Rail Preservation Programs: A Survey of National Guidance and State Practice

Requested by
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The Caltrans Division of Research and Innovation (DRI) receives and evaluates numerous research problem statements for funding every year. DRI conducts Preliminary Investigations on these problem statements to better scope and prioritize the proposed research in light of existing credible work on the topics nationally and internationally. Online and print sources for Preliminary Investigations include the National Cooperative Highway Research Program (NCHRP) and other Transportation Research Board (TRB) programs, the American Association of State Highway and Transportation Officials (AASHTO), the research and practices of other transportation agencies, and related academic and industry research. The views and conclusions in cited works, while generally peer reviewed or published by authoritative sources, may not be accepted without qualification by all experts in the field.

Executive Summary

Background

Caltrans has limited ownership of the rail lines located in the state, and private owners are increasingly filing for abandonment with the federal government. If Caltrans does not act to acquire or otherwise preserve these lines, the land may be purchased by someone who will remove the lines. Once rail lines are removed from the ground, these rail rights of way are no longer exempt from the public hearing and environmental processes and are effectively lost forever. This may result in more freight being transported on highways and preclude any possible future use of the abandoned line for either freight or passengers.

Even if a line is not currently used, it is often desirable to preserve it for potential future use, as establishing a new line (or re-establishing removed tracks) is much more difficult than bringing an old line back into use. Caltrans wishes to understand how other states are dealing with the issue of rail preservation, with a focus on preserving intact rail right of way for future freight use.

This Preliminary Investigation seeks to capture national guidance for preserving freight rail corridors and service, trends in the abandonment of freight rail lines and the critical elements of progressive state department of transportation (DOT) rail preservation programs.

Summary of Findings

This Preliminary Investigation includes an examination of **National Guidance** and **Progressive State Rail Preservation Programs**. The two sections of this Preliminary Investigation are summarized below.

National Guidance

Best practices or recurring themes culled from the survey responses that provided the foundation of a 2007 NCHRP synthesis on rail preservation include:

- Developing a clear policy foundation that allows an agency to act before abandonment is proposed.
- Tracking and communicating the benefits of public rail line investment.
- Providing a mixture of loans and grants to fund rail rehabilitation efforts. States with well-funded programs have high rates of success in retaining rail corridors.
- Directly engaging with all types of rail service providers to develop relationships and encourage information sharing about lines that have the potential for abandonment.
- Restoring rail service is far less common than restoring a rail corridor. Having the long-term funding commitment necessary to respond to restoration opportunities as they arise is critical.

We also highlight models and tools that assess and compare the relative costs of the transportation modes used to move freight, including a guidebook that is part of a 2007 NCHRP report and a Federal Railroad Administration Excel-based model that analyzes the diversion of highway freight traffic to rail.

Progressive State Rail Preservation Programs

We reviewed published research, state rail plans and state DOT web sites to gather information about the rail preservation programs administered by the following state DOTs:

- Indiana.
- Kansas.
- North Carolina.
- Ohio.
- Oregon.
- Pennsylvania.
- South Carolina.
- Texas.
- Virginia.
- Washington.
- Wisconsin.

Best Practices

The most commonly used strategy in the rail preservation programs we examined is the availability of funding for rail acquisition or rehabilitation. Most of these programs are geared toward short line railroads—the smaller Class II or Class III railroads—rather than large Class I[1] freight railroad companies. States with well-developed preservation programs have also found some success with state acquisition of rail lines, though research indicates that this preservation tool requires adequate time and funding to fully realize the benefits of state ownership. Benefit-cost analyses are a relatively recent addition to the rail preservation toolbox.

The table below highlights strategies that are recommended or in use to advance an effective state rail corridor preservation program. Several of these strategies are similar to recommendations in the 2007 NCHRP synthesis on rail preservation.

[1] Class I railroads, which are regulated by the Surface Transportation Board, have operating revenues at or above a threshold indexed to a base of $250 million that is adjusted annually in conjunction with changes in the Railroad Freight Rate Index published by the Bureau of Labor Statistics. Declassification from Class I status occurs when a railroad falls below the applicable threshold for three consecutive years.

State Rail Corridor Preservation Strategies	
Strategy	**State(s)**
Establishing funding programs that offer grants or loans for capital improvements	Indiana, Kansas, North Carolina, Ohio, Oregon, Pennsylvania, Texas, Virginia, Washington, Wisconsin
Granting authority for the state to acquire rail lines	North Carolina, Ohio, Oregon, South Carolina, Texas, Washington, Wisconsin
Conducting benefit-cost analyses to evaluate public benefits of public investments in rail projects	Ohio, Pennsylvania, Virginia, Washington
Establishing a relationship with railroad representatives	Indiana, Oregon, South Carolina, Texas
Monitoring the rail system for rail corridors ripe for preservation	Indiana, South Carolina, Texas
Supporting public purchase of rail cars or other equipment	Indiana, Kansas, Oregon
Providing rail-related funding as an incentive to businesses to locate or expand in the state	North Carolina, Virginia
Consolidating or developing storage and loading facilities to improve accessibility to rail service	Indiana, Oregon
Conducting public information campaigns	Indiana
Developing performance measures for rail funding programs	Kansas
Monitoring existing and proposed industrial development	South Carolina
Obtaining the backing of a political champion	Texas
Creating public-private partnerships with Class I railroads	South Carolina
Forming Rural Rail Transportation Districts (in response to concerns about the loss of rail service in rural parts of Texas)	Texas

Financial Support

Of the states that have strategies, all but two—South Carolina and Texas—currently offer financial assistance to encourage preservation of rail lines for rail use. South Carolina DOT provides funding to preserve abandoned railway corridors for pedestrian and bicycle use; preserving a corridor for future use of an active rail line is not an allowable use under the program. In Texas, the Rail Relocation and Improvement Fund was created by the state Legislature and approved by Texas voters at a constitutional amendment election in 2005 but is not yet funded.

The table below summarizes the ongoing state-funded programs that provide support for rail preservation. Most programs limit availability to short line railroads.

Funding Programs to Encourage Rail Preservation		
State	**Program(s)**	**Description**
Indiana	Industrial Rail Service Fund (1997)	Grants and low-interest loans to Class II and Class III railroads.
Kansas	State Rail Service Improvement Fund (1999)	Low-interest, 10-year revolving loans to short line railroads; loans cover 70 percent of project costs.
North Carolina	Rail Industrial Access Program (1994)	Funds of up to 50 percent of project costs may be used to construct or rehabilitate tracks; provides an incentive to businesses to locate or expand facilities in North Carolina.
Ohio	Rail Line Acquisition Program	Assistance for the acquisition of rail lines to prevent cessation of service or enhance the line's viability.
Oregon	ConnectOregon (2005)	A lottery-bond-based initiative that began in 2005 to provide financing for rail and other types of transportation projects.
Pennsylvania	1. Rail Freight Assistance Program (1984). 2. Rail Transportation Assistance Program. 3. Pennsylvania Infrastructure Bank (1998).	All programs provide financial assistance for investment in rail infrastructure. 1. Funding for up to 70 percent of the total project up to $700,000. 2. Applicants are required to have a line item authorized in the current Capital Budget Act. 3. Low-interest loans with terms up to 10 years.
Virginia	1. Rail Enhancement Fund (2005). 2. Rail Preservation Grants (1991). 3. Rail Industrial Access Grants (1986).	1. Fund established in 2005 as the first dedicated source of rail funding in state history; applicants must provide a minimum of 30 percent cash or in-kind contribution. 2. Grants to support and preserve short line railways, with an annual allocation of $3 million. 3. Grants to support projects that provide rail access to businesses in Virginia; funding expected to average $1.5 million in future years.
Washington	1. Freight Rail Investment Bank Program.	1. Grant program that assists with smaller capital projects with funds up to $250,000 that must be matched by at least 20 percent of funds

Funding Programs to Encourage Rail Preservation		
State	**Program(s)**	**Description**
	2. Freight Rail Assistance Program.	from other sources. 2. Grant program directed toward larger projects.
Wisconsin	1. Freight Railroad Preservation Program (1992; replaced original 1977 program). 2. Freight Railroad Infrastructure Improvement Program (1992).	1. Grant funding of up to 80 percent of the cost to purchase abandoned rail lines or facilitate connectivity to a different transportation corridor; the program pays 100 percent of real estate acquisition costs. 2. Low-interest loans of up to 100 percent for rail projects that connect an industry to the national rail system, make corridor improvements, rehabilitate lines or develop the economy.

Statutory Provisions
The table below summarizes the rail-related statutory provisions highlighted in this Preliminary Investigation.

Statutory Provisions Related to Rail Preservation	
Topic Area	**State(s)**
Establishing funding programs	Kansas, Virginia
Granting authority for state rail acquisition	North Carolina, Ohio, Oregon, South Carolina, Texas, Wisconsin
Stipulating rail plan provisions regarding abandonment	Washington
Preservation program guidelines	Washington

Gaps in Findings

We found relatively little published research that discussed the efficacy of rail preservation efforts. The 2007 NCHRP synthesis, *Preserving Freight and Passenger Rail Corridors and Service*, provided the most extensive assessment of state rail preservation programs.

Response rates to the survey that formed the basis for the 2007 NCHRP synthesis averaged 24 percent, indicating that there are relatively few state DOT programs with a depth of experience on rail preservation.

State and national models and tools that evaluate the benefits of preserving freight rail service are relatively new, and some are untested. Two of the state models we present in this Preliminary Investigation will be used for the first time during upcoming funding cycles.

Next Steps

Caltrans might consider the following in its continuing evaluation of rail preservation:

- Examine public or private business models that encourage diversion of medium-distance intercity freight from the highway to the rails. This is among the issues cited in the NCHRP synthesis as warranting further study.
- Consult with agencies with long-standing funding programs that support rail preservation to learn more about program operation, including the benefits of grant versus loan programs, effective administrative practices and strategies to encourage continued program funding.
- Follow up with North Carolina, Ohio and Pennsylvania DOTs to learn more about their effective rail preservation programs. These DOTs are cited in the NCHRP synthesis as having "serious, well-established rail sections and a history of successful preservation efforts."
- Consult with agencies with experience in state ownership of rail lines—North Carolina, Ohio, Oregon, South Carolina, Texas, Washington and Wisconsin—to learn more about the benefits and challenges associated with this preservation strategy.
- Follow up with agencies employing benefit-cost analyses in the evaluation of potential rail rehabilitation projects to learn more about these tools.
    - Ohio DOT will conclude testing of its new tool this summer.
    - PennDOT will begin using its new assessment tool—Pennsylvania Rail Benefits Estimator—during the 2011 grant selection process.
    - Washington State DOT applies its evaluation methodology in two ways: a more limited application of the model that analyzes information from the agency's grant or loan programs, and a more extensive application that is applied to larger projects.

Contacts

During the course of this Preliminary Investigation, we corresponded with the following individuals:

State Agencies

Indiana
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Manager
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(317) 232-1491, mdriley@indot.in.gov

Ohio
Matthew Dietrich
Executive Director
Ohio Rail Development Commission
(614) 644-0295, matt.dietrich@dot.state.oh.us

National Guidance

The reports and studies cited below offer **Best Practices** in developing an effective rail preservation program and provide tools to aid in determining the **Economic and Other Implications of Freight Rail**.

Best Practices

The most significant national guidance on best practices comes in the form of a 2007 NCHRP synthesis that presents the results of a survey of key stakeholders in the rail preservation process. We also highlight a discussion of paper barriers—agreements stipulating that virtually all traffic originating on a rail line must interchange with the Class I railroad that originally leased the tracks or pay a penalty—in reports prepared for Congress and the Surface Transportation Board (STB).

Preserving Freight and Passenger Rail Corridors and Service, *NCHRP Synthesis 374*, 2007.
http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_374.pdf
This synthesis examines efforts to preserve rail corridors. Information gathering centered on a survey of state DOTs, selected metropolitan planning organizations, commuter rail agencies, short line holding companies and Class I railroads. Best practices or recurring themes culled from survey responses include:

- Developing a clear policy foundation that allows agencies to act in advance of specific abandonment "crisis" situations.
- Tracking the benefits of public rail line investment and communicating those impacts to political decision makers.
- Directly engaging the future rail service providers from the earliest stages of rail line assessment. It is critical to obtain cooperation and commitment from three parties—the rail shippers and receivers, the short line or regional service provider, and the Class I large railroad connector. Most shipments must move by means of at least two rail carriers to reach their final destinations. Full origin-destination transit performance may depend on Class I connecting service.
- Providing a mixture of loan and grant assistance programs. Success rates for retaining corridors are high in states with well-funded programs.
- Maintaining long-term partnership relationships with experienced short line operators.
- Combining DOT and local (usually county-based) agencies in a joint-powers relationship designed to preserve or rejuvenate a specific rail property.

Restoring Dormant Corridors
A discussion of the restoration of dormant rail corridors begins on page 19 of the PDF. Researchers note that while rail corridor restorations are fairly common, restoring rail service to abandoned or dormant rail alignments is far more unusual. Three states—North Carolina, Ohio and Pennsylvania—are noted as having the long-term funding commitment necessary to respond to restoration opportunities as they arise. Survey respondents report the following principal challenges to restoring rail service, in order of importance:

- Securing funding for the restoration project.
- Dealing with right of way encroachments.
- Opposition from adjacent landowners.
- Discord among public agencies over the intended corridor use.
- Pressure from potential or actual recreational users.

Railbanking
The report describes the federal railbanking program as a tool that can be used to preserve alignments that have little prospect for short-term commercial use. Since 1983, private and public organizations have used this mechanism to preserve rail corridors by keeping alignments intact through interim conversion to trail use. Under what has come to be known as "Rails to Trails," a line is not technically abandoned and the possibility remains for renewed rail service. The original rail service provider or a new operator may reassume control of any Rails to Trails corridor to reinitiate train service.

While restoring active train service may be challenging, the report notes the significant advantage provided by preserving the corridor when compared to installing a new alignment. Retaining the infrastructure eliminates individual property negotiations, streamlines environmental processes, and keeps major structures intact. Leaving rail infrastructure intact is particularly attractive in California, where the removal of rail track infrastructure from a rail-banked corridor triggers requirements for a full environmental review when an interested party seeks to replace the removed rails.

The authors note that use of the federal railbanking program has been largely driven by trail interests rather than those seeking to restore future rail service.

Future Study
Areas recommended for future study include:

- Identifying lightly used or dormant long-distance rail alignments that are worthy of preservation for future use and the mechanisms to effect the preservation.
- Using public or private business models that encourage diversion of medium-distance intercity freight from the highway to the rails.
- Designing transit systems to play a dual role in moving passengers and providing freight mobility in the inner city.

Freight Railroads: Industry Health Has Improved, but Concerns About Competition and Capacity Should Be Addressed, Report to Congressional Requesters, U.S. Government Accountability Office, October 2006.
http://www.gao.gov/new.items/d0794.pdf
Researchers consulted with shipper groups, economists and other experts in the rail industry to identify possible remedies that could provide more competitive options to shippers in areas of inadequate competition or excessive market power. Among them is the use of paper barriers; page 55 of the PDF provides a description of this practice:

> *Paper barriers:* This approach would prevent or, put a time limit on, paper barriers. These agreements stipulate that virtually all traffic that originates on that line must interchange with the Class I railroad that originally leased the tracks or pay a penalty. Since the 1980s, approximately 500 short lines have been created by Class I railroads selling a portion of their lines; however, the extent to which paper barriers are a standard practice is unknown because they are part of confidential contracts. When this type of agreement exists, it can inhibit smaller railroads that connect with or cross two or more Class I rail systems from providing rail customers access to competitive service. Eliminating paper barriers could affect the railroad industry's overall capacity since Class I railroads may abandon lines instead of selling them to smaller railroads and thereby increase the cost of entering a market for a would-be competitor. In addition, an official from a railroad association told us that it is unclear if a federal agency could invalidate privately negotiated contracts.

Description of the U.S. Freight Railroad Industry, Volume 1, Surface Transportation Board, November 2009.
http://www.stb.dot.gov/stb/docs/CompetitionStudy/Volume%201.pdf
Page 97 of the PDF notes a difference of opinion on the paper barrier issue, even among smaller railroads:

- While many see a need for some type of arrangement when Class I railroads spin off lighter-density lines to smaller railroads, many view it as an impediment to competition.
- Some see paper barriers as providing a better alternative to the simple abandonment of lines by Class I railroads or continued operation at increasingly higher costs with poorer service.
- Some feel that without paper barriers it is unlikely that the smaller railroads will be able to acquire lines from the Class I railroads in the near future.
- Yet another approach considers paper barriers to be a captive shipper issue. The rationale: The shipper would still be captive if control of the line in question reverted to the original Class I owner, and resolution should come through STB captive-shipper processes.

The authors summarize stakeholder feedback on competition among railroads on page 91 of the PDF, noting that some industry stakeholders allege "that railroads limit competition through the use of route closures, restricted switching access, excessive charges for trackage rights, and paper barriers."

Economic and Other Implications of Freight Rail

Viable rail networks provide an alternative to freight shipments that are now using other transportation modes—chiefly roads and waterways. The reports cited below assess the effects of a diversion from one transportation mode to another on costs and other factors.

Surface Freight Transportation: A Comparison of the Costs of Road, Rail, and Waterways Freight Shipments That Are Not Passed on to Consumers, Report to the Subcommittee on Select Revenue Measures, Committee on Ways and Means, House of Representatives, U.S. Government Accountability Office, January 2011.
http://www.gao.gov/new.items/d11134.pdf
This recent analysis shows that the costs of freight trucking that are not passed on to the consumer are at least six times greater than rail costs and at least nine times greater than waterway costs. These costs include private costs; public costs such as infrastructure maintenance; and external costs such as congestion, pollution and accidents.

The report's summary includes this:

> When prices do not reflect all these costs, one mode may have a cost advantage over the others that distorts competition. As a consequence, the nation could devote more resources than needed to higher cost freight modes, an inefficient outcome that lowers economic well-being. Inefficient public investment decisions can result when all construction and other fixed costs are not passed on to the beneficiaries of that investment.

Rail Freight Solutions to Roadway Congestion—Final Report and Guidebook, *NCHRP Report 586*, 2007.
http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_586.pdf
This project examined obstacles, strategies and constraints in assessing the potential for rail freight to relieve roadway congestion. Topics covered in the report include:

- **Freight mode choice.** Factors and constraints affecting the potential and likelihood of diverting various types of freight traffic from truck to rail. This includes economic development, social, environmental, safety and security factors relevant to both private sector and public sector shippers and carriers.
- **Analysis framework.** A methodology for using available data to assess relative benefits and costs and the feasibility of public investment in rail freight solutions to roadway congestion.

- **Public policy.** Processes, practices and barriers at all levels of government that can facilitate or inhibit public sector investment in rail freight. This includes legislative restrictions, planning processes and implementation procedures.
- **Decision-making considerations.** Benefit-cost analysis procedures relevant for decision making on public investment in rail freight transportation.

A guidebook, which begins on page 138 of the PDF, incorporates research findings into a set of tools and methods that transportation planners can use to examine the potential for rail freight as a way to help control the growth of roadway traffic congestion.

Intermodal Transportation and Inventory Cost Model, Highway-to-Rail Intermodal, ITIC-IM, Version 1.0, Federal Railroad Administration, U.S. Department of Transportation, March 2005.
http://www.fra.dot.gov/rpd/freight/1543.shtml

Note: The link above provides general information about the model. To obtain a copy of the CD-ROM that includes the model, data sets and other documentation, contact Scott Greene at (202) 493-6408 or scott.greene@dot.gov.

This Excel-based model is used to conduct policy analysis of issues concerning freight movement. Input data reflecting the user's typical freight movements is used to analyze the diversion of highway freight traffic to rail service and assess the economic benefits associated with changes in transportation strategy or infrastructure.

Related Resource:

> **User's Manual, Intermodal Transportation and Inventory Cost Model: Highway-to-Rail Intermodal**, Federal Railroad Administration, U.S. Department of Transportation, March 2005.
> http://www.fra.dot.gov/downloads/Policy/ITIC-IM%20documentation%20v1_0.pdf
> This manual describes how the model can be used to develop the information needed for policy assessment involving both rail-to-truck and truck-to-rail diversion.

Progressive State Rail Preservation Programs

Below we highlight elements of progressive rail preservation programs administered by the following state DOTs or related agencies:

- Indiana.
- Kansas.
- North Carolina.
- Ohio.
- Oregon.
- Pennsylvania.
- South Carolina.
- Texas.
- Virginia.
- Washington.
- Wisconsin.

We consider the programs from three perspectives: Best Practices, Financial Support and Statutory Provisions.

Indiana

The centerpiece of Indiana DOT's rail preservation program is its Industrial Rail Service Fund, which provides grants and low-interest loans to Class II and Class III railroads. A board created by the Indiana Legislature to examine the most efficient and beneficial reuse of abandoned rail corridors was dissolved following publication of a 2003 study that found the board's processes impeded INDOT's ability to respond effectively to opportunities to preserve rail corridors.

Contact: Mike Riley, Manager, Rail Office, Indiana Department of Transportation, (317) 232-1491, mdriley@indot.in.gov.

Best Practices

Indiana Rail Corridor Preservation Study, Indiana Department of Transportation, February 2003.
See Appendix A.
This study aimed to provide INDOT with strategies to identify corridors with the potential to be abandoned and criteria for prioritizing corridor preservation efforts. Researchers highlighted practices used in effective corridor preservation programs in other states, including:

- State purchase of rail lines.
- Public information campaigns and research studies to build the case for rail.
- Public purchase of rail cars.
- Grants and loans for capital improvements to rail lines to help small railroads stay in business.
- Railbanking (Rails to Trails).
- Consolidation of storage and loading facilities to improve accessibility to rail service.

The study found the Indiana rail preservation process to be cumbersome and inflexible, precluding INDOT from taking the necessary steps to acquire rail corridors under federal acquisition procedures. Researchers found that the Transportation Corridor Planning Board, created in 1995 by the Indiana Legislature to examine the most efficient and beneficial reuse of abandoned rail corridors, played no substantive role in the corridor acquisition process. Study recommendations include:

- Composing legislative revisions that:
    - Grant INDOT a right of first refusal on abandoned rail corridors.
    - Authorize INDOT to engage in negotiations with railroads for the purchase of active and abandoned rail corridors.
    - Give INDOT a means to acquire corridors through eminent domain if the purchase cannot be negotiated.
- Conducting at least annual meetings between INDOT and representatives of all railroads serving the state to gather information about rail corridors that might be abandoned during the coming year.
- Consulting with affected state and local agencies and preparing an annual master list of rail corridors for preservation.
- Developing a budget that permits acquisition of corridors as they become available.

Related Resource:

Indiana Rail Corridor Preservation Study: Project Summary, Indiana Department of Transportation, February 2003.
http://www.in.gov/indot/files/tri-fold.pdf
This brochure summarizes key findings from the 2003 study that examined the effectiveness of the Indiana process for rail corridor preservation.

Financial Support

Indiana Rail Plan, Indiana Department of Transportation, July 8, 2009.
http://www.in.gov/indot/files/FR_Indiana_Rail_Plan_07082009.pdf
Current rail preservation practices center around INDOT's Industrial Rail Service Fund (IRSF). Established in 1997, the IRSF provides grants and low-interest loans to Class II and Class III railroads as well as short lines operated by local port authorities. The IRSF is funded through 0.029 percent of the state sales tax. The goal of the program is to assist short lines in upgrading infrastructure to accommodate 286,000-pound rail cars and upgrading bridges and track to attract new businesses.

Related Resource:

> **Industrial Rail Service Fund: Grant Application FY 2011**, Indiana Department of Transportation, undated.
> http://www.in.gov/indot/files/FY11procedures.pdf
> The IRSF application process uses a point system to score submissions. Grants totaling $1,646,759 were awarded during FY 2010; grant funding of $1,300,000 is available for FY 2011.

Kansas

Since 1999, Kansas DOT has provided low-interest, 10-year revolving loans to short line railroads through its State Rail Service Improvement Fund (SRSIF) to assist with the rehabilitation of track, bridges, yards, maintenance facilities, buildings and sidings, and with the purchase of rail cars. A 2005 program review noted that Class I railroads operating in Kansas support the loan program, recognizing that viable short line railroads make a significant contribution to the overall health of the entire rail network.

Contact: John W. Maddox, Office of Freight and Rail Program Manager, Kansas Department of Transportation, (785) 296-3228, johnm@ksdot.org.

Best Practices

Appendix A, Public Policy Profile, **Kansas Statewide Freight Study**, Kansas Department of Transportation, 2009.
http://www.ksdot.org/burRail/rail/pdf/Statewide%20Freight%20Study,%20Appendix%20A.pdf
This study recommends the development of metrics that can help KDOT evaluate its success in meeting transportation goals and objectives. See page 31 of the PDF for performance measures recommended for the agency's short line funding program:

> The SRSIF is intended to maintain the short lines at the FRA Class 2 standard, and to focus on those short lines with a viable business plan. Performance measures to track the effectiveness of this program would be the number of miles of short line track at the FRA Class 2 standard that are sufficient to handle 286,000 lbs of weight, and the percentage of customers using the track that have a viable, sustainable business plan.

Review of the Kansas Short Line Railroad Rehabilitation Program, Final Report, Kansas Department of Transportation, November 2005.
http://www.ksdot.org/burrail/rail/publications/rehstudy2005.pdf
This study's economic analysis of the SRSIF, the state's short line rehabilitation program, concluded that program expenditures provided significant benefits to the public and private sectors, including:

- The combined 10-year present value of public sector benefits for state and local tax revenues and highway maintenance cost savings is $43.7 million.

- The combined 10-year present value of private sector benefits, both direct and indirect, from rehabilitation projects and acquisition of the Central Kansas Railway by the K&O Railroad, is more than $1 billion in business earnings and $425 million in personal wage income.

Researchers note that the Class I railroads operating in the state are unanimous in their support of SRSIF and the financial assistance the program provides to the Class I railroads' key transportation partners, noting that healthy short line railroads are absolutely vital to the Class I railroads.

The Impact of Jumbo Covered Hopper Cars on Kansas Shortline Railroads, Kansas Department of Transportation, Report No. K-TRAN: KSU-04-3, September 2004.
http://www.ksdot.org/burRail/rail/publications/jumbocarsonslrr.pdf
Class I railroads have been replacing 263,000-pound covered hopper cars capable of handling 100 tons of grain with 286,000-pound covered hopper cars that can handle 111 tons. Researchers note that while these heavier cars provide a decrease in railroad cost per ton-mile for the Class I carrier, they will cause a significant increase in operating and maintenance costs for short line railroads, which make up 44 percent of the current Kansas rail system. Track and bridge improvements needed to upgrade mainline tracks are costly—too costly for short line providers to finance in the private market.

The report concludes that Kansas has an economic interest in preserving short line rail service, with annual savings of at least $58 million per year derived from the use of short lines in avoided road damage cost, and $20.7 million in savings for the state's wheat shippers for wheat transportation handling costs. Researchers recommend increasing funding for the SRSIF and purchasing covered hopper cars for leasing to short line railroads for use in Kansas.

Financial Support

Kansas Statewide Rail Plan, State of Kansas, Final Report, 2011.
http://www.ksdot.org/burRail/rail/publications/StateWideRailPlan2011.doc
The state's rail plan notes that the SRSIF has contributed to the stabilization of the rail system through its investments to preserve critical rail corridors threatened with abandonment. Initially funded in 1999 for an eight-year funding cycle, the program provides $3 million annually to Kansas short line railroads through a low-interest, 10-year revolving loan program that assists in the rehabilitation of the railroad tracks and its components, bridges, yards, shops, buildings and sidings. The loan program is structured as a 70 percent state loan and a 30 percent railroad/port authority match funding arrangement.

A billed passed in the Kansas Legislature during 2010 increases annual SRSIF funding from $3 million to $5 million beginning in 2013. (See page 2 of the PDF available at http://www.skyways.org/ksleg/KLRD/Publications/Transportation_Resources/HB2650-2010SumLegis.pdf.)

Freight Rail Funding, SSTI Snapshot, State Smart Transportation Initiative, 2010.
http://ssti.us/wp/wp-content/uploads/2011/01/Snapshot.Shortline%20RR%20Funding.pdf
One in a series of smart transportation snapshots that spotlights innovative state practices, this document summarizes benefits of the SRSIF program, including:

- Based on the operational benefits accruing to shippers from rail rehabilitation projects during the first six years of the program, the benefit-cost ratio of the program was found to be nearly 9-to-1.

- According to a 2005 study, the program has enabled higher train speeds on short line railroad track, reduced derailments, extended the service life of existing rail lines and improved capacity in rail yards.

Statutory Provisions

Section 75-5048, Rail Service Improvement Program; Rail Service Improvement Fund; Requirements; Restrictions; Funding; Transfer of Money, Authorized, Kansas Statutes Annotated, 2009.
http://kslegislature.org/li/statute/075_000_0000_chapter/075_050_0000_article/075_050_0048_section/075_050_0048_k/
This legislation establishes the SRSIF.

North Carolina

The 1988 Rail Corridor Preservation Act gave North Carolina DOT the authority to purchase railroads and preserve rail corridors for "future rail use and interim compatible uses." NCDOT's Industrial Access program, developed to provide businesses with an incentive to locate or expand their facilities in North Carolina, provides funding to local governments, community development agencies, railroad companies and industries to improve rail access.

Contact: Patrick Simmons, Director, Rail Division, North Carolina Department of Transportation, (919) 733-7245, ext. 263, pbsimmons@ncdot.gov.

Best Practices

Corridor Preservation, Rail Division, North Carolina Department of Transportation, undated.
http://www.bytrain.org/corridor/
This web site provides an overview of NCDOT's approach to rail preservation. Some highlights:

- Preserving and revitalizing existing railroad infrastructure and right of way have become an attractive and cost-effective option, especially since the current freight-rail system serves every major city and most counties in the state.
- The Rail Corridor Preservation Act, passed by the General Assembly in 1988, gave NCDOT authority to purchase railroads and preserve rail corridors for "future rail use and interim compatible uses." Amendments to the Act passed during the 1989 session also declared it a public purpose for the NCDOT to reassemble critically important lost portions of rail corridors by condemnation.
- In 1988, the NCDOT purchased the former Southern Railway's 67-mile Murphy Branch (part of which has since been purchased by the Great Smoky Mountains Railroad), setting the precedent for other acquisitions that followed. NCDOT now holds title to more than 100 miles of rail to be preserved for future use.
- The Rail Division provides technical assistance to local governments and economic development groups to preserve freight-rail service to customers along light-density branch lines. In addition, state and federal funds are used to assist short line railroads in making improvements to tracks and bridges to help keep these lines active.

Related Resources:

Rail Corridor Preservation Policy, Rail Division, North Carolina Department of Transportation, October 1998.
http://www.bytrain.org/corridor/pdf/cormanual.pdf
This policy addresses the agreements that may be executed to allow for compatible interim uses of the corridor right of way, the rights of property owners adjacent to the preserved rail corridor and commercial use of rail property.
Encroachment Process, Rail Division, North Carolina Department of Transportation, undated.
http://www.bytrain.org/corridor/encroach.html
Under specified circumstances, NCDOT allows right of way encroachments upon its inactive rail corridors. This web page presents NCDOT's Railroad Encroachment Review Process Flow Chart.

Encroachment Application Form, Rail Division, North Carolina Department of Transportation, September 2009.
http://www.bytrain.org/corridor/pdf/encroachfrm.pdf
This form is completed when an adjacent property owner wishes to encroach on an inactive rail corridor.

Financial Support

Rail Industrial Access Program, Rail Division, North Carolina Department of Transportation, undated.
http://www.bytrain.org/industrial/
This web site describes NCDOT's Rail Industrial Access Program, which provides funding to local governments, community development agencies, railroad companies and industries to improve rail access. Some highlights:

- NCDOT began the program to provide businesses with an incentive to locate or expand their facilities in North Carolina. This funding helps ensure that companies have the railroad tracks needed to transport freight and materials.
- Funds may be used to construct or rehabilitate railroad spur tracks. Funding for projects is contingent upon application approval prior to the industry making its decision to locate or expand its facility in North Carolina and private and/or local sources providing matching funds.
- Recipients may receive a maximum 50 percent of total project costs.

Related Resource:

Rail Industrial Access Program Policies and Procedures, Rail Division, North Carolina Department of Transportation, undated.
http://www.bytrain.org/industrial/programsummary.html
This web site describes the process to apply for a Rail Industrial Access Program grant. Points are awarded on the basis of economic benefits using criteria that include employment and capital investment in the first two years of operations and annual rail carloads.

Statutory Provisions

Article 2D, Railroad Revitalization, Chapter 136, North Carolina General Statutes, various dates.
http://www.ncga.state.nc.us/EnactedLegislation/Statutes/pdf/ByArticle/Chapter_136/Article_2D.pdf
Provisions of particular interest in Article 2D include:

§ 136-44.35. Railroad revitalization and corridor preservation a public purpose.

The General Assembly hereby finds that programs for railroad revitalization which assure the maintenance of safe, adequate, and efficient rail transportation services and that programs for railway corridor preservation which assure the availability of such corridors in the future are vital to the continued growth and prosperity of the State and serve the public purpose. (1979, c. 658, s. 1; 1989, c. 600, s. 1.)

§ 136-44.36B. Power of Department to preserve and acquire railroad corridors.
In exercising its power to preserve railroad corridors, the Department of Transportation may acquire property for new railroad corridors and may acquire property that is or has been part of a railroad corridor by purchase, gift, condemnation, or other method, provided that the Department may not condemn part of an existing, active railroad line. The procedures in Article 9 of this Chapter apply when the Department condemns property to preserve or acquire a railroad corridor. (1989, c. 600, s. 3; 1991, c. 673, s. 1.)

Ohio

Statutory authority to conduct rail planning in Ohio is assigned to the Ohio Rail Development Commission (ORDC), formed in 1994 as an independent agency of the Ohio DOT. The commission oversees the Rail Line Acquisition Program, which provides assistance for the acquisition of rail lines to prevent the cessation of service, preserve the line or right of way for future rail development, or enhance the line's viability. The commission is currently beta testing a benefits assessment tool that evaluates the public benefits of public investments in rail projects.

Contact: Matthew Dietrich, Executive Director, Ohio Rail Development Commission, (614) 644-0295, matt.dietrich@dot.state.oh.us.

Best Practices

Ohio Statewide Rail Plan, Ohio Department of Transportation, Final Report, May 10, 2010.
http://www.dot.state.oh.us/Divisions/Rail/Programs/StatewideRailPlan/Documents/Ohio%20Statewide%20Rail%20Plan%20-%20Final%20Report%20Complete.pdf
Chapter 12, "Ohio Rail Investment Programs," which begins on 125 of the PDF, describes a quantitative tool in development to evaluate the public benefits of public investments in rail projects. The tool will compare the costs of a project to the monetized benefits to determine whether the project represents an efficient use of public funds. At the time of publication of the rail plan, a preliminary benefits assessment tool had been developed and was expected to undergo beta testing. ORDC's executive director confirmed that testing is under way. A final form of the tool is expected to be ready for use in August 2010.

Quantifiable benefits are based roughly on the U.S. DOT's selection criteria for Transportation Investment Generating Economic Recovery (TIGER) Discretionary Grants. In general, benefits are quantified using the following criteria:

- **State of good repair.** The tool considers the extent to which projects return transportation infrastructure to a state of good repair. Estimating the project's impact on the future costs of maintaining transportation infrastructure is emphasized.
- **Economic competitiveness.** The tool considers the extent to which the proposed project promotes the efficiency of the transportation system. These benefits include changes to logistics costs, including the likely impacts on transportation operating expenses as well as inventory

carrying costs. Where applicable, the model also considers employment and economic growth that would result from projects.

- **Safety.** The safety benefits of proposed projects are monetized. Generally, the model assesses project implications for risks of death, injury and monetary loss. The changes in risks are multiplied by monetary values applied to death, injury and average monetary loss per accident.
- **Sustainability.** Impact of projects on air emissions are assessed and monetized. Changes in pollutants are forecasted and multiplied by the costs of the pollutants.

The Ohio model does not include a fifth factor—livability—which is reflected in the long-term outcomes given priority for TIGER grants. This outcome is described by the U.S. DOT as "improving the quality of living and working environments and the experience for people in communities across the United States." (See http://www.dot.gov/recovery/ost/faqs.htm for additional information about TIGER grants.)

Ohio stakeholders recommend development of the benefits calculator tool on at least two levels: one for larger projects using TIGER criteria and one for the lower-cost projects more typical of the projects ORDC currently funds.

Financial Support

Ohio Statewide Rail Plan, Ohio Department of Transportation, Final Report, May 10, 2010.
http://www.dot.state.oh.us/Divisions/Rail/Programs/StatewideRailPlan/Documents/Ohio%20Statewide%20Rail%20Plan%20-%20Final%20Report%20Complete.pdf
Chapter 11, "Rail Funding and Finance Options," begins on page 118 of the PDF. Statutory authority to conduct rail planning in Ohio is assigned to the ORDC, an independent agency of the Ohio DOT. ORDC administers the Rail Line Acquisition Program. The program description follows:

> This program provides assistance for the acquisition of rail lines to prevent the cessation of service, preserve the line or right of way for future rail development, or enhance the line's viability. Funding requests are evaluated on the basis of the importance of the rail line for rail users and overhead traffic, the number of people employed by rail-dependent rail users, and the importance of the line with respect to affected shipper transportation costs.

Rail Line Acquisition Program Summary, Ohio Department of Transportation, undated.
http://www.dot.state.oh.us/Divisions/Rail/Programs/freight/Pages/RailLineAcquisitionProgramSummary.aspx
This web site provides application criteria for the ORDC Rail Line Acquisition Program.

Statutory Provisions

Chapter 4981, Rail Development Commission, Ohio Revised Code, various dates.
http://codes.ohio.gov/orc/4981
This is the statute that created the ORDC in 1994. In executing its duties, the ORDC is permitted to acquire, construct, enlarge, improve and equip, and to sell, lease, exchange or otherwise dispose of property, structures, equipment and facilities for rail transportation. It is intended that such activities contribute to the creation or preservation of jobs or employment opportunities or the improvement of the economic welfare of the people of Ohio.

Oregon

In 2005, *Connect*Oregon, a lottery-bond-based initiative, began providing financing for rail and other types of transportation projects in Oregon. The state's recent rail study examined other options to preserve and expand rail access. Recommendations include increasing capacity, providing equipment, maximizing or preserving existing rail-friendly land for future or existing rail-served industries, improving deteriorating infrastructure and growing intra-Oregon rail traffic. Oregon has the statutory authority to own and operate rail lines. To inform its use of this preservation tool, Oregon DOT's recent rail study examines the success of other state programs in using rail ownership to preserve rail lines.

Contact: Kelly Taylor, Administrator, Rail Division, Oregon Department of Transportation, (503) 986-4125, kelly.c.taylor@odot.state.or.us.

Best Practices

Draft Oregon Freight Plan, Oregon Department of Transportation, December 15, 2010.
http://www.oregon.gov/ODOT/TD/FREIGHT/docs/FreightPlan/DraftORFreightPlan.pdf
Page 52 of the PDF addresses the dominance of truck freight in moving freight within Oregon and the importance of developing strategies to encourage the use freight rail:

> Internal freight movements in Oregon are dominated by the truck mode to an even greater degree than trucking dominates overall freight movement. As indicated in the Oregon Rail Study, changes in Class I business models over the last decade and the general economics of rail and truck transportation have tended to limit the use of rail as a mode alternative for internal freight movements in Oregon. Given the high level of anticipated growth in internal freight movements, strategies to encourage shorter haul freight rail movements where there is measurable public benefit (such as reduction of highway investment and maintenance needs) and where the economics of freight rail can be made competitive with trucking should be examined.

2010 Oregon Rail Study, Oregon Department of Transportation, 2010.
http://www.oregon.gov/ODOT/RAIL/docs/Rail_Study/2010RailStudyPrint.pdf
This study, which provides the basis for an updated *Oregon Rail Plan*, includes an inventory of freight rail lines considered at risk for abandonment. (The *Oregon Rail Plan* was last updated in 2001. An update to the plan is expected in the next few years.) The rail study includes a discussion of the significance of Oregon's short line carriers.

- Large railways can be expected to invest as required to protect their competitive advantage in the national market. However, these investments will not necessarily address the needs of Oregon customers seeking access to rail service for shorter distances or smaller volume movements.

- Potential line abandonments driven by high capital costs, low rates of cargo diversification and the inability to tap into growing markets would effectively cut off access to the national rail network for many carload rail shippers and dozens of rural communities around the state.

- Strategies for Oregon to plan and partner with railroads to preserve and expand rail access in Oregon include increasing capacity, developing hub facilities for transloading (transferring a shipment from one mode of transportation to another) and aggregating shipments, providing equipment, maximizing or preserving existing rail-friendly land for future or existing rail-served industries, improving deteriorating infrastructure and growing intra-Oregon rail traffic.

Oregon has the statutory authority to own and operate rail lines. Researchers developed case studies of the rail acquisition programs in New Mexico, Oklahoma, Washington and Wisconsin to provide guidance to Oregon when making decisions about public ownership and operation of rail. Four common scenarios an agency might encounter when contemplating public ownership appear on page 152 of the PDF:

- Abandonment of a rail line because railroad revenues are insufficient for maintaining track conditions.
- Abandonment of a rail line because of rapid or unforeseen structural failures. Restoration of service requires an infusion of capital.
- Preservation of a significant rail corridor. A rail line may be threatened because operating costs exceed revenue or because the major network carrier decides to abandon the line as part of rationalizing its network. The state may consider purchasing the line to preserve the corridor even if the current low volume of business does not appear to justify short-term restoration of rail freight service.
- New or intensified passenger service. A rail line could be slated for major infusions of public capital to support commuter or intercity passenger rail operations. Freight service would also continue on the line, but infrastructure investment would be driven largely by passenger service requirements.

Researchers report varying results of state ownership.

- Oklahoma's purchase of a mainline has allowed for the use of lease revenues to upgrade other lines around the state.
- It took several years for Wisconsin to address the need for sustained investment in the infrastructure it purchased. With increased funding over the years, Wisconsin has a well-developed public rail network that is operated mostly by one railroad.
- Relatively new to rail ownership, Washington faces many of the problems Wisconsin experienced in its early years of rail acquisition. Programs to fund the upgrades of lines in poor condition are lacking, and at least one operator has indicated that it is difficult to generate sufficient revenues to cover operating costs.

Financial Support

ConnectOregon Overview, Oregon Department of Transportation, undated.
http://www.oregon.gov/ODOT/COMM/CO/overview.shtml
This web site provides an overview of *Connect*Oregon, a lottery-bond-based initiative first approved by the 2005 Oregon Legislature to invest in air, rail, marine and transit infrastructure. The Legislature authorized $100 million in 2005 for *Connect*Oregon I, another $100 million in 2007 for *Connect*Oregon II and $95 million in 2009 for *Connect*Oregon III. Almost 50 percent of the $200 million allocated for *Connect*Oregon I and II went to rail projects.

*Connect*Oregon I applications were reviewed using the considerations outlined in Oregon Laws 2005, Chapter 816, which relates to financing for transportation projects:

- Whether the project reduces transportation costs for Oregon businesses.
- Whether it benefits or connects two or more modes.
- Whether it is a critical link in a statewide or regional transportation system.
- How much of the cost can be borne by applicants.
- Whether the project creates construction and permanent jobs in the state.
- Whether the project is ready for construction.

Statutory Provisions

Section 824.040, Government Acquisition of Lines, Oregon Revised Statutes, 2009.
https://www.oregonlaws.org/ors/824.040
This statute gives the state of Oregon, a city, county, county service district, mass transit district, a transportation district or a port the authority to acquire, own, reconstruct, rehabilitate, operate or maintain a railroad line for the benefit and use of its inhabitants and for profit.

Section 824.042, Department to Participate in Contested Abandonment Proceedings, Oregon Revised Statutes, 2009.
The section in full:

> The Department of Transportation shall participate before the appropriate federal agency in all contested railroad line abandonment proceedings involving the proposed abandonment of any railroad line in this state. Prior to such participation, the department shall consult with public entities and users of railroad service affected by the proposed abandonment.

Pennsylvania

Pennsylvania DOT manages two annual rail freight grant programs that assist with investment in rail freight infrastructure: the Rail Freight Assistance Program and the Rail Transportation Assistance Program. The Pennsylvania Infrastructure Bank also provides low-interest financing for rail rehabilitation projects. A 2011 report describes development of a spreadsheet-based assessment tool to help PennDOT analyze the public benefits resulting from the investment of public funds in private freight-rail investments.

Contact: Sarah Gulick, Bureau Director, Bureau of Rail Freight, Ports & Waterways, Pennsylvania Department of Transportation, (717) 783-8567, sgulick@state.pa.us.

Best Practices

Analysis of Public Benefits for Pennsylvania Rail Freight Funding, Pennsylvania Department of Transportation, Final Report, January 4, 2011.
ftp://ftp.dot.state.pa.us/public/pdf/BPR_PDF_FILES/Documents/Research/Complete%20Projects/Smart%20Transportation%20Solutions/Analysis%20of%20Public%20Benefits%20for%20PA%20Rail%20Freight%20Funding.pdf
This project developed an assessment tool—Pennsylvania Rail Benefits Estimator (PRBE)—to help PennDOT analyze the public benefits resulting from the investment of public funds in private freight rail investments. PennDOT expects to begin using the tool in connection with the 2011 grant selection process.

Researchers looked to the evaluation practices of five states—Florida, Louisiana, Oregon, Virginia and Washington—to inform development of the PennDOT tool. Similarities among the five approaches to evaluation are presented on page 27 of the PDF and include the following:

- All states use a formal public benefits measurement approach as one element of the overall project prioritization and selection process.
- Each of the states requires applicants to provide basic information on the forecasted change in freight rail traffic (carloads or intermodal units).
- States express the change in traffic as a truck vehicle-miles traveled (VMT) differential to

produce monetized savings in some combination of the following categories: logistics costs, safety, air quality and highway maintenance.

