

# REQUEST FOR LEGISLATIVE ACTION


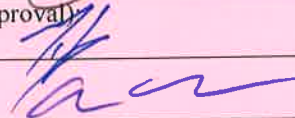
Completed by County Counselor's Office:

Res/~~Ord~~ No.: 20047

Sponsor(s): Dennis Waits

Date: November 13, 2018

|   |  |   |             |  |      |  |             |  |              |   |  |  |                           |  |                         |
|---|--|---|-------------|--|------|--|-------------|--|--------------|---|--|--|---------------------------|--|-------------------------|
| SUBJECT   | <p>Action Requested<br/> <input checked="" type="checkbox"/> Resolution<br/> <input type="checkbox"/> Ordinance</p> <p>Project/Title: Transferring \$60,000.00 from the Rock Island Special Obligation Bond Proceeds for railbanking services and legal defense at the Surface Transportation Board.</p>   |   |             |  |      |  |             |  |              |   |  |  |                           |  |                         |
| <p>BUDGET INFORMATION<br/> <i>To be completed<br/>                 By Requesting<br/>                 Department and<br/>                 Finance</i></p> | <table border="1" data-bbox="316 535 1198 976"> <tr> <td>Amount authorized by this legislation this fiscal year:</td> <td>\$60,000.00</td> </tr> <tr> <td>Amount previously authorized this fiscal year:</td> <td>\$ 0</td> </tr> <tr> <td>Total amount authorized after this legislative action:</td> <td>\$60,000.00</td> </tr> <tr> <td>Amount budgeted for this item * (including transfers):</td> <td>\$ 60,000.00</td> </tr> <tr> <td>Source of funding (name of fund) and account code number;</td> <td></td> </tr> <tr> <td>FROM ACCT:<br/>014-3601-58020 Special Obligation Bond Proceeds - Buildings &amp; Improvements</td> <td>FROM AMT:<br/>\$ 60,000.00</td> </tr> <tr> <td>014-3601-56020 Special Obligation Bond Proceeds Legal Services</td> <td>TO AMT:<br/>\$ 60,000.00</td> </tr> </table> <p>* If account includes additional funds for other expenses, total budgeted in the account is:</p> <p>OTHER FINANCIAL INFORMATION:<br/> <input type="checkbox"/> No budget impact (no fiscal note required)<br/> <input type="checkbox"/> Term and Supply Contract (funds approved in the annual budget); estimated value and use of contract:<br/>                 Department: Estimated Use: \$</p> <p>Prior Year Budget (if applicable):<br/>                 Prior Year Actual Amount Spent (if applicable):</p> | Amount authorized by this legislation this fiscal year: | \$60,000.00 | Amount previously authorized this fiscal year: | \$ 0 | Total amount authorized after this legislative action: | \$60,000.00 | Amount budgeted for this item * (including transfers): | \$ 60,000.00 | Source of funding (name of fund) and account code number; |  | FROM ACCT:<br>014-3601-58020 Special Obligation Bond Proceeds - Buildings & Improvements | FROM AMT:<br>\$ 60,000.00 | 014-3601-56020 Special Obligation Bond Proceeds Legal Services | TO AMT:<br>\$ 60,000.00 |
| Amount authorized by this legislation this fiscal year:   | \$60,000.00  |   |             |  |      |  |             |  |              |   |  |  |                           |  |                         |
| Amount previously authorized this fiscal year:  | \$ 0   |   |             |  |      |  |             |  |              |   |  |  |                           |  |                         |
| Total amount authorized after this legislative action:  | \$60,000.00  |   |             |  |      |  |             |  |              |   |  |  |                           |  |                         |
| Amount budgeted for this item * (including transfers):  | \$ 60,000.00   |   |             |  |      |  |             |  |              |   |  |  |                           |  |                         |
| Source of funding (name of fund) and account code number;   |  |   |             |  |      |  |             |  |              |   |  |  |                           |  |                         |
| FROM ACCT:<br>014-3601-58020 Special Obligation Bond Proceeds - Buildings & Improvements  | FROM AMT:<br>\$ 60,000.00  |   |             |  |      |  |             |  |              |   |  |  |                           |  |                         |
| 014-3601-56020 Special Obligation Bond Proceeds Legal Services  | TO AMT:<br>\$ 60,000.00  |   |             |  |      |  |             |  |              |   |  |  |                           |  |                         |
| PRIOR LEGISLATION   | <p>Prior ordinances and (date):<br/>                 Prior resolutions and (date):</p>   |   |             |  |      |  |             |  |              |   |  |  |                           |  |                         |
| CONTACT INFORMATION   | <p>RLA drafted by (name, title, &amp; phone): Matt Davis, Program Coordinator, 816-503-4849</p>  |   |             |  |      |  |             |  |              |   |  |  |                           |  |                         |
| REQUEST SUMMARY   | <p>RIRCA respectfully requests that \$60,000.00 be transferred from the Rock Island Special Obligation Bond Proceeds to cover the cost of legal services with Nossaman, LLP related to railbanking the Rock Island Corridor and defending the County at the Surface Transportation Board from legal challenges to our status with the Surface Transportation Board.</p> <p><b>Total: \$60,000</b></p>  |   |             |  |      |  |             |  |              |   |  |  |                           |  |                         |
| CLEARANCE   | <p><input type="checkbox"/> Tax Clearance Completed (Purchasing &amp; Department)<br/> <input type="checkbox"/> Business License Verified (Purchasing &amp; Department)<br/> <input type="checkbox"/> Chapter 6 Compliance - Affirmative Action/Prevailing Wage (County Auditor's Office)</p>  |   |             |  |      |  |             |  |              |   |  |  |                           |  |                         |
| ATTACHMENTS   | <p>STB Docket F.D. 35982<br/>                 Jackson County, Missouri<br/>                 Acq. &amp; Op. Exemption -<br/>                 Petition For Revocation</p> <p>To be provided upon request.</p> <p>Rails to Trails Conservancy Railbanking Fact Sheet</p>  |   |             |  |      |  |             |  |              |   |  |  |                           |  |                         |

