

1

H.166

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Introduced by Representatives Consejo of Sheldon, Beyor of Highgate,

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Browning of Arlington, Devereux of Mount Holly, Fagan of

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Rutland City, Higley of Lowell, Hubert of Milton, Kupersmith

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of South Burlington, Masland of Thetford, McCarthy of St.

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Albans City, Mrowicki of Putney, O'Sullivan of Burlington,

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Pearce of Richford, Savage of Swanton, Townsend of

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Randolph, and Townsend of South Burlington

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Referred to Committee on

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Date:

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Subject: Railroads; railbanked property; crossing; license

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Statement of purpose of bill as introduced: This bill proposes to require the

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Secretary of Transportation to grant a license to cross state-owned rail property

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that is railbanked if the crossing is needed by a person to access property

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owned by the person.

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An act relating to a right to cross state-owned railbanked rail property

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It is hereby enacted by the General Assembly of the State of Vermont:

1 Sec. 1. 5 V.S.A. § 3408 is amended to read:

2 § 3408. RAILBANKING; NOTIFICATION

3 (a) If the ~~secretary~~ Secretary finds that the continued operation of any
4 state-owned railroad property is not economically feasible under present
5 conditions, he or she may place the line in railbanked status after giving
6 advance notice of such planned railbanking to the ~~house and senate committees~~
7 ~~on transportation~~ House and Senate Committees on Transportation when the
8 ~~general assembly~~ General Assembly is in session, and when the ~~general~~
9 ~~assembly~~ General Assembly is not in session, to the ~~joint transportation~~
10 ~~oversight committee~~ Joint Transportation Oversight Committee. The ~~agency~~
11 Agency, on behalf of the ~~state~~ State, shall continue to hold the right-of-way of
12 a railbanked line for reactivation of railroad service or for other public
13 purposes not inconsistent with future reactivation of railroad service. Such
14 railbanking shall not be treated, for purposes of any law or rule of law, as an
15 abandonment of the use of the rights-of-way for railroad purposes.

16 (b)(1) The ~~secretary~~ Secretary may enter into agreements with units of
17 federal, state, and local governments, as well as with responsible private
18 persons, for interim use of the right-of-way of a railbanked line, provided that
19 the interim use is not inconsistent with future reactivation of railroad service.

20 (2) Upon request, the Secretary shall enter into an agreement granting a
21 license to cross state-owned rail property that is railbanked if a person needs

1 the crossing to access property owned by the person. The Secretary may
2 charge a fee for the license that shall not exceed the fair market value of a
3 comparable right to cross private property that is not held by a railroad. The
4 Secretary shall not impose any other fees or charges. The license agreement
5 shall not require the property owner to procure insurance naming the State or
6 an agency thereof as an additional insured or to indemnify the State or an
7 agency thereof. The Secretary may terminate a crossing license if the property
8 owner benefited by the license engages in activities that are inconsistent with
9 future reactivation of railroad service.

10 (c) The ~~secretary~~ Secretary may, after consulting with municipalities, adopt
11 rules governing the interim trail use of state-owned railroad rights-of-way that
12 have been placed in railbanked status. Signs indicating the rules shall be
13 conspicuously posted in or near all areas affected. Any person who violates
14 these rules shall be subject to a penalty of not more than \$300.00.

15 Sec. 2. 12 V.S.A. § 5601 is amended to read:

16 § 5601. LIABILITY OF STATE

17 (a) The ~~state~~ State of Vermont shall be liable for injury to persons or
18 property or loss of life caused by the negligent or wrongful act or omission of
19 an employee of the ~~state~~ State while acting within the scope of employment,
20 under the same circumstances, in the same manner and to the same extent as a
21 private person would be liable to the claimant except that the claimant shall not

1 have the right to levy execution on any property of the ~~state~~ State to satisfy any
2 judgment. The ~~superior courts~~ Superior Courts of the ~~state~~ State shall have
3 exclusive jurisdiction of any actions brought hereunder.

4 * * *

5 (e) This section shall not apply to:

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7 (8) Any claim arising from the selection of or purposeful deviation from
8 a particular set of standards for the planning and design of highways.

9 (9) Any claim arising from the crossing of state-owned railbanked
10 property.

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12 Sec. 3. EFFECTIVE DATE

13 This act shall take effect on passage.