- All states use applicant data and their own factors to estimate job creation as part of the economic analysis.
- In all cases, a positive benefit-cost ratio is required for funding eligibility.
- When measuring public benefits, states tend to rely on the change in VMT of forecasted truck-to-rail diversion and short- and long-term job creation. Some states are producing benefit-cost ratios using the TIGER factors required by U.S. DOT. See page 15 of this Preliminary Investigation for further discussion of TIGER factors.

Appendix 7, Investment Plan, **Pennsylvania Intercity Passenger & Freight Rail Plan**, Pennsylvania Department of Transportation, February 2010.
ftp://ftp.dot.state.pa.us/public/Bureaus/railfreight/PARailPlanAppend2/Appendix7.pdf

Note: To access the entire plan and its appendices, go to http://www.dot.state.pa.us and click on "Aviation and Rail Freight" and then "PA Rail Plan 2035."

This section of PennDOT's freight rail plan discusses the impact of short line and regional railroads on the overall rail network, noting that the smaller carriers provided an alternative to the abandonment of low-density rural branch lines. Many short line and regional railroads operate on track previously abandoned by Class I railroads that were unable to operate profitably. The report notes that "many shortlines and regional railroads have successfully provided better service at lower cost than the previous Class I operator."

Financial Support

Rail Freight Grant Program Policy, Pennsylvania Department of Transportation, November 2008.
ftp://ftp.dot.state.pa.us/public/Bureaus/railfreight/BRFPolicy.pdf
PennDOT maintains two annual rail freight grant programs that provide financial assistance for investment in rail freight infrastructure with the intent to preserve essential rail freight service where economically feasible, and to preserve or stimulate economic development through the generation of new or expanded rail freight service. Financial assistance is available on a matching grant basis to railroad companies, transportation organizations, rail users, municipalities and municipal authorities. More about these programs is given below:

Rail Freight Assistance Program (RFAP). Currently funded at $10.5 million, the RFAP provides funding for up to 70 percent of the total project cost up to $700,000; new construction is capped at $250,000. The focus is on maintenance projects that "restore, improve, or maintain an existing railroad line to the level necessary for safe operation or use and has an estimated useful life of at least five years but does not include acquisition cost of land, rights to land, buildings, or building materials to construct a new building."

Rail Transportation Assistance Program (Rail TAP). This program differs from the RFAP in the total allocation—$20 million this year—and by requiring that applicants have a line item authorized in the current Capital Budget Act. Grants are awarded based on the results of an objective evaluation process. Construction is the focus of this program, with funding provided for materials to "construct a railroad line (where none exists) or a rail associated facility … ."

Related Resource:

> **dotGrants Information**, Pennsylvania Department of Transportation, November 2008.
> http://www.dot.state.pa.us/Internet/Bureaus/pdBRF.nsf/RailFreightHomepage?openframeset (Click on "Grants and Loans" and then "dotGrants.")
> This web site provides information about PennDOT's web-based electronic grants system, dotGrants. This system is used to submit rail grant applications, to electronically process grant agreements for projects selected for funding, and to request reimbursements once grant project work has been completed.

Pennsylvania Infrastructure Bank, Pennsylvania DOT, undated.
http://www.dot.state.pa.us/penndot/bureaus/pib.nsf/homepagepib?readform
The Pennsylvania Infrastructure Bank (PIB) provides low-interest loans to help fund rail infrastructure construction and rail rehabilitation projects. The interest rate on PIB loans is fixed at one-half the prime lending rate with terms up to 10 years. There is no minimum or maximum PIB loan amount.

Statutory Provisions

Act 119, General Assembly of Pennsylvania, 1984.
http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=1983&sessInd=0&billBody=H&billTyp=B&billNbr=0865&pn=3181
This legislation established the Rail Freight Preservation and Improvement Act, which provides the basis for the RFAP and Rail TAP programs. The goals of the programs are to provide "state assistance for the preservation, rehabilitation and improvement of efficient and coordinated rail freight transportation services...".

South Carolina

South Carolina Public Railways, a division of the state's Department of Commerce, has authority to acquire rail corridors that may be at risk of abandonment and may also develop and construct new rail corridors. Currently, the division operates three common carrier railroads. A 2008 rail right of way inventory prepared by South Carolina DOT as part of its statewide multimodal plan identifies at-risk lines and recommends steps to acquire or preserve them. Currently, SCDOT's financial support for rail preservation is directed to purposes other than continuing use of a corridor as an active rail line.

Contacts: Jeff McWhorter, President and CEO, South Carolina Public Railways, (843) 727-2067, jeff_mcwhorter@scrailways.com; Roy Tolson, Director, Office of Railroads, Division of Intermodal Freight Programs, South Carolina Department of Transportation, (803) 737-6218, tolsonr@scdot.org.

Best Practices

South Carolina State Rail Plan 2008 Update, South Carolina Public Railways, South Carolina Department of Commerce, March 2009.
See the Document Directory available at http://sccommerce.com/resources/document-directory/r for links to parts 1 through 6 of the updated rail plan.
This 2009 publication is the first update of the state rail plan since 1999. Part 5 of the rail plan, available at http://sccommerce.com/sites/default/files/document_directory/Rail_Plan_-_South_Carolina_State_Rail_Plan_2008_Part_5_Proposed_Direction_and_Next_Steps_Wilbur_Smith_Associates_2009.pdf, reports interest in public-private partnerships on the part of both of South Carolina's

Class I railroads. Proposals involving South Carolina rail lines include the Crescent Corridor (Norfolk Southern) and the I-95 rail corridor (CSX Transportation).

Statewide Rail Inventory (Draft Statewide Multimodal Transportation Plan Rail Right of Way Inventory), South Carolina Statewide Multimodal Transportation Plan, South Carolina Department of Transportation, 2008.
http://www.scdot.org/inside/multimodal/pdfs/RailInventory.pdf
As the rail element of the *South Carolina Statewide Multimodal Transportation Plan*, this document provides an assessment of rail corridors to identify opportunities for future transportation use. The statewide inventory of rail corridors sought to identify at-risk lines and take steps to acquire or preserve them using appropriate state or federal legislation. The report includes the following recommendations to identify rail preservation opportunities:

Improving Communication

- Establish relationships with Class I and short line rail carriers operating in South Carolina.

Gathering Data

- Monitor notices for abandonment, discontinuance of service or other service modifications that may affect the rail operations in South Carolina.
- Request system diagram maps and narratives from Class I and Class III carriers identifying lines that have a pending abandonment or discontinuance pending.
- Solicit car loading data from Class I and Class III carriers to establish tonnage information to determine the level of service on rail lines within the state.

Ongoing Monitoring

- Monitor existing and proposed industrial development through the Department of Commerce or public interest groups.
- Monitor rail trail and conservancy activity by public and private environmental and recreational organizations.

Legislative Changes

- Present legislation that broadens the authority of SCDOT or the South Carolina Department of Commerce to acquire and own railroad rights of way for all transportation uses.

Financial Support

Preservation of Abandoned Rail Corridors, South Carolina Department of Transportation, undated.
http://www.scdot.org/community/tep_rail.shtml
The web site describes a rail preservation program supported by SCDOT's federal Transportation Enhancement Program. Funds targeted for rail preservation can be used to preserve abandoned railway corridors for public use, including bicycle and pedestrian use. Funding cannot be used to preserve an abandoned rail corridor strictly for future use as an active rail line or highway.

Statutory Provisions

Article 9, Division of Public Railways, Title 13, Code of Laws of South Carolina (unannotated), various dates.
http://www.scstatehouse.gov/code/t13c001.htm (Scroll down to "Article 9.")

This is the statute that created a Division of Public Railways within South Carolina's Department of Commerce. South Carolina Public Railways has authority to acquire rail corridors that may be at risk of abandonment as well as develop and construct new rail corridors.

Texas

Among the mechanisms in Texas to support acquisition of rail lines are rural rail transportation districts, created in 2001 in response to concerns about the loss of rail service in rural parts of Texas. Current Texas law explicitly allows for the TxDOT purchase of abandoned rail corridors only for the purpose of continued freight rail operations. Unlike other states, TxDOT does not currently offer a recurring source of funds to assist short line or other carriers with rail preservation efforts.

Contact: Bill Glavin, Director, Rail Division, Texas Department of Transportation, (512) 486-5230, wglavin@dot.state.tx.us.

Best Practices

Abandoned Rail Corridors in Texas: A Policy and Infrastructure Evaluation, Texas Department of Transportation, Report No. FHWA/TX-11/0-6268-1, December 2010.
http://tti.tamu.edu/documents/0-6268-1.pdf
This project evaluated current statutes governing TxDOT's acquisition and use of abandoned rail corridors and identified potential uses of existing and prospective abandoned corridors in Texas. While current Texas law explicitly allows for TxDOT purchase of abandoned rail corridors only for the purpose of continued freight rail operations, researchers note that "there is sufficient legal precedent and authority to allow TxDOT to purchase and/or use other legal means to preserve abandoned rail corridors for alternative transportation uses."

Researchers concluded that lengthy rail corridor abandonment by Class I railroads is unlikely to occur in the near future. The current risk of rail abandonment comes from smaller, underutilized branch lines of the Class I railroads and the lines of marginally capitalized short line railroads. Recommendations to encourage the preservation of abandoned rail corridors include:

- Encouraging the development of laws and policies that allow for maximum flexibility in preserving rail corridors as future transportation assets.
- Continuing to monitor the rail system for low-traffic freight rail lines that may be in danger of abandonment.
- Working cooperatively with private railroad companies to explore options for keeping freight rail lines in service. Options for preserving the corridors should be investigated if abandonment is imminent.

Protecting and Preserving Rail Corridors Against Encroachment of Incompatible Uses, Texas Department of Transportation, Report No. 0-5546-1, January 2008.
http://www.utexas.edu/research/ctr/pdf_reports/0_5546_1.pdf
This study assesses corridor planning practices in Texas and other states to identify common themes that can inform the development of rail preservation strategies. Lessons learned from the case studies examined in this project include:

- Agencies must be ready to act politically and financially to acquire corridors as they become available.
- The backing of political champions is often important for projects to come to fruition.

- Regular and meaningful contact with the railroads—especially the Class I railroads—provides a mechanism to address issues as they arise. An open line of communication puts the DOT in the position of being the first agency called if freight railroads are considering divestiture of rail lines.
- Long-term planning, including an inventory of assets at the state and local levels, is critical for rail preservation and development.
- The ability to find adequate sources of financing is critical for preservation and acquisition. In many cases, the Class I railroads will not negotiate sales or access rights unless they are assured that funding is readily available.

Financial Support

Texas Rail Plan, Texas Department of Transportation, November 2010.
See http://www.txdot.gov/public_involvement/rail_plan/trp.htm for links to the rail plan's chapters and supplementary material.
Chapter 3 of the rail plan, available at ftp://ftp.dot.state.tx.us/pub/txdot-info/rail/plan/ch3.pdf, provides background on TxDOT's involvement with rail preservation.

Rail Line Acquisition
The state's initial involvement in the preservation of rail lines came about as the result of an application to abandon the South Orient rail line. In 1989, the Texas Transportation Commission provided a $3 million secured grant to the South Orient Rural Rail Transportation District to purchase the line from the Atchison, Topeka and Santa Fe Railway. The rail district entered into a lease and operating agreement with private investors, bringing about the formation of the South Orient Railroad Company (SORC). In1998, SORC filed an abandonment application. In 1999, the Texas Legislature appropriated $6 million toward the $9.5 million purchase price of the South Orient rail line.

Rural Rail Transportation Districts
Rural rail transportation districts (RRTDs) were established in 2001in response to concerns about the loss of rail service in rural parts of Texas. One or more counties can establish RRTDs to acquire lines that may be abandoned, construct new lines or rehabilitate existing lines. RRTDs were given the power of eminent domain and the authority to issue bonds to assist in their efforts to preserve rail infrastructure and promote economic development in the state. As of June 2007, the state had 38 RRTDs, though the report notes many are inactive.

Related Resources:

Texas Rural Rail Transportation Districts: New Roles and Relationships, Texas Department of Transportation, Report No. FHWA/TX-03/4007-2, October 2002.
http://tti.tamu.edu/documents/4007-2.pdf
This report explores the impacts RRTDs may have on TxDOT's statewide transportation planning responsibilities in the future. The report also addresses the development of initial evaluation criteria or factors for abandoned rail corridors that TxDOT can use during the public hearing process.

Texas Rural Rail Transportation Districts: Informational Guidebook for Formation and Evaluation, Texas Department of Transportation, Report No. FHWA/TX-02/4007-P1, September 2001.
http://tti.tamu.edu/documents/4007-P1.pdf
This guidebook provides basic information for RRTD board members.

Chapter 7 of the rail plan, available at ftp://ftp.dot.state.tx.us/pub/txdot-info/rail/plan/ch7.pdf, includes a reference to an unfunded TxDOT program to aid in rail rehabilitation.

Rail Relocation and Improvement Fund
The Rail Relocation and Improvement Fund (RRIF) was created in 2005 to provide funding to relocate, construct, reconstruct, acquire, improve, rehabilitate or expand public or private rail lines. RRIF, which is yet to be funded, "will establish Texas' ability to address the rail plan goals for which no federal funding is available and will act as a match for any federal funds that are available." Page 5 of the PDF provides a weighting scale that can be used to select RRIF projects when funding becomes available.

Statutory Provisions

Chapter 91, Rail Facilities, Title 5, Texas Transportation Code, various dates.
http://www.statutes.legis.state.tx.us/docs/TN/htm/TN.91.htm
See Sec. 91.007:

> Notification of Intent to Abandon or Discontinue Service. On receipt of notice of intent to abandon or discontinue rail service served under 49 C.F.R. Section 1152.20, as amended, the department shall coordinate with the governing body of a municipality, county, or rural rail transportation district in which all or a segment of the line is located to determine whether:
> (1) the department should acquire the rail facility to which the notice relates; or
> (2) any other actions should be taken to provide for continued rail transportation service.

Rule §7.22, Acquisition of Abandoned Rail Facilities, Title 43, Part 1, Chapter 7, Texas Administrative Code, amended to be effective April 1, 2011.
http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=43&pt=1&ch=7&rl=22
This rule provides the criteria considered in approving acquisition of an abandoned rail facility, including:

- Service performed on the rail line in the two years preceding the date of the notice of intent to abandon or discontinue service.
- Comments or other evidence in support of or opposition to the proposed abandonment or discontinuance of service received from interested parties.
- Alternate sources of transportation services available, including alternate sources of rail transportation service.
- Impact of the proposed abandonment or discontinuance of service on the operation of the state transportation system.
- Local and regional economic impact of the abandonment or discontinuance of service.
- Viability of the rail line for continued rail transportation service.
- The extent to which the monetary value of the economic benefits attributable to the acquisition exceed the amount of funds disbursed by the department to acquire the rail facility.

Virginia

Virginia's Department of Rail and Public Transportation (DRPT) offers three types of funding assistance to freight rail operators: rail enhancement funding with a 70/30 match, and grants for rail preservation and rail industrial access. In 2005, the Rail Enhancement Fund became the first dedicated source of rail funding in state history.

Contact: Kevin Page, Chief of Rail Transportation, Virginia Department of Rail and Public Transportation, (804) 786-3963, kevin.page@drpt.virginia.gov.

Best Practices

FY2011 Application Procedures, Rail Preservation Program, Virginia Department of Rail and Public Transportation, November 27, 2009.
http://www.drpt.virginia.gov/activities/files/Rail%20Preservation%20Application%20Procedures%20FY%202011%20Rev%20Nov%202009.doc
A benefit-cost analysis methodology is applied to applicant projects to select rail freight preservation projects for implementation that have the greatest merit to the Commonwealth. Any project with a benefit-cost ratio of less than 1 will not be considered as a viable project to be recommended for funding.

Benefit-cost and project scoring and evaluation procedures were under review at the time of publication. Current selection criteria include:

- Benefit-cost ratio.
- Potential employment.
- Geographic location of the proposed project in relationship to prior allocations.
- Small industries where there is a demonstrated need for financial assistance.
- The potential for long-term viability of the line.
- Local unemployment rate.
- Local contributions.
- Project readiness.

Statewide Rail Plan, Commonwealth of Virginia, Final Version, December 12, 2008.
http://www.drpt.virginia.gov/activities/files/Final%20Statewide%20Rail%20Plan%202008.pdf
The state's rail plan describes Virginia's goals for short line railroad preservation: the establishment of a cyclical program to preserve the state's short line rail network to a minimum of the Federal Railroad Administration's Class II track standards for freight-only short lines and Class IV track standards for short lines hosting passenger trains and some of the freight-only short lines. Drafters of the rail plan estimate the cost to bring all of Virginia's short line railroads into conformance with these standards as $209 million over the next 30 years.

Financial Support

Rail Enhancement Fund, Virginia Department of Rail and Public Transportation, undated.
http://www.drpt.virginia.gov/projects/ref.aspx
Established in 2005, the Rail Enhancement Fund is the first dedicated source of rail funding in state history. The fund provides funding for acquiring, leasing and/or improving railways or railroad equipment, rolling stock, rights of way or facilities for freight and/or passenger rail purposes. The source of revenues for the Rail Enhancement Fund is a portion of the vehicle rental tax and the interest earned on cash balances—a total of approximately $23.5 million in FY 2008. All projects receiving funds from the fund must include a minimum of 30 percent cash or in-kind matching contribution from a private source, which may include a railroad, regional authority, local government source or a combination of such sources. At least 90 percent of program funds must be spent on capital improvements.

Related Resource:

> **Application Procedures, Rail Enhancement Fund**, Virginia Department of Rail and Public Transportation, November 2009.
> http://www.drpt.virginia.gov/projects/files/REF%20FY2010%20App%20Procedures%20Final%20Nov%202009.doc
> This application packet details the project selection process and execution requirements for potential Rail Enhancement Fund projects. Appendices include a standard agreement and sample budget.

Rail Preservation Grants, Virginia Department of Rail and Public Transportation.
The Statewide Rail Plan, available at
http://www.drpt.virginia.gov/activities/files/Final%20Statewide%20Rail%20Plan%202008.pdf, provides an overview of the Rail Preservation Program on page 85 of the PDF. Established in 1991, the fund provides state financial support to preserve, continue and increase the productivity, safety and efficiency of short line railways in Virginia. The fund receives a $3 million annual allocation of highway construction funds and the interest earned on cash balances to fund short line rail improvement projects.

Related Resource:

> **Rail Preservation Program**, **FY2011 Application Procedures**, Virginia Department of Rail and Public Transportation, November 27, 2009.
> http://www.drpt.virginia.gov/activities/files/Rail%20Preservation%20Application%20Procedures%20FY%202011%20Rev%20Nov%202009.doc
> This packet of application materials for the Rail Preservation Program includes selection criteria that were under review at the time of publication.

Rail Industrial Access Grants, Virginia Department of Rail and Public Transportation.
The Statewide Rail Plan, available at
http://www.drpt.virginia.gov/activities/files/Final%20Statewide%20Rail%20Plan%202008.pdf, provides an overview of the Rail Industrial Access Fund on page 85 of the PDF. Established in 1986, the fund provides financial support for projects that provide freight rail access to businesses in Virginia in conjunction with the Virginia Economic Development Partnership, county and municipal economic development departments, railroads and private industry. Funding for this program is expected to average $1.5 million per year for future years.

Related Resource:

> **Application Procedures, Railroad Industrial Access Program**, Virginia Department of Rail and Public Transportation, 2008.
> http://www.drpt.virginia.gov/activities/files/RIA2008%20Update.pdf
> This document includes information about program administration selection criteria for applicants to the Railroad Industrial Access Program.

Statutory Provisions

§ 33.1-221.1:1.2, Shortline Railway Preservation and Development Fund, Code of Virginia, various dates.
http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+33.1-221.1C1.2
This statute creates in the state treasury a special nonreverting fund known as the Shortline Railway Preservation and Development Fund.

§ 33.1-221.1:1.1, Rail Enhancement Fund, Code of Virginia, various dates.
http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+33.1-221.1C1.1
This statute creates the Rail Enhancement Fund, a special fund within the Transportation Trust Funds.

Washington

Washington State DOT touts its rail preservation program as one of the best in the country. Since 1980, WSDOT has invested $99 million in the rail freight infrastructure used by regional and small railroads. Two grant programs—the Freight Rail Investment Bank and Freight Rail Assistance—support rail preservation. Recent development of a benefit-cost analysis calculator aids WSDOT in the selection of rail projects that meet agency priorities.

Contact: Scott Witt, Director, State Rail and Marine Office, Washington State Department of Transportation, (360) 705-6903, witts@wsdot.wa.gov.

Best Practices

Washington State 2010-2030 Freight Rail Plan, Washington State Department of Transportation, December 2009.
http://www.wsdot.wa.gov/NR/rdonlyres/34925D95-4F59-44B6-90DD-6BE102B33C15/0/StateFreightRailPlan.pdf
The Executive Summary notes that "the state has one of the best rail preservation and development programs in the country. The state has invested $99 million in its rail freight infrastructure since 1980. An additional $35 million in investment is anticipated from 2010 to 2012. … All of these investments have been in regional and small railroads, in recognition of the fact that these railroads are a vital component of the state's transportation system and economic well-being."

The discussion of the significance of retaining viable short line railroads continues on page 130 of the PDF:

- In many cases, improvements for the state's short lines involve upgrades to existing infrastructure rather than capacity expansion projects that involve more significant environmental issues. Infrastructure upgrades should be able to move more readily from planning to construction.
- Many of the recent WSDOT short line funding proposals involve improvements to increase track capacity maximums from 263,000 pounds per car to 286,000 pounds per car to meet Class I railroad requirements. Upgrading track to handle the heavier cars may make economic sense if it results in an increase in the amount of traffic on a line. However, if cargo volumes remain the same, but the number of carloads decreases due to the heavier loading, the benefit is less clear.
- Even if lines are marginal, there may be a compelling state interest in supporting these lines to reduce truck traffic or maintain jobs, or for other reasons that serve the public interest.

Rail Benefit/Impact Evaluation Methodology, State Rail and Marine Office, Washington State Department of Transportation, July 2008.
http://www.wsdot.wa.gov/NR/rdonlyres/9AFD9F7E-8246-43F7-A1F6-45CBE3D9A034/0/A1Exhibit18FinalBenefitImpactMethodology.pdf
This publication describes WSDOT's spreadsheet-based benefit-cost analysis calculator. The Washington State Legislature required WSDOT to develop and implement an evaluation methodology for rail freight projects to reflect the following priorities, in order of relative importance:

- Economic, safety or environmental advantages of freight movement by rail compared to alternative modes.

- Self-sustaining economic development that creates family-wage jobs.
- Preservation of transportation corridors that would otherwise be lost.
- Increased access to efficient and cost-effective transport to market for Washington's agricultural and industrial products.
- Better integration and cooperation within the regional, national and international systems of freight distribution.
- Mitigation of impacts of increased rail traffic on communities.

Note: Additional discussion of WSDOT's benefit-cost evaluation tool appears in the PennDOT report, *Analysis of Public Benefits for Pennsylvania Rail Freight Funding*; see page 21 of the PDF available at ftp://ftp.dot.state.pa.us/public/pdf/BPR_PDF_FILES/Documents/Research/Complete%20Projects/Smart%20Transportation%20Solutions/Analysis%20of%20Public%20Benefits%20for%20PA%20Rail%20Freight%20Funding.pdf. See page 18 of this Preliminary Investigation for the full citation.

Financial Support

2010-2030 Freight Rail Plan, Washington State Department of Transportation, December 2009.
http://www.wsdot.wa.gov/NR/rdonlyres/34925D95-4F59-44B6-90DD-6BE102B33C15/0/StateFreightRailPlan.pdf
The state's rail plan describes two funding programs that support rail preservation:

Freight Rail Investment Bank Program. The goal of this grant program is to assist with the funding of smaller capital rail projects. Funds will be available for up to $250,000 and must be matched by at least 20 percent of funds from other sources. The Washington State Legislature provided $5 million for the grant program for the 2009-2011 biennium. In 2009 the Legislature expanded the once public-sector-only program to include eligible private sector organizations with projects that will further the state interest.

Freight Rail Assistance Program. This grant program is directed toward larger projects to:

- Support branch lines and light density rail lines.
- Provide or improve rail access to ports.
- Maintain adequate mainline capacity.
- Preserve or restore rail corridors and infrastructure.

The Legislature allocated $2.75 million for freight rail assistance projects in 2009-2011.

WSDOT also administers the Grain Train Revolving Fund, which is a financially self-sustaining transportation program that supports Washington's farmers, short line railroads and rural economic development.

Related Resources:

Freight Rail Investment Bank Program: Call for Projects—2010, Application Packet, Washington State Department of Transportation, undated.
http://www.wsdot.wa.gov/NR/rdonlyres/2CFB28CC-9663-4131-AD5C-2332B88F2C51/0/FreightRailInvestmentBankApplicationPacketFinal2010.pdf

This application packet includes a background and overview of the Freight Rail Investment Bank program. Note that the WSDOT web site hosting this file and the undated application materials continue to include the former prohibition against private participation in this grant program.
Freight Rail Assistance: Call for Projects—2010, Application Packet, Washington State Department of Transportation, undated.
http://www.wsdot.wa.gov/NR/rdonlyres/E09AF89F-91A3-4290-B308-0A46AC103856/0/FRAApplicationFinal2010FINAL.pdf
This application packet includes a background and overview of the Freight Rail Assistance program as well as a discussion of the criteria used to evaluate and prioritize proposals.

Statutory Provisions

RCW 47.06.080, Freight Rail Plan, Revised Code of Washington, various dates.
http://apps.leg.wa.gov/rcw/default.aspx?cite=47.06.080
The provision in full:

> The state-interest component of the statewide multimodal transportation plan shall include a state freight rail plan, which shall fulfill the statewide freight rail planning requirements of the federal government, identify freight rail mainline issues, identify light-density freight rail lines threatened with abandonment, establish criteria for determining the importance of preserving the service or line, and recommend priorities for the use of state rail assistance and state rail banking program funds, as well as other available sources of funds. The plan shall also identify existing intercity rail rights-of-way that should be preserved for future transportation use.

RCW 47.76.220, State Rail Plan—Contents, Revised Code of Washington, various dates.
http://apps.leg.wa.gov/rcw/default.aspx?cite=47.76.220
This provision describes the priorities the state must establish to determine which rail lines should receive state support, including anticipated benefits to the state and local economy, anticipated line impact to roads and highway improvements, financial viability of state-funded lines, and line impact on energy use and air pollution.

RCW 47.76.240, Rail Preservation Program, Revised Code of Washington, various dates.
http://apps.leg.wa.gov/rcw/default.aspx?cite=47.76.240
This statute provides guidance for the state's rail preservation program:

> (1) The department of transportation shall continue to monitor the status of the state's mainline and branchline common carrier railroads and preserved rail corridors through the state rail plan and various analyses, and shall seek alternatives to abandonment prior to interstate commerce commission proceedings, where feasible.
>
> (2) The utilities and transportation commission shall intervene in proceedings of the surface transportation board, or its successor agency, on abandonments, when necessary, to protect the state's interest.
>
> (3) The department of transportation, in consultation with the Washington state freight rail policy advisory committee, shall establish criteria for evaluating rail projects and corridors of significance to the state.
>
> (4) Local jurisdictions may implement rail service preservation projects in the absence of state participation.
>
> (5) The department of transportation shall continue to monitor projects for which it provides assistance.

Wisconsin

Wisconsin has a long history of rail preservation that dates back to 1977. The first grant program—the precursor to Wisconsin Department of Transportation's current Freight Railroad Preservation Program—was developed during an era when widespread railroad bankruptcies and line abandonments threatened the availability of rail service in Wisconsin. In 1992, voters ratified a constitutional amendment to permit acquisition of rail infrastructure with state funds. Today rail preservation efforts are supported by two funding programs: Freight Railroad Preservation Program grants and Freight Rail Infrastructure Improvement Program loans.

Contact: Frank Huntington, Bureau of Railroads and Harbors, Wisconsin Department of Transportation, (608) 267-3710, frank.huntington@dot.wi.gov.

Best Practices

Wisconsin Rail Issues and Opportunities Report, Wisconsin Department of Transportation, 2004.
http://www.dot.wisconsin.gov/projects/state/docs/rail-issues.pdf
The findings from this report provided input for the rail component of *Connections 2030*, WisDOT's multimodal transportation plan. Rail corridor preservation and publicly owned infrastructure are addressed in the following:

- State law gives WisDOT the first right to acquire, for present or future transportation use, any property used in operating a railroad. WisDOT can exercise its right of first refusal or assign this right to any other state agency, county, city or transit commission. This right can only be invoked when a corridor is officially abandoned. It has not been extensively used because lines are usually preserved under the Rails to Trails program.
- Freight Railroad Preservation Program grants have been the primary mechanism for funding rail corridor acquisitions in Wisconsin.
- Service preservation efforts have traditionally been state and local partnerships supported partially by Freight Railroad Preservation Program grants and Freight Rail Infrastructure Improvement Program loans. Corridor preservation has traditionally been accomplished under the Rails to Trails program.
- Having a shared corridor with both rail service and a trail is an opportunity that has not been frequently pursued in Wisconsin.
- Much of the existing state-owned railroad track cannot meet future rolling stock and marketplace needs.

Financial Support

Freight Railroad Preservation Program, Wisconsin Department of Transportation, undated.
http://www.dot.wisconsin.gov/localgov/aid/frpp.htm
This web site describes the state's original rail funding program, created in 1977 to help communities and shippers preserve freight rail service. In 1992, the Freight Railroad Preservation Program (FRPP) replaced the original rail assistance grant program. The FRPP provides grants to local units of government, industries and railroads for the purpose of preserving essential rail lines and rehabilitating them following purchase. Approximately $111 million in grants have been awarded since 1980 for rail acquisition and rehabilitation projects. The 2009-2011 state budget provides $60 million in bonding authority for the program.

FRPP provides up to 80 percent of the cost:

- To purchase abandoned rail lines in an effort to continue freight service or for the preservation of the opportunity for future rail service.
- To rehabilitate facilities such as tracks or bridges on publicly owned rail lines.
- To facilitate connectivity to a different transportation corridor as a viable alternative to rail line acquisition or rehabilitation.

The program pays for 100 percent of real estate acquisition costs.

Related Resource:

> **Application Instructions: Freight Railroad Preservation Program SFY 2012**, Wisconsin Department of Transportation, undated.
> http://www.dot.wisconsin.gov/localgov/docs/frpp.pdf
> This document provides instructions for applying for financial assistance under the FRPP program. Application forms are available at http://www.dot.wisconsin.gov/localgov/docs/frppforms.pdf.

Freight Railroad Infrastructure Improvement Program, Wisconsin Department of Transportation, undated.
http://www.dot.wisconsin.gov/localgov/aid/friip.htm
This web site describes the Freight Railroad Infrastructure Improvement Program (FRIIP), which was created in 1992 to provide low-interest loans of up to 100 percent to railroads, rail service customers and units of government that enable the state to encourage a broader array of improvements to the rail system, particularly on privately owned lines. It also provides funding for other rail-related projects such as loading and transloading facilities. Since 1992, $101 million in FRIIP loans have been awarded. Current funding is derived from the repayment of prior loans.

Related Resource:

> **Application Instructions: Freight Railroad Infrastructure Improvement Program SFY 2012**, Wisconsin Department of Transportation, undated.
> http://www.dot.wisconsin.gov/localgov/docs/friip.pdf
> This document provides instructions for applying for financial assistance under the FRIIP program.

Statutory Provisions

85.08 Freight Railroad Assistance, Wisconsin Statutes, 2009-2010.
https://docs.legis.wisconsin.gov/statutes/statutes/85/08/1
See below for excerpts from the statute:

> (2) GENERAL POWERS.
> (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.
> (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.
> (l) To acquire rail property for the purpose of preserving freight rail service or improving the efficiency of freight rail service if, in the department's judgment, the public interest requires acquisition of the rail property.

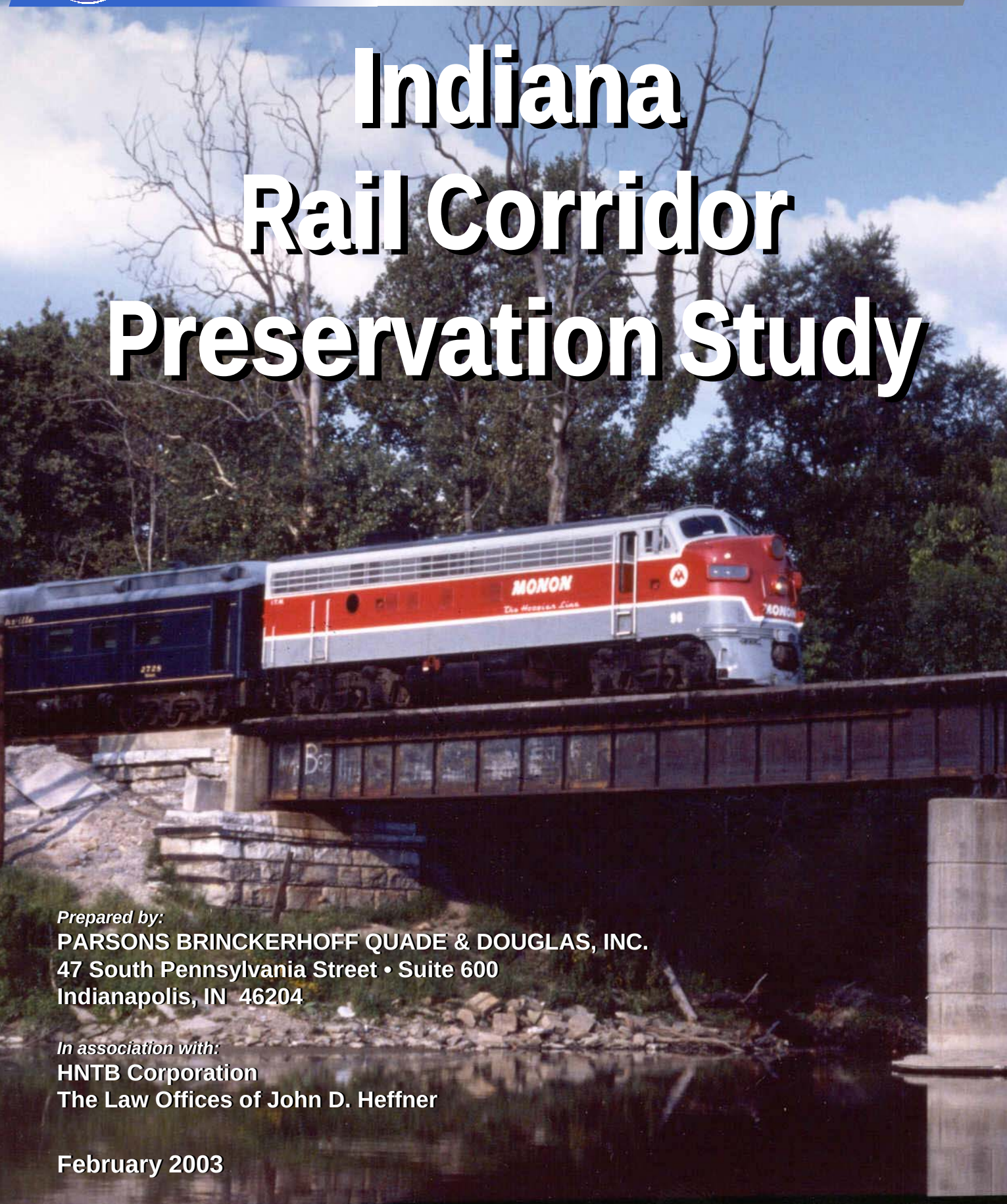
(4m) FREIGHT RAILROAD LOANS AND GRANTS.
(a) *Purpose; findings.* The purpose of this subsection is to assist in the preservation and improvement of freight rail service in this state. The legislature finds that private capital and local government contributions are insufficient for adequate freight rail 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.

85.09 Acquisition of Abandoned Rail Property, Wisconsin Statutes, 2009-2010.
https://docs.legis.wisconsin.gov/statutes/statutes/85/09/1
This statute gives WisDOT the "first right to acquire, for present or future transportational 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." If the department decides to acquire a rail property, "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 … ."

Appendix A:

Indiana Department of Transportation

Indiana Rail Corridor Preservation Study



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February 2003

INDIANA RAIL CORRIDOR PRESERVATION STUDY

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SECTION 1: BEST PRACTICES IN RAIL CORRIDOR PRESERVATION

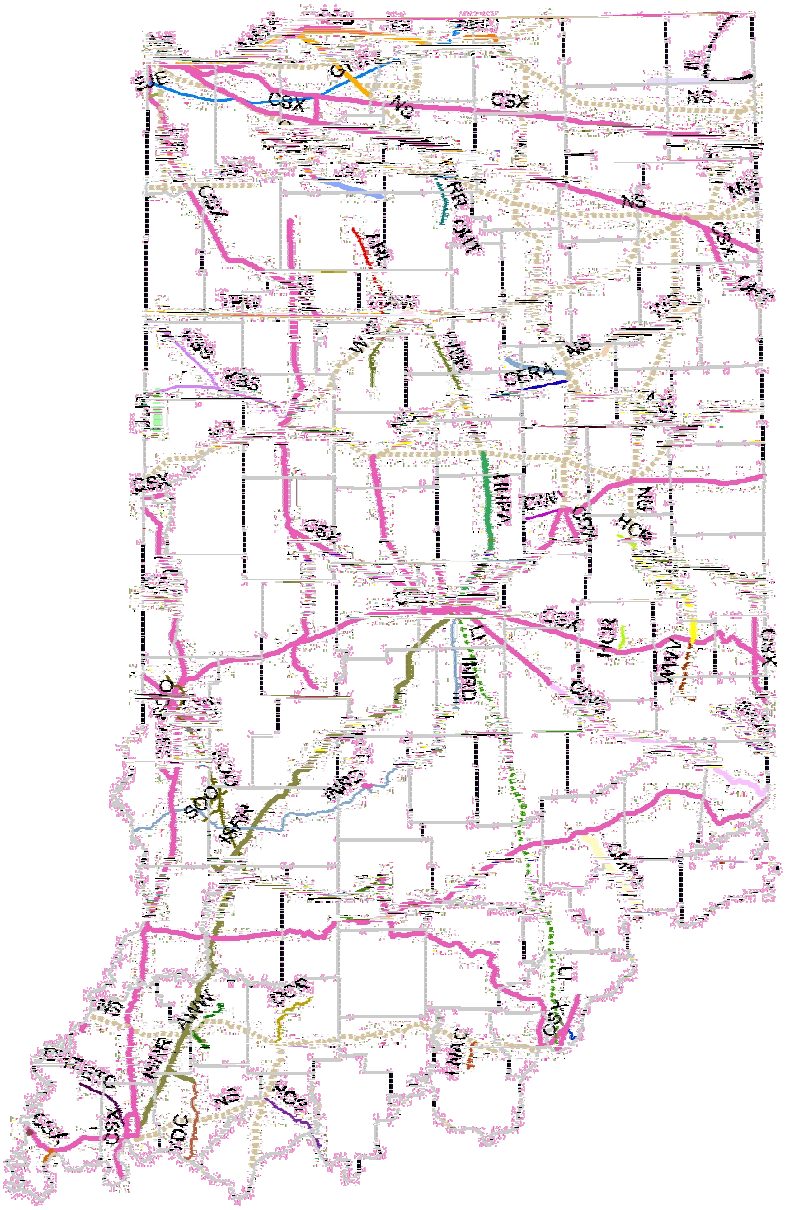
1.0 Introduction

The 2002 State rail system is shown in Figure 1-1. Since 1950 approximately 3,260 miles of rail line have been abandoned in Indiana. The 1995 Indiana Rail Plan noted that over 2,000 miles of rail lines were abandoned between 1968 and 1994. From 1995 to July 2002, approximately 133 miles of rail line have been abandoned.

The loss of transportation corridors is significant because it is almost impossible to reassemble these linear rights-of-way. Transportation corridors are important to the prosperity and vitality of the state, as they provide for freight and passenger rail service, hiking and biking trails (for both commuting and recreational purposes), and utility needs.

It is important that the Indiana Department of Transportation (INDOT) has a process in place to monitor rail line activity so that lines with a potential to be abandoned can be easily identified. Once those lines are identified, it is important that INDOT has the ability and financial capacity to prioritize and preserve those that will have continued future value.

Figure 1-1



The *Indiana Rail Corridor Preservation Study* was prepared to provide INDOT with strategies to identify corridors with the potential to be abandoned and criteria for prioritizing corridor preservation efforts. The following pages discuss effective corridor preservation programs in other states so that "good practices" might be applied in Indiana.

In addition, this document provides a thorough discussion of the current corridor acquisition process in Indiana. A key issue that is addressed is the effectiveness of the Indiana process for rail preservation in meeting state objectives. The study found that the Indiana process is cumbersome and inflexible. **The time needed to complete the process takes longer than the current federal process of the Surface Transportation Board (STB*)***, which oversees all the rail line acquisitions and abandonments.

The current Indiana process (as required by statute) has thus precluded INDOT from taking the necessary steps to acquire rail corridors due to the fact that the federal abandonment process is usually complete and the corridor "lost" before the prescribed state process for corridor preservation can be completed.

This report includes the following components:

- An overview of national rail issues
- A summary of effective corridor preservation programs in other states
- Rail corridor preservation issues in Indiana
- Criteria for prioritizing corridor preservation efforts
- Procedures for corridor acquisition
- Study conclusions and recommendations

1.1 Overview of National Rail Issues

Consolidation of rail companies and the associated abandonment of rail corridors have been taking place for many decades as Class I railroads shed little-used branchlines in an effort to maintain profitability. Over the years, many of these branchlines have been purchased by shortline railroad companies, enabling shippers to get their goods to the mainline rail corridors for distribution throughout the nation and overseas. One of the benefits of shortlines is that they are capable of providing more responsive and cost-effective local service and can therefore increase the use of rail by local businesses. Shortlines tend to be better able to provide local service than their Class I railroad counterparts because they are locally owned or managed, have a local marketing presence, are unhampered by the complex work rules of larger carriers and have a lower cost structure.

When branchlines are abandoned, local users often have no choice but to switch to trucks – often a more expensive mode of transportation. This can reduce the competitiveness of the users and can affect the local economy, and can increase congestion and road repair costs.

Shortline railroads share revenues with the Class I carriers for interstate trips, usually receiving a small share because the Class I railroads carry goods for longer distances. Shortlines often operate at very low profit margins, and because they frequently only connect to one Class I railroad, they have limited bargaining power to obtain a better revenue share.

Compounding the financial problems of shortline railroads is that when a Class I carrier sheds a branchline, the line is often in very poor condition, having suffered from years of deferred maintenance. With the low profit margins and the low usage of their lines, few shortline operators can afford to keep the rails, bridges, yards, and other facilities in good condition. Many shortlines have difficulty financing track and facility upgrades without public assistance. They experience great difficulty financing bridge or structure improvements and replacing lighter weight rail with heavier components necessary for handling 286,000 pound freight cars. Current trends suggest that 286,000-pound cars are already common and will shortly become the industry standard, with some indications that 315,000-pound carloads may become common in the future.

A further problem for shortline railroads that serve agricultural areas is that revenues are limited to harvest times, and can vary greatly from year to year based on droughts and other external factors. Two western railroads –the Union Pacific and the Burlington Northern and Santa Fe – have adopted grain marketing policies intended to encourage grain shippers to load at facilities located on mainlines. These policies draw traffic from many branch lines and grain hauling shortline railroads as well as smaller grain purchasers.

Shortages of rail cars are a problem in some states. In agricultural areas, bumper crops or crops that require specialty freight cars often suffer from serious shortages of rail cars, forcing them to ship by truck, which is more expensive, or pay more for rail service by purchasing “certificates” guaranteeing service at a higher price.

The railroad consolidations, which have been taking place since 1980, have also taken their toll on the rail network. As railroads merge, the typical business plan is to consolidate more traffic on fewer lines allowing redundant mainline trackage to be abandoned or spun off to shortline railroads. Mainlines and yards have tended to become very congested as railroads shift their market focus from local wayside customers to unit trains of coal, grain, and minerals as well as automobiles, chemicals, and transcontinental intermodal traffic. The Class I railroad policy toward eliminating excess capacity is not limited just to track and yards, but includes reductions of engines, rolling stock, and personnel.

Rail passenger service presents some special problems. Congress established Amtrak in 1971 to preserve a skeletal network of rail passenger service. During the past three decades Amtrak has been required to provide an unprofitable national service over the tracks of freight railroads (except in the Northeast and a few other locations where Amtrak owns its lines) while being required to operate as a for-profit entity. Compounding this problem is the fact that Amtrak’s principal competitors – the automobile and the airline – operate over publicly funded facilities. Moreover, the airline industry has engaged in intense fare competition to increase its market share.

During its 31 years of service, Amtrak has been subject to an intense level of budget scrutiny, with funding reductions and uncertainties not experienced by competing modes. This has limited its ability to purchase new equipment and maintain existing equipment and facilities. Nevertheless, ridership has been substantial where Amtrak service has been properly funded and promoted, particularly in the Northeast, New York State, California, and Washington State. In other parts of the country such as Indiana, Amtrak ridership has frequently been depressed due to equipment shortages, inadequate frequencies, discontinuance of service, travel times more than twice that of other modes and unattractive arrival and departure times. For example, the single daily Indianapolis-Chicago train arrives in Indianapolis from Louisville at 1:45 a.m., and departs for Chicago at 3:50 a.m.

