

Fidelity National Title Insurance Company

RAILROAD LAND



John J. Foster
Manager, Midwest Agency

Railroad Land

I. The two most important questions:

- A. How did the railroad acquire the land?
- B. What happens upon abandonment?

II. Methods of Acquisition

- A. Congressional Grants (94 million acres to railroads directly; another 37 million acres to states for conveyance to railroads)

1. Charter Acts/Pacific Railroad Acts

a. 1862 to 1871

- i. Grants provided "limited fee" title (reverted to U.S. ownership upon disuse as a railroad)
- ii. Right of Way ("ROW") – usually 400 feet wide; sometimes only 200 feet wide
- iii. To perfect its title railroad had to:
 - Lay track.
 - File survey map with the US Department of the Interior.
 - Title of any grant related back to date of original grant.
 - Title was considered superior to any patent granted or homestead entry after the original grant date.
- iv. No US patents were issued under these acts; therefore, searching the public records won't disclose the document creating the railroad's interest.
- v. Did NOT include subsurface mineral rights; retained by US government.

vi. Did include land adjacent needed for stations, switch towers, water and coal facilities, engine sheds, etc. (even if beyond the 400 or 200 foot ROW).

vii. "In Aid of Construction Grants"/ "Grants in Aid":

included fee ownership of alternate sections of land (1 sq. mile = 640 acres) along the ROW;

railroad could sell this land to third parties to finance construction of the railroad;

US patents were issued on this land, so the land title was searchable from the US patent of origin.

b. 1871 to 1875

i. Grants provided limited fee title.

ii. ROW – 200 feet wide.

iii. Adjacent land sold for railroad purposes.

iv. No US patents issued for "Grant In Aid" land.

c. 1875: General Railroad Right-of-Way Act (43 U.S.C. Sec. 934-939)

i. Outgrowth of public unhappiness over what railroads had been receiving.

ii. ROW – 200 feet wide.

iii. Grants provided easement, not a limited fee.

iv. No alternate sections were included; adjacent land for railway purposes was included.

- v. Railroad had right to remove earth, stone, wood, etc. from adjacent PUBLIC land for construction purposes.
- vi. Profile map filed with US Department of the Interior; upon approval, any subsequent interest was subject to the railroad's interest.

B. Private Grants

- 1. Purchase from or grant by private owners.
- 2. Language of the grant controls (indicating intention of the parties): Fee; Limited Fee (subject to reversion); Easement.
- 3. May be indeterminate; quiet title required.
- 4. Courts consider:

consideration paid.
reversionary language.
subsequent LD of adjacent land.
extrinsic evidence; testimony.

- 5. Other methods:

Eminent domain / condemnation
Adverse possession

III. Abandonment

A. Congressional Grant Railroads

- 1. Have limited ability to transfer ROW:
 - a. May give an easement, unless it interferes with railroad use. (for telephone/ telegraph, gas, cable, fiber-optic pipelines or for road-crossing purposes).

- b. May sell ROW to another railroad without special authorization.
- c. May NOT sell for non-railroad purposes, without following specific procedures, constituting "legal abandonment":
 - i. Sale must be approved (via an "Order of Abandonment") by the Surface Transportation Board ("STB") of US Department of Transportation (or Interstate Commerce Commission ("ICC"), prior to 1/3/96), AND
 - ii. Sale must be approved by Congress or by a federal district court.
 - iii. After abandonment approval, the federal government has ONE YEAR to accept the land for federal highway purposes.
 - iv. If land not so accepted by federal government:

If abandonment occurred between March, 1922 and October 4, 1988:

Land within municipality reverts thereto; If land not within a municipality, title to PATENTED land reverts to adjacent landowners; title to UNPATENTED land reverts to the federal government.

B. Private Grant Railroads

- 1. Abandonment may require STB approval, and the document creating the railroad's interest (deed, grant or other conveyance document) controls disposition.
- 2. If railroad holds FEE TITLE, (i.e., no reversionary language) railroad can convey outright.
- 3. If railroad holds LIMITED FEE TITLE (i.e., including reversionary language), upon the

railroad ceasing use, property reverts to original grantor, or to his heirs or successors.

4. If railroad held EASEMENT only (including a purportedly "fee" conveyance by deed "for railroad purposes" or "for right of way purposes"), easement interest (dominant tenement) MERGES into the underlying servient tenement, (ie., the railroad's easement interest merges into the underlying owner's title, formerly burdened by the easement.)
5. State law controls as to whether "legal abandonment" has taken place:
 - Non-use for a time period
 - Removal of track structure and
 - Used for purposes inconsistent with railroad use.

IV. "Rails-To-Trails" – applies to federally-granted rights of way; not to those obtained by private grant or by condemnation.

A. Congressional Grant railroads – "National Trail System Improvements Act of 1988" ("the Rails-to-Trails Act"), effective October 4, 1988 (16 U.S.C. 1248 (c)-(f))

1. Upon abandonment of ROW, which is NOT to be used as federal highway, the ROW may be incorporated into a nature, hiking or biking trail system, if adjacent to federal lands; OR
2. If NOT adjacent to federal lands, local agencies may apply to manage the former ROW; OR
3. Federal interest may be sold, with proceeds going to Federal Land and Water Conservation Fund.
(Note: After October 4, 1988, abandoned federally-granted rights of way no longer revert to adjacent landowners.)

B. Private Grants/ Condemnation:

"Rail Banking Act ,a 1983 amendment to the "National Trail Systems Act" –(16 U.S.C. 1247 (d))

1. Promotes a "national policy" to preserve railroad ROW's for future use; prevents "corridor collapse".
2. Interim non-rail use of ROW by donation, transfer, lease, sale, etc., is not deemed as "abandonment of railroad usage".
3. This federal law takes precedence over conflicting state law on what constitutes "legal abandonment".

IV. Title Practice

A. As to land traversed by ROW (either mainline or "siding")

1. except ROW from Legal Description, OR
2. raise Schedule B exception
 - a. re: 1.)the rights of the railroad, if any; 2.)the existence of any reversionary interest, power of termination, or right of first refusal existing in the federal or state governments, AND
 - b. re: 3.)as to "abandoned" ROW's, the consequence of the failure of the railroad to comply with any statutory or regulatory requirements relating to abandonment.
 - c. For MOST congressional grant railroads (except "Charter Act" or "Pacific Railroad Act" railroads, with grants issued 1862-1871), raise an exception relating to subsurface mineral rights in the federal government.
3. If INSURING property contiguous to a ROW, consider access issues (i.e., "landlocking"):
 - License or crossing permit granted by the railroad or ROW owner?
 - If not, raise "lack of access" exception.

- If a license allows access; will it be terminated by the present transaction? (Note: a license is "personal" to the parties thereto, and does not "run with the land", as does an easement.)
4. Pursuant to state law, real estate taxes are billed either by individual counties or by state department of revenue.
 5. Lien searches – must usually be done in the Secretary of State's Office.

B. Insuring ROW property – Contact your underwriter!

Road Crossing Application Form

SECTION 1: TO BE COMPLETED FOR ALL CROSSINGS

Name _____

Address _____

City _____ State _____ Zip Code _____

Contact Person _____

Phone _____ Fax _____

() Individual () Partnership () Proprietorship () Corporation: _____ State Incorporated

Names of Officers, Partners or Proprietor _____

Billing Address if different than above _____

Type of Road Crossing:

____ Private Farm Crossing ____ Private Commercial Crossing ____ Contractor's Crossing

____ Pedestrian Overpass ____ Pedestrian Underpass ____ Other _____

____ Existing Crossing ____ New Installation ____ Relocation

____ Permanent Use ____ Temporary Use for _____ Mos. ____ Reconstruction

Crossing will be used to access _____

Type of Vehicles To Be Driven Over Crossing:

____ Passenger Cars ____ Recreational Vehicles ____ Pickups

____ Farm Equipment ____ Heavy Construction Equipment ____ Other _____

Approximate number of daily one way trips over the crossing _____

Name of Owner of Property to be served by crossing _____

Address if different than above _____

Crossing is Located in the:

_____ Section _____, Township _____, Range _____

(Example: SE 1/4 of NW 1/4 Section 15, Township 39N, Range 12E)

In / Near the City of _____, _____ County/Parish, State of _____

Attach a Legal Description of Your Property to be served by the crossing and a Property or County Map showing the Location of the Crossing.
INDICATE on the map the distance measured along the track between the crossing and fixed objects in the vicinity (i.e. bridge, culvert, railroad mile marker, public road)

SECTION 2: TO BE COMPLETED FOR EXISTING CROSSINGS ONLY

Name(s) of previous users of crossing _____

Crossing is currently covered by license agreement number _____

Dated _____ with _____

SECTION 3: TO BE COMPLETED FOR INSTALLATION OF NEW CROSSINGS ONLY

How is property currently accessed? _____

Why was access to property not obtained from previous owner _____

Desired crossing will be _____ feet () north () south () east () west

of nearest _____ () public () private road crossing.

Track is in _____-ft cut/fill Number tracks crossed _____ Track is on: () curve () straight

Signed _____ Date _____

FOR RAILROAD USE ONLY

RAILROAD MILEPOST _____ RAILROAD SUBDIVISION _____ AAR/DOT NUMBER _____

MGR IND & PUBLIC PROJECTS _____ MGR TRACK MAINTENANCE _____ MGR SIGNAL MAINTENANCE _____

TELEPHONE: _____ TELEPHONE: _____ TELEPHONE: _____

SUPERINTENDENT TRANSP SVCS APPROVAL RECEIVED:

WIDTH OF CROSSING _____ WIDTH OF RR RIGHT-OF-WAY _____ CROSSING SURFACE _____

FLAGGING PROTECTION REQUIRED? _____ LOCKED GATES REQUIRED AT RIGHT-OF-WAY LINES? _____

SPECIAL PROVISIONS:

ESTIMATED COST
(ATTACH MATERIAL AND FORCE
ACCOUNT ESTIMATE)

WORK TO BE PERFORMED BY RAILROAD:

ANNUAL LICENSE FEE

ANNUAL SIGNAL MAINTENANCE
FEE

SUBMITTED BY _____ DATE _____

TITLE: _____



Source: CPR Archives

Image Ref#: NS 6678

Railroad Contact Information

(for real estate departments, system maps, etc.)

NATIONAL RAILROADS

1.) Burlington Northern and Santa Fe Railway (including, inter alia, by merger the Chicago, Burlington & Quincy Railway (C, B&Q), Atchison, Topeka & Santa Fe Railway (AT&SF), the Great Northern Railway (GN), and the Northern Pacific Railway (NP)): www.bnsf.com

2.) Canadian National Railway (including, inter alia, by merger, the Wisconsin Central Railway (WC), the Green Bay & Western Railway (GBW), the Illinois Central Railway (IC), and the Duluth, Missabe & Iron Range Railway (DM&IR)): www.cn.ca

3.) Canadian Pacific Railway (including, inter alia, by merger, the Minneapolis, St. Paul & Sault Ste. Marie Railway, AKA "the SOO LINE"): www8.cpr.ca

4.) Union Pacific Railway (including, inter alia, by merger, the Chicago & North Western Railway (C&NW)): www.uprr.com

5.) CSX Transportation (including, inter alia, by merger, the Baltimore & Ohio Railroad (B&O), the Chesapeake & Ohio Railroad (C&O)): www.csx.com

6.) Norfolk Southern Railway (including, inter alia, by merger, the Norfolk & Western Railway (N&W), the Southern Railway, and the Wabash Railway): www.norfolksouthern.com

REGIONAL RAILROADS

1.) Iowa, Chicago & Eastern Railroad (I, C&E): www.icerail.com

2.) Dakota, Minnesota & Eastern Railroad (D, M&E): www.dmerail.com

3.) Twin Cities & Western Railroad (TC&W): www.tcwr.net

4.) Wisconsin & Southern Railroad (W&S): www.wsorrailroad.com

5.) Elgin, Joliet & Eastern Railway (E, J&E): www.tstarinc.com/eje

6.) The Belt Railway Company of Chicago: www.beltrailway.com

CONTROLLING FEDERAL AGENCY

Surface Transportation Board, US Department of Transportation:
www.stb.dot.gov

CONTROLLING STATE AGENCIES

Usually your state's department of transportation, accessible through your state's website.

NATIONAL RAILROAD INDUSTRY ASSOCIATION

Association of American Railroads: www.aar.org

HELPFUL "FALLEN FLAG" WEBSITE

Answers.com/fallen flags: www.answers.com/topic/fallen-flag

Railroad – Related Statutes

ILLINOIS:

35 ILCS 200/11-7- et seq., "Assessment of railroad companies", attached.

35 ILCS 605/0.01 et seq., "Illinois Central Railroad Tax Act", attached.

Various other railroad statutory citations, attached.

INDIANA:

IC 8-3-1.5, "State Rail Preservation Law", attached.

IC 8-3-5, "Railroad application of eminent domain", attached.

IC 8-3-8, "Railroad rights of way; recording deeds", attached.

IC 8-3-15, "Public use of railroad land", attached.

IC 32-24-4, "Procedures for utilities and other corporations", attached.

WISCONSIN:

W.S. Sec. 190.11, "Railroad conveyances, how executed and filed" (See Underwriting Bulletin, "Searching Railroad Lands", 10/20/04, attached hereto.

W.S. Ch. 190, generally, "Railroads, organization and management", attached.

