

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4328**

A bill to amend 1976 PA 295, entitled "State transportation preservation act of 1976," by amending sections 2, 10, and 17 (MCL 474.52, 474.60, and 474.67), section 2 as amended by 1984 PA 210, section 10 as amended by 1993 PA 28, and section 17 as amended by 1993 PA 16, and by adding sections 10a, 10b, 10c, 10d, 10e, 10f, and 10g; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (A) "BUREAU" MEANS THE BUREAU OF URBAN AND PUBLIC TRANSPOR-
3 TATION IN THE DEPARTMENT.

4 (B) ~~(a)~~ "Commuter trail" means a trail, lane, path, road,
5 or other right of way on which motorized vehicles are not
6 permitted and which has the primary or substantial purpose and

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1 result of providing a means for people to move from 1 location to
2 another.

3 (C) ~~(b)~~ "Department" means the state transportation
4 department.

5 (D) ~~(c)~~ "Federal acts" means the regional rail reorganiza-
6 tion act of 1973, 45 U.S.C. 701 to 797m; the railroad revitaliza-
7 tion and regulatory reform act of 1976, Public Law 94-210, 90
8 Stat. 31; the local rail service assistance act of 1978, section
9 5, Public Law 89-670, 80 Stat. 931; the staggers rail act of
10 1980, Public Law 96-448, 94 Stat. 1895; and the northeast rail
11 service act of 1981, subtitle E title XI, Public Law 97-35, 95
12 Stat. 643.

13 (E) ~~(d)~~ "Recreational trail" means a trail, lane, path,
14 road, or other right of way which because of its scenic, wild, or
15 topographical nature, has as its primary purpose recreational use
16 of the trail itself.

17 Sec. 10. (1) In weighing the varied interests of the resi-
18 dents of this state, the department shall give consideration to
19 the individual interest of any person, public or private corpora-
20 tion, local or regional transportation authority, local govern-
21 mental unit, private carrier, group of rail users, state agency,
22 other public or private entity, including a port authority estab-
23 lished under the Hertel-Law-T. Stopczynski port authority act,
24 ~~Act No. 639 of the Public Acts of 1978, being sections 120.101~~
25 ~~to 120.130 of the Michigan Compiled Laws~~ 1978 PA 639,
26 MCL 120.101 TO 120.130, or any combination of these entities,
27 expressing a desire to acquire or lease or secure an easement for

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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 reimburse-
5 ment, 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
8 THIS SUBSECTION WITHIN 180 DAYS AFTER THE EFFECTIVE DATE OF THE
9 AMENDATORY ACT THAT ADDED THIS SUBSECTION. THE DEPARTMENT SHALL
10 ACCOMPLISH DIVESTITURE OR CREATE LEASES, WITHOUT PARTITIONING A
11 SEGMENT OR A PORTION OF A SEGMENT, IN THE FOLLOWING ORDER FROM
12 THE SMALLEST SEGMENT FIRST TO THE LARGEST SEGMENT LAST, OF THE
13 FOLLOWING DEFINED SEGMENTS OF STATE-OWNED RAIL PROPERTY:

14 (A) LENAWEЕ COUNTY SYSTEM MEANS THE RAIL LINES OWNED BY THE
15 STATE BETWEEN ADRIAN AND RIGA, BETWEEN GROSVENOR AND RIVER RAISIN
16 AND LENAWEЕ JUNCTION.

17 (B) HILLSDALE COUNTY SYSTEM MEANS THE RAIL LINES OWNED BY
18 THE STATE BETWEEN LITCHFIELD AND THE INDIANA STATE LINE AND
19 BETWEEN JONESVILLE AND QUINCY.

20 (C) VASSAR AREA SYSTEM MEANS THE RAIL LINES OWNED BY THE
21 STATE BETWEEN MILLINGTON AND MUNGER, BETWEEN VASSAR AND COLLING,
22 AND AT 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
27 WILLIAMSBURG, AND BETWEEN OWOSSO AND ST. CHARLES.