Today, many states are considering how to respond to increased public interest in intercity passenger rail service, including both regular Amtrak service and high speed rail. The current uncertainty about Amtrak funding, and in fact its very existence, have resulted in a moratorium on consideration of any new services that are not fully supported by states. Funding issues aside, the congestion which Class I railroads are experiencing on many of their "core" lines inhibits Amtrak's ability to add frequencies or increase speeds. For example, in Georgia Amtrak's attempt several years ago to add temporary additional service during the Olympics was hindered by freight rail congestion where NS and CSX lines cross in downtown Atlanta. Also Amtrak's continual equipment shortages have limited its ability to add new state-supported services that are otherwise feasible.

Other common problems are:

- There is a significant lack of financial resources, particularly with the shortage of funding for Amtrak, the demise of the federal Local Rail Freight Assistance program, and the Federal Railroad Administration's (FRA) delay in disbursing loan funds approved by Congress under the Railroad Rehabilitation Improvement Finance Act (so-called "RRIF" loans). Some states are legally unable to fund rail programs, especially if they involve privately-owned freight railroads.
- Lack of shipper choice occurs because customers are captive to just one railroad.
- Poor track conditions, limited track capacity, and numerous grade crossings slow both passenger and freight service, making it less competitive compared to other modes.
- As track is abandoned and traffic grows, remaining mainlines are becoming congested.
- Increased use of shared lines for passenger rail potentially interferes with the movement of freight.
- Trade agreements (such as NAFTA) and railroad consolidations can create shifts in mode choices and traffic flows and generate increases in the volume of goods moved, which can put additional demands on limited rail freight facilities.
- Shifts in trading patterns or fuel costs can decrease the demand for rail services.
- Whenever trucking replaces rail shipments, more damage is done to highways. This can be especially troublesome in rural areas.
- A shift from rail to trucks for heavy loads can increase highway accident-related costs.

- Flooding can cause damage to rail lines that owners cannot afford to repair (or would choose not to repair), making the future of rail service tenuous in some places.

California's rail plan also mentioned problems that can arise when utilization of rail modes *increase*s, including more frequent highway-rail accidents, noise and vibration impacts and air quality impacts from diesel locomotives. Hazardous materials movements by rail require increased costs to make safety improvements to signals, highway grade crossings, and track. If rail cars become heavier, the potential for each of these negative impacts would be increased, along with the costs of maintaining rail infrastructure.

It is evident from reviewing rail issues from both a national and local perspective that corridor preservation and abandonment will always be an issue.

1.2 Effective Corridor Preservation Programs in Other States

There are a variety of rail programs in place across the United States. Some of these programs relate to preserving corridors that are threatened with imminent abandonment, others are more proactive, focusing on maintaining or increasing the use of rail services to reduce the risk of abandonment.

Once rail lines are abandoned the corridors may disappear forever if there is no action by state or local agencies, shippers, or other parties. The land can be sold to developers, or if the land was purchased with reverter clauses, it could legally revert to its original ownership, namely, the hundreds of individual owners of neighboring properties. When this happens, re-assembling all parcels along the corridor is nearly impossible.

Input for Rail Plans

A key element of successful rail programs is the gathering and dissemination of information. Positive public input also helps to strengthen political and financial support for rail programs.

Members of rail-related "advisory boards" and other forums used by transportation departments across the country typically include representatives from:

- MPOs
- DOT district offices
- Railroad industry
- Shippers, including manufacturers or farmers that ship via rail
- County and local government
- Federal and state agencies (economic development, environmental, parks, etc.)
- Other states (usually to build support for intercity passenger rail)
- Intermodal airports or water ports

Freight Rail Programs and Policies

Many states, including Indiana, emphasize support for shortline railroads in their plans, as these are believed to be most endangered and most critical to economic viability, especially in rural

areas. In Iowa, for example, state funds can be used to rehabilitate or acquire only those rail branchlines that carry less than five million gross ton-miles per year.

Public Purchase: A number of states purchase rail lines outright to avoid abandonment. Georgia, for example, has purchased eight lines, three of which are now leased to separate shortline operators. These purchases were done with the goal of providing economic security and reliable rail lines to regions and localities. As of 1997, Florida had purchased twelve abandoned corridors and one active one. Funding for these purchases is discussed in subsequent paragraphs. Ohio and Michigan also own rail lines and lease them to short line operators.

North Carolina's state government participates as a private-sector railroad owner through its majority ownership (75 percent) in the North Carolina Railroad Company (NCRC). The NCRC owns a network of profitable, light density freight lines in eastern North Carolina leased to Norfolk Southern Railway. It also owns the Greensboro-Charlotte segment of NS' key Atlanta-Washington route. NCRC figures prominently in the State's passenger planning because NCDOT has plans to develop higher speed Amtrak passenger service between Raleigh and Charlotte over NCRC's trackage.

Texas recently purchased a rail line from Alpine, TX down to the Mexican border. The Texas State legislature provided $6 million for the purchase, with a company called Grupo Mexico providing $3.5 million. Grupo Mexico has a 40-year lease of the corridor and has promised to upgrade the track to a useable condition for cross-border freight in 2002.

Wisconsin has a rail preservation program called the Railroad Service Assistance Program. From 1976 through 1993, this program enabled communities to preserve rail service that was threatened with abandonment by the major carriers. After abandonment approval was granted by the former Interstate Commerce Commission (now the Surface Transportation Board), communities could form local rail transit commissions for the purpose of acquiring rail property. The state, through the rail transit commissions, provided 100 percent of the real property costs and 80 percent of improvement costs, with the remaining 20 per cent provided by the locality. In 1993, the plan was modified to allow shippers to apply directly to WisDOT for loans to construct new spurs, upgrade existing track, and construct intermodal facilities.

Public Information Campaigns: In Louisiana, lack of public support has hampered the state's initiatives to support local rail activities. Many of the state's residents are unaware of the importance of the rail industry to the state economy. The state's Department of Transportation and Development is therefore working to improve understanding, communication, and coordination of rail activities between the state, railroads, and local jurisdictions.

Studies can also help to build the case for rail.

- The Illinois DOT estimates that more than 1,000 shippers have gone out of business or changed to other modes after a rail line had been abandoned. Changing to truck transportation often entails an increase in shipping costs, which makes businesses less competitive.
- Evaluating the cost/benefit ratio of existing projects is important in identifying the best way to spend future funds. A few states conduct surveys to help them determine which

lines are most critical to the state's economy. These can include surveys of manufacturers and agricultural shippers, as well as discussions with shortline railroads.

- Washington State, in response to a growing crisis in its primarily agricultural eastern half, produced a $1.3 million, six-year study of transportation's effects there. Roads are deteriorating due to heavy truck traffic, travel along waterways is often blocked by water drawdowns, and rail corridors are being proposed for abandonment. This study was intended to provide policymakers with information necessary to make the transportation improvements most important to the state's economic competitiveness. Before the study was completed, the effort resulted in better connections and communications between WSDOT, shippers and railroads. This resulted in the Grain Train project, described below.

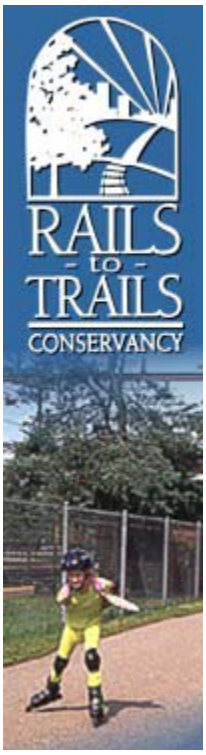
Public Purchase of Cars: Washington State's Grain Train project was started in response to a lack of cars available for wheat shipments. The project is a partnership between the Port of Walla Walla, the Blue Mountain Railroad, an association of four grain elevators, and WSDOT. It involved the purchase of 29 grain cars (for $754,000), which were used by area shippers. The program has had a number of benefits, including preserving rail access by keeping railroads in business, alleviating railcar shortages, reducing costs to shippers, and reducing road damage by heavy trucks. After the initial purchase of the rail cars, the project has since proven to be self-financing, requiring little administration.

Rail Line Rehabilitation: In lieu of outright purchase, grants and loans for capital improvements to rail lines can help small railroads stay in business. In Indiana, the Industrial Rail Service Fund (IRSF) helps to preserve rail business and promote economic development. Where state law prevents the state from making direct improvements to privately-owned facilities, improving the highway grade crossings can help, as can improvements to intermodal connections.

When freight lines share their corridors with passenger service, the freight lines can benefit from shared improvement costs. For example, the Burlington Northern and Santa Fe Railway has been working with the States of California and Washington on mainline speed and capacity improvements (for intercity rail in California and commuter and intercity rail in Washington). BNSF sees these passenger-related improvements as beneficial to its freight service.

Railbanking (Rails-to-Trails): In 1983, concerned about the rapid contraction of America's rail network and the potential for the permanent loss of many rail corridors after abandonment, the U.S. Congress amended the National Trails System Act to create the railbanking program. Railbanking is a method by which lines proposed for abandonment can be preserved through interim conversion to public-use trails.[1] Railbanking is an important rail preservation tool because many rights-of-way are built on easements whose ownership reverts back to the railroad's original grantor (or its successor) upon abandonment. Railbanking is not an issue where the railroad owns its right-of-way in fee and can do with the property as it pleases upon abandonment.

[1] Source: Rails to Trail Conservancy website:http://www.trailsandgreenways.org/TAG_active_pages/ TechnicalAssistance/FactSheets/view_text.asp?SheetID=6



Once railbanked, corridors are not considered to be "abandoned," and therefore right-of-way does not revert back to adjacent landowners. The United States Supreme Court has ruled that conversion of a railroad right-of-way to a trail is not an unconstitutional taking of the adjoining property owner's land as long as the trail was developed under the STB railbanking authority.

Railbanking can be requested by either a public agency or a private organization. It requires an agreement between the railroad and the trail agency, and it often involves an actual sale of the property. Many states directly purchase rail corridors for railbanking, or provide loans or grants to cities, counties, or ports to bank rail corridors.

A railbanked line is subject to restoration of rail service by any rail company that applies to the STB to use the corridor. While in use as a trail, ties and rails may be removed, but the trail operator can take no action which would preclude the restoration of rail service at some later date.

Occasionally, under agreement with the owning railroad, trails have been built along active rail lines. However, it is more common that abandoned corridors are converted to trails. With railbanked trails, rails are removed or left in an unusable condition, and the sole use is for recreation: walking, hiking, horseback riding, bicycling, or (if paved) in-line skating, skateboarding, and other linear activities.

Railbanking has become very popular over the years, with the Rails-to-Trails Conservancy estimating that there are more than 11,655 miles of rail-trails nationwide and around 100 million users per year. Interest in converting rail corridors to trails continues to grow.

Other Programs: The most effective way to reduce railroad abandonments is to keep railroads in business. This can be done by assisting railroads financially with capital improvements, but it can also be done by increasing shippers' use of freight rail or by otherwise making existing operations more profitable.

In Iowa, grain elevators are consolidating at regional points that have rail service. It is believed that strategic storage and loading facilities can contribute to making Iowa products more competitive by improving their accessibility to rail freight service. This also concentrates service onto fewer branchlines, making rail freight service more profitable (although probably leading to abandonments of some less-used branchlines.)

In Idaho, railroads suggested that abandonments could be reduced if shippers would change their shipments to a weekly basis so that they could reduce operating costs.[2]

Elimination of highway-railroad grade crossings at selected locations contributes to cost reductions for railroads.

[2] Source: State Rail Policies, Plans & Programs, University of Texas at Austin, 1997, page 136 (quoted from the *Idaho State Rail Plan*, 1996).

Washington State considered a number of alternatives to respond to serious capacity constraints on its mainlines. These included installing new track and passing sidings on existing mainlines, constructing additional crossings in the Cascade Mountains, modernizing railyards, eliminating highway-railroad grade crossings, and improving terminal areas.

The Arizona Department of Transportation offers a no-cost consultant field condition survey for the shortline industry. On a three to four-year cycle, the Department funds a survey of line, yard, and bridge conditions and needs. This effort gives the shortline operator a second opinion of the branch. It has also been useful in allocating railroad funds.[3]

The Pennsylvania Department of Transportation maintains a Rail Freight Properties Directory that identifies properties located along the regional and shortline railroads in Pennsylvania that have the potential to be served by rail. The Directory serves as a valuable resource to promote economic development, to increase the traffic base of the regional and shortline railroads and to foster ongoing collaborative efforts and communication between the railroads, economic development contacts, chambers of commerce, planning agencies, industrial real estate agents, developers, property owners, and others. It also serves as a marketing tool to entice businesses to locate or expand in Pennsylvania. This Directory compliments the directories of the Class I railroads. [4]

Passenger Rail Programs and Policies

Currently six Amtrak routes traverse Indiana.[5] Due to poor arrival and departure times, however, not one of Indiana's passenger stations is ranked in Amtrak's top 100 revenue-producing stations. In addition, unlike its neighbors Michigan and Illinois, Indiana has not yet invested in track and signal improvements to accommodate higher speed trains. Indiana is also not among the 14 states which contribute to passenger rail service through the former 403(b) program that subsidizes additional Amtrak services.[6]

Because of its key location with respect to Lake Michigan, any service that increases the connection of Chicago and points east will benefit at least the northwestern portion of the state. Moreover, economic benefits to Indiana will result from increases in Amtrak service anywhere

[3] *A Report on State Programs for Light Density Rail Lines 1976-1995*, prepared byAASHTO's Standing Commmittee on Rail Transportation, February, 1997. Page 9.

[4] http://www.paopen4business.state.pa.us/BIncentives/Incentives.asp

[5] These routes include the NS (former New York Central) route between Chicago and Cleveland traversed by three Amtrak trains. And, each of Amtrak's three Michigan routes uses the Chicago-Cleveland line as far east as Porter, IN, serving a small portion of the State. Amtrak also operates over the CSX (former Baltimore & Ohio) mainline across Northern Indiana. Finally, Amtrak operates through Indiana on its way from Chicago to Indianapolis, Cincinnati, and Louisville, via CSX and L & I albeit at night.

[6] Current sec. 403(b) states include Vermont, Maine, Massachusetts, New York, Pennsylvania, North Carolina, Michigan, Illinois, Wisconsin, Missouri, Oklahoma, California, Oregon, and Washington. Several other States such as Virginia and Florida plan to finance track and signal improvements in exchange for increased Amtrak service.

in the US, since Beech Grove in Marion County is one of Amtrak's primary passenger car repair/rehabilitation facilities.

> "Because of the budgetary constraints on Amtrak, states are becoming increasingly important sources of passenger rail funding. States are now forced to grapple with the pros and cons of subsidizing passenger rail service, just as the US Congress did in 1970. …[S]trong state programs exist primarily in those states facing urban congestion and rising highway costs. In these states, arguments for the economic benefit of investment in transportation seem to be the most effective."[8]

In addition to funding for Amtrak operations and funding for high speed rail feasibility studies, other states administer a range of passenger rail programs and policies, as described below:

California integrates intercity rail service with public transit whenever possible, including access to airports. Increasing ridership helps to lower operating losses and to build support for continuation of passenger services.

In the past Florida DOT had provided financial assistance for the development of magnetic levitation rail technology. (For example, FDOT partially funded American Technology, Inc. in its effort to develop iron magnets to support maglev vehicles.) Recently, Florida dropped its support for a private firm to build a high speed rail service known as Florida Overland Express. In its place, Florida has plans to spend $83 million to upgrade the Florida East Coast Railway's line between Jacksonville and West Palm Beach (where the service will switch over to CSX's line to Miami). This will permit Amtrak to increase its present frequency to six daily roundtrips at speeds of up to 90 mph. (This work has recently been delayed by the ongoing Amtrak funding uncertainties.)

The North Carolina Railroad Company (NCRC) connects the most heavily populated areas of the state, making it ideal for both freight and passenger uses. Because of the state's majority ownership of the line, North Carolina has discretion to increase passenger train frequency on this freight line (a power that Amtrak has, but that most states lack).

1.3 Successful Legislation In Other States

This section highlights the best rail preservation practices permitted through state legislation.

The background research on this topic included the review of two books published by the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin: State Rail Policies, Plans & Programs and Exemplary State Rail Programming and Planning. Information

[7] Current sec. 403(b) states include Vermont, Maine, Massachusetts, New York, Pennsylvania, North Carolina, Michigan, Illinois, Wisconsin, Missouri, Oklahoma, California, Oregon, and Washington. Several other States such as Virginia and Florida plan to finance track and signal improvements in exchange for increased Amtrak service.
[8] State Rail Policies, Plans & programs, p.54.

presented is also based on discussions with several state DOT rail officials, the review of statutes from selected states, and the knowledge and expertise of attorney John Heffner.

From the data and information obtained during research it can be concluded that a successful state rail program has some or all of the following legislative provisions:

- A guaranteed source of annual funding through some combination of issuing bonds and/or accessing a trust fund or trust fund revenues;
- The power to condemn and acquire rights of way, active rail lines, and other railroad property;
- Broad powers to rehabilitate, improve, or construct railroad lines, property, or facilities including those for the purpose of industrial access and rail passenger service;
- The ability to operate or subsidize freight or passenger operations and to enter into "purchase of service" contracts where appropriate;
- The ability to lease or purchase railroad rolling stock, locomotives, or other equipment including installment purchase agreements;
- A right of first approval to acquire rail lines and corridors which are being abandoned. (In other words the railroad may not sell to anyone else except a party proposing to continue rail service unless it is first offered to the state and the state declines to purchase.)

One of the distinctions between the successful programs of "activist" states such as those identified below and other state programs is the level of support which the programs command at all levels of state government and in private business circles.[9] Successful rail programs have commanded the support of the states business community where they are viewed as necessary for industrial development (freight), economic development (freight and passenger), tourism (passenger), competitiveness in the global economy (freight and passenger), congestion relief (freight and passenger), and pollution reduction (freight and passenger).

Of the 48 continental states, approximately 20 state DOTs have the power to acquire (and have in fact acquired) abandoned and active rail lines.[10] The vast majority of States which are active in rail service preservation have programs which enable the state to make state funds (and in the past matching federal funds) available for track and facility rehabilitation as well as improvements, new construction, and access for new industrial sites. The right of first refusal provision is more common in the Northeast Mid-Atlantic States which faced massive abandonment activity by the Penn Central and the other bankrupt eastern railroads in the 1970's and the extensive abandonment activity carried out by Conrail in the early to mid 1980's. Subsidization of branch lines is rare today.

[9] While a review of Ohio's railroad legislation suggests that it has a very advanced program in both freight and passenger service, the lack of funding commitment has prevented the State from developing an intrastate rail passenger network.

[10] Illustrative states which have acquired rail corridors or rail lines include Maine, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, Georgia, Florida, Ohio, Michigan, Wisconsin, Mississippi, South Dakota, Washington, Oregon, Texas, Oklahoma, and Colorado.

Regarding passenger service, there are presently 14 states[11] which contract with Amtrak under Sec. 403(b) of the Rail Passenger Service Act or provide other assistance to provide intercity rail passenger service outside or beyond the scope of Amtrak's national service offerings. Some of these such as Missouri and Oklahoma merely subsidize Amtrak service while others including Vermont, Illinois, and Michigan are also upgrading tracks and signals to increase speeds and frequencies. Finally, a few states -- notably North Carolina, Washington, and especially California -- have gone so far as to acquire equipment as well. The states of Virginia and Florida have or plan to spend substantial state funds to upgrade lines over which Amtrak operates but do not presently contract with Amtrak to provide service.

The following paragraphs provide information on six states that currently are most active and progressive in their support for programs for freight and passenger service. They include Wisconsin, North Carolina, and Washington for freight and California, Maine, and North Carolina for passenger. Each State's legislative program is discussed below and related statutes are provided in the attached appendices.

Rail Freight Service

Wisconsin – State statutes authorize the Wisconsin DOT to acquire rail property for the purpose of preserving rail freight service or improving the efficiency of freight service; for the acquisition, rehabilitation, construction, or operation of any transportation properties within the State or other states; and to make grants of financial assistance and provide technical assistance. The State is also authorized to make grants (or loans) for the acquisition of rail property or rail property improvements.

State law gives WISDOT a first right to acquire, for present or future transportation or recreational purposes, abandoned rail properties including track and track material, whether by gift, purchase, or condemnation. WISDOT may own the acquired property directly or may convey it to a political subdivision including something called a "transit commission." The statute allows the State to plan, promote, and engage in financial and technical assistance programs for continuing, restoring, and operating rail branch lines. Additionally, WISDOT can acquire or improve tracks and facilities including stations needed for passenger service. It may issue bonds to pay for railroad-related improvements. See chapters 20 (re: bond issuance) and 85 of Wisconsin statutes in Appendix A.

Since the Milwaukee Road bankruptcy of the 1980's, Wisconsin has been very active in acquiring and rebuilding a network of lines as they have come up for abandonment. Today the Wisconsin & Southern Railroad (WSOR) operates a successful regional railroad operating over a mixture of publicly owned lines saved from abandonment under this statute, as well as some trackage leased from Canadian Pacific Rail and the Union Pacific. Currently WSOR handles approximately 30,000 carloads of traffic annually.

North Carolina – North Carolina's railroad statutes specifically grant its DOT the powers to purchase, lease, or otherwise acquire a railroad line or railroad property to maintain existing or

[11] Maine, Vermont, Massachusetts, New York, Pennsylvania, North Carolina, Michigan, Illinois, Wisconsin, Missouri, Oklahoma, California, Oregon, and Washington.

provide future rail service, to rehabilitate or improve property, to construct new rail lines or facilities, and to preserve rail corridors for future railroad use and compatible existing uses. The state may acquire rail properties including equipment by installment contract. The state may also make lines it has acquired for transportation uses available for interim recreational use. The state lacks the power to condemn active rail lines.

North Carolina has a rail access program for financing rail access to new industrial sites. The State's freight and passenger program is funded by an annual $5 million grant from its state highway trust fund as well as dividends from the 100% state owned North Carolina railroad. (Its line between Charlotte and Greensboro forms part of Norfolk Southern's mainline between Atlanta and Washington, D.C.) See N.C.G.S. 136-44 et al in Appendix B.

North Carolina's involvement in railroading began years ago with its minority ownership interest in the North Carolina Railroad. It bought out the minority shareholders a couple of years ago. The state has been actively engaged since the 1980's in acquiring railroad branch lines abandoned by the former Seaboard Coast Line Railroad. (No Norfolk Southern Railway lines of any significance have been abandoned or acquired.) Many of the State-owned lines have been leased to shortline railroads which have been able to revive them financially.

Washington – A review of the Washington state statutes reveals that the state has two different rail freight assistance programs: an "essential rail assistance account" and a "high capacity transportation account." The essential rail assistance account is for acquiring, rebuilding, rehabilitating, or improving branch lines; operating railroad equipment necessary to maintain service; constructing transload facilities; preserving and/or operating light density lines; purchasing abandoned rail corridors; purchasing or rehabilitating railroad equipment; and constructing improvements to mitigate port access or mainline congestion. Funds lent and income derived go back into a revolving fund used to finance new projects. The high capacity transportation account is a program intended to facilitate capacity improvements especially on mainlines. See RCW Chapter 47.76, et al in Appendix C.

Washington State's focus has been on the upgrading of light density lines, transload and port facilities, and the acquisition of freight cars for use by short line railroads and shippers. The State is also investing substantial amounts of money to increase track capacity at the Ports of Seattle and Tacoma and on the Burlington Northern and Santa Fe mainline between Portland, Seattle, and Vancouver, BC, to permit heavy rail freight, higher speed Amtrak, and commuter rail service to co-exist.

Interestingly, Washington law forbids those preserving a right-of-way subject to reversionary easements from using it for nonrailroad purposes (e.g. fiber optics lines) without approval of the State DOT and the fee holder or the reversionary rights holder or unless compensation is paid.

Rail Passenger Service

California – California has a very comprehensive rail passenger statute (sections 14030-14053 of the state code in Appendix D) which gives the State DOT (known as "Caltrans") the following powers:

1. To enter into contracts with Amtrak to provide both intercity and commuter rail service.
2. To construct, acquire, lease, improve and operate rail passenger terminals and related facilities which provide intermodal passenger services on specified corridors.
3. To establish a network of feeder bus services to and from rail terminals.
4. To request freight railroads whose facilities are used for passenger service to institute operating efficiencies, other than with respect to crew sizes.
5. To prepare biennially a 10-year State Rail Plan for operating and capital expenses and capital facilities needed for both rail freight and rail passenger service.
6. To purchase, sell, or lease rail passenger cars and engines and self propelled equipment.
7. To acquire, lease, design, construct, and improve track lines and related facilities.
8. To acquire by purchase, lease, or eminent domain any property necessary for the development and implementation of the state's rail passenger program.
9. To acquire abandoned or proposed to be abandoned rail lines for use as freight or passenger routes.
10. To implement numerous initiatives involving the pricing and marketing of state supported Amtrak service as well as on-board amenities (custom class service, dining car service).

It is believed that the State funds the Caltrans program on a multiyear basis. The involvement of Caltrans with passenger service goes back to 1976 when it contracted with Amtrak to add one additional trip on the "San Diegan" route. Because of these initiatives, California has the largest rail passenger service outside the Northeast. Under Caltrans auspices, Amtrak now operates six round trips per day in the San Joaquin Valley to Bakersfield.

Maine - Maine's authority to establish rail passenger service is in the Passenger Rail Service Act of 1995 in Title 23, Part 7, chapter 621, beginning at sec. 8001 (see Appendix E). That law gives Maine the authority "to take all actions that are reasonably necessary to initiate, establish, or reinitiate regularly scheduled passenger rail service between points within this State and points within and outside this State." These actions might include acquisition, holding, use, operation, repair, construction, or rehabilitation of railroad lines, property, rolling stock and trackage rights. The law gives Maine the right to acquire properties through purchase, lease, lease-purchase, gift, devise, eminent domain, or otherwise. The State may enter into such contracts as necessary including contracts with Amtrak. The legislature appropriated $40 million exclusive of any borrowed funds for this purpose. The law also caps the liability for passenger service providers at $75 million (but requires the providers to have insurance of at least that amount - otherwise the cap does not apply).

Other provisions of Maine's transportation laws which may benefit passenger service give the State the power to acquire, if necessary by condemnation, railroad lines and associated property, contract for continuation of freight service on a temporary basis, and provide a right of first refusal to purchase or lease a line to be abandoned.

Maine is a recent entrant among states supporting Amtrak service under Sec. 403(b). Maine originally approached Amtrak about providing service between Portland and Boston in 1990.

Bowever, numerous disputes and litigation with the rail line owner (Guilford Transportation Industries, Inc.) as well as the need to rebuild the Guilford subsidiary Boston & Maine Railroad's mainline delayed the initiation of service until the Fall of 2001.

North Carolina – North Carolina's ability to fund and operate rail passenger service is found in its statutes at N.C.G.S. 136-44 generally (see Appendix B). These powers cover purchase or lease of railroad lines and equipment, the rehabilitation of railroad lines and equipment, and the use of installment contracts to facilitate the purchase of lines or equipment. The state can contract with Amtrak to provide service. As noted earlier, rail service receives a guaranteed amount of money through a portion of highway trust fund revenues as well as dividends from ownership of the North Carolina Railroad.

North Carolina has taken the "small is beautiful" approach to passenger rail. Rather than wait until a "state of the art" service could be funded and built, the State has opted for an incremental approach. Starting first with a one-year operating experiment in the form of the original "Carolinian" in 1984, it patiently built ridership with extensive state-funded marketing, added service, purchased second hand equipment, and eventually bought two new locomotives. Now it is rebuilding a secondary freight line used by its passenger trains to 79 mph passenger standards. Long term, the State looks to add more frequencies, higher speeds, and broader coverage to include areas currently without service. North Carolina illustrates how a state like Indiana can afford to provide a well-patronized service at a modest cost to the taxpayers.

SECTION 2: RAIL CORRIDOR PRESERVATION ISSUES IN INDIANA

Section 2 provides information on rail corridors abandoned since 1995 and identifies corridors that were previously abandoned and are now part of a preservation effort. In the identification of corridors being preserved for future uses, the Hoosier Rails to Trails Council provided detailed information and valuable assistance. This section also provides a list of factors for predicting future rail abandonments and discusses corridors that should be watched due to the potential for their operational status to change.

Since 1995, approximately 133 miles of rail line have been abandoned in Indiana. It is important to understand the reasons for these abandonments, to know what to look for and to understand the abandonment process so that appropriate actions can be taken in a timely manner.

2.1 The Abandonment Process

Background – Generally speaking, railroads seek abandonment approval[12] when the carrier determines that the line's business is unprofitable and is unlikely to improve to the point where it will justify the costs of continued operation, maintenance, and investment. Under the Interstate Commerce Commission (ICC) Termination Act of 1995 (the "ICCTA"), the law which abolished the former Interstate Commerce Commission and replaced it with the Surface Transportation Board (STB), a railroad may abandon a line only with the permission of the STB. The STB must determine whether the "present or future public convenience and necessity require or permit" the abandonment.

In making this determination, the STB examines and balances two competing factors: the financial burden on the railroad for continuing to provide a money losing service against the need for continued service by local communities and shippers.

1.) Initially the railroad has the burden of proving that the service is unprofitable considering all of the direct and indirect costs of operation, the use made of the line by the shipping public, and whether satisfactory alternative transportation is available. If the railroad cannot carry (or prove) that burden, the abandonment will be denied. It is important to note that the railroad does not have to show an actual operating loss. Even if the service generates an operating profit, the railroad can still prove that the line is an economic burden taking into

[12] The term "abandonment" has several meanings. In STB terms it means termination of a railroad's common carrier obligation, salvage of the track structure, and permanent withdrawal of the right-of-way from railroad service. For the purpose of this memorandum, the term abandonment also encompasses discontinuance of service.

account the cost to rehabilitate the line to a minimally acceptable physical condition and/or the "opportunity costs" associated with the line.[13]

2.) If a railroad successfully demonstrates that continued operation will be a burden on interstate commerce, the STB then considers the evidence of the public's need for continued service including the use made by shippers of other transportation modes. The effect on local businesses, the communities served, public safety, and the environment will be considered. The statute specifically directs the STB to consider whether the abandonment "will have a serious, adverse impact on rural and community development."

Summary of Steps in the Abandonment Process

The ICCTA establishes two procedures for obtaining abandonment authorization: (1) the formal abandonment application process of 49 U.S.C. 10903 and (2) the informal exemption process of 49 U.S.C. 10502. Moreover, through regulation, the STB has established two different methods of obtaining abandonment authority through exemption: (1) the individual petition for exemption and (2) the class exemption (codified at 49 CFR 1152.50). Each is explained in some detail below.

The Formal Abandonment Application Process. 49 U.S.C. 10903 allows a rail carrier to obtain abandonment authority by filing an application, submitting evidence, and obtaining a decision after a hearing before the agency. During the past several years, the STB has in its precedent developed an informal policy of requiring railroads, which anticipate substantial opposition to an abandonment, to seek authority by formal application.

The application process has certain advantages and disadvantages for carriers. On the positive side, the application process is reasonably quick (110 days from filing date to a decision) and certain (the railroad gets either an approval, an approval with conditions, or a denial). On the negative side, the applicant must satisfy certain technical requirements before the STB will accept the application. The applicant must provide cost evidence supporting its application in the exact manner specified in the STB's regulations at 49 CFR 1152.30 et seq. ("Standards for Determining, Costs, Revenues, and Return on Value").

Finally, the abandonment applicant must pay a substantial filing fee, now over $15,000. In addition, a railroad seeking abandonment approval – whether by application or exemption – must satisfy the STB's environmental and historic preservation requirements.

Preconditions to filing an abandonment application – The STB's regulations specify certain requirements the applicant must meet before the STB will accept the application: the System Diagram Map ("SDM"), the Notice of Intent, and Publication.

System Diagram Map – The earliest formal indication that a railroad intends to abandon a line comes from the carrier's system diagram map ("SDM"). The ICCTA requires a rail carrier contemplating the filing of an abandonment to submit to the STB and officials in the affected

[13] The STB uses the term "opportunity costs" to mean the return on investment associated with the assets comprising the line.

state(s) a map of all its rail lines.[14] (Class III carriers may choose to prepare a narrative description of its lines instead of a map.) The lines in the carrier's system must be shown in one of five categories:

Category 1 – Lines anticipated by the carrier to be abandoned within three years
Category 2 – Lines under study to determine whether they are candidates for abandonment
Category 3 – Lines pending an STB decision on abandonment or discontinuance of service
Category 4 – Lines which are currently being operated with financial assistance (i.e., an operating subsidy)
Category 5 – All other lines which the carrier owns or operates. ("the carrier's core system")

The SDM is required to be submitted annually to the STB (and to state officials), although it can be modified at any time during the year. Any line that is considered a Category 1 must be identified as such on the map for at least 60 days prior to the filing of an abandonment application, or a protested application will be rejected. A carrier with Category 1 lines must also publish its system diagram map or narrative in a newspaper in each county containing the Category 1 line and publish all subsequent changes to its SDM.

Notice of Intent – The STB also requires a railroad proposing to file an abandonment application to file a "Notice of Intent." The railroad must publish this notice once a week for three consecutive weeks in general circulation newspapers in each county where the line is located, send it to each of the significant shippers on the line, send it to the State agency responsible for rail transportation planning, and post it at each station and terminal on the line. Each of these notice requirements must be fulfilled at least 15, but no more than 30, days before the application is filed at the STB.

Publication Requirements – The STB's abandonment regulations prescribe precisely how the railroad applicant must give notice of an application and to whom and by what class of mail the application should be sent. Failure to follow these requirements literally can result in delay or rejection of the application.

Abandonment Application – As noted previously, the application must contain detailed information about the costs and revenues on the line to be abandoned and the financial condition of the carrier. A railroad may ask the STB to waive certain information requirements. For example, a railroad is normally allowed to exclude data concerning overhead or bridge traffic (traffic that does not begin or end on the line to be abandoned) if it would retain that traffic by rerouting over other rail lines. The ICCTA establishes strict filing and procedural requirements for abandonment applications and the STB has adopted appropriate implementing regulations. Significantly, the STB's "case in chief" policy requires that applicants submit all of their opening evidence and argument with their application.

[14] As a practical matter, only a railroad planning to seek abandonment by application need file an SDM. Curiously, this requirement does not apply where abandonment authority is sought by exemption.

2.2 Application Schedule

Day One - Application is filed.

Day Ten - Request for Oral Hearing is due. (The STB has not held an oral evidentiary hearing in an abandonment case since it was established in 1996. The last time the ICC held a hearing in an abandonment case was around 1994. Yet the agency has stated that it still has the power to hold a hearing and will do so in an appropriate case.)

Day Fifteen – The STB grants or denies oral hearing requests.

Day Twenty – The STB publishes a decision accepting or rejecting the application. If rejected, the applicant has 60 days to submit a revised application without forfeiting the filing fee.

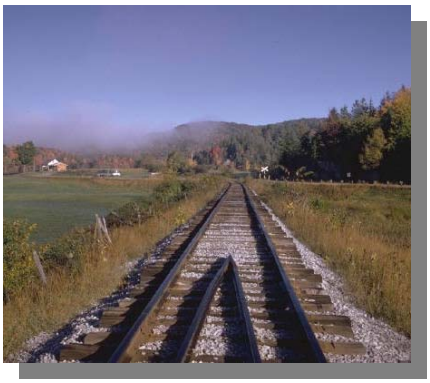
Day Forty Five – Protests, comments, requests for public use condition, and requests for trail use conditions due. Under the "case in chief" policy, protestants must submit all evidence and argument on day 45. To be effective, a protestant must spend a substantial amount of effort preparing its evidence and argument.

Day Sixty – Applicant's reply, evidence and argument (if any) is due. Applicant may not bring up new matters, but may respond to matters raised by protestants.

Day One Hundred Ten (110) – Decision on the merits must be served. An applicant dissatisfied with the decision can file an administrative appeal with the agency (known as a "petition for reconsideration") but must file any court appeal with the appropriate United States Court of Appeals within 60 days of the service date of the decision. A protestant can similarly appeal the case and, in the case of a protestant seeking to preserve service, can file an offer of financial assistance ("an OFA") to continue service by purchasing the line or subsidizing operations over the line for up to a year (after which it would have to purchase the line). An appeal does not automatically stay the decision. An appellant would also have to ask the STB (and an appellate court) to stay the decision. The STB is normally reluctant to do so absent a significant reason.

Reference pages 85-87 for an illustrative example of how this process could work with an actual abandonment case.

2.3 Abandonment Exemptions



As noted above, a railroad has the option of using either of two exemption procedures (the individual petition for exemption or the class exemption for out-of-service lines) to obtain abandonment authority. The 1980 Staggers Act amendments to the former Interstate Commerce Act gave the ICC the authority to exempt carriers, services and transactions from many kinds of regulations including those pertaining to railroad abandonments. The ICCTA continued this exemption

provision. The STB has exemption authority to facilitate the abandonment of lines where it believes that closer regulatory scrutiny is unnecessary. In making that determination, the STB considers (1) whether continued regulation is unnecessary to satisfy one or more of the 15 Rail Transportation Policy Goals of the ICCTA and (2) either the matter sought to be exempted is one of limited scope or regulation is not needed to protect shippers from the abuse of market power.

Individual Exemptions - A railroad seeking to abandon a line by means of an individual exemption does so by filing a pleading known as a "Petition for Exemption" under 49 U.S.C. 10502. Because abandonment authority sought by this procedure would be exempt upon approval, the STB does not require the petitioning railroad to place the line on its SDM or file a notice of intent as would be required for a line to be abandoned under the formal procedures. Accordingly, the first official notice public officials get of a line to be abandoned by exemption is when the petitioner submits a copy of its Environmental and Historic Report to affected federal, state, and local officials (sent at least 20 days before submitting the petition to the STB).

The STB limits the use of the individual exemption process to two categories of abandonments: (1) those which are either uncontested by shippers or, if opposed, have revenues which are clearly marginal compared to the petitioning carrier's costs [15]and (2) where the line is currently in use or, if out-of-service, does not qualify for the class exemption procedures discussed below.

The exemption process is generally very advantageous for the carrier provided it is eligible to use this procedure. Not only is the filing fee much lower but the carrier is not required to satisfy the STB's complex costing regulations. However, a carrier expecting opposition would want to satisfy those regulations as much as possible to show that its revenues are clearly marginal compared to the costs of service. As with an abandonment application, the STB expects the abandonment petitioner to include all opening evidence and argument in its petition. The exemption process has one major disadvantage. If the carrier elects to use an exemption and substantial opposition then materializes, it will likely lose and have to refile its case as a formal application, thereby wasting substantial legal and filing fees.

Once a carrier files its Petition for Exemption, the STB will publish notice of the proposed exemption in the Federal Register twenty days after it is filed. No further public notice is given. Parties opposing an exemption must file an opposition within twenty days after publication of the Federal Register notice. Requests for public use conditions and trail use requests would also be due at that time. The STB normally serves a decision granting, granting with conditions, or denying or rejecting the exemption 110 days after the original filing date. While the exemption statute, 49 U.S.C. 10502, requires the STB to decide an exemption case within 90 days after filing, the statute also allows the STB to decide to "investigate" an exemption request and gives it nine months from the date it decides to hold an investigation in which to complete that investigation. Once the STB adopted its present policy of limiting the use of individual exemptions to uncontested abandonments and those where the facts overwhelming justify approval, it has not investigated any abandonment exemptions.

Class Exemption: Out-of-Service Lines - Where a rail line has been out-of-service for at least two years, any overhead traffic can be rerouted over other lines, and there are no pending

[15] The STB will reject outright an abandonment sought by petition for exemption where the evidence is inadequate.

complaints filed by shippers at the STB or in court alleging lack of service (or decisions in favor of shippers on lack of service), the STB encourages railroads to use the class exemption it promulgated at 49 CFR 1152.50 for abandonment "approval."

The class exemption process is very simple: the railroad merely files a verified notice with the Board certifying that (1) no local traffic has moved on the line for the past two years; (2) any overhead traffic that has moved over the line can be rerouted over other lines; and (3) no formal complaint about a lack of service is pending or has been decided in favor of a shipper. Upon receipt, the Board issues a decision 20 days after filing accepting the exemption and giving the public notice. Petitions for reconsideration, comments, public use conditions, and trail use requests are due 20 days after publication of the decision.

Defeating a class exemption is very difficult. A protestant would have to show that the applicant railroad does not qualify to use the exemption or the notice contains false or misleading information. Absent some significant finding by the Board, the exemption becomes effective 30 days after the Board publishes the notice and 50 days after the original filing.

As with the individual petition, no Notice of Intent to abandon or SDM or narrative notice is required. However, the railroad must notify the affected state's Public Service Board (or equivalent agency) of its intent to abandon ten days before filing the exemption notice with the STB, and the railroad must send its environmental and historic report to the appropriate agencies.

As an aside, it should be noted that many larger railroads use the out-of-service class exemption procedure to abandon active rail lines.[16] By rerouting overhead traffic on other lines, they can use this procedure to quickly abandon a line without providing much advanced notice.

2.4 Post Abandonment Conditions and Restrictions

Regardless of whether the abandonment is sought by application or exemption, the STB may impose certain conditions and restrictions on an approval which have the effect of delaying the consummation for a few months or even indefinitely. The first of these is the Offer of Financial Assistance (OFA) process mentioned earlier.

When Congress overhauled the abandonment provisions of the former Interstate Commerce Act in 1980 as part of the Staggers Rail Act amendments, it established a procedure at 49 U.S.C. 10905 [included in the ICCTA as sec. 10904] to ensure that financially responsible persons would have a mechanism to preserve economically weak but socially necessary rail lines. Although there are some slight variations in the OFA process depending upon whether abandonment is sought by application, individual petition, or class exemption, the process works as follows.

[16] Conrail had sought to use this procedure to abandon portions of the Pittsburgh, Fort Wayne & Chicago line (formerly the route of the "Broadway Limited") across Ohio and Indiana. Actions taken by local government units and Norfolk Southern Railway preserved this key corridor.

When the STB serves a decision permitting the abandonment, persons desiring to preserve service through purchase or subsidy have 10 days from that date to file an OFA.[17] The OFA need not be detailed. The offeror need only identify the line(s) to be acquired or subsidized, state the amount of the proposed purchase price or subsidy and, if different from applicant's valuation or cost figures, explain any disparity, and show that it is "financially responsible" within the meaning of the statute.

Once the OFA is filed, the regulations contemplate that the parties will begin negotiations to reach an agreement for purchase or subsidized operation and provide a 30-day negotiating period. However, the regulations give the STB the power to set mandatory terms and conditions for purchase or subsidy if the parties cannot negotiate them. This Petition to Set Terms and Conditions is due at the end of the 30-day period and must contain the petitioner's appraisal and other relevant evidence and argument. The other party (usually the abandoning railroad) has 5 days to submit a reply and the Board will render a decision 30 days after the Petition is filed. The Offeror has 10 days to accept or reject the Board's terms. Otherwise, the abandonment becomes effective unless there are any other conditions.

In its decision granting the abandonment, the Board may impose a public use condition and/or a rail-trail condition for 180 days from the service date of the abandonment decision. The public use condition is imposed to preserve the right-of-way and, in some cases, the track and structures for a limited amount of time to give parties time to negotiate with the railroad for preservation for a public purpose such as highway or mass transit rights of way or utility lines. Unlike the OFA process, the STB does not get involved in setting terms and conditions.

Should someone ask the STB to impose a rail-trail condition, it does so to give a trail user the opportunity to negotiate with the railroad for acquisition of the line as a rail-trail under the National Trails Act. The STB will only grant a trail use condition if the railroad consents. Again, the STB does not set terms or mandate the use of the right-of-way as a trail. Trails Act negotiations are entirely voluntary and the conversion of a railroad right-of-way into a trail happens when the STB issues a decision known as a "CITU – Certificate of Interim Trail Use" (in lieu of an abandonment certificate) or an "NITU – Notice of Interim Trail Use" (in lieu of an abandonment exemption). Should the line be abandoned, the STB loses its jurisdiction to designate the line as a rail-trail. The value of a trail designation is that it ensures that reversionary right-of-way easements will be preserved or "railbanked" despite the fact the right-of-way is no longer being used for rail service.

The final set of conditions involves environmental and historic matters. Regardless of whether abandonment is sought by application or exemption, the STB must comply with a series of laws including the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). These laws can prevent the applicant from fully enjoying the abandonment authority granted by delaying track salvage until those conditions imposed by the STB are satisfied in some way or are lifted. These restrictions could include, among other things,

[17] In the case of an "exempt abandonment" which is the subject of a class exemption, an offeror must first file "an expression of intent" to make an offer within 10 days of the STB notice accepting the exemption. The actual OFA is due 20 days after the filing of the expression of intent and 30 days after the STB publishes notice of the abandonment.

requiring the railroad to design a track salvage plan which protects endangered species, remove toxic wastes located along the right-of-way, prepare a historic and cultural resource survey documenting the line in text and pictures, or preserve historically significant buildings and structures. In the case of the Union Pacific's Wallace Branch in Idaho, compliance with environmental conditions delayed track salvage for 10 years.

2.5 Abandonments Since 1995

The previous Indiana Rail Plan, dated 1995, provided information on abandonments through the year 1994. The analysis of abandonments for this study examined the period 1995 through Fall, 2002.

The process that was followed included a records search of INDOT's abandonment files. All abandonment dockets that were filed at INDOT were reviewed to determine if the abandonment had actually been consummated.[18] The records search was backed-up by a review of records on the Surface Transportation Board (STB) web site. In addition, attorney John Heffner provided a quality assurance check of the abandonment records that were found.

