

MINUTES OF THE MEETING
HIGHWAYS AND TRANSPORTATION COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 16, 1985

The meeting of the Highways and Transportation Committee was called to order by Chairman Harp on February 16, 1985, at 3:30 p.m. in Room 325 of the State Capitol.

ROLL CALL: All members of the Committee were present, except Representative Keyser, who was excused.

CONSIDERATION OF HOUSE BILL 383: Representative Dennis Nathe, District 19, sponsor of House Bill 383, stated that although it was short, the bill would have great impact and consequences in the State.

Representative Nathe said the bill would provide that the railroads pick up 50% of maintenance costs for area highways when a branch rail line is abandoned. He explained Section 1 of the bill provides for (1) the establishment of an account for railroad deposits; (2) the drawing of warrants based on a need for the funds; and (3) issuance of warrants in an amount determined by the Department of Highways and approved by the Legislature.

Representative Nathe offered an amendment to the bill on page 1, line 21, whereby "potentially" would be inserted before "profitable", and again on page 2, line 17.

Representative Nathe read each section of the bill to committee members and explained that Section 4 would require that a rail abandonment highway impact analysis be prepared by the Department of Commerce. He said the bill is the result of concern for the number of railroad lines abandoned since 1979 (a result of railroad deregulation) and for the considerable impact to Montana highways. Representative Nathe explained this impact could total \$20 million by 1990 and that it would be appropriate for railroads to pick up half of this cost.

Representative Nathe called upon Mr. Bill Fogarty, Administrator, Transportation Division, Department of Commerce, who referred to a 3'x6' map in explaining branch lines which have been abandoned from 1983 to date. Mr. Fogarty advised committee members a total of 140 miles of railroad lines have been abandoned.

Representative Nathe explained he requested "potentially" be inserted in the language of the bill, as each year railroads in the State file a systems diagram in one of three categories of abandonment, which include those under study and those potentially being considered for abandonment.

Representative Nathe commented there were no highways when the rails were first built and that by inserting "potentially" the bill would get at the problem of the "spread between rates", which a railroad can use to lower profits on branch lines, as a step toward abandonment.

Representative Nathe stated if per ton miles on rails decrease, the railroads use the rationale that highways are available. He said the bill doesn't apply to branch lines that are not profitable, i.e., as long as there is a profit from operating the branch line, there is a certain amount of responsibility on the part of the railroad to serve the area.

PROPOSERS: Representative Ted Schye, District 18, stated his farm is situated 15 miles from the end of a branch line, which may be abandoned, but the highway serving the area is old and would deteriorate quickly with increased traffic from rail abandonment.

Senator Ed Smith, District 10, told committee members he resides on the branch line from Bainville to Plentywood, and if the rail line were abandoned there would be a tremendous negative impact to the highway serving the area. Senator Smith advised committee members of a bill that would use coal funds for roads, which was killed in the Senate this date. He commented compensation must be made for abandonment of rail lines, since grain trade is now situated on the West Coast.

Mr. Bill Fogarty, Administrator, Transportation Division, Department of Commerce, stated 1,251 miles of rail line have been abandoned in the State, of which 851 were Milwaukee Railroad lines. He said 377 miles of Burlington Northern track or 9 branch lines, have been abandoned in the past two years, and that his department is concerned with the economy as well as the impact to highways in the State.

Mr. Mons Tiegen, representing the Montana Stock Growers Association, the Montana Wool Growers Association and the Montana Cowbells, told committee members those organizations are all concerned with railroads dropping branch lines in areas in which highways were not built to accommodate today's trucks. He said the organizations believe highways should be compensated by the railroads (Exhibit 0).

Mrs. Jo Bruner, representing Women Involved in Farm Economics (WIFE), read from prepared testimony in support of the bill (Exhibit 1) and said the Montana Farmers Union and Cattle Feeders also support the bill.

Mr. Gary Wicks, Director, Department of Highways, stated that many highways built in the 1930's are being affected by abandonment. As an example, he cited the roadway between Geraldine and Denton which is 60 miles long and would require \$30 million to reconstruct.

Mr. Wicks advised committee members House Bill 383 "is a way to cover the cost of reconstructing roads impacted by railroad abandonment".

Mr. Joe Brand, Director, United Transportation Union in Montana, stated his organization's support of the bill and told committee members he was a railroad retiree with more than 40 years in the industry. Mr. Brand stated that subsequent to deregulation the railroads did not keep their promises for better, faster service and that prior to the merger of May, 1970, railroads hauled cattle and provided good service. He stated merchants can't get carload lots of goods now and commented that deregulation is not all bad, but "the railroads went too fast and without proper thought in accomplishing their goals, thus ruining railroad transportation in Montana". He said there is now a railroad monopoly in the State and no competition and that holding company assets are diverted to other areas. Mr. Brand advised the Committee he believes railroads should be responsible for highways impacted by abandoned lines, especially in view of railroad holdings in coal, oil and timber in the State.

Mr. Tom Beck, President, Montana Association of Counties, stated that railroad abandonment creates loss of taxable valuation to the counties and increased traffic on county roads.

Mr. James T. Mular, State Director, Brotherhood of Airline & Railway Clerks, told committee members he had 35 years of railroad service, beginning with the Northern Pacific Railroad. He said competition was then the key word of railways.

Mr. Mular stated that prior to the 4R Act and the Staggers Act of 1980, he sat in hearings where questions were asked of the Northern Pacific, Great Northern, CB&Q and Milwaukee Railroads concerning the abandonment of branch lines. He said the "measure of profit then was convenience and now railroads operate by law". He commented a profitable line is determined by gross ton miles and statutory criteria on profitability, which is defined as a 14% return on net investment for railroads.

Mr. Mular said the bill allows a state administrative body to determine profitability of a branch line in serving the shipping needs of the public, as railroads say a cost factor is involved in abandonment which is then passed on to the public. He commented this is especially so with a captive, dominated railroad market such as in Montana, where 93% of the network belongs to one railroad, thus the need for House Bill 383.

Mr. Bob Blair, Montana Peoples Action, Missoula, stated the railroad (Burlington Northern) has extensive land holdings in the State and is a large employer, which has substantial impact on state economy, but railroads should be accountable to the people of Montana. (Exhibit 1a).

OPPONENTS: Mr. Tom Spence, Attorney, Burlington Northern, stated the bill violates taxation laws and the 4R Act, and if it is determined not to be a tax, "it would be even less defensible". Mr. Spence said there should be a way to show a rational basis for the relationship between abandonment and highways. He asked how costs of impact to highways could be determined if they were related to abandonment (Exhibit 2).

Mr. Spence told the Committee abandonment criteria is determined by the Interstate Commerce Commission (ICC), and since House Bill 383 is inconsistent with ICC determinations, or more restrictive, the bill would be preempted by the ICC. He commented the bill addresses concerns with increased wear on Montana highways if rail lines are abandoned and that the "bottom line is, who will pay?". He said he is confused by the position of the Department of Commerce, who support export production to the Port of Butte, but are concerned with increased truck traffic at the same time.

QUESTIONS: Representative Harbin asked Mr. Spence if he thought the statements made by proponents relating to the distance to roads versus branch lines was in error. Mr. Spence replied he did not know.

Representative Harbin commented the Committee does not care about the valuation of grain shipments now, but is concerned with those in the future. He said the Department of Highways has never encouraged increased vehicular use of highways and that the Committee does not care about abandonment procedures, but what is abandoned and the impact of such abandonment.

Representative Glaser asked Mr. Wayne Hatton, BP General Manager for Burlington Northern in Billings, about the inequity between rates in Montana and those in other states (example, Hasting, Nebraska). Mr. Hatton replied he was not prepared to discuss rates this date.