|        |  |               |
|--------|--|---------------|
| REVIEW | Department Director:  | Date: 11/8/18 |
|        | Finance (Budget Approval)<br><i>If applicable</i>  | Date: 11/9/18 |
|        | Division Manager:     | Date: 11/9/18 |
|        | County Counselor's Office:   | Date:         |

Fiscal Information (to be verified by Budget Office in Finance Department)

- This expenditure was included in the annual budget.
- Funds for this were encumbered from the \_\_\_\_\_ Fund in \_\_\_\_\_.
- There is a balance otherwise unencumbered to the credit of the appropriation to which the expenditure is chargeable and there is a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made each sufficient to provide for the obligation herein authorized.
- Funds sufficient for this expenditure will be/were appropriated by Ordinance # \_\_\_\_\_
- Funds sufficient for this appropriation are available from the source indicated below.

| Account Number: | Account Title: | Amount Not to Exceed: |
|-----------------|----------------|-----------------------|
|                 |                |                       |

- This award is made on a need basis and does not obligate Jackson County to pay any specific amount. The availability of funds for specific purchases will, of necessity, be determined as each using agency places its order.
- This legislative action does not impact the County financially and does not require Finance/Budget approval.

## Fact Sheet

# Railbanking — What, Where, Why, When and How

In 1983, concerned by the rapid contraction of America's rail network, 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 for future rail use through interim conversion to trail use.

Railbanking can be requested by either a public agency or a qualified private organization at the time that the railroad files for abandonment with the Surface Transportation Board (STB), formerly the Interstate Commerce Commission. The railbanking request must be sent to the STB in Washington, D.C., and must at the very minimum include a Statement of Willingness To Assume Financial Responsibility. Since the abandoning railroad company must agree to negotiate a railbanking agreement, a copy of the request for railbanking must be served on the railroad at the same time it is sent to the STB.

A Public Use Condition (PUC) request is a request that is complementary to a request for railbanking. If a PUC request is made to the STB, the STB will place a restriction on the abandonment that prevents the railroad company from selling off or otherwise disposing of any property or trail-related structures, such as bridges or culverts, for a period of 180 days after the abandonment is authorized. This PUC gives the prospective trail manager some breathing room for preparing an offer to the railroad. (The PUC is also a good backup device should the railroad not agree to railbanking since the STB will issue a PUC regardless of whether the railroad agrees.)

There are several other important points regarding railbanking:

1. A railbanking request is not a contract and does not commit the interested party to acquire any property or to accept any liability. It invites negotiation with the railroad company under the umbrella of railbanking.
2. A party filing a Statement of Willingness To Assume Financial Responsibility is not accepting any financial responsibility. It is merely expressing an interest in possibly doing so.
3. The tracks and ties on a railbanked line can be removed.

However, bridges and trestles must remain in place, and no permanent structures can be built on the right-of-way.