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1 (3) THE SPECIFIC TERMS OF A SALE WILL BE AS DETERMINED BY
2 THE 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
5 RAIL 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 OTHER-
9 WISE 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, AND THAT RATES ON THE SEGMENT PURCHASED
12 FROM THE STATE WILL NOT INCREASE MORE THAN THE AVERAGE PERCENTAGE INCREASE IN THE
13 DETROIT CONSUMER PRICE INDEX FOR THE 12-MONTH PERIOD EACH YEAR
14 FOR THE BASE RATE IN EFFECT ON JANUARY 1, 1996 FOR 3 YEARS AFTER
15 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 SUB-
20 SECTION (2)(D), THE PURCHASER SHALL BE REQUIRED TO CHARGE REASON-
21 ABLE FREIGHT RATES FOR THAT SECTION BETWEEN DURAND AND ANN ARBOR
22 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 SEG-
25 MENT IN EFFECT ON THE EFFECTIVE DATE OF THIS ACT SHALL BE EXTENDED
26 AT THE SAME TERMS AND CONDITIONS UNTIL A SALE OR LEASE
27 IS EXECUTED.

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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,
3 BY 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 DEPARTMENT
10 AND SHALL THEN BE OFFERED FOR SALE OR LEASE TO THE FOLLOWING PAR-
11 TIES 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 POTEN-
16 TIAL PURCHASER SHALL SUBMIT TO THE DEPARTMENT ITS MOST RECENT
17 FINANCIAL STATEMENT AND A PROPOSED OPERATION PLAN INCLUDING TRIB-
18 UTARY LINES AND INCLUDING KNOWN POTENTIAL SUBLEASE AGREEMENTS.
19 AS USED IN THIS SUBSECTION, "TRIBUTARY LINES" MEANS SPUR RAIL
20 LINES THAT ONLY INTERSECT WITH A RAIL LINE OWNED BY THE STATE ON
21 THE EFFECTIVE DATE OF THE 1998 AMENDMENTS TO THIS SECTION.

22 (7) IF DURING THE FIRST 10 YEARS AFTER PURCHASE THE PUR-
23 CHASER ABANDONS SERVICE AND SELLS THE SEGMENT OR ANY PORTION OF
24 THE SEGMENT THAT DOES NOT INVOLVE MAIN LINE TRACK, OR ANY RAILS,
25 TIES, OR BALLAST, EXCLUDING NORMAL SALVAGE, 95% OF THE PROCEEDS
26 FROM THE SALE SHALL BE RETURNED TO THE STATE AS ADDITIONAL

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1 PURCHASE PRICE. A SEGMENT OR A PORTION OF A SEGMENT MAY BE SOLD
2 WITH THE APPROVAL OF THE DEPARTMENT.

3 (8) A PARTY AGGRIEVED BY THE PERFORMANCE OR FAILURE TO PER-
4 FORM UNDER THE TERMS OF A PURCHASE AGREEMENT MAY BRING AN ACTION
5 IN THE CIRCUIT COURT WHERE THE PARTY RESIDES OR WHERE THE PROP-
6 ERTY IS LOCATED FOR APPROPRIATE RELIEF.

7 (9) THE SPECIFIC TERMS OF A LEASE WILL BE AS DETERMINED BY
8 THE DEPARTMENT EXCEPT FOR THE FOLLOWING REQUIRED CONDITIONS:

9 (A) EACH LEASE AGREEMENT SHALL REQUIRE THAT THE LESSEE PRO-
10 VIDE AT A MINIMUM THE AVERAGE LEVEL OF SERVICE ADJUSTED FOR TRAF-
11 FIC LEVELS FOR 3 YEARS AFTER THE DATE OF THE LEASE AGREEMENT
12 UNLESS OTHERWISE MUTUALLY AGREED UPON BETWEEN THE LESSEE AND
13 SHIPPERS THAT EXISTED ON THAT LINE ON THE EFFECTIVE DATE OF THE
14 AMENDATORY ACT THAT ADDED THIS SUBSECTION, AND THAT RATES ON THAT
15 SEGMENT LEASED FROM THE STATE WILL NOT INCREASE MORE THAN THE
16 AVERAGE PERCENTAGE 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
18 FOR 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 SUBDIVI-
21 SION, "ELIGIBLE EXPENDITURES" INCLUDES THE MATERIAL AND DIRECT
22 EXPENSES REQUIRED FOR THE INSTALLATION OF RAILROAD TIES, TRACK,
23 BALLAST, CROSSING IMPROVEMENTS, DITCH AND DRAINAGE REPAIR OR
24 IMPROVEMENTS, BRUSH TRIMMING, AND THE EXPENSES REQUIRED TO CON-
25 DUCT TRACK AND SIGNAL INSPECTIONS AS SPECIFIED IN FEDERAL
26 REGULATIONS.