Representative Glaser, referring to his question on equity of rates, stated, "It is my opinion that the inequity in rates exists because of a coercive monopoly in the State from certain land grants which the Burlington Northern is taking advantage of." Mr. Hatton replied, "The issue of land grants is not germane to this situation."

Chairman Harp asked Mr. Spence how the 4R Act exempted the State of Montana from similar action taken by other states against railroads. Mr. Spence replied the bill would be a tax and is open to dispute.

Chairman Harp asked if there could be an analogy drawn between House Bill 383 and legislation that requires deposit of coal severance tax for the purpose of assisting in the construction of highways in areas severely impacted by coal development such as in Colstrip. He said he sees a connection between the two and that Burlington Northern has a social obligation to small communities in the State, just as the utilities have in Colstrip.

In closing, Representative Nathe stated the Port of Butte was an attempt by the Department of Commerce to instill competition within the railroad system in the State. He said Montana rates are 200% higher than those charged by the railroad in either Minnesota or Nebraska (Exhibit 3) and suggested Burlington Northern check the road along the Geraldine-Denton branch line.

Representative Nathe said it was his opinion that the ICC and railroads "play musical chairs", as ICC board members seem to end up as railroad officials. He provided committee members with copies of written testimony from Orville Hash, Redstone, Montana, who could not be present (Exhibit 4). Mr. Nash, President of the Association for Branch Line Equality (ABLE), which was organized 3 years ago on the Bainville-Opheim branch line, explained highways in the Scobey-Wolf Point area have already been negatively impacted and truck drivers are complaining of damage to their vehicles. He said 282 miles of highway would be impacted by abandonment of the Bainville-Opheim branch line.

Referring to Table 3, Estimated Revenues and Costs, Bainville to Opheim (Exhibit 5), Representative Nathe asked Mr. Fogarty to explain the information presented. Mr. Fogarty stated lines 6 through 9 show the ICC opportunity costs for a rate of return to the railroads. He said the Department of Commerce included materials and land net profits of \$6.7 million in 1983 for the entire rail line. Mr. Fogarty commented the railroad can take any segment of profit on a branch line to determine feasibility of abandonment instead of looking at the profit of the entire line.

CONSIDERATION OF HOUSE BILL 663: Representative Janet Moore, District 65, stated the bill would establish a scenic highway in the Seely-Swan Valley from Clearwater Junction to Highway 35, north of Bigfork. She said the bill would give the existing management plan (written in 1954) the power of law and that she had received overwhelming support for the bill with the exception that there is some concern about an increase in tourism that may result from the scenic designation.

Representative Moore explained tourists generated 220,000 travel-related jobs and \$4 million in tourist dollars in 1983, which is a large segment of Montana's economy.

PROPOSERS: Mr. Gareth Moon, told committee members he was state forester from 1954 to 1980 and a state lands commissioner from 1980 to 1982, when he retired. He read from a prepared statement in support of the bill (Exhibit 6) and said the highway goes through 40,000 acres of state school trust lands.

Mr. Moon explained that in 1954, the highway was largely dirt and gravel and that paving of the road increased production of timber from state lands and contributed to improvement of forestry procedures in the area.

Mr. Moon explained there was concern for environmental impact when the highway was originally paved and said the Department of State Lands could prepare a management plan. He encouraged committee support of the bill, adding he was not representing any special interest group.

Mr. Dennis Hemmer, Commissioner, Department of State Lands, stated his support of the bill and proposed the Committee strike "prepare" on page 1, line 16 and insert "adopt as rules". He further suggested that on page 1, line 18, following "highway", "and" be stricken and "." inserted, as well as striking "preparation" and inserting "adoption" on page 1, line 19, and striking "landscaping" on page 2, line 9, to insert "forest management". Mr. Hemmer said formal adoption procedures would take place with the exception of a section of roadway from Seely Lake to Swan Lake (Exhibit 6a).

Mr. Duane Wright, Lindbergh Lake Homeowners Association, Swan Valley, stated his support of the bill, citing the negative impact to California highways of ignoring aesthetics along roadways.

Mr. Jeff Macon, representing the Seely-Swan Chamber of Commerce, told the Committee that of the 100 chamber members 50 are businessmen and 50 are private individuals. He stated the Chamber is interested in the overall needs of the Valley instead of taking a hard business-line and that of 62 persons polled, 36 were in favor of the bill as written, while 26 are opposed in view of public safety.

Mr. Macon advised committee members agriculture is not a significant source of income in the Seely-Swan, as are tourism and timber. He said high-density subdivisions create more problems than tourists and that area residents "should continue to work together on comprehensive land use planning".

Mr. Ron Cox, told committee members he was a 22 year professional in forest land management and said that Seely-Swan is a community-oriented valley. He displayed a 3'x6' forest service map denoting land use in the Valley and said about 54% of land along the highway is privately owned, while nearly 70% of the land near Swan Lake is privately or corporately owned.

Mr. Cox commented the bill reflects a social concern for preservation of an area in which the economy plays a large part. He said income in the Valley is relatively low, while the area remains one of the "last frontiers", thus creating "a paradox for Missoula County in growth versus perservation". He explained he is concerned with the future of the land and referred to the Lolo National Forest draft plan in which it is stated that the forest will outlast requirements of the population in the area. Mr. Cox added, "the Department of State Lands does not have a qualified landscape architect now".

Mr. Lewis Lindemer, resident and Seely-Swan businessman stated he supported the bill.

OPPONENTS: Mr. Lee Tiffin, resident on Highway 83, said he originally thought House Bill 663 was a good bill, but has questions now concerning how much additional businesss the bill would actually generate. Mr. Tiffin also questioned the benefit of greater tourism and business given the costs to the residents of the Valley in terms of safety, maintenance, noise pollution, trespassing and greater harm to the environment.

Ms. Mary Phillips, resident of Condon, in the Seely-Swan Valley, advised committee members the bill should be withdrawn for further study and be subject to a public vote.

Mr. Lee Anderson, landowner on the Highway 83 corridor, stated public meetings held on the matter of a scenic highway designation had no form for opponents to sign, but he had a letter of opposition signed by 15 persons originally, and later another 29 persons. He said passage of the bill would affect the solitude of area residents.

Mr. Martin Kux, Swan Valley resident, stated the bill needs more publicity in the area and further study, as it could have a negative impact on the way of life for those trying to get away from developed areas. He said he is not certain the existing management plan needs to be made a law.

Mr. John King, Swan Valley resident, told committee members Highway 83 is a minimum-width two-lane highway for 90 miles and that with logging trucks and local traffic in addition to a potential increase of tourist traffic, he was concerned with public safety.

Mr. Paul H. Morton, Condon, stated he opposed the bill.

QUESTIONS: Representative Zabrocki asked Representative Moore how many persons resided in the Valley. Representative Moore replied there were 300 registered voters.

Representative Smith asked why the road was not built wider. Mr. Moon replied the Bureau of Public Roads paid for the road with public receipts.

Representative Smith asked about the \$58,000 cost for personal services and operating costs in the fiscal note. Mr. Moon replied the cost could be alleviated by changing language in the bill from a "State Lands architect" to Forest Service".

Representative Compton asked Representative Moore if the proposal would change the fiscal note. Representative Moore replied it would reduce operating costs and personal services to a minimal amount.

