

CHAPTER 1095
RAILWAY FINANCE AUTHORITY

S. F. 2378

AN ACT creating the Iowa railway finance authority to aid in the construction, renovation and repair of railway facilities, providing for the authority to issue revenue bonds and providing for the collection of delinquent property taxes of railway companies by the department of transportation and making an appropriation.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. SHORT TITLE. This Act may be referred to and cited as the "Iowa Railway Finance Authority Act".

Sec. 2. NEW SECTION. DECLARATION OF NECESSITY AND PURPOSE. The purpose of this Act is to benefit the citizens of Iowa by improving their general health, welfare and prosperity and insuring the economic and commercial development of the state. Access to adequate railway transportation facilities is essential to the economic welfare of the state. This Act is intended to preserve for the citizens of Iowa those railway facilities now in existence in the state which have a viable future but which for a variety of economic and legal reasons may well go out of service if the state does not provide the financing mechanism contained in this Act. It is the intent of the Act that ownership and control of railway facilities be transferred to private ownership as promptly as economically practicable. It is further intended that the authority created herein be vested with all powers to enable it to accomplish its purposes except the power to operate rolling stock except as incidental to the repair or renovation of a railway facility.

Sec. 3. NEW SECTION. LEGISLATIVE FINDINGS. The general assembly finds and declares as follows:

1. The establishment of the authority is in all respects for the benefit of the people of the state of Iowa, for the improvement of their health and welfare, and for the promotion of the economy, which are public purposes.

2. The authority will be performing an essential governmental function in the exercise of the powers and duties conferred upon it by this chapter.

3. There will exist a serious shortage of viable rail lines and railway facilities serving the rural and agricultural communities of the state.

4. There exists a serious problem in this state regarding the ability of agricultural producers to transport economically farm products to traditional markets because of the abandonment and possible abandonment of railway facilities within the state.

5. These conditions are making it more and more difficult for farmers and farm related businesses to survive in the present state of the economy thus threatening the very heart blood of Iowa.

6. One major cause of this condition has been recurrent shortages of funds in private channels and the high interest cost of borrowing.

7. These shortages have contributed to reductions in construction of new railway facilities, and have made the sale, purchase and repair of existing railway facilities a virtual impossibility in many parts of the state.

8. Iowa faces the possible consequences of two railroad bankruptcies and further reductions in service by other railroads due to deteriorating rail facilities. The loss of rail service on three thousand ninety miles may be the immediate consequence of the bankruptcies, with a resultant increase in transportation costs. This will be accompanied by a reduction in Iowa farm income. Any prolonged loss of service on the essential portions of these rail facilities means the loss of jobs in Iowa and a loss to the state economy.

9. A stable supply of adequate funds for financing of railway facilities is required to encourage construction of railway facilities, the rehabilitation of existing facilities and to prevent the abandonment of others in an orderly and sustained manner and to reduce the problems described in this section.

10. It is necessary to create a railway finance authority to encourage the investment of private capital and stimulate the construction, rehabilitation and repair of railway facilities and to prevent the abandonment of others through the use of public financing.

11. All of the purposes stated in this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned or granted.

Sec. 4. NEW SECTION. DEFINITIONS. For purposes of this Act, unless the context otherwise requires:

1. "Authority" means the Iowa railway finance authority created by this Act.

2. "Railway facilities" means land, structures, fixtures, buildings and equipment, except rolling stock, necessary or useful in providing railroad transportation services, including, but not limited to, roadbeds, track, trestle, depot, switching and signaling equipment and all necessary, useful and related equipment and appurtenances and all franchises, easements and other interests in land and rights-of-way necessary or convenient as a site or sites for any of the foregoing.

3. "Project costs" as applied to railway facilities financed under the provisions of this Act means the total of all reasonable or necessary costs for or incidental to the acquisition, construction, reconstruction, repair, alteration, improvement or extension of any railway facilities including, but not limited to, the cost of studies and surveys, plans, specifications, architectural and engineering services, legal, organizational, marketing or other special services, financing, acquisition, demolition, construction, equipment and site development of new and rehabilitated buildings and facilities, rehabilitation, reconstruction, repair or remodeling of existing buildings and facilities and all other necessary and incidental expenses including, but not limited to, an initial bond and interest reserve together with interest on bonds issued to finance the railway facilities to a date six months subsequent to the estimated date of completion.

