Public Law 96-101
96th Congress

An Act

Nov. 4, 1979
[S. 1905]

To provide for the orderly restructuring of the Milwaukee Railroad, and for the protection of the employees of such railroad.

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 "Milwaukee Railroad Restructuring Act".

Milwaukee Railroad Restructuring Act.
45 USC 901 note.

CONGRESSIONAL FINDINGS

45 USC 901.

SEC. 2. (a) Congress hereby finds that—

(1) the severe operating losses and the deteriorating plant and equipment of the Milwaukee Railroad threaten to cause cessation of its operations in the near future;

(2) a cessation of operations by the Milwaukee Railroad would have serious repercussions on the economies of the States in which such railroad principally operates (the States of Washington, Montana, Idaho, North Dakota, South Dakota, Illinois, Iowa, Missouri, Michigan, Indiana, Minnesota, and Wisconsin);

(3) a cessation of operations of the Milwaukee Railroad would result in the loss of many thousands of jobs of railroad workers and other workers whose employment is dependent upon rail service over the lines presently operated by the Milwaukee Railroad;

(4) experienced railroad employees make a valuable contribution toward strengthening the railroad industry; and other railroads have the ability and willingness to employ displaced employees of the Milwaukee Railroad;

(5) the ownership by employees or by employees and shippers of part or all of the Milwaukee Railroad may be a valuable tool in reorganization and should be given serious consideration;

(6) cessation of essential transportation services by the Milwaukee Railroad would endanger the public welfare;

(7) cessation of such services is imminent; and

(8) there is no other practicable means of obtaining funds to meet payroll and other expenses necessary for continuation of services and reorganization of the Milwaukee Railroad.

(b) The Congress declares that emergency measures set forth in this Act must be taken to restructure the Milwaukee Railroad and to avoid the potential unemployment and damage to the economy of the region and of the Nation which a cessation of essential services by the Milwaukee Railroad would otherwise cause.

DEFINITIONS

45 USC 902.

SEC. 3. As used in this Act—

(1) the term "bankruptcy court" means the court having jurisdiction over the reorganization of the Milwaukee Railroad;

(2) the term "Board" means the Railroad Retirement Board;

(3) the term "Commission" means the Interstate Commerce Commission;

(4) the term "employee"—

(A) includes any employee of the Milwaukee Railroad who worked on a line of such railroad the sale of which became effective on October 1, 1979; but

(B) does not include any individual serving as president, vice-president, secretary, treasurer, comptroller, counsel, member of the board of directors, or any other person performing such functions;

(5) the term "Milwaukee Railroad" means the Chicago, Milwaukee, St. Paul and Pacific Railroad Company; and

(6) the term "restructured Milwaukee Railroad"—

(A) means the entity operating the lines of the Milwaukee Railroad after the 6-month period beginning on (i) the occurrence of an event described in section 22(b) of this Act, or (ii) April 1, 1980, whichever first occurs; but

(B) does not include (i) any line of the Milwaukee Railroad which is the subject of a proposed sale, transfer, or abandonment pending on the expiration of the 6-month period described in subparagraph (A) of this paragraph, or (ii) any entity formed pursuant to section 6 of this Act.

SALES AND TRANSFERS

SEC. 4. (a) The Milwaukee Railroad may negotiate and enter into agreements to sell, to another rail carrier or any other person, all or any portion of its rail properties used in railroad operations as of October 15, 1979. Such sale agreements may in no event become final and effective until the occurrence of an event described in section 22(b) of this Act, or April 1, 1980, whichever first occurs. In taking action under this subsection, the Milwaukee Railroad may consult with the Secretary of Transportation. 45 USC 903.

(b)(1) The Secretary of Transportation, under the authority of section 5(a)-(e) of the Department of Transportation Act, may develop plans, participate in negotiations, and recommend to the trustee proposals for the sale or transfer of any rail properties of the Milwaukee Railroad which are used in rail operations as of October 15, 1979. In taking action under this paragraph, the Secretary shall give preference to financially responsible persons, including governmental entities, negotiating for the purchase of any lines with the intent of providing common carrier service. 49 USC 1654.