The result of the abandonments search is presented in Table 2-1: Rail Corridor Abandonments Since 1995. Sixteen abandonments are listed in Table 2-1. Nine abandonments were from CSX, two from Norfolk Southern, one from the Indiana Railroad Company, one from Indiana High-Rail Corporation, one from the Chicago, South Shore and South Bend Railroad, and two from the Indiana Southwestern Railroad. The abandonments are also illustrated in Figure 2-1.

During the review process it was determined that the abandonment process for a segment of the CSX line from Bloomington to Ellettsville had not been consummated. The Monon Rail Preservation Corporation intervened during the abandonment notice process and purchased the rail line from CSX. Officials in Bloomington were interested in preserving the industrial development potential on the west side of the city and thus wanted to maintain the rail line connection. Currently, negotiations are under way to move the existing rail switching yard from the west side of Bloomington to this area where the line was preserved. Once that occurs, the former switching area is planned to be converted to green space for a city park.

2.6 Potential Re-Use of Abandoned Lines

As shown in Table 2-1, three of the lines abandoned since 1995 are fully railbanked for future trail use, including two segments totaling 38 miles of the Norfolk Southern in Howard, Miami and Fulton Counties and a 22.5 mile segment of the Owensville Terminal Company line in Posey and Gibson counties. In addition, three lines located in Wayne, Floyd and Clark Counties have had the "Notice of Interim Trail Use" (NITU) filed for potential trail use.

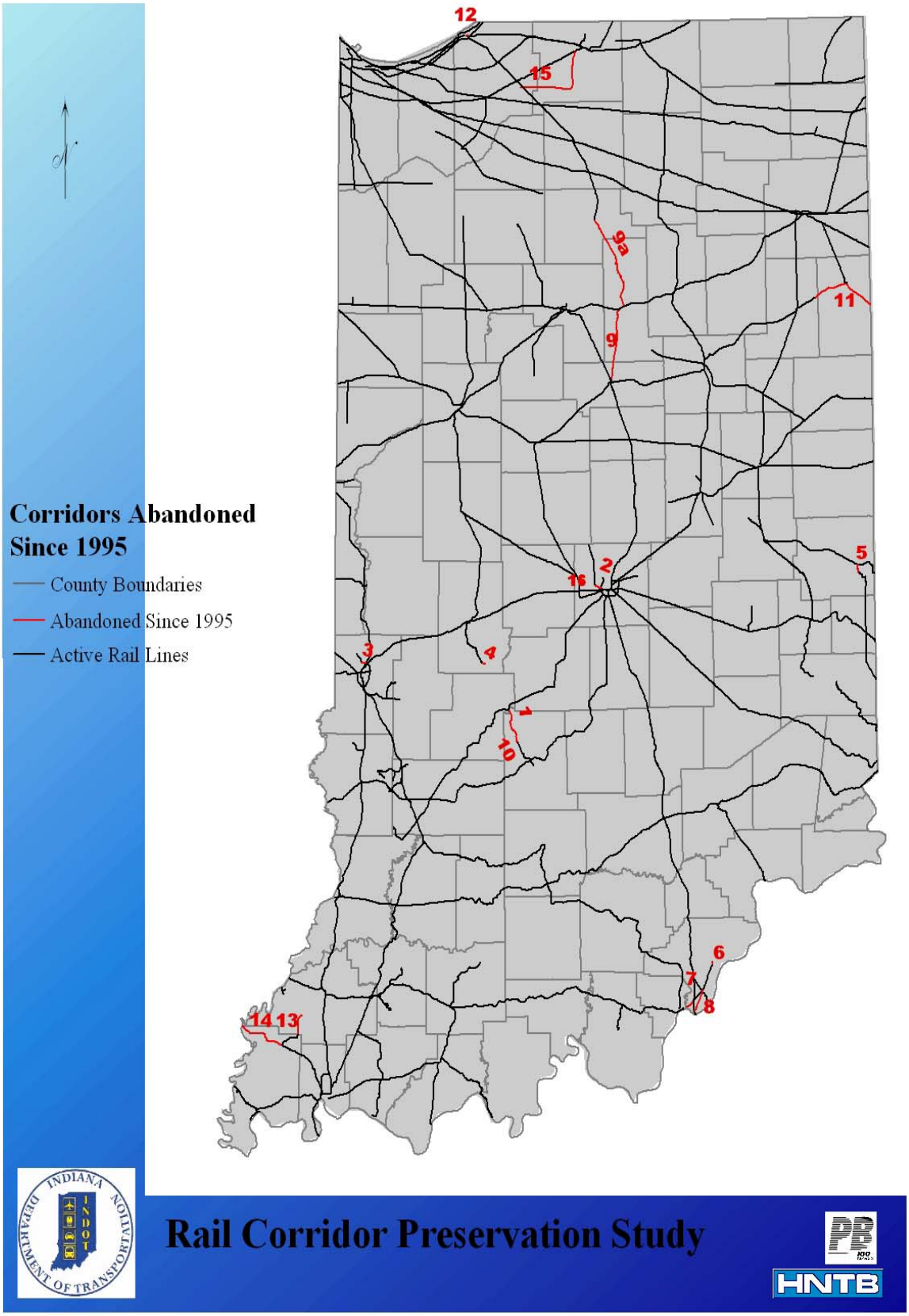
[18] Under STB precedent an abandonment does not occur until consummated. Consummation entails obtaining STB abandonment authorization, canceling all tariffs and rate publications applicable to the line, terminating train operations, salvaging the track structure, and filing a letter with the STB indicating that consummation has occurred.

Table 2-1
RAIL CORRIDOR ABANDONMENTS SINCE 1995

No.	STB Docket No.	Length (miles)	Year	County	Location (Milepost) / Comments
1	CSX AB-55 (514x) Effective 2/5/95	10.28	1995	Monroe/Owen	Q-203.13 at Gosport to Q-213.41 at Ellettsville
2	CSX AB-55 (528x) Effective 7/7/96	1.4	1996	Marion	BD-127.8 at Moorefield Yard to BD-129.2 at Speedway (Parallel track only)
3	CSX AB-55 (536x) Effective 3/24/97	2.6	1997	Vigo	Chicago Service Line/Saxton Branch - ZY-0.0 at Dewey to ZY-2.6 at the end of the track (Industrial spur)
4	CSX AB-55 (570x) Effective 3/22/99	0.35	1999	Putnam	Cloverdale: LQ-189.65 to LQ-190.0
5	CSX AB-55 (577x) Effective 10/5/00	1.31	2000	Wayne	Richmond: CI-61.90 to CI-63.21 Filed NITU. Richmond Parks Dept negotiating to railbank.
6	CSX AB-55 (578x) Effective 5/23/00	0.26	2000	Clark	Charlestown: B-40.34 to B-40.6
7	CSX AB-55 (591x) Effective 8/7/01	3.8	2001	Floyd/Clark	B-50.5 near Clarksville to 54.3 near New Albany Filed NITU. CSX negotiating w/local officials for trail use.
8	CSX AB-55 (592x) Effective 11/8/01	5.4	2001	Clark	B-1.3 near Watson to B-6.7 near Jeffersonville Filed NITU. CSX negotiating w/local officials for trail use.
9	NS AB-290 (168x) Effective 3/31/98	17	1998	Howard/Miami	I-57.2 at Kokomo to I-74.2 at Peru (Kokomo to Peru segment). Fully rail-banked
9a	NS AB-290 (168x) continued	21.4	1998	Miami/Fulton	I-74.2 at Peru to I-95.6 at Rochester (Peru to Rochester segment). Fully rail-banked
10	INRD AB-295 (4x) Effective 1/6/02	0.58	2002	Monroe	Q-213.41 to Q-213.69 in Ellettsville (Crossing abandoned to facilitate highway improvements)
11	IHRC AB-336 (5)(6) Effective 8/21/97	17 (in IN)	1997	Wells/Adams	TS-65.5 at Craigville to TS-117.8 at Delphos, OH

No.	STB Docket No.	Length (miles)	Year	County	Location (Milepost) / Comments
12	CSSB AB-344 (1x) Effective 12/16/01	0.45	2001	LaPorte	Extends from a connection at the east end of CSX's Lincoln Yard, near Second St., to the end of the line at the facility of the Pioneer Lumber Co. at Michigan City
13	OTC AB-477 (2x) Effective 12/7/97	6	1997	Posey	MP 277.0 north of Cynthiana to MP 271.0 north of Owensville
14	OTC AB-477 (3x) Effective 3/12/98	22.5	1998	Posey/Gibson	Owensville Terminal Co. MP 205.0 near Browns, IL to MP 227.5 at Poseyville. Fully rail-banked.
15	NS AB-290 (194x) Effective 10/14/99	21.5	1999	St Joseph	South Bend to Dillion - MP 2.5 to MP 24
16	CSX AB-55 (621x)	0.80	2002	Marion	MP BD 127.00 to MP BD 127.80 in Marion County.
	Total Abandoned	132.63			

Figure 2-1


Corridors Abandoned Since 1995
County Boundaries
Abandoned Since 1995
Active Rail Lines
12
15
9a
9
11
5
16
2
3
4
1
10
6
7
8
14
13
Rail Corridor Preservation Study
INDIANA DEPARTMENT OF TRANSPORTATION
INDOT
PB
HNTB

2.7 Previously Abandoned Rail Corridors That Are Part of a Preservation Effort

As noted in the previous section, many miles of railroad lines have been abandoned over the last 40 years. While many have been lost, some have been preserved as rail-trails or are in various stages of preservation for alternative public uses. The following sections describe the process for preserving rail corridors for public use, corridor maintenance issues, and the status of rail-trail facilities in Indiana.

2.8 Alternative Uses for Rail Rights-Of-Way

The Interstate Commerce Commission (ICC) Termination Act ("the ICCTA"), the National Trails System Act**,** and the Surface Transportation Board (STB) regulations give interested parties the opportunity to negotiate voluntary agreements to use railroad rights-of-way for recreational or other public use, such as passenger rail service or roadways. This method of preserving a railroad corridor is called "railbanking", meaning that the right-of-way is preserved for future use as a railroad.

Public Use Conditions - When the STB approves or exempts a rail line abandonment request it must determine if the line is suitable for an alternative public use. If it is suitable, the STB may prohibit the railroad from selling or otherwise disposing of the rail corridor**,** including bridges, tunnels, and other structures, and, in a few appropriate cases, the track itself, for up to 180 days after the effective date of the decision authorizing abandonment. During that 180-day period, interested parties may negotiate with the railroad to acquire the property for public use. If the parties fail to reach an agreement within the 180-day period, the STB must allow the railroad to fully abandon the line and dispose of its property. The STB cannot require the railroad to sell its property for public use and will not set the terms for the acquisition.

A request for a public use must be filed within 45 days of the filing of the abandonment application (25 days after the notice of the application appears in the Federal Register). With exemption cases the request for a public use condition must be filed within 20 days after the Federal Register publication appears.

A request for a public use condition must include the following information:

1. A statement that a public use condition is being sought**.**
2. An explanation of the public importance of the proposed public use**.**
3. A statement of the period of time for the request (cannot exceed 180 days)**.**
4. A justification for the requested period of time**.**
5. A "Certificate of Service" indicating that a copy of the public use request has been provided to the carrier seeking abandonment at its current address of record.

Trail Use Conditions – A trail use request must be filed in the process initiated by the railroad to abandon the line. A trail use request has no effect on the STB's decision to give a railroad permission to abandon. It is considered after the STB has decided to permit the abandonment.

The trail use request must include the following information:

1. A map that clearly identifies the rail corridor (including mileposts), which is proposed for trail use.
2. A statement of willingness to accept financial responsibility, which indicates the trail applicant's willingness to manage the trail, pay property taxes on the trail, and accept responsibility for any liability arising from the use of the rail corridor as a trail.
3. An acknowledgement that trail use is subject to the trail applicant's ability to meet the above obligations on an on-going basis and the possibility of future re-activation of rail service on the corridor.
4. A "Certificate of Service" indicating that a copy of the trails use request has been served on the carrier seeking abandonment at its address of record.

A trail use condition will only be imposed if the railroad consents. If agreed, a condition is imposed which prohibits the rail carrier from disposing of the rail corridor for 180 days while the parties negotiate an agreement. The STB may grant additional extensions of up to the 180 days in cases where both parties jointly request it, noting that they are close to an agreement.

The conversion of a railroad right of way into a trail happens when the STB issues a decision known as a "CITU – Certificate of Interim Trail Use" (in lieu of an abandonment certificate) or a "NITU – Notice of Interim Trail use" (in lieu of an abandonment exemption). Note that the STB can continue to grant abandonment extensions so long as the abandonment has not been consummated. The STB loses jurisdiction to grant trail use requests the moment the abandonment is consummated even if the railroad and the trail applicant are agreeable to designation of the line as a trail.

Trail use requests must be filed within 45 days of the filing of the application (25 days after the publication of the application in the Federal Register). The carrier seeking the abandonment then has 15 days to notify the STB whether and with whom it intends to negotiate a trail use agreement. For class exemption cases, a trails use request must be filed within 10 days of the appearance of the Federal Register notice. For abandonments sought by petition for exemption, the trails use request must be filed within 20 days after the STB publishes a Federal Register notice acknowledging the filing of the petition. Failure to file a trail use request within these deadlines is not fatal so long as the railroad is still willing to negotiate trail use and the STB retains jurisdiction over the abandonment (i.e., the abandonment has not been consummated).

2.9 Corridor Maintenance

Before the decision is made to acquire and preserve rail corridors, especially in the case of a state that is contemplating this action for the first time, it is important to consider the ramifications

and responsibilities of ownership. The ownership of rail corridors involves risks, maintenance responsibilities, and costs. These factors are discussed in this section.

Experience in Other States - The experiences and practices of other Midwestern states were investigated, including those of Illinois, Kentucky, Michigan, Minnesota, Ohio, and Wisconsin. Most of these states own or participate in ownership of rail corridors for the purposes of providing bike-and-hike recreational trails. Typically, in these cases the railbed is removed and replaced with a trail, and the property is managed by a Department of Natural Resources, park district, or similar local or state entity. Three of the states own active rail corridors that are operated by other entities, usually private short line railroads. Maintenance responsibility for these lines usually lies with the operator. Of the states surveyed, Michigan, Minnesota and Ohio own inactive rail corridors for the primary purpose of line preservation. Table 2-2 summarizes the preserved railway corridor experience of these nearby states as of late 2002.

In most surveyed states, regardless of whether the corridor is operating, inactive, or used for a recreational trail, partnerships with other public and private entities are common. In some cases, the state's primary role is to assist in the acquisition of the line, but actual ownership is by the local entity. These local entities, such as port authorities or rail development boards, then hold maintenance and other ongoing responsibilities. (Indiana legislation also provides for local port authorities to own rail corridors.) This approach has several benefits, one of which is the recognition that the line is considered sufficiently important to preserve by those most proximate to it. Having nearby stakeholders also makes monitoring of conditions and issues easier and more effective. On the other hand, it is unlikely that this locally-driven approach would successfully identify lines that have regional or national significance.

Table 2-2
Rail Corridor Ownership in Selected Midwestern States

State	State Ownership of Inactive Rail Corridors	State Ownership of Active Rail Corridors	Notes
Illinois	None	None	No state or local public ownership of rail corridors.
Kentucky	For trails only	None	State policy is to look to local entities for possible ownership, but railbanking study under way.
Michigan	1,652 miles in addition to trails	400 miles	State moving to divest of rail property ownership where possible.
Minnesota	200 miles in addition to trails	None	Additional inactive mileage owned in partnership with local entities.
Ohio	40 miles in addition to trails	240 miles	State prefers to limit ownership to operating corridors only.
Wisconsin	For trails only	440 miles	Most ownership is with local partners.

Maintenance issues for inactive preserved rail corridors have been reviewed based on input from the states and from other public entities. Three areas were commonly cited as requiring the most attention: highway crossings, bridges and culverts, and weed control.

Grade Crossings - Key issues related to highway/railroad grade crossings include the condition of the crossing surface, and the presence and condition of warning devices. Often, upon abandonment or termination of use of a rail line, the rail and the crossing surface material are removed by the railroad. This has the advantage of minimizing the possibility of problems arising from loose rail, timber, or fastenings, and from the development of holes in the road or crossing or other surface irregularities. These conditions can lead to complaints from roadway authorities and motorists, and damage to highway vehicles.

For locations where automatic crossing warning devices such as flashing lights and gates have not been removed, their removal should be considered. The existence of warning signs and the physical crossing itself can contribute to an increased possibility of rear-end collisions when vehicles stop or slow unexpectedly to check for rail traffic. In fact, state law requires that school buses and vehicles carrying hazardous materials stop at all marked rail crossings. An additional reason to remove signal equipment is that crossing signal equipment is housed in electrical cases or walk-in bungalows that can be attractive targets for vandalism.

Storage batteries containing potentially harmful chemicals are usually present in these installations as well. Railroads are regulated by the EPA as generators of hazardous waste material. The Association of American Railroads Signal Manual recommends that spent batteries be considered a potential liability problem and that they be considered hazardous waste unless laboratory testing indicates otherwise. It is recommended that storage batteries, if still on-site, be removed and shipped to an authorized disposal facility.

The previous railroad owner will typically remove equipment and components of value for use in other locations, and unused equipment left in place for any length of time will usually deteriorate as a result of weather damage, vandalism, and snow removal, so there is rarely a benefit to maintaining possession of these devices.

Ongoing maintenance related to highway crossings primarily consists of regular inspection to prevent and/or repair safety hazards. This can be, and often is, performed by the local highway maintenance organization or the entity responsible for the railbanked line.

Bridges and Culverts - Railroads typically reduce maintenance on inactive rail lines long before abandonment or sale of the line. The Federal process for rail line abandonment is lengthy, and railroads usually reduce maintenance to reflect the light traffic volumes and low profit potential that precede abandonment or cessation of service. As a result, bridges and structures typically receive minimal attention for many years prior to sale or abandonment. During this time, drainage ways under and near culverts and small bridges can become partially blocked with silt or debris, and flooding can result. Larger bridges can pose risks related to concrete or other

components falling on pedestrians and cars below. Liability hazards exist to trespassers or authorized users of the property.

For railbanked corridors, it is recommended that bridges and drainage structures be inspected regularly, and it is wise to consider the development of a long-range drainage maintenance program. Many states handle these needs by arrangement with the local highway district authority. It should also be expected that some emergency maintenance and/or repair might be required during any given year. While the frequency and magnitude of these issues is impossible to predict, erosion and other drainage-related failures poses a significant risk to the corridor and to adjacent properties, and issues should be addressed promptly to minimize costs and damage.

Vegetation Control - Many municipalities have ordinances requiring property owners to control weeds and brush. Railroad property is not always maintained to meet this standard, especially on abandoned lines. In practice, many private and public entities perform this work only when complaints are received. This is not necessarily good policy. It is recommended that key locations where weeds and brush may become a problem be identified, and arrangements made with local entities to maintain brush conditions to prevent problems.

Other Issues - As long as no train operations are conducted, the Federal Railroad Administration requires no rail-related inspection actions for preserved rail lines. The basic principles and responsibilities of property ownership do apply to preserved rail corridors, however, so periodic inspections of property are beneficial. The benefits of an inspection include the identification of unauthorized use, drainage and flooding problems, obvious structural problems, vandalism, and other changing conditions.

It is recommended that no trespassing signs be erected at potentially hazardous locations and at locations with the potential to be used by trespassers. These include bridges and highway crossings. Highway crossings, and other locations where the right-of-way is accessible to vehicles, should be gated or otherwise barricaded where possible. Ongoing maintenance should include inspection of these signs and barricades at periodic intervals (perhaps annually), and repair or replacement as necessary.

Environmental contamination is an issue that is most frequently addressed during negotiations and investigations related to the sale of the property. However, issues of contamination can be found after the transfer of property, and can also occur as a result of the actions of adjacent property owners. The prevention or early identification of these events is another reason for periodic inspections.

Many rail corridor owners find that one of the more time-consuming aspects of ownership is the need to deal with easements and other interfaces. This includes utility crossings (pipelines, electrical transmission systems, fiber optic and other communications systems, etc), rights of access by adjacent property owners, requests for new crossings, requests for temporary construction access, and many other types of issues. A corridor as short as ten miles can accumulate a large number of these agreements over the course of the hundred years or so that many railroad operations have been conducted. One local corridor owner in Ohio reported as many as 50 requests in a given year related to these agreements. It is recommended that a single

point of contact be identified for these issues, and that consistent policies be set in place as to procedures, approvals, and reimbursement of related administrative costs.

Costs - The states surveyed typically do not compile detailed comprehensive records of costs related to the ownership of inactive preserved rail corridors, so a precise identification of predicted costs for such a program in Indiana is not possible. It is common that some responsibilities are delegated (in some cases formally, and in others by default) to the local state highway maintenance district. Examples exist in which a transfer of funds accompany this arrangement, but in many cases this is accomplished on an informal basis and the actual costs are not visible. These expenditures are often treated on an as-needed or emergency-only basis.

At a minimum, it is recommended that a full-time staff person be hired to act as point person for issues related to the ownership and maintenance of the corridor. Costs would include appropriate salary, related employment costs, and office space and equipment costs. Most states or entities that own corridors currently employ one staff person (in some cases part-time) to deal with these issues. This is often sufficient unless the corridor ownership exceeds several hundred miles or involves special issues. Costs can be partially offset by the establishment of fees for applications and requests.

Table 2-3 identifies the costs that should be considered for inclusion in an annual budget for the maintenance of a network of preserved rail corridors of up to several hundred miles. Approximate order-of-magnitude costs are estimated and one-time start-up costs are not included. Most of these costs will vary depending on the number and length of corridors held.

Table 2-3
Suggested Inactive Rail Corridor Maintenance Costs

Issue	Experience Elsewhere	Suggestions
Highway Crossing Inspection/Minor Repair	No data	Arrange with local maintenance authorities
Bridges and Culverts	Individual culvert washouts can cost from $15,000 to $400,000	Inspection and prevention is important; annual budget of $100,000 for repair may be an appropriate order-of-magnitude
Weed and Brush Control	Several agencies spend between $20,000 and $30,000 annually for miscellaneous weed control	Arrange with local authorities or budget $25,000 to $50,000
Environmental	No annual costs cited	Thorough up-front investigation at purchase is critical. Ongoing costs are rarely but potentially large
Signage	Install upon purchase of corridor, then maintain as required	Inspect, and arrange with local maintenance authorities to maintain
Misc. including fencing and trash removal	Varies, but can be $50,000 in some years	Propose $25,000 allowance.

2.10 Current Rail-Trail Preservation Efforts

In comparison to the other states, Indiana currently does not own active or inactive rail corridors for any purpose, but local entities do. As noted in the previous section, sixteen rail lines were abandoned since 1995. Of those sixteen, six are either actively being railbanked or are in the negotiation stages of preservation for a trail use. The following list summarizes the status of each:

1. CSX line in Wayne County
   - The Richmond Parks Department is negotiating to railbank a 1.31 mile segment.

2. CSX line in Floyd and Clark counties
   - CSX staff are negotiating with local officials for trail use of a 3.8 mile segment.

3. CSX line in Clark County
   - CSX staff are negotiating with local officials for trail use on a 5.4 mile segment.

4. Norfolk Southern line in Howard, Miami and Fulton counties
   - Two segments of this line are fully railbanked, including the 17-mile segment from Kokomo to Peru and the 21.4-mile segment from Peru to Rochester.

5. Indiana Southwestern line in Posey and Gibson counties
   - The 22.5-mile segment from Poseyville to Browns, Illinois in southwest Indiana is fully railbanked.

A number of abandoned rail corridors have been converted to rail-trails. Table 2-4, titled Active Rail-Trail Facilities in Indiana, provides a list of the current active rail-trails in the state. Those facilities are illustrated in Figure 2-2. The Hoosier Rails to Trails Council provided the table and map location of the rail-trail facilities.

In addition to the rail-trail facilities that are currently in operation, there are a number of previously abandoned corridors that are in various stages of preservation. Where trails may be proposed for these corridors, the Hoosier Rails to Trails Council has established a methodology to identify trail status based on a tiered approach, as illustrated in the matrix below.

Table 2-5, on the following page, provides a listing of corridors in various stages of development, based on the trail status matrix.

TRAIL STATUS IDENTIFICATION MATRIX

Option	Idea	Champion/ Organization	Funding	Land Acquisition	Design	Construction	Minimum Safety Features*	Trail Term
A	No	No	No	No	No	No	No	No trail
B	Yes	No	No	No	No	No	No	Idea
C	Yes	Yes	No	No	No	No	No	Idea
D	Yes	Yes	Yes	No	No	No	No	Idea
E	Yes	Yes	Yes	Yes	No	No	No	In development
F	Yes	Yes	Yes	Yes	Yes	No	No	In development
G	Yes	Yes	Yes	Yes	Yes	No	Yes	In development
H	Yes	Yes	Yes	Yes	Yes	Yes	No	Trail
I	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Trail

Source: Hoosier Rails to Trails Council (HRTC), October, 2002.
Notes: All categories are of equal weight
* Minimum safety features include stop signs and notice of street crossings

TABLE 2-4
INDIANA RAIL-TRAIL FACILITIES
AS OF OCTOBER 2002
Provided by the Hoosier Rails to Trails Council

ID	Name & City/Town	County	Trailhead	Terminus	Miles	Surface
1	DeKalb Co. Trail Auburn to Waterloo	DeKalb	Auburn	Waterloo	3.0	Concrete
2	East Bank Trail South Bend	St. Joseph	St Joe High School	Hydraulic Ave	1.0	Asphalt, wood
3	Clear Creek Trail (Old 1990) Bloomington	Monroe	Tapp Rd/ Country Club	Dillman Rd, southwest of SR37	3.0	Grass
4	Indian Trails Riverwalk Anderson	Madison	Truman Bridge	8th Street Bridge	1.0	Asphalt
5	Erie-Lackawana Trail Hammond	Lake	Transit/Bus Center	I-80/94	4.0	Asphalt
6	Iron Horse Heritage Trail Portage	Porter	SR 149	Imagination Glen Park	1.0	Dirt
7	Nancy Burton Trail Zionsville	Boone	SR 334	Eagle Creek Bridge	2.0	Limestone
8	Marmont Vandalia Trail Culver	Marshall	Old Depot/Beach	Academy	1.0	Wood mulch
9	George Lake Trail Hammond	Lake	St Joseph College	Grand Blvd.	1.0	Asphalt
10	Crosstown Trail Highland	Lake	45th Street	Griffith	3.0	Asphalt
11	Monon Trail Indianapolis	Marion	96th Street	Fall Creek Blvd	7.5	Asphalt
12	Prairie Duneland Trail Portage	Porter	Willowcreek Road	SR 149	7.0	Asphalt
13	Mill Race Trail Goshen	Elkhart	Courthouse	Shanklin Park	0.5	Asphalt, dirt
14	The Riverwalk Peru	Miami	C&O RR Station	Bowling alley	1.0	Asphalt
15	Sweetser Switch Trail Sweetser	Grant	CR 300 East	CR 400 East	1.0	Asphalt
16	Erie Trail Schererville	Lake	Griffith	Merrillville	1.0	Asphalt
17	Interurban Trail Delphi	Carrol	Southwest of town	By Happy Jack's Trail	0.7	Gravel
18	The Belt RR Trail Delphi	Carrol	North by Paint Creek Bridge	Carrollton Rd by golf course	0.3	Gravel
19	Erie Trail Merrillville	Lake	Schererville	Burr Road	3.0	Asphalt
20	Erie Trail Lake County Parks	Lake	Burr Road	Crown Point	1.6	Asphalt
21	Cardinal Greenway Muncie	Delaware	Wysor Station	550 East-700 South	10.0	Asphalt
21	Cardinal Greenway Marion	Grant	Marion	Jonesboro	8.0	Asphalt
21	Cardinal Greenway Richmond	Wayne	West D Street	Industries Road	2.0	Asphalt
21	Cardinal Greenway Muncie (1)	Delaware	Wysor Station	Gaston	10.0	Asphalt

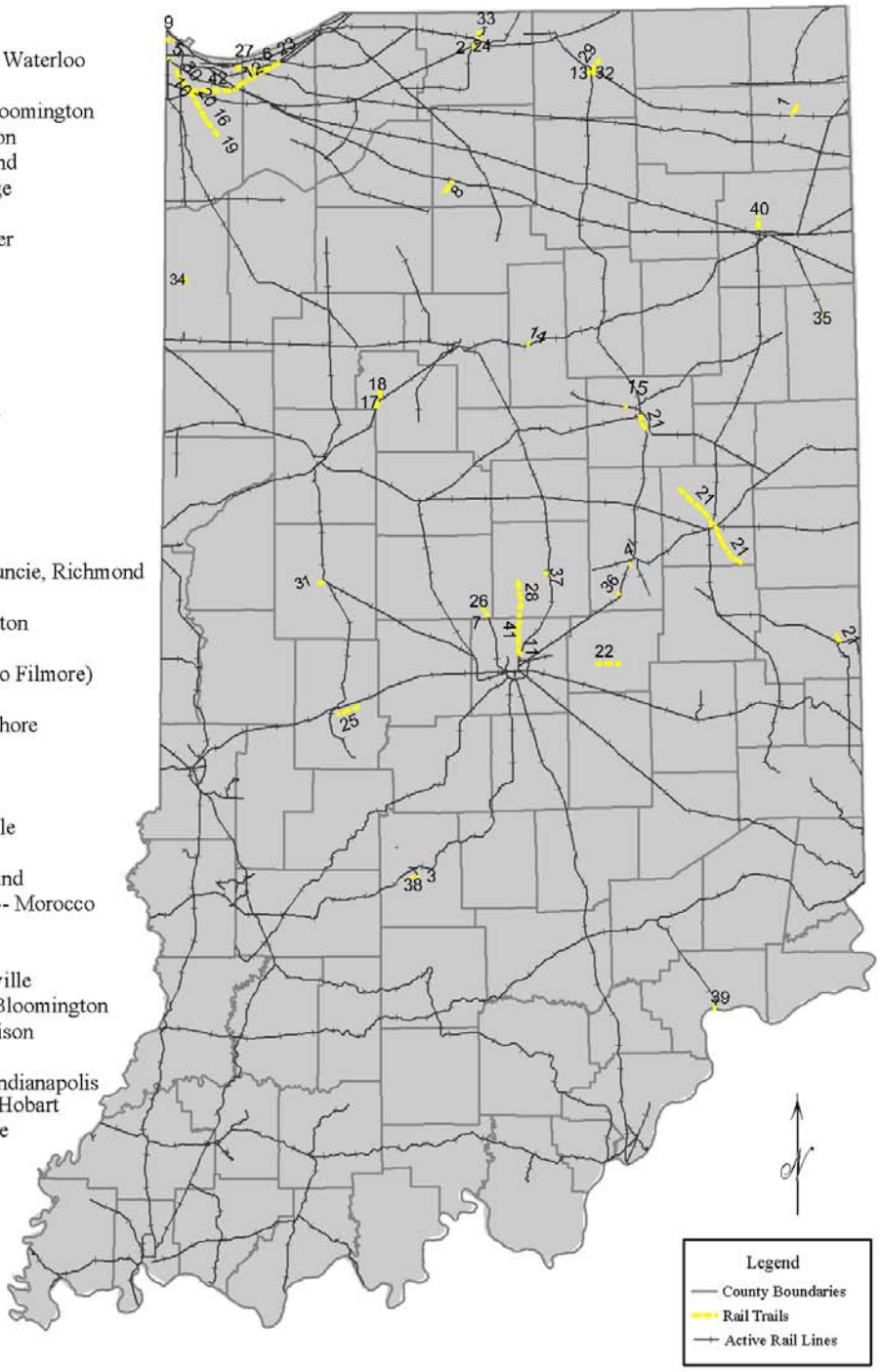
ID	Name & City/Town	County	Trailhead	Terminus	Miles	Surface
22	The Pennsy Trail Greenfield	Hancock	100W-100S	400E-100S	3.0	Asphalt
23	Prairie Duneland Trails Chesterton	Porter	19th & Porter	SR 149	3.0	Asphalt
24	GTW Bridge South Bend	St Joseph	Howard Park	Riverwalk North	0.2	Asphalt
25	People Pathways Greencastle	Putnam	Greencastle	Filmore	3.4	Stone
26	Zionsville Rail-Trail Zionsville	Boone	Whitestown Road	SR 334	2.0	Asphalt
26	Zionsville Rail-Trail–Pending Zionsville	Boone	Spring Knoll	Whitestown Road	1.5	Asphalt
27	Marquette Trail National Lakeshore	Lake	Lake-Porter County Line	Grand Blvd	2.5	Crushed stone
28	Monon Trail Carmel	Hamilton	96th Street	146th Street	5.0	Asphalt
29	Pumpkinvine Trail Goshen	Elkhart	Abshire Park	CR 28	2.0	Crushed stone
30	Erie Trail Griffith	Lake	Highland	Schererville	3.0	Asphalt
31	Sugar Creek Trail Crawfordsville	Montgomery	Skenck Road	Sugar Creek Bridge	7.0	Asphalt
32	Winona Railway Trail Goshen	Elkhart	Goshen College	Elementary School south	1.0	Asphalt
33	LaSalle-Big Blue Stem Roseland	St Joseph	Cripe	New Cleveland Road	1.0	Asphalt
34	Chicago Attica & Southern Trail-Morocco	Newton	Morocco	Southeast of town	0.5	Asphalt
35	Kikionga Trail Decatur	Adams	Arnolds Lumber Yard	Kikionga Park	0.5	Gravel
36	The Interurban Trail Pendleton	Madison	Pendleton Ave	SE corner Falls Park	1.0	Asphalt, Limestone
37	White River Greenway Noblesville	Hamilton	8th & Logan	Forest Park	0.2	Asphalt
38	New Clear Creek Trail (2001) Bloomington	Monroe	Tapp Road at Quarry	That Road, 1 mile east of Rogers	2.0	Asphlt
39	Heritage Trail of Madison Madison	Jefferson	State Hospital	Bottom of Railroad Hill	1.5	Grass
40	Hearthstone Trail Ft Wayne	Allen	Hearthstone neighborhood	on Wallen Road	0.5	Concrete
41	Northern Indianapolis 1902 Electric-Indianapolis	Marion	Blind School entrance	64th Street & College Avenue	1.0	Concrete/ grass
42	Oak Savannah Trail Griffith to Hobart/county line	Lake	Griffith to Gary to	Hobart and county line	9	Asphalt
	TOTAL MILES				124.4	

(1) Under construction – to open 2002

Figure 2-2

Indiana Rail Trails

1. DeKalb County Trail -- Auburn to Waterloo
2. East Bank Trail -- South Bend
3. "Old ('90)" Clear Creek Trail -- Bloomington
4. Indian Trails Riverwalk -- Anderson
5. Erie-Lackawanna Trail -- Hammond
6. Iron Horse Heritage Trail -- Portage
7. Nancy Burton Trail -- Zionsville
8. "Marmont Vandalia" Trail -- Culver
9. George Lake Trail -- Hammond
10. Crosstown Trail -- Highland
11. Monon Trail -- Indianapolis
12. Prairie Duneland Trail -- Portage
13. Mill Race Trail -- Goshen
14. The Riverwalk -- Peru
15. Sweetser Switch Trail -- Sweetser
16. Erie Trail -- Schererville
17. Interurban Trail -- Delphi
18. the Belt RR Trail -- Delphi
19. Erie Trail -- Merrillville
20. Erie Trail -- Lake County Parks
21. Cardinal Greenway -- Marion, Muncie, Richmond
22. The Pennsy Trail -- Greenfield
23. Prairie Duneland Trails -- Chesterton
24. GTW Bridge -- South Bend
25. People Pathways -- Greencastle (to Filmore)
26. Zionsville Rail-Trail -- Zionsville
27. Marquette Trail -- National Lakeshore
28. Monon Trail -- Carmel
29. Pumpkinvine -- Goshen
30. Erie Trail -- Griffith
31. Sugar Creek Trail -- Crawfordsville
32. Winona Railway Trail -- Goshen
33. LaSalle - Big Blue Stem -- Roseland
34. Chicago Attica & Southern Trail -- Morocco
35. Kikionga Trail -- Decatur
36. The Interurban Trail -- Pendleton
37. White River Greenway -- Noblesville
38. "New ('01)" Clear Creek Trail -- Bloomington
39. Heritage Trail of Madison -- Madison
40. Hearthstone Trail -- Fort Wayne
41. Northern Indpls 1902 Electric -- Indianapolis
42. Oak Savannah Trail -- Griffith to Hobart /county line



Rail Corridor Preservation Study

Table 2-5
Corridors In Various Stages of Preservation
(as of October 2002)
Information provided by the Hoosier Rails to Trails Council

Corridor/Project Name	County	Start Point	End Point	Distance	Status
Iron Horse	Porter	Portage	Portage	4 miles	In development
Erie-Lackawanna	Lake	Crown Point	Crown Point	1 mile	In development
Notre Dame Branch	St. Joseph	West South Bend	Notre Dame	3 miles	Idea
LaSalle – Big Blue Stem	St. Joseph	St. Joe High School	State line	5 miles	In development
Plymouth Second	St. Joseph	South Bend	Lakeville	3 miles	Idea
B&O	Marion	Clermont	Tibbs Avenue	4 miles	Idea/In development
B&O	Hendricks	North Salem	Clermont	20 miles	Idea/In development
B&O	Putnam/Park	Montezuma	Bernard	40 miles	Idea/In development
Lawrenceburg & Aurora	Dearborn	Aurora	Lawrenceburg	3 miles	In development
Heritage Trails of Madison	Jefferson	Madison	Madison	6 miles	In development
Veterans Memorial Pkwy	Lake	Crown Point	Hebron	9 miles	In development
National Road Trail	Vigo	Terre Haute	Terre Haute	7 miles	Phase I open
Nickel Plate Trail	Howard	Cassville	CR 1350S	1 mile	In development
Nickel Plate Trail	Miami	CR 1350S	Peru	15 miles	Portions open
Nickel Plate Trail	Miami	Peru	1600N	18 miles	Portions open
Nickel Plate Trail	Fulton	CR400	Wabash Avenue	4 miles	In development
Pennsy Trail	Marion	Arlington Street	Post Road	Unknown	In development
Pennsy Trail	Hancock	Cumberland	Cumberland	2 miles	Idea
Pennsy Trail	Henry	County Line	County Line	Unknown	Idea
Pennsy Trail	Wayne	County Line	Richmond	Unknown	Idea
Earl Pfeiffer Trail	Wayne	Glen Miller Park	State Line	Unknown	Idea
Posey Trail	Posey	Poseyville	Into Illinois	11.5 miles	Portion open
Oak-Savannah Trail	Lake	Hobart, Gary, Griffith	Hobart, Gary, Griffith	Unknown	In development
Pumpkinvine Nature Trail	Elkhart/LaGrange	Middlebury	Shipshewana	6 miles	In development/ portions open
Fort Wayne (NYC)	Allen	YMCA	Hearthstone	3 miles	Idea
Fort Wayne (GRI)	Allen	Under I-69	Washington Church	Unknown	Idea
Thorntown	Boone	In town	In town	1.5 miles	In development

Corridor/Project Name	County	Start Point	End Point	Distance	Status
Lebanon-Lafayette	Boone/Tippecanoe	Lebanon	Lafayette	Unknown	Idea
Midland Equestrian Trail	Boone	Jolietville	Lebanon	12 miles	Idea
Delphi Monon North/South	Carroll	Delphi	Rostown	3+ miles	Idea
Monticello	White	Monticello	Undetermined	Unknown	Idea
Richmond	Wayne	Centerville	Richmond	Unknown	Idea
Clarksville	Clark	Clarksville	Clarksville	Unknown	In development
Flex-n-Gate	Vermillion	State Line	Flex-n-Gate Factory	4 miles	Idea
Covington	Fountain	Covington	Covington	Unknown	Idea
Marion and west	Grant	Marion	Sweetser	3 miles	Idea
Cardinal Greenway	Wayne	Richmond	County line of Henry	Unknown	Idea
Cardinal Greenway	Henry	County Line	End of current trail	Unknown	In development
Cardinal Greenway	Randolph	County Line	County Line	Unknown	In development
Monon south	Marion	Fall Creek	10th Street	3 miles	Funded for construction
Monon Westfield/Washington	Hamilton	146th Street	216th Street	7 miles	Idea
Monon Adams Township	Hamilton	216th Street	Lamong Road	2 miles	Idea
Monon Sheridan	Hamilton	Lamong Road	County Line	3 miles	Idea
Monon Bloomington	Monroe	In town	In town	Unknown	Idea
Honey Creek Line	Madison	Anderson	New Castle	Unknown	Idea
Zionsville Trail	Boone	Pleasant Street	Mulberry Road	1 mile	In development
Interurban Trail Northeast	Marion	Fort Benjamin Harrison	Hamilton County Line	Unknown	Idea
Interurban Trail Northeast	Hamilton	County Line	County Line	Unknown	Idea
Interurban Trail Northeast	Madison	County Line	Muncie	Unknown	Idea
Interurban Trail Northwest	Marion	Indpls. Art Museum	52nd Street	1 mile	Idea

2.11 Factors to Predict Future Railroad Abandonments

Predicting railroad abandonments is a difficult process due to the varied procedures by which abandonments can occur and the variety of exceptions and exemptions that can be granted. It is important that INDOT staff be knowledgeable about the abandonment process and diligent about understanding the status of key railroad properties so that needed corridors can be preserved in a timely and efficient manner.

2.12 System Diagram Map

From a strict legal perspective, the ICC Termination Act's ("ICCTA's") requirement[19] that railroads contemplating the possible abandonment of trackage submit an annual System Diagram Map ("SDM") or annual update[20] to the Surface Transportation Board is the principal means which state or local governments have for predicting railroad abandonments. (See Section 2.1)

The SDM requires railroads to classify their track in one of five categories and the ICCTA's implementing regulations forbid the carrier from seeking abandonment authority unless there is compliance with the SDM requirements. However, this SDM requirement has a significant loophole which makes it a poor indicator of future abandonment activity: a railroad seeking to abandon a line through the exemption procedure is not required to have a SDM (or narrative) on file before implementing its request. Moreover, the use of the abandonment class exemption procedures[21] discussed in Section 2.3 allows railroads to abandon critical links in their network where the segments to be eliminated have had no local traffic in over two years, there are no pending shipper complaints about lack of service (and no finding by the STB or a court as to lack of service) and overhead traffic can be rerouted, albeit circuitously.

As a result, a class I railroad can spend several years severing a mainline route, with critical implications for competitive traffic flows and possible rail passenger service, while preserving all local service using other routes. While states or localities can use the ICCTA's offer of financial assistance procedures (at 49 U.S.C. 10904(d)-(f)) to stockpile the abandoned segments, decisions on abandonment cut-points and timing by the abandoning carrier can make rail service preservation very difficult.

Accordingly, the focus of this section will be to identify practical strategies for predicting future abandonments.

[19] See, 49 U.S.C. 10903(c)(2) and 49 CFR 1152.10.
[20] STB regulations allow class III railroads the option of filing a written narrative describing possible abandonment candidates in lieu of a map.
[21] See, 49 CFR 1152.50.

2.13 Precursors for Rail Line Abandonments

1. Changes in traffic flows as a result of railroad mergers and consolidations.

   Applicants in significant merger and consolidation proposals are required to submit as part of their application proposed operating plans showing the increase or decrease in train movements and tonnage as a result of the merger or consolidation. A significant change in traffic flows may predict the downgrading of a former mainline making all or part of the route a potential abandonment candidate.

2. Carrier rate or commercial actions designed to discourage business, making it easier to obtain abandonment authorization.

   The most common of these is the filing of a light density line surcharge intended to recoup short term loses from customers with limited carrier options. Under current law the surcharge automatically takes effect but may be challenged by the shipper through a rate reasonableness complaint filed with the STB. The carrier may also change the rate structure so as to encourage traffic movement via a different gateway or interchange with a connecting carrier.

3. The sale of one segment of a longer route to a shortline railroad or other purchaser while retaining the remaining portion of the line, which provides a strategic competitive connection but has little or no traffic. The railroad then abandons this strategic segment after waiting two years under the out of service abandonment class exemption (49 CFR 1152.50).

4. Continued ownership of line segments with no local traffic.

5. Class I railroad actions to persuade Amtrak to move to another parallel line.

   For example: Conrail persuaded Amtrak to move its Broadway Limited off the former PRR main across Indiana through Fort Wayne to the former NYC line through Cleveland and Elkhart.

6. Deferring track maintenance and removal of automatic block signaling systems (a railroad must get FRA approval to deactivate a signal system).

7. Decrease or changes in train service and local switching activities including changes in crew bases.

8. Railroad discussions with shippers about plant relocation or building offline truck relocation centers.

9. Closure of shipper facilities or removal of shipper sidetracks and connecting switches.

10. The filing by a railroad at the STB of a notice giving it trackage rights over a parallel, connecting rail line or a railroad relocation notice to use a parallel line.

2.14 Actions INDOT Should Take to Get Advance Notice of Railroad System Changes

As can be seen in the previous section, many of the precursors to abandonment are difficult to identify as they occur. This provides significant challenges for public agencies and others with an interest in predicting and planning for opportunities related to abandonments. Nevertheless, by monitoring abandonment activities and staying in touch with representatives in the railroad industry, many railroad system changes can be identified in advance. Suggested actions include the following:

1. Watch filings with and decisions issued by the Surface Transportation Board on a routine basis.

2. Meet at regular intervals with all railroads serving the State. Each class I railroad has a lobbyist or governmental liaison assigned to that State. For example, an NS representative could share the company's current categorization of lines as core, strategic, and tactical, with tactical lines being those of least significance of the three. It is also helpful to stay in contact with short line railroad general managers or the resident managers of shortline holding companies.

3. Review traffic and financial reports filed with the State (including the State Finance Department). Shortline traffic, revenues, and finances should be watched with particular care because these carriers are much more fragile than larger railroads.