Chairman Harp asked Mr. Gary Wicks, Director, Department of Highways, about the "scenic" designation and how it was viewed by the Department. Mr. Wicks replied there have been several requests in the past for such designation, but the Department has no authority under present law to do so, although Pintlar, near Anaconda, was so designated by the Public Service Commission, which actually does not have the authority to make such designation. He commented the Department resists such action as so many highways in the State would qualify for scenic designation and the costs to the Department for signs and administration would be prohibitive.

In closing, Representative Moore requested committee members support House Bill 663.

CONSIDERATION OF HOUSE BILL 749: Representative William (Red) Menahan, District 67, sponsor, stated House Bill 749 would require the Department of Highways to maintain all secondary roads as counties such as Deer Lodge have lost 30% of road maintenance funds. He referred to a situation in Deer Lodge County wherein the County closed a road over the Continental Divide between Mill Creek and Ralston, affecting hauling of timber for Louisiana Pacific, that has a contract for timber on Mount Hagan.

PROPOSERS: Representative Bud Campbell, District 48, stated the road closure would mean increased timber costs and asked the Committee to support the bill.

OPPONENTS: Mr. Gary Wicks, Director, Department of Highways, stated he did not have cost figures for gravel portions of secondary roads but the cost of bringing 2068 paved miles up to standard would be \$19 million (\$8.2 million in one-time equipment costs and \$11 million in routine maintenance). He said the cost would remain at \$11 million annually thereafter and would require an additional 180 FTE.

Mr. Wicks said these are federal-aid secondary highways which are also local county roads and are state-assisted in highway improvement (75% federal funds and 25% state funds). He commented the State insists these roads be maintained at good levels and as local governments have a problem in doing so the State receives requests for assistance. Mr. Wicks said the Department recognizes the problem but it will not be solved by putting the burden on the Department.

There were no questions from the Committee. In closing, Representative Menahan stated if the most hard-pressed, commercially used roads could be identified and the State would purchase materials, the counties could supply the equipment to do the work.

CONSIDERATION OF HOUSE BILL 674: Representative Dennis Nathe, District 19, sponsor, stated House Bill 674 would provide roadside signs identifying mountain ranges and geographical features, which would be erected and maintained by the Department of Highways.

Representative Nathe told committee members he did not realize the fiscal impact when the bill was drafted, but thought the signs would be an asset in identifying such sites, for residents as well as tourists, and that dollars from old five-mile signs could be used for this purpose.

PROPONENTS: Mr. Mike Hayworth, Colstrip, representing the Bible Science Association, stated his organization supports the concept of the bill, but not signs which identify areas according to the theory of evolution, as fact.

OPPONENTS: Mr. Gary Wicks, Director, Department of Highways, stated the fiscal impact of the bill appears to be \$126,000 in both FY86 and FY87. He said there is a problem with what the signs "should say" and with motorists not paying attention to important traffic signs, adding, "the Department would like to stay out of these arguments".

Mr. Wicks suggested the Historical Society plan for 40 signs in the the State might suffice.

There were no questions from the Committee and Representative Nathe closed saying he did not envision huge signs, just small ones.

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DISPOSITION OF HOUSE BILL 749: Representative Zabrocki made a motion that House Bill 749 be Tabled. The motion was seconded by Representative Compton and given approval of all committee members except Representative Campbell, who voted no.

DISPOSITION OF HOUSE BILL 674: Representative Compton made a motion that House Bill 674 be Tabled. The motion was seconded by Representative Glaser. All members voted aye except Representatives Campbell, Koehnke and O'Connell, who voted no.

DISPOSITION OF HOUSE BILL 663: Chairman Harp told committee members he sees a division in the Seely-Swan community on the bill and problems ahead for Representative Moore.

Representative O'Connell made a motion that House Bill 663 be Tabled. Representative Zabrocki made a substitute motion that the bill DO PASS. The motion made by Representative Zabrocki failed with all other members of the Committee voting no.

The motion to Table, made by Representative O'Connell, was given committee approval by all members except Representative Zabrocki.

Addressing House Bill 383, Chairman Harp advised the Committee they could clear up some language in the bill with a Statement of Intent.

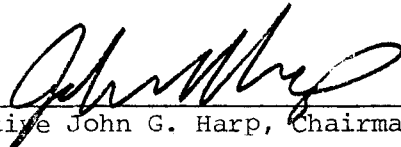
Mr. Tom Gomez, Legislative Researcher, referring to information he provided committee members on the bill (Exhibit 7), stated, "Any law is inherently discriminatory, as it sets up a distinction that would affect the rights, property and interests of a particular class of people who are subject to the law."

Mr. Gomez, referring to Burlington Northern's question as to whether there is a rational basis for the bill, said the Legislature can "define whether different treatment of one class of people is warranted". He advised the Committee they could utilize a Statement of Intent to provide reasons for legislative enactment of the bill or for the purpose of declaring it a matter of public policy or finding, which warrants a burden being placed upon such a private entity as the railroad.

Chairman Harp requested that Representative Nathe and Mr. Gomez prepare a Statement of Intent and related information for the Committee meeting on Tuesday, February 19, 1985, at 5 p.m. He commented he is very interested in getting a full hearing on House Bill 383 and that the State should take action to show Burlington Northern that not all of its proceedings are preempted by federal law.

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There being no further business before the Committee, the meeting was adjourned at 6:10 p.m.



Representative John G. Harp, Chairman

DAILY ROLL CALL

HOUSE HIGHWAYS AND TRANSPORTATION COMMITTEE

49th Legislative Session

Date Feb. 16, 1985

Name	Present	Absent	Excused
Harp	✓		
Abrams	✓		
Campbell	✓		
Compton	✓		
Glazer	✓		
Harbin	✓		
Howe	✓		
Kennerly	✓		
Keyser			Ⓢ
Koehnke	✓		
O'Connell	✓		
Peterson	✓		
Smith	✓		
Zabrocki	✓		

VISITORS' REGISTER

Highways + Transp

COMMITTEE

BILL NO. HB 383DATE 2-16-85SPONSOR Nathe

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Tom Spence	Billings		X
Wayne Hutton	"		X
Walter T. Brown	Helena	X	
WIFE: F.W. Brown	1469 Kidder	X	
Jim McLean	Butte BRAC	X	
Joe Brand	Helena, MT	X	
MJ Engleson	Missoula	X	
Robert Blair	Missoula	X	
Joseph E. Moore	444 Stephens #1, Missoula	X	
TARA GALLAGHER	806 W. Clark Livingston	X	
Chris Clancy	Livingston	X	
Tom Beck	Me Co	X	
Bret Brunner	Helena	X	
Ted Schae	Glasgow	X	
Bill Fogarty	Helena	X	
Stuart Daygett	mt. Hqs. of state, Grizzly Districts - Helena	X	
Sen Ed Smith	Dist 10	X	
Gary WICKS	Helena	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

2-16-85
HB 383

Exhibit O

WITNESS STATEMENT

Name Mons Tigeil Committee On Highways + Transp.
Address Holena Date 2/16/85
Representing 111 Stockgrowers - Woolgrowers Support X
Bill No. 383 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. It is a well recognized fact that the abandonment of rail lines places a huge burden on the remaining public highways.
2. Our highway system now is badly overloaded so it seems only proper that the railroad make some contribution toward improving the impacted roadways.
- 3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WIFE

Women Involved in Farm Economics

H.B. 383.

3-16-85
Exhibit 1
HB383

This Bill will not take effect unless the railroads in the State abandon more branch lines!

343.8 miles of ³⁴¹trackage have already been abandoned between the years 1979- 1984, which means that those lines which were no longer being used, or which were unprofitable for the railroads should have already been taken out of service. *1217.5 Total miles abandoned in that time*

The lines which are still in existence have traditionally been profitable lines- in some cases, it appears to observers that some of them are deliberately being allowed to deteriorate, making maintenance and/or replacement of trackage very expensive. The term "cannibalization" has been used in the past, but a better phraseology would be maximization of profits, with complete disregard for Montana's rural population!

