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An Act To Promote Rail Competition in Northern Maine

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Public Law 2009, chapter 645 enacted An Act To Authorize Bond Issues for Ratification by the Voters for the June 2010 Election and November 2010 Election; and

Whereas, Public Law 2009, chapter 645, Part A, section 6 provided \$7,000,000 to purchase and preserve approximately 240 miles of railroad track in Aroostook County then owned and operated by the Montreal, Maine and Atlantic Railway; and

Whereas, the purpose of the purchase was to facilitate the retention of rail service to all Maine shippers served by those Aroostook County railroad tracks; and

Whereas, the bond issue referendum was duly ratified by the people of Maine; and

Whereas, the State has now negotiated and completed the purchase of the railroad track, now called the Aroostook Lines; and

Whereas, the purchase and sale agreement fails to provide nondiscriminatory and competitive access to the Aroostook Lines for all Aroostook County employers and shippers and threatens the preservation of jobs in Aroostook County through terms and conditions not mandated by Public Law 2009, chapter 645 or the referendum; and

Whereas, the State has now awarded a contract for the operation of the Aroostook Lines to serve Maine businesses and communities; and

Whereas, neither the Department of Transportation nor the Aroostook Lines operator possesses the ability to serve the largest employers and shippers of northern Maine, which are critical to the economy of that part of the State; and

Whereas, the State's purchase of the Aroostook Lines contains no protections for, and discriminates against, these critical Aroostook County employers and shippers, jeopardizing the livelihoods of thousands of Maine residents; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 23 MRSA §7151, as amended by PL 1991, c. 371, is further amended to read:

§ 7151. Legislative findings; declaration of policy; purpose

1. Legislative findings. The Legislature finds that safe, efficient and reliable rail service is essential to the economy of the State, the economic livelihood of industries located in the State, conservation and protection of the environment and the quality of life of the citizens of the State. The Legislature further finds that safe and efficient railroad service is essential to the State's public safety and the continued health and well-being of its citizens, particularly because of railroad transportation of bulk cargoes and hazardous and toxic substances, and the significant dangers that result from mishandling those and other cargoes.

2. Declaration of policy. It is declared to be the policy of the State that the State and its agencies shall cooperate with the Congress of the United States and the appropriate federal agencies to assure the development and maintenance of safe, efficient and reliable rail service for the State. For any railroad line acquired under this chapter, it is the intent of the Legislature that the State may acquire the railroad line, but the State may not be an operator of the railroad.

3. Acquisition, lease of railroad tracks; purpose. The purpose of the State's acquisition and subsequent lease of railroad tracks is to serve businesses, communities and other interconnected transport facilities in the State and not to serve entities located outside of the State on a discriminatory or preferential basis.

Sec. 2. 23 MRSA §§7157, 7158 and 7159 are enacted to read:

§ 7157. Funds; reimbursement

In order to receive any reimbursement or to continue to be eligible for reimbursement under the railroad assistance program in the Department of Transportation, an entity must:

1. Provide access. Make rail access available to all shippers within 50 miles of each other on a nondiscriminatory and equal basis; or

2. Allow purchase of access. Allow any shipper to purchase full physical access and control of access to its own shipping docks for the same consideration paid by other shippers within 50 miles of that shipper.

§ 7158. Disbursement of funds

An instrumentality of the State may not disburse funds for the upgrade, maintenance, purchase or lease of or any other purpose related to any railroad tracks until the Commissioner of Transportation has determined that the owner or operator of the railroad tracks has provided access to the railroad tracks to all shippers within 50 miles of each other on a nondiscriminatory and equal basis.

§ 1759. Service; state entity

A lease entered into after January 1, 2011 for the operation of rail service across railroad tracks owned by the State must be negotiated so as not to discriminate against or impose discrimination upon any entity doing business in the State that is served by those railroad tracks or served by railroad tracks immediately adjacent to those railroad tracks. The lease must contain, or be amended to contain, provisions ensuring that businesses, communities or other interconnected transport facilities located

within the State that are served by those railroad tracks not suffer discrimination or be discriminated against in favor of businesses, communities or interconnected transport facilities located outside the State, and those provisions must be material terms of the lease. Violation of any term of a lease is grounds for immediate termination of the lease.