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1 (C) TRACKAGE IN THE SEGMENTS LEASED BY THE STATE SHALL BE
2 MAINTAINED AT NOT LESS THAN THE FEDERAL RAILWAY ADMINISTRATION
3 CLASS OF TRACK STANDARDS FOR EACH SEGMENT AS OF JANUARY 1, 1998.

4 (D) IN THE CASE OF A LEASE OF THE SEGMENT DESCRIBED IN SUB-
5 SECTION (2)(D), THE LESSEE SHALL BE REQUIRED TO CHARGE REASONABLE
6 FREIGHT RATES FOR THAT SECTION BETWEEN DURAND AND ANN ARBOR AND
7 HONOR ALL EXISTING FREIGHT RATE AGREEMENTS AND TRACKAGE RIGHTS
8 FOR 3 YEARS AFTER THE DATE OF SALE.

9 (10) A PARTY AGGRIEVED BY THE PERFORMANCE OR FAILURE TO PER-
10 FORM UNDER THE TERMS OF A LEASE AGREEMENT MAY BRING AN ACTION IN
11 THE CIRCUIT COURT WHERE THE PARTY RESIDES OR WHERE THE PROPERTY
12 IS LOCATED FOR APPROPRIATE RELIEF.

13 (11) ~~(2)~~ Upon acquisition of a right-of-way, the depart-
14 ment may preserve the right-of-way for future use as a railroad
15 line and, if preserving it for that use, shall not permit any
16 action which would render it unsuitable for future rail use.
17 However, if the department determines a right-of-way or other
18 property acquired under this act is no longer necessary for rail-
19 road transportation purposes, the department may preserve and
20 utilize the right-of-way for other transportation purposes or may
21 dispose of the right-of-way or other property acquired under this
22 act for the purposes described in section 6, or may dispose of or
23 lease the right-of-way or other property for other purposes, as
24 appropriate. However, the department shall not dispose of or
25 lease a right-of-way without first offering to transfer the
26 right-of-way to the department of natural resources. If the
27 department of natural resources desires to lease or purchase the

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

14 (12) ~~(3)~~ In preserving a right-of-way for future rail use,
15 the department may do 1 or more of the following:

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

24 (b) Transfer, for appropriate reimbursement, the
25 right-of-way to the department of natural resources for use as a
26 Michigan trailway pursuant to ~~the Michigan trailways act~~ PART
27 721 OF THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT,

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1 1994 PA 451, MCL 324.72101 TO 324.72112, if the deed includes
2 restrictions on the use of the property that assure that the
3 property remains viable for future rail usage, and includes a
4 clause that provides that the department of natural resources
5 shall transfer, for appropriate reimbursement, the right-of-way
6 to the department, upon a determination of the director of the
7 ~~state transportation~~ department that the right-of-way is needed
8 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
11 resources, to a county, city, village, or township for use as a
12 recreational trail. The lease shall be for an indefinite period
13 of time, cancelable by the department only if the right-of-way is
14 needed for rail usage. A recreational trail shall be reserved
15 for non-motorized forms of recreation or snowmobiling only.
16 Snowmobiling shall not be allowed on more than 50% of the mileage
17 of the recreational trails established pursuant to this act.

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

25 SEC. 10A. BEFORE ENTERING INTO A SALES OR LEASE AGREEMENT, THE
26 DEPARTMENT SHALL ISSUE A STATEMENT REGARDING THE VIABILITY OF THE
27 SEGMENT.