4. Review Amtrak operations in Indiana and adjacent states periodically with Amtrak's Intercity Office located in Chicago.

5. Attend annual meetings of SCORT (AASHTO's Standing Committee on Rail Transportation) and compare notes frequently with counterparts at neighboring state DOTs.

6. Visit online shippers periodically. Solicit shipper feedback through surveys.

7. Monitor the local railfan network and railroad oriented publications like "Trains Magazine", "Railfan", and the Trains.com website. These groups sometimes have an amazing amount of knowledge to share.

2.15 Corridors Where the Operational Status Could Change

There are currently a number of rail lines in the state whose status of operation could change, based on one or a combination of factors. A listing of the lines whose operational status could change is presented in Table 2-6, along with a recommendation as to the possible functional value of the preserved corridor. The lines are also identified in Figure 2-3. The list begins at the north end of the state and works south, from west to east, through the state.

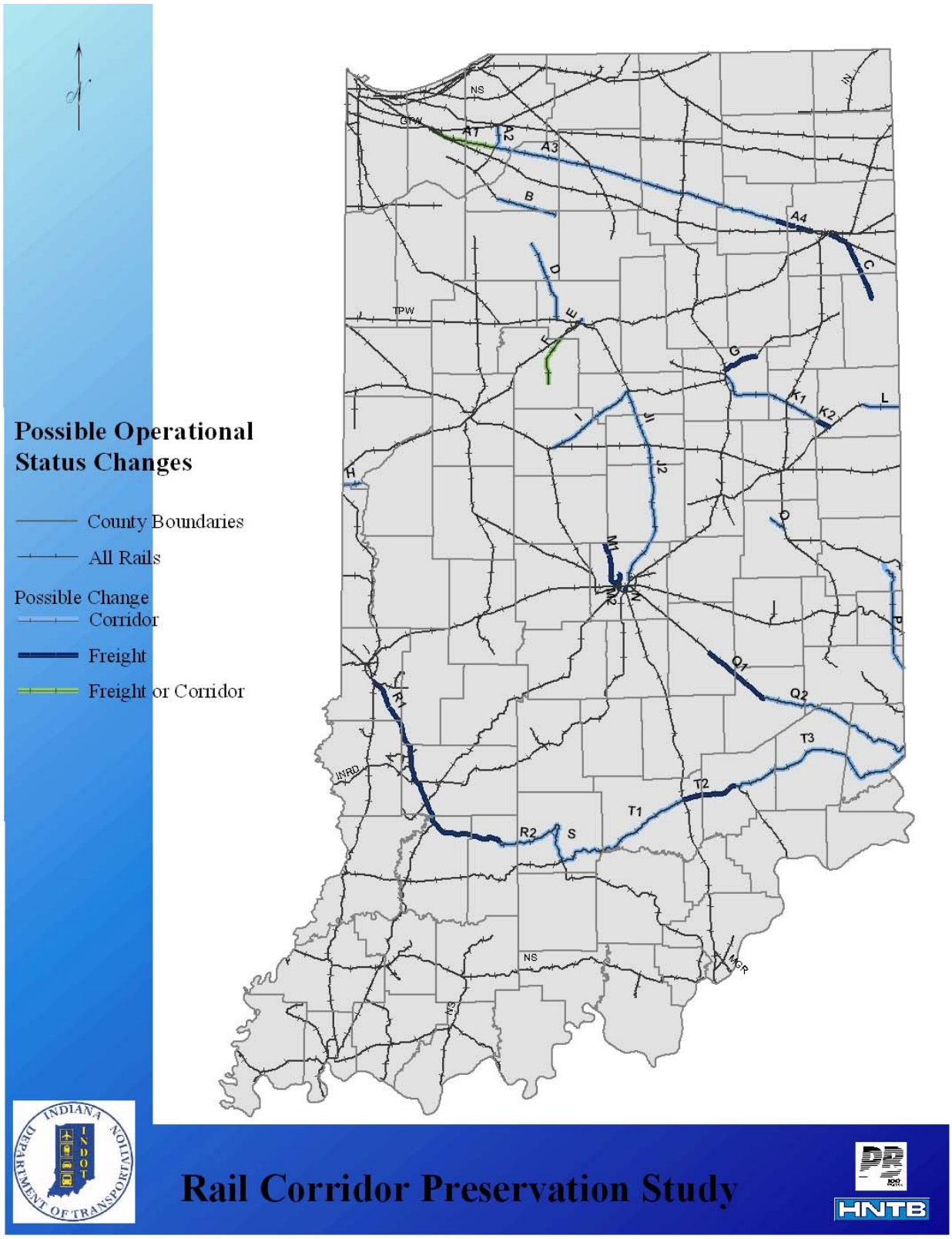
Table 2-6
Corridors Where Operational Status Could Change

Rail Line	Segment	Map Code	Preservation/Use Recommendation*
CSX	Valparaiso to Fort Wayne (parallels another CSX line that has been double-tracked)		
	• Valparaiso to Hanna	A1	Freight or corridor
	• Hanna to Wellsboro	A2	Corridor
	• Valparaiso To Coesse	A3	Corridor
	• Hanna to a point just west of Fort Wayne	A4	Freight
JKL	North Judson to Monterey	B	Corridor
CSX	Fort Wayne to Decatur	C	Freight
ARL	Winamac to a point just east of Lake Cicott	D	Corridor
LER	Small segment that extends just north of Logansport	E	Corridor
WSR	Clymers to Bringhurst	F	Freight or corridor
NS	Marion to Van Buren	G	Freight
CSX	West state line to Foster	H	Corridor
NS	Kokomo to Frankfort	I	Corridor
NS	Kokomo to Tipton	J1	Corridor
HHPA	Tipton to Indianapolis	J2	Corridor
NS	Marion to Dunkirk	K1	Corridor
NS	Dunkirk to Redkey	K2	Freight
NS	Portland to east state line (through Brice)	L	Corridor
CSX	Downtown to north county line (through New Augusta)	M1	Freight
CSX	Downtown spur along White River Parkway West Drive	M2	Freight
LI	Downtown segment between the Belt Railway and CSX Mainline	N	Freight
HCR	Sulphur Springs to intersection of NS line	O	Corridor
CSX	Richmond though Raymond to east state line	P	Corridor
CIND	Shelbyville to Greensburg	Q1	Freight
CIND	Greensburg to east state line	Q2	Corridor
SOO	West of Riley (Vigo County) to Lawrenceburg/east state line		
	• West of Riley to Crane	R1	Freight
	• Crane to Bedford	R2	Corridor
CSX	Bedford to Mitchell	S	Corridor
CSX	Cincinnati to St. Louis (mainline)		
	• Mitchell to Seymour	T1	Corridor
	• Seymour to North Vernon	T2	Freight
	• North Vernon to Lawrenceburg/east state line	T3	Corridor

* *"Corridor" refers to uses other than freight and could include passenger service or recreational/alternative transportation uses.*

ARL	A & R Line, Inc.	LER	Logansport and Eel River Shortline Co. Inc.
CSX	CSX Transportation Inc.	LI	Louisville & Indiana Railroad Company
CIND	Central Railroad of Indiana	NS	Norfolk Southern
HCR	Honey Creek Railroad	SOO	Soo Line Railroad
HHPA	Hoosier Heritage Port Authority	WSR	Winamac Southern Railroad
JKL	J.K. Line		

Figure 2-3


Possible Operational Status Changes
County Boundaries
All Rails
Possible Change
Corridor
Freight
Freight or Corridor
NS
GTW
A1
A3
B
A4
C
D
TPW
E
F
G
K1
K2
L
I
J1
J2
H
M1
M2
N
O
P
Q1
Q2
R1
T3
INRD
T2
T1
R2
S
NS
MCR
NS
Rail Corridor Preservation Study
HNTB

Note that a rail line's inclusion on the list is not an indication of expected abandonment. Rather, operations on the line may change and they thus should be monitored.

The factors for predicting future railroad abandonments were identified previously in this section. While each of those factors can provide an early indication of abandonment, the first several strategies in that list are the key precursors to look for and consider.

Additional factors to be considered on a case specific basis for the lines identified in Table 2-6 include:

1. Whether or not the rail line continues to "fit" within its owners network structure, especially for Class I railroad lines.

2. The existence of duplicate and/or parallel routes which may render a line unnecessary.

3. Maintenance issues that could become too cumbersome and/or expensive, such as major bridges, or alignments through cities with slow speeds, numerous grade crossings, other rail crossings, and/or other challenges.

As a general rule, the two major railroads serving Indiana have indicated that their recent policy to sell low density lines will become less aggressive. NS in particular has stated that, on a systemwide basis, they do not anticipate large scale route reductions in the near term. This policy of course is subject to change in the future.

2.16 High Speed Rail Initiative

INDOT is one of nine member states in the Midwest Regional Rail Initiative, an ongoing effort to develop and implement an improved passenger rail system in the Midwest. If developed, this system would provide high-speed rail service (at speeds likely up to 110 mph) with reduced travel times, and increased frequency of service, accessibility and reliability. Other participating states include Illinois, Iowa, Michigan, Minnesota, Missouri, Ohio, Nebraska and Wisconsin.

Regional and national discussions on rail transportation have resulted in the designation of three high-speed rail routes through Indiana:

1. Chicago to Cleveland
2. Chicago to Detroit via Porter
3. Chicago through Indianapolis to Cincinnati and to Louisville

It is of particular importance that the state be in a position to consider actions to preserve potential high speed passenger lines, because the network-oriented value of the lines is unlikely to be of consequence to local public and private entities. In short, only the state is in a position to take the regional (if not national) view.

2.17 Utility Corridors

Generally, as a linear corridor that links activity centers in an urban area, rail corridor right-of-way is ideally suited for utility use. Constructing utilities in a rail corridor can be less disruptive and have less impact on the immediate surroundings. The best scenario may be for utilities to serve as a companion use to a rail-trail or public transit facility. In combination, two uses could potentially strengthen the opportunity for corridor preservation.

More specifically, if the objective is to preserve the corridor for possible future restoration of rail service, any utilities that are installed during a "railbanking period" should be positioned as if the tracks were still there. In cases involving an underground pipe or duct installation of relatively shallow depth, any parallel occupation of utility lines should be at a depth similar to what would have been required if the tracks were still there. Any aerial crossings should provide ground clearance equal to that which would be required if trains were still running. Due to the fact that the utility installer would be able to complete this construction without having to work around active railroad tracks, any additional costs to meet these requirements should be modest.

There are no specific criteria that might be applied statewide to identify rail corridors for utility use. The use of rail corridor right-of-way for utility purposes is site specific and dependent on the particular needs and location of each individual utility and area.

SECTION 3: PRIORITIZING CORRIDOR PRESERVATION EFFORTS

Prioritization of rail projects is by nature a complex process. Factors to consider include need, costs, benefits, financial feasibility, location, public support, timeframe, legal issues (such as applicable preservation options), and future expectations (such as risk of abandonment).

For rail corridor preservation efforts to be most effective, it is important to establish a classification method that examines both the need for the corridor and the risk of abandonment. Medium to high priority projects proposed for corridors that are in immediate danger of abandonment should outrank high priority projects for corridors that are not currently at risk of being lost.

3.1 Classification Method

A process used by the Chicago area's Regional Transportation Authority (RTA) provides a useful example of a ranking methodology that incorporates need determination with risk assessment or what they term the "threat level." That process is discussed below, along with ways it could be incorporated into a process for Indiana.

The RTA's methodology was developed solely for a study that prioritized regional freight rail corridors for potential future transit use. The process includes two main criteria: the desirability or potential of the line for transit use (or other future use in the case of Indiana), and the level of "threat" (here meaning the likelihood of a line being abandoned or otherwise lost). Each rail line in the metropolitan area was examined for both "need" and "threat level" before being categorized into "red" "yellow" and "green" priority categories.

Need for the Corridor

The need rankings for the RTA Study categorized the potential importance of each line to the development of the region's commuter rail system. The highest-ranking lines were those that could act as emergency bypass routes for existing commuter lines. After that, corridors that could act as extensions of existing downtown-oriented service, and corridors connecting existing transit lines for potential use as suburb-to-suburb routes were identified. "Low need" corridors included those that could be used for relocation of existing service or for service from downtown Chicago to currently unserved suburban areas.

In Indiana, corridor need could be related to a number of factors, as discussed below:

Purpose – the role of the corridor to the national, regional or local transportation system would be assessed. Likewise, whether the corridor could serve a single use or purpose versus a multiple use or purpose would be considered.

Usage Levels – a rail line that is heavily used and is clearly part of the carrier's operations is critical to the movement of goods and is a needed segment of the rail network. In addition to through lines with heavy rail traffic, other lines may play an important role in rail operations. Lines leading to major yards would be one example.

Official Sanction – if a rail corridor is designated as important for development or access in a local or state planning document, the need for the corridor would be evaluated. Documents such as the Comprehensive Plan or the Long Range Transportation Plan identify long term needs for an area and would be important to the corridor preservation process.

Future Need – Similar to the official sanction criteria above, if a corridor is designated as being needed to meet future needs (transportation, recreation, development, access, etc), it would be evaluated relevant to the level of need and the factors presented above.

Threat Level (Risk of Abandonment)

High - The abandonment of a rail line is the single most important factor that could impede preservation options. For the Chicago RTA study, a high risk of abandonment was associated with corridors that had low levels of freight activity or corridors that were in the process of abandonment.

For Indiana purposes, corridors with a high threat of abandonment would be those corridors that experience any of the ten factors identified in Section 2 under "precursors for rail line abandonments". The first four factors are the most critical and are listed below:

1. A change in traffic flow as a result of railroad mergers and consolidations.
2. Carrier rate or commercial actions designed to discourage business, making it easier to obtain abandonment authorization.
3. The sale of one segment of a longer route to a shortline railroad or other purchaser while retaining the remaining portion of the line (which provides a strategic competitive connection but has little or no traffic). The railroad then abandons this strategic segment after waiting two years under the out of service abandonment class exemption.
4. Continued ownership of line segments with no local traffic.

Low – for the RTA study, corridors with high levels of freight activity (20 or more trains per day) or lines owned by a public entity were considered low risks for abandonment.

Similar factors would apply in Indiana. Corridors with a low risk of abandonment would:

1. Have high levels of freight activity
2. Be significant from a national, regional or local perspective

Once threat and need levels are assessed for each rail corridor, the following process could be used to integrate the two:

- "Green" corridors are those that have low to medium need levels and low to medium threat levels.

- "Yellow" corridors are those that combine a high need with a low threat level, or a medium need with a high threat level.
- "Red" corridors have a high threat of abandonment, and a high or medium need level.

"Red" corridors are considered the most important to target for preservation. They should be closely monitored for pending abandonment.

The matrix shown in Table 3-1 illustrates this classification process.

Table 3-1
MATRIX CLASSIFICATION
RAIL CORRIDOR "NEED VS. THREAT" CRITERIA

		NEED		
		LOW	MEDIUM	HIGH
THREAT	LOW			
	MEDIUM			
	HIGH			

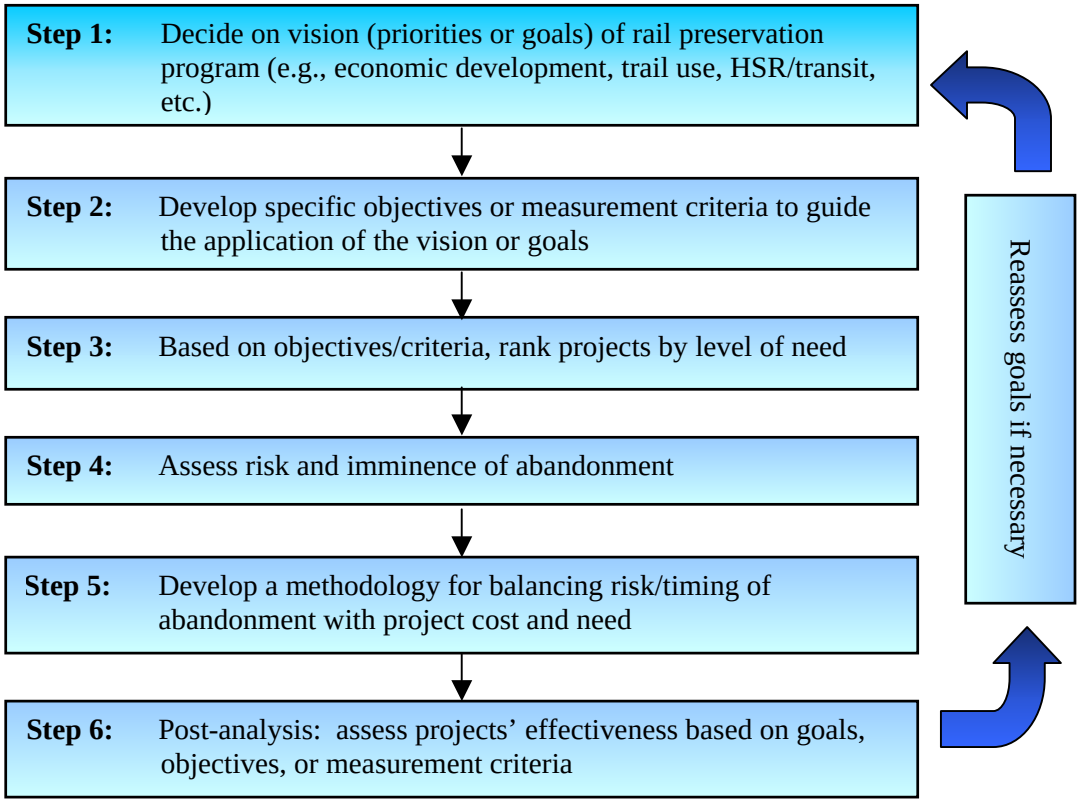
As discussed in the previous section, the corridors where operational status could change should be watched most closely. Those corridors have a higher threat of "change" than others. From a need perspective, the lines being considered for high speed rail/passenger service should be preserved as well as those lines critical to freight movement in and through the state.

3.2 Establishing Goals

The preservation of rail corridors will require financial support and an expansion of the rail program in Indiana. Should funding be appropriated, initial steps for an expanded rail program in Indiana should begin with a clear articulation of goals. If a single funding source exists for passenger, recreational and freight rail projects, priorities will have to be set. If separate funding sources exist, goals and objectives, or measurement criteria will still be needed to assist in ranking candidate projects. The rest of this section provides examples of goals, objectives and prioritization methods used by other states, and concludes with proposed goals and objectives for Indiana.

In general, goals provide a big picture focus for prioritizing different types of rail projects. Once broad goals are established, specific objectives and measurement criteria can be developed to rank projects in a fair manner.

The flowchart below illustrates some basic concepts in developing and using a project prioritization methodology.



The following paragraphs discuss goals of rail programs in other states. Most stress the preservation of shortline railroads, which is not surprising, as many states have funding sources dedicated exclusively to the preservation of shortline freight service. Other goals promote freight rail, passenger rail, economic development or intermodal connectivity.

Within each category of goals are related objectives and measurement criteria. These can be used to rank aspects of a project in a more impartial manner, and to focus decisions in a particular direction. For example, a goal of "maintaining essential freight rail infrastructure" could have objectives that favor shortline projects with the highest total number of jobs created or retained, or it could have objectives that would influence decisions more towards shortline projects that boost rural economic development, regardless of the number of jobs involved. Objectives and measurement criteria can be also be used for "post analysis," assessing the effectiveness of rail program spending once projects are completed.

When projects of a similar type are ranked, it is often possible to employ formulas or other objective ranking methodologies, although they typically have limitations. While some states' "formulas" appear quantitative and easy-to-use, the criteria are often subjective. Even the

commonly accepted "benefit-cost ratio" often includes (or wrongly excludes) intangible benefits which are hard or impossible to put a dollar value on. While this may be considered a weakness by individuals looking for an impartial ranking scheme, such difficulties are unavoidable.

3.3 Preservation Goals

Only a few of the states examined for this study had goals that stressed preservation as a "pure" goal without some sort of modifier. Often preservation is part of another goal. Missouri DOT provides an example with their goal to "retain rail service in areas where the public need demonstrates the necessity of such service."

- Florida DOT focuses on maintaining essential rail services where possible and preserving facilities and corridors for future transportation uses when abandonment is imminent.
- New Jersey has a freight rail goal to "preserve and improve freight transportation systems which support and promote economic development." It also includes the following objectives:
  - Protect the core rail system's right-of-way
  - Promote rail and intermodal facilities that exhibit potential for long-term economic viability
  - Support competitive freight transportation services where economically viable.
- Idaho provides broader preservation goals:
  - Retain and maintain operations on all lines of the rail system that serve as essential components of the state's transportation system
  - Preserve rights-of-way of rail lines for future rail or alternative uses.

3.4 Freight Goals

Some state programs stress a general desire to promote rail shipping. Other programs concentrate on the more endangered shortline services (such as INDOT's Industrial Rail Service Fund).

- Florida is direct and simple in its goal to "promote rail as a means of freight movement."
- Iowa hopes to "encourage mainline service improvements for safer, more efficient freight travel."
- The Illinois Rail Freight Program is "designed to protect access for shippers and businesses to rail transportation." Because shortlines provide connections between businesses and Class I railroads, this is largely a shortline program.
- Georgia's Department of Transportation states directly that it "decided to focus its attention on shortline carriers and their service, maintenance, and capacity issues."
- Iowa's Rail Assistance Program rates freight rail projects according to:
  - Financial participation by other sources
  - A financial analysis
  - Urgency of need
  - Availability of funding

- Benefit-cost ratio
- Other identifiable benefits to the state

Intermodal

- One of Arizona's two goals is to support the development and maintenance of intermodal facilities.
- Burgeoning international trade has forced the state of Florida to also emphasize intermodal planning (sea, rail & road).
- Iowa's goals include "fostering the development of a multimodal transportation system that provides maximum utilization of each mode."
- The Arkansas rail program has two main focus points, one of which is encouraging freight shipping alternatives.
- Idaho's goals include promoting the development and improvement of rail-served intermodal transportation service throughout the state.
- Florida's program listed these broad objectives:
  - Promote the most efficient multimodal connections for people and goods
  - Improve alternatives for moving freight
- Louisiana had these objectives for its intermodal goals:
  - Create a freight railroad intermodal grant program.
  - Conduct a comprehensive study of the "shipper choice" issue (many of the state's water ports only have access to one Class I carrier, eliminating the potential for competition in rail shipping rates)
  - Develop cross-modal evaluation methods to best determine spending priorities

Environmental

- Florida's rail program includes a goal to "protect the environment by minimizing the impact of transportation facilities and services."
- New Jersey's environmental goals are different, focusing not on reducing negative impacts, but on creating positive ones:

  GOAL: Maximize the conservation of energy by promoting the use of freight systems, which will provide the necessary service at the lowest energy cost
  Objectives:
  - Promote energy efficiency of rail freight and intermodal transportation

  GOAL: Advise and counsel on a freight transportation system which complements the state's desire for a clean, healthful, and pleasant living environment.
  Objectives:
  - Promote rail freight and intermodal services that minimize detrimental environmental impacts and support the goals of the Clean Air Act
  - Provide transportation facilities that satisfy the requirements of freight shippers and the industries they serve

Economic Development

- Economic development is a goal of many state rail programs and is often the main focus.

- In Virginia, most applicants for the state's Rail Industrial Access (RIA) program work through the Virginia Department of Economic Development, which also markets the RIA program. RIA itself is administered through the Virginia Department of Rail & Public Transportation.
- The state of Illinois prioritizes rail spending to support those rail freight projects that achieve statewide economic and service goals.
- California's goal for its freight rail program is to maintain the state's transportation infrastructure as a means to remain competitive in the world market.
- New Jersey's rail freight program has the following objectives for its economic development goal:
  - Minimize the negative employment impacts of rail freight service abandonments.
  - Increase employment potential with new/improved rail freight services and intermodal facilities
  - Minimize increase in transportation costs for industries located on lines scheduled for abandonment and provide transportation cost benefits to industries not having direct access to the rail system

The criteria for selecting those rail projects that have the most promising economic development impact (or the best benefit-to-cost ratio) are different in every state.

- Candidate projects for Iowa's Rail Economic Development Program are rated according to:
  - Amount of capital investment
  - Number of jobs created or preserved
  - Significance on location decisions of new or expanding businesses
- The Virginia Rail Industrial Access program has a highly quantitative prioritization scheme that ranks applications for assistance based on a 100-point scale based on:
  - Predicted total number of carloads produced
  - Added employment
  - State's portion of track per initial capital investment costs
  - Unemployment rate within the jurisdiction of the project
  - Project's contribution to an economic development initiative
  - Amount of non-state contribution to track construction
  - Contribution to the long-run viability of a branchline
- North Carolina implemented its North Carolina Rail Industrial Access (NCRIA) program in 1994, modeled after Virginia's program. One difference is that the NCRIA monies are limited to industries and economic development projects where North Carolina competes with other states. The applicant must demonstrate that a similar project is being considered outside of North Carolina before the project can qualify for funding.

The ranking schemes used by the Virginia and North Carolina RIA programs are shown in Appendix F.

Financial/Cost Criteria

A number of states specify financial viability in their goals or criteria for rail freight assistance programs. Idaho's goal for example, is to "provide a viable, competitive, and safely operated rail system to serve the citizens of Idaho."

- Iowa and New Jersey provide examples of objectives for this goal:
  - Improve branchlines that contribute to economic viability (IA)
  - Abandon lines that do not promote economic development or viability (IA)
  - Promote rail and intermodal facilities that exhibit potential for long-term economic viability (NJ)
  - Support competitive freight transportation services where economically viable (NJ)

It is difficult to predict economic viability of rail service, but some states require assurances from local governments or guarantees from business in the area that they will provide some number of carloads for the shortline in question.

Other financial goals relate to reducing highway rehabilitation costs (due to reduced heavy truck trips) or to reducing a state's share of the cost of rail projects. Many states, including Indiana, favor projects which have a large portion of costs covered by private or local government sources.

3.5 Passenger Rail Goals

States with passenger rail programs typically utilize goals and objectives to guide decision-making regarding when expansion projects are worthy of funding, and at what point service should be reduced or eliminated.

- Florida's passenger rail program has the following goals:
  - Extend and maintain passenger rail services where appropriate
  - Provide rail alternatives to the single-occupancy vehicle
  - Promote the most efficient multimodal connections for people and goods
  - Implement high-speed rail and connections to other modes

- California's passenger rail program goals include:
  - Promote economic development
  - Reduce roadway and airway congestion
  - Integrate passenger rail systems within multimodal networks
  - Comply with Clean Air Act Amendments (CAAA)
  - Comply with the Americans with Disabilities Act (ADA)
  - Provide a rail transportation alternative to other travel modes
  - Improve air quality
  - Conserve fuel
  - Contribute to efficient and environmentally superior land use
- California provides a high level of support for its Amtrak service, and it lists "priorities" for that program. These can be used as assessment criteria (to judge success of past spending) as well as guidelines for directing future spending:
  - Increase the cost-effectiveness of state-supported intercity rail
  - Increase capacity on existing routes
  - Reduce running times to attract riders and to provide an efficient service

- Improve the safety of state-supported intercity rail service, including grade crossing improvements and closures
- Initiate new cost-effective routes

California's passenger rail program also includes state "Service Evaluation Standards & Goals."

- The California Department of Transportation (CalTrans) goal is to provide cost-effective services that will achieve at least 50 percent coverage of costs from the farebox.
- CalTrans standards for adding or removing services are:
  - Where the cost-effectiveness of an existing service will be improved by adding or removing frequencies or route segments
  - Where the cost-effectiveness of the state-supported services as a whole will be improved
  - Where the department (CalTrans) has already paid for capacity increases and where others agree to fund capital and/or operating needs

3.6 Other Criteria

- Safety is included in perhaps virtually every states' list of goals. Objectives and performance criteria include:
  - Reduce the potential for at-grade rail-highway crossing accidents
  - Reduce number of incidents or fatalities by X%
  - Reduce the number of miles of excepted track to X% of all shortline track in the state
  - Increase awareness of rail crossing safety

Of the states examined for this study, none listed goals related to recreational trails. This might be due to the age of the information (most is from the mid-1990s) or to the fact that recreational projects are administered by agencies other than the state DOT (usually a department of parks, natural resources, or health).

- Objectives for recreation-related goals might be:
  - Support local efforts to preserve abandoned rail corridors for recreational use
  - Increase the number of counties with access to recreational trails
  - Increase the total mileage of rail-trails in the state by a specific amount

3.7 Proposed Goals for Indiana's Rail Program

Some of the above-listed objectives and prioritization schemes have already been adopted and others could easily be adopted in Indiana. Others might require new funding sources. Some measurement criteria might require additional staff to analyze the candidate projects. At least one state (Iowa) asks that any analysis required for project applications be done by the sponsoring local government. While this may not add to objectivity, it does reduce overall costs for the state transportation agency.

Depending on funding availability, the following goals and objectives might be appropriate for Indiana:

Preservation

- Retain and maintain operations on all lines of the rail system that serve as essential components of the state's transportation system (and/or facilities that exhibit potential for long-term economic viability)
- Encourage local planning efforts to assess uses and value of corridors in danger of abandonment
- Locate and develop new funding sources for acquisition of abandoned corridors

Economic Development

- Coordinate with the Indiana Department of Commerce, port authorities and other economic development groups. Also increase awareness of rail shipping issues in the economic development community
- Assess proposed rail improvement projects for their impact on job creation (or maintenance), and prioritize accordingly
- Upgrade more shortline infrastructure to handle 286,000 pound carloads

Promotion of Freight Rail/Shortlines/Intermodal Facilities

- Maintain (or increase) shipper access to rail where viable
- Increase access to rail for Indiana farms & manufacturers (where viable)
- Work with Indiana Port Commission and other public port authorities to promote and facilitate intermodal interface with rail in support of Indiana industries[22]
- Examine the potential of diverting some truck traffic from the Indiana highway network by commencing a study of short haul intermodal service between Louisville and Chicago.[23]
- Increase awareness of freight shipping issues among local planners, businesses, and chambers of commerce
- Increase number of shortline miles that can handle 286,000 pound carloads
- Decrease number of shortline miles of FRA Excepted track

Passenger Rail

- Build support for intercity and high speed rail (HSR)
- Keep Indiana in the running for Amtrak or HSR funding if it becomes available (by upgrading stations, planning corridors, etc.)

Safety

It is important that rail safety be maintained as a primary goal of INDOT. This category is not more fully discussed here because INDOT already has funding and prioritization systems in place to address railroad and grade crossing safety issues.

The October 2002 Indiana Rail Plan suggests increasing driver education about rail crossing issues by adding the subject to driver education classes and drivers license examinations.

[22] Source: Indiana Rail Plan, INDOT Multi-Modal Transportation Division, October 2002, page 64.
[23] Source: Indiana Rail Plan, INDOT Multi-Modal Transportation Division, October 2002, page 64.

Additional consideration for upgrades of FRA Excepted shortline track might also be added to current rail safety prioritization schemes.

Other

A more ambitious rail program could include some of the following objectives:

- Increase the number of counties with access to rail trails
- Increase rail's share of freight movement
- Increase the mode share of rail for commuting or for inter-city travel
- Encourage county and local planners to implement rail-friendly planning
- Utilize rail as a strategy to reduce air pollution, particularly in non-attainment or maintenance areas

3.8 Advisory Committees and Decision-Making

Prioritizing projects with similar purposes is difficult enough, but ranking rail projects planned for different uses requires a clear vision of what the state's rail program should accomplish. Even with a well-defined set of goals, program staff may still have difficulty comparing projects with recreational benefits with those that would keep or increase jobs, or with projects that would have particular environmental, safety or transportation benefits.

In response to this complexity, most states have formulated advisory committees to help make these decisions. Another useful tool is dividing projects into categories before prioritizing them.

Rail projects generally will fall into one or more of these categories:

- Freight use (usually shortline)
- Transit use (either rail transit or as a paved, express, bus-only road)
- Inter-city passenger rail (high speed or conventional)
- Recreational use (including both excursion trains and non-rail uses such as pedestrian and bicycle use)
- Utility line placement

Ranking rail projects among others in the same category can be complicated by a number of factors. One is future planning: some rail corridors may be useless in the near-term, but can be very important to preserve for the future. In growing areas, it can be important to retain abandoned corridors for future utility line placements, or as transit corridors. In the Indianapolis area, for example, two local suburban communities and their county government purchased a rail corridor between Noblesville and downtown Indianapolis. The intent was to preserve the corridor for future transit use. Currently the line sees minimal freight and excursion use, and is used by utilities. Transit concepts in the Indianapolis region are currently in the early planning stages, and in the next ten or twenty years needs may change.

Advisory Committees

Because rail project prioritization decisions are often complex, many states rely on advisory committees to assist transportation officials in prioritizing projects. As discussed previously, formulas or other simple methodologies can be useful for ranking projects of a particular type

(such as deciding which of two shortline projects is more worthy of funding), but they are generally less usefull in making decisions across project categories.

An advisory committee should include representatives with a wide diversity of interests. Complex ranking decisions require the evaluation of a range of concerns, and broad representation makes it more likely that factors relevant to the decision are neither ignored nor overvalued.

Indiana's Transportation Corridor Planning Board (TCPB) does have a broad-based membership, including representatives from:

- Indiana Department of Natural Resources
- The railroad industry
- Utilities
- The Farm Bureau Co-op
- Indiana Association of Cities and Towns
- Local trail greenways committees
- INDOT

To be more inclusive, Indiana might consider involving representatives from Metropolitan Planning Organizations (MPOs) or other local governments, port authorities, rail passenger advocates, and/or other shippers (manufacturers). INDOT also might want to create a citizen's advisory committee, or invite members of the general public to join in the existing TCPB.

Information on active advisory groups in other states is summarized below:

- North Carolina has a business-only advisory group, the Association of North Carolina Railroads, to which NCDOT presents its rail plans for comment and input.
- Because it is often hard to keep members interested in attending rail advisory meetings for any length of time, some states expand their advisory groups during the development of their state rail plans, or for other major projects. These groups then contract or meet less frequently during periods of low activity. Tennessee, for example, created a Rail System Plan Advisory Committee that existed only during the preparation of their State Rail Plan. Membership included:
  - 12 railroad company or railroad authority representatives
  - 12 manufacturers or producers of rail freight
  - 15 city or county government representatives
  - Representatives from rail passenger organizations and Amtrak
  - Representatives from nine state & federal agencies
- Involving nearby states can also be useful. This is already being done with high speed rail (HSR) projects across the country. It can also be valuable in making decisions for freight, transit, or rail-trail projects that cross state lines.
- Some states, such as Florida, include rail stakeholders directly in their decision-making bodies. The Florida Transportation Commission (which makes decisions on all transportation policy, not just rail) consists of eleven members: nine commissioners are appointed by the Governor & confirmed by the legislature (traditionally one from each

geographic district of the Florida Department of Transportation), and the other two are at-large members with rail or port expertise.

The examples from other states show that much can be achieved for rail programs and corridor preservation with proper planning and adequate staffing and funding support in place. The preservation of rail corridors in Indiana will require additional financial support and a greater emphasis on strengthening the "basics" (goals, planning, prioritization methodology) of the rail program. This can be initiated through the development and implementation of goals that:

- Increase awareness of the importance of freight rail to Indiana's economy (educate the public, legislators, and local government officials)
- Increase awareness of the abandonment process to help encourage local planning efforts on potential uses of corridors for recreation, public transit, utilities and other uses
- Identify new funding sources
- Prioritize rail corridors based on a classification method that analyzes the need for the corridor and assesses the level of "threat" to that corridor
- Continue awareness efforts for passenger rail and high speed rail
- Encourage the development of a partnering relationship with the Indiana Department of Commerce (for freight/economic development projects) and with other departments and commissions regarding safety, recreational rail-trails, public transit and utility uses
- Build public support for rail projects and establish partnering relationships with rail advocacy organizations (e.g., Indiana High Speed Rail Association, Hoosier Rails-To-Trails Council, Indiana Association of Rail Passengers)
- Encourage research to determine potential economic impact of rail freight and intermodal projects and widely disseminate the results.

SECTION 4: RAIL FUNDING OPPORTUNITIES

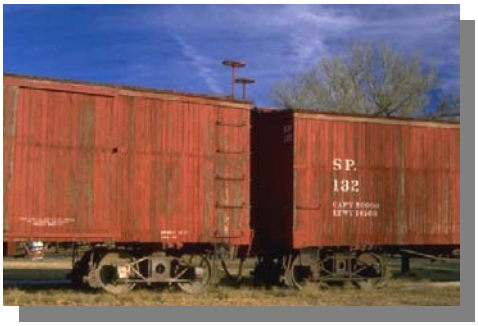
4.1 Potential Funding Sources

The main indicator of the need for increased funding levels for the rail program is the cost of purchasing railroads proposed for abandonment. Costs typically range from $10,000 per mile (at the lowest) to $1,000,000 per mile or more (usually in urban areas). Without access to substantial funds, or the ability to borrow funds for later repayment, INDOT is largely unable to railbank or otherwise purchase railroads that come up for abandonment.

Under current property rights laws and in light of recent court rulings, if corridors are not preserved during the initial abandonment process, they are gone forever. While the legislature could grant funds to INDOT for specific acquisitions, this would be difficult to accomplish in the short timeframes set by the federal Surface Transportation Board due to the fact that abandonments are often approved in two or three months. The likelihood that a line could be abandoned between legislative sessions is high. Without a pre-existing source of funds, INDOT would be unable to respond.

Purpose

Funding enables states to carry out railroad preservation planning, acquisition, and repair activities, either directly, through grants, or through low-interest loan programs. Without adequate funding, states are restricted in their ability to recognize and act on opportunities. Funding to support shortline railroads, those most in danger of abandonment, is important enough that thirty states (including Indiana) have funding programs targeting their preservation[24].



Freight railroads benefit the state's economy by providing cheaper transportation services to the farming, mining, power-generation, and manufacturing industries. Making these industries more competitive keeps jobs in Indiana. Freight railroads also benefit the state by saving wear-and-tear on the road system, as most damage to roads is caused by heavy trucks.

The American Association of State Highway and Transportation Officials (AASHTO) estimates that the ten-year infrastructure needs for the nation's shortline railroads total between $8 and $12 billion, of which only twenty percent can be funded by the railroads themselves. The 2002 Indiana Rail Plan estimates that Indiana shortlines alone (excluding Class 1 railroads) will need $100 million in capital investments to accommodate the increased car weights which the markets are demanding.

[24] California State Rail Plan 2001-02 – 2010-11, Caltrans, March 13, 2002, page 132.

Because information of impending abandonments may arrive with short notice, and because federal law sets time limits on anti-abandonment actions, state governments need funds at their disposal to respond effectively when abandonments are imminent. States that require special legislation to obtain project funds are at a distinct disadvantage. With annual funding of just $1.4-$1.5 million per year for its freight rail program, INDOT would be unable to afford to purchase a rail line longer than a mile or two upon receiving notice of abandonment.

4.2 Federal Funding Programs

Freight rail funding

The Transportation Equity Act for the 21st Century (TEA-21), the current federal transportation funding legislation, contains some railroad-specific funds, as well as some more general funds that can be used for railroad improvements if states so choose:

- Section 7202 Light Density Line Pilot Program – purpose is to fund capital improvements and rehabilitation for publicly and privately-owned light density lines.
- Section 7203 Rail Rehabilitation and Improvement Funding (RRIF) – provides funding for loans or loan guarantees for acquisition, development, improvement, or rehabilitation of intermodal or rail equipment or facilities.[25]
- Section 130 Highway Rail Grade Crossing Program - provides funds to improve the safety of highway-rail crossings. Currently provides about $5 million per year to Indiana.
- Federal STP Safety Funds - provide about $15 million per year to Indiana to be used for highway safety improvements. Governor O'Bannon has directed that roughly two thirds of these funds be used for enhancing safety at highway-rail crossings. Because the funds must be used in a cost-effective manner, most improvements are new or upgraded signals or gates (not expensive grade separation projects), and most projects involve Class I rail lines, which are more heavily used, and thus generally have a higher accident probability.
- Transportation Enhancement (TE) funds – which cannot be used for highway widenings or maintenance, are largely used for historic bridges, streetscaping, and bike/pedestrian trails in Indiana. Occasionally enhancement funds have been used by port authorities in Indiana to preserve historic rail corridors (such as the one used by the State Fair Train) and to rehabilitate historical rail bridges from the mid-nineteenth century.
- Section 1110 Congestion Mitigation & Air Quality (CMAQ) – purpose is to reduce congestion on local streets and improve air quality in "non-attainment areas", usually by reducing vehicular emissions. CMAQ can be used for rail improvements if they can be shown to achieve these goals (for example by reducing truck traffic, or by replacing a

[25] Policy "disputes" between FRA and OMB have resulted in no RRIF funds being distributed to date. Legislation has been introduced to make more funding available from this program.

congestion-causing rail grade crossing with an overpass or bypass). CMAQ can also be used for bicycle, pedestrian and trail improvements that contribute to improved air quality.

- Section 1221 Transportation and Community System Preservation Pilot Program (TCSP) – a comprehensive initiative of research and grants to investigate the relationships between transportation, community, system preservation and private sector initiatives. States and local governments are eligible for discretionary grants to plan and implement strategies that improve the efficiency of the transportation system, reduce environmental impacts of transportation, reduce the need for costly future public infrastructure improvements, and otherwise improve access to jobs and services. The State of Washington has used TCSP funds to acquire abandoned rail lines for service resumption purposes.
- Some FHWA State Planning and Research (SPR) funds have been used to fund rail planning studies.
- The Transportation Infrastructure Finance and Innovation Act (TIFIA) - provides loans and loan guarantees to help finance improvements to freight facilities on or adjacent to the National Highway System (NHS). Theoretically, freight rail facilities on or near the NHS may be eligible for funding assistance through TIFIA.
- Federal Transit Administration (FTA) funding for urban and commuter transit rail projects - can sometimes be used to help freight rail operations, particularly where freight rail crosses transit lines, or along joint-use corridors.
- Funds for high-speed rail (HSR) improvements - can also be used to improve freight rail, either through the Grade Crossing Hazards elimination program ("Financial Assistance to Eliminate Highway-Railroad Grade Crossing Hazards on Designated High-Speed Rail Corridors") or through one of the HSR demonstration projects. (According to the FRA website, the states that are already implementing HSR incremental upgrade programs are targeting service speeds of 110 to 125 miles per hour for the near future, primarily on existing tracks also used for freight.)
- 1993 federal flood funding was used to repair and upgrade rail in a few states.
- Earmarks - a number of states, working through their Congressional delegations, secured funding for specific freight rail assistance projects. Examples include the repair of the Coos Bay Bridge ($5.5 million) of the Central Oregon & Pacific, the construction of the San Ysidro Intermodal Yard ($10 million)[26], and the Lafayette, Indiana Rail Relocation Project ($22 million).
- Florida uses the LRSA Program (Federal Loan Repayment Funds) to improve infrastructure elements of the rail freight network.
- 1036(c) funds - are used to assess grade crossing safety and to prepare EISs.

[26] California State Rail Plan 2001-02 – 2010-11, Caltrans, March 13, 2002, page 134.

- TIFIA – Rail programs that employ innovative financing techniques can receive federal loan guarantees or other assistance from FHWA.

It should be noted that funds from some of these federal categories are not available each year. Financing assistance through TIFIA requires competitive grant applications, as do grade crossing enhancements for designated high speed rail lines. Only some of INDOT's applications for HSR grade crossing improvements over the past few years have been successful, and in recent years, all of these funds have been legislatively earmarked for specific projects.

Transit Funding

The FTA provides grants for new transit projects, including bus and ferry projects, as well as rail transit. Capital funding for new rail systems or extensions of existing lines would most likely come from the Section 5309 New Starts program. Although New Starts funding may provide up to 80 percent of the capital cost of a project, funding for recent New Starts projects averages around 50 to 60 percent.

For urban areas, there is currently no federal funding available to support transit operating costs. However, FTA does provide funds to support capital maintenance of transit systems. This includes replacement of buses, rail cars, or depots, as well as smaller items such as rehabilitation of bus engines or installation of bus stop signs. These grants require a minimum 20 percent state or local match.

Federal operating assistance is available for rural transit systems, but these would most likely not involve rail corridors.

Intercity Passenger Rail Funding

Like all major national intercity rail services in the world, Amtrak receives substantial government support. From 1971 through June of 1999, the federal government provided Amtrak with nearly $23 billion in financial assistance. In December 1994 Amtrak was directed to work towards the goal of eliminating its need for federal operating subsidies by 2002. Annual federal subsidies since then however, have ranged from $520 million to $1.7 billion, with Amtrak requesting $1.2 billion in 2002 to maintain service for another year.

While the future of passenger rail funding is unknown at this time, a number of ideas are being considered, including a restructuring plan submitted to Congress by the Amtrak Reform Council in February 2002, and a bill that proposed spending $4.6 billion a year over the next four years to improve and expand rail service. (This bill passed a Senate subcommittee in the Spring of 2002.) In addition, in May 2002, legislation that would provide $59 billion for high speed rail and other rail infrastructure projects was approved by the US House of Representatives Subcommittee on Railroads. This legislation, HR 2950, is called RIDE-21 (the Railroad Infrastructure Development and Expansion Act for the 21st Century).

Because no Indiana passenger station ranks in Amtrak's top 100 revenue-producing stations, future loss of service resulting from potential cuts in Amtrak funding is a serious possibility for this state. Indiana's share of any increase in future passenger rail funding is undecided.