(2) Any sale or transfer proposal developed under paragraph (1) of this subsection shall be submitted to the bankruptcy court. Such a proposal may in no event become final or effective until the occurrence of an event described in section 22(b) of this Act, or April 1, 1980, whichever first occurs.

COURT APPROVED ABANDONMENTS AND SALES

SEC. 5. (a)(1) Upon the occurrence of an event described in section 22(b) of this Act, or on April 1, 1980, whichever first occurs, the bankruptcy court may authorize the abandonment of lines of the Milwaukee Railroad pursuant to section 1170 of title 11 of the United States Code. Pending the expiration of the time for appeal of an abandonment order or the determination of any such appeal, the bankruptcy court may authorize the termination of service on a line to be abandoned, and the order authorizing such termination may not be stayed. In authorizing any abandonment pursuant to this section, the court shall require the carrier to provide a fair arrangement at 45 USC 904. 92 Stat. 2643.

92 Stat. 1439.

least as protective of the interests of employees as that required under section 11347 of title 49 of the United States Code.

(2) Prior to the date specified in paragraph (1) of this subsection, the bankruptcy court may hear and consider any request for the abandonment of lines of the Milwaukee Railroad, and may fix the time for the Commission's report on the request, but it may take final action authorizing such abandonment only in accordance with such paragraph (1).

(b)(1) Upon the occurrence of an event described in section 22(b) of this Act, or on April 1, 1980, whichever first occurs, the bankruptcy court may authorize the sale or transfer of a line of the Milwaukee Railroad to be used in continued rail operations, subject to the approval of the Commission under paragraph (2) of this subsection. In authorizing any such sale or transfer, the court shall provide a fair arrangement at least as protective of the interest of employees as that required under section 11347 of title 49 of the United States Code.

(2) The bankruptcy court may not authorize a sale or transfer pursuant to paragraph (1) of this subsection unless an appropriate application with respect to such sale or transfer is initiated with the Commission and, within such time as the court may fix, not exceeding 180 days, the Commission, with or without a hearing, as the Commission may determine, and with or without modification or condition, approves such application, or does not act on such application. Any action or order of the Commission approving, modifying, conditioning, or disapproving such application is subject to review by the court only under sections 706(2)(A), 706(2)(B), 706(2)(C), and 706(2)(D) of title 5 of the United States Code. An application may be initiated with the Commission prior to the date specified in paragraph (1) of this subsection.

(3) Pending review of an application by the Commission pursuant to paragraph (2) of this subsection, the bankruptcy court may, on a preliminary basis, authorize the sale or transfer of lines of the Milwaukee Railroad to another rail carrier. The court may permit the purchasing carrier to operate interim service as a common carrier over the lines to be purchased, without regard to section 10901

92 Stat. 1402.

of title 49 of the United States Code. In operating such service, the purchasing carrier shall use employees of the Milwaukee Railroad to the extent necessary for the operation of such service. The bankruptcy court may take final action authorizing any such sale or transfer only in accordance with paragraph (1) of this subsection.

(c) Nothing in this section shall be deemed to affect the priorities or timing of payment of employee protection which might have existed in the absence of this Act.

EMPLOYEE OR EMPLOYEE-SHIPPER OWNERSHIP PLAN

45 USC 905.

SEC. 6. (a)(1) No later than December 1, 1979, an association composed of representatives of national railway labor organizations, employee coalitions, and shippers (or any combination of the foregoing) may submit to the Commission a single plan for converting all or a substantial part of the Milwaukee Railroad into an employee or employee-shipper owned company and a method for implementing such plan. The plan shall include a comprehensive evaluation of the prospects for the financial self-sustainability of the Milwaukee Railroad.

(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 of the United States Code.

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

(e)(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 continue 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.

EMERGENCY RAIL SERVICES ACT OF 1970

SEC. 7. (a) Subsection (a) of section 3 of the Emergency Rail Services Act of 1970 (45 U.S.C. 662(a)) is amended by striking out "upon a finding" in the fifth sentence and all that follows in that subsection and inserting in lieu thereof a period.

