

WisDOT Guide to Railroad Abandonments in Wisconsin

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Overview of Abandonments

This pamphlet is intended to provide information about the railroad abandonment process and how to prepare for an abandonment. Information is based on rules established by the US Surface Transportation Board (STB) and the Wisconsin Department of Transportation (WisDOT) policies and procedures.

Typically, railroads only seek abandonments on lines that are no longer economically viable to operate. Railroads interested in officially abandoning rail line segments must participate in a specific process for approval through the STB.

Surface Transportation Board's Role

The STB is an economic regulatory agency that Congress charged with resolving railroad rate and service disputes and reviewing proposed railroad mergers. The STB is decisionally independent, although it is administratively affiliated with the Department of Transportation. (1)



Reasons for Railroad Regulation

The necessity for regulatory protection was recognized because rail carriers have significant market power in particular situations and because rail transportation is vital to the public.

The current regulatory scheme governing abandonments and acquisitions to preserve service seeks to balance these competing considerations. The STB balances the economic burden of continued operation against the public's need for the service. (2)

The STB serves as both an adjudicatory and a regulatory body. The agency has jurisdiction over railroad rate and service issues and rail restructuring transactions (mergers, line sales, line construction, and line abandonments). (1)

The U.S. Surface Transportation Board (STB) has exclusive authority during rail abandonment proceedings and rail banking procedures. However, once the STB has approved full abandonment it relinquishes jurisdiction and state property law determines a party's property interest in a rail corridor.

WisDOT's Role

The Wisconsin Department of Transportation's policy is to preserve freight rail service where feasible. If preservation of service is not feasible, the department works with the Wisconsin Department of Natural Resources (WDNR) to preserve rail corridors for future use through the National Trails System Act.

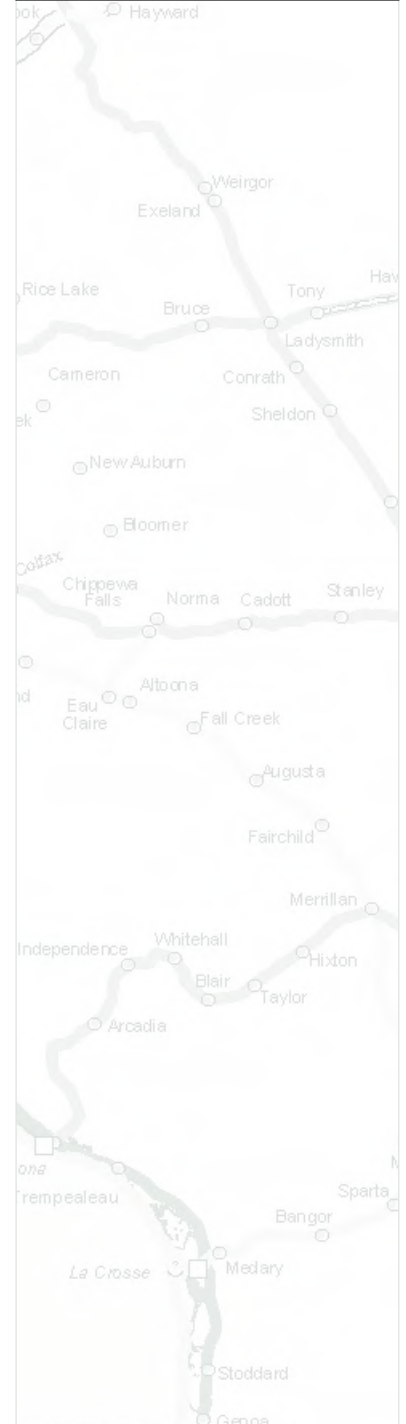
When WisDOT first learns of a potential railroad abandonment, an investigation and evaluation of the corridor begins immediately.

Staff evaluate current and potential traffic on the line, revenues, costs, energy and environment, economic effects, alternative transportation, track condition, and the cost to improve and maintain the tracks at a level which is adequate to carry the traffic on the line.

