

STATE OF MINNESOTA

DEPARTMENT OF TRANSPORTATION

DIVISION OF PUBLIC TRANSPORTATION/PLANNING

In the Matter of the Proposed)	STATEMENT OF NEED AND
Adoption of Rules Pertaining to)	
the State Rail Bank Program.)	REASONABLENESS

The proposed rules pertaining to the State Rail Bank Program contain all new material. These rules are to be permanent rules of the Department of Transportation. The Commissioner of Transportation has the authority to adopt these rules pursuant to Minn. Stat. §222.63, subd. 7.

The purpose of the State Rail Bank Program and these rules is to acquire and preserve abandoned rail lines for future public use, or for disposition for commercial use in serving the public. These future public or commercial uses include providing for the transportation of individuals or freight, or the transmission of energy, fuel or other commodities.

This Statement of Need and Reasonableness in support of the Department of Transportation's proposed rules will be presented section by section and by subsections therein.

14 MCAR §1.4010 Definitions

Many of the definitions listed are self explanatory and the remainder are used to clarify terms that may have different meanings when used in another context. The definitions are necessary to allow the use of single words or phrases and therefore they are reasonable because they eliminate the redundant use of citations and explanations.

A. Acquire. This definition is self explanatory.

B. Betterments. This definition clarifies the meaning of "betterments" and limits the expenditure of funds for betterments to a specific purpose. Rail lines that qualify for the expenditure of funds for betterments are those that need repairs so that safe rail operations can be continued on a line. For example, replacing ties and ballast, or repairing bridges and grade crossing signals are considered as improvements that may be necessary to continue to

provide rail service that is safe. Each rail line that is acquired for continued rail operations will be unique in terms of specific betterments that will be required. After a rail line is acquired and betterments have been made, the ongoing maintenance of the rail line will not be considered as betterments to the property.

C. Commissioner. This definition is self explanatory.

D. Continued rail operations. This definition limits continued rail operations to mean using a rail line for providing rail service as soon as it is practically possible after the line is acquired. A lapse in time may occur if a line needs to be taken out of service temporarily so that betterments can be made, or so that someone can be found to operate over the line and provide the rail service.

E. Convey. Minn. Stat. §222.63, subd. 4, permits the commissioner to convey acquired rail lines to governmental subdivisions of the state for the purposes of the program cited in Minn. Stat. §222.63, subd. 2, 2a, 2b and 2c. This definition clarifies the meaning of convey as it relates to the commissioner's authority.

F. Department. This definition is self explanatory.

G. Dispose. This definition explains the ways of disposing of rail bank property as provided in the program's legislation. One of the ways of disposing of property is permitted, the other is required. The commissioner is permitted to dispose of property by conveying it to political subdivisions of the state under Minn. Stat. §222.63, subd. 4. The commissioner is required to dispose of property that has not been utilized for the purposes of the program nor conveyed to a political subdivision. This required disposition is mandated in Minn. Stat. §222.63, subd. 5.

H. Other uses. This definition provides that when property is used for purposes other than those cited in Minn. Stat. §222.63, subd. 2b, that the use shall be called an other use. An example of "other use" is when a utility company had an agreement with the owning railroad to have utility poles and lines on their right-of-way and the commissioner agrees to let the utility company continue to do so when the property is acquired for the state rail bank.

I. Preserve. This definition is self explanatory.

J. Project. This definition is self explanatory.

K. Program. This definition is self explanatory.

L. Rail line. This definition is self explanatory.

M. Railroad. This definition is established by federal law in the Interstate Commerce Act.

N. Utilize. This definition clarifies the term utilize to mean that acquired property is being used for the purposes intended in the program's legislation.

14 MCAR §1.4011 Program Criteria.

A. Eligibility for acquisition and preservation. This subsection is necessary because it provides that an abandoned rail line is eligible for being acquired and preserved in the state rail bank if it meets the requirements of the state rail bank legislation and these rules. It is reasonable to expect a rail line to meet the requirements of the program's legislation and rules.

B. Funding criteria. This subsection is necessary because it lists criteria that will be considered in determining whether or not projects will be funded. The reasonableness of this subsection is supported by the need to have funding criteria so that priorities can be established among proposed projects competing for a limited source of funds. The first part of this subsection, B.1., lists criteria that will be considered for all projects. The second part, B.2., lists criteria which will give certain kinds of projects priority over other projects.

B.1.a. Program funds must be available to fund eligible projects.

B.1.b. The more probable it is that a rail line will be utilized for the purpose for which it is being acquired will increase the department's interest in a project proposed for funding. For example, suppose that rail line A and rail line B are being abandoned at the same time. Each line could be used in the future to provide rail service to two different power plants. However, line A's power plant is in the process of being built and is scheduled for completion in one year. Line B's power plant is proposed for construction

in five years, but no firm commitment has been made to build it. Therefore, it is more probable that rail service will be required on line A as opposed to line B, and line A would receive more consideration.