(b) Section 3 of the Emergency Rail Services Act of 1970 (45 U.S.C. 662) is amended by inserting after subsection (b) the following new subsection:

"(c) The Secretary shall not guarantee any certificate under this section unless such certificate is treated as an expense of administration and receives the highest lien on the railroad's property and priority in payment under the Bankruptcy Act, except that this subsection shall not apply to certificates guaranteed for a railroad that is actively engaged in restructuring, as defined by the Secretary. For purposes of this subsection, the term "restructuring" includes an employee ownership plan or an employee-shipper ownership plan.".

92 Stat. 2549.
11 USC 101 *et seq.*

(c) Section 3(e) of the Emergency Rail Services Act of 1970 (45 U.S.C. 662(e)) is amended—

(1) by striking out "$125,000,000" and inserting in lieu thereof "$200,000,000"; and

(2) by striking out the last sentence thereof, as added by Public Law 96-86.

45 USC 906.
45 USC 661 note.

(d) The Secretary of Transportation shall, under the authority of the Emergency Rail Services Act of 1970, 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 22 of this Act, 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 22(b) of this Act 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, and the provisions of section 3(b)(3) and the last two sentences of section 3(d) of such Act shall not apply to such guarantee.

45 USC 906.

(e) 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.

45 USC 906.

(f) Notwithstanding the provisions of section 3(c) of the Emergency Rail Services Act of 1970, certificates guaranteed under this Act shall be subordinated to the claims of any creditors of the Milwaukee Railroad as of the date of enactment of this Act.

45 USC 906.

(g) 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 of the United States Code. 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 22 of this Act.

RAILROAD HIRING

45 USC 907.

SEC. 8. 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, 1981, 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

Rail carrier.

carrier shall not be considered to be hiring new employees when it recalls any of its own furloughed employees.

EMPLOYEE PROTECTION AGREEMENTS

SEC. 9. (a) The Milwaukee Railroad and labor organizations representing the employees of such railroad may, not later than 20 days after the date of enactment of this Act, 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. 45 USC 908.

(b) If the Milwaukee Railroad and the labor organizations representing the employees of such railroad are unable to enter into an employee protection agreement under subsection (a) of this section within 20 days after the date of enactment of this Act, the parties shall immediately submit the matter to the National Mediation Board. The National Mediation Board shall attempt, by mediation, to bring the parties to an agreement with respect to employee protection no later than 40 days after the date of enactment of this Act.

(c)(1) If the National Mediation Board is unable to bring the parties to an agreement under subsection (b) of this section within 40 days after the date of enactment of this Act, the Milwaukee Railroad and the labor organizations representing the employees of such railroad shall immediately enter into an employee protection agreement that is fair and equitable.

(2) If an employee protection agreement is entered into under this subsection, any claim of an employee for benefits and allowances under such agreement shall be filed with the Board in such time and manner as the Board by regulation shall prescribe. The Board shall determine the amount for which such employee is eligible under such agreement and shall certify such amount to the Milwaukee Railroad for payment.

(d) Benefits and allowances under an employee protection agreement entered into under this section shall be paid by the Milwaukee Railroad in accordance with section 15 of this Act, and claims of employees for such benefits and allowances shall be treated as administrative expenses of the estate of the Milwaukee Railroad.

SUPPLEMENTARY UNEMPLOYMENT INSURANCE

SEC. 10. (a) Any employee of the Milwaukee Railroad— 45 USC 909.

(1) who (A) is employed by the restructured Milwaukee Railroad, and (B) is separated from that employment by reason of any reduction in service by such railroad prior to April 1, 1984; or

(2) who (A) is separated from his employment with the Milwaukee Railroad in connection with a restructuring transaction carried out by such railroad, and obtains employment, prior to April 1, 1981, with another rail carrier, and (B) is separated from employment with such other carrier prior to April 1, 1984,

shall be entitled to receive monthly supplementary unemployment insurance in accordance with the provisions of this section.