The evaluation is done to decide which of the following potential actions is appropriate for the abandonment in question:

- A. **Retain Service:**
 - a. Continuation of rail service by current operator
 - b. Purchase by or for a new railroad operator
- B. **Preserve for Future Service and/or Preserve Corridor:**
 - a. WisDOT and Local Partners Purchase
 - b. WisDOT Purchase
 - c. Rails to Trails (Railroad must agree)
 - d. Other Public Purchase ("**Rail Banking for Public Use**")
- C. **No Interest:**
 - a. Allow abandonment
 - b. Railroad sells; possible reversion to abutting landowners

In some cases, WisDOT may determine that only a portion of the application should be supported, and another portion opposed. WisDOT then submits formal comments outlining the official position to the STB.



Pre-Abandonment Considerations

The loss of rail service will affect nearly all rail users located along a line being considered for abandonment. This effect will range from having to make minimal changes to extensive adjustments to compensate for the loss of rail service.



Certain shippers along the line may divert their shipments to another transportation mode, or they may choose to ship by using truck/rail or truck/barge combinations. Others may be compelled to make major changes in operational procedures, or restricting the markets served. These alternatives are costly and create at least some inconvenience.

What can be done before abandonment?

The primary concern for abandonment is financially low performing lines. One way of estimating low performance is low traffic density.

If a line of interest may be under consideration for abandonment, several actions could be taken to help avert the abandonment. A user's willingness to invest money in a facility for rail purposes, such as increasing shipping capacities or improving loading equipment, is a way of showing an intention to increase carloads.

If the prospect of increased traffic on the line is not probable, another alternative to the loss of service might be the implementation of surcharges or higher freight rates to offset the deficit created by inadequate revenues from the existing level of traffic.

State and Federal programs also exist to potentially avoid abandonment and the consequent loss of rail service:

Feeder Line Development Program was created by the Staggers Rail Act of 1980. It provides rail users with an option through which abandonment may be averted. This federal program, set forth in **Title 49 CFR 1151**, provides interested parties with a means of dealing with inadequate rail service. (2)

Freight Railroad Preservation Program (FRPP) is a State of Wisconsin grant program to cover up to 80 percent of project costs to help preserve freight rail service or rehabilitate track on publicly-supported rail lines. To be eligible, lines must be economically viable, or have the potential for becoming profitable. (3)

Freight Railroad Infrastructure Improvement Program (FRIIP) is a long-term, low-interest revolving (WI) State loan program used to improve rail infrastructure and construct new rail-served facilities. (4)