Most of the roads in this State were built many years ago when it was taken for granted that the railroads would always continue to serve all the towns located along their tracks.

Funding for primary and secondary roads maintenance and replacement has been steadily decreasing at the same time that the cost of such work has dramatically increased!

The problem is compounded more in the areas where the pattern of grain traffic is changing, due to the efforts of the railroad to 'increase their efficiency.' It has meant that there is an increasing number of larger, heavier trucks going over the roads that are, in many instances, outdated, and past due for replacement. They were never designed to withstand heavier traffic in the first place!

In areas where branch lines have been abandoned, or have the perceived potential for abandonment procedures, these problems have become intensified.

The railroad, in its efforts to become a highly profitable business has been able, by its rates, to get grain traffic to move over the roads to the main line. This is legal under the Staggers Act of 1980.

By the same token, the RR's costs have increased for repair and maintenance of their branch lines - and this then, becomes the reason - and their excuse- for abandoning a formerly profitable line! Less traffic going over the branch line means less profit--- and much of the former traffic is going over the already bad roads to the main line! Increased expenses involved in repairing the branch line are charged against it - and the result is an abandonment procure.

The intent of the Staggers Act was to free the RR's from an

2. (HB 383)

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Ex 1 p 2
HB 383

overabundance of regulation. It appears that the Act has achieved its' objective of making the railroads profitable.

The net operating income on the nations' railroads soared to \$1.332 billion in the first half of 1984, nearly $2\frac{1}{2}$ times greater than the \$543 million netted in the first half of the previous year.

The American Association of Railroads figures showed that the rail ordinary income during the first half of 1984 totalled more than \$1.4 billion. compared with the \$657 million a year earlier. Ordinary income differs from rail operating income because it is calculated with non-railroad operations. Total revenues for the period climbed to nearly \$15 billion, compared with \$12.9 billion in 1983.

Third quarter profits from the BN were reported as being \$161 million compared with \$140 million a year earlier. The company said that the RR operating income was up 9% from a year ago in the 3rd quarter because of improved traffic volume, and increased operational efficiency. Their increased efficiency and income in this State is at the expense of the road system!!

This is at a time when the reduction of the BN's assessed property valuation has reduced the property tax base in 49 counties for the tax year 83-84, according to the MT Taxpayers Assoc.

Just in Choteau County, the assessed valuation of the BN railroad went from \$9,003,705 for tax year 82/83, to \$3,311,906 for the following year. That is a reduction of over 63%.

A Federal Law tells the states how to value railroad property- the 4-R Act.

In the case of abandoned trackage, the counties involved are even more affected!

The predominant industry in the state - agriculture- is in dire financial straits-- and yet, we are the only industry that pays the transportation costs on all we produce and all we consume!! In some areas of the state, every fourth crop goes to pay the railroad for the transportation of the other three crops!! That is -- except in drought years-- then it takes some of last years bushels too!!

W.I.F.E. supports this bill - we want the railroad to remain profitable, but we do not want to have to go back to gravel roads simply because they will not serve the remaining branch lines in Montana!

Mary Nielsen

(This sheet to be used by those testifying on a bill.)

2-16-85
Exhibit 1a
HB 383

NAME: Robert Blair DATE: 2-16-85

ADDRESS: 444 Stephens #1, Missoula, Montana

PHONE: 721-9694

REPRESENTING WHOM? Montana Peoples Action

APPEARING ON WHICH PROPOSAL: H.B. 383

DO YOU: SUPPORT? yes AMEND? OPPOSE?

COMMENT: Because of the Railroads impact on the
economy of Montana, it must be held accountable
to the Montana people in its decisions to close
lines. There-fore, we support the bill.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

My name is Tom Spence; I am the General Counsel for the Burlington Northern Railroad - Billings Region. I have had an opportunity to review House Bill No. 383, a Bill for an Act establishing an Abandoned Railroad Highway Assistance Account and providing for payments into that account by railroad's abandoning lines in the State of Montana. I would like to offer the following comments for your consideration:

(a) It appears that the required payment would be in the nature of a tax and, therefore, in our opinion, the Bill violates 49 U.S.C.A. 11503, which, generally, provides that a state may not impose a tax that discriminates against rail transportation property.

(b) For the proposal to have a rational basis, one must assume that abandonment of a piece of rail line results in direct and somehow proportional increases in highway truck traffic. It is submitted that in many cases abandonment does not result in any meaningful increase in highway truck traffic. For example, many of the customers that formerly availed themselves to the railroad services on the abandoned line, may in fact continue to use rail facilities from another location no farther from their point of origin.

(c) Montana Department of Commerce statistics indicate that in 1980 Burlington Northern Railroad had less than one-half of the market share of grain moving out of Montana. Today that figure is in excess of 75 percent of the grain shipped out of state, and to that extent, it is submitted that BN's operations have in fact substantially reduced highway truck traffic in the State of Montana.

(d) BN finds it somewhat inconsistent for the State of Montana to suggest that BN is somehow responsible for increased highway truck traffic and, therefore, should bear a portion of the cost of maintaining Montana's highways when, at the same time, the State of Montana is involved in the construction and promotion of an enterprise that encourages the truck transportation of grain, and in the future, wood products, past existing rail facilities to a distant terminal. How can the State on the one hand complain about the cost of increased truck highway traffic and, on the other hand, promote the same.

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Ex 2-p2
HB 383

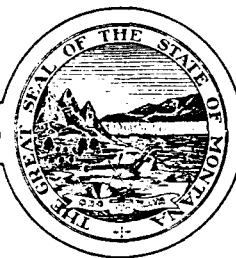
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(e) The criteria for permissible abandonment of rail lines has been established by, and is under the jurisdiction of, the Interstate Commerce Commission. To the extent that House Bill 383 is inconsistent with those federal standards, BN submits that it is preempted by them.

For the reasons stated, BN is opposed to House Bill 383.

2-16-85
Exhibit 3
NB 383

DEPARTMENT OF COMMERCE
TRANSPORTATION DIVISION



TED SCHWINDEN, GOVERNOR

1424 9TH AVENUE

STATE OF MONTANA

(406) 444-3423

HELENA, MONTANA 59620-0401

February 5, 1985

TO: Senator Ed Smith
Representative Dennis Nathe

FROM: Bill Fogarty, Administrator *Bil*
Transportation Division

RE: BN Grain Tariffs from Points in Nebraska, Minnesota
and Montana to the Pacific North Coast

Corn rates in effect on January 1, 1985 are shown as 107/cwt from Culbertson and Hastings, Nebraska in 54-car unit trains. Those same 54 cars move from Appleton and Glenwood, Minnesota at 110/cwt and 115/cwt from Minneapolis. These are published rates and can be found in ICC BN Tariff 4022 and 6003. Culbertson, Nebraska is 1,709 miles from Pacific North Coast ports.

Wheat rates from representative Montana points are as follows.

	<u>Miles</u>	<u>Per CWT</u>
52 car rates from Wolf Point	1,087	170
52 car rates from Harlem	946	135
52 car rates from Cut Bank	784	122
52 car rates from Inverness	784	126
52 car rates from Circle	1,240	169

This equates to the following Per Car Mile Earnings (PCME).