B.1.c. Because rail lines are located in a variety of settings, such as rural, urban, farmland and forests, the difficulty of reestablishing a similar right-of-way at some future date is one of the criteria that will be considered. Once a rail line is abandoned and sold by the railroad it is usually gone forever. Generally the property is sold in parcels to the adjacent landowners and they use the property to suit their needs. After this process occurs, reestablishing the right-of-way is next to impossible because the rail bank program does not include the power of eminent domain. Even if eminent domain is used by entities with the power to condemn it would be very costly to reestablish a corridor.

B.1.d. In the past the state has encountered difficulties with the title to railroad property. Title to railroad property is usually in the form of easements with reversionary clauses, quit claim deeds or warranty deeds. Each line is unique in terms of how many miles long it is and the percentage of property that has a certain type of title. In some cases, it may be too costly for the state to clear the title sufficiently to allow use of the property for a rail bank purpose.

B.1.e. When an entity other than the state is taking action to acquire an abandoned rail line for purposes similar to those of this program, the state will allow such programs priority. For example, regional rail authorities have the powers to acquire abandoned lines and provide rail service. If a regional rail authority wants to do so, there is no need for the state to interfere with the authority's actions.

B.2.a. Rail lines that are to be utilized for continued rail operations are of the highest priority because the right-of-way already exists for the purpose of providing rail transportation, and it is least disruptive to the rail users and adjacent land uses to continue to use the property as it has been for decades.

B.2.b. The second priority for consideration is rail lines that are to be preserved for rail service in the future, because the right-of-way exists for providing rail service and it again would be least disruptive to reuse the property for the purpose of providing rail transportation.

B.2.c. This refers to the level of benefits that are expected to be accomplished through the proposed future use of the property. If the proposed future use on one line will benefit more people than the proposed use of another line, the one with the greatest benefits would receive a higher priority.

B.2.d. Finally, a rail line that could be utilized for more than one transportation or transmission purpose would receive a higher priority than a line that has only one proposed use. Buying one rail line that can be utilized for multiple purposes would provide more services to the public than buying one line for one purpose.

C. Continued rail operations projects. This subsection is necessary because it lists the information that will be required to determine the priority of continued rail operations projects. It is reasonable to prioritize these projects because they will be more costly than other types of projects. Higher costs are due to acquiring the land with the rail in place and possible needs for betterments to the property.

C.1. This refers to the necessity of completing a cost/benefit analysis on a project to determine its financial viability.

C.2. A detailed plan of how the rail line would be operated is necessary to determine if the entity proposing to provide rail operations would be able to do so.

C.3. This refers to the necessity of knowing how funds will be raised so that continued rail service can be accomplished. The financial plan should explain how the operations will be paid for.

14 MCAR §1.4012 Acquisition of rail bank property.

A. Published list of proposed projects. The program's legislation requires that a notice must be published in the State Register and newspaper if the commissioner desires to acquire property, see Minn. Stat. §222.63, subd. 3. This subsection is necessary to provide for the publication of a list of proposed projects so that the public can be made aware of what they are. This subsection also lists the kind of information that will be provided in published notices. The reasonableness of this subsection is supported by the need to clarify to the public which rail lines the department may desire to purchase.

B. Initiation of title search. This subsection provides that after the procedures under A. have been completed, and after an abandonment application is filed, the title search will be initiated. The department will publish a notice informing the public that it has initiated a title search. In some cases there may be a considerable lapse of time between the published notice under part A. and the time that a title search is conducted. In this way the public will be aware that the department is still considering acquiring the property. This subsection is necessary to keep the public informed and it is reasonable for the department to do so.

C. Public information meeting. Minn. Stat. §222.63, subd. 3, requires that at least one public meeting or hearing be held in the area where the line is located. This subsection is needed to provide for a public meeting after the title search has been completed. By having the meeting at that time the department will be able to provide the public with more information. Also, the quality of the title will have an impact on the department's interest in acquiring the property. Therefore, it is reasonable that the public meeting be held after the title search.

D. Decision to acquire. This subsection is necessary because it provides that the decision of whether or not to acquire a line will be made after the public meeting. It is reasonable for the department to decide what to do after the meeting so that the public's comments and concerns can be considered in making a decision. The decision will be published as required by Minn. Stat. §222.63, subd. 3.

E. Simultaneous implementation of 14 MCAR §§1.4012 - 1.4014. This subsection provides that the procedures for acquisition, utilization and disposition shall be implemented simultaneously when possible. This is necessary because it is probable that a decision to acquire and utilize or dispose of property may be made at the same time. For example, if the proposed plan for a line is to acquire it and then lease it to a utility company for a transmission line as soon as it is acquired, the procedures for acquisition and utilization would be implemented simultaneously. This type of situation demonstrates the reasonableness of this subsection.