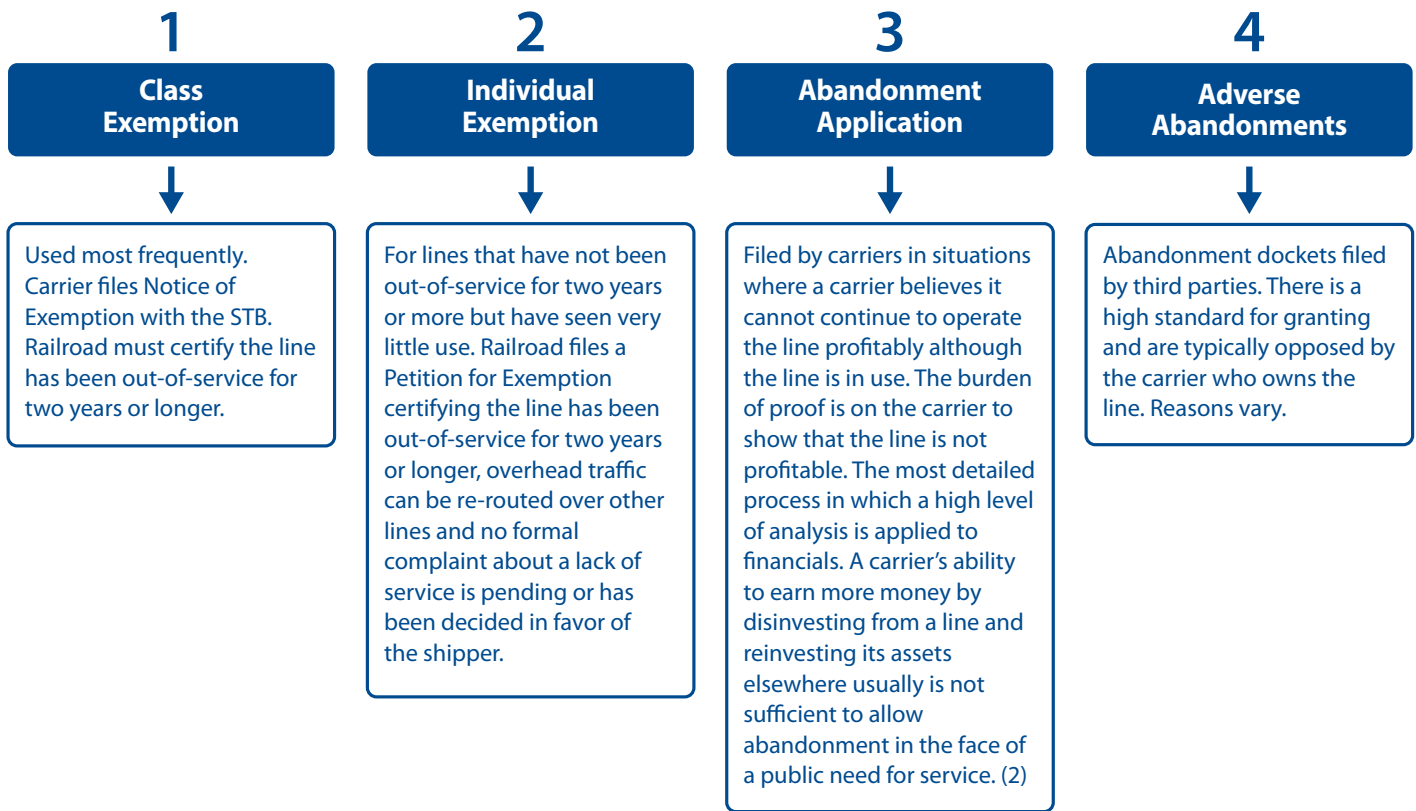
Source: FRA / WisDOT 2007

Abandonment Procedures

The code of federal regulations **Title 49, part 1152** establishes STB abandonment procedures.

Four Types of Abandonment Dockets

Railroads can use one of four types of abandonment applications, but all abandonments of rail lines must come before the Surface Transportation Board. There are no de facto abandonments. Lines that have not come before the STB or the former ICC, no matter how many years or decades they may have been out-of-service, are referred to as “out-of-service”, not “abandoned”. (2)



Modified Certificate of Public Convenience and Necessity

Special rules are applied to operations over abandoned rail lines which have been acquired by a State. The rail line must have been fully abandoned or approved for abandonment by the Board or a bankruptcy court.

If the State intends to operate the line itself, it will be considered a common carrier. When a State acquires a rail line described under [49 CFR 1150 Subpart C](#) and contracts with an operator to provide service over the line, only the operator incurs a common carrier obligation. Most operating lines owned by the State of Wisconsin are operated under Modified Certificates.

Termination of Service Under Modified Certificates

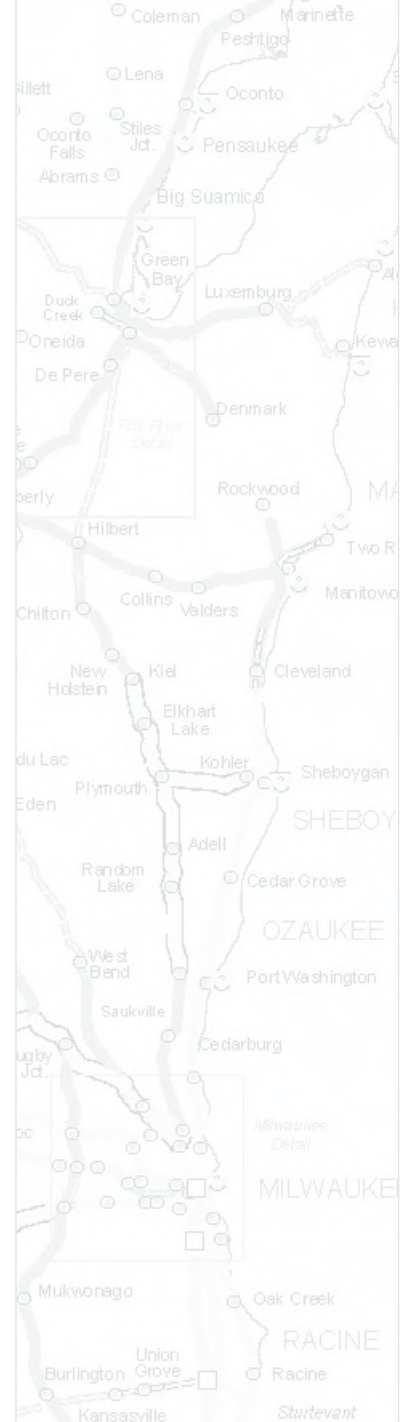
Duration of the service may be determined in the contract between the State and the operator. An operator may not terminate service over a line unless it first provides 60 days' notice of its intent to terminate the service.

