

Act No. 235  
Public Acts of 1998  
Approved by the Governor  
July 2, 1998  
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July 3, 1998  
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STATE OF MICHIGAN  
89TH LEGISLATURE  
REGULAR SESSION OF 1998

**Introduced by Reps. Gernaat, Harder, Green, Cropsey, Llewellyn, Jellema, Bobier, McManus, DeVuyst, Baade, London, Curtis, McBryde, Goschka, Middleton, Wetters, Rhead, McNutt, Bodem, Lowe, Hammerstrom, Kukuk, Frank, Bogardus, Sikkema, Tesanovich, Prusi, Gagliardi, Anthony, Raczkowski and Galloway**

## **ENROLLED HOUSE BILL No. 4328**

AN ACT to amend 1976 PA 295, entitled "An act to improve and maintain transportation services in this state; to provide for the acquisition and use of funds; to provide for the acquisition of certain railroad facilities and certain property; to provide for the disposition and use of facilities and property acquired under this act; to provide for financial assistance to certain private transportation services; to prescribe the powers and duties of certain state departments and agencies; to provide for the transfer of certain funds; to provide for the creation of a fund; and to provide for appropriations," 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:*

Sec. 2. As used in this act:

- (a) "Bureau" means the bureau of urban and public transportation in the department.
- (b) "Commuter trail" means a trail, lane, path, road, or other right of way on which motorized vehicles are not permitted and which has the primary or substantial purpose and result of providing a means for people to move from 1 location to another.
- (c) "Department" means the state transportation department.
- (d) "Federal acts" means the regional rail reorganization act of 1973, 45 U.S.C. 701 to 797m; the railroad revitalization and regulatory reform act of 1976, Public Law 94-210, 90 Stat. 31; the local rail service assistance act of 1978, section 5, Public Law 95-670, 92 Stat. 931; the staggers rail act of 1980, Public Law 96-448, 94 Stat. 1895; and the northeast rail service act of 1981, subtitle E title XI, Public Law 97-35, 95 Stat. 643.
- (e) "Recreational trail" means a trail, lane, path, road, or other right of way which because of its scenic, wild, or topographical nature, has as its primary purpose recreational use of the trail itself.

Sec. 10. (1) In weighing the varied interests of the residents of this state, the department shall give consideration to 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, other public or private entity, including a port authority established under the Hertel-Law-T. Stopczynski port authority act, 1978 PA 639, MCL 120.101 to 120.130, or any combination of these entities, expressing a desire to acquire or lease or secure an easement for the use of a portion

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

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

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

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

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

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

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

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

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

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

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

(e) Any existing lease or agreement for operation of a segment in effect on the effective date of this act shall be extended at the same terms and conditions until a sale or lease is executed.

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

(a) Current operator.

(b) Current shippers on that segment.

(c) Governmental entities.

(d) Other railroad companies.

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

(a) Current shippers on that segment.

(b) Governmental entities.

(c) Other railroad companies.

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

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

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

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

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

(b) Not less than 50% of trackage rights revenues shall be reinvested in eligible expenditures. As used in this subdivision, "eligible expenditures" includes 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 as specified in federal regulations.

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

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

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

(11) Upon acquisition of a right-of-way, the department may preserve the right-of-way for future use as a railroad line and, if preserving it for that use, shall not permit any action which would render it unsuitable for future rail use. However, if the department determines a right-of-way or other property acquired under this act is no longer necessary for railroad transportation purposes, the department may preserve and utilize the right-of-way for other transportation purposes or may dispose of the right-of-way or other property acquired under this act for the purposes described in section 6, or may dispose of or lease the right-of-way or other property for other purposes, as appropriate. However, the department shall not dispose of or lease a right-of-way without first offering to transfer the right-of-way to the department of natural resources. If the department of natural resources desires to lease or purchase the right-of-way, the department of natural resources must indicate their desire within 60 days and accept the offered transfer within 1 year after the offer is made. If the department of natural resources does not indicate their desires within 60 days, the department may dispose of or lease the right-of-way as otherwise provided for in this act. If the department of natural resources does not accept the offered transfer within 1 year after indicating their desire to lease or purchase the right-of-way, the department may dispose of or lease the right-of-way as otherwise provided for in this act. When appropriate, a right-of-way or other property shall be transferred or leased to a public or private entity with appropriate reimbursement, as determined by the department.

