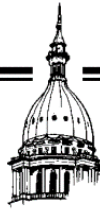




Senate Fiscal Agency  
P. O. Box 30036  
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## BILL ANALYSIS



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Senate Bill 263 (as introduced 3-13-13)  
Sponsor: Senator Bruce Caswell  
Committee: Transportation

Date Completed: 5-21-13

**CONTENT**

**The bill would amend the State Transportation Preservation Act to delete provisions that authorize and govern the sale or lease of specific segments of State-owned rail property.**

The provisions that would be deleted are described below.

**Divestiture Authorization & Required Terms**

The Act authorizes the Michigan Department of Transportation (MDOT) to sell, or lease to the current operators of, specific rail properties. The Department must sell or lease the following properties in the following order: the Lenawee County system, the Hillsdale County system, the Vassar area system, and the Ann Arbor and Northwest Michigan system. The Act defines each system as State-owned rail lines within the respective geographic area.

The Department determines the specific terms of a sale or lease of rail property, but the Act requires some specific conditions.

First, a purchase agreement must require the purchase price to be at least for the net liquidation value of the property. Purchase agreements and leases must require the purchaser or lessee to provide at least the average level of service adjusted for traffic levels for three years after the date of the sale or lease agreement.

A lessee must reinvest at least 50% of trackage rights revenue in eligible expenditures. ("Eligible expenditures" means the material and direct expenses required for the installation of railroad ties, track, ballast, crossing improvements, ditch and drainage repair or improvements, brush trimming, and the expenses required to conduct track and signal inspections under federal regulations.)

The rates on a purchased or leased segment must not increase more than an amount based on the average increase of the Detroit consumer price index. If a lease or sale involves the Ann Arbor and Northwest Michigan system, the purchaser must charge reasonable freight rates, and honor all existing freight rate agreements and trackage rights for three years after the date of sale.

If, within the first 10 years after a purchase, a purchaser abandons service and sells a segment or any portion of a segment that does not involve main line track, or any rails, ties, or ballast, excluding normal salvage, 95% of any sale proceeds must be returned to the State as additional purchase price. Purchasers may sell segments or portions of segments with MDOT approval.

If there are no acceptable purchase offers, MDOT must offer a lease for at least 10 years to the following parties in the following order: the current operator, current shippers on that segment, governmental entities, and other railroad companies.

If a purchaser or lessee fails to satisfy a sale or lease agreement, the property reverts to MDOT, which then must offer the property for sale or lease to the following parties in the following order: current shippers on that segment, governmental entities, and other railroad companies.

Also, any lease or agreement that was in effect on July 3, 1998, was extended at the same terms until the execution of a sale or lease.

The bill would delete all of these provisions.

Under the remaining provisions, MDOT must consider the individual interest of any person, public or private corporation, local or regional transportation authority, local governmental unit, private carrier, group of rail users, State agency, or other public or private entity, that expresses a desire to acquire, lease, or secure an easement for real property owned by a railroad company. Any property acquired by MDOT under the Act may be conveyed or leased to certain entities with appropriate reimbursement, as determined by MDOT.

The bill also would retain provisions that govern MDOT's preservation and use of rights-of-way, and that authorize MDOT, as a term of conveyance, to require restrictions on the use of the property to assure that it remains viable for future rail use.

#### Bidding Prequalification, Application Scoring, & Appeals

The bill would repeal sections of the Act that prescribe application requirements, bid evaluation standards, and an appeal process, for bid selection for sales and leases, as discussed below.

Section 10a requires MDOT to issue a statement regarding viability of a segment of rail before entering into a sales or lease agreement.

Section 10b requires the Bureau of Passenger Transportation, with regard to selling the properties listed above, to mail prequalification materials to all railroad companies on file with the Secretary of State and any others who request them. The section prescribes requirements for prequalification, procedures for application, and evaluation standards for review. A committee appointed by the Director reviews and evaluates each bid.

Section 10c allows a prospective bidder to appeal the committee's prequalification determination to the Deputy Director of the Bureau, who must assemble a panel to review an appeal. Section 10d allows the panel's decision to be appealed to the State Transportation Commission.

Section 10e requires the Bureau to develop a scoring mechanism with which to evaluate bid proposals, and requires proposals to include the following:

- Proof of financial ability to lease, operate, and maintain the segment.
- A 10-year plan for operation of the segment.
- The anticipated effect the change would have on shippers, and information on how the bidder would achieve a smooth transition.
- A strategic plan setting forth the bidder's understanding of the business environment of the segment and proposed approach to maintaining current traffic and capturing additional business.

- A capital program plan regarding the bidder's 10-year investment program for the segment's infrastructure maintenance and improvement.
- Ten-year financial projections for the bidder's proposed operation of the segment.
- A sealed envelope containing documentation of the consideration offered by the bidder.
- Other information required by the proposal solicitation.

Section 10f requires the Bureau to apply the scoring mechanism; prescribes the method the Bureau must use in evaluating proposals and selecting a bidder; and requires the approved bidder to enter into an agreement with the Bureau, and take possession of the segment and begin operations within 120 days after being notified of its approval.

Section 10g allows the Director or his or her designee to select a replacement operator for a segment on an emergency basis if an operator under contract with MDOT discontinues service voluntarily or if MDOT removes the operator for failure to comply with its operating agreement.

MCL 474.60

## **BACKGROUND**

As a result of several railroad bankruptcies in the mid-1970s and 1980s, more than 35% of Michigan's total freight rail network was proposed for abandonment. To avoid the potential negative impact of rail service disruption, MDOT purchased approximately 900 of the 1,100 affected miles and contracted with private railroad operators to rehabilitate the lines and return them to use. Since then, some of the lines have been returned to private ownership and others have been turned into recreational trails. Today, the State owns approximately 665 miles of rail lines.

Public Act 235 of 1998 amended the State Transportation Preservation Act to authorize MDOT to lease or divest itself of four specific rail lines, with the ultimate goal of returning them to the private sector. As noted above, the lines include the Lenawee County system, the Hillsdale County system, the Vassar area system, and the Ann Arbor and Northwest Michigan system. The Act included a prohibition against leasing or selling specific segments of the lines, which was evidently designed to prevent owners from abandoning less profitable segments and causing service disruption.

To date, MDOT has completed the divestiture process for the Lenawee County system. According to the statute, the Hillsdale County system is the next line subject to divestiture.

Legislative Analyst: Glenn Steffens

## **FISCAL IMPACT**

While the bill would not prevent the State from divesting its ownership of the rail lines outlined in the Act, the Department of Transportation has indicated that there are no immediate plans to sell any of these rail lines. Also, any costs associated with maintenance and improvement of these rail lines is currently appropriated in the Department's annual budget. If the lines were to be sold to eventually a private entity, the revenue would revert to the Rail Freight Fund in the Department of Transportation. The amount deposited would depend on the sale price at the time of purchase.

Fiscal Analyst: Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.