4. Railbanking can only be requested for a rail line that is still under the authority of the STB. The STB has authority over the corridor until the railroad files a notice of consummation, which must be filed within one year of the abandonment decision (unless the railroad requests an extension). If no notice of consummation is filed by the railroad within one year, abandonment authorization lapses. Railbanking requests are due within the period specified in the applicable notice of abandonment. However, late-filed requests will be accepted for good cause so long as the STB retains authority to do so.
5. Some railroad rights-of-way contain easements that revert back to adjacent landowners when an abandonment is consummated. However, if a line is railbanked, the corridor is treated as if it had not been abandoned. As a result, the integrity of the corridor is maintained, and any reversions that could break it up into small pieces are prevented.
6. Railbanking can be affected through a sale, a donation or a lease of the corridor. The details of which are subject to negotiation with the railroad.
7. A railbanked line is subject to possible future restoration of rail service. The abandoning railroad can apply to the STB to resume rail service on a railbanked corridor which will then vacate the trail use ordinance. The terms and conditions of a transfer back to rail service must be negotiated with the trail manager.

A more thorough discussion of railbanking and other legal issues related to rails-to-trails conversions can be found in *Secrets of Successful Rail-Trails: An Acquisition and Organizing Manual for Converting Rails into Trails*, available online at [www.railstotrails.org](http://www.railstotrails.org).

On the back is a sample of a request for railbanking including a Statement of Willingness to Assume Financial Responsibility and a Public Use Condition. The items in italics are to be completed by the prospective trail agency or group.

[Date]

Ms. Cynthia Brown  
Chief, Section of Administration  
Surface Transportation Board  
Office of Proceedings  
395 E Street, S.W.  
Washington, DC 20423-0001

Re: [Name of Railroad Company] Abandonment in [Name of County and State], [STB Docket Number]

Dear Ms. Brown:

This request is filed on behalf of [Agency Name] which is a [political subdivision or government agency interested in transportation and/or natural resources, private public interest organization interested in conservation and/or recreation, etc.], which is hereinafter referred to as 'proponent'.

While not taking a position on the merits of this abandonment, proponent requests issuance of a Public Use Condition as well as a Certificate or Notice of Interim Trail Use rather than an outright abandonment authorization between [endpoint a] and [endpoint b].

#### A. Public Use Condition

Proponent requests the STB to find that this property is suitable for other public use, specifically trail use, and to place the following conditions on the abandonment:

1. An order prohibiting the carrier from disposing of the corridor, other than the tracks, ties and signal equipment, except of public use on reasonable terms. The justification for this condition is that [example: the rail corridor in question is along a scenic river and will connect a public park to a major residential area. The corridor would make an excellent recreational trail and conversion of the property to trail use is in accordance with local plans. In addition, the corridor provides important wildlife habitat and greenspace and its preservation as a recreational trail is consistent with that end.] The time period sought is 180 days from the effective date of the abandonment authorization. Proponent needs this much time because [example: we have not had an opportunity to assemble or to review title information, complete a trail plan or commence negotiations with the carrier.]
2. An order barring removal or destruction of potential trail-related structures such as bridges, trestles, culverts and tunnels. The justification for this condition is that these structures have considerable value for recreational trail purposes. The time period requested is 180 days from the effective date of the abandonment authorization for the same reason as indicated above.

#### B. Interim Trail Use

The railroad right-of-way in this proceeding is suitable for railbanking. In addition to the public use conditions sought above, proponent also makes the following request:

#### STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

In order to establish interim trail use and rail banking under section 8(d) of the National Trails System Act, 16 U.S.C. §1247(d), and 49 C.F.R. §1152.29, [Agency Name] is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by [Name of Railroad Company] and operated by [Name of Operator if different than Railroad Company].

The property, known as the [Property Name] extends from railroad milepost [Milepost Number] near [endpoint a] to railroad milepost [Milepost Number] near [endpoint b] a distance of [number] miles in [County Name] County, [State]. The right-of-way is part of a line of railroad proposed for abandonment in STB Docket No. AB-xx (Sub yy).

A map depicting the right-of-way is attached.

[Agency Name] acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

By my signature below, I certify service upon [Railroad Company and Address], by U.S. Mail, postage prepaid, first class, on [date].

Respectfully submitted,

[Name]

On behalf of [Agency]



National Headquarters  
2121 Ward Court, NW, 5th Floor  
Washington, DC 20037  
tel 202.331.9696  
fax 202.223.9257

