

# HOUSE BILL No. 4004

January 13, 2011, Introduced by Rep. Kurtz 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 2008 PA 570.

**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 the  
3 individual interest of any person, public or private corporation,  
4 local or regional transportation authority, local governmental  
5 unit, private carrier, group of rail users, state agency, other  
6 public or private entity, including a port authority established  
7 under the Hertel-Law-T. Stopczynski port authority act, 1978 PA  
8 639, MCL 120.101 to 120.130, or any combination of these entities,  
9 expressing a desire to acquire or lease or secure an easement for  
10 the use of a portion or all of the real property owned by a

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

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

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

16 (b) Hillsdale county system means the rail lines owned by the  
17 state between Litchfield and the Indiana state line and between  
18 Jonesville and Quincy, **EXCLUDING THAT PORTION OF THE SEGMENT**  
19 **LOCATED IN JONESVILLE WEST OF BECK STREET TO THE NORTHERN BANK OF**  
20 **THE ST. JOSEPH RIVER.**

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

24 (d) Ann Arbor and Northwest Michigan system means the rail  
25 lines owned by the state between Durand and Ann Arbor, between  
26 Owosso and Thompsonville, between Cadillac and Petoskey excluding  
27 the portion of the segment located in Petoskey north of Emmet

1 street, between Walton Junction and Traverse City, between Grawn  
2 and Williamsburg, and between Owosso and St. Charles.

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

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

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

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

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

25 (e) Any existing lease or agreement for operation of a segment  
26 in effect on July 3, 1998 shall be extended at the same terms and  
27 conditions until 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, by  
3 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  
10 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 recent  
17 financial statement and a proposed operation plan including  
18 tributary lines and including known potential sublease agreements.  
19 As used in this subsection, "tributary lines" means spur rail lines  
20 that only intersect with a rail line owned by the state on July 3,  
21 1998.

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

1 the department.

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

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

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

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

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

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

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

10 (11) Upon acquisition of a right-of-way, the department may  
11 preserve the right-of-way for future use as a railroad line and, if  
12 preserving it for that use, shall not permit any action which would  
13 render it unsuitable for future rail use. However, if the  
14 department determines a right-of-way or other property acquired  
15 under this act is no longer necessary for railroad transportation  
16 purposes, the department may preserve and utilize the right-of-way  
17 for other transportation purposes or may dispose of the right-of-  
18 way or other property acquired under this act for the purposes  
19 described in section 6, or may dispose of or lease the right-of-way  
20 or other property for other purposes, as appropriate. However, the  
21 department shall not dispose of or lease a right-of-way without  
22 first offering to transfer the right-of-way to the department of  
23 natural resources **AND ENVIRONMENT**. If the department of natural  
24 resources **AND ENVIRONMENT** desires to lease or purchase the right-  
25 of-way, the department of natural resources **AND ENVIRONMENT** must  
26 indicate their desire within 60 days and accept the offered  
27 transfer within 1 year after the offer is made. If the department

1 of natural resources **AND ENVIRONMENT** does not indicate their  
2 desires within 60 days, the department may dispose of or lease the  
3 right-of-way as otherwise provided for in this act. If the  
4 department of natural resources **AND ENVIRONMENT** does not accept the  
5 offered transfer within 1 year after indicating their desire to  
6 lease or purchase the right-of-way, the department may dispose of  
7 or lease the right-of-way as otherwise provided for in this act.  
8 When appropriate, a right-of-way or other property shall be  
9 transferred or leased to a public or private entity with  
10 appropriate reimbursement, as determined by the department.

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

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

21 (b) Transfer, for appropriate reimbursement, the right-of-way  
22 to the department of natural resources **AND ENVIRONMENT** for use as a  
23 Michigan railway pursuant to part 721 of the natural resources and  
24 environmental protection act, 1994 PA 451, MCL 324.72101 to  
25 ~~324.72113~~ **324.72115**, if the deed includes restrictions on the use  
26 of the property that assure that the property remains viable for  
27 future rail usage, and includes a clause that provides that the

1 department of natural resources **AND ENVIRONMENT** shall transfer, for  
2 appropriate reimbursement, the right-of-way to the department, upon  
3 a determination of the director of the department that the right-  
4 of-way is needed for use as a railroad line.

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

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

22 (13) As a term of conveyance, the department may require  
23 restrictions on the use of the property that assure that the  
24 property remains viable for future rail use and that the rail line  
25 is made available by the purchaser for future freight or passenger  
26 rail uses and that the property shall revert to the department if  
27 the purchaser fails to maintain the property so that it remains



1 viable for future rail use.