

No. 1984-119

AN ACT

HB 865

Empowering the Department of Transportation to preserve and improve rail freight service in the Commonwealth by making grants, loans or other assistance available to qualified applicants; authorizing a comprehensive rail study; making an appropriation; and making repeals.

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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 Rail Freight Preservation and Improvement Act.

Section 2. Findings and declaration of policy.

(a) Findings.—It is hereby determined and declared as a matter of legislative finding that:

(1) The welfare and vitality of the Commonwealth, the satisfactory movement of goods within the Commonwealth and the economic health of Commonwealth industries are being jeopardized by the deterioration or inadequate provision of rail freight transportation services within the Commonwealth.

(2) The number of miles of rail track within the Commonwealth which have been abandoned, prepared for abandonment or over which service has been terminated, as a result of the reorganization of rail carriers in the northeast United States, has directly threatened the provision of rail freight transportation services upon which the welfare and vitality of the Commonwealth depends.

(3) State assistance for the preservation, rehabilitation and improvement of efficient and coordinated rail freight transportation services, systems and facilities is essential to the solution of these Statewide problems.

(4) The immediacy of the rail freight transportation problems within the Commonwealth necessitates that a comprehensive rail freight study be undertaken of the Commonwealth's transportation services, systems and facilities and concerning their preservation and improvement.

(b) *Policy declaration.*—Therefore, it is hereby declared to be the policy of the Commonwealth to promote the health, safety, convenience and welfare of its inhabitants by the establishment of a rail freight policy committee and by providing, through the Department of Transportation, State financial assistance for the preservation and improvement of essential rail freight transportation services, systems and facilities; by the conduct of a comprehensive study of such services, systems and facilities; and through the coordination of the Commonwealth's rail freight transportation activities with Federal and local governments, transportation organizations, transportation companies and other interested groups.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Accelerated maintenance.” The replacing of ties and other track and structural materials in quantities as to be sufficient functionally to restore a railroad line to the level necessary for compliance with Federal Railroad Administration Class I Track Safety Standards for five years after completion of a project.

“Capital project.” Acquisition of property for equipping, furnishing, constructing, reconstructing, rehabilitating or improving rail freight transportation systems or facilities, but shall not include accelerated maintenance.

“Committee.” The Rail Freight Policy Committee created by this act.

“Department.” The Department of Transportation.

“Municipality.” Any county, city, borough, incorporated town, township or home rule municipality.

“Rail freight transportation services, systems and facilities.” 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 property by rail; systems shall include any lines, rail corridors or properties necessary in providing rail freight transportation services, including easements or other rights-of-way; facilities shall include freight cars, locomotives, wires, poles and equipment for electrification of rail lines, rails, tracks, roadbeds, elevated structures, buildings, stations, terminals, loading docks, sidetracks, shelters, parking areas, tunnels or such similar items as may be necessary in the provision of rail freight transportation services.

“Railroad company.” Any person, firm or corporation rendering common carrier rail freight transportation service in this Commonwealth,

pursuant to authorization from the Public Utility Commission or the Interstate Commerce Commission, where such authorization is required by law.

“Secretary.” The Secretary of Transportation.

“State Transportation Commission.” The commission created in section 2011 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, or any successor organization.

“Transportation organization.” Any municipal authority, mass transportation, port or other authority, or any combination of two or more such entities, now existing or hereafter organized under the laws of Pennsylvania, or pursuant to an interstate compact, empowered to render rail freight transportation service or assist in rendering rail freight transportation service in the Commonwealth of Pennsylvania, even though it may also render rail freight transportation service in adjacent states.

Section 4. Rail Freight Policy Committee.