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1 SEC. 10B. (1) FOR THE PURPOSE OF SELLING THE RAILROAD
2 PROPERTIES DESCRIBED IN SECTION 10(2), THE BUREAU SHALL MAIL
3 PREQUALIFICATION MATERIALS TO ALL RAILROAD COMPANIES ON FILE WITH
4 THE SECRETARY OF STATE AND TO ALL OTHER PERSONS REQUESTING THE
5 MATERIALS.

6 (2) THE BUREAU SHALL ACCEPT EACH PREQUALIFICATION APPLICA-
7 TION THAT CONTAINS ALL OF THE FOLLOWING INFORMATION:

8 (A) THE NAME AND ADDRESS OF THE PROSPECTIVE BIDDER AND ANY
9 PARTNER OR OTHER JOINT VENTURE PARTICIPANT IN THE BID.

10 (B) A DETAILED NARRATIVE DESCRIBING THE RELEVANT EXPERIENCE
11 OF THE PROSPECTIVE BIDDER, ANY PARTNER OR PARTICIPANT, AND KEY
12 MANAGEMENT PERSONNEL, WITH PARTICULAR EMPHASIS ON RAIL OPERATIONS
13 AND MARKETING.

14 (C) A DESCRIPTION OF THE STAFFING AVAILABLE TO OPERATE THE
15 SEGMENT SUBJECT TO THE BID, INCLUDING BOTH CURRENT AND PROSPEC-
16 TIVE EMPLOYEES.

17 (D) A LISTING OF THE EQUIPMENT AVAILABLE TO OPERATE AND
18 MAINTAIN THE SEGMENT OR DETAILED INFORMATION SHOWING HOW THE SPE-
19 CIFIC EQUIPMENT WILL BE PURCHASED OR LEASED IF THE PROSPECTIVE
20 BIDDER IS SELECTED TO TAKE POSSESSION OF THE SEGMENT.

21 (E) FINANCIAL STATEMENTS FOR THE 2 CALENDAR OR FISCAL YEARS
22 IMMEDIATELY PRECEDING THE MAILING OF THE PREQUALIFICATION APPLI-
23 CATION, TOGETHER WITH ALL QUARTERLY FINANCIAL STATEMENTS AVAIL-
24 ABLE AFTER THE CLOSE OF THE LAST CALENDAR OR FISCAL YEAR AND UP
25 TO THE DATE THAT THE APPLICATION IS FILED, AND ANY OTHER FINAN-
26 CIAL INFORMATION REQUESTED BY THE BUREAU. EACH FINANCIAL

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1 STATEMENT SHALL BE PREPARED AND CERTIFIED BY AN INDEPENDENT
2 CERTIFIED PUBLIC ACCOUNTANT.

3 (F) BANK AND COMMERCIAL LENDING REFERENCES, INCLUDING THE
4 NAMES AND ADDRESSES OF THE INSTITUTIONS AND ACCOUNT OFFICERS.

5 (3) A COMPLETED PREQUALIFICATION APPLICATION SHALL BE
6 RECEIVED BY THE BUREAU NOT LATER THAN 5:00 P.M. ON THE DATE INDI-
7 CATED IN THE PREQUALIFICATION PACKAGE. A PROSPECTIVE BIDDER WHO
8 REQUESTS PREQUALIFICATION MATERIALS AFTER THE DATE OF THE
9 DEPARTMENT'S INITIAL MAILING SHALL BE SUBJECT TO THE SAME DUE
10 DATE AS ALL OTHER APPLICANTS. THE DUE DATE SHALL BE CLEARLY
11 NOTED IN THE PREQUALIFICATION MATERIALS. INCOMPLETE APPLICATIONS
12 OR APPLICATIONS RECEIVED AFTER THE DUE DATE SHALL NOT BE
13 ACCEPTED.

14 (4) THE DIRECTOR SHALL APPOINT A COMMITTEE COMPOSED OF MEM-
15 BERS OF THE DEPARTMENT STAFF TO REVIEW AND EVALUATE ALL ACCEPTED
16 APPLICATIONS AND NOTIFY ALL PROSPECTIVE BIDDERS, WITHIN 30 DAYS
17 AFTER THE APPLICATION DUE DATE, WHETHER THE PROSPECTIVE BIDDER
18 HAS BEEN PREQUALIFIED TO BID ON THE DIVESTITURE OF A SEGMENT.

