

**STATE TRANSPORTATION PRESERVATION ACT OF 1976**  
**Act 295 of 1976**

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 certain funds; and to provide for appropriations.

**History:** 1976, Act 295, Eff. Nov. 15, 1976;—Am. 1981, Act 129, Imd. Eff. Sept 30, 1981;—Am. 1982, Act 288, Imd. Eff. Oct. 7, 1982;—Am. 1984, Act 210, Imd. Eff. July 9, 1984;—Am. 2001, Act 126, Imd. Eff. Oct. 15, 2001.

*The People of the State of Michigan enact:*

**474.51 Short title; declaration of public purpose.**

Sec. 1. (1) This act shall be known and may be cited as the "state transportation preservation act of 1976".

(2) There exists a need to provide authorization for financial assistance for the capital improvement, maintenance, and operation of rail, street railway, intercity bus, and ferry services in this state. To undertake the planning, development, acquisition, and operation of these services is in the best interest of the state and is a valid public purpose.

(3) The preservation of abandoned railroad rights of way for future rail use and their interim use as public trails is declared to be a public purpose.

**History:** 1976, Act 295, Eff. Nov. 15, 1976;—Am. 2008, Act 488, Imd. Eff. Jan. 12, 2009.

**Constitutionality:** MCL 474.51 et seq. and MCL 247.660b et seq. are constitutional. In re Advisory Opinion 1976 PA 295 and 1976 PA 297, 401 Mich 686; 259 NW2d 129 (1977).

**474.52 Definitions.**

Sec. 2. As used in this act:

(a) "Bureau" means the bureau of passenger 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, the principal department of state government created under section 350 of the executive organization act of 1965, 1965 PA 380, MCL 16.450.

(d) "Federal acts" means the regional rail reorganization act of 1973, 45 USC 701 to 797m; the railroad revitalization and regulatory reform act of 1976, Public Law 94-210; the local rail service assistance act of 1978, section 5, Public Law 89-670; the staggers rail act of 1980, Public Law 96-448; and the northeast rail service act of 1981, subtitle E title XI, Public Law 97-35.

(e) "Recreational trail" means a trail, lane, path, road, or other right of way that because of its scenic, wild, or topographical nature, has as its primary purpose recreational use of the trail itself.

(f) "Street railway" means that term as defined under the nonprofit street railway act, 1867 PA 35, MCL 472.1 to 472.31.

**History:** 1976, Act 295, Eff. Nov. 15, 1976;—Am. 1984, Act 210, Imd. Eff. July 9, 1984;—Am. 1998, Act 235, Imd. Eff. July 3, 1998;—Am. 2008, Act 488, Imd. Eff. Jan. 12, 2009.

**474.53 Repealed. 1998, Act 235, Imd. Eff. July 3, 1998.**

**Compiler's note:** The repealed section pertained to administration of act and promulgation of rules.

**474.54 Powers of department generally.**

Sec. 4. The department shall exercise those powers necessary to gain qualification on behalf of the state for financial assistance available pursuant to the federal acts and, in so doing, may:

(a) Plan, promote, supervise, and support safe, adequate, and efficient rail services.

(b) Employ sufficient trained and qualified personnel to implement the purposes described in this section.

(c) Maintain adequate programs of investigation, research, promotion, and development in connection with the purposes described in this section, and provide for public participation in these areas.

(d) Comply with the rules and regulations of the secretary of transportation of the United States department of transportation in connection with federal rail assistance programs.

(e) Do those other things necessary to maximize federal assistance for rail services to this state.

**History:** 1976, Act 295, Eff. Nov. 15, 1976;—Am. 1984, Act 210, Imd. Eff. July 9, 1984.

#### **474.55 Financial assistance for railroad or street railway; department as agent.**

Sec. 5. The department may provide financial assistance in the form of grants, leases, loans, and purchases, or any combination of grants, leases, loans, and purchases, within the limits of the funds appropriated by the legislature or otherwise obtained, for the maintenance of a railroad or a street railway within the state as provided in the federal acts, other relevant federal legislation, 1951 PA 51, MCL 247.651 to 247.675, or other relevant state law. The department may act as the agent for the state, a person, a public or private corporation, a local or regional transportation authority, a local governmental unit, a private carrier, a group of rail users, or a combination of these entities for the maintenance of a railroad or a street railway in this state.

