

SENATE BILL No. 263

March 13, 2013, Introduced by Senators CASWELL, GREEN, JONES and PROOS 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 2012 PA 42; and
to repeal acts and parts of acts.

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~~ **CONSIDER**
3 the individual interest of any person, public or private
4 corporation, local or regional transportation authority, local
5 governmental unit, private carrier, group of rail users, state
6 agency, other public or private entity, including a port authority
7 established under the Hertel-Law-T. Stopczynski port authority act,

1 1978 PA 639, MCL 120.101 to 120.130, or any combination of these
2 entities, expressing a desire to acquire or lease or secure an
3 easement for the use of a portion or all of the real property owned
4 by a railroad company. The property acquired by the department
5 under this act may be conveyed or leased to an entity or
6 combination of entities listed in this subsection with appropriate
7 reimbursement, as determined by the department.

8 ~~—— (2) The department may begin divestiture or offer 10-year~~
9 ~~leases to the current operator of the properties described in this~~
10 ~~subsection within 180 days after July 3, 1998. Except as otherwise~~
11 ~~provided in this act, the department shall accomplish divestiture~~
12 ~~or create leases, without partitioning a segment or a portion of a~~
13 ~~segment, in the following order from the smallest segment first to~~
14 ~~the largest segment last, of the following defined segments of~~
15 ~~state-owned rail property:~~

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

19 ~~—— (b) Hillsdale county system means the rail lines owned by the~~
20 ~~state between Litchfield and the Indiana state line and between~~
21 ~~Jonesville and Quincy, excluding that portion of the segment~~
22 ~~located in Jonesville from Beck street to the St. Joseph river.~~

23 ~~—— (c) Vassar area system means the rail lines owned by the state~~
24 ~~between Millington and Munger, between Vassar and Colling, and at~~
25 ~~Denmark Junction.~~

26 ~~—— (d) Ann Arbor and Northwest Michigan system means the rail~~
27 ~~lines owned by the state between Durand and Ann Arbor, between~~

~~1 Owosso and Thompsonville, between Cadillac and Petoskey excluding
2 the portion of the segment located in Petoskey north of Emmet
3 street and excluding the Jarman Spur starting at 450 feet from the
4 point of switch on the main rail to US 131, between Walton Junction
5 and Traverse City, between Crawn and Williamsburg, and between
6 Owosso and St. Charles.~~

~~7 ——— (3) The specific terms of a sale will be as determined by the
8 department except for the following required conditions:~~

~~9 ——— (a) Each purchase agreement shall require that the purchase
10 price shall be not less than the net liquidation value of the rail
11 line or lines.~~

~~12 ——— (b) Each purchase agreement shall require that the purchaser
13 provide at a minimum the average level of service adjusted for
14 traffic levels for 3 years after the date of sale unless otherwise
15 mutually agreed upon between the purchaser and shippers that
16 existed on that line on July 3, 1998, and that rates on the segment
17 purchased from the state will not increase more than the average
18 percentage increase in the Detroit consumer price index for the 12-
19 month period each year for the base rate in effect on January 1,
20 1996 for 3 years after the date of sale.~~

~~21 ——— (c) Trackage in the segments sold by the state shall be
22 maintained at not less than the federal railway administration
23 class of track standards for each segment as of January 1, 1998.~~

~~24 ——— (d) In the case of the sale of the segment described in
25 subsection (2) (d), the purchaser shall be required to charge
26 reasonable freight rates for that section between Durand and Ann
27 Arbor and honor all existing freight rate agreements and trackage~~

1 ~~rights for 3 years after the date of sale.~~

2 ~~—— (c) Any existing lease or agreement for operation of a segment~~
3 ~~in effect on July 3, 1998 shall be extended at the same terms and~~
4 ~~conditions until a sale or lease is executed.~~

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

8 ~~—— (a) Current operator.~~

9 ~~—— (b) Current shippers on that segment.~~

10 ~~—— (c) Governmental entities.~~

11 ~~—— (d) Other railroad companies.~~

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

16 ~~—— (a) Current shippers on that segment.~~

17 ~~—— (b) Governmental entities.~~

18 ~~—— (c) Other railroad companies.~~

19 ~~—— (6) Before the execution of a purchase agreement, the~~
20 ~~potential purchaser shall submit to the department its most recent~~
21 ~~financial statement and a proposed operation plan including~~