	<u>Miles</u>	<u>PCME</u>
Culbertson, Nebraska	1,709	\$1.19
Hastings, Nebraska	1,730	1.18
Appleton, Minnesota	1,653	1.26
Glenwood, Minnesota	1,635	1.28
Minneapolis, Minnesota	1,742	1.25

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E 3 p.2
HB 383

Memorandum - Senator Ed Smith
Representative Dennis Nathe
February 5, 1985
Page 2

This would then be compared to Montana origins which compute to the following.

	<u>Miles</u>	<u>PCME</u>
Wolf Point	1,087	\$3.08
Harlem	946	2.81
Cut Bank	784	3.07
Inverness	784	3.17
Circle	1,240	2.68

Upon examining the highest Minnesota or Nebraska earnings at \$1.28 to Montana origins, the percentage increase is:

	<u>Increase</u>
Glenwood - \$1.28 Wolf Point - \$3.08	240.63%
Harlem - 2.81	219.53%
Cut Bank - 3.07	239.84%
Inverness - 3.17	247.66%
Circle - 2.68	209.38%

As you can see, Montana rates are 200+% greater than the highest Minnesota or Nebraska rate.

BN and the SOO Rails Helped Build These Healthy Branch Line Communities—Mutually
Beneficial for Some Seventy Years—the Basic Principles Have Not Changed

2-16-85
Exhibit 4
HB383

A. B. L. E.

— Association for Branch Line Equality —

& Branch Line Marketing & Shipping Assoc.

Officers: ORVILL NASH, Pres. RAMON TROWER, Sec.-Treas. MARY NIELSEN, Exec. Sec. CURT OVERBY, Vice Pres.

Involving the Economic &
Cultural Survival of the
following communities—

H.B. 383

ANTELOPE
FLAXVILLE
FOUR BUTTES
FROID
GLEN TANA
HOMESTEAD
MADOC
MEDICINE LAKE
NAVAJO
OPHEIM
PEERLESS
PLENTYWOOD
REDSTONE
RESERVE
RICHLAND
SCOBEEY

My name is Orvill Nash, and I am submitting the
following remarks in support of HB 383.

I am President of the Association for
Branch Line Equality- a Shippers Association
that was formed 3 years ago on the 146 mile
Bainville/Opheim branch line in an effort to keep

REDSTONE, Mont. 59297
Ph. 895-2551 or -2244
Box 32

MED. LAKE, Mont. 29247
Box 32 Star Route
Ph. 286-5593

SCOBEEY, Mont. 59293
Box 530 Ph 487-2757, -5301
or 783-5601

and other adjoining the 23 shipping points and the 16 communities from being
communities adversely impacted by the unit train rates being
used by the facilities on the Burlington Northern's main line.

I feel that the estimated highway impact should this line, or
any portion of it, be abandoned, is too low!

Already Highway #13 from Scobey to Wolf Point has been made very
dangerous by the amount of traffic that has gone down to the main line
terminals because of the rate differentials. Farmers are waiting for the
first really bad accident to happen - and are surprised that it has
not already occurred! And yet, according to the MT Highway Plan, just
11.5 miles of that road will be resurfaced, widened, with partial
reconstruction in the year 1987, if all goes according to plan!!

Area truckers are complaining about the increasing damages to their
trucks.

If all, or any part of, this line is abandoned (and had it not been
for the small Soo Line branch line to the north of us this would have
already happened according to various BN officials!) the amount of
affected mileage is staggering! From Opheim to Scobey- 7 miles of which
is gravel!- there are 48 miles of road. It is 37 miles from Scobey to
Highway #2, via Plentywood. Opheim to Glasgow is 51 miles, and the
Scobey/Wolf Point Highway is 48 miles long. From Flaxville to Highway
#2 (a well- travelled road, part of which is gravel) is 48 miles.
That amounts to 282 miles- not including the impact on Highway #2, or
the miles and miles of gravelled roads that have bridges that ^{are} already
feeling the strain of the heavier trucks!

Either We "Hang" Together—Or We'll Hang Separately YOU Can Help Make It Happen—Either Way

These roads were never built to withstand the additional heavy traffic. Truckers admit privately that they can only make a profit if they are overloaded-- further impacting all of these roads!

It appears likely that we will lose at least part of our line- even though BN officials have told us many times that this line has been a very profitable one for their company. Now they have allowed the trackage from Scobey West, and even from Plentywood to Soobey, to deteriorate to a point where it becomes too expensive to maintain. They have urged that our association operate a Short Line RR on it- and yet, we cannot afford to, since the additional costs would have to be charged to the farmers- and it could not compete with the main line terminals!

So it all boils down to the same old story- the impact of the Staggers Act (deregulation of the railroads) and the BN taking advantage of that law by maximizing their profits with a total lack of concern for the welfare of the branch line communities that have relied on their service- and been a profitable operation!- for years!

Our major competitor is the BN's own main line!! And the rates can be manipulated at any time to get the grain traffic over all those miles of roads to main line facilities when that company decides that it no longer wants to run its trains over that poor trackage!

A terminal built at Scobey has no guarantee that the railroad will continue going that far up the line, but those people spent nearly a million dollars to upgrade their facility in order to keep the grain going out by rail, not over the roads!

Therefore, to lessen the cost of the Highway impact to all taxpayers - with the exception of the Burlington Northern itself- and to discourage the railroads from abandoning more lines, HB 383 is the only protection that we have.

The shippers on the branch line will get a slight relief from the additional cost of the highway impact ONLY if HB 383 is enforced.

Our group feels strongly that the railroads must pay for some of the losses that they incur and their impact on the rest of us taxpayers!

Orvill Nash (by M.N.)
Orvill Nash. Pres. A.B.L.E.

2-16-83
EX4-p3
HB383

MONTANA

MONTANA

Showing Lines of the
**GREAT NORTHERN
RAILWAY**

Scale in Statute Miles
0 10 20 30 40 50



THE NEW LINE

Built in 1928

2-16-85
Exhibit 5
H13383

TABLE 3
ESTIMATED REVENUES AND COSTS
Bainville to Opheim

<u>REVENUES ATTRIBUTABLE</u>	<u>YEAR 1983</u>
1. Freight Originated And/Or Terminated On Branch	\$12,891,300
<u>AVOIDABLE COSTS</u>	
2. On-Branch Costs (Lines 2a Through 2c)	\$ 1,858,444
a. Maintenance of Way and Structures (Normalized)	880,800
b. Transportation	490,367
c. Maintenance of Equipment	487,277
3. Off-Branch Costs	<u>3,505,569</u>
4. Total Avoidable Costs (Line 2 + Line 3)	\$ 5,364,013
5. Avoidable Loss from Operations (Line 1 - Line 4)	\$ (7,527,287) (1)
6. Net Liquidation (Line 6a + Line 6b)	\$ 4,886,896
a. Materials	4,178,192
b. Land	708,704
7. Rate of Return	21.6%
8. Opportunity Cost Foregone (Line 6 x Line 7)	1,055,569
9. Total Avoidable Loss (Line 5 + Line 8)	\$ (6,471,718) (1)

(1) Parentheses Indicates Gain

SOURCE: Montana Department of Commerce

VISITORS' REGISTER

House Highways & Transp COMMITTEEBILL NO. HB 663DATE 2-16-85SPONSOR MOORE

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<i>Leedsell Lindeman</i>	Box 481 - Seeley Lake 3600 W. Snelling St Paul, MN	X	
<i>Jeff Macon</i>	Box 501 Seeley Lake	X	
<i>EVA RICHARDS</i>	Hwy 83 So. # 1000 SEELEY LAKE MT 59868	X	
<i>Mary Phillips</i>	Rumble C - Rd Candon MT 59826		X
<i>MARTIN J KUX</i>	LINDSBURG AND RD CANDON MT 59826		X
<i>Lee ANDERSON</i>	P.O. Box 1047 CANDON, MT 59829		X
<i>John E. King</i>	Candon, MT 59826		X
<i>John A. Martin</i>	Candon MT		X
<i>Lee G. Tiffin</i>	Swan Valley, Candon, MT 59826		X
<i>RONALD L. Cox</i>	Drawer G Seeley Lake MT 59868	X	
<i>Deane Wright</i>	Helen Lindborg Candon	X	
<i>Dennis Hemmer</i>	Dept of State Lands		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

2-16-85
HB663
Exhibit 6

My name is Gareth Moon. I was State Forester of Montana from 1954 to 1980, and State Land Commissioner from 1980 to 1982, when I retired due to poor health.