(b) Each employee described in subsection (a) of this section shall be entitled to receive supplementary unemployment insurance during each month in which such employee is not employed, for all or a portion of such month, by the Milwaukee Railroad or another rail

carrier. Each such employee shall be entitled to receive such insurance for a total of not more than 36 months, except that—

(1) the period of entitlement for assistance under this section shall not exceed the employee's total months of service with the Milwaukee Railroad; and

(2) no compensation shall be provided under this section after April 1, 1984, unless it is necessary in order to provide an employee with at least 8 months of such insurance, but after such date, such employee only shall receive such 8-month minimum if such employee is not employed continuously after such date.

(c) Supplementary unemployment insurance under this section shall be payable to an employee on a monthly basis in an amount equal to—

(1) eighty percent of such employee's average monthly normal compensation from employment with the Milwaukee Railroad during the period beginning June 1, 1977, and ending on the date of enactment of this Act, less

(2) the sum of (A) the amount of any benefits payable to such employee for such month under the Railroad Unemployment Insurance Act or under any State unemployment insurance program, and (B) the amount of any earnings of such employee for such month from employment or self-employment of any kind.

(d) An application for supplementary unemployment insurance shall be filed with the Board in such time and manner as the Board by regulation shall prescribe.

(e) Any supplementary unemployment insurance received by any employee pursuant to this section shall be considered to be compensation solely—

(1) for purposes of the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.); and

(2) for purposes of determining the compensation received by such employee in any base year under the Railroad Unemployment Insurance Act.

45 USC 367.

(f)(1) The provisions of this section shall not apply to an employee in the event of his resignation, retirement, or discharge for cause from the employment of any rail carrier.

(2) An employee shall not be entitled to receive supplementary unemployment insurance under this section if he has failed to exhaust all seniority rights or other employment rights under applicable collective bargaining agreements.

(3) An employee shall not be entitled to receive supplementary unemployment insurance under this section for any month or portion of a month in which such employee is unemployed due to normal seasonal unemployment patterns in the railroad industry.

(g) For purposes of this section, any employee of the Milwaukee Railroad who is furloughed shall be considered to be separated from his employment.

(h) The first sentence of section 7(b)(7) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(7) is amended—

(1) by striking out "The" and inserting "Notwithstanding any other provision of law, the" in lieu thereof; and

(2) by inserting "and the Milwaukee Railroad Restructuring Act" immediately before the period at the end thereof.

EMPLOYMENT OF MILWAUKEE RAILROAD EMPLOYEES

45 USC 910.

SEC. 11. (a) The Board shall prepare and maintain—

(1) a list of individuals separated from employment with the Milwaukee Railroad who indicate a desire to appear on a list to be available to rail carriers; and

(2) a list of employment, by class and craft, available with rail carriers,

based upon information submitted to the Board by the Milwaukee Railroad and other rail carriers. Upon the request of any rail carrier, the Board shall make available to such carrier a copy of the list described in paragraph (1) of this subsection.

(b) The Board shall maintain the lists required by subsection (a) of this section through December 31, 1984.

NEW CAREER TRAINING ASSISTANCE

SEC. 12. (a) Any employee who elects to receive a separation allowance from the Milwaukee Railroad under an employee protection agreement entered into under section 9 of this Act shall be entitled to receive from the Board expenses for training in qualified institutions for new career opportunities. 45 USC 911.

(b) To be entitled for assistance under this section, an employee must begin his course of training within two years following the date of his separation from employment with the Milwaukee Railroad.

(c) Entitlement to expenses for assistance under this section shall be determined by the Board on the basis of an application therefor filed by an employee with the Board.

(d) No assistance may be provided under this section after April 1, 1984.

(e) As used in this section—

(1) the term "expenses" means actual expenses paid for room, board, tuition, fees, or educational material in an amount not to exceed $3,000; and "Expenses."