14 MCAR §1.4013 Utilization of rail bank property.

A. Notice to utilize rail bank property. The program's legislation requires that a notice is to be published in the State Register and newspaper if the commissioner desires to utilize banked property. This subsection is necessary and reasonable because it provides for the publication of such a notice and the kinds of information the notice will include.

B. Public information meeting. This subsection is necessary because it provides for the public meeting that must be held under Minn. Stat. §222.63, subd. 3. It is reasonable because it provides a procedure for how the public will be notified of meetings.

C. Decision to utilize. This subsection provides that the decision of whether or not to utilize the property as proposed will be made after the public meeting. This is necessary so that public input can be considered in the decision. The decision will be published in the newspaper to notify the public. This subsection is reasonable, as it provides for notifying the public of what decision has been made.

14 MCAR §1.4014 Disposition of rail bank property.

A. Notice to dispose of rail bank property. This subsection is necessary because it provides for the publication of notice to the public for the purpose of disposing of banked property. The notice is required under Minn. Stat. §222.63, subd. 3. and it is reasonable to provide the public with information on the plans for disposing of the property.

B. Public information meeting. This subsection is necessary because it provides for the public meeting that must be held under Minn. Stat. §222.63, subd. 3. It is reasonable because it provides a procedure for how the public will be notified of meetings.

C. Decision to dispose of property. This subsection is necessary because it provides that the decision to dispose of property will be made after the public meeting. It is reasonable for the department to decide what to do after the meeting so that the public's comments and concerns can be considered in making a decision. A notice of the decision will be published. If the disposition is required because the property has not been utilized, the

notice will cite the time period during which adjacent landowners may make offers to purchase the property. This time period is required by Minn. Stat. §222.63, subd. 5. This subsection is reasonable because it provides for notifying the public of the department's decision.

14 MCAR §1.4015 Management of banked property.

A. Maintenance and other uses during preservation of property. This subsection is necessary because it discusses how banked property will be managed. While property is being preserved and not being utilized, the commissioner is required to maintain the property under Minn. Stat. §222.63, subd. 2c. By leasing out property for other uses while it is being preserved, the commissioner can raise funds to help pay for the maintenance of other banked property. The conditions under which other uses of property will be considered are listed in this subsection. It is reasonable to list what the conditions are in the rules so that the public will know what the conditions are.

A.1. On some rail lines the grain elevators are currently leasing the property they are on from the railroad. If the state has to buy this property as a part of the right-of-way it would be appropriate to continue to lease the property to the grain elevator.

A.2. Through leasing property to a grain elevator the state is not responsible for the maintenance of that property. Also, the leasing fee can be used to maintain other property that is being preserved.

A.3. A use considered to be in conflict with adjacent land uses is one totally inconsistent and inappropriate to its surroundings.

A.4. A use that provides a benefit to the state is one where the benefits of the use are greater than the liabilities.

B. Other uses during utilization of property. This subsection is necessary because it provides that other uses of the property will be allowed during utilization of the property as long as the other uses do not hamper utilization. It is reasonable to allow other uses that do not interfere with the intent of the program.

14 MCAR §1.4016 Administration of the rail bank program.

A. Provision of information for continued rail service projects. This subsection requires the entity proposing a continued rail operations project to provide the commissioner with data. The provision of data is necessary because it will be used to conduct a benefit/cost analysis, and to evaluate the operational and financial aspects of proposed projects. The provision of this data is reasonable because it relates directly to the information used to establish the priority of these types of projects, see 14 MCAR §1.4011, C.

B. Contracts. This subsection provides that any commitments of program funds or authority to use property will be handled through the execution of written contracts. This subsection is necessary and reasonable because it is required by statute to handle such matters through written contracts.

C. Variance. This sub-section allows the commissioner to grant variances from these rules. A provision allowing the granting of variances is necessary because all of the rail bank projects will not be alike, and yet the rules must be uniform in their application. The provision for granting a variance will allow the commissioner to treat a unique circumstance differently. The applicant for a variance must show affirmatively that the rule in question can be met or exceeded through a variance, that the rule in question imposes an excessive burden on implementing a project, and that the health and safety of the public will not be jeopardized. If the circumstance which justified the variance changes, the applicant must notify the department. The department will then impose the requirement stated in the rule. This is necessary so that alternative practices which do not comply with the language of the rules will only be permitted when the circumstances justify them. The reasonableness of this subsection is supported by the need to have a process that allows unique circumstances to be considered in light of the intent of the rules.



for Richard P. Braun
Commissioner

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