

## No. 10

## AN ACT

## SB 1154

Authorizing development of rural and intercity common carrier surface transportation.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

**Section 1. Short Title.**—This act shall be known and may be cited as the “Pennsylvania Rural and Intercity Common Carrier Surface Transportation Assistance Act.”

**Section 2. Findings and Declaration of Policy.**—(a) It is hereby determined and declared as a matter of legislative finding:

(1) That the welfare and vitality of the Commonwealth, the satisfactory movement of people and goods within the Commonwealth, and the effectiveness of highway, industrial development and other programs are being jeopardized by the deterioration or inadequate provision of rural and intercity common carrier surface transportation facilities and services, the intensification of traffic congestion, railroad bankruptcies and the lack of coordinated transportation and other development planning on a comprehensive basis.

(2) That State financial assistance for the development of efficient and coordinated intercity common carrier surface transportation systems, facilities and services is essential to the solution of these Statewide problems.

(3) That efficient and coordinated intercity common carrier surface transportation systems, facilities and services will promote the public health, safety, convenience and welfare.

(4) That modern, efficient intercity common carrier surface transportation is a necessary part of a balanced transportation system.

(5) That the Regional Rail Reorganization Act of 1973 (Pub.L.93-236) requires State participation in the continuation of branch line rail service.

(b) Therefore, it is hereby declared to be the policy of the General Assembly of the Commonwealth of Pennsylvania to promote the health, safety, convenience and welfare of its inhabitants by means of State financed projects and financial assistance for the development of efficient and coordinated rural and intercity common carrier surface transportation systems, facilities and services. Such purposes are hereby declared to be public uses.

**Section 3. Definitions.**—As used in this act:

“Capital project” means the constructing, improving, equipping and/or leasing of any system of rural and intercity common carrier surface transportation or any components thereof, including but not limited to

rolling stock, including self-propelled and multiple unit cars, freight cars, locomotives, passenger buses, and wires, poles and equipment for the electrification of any of the foregoing, rails, tracks, roadbeds, guideways, elevated structures, buildings, stations, terminals, docks, shelters, airports and parking areas for use in connection with rural and intercity common carrier surface transportation systems; right-of-way, interconnecting lines and tunnels; or any improvement of or equipment or furnishings for any of the foregoing or any part of fractional and undivided co-ownership interest in any one or combination of any of the foregoing, that may be designated as a capital project by the secretary. "Capital project" shall also include the acquisition, by purchase or assignment or otherwise, of all or part of any construction or acquisition contract from any transportation organization or company relating to any project or projects at any stage of construction, or after completion.

"Department" means the Pennsylvania Department of Transportation.

"Federal agency" means and includes the United States of America, the President of the United States of America, and any department of, or corporation, agency, or instrumentality heretofore or hereafter created, designated or established by the United States of America.

"Project grant" means and includes the Commonwealth's share of the cost of carrying out the particular project, which may include costs incurred prior to the effective date of this act and which cost shall include an appropriate allowance for the administrative expenses involved in carrying out the project.

"Rural and intercity common carrier surface transportation" means transportation provided by any and all persons or corporations holding out, offering, or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or property, or both, or any class of passengers or property, other than passenger transportation provided wholly within an urbanized area by, through, over, above, or under land, or water and shall include transportation provided by forwarders, but shall not include transportation provided by common or contract carriers of freight by motor vehicles, or brokers, or any bona fide cooperative association transporting property exclusively for the members of such association on a nonprofit basis.

"Secretary" means the Pennsylvania Secretary of Transportation.

"Transportation company" means and includes any person, firm or corporation rendering common carrier surface transportation service, other than common carrier of freight by motor vehicle service, in this Commonwealth pursuant to authorization from the Pennsylvania Public Utility Commission or the Interstate Commerce Commission or the United States Railway Association.

"Transportation organization" means any political subdivision or any mass transportation or port authority or airport authority now or hereafter organized under the law of Pennsylvania or pursuant to an interstate

compact or otherwise empowered to render transportation service or assist in the rendering of transportation service in the Commonwealth of Pennsylvania, even though it may also render transportation service in adjacent states, or any combination of two or more of such entities.