High Speed Rail Funding

In addition to Amtrak funding, the federal government has been spending funds on high speed rail (HSR) development. Since 1994, over $20 million has been spent each year on planning, research, and improvements to proposed corridors (not including improvements to the Northeast Corridor)[27]. At this point eleven corridors have been designated by the Federal Railroad Administration for future HSR service. Some of these are quite extensive – the "Chicago Hub" corridor, for example, proposes the use of over 3,000 miles of existing rail rights-of-way to connect rural, small urban, and major metropolitan areas in nine states.[28]

Federally-funded HSR projects include research on new technologies such as magnetic levitation and new signaling systems, as well as some physical improvements to HSR corridors. TEA-21 included "Financial Assistance to Eliminate Highway-Railroad Grade Crossing Hazards on Designated High-Speed Rail Corridors," (HSR would require higher design standards and/or the elimination of grade crossings in order to operate at higher speeds). Some of the research is being carried out as demonstration projects: Illinois DOT was awarded a $3 million grant from the FRA to rebuild and signalize tracks in the East St. Louis area, with the intent of providing a small case study of the potential viability of HSR in congested metropolitan areas.

TEA-21 also authorized $55 million for pre-construction planning for a maglev project, and up to $950 million for final engineering and construction for the one project to be selected (the two projects still in the running are one in Pittsburgh, and one connecting Baltimore and Washington).

If HSR funding increases to fund system construction, it is not known how much might come to Indiana. Indiana has a number of designated corridors (listed below), with Gary serving as a designated station stop for more HSR routes than any other US city except Chicago. INDOT held a series of forums in 2001 to gather public input on HSR and has completed a number of planning studies. The seven INDOT High Speed Rail forums were attended by over 1,100 Hoosiers, and public comment was almost entirely positive.[29]

Designated HSR Corridors in Indiana

- Chicago-Gary-Cleveland
- Chicago-Gary-Kalamazoo (with proposed branches to Detroit, Lansing, and Grand Rapids)

[27] Information from the National Association of Railroad Passengers, updated February 2002. http://www.narprail.org/fund.htm.

[28] Midwest Regional Rail System: A Transportation Network for the 21st Century, Executive Report, February 2000. The nine states are: IL, IN, IA, MI, MN, MO, NE, OH & WI.

[29] *The Indiana Passenger Rail Initiative: Taking a Bold Track into a New Century*, Final Report, March 2002. Prepared by Blalock & Brown for INDOT. (http://www.in.gov/dot/modetrans/train/pdf/railoutreach.pdf)

- Chicago-Gary-Lafayette-Indianapolis-Cincinnati
- Chicago-Gary-Lafayette-Indianapolis-Louisville

Rail-Trail Funding

As with federal funding for freight railroads, trail funding comes both from funds dedicated specifically to trail projects, and also from more general funds whose goals (public health, economic development) can be met with rail-trails. Some of these funds could only be used to maintain or rehabilitate existing trails. Other programs provide grants for small amounts (a few thousand dollars), and are intended for small-scale projects or as planning grants.

- Transportation Enhancements. Begun under ISTEA and renewed as part of TEA-21, Transportation Enhancements (TE) require every state to reserve at least ten percent of their federal surface transportation funds for designated transportation enhancement activities, which include pedestrian and bicycle facilities, conversion of rails to trails, and safety and education programs. A twenty percent local match is required. TE funds are administered by INDOT, and have been used for several rail-trails across the state. Indiana's TE Program places an emphasis on acquiring abandoned railroad rights-of-way whenever possible.

- Recreational Trails Program. Federal transportation funds administered by the Indiana Department of Natural Resources, this program provides funds to develop and maintain recreational trails and trail-related facilities.

- Urban Park and Recreation Recovery Program. The National Park Service provides these rehabilitation grants to restore neighborhood park and recreation sites that have deteriorated to the point where health and safety are endangered or the community's range of quality recreation service is impaired. A 30 percent local match is required.

- The Section 1221 Transportation and Community System Preservation Pilot Program (TCSP), described above, could potentially be used to support rail trail projects.

- Land and Water Conservation Fund (LWCF) provides grants to communities to build a variety of parks and recreation facilities, including trails and greenways. The program requires a 50 percent match through in-kind services or cash. (LWCF grants must be used for recreation purposes in perpetuity, so railbanked corridors could not apply.)

- Community Development Block Grants provide eligible metropolitan areas and urban counties with annual direct grants they can use to revitalize neighborhoods, and/or improve community facilities and services, principally to benefit low- and moderate-income persons.

- Economic Development Grants for Public Works and Development of Facilities – the US Department of Commerce provides these grants to states, counties, and cities designated as redevelopment areas by the Economic Development Administration. Funds can be used for trail development and greenway facilities, as well as many other public works projects. A 20 or 30 percent local match is required.

- The National Endowment for the Arts can provide grants for design competitions, as part of its mission to stimulate excellence in design in the public realm. Signage and other design elements of trails can be important in building use and support.

- CMAQ funds can also be used in "non-attainment areas" to provide funds for bicycle and pedestrian trails as part of its goal of reducing congestion on local streets and improving air quality. Funding requires a 20 percent local match.

- The Federal Public Lands Highways Discretionary Fund is an FHWA-administered fund, the main purpose of which is to improve access to public lands and federal reservations. Improved access can include trails.

- The Save America's Treasures Historic Preservation Fund is administered by the National Park Service in partnership with the National Endowment for the Arts. Grants are available for projects that help preserve nationally significant historic sites, structures, and cultural artifacts. Railroads and many adjacent structures such as passenger stations or freight depots are often over a century old. A 50 percent match is required.

- Through the Brownfields Redevelopment Initiative the General Services Administration provides funds and loan guarantees to clean up and redevelop environmentally contaminated industrial and commercial sites, commonly known as brownfields. Many abandoned rail properties may be contaminated with runoff from past decades.

- A few small grant programs are offered by the US Department of Health and Human Services, the Department of Education, and the Department of Justice. Rail-trail projects that encourage healthy living or a safe, drug-free pathway to school can be eligible for these grants.

4.3 Private and Local Funding

The availability of private and local funds is site specific and depends on the planned use of the facilities.

Freight Rail

Class I railroads generally take care of their own capital expenses. For example, a May 2002 press release from CSX Transportation indicates that it plans to spend more than $37 million to maintain and upgrade its network in the State of Indiana in 2002.

Shortline railroads contribute to their own upkeep, but are often unable to fund needed capital repairs or improvements. Additional support for these freight rail lines can be sought from businesses served by the railroad, as well as from municipalities, counties, INDOT or economic development agencies that are interested in supporting those businesses.

In some states (including Indiana), water ports contribute to upgrading rail connections to their facilities.

Corporations that rely on railroads for bringing materials in or shipping final products have also helped maintain shortline railroads, either through direct contributions, or by guaranteeing a certain number of annual shipments in future years. Some shippers also assist shortline railroads by purchasing and storing their own freight cars.

Rail Transit

Rail corridors that will be preserved or upgraded for transit use can attract support from transit agencies and the municipalities that they serve. Additional, although limited, funding sources include passenger fare revenue, revenues from advertising and concessions, and special taxing districts created in station areas.

There are two types of special taxing districts, Tax Increment Financing (TIF) districts, and Business Improvement Districts (BIDs), also called Public Improvement Districts (PIDs). TIFs do not require new or increased taxes, but rely on the benefit of public improvements in increasing property values. As property values increase, the additional property tax revenue that is collected from commercial developments in the district can be set aside and dedicated to paying for the original public improvements (assuming they were financed by borrowing). Because only the incremental increase in property values are taxed, this funding source is limited.

BIDs and PIDs involve imposing new taxes on businesses within a defined district (for example, businesses near a downtown rail station). The taxes can only be used to improve the district, including improved street lighting, security, trash pickup, rail station façade improvements, etc., and could not be used to finance out-of-district benefits, such as purchasing rail right-of-way or subsidizing rail service. Due to the usually small number of businesses that are involved in a BID or PID, income from this source is also limited.

Joint development can also provide private dollars for public improvements. Joint development of station areas usually involves retail and office space built around and on top of transit stations, but can also involve a transit station integrated into a residential development. The private developer pays for all or part of the station construction. In return, the developer profits by having homes that are easier to rent or sell due to their proximity to a rail station, or by having commercial and office space that it easier to lease due to its easy access and high pedestrian traffic. In addition, transit-friendly developments require less space devoted to parking.

Passenger Rail and High Speed Rail (HSR)

Private funding for passenger rail projects, aside from passenger fare revenue, is limited. Additional revenues can be obtained from concessionaires and advertising, as well as from special taxing districts created around station areas, or joint development opportunities. As with municipal rail transit, funds from these sources are limited and most would not yield revenue until after system construction.

Entities interested in the privatization of passenger rail, including high speed rail technologies, are another possible source of funding. It is unclear at what level the private sector would be able to support passenger rail, as even the revenues from Amtrak's most heavily-used rail corridor (the Northeast Corridor) do not quite cover the line's operating and capital costs.

Local government support for Amtrak is another possibility. Fourteen states [30] currently contract with Amtrak to operate rail passenger service and agree to pay all or a majority of Amtrak's operating loss on a specific route. Because Amtrak frequently responds to budget cuts by eliminating service on some lines, or reducing the number of daily trains, this arrangement provides a way for states and localities to guarantee the preservation or expansion of service.

Rails-to-Trails

Corridors slated for conversion to trails attract support from municipalities, as well as local, state, and national foundations. Funding for trail projects is available from many sources due to their popularity and the wide variety of benefits trails can provide. Economic development, health, recreation, transportation, historic preservation, tourism, and educational benefits can be derived from trails.

At the local level, impact fees on subdivision and commercial developers can be used to fund community facilities, including parks and greenways.

Referenda provide another possible source for trail funding. In Pinellas County, Florida voters approved a one-cent sales tax increase to provide an additional $5 million for the development of the popular Pinellas Trail.

Government partnerships with not-for-profit organizations are another source of funding. California Trails Connections, for example, is a partnership between the national Rails-to-Trails Conservancy, the National Park Service, California State Parks, and the California Department of Health Services.

The Hoosier Rails-to-Trails Council (HRTC) is a non-profit advocacy and assistance group in Indiana. While HRTC generally is not a source for capital funds, it can provide technical assistance for specific projects. The Indiana Trails Fund is a not-for-profit citizen's trail development organization which gives individuals, corporations, and institutions a tax-free way to donate land, money, equipment, materials and labor to help develop trails or to advocate for trails. Other foundations might also help with the purchase, maintenance and/or operation of trails, including the Indianapolis Greenways Foundation, Inc., the Lilly Foundation, and others.

National grant-making foundations also exist. The most directly relevant would be the Rails-To-Trails Conservancy (RTC), which provides technical assistance to groups interested in developing railbanked trails. RTC can purchase rail lines for sale back to local groups in the event that local governments or private groups are unable to obtain funding within the time limit

[30] Source: Amtrak. As of June 2002, the states that contract with Amtrak to operate rail passenger service are: California, Illinois, Maine, Michigan, Missouri, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Vermont, Washington, and Wisconsin.

specified by the Surface Transportation Board. (This is only done for important trails and in situations where local reimbursement is assured.)

Small grants are available from a number of foundations, including the Kodak American Greenways Awards, the Bikes Belong Coalition, Fish America Foundation, the Oracle Corporate Giving Program, PowerBar's Direct Impact on Rivers and Trails Program (DIRT), and the National Trails Fund. Also, funds from the National Tree Trust and the Global ReLeaf Heritage Forest Program are available for trailside tree plantings.[31]

Volunteers can be very helpful for trail clearing and maintenance. Members of AmeriCorps' National Civilian Community Corps created or improved more than 200 miles of hiking trails in 25 states. Teams cleared trees and brush, implemented erosion control measures, created and updated signs, and leveled trails to comply with federal guidelines on access for people with disabilities.

4.4 Existing State Funding Programs in Indiana

INDOT administers most of the federal funds listed above and therefore has some limited discretion on how some of the funds are spent. It is important to note however, that most of Indiana's anticipated FHWA funding is already programmed as part of the state's 20-year Long-Range Transportation Plan.

Overall, the agency's highway funds have been targeted to roadway improvements but some highway funds have been dedicated to rail-related uses. INDOT's spending (including both state and federal funds) for highway operations, construction, maintenance, consulting and land acquisition averaged over $960 million per year in 2000-2002[32]. Funding for freight rail projects is around $1.5 million per year, with transit funding (for both bus and rail modes) averaging $47 million annually over the past three years.[33] (More information on transit funding is available in the State Transit Funding section below.)

Some of the highway funding is used for highway-rail grade crossing improvements. For example, Indiana decided to dedicate two thirds of its highway safety funds (about $10 million of a total $15 million a year) to improving highway-rail grade crossings, and it is considering using additional highway funds for a new rail-highway grade-separation initiative. Even considering this, rail funding is still a small portion of INDOT's total budget.

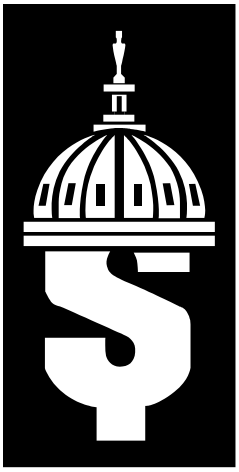
Beyond acting as administrator for federal funds and providing matching funds where needed, INDOT has three state-funded programs for transit and one for freight rail. Each of these

[31] Much of the information on funding sources for trails is from the Rails-to-Trails Conservancy's Trail & Greenway Funding Guide.
[32] This includes spending on the highway program (construction, consulting, ROW), as well as program support (vehicles and equipment, SPR, building and grounds). It does not include salaries and other overhead costs, which would add another $200 million to the total.
[33] Source: Interview with INDOT. INDOT's total transit obligations jumped to $54 million in 2002 due to the change in the CRSF.

funding sources currently has limited resources, with demand for funding higher than available revenues.

State Freight Funding

INDOT's freight rail program is largely funded through the Industrial Rail Service Fund (IRSF). The IRSF program aims to preserve rail business and promote economic development through maintenance of existing low-density rail lines.



At this writing, the IRSF receives 0.04% of the revenues from the five percent state sales tax. When the sales tax rate increases to six percent in December 2002, the IRSF will get 0.0333% of revenues. Although the intent was to keep IRSF receipts basically unchanged, the net receipts from the sales tax will actually decrease by approximately $15,000 per year under the new formula. The IRSF usually receives around $1.4 to $1.5 million annually.

IRSF funds can be used to provide grants or loans for the rehabilitation or expansion of a Class II or Class III railroad. The IRSF can also be used for other projects, including rehabilitation of non-track rail facilities (such as repair buildings), high-speed rail development, and to assist local port authorities owning rail assets.

There have been a number of changes made to the IRSF legislation over the years. At one point, IRSF was altered to allow funding of railroad relocation projects (although that provision was rescinded after the Lafayette Railroad Relocation Project ended). In 1991, the law was amended to allow funding for INDOT participation at HSR conferences. And in 1993, IRSF was changed to allow funding for rail projects at municipally-owned port authorities.[34]

The IRSF began as a low-interest loan program. However, requests for loans were few, as many shortlines could not afford to make monthly interest and principal payments. Today, IRSF funds are most commonly granted in amounts of $200,000 for rehabilitation of shortline tracks. Loans can be for larger amounts. The IRSF has helped more than half of the 41 Class II and III railroads operating in the state.

With applications for loans and grants now exceeding annual fund receipts, a priority of the program is to reduce the miles of "excepted track" (the poorest condition of track upon which FRA will allow freight traffic to be moved, where maximum speeds are restricted to less than 10 miles per hour). Poor track conditions limit the effectiveness of service provided to shippers, and limit the railroads' ability to attract new customers. Track conditions can also lead to derailments, which are not only potentially dangerous, but can be expensive for shortline railroads that are already operating at low profit margins. According to a 1998 INDOT survey, approximately twenty percent of the shortline trackage in the state fell into the excepted

[34] Source for legislative change information: State Rail Policies, Plans & Programs, Lyndon B. Johnson School of Public Affairs, University of Texas at Austin, 1997, page 157

category.[35] Today, in large part due to the effects of the Industrial Rail Service Fund, this percentage has been reduced to approximately 12% of total shortline mileage.

There is a 25 percent match requirement for IRSF grants, which is most often provided by the railroad receiving the grant. The match can also be met with funds from local governments, port authorities, businesses served by the rail line, or other sources. Overmatching of funds is looked upon favorably in the grant allocation process.

One sign of the inadequacy of current IRSF funding levels is the fact that rehabilitating just one mile of track can cost from tens of thousands of dollars per mile to hundreds of thousands or more in urban areas, or where major bridge rehabilitation is required.[36] This inadequacy is compounded by the increasing trend in the coal and grain industries of shipping cars weighing 286,000 pounds. The 2002 Indiana State Rail plan estimates that Indiana's shortlines require $100 million in capital investment to meet this new industry weight standard. At $1.5 million per year, the IRSF cannot make much progress in improving track conditions in a state with over 1,250 miles of track owned by shortlines.

State Transit Funding

The State has three funding sources to support transit programs. These funds are distributed yearly and may be used for capital expenditures or for operating and maintenance (O&M) expenses at the transit agency's discretion.

- **Public Mass Transportation Fund (PMTF)** receives a 0.76 percent [37] share of the state's sales tax revenue. These funds are allocated yearly to transit agencies using a formula based on passenger trips, vehicle miles, and locally-derived income (fares and subsidies). Funds may be used for operating and capital expenses for public transportation (rail or bus). Grants are capped at 50 percent of total expense or 100 percent of locally-derived income, whichever is less. Total amounts vary from year to year depending on sales tax revenues. State revenues to the PMTF have been between $27 and $30 million over the past three years. Federal grants to the fund have been between $5 and 7 million during that time, with $8.7 million expected in fiscal 2002.
- **Electric Rail Service Fund** is generated from property tax on a railroad company's distributable property that provides service within a commuter transportation district established under state law. Currently only Northern Indiana Commuter Transportation District (NICTD) qualifies for this fund, which largely returns NICTD's own property tax payments to itself. In the last four years, the electric rail service fund has received between $124,000 and $161,000 each year.

[35] INDOT 2000-2025 Long Range Plan, page 72.
[36] According to the 1996 Nebraska State Rail Plan, which involved field inspection of 700 miles of branchlines, the tracks were estimated to cost, on average, $157,000 per mile to bring up to Class 2 standards. Costs depended on a number of factors – current conditions, curvature, drainage, condition of bridges and other structures – and ranges from a low of $40,000 per mile to a high of $685,000 per mile.
[37] This percentage will be reduced to .635% when the state sales tax increases to six percent in December 2002.

- **Commuter Rail Service Fund** has historically been funded out of a 0.17 percent[38] share of the state's sales tax revenues. Recently, this fund has also received revenue from an "indefinite situs" tax paid by rail car leasing companies operating through Indiana. This new source almost doubled the funds available in 2001 (obligations in 2002 amounted to over $11.5 million, compared to $6.3 million in 2001). CRSF funds must be used for the maintenance, improvement, and operation of commuter rail service. The "indefinite situs tax" can only be used for debt financing. Currently the only entity eligible for these funds is NICTD.

INDOT has funded a few transit projects with highway funds. Highway funds were used for the purchase of buses to help relieve traffic congestion during a road construction project, and CMAQ funding has been used for the purchase of rail rolling stock for NICTD. It should be noted that money from the Federal Transit Administration (FTA) is usually granted directly to the transit agencies, bypassing INDOT and other state agencies.

Other Existing State Funding Sources

Funding for rail projects is potentially available from other agencies besides INDOT. The Indiana Department of Natural Resources (DNR) has provided funding for rail trail programs in the past. The Department of Commerce might also have grants, tax incentives, or loan assistance available for rail initiatives that are tied to economic development or energy efficiency improvements.

[38] This percentage will be reduced to .14% when the state sales tax increases to six percent in December 2002.

4.5 Rail Funding in Indiana Compared to Other States

Shortline funding in Indiana is lower than in other Midwestern states, as is shown in Table 4-1. The type of program can be loan, grant or both.

Table 4-1
Funding for Rail Freight in Midwestern States

State	Name of Program	Funds Available	Type of Program	Miles of Active Rail	Miles of Class II & III Rail
Illinois	State Loan Fund	$ 2,900,000	Loan	7,900	625
Indiana	**Industrial Rail Service Fund**	**$ 1,400,000**	**Both**	**4,800**	**1,250**
Iowa	Rail Assistance Program	$ 8,300,000	Both	4,268	1,323
Kentucky	(No state program to upgrade shortline trackage)	$ 0	n/a	2,813	500
Michigan	Rail Loan Assistance	$ 3,000,000	Loan	3,686	2,052*
Minnesota	Rail Service Improvement	$ 7,000,000	Both	4,652	1,479
Missouri	Rail Preservation Fund	$ 2,400,000	Both	4,484	717
Ohio	Rail Development Program	$7,100,000	Both	5,800	1,479
Tennessee	Transportation Equity Fund	$ 3,500,000	Grant	3,151	560
Wisconsin	Freight Rail Assistance	$ 8,200,000	Both	4,000	2,560**

* This figure includes 695 miles of rail owned by the State of Michigan.
** This figure includes 600 miles of rail owned by the State of Wisconsin.
Sources:
Rail track mileage data from State Rail Policies, Plans & Programs, Lyndon B. Johnson School of Public Affairs, University of Texas at Austin, 1997, and from INDOT's 2025 State Plan.
Most funding information is from the California State Rail Plan 2001-2010 (February 2002), supplemented by information from interview with Kentucky Transportation Cabinet & from draft Kentucky Statewide Rail Plan; OhioDOT website, and INDOT.

Indiana's funding for other rail projects, including HSR, Amtrak and transit also lags behind some midwestern states. Table 4-2 on the following page gives some indications of Indiana's standing in inter-city passenger rail and recreational rail-trail programs.

Table 4-2
Rail Programs in Midwestern States
(as of December 2002)

State	Contributes to Amtrak Service?	Part of a Designated HSR Corridor?	Number of Rail-Trails	Miles of Rail-Trails
Illinois	Yes	Yes	44	485
Indiana	**No**	**Yes**	**42**	**113**
Iowa	No	Yes	58	560
Kentucky	No	No*	5	16**
Michigan	Yes	Yes	94	1,168
Minnesota	No	Yes	63	1,306
Missouri	Yes	Yes	11	263
Ohio	No	Yes	53	421
Tennessee	No	No	15	41
Wisconsin	Yes	Yes	67	1,297

* One of the Chicago Hub designated HSR corridors terminates in Louisville, and Kentucky has provided letters of support to the Midwest Regional Rail Initiative, but is not a member[39].
** 16 miles are completed, 160 additional miles are at some stage of planning or development within the State of Kentucky.
Sources: Amtrak, INDOT, FRA website, the Rails-to-Trails Conservancy website, the draft Kentucky Statewide Rail Plan, and an interview with Kentucky Transportation Cabinet staff.

4.6 Programs in Other States and Recommendations for Indiana

State funding for freight and passenger rail comes from a variety of sources, including:

- Dedicated portions of taxes on motor fuels, sales tax, or other taxes.
- State transportation funds (most often used for highways).
- Property taxes on rail investments.
- General revenues.
- Economic development program funds.
- Water port or Airport funds (usually used to improve intermodal connections).

[39] Kentucky did a study of the potential for HSR between its largest metro areas (Lexington, Frankfort, Louisville and the Cincinnati area). It concluded that HSR, which is considered best as a competitor to short air routes, would not be successful in Kentucky. Because the state's major metro areas are very close to one another, HSR would have to compete with inexpensive and convenient auto travel, instead of expensive and less convenient air travel.

- Dedicated corporate income taxes. (Idaho is considering using 50 percent of the state's corporate income taxes paid by private railroads to fund intermodal projects and rail improvement projects.)
- Referendum. (In 1989 voters in New Jersey approved a bond issue of $25 million to preserve railroad ROW for future transportation uses.)

States can also use any of the usual financing tools, such as the following:

- Bonding (to spread the cost of capital improvements over 20-30 years).
- Revolving loan funds using low or no interest.
- Matching funds from private sources or local governments
- Loan guarantees. (Minnesota guarantees up to 90 percent of any loan used for rail improvements. The program defers four percent of a borrower's interest payments on a loan over seven percent per annum.)

In general, there are three approaches for state funding: improving the effectiveness of existing rail funding sources, directing existing taxes to rail, and new taxes.

Making the Most of Existing Taxes

One way to improve the use of existing rail sources might be to re-invigorate advisory committees to make sure that rail funds are used only on the most important projects. Some states have also commissioned studies (usually through local universities) to assess the success and effectiveness of past uses of funds. Another common way to stretch existing dollars is to use funds for loans or as a revolving loan fund, instead of grants. In this way funds can be re-used year after year, using annual appropriations to increase the available loan pool each year. On the other hand, loans are ineffective for some purposes. As INDOT's experience with the IRSF shows, loans are ineffective for shortline railroads that are very close to bankruptcy or cannot repay the loan on time. Grants are more effective for purchasing or railbanking abandoned rail lines, and for supporting passenger rail service.

Loan guarantees are another way to maximize the impact of available rail funds (with the same drawbacks as for revolving loan funds, above). In Minnesota, the "Rail User and Rail Carrier Loan Guarantee Program" will insure up to 90 percent of loans made to shortline operators. The program will also defer four percent of a borrower's interest payments on a loan over seven percent per annum.

Another way to make state rail program dollars go further is to require a higher match level for grants. While this also is hard on shortline railroads, it would not be as much of a difficulty as a loan-only program. Because overmatch (above the existing 25% match requirement) for the Industrial Rail Service Fund (IRSF) is considered an advantage for applicants, this concept is already in use to some extent in the state. Making a larger match a requirement would necessitate a change in the IRSF enabling statute.

The use of financing (bonds) might also be useful for larger projects. Currently if INDOT wanted to use IRSF to fund, say, a $4 million repair project, it would have to pay out part or all of the available IRSF funds for some number of years. INDOT is not allowed to borrow money,

so the shortline would have to borrow money relying on the promise of future INDOT payments to guarantee the loan. If INDOT were allowed to use the IRSF to guarantee bonds, it would not have this limitation in funding larger projects. Bonds are also useful in that they more closely tie taxation to the years in which benefits are received. (Track repairs done in one year should provide improved rail service for 10-20 years or more.) This would require a change in the IRSF enabling statute.

Re-direction of Existing Taxes

Existing taxes that currently go to the state's general fund can be re-directed as dedicated rail funding sources. There are a number of benefits to using dedicated funding sources compared to a budget line from the general fund every year. Once in place, dedicated taxes do not depend on political support, and they are not subject to mid-year cuts if the state budget is in trouble. In addition, dedicated tax sources are usually predictable. While revenues from dedicated tax sources do vary from year to year, they are more predictable than annual appropriations from the general fund.

Ohio dedicates half of the state's corporate franchise tax paid by private railroads to fund freight and passenger rail projects. In 1998-1999 this amounted to around $7 million per year. Pennsylvania considered using taxes paid by rail companies to fund rail projects. Pennsylvania leads the nation with the most railroads operating in the state, and in 1993 received around $15 million annually in taxes from railroads. (Pennsylvania has a substantial rail funding program, providing about $9 million per year in grants.[40])

Property taxes on rail investments are used for rail projects in California. Indiana already does something similar for NICTD with the Electric Rail Service Fund, which collects some rail property taxes, and the Commuter Rail Service Fund, which collects some taxes paid by rail car leasing companies that operate through Indiana. A different source could be found for other rail projects.

While no comprehensive tax data has been assembled for Indiana railroads, Amtrak expended $15 million in 2000 on goods and services in the state, and spent almost $47 million in wages and salaries. CSX has an annual payroll of $76 million in the state of Indiana, and in 2002 is planning to spend $37 million to maintain and upgrade its network in the state. While many of the goods and services purchased would be untaxed (as are most non-retail purchases), the tax revenues from wages and salaries is substantial. Assuming a state income tax of 3.4% (with conservative allowances for deductions and exemptions), Amtrak and CSX alone generate over $3 million in income tax revenues for the state. Other Class I railroads also have employees in Indiana, and information on Class II and III railroads indicates that 2,429 jobs were created and $1.2 billion in capital investments were made between January 1994 and October 1998[41]. Dedicating half of all railroad-generated state tax revenues to a new state rail fund could add up to an annual funding stream much larger than the amount paid out by the IRSF each year.

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[40] State Rail Policies, Plans & Programs, Lyndon B. Johnson School of Public Affairs, University of Texas at Austin, 1997, page 355.

[41] Source: Indiana Shortline Rail Association 1998 study. It is possible that the 2,429 jobs may include jobs resulting from the secondary impacts of railroad operations, and not just persons directly employed by Class I and II railroads.

Dedicated funds for rail projects could conceivably come from any existing tax source, including the sales tax, gasoline tax, diesel fuel tax, income tax, and license plate fees for cars and/or trucks. Setting aside a fixed percentage of these general taxes for rail projects would be easier to administer than estimating railroad-generated revenues from property, fuel, sales, income and corporate taxes.

Broad-based taxes would be more justifiable for passenger rail or transit funds, as many people could benefit from these services. California, for example, uses a large portion of its state sales tax for mass transportation and inter-city passenger rail. For freight rail programs, a share of certain business or agricultural and manufacturing-related taxes might be a more appropriate, since businesses are more likely to benefit directly from freight rail service than most individual citizens.

Using bond issues is another way to re-direct current taxes to rail uses. While bonds are usually paid out of general funds, they guarantee payments over a number of years without requiring biennial legislative approval. (The state is obligated to make bond payments until the bonds are paid off, but annual rail funding legislation can be rescinded at any time.)

Bonds can also be tied to referenda (currently not allowed in Indiana). Examples of rail-related referenda over the past few years in other states include:

- In 1989, New Jersey voters approved the "New Jersey Bridge Rehabilitation and Railroad Right-Of-Way Preservation Bond Act" which authorized NJDOT to spend up to $25 million to preserve railroad rights-of-way for future transportation uses.
- In November 2000, Ohio voters passed the Clean Ohio Fund, which authorized their General Assembly to issue up to $400 million in bond funds to be available for brownfields redevelopment, environmental clean-up, farmland preservation, green space preservation, stream and watershed protection, and trail development.
- Pinellas County, Florida passed a sales tax increase to provide funds for a public trail.
- California had three rail-funding propositions in the 1990s. A $2 billion "passenger rail and clean air bond act" was approved in 1990. The 1992 and 1994 bond measures were not approved.
- In November 2000, Florida voters amended their state constitution to require that high speed rail construction begin in that state by 2003.

Legislation relating to the formation of the Transportation Corridor Planning Board (Indiana Code 8-4.5-3-7) refers to "the transportation corridor fund." The fund was intended to be used to support research and prioritization of potential future uses of rail rights-of-way. Although this bill was passed in the 1990s, no monies have been allocated to this fund.

New Funds

New tax funds for rail projects could come from a wide variety of sources, although none would be easy to implement. Potential sources include increases in sales, income, gasoline, or diesel

fuel taxes. The Indiana High Speed Rail Association has proposed setting aside a fixed percentage of the increased sales tax to fund high speed rail projects.

The legislature recently passed a three-cent per-gallon increase in the state's gas tax. One penny of the increase will go to localities, with two cents going to INDOT. The new funds going to INDOT are restricted to highway uses only, so this revenue cannot be used for transit, HSR or freight rail projects.

The legislature also passed an increase in the state sales tax, from five percent to six percent. The percentage of sales tax revenues going to the Industrial Rail Service Fund was reduced to keep annual receipts relatively constant.

It is unknown whether the Legislature would be willing to pass additional tax increases in the near future for any purpose (rail or otherwise). It might be more likely, once the economy improves and the current budget crisis is resolved, that the legislature would choose to dedicate some of the proceeds from the current tax increase to rail projects.

4.7 Funding Conclusions

Given the cost of acquiring rail corridors, the current level of state rail funding is clearly inadequate for INDOT to react in a timely manner to a notice of imminent abandonment. INDOT's one program fund for freight rail, the Industrial Rail Service Fund (IRSF), is used primarily for helping shortline railroads stay in operation. Indeed, even for this purpose, the demand for IRSF funding exceeds the available funding.

Railroads are vital corridors, whether used for freight movement, recreation, transit, or intercity passenger travel. Each of these uses can be important in economic development, whether used to increase property values of homes, attract new businesses, reduce traffic congestion, increase tourism, improve quality-of-life, or to retain jobs by making Indiana farms and manufacturers more competitive. It would currently be very difficult for INDOT to preserve any rail corridor, whatever the intended purpose.

The State is an obvious source for some rail preservation projects, particularly those involving corridors that cross municipal or county lines. While many funding sources exist, including federal agencies and local governments, and private businesses and institutions, most of these sources are quite limited in their realistic ability to provide significant resources for this purpose.

Whatever the source of revenue, a substantial increase in current funding levels for rail, perhaps combined with the ability to borrow money, will be needed if the state is to be in a position to acquire corridors as they come up for abandonment. The most justifiable approach may be to set aside a percentage of taxes already collected from rail businesses. This is already done for the Northern Indiana Commuter Transit District (NICTD) to a limited extent, and could be expanded to include other rail-related businesses without increasing taxes.

SECTION 5: CORRIDOR ACQUISITION PROCEDURES

5.1 The Problem

Indiana law requires the Indiana Department of Transportation ("INDOT") and the Transportation Corridor Planning Board ("the Board") to follow a very time consuming, inflexible, and multi-step procedure before the State can acquire and preserve a railroad right-of-way or corridor threatened with abandonment.[42] Because the state acquisition procedures and timeframes do not mesh with the expedited federal railroad abandonment procedures and deadlines, INDOT could likely lose the opportunity to acquire a strategic rail right-of-way while complying with the current state acquisition procedures.

5.2 Background

Indiana law currently provides for a Transportation Corridor Use Master Plan which requires INDOT to annually prepare a list of existing rights-of-way that might be abandoned during the following year and to set priorities for potential future uses of rights-of-way consistent with INDOT's comprehensive transportation plan and the Department of Natural Resources trail system plan. IC 8-4.5-3 et al. Indiana law also establishes the ten-member Transportation Corridor Planning Board identified above.

The Board's responsibilities include reviewing and approving certain corridor preservation activities of INDOT (such as the list of rights of way that may be abandoned, approving INDOT filings with the federal Surface Transportation Board ("the STB") for public use conditions on corridors identified for preservation), approving applications for funding the acquisition, construction, or improvement of recreational trails, and for considering and approving INDOT's recommendations to acquire a railroad's interest in a corridor proposed for abandonment. IC 8-4.5-3 et al; 8-4.5-5 et al; 8-4.5-4-1 et al. Based upon current regulations these provisions are not efficient or effective in permitting the State to acquire and preserve rail corridors.

Accordingly, the following paragraphs provide justification for a recommendation that the legislature repeal the current statutory acquisition procedures and enact legislation similar to that employed in states such as Maine, Wisconsin or Washington to facilitate state acquisition of strategic rail corridors. Information from those states is included in Appendix G. In addition, suggested language for a new Indiana rail preservation statute is included in Appendix H.

[42] This review deals only with the acquisition of railroad lines which are the subject of a pending or proposed railroad abandonment. It does not deal with the acquisition of "active" freight lines or rail lines needed for intercity or commuter rail passenger service.

5.3 Summary of Current Legislation

Current Indiana Acquisition Process

Under current law, INDOT determines whether the state should acquire a railroad's interest in a corridor that is proposed to be abandoned. Presumably, it does so as part of its annual review of the Transportation Corridor Use Master Plan. INDOT then makes its recommendations to the Board regarding acquisition of a railroad's interest in any corridor. The Board must approve the acquisition of a railroad's interest. Briefly, the statute requires the State to hold one or more hearings for each phase of the acquisition process for which proper notice must be given. Furthermore, the statute requires that the State hold one or more hearings before making its determination, again providing notice to the public for each hearing. IC 8-4.5-4-3.

The state may acquire any part of a railroad's interest in a corridor for any of the following purposes:

1. A present or future rail line
2. A transportation corridor
3. A communication corridor
4. A recreational trail
5. A utility corridor
6. The preservation of a railroad corridor
7. Any combination of purposes described above.
   IC 8-4.5-4-2

In determining whether to acquire a railroad's interest in a corridor, the statute requires INDOT to consider:

A. The potential for future use of the railroad's interest in the corridor as a freight or high-speed passenger rail line, including:

   1. The potential need for use of the railroad's interest in the corridor for future transportation purposes;
   2. The cost of maintaining the railroad's interest in the corridor for future transportation purposes;
   3. The effect of any interim use and the future transportation use of the railroad's interest in the corridor on property owners;
   4. Any relevant requirement of any federal law; and
   5. Any other factor INDOT considers relevant

B. Based on the recommendation of the Department of Natural Resources, the potential for recreational use of the railroad's interest in the corridor including:

   1. The recreational value of the railroad's interest in the corridor;
   2. The feasibility of using the railroad's interest in the corridor for recreation;

3. The likelihood that there may be significant recreational use of the railroad's interest in the corridor if the railroad's interest in the corridor is converted to a recreational trail;
4. The general acceptability of the proposed recreational use of the railroad's interest in the corridor to property owners and the community at large;
5. The existence of a willing person, public or private, to operate the railroad's interest in the corridor for the proposed recreational use;
6. Any relevant requirement of any federal law;
7. Any other factor INDOT considers relevant.

C. The potential for the use of the railroad's interest in the corridor for communications or utility use; and

D. Whether there are funds to acquire the railroad's interest in the corridor. (IC 8-4.5-4-4.)

The current acquisition process includes three discrete steps:

1. The presentation of acquisition proposals at one or more initial public meeting(s);
2. Consideration and recommendation by INDOT of specific acquisitions; and
3. The Board's consideration and approval of INDOT's recommendations.

First, the law requires INDOT to hold at least one public meeting in each county through which the corridor passes before determining whether to acquire it. INDOT may chose to hold additional meetings if appropriate.

Second, after INDOT determines whether to acquire any part of a railroad's interest in a corridor, it makes its recommendations to the Board.

Finally, after receiving INDOT's recommendations, the Board holds one or more public meetings before making its determination. One of these meetings must be held in a county through which the corridor passes.

The law requires that notice of each public meeting must be given at least 48 hours in advance of the meeting and specifies certain parties to whom notice must be given.[43] Given the time required to contact the appropriate attendees, find suitable meeting locations, prepare the meeting

[43] Notice shall also be given to the following at least 48 hours in advance of the meeting:

D. County Commissioners of each county through which the railroad's interest in the proposed abandoned corridor passes

D. The legislative body of each city or town through which the railroad's interest in the corridor passes; or that is within one mile of any part of the railroad's interest in the corridor

D. The railroad that proposes to abandon the railroad's interest in the corridor

D. The Indiana Utility Regulatory Commission.

IC 5-14-1.5; IC 8-4.5-4-3.

notices, and prepare the appropriate paperwork after the meetings, this process could well require no less than 90 days for even the simplest right-of-way acquisition. Where a rail corridor potentially threatened with abandonment traverses several political jurisdictions, the acquisition process could require six months to a year or more.

Accordingly, this time frame must be compared against the time frame to meet the requirements for corridor abandonment as set forth by the STB.

5.4 Surface Transportation Board Abandonment Processes

In general, the abandonment and transfer of all railroad lines is subject to the approval of the STB. In the case of abandonments, the STB's enabling statute,[44] prohibits a railroad from abandoning a line or discontinuing service without first getting STB authorization. In addition, a "person" (either a railroad or a nonrailroad) cannot acquire an "active" rail line (i.e., one that has not been abandoned) without first getting STB acquisition authority.[45]

There are three different STB regulatory schemes applicable to railroad abandonments:

1. The formal statutory provisions of 49 U.S.C. 10901
2. The individual regulatory exemption established by 49 U.S.C. 10502
3. The "class exemption" regulation promulgated at 49 CFR 1152.50.

Each has its own deadlines and procedures including those applicable to purchase through the abandonment process ("the Offer of Financial Assistance" or "OFA").

Formal Abandonment Process

The formal abandonment process involves filing an application for abandonment approval under 49 U.S.C. 10903. It is generally used by larger railroads to abandon strategic line segments, where the applicant (regardless of its size) anticipates substantial opposition to the abandonment, or where an otherwise unprofitable rail line handles a substantial amount of traffic. The formal application is very onerous in terms of its requirements (the applicant must give advance notice in the form of filing a "system diagram map" with the STB 60 days in advance of the application, send a "notice of intent" to the STB 30 days in advance of filing the application, and submit complex supporting economic evidence and property appraisals and other materials necessary for an offeror to submit an OFA), and pay a steep filing fee ($14,500). The formal application process is advantageous to the carrier by providing certainty -- the STB is required to grant or deny the application within 110 days of filing.

Presently the STB reviews only about 3 or 4 formal abandonment applications per year. The only Indiana abandonments which would likely be the subject of a formal application would be the former Conrail lines between Indianapolis and Cincinnati or Gary to the Ohio state line and

[44] The Interstate Commerce Commission (ICC) Termination Act ("the ICCTA").
[45] There is no requirement that a railroad get approval to sell a line. The statute places the burden for approval of a sale on the buyer.

only if there was concerted, substantial opposition by the State or by online communities or customers.

Formal Application Timeline

Prior to filing at STB

60 days prior	Current System Diagram Map filed
15 to 30 days prior	Notice of Intent filed at STB; identifies lines proposed for abandonment
20 days prior	Environmental and Historic Report submitted to federal, state, and local officials

Upon filing

Day 1	Application filed
Day 10	Request for oral hearing due
Day 15	STB grants or denies oral hearing
Day 20	STB publishes decision accepting or rejecting application
Day 45	Protests, comments, requests for public use condition and for trail use conditions due
Day 60	Railroad's reply to protests due
Day 110	STB decision issued
Day 120	Offer of Financial Assistance (OFA) due (see below)

Individual Regulatory Exemption Process

A more common approach than the formal application process is the individual regulatory exemption which the petitioning carrier obtains by filing a "petition for exemption" under 49 U.S.C. 10502. Every abandonment is eligible for approval under this procedure provided the abandonment meets the statutory tests (the matter satisfies one or more of the ICCTA's rail transportation policy goals and either the matter is one of limited scope or there is no opportunity for abuse of captive shippers).

As a practical matter, the STB has great discretion and will consider and grant <u>any</u> abandonment under these procedures provided that there is no opposition from a State agency, city government, or an on-line customer, and if the abandonment is opposed, the line has little or no traffic or is hopelessly unprofitable. The STB has made a practice of rejecting abandonment petitions (requiring the abandonment authority to be sought by formal application) which are based on negative history or where the abandonment may be politically sensitive.

From the petitioning railroad's perspective, the individual regulatory exemption has numerous advantages. The system diagram map and notice of intent requirements do not apply. The petition carries a much lower filing fee ($4,100) and the petitioner does not have to comply with the STB's exceedingly complex abandonment costing regulations (The Standards for Determining Costs, Revenues, and Return on Value).

The STB normally decides an abandonment exemption case within 110 days of filing;[46] however, it does have the right to institute an investigatory (i.e., evidentiary) proceeding to be completed within one year of the filing date.[47] In fact, as noted above, the STB simply chooses to reject an inadequate abandonment petition for exemption rather than develop a more thorough record.

Petition For Exemption Timeline

Prior to filing at the STB	
20 days prior	Environmental & Historic Report submitted to federal, state & local officials
Upon filing	
Day One	Carrier files its Petition
Day 20	STB publishes notice of proposed exemption in Federal Register
Day 40	Parties opposing the exemption must file an opposition, Requests for public use conditions and trail use also due
Day 90	STB may initiate investigation (may take 9 months)
Day 110	STB issues decision
Day 120	Offer of Financial Assistance (OFA) due (see below)

Class Exemptions: Out-of-Service Lines

By far the most common type of abandonment authority used today is that known as a "class exemption" for an out-of-service rail line. This exemption applies to a broad "class" of lines (hence the term "class exemption") where there has been no local service performed (i.e., no local customers have been served) for at least two years, any overhead traffic can be rerouted over other lines, and there are no pending shipper complaints or no shipper complaints decided against the abandoning carrier within the last two years.

The use of the term "out-of-service" is somewhat deceptive because a clever carrier can employ this procedure to abandon a strategic route, taking several years to use pricing and poor service to eliminate local business, and to divert overhead traffic to other routes, and then selectively abandon the route in pieces.

A carrier seeking to abandon a line utilizing this procedure merely files a verified notice of exemption with the STB under 49 CFR 1152.50 and waits 50 days before it can consummate the exemption.

This procedure is especially advantageous to abandoning carriers because it is almost impossible to oppose, requires virtually no supporting evidence, is fast, and cheap (a $2,500 filing fee). As with the individual petition, the system diagram map and notice of intent requirements do not apply.

[46] Normal STB procedure is to make decisions effective 30 days after service. In other words, the petitioner must wait 30 days before consummating the authority granted.

[47] The investigation must be completed within 9 months of the decision to investigate. The decision of whether or not to investigate must be made within 90 days from the date the petition is filed with the STB.

Notice of Exemption Timeline

Prior to filing at the STB	
20 days prior	Environmental & Historic Report submitted to federal, state & local officials
10 days prior	Railroad must notify the state's Public Service Board Commission and three designated federal agencies
Upon filing	
Day One	Carrier files notice of exemption
Day 20	STB issues a decision giving public notice
Day 30	Petitions for Stay due (only way to delay abandonment)
Day 30	Expression of intent due (see below)
Day 40	Petitions for reconsideration, comments, public use conditions and trail use requests due
Day 50	Exemption effective absent a stay

To illustrate the discrepancies in the current Indiana statues and the Surface Transportation Board's process, an example was prepared using the Central Railroad of Indiana line from Shelbyville to Cincinnati. If this line were proposed for abandonment the following three flow charts illustrate (1) the formal application procedure for abandonment, (2) the petition for exemption procedure and (3) the notice of exemption procedure. In every example, using the optimum timing scenario, the line would be abandoned before INDOT could complete the current statutory process to acquire and preserve the line for future use.