W.S. Sec. 85.09, "Acquisition of abandoned rail property", attached.

Illinois Compiled Statutes

REVENUE (35 ILCS 200/) Property Tax Code.

(35 ILCS 200/Art. 11 Div. 3 heading)
Division 3. Railroads

(35 ILCS 200/11-70)

Sec. 11-70. Assessment of railroad companies; definitions. These words and phrases, for the assessment of the property of railroad companies, and unless otherwise required by the context shall be defined as follows:

(a) "Railroad company," "railroad," or "company" means any person, company, corporation or association owning, operating or constructing a railroad, a suburban or interurban railroad, a switching or terminal railroad, a railroad station, or a railroad bridge in this State.

(b) "Operating property" means all tracks and right of way, all structures and improvements on that right of way, all rights and franchises, all rolling stock and car equipment, and all other property, real or personal, tangible or intangible connected with or used in the operation of the railroad including real estate contiguous to railroad right of way or station grounds held for reasonable expansion or future development.

(c) "Non-operating personalty" means all personal property, tangible and intangible, held by any railroad company and not included in the definition of "operating property".

(d) "Non-carrier real estate" means all land, and improvements on that land, not situated on the right of way of the railroad and not used as operating property within the meaning of the definition in paragraph (b). Improvements owned by others and situated on the right of way not used in the operations of the railroad shall be deemed to be "non-carrier real estate." The Department shall adopt proper rules and regulations to determine whether any property is "non-carrier real estate."

(e) "Trackage rights" or "trackage right agreement" means the right by which one railroad company operates trains in scheduled service over tracks owned and used by another railroad company and the valuation of trackage rights shall include the value of all rolling stock, and all tangible or intangible personal property used or connected therewith.

(Source: P.A. 81-1stSS-1; 88-455.)

(35 ILCS 200/11-75)

Sec. 11-75. Assessment date for railroad companies. The Department shall assess all property owned or used by railroad companies operating within this State, as of January first annually, except property found by the Department to be non-carrier real estate.

The assessment of the property of any railroad company shall be based upon the value of property defined in Section

11-70, less the percentage of the total value which consists of operating or non-operating personal property.
(Source: P.A. 86-173; 86-905; 86-1028; 88-455.)

(35 ILCS 200/11-80)

Sec. 11-80. Assessment procedure for railroad companies. In assessing the taxable property of any railroad company, the Department shall first determine 33 1/3% of the fair cash value of all the property of any railroad company as a unit, but shall make due allowance for any non-carrier real estate and all personalty.

The Department shall take into consideration the actual or market value of the shares of stock outstanding, the actual or market value of all bonds outstanding and all other indebtedness as is applicable, for operating the road. In determining the market value of the stock or indebtedness the Department shall consider quotations for the 5 years preceding the assessment date; the net earnings of the company during the 5 calendar years preceding the assessment date; and such other information as the Department may consider as bearing on the fair cash value of the property. The valuation by the Department shall include capital stock and all other property of railroad companies, except non-carrier real estate. The above facts shall not be conclusive upon the Department in determining 33 1/3% of the fair cash value of the property of a railroad company.

The Department shall determine the equalized assessed value of the taxable property of every railroad company by applying to its determination of 33 1/3% of the fair cash value of the property an equalization factor equal to the statewide average ratio of the equalized assessed value of locally assessed property to 33 1/3% of the fair cash value of such locally assessed property.

The Department shall assess the value of all operating property acquired by a railroad company or its wholly-owned subsidiary by trade with a municipality, which is situated in a state contiguous to Illinois, at no greater value than the value of the operating property traded to the municipality for the property by the railroad company. The value shall be that value established for the year immediately preceding the calendar year of the trade. The assessment shall not increase, but may decrease, during the 10 years following the calendar year of the trade.

(Source: P.A. 86-173; 86-905; 86-1028; 88-455.)

(35 ILCS 200/11-85)

Sec. 11-85. Property schedules. Every railroad company shall, on or before June 1 of each year, when required, make out and file with the Department a statement or schedule showing the property held for right of way, whether owned, leased, or operated under trackage right agreement, and the length of the first, second, third and other main and all side tracks and turnouts, and the number of acres of right of way in each county of this State and in each taxing district of this State, through or into which the road may run. It shall describe all improvements and stations located on the right of way, giving the quantity, quality, character and original cost of each. It shall also report all non-operating personalty owned or controlled by the company on January 1, giving the quantity, quality, character and location of the same. New

companies shall make the statement on or before the June 1 after the location of their road.

When the statement has once been made, it is not necessary to report the description as required above unless directed to do so by the Department, but the company shall, on or before June 1, annually, report all additions or changes in its property in this State as have occurred.

The return required by this Section should be made by the using company, but all property which is operated under one control shall be returned as provided in this Section.
(Source: P.A. 86-905; 88-455.)

(35 ILCS 200/11-90).

Sec. 11-90. Information schedules. Each year every railroad company in this State shall return to the Department, in addition to any other information required by this Code, sworn statements or schedules as follows:

(a) The amount of capital stock authorized and the total number of shares of capital stock.

(b) The amount of capital stock issued and outstanding.

(c) The market value, or if no market value then the estimated value, of the shares of stock outstanding.

(d) The total amount of all bonds outstanding and all other indebtedness.

(e) The market value, or if no market value then the estimated value, of all bonds outstanding and all other indebtedness.

(f) A statement in detail of the entire gross receipts and net earnings of the company during the 5 calendar years preceding the assessment date within this State, and of the entire system from all sources.

(g) The length of the first, second, third and other main tracks and all side tracks and turnouts showing the proportions within this State and elsewhere.

(h) The reproduction cost of the property within Illinois and the total reproduction cost of all property of the company. The reproduction cost, so far as applicable, shall be as last determined by the United States Interstate Commerce Commission, or other competent authority, plus additions and betterments, less retirements and depreciation to the December 31 preceding the assessment date.

(i) An enumeration and classification of all rolling stock and car equipment owned or leased by the company. The classification shall show type of equipment and circumstances of ownership and use. The enumeration shall include rolling stock used over the track of other companies under any trackage right agreement. All other property used in connection with a trackage right agreement shall be listed.

(j) Any other information the Department may require to determine the fair cash value of the property of any railroad company, or necessary to carry out the provisions of this Code.

Such statements or schedules shall conform to the instructions and forms prescribed by the Department.

In cases where a railroad company uses property owned by another, the return shall be made by the using company and all

property operated under one control shall be returned as provided above.

(Source: P.A. 86-905; 88-455.)

(35 ILCS 200/11-95)

Sec. 11-95. Listing of non-carrier real estate. Every railroad company subject to assessment in this State shall annually return to the Department a list of its non-carrier real estate in this State, providing its description, the current assessed value, and the estimated true value of all non-carrier real estate both within and outside of this State, and any other information the Department may require. The Department shall examine the list and make whatever additions or alterations it may find necessary, and transmit to the proper assessing officials of each county in which non-carrier real estate is located, the list described above, together with any other information it considers pertinent. If additions or alterations to the list are made by the Department, the revised list shall also be sent to the reporting carrier. The proper assessing officials of each county shall then assess the non-carrier real estate in the same manner as similar locally assessed property belonging to individuals, except that it shall be treated as property belonging to railroads. If any parcels are not platted, any description is sufficient which would enable a competent surveyor to locate the property.

Property listed as non-carrier real estate shall also include the property index number in counties where such a numbering system has been adopted.

(Source: P.A. 84-777; 84-1013; 88-455.)

(35 ILCS 200/11-100)

Sec. 11-100. Proration of value; property outside of State. If any railroad company owns or uses operating property partly within and partly outside of this State, the Department shall determine the value of the entire operating property of the railroad but shall take only that part of the entire value as is represented by the average percentage of (a) the length of all track including main, second and additional main track, side track and turnouts within this State, (b) its gross revenues arising from railroad operations in this State, (c) the reproduction cost of its operating property within this State, as determined by the Interstate Commerce Commission of the United States, or other competent authority, plus additions and betterments, less retirements and depreciation. Nothing in this section shall be construed to preclude the use or substitution of other factors or methods as may appear reasonable and necessary in determining the proportion of a railroad's operating property within this State.

(Source: Laws 1939, p. 886; P.A. 88-455.)

(35 ILCS 200/11-105)

Sec. 11-105. Description of railroad track. The right of way, including the superstructures of first, second, third and other main tracks and all side tracks and turnouts, and the stations and improvements of the railroad company on the right of way and all other taxable operating property of the railroad company shall be denominated "railroad track" and shall be so listed and valued. "Railroad track" shall be described in the assessment thereof as a strip of land

extending on each side of the track and embracing the same, together with all the stations and improvements and other taxable operating property thereon, commencing where the track crosses the boundary line in entering the taxing district, and extending to where the track crosses the boundary line leaving the taxing district, or to the point of termination in the district, as the case may be, containing acres, more or less (inserting name of taxing district, boundary line of same, and number of acres and length in miles), and when advertised or sold for taxes no other description is necessary. Where a railroad company has taxable operating property in taxing districts in which it owns or uses no tracks or trackage rights, the property shall be described the same as similar property belonging to individuals.
(Source: P.A. 81-1stSS-1; 88-455.)

(35 ILCS 200/11-110)

Sec. 11-110. Certification of railroad assessments. The equalized assessed value of the operating property of every railroad company subject to assessment, when determined as prescribed in Section 11-80, shall be listed and taxed in the several taxing districts in the proportion that the length of all the track owned or used in such taxing district bears to the whole length of all the track owned or used in this state, except the value of all buildings of an original cost exceeding \$1,000, which are considered to have a situs in the taxing district in which they are located. Where any railroad company operates in this State, in whole or in part over the tracks of another company, under any trackage right agreement, the value of the trackage rights, including the other taxable operating property (except buildings of an original cost exceeding \$1,000) used or connected therewith, shall be taxed in each taxing district in the proportion that the length of all the track so used under the agreement, in the taxing district bears to the whole length of all the track so used in this state. Where a railroad company holds taxable operating property in a taxing district, and owns or uses no tracks, or trackage rights in that district, the property shall be taxed in the taxing district.

The Department shall distribute the equalized assessed value of the taxable property of every railroad company (other than non-carrier real estate), when determined as prescribed in Section 11-80, to the respective taxing districts entitled to it and shall certify the same to the county clerks of the respective counties, who shall extend taxes against those values the same as against other property in the taxing districts.

(Source: P.A. 81-1stSS-1; 88-455.)

(35 ILCS 200/11-115)

Sec. 11-115. Failure to file schedules. In case any railroad company neglects to return to the Department any statements or schedules required to be returned to the Department, within the time required, the Department shall proceed to assess the property of the railroad company according to its best information and judgment at 33 1/3% of its fair cash value, and may add to the valuation thereof an amount equal to 50% of the valuation. If good cause is shown, the Department may, in its discretion, grant reasonable extensions of time for filing any required statement or

schedule.

Anyone who makes any statement or schedule to the Department and wilfully swears falsely in any material matter shall be guilty of perjury and punished accordingly.

No railroad company wilfully refusing or neglecting to return any information required by this Code shall be heard to object to the legality of its assessment in any court of this state.

(Source: P.A. 79-703; 88-455.)

(35 ILCS 200/11-120)

Sec. 11-120. Platting by railroad company. When any railroad company makes or records a plat of any contiguous lots or parcels of land belonging to it, they may be described as designated on the plat.

(Source: Laws 1939, p. 886; P.A. 88-455.)

(35 ILCS 200/11-125)

Sec. 11-125. Department rules on railroad assessments. The Department may adopt rules and regulations as it considers necessary to carry out the provisions of Sections 11-70 through 11-120. The rules and regulations when adopted, if not inconsistent with this Code, shall be as binding and of the same effect as if contained in this Code.

(Source: Laws 1943, vol. 1, p. 1136; P.A. 88-455.)

Top

Illinois Compiled Statutes

REVENUE

(35 ILCS 605/) Illinois Central Railroad Tax Act.

(35 ILCS 605/0.01) (from Ch. 120, par. 372.90)

Sec. 0.01. Short title. This Act may be cited as the Illinois Central Railroad Tax Act.

(Source: P.A. 86-1324.)

(35 ILCS 605/18) (from Ch. 120, par. 373)

Sec. 18. In consideration of the grants, privileges and franchises herein conferred upon said company for the purposes aforesaid, the said company shall, on the first Mondays of December and June in each year, pay to the Department of Revenue of the State of Illinois five per centum on the gross or total proceeds, receipts or income derived from said road and branches, for the six months then next preceding. The first payment of such percentage on the main trunk of said road to commence four years from the date of said deed of trust, and on the branches, six years from the date aforesaid, unless said road and branches are sooner completed, then from the date of completion. And for the purpose of ascertaining the proceeds, receipts or income aforesaid, an accurate account shall be kept by said company, a copy whereof shall be furnished to the Governor of the State of Illinois and to the Department of Revenue; the truth of which account shall be verified by the affidavits of the treasurer and secretary of such company. And for the purpose of verifying and ascertaining the accuracy of such account, full power is hereby vested in the Governor of the State of Illinois, the Director of the Department of Revenue, or any other person by law appointed, to examine the books and papers of said corporation, and to examine, under oath, the officers, agents and employees of said company, and other persons. And if any person, so examined by the Governor or other authority, shall knowingly and wilfully swear falsely, or if the other officers making such affidavits shall knowingly and wilfully swear falsely, every such person shall be subject to the pains and penalties of perjury.

