

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 865

Session of
1983

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KASUNIC, DALEY, MORRIS, ALDERETTE AND BOYES, APRIL 26, 1983

SENATOR KUSSE, TRANSPORTATION, AS AMENDED, MARCH 26, 1984

AN ACT

1 Empowering the Department of Transportation to preserve and
2 improve rail freight service in the Commonwealth by making
3 grants, loans or other assistance available to qualified
4 applicants; authorizing a comprehensive rail study; making an <—
5 ~~appropriation~~ APPROPRIATIONS; and making repeals. <—

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

11 Section 1. Short title.

12 This act shall be known and may be cited as the Rail Freight
13 Preservation and Improvement Act.

14 Section 2. Findings and declaration of policy.

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

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

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

29 (3) State assistance for the preservation,
30 rehabilitation and improvement of efficient and coordinated

1 rail freight transportation services, systems and facilities
2 is essential to the solution of these Statewide problems.

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

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

20 Section 3. Definitions.

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

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

30 "Capital project." Acquisition of property for equipping,

1 furnishing, constructing, reconstructing, rehabilitating or
2 improving rail freight transportation systems or facilities, but
3 shall not include accelerated maintenance.

4 "Committee." The Rail Freight Policy Committee created by
5 this act.

6 "Department." The Department of Transportation.

7 "Municipality." Any county, city, borough, incorporated
8 town, township or home rule municipality.

9 "Rail freight transportation services, systems and
10 facilities." Transportation provided by any and all persons or
11 corporations holding out, offering or undertaking, directly or
12 indirectly, service for compensation to the public for the
13 transportation of property by rail; systems shall include any
14 lines, rail corridors or properties necessary in providing rail
15 freight transportation services, including easements or other
16 rights-of-way; facilities shall include freight cars,
17 locomotives, wires, poles and equipment for electrification of
18 rail lines, rails, tracks, roadbeds, elevated structures,
19 buildings, stations, terminals, loading docks, sidetracks,
20 shelters, parking areas, tunnels or such similar items as may be
21 necessary in the provision of rail freight transportation
22 services.

23 "Railroad company." Any person, firm or corporation
24 rendering common carrier rail freight transportation service in
25 this Commonwealth, pursuant to authorization from the Public
26 Utility Commission or the Interstate Commerce Commission, where
27 such authorization is required by law.

28 "Secretary." The Secretary of Transportation.

29 "State Transportation Commission." The commission created in
30 section 2011 of the act of April 9, 1929 (P.L.177, No.175),

1 known as The Administrative Code of 1929, or any successor
2 organization.

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

11 Section 4. Rail Freight Policy Committee.

12 (a) Creation.--There is hereby created a Rail Freight Policy
13 Committee, which shall consist of thirteen members. The members
14 shall be the Secretary of Transportation, ex officio, who shall
15 act as chairman, the Secretary of Commerce, ex officio, the
16 Secretary of Community Affairs, ex officio, the Chairman of the
17 Public Utility Commission, ex officio, three members of the
18 House of Representatives to be appointed by the Speaker, two
19 shall be members of the majority party, and one shall be a
20 member from the minority party, three members of the Senate to
21 be appointed by the President pro tempore, two shall be members
22 of the majority party, and one shall be a member from the
23 minority party, two representatives of railroad companies, one
24 of a Class I railroad and one of a Class III railroad, to be
25 appointed by the Governor, who shall have extensive experience
26 and knowledge of rail freight transportation activities
27 throughout the Commonwealth, and one representative of a
28 railroad shipper, to be appointed by the Governor, who shall
29 have extensive experience and knowledge of rail freight
30 transportation activities throughout the Commonwealth. Each

1 member may designate a representative to serve in his or her
2 stead. A member who designates a representative shall notify the
3 chairman, in writing, of the designation.

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

7 (1) One year for the representative of a Class I
8 railroad.

9 (2) Two years for the representative of a Class III
10 railroad.

11 (3) Three years for the representative of a railroad
12 shipper.

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

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

24 (d) Powers and duties.--The power and duty of the committee
25 shall be to advise and comment on the comprehensive rail freight
26 study, to advise and comment on all phases of the rail freight
27 transportation program activities being undertaken or
28 financially assisted by the department, and to propose methods,
29 strategies or technologies for improving rail freight
30 transportation services systems or facilities within the

1 Commonwealth. The committee shall periodically submit reports of
2 its deliberations and conclusions to the Governor, members of
3 the General Assembly and the State Transportation Commission.
4 The committee shall terminate its existence by 1988.

5 Section 5. Comprehensive rail freight study.

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

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

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

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

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

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

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

30 (5) Analysis of disposition of Commonwealth owned branch

1 lines as well as remaining route miles that have not been
2 acted upon by Conrail.