**History:** 1976, Act 295, Eff. Nov. 15, 1976;—Am. 1982, Act 288, Imd. Eff. Oct. 7, 1982;—Am. 1984, Act 210, Imd. Eff. July 9, 1984;—Am. 2008, Act 488, Imd. Eff. Jan. 12, 2009.

#### **474.56 Acquisition of railroad property or other property; condemnation.**

Sec. 6. (1) The department, as sole agent for the state, may acquire by purchase or through the procedures set forth in 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, a portion or portions of the property of a railroad company, including, but not limited to, the tracks and ties, rights of way, land, buildings, appurtenances, other facilities, rolling stock, and equipment, whether or not necessary for the operation of a railroad, for the preservation of a railroad line, or for commuter trail use. In addition, the department may acquire by purchase or otherwise other property owned by an entity other than a railroad company which is found by the department to be necessary for the present or future operation of a railroad.

(2) The department may acquire through condemnation only those segments of a railroad which has been abandoned. Acquisition through condemnation shall be limited to right of way, track, ties, bridges, and culverts which are necessary for the operation of a railroad. The action shall be undertaken pursuant to Act No. 149 of the Public Acts of 1911, being sections 213.21 to 213.25 of the Michigan Compiled Laws, and Act No. 87 of the Public Acts of 1980, being sections 213.51 to 213.77 of the Michigan Compiled Laws.

**History:** 1976, Act 295, Eff. Nov. 15, 1976;—Am. 1984, Act 210, Imd. Eff. July 9, 1984.

#### **474.57 Expired. 1976, Act 295, Eff. Dec. 31, 1976.**

**Compiler's note:** The expired section pertained to sale, transfer, or exchange of rail properties or trackage rights subject to bankruptcy or discontinuance proceedings.

#### **474.58 Notice of abandonment; acquisition of rights of railroad company by state department of transportation or department of natural resources; warranty or quitclaim deed; acquisition of rights in rights of way approved for abandonment.**

Sec. 8. (1) A railroad company operating within this state shall notify the department at the time it files with the appropriate governmental agencies for abandonment of a line.

(2) The rights a railroad company may have in all rights of way approved for abandonment within the state shall not be offered for sale without offering the department, on reasonable terms in the first instance, and the department of natural resources, on reasonable terms in the second instance, the right to purchase those rights. The offer shall include a detailed description of the property and appropriate valuation maps and track charts. Additional information or documents may be provided as agreed to by the parties. The department shall reimburse the railroad company for the expense of providing all such additional information or documents. Upon receipt of such an offer, the department shall notify the departments of natural resources, agriculture, and commerce. The purchase or other acquisition may be by warranty or quitclaim deed. The department or the department of natural resources may purchase or acquire those rights a railroad company may have in all rights of way approved for abandonment unless within 60 days of the offer for sale by the railroad company, the department determines that the abandoned route does not have potential for a use described in section 6 or the department of natural resources determines that the abandoned route does not have potential for management as a recreational resource. If the department determines that the abandoned route does not have potential for a use described in section 6 and the department of natural resources determines that the abandoned route does not have potential for management as a recreational resource or the department or the department of natural resources does not make a reasonable offer, in writing, to purchase within 60 days, the railroad company may dispose of the rights it has in those rights of way as it sees fit. If a right of way abandoned before January 1, 1977, is available and the department determines that the right of way has potential for a use described in section 6, the department may purchase by warranty or quitclaim deed the rights a railroad company or others have in the right of way.

**History:** 1976, Act 295, Eff. Jan. 1, 1977;—Am. 1984, Act 210, Imd. Eff. July 9, 1984.

**474.59 Cooperation and contractual arrangements with other states and dominion of Canada; acquisition of trackage rights and rail property in other states and dominion of Canada.**

Sec. 9. The department may cooperate with other states and the dominion of Canada in connection with the purchase of rail property within the state. The department may acquire trackage rights in other states and rail property lying in other states and the Dominion of Canada to carry out the intentions and purposes of this act. In carrying out the authority conferred by this section, the department may enter into general contractual arrangements, including joint purchasing and leasing of rail property with other states and the Dominion of Canada.