(2) the term "qualified institution" means an educational institution accredited for payment by the Veterans' Administration under chapter 36 of title 38 of the United States Code. "Qualified institution." 38 USC 1770 *et seq.*

ELECTION

SEC. 13. Any employee who receives any assistance under section 10 or section 12 of this Act or under an employee protection agreement entered into under section 9 of this Act shall be deemed to waive any employee protection benefits otherwise available to such employee under the Bankruptcy Act, title 11 of the United States Code, subtitle IV of title 49 of the United States Code, or any applicable contract or agreement. 45 USC 912. 92 Stat. 2549. 11 USC 101 *et seq.* 92 Stat. 1337. 49 USC 10101 *et seq.*

AUTHORIZATION OF APPROPRIATIONS

SEC. 14. (a) There is authorized to be appropriated to provide supplementary unemployment insurance under section 10 of this Act not to exceed $5,000,000. 45 USC 913.

(b) There is authorized to be appropriated for new career training assistance under section 12 of this Act not to exceed $1,500,000.

(c) There is authorized to be appropriated to the Board to carry out its administrative expenses under this Act not to exceed $750,000.

(d) Amounts appropriated under this section are authorized to remain available until expended.

OBLIGATION GUARANTEES

SEC. 15. (a) The Secretary of Transportation, under the authority of section 511 of the Railroad Revitalization and Regulatory Reform Act 45 USC 914.

of 1976 (45 U.S.C. 831), shall guarantee obligations of the Milwaukee Railroad for purposes of providing employee protection in accordance with the terms of the employee protection agreement entered into under section 9 of this Act. Guarantees under this section shall be entered into without regard to the requirements of subsection (g) of section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976.

45 USC 831.

(b) Any obligation guaranteed pursuant to this section shall be treated as an administrative expense of the estate of the Milwaukee Railroad.

(c) The aggregate unpaid principal amount of obligations which may be guaranteed by the Secretary pursuant to this section shall not exceed $75,000,000.

(d) The total liability of the Milwaukee Railroad in connection with benefits and allowances provided under an employee protection agreement entered into under section 9 of this Act shall not exceed $75,000,000.

(e) Except in connection with obligations guaranteed under this section, the United States shall incur no liability in connection with any employee protection agreement entered into under section 9 of this Act.

(f) Section 516 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 836) shall not apply to any obligation guaranteed under this section.

TRANSACTION ASSISTANCE

SEC. 16. Section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825) is amended by adding at the end thereof the following new subsections:

"(f) REHABILITATION FOR COMMON CARRIER SERVICE.—(1) Notwithstanding subsections (a) through (e) of this section (other than subsection (d)(3)), the Secretary shall immediately purchase redeemable preference shares or trustee certificates convertible to redeemable preference shares under this section as necessary to facilitate the rehabilitation and improvement of Milwaukee Railroad property that has been sold or transferred to another person or retained by the restructured Milwaukee Railroad and that will be used for common carrier rail service.

"(2) The Secretary may not take any action under this subsection—

"(A) prior to (i) the occurrence of an event described in section 22(b) of the Milwaukee Railroad Restructuring Act, or (ii) April 1, 1980, whichever first occurs; or

Post, p. 746.

"(B) after April 1, 1981.

"(3) Funds received from purchases by the Secretary pursuant to this subsection may not be used for the rehabilitation and improvement of any line of railroad which carried less than an average of 3,000,000 gross tons of freight per mile per year during the previous three-year period.

"(g) LIMITATION.—Not more than 50 percent of the funds made available at any time for the purchase of redeemable preference shares and trustee certificates under this section may be used for the rehabilitation and improvement of the facilities of any single railroad undergoing restructuring.".

COURT APPROVED ABANDONMENTS AND SALES IN PENDING CASES

45 USC 915.
11 USC 205.

SEC. 17. (a) Notwithstanding any other provision of law, in any case pending under section 77 of the Bankruptcy Act on the date of

enactment of this Act, the court may authorize the abandonment of lines of railroad pursuant to section 1170 of title 11 of the United States Code. Pending the expiration of the time for appeal of an abandonment order or the determination of any such appeal, the court may authorize the termination of service on a line to be abandoned, and the order authorizing such termination may not be stayed. In authorizing any abandonment pursuant to this section, the court shall require the carrier to provide a fair arrangement at least as protective of the interests of employees as that required under section 11347 of title 49 of the United States Code.