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

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

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

19 Section 6. Program authority.

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

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

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

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

9 (4) Acquire by purchase, lease, eminent domain
10 proceedings, gift or otherwise, all and any property, in such
11 estate as determined by the secretary, for promoting the
12 purposes of this act, including the property of a public
13 utility. All municipalities and corporations are hereby
14 authorized to donate property to the department. Eminent
15 domain proceedings shall be in accordance with the act of
16 June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent
17 Domain Code, and the department is empowered to join with any
18 municipality or transportation organization in obtaining any
19 property through the eminent domain proceedings.

20 (5) Undertake research, studies, analysis and planning,
21 to make grants to railroad companies, transportation
22 organizations and municipalities for research, studies
23 analysis and planning, relating to any phase of rail freight
24 transportation services, systems and facilities, including
25 the management, operation, capital requirements and economic
26 feasibility thereof, and any preparation of engineering and
27 architectural surveys, plans and specifications and other
28 similar activities preliminary to and in preparation for
29 construction, acquisition or improved operation of rail
30 freight transportation services, systems and facilities

1 within the Commonwealth.

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

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

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

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

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

29 (2) A grant shall be made only upon application filed by
30 a grantee reviewed and approved by the department. No grant

1 shall exceed the amount requested by a grantee. An amended
2 grant request need not be filed by a grantee where a proposed
3 contract amendment does not exceed the amount previously
4 requested.

5 (3) A grant may be made with reference to any
6 appropriate project regardless of when it was first commenced
7 or considered and regardless of whether the costs with
8 respect thereto shall have been incurred prior to the time
9 the project is undertaken or the project grant is applied for
10 or made. In the case of a project involving accelerated
11 maintenance or rehabilitation, grants shall be made by the
12 department only after receipt of satisfactory documentation
13 concerning the condition of the rail facilities involved
14 before and after the accelerated maintenance or
15 rehabilitation. Where the department contracts for a grant
16 based upon estimated costs, payments may be made thereunder
17 prior to the time costs are actually incurred, however, the
18 department shall adjust the payments under any agreement
19 before the end of the fiscal year involved, based upon the
20 most recent available actual data.

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

27 (c) Loan authority.--The department is hereby authorized to
28 make loans of Federal funds to railroad companies,
29 transportation organizations or municipalities, in accordance
30 with the requirements of any Federal law establishing a loan

1 program, for the rehabilitation and improvement of rail freight
2 transportation systems and facilities.

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

5 ~~(a) Contractual authority. The department shall have the~~ <—

6 (A) CONTRACTUAL AUTHORITY.-- <—

7 (1) THE DEPARTMENT SHALL HAVE THE power and authority to
8 enter into contracts and to make joint contracts of purchase
9 with any railroad company, transportation organization or
10 municipality in any manner complying with the law applicable
11 to the entity. The department shall have power and authority
12 to make contracts for the improvement of any rights-of-way,
13 roadbeds or rolling stock, electrification systems, other
14 transportation systems, or any parts thereof, constituting a
15 project without advertisement for competitive bids, where
16 such work is to be done at cost by the personnel and with the
17 facilities of the railroad company, local transportation
18 organization or municipality on whose system the property is
19 to be used. ~~Any other provision of law to the contrary~~ <—
20 ~~notwithstanding, the department may sell under a system of~~
21 ~~public competitive bidding,~~

22 (2) ANY OTHER PROVISION OF LAW TO THE CONTRARY <—
23 NOTWITHSTANDING, THE DEPARTMENT MAY SELL, transfer, lease or
24 grant any license to, easement over or any other interest in
25 all, or any part of, the rail properties and other property
26 acquired under the provisions of this or any other rail-
27 related act to any responsible person, firm, corporation,
28 municipality or instrumentality thereof, municipal authority,
29 transportation authority, the Federal Government or any
30 branch or agency thereof, for continued operation or other

1 use compatible with the operation of a railroad or any public
2 purpose, when approval for the continued operation or other
3 public purpose is granted by the Interstate Commerce
4 Commission of the United States, when such approval is
5 required. ~~In the event the department~~ THE SALE BY THE <—
6 DEPARTMENT OF ANY RAIL PROPERTY OR OTHER PROPERTY ACQUIRED
7 UNDER THE PROVISIONS OF THIS OR ANY OTHER RAIL-RELATED ACT TO
8 ANY RESPONSIBLE PERSON, FIRM OR CORPORATION SHALL BE BY A
9 SYSTEM OF PUBLIC COMPETITIVE BIDDING.