(a) Creation.—There is hereby created a Rail Freight Policy Committee, which shall consist of 13 members. The members shall be the Secretary of Transportation, ex officio, who shall act as chairman, the Secretary of Commerce, ex officio, the Secretary of Community Affairs, ex officio, the Chairman of the Public Utility Commission, ex officio, three members of the House of Representatives to be appointed by the Speaker, two shall be members of the majority party, and one shall be a member from the minority party, three members of the Senate to be appointed by the President pro tempore, two shall be members of the majority party, and one shall be a member from the minority party, two representatives of railroad companies, one of a Class I railroad and one of a Class III railroad, to be appointed by the Governor, who shall have extensive experience and knowledge of rail freight transportation activities throughout the Commonwealth, and one representative of a railroad shipper, to be appointed by the Governor, who shall have extensive experience and knowledge of rail freight transportation activities throughout the Commonwealth. Each member may designate a representative to serve in his or her stead. A member who designates a representative shall notify the chairman, in writing, of the designation.

(b) Terms of appointees.—The term of all members of the committee appointed by the Governor shall be for three years, however, the initial terms of these members shall be as follows:

- (1) One year for the representative of a Class I railroad.
- (2) Two years for the representative of a Class III railroad.
- (3) Three years for the representative of a railroad shipper.

Any member of the committee may be reappointed for an additional term or terms. Any person appointed to fill a vacancy shall serve only for the unexpired term.

(c) Meetings and expenses.—The committee shall meet at least four times every 12 months, but may hold such additional meetings as are called by the chairman or by petition of at least four committee members. The railroad and shipper members of the committee shall be allowed per diem expenses, to be set by the committee, but not to exceed \$75. The department shall provide appropriate staff support to enable the committee to properly carry out its functions.

(d) Powers and duties.—The power and duty of the committee shall be to advise and comment on the comprehensive rail freight study, to advise and comment on all phases of the rail freight transportation program activities being undertaken or financially assisted by the department, and to propose methods, strategies or technologies for improving rail freight transportation services systems or facilities within the Commonwealth. The committee shall periodically submit reports of its deliberations and conclusions to the Governor, members of the General Assembly and the State Transportation Commission. The committee shall terminate its existence on November 30, 1988.

Section 5. Comprehensive rail freight study.

(a) Initiation of study.—The department shall undertake, either through its own staff or through the use of a consultant or consultants, or both, a comprehensive study of rail freight transportation services, systems and facilities within the Commonwealth and recommendations for their preservation and improvement to include at least the following elements:

(1) Identification of the rail network required to support Pennsylvania's industries.

(2) Identification of strategies to be used by the Commonwealth in assisting in the preservation of essential rail lines:

(i) a review of the department's criteria for evaluating potential projects, including alternate transportation costs, hazardous materials, etc.; and

(ii) identification of types of assistance which would be appropriate in different problem situations.

(3) Identification of major heavy, high and wide freight flows and define a base rail network corresponding to those flows; identify ways in which the department could act to preserve clearances on heavy, high and wide routes in the event of track alterations or removal.

(4) Identification of Commonwealth strategies in the event the Conrail system is broken up or if Conrail is sold to another railroad which only maintains main line services.

(5) Analysis of disposition of Commonwealth owned branch lines as well as remaining route miles that have not been acted upon by Conrail.

(6) Identification of all other modes involved in rail freight movements and assess intermodal needs, including motor freight transfer facilities, port access and air freight movement.

(b) Utilization of study.—The department shall consider the conclusions of the comprehensive rail freight study in the implementation of its programs designed to preserve and improve the rail freight transportation services, systems and facilities within the Commonwealth, including the development of new initiatives, where required.

(c) Appropriation.—The sum of \$750,000, or as much thereof as may be necessary, is hereby appropriated to the department for the exclusive purpose of carrying out the comprehensive rail freight study, including department administrative expenses. Unexpended funds appropriated shall remain available for expenditure until November 30, 1988.

Section 6. Program authority.

(a) Authority.—The department is hereby authorized, within the limitation herein provided to:

(1) Provide operating subsidy grants to railroad companies, transportation organizations or municipalities to defray, or assist in defraying, the net deficit incurred by such entities in providing essential rail freight transportation services within the Commonwealth.