(Source: P. A. 76-117.)

(35 ILCS 605/22) (from Ch. 120, par. 374)

Sec. 22. The lands selected under the act of congress entitled "An Act granting the right of way, and making a grant of land to the states of Illinois, Mississippi and Alabama, in aid of the construction of a railroad from Chicago to Mobile", passed September 20, 1850, and authorized by this Act to be conveyed shall be exempt from all taxation under the laws of this state, until sold and conveyed by the Illinois Central Railroad Company or the trustees designated in this Act. The stock, property and assets belonging to the company shall be listed by the president, secretary or other officer, with the Department of Revenue, and an annual tax for state purposes shall be assessed, upon all the property and assets of every

name, kind and description belonging to that company. Whenever the taxes levied for state purposes shall exceed $\frac{3}{4}$ of 1% per year, such excess shall be deducted from the gross proceeds or income required to be paid by the company to the state, and the company is hereby exempted from all taxation of every kind, except as herein provided for. The revenue arising from such taxation, and the 5% of gross or total proceeds, receipts or income aforesaid, shall be paid to the Department of Revenue and covered into the general revenue fund in the state treasury and applied to the payment of interest-paying state indebtedness until the extinction thereof. In case the 5% provided to be paid into the state treasury and the state taxes to be paid by the corporation do not amount to 7% of the gross or total proceeds, receipts or income, however, then the company shall pay the difference, so as to make the whole amount paid equal, at least, to 7% of the gross receipts of the company.

(Source: P.A. 76-117.)

Top

Illinois Compiled Statutes

RAILROADS

- 610 ILCS 5/ Railroad Incorporation Act.
- 610 ILCS 10/ Railroad Company Charter Change Act.
- 610 ILCS 15/ Railroad Stock Transfer Act.
- 610 ILCS 20/ Railroad Borrowing Act.
- 610 ILCS 25/ Railroad Consolidation Act.
- 610 ILCS 30/ Railroad Interstate Line Consolidation Act.
- 610 ILCS 35/ Railroad Operative Contract Act.
- 610 ILCS 40/ Railroad Bridge Act.
- 610 ILCS 45/ Railroad Lessees Act.
- 610 ILCS 50/ Railroad Water Craft Act.
- 610 ILCS 55/ Railroad Depot Act.
- 610 ILCS 60/ Railroad Motor and Aerial Transport Act.
- 610 ILCS 65/ Railroad Bond Guarantee Act.
- 610 ILCS 70/ Railroad Powers Act.
- 610 ILCS 75/ Railroad Director Residence Act.
- 610 ILCS 80/ Railroad Police Act.
- 610 ILCS 85/ Railroad Sanitation Act.
- 610 ILCS 90/ Railroad Intoxicating Liquor Act.
- 610 ILCS 95/ Railroad Obstruction Act.
- 610 ILCS 100/ Railroad Mooring Act.
- 610 ILCS 105/ Railway Employees Water Act.
- 610 ILCS 107/ Railroad Employees Medical Treatment Act.
- 610 ILCS 110/ Bulk Grain Act.
- 610 ILCS 115/ Street Railroad Right of Way Act.
- 610 ILCS 120/ Street Railroad Bridge Act.
- 610 ILCS 125/ Street Railroad Vestibule Act.
- 610 ILCS 130/ Elevated Railroad Approval Act.

8	3	1.5		Go
---	---	-----	--	----

Information Maintained by the Office of Code Revision Indiana Legislative Services Agency

10/27/2005 01:33:49 PM EST

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, subject to IC 8-23-2-3.

(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.

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 subject to IC 8-9.5-6-1.

(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.53.

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 8-9.5-6-1.

(Formerly: Acts 1975, P.L.79, SEC.1.) As amended by Acts 1980, P.L.74, SEC.54.

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.

As added by Acts 1979, P.L. 50, 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), 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.

8	3	5	
---	---	---	--

 Go

Information Maintained by the Office of Code Revision Indiana Legislative Services Agency

10/27/2005 01:28:42 PM EST

IC 8-3-5**Chapter 5. Railroad. Application of Eminent Domain.****IC 8-3-5-1****Purposes authorized by charter**

Sec. 1. Any railroad company organized under Indiana statutes but not under IC 8-4-1, may adopt the provisions of that chapter for condemning real estate; provided, that nothing in this section contained shall be deemed or held to authorize such corporations to condemn for any purpose or to any extent not authorized by its charter, but such company adopting the provisions of that chapter shall not condemn more, or for any purpose than as authorized by its charter; neither shall such corporation be deemed to have surrendered or abandoned its charter by condemning real estate as authorized in this section.

(Formerly: Acts 1889, c.194, s.1.) As amended by P.L.62-1984, SEC.27.

8	3	8		Go
---	---	---	--	----

Information Maintained by the Office of Code Revision Indiana Legislative Services Agency
10/27/2005 01:28:57 PM EST

IC 8-3-8

Chapter 8. Railroad Rights-of-Way Recording Deeds

IC 8-3-8-1

Time for recordation

Sec. 1. Any railroad corporations, lessee or assignee or receiver, or other person or corporation, running, controlling or operating, or that may hereafter construct, build, run, control or operate, any railroad into or through this state, shall, within forty-five (45) days from the date of execution of any conveyance, lease, release or other contract affecting the right of way of any railroad hereafter constructed, record, or cause to be recorded, in the proper records in the recorder's office of the county wherein the lands are situate so conveyed, leased, released or constructed.

(Formerly: Acts 1893, c.152, s.1.)

IC 8-3-8-2

Necessity for recordation

Sec. 2. Every such conveyance, lease, release, or other contract affecting any right of way of any railroad not so recorded in forty-five (45) days, as provided for in section 1 of this chapter, shall be void as against any subsequent purchaser, lessee, or mortgagee in good faith and for a valuable consideration.

(Formerly: Acts 1893, c.152, s.2.) As amended by P.L.62-1984, SEC.29.

8	3	15		Go
---	---	----	--	----

Information Maintained by the Office of Code Revision Indiana Legislative Services Agency
10/27/2005 01:30:07 PM EST

IC 8-3-15**Chapter 15. Public Use of Railroad Land****IC 8-3-15-1****Railroad right retained**

Sec. 1. The use by the public (of the) right of way or depot grounds of any railroad in this state by riding, driving or walking thereon, shall not ripen into a right to continue to do so even though it has been so used for a period of twenty (20) years or more; nor shall such use be evidence of a grant to do so except where such use is made across such ground to connect a street or highway on each side thereof, and except where a court of competent jurisdiction has adjudged the existence of a street or highway. *(Formerly: Acts 1899, c.209, s.1.)*

IC 8-3-15-2 Repealed

(Repealed by Acts 1972, P.L.8, SEC.3.)

IC 8-3-15-3**Riding, driving, or walking on right-of-way or yard a misdemeanor; definitions; exceptions**

Sec. 3. (a) A person who rides, drives, or walks on or along the right-of-way or yard of a railroad company at a place other than a public crossing commits a Class B misdemeanor.

(b) "Right-of-way" means the track or roadbed owned or leased by a railroad which is located on either side of its tracks and which is readily recognizable to a reasonable person as being railroad property or is reasonably identified as such by fencing or appropriate signs.

(c) "Yard" means a system of parallel tracks, cross-overs, and switches where cars are switched and made up into trains, and where cars, locomotives, and other rolling stock are kept when not in use or awaiting repairs.

(d) This section does not apply to:

(1) passengers on trains or employees of a railroad company while engaged in the performance of their duties;

(2) picketing by railroad employees in the vicinity of entrances to railroad company property;

(3) an authorized representative of the railroad employees;

(4) a person going upon the right-of-way or into the yard to save human life or to protect property;

(5) a person being on the station grounds or in the depot of the railroad company as a passenger or for the purpose of transacting business;

(6) a person, or the person's family or employees going upon the right-of-way for the purpose of crossing from one (1) part to another part of a farm the person owns or leases, where the farm lies on both sides of the right-of-way;

(7) a person having written permission from the railroad company to go upon the right-of-way;

(8) representatives of the Indiana department of transportation;

(9) representatives of the federal Surface Transportation Board; or

(10) a registered land surveyor or a land surveyor's employees who are on the right-of-way or in the

yard for the purpose of making land surveys.

As added by Acts 1977, P.L.26, SEC.2. Amended by Acts 1982, P.L.62, SEC.4; P.L.384-1987(ss), SEC.41; P.L.18-1990, SEC.49; P.L.259-1999, SEC.1.

32	24	4		Go
----	----	---	--	----

Information Maintained by the Office of Code Revision Indiana Legislative Services Agency

10/27/2005 01:25:09 PM EST

IC 32-24-4**Chapter 4. Procedures for Utilities and Other Corporations****IC 32-24-4-1****Public utilities**

Sec. 1. (a) A person, firm, partnership, limited liability company, or corporation authorized to do business in Indiana and authorized to:

(1) furnish, supply, transmit, transport or distribute electrical energy, gas, oil, petroleum, water, heat, steam, hydraulic power, or communications by telegraph or telephone to the public or to any town or city; or

(2) construct, maintain or operate turnpikes, toll bridges, canals, public landings, wharves, ferries, dams, aqueducts, street railways, or interurban railways for the use of the public or for the use of any town or city;

may take, acquire, condemn, and appropriate land, real estate, or any interest in the land or real estate.

(b) A person described in subsection (a) has all accommodations, rights, and privileges necessary to accomplish the use for which the property is taken. A person acting under subsection (a) may use acquired, condemned, or appropriated land to construct railroad siding, switch, or industrial tracks connecting its plant or facilities with the tracks of any common carrier.

As added by P.L.2-2002, SEC.9.

IC 32-24-4-2**Fee simple or easements**

Sec. 2. The condemnor may take, acquire, condemn, and appropriate a fee simple estate, title, and interest in an amount of land as the condemnor considers necessary for the condemnor's proper uses and purposes. However, for rights-of-way, the condemnor shall take, acquire, condemn, and appropriate an easement.

As added by P.L.2-2002, SEC.9.

IC 32-24-4-3**Authority to exercise eminent domain**

Sec. 3. The appropriation and condemnation of land and easements in land authorized under this chapter shall be made under IC 32-24-1, except as otherwise provided in this chapter.

As added by P.L.2-2002, SEC.9.

IC 32-24-4-4**Application; payments; election of method; sale of interest in servient estate; statement in offer; acceptance of offer**

Sec. 4. (a) This section applies to a public utility that appropriates by condemnation procedures an easement for right-of-way purposes on land zoned or used for agricultural purposes.

(b) If a public utility makes a uniform easement acquisition offer under IC 32-24-1-5 or a settlement offer under IC 32-24-1-12 in

excess of five thousand dollars (\$5,000), the owner of the land may elect to accept as compensation either a lump sum payment or annual payments for a period not to exceed twenty (20) years.

(c) The landowner must elect either the lump sum payment or the annual payment method at the time the landowner:

- (1) accepts the public utility's offer under IC 32-24-1-5 or IC 32-24-1-12 to purchase an easement;
- (2) accepts the appraisers' award; or
- (3) is awarded damages by a judgment in a proceeding under this article.

The grant of easement or judgment, whichever is applicable, must state the method of payment the landowner has elected to receive.

(d) If the land is owned by more than one (1) person, the election to receive annual payments must be unanimous among all record owners to be binding upon the public utility.

(e) Selection of the lump sum method of payment irrevocably binds the landowner and the landowner's successors in interest.

(f) The annual amount payable must be equal to the lump sum payment that would have otherwise been made by the utility divided by the number of years the landowner elects to receive the annual payments plus interest at a rate agreed upon by the public utility and the landowner on the balance remaining at the end of each year. The public utility shall make the annual payment as close as practicable to the date of the landowner's acceptance of the public utility's offer or the date of the judgment granting the utility the easement. If the public utility and the landowner are unable to agree upon the interest rate, the interest rate shall be the average annual effective interest rate for all new Federal Land Bank Loans, computed on the basis of the twelve (12) month period immediately preceding the date of settlement.

(g) A landowner who withdraws the appraisers' award under IC 32-24-1-11 may receive only a lump sum payment from the clerk at that time. If the landowner is later awarded a judgment for damages that exceeds the amount of the appraisers' award, the landowner may elect either method of compensation only to the extent that the damages exceed the appraisers' award remaining to be paid by the public utility as a result of the judgment.

(h) A landowner who elects the annual payment method may terminate the election by giving notarized written notice to the public utility at least ninety (90) days before the annual date of payment. The public utility may prescribe reasonable forms for the notice and may require that these forms be used for the notice to be effective. In the event the landowner terminates this election, the public utility shall pay the landowner in a single payment the difference between the lump sum and the total of all annual payments previously paid by the public utility. Upon the landowner's receipt of this payment, the public utility's payment obligations cease.

(i) If a landowner sells the landowner's entire interest in the servient estate, the landowner shall give the public utility prompt notarized written notice of the sale, together with a copy of the deed

specifying the name and address of the landowner's successor in interest. If the public utility receives the notice less than ninety (90) days before the date of an annual payment, the public utility may make this annual payment to the landowner but must make all successive payments to the landowner's successors and assigns.

(j) If a landowner sells less than the landowner's entire interest in the servient estate, the public utility may continue to make the annual payments to the landowner.