4. "Department" means the Iowa department of transportation.

5. "Governing board" or "board" means the governing board of the authority created by section six (6) of this Act.

6. "Bonds" means negotiable bonds, notes or other obligations, except those obligations to the federal government, issued under this Act.

Sec. 5. NEW SECTION. IOWA RAILWAY FINANCE AUTHORITY. There is created an Iowa railway finance authority for the purpose of financing railway facilities as provided in this Act.

Sec. 6. NEW SECTION. GOVERNING BOARD--STAFF.

1. The powers of the authority shall be vested in and exercised by a governing board consisting of five members appointed by the governor subject to confirmation by the senate.

2. The members of the governing board shall be appointed by the governor for staggered terms of six years beginning and ending as provided in Senate File two thousand three hundred one (2301) as enacted by the Sixty-eighth General Assembly, 1980 Session, section three (3). A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. A member of the board may be removed from office by the governor for misfeasance, malfeasance or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing. A member of the board shall not also serve concurrently as a member of the state transportation commission or as an official or employee of the department.

3. Three members of the board constitute a quorum and the affirmative vote of at least three members is necessary for any recommendation made by the board. The majority shall not include any member who has a conflict of interest and a statement by a member of a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the right of a quorum to perform the functions and duties of the board.

4. Members of the board are entitled to receive forty dollars per diem for each day spent in performance of their functions and duties as members and reimbursement for all actual and necessary expenses incurred in the performance of their functions and duties as members.

5. Meetings of the board shall be held at the call of the chairperson or when two members so request.

6. Members shall elect a chairperson and vice chairperson annually, and other officers as they determine. However, the director of the department shall be the secretary of the board.

7. The members of the board shall give bond as required for public officers in chapter sixty-four (64) of the Code.

8. The members of the board shall be subject to and be officials within the meaning of chapter sixty-eight B (68B) of the Code.

9. The director and staff of the department shall serve as the staff of the authority. The director of the department shall advise the board on matters relating to railroad transportation and carry out all directives from the board, and may employ professional expertise when not available on the department staff.

10. The counsel of the transportation regulation board and the attorney general's office shall provide legal services for the authority and the board unless a majority of the board deems outside counsel is required in a particular instance.

Sec. 7. NEW SECTION. POWERS OF THE AUTHORITY. The authority shall have all powers necessary for the performance of its purposes and duties, including but not limited to, the power to:

1. Have perpetual succession as a public authority.
2. Adopt rules for the regulation of its affairs and to carry out its duties and responsibilities.
3. Sue and be sued in its own name.
4. Exercise the power of eminent domain.
5. Acquire railway facilities, whether located within Iowa or a contiguous state, directly or through an agent, by purchase, lease, gift, devise or otherwise.
6. Determine the location and construction of any railway facility to be financed under the provisions of this Act and to construct, reconstruct, renovate, replace, maintain, repair and lease the same, and to enter into contracts for any of these purposes.
7. Enter into contracts with any person, federal or state government or subdivision of a state for the operation, management or use of a railway facility.
8. Designate an agent to determine the location and construction of a railway facility under the provisions of this Act and as agent of the authority, to construct, reconstruct, renovate, replace, maintain, repair, and lease the same and to enter into contracts for any of these purposes including contracts for the operation, management or use of the railway facility.
9. The authority may sell or convey any of the railway facilities upon terms and considerations acceptable to the governing board.
10. Issue bonds, notes or other obligations for any of its purposes and to refund the same, all as provided for in this Act. However, total outstanding principal amount of bonds shall not exceed one hundred million dollars at any one time.
11. Invest or deposit moneys of the authority, subject to any agreement with bondholders or noteholders, in any manner determined by the authority, notwithstanding the provisions of chapter four hundred fifty-two (452), four hundred fifty-three (453) or four hundred fifty-four (454) of the Code.
12. Fix and revise and charge and collect rates, rents, fees and charges for the use of any railway facility or any portion of a facility and to contract with any person, firm or corporation or other public or private body in respect to a facility.
13. Mortgage all or any portion of its railway facilities and the sites, whether then owned or thereafter acquired, to finance the railway facility or any portion of the facility.
14. Extend loans for the purpose of financing project costs of a railway facility.

