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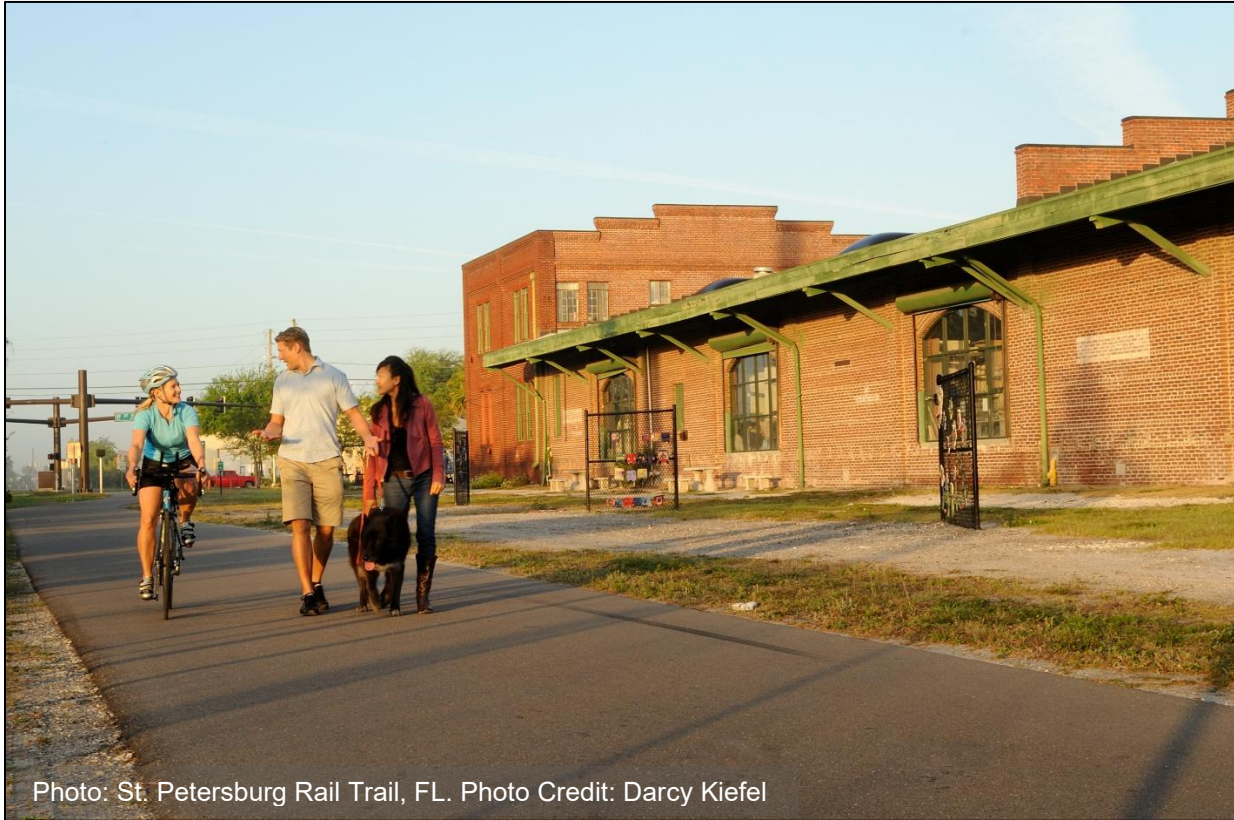


Photo: St. Petersburg Rail Trail, FL. Photo Credit: Darcy Kiefel

Preserving rail corridors through trails

Overview of the history and importance of railbanking, and how the Rails to Trails Landowner Rights Act (H.R. 4924) would inhibit railbanking and rail-to-trail projects.



Summary:

Railbanking limits the fragmentation of railroad corridors through the cost-effective means of permitting a trail sponsor to take on maintenance responsibility of a corridor unless and until rail service reactivates. Congress amended the Trails Act and created the federal railbanking program specifically to ensure that the federal government's exclusive jurisdiction over certain corridors could be preserved. Railbanked rail-to-trail projects have helped to achieve this important goal while also generating net positive economic benefits for local communities.

The Rails to Trails Landowner Rights Act (H.R. 4924) would create onerous requirements for railbanking, rendering the process unworkable. A particularly defeating example of the legislation is that it would give a single landowner, who may not even hold a property interest in a rail corridor, the power to veto a railbanking proposal. This would prohibit virtually all railbanked rail-to-trail projects from proceeding.