About February 1954, U. S. Forest Service, Northern Pacific Railway and Rutledge Parker as State Forester, signed a Memorandum of Understanding regarding the Swan Highway Corridor. It was not a legal contract. It merely expressed the desire and will of the major landowners.

At that time, the road running through the Swan was largely dirt or gravel, usually a one lane road. We were delighted with the new blacktop highway primarily because it meant better management of the State-owned forest through better fire control access and it meant an increase from about \$4.00/MBF for stumpage on State land to about \$30/MBF and higher at that time.

The Memo stated that the scenic qualities in the Swan Valley of Montana are of such inestimable value and provide a major attraction for both residents and visitors to the State of Montana, and it would be great and lasting benefit to the people of Montana, as well as to those having the good fortune to visit this area, if the scenic qualities could be preserved along Swan Highway #83. Further the parties entering into this agreement either own or manage substantial tracts of land along Swan Highway, and these parties desired to conserve and enhance the natural features and beauty of this valley to the greatest practicable degree.

At the time the memorandum was signed, State Forestry, in arranging for a right of way easement to the State Highway Department had retained the ownership of all the merchantable timber within the right of way and still owns it. The Northern Pacific Railway retained their timber ownership on certain sections,

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HAB 663
Ex 6-p2

but not all. I do not recall what position the U. S. Forest Service took except that I know the road was built before the Highway Department had the right of way in hand. It was a Bureau of Public Roads project and they were in a hurry.

It was agreed that the removal of merchantable timber for other than visual and quality objectives would be limited to those trees which create either a physical or an economic risk to landowners or a safety hazard to the highway traveller. Any vegetation removed within the roadside zone would be carried out with exceptional care to prevent damage to the remaining stand or the smaller vegetation.

Also, we meant to create some turnoffs along the highway that would enhance the view of the mountains on either side, yet be safe for a family with children to stop at. One was created by the Forestry Division and the Youth Camp in the late 1970s on the Swan River State Forest as the Swan Peak Scenic View. There are also others.

By 1979, the State Highway Department entered the memorandum as a member. We

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HB663
EX6-p3

also felt that the Fish and Game Department should be made a member of the Memo because of the wildlife in the area, particularly the deer who cross the road especially in the morning and evening.

We also agreed that display of large signs would not be permitted unless these signs are designated to harmonize with the scenic qualities of the surrounding area.

We agreed that all utility lines would be back off the right of way or buried when and where feasible.

All of this was done because we felt the highway corridor was especially beautiful and should, if possible, be kept that way for future Montanans and visitors.

At the time we entered the 1954 agreement, it was with the general agreement of the people of the area, with whom we visited, to follow this method. All of the participants took time to visit and ask folks who live there for their thoughts and ideas.

Today, I do not represent any of the agencies or companies I have mentioned. I am retired and now a private citizen with a more than casual interest in the Swan highway.

The old memorandums are still in force, but they are still not legally binding. I believe the designation of the highway as a scenic one, by law, will enhance the position of the agencies and companies to do more work along the right of way. Much of the work required has been done and can be done by the Swan River Youth Camp enrollees and staff working with the Department of State Lands and

2-16-85
HB 663
EX 6-p4

the Division of Forestry.

The Department of State Lands is certainly qualified -- to prepare a formal management plan. This is excellent, provided that they are funded to do the job.

The management plan should produce a highway corridor that retains the characteristics of the old growth forest with its variation of plant species, with safe roadside stops, make visual openings and enhance the safety to the motoring public.

I particularly like the requirement for public involvement in the process of developing the management plan, and to me, "public" means more than just the folks living in the Swan Valley. Others also have a right to be heard because this is a State highway and involves the use of State revenue.

For these reasons, I encourage you to recommend that House Bill 663 be enacted into law.

TESTIMONY OF GARETH C. MOON AT HOUSE COMMITTEE HEARING ON HB 663 ON FEBRUARY
16, 1985.

(This sheet to be used by those testifying on a bill.)

2-16-85
Exhibit 6a
HB 663

NAME: Dennis Hemmer DATE: 2-16-85

ADDRESS: Helena

PHONE: _____

REPRESENTING WHOM? Department of State Lands

APPEARING ON WHICH PROPOSAL: HB 663

DO YOU: SUPPORT? _____ AMEND? ☒ _____ OPPOSE? _____

COMMENT: insert the following amendments

1. Page 1 Line 16

Following: "shall"

Strike: "prepare"

Insert: "adapt as rules"

2. Page 1 Line 18

Following: "highway"

Strike: "and"

Insert: "This plan must be consistent with the management plan in the existing memorandum of understanding relating to this scenic highway. In preparing the plan, the department"

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

3 Page 1 line 18

Following line 18

Strike: "preparation"

Insert: "adoption"

4 Page 2 line 9

Following: "on"

Strike: "landscaping"

Insert: "forest management"

VISITORS' REGISTER

House Highways + Transp COMMITTEE

BILL NO. HB 749

DATE 2-16-85

SPONSOR Menahan

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

House Highways & Transp. COMMITTEE

BILL NO. HB 674

DATE 2-16-85

SPONSOR Nathe

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

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PAT M. GOODOVER
CARROLL GRAHAM



Montana Legislative Council

State Capitol
Helena, MT. 59620

(406) 444-3064

Research Memorandum

2-16-85
Exhibit 7
HB 383
DIANA S. DOWLING

EXECUTIVE DIRECTOR
CODE COMMISSIONER

ELEANOR ECK

ADMINISTRATIVE ASSISTANT

MARILYNN NOVAK

DIRECTOR, LEGISLATIVE SERVICES

ROBERT PERSON

DIRECTOR, RESEARCH

SHAROLE CONNELLY

DIRECTOR, ACCOUNTING DIVISION

ROBERT C. PYFER

DIRECTOR, LEGAL SERVICES

TO: Representative John Harp, Chairman
House Committee on Highways and Transportation

FROM: Tom Gomez, Researcher
Legislative Council

DATE: February 16, 1985

RE: HB 383, applicability of 49 U.S.C. 11503 relating
to tax discrimination against rail transportation
property.

You have requested clarification regarding the applicability of 49 U.S.C. 11503 as it relates to the payment of additional costs, caused by railroad abandonments, of improving, maintaining, and repairing public highways as provided in HB 383.

The provisions of 49 U.S.C. 11503 are part of the 4-R Act (Railroad Revitalization and Regulatory Reform Act of 1976). Section 49 U.S.C. 11503 prohibits a state from engaging in acts that "unreasonably burden and discriminate against interstate commerce" and applies to

- (1) assessment of railroad property at a value that has a higher ratio to the true market value of the railroad property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property;
- (2) the levy or collection of a tax based on the valuation of property that may not be made under (1);
- (3) the levy or collection of an ad valorem property tax that exceeds the tax rate applicable to commercial and industrial property; and
- (4) imposition of "another tax that discriminates against a rail carrier."