(k) A public utility shall make annual payments to the landowner only for the time the servient estate continues to be zoned or used for agricultural purposes. If the servient estate is no longer zoned or used for agricultural purposes, the public utility shall pay to the landowner the difference between the lump sum and the total of all annual payments previously paid by the public utility. Upon the landowner's receipt of this payment, the public utility's payment obligations cease.

(l) This section is binding upon the heirs, successors, and assigns of the landowner and the public utility.

(m) Every offer of a public utility under IC 32-24-1-5 and IC 32-24-1-12 must include the following statement in at least ten (10) point boldface type capital letters:

"IF THIS OFFER IS OVER FIVE THOUSAND DOLLARS (\$5,000), YOU MAY ELECT UNDER IC 32-24-4-4 TO ACCEPT PAYMENT IN A LUMP SUM PAYMENT OR IN ANNUAL PAYMENTS FOR A PERIOD NOT TO EXCEED TWENTY (20) YEARS WITH INTEREST. IF YOU ELECT ANNUAL PAYMENTS, THEN POSSESSION WILL BE REQUIRED THIRTY (30) DAYS AFTER YOU HAVE RECEIVED YOUR FIRST ANNUAL PAYMENT."

(n) Every offer of a public utility under IC 32-24-1-5 and IC 32-24-1-12 must also include a form to be used by the landowner to accept the offer that substantially contains the following:

ACCEPTANCE OF OFFER

I (We), _____,
landowner(s) of the above described property or interest in property hereby accept the offer of \$ _____
made by _____ (condemnor) on this _____ day of _____, 20____. Please check one
of the following if the offer is in excess of five thousand dollars (\$5,000):

☐ I (We) elect to accept payment in a lump sum.

☐ I (We) elect to accept payment in annual payments for a period of _____ years with interest as
determined under IC 32-24-4-4.

NOTARY'S CERTIFICATE

STATE OF _____)

)SS:

COUNTY OF _____)

Subscribed and sworn to before me this _____ day of _____, 20____. My Commission Expires:

(Signature)

(Printed) NOTARY PUBLIC.

As added by P.L.2-2002, SEC.9.



Fidelity National Title

Underwriting Bulletin

TO: ALL WISCONSIN AGENTS
FROM: PAUL COZZI, VICE PRESIDENT AND REGIONAL COUNSEL
DATE: October 20, 2004
RE: SEARCHING RAILROAD LANDS

When dealing with any lands where the chain of title discloses prior ownership by a railroad, Wis. Stat. § 190.11 requires that a search be conducted of the Wisconsin Department of Financial Institutions records for any conveyance of the land by the railroad. Filing as required by this statute constitutes constructive notice just as if recorded in the county land records. **Filing with the county is not required by the statute.** Similarly, when insuring conveyances by a railroad, in addition to complying with all other Fidelity requirements for such transactions, (See Fidelity's Underwriting and Exceptions Manual and Underwriting Deskbook), the conveyance instruments should be filed with the Department. The documents should also be filed with the County Recorder as a Fidelity requirement.

The Department contact is

Uniform Commercial Code Bureau, 3rd Floor
PO Box 7847
Madison, WI 53707-7847
(608) 261-9548
Fax: (608) 264-7965

The Department encourages people to come in themselves but they can do the searches too. The cost is \$10.00 and is done by the name of the railroad company. You should give them about a week to complete the search. They do not index by property description, but the more information you can provide, the better.

The text of Wis. Stat. § 190.11 is attached.

190.11. Railroad conveyances, how executed and filed.

(1) Every conveyance or lease, deed of trust, mortgage or satisfaction thereof made by any railroad corporation shall be executed and acknowledged in the manner in which conveyances of real estate by corporations are required to be to entitle the same to be recorded, and shall be filed with the department of financial institutions, which shall endorse thereon "filed" and the date of filing.

(2) A record of filing under sub. (1) shall from the time of reception of the instrument have the same effect as to any property in this state described therein as the record of any similar instrument in the office of a register of deeds has as to property in his or her county, and shall be notice of the rights and interest of the grantee, lessee or mortgagee by such instrument to the same extent as if it were recorded in all of the counties in which any property therein described may be situated.

(3) The department of financial institutions shall collect a fee of \$ 1 per page filed under sub. (1)

(4) The department of financial institutions shall collect a fee at the rate under s. 77.22 and, on or before the 15th day of the month after the fee is collected, shall remit that fee to the department of administration for deposit in the general fund. Sections 77.21, 77.22 and 77.25 to 77.27 apply to the fee under this subsection.

CHAPTER 190

RAILROADS; ORGANIZATION AND MANAGEMENT

190.001	Definitions.	190.07	Railroad ferries on Lake Michigan.
190.01	Who may organize; articles; fee.	190.08	Streams, highways, restored.
190.015	Directors, election, eligibility, classes, term, powers.	190.085	Clearance of wrecks or derailments; restoration of damaged property.
190.016	Stockholders' meetings.	190.09	Railroad cattle pass, abandonment.
190.02	Powers of railroads.	190.10	Railroad fixtures, after-acquired property, lien on.
190.025	Powers of railroads; special cases.	190.11	Railroad conveyances, how executed and filed.
190.03	Office in state; books produced.	190.12	Stock; sale to employees and subsidiaries.
190.04	Special charter rights.	190.13	Report to stockholders.
190.05	Railroads; powers in other states.	190.14	Inspection of books.
190.051	Branches and extensions.	190.15	Right-of-way through public lands.
190.06	Railroad consolidation; sale or lease of property.	190.16	Industrial spur tracks.

190.001 Definitions. In this chapter:

(1) "Office" means the office of the commissioner of railroads.

History: 1977 c. 29; 1981 c. 347; 1993 a. 16, 123.

190.01 Who may organize; articles; fee. (1) Any number of persons, not less than 5, may form a corporation for the purpose of constructing, maintaining and operating a railroad for public use by making articles of organization in which shall be stated:

(a) The name of the corporation.

(b) The places from and to which such railroad is to be constructed or maintained and operated.

(c) The length of such railroad and the name of each county in this state through or into which it is made or intended to be made.

(d) The aggregate number of shares which the corporation shall have authority to issue; if said shares are to consist of one class only, the par value of each of said shares, or a statement that all of said shares are without par value; or, if said shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value.

(e) The names and residences of the directors of the corporation who shall manage its affairs for the first year and until others are chosen in their places, and who shall not be less than 5.

(1m) Each director shall subscribe his or her name, place of residence and the number of shares of stock the person agrees to take in the corporation to the articles of organization. An affidavit of at least 3 of the named directors shall be annexed to the articles certifying that the signatures are genuine and that it is intended in good faith to construct or maintain and operate the railroad mentioned in the articles of organization.

(2) The articles of incorporation and amendments thereto shall be filed with the department of financial institutions; in the case of articles, the department of financial institutions shall thereupon issue a certificate of incorporation and the corporation then has legal existence. The articles of incorporation or special charter of any railroad company may be amended by a majority vote of all the stock in the respects and for the purposes provided in s. 180.1001. The fees for filing articles and amendments thereto are as provided in s. 180.0122 (1) (a) and (m) except that the fees for filing an amendment which authorizes the issuance of redeemable preference shares for sale to the U.S. secretary of transportation under sections 505 and 506 of P.L. 94-210 is \$15 for the amendment and an additional sum equal to \$1 for each \$100,000 or fraction thereof of par value redeemable preference shares authorized by the amendment.

(3) When a railroad corporation is organized to acquire or take over the property of another railroad corporation which is sold in judicial proceedings, or when any railroad corporation is reorganized under the federal bankruptcy act and such corporation under a plan of reorganization as confirmed by the act, shall have been

authorized to put into effect and carry out said plan, or when any new railroad corporation shall be organized for the like purpose, the fees for filing a copy of the plan of reorganization or any amendments to the articles of incorporation of such existing railroad corporation increasing or changing the amount of its authorized capital stock, or for filing the articles of incorporation of such new railroad corporation so to be organized, shall be computed and paid only upon the excess of the aggregate authorized capital stock of such reorganized or such new corporation over the authorized aggregate capital stock of the old corporation upon which filing fees previously have been paid.

(4) A railroad that is incorporated in another state is not required to form a corporation in this state, but any railroad first transacting business in this state after January 1, 1994, is required to obtain a certificate of authority from the department of financial institutions in the manner required of foreign corporations before the railroad transacts business in this state.

History: 1977 c. 29, 63, 203; 1989 a. 303; 1993 a. 16, 482; 1995 a. 27; 1997 a. 35, 254.

190.015 Directors, election, eligibility, classes, term, powers. (1) The stock, property, affairs and business of every railroad corporation shall be managed by directors who shall be chosen by the stockholders from among their number, at the time and place provided by the articles of organization or the bylaws.

(2) The trustees shall hold office for the term provided by the articles or bylaws and until their respective successors are chosen. The directors may be divided into 3 classes, each of which shall be composed, as nearly as may be possible, of one-third of the directors. The term of office of the first class shall expire in one year, the 2nd in 2 years, and the 3rd in 3 years. At each annual election thereafter, a number of directors shall be elected for 3 years equal to the number whose term of office shall then expire. All other vacancies shall be filled in accordance with the bylaws.

(3) The directors shall choose one of their number president and such other officers as the corporate articles and bylaws require, for the term prescribed by the articles or bylaws. The directors may fill any vacancy in their board, happening after any regular annual election, until the next succeeding election.

History: 1997 a. 254.

190.016 Stockholders' meetings. (1) TIME AND PLACE. The time and place of annual meetings of the stockholders of every railroad corporation shall be fixed by its articles or bylaws. If not so fixed, the annual meetings shall be on the anniversaries of the first corporate meeting.

(2) NOTICE. Meetings of railroad corporations shall be called and noticed as prescribed by the articles or bylaws, but if no provision therefor is made, meetings of any railroad corporation may be called by the board of directors or trustees at any time, and shall be called by the secretary when requested by the owners of one-fifth of the outstanding shares of voting stock on 10 days' notice; and such notice to stockholders may be served by publishing the

190.016 RAILROADS; ORGANIZATION AND MANAGEMENT

same as a class 2 notice, under ch. 985, at or nearest to the location of the corporation, or by personal service or by mailing a copy thereof to each stockholder directed to the stockholder's last post-office address as it appears in the records of the corporation.

History: 1993 a. 482.

190.02 Powers of railroads. Every public railroad corporation shall have the powers conferred on corporations in ch. 180 and in addition thereto shall have power:

(1) **SURVEY OF ROUTE.** To cause such examination and surveys for its proposed railroad to be made as may be necessary to the selection of the most advantageous route, and for such purpose to enter upon the lands of any person, but subject to responsibility for all damage which shall be done thereto.

(2) **DONATIONS TO RAILROADS.** To take and hold grants of aid; but the real estate received by voluntary grant shall be held and used for the purpose of the grant only.

(3) **ACQUIRE PROPERTY; LEASE AND ALIENATE.** To acquire all property necessary for the construction, maintenance and operation of its railroad and the stations, depot grounds, yards, round-houses, shops, warehouses, elevators, docks and other accommodations reasonably necessary to accomplish the objects of its incorporation; to lease or otherwise dispose of any part thereof or to sell the same when no longer necessary to its use.

(4) **ACQUIRE LANDS FOR CUTS, FILLS, MATERIALS.** For the purposes of cuttings and embankments and of obtaining gravel or other material, to take as much land as may be necessary for the proper construction, operation and security of the road, and to remove any trees that may be in danger of falling on the road, making compensation therefor as provided for lands taken for the use of the corporation.

(5) **CROSS HIGHWAYS, STREETS, STREAMS; HIGHWAY BRIDGES.** To construct its railroad across, over, under, along or upon any stream, watercourse, street, highway, road or canal; to carry any highway, street or road which it shall intersect over or under its tracks as may be most expedient for the public good; to change the course and direction of any highway, street or road when made necessary or desirable by the construction of the railroad and acquire land necessary therefor; provided, such highway or road be not so changed from its original course more than six rods, nor its distance thereby lengthened more than five rods; and provided, further, that every bridge erected over any highway or street shall leave a clear passageway at least twenty feet wide or two passageways, each not less than fourteen feet in width.

(6) **RAILROAD INTERSECTIONS.** To cross, intersect, join or unite its railroad with any other railroad, at any point, with the necessary turnouts, sidings and switches and other conveniences in furtherance of the objects of its connections. And if the 2 corporations cannot agree upon the amount of compensation to be made therefor or the points and manner of such crossings and connections the same shall be ascertained by the office on application of either corporation.

(7) **MOTIVE POWER.** To operate its railroad by any power, and to do all the business incident to railroad corporations.

(8) **STRUCTURES.** To erect and maintain all necessary and convenient buildings, stations, fixtures and machinery for the accommodation and use of passengers, freight and business.

(9) **BORROWING.** To borrow money upon such terms as the corporation or board of directors shall authorize as necessary or expedient, and to execute trust deeds or mortgages on any railroads or parts thereof constructed or in process of construction, for amounts borrowed or owing by the corporation and thereby transfer or mortgage its property, rights, privileges, franchises, immunities, exemptions and appurtenances, used in connection with such railroads, then belonging to the corporation or which may thereafter belong to it, as security for any debt therein mentioned in such manner as the corporation or directors shall think proper.

(10) **INSURANCE.** To procure insurance in its own behalf on all the property upon its route for which it may be liable in damages

for injury caused thereto by fires set or caused by the operation of its road.