19 (5) THE COMMITTEE SHALL BASE ITS REVIEW AND EVALUATION OF
20 ALL ACCEPTED PREQUALIFICATION APPLICATIONS ON THE SUFFICIENCY OF
21 THE PROSPECTIVE BIDDER'S RESOURCES BOTH TO PARTICIPATE IN THE
22 BIDDING PROCESS AND TO ACQUIRE AND RELIABLY AND EFFECTIVELY OPER-
23 ATE THE SEGMENT SUBJECT TO THE BID, INCLUDING THE PROSPECTIVE
24 BIDDER'S FINANCIAL ABILITY TO CLOSE THE DIVESTITURE TRANSACTION.

25 (6) A PROSPECTIVE BIDDER THAT SUBMITS A FALSE STATEMENT OF A
26 MATERIAL NATURE SHALL NOT BE PREQUALIFIED.

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1 (7) A PROSPECTIVE BIDDER THAT, AT THE TIME OF SUBMITTING ITS
2 PREQUALIFICATION APPLICATION, IS IN ARREARS WITH EITHER THE STATE
3 OR FEDERAL GOVERNMENT SHALL NOT BE PREQUALIFIED.

4 SEC. 10C. (1) A PROSPECTIVE BIDDER MAY APPEAL IN WRITING TO
5 THE ADMINISTRATOR THE COMMITTEE'S DECISION NOT TO PREQUALIFY A
6 PROSPECTIVE BIDDER. THE APPEAL SHALL BE RECEIVED WITHIN 10 DAYS
7 AFTER THE PROSPECTIVE BIDDER HAS BEEN NOTIFIED OF THE COMMITTEE'S
8 DECISION. THE APPEAL SHALL STATE WHY THE PROSPECTIVE BIDDER DIS-
9 PUTES THE DECISION AND SHALL SUPPLY ANY SUPPORTING DOCUMENTS
10 NEEDED TO SUBSTANTIATE THE PROSPECTIVE BIDDER'S CLAIMS.

11 (2) THE ADMINISTRATOR SHALL ASSEMBLE AND SUBMIT ALL RELEVANT
12 INFORMATION TO A PANEL. THE INFORMATION SHALL INCLUDE THE DECI-
13 SION OF THE COMMITTEE AND THE MATERIAL AND INFORMATION SUBMITTED
14 BY THE PROSPECTIVE BIDDER.

15 (3) THE PANEL SHALL REVIEW THE INFORMATION PROVIDED BY THE
16 ADMINISTRATOR, CONDUCT ANY FURTHER INQUIRY OR REVIEW CONSIDERED
17 APPROPRIATE BY THE PANEL, AND DECIDE THE ISSUE. THE PANEL MAY,
18 AT ITS SOLE DISCRETION, INVITE THE PROSPECTIVE BIDDER TO MEET
19 WITH THE PANEL TO PROVIDE FURTHER EXPLANATION.

20 (4) THE DEPUTY DIRECTOR OF THE BUREAU SHALL NOTIFY THE PRO-
21 SPECTIVE BIDDER AND OTHER APPROPRIATE PERSONS, IN WRITING, OF THE
22 DECISION MADE BY THE PANEL AS SOON AS REASONABLY POSSIBLE AFTER
23 THE APPEAL IS RECEIVED AND THE INFORMATION NECESSARY TO DECIDE
24 THE APPEAL IS ASSEMBLED.

25 (5) AS USED IN THIS SECTION AND SECTION 10D:

26 (A) "ADMINISTRATOR" MEANS THE DEPUTY DIRECTOR OF THE BUREAU.

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1 (B) "PANEL" MEANS THE PREQUALIFICATION APPEAL PANEL
2 CONSISTING OF THOSE EMPLOYEES OF THE DEPARTMENT DESIGNATED BY THE
3 DIRECTOR.

