

## **IC 8-3-1.5**

### **Chapter 1.5. State Rail Preservation Law**

#### **IC 8-3-1.5-1**

##### **Definitions**

Sec. 1. As used in this chapter:

(a) "Agent for the State" means the department as agent for the state as that term is used in the Regional Rail Reorganization Act of 1973.

(b) "Department" refers to the Indiana department of transportation established under IC 8-23-2-1.

(c) "Includes" and variants of it, should be read as if the phrase "but is not limited to" was also set forth.

(d) "Person" means individuals, corporations, partnerships, or foreign and domestic associations, including railroads.

(e) "Rail properties" means assets or rights, owned, leased, or otherwise controlled by a railroad or other persons which are used, or useful, in rail transportation service; however, the term rail properties does not include any properties owned, leased or otherwise controlled by a railroad not in reorganization unless it consents to such property's inclusion in the particular transaction.

(f) "Rail service" means both freight and passenger service.

*(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.40; P.L.18-1990, SEC.36.*

#### **IC 8-3-1.5-2**

##### **Authority of Indiana department of transportation**

Sec. 2. The department is hereby authorized to exercise those powers necessary for the state to qualify for rail service continuation subsidies pursuant to the provisions of the federal Regional Rail Reorganization Act of 1973, including authority:

(a) to establish a state plan for rail transportation and local rail services;

(b) to administer and coordinate the state plan;

(c) to provide in the plan for the equitable distribution of federal rail service continuation subsidies among state, local, and regional transportation authorities;

(d) to promote, supervise, and support safe, adequate, and efficient rail services;

(e) to employ sufficient trained and qualified personnel for these purposes;

(f) to maintain adequate programs of investigation, research, promotion, and development in connection with such purposes and to provide for public participation therein;

(g) to provide satisfactory assurances on behalf of the State that such fiscal control and fund accounting procedures will be adopted by the State as may be necessary to assure proper disbursement of and account for federal funds paid to the State as rail service

continuation subsidies;

(h) to comply with the regulations of the Secretary of Transportation of the United States Department of Transportation affecting federal rail service continuation programs; and

(i) to do all things otherwise necessary to maximize federal assistance to the State under Title IV of the Federal Regional Rail Reorganization Act of 1973.

*(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.41; P.L.1-1994, SEC.34; P.L.100-2012, SEC.22.*

### **IC 8-3-1.5-3**

#### **Financial assistance for continuance of rail service**

Sec. 3. The department is hereby authorized to provide financial assistance, within the limits of the funds appropriated for this purpose, for the continuation of operations and maintenance of any railroad within the State as provided for in the federal Regional Rail Reorganization Act of 1973, or other relevant federal legislation. The department may also act as the agent in cooperation with any local or regional transportation authority, local government units, any group of rail users, or any person, and the federal government in any rail service continuation program.

*(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.42.*

### **IC 8-3-1.5-4**

#### **Information to be provided to department**

Sec. 4. The department in performing its planning function is authorized to request any railroad to provide such data and information as are necessary for the planning process. Railroads operating within the State shall provide such information within sixty (60) days of the date of the request. Should the railroad fail to provide such information, the department is hereby granted subpoena power for securing this data. The department shall exercise all necessary caution to avoid disclosure of confidential information supplied under this section.

*(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.43.*

### **IC 8-3-1.5-5**

#### **Acquisition of rail or nonrail property**

Sec. 5. (a) The department, as sole agent for the State, may acquire by purchase or condemnation or otherwise any portion or portions of any rail properties. In addition, the department may acquire any other non-rail property found by the department to be necessary for the operation of a railroad.

(b) The authority to acquire rail properties extends to rail properties both within and not within the jurisdiction of the Interstate Commerce Commission. It also includes rail properties within the purview of the Regional Rail Reorganization Act of 1973 and any

other relevant federal legislation.

(c) The acquisition of the rail properties, by the department is for the purpose of the continued and future operation of a railroad deemed to be in the public interest. The acquisition of the rail properties, and other non-rail property, is declared to be a public purpose and to be reasonably necessary. This action may be taken in concert with another State or States as necessary to insure continued rail service in this State.

*(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.44.*

#### **IC 8-3-1.5-6**

##### **Disposition of property**

Sec. 6. The department may sell, transfer, or lease all, or any part of the rail properties acquired under the provisions of this chapter 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 purposes, is granted by the Interstate Commerce Commission of the United States, whenever approval is required. The sale, transfer, or lease shall be for a price, and subject to any further terms and conditions which the department feels are necessary and appropriate to effectuate the purposes of this chapter.

*(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.45.*

#### **IC 8-3-1.5-7**

##### **Interstate commerce commission certificate**

Sec. 7. After acquiring any railroad lines within the State, the department shall assist any responsible person, firm, or corporation to secure, as promptly as possible, any order or certificate required by the Interstate Commerce Commission for the performance of railroad service. The department shall also give any assurances or guarantees which are necessary or desirable to carry out the purposes of this chapter.