Sec. 3. Reimbursement conditions. The expenditure or reimbursement of funds under the control of, or at the request of, the Department of Transportation as it relates to the purchase, pursuant to Public Law 2009, chapter 645, section 6, of railroad track in Aroostook County, now known as and referred to in this section and section 4 as the Aroostook Lines, is subject to the following conditions:

1. Any repayment, recrediting or restitution of funds or credits provided to the State to assist in purchasing the Aroostook Lines or reducing the per car-mile trackage fee is authorized only if the Commissioner of Transportation makes a finding that all shippers wishing to access the tracks are allowed to do so under nondiscriminatory and equal terms;

2. A corridor finder's fee may not be paid or any corridor approved as contemplated by the purchase and sale agreement until the Commissioner of Transportation has determined that the Montreal, Maine and Atlantic Railway has allowed the Aroostook Lines operator full physical access to all shippers on the Montreal, Maine and Atlantic Railway lines in the State under nondiscriminatory and equal terms; and

3. The Department of Transportation is authorized to accept additional contributions to reduce the per car-mile trackage fee for shippers using the Aroostook Lines from 30¢ to 10¢ and, in exchange for the additional contributions, the department shall ensure that nondiscriminatory and equal access to its operator is provided to all shippers in affected counties.

Sec. 4. Reports. Beginning June 30, 2011, the Department of Transportation and the Aroostook Lines operator shall provide quarterly reports to the joint standing committee of the Legislature having jurisdiction over transportation matters and the joint standing committee of the Legislature having jurisdiction over economic development matters detailing:

1. The progress in serving the businesses and communities of the northern part of the State, including both shippers and other interconnected transport facilities located in the State;

2. The remaining obstacles providing access to the railroad tracks to the largest employers in the northern part of the State and to improving service quality to shippers and other interconnected transport facilities located in the State;

3. The recommended strategies to secure access and improved service on competitive and economical terms; and

4. Any further suggestions for legislative action necessary to ensure the provision of access and improved service.

The department and the operator shall provide the quarterly reports under this section until the Commissioner of Transportation and the chief executive of the Aroostook Lines operator confirm to the joint standing committee of the Legislature having jurisdiction over transportation matters and the joint standing committee of the Legislature having jurisdiction over economic development matters that the

objectives set out in this section for access and service quality have been reached and will be maintained on a longterm basis. After access to the railroad tracks and service quality have been confirmed, the department shall provide annual reports to the committees by February 15th of each year.

Sec. 5. Retroactivity. This Act applies retroactively to January 1, 2011.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This bill amends the statutes governing the acquisition of railroad lines to require that:

1. In order to receive reimbursement under the railroad assistance program in the Department of Transportation, an entity must make rail access available to all shippers within 50 miles of each other on a nondiscriminatory and equal basis, or allow any shipper to purchase full physical access and control of access to its own shipping docks for the same consideration paid by other shippers within 50 miles of that shipper;

2. An instrumentality of the State may not disburse funds for the upgrade, maintenance, purchase or lease of or any other purpose related to any railroad tracks until the Commissioner of Transportation has determined that the owner or operator of the railroad tracks has provided access to the railroad tracks to all shippers within 50 miles of each other on a nondiscriminatory and equal basis; and

3. A lease entered into after January 1, 2011 for the operation of rail service across railroad tracks owned by the State must be negotiated so as not to discriminate against or impose discrimination upon any entity doing business in the State that is served by those railroad tracks or served by railroad tracks immediately adjacent to those railroad tracks.

In addition, this bill imposes conditions on the expenditure or reimbursement of funds under the control of, or at the request of, the Department of Transportation as it relates to the purchase, pursuant to Public Law 2009, chapter 645, section 6, of railroad track in Aroostook County, known as the Aroostook Lines. The bill requires that the Department of Transportation and the Aroostook Lines operator provide quarterly reports to the joint standing committee of the Legislature having jurisdiction over transportation matters and the joint standing committee of the Legislature having jurisdiction over economic development matters detailing the provision of progress in serving the businesses and communities of the northern part of the State, including both shippers and other interconnected transport facilities located in the State.