(11) **OPERATE BUSES AND AIR TRANSPORTATION.** (a) To own and operate motor vehicles for the purpose of transporting persons and property upon the public highways, for hire, subject to ch. 194.

(b) To own and operate equipment for, and engage in, aerial transportation.

(c) To purchase and own the capital stock and securities of corporations organized for, or engaged in, the businesses specified in pars. (a) and (b).

History: 1977 c. 29 ss. 1294, 1654 (9) (e); 1981 c. 347 ss. 25, 80 (1); 1993 a. 16, 123; 1995 a. 27; 1997 a. 254; 1999 a. 32.

Mineral estates reserved by railroad corporations from lands received from the public domain is discussed. 69 Atty. Gen. 204.

190.025 Powers of railroads; special cases. (1) **RAILROAD PROPERTY ACQUIRED UNDER MORTGAGE OR TRUST DEED.** In case of a sale of any interest in railroad property by virtue of any trust deed or mortgage under s. 190.02 (9), the purchasers and their associates, successors and assigns shall have, exercise and enjoy all rights, privileges, grants, franchises, immunities and advantages mentioned in the trust deed or mortgage which were possessed by the corporation that executed that instrument, so far as those rights, privileges, grants, franchises, immunities and advantages relate or pertain to that portion or line of road purchased at that sale, as fully and absolutely in all respects as the corporation that executed that instrument might have done if the sale had not taken place.

(2) **RAILROADS ACQUIRED THROUGH JUDICIAL PROCEEDINGS AND REORGANIZED RAILROADS.** (a) This subsection applies to any of the following:

1. A railroad corporation organized to and which shall acquire, directly or by mesne conveyances, the property of another railroad corporation sold in judicial proceedings.

2. A railroad corporation reorganized under the federal bankruptcy act which, under a plan of reorganization as confirmed by the act, shall have been authorized to put into effect and carry out the plan of reorganization, or a new railroad corporation which shall be organized for the like purpose.

(b) A railroad corporation that is subject to this subsection shall have all powers conferred by law upon railroad corporations. The railroad corporation may issue, sell, pledge or otherwise dispose of its evidences of debt, at such times, in such amounts, for such considerations and upon such terms and conditions as the board of directors of the corporation shall determine, and as shall be authorized by the office, or the interstate commerce commission in the case of a railroad corporation organized for the purpose of acquiring a railroad engaged in interstate commerce, or any existing railroad corporation reorganized under the act and acquiring railroad property used in interstate commerce. The evidences of debt may be convertible, at the option of the holder, into stock, and shares of stock. The shares may have a nominal or par value or, if the shares are shares of common stock, be without nominal or par value. The shares may be of such classes, with such rights and voting powers as may be expressed in the corporation's articles or any amendment thereto.

(c) 1. A railroad corporation reorganized under the federal bankruptcy act may elect to file a certified copy of the plan of reorganization as confirmed by the federal bankruptcy act with the department of financial institutions. The filing of the plan shall accomplish and evidence the amendment of its charter or articles of incorporation without the necessity for any other or further action, corporate or otherwise. A reorganized railroad corporation shall, upon filing the plan of reorganization, have all powers necessary to put into effect and carry out the plan of reorganization in all respects. The fees for filing the copy of the plan of reorganization shall be the same as prescribed in s. 190.01 (3).

2. Filing the plan of reorganization under subd. 1. shall not preclude the reorganized corporation from amending its charter or articles in the manner provided by law.

(3) **GUARANTEE SECURITIES.** (a) Any railroad corporation, organized and existing under the laws of this state or existing by consolidation of different railroad corporations under the laws of this state and any other state, that owns more than 50% of the capital stock of another corporation, the capital stock of which it is authorized to own, is authorized by action of its board of directors to guarantee the payment of the principal and interest of bonds or other obligations of the other corporation.

(b) Any railroad corporation, organized and existing under the laws of this state or existing by consolidation of different railroad corporations under the laws of this state and any other state, that owns with other railroad corporations more than 50% of the capital stock of another corporation, the capital stock of which it is authorized to own, is authorized by action of its board of directors to guarantee the payment of the principal and interest of bonds or other obligations of the other corporation, and to join with the other railroad corporations in guaranteeing the payment of principal and interest of bonds or other obligations of the other corporation.

History: 1997 a. 254 ss. 54, 55, 57 to 60.

190.03 Office in state; books produced. Any railroad corporation existing under the laws of this state shall produce before the office of the commissioner of railroads, the legislature, or any committee of either house, or any court of record, its books of account and stock books, or so many and such parts thereof as may be required by them, or in the discretion of the office of the commissioner of railroads, legislature, committee or court, transcripts from such books, or such parts thereof as may be called for, duly authenticated; and each such railroad corporation shall designate some office within this state as its principal office and inform the office of the commissioner of railroads of such designation, and shall keep there or at the office of its transfer agents or registrars a list of its stockholders, giving the names and addresses of its stockholders, together with a statement of the number and class of shares of its stock held by each of them, as shown by its books. A failure or refusal to comply with any of the foregoing provisions shall be cause of forfeiture of its franchises.

History: 1977 c. 29 s. 1654 (9) (e); 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

190.04 Special charter rights. All railroad corporations shall have all peculiar rights and privileges granted to them respectively by their charters or any special law, not inconsistent with these statutes.

190.05 Railroads; powers in other states. Any domestic railroad corporation may exercise all its rights, franchises and privileges in any other state and may accept from any other state and use any additional or other powers or privileges applicable to the doings of said corporation in said state.

190.051 Branches and extensions. (1) (a) Any railroad corporation may extend its road from any point named in its charter or articles of organization, or may build branch roads from any point on its line or from any point on the line of any other road connected or to be connected with its road, the use of which other road between such points and the connection with its own road the railroad corporation has secured for a term of not less than 10 years.

(b) Before making an extension or building a branch road under par. (a), the railroad corporation shall, by resolution of its directors, to be entered in the record of its proceedings, designate the route of the proposed extension or branch, and file, for record, a copy of the record, certified by the president and secretary, with the department of financial institutions. Upon filing the record with the department of financial institutions, the railroad corporation shall have all of the rights and privileges to make the extension or build the branch and receive aid therefor that the railroad corporation would have had if it had been authorized in its charter or articles of organization.

(2) The requirements of this section shall not apply to permanent branches or extensions not exceeding 5 miles in length nor

to temporary branches or extensions not exceeding 10 miles in length.

History: 1995 a. 27; 1997 a. 254; 1999 a. 32 s. 218.

190.06 Railroad consolidation; sale or lease of property. (1) Any railroad corporation existing under the laws of this state, or by consolidation under said laws and the laws of other states, may consolidate with any other railroad corporation, and possess all of the powers, franchises and immunities, and be subject to all the liabilities and restrictions of railroad corporations generally, and such, in addition, as the combining corporations peculiarly possessed or were subject to at the time of consolidation. Articles of consolidation shall be approved by each corporation, by a vote of a majority of the stock at an annual meeting or at a special meeting called for that purpose or by the consent in writing of the holders of a majority of the stock annexed to such articles; and such articles, with a copy of the records of such approval or such consent and accompanied by lists of the stockholders and the number of shares held by each, duly certified by their respective presidents and secretaries, shall be filed for record with the department of financial institutions before any such consolidation shall have validity or effect.

(2) Any such railroad corporation may upon like approval lease, or purchase the railroad, franchises and immunities, and all other property, and the stocks or bonds, or both, of any railroad corporation, or any portion thereof, when the road so purchased or leased will constitute a branch or feeder of, or be connected with or intersected by any line maintained or operated by such purchasing or leasing corporation, or which it is authorized to build, own, or maintain and operate. Any corporation taking such conveyance or lease shall have all the rights, privileges and immunities, and be subject to all the duties and restrictions of the lessor or grantor.

(3) Any domestic railroad corporation may purchase and may upon like approval purchase and hold the stock or bonds of any other railroad corporation described in this section, or may purchase and hold the stock or bonds of any railway company to which it has furnished the money for the construction of its railway; or for money so furnished, or for such other consideration, as may be agreed upon between the companies, by their respective boards of directors, and take a conveyance of the whole or any portion of the franchises of any other such corporation and of the railway, property and appurtenances thereof. Any stock or bonds which shall have been issued by any purchasing corporation in consideration of any property by it purchased as authorized by this section, shall be deemed fully paid, but securities hereunder shall be issued only upon compliance with the law which requires a permit or certificate of authority.

(4) All acts and purchases and conveyances made prior to April 24, 1897, by or to any domestic railway company which are authorized by this section, and all conditions and agreements upon which the stock and bonds of any such corporation have been and are to be issued including any and all terms and conditions as to price, voting power, dividends and trustees or otherwise, and as between different classes of stock or otherwise and all issues of stocks and bonds in accordance with such terms, conditions and agreements, are hereby in all things legalized, ratified and confirmed.

(5) But no railroad corporation shall consolidate with, or lease or purchase, or in any way become owner of or control any other corporation, or any stock, franchises, rights or property thereof which owns or controls a parallel and competing railroad to and with the railroad owned or controlled and operated by such purchasing railroad corporation, to be determined by jury.

History: 1995 a. 27.

190.07 Railroad ferries on Lake Michigan. Any railroad corporation in this state may contract with the owner or operator of any railroad terminating on the eastern shore of Lake Michigan, within the state of Michigan, for the joint operation of their roads; and may build or buy, and operate vessels to facilitate transportation.

190.08 RAILROADS; ORGANIZATION AND MANAGEMENT

190.08 Streams, highways, restored. Every corporation constructing, owning or operating a railroad shall restore every watercourse, street, highway, road or canal across, along or upon which such railroad may be constructed to its former state or to such condition that its usefulness shall not be materially impaired and thereafter maintain the same in such condition against any effects in any manner produced by such railroad. And may acquire any lands required to change or restore any highway, street, canal or watercourse, and lands so taken shall become a part of such highway or street. This section shall not apply to sloughs or bayous closed by the government prior to April 14, 1893, to aid the navigation of rivers; but in case such sloughs or bayous are thereafter closed by any railroad company such company shall be liable in damages to any person owning lands thereon injured thereby. The statutes for acquiring land by right of eminent domain shall apply in assessing damages for such closing.

Under this section, a railroad was under no responsibility to pay for the construction of a new railroad bridge necessitated by the channel alteration of a river as part of an improvement project as the statute imposes only a duty to "restore" against effects "produced by such railroad," and the conditions necessitating the alteration were in no way produced by the railroad. *Metropolitan Sewerage District of County of Milwaukee v. Chicago Milwaukee St. Paul & Pacific Railroad Co.* 69 Wis. 2d 387, 230 N.W.2d 651 (1975).

Under this section and the common law, a railroad was liable for the cost of replacing a bridge that impeded a creek's flow and hindered its drainage function as under the statute the railroad had a duty to restore the stream "to such condition that its usefulness shall not be materially impaired," and under the common law its duty was to continually maintain the bridge so as not to materially interfere with the water's natural flow. *Metropolitan Sewerage District of County of Milwaukee v. Chicago Milwaukee St. Paul & Pacific Railroad Co.* 69 Wis. 2d 387, 230 N.W.2d 651 (1975).

In the absence of sufficient proof that the old bridge was inadequate to carry increased water flow, the railroad was not liable for the cost of a new bridge. *Metropolitan Sewerage District of Milwaukee v. Chicago & North Western Railway Co.* 78 Wis. 2d 119, 254 N.W.2d 190 (1977).

This section did not apply to abandoned railroad property acquired by the DNR for development into hiking and biking trails. 77 Atty. Gen. 106.

190.085 Clearance of wrecks or derailments; restoration of damaged property. Every corporation constructing, owning or operating a railroad shall clear any railroad wreck or derailment from the right-of-way and adjoining property and restore or repair the right-of-way and adjoining property damaged by the wreck or derailment within 180 days after its occurrence. Any such corporation which violates this section shall forfeit to the state \$100 for each violation and each day that the violation continues constitutes a separate offense.

History: 1979 c. 186.

190.09 Railroad cattle pass, abandonment. No railroad corporation shall close or obstruct any cattle pass or opening that has been used as a passageway for livestock across its right-of-way for a period of 5 years without having first secured the consent in writing of the abutting landowners.

History: 1993 a. 213, 490; 1997 a. 254.

190.10 Railroad fixtures, after-acquired property, lien on. All rolling stock, locomotives, cars, automotive and motor vehicles, machinery, tools, equipment, fuel, supplies, materials, and other personal property of any railroad corporation used and employed in connection with the maintenance or operation of its railroad, for all purposes of this section and s. 190.11, are hereby defined and declared to be appurtenant to such railroad as real property; and all such property and all additional rights-of-way, depot grounds and other real property acquired subsequently to the execution of any trust deed or mortgage which shall have been described or provided for therein shall be subject to the lien thereof to the same extent as the real property therein described which the corporation owned at the time of its execution.

History: 1993 a. 490.

190.11 Railroad conveyances, how executed and filed.

(1) Every conveyance or lease, deed of trust, mortgage or satisfaction thereof made by any railroad corporation shall be executed and acknowledged in the manner in which conveyances of real estate by corporations are required to be to entitle the same to be recorded, and shall be filed with the department of financial institutions, which shall endorse thereon "filed" and the date of filing.