Notice of Intent to Abandonment

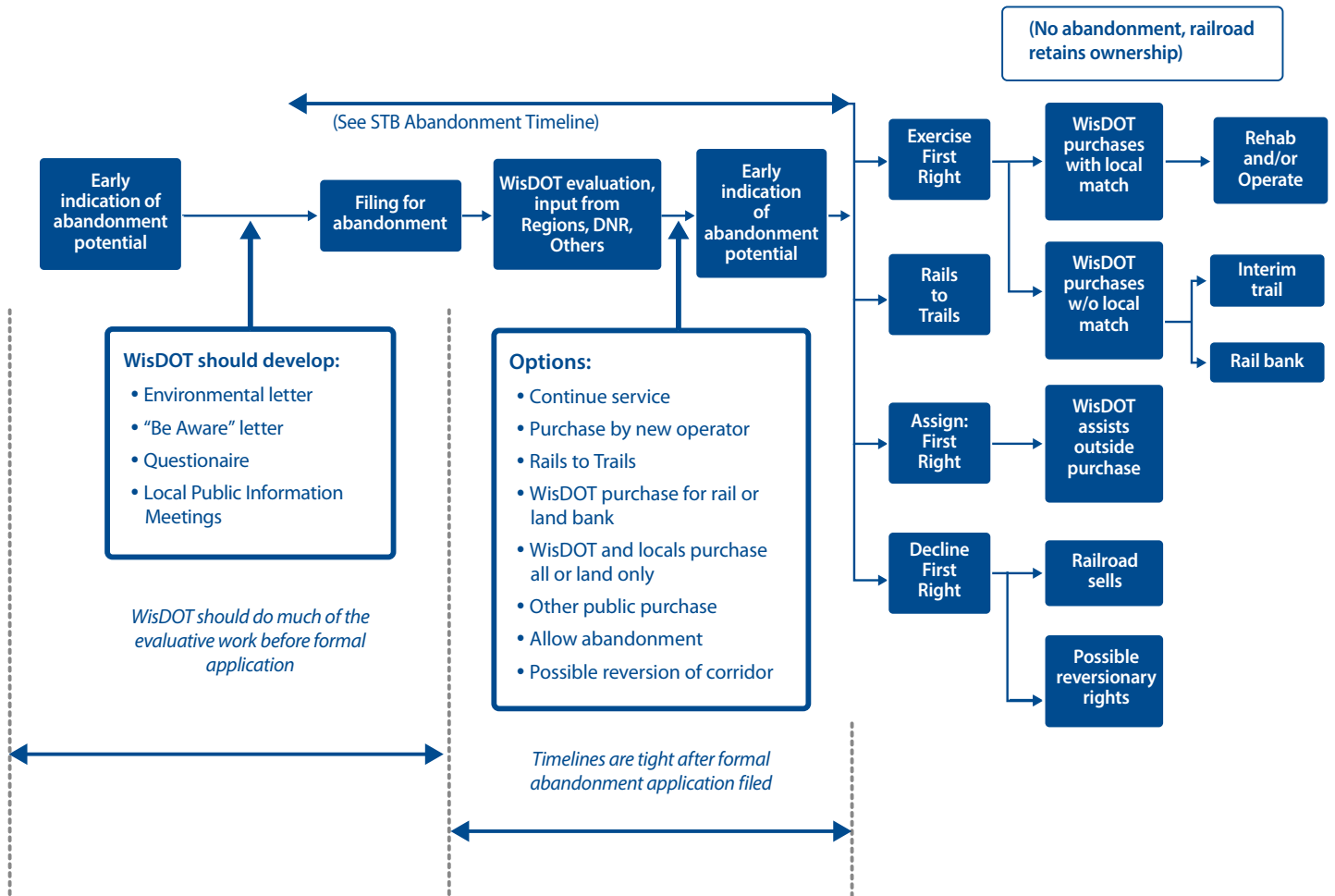
60 days before a railroad can apply to the STB to abandon a line it must file a Notice of Intent to Abandon with the STB, the State in which the abandonment is proposed, and rail users that would be affected. The railroad must also publish notice in a newspaper in every affected county for three consecutive weeks as well as notify the designated state agency. WisDOT is the designated agency for the State of Wisconsin pursuant to [49 USC Sec. 22102\(2\)](#).