Section 4. Program Authorizations.—The department is hereby authorized, within the limitations hereinafter provided:

(1) To undertake and to provide financial support for research projects, by contract or otherwise, concerning rural and intercity common carrier surface transportation.

(2) To undertake projects and to make project grants to transportation organizations or transportation companies:

(i) For the purpose of studies, analysis, planning and development of programs for rural and intercity common carrier surface transportation service and facilities, and for the purpose of activities related to the planning, engineering and designing of specific rural and intercity common carrier transportation projects which are a part of a comprehensive program, including, but not limited to, activities such as studies relating to management, operation, capital requirements and economic feasibility, to the preparation of engineering and architectural surveys, plans and specifications, and to other similar or related activities preliminary to and in preparation for the construction, acquisition or improved operation of rural and intercity common carrier surface transportation systems, facilities and equipment.

(ii) To provide for research, development and demonstration projects in all phases of rural and intercity common carrier surface transportation (including the development, testing and demonstration of new facilities, equipment, techniques and methods) to assist in the solution of rural and intercity common carrier surface transportation problems, in the improvement of rural and intercity common carrier surface transportation service, and the contribution of such service toward meeting total rural and intercity common carrier surface transportation needs at minimum cost.

(iii) To provide for programs designed solely to advertise, promote and stimulate the development and use of rural and intercity common carrier surface transportation facilities; provided that advertising costs shall not exceed 1 ½% of the total budget of a transportation organization or transportation company.

(iv) To finance or assist in financing the provision or continuation of necessary rural and intercity common carrier surface transportation service, to permit continuation of and/or needed improvements in services which are not self-supporting, and to permit services which may be socially and economically desirable but not capable of generating a net income. Each project and project grant shall be subject to annual review and renewal by the secretary. Each project grant shall be based upon a program or plan approved by the department as in furtherance of a coordinated rural and intercity common carrier surface transportation plan for the Commonwealth, and not involving unnecessary and unfair competition.

No State grant shall be made for a particular project unless the department determines and finds for said project that:

(A) the project is necessary in the public interest; and

(B) the intercity and rural common carrier is taking or will take continuing action to improve the service and hold losses to a minimum.

No agreement referred to in this paragraph (2) shall impair, suspend, contract, enlarge or extend or affect in any manner the powers of the Pennsylvania Public Utility Commission or the Interstate Commerce Commission or the United States Railway Association otherwise applicable by law.

(3) To undertake capital projects and make capital project grants to transportation organizations and/or transportation companies if the primary purpose thereof, as determined by the department which determination shall be conclusive, is to facilitate and improve rural and intercity common carrier surface transportation, in accordance with the programs of the department.

(4) In view of the particular sensitivity of special instrumentalities and agencies of the Commonwealth created to serve or coordinate the local transportation needs of substantial metropolitan areas, no passenger service project for use exclusively or principally in the local service area of any such agency or instrumentality in which a city or county of the first or second class has membership, shall receive a project grant except in accordance with a system of priorities agreed upon by the department and such agency or instrumentality. In the case of a project grant for a passenger service project to be operated exclusively or principally within the local service areas of such agency or instrumentality no project grant shall be made except in accordance with agreements by the department and such agency or instrumentality with respect to such use. In the case of a project not falling within the scope of the preceding sentence but covering use both within and without the local service area of such agency or instrumentality, the project grant shall require that the routes, schedules, and fares applicable only within such service areas shall be determined only after consultation with such agency or instrumentality.

(5) Projects may be undertaken and project grants may be made with reference to any appropriate project, irrespective of when it was first commenced or considered and regardless of whether costs with respect thereto shall have been incurred prior to the time the project is undertaken or the project grant is applied for or made.