(2) A record of filing under sub. (1) shall from the time of reception of the instrument have the same effect as to any property in this state described therein as the record of any similar instrument in the office of a register of deeds has as to property in his or her county, and shall be notice of the rights and interest of the grantee, lessee or mortgagee by such instrument to the same extent as if it were recorded in all of the counties in which any property therein described may be situated.

(3) The department of financial institutions shall collect a fee of \$1 per page filed under sub. (1).

(4) The department of financial institutions shall collect a fee at the rate under s. 77.22 and, on or before the 15th day of the month after the fee is collected, shall remit that fee to the department of administration for deposit in the general fund. Sections 77.21, 77.22 and 77.25 to 77.27 apply to the fee under this subsection.

History: 1981 c. 20; 1985 a. 29; 1991 a. 39; 1993 a. 412; 1995 a. 27.

190.12 Stock; sale to employees and subsidiaries.

(1) Any railroad company existing in whole or part under the laws of this state may, with the consent of the stockholders as hereinafter stated, issue and sell, under such restrictions and terms, and for such consideration as the stockholders shall authorize, any part or all of its unissued stock, or additional stock authorized pursuant to this section, to employees of the corporation or any subsidiary corporation, without first offering such stock for subscription to its stockholders. Such consent and authorization may be given at any annual or special meeting of the stockholders by a majority vote of all its stock, upon the same notice to stockholders as is provided in s. 190.016. If any stockholder not voting in favor of said issue and sale of stock to employees so desires, the stockholder may, at such meeting, or within 20 days thereafter, object thereto by written notice filed with the secretary of the corporation and demand payment for the stock held by the stockholder at the time of such meeting, in which case such stockholders or the corporation may at any time within 60 days after such meeting file a petition in either the circuit court of Dane County or the circuit court of the county in which the principal office of the corporation within this state is located, asking for the condemnation of the shares of such dissenting stockholder and a finding and determination of the fair value thereof at the date of such stockholders' meeting.

(2) The taking of shares of such dissenting stockholders in order to promote employee ownership in railroad enterprises is hereby declared to be a taking for a public use and the necessity therefor shall in all cases be determined by the railroad company. The circuit courts of the several counties in this state are hereby vested with jurisdiction to hear and determine condemnation proceedings instituted by such petition and to determine the fair value of such shares of stock, and to render judgment against the corporation for the said value thereof. Any and all such dissenting stockholders may join, or may be joined, in all such proceedings and the fair value of such shares of stock shall be equal to their market value, which in the case of stocks listed upon any stock exchange shall be the average price for which like shares of stock were sold upon such exchange during the week in which was held the stockholders' meeting aforesaid. Upon payment by the corporation to the said stockholder, or to the clerk of said court, of the value of such shares of stock so determined, such stockholder shall cease to have any interest in such shares or in the property of the corporation, and the stockholder's shares of stock shall be transferred to, and may be held and disposed of by the corporation as treasury stock. The corporation shall be liable for and shall pay to any such objecting stockholder the value of the objecting stockholder's shares of stock so determined. In case of failure or refusal of such stockholder to surrender for transfer the certificates representing such shares of stock, the filing with the secretary of said railroad company of a certified copy of the circuit court's order determining the value thereof together with a receipt from the clerk of said court showing full payment therefor by the railroad company, shall constitute full authority for the said company to

issue new certificates in lieu of those in the hands of such dissenting stockholder, and such outstanding certificates shall thereupon be null and void.

(3) Any such corporation may, at any such annual or special meeting of its stockholders held pursuant to the notice aforesaid, increase its capital stock in such amount as may be determined by like vote of its stockholders at such meeting to provide additional stock for issue and sale to such employees.

(4) In the event such corporation by like vote of its stockholders at a subsequent meeting held pursuant to notice as specified in sub. (1), shall, before the trial of any such condemnation proceeding, rescind the previous action respecting such issue and sale of stock to employees and determine not to sell such stock without first offering it to existing stockholders, then such condemnation proceeding shall be, upon application of either party, dismissed, and all court costs be paid by the railroad company.

History: 1993 a. 482.

190.13 Report to stockholders. Every railroad corporation shall make an annual report to its stockholders of its operations for the preceding calendar year, or for its fiscal year, as the case may be, which report shall contain a balance sheet showing its assets and liabilities, its capital stock, and funded debt, and an income account showing its operating revenues, operating expenses, gross and net income, as the result of its traffic or business operations, and such other information in respect of its affairs as the board of directors shall deem advisable. A copy of each such report shall be kept on file in its principal office in this state, shall be mailed to each stockholder whose post-office address is known and shall be filed with the office of the commissioner of railroads.

History: 1977 c. 29 s. 1654 (9) (c); 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1995 a. 27, 216.

190.14 Inspection of books. The official custodian of the books, records and papers or other property of every railroad corporation shall keep the same in his or her possession and at all times during business hours have the same ready to be exhibited to any officer, director or any committee appointed by the stockholders, representing one-tenth of all the subscribed stock, on request, and furnish them or either of them transcripts from the records or proceedings of the board of directors, under the custodian's official hand and seal, on the payment to the custodian of the same fee as that required by law to be paid to the register of deeds for transcripts. The official custodian shall on vacating the office of official custodian make over all such books, records, papers and property of the railroad corporation in the custodian's possession to the custodian's successor in office, and where no successor has been elected to the board of directors, or to the person appointed therefor by the stockholders.

History: 1993 a. 482.

190.15 Right-of-way through public lands. The commissioners of public lands may sell and convey to any railroad corporation, for the compensation and upon the terms that the commissioners may fix, a strip of land 100 feet wide, or more, if needed, through lands owned by the state that the commissioners have power to sell, and across which a railroad has been or shall be located or constructed. The railroad corporation shall, as soon as the route of its road is definitely fixed, deposit in the office of the commissioners of public lands a plat exhibiting all of the affected public lands and the location of the route through the affected public lands. The railroad corporation shall have no right to take or use any of the affected public lands prior to depositing the plat. Every deed or patent for any lands conveyed to a railroad corporation under this section shall contain an express reservation unto the state of the title of the lands conveyed except as to the use of the lands by the railroad corporation or its successors or assigns for railroad purposes.

History: 1993 a. 490; 1997 a. 254.

190.16 Industrial spur tracks. (1) AT CORPORATION EXPENSE. Any railway company may build, maintain and operate spur tracks from its road to and upon the grounds of any industry or enterprise, with all sidetracks, wyes, turnouts and connections necessary or convenient to the use of the same; and any such company may acquire in the manner provided for the acquisition of real estate, other than for its main track, all necessary roadways and rights-of-way for such spur tracks and for wyes, turnouts and connections. Section 190.051 shall not apply if the spur tracks mentioned in this subsection shall not exceed 5 miles in length.

(2) MUNICIPAL CONSENT. No such spur tracks shall be constructed across, or upon any street, road or alley, within any city, village or town, until application therefor shall have been made to and acted upon by such city, village or town. The city may prescribe any reasonable terms and conditions for the construction of any such spur track.

(3) PRIVATE CONSTRUCTION. The owner of any elevator, warehouse, manufacturing plant or mill, or of any lumber, coal or wood yard located within one-half mile of any railroad or any sidetrack thereof may at the owner's own expense construct a spur track therefrom to a point on the right-of-way within the terminal or yard limits of such railroad and the railroad shall connect the same with its tracks within such terminal or yard limits. Such spur track shall at all times be under the control and management of and be kept in repair and operated by such railroad, but the cost of maintaining and operating shall be paid monthly by the owner thereof, and in case of neglect to pay the same upon demand, the obligation of this subsection upon any such railroad shall cease until such charges are paid.

(4) WHEN COMPULSORY. (a) Every railroad shall acquire the necessary right-of-way for and shall construct, connect, maintain and operate a reasonably adequate spur track whenever such spur track does not necessarily exceed 3 miles in length, is practically indispensable to the successful operation of any existing or proposed industry or enterprise, and its construction and operation is not unusually dangerous, and is not unreasonably harmful to public interest, and any person aggrieved by the failure of any railroad to fully perform such obligation may prosecute proceedings before the office to compel compliance therewith.

(b) Such railroad may require the person primarily to be served thereby to pay the legitimate cost and expense of acquiring the necessary right-of-way for such spur track, and of constructing the same, the cost to be estimated in separate items by the office, and deposited with the railroad, before it shall be required to incur any expense whatever therefor; but such person, in lieu of depositing the total estimated cost may offer in writing to construct such spur track, the offer to be accompanied by a surety company bond, running to such railroad, and conditioned upon the construction of such spur track in a good and workmanlike manner, according to the plans and specifications of such railroad, approved by the office, and deposit with such railroad the estimated cost of the necessary right-of-way. Provided that before the railroad shall be required to incur any expense whatever in the construction of such spur track, the person primarily to be served thereby shall give the railroad a bond to be approved by the office as to form, amount and surety, securing the railroad against loss on account of any expense incurred beyond the estimated cost.

(c) Whenever a spur track is so constructed at the expense of the owner of any industry or enterprise, and any other person shall desire a connection with such spur track, application therefor shall be made to the office, and such other person shall be required to pay to such owner an equitable proportion of the cost thereof, to be determined by the office.

(5) REMOVAL, WHEN. Except where a spur track was constructed prior to June 16, 1925, at the expense of the railroad company, no spur track shall be removed, dismantled or otherwise rendered unfit for service except upon order of the office made

190.16 RAILROADS; ORGANIZATION AND MANAGEMENT

after hearing held upon notice to all parties interested, and for good cause shown; provided that if no objection has been filed with the office within 20 days from the original publication of such notice, the office may without hearing authorize such spur track removed, dismantled or otherwise rendered unfit for service.

History: 1973 c. 157; 1977 c. 203; 1981 c. 347 s. 80 (1); 1993 a. 16, 123, 246, 482, 490.

(am) An assessment of the impact of mental and physical impairments upon the ability of a driver to exercise reasonable control over a motor vehicle.

(b) The implementation of highway safety performance standards promulgated by the state or federal government.

(c) A general accounting of all state or federal funds expended in implementing the comprehensive highway safety program.

(d) Recommendations for additional legislation, programs and funds necessary for the effective implementation of a comprehensive highway safety program.

(e) Current statistical information compiled from the information submitted under sub. (8) (b).

(4) **BICYCLE RULES.** The department shall publish literature setting forth the state rules governing bicycles and their operation and shall distribute and make such literature available without charge to local enforcement agencies, safety organizations, and schools and to any other person upon request.

(6) **DRINKING AGE STUDY.** The department shall study the impact of raising the legal drinking age to 21 and report the results of its study to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2) by January 1, 1988, 1989, 1990 and 1991. All other state agencies shall cooperate with the department in conducting the study. The department shall study the effect of the change in the drinking age on all of the following:

(a) Motor vehicle accident and fatality rates for persons 16 to 26 years of age including blood alcohol content and time and location of accidents.

(b) Alcohol and other drug use by persons 10 to 21 years of age.

(c) Per capita alcohol beverages consumption in this state.

(d) Arrests and other enforcement actions by law enforcement agencies and universities related to alcohol and other drug use by persons 12 to 26 years of age.

(e) Referrals and admissions of persons 12 to 21 years of age to alcohol treatment programs and facilities.

(f) Alcohol and other drug related utilization of crisis services and suicide rates of persons 12 to 21 years of age.

(7) **FEDERAL FUNDS.** (a) The department shall annually prepare a plan to use, for purposes of state and local emergency medical services, at least 25% of any federal funds transferred under 23 USC 153 (h). The department shall prepare the plan after consulting with the council on highway safety, the department of health and family services and the emergency medical services board. Funds expended under the plan may not be used to supplant other federal and state funds used for emergency medical services purposes. Funds may not be expended under the plan unless any necessary federal approval of the plan has been obtained.

(b) When evaluating and selecting proposed hazard elimination projects to be funded using federal funds available under 23 USC 152, the department shall consider the reduction in motor vehicle accidents that will result from the proposed projects, except that, if a proposed project will reduce the response time of emergency vehicles, the department shall consider both the reduction in motor vehicle accidents that will result from the proposed project and the public safety benefits that will result from a reduction in the response time of emergency vehicles.

(8) **POLICE PURSUIT INFORMATION.** (a) In this subsection, "police pursuit" means an active attempt by a traffic officer in a police vehicle to apprehend one or more occupants of a moving motor vehicle, the operator of which is resisting apprehension by disregarding the officer's visual or audible signal to stop his or her vehicle, increasing the speed of the vehicle or extinguishing the lights of the vehicle.

(b) Not later than August 15 of each year, each law enforcement agency, as defined in s. 165.83 (1) (b), that uses police vehicles shall report to the department, on a form prescribed by the department, information on police pursuit engaged in during the preceding 12 months by law enforcement officers employed by

that agency. The information shall include the circumstances of the police pursuit, including the distance, location and maximum speed of the pursuit; the reasons for commencing the police pursuit; and the outcome of the police pursuit, including the number if any of resulting deaths or great bodily injuries and an estimate of the value of any resulting property damage, if any. The department shall collect and maintain information submitted under this paragraph for not less than 10 years.

History: 1973 c. 182; 1975 c. 200; 1977 c. 196 s. 131; 1979 c. 34 ss. 19 to 24; Stats. 1979 s. 85.07; 1983 a. 74; 1985 a. 337; 1987 a. 40, 403; 1993 a. 251; 1995 a. 27 s. 9126 (19); 1997 a. 88; 1999 a. 9, 85.