15. Extend loans to refund bonds, obligations to the federal government, mortgages or advances issued, made or given for the cost of a railway facility including the issuing of bonds and making loans to refinance indebtedness incurred for railway facilities undertaken and completed prior to or after the enactment of this Act when the governing board finds that this financing is in the public interest.

16. Have and alter a corporate seal.

17. Receive and accept from any public agency loans or grants for or in aid of project costs and to receive and accept grants, gifts and other contributions from any source.

18. Own a railway facility under this Act if necessary to preserve part of a railway system, upon the determination, after consultation with the department, that the railway facility is necessary to the system, and then shall be relinquished to private ownership or operation as soon as economically practicable.

19. Temporarily operate a railway facility under this Act if sufficient need exists or there is an emergency situation as determined by a majority of the board.

Sec. 8. NEW SECTION. DUTIES OF GOVERNING BOARD. The specific duties of the governing board shall be to:

1. Keep accurate records of all its proceedings and make them available to the public.

2. Exercise its powers and duties consistent with the policies and plans of the state transportation commission submitted by it to the general assembly as required under section three hundred seven point ten (307.10), subsection one (1) of the Code.

3. Issue a public declaration before the issuance of bonds as to the need for and use of the proceeds from the issuance of bonds.

4. Provide a prospectus in connection with the offering for sale of bonds.

5. Establish a maximum interest rate which the bonds of an issue may bear.

6. Establish one or more bond reserve funds.

7. When issuing bonds, issue bonds the interest of which will be tax exempt for federal income tax purposes, whenever possible.

8. Contract for services through the department when practicable.

9. Provide an economically designed and reproduced annual report to the members of the general assembly who request it containing information as directed by the legislative council.

Sec. 9. NEW SECTION. BONDS. All bonds issued by the authority shall be payable solely out of the revenues and receipts derived from the lease or sale by the authority of its railway facilities or as may be designated in the proceedings of the governing board under which the bonds shall be authorized to be issued by the governing board, or derived from any loan agreement between the authority and the borrower with respect to railway facilities or any other funds of the authority which the board may designate except that no tax funds which the authority may receive from the state or any political subdivision shall be used for payment of the bonds. The

proceedings of the governing board authorizing the issuance of the bonds shall provide for the manner of execution, delivery, form, terms, investment and disbursement of the proceeds, and security for the payment of the bonds. Before any bonds of the authority may be offered for sale, the authority shall issue a prospectus in connection with the offering. The bonds shall be either registered, registered as to principal only or in coupon form, be payable as to principal at times over a period not to exceed thirty-five years. Any bonds of the authority may be sold at public or private sale at the price, in the manner and at the time as may be determined by the governing board. The proceedings under which bonds may be issued shall recognize and protect any prior pledge or mortgage made for any prior issue of bonds as they shall relate to the same facility. Chapter seventy-five (75) and sections twenty-three point twelve (23.12) through twenty-three point sixteen (23.16) of the Code do not apply to bonds issued under this Act. All bonds and interest coupons issued under this Act are negotiable instruments.

Sec. 10. NEW SECTION. REFUNDING OF BONDS. Any bonds of the authority at any time outstanding may be refunded with the consent of the bondholders or as provided in call provisions of the original issue by the authority by the issuance of its refunding bonds in an amount as it deems necessary but not exceeding an amount sufficient to refund the principal of the bonds to be refunded, together with any unpaid interest premiums, commissions, service fees and other expenses necessary to be paid. Any refunding may be effected whether the bonds to be refunded have matured or shall mature, either by sale of the refunding bonds and the application of the proceeds for the payment of the bonds to be refunded, or by the exchange of the refunding bonds for the bonds to be refunded with the consent of the holders of the bonds to be refunded. Refunding may be made without regard to whether or not the bonds to be refunded were issued in connection with the same railway facility or separate railway facilities or for any other purpose, and without regard to whether or not the bonds proposed to be refunded shall be payable on the same date or different dates or due serially or otherwise.

