Milwaukee Railroad for purposes of financing the operations of the Milwaukee Railroad, beginning November 1, 1979, in accordance with section 920 of this title.

(h) Cancellation of United States obligations

(1) All obligations to the United States or any agency or instrumentality of the United States incurred pursuant to this section by the Milwaukee Railroad or the trustee of the property of the Milwaukee Railroad shall be waived and canceled when—

(A) the Milwaukee Railroad is reorganized as an operating rail carrier; or

(B) substantially all of the Milwaukee Railroad is purchased.

(2) For purposes of this subsection, substantially all of the Milwaukee Railroad shall be considered as having been purchased when (A) more than 50 percent of the rail system operated by the Milwaukee Railroad on October 14, 1980, has been purchased, and (B) more than 50 percent of the employees employed by the Milwaukee Railroad on October 14, 1980, have obtained employment with other rail carriers.

(Pub. L. 96-101, §7(less (a)-(c)), Nov. 4, 1979, 93 Stat. 740; Pub. L. 96-448, title VII, §701(c)(1), Oct. 14, 1980, 94 Stat. 1961.)

REFERENCES IN TEXT

The Emergency Rail Services Act of 1970, referred to in subsec. (d), is Pub. L. 91-663, Jan. 8, 1971, 84 Stat. 1975, as amended, which is classified generally to chapter 15 (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

Directed service under title 49, referred to in subsec. (g), probably refers to directed service under section 11125 of Title 49, Transportation, prior to the general amendment of subtitle IV of Title 49, by Pub. L. 104-88, §102(a).

CODIFICATION

Subsecs. (a) to (c) of this section amended section 662 of this title.

AMENDMENTS

1980—Subsec. (h). Pub. L. 96-448 added subsec. (h).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-448 effective Oct. 14, 1980, see section 710(d) of Pub. L. 96-448, set out as a note under section 1170 of Title 11, Bankruptcy.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 701 of Title 49.

§ 907. Railroad hiring

Each person who is an employee of the Milwaukee Railroad on September 30, 1979, and who is separated or furloughed from his employment with such railroad (other than for cause) prior to April 1, 1984, as a result of a reduction of service by such railroad shall, unless found to be less qualified than other applicants, have the first right of hire by any other rail carrier that is subject to regulation by the Commission for any vacancy that is not covered by (1) an affirmative action plan, or a hiring plan designed to eliminate discrimination, that is required by Federal or State statute, regulation, or executive order, or by the order of a Federal court or agency, or (2) a permissible voluntary affirmative action plan. For purposes of this section, a rail carrier shall not be considered to be hiring new employees when it recalls any of its own furloughed employees.

(Pub. L. 96-101, §8, Nov. 4, 1979, 93 Stat. 740; Pub. L. 97-468, title II, §236(a), Jan. 14, 1983, 96 Stat. 2547.)

AMENDMENTS

1983—Pub. L. 97-468 substituted “April 1, 1984” for “April 1, 1981”.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 701 of Title 49.

EXEMPTION OF NATIONAL RAILROAD PASSENGER CORPORATION IN HIRING QUALIFIED TRAIN AND ENGINE EMPLOYEES

Section inapplicable to National Railroad Passenger Corporation in hiring of qualified train and engine employees holding seniority rights to work in intercity rail passenger service in connection with the assumption by such Corporation of functions previously performed under contract by other carriers, see section 4011(c) of Pub. L. 99-272, set out as a note under section 797b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 797b, 797c, 919, 1004 of this title.

§ 908. Employee protection agreements**(a) Agreement between Milwaukee Railroad and labor organizations**

The Milwaukee Railroad and labor organizations representing the employees of such railroad may, not later than 20 days after November 4, 1979, enter into an agreement providing protection for employees of such railroad who are adversely affected as a result of a reduction in service by such railroad or a restructuring transaction carried out by such railroad. Such employee protection may include, but need not be limited to, interim employee assistance, moving expenses, employee relocation incentive compensation, and separation allowances.