(2) Provide grants to railroad companies, transportation organizations or municipalities to defray, or assist in defraying, the cost of accelerated maintenance projects performed on rail lines within the Commonwealth.

(3) Undertake capital projects and to provide capital project grants to railroad companies, transportation organizations or municipalities. The department shall not operate or provide directly rail freight transportation services on its own rail lines or on lines owned by others, nor shall a capital project be undertaken in order to enable the department to provide directly rail freight transportation services.

(4) Acquire by purchase, lease, eminent domain proceedings, gift or otherwise, all and any property, in such estate as determined by the secretary, for promoting the purposes of this act, including the property of a public utility. All municipalities and corporations are hereby authorized to donate property to the department. 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 municipality or transportation organization in obtaining any property through the eminent domain proceedings.

(5) Undertake research, studies, analysis and planning, to make grants to railroad companies, transportation organizations and municipalities for research, studies analysis and planning, relating to any phase of rail freight transportation services, systems and facilities, including the management, operation, capital requirements and economic feasibility thereof, and any preparation of engineering and architectural surveys, plans and specifications and other similar activities preliminary to and in preparation for construction, acquisition or improved operation of rail freight transportation services, systems and facilities within the Commonwealth.

(6) Undertake demonstration projects and to make grants to railroad companies, transportation organizations and municipalities for demonstration projects, including the development, testing and demonstration of new facilities, equipment, techniques and methods of providing rail freight transportation services, systems and facilities within the Commonwealth.

(7) Undertake marketing activities and to make grants to railroad companies, transportation organizations and municipalities for marketing activities designed to foster the fullest and most efficient utilization of rail freight transportation services, systems and facilities within the Commonwealth. Marketing activities may be undertaken by contract with the department or by subcontract with a grantee of the department, upon approval of the subcontract by the secretary.

(8) Undertake audits of any project being financially assisted by the department. The department may hire outside auditors to perform such functions or may direct its grantees to engage such auditors and include the expense thereof as an eligible program cost.

(b) Guidelines for grants.—The following shall govern all grants made under the authority of subsection (a):

(1) A responsible level of local financial participation, to be determined by the department, shall be required for each category of project authorized by this section.

(2) A grant shall be made only upon application filed by a grantee reviewed and approved by the department. No grant shall exceed the amount requested by a grantee. An amended grant request need not be filed by a grantee where a proposed contract amendment does not exceed the amount previously requested.

(3) A grant may be made with reference to any appropriate project regardless of when it was first commenced or considered and regardless of whether the 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. In the case of a project involving accelerated maintenance or rehabilitation, grants shall be made by the department only after receipt of satisfactory documentation concerning the condition of the rail facilities involved before and after the accelerated maintenance or rehabilitation. Where the department contracts for a grant based upon estimated costs, payments may be made thereunder prior to the time costs are actually incurred, however, the department shall adjust the payments under any agreement before the end of the fiscal year involved, based upon the most recent available actual data.

(4) No agreement shall impair, suspend, contract, enlarge or extend or affect in any manner the powers of the Pennsylvania Public Utility Commission, the Interstate Commerce Commission or any other regulatory agency having jurisdiction over rail freight transportation services, systems and facilities.

(c) Loan authority.—The department is hereby authorized to make loans of Federal funds to railroad companies, transportation organizations or municipalities, in accordance with the requirements of any Federal law establishing a loan program, for the rehabilitation and improvement of rail freight transportation systems and facilities.

Section 7. Contracts; procurement and sale of property; competition in award of contracts.

(a) Contractual authority.—

(1) The department shall have the power and authority to enter into contracts and to make joint contracts of purchase with any railroad company, transportation organization or municipality in any manner complying with the law applicable to the entity. The department shall have power and authority to make contracts for the improvement of any rights-of-way, roadbeds or rolling stock, electrification systems, other transportation systems, or any 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 railroad company, local transportation organization or municipality on whose system the property is to be used.