**History:** 1976, Act 295, Eff. Nov. 15, 1976;—Am. 1984, Act 210, Imd. Eff. July 9, 1984.

**474.60 Acquiring, leasing, or securing easement for use of real property owned by railroad; conveyance or lease to public or private entity; divestiture or creation of leases; determination of sale terms; exceptions; order of parties to be offered lease; reversion; submission of financial statement and operation plan; “tributary lines” defined; return of proceeds to state; action for relief; determination of lease terms; jurisdiction; preservation of right-of-way for future use as railroad line; disposing of or leasing right-of-way; powers of department; restrictions to assure future rail use.**

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 July 3, 1998. Except as otherwise provided in this act, 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, excluding that portion of the segment located in Jonesville from Beck street to the St. Joseph river.

(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 excluding the portion of the segment located in Petoskey north of Emmet street and excluding the Jarman Spur starting at 450 feet from the point of switch on the main rail to US-131, 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 July 3, 1998, 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 July 3, 1998 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 July 3, 1998.

(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 that would render it unsuitable for future rail use. 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. 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 324.72115, 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.

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

**History:** 1976, Act 295, Eff. Nov. 15, 1976;—Am. 1984, Act 210, Imd. Eff. July 9, 1984;—Am. 1993, Act 28, Imd. Eff. Apr. 21, 1993;—Am. 1998, Act 235, Imd. Eff. July 3, 1998;—Am. 2008, Act 570, Imd. Eff. Jan. 16, 2009;—Am. 2011, Act 29, Imd. Eff. May 17, 2011;—Am. 2012, Act 42, Imd. Eff. Mar. 6, 2012.

#### **474.60a Issuance of statement regarding segment viability.**

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

**History:** Add. 1998, Act 235, Imd. Eff. July 3, 1998.

#### **474.60b Prequalification; requirements.**

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.

**History:** Add. 1998, Act 235, Imd. Eff. July 3, 1998.

#### **474.60c Prequalification; appeal of committee decision; definitions.**

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.

**History:** Add. 1998, Act 235, Imd. Eff. July 3, 1998.

#### **474.60d Prequalification; appeal of panel decision.**

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.

**History:** Add. 1998, Act 235, Imd. Eff. July 3, 1998.

#### **474.60e Divestiture of segment; proposals; scoring mechanism; contents of proposal; availability of information to bidder.**

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.

**History:** Add. 1998, Act 235, Imd. Eff. July 3, 1998.

**474.60f Application of scoring mechanism; opening sealed envelope; evaluation of proposal; selection of bidder; failure of bidder to accept award; retention of guaranty as liquidated damages; return of certified checks or surety bonds to unsuccessful bidders; agreement.**

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.

**History:** Add. 1998, Act 235, Imd. Eff. July 3, 1998.

**474.60g Replacement operator.**

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.

**History:** Add. 1998, Act 235, Imd. Eff. July 3, 1998.

#### **474.61 Federal funds; public or private grants, gifts, donations, or appropriations.**

Sec. 11. The department may utilize federal funds, or other public or private grants, gifts, donations, or appropriations in carrying out the purposes of this act.

**History:** 1976, Act 295, Eff. Nov. 15, 1976;—Am. 1984, Act 210, Imd. Eff. July 9, 1984.

#### **474.62 Federal loan, guarantee of loan, or federal programs.**

Sec. 12. The department may apply for an acquisition and modernization loan, or a guarantee of a loan, pursuant to the federal acts or other federal programs within the limit of funds appropriated for this purpose.

**History:** 1976, Act 295, Eff. Nov. 15, 1976;—Am. 1984, Act 210, Imd. Eff. July 9, 1984.

#### **474.63 Repealed. 1981, Act 129, Eff. Oct. 1, 1981.**

**Compiler's note:** The repealed section pertained to the administration of a delinquent railroad tax fund and to the transferring of balances to the general fund.