Application for Abandonment

After the Notice of Intent to Abandon is filed with the STB the railroad files an Application for Abandonment with the STB.



WisDOT Railroad Abandonment Process

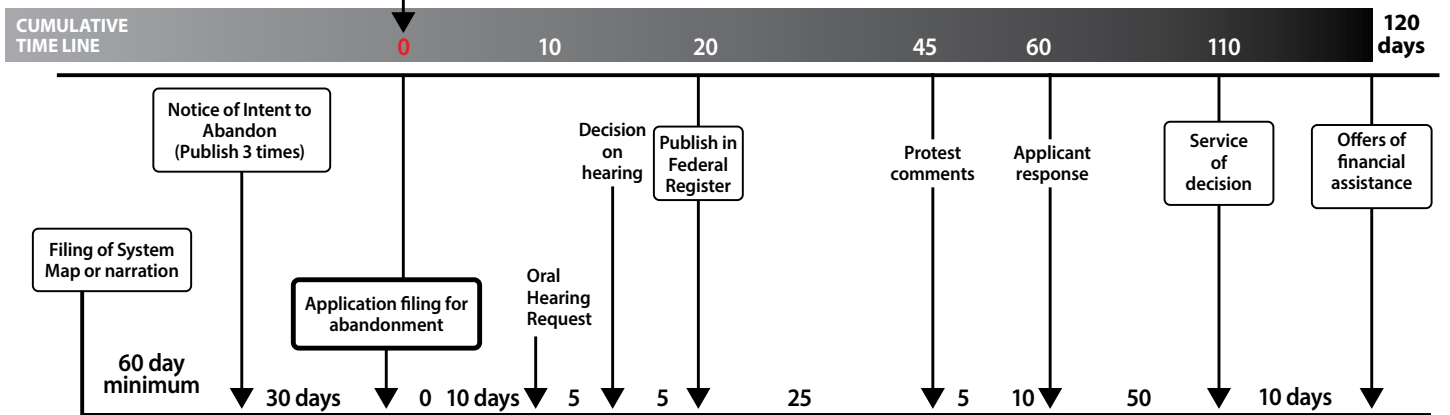


STB Railroad Abandonment Timeline

Non Exempt – Top (longer)

Exempt – Bottom (typical for shorter mileage abandonments)

NON-EXEMPT



EXEMPT



Criteria for "Exempt"

<p>CLASS EXEMPTION:</p> <ul style="list-style-type: none"> No local traffic for 2 years No formal complaint of lack of services for shippers Overhead traffic can be rerouted to other railroad lines Timeline per the above chart 	<p>INDIVIDUAL EXEMPTION:</p> <ul style="list-style-type: none"> Same criteria Effective date: 120 days after filing, or 10 days after STB's decision
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Public Comment or Protest Period

After a railroad files the Application for Abandonment a 30-day comment period is provided to enable interested parties to prepare and submit comments or protests. to the STB. Any comments or protest may provide a specific statement of position and summary of evidence regarding any or all the following:

- Intent to offer financial assistance (see [Offers of Financial Assistance](#));
- Environmental impact;
- Impact on rural and community development;
- Suitability of the properties for other public purposes (see [Rail Banking for Public Use](#));
- Recommended provisions for protection of the interests of employees; and,
- Prospective use of the right of way for interim trail use and rail banking under the National Trails Act (see [Interim Trail Use and Rail Banking](#)).

Offers of Financial Assistance

If an abandonment has been approved, persons interested in retaining service have a final alternative to abandonment. Following announcement of its findings, the STB decision is published in the Federal Register. At this time any party may, within 10 days, make an Offer of Financial Assistance (OFA) to the carrier in the form of subsidy or may offer to purchase the line. If, within 15 days after publication of the decision permitting abandonment, a financially responsible party has offered to subsidize or to purchase the line, the issuance of the abandonment certificate can be postponed. Should more than one offer be made, the carrier will be allowed to decide which offer it will consider. Negotiations must be completed within 30 days.