85.075 Rail program rules. The department shall adopt rules to carry out the railroad programs under ss. 85.08 and 85.09.

History: 1983 a. 27; 1985 a. 135 s. 85.

85.08 Freight railroad assistance. (1) **LEGISLATIVE FINDINGS.** The legislature finds that private capital and local governmental financial and technical resources are unable to fully meet the transportation needs of all citizens. It is determined that the programs authorized under this section are legitimate governmental functions serving proper public purposes.

(2) **GENERAL POWERS.** The department shall administer the programs of financial and technical assistance under this section for the purpose of assistance to or restoration of freight railroad service and shall maximize the use of available federal aid in conjunction with the allocation of state aid. The department may exercise those powers necessary to establish freight railroad assistance programs, including authority:

(b) To plan, promote and engage in financial and technical assistance programs for continuing, restoring and operating rail branch line transportation services.

(c) To maintain adequate programs of investigation, research, promotion and development in connection with transportation programs authorized under this section and to provide for public participation in these programs.

(d) To comply with federal regulations affecting federal transportation service continuation or restoration, or operating assistance programs.

(e) To enter into joint service agreements or other agreements providing for mutual cooperation related to transportation services and projects, including joint applications for federal aids with any county or other body public and corporate.

(f) To receive, use or reallocate federal funds, grants, gifts and aids.

(g) To adopt rules necessary to effectuate and enforce this section and to prescribe conditions and procedures, including auditing and accounting methods and practices, to assure compliance in carrying out the purposes for which state financial and technical assistance is made.

(i) To make and execute contracts with the federal government, any other state or any county, city, village, town, railroad, or any transit commission organized under s. 59.58 (3), 66.0301 or 66.1021, to ensure the continuance and improvement of quality transportation service at reasonable rates or to provide for rail service on rail property owned by the state.

(j) To audit the operating revenues and expenditures of all transportation systems participating in the aids program under this section in accordance with accounting methods and practices prescribed by the department.

(k) To allow other uses of rail corridors owned by the state that are being used for freight rail service when such uses serve the purpose of providing assistance to or restoration of freight rail service, and to regulate the safety and compatibility of such uses with the provision of freight rail service by issuing a permit for any such use.

Cross Reference: See also ch. Trans 31, Wis. adm. code.

(L) To acquire rail property for the purpose of preserving freight rail service or improving the efficiency of freight rail service.

vice if, in the department's judgment, the public interest requires acquisition of the rail property.

(3) **COORDINATION AND COOPERATION.** (a) The department shall coordinate the transportation activities of the state to effectuate the purposes of this section and is responsible for negotiating with the federal government for transportation service programs authorized under this section.

(b) The department may cooperate with other states in connection with the acquisition, rehabilitation, construction or operation of any transportation properties within this state or in other states in order to carry out the purposes of this section. The department may enter into contractual arrangements for such purposes, including joint acquisition of transportation properties with other states and entering into leases jointly with other states affected thereby.

(4) **RAIL PLANNING AND TECHNICAL ASSISTANCE GRANTS.** Upon its own initiative or upon application by a government agency, the department may make grants of financial assistance and provide technical assistance for rail system, service and technical studies.

(4m) **FREIGHT RAILROAD LOANS AND GRANTS.** (a) *Purpose; findings.* The purpose of this subsection is to assist in the preservation and improvement of freight rail service in this state. The legislature finds that private capital and local government contributions are insufficient for adequate freight rail service. The legislature finds that freight rail service preservation and improvement bear a significant relationship to the conservation of energy, the preservation of existing economic and tax bases and the maintenance of a balanced transportation system. The legislature further finds that these are proper governmental functions and that the programs authorized under this subsection are therefore valid governmental functions serving proper public purposes. It is the intent of this subsection to promote the public good by preserving and improving freight rail service in this state.

(b) *Definitions.* In this subsection:

1. "Eligible applicant" means a county, municipality or town or agency thereof, a railroad, a current or potential user of freight rail service or a transit commission organized under s. 59.58 (3), 66.0301 or 66.1021.

3. "Rail service" means a level of rail service which the department determines to be an acceptable level of service.

(c) *Railroad facilities acquisition grants and loans.* The department may make grants to eligible applicants for the purpose of preserving freight rail service through the acquisition of rail property. The grant may be composed of state funds, federal funds, state property, the use of state property, or any combination of state funds, federal funds, state property and the use of state property. No grant for the acquisition of rail property improvements may exceed 80% of the acquisition cost. No grant for the acquisition of rail property exclusive of rail property improvements may exceed 100% of the acquisition cost. A grant may be made to an eligible applicant before or after abandonment of a railroad line as defined in s. 85.09 (3). The department may permit an eligible applicant's share of an increase in the acquisition cost of rail property or rail property improvements to be paid in installments if the increase in acquisition cost is caused by negotiation or litigation. No grant may be made under this paragraph for the acquisition of rail property if the acquisition price exceeds an amount deemed reasonable by the department. If a grant is made to an eligible applicant under this paragraph, the department may award a loan to the eligible applicant for not more than 15% of the acquisition cost. A grant of money or a loan made under this paragraph shall be paid from the appropriation under s. 20.395 (2) (bq), (bu) or (bx) or 20.866 (2) (uw). The department shall administer this program and shall have all powers necessary and convenient to implement this paragraph and par. (d), including the following powers:

1. To develop the specifications and provisions of the grants and loans which are made to eligible applicants.

2. To receive and review applications for grants and loans and to prescribe the form, nature and extent of the information which shall be contained in applications.

3. To determine whether the proposed rail service to be provided on the rail property acquired, rehabilitated or constructed with financial assistance under this paragraph or par. (d) has a likelihood of attaining and sustaining economic self-sufficiency and to employ such findings in the awarding of grants and loans.

4. To determine whether the rail property to be acquired with financial assistance under this paragraph offers satisfactory opportunity for alternate public use or recovery of public funds and to employ such findings in the awarding of grants and loans.

5. To make and execute agreements with eligible applicants for grants and loans. These agreements shall ensure that any public purpose served by the financial assistance is appropriately maintained by the eligible applicant, that rail service on the line is adequately continued and that the required corridor preservation, maintenance, rehabilitation and improvement activities are performed.

6. To determine whether rail service is being adequately continued and the grantee or, if applicable, the railroad providing service on the affected rail line is performing any corridor preservation, maintenance or improvement activities that are required by the department on a rail line for which a grant is made under this paragraph or par. (d). If, without the approval of the department, rail service is discontinued or the grantee disposes of any portion of the rail property for which financial assistance was obtained under this paragraph or par. (d), or if corridor preservation, maintenance or improvement activities are inadequate, including failing to meet any federal or state safety or performance standards specified in the agreement with the department or established by departmental rule, the rail property for which financial assistance was obtained shall revert to the ownership and control of the department unless the department elects to accept repayment from the grantee of the full amount of all grants and loans received from the department for the line, including any interest accrued on loans.

7. To provide technical assistance to the eligible applicant and any railroad using the rail property in a manner deemed necessary by the department.

(d) *Railroad rehabilitation and construction grants and loans.* The department may make grants to eligible applicants for the purpose of rehabilitating or constructing rail property improvements. Construction shall be limited to that which is required to continue rail service on a particular line or to provide alternative rail service when a line has been abandoned. A grant under this paragraph may be composed of state funds, federal funds, state property, the use of state property, technical assistance, or any combination of state funds, federal funds, state property, the use of state property and technical assistance. The value of a grant may not exceed 80% of the costs of rehabilitation or construction. If a grant is made to an eligible applicant under this paragraph, the department may award a loan to the eligible applicant for not more than 15% of the rehabilitation or construction costs. A grant may be made before or after abandonment of a railroad line as defined in s. 85.09 (3). A grant or loan made under this paragraph shall be paid from the appropriation under s. 20.395 (2) (bq), (bu) or (bx) or 20.866 (2) (uw).

(e) *Freight rail infrastructure improvement loans.* 1. Upon the request of an eligible applicant, the department may negotiate and enter into a loan agreement with the eligible applicant for purposes of rehabilitating a rail line or to finance an economic development and transportation efficiency project, including a project designed to promote safety or the viability of a statewide system of freight rail service, to assist intermodal freight movement or to provide industry access to a rail line. A loan made under this paragraph shall finance a project that confers a public benefit or enhances economic development in this state. Loans made under

this paragraph shall be paid from the appropriation under s. 20.395 (2) (bu), (bw) or (bx).

2. Projects for which a loan made under this paragraph may be used include all of the following:

a. Line upgrades that will expand the use of a rail line for the public benefit, including increased passenger service and increased use of double-stack technology and piggyback service.

b. Rail branch line stabilization or upgrading.

c. Projects associated with rail intermodal facilities, such as terminals, team tracks, docks, conveyers and other loading and unloading facilities.

d. Relocation of a freight rail off-loading facility that has been agreed to by the owner of the facility; the city, village or town in which the facility is located; and the city, village or town in which the facility will be relocated.

e. Rail line relocation or consolidation.

3. Loans made under this paragraph shall be allocated by the department on bases that protect the public interest, including a cost-benefit analysis. A loan made under this paragraph may cover up to 100% of a project's cost.

4. The department shall administer this program and shall have all powers necessary and convenient to implement this paragraph, including the following powers:

a. To establish standards and schedules for railroad infrastructure improvement projects and to establish the specifications and provisions of a loan that is made to an eligible applicant.

b. To establish the level and period of rail service to be provided by the railroad in any loan agreement.

c. To negotiate and establish the financial participation required of an eligible applicant in any loan agreement.

d. To provide technical assistance to an eligible applicant.

5. An application for a loan under this paragraph may not be made if an abandonment or discontinuance application is pending on the line or portion of line, or the line or portion of line on which the rail property improvements are located has been designated by the railroad to the interstate commerce commission on its system diagram map as anticipated to be the subject of an abandonment or discontinuance application within a 3-year period following the date of the application or the date on which the loan is scheduled, unless the secretary determines that this restriction may be waived for a particular application.

(g) *Exemption from bond requirements.* The secretary may exempt contracts involving the performance of labor or furnishing of materials for any public improvement or public work under the railroad rehabilitation and construction program of par. (d) or the loan program for freight rail infrastructure improvements under par. (e) from the performance and payment bond requirements of s. 779.14 if the secretary determines that:

1. Adequate guarantees or warranties are provided for by contract;

2. Adequate safeguards are provided by accounting and payment controls;

3. Adequate security is available;

4. Public benefits of proceeding with the project substantially outweigh the risk of waiving the performance and payment bond requirements of s. 779.14; and

5. The project cannot proceed in a timely and efficient manner unless the performance and payment bond requirements of s. 779.14 are waived in whole or in part.

(5) *ASSISTANCE TO RURAL AREAS.* (a) In this subsection, "rural municipality" means any of the following:

1. A city, town or village with a population of 4,000 or less.

2. A city, town or village that is located in a county with a population density of less than 150 persons per square mile.

(b) In awarding assistance under this section, the department shall make a good faith effort to select eligible applicants that rep-

resent or will benefit various geographical regions and populations of this state, including rural municipalities.

History: 1977 c. 29, 418; 1979 c. 34 ss. 912 to 932, 2102 (52) (b); 1979 c. 221; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 27; 1989 a. 31; 1991 a. 269; 1993 a. 16, 437, 491; 1995 a. 113, 201; 1999 a. 150 s. 672.

Cross Reference: See also ch. Trans 29, Wis. adm. code.

85.085 Private road crossings. (1b) In this section, "rehabilitated" means a significant rebuilding of railroad track that restores severely deteriorated track to a minimum service standard or, for track that is at or above a minimum service standard, that increases the service standard of the track.

(1m) The department shall make payments from the appropriation under s. 20.395 (2) (bu) to fund the rebuilding of any private road crossing across the tracks of a rail transit commission within this state if the applicable tracks of the rail transit commission were rehabilitated during the 1992-93 fiscal year or thereafter, the private road crossing has not been rebuilt since the tracks were rehabilitated and the private road crossing user obtains a private road crossing permit from the applicable rail transit commission.

(2) The department shall make payments from the appropriation under s. 20.395 (2) (bu) to reimburse any private road crossing user for costs incurred by the user in financing the rebuilding of a private road crossing across the tracks of a rail transit commission within this state if the applicable tracks of the rail transit commission were rehabilitated during the 1992-93 fiscal year or thereafter and the private road crossing user has obtained a private road crossing permit from the applicable rail transit commission.

(3) The department shall not make any payment under this section unless the applicable private road crossing permit provides that the rail transit commission shall, at the user's sole cost and expense, maintain, repair and renew the private road crossing. "Maintain, repair and renew" does not include any rebuilding of a private road crossing that is required because the applicable tracks have been rehabilitated.

History: 1993 a. 354; 1995 a. 113.

85.09 Acquisition of abandoned rail property. (1) DEFINITIONS. As used in this section:

(b) "Municipality" means any city, village or town.

(c) "State agency" means state departments and independent agencies.

(d) "System diagram map" means the map required under federal law to be filed with the department by the railroad operating in this state that indicates rail lines in the process of abandonment, rail lines the railroad expects to abandon and the rail lines that are under study by the railroad for possible abandonment in the future.