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

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

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

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

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

Sec. 10a. Before entering into a sales or lease agreement, the department shall issue a statement regarding the viability of the segment.

Sec. 10b. (1) For the purpose of selling the railroad properties described in section 10(2), the bureau shall mail prequalification materials to all railroad companies on file with the secretary of state and to all other persons requesting the materials.

(2) The bureau shall accept each prequalification application that contains all of the following information:

(a) The name and address of the prospective bidder and any partner or other joint venture participant in the bid.

(b) A detailed narrative describing the relevant experience of the prospective bidder, any partner or participant, and key management personnel, with particular emphasis on rail operations and marketing.

(c) A description of the staffing available to operate the segment subject to the bid, including both current and prospective employees.

(d) A listing of the equipment available to operate and maintain the segment or detailed information showing how the specific equipment will be purchased or leased if the prospective bidder is selected to take possession of the segment.

(e) Financial statements for the 2 calendar or fiscal years immediately preceding the mailing of the prequalification application, together with all quarterly financial statements available after the close of the last calendar or fiscal year and up to the date that the application is filed, and any other financial information requested by the bureau. Each financial statement shall be prepared and certified by an independent certified public accountant.

(f) Bank and commercial lending references, including the names and addresses of the institutions and account officers.

(3) A completed prequalification application shall be received by the bureau not later than 5:00 p.m. on the date indicated in the prequalification package. A prospective bidder who requests prequalification materials after the date of the department's initial mailing shall be subject to the same due date as all other applicants. The due date shall be clearly noted in the prequalification materials. Incomplete applications or applications received after the due date shall not be accepted.

(4) The director shall appoint a committee composed of members of the department staff to review and evaluate all accepted applications and notify all prospective bidders, within 30 days after the application due date, whether the prospective bidder has been prequalified to bid on the divestiture of a segment.

(5) The committee shall base its review and evaluation of all accepted prequalification applications on the sufficiency of the prospective bidder's resources both to participate in the bidding process and to acquire and reliably and effectively operate the segment subject to the bid, including the prospective bidder's financial ability to close the divestiture transaction.

(6) A prospective bidder that submits a false statement of a material nature shall not be prequalified.

(7) A prospective bidder that, at the time of submitting its prequalification application, is in arrears with either the state or federal government shall not be prequalified.

Sec. 10c. (1) A prospective bidder may appeal in writing to the administrator the committee's decision not to prequalify a prospective bidder. The appeal shall be received within 10 days after the prospective bidder has been notified of the committee's decision. The appeal shall state why the prospective bidder disputes the decision and shall supply any supporting documents needed to substantiate the prospective bidder's claims.

(2) The administrator shall assemble and submit all relevant information to a panel. The information shall include the decision of the committee and the material and information submitted by the prospective bidder.

(3) The panel shall review the information provided by the administrator, conduct any further inquiry or review considered appropriate by the panel, and decide the issue. The panel may, at its sole discretion, invite the prospective bidder to meet with the panel to provide further explanation.

(4) The deputy director of the bureau shall notify the prospective bidder and other appropriate persons, in writing, of the decision made by the panel as soon as reasonably possible after the appeal is received and the information necessary to decide the appeal is assembled.

(5) As used in this section and section 10d:

(a) "Administrator" means the deputy director of the bureau.

(b) "Panel" means the prequalification appeal panel consisting of those employees of the department designated by the director.

Sec. 10d. (1) The decision of the panel may be appealed to the state transportation commission if the prospective bidder submits a written appeal and all supporting documents to the state transportation commission within 10 days after the panel renders its decision. Upon failure to appeal, the decision of the panel becomes final.

(2) The commission may consider the appeal either at a regularly scheduled public meeting or a special meeting. In making its decision, the commission shall take into consideration all records from the panel's review, together with any

documentation that may have been filed by the prospective bidder and by the department. Unless a final decision on the appeal is delayed for good cause and all parties are appropriately notified, the commission shall inform the prospective bidder and the department of its decision on the appeal by sending a copy of its written decision within 10 days after the date on which the appeal was heard by the commission. The decision of the commission shall be binding on all parties involved.

Sec. 10e. (1) For each segment to be divested, the bureau shall develop a scoring mechanism with which to evaluate proposals submitted by prospective bidders.