Section 5. Intercity Rail Passenger Service Program.—(a) The department may cooperate and contract with the National Railroad Passenger Corporation for any intercity rail passenger services deemed necessary, convenient or desirable by the secretary, within the amounts available by appropriation therefor, as such services are made available pursuant to the provisions of the Federal Rail Passenger Service Act of 1970 and any acts amendatory or supplemental thereto. Notwithstanding

any inconsistent law, general, special or local, the secretary, as funds are made available for the purposes hereof, is hereby empowered to contract with such corporation and to do all other things necessary, convenient or desirable on behalf of the Commonwealth to secure the full benefits available under and pursuant to such act, and to contract and do all other things necessary as hereinafter provided on behalf of the Commonwealth to effect the intercity rail passenger service program which he determines is necessary, convenient or desirable. Such requirements shall include compliance with labor protection provisions of the National Railroad Passenger Act.

(b) The department shall coordinate the intercity rail passenger activities of the Commonwealth and other interested public and private organizations and persons to effectuate the purposes of this section and shall have the responsibility for negotiating with the Federal Government with respect to intercity rail passenger service programs. The secretary is authorized to enter into joint service agreements between the Commonwealth and any railroad company; any other Commonwealth department or agency or instrumentality thereof; any Federal agency; any other state or agency or instrumentality thereof; or any political subdivision or municipality of the Commonwealth or any other state, or any instrumentality thereof, relating to property, buildings, structures, facilities, services, rates, fares, classifications, dividends, allowances or charges (including charges between intercity rail passenger service facilities), or rules or regulations pertaining thereto, for or in connection with or incidental to transportation in whole or in part upon intercity rail passenger service facilities. Intercity rail passenger service facilities include the right-of-way and related trackage, rails, cars, locomotives, or other rolling stock, signal, power, fuel, communication and ventilation systems, power plants, stations, terminals, storage yards, repair and maintenance shops, yards, equipment and parts, offices and other real estate or personalty used or held for or incidental to the operation, rehabilitation or improvement of any railroad operating intercity rail passenger service or to operate such service, including but not limited to buildings, structures, and rail property.

(c) With the approval of the Governor or his designee, the secretary may on such terms and conditions as he may determine necessary, convenient or desirable rehabilitate any such intercity rail passenger service facility or any related services and activities, or may provide for such by contract, lease or other arrangement on such terms as the secretary may deem necessary, convenient or desirable with any agency, corporation or person, including but not limited to any railroad company, any State agency, the Federal Government, any other state or agency or instrumentality thereof, any public authority of this or any other state, or any political subdivision or municipality of the State. As used in this subsection, rehabilitate may include renovation, improvement, extension,

repair, or, where incidental and money-saving, construction of part of any such intercity rail passenger service facility or related services and activities.

Section 6. Cooperation With Other Governments and Private Interests.—(a) The department is directed to administer all projects under this act with such flexibility as to promote and encourage full cooperation and financial participation of Federal, State and local governments, agencies and instrumentalities, as well as private interests, so as to result in as effective and economical a program as possible. State financed projects as authorized under this act shall require local financial participation to the extent deemed reasonable by the secretary as expressed by rule or regulation. The department shall respond to the requirements of the Regional Rail Reorganization Act of 1973 for the preservation of railroad service by means of operating assistance or acquisition, and shall follow planning requirements related thereto.

(b) The department is hereby authorized to enter into agreements providing for mutual cooperation between it and any Federal agency and any transportation organization, or transportation company, or one or more of them, in any or all projects, including joint applications for Federal grants.

(c) It is the purpose and intent of this act to authorize the department to do any and all other things necessary or desirable to secure the financial aid or cooperation of any of the department's projects, and to do and perform all things which may be required by any statute of the United States of America or by the lawful requirements of any Federal agency authorized to administer any program of Federal aid to transportation.

Section 7. Contracts; Procurement and Sale of Property; Competition in Award of Contracts.—(a) The department shall have power and authority to enter into contracts and to make joint contracts of purchase with any transportation organization and/or company in any manner complying with the law applicable to such transportation organization and/or company. The department shall also have power and authority to make contracts for the improvement of any rights-of-way, roadbeds or rolling stock, or electrification systems, or other transportation systems, or parts thereof, constituting a project without advertisement for competitive bids, where such work is to be done at cost by the personnel and with the facilities of the local transportation organization or company on whose system such property is to be used. The department may sell, transfer, or lease all, or any part, of the rail properties and other property acquired under the provisions of this act to any responsible person, firm, or corporation for continued operation of a railroad, or other public purpose, provided that approval for the continued operation, or other public purpose, is granted by the Interstate Commerce Commission of the United States, whenever approval is required.