(2) *FIRST RIGHT OF ACQUISITION.* (a) The department of transportation shall have the first right to acquire, for present or future transportation or recreational purposes, any property used in operating a railroad or railway, including land and rails, ties, switches, trestles, bridges, and the like located on that property, that has been abandoned. The department of transportation may, in connection with abandoned rail property, assign this right to a state agency, the board of regents of the University of Wisconsin System, any county or municipality, or any transit commission. Acquisition by the department of transportation may be by gift, purchase, or condemnation in accordance with the procedure under s. 32.05. In addition to its property management authority under s. 85.15, the department of transportation may lease and collect rents and fees for any use of rail property pending discharge of the department's duty to convey property that is not necessary for a public purpose. No person owning abandoned rail property, including any person to whom ownership reverts upon abandonment, may convey or dispose of any abandoned rail property without first obtaining a written release from the department of transportation indicating that the first right of acquisition under this subsection will not be exercised or assigned. No railroad or railway may convey any rail property prior to abandonment if the rail property is part of a rail line shown on the railroad's system map as in the process of abandonment, expected to be abandoned, or

85.09 DEPARTMENT OF TRANSPORTATION

under study for possible abandonment unless the conveyance or disposal is for the purpose of providing continued rail service under another company or agency. Any conveyance made without obtaining such release is void. The first right of acquisition of the department of transportation under this subsection does not apply to any rail property declared by the department to be abandoned before January 1, 1977. The department of transportation may acquire any abandoned rail property under this section regardless of the date of its abandonment.

(b) The first right of acquisition under this subsection applies only to the following property:

1. In unincorporated areas, any land measured 50 feet from the center line of each outermost track bed and any land between such tracks.
2. In incorporated areas, any land measured 33 feet from the center line of each outermost track bed and any land between such tracks.
3. Any property not included in subds. 1. and 2. that consists of a loading or unloading facility, a vehicular access facility, or a building that is, in the department's judgment, suitable for a freight or rail passenger station.

(3) DETERMINATION OF ABANDONMENT. For purposes of this section, rail property shall be deemed abandoned if par. (a) or (b) applies:

(a) A certificate or approval of abandonment has been issued by the interstate commerce commission or federal court or any other federal or state agency having jurisdiction over the rail property.

(b) A certificate or approval of abandonment is not required and the use of the rail property for railroad or railway purposes has been discontinued with the intent not to resume. Intent not to resume may be inferred from circumstances including, but not limited to, the following:

1. If the rail property is not used for railroad purposes for 2 consecutive years.
2. If the facilities on the rail property are removed or rendered unfit for service.
3. If the rail property is used for other than railroad purposes.

(4) ACQUISITION AND CONVEYANCE. Upon its own initiative, the department may determine at any time whether the rail property is abandoned, and whether it is in the best interest of the state to acquire the rail property. Within 90 days after being requested by any state agency, any railroad or any county or municipality in which the rail property is located, the department shall, subject to sub. (5) (b), make a determination of the abandonment status and, if found to be abandoned, shall determine whether it is in the best interest of the public to acquire the rail property. If it is determined to acquire the rail property or any part or interest therein, the department shall, within 180 days of the determination of its abandoned status, or the interstate commerce commission's final order permitting the abandonment, or the termination of any efforts to negotiate an agreement for continual operation of rail service on the line, whichever occurs last, determine the fair market value of the rail property and acquire the rail property at a price deemed reasonable by the department or make a relocation order under s. 32.05. In making its determination, the department shall consider long-range potential for use of the rail property for restoration of railroad service and for other transportation related purposes. The department shall solicit the opinions of appropriate state agencies, affected counties and municipalities and other interested persons. The department shall give due consideration to an expressed desire by a state agency or an affected county or municipality to acquire, in whole or in part, the rail property under consideration. Subject to sub. (6), all or part of any interest in abandoned rail property acquired by the department under this section or under s. 66.941 (7), 1975 stats., may be subsequently conveyed to another state agency or a county or municipality for transportation purposes, recreational purposes, scenic purposes or for the purpose of constructing a correctional institution, or to a railroad

for continued railroad transportation operations when the railroad has operated on the rail property for 5 years and the department may make such conveyances for such purposes. Any determination of the department under this section that rail property is not abandoned shall not preclude the undertaking of a subsequent investigation and determination concerning the same rail property or any portion thereof. If at any time subsequent to the acquisition of rail property under this section the department determines that the rail property is not suitable for transportation purposes, recreational purposes, scenic purposes or for the purpose of constructing a correctional institution, or that the rail property or any interest therein may be conveyed to any other person on terms which are not inconsistent with the potential use of the rail property for transportation purposes, recreational purposes, scenic purposes or for the purpose of constructing a correctional institution or which yield a benefit, including financial benefits, to the state which outweighs the benefit derived from the rail property if used for transportation purposes, recreational purposes, scenic purposes or for the purpose of constructing a correctional institution, the department may convey the rail property or such interest therein, subject to sub. (6). The department shall give notice of its intention to make the conveyance, and state and local units of government shall have the first 6 months in which to exercise their opportunity to acquire the rail property or interest therein. The railroad from which the rail property was acquired shall have the next 6 months in which to exercise its opportunity to reacquire the rail property or interest therein.

(4l) DISPOSAL OF RAIL PROPERTY. The department shall sell at public or private sale rail property acquired under sub. (4) when the department determines that the rail property is not necessary for a public purpose and, if real property, the real property is not the subject of a petition under s. 560.9810 (2). Upon receipt of the full purchase price, the department shall, by appropriate deed or other instrument, transfer the rail property to the purchaser. The funds derived from sales under this subsection shall be deposited in the transportation fund, and the expense incurred by the department in connection with the sale shall be paid from the appropriation under s. 20.395 (2) (bq).

(4m) RELOCATION PLAN. The department is exempt from s. 32.25 (1) if the department determines that acquiring rail property under this section will not result in any displaced persons as defined in s. 32.19 (2) (e). The department shall file a statement of its determinations with the department of commerce.

(5) DUTIES OF RAILROADS AND OTHERS. (a) Any railroad which places a rail line or portion of a line on a system diagram map shall within 60 days of such action provide to the department one legible copy of each map in the railroad's possession which shows rail property boundaries or engineering stations for the line involved. At the same time the railroad shall provide to the department all other pertinent information in its possession requested by the department relating to the title to the rail property covered by the line involved. The department shall determine the reasonable cost to the railroad of providing documents and information under this paragraph and shall reimburse the railroad in this amount. Any conveyance by the railroad made without providing the information required by this paragraph is void.

(b) Any state agency, railroad, county or municipality which requests the department to make a determination of abandonment status and public interest in acquisition of rail property under sub. (4) shall provide a formal legal description of the rail property which is the subject of the request. The department may decline to take action on requests which do not contain an adequate description of the rail property involved. When the department provides a release of its first right to acquire rail property, the state agency, railroad, county or municipality which receives the release shall within 90 days have the release recorded by the register of deeds for each county in which the rail property is located.

(6) STATE RIGHTS SUBORDINATE TO FEDERAL LAW. To the extent that the first or subsequent rights of acquisition under this section conflict with rights conferred by 49 USC 10905 (f) (4) or 10910

(h), the rights conferred by this section are subordinate to such federal rights and shall take effect only when consistent with 49 USC 10905 (f) (4) and 10910 (h):

(7) RULES. The department may adopt such rules as it deems necessary to accomplish the purposes of this section.

History: 1977 c. 29, 418; 1979 c. 34 s. 1018; Stats. 1979 s. 85.09; 1981 c. 20, 1983 a. 27, 192; 1985 a. 29 ss. 1583 to 1586, 3200 (51); 1985 a. 332 s. 253; 1987 a. 5; 1989 a. 31; 1991 a. 39; 1993 a. 16; 1995 a. 27 ss. 3525, 9116 (5); 2003 a. 33.

Cross Reference: See also ch. Trans 29, Wis. adm. code.

85.095 Harbor assistance program. (1) DEFINITIONS. In this section:

(a) "Eligible applicant" means a county, municipality, town or agency thereof, a board of harbor commissioners organized under s. 30.37, or a person who owns a harbor facility.

(am) "Harbor facility" has the meaning given in s. 30.01 (3).

(b) "Harbor improvements" means any dock wall repair and maintenance, construction of new dock walls, dredging of materials from a harbor or the placement of dredged materials in containment facilities.

(2) ADMINISTRATION. The department, in consultation with the Wisconsin coastal management council created under s. 14.019, shall administer the harbor assistance program and shall have the following powers:

(a) To make grants for the purpose of reimbursing eligible applicants for moneys expended to make harbor improvements and to fund other harbor assistance and improvement projects. The amount of a grant may not exceed 80% of the moneys expended by the eligible applicant for harbor improvements.

(b) To establish criteria for evaluating applications for harbor assistance grants in order to provide for the disbursement of grants. In establishing these criteria, the department shall consult with the department of commerce and shall give priority to applicants based on the amount of tonnage and waterborne transportation handled in the harbor.

(c) To receive and review applications for grants under this section and to prescribe the form, nature and extent of the information which shall be contained in the applications.

(d) To direct, with the approval of the governor, that state debt subject to the limitations in s. 20.866 (2) (uv) be contracted in accordance with ch. 18 to fund harbor improvements and other harbor assistance and improvement projects.

(3) PLANNING REQUIREMENTS. (a) Except as provided in par. (c), no grant may be made under this section unless the eligible applicant submits information to the department regarding harbor projects for which the eligible applicant may request state aid under this section or federal aid, or both, during the next 3-year period. The information shall be submitted prior to the April 1 which precedes the fiscal year in which the eligible applicant seeks aid under this section.

(b) The department shall, by rule, establish the starting date of each 3-year period and the form, nature and extent of the notice required under par. (a).

(c) The department may waive the requirements under this subsection.

(4) HARBOR IMPROVEMENTS ON MISSISSIPPI RIVER. An eligible applicant may receive a grant under this section for harbor improvements located on an island in the Mississippi River regardless of the state in which the island is located if the island is owned by a city, village, town or county in this state.

(5) PRIVATE HARBOR FACILITY ELIGIBILITY. (a) Notwithstanding subs. (2) and (3), the department may award a grant under this section to fund harbor improvements and other harbor assistance and improvement projects to a privately owned harbor facility only if the harbor facility is to be held open for public use for at least 10 years following completion of the improvement or project for which reimbursement is provided under sub. (2) (a) or for any period specified by the department in any grant agreement, whichever is longer.

(b) If the recipient of a grant described under par. (a) fails to hold the harbor facility open for public use for the period specified in par. (a), the grant recipient shall repay the grant funds to the department to the extent and in the manner directed by the department, and the department shall include this requirement in any grant agreement with the grant recipient.

History: 1979 c. 34, 221, 355; 1981 c. 314; 1983 a. 27; 1987 a. 27, 399; 1989 a. 31, 359; 1995 a. 27 s. 9116 (5); 1995 a. 130; 2003 a. 208.

Cross Reference: See also ch. Trans 28, Wis. adm. code.

85.10 Sale of aerial photographic survey products. The department may sell to any person the selection of photographic products from the aerial photographic survey conducted under s. 23.325. The department may retain an amount equal to the costs that it incurs in selling and reproducing the photographic products.

History: 1977 c. 418; 1979 c. 175 s. 53; 1987 a. 27; 1991 a. 39.

85.103 Disclosure of personal identifiers. (1) In this section, "personal identifier" means a name, social security number, telephone number, street address, post-office box number or 9-digit extended zip code.

(2) The department shall include on any form for application for original registration under s. 341.08, for application for renewal of registration under s. 341.08, for application for a certificate of title under s. 342.06, for application for a license or identification card or renewal of a license or identification card under s. 343.14 and for application for a special identification card under s. 343.51, a place for the individual to designate that the individual's personal identifiers may not be disclosed in information compiled or maintained by the department that contains the personal identifiers of 10 or more individuals, a statement indicating the effect of making such a designation and a place for an applicant or registrant who has made a designation under this subsection or sub. (3) to reverse the designation.

(3) The department shall provide to an individual upon request a form that includes a place for the individual to designate that the individual's personal identifiers may not be disclosed in information compiled or maintained by the department that contains the personal identifiers of 10 or more individuals, a statement indicating the effect of making such a designation and a place for an applicant or registrant who has made a designation under this subsection or sub. (2) to reverse the designation.

(4) The department shall treat a designation made under s. 341.08 (1m), 1997 stats., s. 342.06 (1) (i), 1997 stats., s. 343.14 (2m), 1997 stats., or s. 343.51 (1m), 1997 stats., as if the designation were made under sub. (2) or (3).

(5) In providing a person with any information that is collected or prepared by the department and that consists in whole or in part of the personal identifiers of 10 or more persons, the department may not disclose the personal identifier of any person who has made a designation under sub. (2) or (3), except as provided in sub. (6).

(6) The department may disclose the personal identifier of any person who has made a designation under sub. (2) or (3) if the department discloses the personal identifier under s. 341.17 (9), 342.06, 343.027, 343.14, 343.234, 343.235, 343.24 (3) and (4), or 343.245 (3m).

(7) (a) The department shall establish by rule a reasonable period for complying with designations made under subs. (2) and (3).

(b) If an unanticipated number of designations result in the department not being able to comply with a reasonable effort with designations made under subs. (2) and (3) within the period established by the department under par. (a), the department may establish the temporary extension by rule, using the procedure under s. 227.24.

History: 1999 a. 88; 2001 a. 93; 2005 a. 25.

85.105 Sale of motor vehicle records. (1) Notwithstanding s. 343.24 (2m), the department may contract with a person to

