

HOUSE BILL No. 5258

November 5, 2003, Introduced by Reps. Shackleton, Pastor, Newell, Casperson, Elkins and Farhat and referred to the Committee on Regulatory Reform.

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
2 residents of this state, the department shall give consideration
3 to 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
7 authority established under the Hertel-Law-T. Stopczynski port
8 authority act, 1978 PA 639, MCL 120.101 to 120.130, or any
9 combination of these entities, expressing a desire to acquire or
10 lease or secure an easement for the use of a portion or all of
11 the real property owned by a railroad company. The property

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

5 (2) The department may begin divestiture or offer 10-year
6 leases to the current operator of the properties described in
7 this subsection within 180 days after ~~the effective date of the~~
8 ~~amendatory act that added this subsection~~ **July 3, 1998**. The
9 department shall accomplish divestiture or create leases, without
10 partitioning a segment or a portion of a segment, in the
11 following order from the smallest segment first to the largest
12 segment last, of the following defined segments of state-owned
13 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
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.

1 (3) The specific terms of a sale will be as determined by the
2 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
9 otherwise mutually agreed upon between the purchaser and shippers
10 that existed on that line on the effective date of the amendatory
11 act that added this subsection, and that rates on the segment
12 purchased from the state will not increase more than the average
13 percentage increase in the Detroit consumer price index for the
14 12-month period each year for the base rate in effect on
15 January 1, 1996 for 3 years after 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
20 subsection (2)(d), the purchaser shall be required to charge
21 reasonable freight rates for that section between Durand and Ann
22 Arbor 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
25 segment in effect on ~~the effective date of this act~~ **November**
26 **15, 1976** shall be extended at the same terms and conditions until
27 a sale or lease is executed.

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
10 the department and shall then be offered for sale or lease to the
11 following parties 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
16 potential purchaser shall submit to the department its most
17 recent financial statement and a proposed operation plan
18 including tributary lines and including known potential sublease
19 agreements. As used in this subsection, "tributary lines" means
20 spur rail lines that only intersect with a rail line owned by the
21 state on ~~the effective date of the 1998 amendments to this~~
22 ~~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,
26 ties, or ballast, excluding normal salvage, 95% of the proceeds
27 from the sale shall be returned to the state as additional

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
4 perform under the terms of a purchase agreement may bring an
5 action in the circuit court where the party resides or where the
6 property 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
10 provide at a minimum the average level of service adjusted for
11 traffic 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~~ **July 3, 1998**, and that
15 rates on that segment leased from the state will not increase
16 more than the average percentage increase in the Detroit consumer
17 price index for the 12-month period each year for the base rate
18 in effect on January 1, 1996 for 3 years after the date of the
19 lease.

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

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

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

13 (11) Upon acquisition of a right-of-way, the department may
14 preserve the right-of-way for future use as a railroad line and,
15 if preserving it for that use, shall not permit any action which
16 would render it unsuitable for future rail use. However, if the
17 department determines a right-of-way or other property acquired
18 under this act is no longer necessary for railroad transportation
19 purposes, the department may preserve and utilize the
20 right-of-way for other transportation purposes or may dispose of
21 the right-of-way or other property acquired under this act for
22 the purposes described in section 6, or may dispose of or lease
23 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

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
4 natural resources does not indicate their desires within 60 days,
5 the department may dispose of or lease the right-of-way as
6 otherwise 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
11 appropriate, a right-of-way or other property shall be
12 transferred or leased to a public or private entity with
13 appropriate reimbursement, as determined by the department.

14 (12) In preserving a right-of-way for future rail use, the
15 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 right-of-way
25 to the department of natural resources for use as a Michigan
26 trailway pursuant to part 721 of the natural resources and
27 environmental protection act, 1994 PA 451, MCL 324.72101 to

1 ~~324.72112~~ **324.72113**, if the deed includes restrictions on the
2 use of the property that assure that the property remains viable
3 for future rail usage, and includes a clause that provides that
4 the department of natural resources shall transfer, for
5 appropriate reimbursement, the right-of-way to the department,
6 upon a determination of the director of the department that the
7 right-of-way is needed for use as a railroad line.

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

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

24 **(13) The restrictions on transfer of property and the**
25 **requirements of a conveyance or lease of property described in**
26 **this section do not apply to a conveyance of property located in**
27 **the city of Petoskey, Emmet county, Michigan, and further**

1 described as follows:

2 That portion of state owned rail property, and the tracks on that
3 property, located in the city of Petoskey from the westerly
4 boundary line of the Emmet street right of way to the north end
5 of the state owned right of way.

6 Enacting section 1. This amendatory act does not take
7 effect unless Senate Bill No. _____ or House Bill No. 5257
8 (request no. 03599'03) of the 92nd Legislature is enacted into
9 law.