

AN ACT concerning State government.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Department of Transportation Law of the Civil Administrative Code of Illinois is amended by changing Sections 2705-435 and 2705-440 as follows:

(20 ILCS 2705/2705-435) (was 20 ILCS 2705/49.25g-1)

Sec. 2705-435. Loans, grants, or contracts to rehabilitate, improve, or construct rail facilities; State Rail Freight Loan Repayment Fund. In addition to the powers under Section 105-430, the Department shall have the power to enter into agreements to loan or grant State funds to any railroad, unit of local government, rail user, or owner or lessee of a railroad right of way to rehabilitate, improve, or construct rail facilities.

For each project proposed for funding under this Section the Department shall, to the extent possible, give preference to cost effective projects that facilitate continuation of existing rail freight service. In the exercise of its powers under this Section, the Department shall coordinate its program with the industrial retention and attraction programs of the Department of Commerce and Economic Opportunity ~~Community Affairs~~. No funds provided under this Section shall be expended for the acquisition of a right of way ~~or rolling stock~~ or for operating subsidies. The costs of a project funded under this Section shall be apportioned in accordance with the agreement of the parties for the project. Projects are eligible for a loan or grant under this Section only when the Department determines that the transportation, economic, and public benefits associated with a project are greater than the capital costs of that project incurred by all parties to the agreement and that the project would not have occurred without its

participation. In addition, a project to be eligible for assistance under this Section must be included in a State plan for rail transportation and local rail service prepared by the Department. The Department may also expend State funds for professional engineering services to conduct feasibility studies of projects proposed for funding under this Section, to estimate the costs and material requirements for those projects, to provide for the design of those projects, including plans and specifications, and to conduct investigations to ensure compliance with the project agreements.

The Department, acting through the Department of Central Management Services, shall also have the power to let contracts for the purchase of railroad materials and supplies. The Department shall also have the power to let contracts for the rehabilitation, improvement, or construction of rail facilities. Any such contract shall be let, after due public advertisement, to the lowest responsible bidder or bidders, upon terms and conditions to be fixed by the Department. With regard to rehabilitation, improvement, or construction contracts, the Department shall also require the successful bidder or bidders to furnish good and sufficient bonds to ensure proper and prompt completion of the work in accordance with the provisions of the contracts.

In the case of an agreement under which State funds are loaned under this Section, the agreement shall provide the terms and conditions of repayment. The agreement shall provide for the security that the Department shall determine to protect the State's interest. The funds may be loaned with or without interest. Loaned funds that are repaid to the Department shall be deposited in a special fund in the State treasury to be known as the State Rail Freight Loan Repayment Fund. In the case of repaid funds deposited in the State Rail Freight Loan Repayment Fund, the Department shall, subject to appropriation, have the reuse of those funds and the interest accrued thereon, which shall also be deposited by the State

Treasurer in the Fund, as the State share in other eligible projects under this Section. However, no expenditures from the State Rail Freight Loan Repayment Fund for those projects shall at any time exceed the total sum of funds repaid and deposited in the State Rail Freight Loan Repayment Fund and interest earned by investment by the State Treasurer which the State Treasurer shall have deposited in that Fund.

For the purposes of promoting efficient rail freight service, the Department may also provide technical assistance to railroads, units of local government or rail users, or owners or lessees of railroad rights-of-way.

The Department shall take whatever actions are necessary or appropriate to protect the State's interest in the event of bankruptcy, default, foreclosure, or noncompliance with the terms and conditions of financial assistance or participation provided hereunder, including the power to sell, dispose, lease, or rent, upon terms and conditions determined by the Secretary to be appropriate, real or personal property that the Department may receive as a result thereof.

The Department is authorized to make reasonable rules and regulations consistent with law necessary to carry out the provisions of this Section.

(Source: P.A. 91-239, eff. 1-1-00; revised 12-6-03.)

(20 ILCS 2705/2705-440) (was 20 ILCS 2705/49.25h)

Sec. 2705-440. Intercity Rail Service.

(a) For the purposes of providing intercity railroad passenger service within this State (or as part of service to cities in adjacent states), the Department is authorized to enter into agreements with units of local government, the Commuter Rail Division of the Regional Transportation Authority (or a public corporation on behalf of that Division), architecture or engineering firms, the National Railroad Passenger Corporation, any carrier, any adjacent state (or political subdivision, corporation, or agency of an adjacent state), or any individual, corporation, partnership, or public

or private entity. The cost related to such services shall be borne in such proportion as, by agreement or contract the parties may desire.

(b) In providing any intercity railroad passenger service as provided in this Section, the Department shall have the following additional powers:

(1) to enter into trackage use agreements with rail carriers;

(2) to enter into haulage agreements with rail carriers;

(3) to lease or otherwise contract for use, maintenance, servicing, and repair of any needed locomotives, rolling stock, stations, or other facilities, the lease or contract having a term not to exceed 50 7 years (but any multi-year contract shall recite that the contract is subject to termination and cancellation, without any penalty, acceleration payment, or other recoupment mechanism, in any fiscal year for which the General Assembly fails to make an adequate appropriation to cover the contract obligation);

(4) to enter into management agreements;

(5) to include in any contract indemnification of carriers or other parties for any liability with regard to intercity railroad passenger service;

(6) to obtain insurance for any losses or claims with respect to the service;

(7) to promote the use of the service;

(8) to make grants to any body politic and corporate, any unit of local government, or the Commuter Rail Division of the Regional Transportation Authority to cover all or any part of any capital or operating costs of the service and to enter into agreements with respect to those grants;

(9) to set any fares or make other regulations with respect to the service, consistent with any contracts for the service; and

(10) to otherwise enter into any contracts necessary or

convenient to provide the service.

(c) All service provided under this Section shall be exempt from all regulations by the Illinois Commerce Commission (other than for safety matters). To the extent the service is provided by the Commuter Rail Division of the Regional Transportation Authority (or a public corporation on behalf of that Division), it shall be exempt from safety regulations of the Illinois Commerce Commission to the extent the Commuter Rail Division adopts its own safety regulations.

(d) In connection with any powers exercised under this Section, the Department+

(1) shall not have the power of eminent domain; and

(2) shall not ~~itself become the owner of railroad locomotives or other rolling stock, or~~ directly operate any railroad service with its own employees.

(e) Any contract with the Commuter Rail Division of the Regional Transportation Authority (or a public corporation on behalf of the Division) under this Section shall provide that all costs in excess of revenue received by the Division generated from intercity rail service provided by the Division shall be fully borne by the Department, and no funds for operation of commuter rail service shall be used, directly or indirectly, or for any period of time, to subsidize the intercity rail operation. If at any time the Division does not have sufficient funds available to satisfy the requirements of this Section, the Division shall forthwith terminate the operation of intercity rail service. The payments made by the Department to the Division for the intercity rail passenger service shall not be made in excess of those costs or as a subsidy for costs of commuter rail operations. This shall not prevent the contract from providing for efficient coordination of service and facilities to promote cost effective operations of both intercity rail passenger service and commuter rail services with cost allocations as provided in this paragraph.

(Source: P.A. 91-239, eff. 1-1-00.)

Public Act 094-0807

HB5220 Enrolled

LRB094 17000 DRH 52281 b

Section 99. Effective date. This Act takes effect upon becoming law.