

SENATE BILL No. 1536

September 23, 2008, Introduced by Senator 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
10 the use of a portion or all of the real property owned by a

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

5 (2) The department may begin divestiture or offer 10-year
6 leases to the current operator of the properties described in this
7 subsection within 180 days after ~~the effective date of the~~
8 ~~amendatory act that added this subsection~~ **JULY 3, 1998. The EXCEPT**
9 **AS OTHERWISE PROVIDED IN THIS ACT, THE** department shall accomplish
10 divestiture or create leases, without partitioning a segment or a
11 portion of a segment, in the following order from the smallest
12 segment first to the largest segment last, of the following defined
13 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 **EXCLUDING**
26 **THE PORTION OF THE SEGMENT LOCATED IN PETOSKEY NORTH OF EMMET**
27 **STREET**, between Walton Junction and Traverse City, between Grawn

1 and Williamsburg, and between Owosso and St. Charles.

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

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

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

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

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

25 (e) Any existing lease or agreement for operation of a segment
26 in effect on ~~the effective date of this act~~ **JULY 3, 1998** shall be
27 extended at the same terms and conditions until a sale or lease is

1 executed.

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

5 (a) Current operator.

6 (b) Current shippers on that segment.

7 (c) Governmental entities.

8 (d) Other railroad companies.

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

13 (a) Current shippers on that segment.

14 (b) Governmental entities.

15 (c) Other railroad companies.

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

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

1 segment or a portion of a segment may be sold with the approval of
2 the department.

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

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

9 (a) Each lease agreement shall require that the lessee provide
10 at a minimum the average level of service adjusted for traffic
11 levels for 3 years after the date of the lease agreement unless
12 otherwise mutually agreed upon between the lessee and shippers that
13 existed on that line on the effective date of the amendatory act
14 that added this subsection, and that rates on that segment leased
15 from the state will not increase more than the average percentage
16 increase in the Detroit consumer price index for the 12-month
17 period each year for the base rate in effect on January 1, 1996 for
18 3 years after the date of the lease.

19 (b) Not less than 50% of trackage rights revenues shall be
20 reinvested in eligible expenditures. As used in this subdivision,
21 "eligible expenditures" includes the material and direct expenses
22 required for the installation of railroad ties, track, ballast,
23 crossing improvements, ditch and drainage repair or improvements,
24 brush trimming, and the expenses required to conduct track and
25 signal inspections as specified in federal regulations.

26 (c) Trackage in the segments leased by the state shall be
27 maintained at not less than the federal railway administration

1 class of track standards for each segment as of January 1, 1998.

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

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

11 (11) Upon acquisition of a right-of-way, the department may
12 preserve the right-of-way for future use as a railroad line and, if
13 preserving it for that use, shall not permit any action which would
14 render it unsuitable for future rail use. However, if the
15 department determines a right-of-way or other property acquired
16 under this act is no longer necessary for railroad transportation
17 purposes, the department may preserve and utilize the right-of-way
18 for other transportation purposes or may dispose of the right-of-
19 way or other property acquired under this act for the purposes
20 described in section 6, or may dispose of or lease the right-of-way
21 or other property for other purposes, as appropriate. However, the
22 department shall not dispose of or lease a right-of-way without
23 first offering to transfer the right-of-way to the department of
24 natural resources. If the department of natural resources desires
25 to lease or purchase the right-of-way, the department of natural
26 resources must indicate their desire within 60 days and accept the
27 offered transfer within 1 year after the offer is made. If the

1 department of natural resources does not indicate their desires
2 within 60 days, the department may dispose of or lease the right-
3 of-way as otherwise provided for in this act. If the department of
4 natural resources does not accept the offered transfer within 1
5 year after indicating their desire to lease or purchase the right-
6 of-way, the department may dispose of or lease the right-of-way as
7 otherwise provided for in this act. When appropriate, a right-of-
8 way or other property shall be transferred or leased to a public or
9 private entity with appropriate reimbursement, as determined by the
10 department.

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

13 (a) Develop the right-of-way for use as a commuter trail where
14 the use is feasible and needed or lease the right-of-way to a
15 county, city, village, or township expressing a desire to develop
16 the right-of-way as a commuter trail. The lease shall be for an
17 indefinite period of time, cancelable by the department only if the
18 right-of-way is needed for rail usage. The trails, unless leased to
19 a county, city, village, or township, shall remain under the
20 jurisdiction of the department.

21 (b) Transfer, for appropriate reimbursement, the right-of-way
22 to the department of natural resources for use as a Michigan
23 railway pursuant to part 721 of the natural resources and
24 environmental protection act, 1994 PA 451, MCL 324.72101 to
25 ~~324.72112~~ **324.72113**, if the deed includes restrictions on the use
26 of the property that assure that the property remains viable for
27 future rail usage, and includes a clause that provides that the

1 department of natural resources shall transfer, for appropriate
2 reimbursement, the right-of-way to the department, upon a
3 determination of the director of the department that the right-of-
4 way is needed for use as a railroad line.

5 (c) Lease the right-of-way to the department of natural
6 resources, or upon approval of the department of natural resources,
7 to a county, city, village, or township for use as a recreational
8 trail. The lease shall be for an indefinite period of time,
9 cancelable by the department only if the right-of-way is needed for
10 rail usage. A recreational trail shall be reserved for non-
11 motorized forms of recreation or snowmobiling only. Snowmobiling
12 shall not be allowed on more than 50% of the mileage of the
13 recreational trails established pursuant to this act.

14 (d) In cases where a trail serves both a significant commuter
15 and recreation function, authorize the joint development of the
16 trail by the department and the department of natural resources, or
17 the department and any interested county, city, village, or
18 township. Administration of the trail shall be determined jointly
19 by the department and the department of natural resources.

20 (13) IF THE DEPARTMENT SELLS A PORTION OF A SEGMENT TO A LOCAL
21 UNIT OF GOVERNMENT, THE PURCHASE AGREEMENT SHALL CONTAIN
22 RESTRICTIONS ON THE USE OF THE PROPERTY THAT ASSURE THAT THE
23 PROPERTY REMAINS VIABLE FOR FUTURE RAIL USAGE AND THAT, UPON
24 FAILURE OF THE PURCHASER TO MAINTAIN THE PROPERTY SO THAT IT
25 REMAINS VIABLE FOR FUTURE RAIL USE, THE PROPERTY SHALL REVERT TO
26 THE DEPARTMENT.