CORRIDOR ACQUISITION PROCESS FLOWCHART

EXAMPLE ACQUISITION: CENTRAL RAILROAD OF INDIANA LINE - SHELBYVILLE TO CINCINNATI

1. FORMAL APPLICATION PROCEDURE

CURRENT INDIANA PROCESS	TIME LINE **Prior to filing at STB**	FEDERAL (STB) PROCESS
Receive System Diagram Map (SDM)	60 days prior	Current System Diagram Map filed
Receive notice of intent	15-30 days prior	Notice of intent filed at STB (identifies lines proposed for abandonment)
Receive environmental & historic report	20 days prior	Environmental & historic report submitted to federal, state and local officials
Receive notice from railroad of intent to abandon	10 days prior	
	Upon filing	
Receive application	Day 1	Application filed
Assumes optimum conditions for INDOT for entire process: INDOT makes arrangements for public hearing (in each county that corridor passes through – Shelby, Decatur, Franklin, Ripley, Dearborn) • contact county representatives • arrange location for meeting(s) • prepare & post notice (48 hours in advance of meeting)	Days 2-12	
	Day 10	Request for oral hearing due
Hold meeting in Shelby County	Day 15	STB grants or denies oral hearing
Hold meeting in Decatur County	Day 17	
	Day 20	**STB publishes decision accepting or rejecting application**
Hold meeting in Franklin County	Day 21	
Hold meeting in Ripley County	Day 23	
Hold meeting in Dearborn County	Day 27	
Prepare recommendation for INDOT Commissioner review/approval	Day 29	
Distribute recommendation to Board & call for a meeting (2 weeks notice needed)	Day 34	
	Day 45	**Protests, comments, requests for public use condition and trail use conditions due**
Meeting of Board to decide on acquisition	Day 49	
INDOT makes arrangements for public hearing in a county with the Board (48 hours notice required)	Day 50-51	
Post public hearing notices	Day 54	
Hold meeting in one affected county (Shelby County, for instance)	Day 57	
Board meets to confirm acquisition	**Day 58**	
INDOT submits request for public use condition/trail use condition **(14 days late for STB process)**	Day 59	
	Day 60	Railroads reply to protests due
	Day 110	STB issues decision
	Day 120	Offer of Financial Assistance (OFA) due (if application granted)

CORRIDOR ACQUISITION PROCESS FLOWCHART

EXAMPLE ACQUISITION: CENTRAL RAILROAD OF INDIANA LINE - SHELBYVILLE TO CINCINNATI

2. PETITION FOR EXEMPTION PROCEDURE

CURRENT INDIANA PROCESS	TIME LINE Prior to filing at STB	FEDERAL (STB) PROCESS
Receive environmental & historic report	20 days prior	Environmental & historic report submitted to federal, state and local officials
Receive notice from railroad of intent to abandon	10 days prior	
	Upon filing	
Receive petition for exemption	Day 1	Carrier files its Petition
Assumes optimum conditions for INDOT for entire process: INDOT makes arrangements for public hearing (in each county that corridor passes through – Shelby, Decatur, Franklin, Ripley, Dearborn) • contact county representatives • arrange location for meeting(s) • prepare & post notice (48 hours in advance of meeting)	Days 2-12	
	Day 10	
Hold meeting in Shelby County	Day 15	
Hold meeting in Decatur County	Day 17	
	Day 20	**STB publishes notice of proposed exemption in Federal Register**
Hold meeting in Franklin County	Day 21	
Hold meeting in Ripley County	Day 23	
Hold meeting in Dearborn County	Day 27	
Prepare recommendation for INDOT Commissioner review/approval	Day 29	
Distribute recommendation to Board & call for a meeting (2 weeks notice needed)	Day 34	
	Day 40	**Parties opposing the exemption must file an opposition.** Requests for public use conditions and trail use also due
Meeting of Board to decide on acquisition	Day 49	
INDOT makes arrangements for public hearing in a county with the Board (48 hours notice required)	Day 50-51	
Post public hearing notices	Day 54	
Hold meeting in Shelby County (for example)	Day 57	
Board meets to confirm acquisition	Day 58	
INDOT submits request for public use condition/trail use condition **(19 days late for STB process)**	Day 59	
	Day 90	STB may initiate investigation
	Day 110	STB issues decision
	Day 120	Offer of Financial Assistance (OFA) due (if petition is granted)

CORRIDOR ACQUISITION PROCESS FLOWCHART

EXAMPLE ACQUISITION: CENTRAL RAILROAD OF INDIANA LINE – SHELBYVILLE TO CINCINNATI

3. NOTICE OF EXEMPTION PROCEDURE

CURRENT INDIANA PROCESS	TIME LINE	FEDERAL (STB) PROCESS
	Prior to filing at STB	
Receive environmental & historic report	20 days prior	Environmental & historic report submitted to federal, state and local officials
Receive notice from railroad of intent to abandon	10 days prior	Railroad must notify the state's Public Service Board Commission and three designated federal agencies
	Upon filing	
Receive notice of exemption	Day 1	Carrier files notice of exemption
Assumes optimum conditions for INDOT for entire process: INDOT makes arrangements for public hearing (in each county that corridor passes through – Shelby, Decatur, Franklin, Ripley, Dearborn) • contact county representatives • arrange location for meeting(s) • prepare & post notice (48 hours in advance of meeting)	Days 2-12	
Hold meeting in Shelby County	Day 15	
Hold meeting in Decatur County	Day 17	
	Day 20	**STB issues a decision giving public notice**
Hold meeting in Franklin County	Day 21	
Hold meeting in Ripley County	Day 23	
Hold meeting in Dearborn County	Day 27	
Prepare recommendation for INDOT Commissioner review/approval	Day 29	
	Day 30	**Petition for stay due (only way to delay abandonment)**
	Day 30	**Expression of intent to make an OFA due**
Distribute recommendation to Board & call for a meeting (2 weeks notice needed)	Day 34	
	Day 40	**Petitions for reconsideration, comments, public use conditions and trail use requests due**
Meeting of Board to decide on acquisition	**Day 49**	
INDOT makes arrangements for public hearing in a county with the Board (48 hours notice required)	Day 50-51	
	Day 50	**Exemption effective absent a stay**
Post public hearing notices	Day 54	
Hold meeting in Shelby County (for example)	Day 57	
Board meets to confirm acquisition	**Day 58**	
INDOT submits request for public use condition/trail use condition **(19 days late for STB process)**	Day 59	
	Day 90	STB may initiate investigation
	Day 110	STB issues decision
	Day 120	Offer of Financial Assistance (OFA) due (absent a stay)

5.5 Post Abandonment Conditions and Restrictions

There are three principal procedures administered by the STB which can be used to preserve a rail line threatened with abandonment. They are the Offer of Financial Assistance (OFA), Public Use Conditions, and Trail Use Requests. Each is available whether abandonment authority is obtained by formal application, individual petition, or class exemption. Each has a very different purpose.

Offers of Financial Assistance

The OFA procedure is a rail service preservation procedure contained within the abandonment provisions of the ICCTA (at 49 U.S.C. 10904). Briefly, it allows a "financially responsible person" (i.e., a public agency or other political subdivision, a rail customer, or another railroad with sufficient assets to purchase the line and operate it for a minimum two year period) to force the abandoning carrier to sell it the line or to continue providing service on the line for up to one year.

The statute seeks to encourage the parties to negotiate a voluntary agreement but gives the STB the authority to set purchase price (normally at the line's net liquidation value) and terms if the parties cannot agree. The STB favors the abandoning carrier in setting the purchase price and terms. By statute, the offeror can always withdraw until it executes the purchase agreement but the abandoning carrier has no choice but to sell once the parties agree on terms or the STB sets them.

The OFA process is limited to preserving rail lines for continued (or restored) common carrier rail service. Mass transit, corridor preservation, scenic excursion train service, and trail use are purposes outside the scope of this provision.

While the OFA process is applicable to abandonments approved by the STB under all three regulatory procedures discussed above, there are some minor procedural and timeline differences. An OFA can be filed any time after the carrier submits its request to the STB and must be filed no later than the deadlines identified below.

OFA Timeline

Day One	STB issues decision granting abandonment
Day 10	OFA due **(applications and individual petitions)** $1,000 filing fee to accompany OFA.
Day 10	Parties seeking to file an OFA and lacking appraisal, traffic, and/or engineering information must submit request to railroad, with copy to STB **(individual petitions and class exemptions only)**
Day 10	Parties lacking the above information can submit a "petition to toll" with the STB to get a 30 day extension for preparing and filing an OFA. Railroad required to provide information and STB can further toll proceedings if railroad is uncooperative. **(individual petitions and class exemptions only).**

Day 10	Parties seeking to submit an OFA to acquire a line abandoned by class exemption must first submit a nonbinding "expression of intent" to file an OFA. This document is merely a letter and has no filing fee. **(limited just to class exemptions).**
Day 40	In the absence of a decision tolling the proceedings, the OFA is due with fee **(limited just to class exemptions).**
Day 40	Negotiations conclude between offeror and railroad. Parties must reach agreement or either party can file Petition to Set Terms and Conditions with the STB (a $14,800 filing fee).[48] In case of individual petition or class exemptions, this step occurs 30 days after filing the OFA. (Day 70 for class exemptions).
Day 45	Replies due (usually filed by the abandoning carrier) (Day 75 for class exemptions).
Day 70	STB issues decision setting terms and conditions (Day 100 for class exemptions).
Day 80	Deadline for offeror to accept or reject terms. (Day 110 for class exemptions).
Day 170	Final closing deadline (Day 200 for class exemptions).

5.6 Public Use Conditions and Trail Use Requests

Public Use Conditions and Trail Use Requests are two other procedures available to preserve rail corridors from abandonment. Unlike OFAs, these conditions are intended to preserve the railroad right-of-way rather than the track structure. Furthermore, these provisions are purely voluntary. The STB has no power to force the railroad to sell the right-of-way or to set purchase price terms or conditions.

In each case the party seeking a condition must file its request with the STB during the period pending abandonment as discussed above. The filing of an OFA takes precedence over either a public use or a rail trail. Imposition of a public use condition precludes the railroad from disposing of the right-of-way (and sometimes the track materials) for 180 days after abandonment.

In either case, the party seeking a condition must provide the appropriate justification (identifying eligible public uses and, in the case of trail use, accepting all liabilities and acknowledging that the right-of-way could be restored to rail service at some future date). A party seeking a rail trail designation may make that request at any time before the line is actually abandoned (at which time the STB loses its jurisdiction to be of any assistance).

[48] A petition to set terms and conditions is a very expensive process with filing, legal, and consulting fees putting the total fees at somewhere between $30,000 and $50,000. The STB will usually grant a public agency offeror a fee waiver for good cause shown.

5.7 Conclusions

1. **The process to preserve rail corridors in Indiana is cumbersome and inflexible, which in essence precludes INDOT from taking the necessary steps to acquire rail corridors under the Federal acquisition procedures.**

The practical reality -- particularly for lines to be preserved for rail service -- is that the STB process could be well along or even completed by the time INDOT or some other party meets all the mandatory state requirements and is approved to acquire a line under the current state acquisition process.

Under the most optimal of scenarios, INDOT would likely need six months to consider, approve, and acquire a rail corridor. In the case of lines sought to be abandoned by exemption, the would-be purchaser would have to file an OFA in as little as 70 days after the carrier filed with the STB and would be put in a position of having to make a commitment to purchase the line within 140 days after the carrier filed with the STB.

Where the state sought to acquire a right-of-way through a public use condition or a rail trail designation, the STB deadlines are far more lenient but still problematic for Indiana. Although the public use condition expires six months after the abandonment approval and the right-of-way can be converted to a trail at any time after the abandonment is approved, requests for trail or public use conditions must be made within 45 days of an abandonment filing. The existing state statute requires that the entire process be followed before a decision to acquire a line is made. By the time INDOT was able to reach a decision to even try to acquire a line, the STB deadlines would be expired.

In addition, INDOT cannot force the acquisition of a corridor under either condition. Additionally, should the carrier accidentally consummate the abandonment (as recently occurred with case CSX AB 55 (Sub No. 592x)), the opportunity to convert the right-of-way into a trail is forever lost.

2. **The Transportation Corridor Planning Board appears to play no substantive role in the corridor acquisition process.**

The Indiana process currently requires INDOT staff to conduct hearings and determine if a rail line should be preserved. The Transportation Corridor Planning Board becomes directly involved after INDOT has made a decision as to acquisition. INDOT staff has the knowledge and expertise to make a recommendation to the INDOT Commissioner regarding the preservation/acquisition of a rail corridor. The review and public hearing process by the Board for corridor acquisition is duplicative, time consuming and likely unnecessary.

5.8 Study Recommendations

1. **Develop new state legislation that revises the acquisition process for rail corridors (See Appendix H).**

The revised legislation should:

- Grant INDOT a right of first refusal on abandoned rail corridors
- Authorize INDOT to engage in negotiations with railroads for the purchase of active and abandoned rail corridors
- Give INDOT a means to acquire corridors through expedited eminent domain if the purchase cannot be negotiated.

- INDOT should meet at least annually with all railroads serving the State in order to assess their status and discuss any issues that might need attention. This will allow the staff to annually update the list of rail corridors that might be abandoned during the current year.

- INDOT, in consultation with affected state and local agencies, should annually prepare a master list of rail corridors for preservation.

- INDOT should develop a budget which would permit it or other state or local agencies to acquire these corridors as they become available and would seek appropriations legislation.

2. Eliminate the approval function of the Transportation Corridor Planning Board.

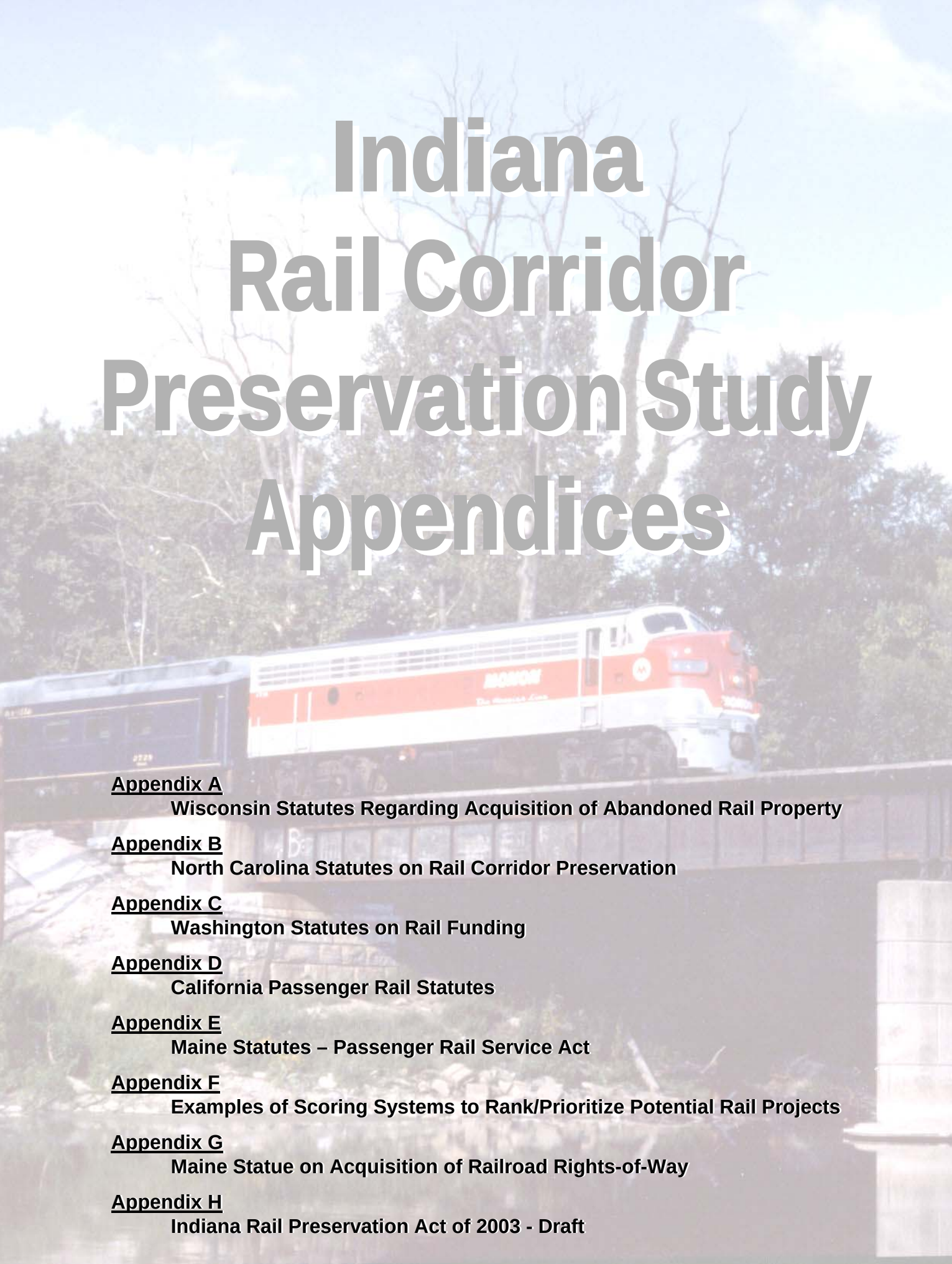
- INDOT staff, having the knowledge and expertise to facilitate rail corridor reviews and investigations, should be given the direct authority to determine which corridors should be considered for acquisition. The staff would then make recommendations to the INDOT Commissioner for action.

3. Eliminate the Transportation Corridor Planning Board or Modify Its Role

- Since the primary function of the Board would be removed under recommendation #2, the Board could be eliminated. **-OR-**

- Maintain the Transportation Corridor Planning Board as an advisory body but eliminate the requirement that the Board review and approve proposed corridor acquisitions. The Board could:
  - Act as a sounding board for INDOT plans and activities
  - Conduct planning reviews, including a review of the list of rail lines proposed to be abandoned each year
  - Serve as a resource for INDOT staff
  - Assist with other activities as needed

Indiana Rail Corridor Preservation Study Appendices



Appendix A
Wisconsin Statutes Regarding Acquisition of Abandoned Rail Property

Appendix B
North Carolina Statutes on Rail Corridor Preservation

Appendix C
Washington Statutes on Rail Funding

Appendix D
California Passenger Rail Statutes

Appendix E
Maine Statutes – Passenger Rail Service Act

Appendix F
Examples of Scoring Systems to Rank/Prioritize Potential Rail Projects

Appendix G
Maine Statue on Acquisition of Railroad Rights-of-Way

Appendix H
Indiana Rail Preservation Act of 2003 - Draft

APPENDIX A

WISCONSIN STATUTES REGARDING ACQUISITION OF ABANDONED RAIL PROPERTY

85.09

85.09 Acquisition of abandoned rail property.

85.09(1)

(1) Definitions. As used in this section:

85.09(1)(b)

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

85.09(1)(c)

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

85.09(1)(d)

(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.

85.09(2)

(2) First right of acquisition.

85.09(2)(a)

(a) The department of transportation shall have the first right to acquire, for present or future transportational or recreational purposes, any property used in operating a railroad or railway, including land and rails, ties, switches, trestles, bridges and the like located thereon, which 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. In exercising its property management authority, the department of transportation, to the greatest extent practicable, shall encourage and utilize the Wisconsin conservation corps for appropriate projects. 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 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.

85.09(2)(b)
(b) The first right of acquisition under this subsection applies only to the following property:

85.09(2)(b)1.
1. In unincorporated areas, any land measured 50 feet from the center line of each outermost track bed and any land between such tracks.

85.09(2)(b)2.
2. In incorporated areas, any land measured 33 feet from the center line of each outermost track bed and any land between such tracks.

85.09(2)(b)3.
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.

85.09(3)
(3) Determination of abandonment. For purposes of this section, rail property shall be deemed abandoned if par. (a) or (b) applies:

85.09(3)(a)
(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.

85.09(3)(b)
(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:

85.09(3)(b)1.
1. If the rail property is not used for railroad purposes for 2 consecutive years.

85.09(3)(b)2.
2. If the facilities on the rail property are removed or rendered unfit for service.

85.09(3)(b)3.
3. If the rail property is used for other than railroad purposes.

85.09(4)

(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 transportational 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 transportational 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 transportational 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 transportational 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.

85.09(4i)

(4i) 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. 16.375 (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).

85.09(4m)

(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.

85.09(5)

(5) Duties of railroads and others.

85.09(5)(a)

(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.

85.09(5)(b)

(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.

85.09(6)

(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).

85.09(7)
(7) Rules. The department may adopt such rules as it deems necessary to accomplish the purposes of this section.

85.09 - ANNOT.
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).*

85.09 - ANNOT.
Cross Reference: *See also ch. Trans 29, Wis. adm. code.*

WISCONSIN STATUTES REGARDING FUNDING FOR TRANSPORTATION-RELATED ACTIVITIES

UNOFFICIAL TEXT
Chapter 20
20.395

20.395
20.395 Transportation, department of. There is appropriated from the transportation fund, or from other funds if so indicated, to the department of transportation the amounts indicated for the following programs:

20.395(1)
(1) Aids.
20.395(1)(ar)
(ar) *Corrections of transportation aid payments.* A sum sufficient to make the corrections of transportation aid payments under s. 86.30 (2) (f) 1.

20.395(1)(as)
(as) *Transportation aids to counties, state funds.* The amounts in the schedule for general transportation aids to counties under s. 86.30.

20.395(1)(at)
(at) *Transportation aids to municipalities, state funds.* The amounts in the schedule for general transportation aids to municipalities under s. 86.30.

20.395(1)(br)
(br) *Milwaukee urban area rail transit system planning study; state funds.* The amounts in the schedule for the purpose of providing the state share of a federally financially assisted planning study of an urban rail transit system under s. 85.063 to serve the Milwaukee urban area. The department shall maximize the use of federal financial aids available for this study wherever feasible and appropriate.

20.395(1)(bs)

(bs) *Transportation employment and mobility, state funds.* As a continuing appropriation, the amounts in the schedule for the transportation employment and mobility program under s. 85.24 (3) (d) and for the grant under 2001 Wisconsin Act 16, section 9152 (5).

20.395(1)(bt)
(bt) *Urban rail transit system grants.* As a continuing appropriation, the amounts in the schedule for the urban rail transit system grant program under s. 85.063 (3).

20.395(1)(bv)
(bv) *Transit and transportation employment and mobility aids, local funds.* All moneys received from any local unit of government or other source for urban mass transit purposes under s. 85.20, for rural public transportation purposes under s. 85.23, or for transportation employment and mobility purposes under s. 85.24 that are not funded from other appropriations under this subsection, for such purposes.

20.395(1)(bx)
(bx) *Transit and transportation employment and mobility aids, federal funds.* All moneys received from the federal government for urban mass transit purposes under s. 85.20, for rural public transportation purposes under s. 85.23, or for transportation employment and mobility purposes under s. 85.24 that are not funded from other appropriations under this subsection, for such purposes.

20.395(1)(cq)
(cq) *Elderly and disabled capital aids, state funds.* As a continuing appropriation, the amounts in the schedule for specialized transportation capital assistance for the elderly and disabled under s. 85.22.

20.395(1)(cr)
(cr) *Elderly and disabled county aids, state funds.* The amounts in the schedule for specialized transportation assistance for the elderly and disabled under s. 85.21.

20.395(1)(cv)
(cv) *Elderly and disabled aids, local funds.* All moneys received from any local unit of government or other source for specialized transportation assistance for the elderly and disabled, for such purposes.

20.395(1)(cx)
(cx) *Elderly and disabled aids, federal funds.* All moneys received from the federal government for specialized transportation assistance for the elderly and disabled, for such purposes.

20.395(1)(ex)
(ex) *Highway safety, local assistance, federal funds.* Not less than 50% of all moneys obligated by the federal government, after July 1, 1975, for the implementation of the federal highway safety program in the state is to be disbursed to local governments, for

such purposes.

20.395(1)(fq)
(fq) *Connecting highways aids, state funds.* The amounts in the schedule to make payments for connecting highways for the purpose of s. 86.32.

20.395(1)(fs)
(fs) *Flood damage aids, state funds.* A sum sufficient to make flood damage aid payments under s. 86.34.

20.395(1)(ft)
(ft) *Lift bridge aids, state funds.* Biennially, the amounts in the schedule to make payments for lift bridges on connecting highways for purposes of s. 86.32 (2).

20.395(1)(fu)
(fu) *County forest road aids, state funds.* The amounts in the schedule for payments to counties for forest road aids under s. 86.315.

20.395(1)(gq)
(gq) *Expressway policing aids, state funds.* The amounts in the schedule to reimburse any county policing expressways under s. 59.84 (10) (b).

20.395(1)(hr)
(hr) *Tier B transit operating aids, state funds.* The amounts in the schedule for mass transit aids under s. 85.20 (4m) (a) 7.

20.395(1)(hs)
(hs) *Tier C transit operating aids, state funds.* The amounts in the schedule for mass transit aids under s. 85.20 (4m) (a) 8.

20.395(1)(ht)
(ht) *Tier A-1 transit operating aids, state funds.* The amounts in the schedule for mass transit aids under s. 85.20 (4m) (a) 6. cm.

20.395(1)(hu)
(hu) *Tier A-2 transit operating aids, state funds.* The amounts in the schedule for mass transit aids under s. 85.20 (4m) (a) 6. d.

20.395(1)(ig)
(ig) *Professional football stadium maintenance and operating costs, state funds.* From the general fund, all moneys received under s. 341.14 (6r) (b) 8. b., for the purposes of making deposits to funds established by professional football stadium districts under s. 85.605.

20.395(2)
(2) Local transportation assistance.

20.395(2)(aq)
(aq) *Accelerated local bridge improvement assistance, state funds.* As a continuing appropriation, the amounts in the schedule for local bridge construction and reconstruction under s. 84.11.

20.395(2)(av)
(av) *Accelerated local bridge improvement assistance, local funds.* All moneys received from any local unit of government for purposes of local bridge construction and reconstruction under s. 84.11, for such purposes.

20.395(2)(ax)
(ax) *Accelerated local bridge improvement assistance, federal funds.* All moneys received from the federal government for purposes of local bridge construction and reconstruction under s. 84.11, for such purposes.

20.395(2)(bq)
(bq) *Rail service assistance, state funds.* As a continuing appropriation, the amounts in the schedule for rail property and rail property improvements acquisition, for freight railroad assistance under s. 85.08, for administrative activities related to railroad crossings under chs. 84 to 86 and for administration of railroad programs under ch. 85.

http://folio.legis.state.wi.us/cgibin/om_isapi.dll?clientID=295573&infobase=stats.nfo&j1=Chapter%2020&jump=Chapter%2020&record={35FF}

APPENDIX B

NORTH CAROLINA STATUTES ON RAIL CORRIDOR PRESERVATION

Article 2D.
Railroad Revitalization.

§ 136-44.35. Railroad revitalization and corridor preservation a public purpose.

The General Assembly hereby finds that programs for railroad revitalization which assure the maintenance of safe, adequate, and efficient rail transportation services and that programs for railway corridor preservation which assure the availability of such corridors in the future are vital to the continued growth and prosperity of the State and serve the public purpose. (1979, c. 658, s. 1; 1989, c. 600, s. 1.)

§ 136-44.36. Department of Transportation designated as agency to administer federal and State railroad revitalization programs.

The General Assembly hereby designates the Department of Transportation as the agency of the State of North Carolina responsible for administering all State and federal railroad revitalization programs. The Department of Transportation is authorized to develop, and the Board of Transportation is authorized to adopt, a State railroad plan, and the Department of Transportation is authorized to do all things necessary under applicable State and federal legislation to properly administer State and federal railroad revitalization programs within the State. Such authority shall include, but shall not be limited to, the power to receive federal funds and distribute and expend federal and State funds for rail programs designed to cover the costs of acquiring, by purchase, lease or other manner as the department considers appropriate, a railroad line or other rail property to maintain existing or to provide future rail service; the costs of rehabilitating and improving rail property on railroad lines to the extent necessary to permit safe, adequate and efficient rail service on such lines; and the costs of constructing rail or rail related facilities for the purpose of improving the quality, efficiency and safety of rail service. The Department shall also have the authority to preserve railroad corridors for future railroad use and interim compatible uses and may lease such corridors for interim compatible uses. Such authority shall also include the power to receive and administer federal financial assistance without State financial participation to railroad companies to cover the costs of local rail service continuation payments, of rail line rehabilitation, and of rail line construction as listed above. This Article shall not be construed to grant to the department the power or authority to operate directly any rail line or rail facilities. (1979, c. 658, s. 2; 1987 (Reg. Sess., 1988), c. 1071, s. 1; 1989, c. 600, s. 2.)

§ 136-44.36A. Railway corridor preservation.

The North Carolina Department of Transportation is authorized, pursuant to 16 U.S.C.A. § 1247(d), to preserve rail transportation corridors and permit compatible interim uses of such corridors. (1987 (Reg. Sess., 1988), c. 1071, s. 2.)

§ 136-44.36B. Power of Department to preserve and acquire railroad corridors.

In exercising its power to preserve railroad corridors, the Department of Transportation may acquire property for new railroad corridors and may acquire property that is or has been part of a railroad corridor by purchase, gift, condemnation, or other method, provided that the Department may not condemn part of an existing, active railroad line. The procedures in Article 9 of this Chapter apply when the Department condemns property to preserve or acquire a railroad corridor. (1989, c. 600, s. 3; 1991, c. 673, s. 1.)

§ 136-44.36C. Installment contracts authorized.

The Department of Transportation may purchase active or inactive railroad lines, corridors, rights-of-way, locomotives, rolling stock, and other rail property, both real and personal, by installment contracts which create in the property purchased a security interest to secure payment of the purchase money. No deficiency judgment may be rendered against the Department of Transportation in any action for breach of a contractual obligation authorized by this section, and the taxing power of the State is not and may not be pledged directly or indirectly to secure any money due the seller. (1991, c. 673, s. 2.)

§ 136-44.36D. Recreational leasing requirements.

Portions of rail corridors held by the North Carolina Department of Transportation in fee simple absolute may be leased by the Department for interim public recreation use provided the following conditions are met:

(1) Before requesting trail use, a sponsoring unit of local government has held a public hearing in accordance with G.S. 143-318.12 and notified the owners of all parcels of land abutting the corridor as shown on the county tax listing of the hearing date, place, and time by first-class mail at the last addresses listed for such owners on the county tax abstracts. A transcript of all public comments presented at the hearing has been sent to the North Carolina Department of Transportation at the time of requesting use of the corridor.

(2) A unit of local government has requested use of the rail corridor or a portion thereof for interim public recreational trail use, and agrees in writing to assume all development costs as well as management, security, and liability responsibilities as defined by the North Carolina Department of Environment and Natural Resources and

the North Carolina Department of Transportation.

(3) Adjacent property owners are offered broad voting representation by membership in the organization, if any, that is delegated most immediate responsibility for development and management of the rail-trail by the sponsoring local government.

(4) The North Carolina Department of Transportation has determined that there will not likely be a need to resume active rail service in the leased portion of the rail corridor for at least 10 years.

(5) Any lease or other agreement allowing trail use includes terms for resumption of active rail use which will assure unbroken continuation of the corridor's perpetual use for railroad purposes and interim compatible uses.

(6) Use of the rail corridor or portions thereof as a recreational trail does not interfere with the ultimate transportation purposes of the corridor as determined by the North Carolina Department of Transportation. (1991, c. 751, s. 1; 1997-443, s. 11A.119(a).)

§ 136-44.37. Department to provide nonfederal matching share.

The Department of Transportation upon approval by the Board of Transportation and the Director of the Budget may provide for the matching share of federal rail revitalization assistance programs through private resources, county funds or State appropriations as may be provided by the General Assembly. Prior to taking any action under this section, the Director of the Budget may consult with the Advisory Budget Commission. (1979, c. 658, s. 3; 1983, c. 717, s. 48; 1985 (Reg. Sess., 1986), c. 955, ss. 47, 48.)

§ 136-44.38. Department to provide State and federal financial assistance to cities and counties for rail revitalization.

The Department of Transportation is authorized to distribute to cities and counties State financial assistance for local rail revitalization programs provided that every rail revitalization project for which State financial assistance would be utilized must be approved by the Board of Transportation and by the Director of the Budget. Prior to taking any action under this section, the Director of the Budget may consult with the Advisory Budget Commission.

(b) Repealed by Session Laws 1989, c. 600, s. 4. (1979, c. 658, s. 3; 1983, c. 717, s. 48; 1985 (Reg. Sess., 1986), c. 955, ss. 49, 50; 1989, c. 600, s. 4.)

Source:
http://www.ncga.state.nc.us/Statutes/GeneralStatutes/HTML/ByChapter/Chapter_136.html

APPENDIX C

WASHINGTON STATUTES ON RAIL FUNDING

RCW 47.76.250

Essential rail assistance account -- Purposes.

(1) The essential rail assistance account is created in the state treasury. Moneys in the account may be appropriated only for the purposes specified in this section.

(2) Moneys appropriated from the account to the department of transportation may be used by the department or distributed by the department to cities, county rail districts, counties, economic development councils, and port districts for the purpose of:

(a) Acquiring, rebuilding, rehabilitating, or improving rail lines;

(b) Purchasing or rehabilitating railroad equipment necessary to maintain essential rail service;

(c) Constructing railroad improvements to mitigate port access or mainline congestion;

(d) Construction of loading facilities to increase business on light density lines or to mitigate the impacts of abandonment;

(e) Preservation, including operation, of light density lines, as identified by the Washington state department of transportation, in compliance with this chapter; or

(f) Preserving rail corridors for future rail purposes by purchase of rights of way. The department shall first pursue transportation enhancement program funds, available under the federal surface transportation program, to the greatest extent practicable to preserve rail corridors. Purchase of rights of way may include track, bridges, and associated elements, and must meet the following criteria:

(i) The right of way has been identified and evaluated in the state rail plan prepared under this chapter;

(ii) The right of way may be or has been abandoned; and

(iii) The right of way has potential for future rail service.

(3) The department or the participating local jurisdiction is responsible for maintaining any right of way acquired under this chapter, including provisions for drainage management, fire and weed control, and liability associated with ownership.

(4) Nothing in this section impairs the reversionary rights of abutting landowners, if any, without just compensation.

(5) The department, cities, county rail districts, counties, and port districts may grant franchises to private railroads for the right to operate on lines acquired under this chapter.

(6) The department, cities, county rail districts, counties, and port districts may grant trackage rights over rail lines acquired under this chapter.

(7) If rail lines or rail rights of way are used by county rail districts, port districts, state agencies, or other public agencies for the purposes of rail operations and are later abandoned, the rail lines or rail rights of way cannot be used for any other purposes without the consent of the underlying fee title holder or reversionary rights holder, or until compensation has been made to the underlying fee title holder or reversionary rights holder.

(8) The department of transportation shall develop criteria for prioritizing freight rail projects that meet the minimum eligibility requirements for state assistance under RCW 47.76.240. The department shall develop criteria in consultation with the Washington state freight rail policy advisory committee. Project criteria should consider the level of local financial commitment to the project as well as cost/benefit ratio. Counties, local communities, railroads, shippers, and others who benefit from the project should participate financially to the greatest extent practicable.

(9) Moneys received by the department from franchise fees, trackage rights fees, and loan payments shall be redeposited in the essential rail assistance account. Repayment of loans made under this section shall occur within a period not longer than fifteen years, as set by the department. The repayment schedule and rate of interest, if any, shall be determined before the distribution of the moneys.

(10) The state shall maintain a contingent interest in any equipment, property, rail line, or facility that has outstanding grants or loans. The owner may not use the line as collateral, remove track, bridges, or associated elements for salvage, or use it in any other manner subordinating the state's interest without permission from the department.

(11) Moneys distributed under this chapter should be provided as loans wherever practicable. Except as provided by section 3, chapter 73, Laws of 1996, for improvements on or to privately owned railroads, railroad property, or other private property, moneys distributed shall be provided solely as loans.

[1996 c 73 § 2; 1995 c 380 § 6; 1993 c 224 § 4; 1991 sp.s. c 13 § 22; 1991 c 363 § 125; 1990 c 43 § 11. Prior: 1985 c 432 § 2; 1985 c 57 § 64; 1983 c 303 § 6. Formerly RCW 47.76.030.]

NOTES:

Effective date -- 1996 c 73: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 13, 1996]." [1996 c 73 § 4.]

Effective dates -- Severability -- 1991 sp.s. c 13: See notes following RCW 18.08.240.

Purpose -- Captions not law -- 1991 c 363: See notes following RCW 2.32.180.

Construction -- Severability -- Headings -- 1990 c 43: See notes following RCW 81.100.010.

Effective date -- 1985 c 57: See note following RCW 18.04.105.

Severability -- 1983 c 303: See RCW 36.60.905.

County rail districts: Chapter 36.60 RCW.

Port districts, acquisition and operation of facilities: RCW 53.08.020.

http://www.leg.wa.gov/RCW/index.cfm?fuseaction=section&section=47.76.250

Chapter 81.100 RCW
HIGH OCCUPANCY VEHICLE SYSTEMS

SECTIONS

81.100.010 Purpose.

81.100.020 Definitions.

81.100.030 Employer tax.

81.100.040 Adoption of goals.

81.100.050 Survey of tax use.

81.100.060 Excise tax.

81.100.070 High occupancy vehicle account.

81.100.080 Use of funds.

81.100.090 Interlocal agreements.

81.100.100 Urban public transportation system.

81.100.900 Construction -- Severability -- Headings -- 1990 c 43.

NOTES:

Use of moneys, construction priority: See 1990 c 298 § 35.

RCW 81.100.010
Purpose.
The need for mobility, growing travel demand, and increasing traffic congestion in urban areas necessitate accelerated development and increased utilization of the high-occupancy vehicle system. RCW 81.100.030 and 81.100.060 provide taxing authority that counties or regional transportation investment districts can use in the near term to

accelerate development and increase utilization of the high-occupancy vehicle system by supplementing available federal, state, and local funds.

[2002 c 56 § 409; 1990 c 43 § 12.]

NOTES:

Captions and subheadings not law -- Severability -- 2002 c 56: See RCW 36.120.900 and 36.120.901.

Construction -- 1990 c 43: "This act shall be liberally construed to give effect to the intent of this act." [1990 c 43 § 56.]

Severability -- 1990 c 43: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 43 § 57.]

Headings -- 1990 c 43: "Section headings, part headings, and the index as used in this act do not constitute any part of the law." [1990 c 43 § 55.]

RCW 81.100.020
Definitions.
Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Transit agency" means a city that operates a transit system, a public transportation benefit area, a county transportation authority, or a metropolitan municipal corporation.

(2) The "high occupancy vehicle system" includes high occupancy vehicle lanes, related high occupancy vehicle facilities, and high occupancy vehicle programs.

(3) "High occupancy vehicle lanes" mean lanes reserved for public transportation vehicles only or public transportation vehicles and private vehicles carrying no fewer than a specified number of passengers under RCW 46.61.165.

(4) "Related facilities" means park and ride lots, park and pool lots, ramps, bypasses, turnouts, signal preemption, and other improvements designed to maximize use of the high occupancy vehicle system.

(5) "High occupancy vehicle program" means advertising the high occupancy vehicle system, promoting carpool, vanpool, and transit use, providing vanpool vehicles, and enforcement of driving restrictions governing high occupancy vehicle lanes.

[1990 c 43 § 13.]

RCW 81.100.030
Employer tax.
(1) A county with a population of one million or more, or a county with a population of from two hundred ten thousand to less than one million that is adjoining a county with a population of one million or more, and having within its boundaries existing or planned high-occupancy vehicle lanes on the state highway system, or a regional transportation investment district for capital improvements, but only to the extent that the tax has not already been imposed by the county, may, with voter approval impose an excise tax of up to two dollars per employee per month on all employers or any class or classes of employers, public and private, including the state located in the agency's jurisdiction, measured by the number of full-time equivalent employees. In no event may the total taxes imposed under this section exceed two dollars per employee per month for any single employer. The county or investment district imposing the tax authorized in this section may provide for exemptions from the tax to such educational, cultural, health, charitable, or religious organizations as it deems appropriate.

Counties or investment districts may contract with the state department of revenue or other appropriate entities for administration and collection of the tax. Such contract shall provide for deduction of an amount for administration and collection expenses.

(2) The tax shall not apply to employment of a person when the employer has paid for at least half of the cost of a transit pass issued by a transit agency for that employee, valid for the period for which the tax would otherwise be owed.

(3) A county or investment district shall adopt rules that exempt from all or a portion of the tax any employer that has entered into an agreement with the county or investment district that is designed to reduce the proportion of employees who drive in single-occupant vehicles during peak commuting periods in proportion to the degree that the agreement is designed to meet the goals for the employer's location adopted under RCW 81.100.040.

The agreement shall include a list of specific actions that the employer will undertake to be entitled to the exemption. Employers having an exemption from all or part of the tax through this subsection shall annually certify to the county or investment district that the employer is fulfilling the terms of the agreement. The exemption continues as long as the employer is in compliance with the agreement.

If the tax authorized in RCW 81.100.060 is also imposed, the total proceeds from both tax sources each year shall not exceed the maximum amount which could be collected under RCW 81.100.060.

[2002 c 56 § 410; 1991 c 363 § 153; 1990 c 43 § 14.]

NOTES:

Captions and subheadings not law -- Severability -- 2002 c 56: See RCW 36.120.900 and 36.120.901.

Purpose -- Captions not law -- 1991 c 363: See notes following RCW 2.32.180.

RCW 81.100.040
Adoption of goals.
The legislature encourages counties, in conjunction with cities, metropolitan planning organizations, and transit agencies in metropolitan areas to adopt goals for reducing the proportion of commuters who drive in single-occupant vehicles during peak commuting periods. Any county imposing a tax under this chapter must adopt such goals. In adopting these goals, counties shall consider at least the following:

(1) Existing and anticipated levels of peak-period traffic congestion on roadways used by employees in commuting to work;

(2) Existing and anticipated levels of transit and vanpool service and carpool programs available to and from the worksite;

(3) Variations in employment density and employer size;

(4) Availability and cost of parking; and

(5) Consistency of the goals with the regional transportation plan.

[1990 c 43 § 15.]

RCW 81.100.050
Survey of tax use.
The department of transportation shall include in the annual transit report under RCW 35.58.2795 and 35.58.2796 an element describing actions taken under this chapter. On at least two occasions prior to December 31, 1998, the department shall include an evaluation of the effectiveness of such actions.

[1990 c 43 § 16.]

RCW 81.100.060
Excise tax.
A county with a population of one million or more and a county with a population of from two hundred ten thousand to less than one million that is adjoining a county with a population of one million or more, having within their boundaries existing or planned high-occupancy vehicle lanes on the state highway system, or a regional transportation investment district for capital improvements, but only to the extent that the surcharge has not already been imposed by the county, may, with voter approval, impose a local surcharge of not more than three-tenths of one percent of the value on vehicles registered to a person residing within the county and not more than 13.64 percent on the state sales and use taxes paid under the rate in RCW 82.08.020(2) on retail car rentals within the county or investment district. A county may impose the surcharge only to the extent that it has not been imposed by the district. No surcharge may be imposed on vehicles

licensed under RCW 46.16.070 except vehicles with an unladen weight of six thousand pounds or less, RCW 46.16.079, 46.16.085, or 46.16.090.

Counties or investment districts imposing a tax under this section shall contract, before the effective date of the resolution or ordinance imposing a surcharge, administration and collection to the state department of licensing, and department of revenue, as appropriate, which shall deduct an amount, as provided by contract, for administration and collection expenses incurred by the department. All administrative provisions in chapters 82.03, 82.32, and 82.44 RCW shall, insofar as they are applicable to motor vehicle excise taxes, be applicable to surcharges imposed under this section. All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW shall, insofar as they are applicable to state sales and use taxes, be applicable to surcharges imposed under this section.

If the tax authorized in RCW 81.100.030 is also imposed, the total proceeds from tax sources imposed under this section and RCW 81.100.030 each year shall not exceed the maximum amount which could be collected under this section.

[2002 c 56 § 411; 1998 c 321 § 34 (Referendum Bill No. 49, approved November 3, 1998); 1992 c 194 § 12; 1991 c 363 § 154; 1990 c 43 § 17.]

NOTES:

Captions and subheadings not law -- Severability -- 2002 c 56: See RCW 36.120.900 and 36.120.901.

Purpose -- Severability -- 1998 c 321: See notes following RCW 82.14.045.

Contingent effective dates -- 1998 c 321 §§ 23-42: See note following RCW 82.14.045.

Legislative intent -- 1992 c 194: See note following RCW 82.08.020.

Effective dates -- 1992 c 194: See note following RCW 46.04.466.

Purpose -- Captions not law -- 1991 c 363: See notes following RCW 2.32.180.

Changes in tax law -- Liability: RCW 82.08.064, 82.14.055, and 82.32.430.

RCW 81.100.070
High occupancy vehicle account.
Funds collected by the department of revenue or other entity under RCW 81.100.030, or by the department of licensing under RCW 81.100.060, less the deduction for collection expenses, shall be deposited in the high occupancy vehicle account hereby created in the custody of the state treasurer. On the first day of the months of January, April, July, and October of each year, the state treasurer shall distribute the funds in the account to the

counties on whose behalf the funds were received. The state treasurer shall make the distribution under this section without appropriation.

[1991 sp.s. c 13 §§ 105, 119; 1990 c 43 § 18.]

NOTES:

Effective dates -- Severability -- 1991 sp.s. c 13: See notes following RCW 18.08.240.

