

vided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER III—CONSOLIDATED RAIL CORPORATION

§ 741. Formation and structure

(a) Establishment

There shall be established within 300 days after January 2, 1974, in accordance with the provisions of this section, a corporation to be known as the Consolidated Rail Corporation or such other corporate name as may be duly adopted by the Corporation.

(b) Status

The Corporation shall be a for-profit corporation established under the laws of a State and shall not be an agency or instrumentality of the Federal Government. The Corporation shall be deemed a rail carrier subject to part A of subtitle IV of title 49, shall be subject to the provisions of this Act and, to the extent not inconsistent with such Act and subtitle IV of title 49, shall be subject to applicable State law. The principal office of the Corporation or of its principal railroad operating subsidiary shall be located in Philadelphia in the Commonwealth of Pennsylvania.

(c) Incorporators

(1) The members of the executive committee of the Association shall be the incorporators of the Corporation and shall take whatever steps are necessary to establish the Corporation, including the filing of articles of incorporation.

(2) Notwithstanding any provision of State law, after February 5, 1976, the members of the executive committee of the Association (including duly authorized representatives of members who are authorized by this chapter to be represented) and the chief executive officer and chief operating officer of the Corporation shall adopt the bylaws of the Corporation and serve as the Board of Directors of the Corporation until all members of the Board of Directors of the Corporation have been selected in accordance with subsection (d) of this section. The chief executive officer shall serve as chairman of such Board until a chairman thereof is selected pursuant to subsection (d) of this section, after which time such chairman shall serve at the pleasure of such Board.

(d) Board of Directors

(1) Notwithstanding any provision of State law, the articles of incorporation and bylaws of the Corporation shall provide that the Board of Directors of the Corporation shall consist of 13 members selected in accordance with the articles and bylaws of the Corporation, as follows:

(A) six individuals selected by the holders of the Corporation's debentures and series A preferred stock voting as one class, with every \$100 principal amount of debentures, and every \$100 liquidation amount of series A preferred stock each receiving one vote for directors;

(B) three individuals selected by the holders of the Corporation's series B preferred stock; and

(C) two individuals selected by the holders of the Corporation's common stock.

(2) The chief executive officer and the chief operating officer of the Corporation shall also serve on the Board, but the chief executive officer and chief operating officer of the Corporation shall not be entitled to vote on the election or removal of either. In the event a vacancy occurs on the Board of Directors due to death, disability or resignation of a director, such vacancy shall be filled only by a vote of the holders of the class of securities that initially elected such director.

(e) Initial capitalization

(1) The Corporation is authorized to issue debentures, series A preferred stock, series B preferred stock, common stock, contingent interest notes, and other securities.

(2) Debentures and series A preferred stock shall be issued initially to the Association. Series B preferred stock and common stock shall be issued initially to the estates of railroads in reorganization in the region, to railroads leased, operated, and controlled by railroads in reorganization in the region, and to other persons leased, operated or controlled by a railroad in reorganization who are transferors of rail properties in exchange for rail properties transferred to the Corporation pursuant to the final system plan. Notwithstanding any other provisions of State or Federal law, the series B preferred stock and common stock shall have terms and conditions not inconsistent with the final system plan. As a condition of its investment in the Corporation, the Association may require that the Corporation adopt limitations consistent with the final system plan on the circumstances under which dividends on the series B preferred stock and common stock are payable so long as any of the debentures or series A preferred stock are outstanding. Notwithstanding anything to the contrary in the final system plan, the initial authorized number of shares of series B preferred stock may be 35,000,000, and the Corporation may issue initially for the purpose of the deposit required under section 743(a)(1) of this title such numbers of shares of series B preferred and common stock as the Association shall certify to the Special Court pursuant to section 719(c)(1)(3)¹ of this title, including any modifications in such numbers of shares as may be ordered by the Special Court for the purpose of, and in connection with, such deposit and certification.

(f) Officers

The officers of the Corporation shall include a chief executive officer and a chief operating officer, who shall be appointed by the Board of Directors and who shall serve at the pleasure of the Board; and such other officers as shall be provided for in the bylaws of the Corporation.

(g) Voting trustees

For and during the period between the deposit of securities of the Corporation with the special court, in accordance with section 743(a) of this title, and the distribution of such securities, in

¹ So in original. Probably should be section "719(c)(3)".

accordance with section 743(c) of this title, the special court shall, within 30 days after the date of conveyance pursuant to section 743(b)(1) of this title, appoint one or more voting trustees for each class of securities which is so deposited. Such voting trustees shall, on behalf of the distributees, exercise the rights of the holders of such securities as their interests may appear. Within 30 days after such appointment, such voting trustees shall select members of the Board of Directors of the Corporation on behalf of the holders of the class of securities whose rights they exercise pursuant to this subsection.

(h) Annual report

The Corporation shall transmit to the Congress and the President, not later than 90 days after the end of each fiscal year, a comprehensive and detailed report on all activities and accomplishments of the Corporation during the preceding fiscal year.