(b) Except in the purchase of projects from a transportation organization, or in the purchase of unique articles, or articles which, for

any other reason, cannot be obtained in the open market, and except as herein specifically provided, competitive bids shall be secured before any purchase or sale, by contract or otherwise, is made or before any contract is awarded for construction, alterations, supplies, equipment, repairs or maintenance or for rendering any services to the department other than professional services; and the purchase shall be made from or the contract shall be awarded to the lowest responsible bidder; or a sale to the highest responsible bidder. No purchase of any unique article or other articles which cannot be obtained in the open market shall be made without express approval of the secretary where the amount involved is in excess of \$5,000.

(c) Except as herein specifically provided otherwise, all purchases and sales in excess of \$5,000 shall be awarded after advertising in a newspaper of general circulation in the area where the property is to be used not less than two weeks prior to the bid opening. Bids shall be publicly opened and read aloud at a date, time and place designated in the invitation to bid. In all cases of purchases or sales in excess of \$5,000 authorized hereunder to be made without competitive bidding except purchases from or sales to a transportation organization or contracts with a transportation company pursuant to subsection (a), invitations to bid shall be sent not less than one week prior to the bid opening to at least three potential bidders who are qualified technically and financially to submit bids, or in lieu thereof a memorandum shall be kept on file showing that less than three potential bidders so qualified exist in the market area within which it is practicable to obtain bids.

(d) Purchases or sales under \$5,000 may be negotiated with or without competitive bidding under sound procurement procedures as promulgated and established by the secretary.

(e) Competitive bidding requirements may be waived if it is determined in such manner as the secretary may, by regulation, provide that an emergency directly and immediately affecting customer service, or public health, safety or welfare requires immediate delivery of supplies, materials, or equipment: Provided, however, That a record of circumstances explaining the emergency shall be submitted to the secretary and kept on file.

(f) Contracts for the sale or lease of property owned by the department shall be awarded after competitive bidding as shown in subsection (c), except where a contract is entered into with any political subdivision or agency or instrumentality of the Commonwealth, transportation organization, transportation company, or Federal agency.

(g) Requirements shall not be split into parts for the purpose of avoiding the provisions of this section.

(h) The department shall have the right to reject any or all bids or parts of any or all bids, whenever, in the opinion of the secretary, such rejection is necessary for the protection of the interest of the Commonwealth. In every

such case, a record shall be made, setting forth the reason for such rejection which record shall thereafter be kept on file.

(i) The secretary shall adopt rules and regulations to effectuate the provisions of this section.

(j) The secretary shall have the power to accept the assignment from any transportation organization or company of all or any interest in any lawfully made contract for the procurement and purchase of any asset deemed necessary or desirable by the secretary in connection with any project.

Section 8. Labor Policy.—(a) Any transportation company or transportation organization financed in whole or in part directly or indirectly by the Regional Rail Reorganization Act of 1973 and the Railroad Revitalization and Regulatory Reform Act of 1976, any of which are hereinafter referred to in this section as the operator, effective as of the date of a conveyance or lease to it, of any project or part thereof, shall offer employment to the employees of the former operator as of the effective date of the conveyance or lease; or, in the case of a partial conveyance or lease, to such number of the employees of the former operator as may be agreed upon as the result of negotiations with the representatives of the various classes or crafts involved, which agreement shall specify the manner in which such employees will be identified and assigned to positions on the project or portion of the project involved. If no agreement with respect to the matters referred to in this subsection is reached by the end of 15 days after the commencement of negotiations, the parties shall within an additional seven days select a neutral referee and, in the event they are unable to agree upon the selection of such referee, then the Secretary of Labor and Industry of Pennsylvania shall immediately appoint a referee. After a referee has been designated, a hearing on the dispute shall commence as soon as practicable. Not less than seven days prior to the effective date of any conveyance or lease pursuant to the provisions of this act, the referee shall resolve and decide all matters in dispute with respect to the negotiation of said implementing agreement or agreements and shall render a decision which shall be final and binding and shall constitute the implementing agreement or agreements between the parties with respect to the transaction involved. Such agreement shall be made or decision rendered prior to the effective date of the conveyance or lease.