10 (3) IN THE EVENT THE DEPARTMENT determines that there is
11 no need for continued operation of a railroad on any rail
12 properties or other properties acquired under the provisions
13 of this or any other rail-related act, and that the
14 properties are not needed for any other public purpose, the
15 department may sell, ~~under a system of public competitive~~ <—
16 ~~bidding, transfer,~~ lease or grant any license to, easement
17 over or any other interest in all or any part of the
18 properties to any responsible person, firm, corporation,
19 municipality or instrumentality thereof, municipal authority,
20 transportation or to the Federal Government or any branch or
21 agency thereof for any worthwhile purpose, as determined by
22 the department. ~~At least 30 days prior to the sale of any~~ <—
23 ~~property as authorized by this section,~~

24 (4) AT LEAST 30 DAYS PRIOR TO THE SALE OF ANY PROPERTY <—
25 AS AUTHORIZED BY PARAGRAPH (2) OR (3), the department shall
26 provide written notice thereof to the chairmen of the
27 Transportation Committees of the Senate and House of
28 Representatives.

29 (b) Competitive bids.--Except in the purchase of unique
30 articles, or articles which for any other reason cannot be

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

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

30 (d) Negotiation of certain contracts.--Purchases or sales

1 under \$5,000 may be negotiated with or without competitive
2 bidding under sound procurement procedures as promulgated and
3 established by the secretary.

4 (e) Waiver of competitive bid requirement.--Competitive
5 bidding requirements may be waived if it is determined in such
6 manner as the secretary may, by regulation, provide that an
7 emergency directly and immediately affecting customer service,
8 public health, safety or welfare requires immediate delivery of
9 supplies, materials, or equipment. A record of circumstances
10 explaining the emergency shall be submitted to the secretary and
11 kept on file.

12 (f) Departmental property.--Contracts for the sale or lease
13 of property owned by the department shall be awarded after
14 competitive bidding as shown in subsection (c), except where a
15 contract is entered into with any municipality or agency or
16 instrumentality of the Commonwealth, transportation
17 organization, railroad company or Federal agency.

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

20 (h) Rejection of bids.--The department shall have the right
21 to reject any or all bids or parts of any or all bids, whenever,
22 in the opinion of the secretary, such rejection is necessary for
23 the protection of the interest of the Commonwealth. In every
24 case, a record shall be made, setting forth the reason for the
25 rejection which record shall thereafter be kept on file.

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

28 (j) Assignments.--The secretary shall have the power to
29 accept the assignment from any railroad company, transportation
30 organization or municipality of all or any interest in any

1 lawfully made contract for the procurement and purchase of any
2 asset deemed necessary or desirable by the secretary in
3 connection with any project.

4 Section 8. Cooperation with other governments and private
5 interests.

6 (a) Cooperation.--The department is directed to administer
7 all projects under this act with such flexibility as to promote
8 and encourage full cooperation and financial participation of
9 Federal, State and local governments, agencies and
10 instrumentalities, as well as private interests, so as to result
11 in as effective and economical a program as possible. The
12 department shall respond to the requirements of any Federal rail
13 freight transportation legislation now existing or enacted into
14 law in the future, to the extent permitted under the laws of
15 this Commonwealth, in order to enhance rail freight
16 transportation services, systems and facilities within the
17 Commonwealth.

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

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

1 Section 9. Rules and regulations of department.

2 In order to effectuate and enforce the provisions of this
3 act, the department is authorized to promulgate necessary rules
4 and regulations and prescribe conditions and procedures in order
5 to assure compliance in carrying out the purposes for which
6 grants may be made hereunder. The rules and regulations shall
7 also provide for the observance of the relevant safety standards
8 of any regulatory body having jurisdiction to promulgate such
9 standards, but the department shall not be authorized hereby to
10 do anything or suffer or permit any action which will violate
11 any agreement with a transportation organization or company or
12 any Federal agency, or impair, suspend, contract, enlarge or
13 extend, or affect in any manner the powers of the Pennsylvania
14 Public Utility Commission, or of the Interstate Commerce
15 Commission, which by law are applicable to the railroad company,
16 transportation organization or municipality involved.

17 Section 10. Grants by transportation organizations or
18 municipalities.

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

24 Section 11. Limitation on decisions; findings and regulations
25 made by the secretary.

26 All decisions, findings and regulations made by the secretary
27 pursuant to this act shall be for the purpose of this act only
28 and shall not constitute evidence before any regulatory body of
29 this Commonwealth or any other jurisdiction.

30 SECTION 12. APPROPRIATION.

<—

1 THE SUM OF \$500,000, OR AS MUCH THEREOF AS MAY BE NECESSARY,
2 IS HEREBY APPROPRIATED TO THE DEPARTMENT OF TRANSPORTATION FOR
3 THE FISCAL YEAR JULY 1, 1983 TO JUNE 30, 1984 TO CARRY OUT THE
4 PROVISIONS OF THIS ACT.

5 Section ~~12~~ 13. Repeals.

<—

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

10 Section ~~13~~ 14. Effective date.

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11 This act shall take effect immediately.