RCW 81.100.080
Use of funds.
Funds collected under RCW 81.100.030 or 81.100.060 and any investment earnings accruing thereon shall be used by the county in a manner consistent with the regional transportation plan only for costs of collection, costs of preparing, adopting, and enforcing agreements under RCW 81.100.030(3), for construction of high occupancy vehicle lanes and related facilities, mitigation of environmental concerns that result from construction or use of high occupancy vehicle lanes and related facilities, payment of principal and interest on bonds issued for the purposes of this section, for high occupancy vehicle programs as defined in RCW 81.100.020(5), and for commuter rail projects in accordance with RCW 81.104.120. No funds collected under RCW 81.100.030 or 81.100.060 after June 30, 2000, may be pledged for the payment or security of the principal or interest on any bonds issued for the purposes of this section. Not more than ten percent of the funds may be used for transit agency high occupancy vehicle programs.

Priorities for construction of high occupancy vehicle lanes and related facilities shall be as follows:

(1)(a) To accelerate construction of high occupancy vehicle lanes on the interstate highway system, as well as related facilities;

(b) To finance or accelerate construction of high occupancy vehicle lanes on the noninterstate state highway system, as well as related facilities.

(2) To finance construction of high occupancy vehicle lanes on local arterials, as well as related facilities.

Moneys received by an agency under this chapter shall be used in addition to, and not as a substitute for, moneys currently used by the agency for the purposes specified in this section.

Counties may contract with cities or the state department of transportation for construction of high occupancy vehicle lanes and related facilities, and may issue general obligation bonds to fund such construction and use funds received under this chapter to pay the principal and interest on such bonds.

[1990 c 43 § 19.]

RCW 81.100.090
Interlocal agreements.
Counties imposing a tax under this chapter shall enter into an agreement through the interlocal cooperation act with the department of transportation. The agreement shall provide an opportunity for the department of transportation, cities and transit agencies having within their boundaries a portion of the existing or planned high occupancy vehicle system as contained in the regional transportation plan, to coordinate programming and operational decisions affecting the high occupancy vehicle system. If two or more adjoining counties impose a tax under RCW 81.100.030 or 81.100.060, the counties shall jointly enter one interlocal agreement with the department of transportation.

[1990 c 43 § 20.]

RCW 81.100.100
Urban public transportation system.
The high occupancy vehicle system is an urban public transportation system as defined in RCW 47.04.082.

[1990 c 43 § 21.]

RCW 81.100.900
Construction -- Severability -- Headings -- 1990 c 43.

See notes following RCW 81.100.010.

Source:
http://www.leg.wa.gov/rcw/index.cfm?fuseaction=chapter&chapter=81.100&RequestTimeout=500

APPENDIX D

CALIFORNIA PASSENGER RAIL STATUTE

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known and may be cited as the Intercity Passenger Rail Act of 1996.

SEC. 2. (a) The Legislature finds and declares all of the following:

(1) An intercity rail passenger system, linking major urban centers and complemented by feeder bus services that provide access to outlying areas and destinations, is an important element of the state's transportation system, and shall remain a state-funded program.

(2) The state has a continuing interest in the provision of cost-effective intercity rail passenger services and has a responsibility to coordinate intercity services statewide.

(3) Since 1976, the state has invested over one billion dollars ($1,000,000,000) in capital improvements and operating support for intercity service and must ensure the protection of that investment. Recently, state costs to support operation of this service have increased greatly due to congressional reductions in Amtrak's federal operating support.

(b) The Legislature, through the enactment of this act, intends all of the following:

(1) The Secretary of Business, Transportation and Housing shall be responsible for the overall planning, coordination, and budgeting of the intercity service.

(2) If the secretary determines that transferring responsibility for intercity rail service in a particular corridor or corridors to a statutorily created joint powers agency would result in administrative or operating cost reductions, the secretary may authorize the Department of Transportation to enter into an interagency agreement to effect a transfer of those administrative functions.

(3) Any intercity rail corridor for which administrative responsibility has been transferred to a joint powers board through an interagency agreement shall remain as a component of the statewide system of intercity rail corridors.

(4) The public interest requires expansion of the state intercity rail program in order to keep pace with the needs of an expanding population.

(5) For not less than a three-year period, the level of state funding for intercity rail service in each corridor shall be maintained at a level equal to at least the current level of service

in the corridor, thus providing fiscal stability that will allow appropriate planning and operation of these services.

SEC. 3. Section 14031.8 of the Government Code is repealed.

SEC. 4. Section 14031.8 is added to the Government Code, to read:

14031.8. (a) The Secretary of Business, Transportation and Housing shall establish, through an annual budget process, the level of state funding available for the operation of intercity passenger rail service in each corridor.

(b) Where applicable, operating funds shall be allocated by the secretary to the joint powers board in accordance with an interagency agreement which includes mutually agreed-upon rail services. Funds for the administration and marketing of services, as appropriate, shall also be transferred by the secretary to the joint powers board, subject to the terms of the interagency agreement.

(c) The joint powers board or local or regional entities may augment state-provided resources to expand intercity passenger rail services, or to address funding shortfalls in achieving agreed-upon performance standards.

(d) The department may provide any support services as may be mutually agreed upon by the board and the department.

(e) Operating costs shall be controlled by dealing with, at a minimum, the current Amtrak cost allocation formula and the ability to contract out to Amtrak or other rail operators as a part of federal legislation dealing with Amtrak reauthorization.

(f) Not later than December 31, 1997, the secretary shall establish a set of uniform performance standards for all corridors and operators to control cost and improve efficiency.

SEC. 5. Section 14031.9 of the Government Code is repealed.

SEC. 6. Section 14031.10 of the Government Code is repealed.

SEC. 7. Article 5 (commencing with Section 14070) is added to Chapter 1 of Part 5 of Division 3 of Title 2 of the Government Code, to read:

Article 5. Intercity Rail Agreements

14070. As used in this article, the following terms have the following meanings:

(a) "Board" or "joint powers board" means the governing board of a joint exercise of powers agency established pursuant to Article 5.2 (commencing with Section 14072), Article 5.4 (commencing with Section 14074), or Article 5.6 (commencing with Section 14076) for the purpose of assuming administrative responsibility for intercity passenger rail service within the respective corridor.

(b) "Secretary" means the Secretary of the Business, Transportation and Housing Agency.

14070.2. (a) If authorized by the secretary, the department may, through an interagency agreement, transfer to a joint powers board, and the board may assume, all responsibility for administering passenger rail service in the corridor. Upon the date specified in the agreement, the board shall succeed to the department's powers and duties relative to that service, except that the department shall retain responsibility for developing budget requests for the service through the state budget process, which shall be developed in consultation with the board, and for coordinating service in the corridor with other passenger rail services in the state.

(b) The interagency agreement shall be executed on or before December 31, 1996. If an interagency agreement is not entered into on or before December 31, 1996, the secretary shall provide a report to the Governor and the Legislature on or before January 30, 1997, explaining why an acceptable agreement has not been developed, with specific recommendations for developing an acceptable interagency agreement.

(c) The secretary shall require the board to demonstrate the ability to meet the performance standards established by the secretary pursuant to subdivision (f) of Section 14031.8.

14070.4. (a) An interagency transfer agreement between the department and a joint powers board, when approved by the secretary, shall do all of the following:

(1) Specify the date and conditions for the transfer of responsibilities and identify the annual level of funding for the initial five years of the transfer and ensure that the level of funding is consistent with and sufficient for the planned service improvements within the corridor.

(2) Identify, for the initial year and subsequent years, the funds to be transferred to the board including state operating subsidies made available for intercity rail services in the corridor, and funds currently used by the department for administration and marketing of the corridor, with the amounts adjusted annually for inflation and in accordance with the business plan.

(3) Specify the level of service to be provided, the respective responsibilities of the board and the department, the methods that the department will use to assure the coordination of services with other rail passenger services in the state, and the methods that the department will use for the annual review of the business plan and annual proposals on funding and appropriations.

(4) Describe the terms for transferring to the joint exercise of powers agency car and locomotive train sets, and other equipment and property owned by the department and required for the intercity service in the corridor including, but not limited to, the number of units to be provided, liability coverage, maintenance and warranty responsibilities, and indemnification issues.

(5) Describe auditing responsibilities and process requirements, reimbursement and billing procedures, the responsibility for funding shortfalls, if any, during the course of each fiscal year, an operating contract oversight review process, performance standards and reporting procedures, the level of rail infrastructure maintenance, and other relevant monitoring procedures. The description shall contain an evaluation of the impact of any transfer of equipment on other intercity corridors. The agreement shall endeavor to minimize the impact and maximize the efficient use of the equipment, including continued joint use of equipment that is currently shared by one or more corridors.

(b) Use of the annual state funding allocation, as set forth in the interagency transfer agreement for the initial five years, shall be described in an annual business plan submitted by the board to the secretary for review and recommendation by April 1 of each year. The business plan, when approved by the secretary, shall be deemed accepted by the state. The budget proposal developed by the department for the subsequent year shall be based upon the business plan approved by the secretary. The business plan shall be consistent with the interagency agreement and shall include a report on the recent as well as historical performance of the corridor service, an overall operating plan including proposed service enhancement to increase ridership and provide for increased traveler demands in the corridor for the upcoming year, short-term and long-term capitol improvement programs, funding requirements for the upcoming fiscal year, and an action plan with specific performance goals and objectives. The business plan shall document service improvements to provide the planned level of service, inclusion of operating plans to serve peak period work trips, and consideration of other service expansions and enhancements. The plan shall clearly delineate how funding and accounting for state-sponsored rail passenger services shall be separate from locally sponsored services in the corridor. Proposals to expand or modify passenger services shall be accompanied by the identification of all associated costs and ridership projections. The business plan shall establish, among other things: fares, operating strategies, capital improvements needed, and marketing and operational strategies designed to meet performance standards established in the interagency agreement.

(c) Based on the annual business plan and the subsequent appropriation by the Legislature, the secretary shall allocate state funds on an annual basis to the board. As provided in the interagency agreement, any additional funds that are required to operate the passenger rail service during the fiscal year shall be provided by the board from jurisdictions that receive service. In addition, the board may use any cost savings or farebox revenues to provide service improvements related to intercity service. In any

event, the board shall report the fiscal results of the previous year's operations as part of the annual business plan.

(d) The term of the agreement shall not exceed three years.

(e) The level of service funded by the state shall in no case be less than the current number of intercity roundtrips operated in a corridor and serving the end points currently served by the intercity rail corridor. The level of service funded by the state shall also include feeder bus service with substantially the same number of route miles as the current feeder system, to be operated in conjunction with the trains.

(f) Nothing in this article shall be construed to preclude expansion of state-approved intercity rail service.

14070.6. The department and any entity that assumes administrative responsibility for passenger rail services through an interagency transfer agreement, may, through a competitive bid process, contract with the National Railroad Passenger Corporation (Amtrak) or with other organizations authorized under state or federal law to provide passenger rail services, and may contract with rail corporations and other rail operators for the use of tracks and other facilities and for the provision of passenger services on terms and conditions as the parties may agree. The department is deemed to be a third-party beneficiary of the contract, and the contract shall not contain any provision or condition that would negatively impact on or conflict with any other contracts the department has regarding intercity rail services. Any entity that succeeds the department as sponsor of state-supported passenger rail services through an interagency transfer agreement, is deemed an agency of the state for all purposes related to passenger rail services, including Section 1614 of Title 49 of the United States Code.

SEC. 8. Article 5.2 (commencing with Section 14072) is added to Chapter 1 of Part 5 of Division 3 of Title 2 of the Government Code, to read:

14072. The Southern California Regional Rail Authority is an existing joint powers authority formed pursuant to Section 130255 of the Public Utilities Code, made up of the county transportation commissions of the Counties of Los Angeles, Orange, Riverside, San Bernardino, and Ventura, and set up to operate the commuter rail network known as Metrolink in those counties.

14072.2. The joint powers authority, known as the Southern California Regional Rail Authority, may, if the authority elects to be a party to an interagency agreement pursuant to Article 5 (commencing with Section 14070), be expanded to form an authority for the administration of intercity passenger rail services in the Counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura. The

expanded authority may include, but is not limited to, the following agencies: the Imperial Valley Association of Governments, the Los Angeles County Metropolitan Transportation Commission, the Orange County Transportation Authority, the Riverside County Transportation Commission, the San Bernardino Association of Governments, the San Diego Association of Governments, the San Luis Obispo Council of Governments, the Santa Barbara County Association of Governments, and the Ventura County Transportation Commission. For the purposes of this section, "authority" means the expanded board of the Southern California Regional Rail Authority. Only the expanded board or authority, not the Southern California Regional Rail Authority board existing on July 1, 1996, may exercise jurisdiction over intercity rail matters for the service area of the authority. For purposes of taking action on intercity rail issues, including, but not limited to, equipment, funding, legislation, marketing, and operations, the member agency from each county shall be allowed one vote. Representation shall be limited to one agency per county.

14072.4. Membership in the expanded Southern California Regional Rail Authority shall be one voting representative from each of the designated member agencies. Members shall be appointed from each of the member agencies annually.

14074.6. This article shall be applicable only if the entities to be represented on the authority enter into a joint exercise of powers agreement to expand the authority, and elect to become a party to an interagency transfer agreement pursuant to Article 5 (commencing with Section 14070).

Source:
http://www.leginfo.ca.gov/cgibin/waisgate?WAISdocID=1969307302+0+0+0&WAISaction=retrieve

APPENDIX E

MAINE STATUTES – PASSENGER RAIL SERVICE ACT

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication is current to the end of the First Special Session of the 120th Legislature, which ended November 14, 2002, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

PLEASE NOTE: The Revisor's Office cannot provide legal advice or interpretation of Maine law. If you need such legal assistance, please contact a qualified attorney.

Chapter 621: PASSENGER RAIL SERVICE (HEADING: PL 1995, c. 374, @3 (new))

Subchapter 1: GENERAL PROVISIONS (HEADING: PL 1995, c. 374, @3 (new))

§8001. Short title

This chapter may be known and cited as the "Passenger Rail Service Act." [1995, c. 374, §3 (new).]

§8002. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 374, §3 (new).]

1. Authority. "Authority" means the Northern New England Passenger Rail Authority and any successors to that authority. [1995, c. 374, §3 (new).]

2. Government agency. "Government agency" includes any department, agency, commission, bureau, authority, instrumentality and political subdivision of: [1995, c. 374, §3 (new).]

A. The Federal Government; [1995, c. 374, §3 (new).]

B. The State; [1995, c. 374, §3 (new).]

C. Any other state; and [1995, c. 374, §3 (new).]

D. The Dominion of Canada and any of its provinces. [1995, c. 374, §3 (new).]

3. Railroad line. "Railroad line" or "lines" means the right-of-way, track, track appurtenances, ties, bridges, station houses and other appurtenant structures. [1995, c. 374, §3 (new).]

§8003. Initiation and establishment of passenger rail service

1. Establishment of service. The authority is directed to take all actions that are reasonably necessary to initiate, establish or reinitiate regularly scheduled passenger rail service between points within this State and points within and outside this State. These actions may include, but are not limited to, the acquisition, holding, use, operation, repair, construction, reconstruction, rehabilitation, modernization, rebuilding, relocation, maintenance and disposition of railroad lines, railway facilities, rolling stock, machinery and equipment, trackage rights, real and personal property of any kind and any rights in or related to that property. [1995, c. 374, §3

(new).]

2. Acquisition of properties; rights. The authority may acquire any of the properties or rights listed in subsection 1 through purchase, lease, lease-purchase, gift, devise or otherwise. In making these acquisitions the authority may exercise the power of eminent domain following the same procedure set forth in section 7154, subsection 5; except that any notice of condemnation must be filed in the registry of deeds for the county or counties, or registry division or divisions, in which the property is located, in the case of real property, and with the office of the Secretary of State in the case of personal property. [1995, c. 374, §3 (new).]

§8004. Contracts; studies

In order to implement section 8003 and the purposes of this chapter, the authority is directed to: [1995, c. 374, §3 (new).]

1. Conduct studies. Conduct or cause to be conducted any studies that the authority determines necessary or proper; [1995, c. 374, §3 (new).]

2. Enter into contracts. Enter into and fulfill any contracts and agreements the authority determines necessary or proper; [1995, c. 374, §3 (new).]

3. Acquire property. Acquire property, including, but not limited to, railroad lines, both within and outside of this State; and [1995, c. 374, §3 (new).]

4. Cooperate with government agencies. Cooperate and enter into agreements, contracts and compacts with any government agency, the National Railroad Passenger Corporation and any other person, public or private. [1995, c. 374, §3 (new).]

§8005. Initial funding

1. Funds for implementation. The authority is directed to seek and use funds necessary for the implementation of this chapter, in an amount not less than $40,000,000, exclusive of any interest or other debt service or expenses paid for funds borrowed through bond issues or otherwise. [1995, c. 374, §3 (new).]

2. Expenditure of funds. These funds must be spent first to reinitiate, at the earliest practicable time, regularly scheduled passenger rail service between Portland, Maine and Boston, Massachusetts, and points between. Any funds that exceed those necessary to reinitiate service between those points must be spent by the authority to extend, to the extent practicable, regularly scheduled passenger rail service to other points within and outside of this State. [1995, c. 543, §2 (amd).]

§8006. Additional funding

The authority is directed to use any revenues it receives from the operation of the passenger rail service established pursuant to this chapter to pay the operational expenses of that service. The authority is directed to seek and use funds necessary to pay all operational expenses of this passenger rail service that are not met by fares and other funds or revenues. For the purposes of this section, "operational expenses" include, but are not limited to, all additional capital expenses necessary to maintain the passenger rail service. [1995, c. 374, §3 (new).]

§8007. Federal funds

The authority may take all actions consistent with this chapter necessary to qualify for, accept and disburse any money that the Federal Government may grant or loan to the authority to fund any actions required of the authority under the terms of this chapter. [1995, c. 374, §3 (new).]

§8008. Government agencies

Any government agency may allocate money and take other actions that may aid in the implementation of this chapter. The authority may provide funds, including loans and matching grants, to government agencies in order to encourage their participation in implementing this chapter. [1995, c. 374, §3 (new).]

§8009. Reasonable fares

Fares for the passenger rail service established pursuant to this chapter must be set at reasonable levels to encourage use of this service. [1995, c. 374, §3 (new).]

§8010. Satisfaction of operating deficits

The authority is directed to obtain all additional funds, through borrowing, revenues or other means, necessary to satisfy operating deficits arising from expenses, including capital expenditures, necessary to ensure the continuation of passenger rail service established pursuant to this chapter. [1995, c. 374, §3 (new).]

§8011. Rules of construction

This chapter must be construed liberally to effectuate the purposes of this chapter. Any amount of money set forth in this chapter is intended to represent a minimum amount that may be spent to effect those purposes. The State may appropriate to the authority, and the authority may expend, additional amounts for those purposes. [1995, c. 374, §3 (new).]

§8012. Passenger rail liability limitation

The liability of passenger rail transportation service providers is limited to a maximum of $75,000,000 in the aggregate for any claims and awards, compensatory or punitive, for property damage, personal injury, bodily injury or death arising from a rail incident or accident occurring in this State and involving a passenger train, but only if those providers have first secured and maintained liability insurance having policy limits of not less than $75,000,000 per occurrence in the aggregate. If a passenger rail transportation service provider fails to secure and maintain liability insurance having policy limits of not less than $75,000,000 per occurrence in the aggregate, then the liability limitation of this section does not apply to that provider. The $75,000,000 aggregate limit is the maximum amount for all claims and awards against all potentially responsible passenger rail transportation service providers involved in a rail incident or accident collectively. A passenger rail transportation service provider may enter into contracts that allocate financial responsibility for claims or awards. For the purposes of this section, a "passenger rail transportation service provider" includes for-profit and non-profit corporations and legal entities that own, lease, operate or manage passenger trains or passenger rail service, the Northern New England Passenger Rail Authority, railroad companies and other legal entities contracting with the Northern New England Passenger Rail Authority for the provision of passenger rail service, railroad companies that own, lease, provide track rights or maintain rail lines over which passenger trains pass and operators of passenger train services, but does not include Amtrak or its successor organization. This section does not affect immunities, limitation

on damages, limitation of actions, limitation of liability or other protections provided to the State, as defined by Title 14, section 8102, subsection 4, under the Maine Tort Claims Act. [2001, c. 54, §1 (new).]

Subchapter 2: NORTHERN NEW ENGLAND PASSENGER RAIL AUTHORITY (HEADING: PL 1995, c. 374, @3 (new))

§8111. Purpose

The Northern New England Passenger Rail Authority, as established by Title 5, section 12004-F, subsection 16, is a body both corporate and politic in the State established for the general purpose of promoting passenger rail service as set forth in subchapter I. It is declared that the purposes of this chapter are public and that the authority shall be regarded as performing a governmental function in carrying out this chapter. The authority, as successor in interest of the Department of Transportation and to its rights, privileges and liabilities as set forth in subchapter I, shall receive any federal and state funds previously authorized to the department for that purpose, and upon creation of the authority all such rights, privileges and liabilities of the department cease. [1995, c. 374, §3 (new).]

§8112. Directors

1. Board of directors. The authority consists of a board of 5 directors appointed by the Governor each to serve for 5 years; except for those first appointed one director is appointed for one year, one director for 2 years, one director for 3 years and one director for 4 years. Immediately after their appointments, the directors of the authority shall enter upon their duties. The Governor shall name one of the appointed members as chair of the authority. The directors shall elect a treasurer and a secretary who need not be members of the authority and any other officers as the board of directors from time to time considers necessary. Any vacancy must be filled for the unexpired term by the Governor. A vacancy in the authority does not impair the right of a quorum of the directors to exercise all the rights and perform all the duties of the authority. The Governor may remove a member from the authority for misconduct. [1995, c. 374, §3 (new).]

2. Meetings of directors; compensation. All the powers of the authority may be exercised by the board of directors in lawful meeting and a majority of the directors then in office is necessary for a quorum. Regular meetings of the board of directors may be established by bylaw and notice need not be given to the directors of the regular meeting. Each director is entitled to compensation according to the provisions of Title 5, chapter 379. [1995, c. 543, §3 (amd).]

§8113. Conflict of interest

A director, officer or employee of the authority may not acquire any interest, direct or indirect, in any contract or proposed contract of the authority. A director, officer or employee may not participate in any decision on any contract entered into by the authority if that individual has any interest, direct or indirect, in any firm, partnership, corporation or association that will be party to such a contract or financially involved in any transaction with the authority; except this prohibition does not apply to the execution of agreements by banking institutions for the deposit or handling of authority funds in connection with any contract or to utility services, the rates for which are fixed or controlled by a governmental agency. [1995, c. 374, §3 (new).]

§8114. Powers

The authority may: [1995, c. 374, §3 (new).]

1. Suit. Sue and be sued; [1995, c. 374, §3 (new).]

2. Seal. Have a seal and alter the seal at pleasure; [1995, c. 374, §3 (new).]

3. Bylaws; rules. Adopt from time to time and amend bylaws covering its procedure and rules for the purposes set forth in this chapter; develop and adopt rules in accordance with the Maine Administrative Procedure Act; publish bylaws and rules as necessary or advisable; and cause records of its proceedings to be kept; [1995, c. 374, §3 (new).]

4. Employees. Employ such assistants, attorneys, experts, inspectors and such other employees and consultants as the authority considers necessary or desirable for its purposes; [1995, c. 374, §3 (new).]

5. Department of Transportation. Utilize the services of the State's Department of Transportation that are available and expedient and all charges for services provided by the department may be paid to it by the authority as mutually agreed upon; and [1995, c. 374, §3 (new).]

6. Other action. Take all lawful action necessary and incidental to effectuate the purposes set forth in this chapter. [1995, c. 374, §3 (new).]

§8115. Obligations of the authority

All expenses incurred in carrying out this chapter must be paid solely from funds provided to or obtained by the authority pursuant to this chapter. Any notes, obligations or liabilities under this chapter may not be deemed to be a debt of the State or a pledge of the faith and credit of the State; but those notes, obligations and liabilities are payable exclusively from funds provided to or obtained by the authority pursuant to this chapter. Pecuniary liability of any kind may not be imposed upon the State or any locality, town or landowner in the State because of any act, agreement, contract, tort, malfeasance, misfeasance or nonfeasance by or on the part of the authority or its agents, servants or employees. The records and correspondence relating to negotiations, trade secrets received by the authority and estimates of costs on projects to be put out to bid are confidential and the authority is deemed to have a lawyer-client privilege. [1995, c. 374, §3 (new).]

§8116. Report to the Legislature; departmental review

1. Annual report. Beginning January 1, 1996, on an annual basis, the authority shall present its report to the Legislative Council and send copies to the joint standing committee of the Legislature having jurisdiction over transportation matters and the Commissioner of Transportation. The report shall include a description of the authority's activities for the preceding fiscal year, including a report of its receipts and expenditures from all sources. [1995, c. 374, §3 (new).]

2. Operating budget. Beginning January 31, 1996, on an annual basis, the authority shall present the operating budget of the authority for the next fiscal year beginning July 1st to the Commissioner of Transportation for approval. The authority may only make expenditures in accordance with allocations approved by the commissioner. Any balance of an allocation that at any time may not be required for the purpose named in that allocation may be transferred at any time prior to the closing of the books to any other allocation for the use of the authority for the same fiscal year subject to review and approval by the commissioner. Fiscal statements

describing a transfer must be submitted by the authority to the commissioner 30 days before the transfer is to be implemented. These fiscal statements must include information specifying the accounts that are affected, amounts to be transferred, a description of the transfer and a detailed explanation as to why the transfer is needed. [1995, c. 374, §3 (new).]

§8117. Fair practices; affirmative action

The authority is subject to and shall comply with Title 5, chapter 65. [1995, c. 374, §3 (new).]

§8118. Property of the authority (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. Property of the authority. All property of the authority pursuant to the provisions of this chapter is exempt from levy and sale by virtue of any execution and an execution or other judicial process is not a valid lien upon its property held pursuant to the provisions of this chapter. The authority may use its property only for the purposes set forth in this chapter. [1995, c. 374, §3 (new).]

2. Entry upon lands. The authority and its authorized agents and employees may enter upon any lands, waters and premises in the State for the purpose of making surveys, soundings, drillings and examinations as it determines necessary or convenient for the purpose of this chapter and the entry may not be deemed a trespass nor is the authority liable for the discovery of any form of waste or environmental contamination. [1995, c. 374, §3 (new).]

3. (TEXT EFFECTIVE UNTIL 7/1/03) Authority for transfer of interest in land to the authority. Any county, municipality or other political subdivision, any public agency or commission of the State and any public service corporation or district, notwithstanding any contrary provisions of law, may lease, lend, grant or convey to the authority, upon its request and upon such terms and conditions as the proper authorities of the political subdivision, agency, commission, public service corporation or district determine reasonable and fair, any real or personal property or rights in the property that are necessary or convenient to the effectuation of the authorized purposes of the authority, including real and personal property or rights in the property already devoted to public use. As used in the subsection, the term "public service corporation" includes a public utility as defined in Title 35-A, section 102, subsection 13 and a corporation referred to in Title 13-A. [1995, c. 374, §3 (new).]

3. (TEXT EFFECTIVE 7/1/03) Authority for transfer of interest in land to the authority. Any county, municipality or other political subdivision, any public agency or commission of the State and any public service corporation or district, notwithstanding any contrary provisions of law, may lease, lend, grant or convey to the authority, upon its request and upon such terms and conditions as the proper authorities of the political subdivision, agency, commission, public service corporation or district determine reasonable and fair, any real or personal property or rights in the property that are necessary or convenient to the effectuation of the authorized purposes of the authority, including real and personal property or rights in the property already devoted to public use. As used in the subsection, the term "public service corporation" includes a public utility as defined in Title 35-A, section 102, subsection 13 and a corporation referred to in Title 13-C. [RR 2001, c. 2, Pt. B, §41 (cor); §58 (aff).]

§8119. Exemption from taxes

Because the accomplishment by the authority of the authorized purpose stated in this chapter

is for the benefit of the people of the State and for the improvement of their commerce and prosperity and is the performance of essential governmental functions, the authority may not be required to pay any taxes or assessment on any property acquired or used by it for the purposes provided in this chapter; except that service facilities leased or rented by the authority to business entities are subject to taxation and assessments must be made against the tenant in possession based upon the value of the leasehold interest, both real and personal. The authority may not be required to pay any tax upon its income except as may be required by the laws of the United States. [1995, c. 374, §3 (new).]

§8120. Employees

Employees of the Northern New England Passenger Rail Authority are subject to the state retirement provisions of Title 5, Part 20 and the state employee health insurance program under Title 5, chapter 13, subchapter II. [1999, c. 152, Pt. E, §4 (new).]

The retirement accounts of state employees transferred to the authority in its capacity as an independent agency must remain in the state regular plan. New employees of the authority shall also become members of the Maine State Retirement System under the state regular plan. The authority shall make employer retirement plan contributions at the state regular plan rate. Employee retirement plan contributions must be at the state regular plan rate. [1999, c. 152, Pt. E, §4 (new).]

The accrued fringe benefits of state employees transferred to the authority in its capacity as an independent agency, including vacation and sick leave, health and life insurance and retirement, remain with the transferred employee. [1999, c. 152, Pt. E, §4 (new).]

Authority employees are entitled to receive the same retirement health benefits as state employees. [1999, c. 152, Pt. E, §4 (new).]

Source: http://janus.state.me.us/legis/statutes/23/title23ch621.rtf

APPENDIX F

EXAMPLES OF SCORING SYSTEMS
TO RANK/PRIORITIZE POTENTIAL RAIL PROJECTS

Table F-1
Virginia Rail Industrial Access Project
Selection Point System

Criterion	Category	Points
Total # of Annual Carloads	a. 501 or greater b. 401 to 500 c. 301 to 400 d. 201 to 300 e. 101 to 200 f. 100 or less	a. 20 points b. 17 points c. 14 points d. 11 points e. 8 points f. 5 points
Added Employment	a. 101 or greater b. 76 to 100 c. 51 to 75 d. 26 to 50 e. 25 or less	a. 20 points b. 17 points c. 14 points d. 11 points e. 8 points
Ratio of Commonwealth Contribution to Initial Capital Investment Cost	a. 0.03 or less b. 0.04 to 0.06 c. 0.07 to 0.10 d. 0.11 to 0.14 e. 0.15	a. 10 points b. 8 points c. 6 points d. 4 points e. 2 points
Jurisdictional Unemployment Rate (Statewide Unemployment Rate = R)	a. (2.5 + R) or greater b. (2.0+R) to (2.4+R) c. (1.5+R) to (1.9+R) d. (1.0+R) to (1.4+R) e. (0.9+R) or less	a. 20 points b. 17 points c. 14 points d. 11 points e. 8 points
Project Included in an Economic Development Initiative		10 points
Non-State Contributions to Track Construction	a. 41% or greater b. 31% to 40% c. 21% to 30% d. 11% to 20% e. 10% or less	a. 10 points b. 8 points c. 6 points d. 4 points e. 2 points
Contributes to the long term viability of a branchline		10 points
Legend: 80 - 100 points = Excellent, 65-80 points = Good, 50-65 points = Fair, <50 Not recommended		

Source: Virginia Department of Rail and Public Transportation, *Railroad Industrial Access Program: Application Procedures* (Richmond, Virginia), Appendix A via *State Rail Policies, Plans & Programs*, Lyndon B. Johnson School of Public Affairs, The University of Texas at Austin, Policy Research Project Report No. 123, 1997.

Table F-2
North Carolina Rail Industrial Access Program
Project Point System

Criterion	**Category**	**Points**
Employment created in first two years of operation	a. 300 or greater b. 200 to 299 c. 100 to 199 d. 50 to 99	a. 16 points b. 12 points c. 8 points d. 4 points
Capital Investment in first two years of operation	a. $5 million or greater b. $25 to $34 million c. $15 to $24 million d. $5 to $14 million	a. 8 points b. 6 points c. 4 points d. 2 points
Annual Carloads	a. 500 or greater b. 350 to 499 c. 200 to 349 d. 50 to 199	a. 8 points b. 6 points c. 4 points d. 2 points
Shortline Preservation		2 points
Distress County of Appalachian Regional Commission eligibility bonus		2 points
Legend: More than 35 points receives 50% of project cost or maximum available - $139,000 24 to 34 points receives 45% of maximum 16 to 23 points receives 40% of maximum 8 to 15 points receives 35% of maximum Less than 8 points receives no funds		

Source: North Carolina Department of Transportation, Rail Division, *Rail Industrial Access Program Policy and Procedures*, Raleigh, North Carolina via *State Rail Policies, Plans & Programs*, Lyndon B. Johnson School of Public Affairs, The University of Texas at Austin, Policy Research Project Report No. 123, 1997.

APPENDIX G

MAINE STATUE ON ACQUISITION OF RAILROAD RIGHTS-OF-WAY

Title 12: CONSERVATION

Part 2: FORESTS, PARKS, LAKES AND RIVERS

Chapter 220: BUREAU OF PARKS AND LANDS (HEADING: PL 1997, c. 678, @13 (new))

Subchapter 2: PARKS AND HISTORIC SITES (HEADING: PL 1997, c. 678, @13 (new))

§1813. Acquisition of railroad rights-of-way for open space or recreation corridors

For the purpose of establishing, preserving or enhancing corridors for use for open space or recreation, the director may acquire with the consent of the Governor and the commissioner, by license, lease, purchase, gift or eminent domain, railroad rights-of-way upon which rail service is no longer operated. When railroad rights-of-way or interests in railroad rights-of-way are taken by eminent domain, the proceedings must be in accordance with this section and are not subject to Title 35-A, chapter 65. For purposes of these acquisitions, the term "owner" as used in this section means the person holding the dominant rights in the property immediately prior to the termination of the operation of rail service and that person's successors and assigns. Acquisitions pursuant to this subsection are not subject to any limitation in acreage. [1997, c. 678, §13 (new).]

If the bureau decides to acquire property by eminent domain, it must have the property appraised and offer to the owner just compensation for the interests acquired. The bureau must file in the registry of deeds for each county in which the property lies a notice of the taking that contains a description of the property and of the interest taken and the name or names of the owner or owners. The bureau may join one or more properties in the same notice, whether those properties are in the same or different ownership. A check in the amount of the award and a copy of the notice of taking must be served upon the owner or owners. If there is more than one owner, the check may be served upon any one of the owners of each separate property. The notice of the taking must be published once in a newspaper of general circulation in each county where the property lies, and that publication constitutes service on any unknown owner or owners or other persons who may have a claim or interest in the property. [1997, c. 678, §13 (new).]

Railroad rights-of-way or other interests within the jurisdiction of the United States Interstate Commerce Commission may not be acquired by eminent domain. [1997, c. 678, §13 (new).]

If any owner is aggrieved by the bureau's award, the owner may appeal from it to the Kennebec County Superior Court or the Superior Court in the county in which the land lies within 30 days after the date of service or publication of the notice of the taking. The appeal must be taken by filing a complaint setting forth the facts upon which the case will be tried according to the Maine Rules of Civil Procedure. The Superior Court shall determine damages by a jury verdict or, if all parties agree, by the court without a jury or by a referee or referees and shall render judgment for any damages, with interest when it is due. [1997, c. 678, §13 (new).]

Except in the case of an acquisition by license or lease and unless otherwise specifically

excepted by the bureau, all reversionary and servient rights in and any other conflicting claims to property acquired pursuant to this section terminate and are extinguished forever as of the date of the acquisition by the bureau. Any person who makes a claim to the property must mail a written notice to the owner and the bureau. Any person damaged by the extinguishing of those rights may make claim for damages in accordance with the eminent domain appeal procedures of this section within 2 years of the date of the acquisition. The burden of proving the validity, compensability and value of any claim is upon the claimant. Notice of the acquisition must be given to the apparent holders of such interests as provided in this section. If the bureau determines that the property acquired may be subject to reversionary or servient interests or other conflicting claims, in order to avoid double or multiple liability, the bureau may make a blanket award of compensation for the acquisition and, instead of serving the award check on the owner, request that the Treasurer of State establish an interest-bearing account into which the full amount of that compensation is deposited. The funds and any interest accrued must be disposed of as follows. [1997, c. 678, §13 (new).]

1. **No claims made or action filed within 2-year period.** If the 2-year period for filing a claim for damages for the extinguishment of a reversionary or servient right or other conflicting claim expires and no claim has been made or action filed, then the Treasurer of State upon request by the bureau shall pay the funds deposited, including any interest accrued, to the owner as defined in this section. [1997, c. 678, §13 (new).]
2. **Claims made or action filed within 2-year period.** If one or more claims have been made or an action filed prior to the expiration of the 2-year period for filing a claim for damages, then the owner as defined in this section must be made a party to those claims and the Treasurer of State shall distribute the deposited funds, including any interest accrued, in accordance with the final order entered in such proceedings, including any appeals. [1997, c. 678, §13 (new).]

As a result of the difficulty of determining the identities and addresses of the possible holders of reversionary or servient rights or other conflicting claims, personal notice to those holders and their mortgagees is deemed given if the bureau mails a notice of the acquisition, including a description of its effect of extinguishing those rights, first class postage prepaid, to each person shown in the real estate tax records of the municipality in which the property lies as the apparent owner of land abutting the property taken. Notice must be posted in the municipal office building, if any, for that municipality and must be published once in a newspaper of general circulation in the county in which the property lies. [1997, c. 678, §13 (new).]

http://janus.state.me.us/legis/statutes/12/title12sec1813.html

Note: See Appendix A for Wisconsin acquisition procedures.

WASHINGTON STATUTE ON RAIL PRESERVATION

RCW 47.76.240

Rail preservation program.

The state, counties, local communities, ports, railroads, labor, and shippers all benefit from continuation of rail service and should participate in its preservation. Lines that provide benefits to the state and local jurisdictions, such as avoided roadway costs, reduced traffic congestion, economic development potential, environmental protection, and safety, should be assisted through the joint efforts of the state, local jurisdictions, and the private sector.

State funding for rail service, rail preservation, and corridor preservation projects must benefit the state's interests. The state's interest is served by reducing public roadway maintenance and repair costs, increasing economic development opportunities, increasing domestic and international trade, preserving jobs, and enhancing safety. State funding for projects is contingent upon appropriate local jurisdiction and private sector participation and cooperation. Before spending state moneys on projects the department shall seek federal, local, and private funding and participation to the greatest extent possible.

(1) The department of transportation shall continue to monitor the status of the state's mainline and branchline common carrier railroads and preserved rail corridors through the state rail plan and various analyses, and shall seek alternatives to abandonment prior to interstate commerce commission proceedings, where feasible.

(2) The utilities and transportation commission shall intervene in interstate commerce commission proceedings on abandonments, when necessary, to protect the state's interest.

(3) The department of transportation, in consultation with the Washington state freight rail policy advisory committee, shall establish criteria for evaluating rail projects and corridors of significance to the state.

(4) Local jurisdictions may implement rail service preservation projects in the absence of state participation.

(5) The department of transportation shall continue to monitor projects for which it provides assistance.

[1995 c 380 § 5; 1993 c 224 § 3; 1990 c 43 § 4. Formerly RCW 47.76.130.]

NOTES:

Construction -- Severability -- Headings -- 1990 c 43: See notes following RCW 81.100.010.

http://www.leg.wa.gov/RCW/index.cfm?fuseaction=section&section=47.76.240

APPENDIX H

INDIANA RAIL PRESERVATION ACT OF 2003

DRAFT

9/18/02

Sec. 1. Railroad revitalization and corridor preservation a public purpose.

The General Assembly hereby finds that programs for railroad revitalization which assure the maintenance of safe, adequate, and efficient rail transportation services and that programs for railway corridor preservation which assure the availability of such corridors in the future are vital to the continued growth and prosperity of the State and serve the public purpose.

Sec. 2. Department of Transportation designated as agency to administer the State railroad preservation program.

The General Assembly hereby designates the Department of Transportation as the agency of the State of Indiana responsible for administering the State's railroad preservation program. The Department is authorized to develop and to adopt a State railroad preservation plan, and the Department is authorized to do all things necessary under applicable State and federal legislation to properly administer the State's railroad preservation program. Such authority shall include, but shall not be limited to, the power to receive federal funds and distribute and expend federal and State funds for rail programs designed to cover the costs of acquiring, by purchase, lease, eminent domain, or other manner as the Department considers appropriate, a railroad line, railroad corridor, or other rail property. The Department shall also have the authority to preserve railroad corridors for future railroad use and interim compatible uses and may lease such corridors for interim compatible uses. The Department may grant or loan funds to responsible groups for the purpose of preserving, restoring, or rehabilitating railroad corridors for interim compatible uses. This Article shall not be construed to grant to the Department the power or authority to operate directly any rail line or rail facilities.

Sec. 3. Rail Corridor Inventory.

The Department shall on an annual basis compile and maintain a list of rail lines potentially eligible for inclusion in the State's Rail Corridor Inventory (the RCI). All railroad lines and railroad rights of way traversing the State shall be eligible for inclusion in the RCI.

Sec. 4. The Department to meet annually with railroads.

The Department is directed to meet at least annually with all common carrier railroads traversing the State for the purpose of ascertaining their future plans for their rail network. The Department shall solicit the railroads plans for changes to the physical plant including track and signals, service changes, changes in traffic flows, and potential sale or abandonment of lines. The railroads shall furnish all material requested by the Department; however, the Department shall maintain the confidentiality of any materials furnished under a request of confidentiality.

Sec. 5. Inclusion of railroad lines in RCI.

(A) The filing by a railroad of a System Diagram Map at the federal Surface Transportation Board (STB) classifying a line as a potential abandonment candidate (a category one line) or the receipt by the Department as the State's clearinghouse of an environmental and historic letter advising that the railroad will shortly seek STB authorization for abandonment or discontinuance shall automatically cause that line to be included in the State's RCI.

(B). The Commissioner of the Department of Transportation shall upon the advice of the staff and in consultation with affected rail customers, communities, and responsible rail trail organizations, promptly delete from the RCI those lines or track segments having no use as rail corridors.

Sec. 6. Imposition of state liens against railroad lines.

Once a carrier proposes to abandon or discontinue service over a line placed on the RCI,

the Commissioner shall record a lien on the line in the land records of the counties traversed by the line. This lien shall void any conveyance of the railroad's track and right of way without first offering the Department a right of first refusal to acquire this property at the line's constitutional minimum value as determined under the precedents of the Interstate Commerce Commission and the STB. The Commissioner shall remove this lien upon learning that the abandonment or discontinuance proposal has been withdrawn, the line is to be sold for continued common carrier rail service under the provisions of 49 U.S.C. 10904(d)-(f) or any other provision of law, the line is to be transferred to a state agency or political subdivision under the public use provisions of 49 U.S.C. 10905 or right of first refusal provisions of this statute, the line is to be transferred to a qualified trail owner/operator under the National Trails Act, or the line is to be conveyed to another responsible party for the provision of intercity rail passenger or urban mass transit service.

Sec. 7. Federal Preemption of State Law.

In the event of a conflict between State and Federal law as administered by the STB, federal law shall apply.

Sec. 8. Power of the Department to acquire and preserve railroad lines, rights of way, or other rail property.

The Department is hereby authorized to acquire, by gift, devise, purchase, lease, eminent domain, or other lawful method the Department deems appropriate, a railroad line, right of way, or other rail property traversing the State. The Department shall exercise this authority when in the Commissioner's discretion it is necessary to protect the public interest, to preserve railroad corridors for present or future railroad use and interim compatible uses. In making a purchase determination, the Commissioner shall consider the following criteria:

A. The potential need for use of the railroad's interest in the corridor as a freight or high-speed passenger rail line;
B. The potential for recreational use of the railroad's interest in the corridor;
C. The potential for the use of the railroad's interest in the corridor for communications or utility use; and
D. The availability of funds to acquire the railroad's interest in the corridor.

Sec. 9. Acquisition procedures.

(A) Upon inclusion of a rail line in the RCI, the Department shall immediately initiate negotiations with the railroad for purchase of the line, the right of way, or other rail property at a price deemed reasonable by the Department. If the parties are unable to reach a purchase agreement, the Department may acquire the line, the right of way, or other rail property through the eminent domain procedures of sec. 10.

(B) Should a party such as a rail shipper, another railroad, or a duly constituted Indiana political subdivision step forward to negotiate to purchase the line, the Department shall give such party the opportunity to purchase the line in lieu of the State.

Sec. 10. Eminent domain procedures.

Should the Department be unsuccessful in its negotiations to acquire the line, it will initiate proceedings to acquire the line, the right of way, or other rail property through eminent domain. The Department will commence proceedings by sending a notice identifying and describing the property to the party or parties identified in the records of the county or counties traversed by the line as the record owner(s) and to the real estate office for the county or counties traversed by the line. The Department shall also publish the notice in a newspaper of general circulation in each county traversed by the line. Said notice shall advise the owner(s) of the Department's desire to acquire the line. The Department shall then prepare and furnish the owner(s) with an appraisal of the real estate and improvements thereon setting the price of the

property at its constitutional minimum value as determined under the precedent of the Interstate Commerce Commission and the STB. Upon receipt of the appraisal, the owner(s) shall have 20 days in which to accept or reject the Department's purchase offer. If accepted, the parties will go to closing within 90 days of acceptance. If the owner(s) reject(s) the Department's purchase offer, the owner(s) will have an additional 30 days in which to file suit in the appropriate State Court having jurisdiction over this matter. The Department will then tender a check in payment at the State's appraised value and close the purchase within 30 days of the rejection with the Court to determine whether any additional amount is due the owner(s).

Sec. 11. Prior legislation repealed; Transportation Corridor Planning Board abolished

Chapters 2, 3, and 4 of Article 8 of the Indiana Code, IC 8-4.5-2, -3, and –4, *et al*, establishing the Transportation Corridor Planning Board ("The Board"), the Transportation Corridor Use Master Plan, and certain provisions for acquiring abandoned railroad rights of way are hereby repealed. The Board is hereby abolished. "The Department" shall be substituted for the Board in any references to the Board in the transportation provisions of the Indiana Code. The Department shall be granted all powers formerly exercised by the Board.

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