

(3) Before the date of transfer, the State shall have standing to participate in any administrative determination or judicial review pursuant to this chapter. If transfer to the State does not occur pursuant to section 1203 of this title, the State shall not thereafter have standing to participate in any such determination or review.

(d) Omitted

(e) Liability of State for damage to land while used under license

The State shall be liable to a party receiving a conveyance of land among the rail properties of the Alaska Railroad subject to the license granted pursuant to section 1203(b)(1)(C) of this title for damage resulting from use by the State of the land under such license in a manner not authorized by such license.

(Pub. L. 97-468, title VI, § 606(a)-(c), (e), Jan. 14, 1983, 96 Stat. 2564-2566, 2571; Pub. L. 98-620, title IV, § 402(52), Nov. 8, 1984, 98 Stat. 3361.)

Editorial Notes

REFERENCES IN TEXT

Section 12 of the Act of January 2, 1976, as amended, referred to in subsecs. (a)(1), (4) and (b)(3), is section 12 of Pub. L. 94-204, Jan. 2, 1976, 89 Stat. 1150, as amended, which is set out as a note under section 1611 of Title 43, Public Lands. Section 12(b)(8)(i)(D) of such Act as amended by subsection (d)(5) of this section is the amendment of subsection (b)(8)(i)(D) of section 12 of Pub. L. 94-204 by section 606(d)(5) of Pub. L. 97-468, title VI, Jan. 14, 1983, 96 Stat. 2566.

The Alaska National Interest Lands Conservation Act, referred to in subsecs. (a)(2) and (c), is Pub. L. 96-497, Dec. 2, 1980, 94 Stat. 2371, as amended. Sections 1425, 1429, and 1430 of the Act (94 Stat. 2515, 2531) were not classified to the Code. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 16, Conservation, and Tables.

CODIFICATION

Section is comprised of subsecs. (a)-(c) and (e) of section 606 of Pub. L. 97-468. Subsec. (d) of section 606 of Pub. L. 97-468 amended section 12 of Pub. L. 94-204, which is set out as a note under section 1611 of Title 43, Public Lands.

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98-620 struck out provision that required review of agency action pursuant to this chapter to be expedited to same extent as expedited review provided by section 1108 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3168).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 1206. Employees of Alaska Railroad

(a) Coverage under Federal civil service retirement laws; election, funding, nature of benefits, etc., for employees transferring to State-owned railroad; voluntary separation incentives

(1) Any employees who elect to transfer to the State-owned railroad and who on the day before the date of transfer are subject to the civil serv-

ice retirement law (subchapter III of chapter 83 of title 5) shall, so long as continually employed by the State-owned railroad without a break in service, continue to be subject to such law, except that the State-owned railroad shall have the option of providing benefits in accordance with the provisions of paragraph (2) of this subsection. Employment by the State-owned railroad without a break in continuity of service shall be considered to be employment by the United States Government for purposes of subchapter III of chapter 83 of title 5. The State-owned railroad shall be the employing agency for purposes of section 8334(a) of title 5 and shall contribute to the Civil Service Retirement and Disability Fund a sum as provided by such section, except that such sum shall be determined by applying to the total basic pay (as defined in section 8331(3) of title 5) paid to the employees of the State-owned railroad who are covered by the civil service retirement law, the per centum rate determined annually by the Director of the Office of Personnel Management to be the excess of the total normal cost per centum rate of the civil service retirement system over the employee deduction rate specified in section 8334(a) of title 5. The State-owned railroad shall pay into the Federal Civil Service Retirement and Disability Fund that portion of the cost of administration of such Fund which is demonstrated by the Director of the Office of Personnel Management to be attributable to its employees.

(2) At any time during the two-year period commencing on the date of transfer, the State-owned railroad shall have the option of providing to transferred employees retirement benefits, reflecting prior Federal service, in or substantially equivalent to benefits under the retirement program maintained by the State for State employees. If the State decides to provide benefits under this paragraph, the State shall provide such benefits to all transferred employees, except those employees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of title 5 within five years after the date of transfer and who elect to remain participants in the Federal retirement program.

(3) If the State provides benefits under paragraph (2) of this subsection—

(A) the provisions of paragraph (1) of this subsection regarding payments into the Civil Service Retirement and Disability Fund for those employees who are transferred to the State program shall have no further force and effect (other than for employees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of title 5 within five years after the date of transfer and who elect to remain participants in the Federal retirement program); and

(B) all of the accrued employee and employer contributions and accrued interest on such contributions made by and on behalf of the transferred employees during their prior Federal service (other than amounts for employees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of title 5 within five years after the date of transfer and who elect to re-

main participants in the Federal retirement program) shall be withdrawn from the Federal Civil Service Retirement and Disability Fund and shall be paid into the retirement fund utilized by the State-owned railroad for the transferred employees, in accordance with the provisions of paragraph (2) of this subsection. Upon such payment, credit for prior Federal service under the Federal civil service retirement system shall be forever barred, notwithstanding the provisions of section 8334 of title 5.