Another troubling feature is the bill's proposal to require trail sponsors to compensate landowners. While courts have recognized some railbanking projects could result in a Fifth Amendment taking of property and in such cases, the landowners would likely be eligible for just compensation by the federal government, this legislation would shift the burden of compensation from the federal government to trail sponsors. The bill would also impose other liabilities and unnecessary costs on trail sponsors that would greatly deter trail sponsors from pursuing rail-to-trail projects. These changes will result in the loss of strategic rail corridors throughout the country.

All rail-to-trail projects are ultimately local endeavors that require significant community buy-in, including support from adjacent landowners and funding investment from the community. With every project, ensuring adjacent landowners are not negatively impacted is a primary consideration for trail sponsors. Indeed, case studies demonstrate how rail-trail projects benefit adjacent landowners by increasing property values and direct access to a desirable amenity. Nevertheless, Congress was clear in its intent to preserve rail corridors through railbanking and maintain federal jurisdiction. This legislation would completely frustrate the purposes of railbanking and would severely restrict all rail-to-trail projects going through the railbanking process.

Recommendation:

Trust for Public Land urges members to oppose H.R. 4924, which would severely undermine railbanking as a viable way to preserve ROWs through rail-to-trails.

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Background on Federal Railbanking Policy

Since the creation of the Interstate Commerce Commission in 1887, the federal government has exercised exclusive jurisdiction over railroads falling within interstate commerce.¹ The Surface Transportation Board (STB) has since replaced the ICC as the agency overseeing railroads in interstate commerce.² The STB's exclusive jurisdiction applies to railroad rights-of-way (ROW); therefore, federal law preempts state property law pertaining to these ROWs.³ Federal jurisdiction over railroad ROWs is terminated only if the STB approves a railroad's application to abandon its service.⁴

In the Transportation Act of 1920, Congress asserted federal jurisdiction on abandonment proceedings in order to address a problem where states were enacting charters and statutes to limit abandonment (and thereby forcing railroads to continue to operate unprofitable lines).⁵ The year 1920 also represents the peak of the railway system at 272,000 miles of track nationally.⁶ By 1986, the railway system had shrunk to 141,000 miles.⁷ The increasing railroad abandonment in the 1970s caused significant fragmentation of railroad ROWs and put at risk the national rail system.⁸

To limit further fragmentation of the nation's rail system, Congress passed the Railroad Revitalization and Regulatory Reform Act (the "4-R Act") of 1976; the law included provisions allowing the ICC to delay abandonment and it authorized the Secretary of the Interior to encourage conservation and recreation uses of abandoned ROWs.⁹ However, the 4-R Act failed to address the problem that once a rail corridor is abandoned (and where the railroad held only easement rights), the ROW ceases to exist.¹⁰ To create a trail and preserve the corridor, a trail sponsor needed to piece back together the corridor, which is a significant challenge when multiple landowners are involved.

Congress addressed this problem by amending the National Trails System Act ("the Trails Act") in 1986 to establish a "railbanking" process which enabled railroads to transfer underutilized ROWs to qualified private entities or public agencies, to use on an interim basis as a recreational trail, until rail service becomes financially feasible again.¹¹

One criticism of railbanking is that trail development appears to be the primary focus of the law, while preserving the corridor for rail service is secondary, and rail service is only infrequently resumed on railbanked corridors. In its review of the Trails Act amendments and the legislative intent to preserve rail corridors, the Supreme Court has recognized the validity of these two purposes.

In *Preseault v. ICC* (U.S. 1986), landowners filed a quiet title action to claim ownership of a railroad ROW that the landowners alleged had been abandoned.¹² The case, involving disputes on jurisdiction and a Fifth Amendment takings claim, was ultimately heard by U.S. Supreme Court. One of the

¹ Gee, Garrett M. *A Primer on Rails-to-Trails Conversions in Eastern U.S.*, Environmental Law Review Syndicate – Scholarship, New York University School of Law Environmental Law Journal, April 29, 2016.

² Ferster, Andrea C. *Rails-to-Trails Conversions: A Legal Review*, Rails to Trails Conservancy, 2017, p. 2.

³ Gee, *supra*.

⁴ Marc A. Sennewald, *The Nexus of Federal and State Law in Railroad Abandonments*, 51 Vanderbilt Law Review 5, 1404-05 (1998) (note that Abandonment is distinguished from a "discontinuance," an action in which a railroad may cease operation for a period of time while preserving the ROW for possible future reactivation).

⁵ *Id.* at 1402-03.