#### **474.64 Acquisition of intercity bus and ferry equipment and facilities.**

Sec. 14. The department may purchase intercity bus equipment and related station and servicing facilities, as well as ferry equipment, dock, port, and water equipment servicing facilities. The department may acquire equipment and facilities to be utilized by intercity bus and ferry operations, under terms and conditions determined by the department.

**History:** 1976, Act 295, Eff. Nov. 15, 1976;—Am. 1984, Act 210, Imd. Eff. July 9, 1984.

#### **474.65 Modernization, rehabilitation, rebuilding, and relocation of rail property; maintenance and improvements.**

Sec. 15. The department may spend sums appropriated and other available funds for the construction, modernization, rehabilitation, rebuilding, and relocation of rail property and may perform or contract for maintenance or improvements on rail property owned by the state, a person, a public or private corporation, a local or regional transportation authority, a local governmental unit, a private carrier, a group of rail users, or a combination of these entities, including, but not limited to, a street railway, as is necessary in the public interest as determined by the department.

**History:** 1976, Act 295, Eff. Nov. 15, 1976;—Am. 1984, Act 210, Imd. Eff. July 9, 1984;—Am. 2008, Act 488, Imd. Eff. Jan. 12, 2009.

#### **474.65a Rail infrastructure loan fund.**

Sec. 15a. (1) The rail infrastructure loan fund is created to implement the rail infrastructure loan program in the state transportation department. Subject to the maximum established by this section, the legislature shall appropriate an amount not to exceed \$3,000,000.00 each year to the rail infrastructure loan fund until the maximum in subsection (5) is met. Interest earned and repayments received and any penalties assessed and received for failure to repay loans on time shall be credited to the fund. The rail infrastructure loan fund is a self-sustaining revolving loan fund to finance construction and improvements that are designed for improvements to freight railroad infrastructure for the purposes of preserving, rebuilding, rehabilitating, or constructing facilities or improvements on railroad operating property or property adjacent to railroad operating property, in this state. Construction is limited to those facilities or improvements required to continue rail service on a particular line or to improve the efficiency and safety of existing rail service. If the department determines that the public interest requires, a loan may be made to eligible applicants provided by subsection (2) to acquire rail property for the purpose of preserving freight rail service or improving the efficiency of existing freight rail service. An eligible applicant described in subsection (2) may apply for a loan from the fund for the purposes described in this section or for use as nonfederal match for any federal rail infrastructure loan program.

(2) The fund shall provide noninterest bearing loans for the purposes described in this section. The department shall evaluate loan applications according to the relative merit of the project in conjunction with program goals and make recommendations to the state transportation commission regarding each loan application. The state transportation commission shall approve or deny the loans and establish loan disbursement and payment schedules based on the needs of the work in progress. A loan shall fund not more than 90% of the rail portion of project costs, and the loan repayment period shall not exceed 10 years. A county, city, township, village, economic development corporation, and railroad and current or potential users of freight railroad services are eligible applicants.

(3) Except as otherwise provided in this subsection, at the end of each fiscal year, unexpended funds shall remain in the rail infrastructure loan fund and shall be available for the purposes of the program in the



succeeding fiscal year. For the fiscal year ending September 30, 2010, \$5,700,000.00 in unobligated fund balance shall be deposited in the comprehensive transportation fund. Amounts in the fund may be combined by the state treasurer with other amounts in the state treasury for purposes of cash management. The earnings from the investment of the fund shall accrue to the fund. The fund shall be accounted for separately from other funds of the state. The fund may receive gifts or grants for the purposes of the fund. Any penalties assessed and received for failure to repay a loan on time and money that is received by this state as repayment for rail infrastructure loans made pursuant to this program shall remain within the rail infrastructure loan fund and shall only be used for the purposes of rail infrastructure loans as provided in this section.

(4) By December 31 each year, the department shall report to the house and senate appropriations subcommittees on transportation and the house and senate fiscal agencies the following information, as appropriate, regarding this section and on a separate report the rail freight fund under section 17:

(a) The beginning fund balance of each fund, revenues received, expenditures and encumbrances incurred, and the ending fund balance for each fund for the preceding fiscal year.

(b) The projects funded during the preceding fiscal year.

(c) The status of projects funded in the preceding fiscal years including the degree to which the projects funded have achieved the objectives of this act.

