

SENATE BILL No. 433

April 25, 2007, Introduced by Senators ALLEN and GILBERT and referred to the Committee on Transportation.

A bill to amend 1976 PA 295, entitled "State transportation preservation act of 1976," by amending section 10 (MCL 474.60), as amended by 1998 PA 235.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10. (1) In weighing the varied interests of the residents
2 of this state, the department shall give consideration to the
3 individual interest of any person, public or private corporation,
4 local or regional transportation authority, local governmental
5 unit, private carrier, group of rail users, state agency, other
6 public or private entity, including a port authority established
7 under the Hertel-Law-T. Stopczynski port authority act, 1978 PA
8 639, MCL 120.101 to 120.130, or any combination of these entities,
9 expressing a desire to acquire or lease or secure an easement for

1 the use of a portion or all of the real property owned by a
2 railroad company. The property acquired by the department under
3 this act may be conveyed or leased to an entity or combination of
4 entities listed in this subsection with appropriate reimbursement,
5 as determined by the department.

6 (2) The department may begin divestiture or offer 10-year
7 leases to the current operator of the properties described in this
8 subsection ~~within 180 days after the effective date of the~~
9 ~~amendatory act that added this subsection~~ **AT ANY TIME**. The
10 department shall accomplish divestiture or create leases, without
11 partitioning a segment or a portion of a segment, in the following
12 order from the smallest segment first to the largest segment last,
13 of the following defined segments of state-owned rail property:

14 (a) Lenawee county system means the rail lines owned by the
15 state between Adrian and Riga, between Grosvenor and River Raisin
16 and Lenawee Junction.

17 (b) Hillsdale county system means the rail lines owned by the
18 state between Litchfield and the Indiana state line and between
19 Jonesville and Quincy.

20 (c) Vassar area system means the rail lines owned by the state
21 between Millington and Munger, between Vassar and Colling, and at
22 Denmark Junction.

23 (d) Ann Arbor and Northwest Michigan system means the rail
24 lines owned by the state between Durand and Ann Arbor, between
25 Owosso and Thompsonville, between Cadillac and Petoskey, between
26 Walton Junction and Traverse City, between Grawn and Williamsburg,
27 and between Owosso and St. Charles.

1 (3) The specific terms of a sale will be as determined by the
2 department except for the following required conditions:

3 (a) Each purchase agreement shall require that the purchase
4 price shall be not less than the net liquidation value of the rail
5 line or lines.

6 (b) Each purchase agreement shall require that the purchaser
7 provide at a minimum the average level of service adjusted for
8 traffic levels for 3 years after the date of sale unless otherwise
9 mutually agreed upon between the purchaser and shippers that
10 existed on that line on ~~the effective date of the amendatory act~~
11 ~~that added this subsection~~ **JULY 3, 1998**, and that rates on the
12 segment purchased from the state will not increase more than the
13 average percentage increase in the Detroit consumer price index for
14 the 12-month period each year for the base rate in effect on
15 January 1, 1996 for 3 years after the date of sale.

16 (c) Trackage in the segments sold by the state shall be
17 maintained at not less than the federal railway administration
18 class of track standards for each segment as of January 1, 1998.

19 (d) In the case of the sale of the segment described in
20 subsection (2)(d), the purchaser shall be required to charge
21 reasonable freight rates for that section between Durand and Ann
22 Arbor and honor all existing freight rate agreements and trackage
23 rights for 3 years after the date of sale.

24 (e) Any existing lease or agreement for operation of a segment
25 in effect on ~~the effective date of this act~~ **NOVEMBER 15, 1976** shall
26 be extended at the same terms and conditions until a sale or lease
27 is executed.

1 (4) If there are no acceptable offers to purchase, the
2 property shall be offered for a lease of not less than 10 years, by
3 the department to the following parties in descending order:

4 (a) Current operator.

5 (b) Current shippers on that segment.

6 (c) Governmental entities.

7 (d) Other railroad companies.

8 (5) If the purchaser or lessee fails to comply with the
9 conditions of sale or lease, the property shall revert back to the
10 department and shall then be offered for sale or lease to the
11 following parties in descending order:

12 (a) Current shippers on that segment.

13 (b) Governmental entities.

14 (c) Other railroad companies.

15 (6) Before the execution of a purchase agreement, the
16 potential purchaser shall submit to the department its most recent
17 financial statement and a proposed operation plan including
18 tributary lines and including known potential sublease agreements.
19 As used in this subsection, "tributary lines" means spur rail lines
20 that only intersect with a rail line owned by the state on ~~the~~
21 ~~effective date of the 1998 amendments to this section~~ **JULY 3, 1998.**

22 (7) If during the first 10 years after purchase the purchaser
23 abandons service and sells the segment or any portion of the
24 segment that does not involve main line track, or any rails, ties,
25 or ballast, excluding normal salvage, 95% of the proceeds from the
26 sale shall be returned to the state as additional purchase price. A
27 segment or a portion of a segment may be sold with the approval of

1 the department. IF THE PURCHASER SELLS A SEGMENT OR ANY PORTION OF
2 A SEGMENT UNDER THIS SECTION, THE PURCHASER SHALL OFFER A RIGHT OF
3 FIRST REFUSAL TO PURCHASE THE SEGMENT TO THE LOCAL GOVERNMENTAL
4 UNIT WHERE THE SEGMENT IS LOCATED. IF THE SEGMENT IS LOCATED IN
5 MORE THAN 1 JURISDICTION, THE PURCHASER SHALL OFFER THE SEGMENT TO
6 EACH UNIT OF LOCAL GOVERNMENT. THE PURCHASER SHALL OFFER SUBSEQUENT
7 REFUSAL RIGHTS, IF ANY, TO ANY LOCAL GOVERNMENT LOCATED ALONG THE
8 SEGMENT OR PORTION OF A SEGMENT. IF MORE THAN 1 LOCAL GOVERNMENT
9 INDICATES AN INTENTION TO EXERCISE THE RIGHT TO PURCHASE THE SAME
10 SEGMENT OR PORTION OF A SEGMENT, THE LOCAL UNIT OF GOVERNMENT WITH
11 THE LARGEST POPULATION SHALL HAVE THE FIRST RIGHT TO PURCHASE THE
12 SEGMENT OR PORTION OF A SEGMENT.