⁶ *Preseault v. ICC*, 494 U.S. 1, 5 (1986) ("In 1920, the Nation's railway system reached its peak of 272,000 miles; today only about 141,000 miles are in use, and experts predict that 3,000 miles will be abandoned every year through the end of this century").

⁷ *Id.*

⁸ Ferster, *supra* at 2.

⁹ *Preseault* 494 U.S. at 5-6.

¹⁰ Ferster, *supra* at 2.

¹¹ *Id.* at 3.

¹² *Id.* at 2.

petitioners' arguments before the court was that the Trails Act amendments were an invalid exercise of congressional power under the Commerce Clause.¹³ The petitioners argued that the law's true purpose was to prevent the reversion of property interests and instead to create recreational trails, while the goal of preserving rail corridors for future use was pretext.¹⁴ In its unanimous decision, the court upheld the law under rational basis and found that both legislative purposes, encouraging the development of trails and preserving established ROWs, were evident and the Trails Act amendments were rationally related to Congress's attempt to address rail abandonments.¹⁵

Preseault is also notable for its holding that rail-to-trail conversions that result in a Fifth amendment taking, giving rise to just compensation claims by landowners, are authorized by the law and landowners may seek relief for any takings under the Tucker Act.¹⁶

The Railbanking Process

Railbanking permits the interim use of railroad ROWs as trails, subject to the future possibility of "restoration or reconstruction for railroad purposes."¹⁷ An outline of the abandonment process, which typically occurs through an exempt proceeding, is as follows¹⁸:

- Notice: At least ten days before filing a notice of exemption with the STB, the railroad must notify the Public Service Commission in the state(s) where the line will be abandoned, the Department of Defense, the National Park Service, and the Forest Service.¹⁹ The railroad must file a verified notice with the STB at least fifty days prior to the consummation of the abandonment.²⁰ The STB must then publish a notice in the Federal Register within twenty days after the railroad's filing of exemption.²¹
- Railbanking order: A prospective trail sponsor must file a petition containing an interim trail use statement within ten days after the railroad's notice of exemption is published in the Federal Register.²² Late requests may be considered by the STB if the abandonment has not yet been consummated.²³ The petition must include a map of the ROW to be acquired or used, a statement of the trail sponsor's willingness to assume full financial responsibility for managing the ROW, to assume any legal liability, and to pay any taxes that may be levied on the ROW.²⁴ Interim trail use is subject to the trail sponsor's ability to maintain full responsibility.²⁵

¹³ *Preseault* 494 U.S. at 17.

¹⁴ *Id.*

¹⁵ *Id.* at 17-19.

¹⁶ *Id.* at 13.

¹⁷ 16 U.S.C. § 1247.

¹⁸ Note that there are two possible abandonment proceedings: fully regulated or exempt. Most rail abandonments now occur through the exempt procedure. Ferster *supra* at 3. A railroad may satisfy the criteria to abandon under an exempt proceeding if it certifies no local traffic has moved over the line for at least two years, that any overhead traffic can be moved to other lines, and that no formal complaint filed by a rail service user regarding the cessation of service is either pending before the Board or has been decided in favor of the complainant within the two year period. 49 CFR 1152.50(b).

¹⁹ 49 CFR 1152.50(d)(1).

²⁰ 49 CFR 1152.50(d)(2).

²¹ *Id.*

²² 49 CFR 1152.29(b)(2).

²³ Ferster, *supra* at 4.

²⁴ 49 CFR 1152.29(a).

²⁵ 49 CFR 1152.29(a)(3).

- Railroad and trail sponsor negotiation: Within ten days after a trail sponsor files a request for interim trail use, the railroad must reply to indicate its intent to negotiate an agreement with the trail sponsor.²⁶ If the railroad agrees to negotiate, the STB will issue a Notice of Interim Trail Use (NITU); the NITU establishes a one year negotiating period between the railroad and trail sponsor for a voluntary agreement to transfer the ROW to the trail sponsor.²⁷ The parties may request up to three one-year extensions for the negotiation period.²⁸ If an agreement is reached, the railroad and trail sponsor must jointly notify the STB within ten days of the agreement.²⁹
- Railbank: Upon agreement and notice, the ROW is added to the railbank and preserved for trail use unless either rail service is reactivated or the trail sponsor fails to meet its obligations for financial responsibility.