92 Stat. 2643.

92 Stat. 1439.

(b)(1) Notwithstanding any other provision of law, in any case pending under section 77 of the Bankruptcy Act on the date of enactment of this Act, the court may authorize the sale or transfer of a line of railroad to be used in continued rail operations, subject to the approval of the Commission under paragraph (2) of this subsection, if the application with respect to such sale or transfer is filed with the Commission on or after November 1, 1979. In authorizing any such sale or transfer, the court shall provide a fair arrangement at least as protective of the interests of employees as that required under section 11347 of title 49, United States Code.

11 USC 205.

(2) The court described in paragraph (1) may not authorize a sale or transfer pursuant to such paragraph unless an appropriate application with respect to such sale or transfer is initiated with the Commission and, within such time as the court may fix, not exceeding 180 days, the Commission, with or without a hearing, as the Commission may determine, and with or without modification or condition, approves such application, or does not act on such application. Any action or order of the Commission approving, modifying, conditioning, or disapproving such application is subject to review by the court only under sections 706(2)(A), 706(2)(B), 706(2)(C), and 706(2)(D) of title 5 of the United States Code.

(3) Pending review of an application by the Commission pursuant to paragraph (2) of this subsection, the court described in paragraph (1) may, on a preliminary basis, authorize the sale or transfer proposed in such application. The court may permit the purchasing carrier to operate interim service over the lines to be purchased, and in operating such service it shall use employees of the carrier subject to the bankruptcy proceeding to the extent such purchasing carrier deems necessary for the operation of such service.

(c) Any action or order of the Commission approving, modifying, conditioning, or disapproving an application for the sale or transfer of rail property that is filed with the Commission before November 1, 1979, in connection with a case pending under section 77 of the Bankruptcy Act on the date of enactment of this Act—

(1) is subject to review by the court only under sections 706(2)(A), 706(2)(B), 706(2)(C), and 706(2)(D) of title 5 of the United States Code; and

(2) may not be stayed by the Commission.

(d) The authority of the bankruptcy court to authorize abandonments, sales, and transfers of lines of the Milwaukee Railroad shall be governed by the provisions of section 5 of this Act, rather than the provisions of this section.

(e) Nothing in this section shall be deemed to affect the priorities or timing of payment of employee protection which might have existed in the absence of this Act.

DIRECTED SERVICE

45 USC 916.

SEC. 18. Until April 1, 1981, the provisions of this Act shall be in lieu of any directed service on any line of the Milwaukee Railroad under section 11125 of title 49 of the United States Code.

92 Stat. 1423.

APPLICABILITY OF NEPA

45 USC 917.
42 USC 4321 note.

SEC. 19. The provisions of the National Environmental Policy Act shall not apply to transactions carried out pursuant to this Act.

AUTHORITY OF THE RAILROAD RETIREMENT BOARD

45 USC 918.

SEC. 20. (a) The Board may prescribe such regulations as may be necessary to carry out its duties under this Act.

(b) In carrying out its duties under this Act, the Board may exercise such of the powers, duties, and remedies provided in subsections (a), (b), and (d) of section 12 of the Railroad Unemployment Insurance Act as are not inconsistent with the provisions of this Act.

45 USC 362.

PUBLICATIONS AND REPORTS

45 USC 919.

SEC. 21. (a) Within 30 days after the date of enactment of this Act, the Board shall publish, and make available for distribution by the Milwaukee Railroad to all its employees, a document which describes in detail the rights of such employees under sections 8, 9, 10, 11, and 12 of this Act.

Report to Congress.

(b) During the 2-year period beginning on the date of enactment of this Act, the Board shall submit a report to the Congress every 6 months describing its activities under this Act.

CONTINUATION OF SERVICE

45 USC 920.

SEC. 22. (a) Until the occurrence of an event described in subsection (b) of this section, the Milwaukee Railroad (1) shall maintain its entire railroad system, as it existed on October 15, 1979, (2) shall continue no less than the regular level of service provided by it as of that date, and (3) shall not embargo traffic (other than when necessitated by acts of God or safety requirements) or abandon or discontinue service over any part of its railroad system.