(d) Status of all outstanding loans.

(e) Any other information considered necessary by the department.

(5) The state's total contribution to the rail infrastructure loan fund shall not exceed \$15,000,000.00 exclusive of interest and any penalties assessed, received, and credited to the fund.

**History:** Add. 2002, Act 747, Imd. Eff. Dec. 30, 2002;—Am. 2010, Act 161, Imd. Eff. Sept. 17, 2010.

#### **474.66 Contracts for rail, street railway, intercity bus, or ferry service.**

Sec. 16. The department may contract with a person, firm, or public or private corporation to provide rail, street railway, intercity bus, or ferry service deemed by the department to be in the best interest of this state.

**History:** 1976, Act 295, Eff. Nov. 15, 1976;—Am. 1984, Act 210, Imd. Eff. July 9, 1984;—Am. 2008, Act 488, Imd. Eff. Jan. 12, 2009.

#### **474.67 Financial assistance for facilities of rail freight and marine freight transportation; deposit of funds to be held as separate fund; rail freight fund; administration.**

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.

**History:** 1976, Act 295, Eff. Nov. 15, 1976;—Am. 1982, Act 288, Imd. Eff. Oct. 7, 1982;—Am. 1984, Act 210, Imd. Eff. July 9, 1984;—Am. 1990, Act 68, Imd. Eff. Apr. 27, 1990;—Am. 1993, Act 16, Imd. Eff. Apr. 14, 1993;—Am. 1998, Act 235, Imd. Eff. July 3, 1998.

#### **474.67a Soo Locks fund.**

Sec. 17a. (1) The Soo locks fund is created as a separate restricted account within the comprehensive transportation fund and shall be administered by the department for the purposes of fulfilling the state's portion of the nonfederal cost share for construction of a new marine lock facility at Sault Ste. Marie, Michigan, as authorized under section 17(1).

(2) The following funds may be deposited into the Soo locks fund:

(a) Comprehensive transportation fund revenues or comprehensive transportation fund bond proceeds.

(b) Other revenues that are appropriated for the purpose of subsection (1).

(3) For each fiscal year, beginning with the fiscal year ending September 30, 2001 and ending with the fiscal year ending September 30, 2050, there is appropriated from the fund an amount necessary to fulfill the terms and conditions of the state's agreement with the Great Lakes commission, acting in its capacity as the principal fiduciary agent for the nonfederal cost share, for the construction of a new marine lock facility at

Sault Ste. Marie, Michigan.

(4) Principal and interest earnings in the fund shall not lapse and shall remain in the fund at the close of the fiscal year and shall carry forward for use for the purposes described in subsection (1), except for the fiscal year ending September 30, 2007 when \$5,270,000.00 shall lapse to the comprehensive transportation fund.

(5) The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(6) Any unexpended balances remaining in the fund upon fulfillment of the state's obligation as described in this section shall lapse to the funds from which originally appropriated.

**History:** Add. 2001, Act 126, Imd. Eff. Oct. 15, 2001;—Am. 2007, Act 68, Imd. Eff. Sept. 28, 2007.

#### **474.68 Termination of rail freight services; contracts for substitute services and relocation assistance.**

Sec. 18. When rail freight services are terminated, the department may contract for substitute services and relocation assistance within this state, to serve affected shippers and communities, if deemed desirable by the department.

**History:** 1976, Act 295, Eff. Nov. 15, 1976;—Am. 1984, Act 210, Imd. Eff. July 9, 1984.

#### **474.69 Repealed. 1984, Act 210, Imd. Eff. July 9, 1984.**

**Compiler's note:** The repealed section pertained to program approval procedure for rail continuation contractual grant and upgrading programs.

#### **474.69a Compliance.**

Sec. 19a. In exercising the powers provided by this act, the department shall comply with policies established by the state transportation commission in accordance with section 28 of article V of the state constitution of 1963.

**History:** Add. 1984, Act 210, Imd. Eff. July 9, 1984.

#### **474.70 Effective date.**

Sec. 20. This act shall not take effect until November 15, 1976.

**History:** 1976, Act 295, Eff. Nov. 15, 1976.