(i) Liability of directors

No director of the Corporation shall be liable, for money damages or otherwise, to any party by reason of the fact that such person is or was a director, if, with respect to the subject matter of the action, suit, or proceeding, such person was fulfilling a duty which he in good faith reasonably believed to be required by law or vested in him in his capacity as a director of the Association or as an officer of the United States. The United States shall indemnify such person against all judgments, amounts paid in settlement, and costs and expenses (including fees of accountants, experts, and attorneys), actually and reasonably incurred in connection with any such action, suit, or proceeding in which such person is determined to have met such standard of conduct. This subsection shall not be construed to grant any immunity from any criminal law of the United States.

(j) Signal systems

If, within two years after August 13, 1981, the Corporation applies for the permission of the Secretary to substitute manual block signal systems for automatic block signal systems on lines on which less than 20,000,000 gross tons of freight are carried annually, the Secretary shall approve or disapprove such application within 90 days of its submission.

(k) Governing provisions after sale

The provisions of this chapter shall not apply to the Corporation and to activities and other actions and responsibilities of the Corporation and its directors and employees after the sale date, other than with regard to—

- (1) section 702 of this title;
- (2) section 711(d) of this title;
- (3) section 713 of this title, but only with respect to information relating to proceedings before the special court established under section 719(b) of this title;
- (4) section 719 of this title, other than subsection (f) thereof;
- (5) section 726(f)(8) of this title, but only as such authority applies to activities related to the ESOP and related trust before the sale date;
- (6) section 726(f)(9) of this title, but only as such indemnification applies to activities re-

lating to the ESOP and related trust before the sale date;

(7) section 726(f)(10) of this title with respect to all securities of the Corporation issued or transferred in connection with the public offering under the Conrail Privatization Act [45 U.S.C. 1301 et seq.] and all securities of Conrail Equity Corporation and all interests in the ESOP;

(8) section 727(c) and (e) of this title;

(9) subsection (b) of this section, but only with respect to matters covered by the last sentence of such subsection;

(10) subsection (i) of this section, but only as such authority applies to service as a director of the Corporation before the sale of the interest of the United States in the common stock of the Corporation;

(11) section 742 of this title, but only to the extent of (A) the creation and maintenance of the power and authority of the Corporation to operate rail service and to rehabilitate, improve, and modernize rail properties, and (B) the creation and maintenance of the powers of the Corporation as a railroad in any State in which it operates as of the sale date;

(12) section 743(b)(1) and (2) of this title, but only to the extent of establishing the legal effect of the conveyance of property ordered and of the deeds and other instruments executed, acknowledged, delivered, or recorded in connection therewith and the quality of title acquired in such property;

(13) section 743(b)(3)(B) of this title with respect to the effect of an assignment, conveyance, or assumption as set forth in the last sentence of such subparagraph (B);

(14) section 743(b)(5) of this title;

(15) section 743(b)(6) of this title, but only with respect to establishing and maintaining the rights of the Corporation with respect to, limiting its obligations with respect to, and establishing the status of, the employee pension and welfare benefit plans transferred to the Corporation thereunder and with respect to the exclusivity of the jurisdiction of the special court and the limitation of jurisdiction of other courts;

(16) section 743(e) of this title;

(17) section 744 of this title, but only with respect to the finality of abandonments completed before the sale date pursuant to the authority thereof;

(18) section 745 of this title, but only as to the effect, and continuing administration, of supplemental transactions consummated before the sale date;

(19) section 748 of this title, but only (A) as to the finality of abandonments completed before the sale date and (B) as to abandonments of lines where a notice or notices of insufficient revenues with respect to such lines have been filed before November 1, 1985;

(20) section 791(a)(2) of this title, but only with respect to activities before the sale date;

(21) section 791(b)(2) and (b)(3) of this title, but only with respect to issuance of and transactions in any security of the Corporation before the sale date;

(22) section 797a(e) of this title;

(23) section 797b of this title;

- (24) section 797c of this title;
 (25) sections 797e(a), 797f, and 797g(a) of this title, but only insofar as they establish part of the prevailing status quo for the Corporation's employees' rates of pay, rules, and working conditions, such provisions to continue to apply unless changed pursuant to section 156 of this title;
 (26) section 797h of this title;
 (27) section 797i(b)(1) of this title;
 (28) section 797j of this title; and
 (29) section 797m of this title, but only with regard to disputes or controversies specified in such section that arose before the sale date.