*(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.46.*

#### **IC 8-3-1.5-8**

##### **Condemnation power**

Sec. 8. If the department is unable to acquire necessary rail properties by purchase or otherwise, it may proceed to condemn all or any portion of such rail properties. In all condemnation proceedings, the legislative determination set forth in this chapter that the acquisition is for a public purpose and is reasonably necessary is prima facie evidence of the purpose and necessity.

*(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.47.*

#### **IC 8-3-1.5-9**

##### **Condemnation procedure**

Sec. 9. The procedure for any necessary condemnation proceedings is set forth in IC 32-24-1.

*(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.48; P.L.2-2002, SEC.40.*

#### **IC 8-3-1.5-10**

##### **Assuring good title**

Sec. 10. The department may take whatever steps are necessary in order to determine the absolute fee simple title ownership of all rail properties of any railroad within the State. The determination may include the status of the rail properties with respect to easements, rights-of-way, leases, reversionary rights, fee simple title ownership, and any and all related title matters. The department may retain attorneys, experts, or other assistants as is necessary to make the title determination.

*(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.49.*

#### **IC 8-3-1.5-11**

##### **Sale of rail properties**

Sec. 11. All rail properties within the State offered for sale by the railroad corporation after June 30, 1975 shall be offered for sale to the department in the first instance.

*(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.50.*

#### **IC 8-3-1.5-12**

##### **Cooperation with other states**

Sec. 12. The department may cooperate with other states in connection with the purchase of any rail properties within this State. The department may also acquire trackage rights in other States and rail properties lying in other States in order to carry out the intentions and purposes of this chapter. In carrying out the authority conferred by this section, the department may enter into general contractual arrangements, including joint purchasing and leasing of rail properties, with other States.

*(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.51.*

#### **IC 8-3-1.5-13**

##### **Acquisition of property by political subdivisions**

Sec. 13. In weighing the varied interests of the residents of this state, the department shall give consideration, as best as the situation allows, to the individual interest of any county, city, or town expressing a desire to acquire a portion, or all, of the abandoned real estate located within the jurisdiction. The department may exercise its powers under this chapter to acquire the abandoned property for

subsequent conveyance to the county, city, or town.  
*(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.52.*

#### **IC 8-3-1.5-14**

##### **Funding**

Sec. 14. The department may utilize federal funds, grants, gifts, or donations which are available, and any sums that are appropriated, in carrying out the purposes of this chapter. The department may also apply for discretionary or other funds available under the provisions of the Regional Rail Reorganization Act of 1973, or other federal programs described in IC 8-23-3-1.

*(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.53; P.L.1-2009, SEC.66.*

#### **IC 8-3-1.5-15**

##### **Acquisition or modernization loans**

Sec. 15. The department may apply for an acquisition and modernization loan, or a guarantee of a loan, pursuant to section 403 of the Regional Rail Reorganization Act of 1973, or any other federal programs, within the limit of funds appropriated for those purposes subject to IC 8-23-3-1 through IC 8-23-3-6.

*(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.54; P.L.1-2009, SEC.67.*

#### **IC 8-3-1.5-16**

##### **Delinquent state railroad taxes; offset against purchase cost**

Sec. 16. In addition to any other funds available to carry out the purposes of this chapter, there are appropriated, and the department may utilize, any delinquent state taxes from any railroad entity, and the interest due on taxes to the date of acquisition, as an offset against the purchase cost of any rail properties purchased from that railroad entity.

*(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.55.*

#### **IC 8-3-1.5-17**

##### **Railroad equipment; acquisition**

Sec. 17. The department is authorized to purchase any railroad rolling stock, equipment, and machinery necessary for the operation and maintenance of any rail properties purchased by it on behalf of the State with any funds made available for this purpose. The department may also acquire, and have available, a pool of equipment and machinery which may be utilized by the operators of the rail properties for the purpose of track maintenance, and other related railroad activities, upon terms and conditions determined by the department.

*(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.56.*

### **IC 8-3-1.5-18**

#### **Contracts for rebuilding and maintaining rail properties**

Sec. 18. The department may contract for the rebuilding of any rail properties acquired pursuant to this chapter, within the provisions of the Regional Rail Reorganization Act of 1973, or any other appropriate legislation. The department may also spend any sums appropriated, as well as any other available funds, for the modernization and rebuilding of any rail properties owned by the state or by a private carrier. The department may do any maintenance on any rail properties owned by the State as is necessary in the public interest.

*(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.57.*

### **IC 8-3-1.5-19**

#### **Contracts to maintain or improve rail transportation service**

Sec. 19. The department may contract with any person, firm, corporation, agency, or governmental unit to provide, maintain, or improve rail transportation service on the rail properties acquired by the State under this chapter.