13 (8) A party aggrieved by the performance or failure to perform
14 under the terms of a purchase agreement may bring an action in the
15 circuit court where the party resides or where the property is
16 located for appropriate relief.

17 (9) The specific terms of a lease will be as determined by the
18 department except for the following required conditions:

19 (a) Each lease agreement shall require that the lessee provide
20 at a minimum the average level of service adjusted for traffic
21 levels for 3 years after the date of the lease agreement unless
22 otherwise mutually agreed upon between the lessee and shippers that
23 existed on that line on ~~the effective date of the amendatory act~~
24 ~~that added this subsection~~ **JULY 3, 1998**, and that rates on that
25 segment leased from the state will not increase more than the
26 average percentage increase in the Detroit consumer price index for
27 the 12-month period each year for the base rate in effect on

1 January 1, 1996 for 3 years after the date of the lease.

2 (b) Not less than 50% of trackage rights revenues shall be
3 reinvested in eligible expenditures. As used in this subdivision,
4 "eligible expenditures" includes the material and direct expenses
5 required for the installation of railroad ties, track, ballast,
6 crossing improvements, ditch and drainage repair or improvements,
7 brush trimming, and the expenses required to conduct track and
8 signal inspections as specified in federal regulations.

9 (c) Trackage in the segments leased by the state shall be
10 maintained at not less than the federal railway administration
11 class of track standards for each segment as of January 1, 1998.

12 (d) In the case of a lease of the segment described in
13 subsection (2)(d), the lessee shall be required to charge
14 reasonable freight rates for that section between Durand and Ann
15 Arbor and honor all existing freight rate agreements and trackage
16 rights for 3 years after the date of sale.

17 (10) A party aggrieved by the performance or failure to
18 perform under the terms of a lease agreement may bring an action in
19 the circuit court where the party resides or where the property is
20 located for appropriate relief.

21 (11) Upon acquisition of a right-of-way, the department may
22 preserve the right-of-way for future use as a railroad line and, if
23 preserving it for that use, shall not permit any action which would
24 render it unsuitable for future rail use. However, if the
25 department determines a right-of-way or other property acquired
26 under this act is no longer necessary for railroad transportation
27 purposes, the department may preserve and utilize the right-of-way

1 for other transportation purposes or may dispose of the right-of-
2 way or other property acquired under this act for the purposes
3 described in section 6, or may dispose of or lease the right-of-way
4 or other property for other purposes, as appropriate. However, the
5 department shall not dispose of or lease a right-of-way without
6 first offering to transfer the right-of-way to the department of
7 natural resources. If the department of natural resources desires
8 to lease or purchase the right-of-way, the department of natural
9 resources must indicate their desire within 60 days and accept the
10 offered transfer within 1 year after the offer is made. If the
11 department of natural resources does not indicate their desires
12 within 60 days, the department may dispose of or lease the right-
13 of-way as otherwise provided for in this act. If the department of
14 natural resources does not accept the offered transfer within 1
15 year after indicating their desire to lease or purchase the right-
16 of-way, the department may dispose of or lease the right-of-way as
17 otherwise provided for in this act. When appropriate, a right-of-
18 way or other property shall be transferred or leased to a public or
19 private entity with appropriate reimbursement, as determined by the
20 department.

21 (12) In preserving a right-of-way for future rail use, the
22 department may do 1 or more of the following:

23 (a) Develop the right-of-way for use as a commuter trail where
24 the use is feasible and needed or lease the right-of-way to a
25 county, city, village, or township expressing a desire to develop
26 the right-of-way as a commuter trail. The lease shall be for an
27 indefinite period of time, cancelable by the department only if the

1 right-of-way is needed for rail usage. The trails, unless leased to
2 a county, city, village, or township, shall remain under the
3 jurisdiction of the department.

4 (b) Transfer, for appropriate reimbursement, the right-of-way
5 to the department of natural resources for use as a Michigan
6 trailway pursuant to part 721 of the natural resources and
7 environmental protection act, 1994 PA 451, MCL 324.72101 to
8 324.72112, if the deed includes restrictions on the use of the
9 property that assure that the property remains viable for future
10 rail usage, and includes a clause that provides that the department
11 of natural resources shall transfer, for appropriate reimbursement,
12 the right-of-way to the department, upon a determination of the
13 director of the department that the right-of-way is needed for use
14 as a railroad line.

15 (c) Lease the right-of-way to the department of natural
16 resources, or upon approval of the department of natural resources,
17 to a county, city, village, or township for use as a recreational
18 trail. The lease shall be for an indefinite period of time,
19 cancelable by the department only if the right-of-way is needed for
20 rail usage. A recreational trail shall be reserved for non-
21 motorized forms of recreation or snowmobiling only. Snowmobiling
22 shall not be allowed on more than 50% of the mileage of the
23 recreational trails established pursuant to this act.

24 (d) In cases where a trail serves both a significant commuter
25 and recreation function, authorize the joint development of the
26 trail by the department and the department of natural resources, or
27 the department and any interested county, city, village, or

- 1 township. Administration of the trail shall be determined jointly
- 2 by the department and the department of natural resources.