(4)(A) The State-owned railroad shall be included in the definition of “agency” for purposes of section 3(a), (b), (c), and (e) of the Federal Workforce Restructuring Act of 1994 and may elect to participate in the voluntary separation incentive program established under such Act. Any employee of the State-owned railroad who meets the qualifications as described under the first sentence of paragraph (1) shall be deemed an employee under such Act.

(B) An employee who has received a voluntary separation incentive payment under this paragraph and accepts employment with the State-owned railroad within 5 years after the date of separation on which payment of the incentive is based shall be required to repay the entire amount of the incentive payment unless the head of the State-owned railroad determines that the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(b) Coverage for employees not transferring to State-owned railroad

Employees of the Alaska Railroad who do not transfer to the State-owned railroad shall be entitled to all of the rights and benefits available to them under Federal law for discontinued employees.

(c) Rights and benefits of transferred employees whose employment with State-owned railroad is terminated

Transferred employees whose employment with the State-owned railroad is terminated during the two-year period commencing on the date of transfer shall be entitled to all of the rights and benefits of discontinued employees that such employees would have had under Federal law if their termination had occurred immediately before the date of the transfer, except that financial compensation paid to officers of the Alaska Railroad shall be limited to that compensation provided pursuant to section 1203(d)(3)(E) of this title. Such employees shall also be entitled to seniority and other benefits accrued under Federal law while they were employed by the State-owned railroad on the same basis as if such employment had been Federal service.

(d) Lump-sum payment for unused annual leave for employees transferring to State-owned railroad

Any employee who transfers to the State-owned railroad under this chapter shall not be entitled to lump-sum payment for unused annual leave under section 5551 of title 5, but shall be credited by the State with the unused annual leave balance at the time of transfer.

(e) Continued coverage for certain employees and annuitants in Federal health benefits plans and life insurance plans

(1) Any person described under the provisions of paragraph (2) may elect life insurance coverage under chapter 87 of title 5 and enroll in a health benefits plan under chapter 89 of title 5 in accordance with the provisions of this subsection.

(2) The provisions of paragraph (1) shall apply to any person who—

(A) on March 30, 1994, is an employee of the State-owned railroad;

(B) has 20 years or more of service (in the civil service as a Federal employee or as an employee of the State-owned railroad, combined) on the date of retirement from the State-owned railroad; and

(C)(i) was covered under a life insurance policy pursuant to chapter 87 of title 5 on January 4, 1985, for the purpose of electing life insurance coverage under the provisions of paragraph (1); or

(ii) was enrolled in a health benefits plan pursuant to chapter 89 of title 5 on January 4, 1985, for the purpose of enrolling in a health benefits plan under the provisions of paragraph (1).

(3) For purposes of this section, any person described under the provisions of paragraph (2) shall be deemed to have been covered under a life insurance policy under chapter 87 of title 5 and to have been enrolled in a health benefits plan under chapter 89 of title 5 during the period beginning on January 5, 1985, through the date of retirement of any such person.

(4) The provisions of paragraph (1) shall not apply to any person described under paragraph (2) until the date such person retires from the State-owned railroad.

(Pub. L. 97-468, title VI, §607, Jan. 14, 1983, 96 Stat. 2571; Pub. L. 100-238, title I, §136(a), Jan. 8, 1988, 101 Stat. 1766; Pub. L. 103-226, §10, Mar. 30, 1994, 108 Stat. 122.)

Editorial Notes

REFERENCES IN TEXT

The Federal Workforce Restructuring Act of 1994, referred to in subsec. (a)(4)(A), is Pub. L. 103-226, Mar. 30, 1994, 108 Stat. 111. Section 3 of the Act is set out as a note under section 5597 of Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 2101 of Title 5 and Tables.

AMENDMENTS

1994—Subsec. (a)(4). Pub. L. 103-226, §10(a), added par. (4).

Subsec. (e). Pub. L. 103-226, §10(b), added subsec. (e) and struck out former subsec. (e) which related to continued coverage for certain employees and annuitants in Federal health benefits and life insurance plans.

1988—Subsec. (e). Pub. L. 100-238 added subsec. (e).

Statutory Notes and Related Subsidiaries

ADMINISTRATIVE PROVISION

Pub. L. 100-238, title I, §136(b), Jan. 8, 1988, 101 Stat. 1767, provided that within 180 days after Jan. 8, 1988, the Director of the Office of Personnel Management was to

notify any person described under the provisions of subsec. (e)(2)(A) of this section for the purpose of the election of a life insurance policy or the enrollment in a health benefits plan pursuant to the provisions of subsec. (e)(1) of this section.

