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Legislative Document

No. 1544

H.P. 1133

House of Representatives, May 3, 2011

An Act To Promote Rail Competition in Northern Maine

(EMERGENCY)

Reference to the Committee on Transportation suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative FITTS of Pittsfield.

Cosponsored by Representatives: CEBRA of Naples, MAZUREK of Rockland, PEOPLES of Westbrook, Senator: COLLINS of York.

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

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

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

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

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

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

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

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

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

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

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

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

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

33 **§7151. Legislative findings; declaration of policy; purpose**

34 **1. Legislative findings.** The Legislature finds that safe, efficient and reliable rail
35 service is essential to the economy of the State, the economic livelihood of industries

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

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

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

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

18 **§7157. Funds; reimbursement**

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

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

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

27 **§7158. Disbursement of funds**

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

33 **§1759. Service; state entity**

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

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

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

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

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

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

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

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

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

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

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

1 The department and the operator shall provide the quarterly reports under this section
2 until the Commissioner of Transportation and the chief executive of the Aroostook Lines
3 operator confirm to the joint standing committee of the Legislature having jurisdiction
4 over transportation matters and the joint standing committee of the Legislature having
5 jurisdiction over economic development matters that the objectives set out in this section
6 for access and service quality have been reached and will be maintained on a long-term
7 basis. After access to the railroad tracks and service quality have been confirmed, the
8 department shall provide annual reports to the committees by February 15th of each year.

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

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

12 SUMMARY

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

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

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

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

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