Page 2
Representative John Harp
February 16, 1985

From a fair reading of the 4-R Act and HB 383, a distinction can be made between the payments required by HB 383 and any of the four categories of prohibited acts described above. HB 383 neither provides for a tax to be levied or collected on the property of a rail carrier, nor does the bill provide for an assessment upon the valuation of rail carrier property. Rather, HB 383 requires an impact payment based upon criteria unrelated to the valuation of property or other common tax consideration.

Thus, the impact payment does not appear to be a "tax" within the literal meaning of the term. Perhaps, it is fair to characterize the impact payment as the imposition upon the rail carrier of the "social cost" of railroad abandonment in those areas previously served by the abandoned railroad line.

However, it must be pointed out that there has been considerable litigation involving the provisions of 49 U.S.C. 11503. The attached reference material provides a discussion of most of the available cases to date that have dealt with the provisions of the 4-R Act. While it is always difficult to generalize issues, most of the litigation seems to fall into four general categories:

- (1) Challenges based on constitutional questions in the area of state taxation;
- (2) Challenges based on the definition of the "assessment jurisdiction;"
- (3) Challenges based on the definition of "commercial and industrial property;" and
- (4) Challenges based on the statistical methodology that best compares the level of assessment between railroad property and commercial and industrial property.

Given the nature of litigation, it seems that there is no existing case law that directly relates to legislation of the type proposed in HB 383.

eg:Misc:Harp

APPENDIX D: 4-R Litigation
Summary

Attached are briefs of every available case that has construed §306 of the 4-R Act to date.

- * Alabama Great Southern R.R. v. Eagerton, 472 F. Supp. 60 (N.D. Ala. 1979) (holding §306 applicable to Alabama tax year beginning Oct. 1, 1978). (P. 4,5)
- * Alabama Great Southern R.R. v. Eagerton, 501 F. Supp. 1044 (M.D. Ala. 1980), rev'd, 663 F.2d 1036 (11th Cir. 1981) (District court held that §306 applies only to property tax; court of appeals reversed holding that franchise tax was within the definition of "any other tax." §306(1)(d)). (P.6-9)
- ** American Trucking Ass'n. v. Conway, 514 F. Supp. 1341 (D. Vt. 1981) (holding 49 U.S.C. §11503(a) not applicable, and relief barred under 28 U.S.C. §1341). (P.10)
- * Arizona v. Atchison, T. & S.F.R.R., 656 F.2d 398 (9th Cir. 1981) holding phrase "all other commercial and industrial property" to mean the aggregate, i.e., reading "all" as "any" rather than "every," and holding §306 constitutionally valid). (P. 11,12)
- ** Arkansas-Best Freight System, Inc. v. Kansas, No. 82-4003 (D. Kan., June 18, 1982) (plaintiff failed to prove discrimination "to the satisfaction of the court" or to demonstrate "reasonable cause"). (P. 13)
- * Atchison, T. & S.F.Ry. v. Lennen, 640 F.2d 255 (10th Cir. 1981) (per curiam) (holding that a showing of irreparable harm is not required in order to obtain relief under §306 and setting forth the standard of "reasonable cause"). (P. 15)
- * Atchison, T. & S.F. Ry. v. Lennen, 531 F. Supp. 220 (D. Kan. 1981) (on remand from the 10th Circuit, 640 F.2d 255, the district court held that "assessment jurisdiction" is to be defined by the court in each case on equitable principles; that railroad property assessed by the unit method would be compared with all other commercial and industrial property, real and personal; that plaintiffs shows "reasonable cause" to issue an injunction; that county officials were not necessary parties; and that retrospective relief was not available under §306 or U.S.C. §1983). (P. 16-21)
- * Clinchfield R.R. v. Lynch, 527 F. Supp. 784 (E.D.N.C. 1980) (applying §306 to a case of de facto tax discrimination where real estate was reappraised once every 8 years, all other property annually). (P. 24,25)

- * General American Transp. Corp. v. Louisiana Tax Comm'n, 511 F. Supp. 610 (M.D. La. 1981) (defining "rail transportation property" to include rail cars owned by non-carrier).
- * Louisville & N. R.R. v. Louisiana Tax Comm'n, 498 F. Supp. 418 (M.D. La. 1980) (rejecting several nonmeritorious arguments offered by the State). (P. 27,28)
- *** Missouri Pac. R.R. v. Tax Div. of Ark. Pub. Serv. Comm'n, 504 F. Supp. 907 (E.D. Ark. 1980), appeal dismissed per stipulation (8th Cir. 1981) (district court abstained). (P. 29,30)
- * Ogilvie v. State Bd. of Equalization, 492 F. Supp. 446 (D.N.D. 1980), aff'd, 657 F.2d 204 (8th Cir. 1981), cert. denied, 102 S.Ct. 644 (1981) (determining factual issue of the maximum assessment ratio allowable under §306). (P. 31-33)
- * Tennessee v. Louisville & N.R.R., 478 F. Supp. 199 (M.D. Tenn. 1979), aff'd mem., 652 F.2d 59 (6th Cir. 1981), cert. denied, 102 S.Ct. 135 (1981) (rejecting "singling out" argument, holding §306 constitutionally valid and valid under the "national basis" and "reasonable and appropriate means" test, holding §306 constitutionally valid and valid under the "national basis" "reasonable and appropriate means" test, holding §306 effective for Tennessee's tax year beginning January 1, 1979, and finding the case ripe for injunctive relief). (P. 34-36)
- * Trailer Train Co. v. State Bd. of Equalization, 511 F. Supp. 553 (N.D. Cal. 1981) (holding the collection of a tax assessed before the effective date of §306 and based upon a discriminatory tax rate barred by §306). (P. 37-38)
- * Alabama Great Southern Railroad v. Eagerton 541 F. Supp. 1084 (M.D. Ala. 1982). Alabama permanently enjoined from collecting the railroad license tax. (P. 38)
- * Atchison, Topeka & Santa Fe Ry. v. State of Arizona 559 F. Supp. 1237 (D. Ariz. 1983). Arizona statute conflicted with 4-R Act. (P. 41,42)
- * Atchison, Topeka and Santa Fe Ry. Co. v. Lennen (D. Kan. 1982). Sales assessment ration study is representative of all commercial and industrial property, the median must be used to determine the average taxpayer and unitary method is the best method of arriving at a railroad value. (P. 42)

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- ** Trailer Train Co. v. State Bd. of Equalization 538 F. Supp. 509 (N.D. Calif 1982). Commercial and individual property must be subject tax before it will be considered in determining the rate of tax on commercial and industrial property. Tax exempt property is not considered. (P.43)
- * Kansas City Southern Railway Co. v. McNamara 563 F. Supp. 199 (M.D. La. 1983). §306 reaches all taxes not just ad valorem or property taxes. (P. 43)
- ** Burlington Northern R. Co. v. Lennen 715 F.2d 494 (10 Cir 1983). Valuation relief is available under §306 only if a prima facie case of retaliation or intentional discrimination is made. (P. 43)
- * Southern Railway Co. v. State Bd. of Equalization 715 F.2d 522 (11th Cir 1983). Congress intended to ensure a federal forum for §306 actions. (P. 44)
- ** ACF Industries, Inc. v. Arizona 714 F.2d 93 (9th Cir 1983). Tax exempt property need not be considered in determining average tax on commercial and industrial property, state may employ a weighted mean rather than the medium when determining the average. (P. 44)
- * Clinchfield R. Co. v. Lynch 700 F.2d 126 (1983 4th Cir). State had burden to show sales-assessment ratio study did not apply to personal property. (P. 45)
- * Trailer Train Co. v. State Board of Equalization of North Dakota 710 F.2d 468 (8th Cir. 1983). Taxing personal property of railroads is discriminatory when personal property of other commercial and industrial property is tax exempt. (P. 45)
- *** Trailer Train Co. v. State Bd. of Equalization 697 F.2d 860 (9th Cir. 1983). Remanded because no discrimination shown. (P. 46)
- * General American Transportation v. Louisiana Tax Comm. 680 F.2d 400 (5th Cir 1982) aff. F. Supp. 610. Private car companies entitled to the same protection as railroads. (P. 47)
- * Atchison, Topeka & Santa Fe. Rv. Co. v. Bair 338 N.W.2d 338 (Iowa 1983). §306(1)(d) applies to excise taxes. (P. 47)
- * Held for the carrier (railroad or trucking firm)
- ** Held for the State
- *** No disposition on the merits

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40383

restatement. The words "and safety" in 49:305(f) are omitted as being transferred to the Secretary of Transportation.