Rail Banking for Public Use

If the STB grants the carrier's application for abandonment authority and if there are no reasonable OFA's, the STB will consider requests for Trail Use or Public Use Conditions to be imposed on the abandonment decision, provided that the STB's Section of Environmental Analysis has found that the right-of-way is suitable for those uses. Although both uses are for the benefit of the public, there is a difference in the two conditions. It is permissible to ask for the imposition of both conditions.

The Public Use Condition can encompass any public use, for example, conservation, commuter rail, recreational trails, transmission lines or a highway. Public Use conditions are imposed by the STB, whether or not the railroad consents. The term of the condition is 180 days and the purpose is to hold the abandonment request open for that long to give the parties an opportunity to negotiate for the transfer of the right-of-way. The 180-day negotiation period cannot be extended. (2)

If the parties fail to reach an agreement within this time frame, the STB must allow the railroad to fully abandon the line and dispose of its property. The STB does not have the authority to require the sale of the property for public use.



Interim Trail Use and Rail Banking

Under [49 CFR 1152.29](#) and the National Trails System Act ([16 USC 1247\(d\)](#)) the STB may defer the abandonment to give interested parties the opportunity to negotiate a voluntary agreement with the abandoning railroad for interim use of the right of way for recreational purposes.

Interim trail use, commonly referred to as “Rails-to-Trails”, can occur only after a railroad officially files for abandonment through the STB. If approved by the STB and agreed to by the abandoning railroad, a Notice of Interim Trail Use (NITU) is issued and, providing the parties reach agreement, the abandonment does not occur.

The subject rail line remains in active status. While the railroad is allowed to remove the rails, ties and other rail material, the corridor must be treated as an active railroad corridor in interim trail use. By remaining an active rail line, the railroad corridor stays intact without impact resulting from the quality of title to the underlying property. No reversionary interests to the property come into play.

There is no regulation as to the amount of time the trail interim use may exist. However, it is understood that rail service may be reestablished at any time if needed.

An agency desiring to manage the corridor in Interim Trail Use must be ready to do so quickly. It is necessary for the agency to prepare a *Statement of Willingness to Accept Financial Responsibility (SOW)* agreeing to take financial responsibility to manage the corridor.

WisDOT petitions the STB and files the SOW on behalf of the agency. If an NITU is issued, a 180-day negotiating period is then allowed for the agency and the railroad to reach agreement as to the terms of the Interim Trail Use agreement. Time extensions may be requested if the parties are negotiating in good faith to reach agreement.

If the parties notify the STB that they have reached agreement to purchase the corridor, the STB will publish a notice in the Federal Register that a Certificate of Interim Trail Use is being issued and that the line is not abandoned. If the terms of the Rails to Trails agreement cannot be reached, or either party wishes to withdraw from the negotiating process, the line is then fully abandoned and subject to WisDOT’s first right of acquisition.



Wisconsin's First Right of Acquisition

Pursuant to [s. 85.09, Wis. Stats](#), WisDOT has the first right of acquisition of rail property that has been fully abandoned after January 1, 1977. WisDOT may only exercise its first right of purchase for present or future transportation or recreational purposes.

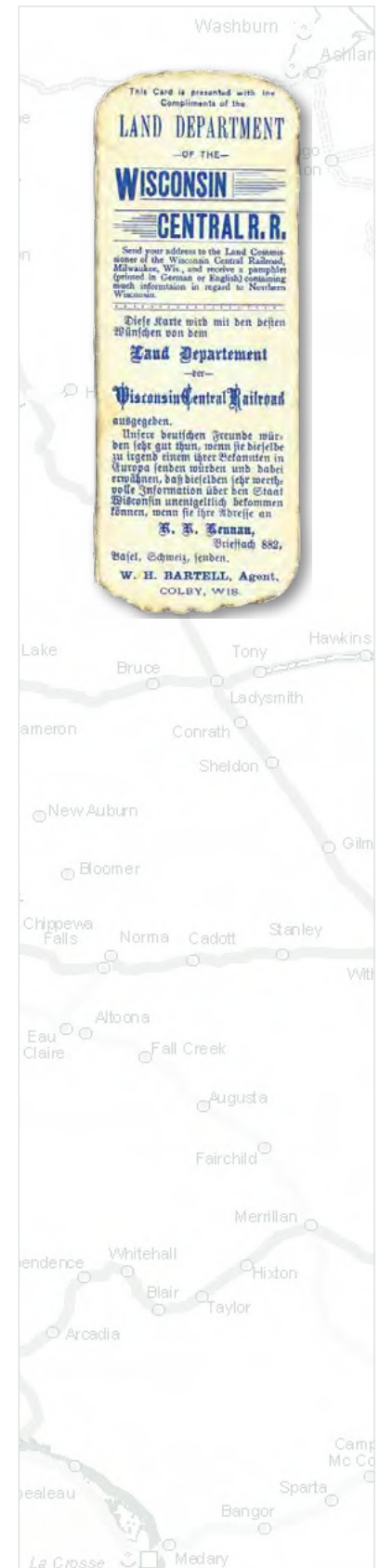
WisDOT may also assign its first right to any other state agency, county, municipality or transit commission for transportation, recreation or scenic purposes or for constructing a correctional institution.