*(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.58.*

### **IC 8-3-1.5-20**

#### **Transfer of rail properties to other state departments or agencies or political subdivisions; sale of properties**

Sec. 20. Whenever the department determines that any rail properties acquired by the state are no longer needed for railroad purposes, it may permanently or temporarily transfer the rail properties to any other state department or agency, or political subdivision of the state, which shall utilize the properties for a public purpose. Whenever more than one (1) department or agency, or political subdivision, wishes to utilize the property, the department shall resolve such a conflict and make a prompt determination of the reasonable and proper order of priority, taking into consideration any applicable state plans, policies, or objectives. If no state department or agency, or political subdivision, wants the properties, the department may sell them, with the proceeds deposited in the industrial rail service fund established by IC 8-3-1.7-2. A public hearing is required prior to the transfer or sale of any rail properties by the department.

*(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.59; P.L.95-1987, SEC.2.*

### **IC 8-3-1.5-20.5**

#### **Commuter rail service fund**

Sec. 20.5. (a) A special fund to be known as the "commuter rail service fund" is established. Any amount earned on money deposited in the fund is part of the fund, and the money in the fund at the end

of any fiscal year does not revert to any other fund. However, if the money in the fund at the end of any fiscal year exceeds the total amount deposited in the fund during that fiscal year and the immediately preceding fiscal year, the amount of the excess shall be transferred to the state general fund.

(b) The money in the commuter rail service fund is appropriated for distribution to commuter transportation districts. However, before money is distributed to a district under this section, the governor must approve the distribution.

(c) A district that receives money under this section may use the money only for the maintenance, improvement, and operation of commuter rail service. Money that is deposited in the fund under IC 6-1.1-8-35(c) must be used:

- (1) to satisfy any annual debt service and required debt service reserves; and
- (2) if funds remain after all payments under subdivision (1) are made, and subject to the terms of any debt service agreement entered into by the district, to provide state matching funds for federal transportation capital grants.

*As added by Acts 1979, P.L.50, SEC.2. Amended by P.L.85-2011, SEC.2.*

#### **IC 8-3-1.5-20.6**

##### **Electric rail service fund**

Sec. 20.6. (a) A special fund to be known as the electric rail service fund is established. The department shall administer the fund.

(b) Any amount earned on money in the fund is a part of the fund and any money remaining in the fund at the end of a fiscal year does not revert to any other fund.

(c) On or before January 31 and July 31 of every calendar year all amounts that are held in the electric rail service fund are to be distributed to those commuter transportation districts that qualify for a distribution under subsection (d).

(d) The only commuter transportation districts that may receive distributions under this section are those that have substantially all of their commuter rail transportation performed by electrically powered railroads.

(e) Commuter transportation districts that qualify for distributions under this section shall receive equal shares of each distribution made from the electric rail service fund.

(f) To make distributions to those commuter transportation districts that qualify for the distributions under subsection (d), the auditor of state shall issue warrants drawn on the electric rail service fund. The treasurer of state shall pay those warrants.

*As added by Acts 1981, P.L.67, SEC.4.*

#### **IC 8-3-1.5-21**

##### **Chicago, South Shore, and South Bend Railway capital improvements fund**

Sec. 21. There is created a Chicago, South Shore, and South Bend Railway capital improvements fund. There is hereby appropriated the sum of three million six hundred thousand dollars (\$3,600,000) to said fund. The fund shall be disbursed by the governor of the state of Indiana to any regional transportation authority, or commuter transportation district which has among its purposes the maintenance, operation and improvement of passenger service over the Chicago, South Shore, and South Bend Railway railroad and any extension thereof. As to capital improvements, the fund hereby appropriated shall only be expended at such time as the governor of the state of Indiana finds that the state of Illinois or any instrumentality thereof has appropriated and is ready to expend for Chicago, South Shore, and South Bend Railway passenger service improvement and development the sum of not less than one million dollars (\$1,000,000), and the Indiana counties, through which the line runs, or instrumentalities thereof, have appropriated and are ready to expend for Chicago, South Shore, and South Bend Railway passenger service maintenance and improvement such sums as he may judge to be said counties' fair share of passenger service maintenance and improvement costs. Said costs to said counties may not exceed three million six hundred thousand dollars (\$3,600,000) in the aggregate. Up to one million dollars (\$1,000,000) of said fund may be expended at the discretion of the governor for the operation of said railroad. *(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1977, P.L.107, SEC.1; Acts 1978, P.L.57, SEC.3; Acts 1980, P.L.74, SEC.60; P.L.95-1987, SEC.3; P.L.2-1995, SEC.41.*

#### **IC 8-3-1.5-22**

##### **Repealed**

*(Repealed by P.L.95-1987, SEC.6.)*

#### **IC 8-3-1.5-23**

##### **Rules and regulations**

Sec. 23. The department shall, subject to IC 8-9.5-2-6(7) (repealed), promulgate rules and regulations consistent with and for the purpose of adequately implementing the foregoing sections of this chapter.

*(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.62; P.L.1-2009, SEC.68.*