4 SEC. 10D. (1) THE DECISION OF THE PANEL MAY BE APPEALED TO
5 THE STATE TRANSPORTATION COMMISSION IF THE PROSPECTIVE BIDDER
6 SUBMITS A WRITTEN APPEAL AND ALL SUPPORTING DOCUMENTS TO THE
7 STATE TRANSPORTATION COMMISSION WITHIN 10 DAYS AFTER THE PANEL
8 RENDERS ITS DECISION. UPON FAILURE TO APPEAL, THE DECISION OF
9 THE PANEL BECOMES FINAL.

10 (2) THE COMMISSION MAY CONSIDER THE APPEAL EITHER AT A REGU-
11 LARLY SCHEDULED PUBLIC MEETING OR A SPECIAL MEETING. IN MAKING
12 ITS DECISION, THE COMMISSION SHALL TAKE INTO CONSIDERATION ALL
13 RECORDS FROM THE PANEL'S REVIEW, TOGETHER WITH ANY DOCUMENTATION
14 THAT MAY HAVE BEEN FILED BY THE PROSPECTIVE BIDDER AND BY THE
15 DEPARTMENT. UNLESS A FINAL DECISION ON THE APPEAL IS DELAYED FOR
16 GOOD CAUSE AND ALL PARTIES ARE APPROPRIATELY NOTIFIED, THE COM-
17 MISSION SHALL INFORM THE PROSPECTIVE BIDDER AND THE DEPARTMENT OF
18 ITS DECISION ON THE APPEAL BY SENDING A COPY OF ITS WRITTEN DECI-
19 SION WITHIN 10 DAYS AFTER THE DATE ON WHICH THE APPEAL WAS HEARD
20 BY THE COMMISSION. THE DECISION OF THE COMMISSION SHALL BE BIND-
21 ING ON ALL PARTIES INVOLVED.

22 SEC. 10E. (1) FOR EACH SEGMENT TO BE DIVESTED, THE BUREAU
23 SHALL DEVELOP A SCORING MECHANISM WITH WHICH TO EVALUATE PROPOS-
24 ALS SUBMITTED BY PROSPECTIVE BIDDERS.

25 (2) THE BUREAU SHALL SOLICIT PROPOSALS FROM BIDDERS. THE
26 PROPOSALS SHALL, AT A MINIMUM, INCLUDE ALL OF THE FOLLOWING ITEMS
27 AND INFORMATION:

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1 (A) PROOF OF SUFFICIENT FINANCIAL ABILITY TO LEASE, OPERATE,
2 AND PROVIDE ADEQUATE MAINTENANCE ON THE SEGMENT.

3 (B) A DETAILED 10-YEAR PLAN FOR OPERATION OF THE SEGMENT,
4 INCLUDING ANY SPECIFIC PORTIONS THE BIDDER PROPOSES TO ABANDON OR
5 OTHERWISE CEASE TO OPERATE.

6 (C) THE ANTICIPATED EFFECT THE CHANGE WOULD HAVE ON SHIPPERS
7 ON THE SEGMENT AND EMPLOYEES OF THE CURRENT CONTRACT OPERATORS ON
8 THE SEGMENT AND INFORMATION ON STEPS THE BIDDER WOULD TAKE TO
9 ACHIEVE A SMOOTH TRANSITION AND MINIMIZE DISRUPTION.

10 (D) A STRATEGIC PLAN SETTING FORTH THE BIDDER'S UNDERSTAND-
11 ING OF THE BUSINESS ENVIRONMENT OF THE SEGMENT AND THE PROPOSED
12 APPROACH TO MAINTAINING EXISTING TRAFFIC AND CAPTURING ADDITIONAL
13 BUSINESS.

14 (E) A CAPITAL PROGRAM PLAN SETTING FORTH THE BIDDER'S
15 10-YEAR INVESTMENT PROGRAM FOR MAINTAINING OR IMPROVING THE CON-
16 DITION OF THE INFRASTRUCTURE OF THE SEGMENT.