(b) The Milwaukee Railroad shall comply with the requirements of subsection (a) of this section until—

(1) an employee or employee-shipper ownership plan is not submitted to the Interstate Commerce Commission within the time period prescribed under section 6(a) of this Act;

(2) the proposed plan is found by the Commission not to be feasible or the Commission does not act within 30 days;

(3) the proposed plan is found by the bankruptcy court not to be fair and equitable to the estate of the Milwaukee Railroad; or

(4) the plan is not implemented within the time period prescribed under section 6(c) of this Act.

AMENDMENT TO THE REGIONAL RAIL REORGANIZATION ACT OF 1973

SEC. 23. Section 211(d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(d)) is amended by striking out paragraph (2) and the sentence following that paragraph and inserting in lieu thereof the following:

"(2) increase the principal amount of such loan to such railroad, in an amount not to exceed $4,000,000, only if the Associ-

ation makes the finding referred to in paragraph (1)(B) of this subsection and determines that such railroad is making a good faith effort to establish an employee stock ownership plan for review and approval by the Association. Any such approval shall be conditioned upon a written commitment that by December 31, 1980, the railroad will adopt an employee stock ownership plan which will acquire qualifying employer securities with a fair market value of $250,000.

The Association may not take any action pursuant to the preceding sentence of this subsection after December 31, 1980.".

REHABILITATION AND IMPROVEMENT FINANCING

SEC. 24. (a) Section 505(b)(2) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(b)(2)) is amended—

(1) by inserting immediately after the comma at the end of clause (A) thereof the following: "except that if the Secretary determines, pursuant to clause (C) of this paragraph, that significant railroad restructuring will result from the project, the Secretary shall not consider the availability of funds from other sources but instead shall consider whether such restructuring benefits would be likely to be achieved if assistance were not provided,"; and

(2) by amending clause (C) thereof to read as follows: "(C) the public benefits, including any significant railroad restructuring, to be realized from the project to be financed in relation to the public costs of such financing and whether the proposed project will return public benefits sufficient to justify such public costs.".

(b) Section 501 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821) is amended—

(1) by striking out "and" at the end of paragraph (6);

(2) by striking out the period at the end of paragraph (7) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(8) 'restructuring' means any activity (including a consolidation, coordination, merger, or abandonment) which (A) involves rehabilitation or improvement of a facility or the transfer of a facility, (B) improves the long-term profitability of any railroad, and (C) results in the enhancement of the national rail freight system through the achievement of higher average traffic densities or improved asset utilization.".

OFFICE OF RAIL PUBLIC COUNSEL

SEC. 25. The Office of Rail Public Counsel may appear and be heard in the case in the bankruptcy court involving the reorganization of the Milwaukee Railroad, for purposes of representing affected shippers, localities, and municipalities with respect to the proposed abandonment of any line of the Milwaukee Railroad. 45 USC 921.

EMPLOYEE STOCK OWNERSHIP PLAN FOR SURVIVING PORTION OF MILWAUKEE RAILROAD

SEC. 26. If an event described in section 22(b) of this Act occurs, resulting in the survival of less than the entire Milwaukee Railroad system, then any relief provided for such surviving Milwaukee Railroad system under the Emergency Rail Services Act of 1970 or any other Federal legislation shall be conditioned upon good faith efforts by the trustee or the Milwaukee Railroad, or both, to establish 45 USC 922. 45 USC 661 note.

an employee stock ownership plan which shall embrace the purchase or acquisition of qualifying employer securities of the Milwaukee Railroad equal in value to 25 per centum of the amount of such relief provided.

Approved November 4, 1979.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 96-225 accompanying H.J. Res. 341 (Comm. on Interstate and Foreign Commerce) and No. 96-583 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 125 (1979):

Oct. 30, considered and passed Senate.

Oct. 30, H.J. Res. 341 considered and passed House; passage vacated and S. 1905, amended, passed in lieu.

Nov. 2, House and Senate agreed to conference report.