Economic Benefits of Rail-to-Trail Projects

Numerous studies on individual rail-to-trail projects have been completed over the last 30 years that demonstrate the economic benefits of rails to trails. Notable benefits include local economic gains due to tourism and jobs created, improved public health from enhanced access to recreation, increases to property values due to proximity to a valued amenity, and improved safety for pedestrians and bicyclists.³⁰ For example, a 2024 study by researchers from Clemson University on the proposed Saluda Grade Trail, a 31-mile trail in upstate South Carolina and western North Carolina, found that the project would generate between \$194.5 million and \$266.6 million in cumulative output. A 2013 study on the Silver Comet Trail in Georgia, which extends 61 miles, found that the trail generated about \$100 million annually in expenditures and \$20 million in earnings, and it supported about 750 jobs.³¹

How H.R. 4924 would obstruct railbanking

On its face, the Rails to Trails Landowner Rights Act (H.R. 4924) may appear to simply amend the railbanking process to provide for additional notice to and input by landowners; however, in practice the legislation would completely undermine railbanking. For instance, the bill would provide a single landowner, who may not have any property interest associated with lands in the ROW, to veto a railbanking proposal. It would also impose upon trail sponsors potentially limitless liability to landowners for “any additional cost attributed to interim use,” despite the fact that the federal government retains exclusive jurisdiction over the ROW.³² In short, the legislation would make it virtually impossible for a trail sponsor to successfully negotiate with a railroad on interim trail use through the railbanking process. As a result, Congress’s goal to prevent fragmentation of the nation’s railroad corridors, and its solution to prevent fragmentation through railbanking, would be defeated by this legislation. An outline of the key problems that would result from the bill’s provisions is as follows:

²⁶ 49 CFR 1152.29(b)(2).

²⁷ Ferster, *supra*.

²⁸ 49 CFR 1152.29(d)(1)(ii).

²⁹ 49 CFR 1152.29(h).

³⁰ Talbot Thrive, *The Argument for More Multi-Use Paths and Rails-to-Trails Projects*, <https://talbotthrive.org/why-are-bike-paths-and-rails-to-trails-programs-good-for-the-community/>, (last accessed Oct. 15, 2025).

³¹ Northwest Georgia Regional Commission, Atlanta Regional Commission, Silver Comet Trail Economic Impact Analysis and Planning Study, https://headwaterseconomics.org/wp-content/uploads/Trail_Study_142-GA-Silver-Comet-Econ-Impact.pdf, July 2013.

³² H.R. 4924 Sec. 2(2)(D)(i)

- Sec. 2(2)(B) would require prospective trail managers to receive signed approval from each landowner adjacent to the ROW or those owning property upon which the ROW crosses. Prospective trail managers would have to receive signed approval within 30 days of an abandonment proceeding. This provision is problematic for several reasons:
 - Most significantly, Congress’s very purpose of establishing railbanking is to stay the abandonment process and allow for interim trail use so that the corridor can be preserved. By allowing a single landowner, even a landowner who has no property interest at stake, to veto the proposal, this legislation would prevent virtually all railbanking efforts. This provision would create a right for individual landowners superseding the federal government’s exclusive jurisdiction of the ROW, an outcome directly contrary to the purpose of railbanking.
 - While some adjacent property owners do have a reversionary interest in the property within the ROW and the potential to seek monetary damages through the Tucker Act, other adjacent landowners may have no property interest whatsoever. In effect this legislation would give veto power to a single landowner, who has no property interest and who would not likely have standing to sue under the Tucker Act. This amounts to veto power over the entire proposal to railbank a ROW.
 - Railbanking negotiations between the railroad and a prospective trail manager can take years, especially when fundraising for a purchase is required, which is why the STB provides for a one year negotiating period with the option for up to three one-year extensions. This legislation would require unanimous approval by adjacent landowners, which could potentially require approval from hundreds of individual parties (see Figure 1), within a 30-day period. For many railbanking proposals, compliance with this provision would not be possible.
- Section 2(2)(D)(i) would require prospective trail managers to compensate property owners who have an interest in property upon which a ROW crosses for “any additional cost attributed to the interim use...including costs imposed on affected landowners due to the required movement of existing infrastructure and lost development opportunities.”
 - Rail lines that are railbanked simply maintain an existing right-of-way that was acquired decades or centuries ago; at the time of the original acquisition, landowners were paid for the property interest which necessarily encompasses “lost development opportunities.” If H.R. 4924 was enacted, then successor property owners would be paid again without a new property interest being transacted. Arguably, this provision would result in duplicative compensation for the same property interest.
 - As discussed by the Supreme Court in *Preseault*, such landowners can already seek relief through the Tucker Act, which allows plaintiff landowners to secure monetary damages in a successful claim based on a Fifth Amendment taking. Additionally, the Federal Circuit Court has held that the federal government, not the trail manager, is responsible for compensating landowners in a takings claim, because the federal government has exclusive jurisdiction over the ROW.³³ This bill sidesteps the Fifth Amendment by ignoring the federal government’s exclusive jurisdiction over the ROW, and creates a potentially limitless financial obligation on trail managers.