(b) The employees so employed shall be given seniority credit and sick leave, vacation, insurance and pension credits in accordance with the records and labor agreements from the acquired transportation system. Members and beneficiaries of any pension or retirement system or other benefits established by the grantor or lessor shall continue to have rights, privileges, benefits, obligations and status with respect to such established system. The operator shall assume the obligations of any transportation system acquired by it with regard to wages, salaries, hours, working conditions, sick leave, health and welfare and pension or retirement provisions for employees. The operator shall assume the provisions of all

the collective bargaining agreements under which the newly acquired employees formerly worked, as modified by the implementing agreement, as though an original party thereto. Such employees shall be entitled to maintain the collective bargaining units existing at the time of the conveyance or lease. The operator and the employees through their representatives for collective bargaining purposes shall take whatever action may be necessary to have pension trust funds under the joint control of the acquired transportation system and the participating employees through their representatives transferred to the trust fund to be established, maintained and administered jointly by them.

(c) In the event that an employee who has been tendered and who has accepted employment with the operator is entitled to protection under the terms of the Regional Rail Reorganization Act of 1973 or the Railroad Revitalization and Regulatory Reform Act of 1976, he shall be afforded such protection by the operator, which will for this purpose be an "acquiring railroad" as set forth in such act.

Section 9. Power to Acquire Property.—(a) The secretary shall have the power to acquire by purchase, lease, eminent domain proceedings, gift or otherwise all or any property, in such estate as he shall determine, for promoting the purposes of this act, including any property of a public utility, except that no line, route, franchise, certificate of public convenience, or certificate of authorization of a transportation company, or interest in any thereof shall be acquired without the consent of such company. All political subdivisions and corporations are hereby authorized to donate property to the department.

(b) Eminent domain proceedings shall be in accordance with the act of June 22, 1964 (Sp. Sess., P.L.84, No.6), known as the "Eminent Domain Code," and the department is empowered to join with any transportation organization in obtaining any property through such eminent domain proceedings.

Section 10. Rules and Regulations of the Department.—In order to effectuate and enforce the provisions of this act, the department is authorized to promulgate necessary rules and regulations and prescribe conditions and procedures in order to assure compliance in carrying out the purposes for which grants may be made hereunder. Such rules and regulations shall also provide for the observance of the relevant safety standards of any regulatory body having jurisdiction to promulgate such standards, but the department shall not be authorized hereby to do anything or suffer or permit any action which will violate any agreement with a transportation organization or company or any Federal agency, or impair, suspend, contract, enlarge or extend, or affect in any manner the powers of the Pennsylvania Public Utility Commission, or of the Interstate Commerce Commission, which by law are applicable to the transportation organization or company involved.

Section 11. Grants by Transportation Organizations.—Any transportation organization shall be and is hereby authorized to make annual grants from current revenues in order to participate in rural and intercity common carrier surface transportation projects and to enter into long-term agreements providing for the payment of the same.

Section 12. Limitation on Decisions; Findings and Regulations Made by the Secretary.—All decisions, findings and regulations made by the secretary pursuant to this act shall be for the purpose of this act only and shall not constitute evidence before any regulatory body of this Commonwealth or any other jurisdiction.

Section 13. Constitutional Construction.—The provisions of this act shall be severable, and if any of the provisions thereof shall be held unconstitutional, such decisions shall not affect the validity of any of the remaining provisions of this act. It is hereby declared as the legislative intent that this act would have been adopted had such unconstitutional provision not been included herein.

Section 14. Effective Date.—This act shall take effect immediately.

APPROVED—The 11th day of February, A. D. 1976.

MILTON J. SHAPP