17 (F) TEN-YEAR FINANCIAL PROJECTIONS FOR THE BIDDER'S PROPOSED
18 OPERATION OF THE SEGMENT, INCLUDING PROJECTED INCOME STATEMENT,
19 BALANCE SHEET, AND CASH FLOW STATEMENT.

20 (G) A PROPOSAL GUARANTY IN THE FORM OF A CERTIFIED CHECK OR
21 SURETY BOND FOR AN AMOUNT EQUAL TO 10% OF THE NET LIQUIDATION
22 VALUE AS DETERMINED BY THE DEPARTMENT FOR PURCHASE OF THE SEGMENT.

23 (H) IN A SEALED ENVELOPE, DETAILED DOCUMENTATION OF THE
24 AVAILABILITY OF THE REMAINDER OF THE CONSIDERATION IN CASH AND IN
25 ANY OTHER NONCASH COMPENSATION OFFERED BY THE BIDDER FOR THE
26 SEGMENT.

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1 (I) OTHER INFORMATION AS REQUIRED BY THE TERMS OF THE
2 SOLICITATION FOR PROPOSALS.

3 (3) BEFORE THE DUE DATE FOR THE PROPOSALS, THE BUREAU MAY
4 MAKE AVAILABLE TO EACH BIDDER ANY PUBLICLY AVAILABLE INFORMATION
5 IN THE BUREAU'S POSSESSION CONCERNING TRAFFIC ON THE SEGMENT AND
6 THE CONDITION OF THE INFRASTRUCTURE OF THE SEGMENT. THE BIDDER
7 HAS THE PRIMARY RESPONSIBILITY FOR OBTAINING PERTINENT INFORMA-
8 TION ON WHICH TO BASE A BID. THE DEPARTMENT IS NOT RESPONSIBLE
9 FOR ASSURING THAT ALL AVAILABLE INFORMATION IS PROVIDED.

10 SEC. 10F. (1) WITHOUT OPENING THE SEALED ENVELOPE, THE
11 BUREAU SHALL APPLY THE SCORING MECHANISM DESCRIBED IN
12 SECTION 10E(1) TO SELECT THE BIDDERS FOR FURTHER CONSIDERATION.

13 (2) FOR EACH PROPOSAL ACCEPTED UNDER SUBSECTION (1), THE
14 BUREAU SHALL OPEN THE SEALED ENVELOPE AND EVALUATE THE FULL
15 PROPOSAL. THE BUREAU SHALL SELECT THE BIDDER TO OPERATE THE SEG-
16 MENT BASED UPON A COMBINATION OF THE SCORE, USING THE MECHANISM
17 DESCRIBED IN SECTION 10E(1), AND BID PRICE THAT YIELDS THE GREAT-
18 EST LIKELIHOOD OF PROVIDING EFFICIENT AND RELIABLE RAIL SERVICE
19 AND THE HIGHEST COMPENSATION FOR THE SEGMENT. IF THE BUREAU DOES
20 NOT SELECT THE BIDDER WHO OFFERS THE HIGHEST CONSIDERATION, IT
21 SHALL PROVIDE A WRITTEN EXPLANATION OF ITS DECISION. IF A BIDDER
22 DOES NOT OFFER CONSIDERATION EQUAL TO OR GREATER THAN THE
23 SEGMENT'S NET LIQUIDATION VALUE, THEN THE BUREAU SHALL REJECT THAT
24 PROPOSAL .

25 (3) UNLESS ALL PROPOSALS ARE REJECTED AS PROVIDED IN
26 SUBSECTION (2), THE BUREAU SHALL SELECT AN APPROVED BIDDER WITHIN
27 30 DAYS OF THE DEADLINE FOR THE SUBMISSION OF PROPOSALS.

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1 (4) IF THE APPROVED BIDDER DOES NOT ACCEPT AN AWARD OF A
2 SEGMENT UNDER SUBSECTION (3), THEN THE PROPOSAL GUARANTY PROVIDED
3 UNDER SECTION 10E(2)(G) SHALL BE RETAINED BY THE BUREAU AS LIQUI-
4 DATED DAMAGES FOR THE COSTS AND LOSSES WHICH THE BUREAU INCURS
5 BUT WHICH CANNOT BE PRECISELY CALCULATED, UNLESS THE BUREAU
6 DETERMINES THAT THE BIDDER HAS MADE A COMPELLING SHOWING OF GOOD
7 CAUSE TO EXCUSE THE FAILURE TO ACCEPT THE AWARD.