(Pub. L. 93-236, title III, §301, Jan. 2, 1974, 87 Stat. 1004; Pub. L. 94-210, title VI, §§608, 611, 612(j)(1), (3), (m), Feb. 5, 1976, 90 Stat. 99, 105, 109, 110; Pub. L. 94-216, §1, 3, Feb. 17, 1976, 90 Stat. 191; Pub. L. 94-248, §4, Mar. 25, 1976, 90 Stat. 286; Pub. L. 97-35, title XI, §1141, Aug. 13, 1981, 95 Stat. 653; Pub. L. 99-509, title IV, §4032, Oct. 21, 1986, 100 Stat. 1906; Pub. L. 104-88, title III, §327(2), Dec. 29, 1995, 109 Stat. 951.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), means the Regional Rail Reorganization Act of 1973, Pub. L. 93-236, Jan. 2, 1974, 87 Stat. 985, as amended, which is classified principally to this chapter (§701 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

The Conrail Privatization Act, referred to in subsec. (k)(7), is subtitle A (§§4001-4052) of title IV of Pub. L. 99-509, Oct. 21, 1986, 100 Stat. 1892, which is classified principally to chapter 22 (§1301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

CODIFICATION

In subsec. (b), "such Act and subtitle IV of title 49" substituted for "such Acts", on authority of Pub. L. 95-473, §3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV (§10101 et seq.) of Title 49, Transportation.

The last sentence of subsec. (f) of this section as originally enacted, which amended section 856 of former Title 31, Money and Finance, was repealed by Pub. L. 97-258, §5(b), Sept. 13, 1982, 96 Stat. 1068, the first section of which enacted Title 31.

AMENDMENTS

1995—Subsec. (b). Pub. L. 104-88, §327(2), substituted "rail carrier subject to part A of subtitle IV of title 49" for "common carrier by railroad under section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3))".

1986—Subsec. (k). Pub. L. 99-509 added subsec. (k).

1981—Subsec. (d)(2). Pub. L. 97-35, §1141(a), struck out provisions respecting resignations.

Subsec. (e)(1). Pub. L. 97-35, §1141(b), substituted "The" for "In order to carry out the final system plan, the".

Subsec. (j). Pub. L. 97-35, §1141(c), substituted provisions relating to signal systems for provisions relating to corporate simplification.

1976—Subsec. (a). Pub. L. 94-210, §612(j)(1), inserted "or such other corporate name as may be duly adopted by the Corporation" after "Corporation".

Subsec. (b). Pub. L. 94-210, §612(j)(3), inserted "or of its principal railroad operating subsidiary" after "of the Corporation".

Subsec. (c). Pub. L. 94-210, §611(a), designated existing provisions as par. (1), struck out provision relating to service of the incorporators as the Board of Directors, and added par. (2).

Subsec. (d). Pub. L. 94-210, §611(b), designated existing provisions as par. (1), inserted provision relating to

applicability of State law, decreased membership from 15 to 13, and revised criteria for selection to membership, and added par. (2).

Subsec. (e). Pub. L. 94-210, §608, designated existing provisions as par. (1), substituted provisions authorizing issuance of debentures, series A preferred stock, series B preferred stock, common stock, contingent interest notes, and other securities, for provisions relating to issuance of stock and other securities, and added par. (2).

Subsec. (e)(2). Pub. L. 94-248 inserted provisions relating to initial authorized number of shares of series B preferred stock and provisions setting such number at 35,000,000.

Subsec. (f). Pub. L. 94-210, §611(c), added subsec. (f). Former subsec. (f), which related to a Federal Government audit of the Corporation, was struck out.

Subsec. (g). Pub. L. 94-210, §611(c), added subsec. (g). Former subsec. (g) redesignated (h) "Annual report".

Subsec. (h). Pub. L. 94-216, §1, redesignated subsec. (h) "Liability of directors" as (i).

Pub. L. 94-210, §§611(c), 612(m), redesignated former subsec. (g) as (h) "Annual report" and added subsec. (h) "Liability of directors".

Subsec. (i). Pub. L. 94-216, §1, 3, redesignated former subsec. (h) "Liability of directors" as (i) and substituted "a director of the Association" for "a director of the Corporation". Former subsec. (i) redesignated (j).

Pub. L. 94-210, §612(m), added subsec. (i) "Corporate simplification".

Subsec. (j). Pub. L. 94-216, §1, redesignated former subsec. (i) "Corporate simplification" as (j).

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, see section 1169 of Pub. L. 97-35, set out as an Effective Date note under section 1101 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (h) of this section relating to the requirement that the Corporation transmit an annual report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 7th item on page 199 of House Document No. 103-7.

ABOLITION OF SPECIAL COURT, REGIONAL RAIL REORGANIZATION ACT OF 1973, AND TRANSFER OF FUNCTIONS

Special court abolished and all jurisdiction and functions transferred to United States District Court for District of Columbia, see section 719(b)(2) of this title.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94-210, see section 619 of Pub. L. 94-210, set out as a note under section 791 of this title.

§ 742. Powers and duties of Corporation

The Corporation shall have all of the powers and is subject to all of the duties vested in it under this chapter, in addition to the powers conferred upon it under the laws of the State or States in which it is incorporated and the powers of a railroad in any State in which it operates. The Corporation is authorized and directed to—