Sec. 11. NEW SECTION. SECURITY FOR BONDS. The principal of and interest on any bonds issued by the authority shall be secured by a pledge of revenues, rentals and receipts out of which the same shall be made payable and may be secured by any federal funds, a trust indenture, mortgage or deed of trust including assignment of leases or other contract rights of the authority, contract rights of the authority or any person, firm, corporation or other business entity acquiring, leasing or operating a railway facility under this Act with third parties which may cover all or any part of the railway facilities for which the revenues, rentals or receipts pledged may be derived, including, but not limited to, any enlargements of or additions to any facilities.

Each such pledge shall continue effective until the principal and interest on the bonds shall have been fully paid or provision for the payment duly made.

Sec. 12. NEW SECTION. PAYMENT OF BONDS--NONLIABILITY OF STATE. Bonds issued under the provisions of this Act, and judgments based on contract or

tort arising from the activities of the authority or persons acting on its behalf, shall not constitute a debt or liability of the state or of any political subdivision within the meaning of any constitutional or statutory debt limitation and no appropriation shall be made, directly or indirectly, by the state or any political subdivision for the payment of the bonds or judgments, or for the indemnification of a person subject to a judgment arising from that person's actions on the authority's behalf, but are special obligations of the authority payable solely and only from the sources provided in this Act.

Sec. 13. NEW SECTION. REMEDIES OF BONDHOLDERS AND NOTEHOLDERS.

1. If the authority defaults in the payment of principal or interest on an issue of bonds or notes after they become due, whether at maturity or upon call for redemption, and the default continues for a period of thirty days, or if the authority fails or refuses to comply with the provisions of this Act, or defaults in an agreement made with the holders of an issue of bonds or notes, the holders of twenty-five percent in aggregate principal amount of bonds or notes of the issue then outstanding, by instrument filed in the office of the clerk of the county in which the principal office of the authority is located, and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of the bonds or notes for the purposes provided in this section.

2. The authority or any trustee appointed under the indenture under which the bonds are issued may, and upon written request of the holders of twenty-five percent in aggregate principal amount of the issue of bonds or notes then outstanding shall:

a. Enforce all rights of the bondholders or noteholders, including the right to require the authority to carry out its agreements with the holders and to perform its duties under this Act.

b. Bring suit upon the bonds or notes.

c. By action require the authority to account as if it were the trustee of an express trust for the holders.

d. By action enjoin any acts or things which are unlawful or in violation of the rights of the holders.

e. Declare all the bonds or notes due and payable and if all defaults are made good then with the consent of the holders of twenty-five percent of the aggregate principal amount of the issue of bonds or notes then outstanding, annul the declaration and its consequences.

3. The trustee shall also have and possess all powers necessary or appropriate for the exercise of functions specifically set forth or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

4. Before declaring the principal of bonds or notes due and payable, the trustee shall first give thirty days' notice in writing to the governor, to the authority and to the attorney general of the state.

5. The district court has jurisdiction of any action by the trustee on behalf of bondholders or noteholders. The venue of the action shall be in the county in which the principal office of the authority is located.

Sec. 14. NEW SECTION. AUTHORITY AS PUBLIC INSTRUMENTALITY. The authority is performing a public function on behalf of the state and is a public instrumentality of the state. Income of the authority and all properties owned or leased by the authority shall be exempt from all taxation in the state of Iowa. This Act shall not be construed as exempting from taxation properties comprising railway facilities financed under any of the provisions of this Act which are owned by persons or entities other than the authority except those leased by the authority.

Sec. 15. NEW SECTION. POWERS NOT RESTRICTED--LAW COMPLETE IN ITSELF. This Act shall not be construed as a restriction or limitation upon any powers which the authority might otherwise have under any laws of this state, but shall be construed as cumulative of any such powers. No proceedings, referendum, notice or approval shall be required for the creation of the authority or the issuance of any bonds or any instrument as security except as herein provided, any other law to the contrary notwithstanding; provided, that nothing herein shall be construed to deprive the state and its governmental subdivisions of their respective police powers over properties of the authority or to impair any power thereover of any official or agency of the state and its governmental subdivisions which may be otherwise provided by law.