Upon receipt of a request for a release of first right, WisDOT has 90 days to determine if determine whether there is public interest in acquiring the property. During that 90-day time frame, a solicitation is made of all appropriate state and local agencies affected. Normally, that would include DNR, the appropriate WisDOT Regional Office and the counties and municipalities where the subject property is located.

If it is determined to exercise or assign the first right, the railroad is notified and a 180-day period of negotiation between the railroad and the party assigned the first right of acquisition begins. WisDOT or the agency assigned the first right must acquire the property within the 180 days.

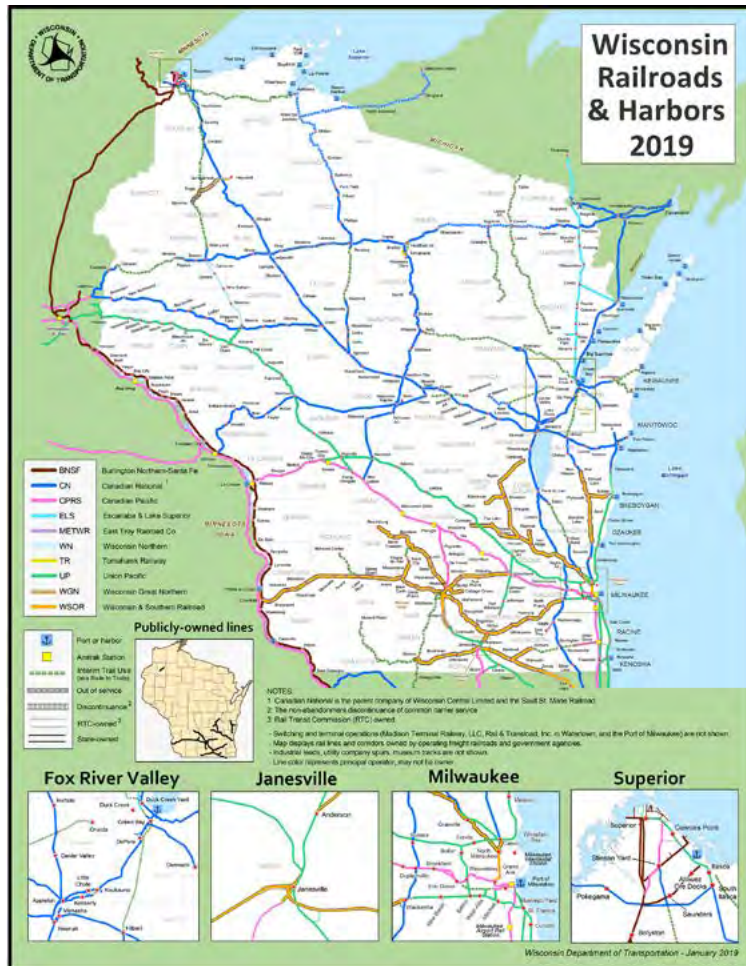
If there is no expressed transportation or recreational interest, WisDOT will prepare a Statement of Release of Interest. The release' document is recorded with the appropriate Register of Deeds thereby satisfying WisDOT's first right of acquisition claim to the property. The owning railroad is then free to dispose of the property to any interested party.

The first right law is very clear in stating that any conveyance of abandoned railroad property without a release of WisDOT's first right of acquisition is void.



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[Download](#) current Wisconsin Railroad & Harbor map pdf.



Contact Us

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