(2) The bureau shall solicit proposals from bidders. The proposals shall, at a minimum, include all of the following items and information:

(a) Proof of sufficient financial ability to lease, operate, and provide adequate maintenance on the segment.

(b) A detailed 10-year plan for operation of the segment, including any specific portions the bidder proposes to abandon or otherwise cease to operate.

(c) The anticipated effect the change would have on shippers on the segment and employees of the current contract operators on the segment and information on steps the bidder would take to achieve a smooth transition and minimize disruption.

(d) A strategic plan setting forth the bidder's understanding of the business environment of the segment and the proposed approach to maintaining existing traffic and capturing additional business.

(e) A capital program plan setting forth the bidder's 10-year investment program for maintaining or improving the condition of the infrastructure of the segment.

(f) Ten-year financial projections for the bidder's proposed operation of the segment, including projected income statement, balance sheet, and cash flow statement.

(g) A proposal guaranty in the form of a certified check or surety bond for an amount equal to 10% of the net liquidation value as determined by the department for purchase of the segment.

(h) In a sealed envelope, detailed documentation of the availability of the remainder of the consideration in cash and in any other noncash compensation offered by the bidder for the segment.

(i) Other information as required by the terms of the solicitation for proposals.

(3) Before the due date for the proposals, the bureau may make available to each bidder any publicly available information in the bureau's possession concerning traffic on the segment and the condition of the infrastructure of the segment. The bidder has the primary responsibility for obtaining pertinent information on which to base a bid. The department is not responsible for assuring that all available information is provided.

Sec. 10f. (1) Without opening the sealed envelope, the bureau shall apply the scoring mechanism described in section 10e(1) to select the bidders for further consideration.

(2) For each proposal accepted under subsection (1), the bureau shall open the sealed envelope and evaluate the full proposal. The bureau shall select the bidder to operate the segment based upon a combination of the score, using the mechanism described in section 10e(1), and bid price that yields the greatest likelihood of providing efficient and reliable rail service and the highest compensation for the segment. If the bureau does not select the bidder who offers the highest consideration, it shall provide a written explanation of its decision. If a bidder does not offer consideration equal to or greater than the segment's net liquidation value, then the bureau shall reject that proposal.

(3) Unless all proposals are rejected as provided in subsection (2), the bureau shall select an approved bidder within 30 days of the deadline for the submission of proposals.

(4) If the approved bidder does not accept an award of a segment under subsection (3), then the proposal guaranty provided under section 10e(2)(g) shall be retained by the bureau as liquidated damages for the costs and losses which the bureau incurs but which cannot be precisely calculated, unless the bureau determines that the bidder has made a compelling showing of good cause to excuse the failure to accept the award.

(5) The department shall return to all unsuccessful bidders the certified checks plus interest earned or surety bonds that are submitted as the bidder's proposal guaranty provided under section 10e(2)(g).

(6) Unless extended by the bureau for good cause, the approved bidder shall enter into an agreement with the bureau and shall take possession of the segment and begin operations within 120 days after the notification of its approval. The agreement shall not be executed until all necessary approvals are obtained from the state transportation commission and the state administrative board.

Sec. 10g. The director or his or her designee may select, using any means at his or her disposal, a replacement operator for a segment on an emergency basis if the person operating the segment under contract with the department discontinues service voluntarily or is removed from the segment by the department for failure to comply with the terms

of its operating agreement. The designation shall only be effective until the divestiture procedures as provided in this act are completed for the segment.

Sec. 17. (1) The department may provide financial assistance, within the limits and conditions of the funds appropriated by the legislature, or otherwise obtained, for grants, leases, loans, and purchases, or any combination of grants, leases, loans, and purchases, for the establishment, continuation, and improvement of production, operation, maintenance, and support facilities of rail freight and marine freight transportation.

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

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

(b) Revenue received from the sale, lease, or other disposition of property acquired under this act.

(c) Railroad operating subsidies refunded to the state pursuant to a contract.

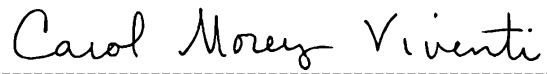
(d) Revenue received from the sale or lease of a tug barge or related facilities constructed or acquired with comprehensive transportation fund money or comprehensive transportation fund bond proceeds.

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

This act is ordered to take immediate effect.



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Clerk of the House of Representatives.



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Secretary of the Senate.

Approved \_\_\_\_\_

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Governor.