(2) Any other provision of law to the contrary notwithstanding, the department may sell, transfer, lease or grant any license to, easement over or any other interest in all, or any part of, the rail properties and other property acquired under the provisions of this or any other rail-related act to any responsible person, firm, corporation, municipality or instrumentality thereof, municipal authority, transportation authority, the Federal Government or any branch or agency thereof, for continued operation or other use compatible with the operation of a railroad or any public purpose, when approval for the continued operation or other public purpose is granted by the Interstate Commerce Commission of the United States, when such approval is required. The department may exercise the authority and power granted pursuant to this paragraph without the necessity of competitive bidding. If, during the first five years after the sale, transfer, lease or grant of a license or easement, the property or property right is used for any purpose other than that which is compatible with the operation of a railroad or any public purpose, the property or property right shall revert to the Commonwealth.

(3) In the event the department determines that there is no need for continued operation of a railroad on any rail properties or other properties acquired under the provisions of this or any other rail-related act, and that the properties are not needed for any other public purpose, the department may sell (under a system of public competitive bidding), transfer, lease or grant any license to, easement over or any other interest in all or any part of the properties to any responsible person, firm, corporation, municipality or instrumentality thereof, municipal authority, transportation or to the Federal Government or any branch or agency thereof for any worthwhile purpose, as determined by the department.

(4) At least 30 days prior to the sale of any property as authorized by paragraph (2) or (3), the department shall provide written notice thereof to the chairmen of the Transportation Committees of the Senate and House of Representatives.

(b) Competitive bids.—Except 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) Advertisement.—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 under 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) Negotiation of certain contracts.—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) Waiver of competitive bid requirement.—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, public health, safety or welfare requires immediate delivery of supplies, materials, or equipment. A record of circumstances explaining the emergency shall be submitted to the secretary and kept on file.

(f) Departmental property.—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 municipality or agency or instrumentality of the Commonwealth, transportation organization, railroad company or Federal agency.

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

(h) Rejection of bids.—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 case, a record shall be made, setting forth the reason for the rejection which record shall thereafter be kept on file.

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

(j) Assignments.—The secretary shall have the power to accept the assignment from any railroad company, transportation organization or municipality 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. Cooperation with other governments and private interests.

(a) Cooperation.—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. The department shall

respond to the requirements of any Federal rail freight transportation legislation now existing or enacted into law in the future, to the extent permitted under the laws of this Commonwealth, in order to enhance rail freight transportation services, systems and facilities within the Commonwealth.

(b) **Agreements.**—The department is hereby authorized to enter into agreements providing for mutual cooperation within 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) **Purpose of act.**—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 9. Rules and regulations of 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. The 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 railroad company, transportation organization or municipality involved.

Section 10. Grants by transportation organizations or municipalities.

Any transportation organization or municipality shall be and is hereby authorized to make annual grants from current revenues in order to participate in the rail freight transportation projects and to enter into long-term agreements providing for the payment of the same.

Section 11. 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 12. Repeals.

Sections 6(a), 7(a) and 13 of the act of February 11, 1976 (P.L. 14, No. 10), known as the Pennsylvania Rural and Intercity Common Carrier Surface Transportation Assistance Act, are repealed.

Section 13. Effective date.

Except for the provisions of section 7, which shall take effect immediately, this act shall take effect in 60 days.

APPROVED—The 5th day of July, A. D. 1984, except as to the following:

Section 5. Comprehensive rail freight study.

* * *

(c) Appropriation.—The sum of \$750,000, or as much thereof as may be necessary, is hereby appropriated to the department for the exclusive purpose of carrying out the comprehensive rail freight study, including department administrative expenses. Unexpended funds appropriated shall remain available for expenditure until November 30, 1988.

I withhold my approval from this entire item. The General Appropriation Act of 1984 contained \$250,000 for the comprehensive rail freight study. This study will take three years to complete. I intend to recommend appropriations for this study in the next two fiscal years to provide funding equivalent to the \$750,000 contained in this bill.

DICK THORNBURGH