³³ Ferster, *supra* at 10.

- Section 2(2)(D)(iii) requires of any railbanking agreement that the trail sponsor “continue all right-of-way maintenance responsibilities in perpetuity...” or until rail service reactivates.
 - As a part of the railbanking filing, a trail sponsor is already required by the STB to sign a statement on willingness to assume financial and managerial responsibility, including any legal liability arising out of the use of the ROW.³⁴ Therefore, this provision is superfluous.
- Section 2(3)(c) would require that prior to issuing a notice of interim trail use, the STB must conduct and the prospective trail sponsor must pay for a cost-benefit analysis on the interim use of the railway considering several factors, including the economic impact on landowners, and also analyzing the “likelihood that the corridor will return to use as rail service....”
 - Requiring a trail sponsor to pay for a cost-benefit analysis is an unnecessary and burdensome exercise that will significantly delay the railbanking process and deter trail sponsors from pursuing railbanking projects. Congress’s purpose in amending the Trails Act to create railbanking was to prevent the fragmentation of rail corridors in a cost-effective manner. By allowing a trail sponsor to take over maintenance responsibility for the corridor, the federal government is reducing its financial burden. Additionally, rail to trail projects have proven to contribute significantly to local economic growth through tourism, recreation, and transportation.³⁵
 - The requirement that a cost benefit analysis include a forecast of whether rail service will reactivate is a useless exercise. Firstly, the reason why a railroad would pursue railbanking is because it has determined that there will not be sufficient demand for rail service for the foreseeable future. In fact, to pursue railbanking through the exempt process, the railroad must certify “no local traffic has moved over the line for at least two years....”³⁶ Any analysis on reactivation would indicate that reactivation is uncertain or unlikely for the foreseeable future. Secondly, as the Supreme Court stated in *Preseault*, “Congress did not distinguish between short-term and long-term rail banking...To the contrary, Congress apparently believed that every line is a potentially valuable national asset that merits preservation even if no future rail use for it is currently foreseeable.”³⁷
- Section 3 requires the STB to periodically review rails-to-trails corridors to make recommendations to Congress about the maintenance requirements of trail sponsors and to consider requests from landowners and trail sponsors to narrow a ROW.
 - The purpose of railbanking is to maintain federal jurisdiction over intact rail corridors for future rail service, however uncertain that may be. Narrowing a ROW could inhibit future use of the corridor for rail service; landowners and trail sponsors are not well-informed to understand the requirements of railroads for future rail service. As with other problematic provisions in the bill, this provision would undermine the federal government’s exclusive jurisdiction by requiring STB to consider input from landowners seeking to shrink the ROW (apparently regardless of whether the landowners even have a future property interest).

³⁴ 49 CFR 1152.29(a)(3) (the trail sponsor must state willingness to assume full responsibility for “(i) Managing the right-of-way; (ii) Any legal liability arising out of the transfer or use of the right-of-way...; and, (iii) The payment of any and all taxes that may be levied or assessed against the right-of-way....”)

³⁵ Saluda Grade Trail, *Economic Potential*, <https://www.saludagraderail.org/rail-trail-impact> (last visited Oct. 15, 2025).

³⁶ 49 CFR Part 1152.50(b)

³⁷ *Preseault* 494 U.S. at 19.

Executive Summary

Railbanking has been a highly successful way to preserve the nation's railroad corridors through the cost-effective means of interim trail use. In turn, rail-to-trail projects have contributed to economic growth for many communities in both rural and urban landscapes. Ultimately, the success of railbanking will continue to depend on the federal government maintaining jurisdiction over ROWs and on the ability of railroads and trail sponsors to negotiate interim trail use. H.R. 4924 would inhibit the railbanking process, thereby frustrating Congress's goal of preserving railroad corridors and precluding communities across the country from the economic benefits of rail-to-trail projects.

Appendix

Figure 1: A map of a 11.5 rail corridor in Talbot County, Maryland with adjacent properties highlighted in yellow. The map shows that along this corridor, there are 318 individual parcels, indicating hundreds of individual owners.