§ 1207. State operation

(a) Laws, authorities, etc., applicable to State-owned railroad with status as rail carrier engaged in interstate and foreign commerce

(1) After the date of transfer to the State pursuant to section 1203 of this title, the State-owned railroad shall be a rail carrier engaged in interstate and foreign commerce subject to part A of subtitle IV of title 49 and all other Acts applicable to rail carriers subject to that chapter,¹ including the antitrust laws of the United States, except, so long as it is an instrumentality of the State of Alaska, the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.), the Railroad Retirement Tax Act (26 U.S.C. 3201 et seq.), the Railway Labor Act (45 U.S.C. 151 et seq.), the Act of April 22, 1908 (45 U.S.C. 51 et seq.) (popularly referred to as the “Federal Employers’ Liability Act”), and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.). Nothing in this chapter shall preclude the State from explicitly invoking by law any exemption from the antitrust laws as may otherwise be available.

(2) The transfer to the State authorized by section 1203 of this title and the conferral of jurisdiction to the Interstate Commerce Commission pursuant to paragraph (1) of this subsection are intended to confer upon the State-owned railroad all business opportunities available to comparable railroads, including contract rate agreements meeting the requirements of section 10713² of title 49, notwithstanding any participation in such agreements by connecting water carriers.

(3) All memoranda which sanction noncompliance with Federal railroad safety regulations contained in 49 CFR Parts 209–236, and which are in effect on the date of transfer, shall continue in effect according to their terms as “waivers of compliance” (as that term is used in section 20103(d) of title 49).

(4) The operation of trains by the State-owned railroad shall not be subject to the requirement of any State or local law which specifies the minimum number of crew members which must be employed in connection with the operation of such trains.

(5) Revenues generated by the State-owned railroad, including any amount appropriated or otherwise made available to the State-owned railroad, shall be retained and managed by the State-owned railroad for railroad and related purposes.

(6)(A) After the date of transfer, continued operation of the Alaska Railroad by a public corporation, authority or other agency of the State shall be deemed to be an exercise of an essential governmental function, and revenue derived from such operation shall be deemed to accrue to the State for the purposes of section 115(a)(1) of title 26. Obligations issued by such entity

shall also be deemed obligations of the State for the purposes of section 103(a)(1)² of title 26, but not obligations within the meaning of section 103(b)(2)² of title 26.

(B) Nothing in this chapter shall be deemed or construed to affect customary tax treatment of private investment in the equipment or other assets that are used or owned by the State-owned railroad.

(b) Procedures for issuance of certificate of public convenience and necessity; inventory, valuation, or classification of property; additional laws, authorities, etc., applicable

As soon as practicable after January 14, 1983, the Interstate Commerce Commission shall promulgate an expedited, modified procedure for providing on the date of transfer a certificate of public convenience and necessity to the State-owned railroad. No inventory, valuation, or classification of property owned or used by the State-owned railroad pursuant to subchapter V² of chapter 107 of title 49 shall be required during the two-year period after the date of transfer. The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and section 382(b) of the Energy Policy and Conservation Act (42 U.S.C. 6362(b)) shall not apply to actions of the Commission under this subsection.

(c) Eligibility for participation in Federal railroad assistance programs

The State-owned railroad shall be eligible to participate in all Federal railroad assistance programs on a basis equal to that of other rail carriers subject to part A of subtitle IV of title 49.

(d) Laws and regulations applicable to national forest and park lands; limitations on Federal actions

After the date of transfer to the State pursuant to section 1203 of this title, the portion of the rail properties within the boundaries of the Chugach National Forest and the exclusive-use easement within the boundaries of the Denali National Park and Preserve shall be subject to laws and regulations for the protection of forest and park values. The right to fence the exclusive-use easement within Denali National Park and Preserve shall be subject to the concurrence of the Secretary of the Interior. The Secretary of the Interior, or the Secretary of Agriculture where appropriate, shall not act pursuant to this subsection without consulting with the Governor of the State of Alaska or in such a manner as to unreasonably interfere with continued or expanded operations and support functions authorized under this chapter.

(e) Preservation and protection of rail properties

The State-owned railroad may take any necessary or appropriate action, consistent with Federal railroad safety laws, to preserve and protect its rail properties in the interests of safety.

(Pub. L. 97-468, title VI, §608, Jan. 14, 1983, 96 Stat. 2573; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 104-88, title III, §326, Dec. 29, 1995, 109 Stat. 951; Pub. L. 108-447, div. H, title I, §152(1), (2), Dec. 8, 2004, 118 Stat. 3222.)

¹ So in original. Probably should be “that part.”

² See References in Text note below.