8 (5) THE DEPARTMENT SHALL RETURN TO ALL UNSUCCESSFUL BIDDERS
9 THE CERTIFIED CHECKS PLUS INTEREST EARNED OR SURETY BONDS THAT ARE
10 SUBMITTED AS THE BIDDER'S PROPOSAL GUARANTY PROVIDED UNDER SECTION 10E(2)(G).

11 (6) UNLESS EXTENDED BY THE BUREAU FOR GOOD CAUSE, THE
12 APPROVED BIDDER SHALL ENTER INTO AN AGREEMENT WITH THE BUREAU AND
13 SHALL TAKE POSSESSION OF THE SEGMENT AND BEGIN OPERATIONS WITHIN
14 120 DAYS AFTER THE NOTIFICATION OF ITS APPROVAL. THE AGREEMENT
15 SHALL NOT BE EXECUTED UNTIL ALL NECESSARY APPROVALS ARE OBTAINED
16 FROM THE STATE TRANSPORTATION COMMISSION AND THE STATE ADMINIS-
17 TRATIVE BOARD.

18 SEC. 10G. THE DIRECTOR OR HIS OR HER DESIGNEE MAY SELECT,
19 USING ANY MEANS AT HIS OR HER DISPOSAL, A REPLACEMENT OPERATOR
20 FOR A SEGMENT ON AN EMERGENCY BASIS IF THE PERSON OPERATING THE
21 SEGMENT UNDER CONTRACT WITH THE DEPARTMENT DISCONTINUES SERVICE
22 VOLUNTARILY OR IS REMOVED FROM THE SEGMENT BY THE DEPARTMENT FOR
23 FAILURE TO COMPLY WITH THE TERMS OF ITS OPERATING AGREEMENT. THE
24 DESIGNATION SHALL ONLY BE EFFECTIVE UNTIL THE DIVESTITURE PROCE-
25 DURES AS PROVIDED IN THIS ACT ARE COMPLETED FOR THE SEGMENT.

26 Sec. 17. (1) The department may provide financial
27 assistance, within the limits and conditions of the funds

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1 appropriated by the legislature, or otherwise obtained, for
2 grants, leases, loans, and purchases, or any combination of
3 grants, leases, loans, and purchases, for the establishment, con-
4 tinuation, and improvement of production, operation, maintenance,
5 and support facilities of rail freight and marine freight
6 transportation.

7 (2) The following funds shall be deposited in the state
8 treasury and shall be held as a separate fund to be known as the
9 rail freight fund which shall be administered by the department
10 within the limits and conditions of funds appropriated by the
11 legislature for the purposes of subsection (1):

12 (a) The funds repaid under a contract entered into pursuant
13 to subsection (1).

14 (b) Revenue received from the sale, lease, or other disposi-
15 tion of property acquired under this act.

16 (c) Railroad operating subsidies refunded to the state pur-
17 suant to a contract.

18 (d) Revenue received from the sale or lease of a tug barge
19 or related facilities constructed or acquired with comprehensive
20 transportation fund money or comprehensive transportation fund
21 bond proceeds.

22 ~~(3) The fund shall terminate on January 1, 1998. Revenue~~
23 ~~remaining in the fund on January 1, 1998 shall be transferred to~~
24 ~~the comprehensive transportation fund created in section 10b of~~
25 ~~Act No. 51 of the Public Acts of 1951, being section 247.660b of~~
26 ~~the Michigan Compiled Laws. However, for the fiscal year ending~~
27 ~~September 30, 1993 only, \$3,995,000.00 in revenue from the fund~~

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1 ~~shall be transferred to the unappropriated balance of the general~~
2 ~~fund.~~

3 Enacting section 1. Section 3 of the state transportation
4 preservation act of 1976, 1976 PA 295, MCL 474.53, is repealed.