Sec. 16. NEW SECTION. LIMITATION OF LIABILITY. The members of the board and persons acting in the board's behalf, while acting within the scope of their employment or agency, shall be employees of the state within the meaning of chapter twenty-five A (25A) of the Code and the provisions, except section twenty-five A point eleven (25A.11) of the Code, of that chapter shall apply to such members and persons. Any awards to a claimant under chapter twenty-five A (25A) of the Code resulting from actions involving the board or a person acting in the board's behalf shall be payable solely from funds of the authority and funds received from the state shall not be used to pay such awards.

Sec. 17. NEW SECTION. EXEMPTION FROM CONSTRUCTION AND BIDDING REQUIREMENTS FOR PUBLIC BUILDINGS. A railway facility is not subject to any requirements relating to public buildings, structures, grounds, works or improvements imposed by any other law, except as determined by the governing board, or any other similar requirements which may be lawfully waived by this section and any requirement of competitive bidding or other restriction imposed on the procedure for awarding contracts for such purpose or the lease, sale, or other disposition of property of the authority is not applicable to any action taken under the provisions of this Act.

Sec. 18. NEW SECTION. LIBERAL INTERPRETATION. This Act, being necessary for the welfare of this state and its inhabitants, shall be liberally construed to effect its purposes.

Sec. 19. The governor shall appoint all members of the governing board under section six (6) of this Act within eight weeks from the effective date of this Act.

Sec. 20. Of the first appointments to the governing body under section six (6) of this Act, two members shall be appointed for terms ending in 1982, two members shall be appointed for terms ending in 1984 and one member shall

be appointed for a term ending in 1986. The terms of the first appointments shall end at 12:00 o'clock midnight on April thirtieth of the year of expiration.

Sec. 21. Chapter three hundred seven (307), Code 1979, is amended by adding the following new section:

NEW SECTION. COLLECTION OF DELINQUENT RAILWAY TAXES--COMPROMISE.

1. Sixty days after the tax obligations of a railway company which are owed to a political subdivision of this state become delinquent as provided in section four hundred forty-five point thirty-seven (445.37) of the Code and remain unpaid, the state department of transportation shall become responsible for collection of the delinquent taxes. The county treasurer of each affected county shall transmit the unpaid tax statement of the railway company to the state department of transportation.

2. The transportation regulation board shall consolidate and collect all delinquent tax obligations of a railway company received from the counties. The transportation regulation board may compromise the delinquent taxes against the railway company property and by written agreement with the railway company agree to the payment of a stipulated sum in full liquidation of all delinquent taxes included in the agreement and may accept title to any right-of-way or other real estate in this state owned by the railway company in payment for the delinquent taxes.

3. Upon the acquisition by the department of payment from the railway company in full liquidation of the delinquent taxes including payment by means of transfer of title to rights of way or other real estate, any tax lien existing prior to such acquisition on the property on which the taxes were delinquent shall be null and void and the department shall not pay any of those delinquent taxes to the county treasurer.

Sec. 22. There is appropriated from the general fund of the state for the use of the Iowa railway finance authority the sum of two hundred seventy-five thousand (275,000) dollars, or so much thereof as is necessary, to be used for salaries, support, maintenance and miscellaneous purposes and to establish and maintain the Iowa railway finance authority and its staff, to promulgate rules under chapter seventeen A (17A) of the Code and for planning purposes. Section eight point thirty-three (8.33) of the Code shall not apply to the funds appropriated by this section. The funds appropriated by this section which are unencumbered and unobligated on July 1, 1982 shall be transferred to the railroad assistance fund and be available for the purposes provided in chapter three hundred twenty-seven H (327H) of the Code.

Sec. 23. This Act, being deemed of immediate importance takes effect from and after its publication in the Audubon News-Advocate, a newspaper published in Audubon, Iowa, and in the Muscatine Journal, a newspaper published in Muscatine, Iowa.

Approved May 20, 1980

I hereby certify that the foregoing Act, Senate File 2378, was published in the Audubon News-Advocate, Audubon, Iowa on May 28, 1980, and in the Muscatine Journal, Muscatine, Iowa on June 2, 1980.

MELVIN D. SYNHORST, *Secretary of State*