22 ~~tributary lines and including known potential sublease agreements.~~
23 ~~As used in this subsection, "tributary lines" means spur rail lines~~
24 ~~that only intersect with a rail line owned by the state on July 3,~~
25 ~~1998.~~

26 ~~—— (7) If during the first 10 years after purchase the purchaser~~
27 ~~abandons service and sells the segment or any portion of the~~

1 ~~segment that does not involve main line track, or any rails, ties,~~
2 ~~or ballast, excluding normal salvage, 95% of the proceeds from the~~
3 ~~sale shall be returned to the state as additional purchase price. A~~
4 ~~segment or a portion of a segment may be sold with the approval of~~
5 ~~the department.~~

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

10 ~~—— (9) The specific terms of a lease will be as determined by the~~
11 ~~department except for the following required conditions:~~

12 ~~—— (a) Each lease agreement shall require that the lessee provide~~
13 ~~at a minimum the average level of service adjusted for traffic~~
14 ~~levels for 3 years after the date of the lease agreement unless~~
15 ~~otherwise mutually agreed upon between the lessee and shippers that~~
16 ~~existed on that line on the effective date of the amendatory act~~
17 ~~that added this subsection, and that rates on that segment leased~~
18 ~~from the state will not increase more than the average percentage~~
19 ~~increase in the Detroit consumer price index for the 12 month~~
20 ~~period each year for the base rate in effect on January 1, 1996 for~~
21 ~~3 years after the date of the lease.~~

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

1 ~~signal inspections as specified in federal regulations.~~

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

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

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

14 (2) ~~(11)~~ Upon acquisition of a right-of-way, the department
15 may preserve the right-of-way for future use as a railroad line
16 and, if preserving it for that use, shall not permit any action
17 that would render it unsuitable for future rail use. If the
18 department determines a right-of-way or other property acquired
19 under this act is no longer necessary for railroad transportation
20 purposes, the department may preserve and utilize the right-of-way
21 for other transportation purposes or may dispose of the right-of-
22 way or other property acquired under this act for the purposes
23 described in section 6, or may dispose of or lease the right-of-way
24 or other property for other purposes, as appropriate. The
25 department shall not dispose of or lease a right-of-way without
26 first offering to transfer the right-of-way to the department of
27 natural resources. If the department of natural resources desires

1 to lease or purchase the right-of-way, the department of natural
2 resources must indicate ~~their~~**ITS** desire **TO LEASE OR PURCHASE THE**
3 **RIGHT-OF-WAY** within 60 days and accept the offered transfer within
4 1 year after the offer is made. If the department of natural
5 resources does not indicate ~~their desires~~**A DESIRE TO LEASE OR**
6 **PURCHASE THE RIGHT-OF-WAY** within 60 days, the department may
7 dispose of or lease the right-of-way as otherwise provided for in
8 this act. If the department of natural resources does not accept
9 the offered transfer within 1 year after indicating ~~their~~**ITS**
10 desire to lease or purchase the right-of-way, the department may
11 dispose of or lease the right-of-way as otherwise provided for in
12 this act. When appropriate, a right-of-way or other property shall
13 be transferred or leased to a public or private entity with
14 appropriate reimbursement, as determined by the department.

15 (3) ~~(12)~~In preserving a right-of-way for future rail use, the
16 department may do 1 or more of the following:

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

25 (b) Transfer, for appropriate reimbursement, the right-of-way
26 to the department of natural resources for use as a Michigan
27 railway pursuant to part 721 of the natural resources and

1 environmental protection act, 1994 PA 451, MCL 324.72101 to
2 ~~324.72115,~~ **324.72116**, if the deed includes restrictions on the use
3 of the property that assure that the property remains viable for
4 future rail usage, and includes a clause that ~~provides that~~
5 **REQUIRES** the department of natural resources ~~shall~~ **TO** transfer, for
6 appropriate reimbursement, the right-of-way to the department, upon
7 a determination of the director of the department that the right-
8 of-way is needed for use as a railroad line.

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

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

24 **(4)** ~~(13)~~ As a term of conveyance, the department may require
25 restrictions on the use of the property that assure that the
26 property remains viable for future rail use and that the rail line
27 is made available by the purchaser for future freight or passenger

1 rail uses and that the property ~~shall~~**WILL** revert to the department
2 if the purchaser fails to maintain the property so that it remains
3 viable for future rail use.

4 Enacting section 1. Sections 10a to 10g of the state
5 transportation preservation act of 1976, 1976 PA 295, MCL 474.60a
6 to 474.60g, are repealed.