In subsection (b), the words "When an investigation under this subtitle" are substituted for "Whenever in any investigation under the provisions of this chapter, or in any investigation instituted upon petition of" for clarity. The words "providing transportation or service subject to the jurisdiction of the Commission under subchapter I or IV of chapter 105 of this title" are inserted for clarity. The words "is about a" are substituted for "shall be brought in issue" for clarity. The words "made or imposed by" are

omitted as surplus. The words "disposing of" are substituted for "proceeding to hear and dispose of" for clarity and as being more inclusive.

In subsection (c), the words "subchapter . . . III of chapter 105" are used to make the subsection apply to water carriers since the words "under the provisions of this section" require that result in view of 49:13(3). The words "in cases pending before the Commission" are omitted as unnecessary in view of the restatement. The words "may be given" are substituted for "shall receive" for clarity. The words "may determine" are substituted for "shall provide" for clarity.

§ 11503. Tax discrimination against rail transportation property

(a) In this section—

(1) "assessment" means valuation for a property tax levied by a taxing district.

(2) "assessment jurisdiction" means a geographical area in a State used in determining the assessed value of property for ad valorem taxation.

(3) "rail transportation property" means property, as defined by the Interstate Commerce Commission, owned or used by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title.

(4) "commercial and industrial property" means property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy.

(b) The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

(1) assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) levy or collect a tax on an assessment that may not be made under clause (1) of this subsection.

(3) levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(4) impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title.

2-16-85
EX 7-P.7
HAB 383

(c) Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section. Relief may be granted under this subsection only if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent, the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction. The burden of proof in determining assessed value and true market value is governed by State law. If the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction to the true market value of all other commercial and industrial property cannot be determined to the satisfaction of the district court through the random-sampling method known as a sales assessment ratio study (to be carried out under statistical principles applicable to such a study), the court shall find, as a violation of this section—

(1) an assessment of the rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the assessed value of all other property subject to a property tax levy in the assessment jurisdiction has to the true market value of all other commercial and industrial property; and

(2) the collection of an ad valorem property tax on the rail transportation property at a tax rate that exceeds the tax ratio rate applicable to taxable property in the taxing district.

Pub.L. 95-473, Oct. 17, 1978, 92 Stat. 1445.

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
11503	49:26c	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 28; added Feb. 5, 1976, Pub.L. 94-210, § 306, 90 Stat. 54; Oct. 19, 1976, Pub.L. 94-555, § 220(o), 90 Stat. 2630.

In subsection (a), the words "for purposes of" in 49:26c(3) are omitted as surplus. The words "such as a State or a county, city, township, or special purpose district . . . which is a unit" are omitted as unnecessary in view of the restatement. The words "all other commercial and industrial property" are omitted as unnecessary in view of the restatement. The words "real or personal" are omitted as surplus. The words "providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 103 of this title" are substituted for "subject to this part" for clarity and to conform to the revised title. The words "National Railroad Passenger Corporation" are omitted as unnecessary in view of the restatement and the Act establishing the Corporation.

In subsection (b), the words "Notwithstanding the provisions of section 202(b)" are omitted as unnecessary because of the restatement of the source provisions of section 10321(b)(4) of the revised title. The word "unreasonably" is substituted for "unreasonable and unjust" for consistency. See the revision note to section 10101 of the revised title. The words "is declared" are omitted as surplus. The words "may not do any of them" are substituted for "any action described in this subsection" and "It is unlawful for . . . to commit any of the following prohibited acts" for clarity. The word "political" is omitted as surplus. The words "for a State" are substituted for "on behalf of such State" for clarity. The words "for purposes of" in 49:26c(1) are omitted as surplus. The words

BILL SUMMARY
(HB 383)

HB 383 provides for an abandoned railroad highway assistance account to be established for the purpose of funding improvement, repair, and maintenance of public highways needed as a consequence of the abandonment of railroad lines and the subsequent increase in motor vehicle traffic in the area previously served by the abandoned railroad line.

HB 383 contains the following major provisions:

Section 1 creates an abandoned railroad highway assistance account within the state special revenue fund to consist of abandonment impact payments.

Section 2 requires a railroad that abandons a branch line or main line that was profitable to pay into the state special revenue account one-half of the additional cost of improving, maintaining, or repairing the public highways in an area previously served by the abandoned railroad.

Section 3 establishes criteria for determining the profitability of a rail line abandoned by a railroad based upon a determination of revenue in excess of avoidable costs in the state rail plan completed by the commerce department.

Section 4 provides for a method of determining the additional cost of improving, maintaining, or repairing public highways caused by the abandonment.

Section 5 gives the department of highways authority to fulfill its responsibilities under the bill.

eg:Misc

Classification, Equalization and
The 4R Act

Section 306 of the 4R Act, 49 USC § 11503, provides that railroad property may not be taxed at a higher rate than the rate applicable to commercial and industrial property in the same taxing jurisdiction. This means that, in a state which has various classes of commercial and industrial property, the railroad property must be taxed at the same rate as the average of all other commercial and industrial property. The 4R Act, however, does not require that a state establish a classification system, nor does it require that other commercial and industrial property be placed in any particular class or classes.

Section 306 also requires that railroad property be assessed, relative to its market value, at the same ratio as the assessed value of all other commercial and industrial property has to the market value of such other property. The 4R Act does not require that railroad property be assessed annually, nor does it require that other commercial and industrial property be assessed on the same cycle as railroad property. The states have total discretion in these matters. What the 4R Act does provide is that the assessed value of railroad property must be equalized, so that the railroad taxpayer bears no greater burden than the average of all other commercial and industrial property.

In the context of SB-48, then, the 4R Act is silent and gives total discretion to the state to determine what property shall be put in the same classes. Thus, the 4R Act gives the state the absolute freedom to place residential real property and commercial and industrial real property in the same or different classes.

Similarly, the state has total discretion whether to require an annual appraisal of all, some, or none of the taxable property in the state. In fact, whether commercial and industrial property is assessed annually or on a five-year cycle, it is still necessary to determine whether the ratio of assessed to market value of commercial and industrial property is the same as that for railroad property. Thus, the need to equalize values exists regardless of the appraisal cycles involved, and the 4R Act neither requires nor forbids any particular reappraisal cycles.

PROXY VOTE

Date 2/16/85

Representative Keyser District 74

having been excused from this meeting of the House Highways and
Transportation Committee, hereby leaves proxy vote for:

House Bill(s): 383 Aye YES No Abstain

Senate Bill(s): Aye No Abstain

Other instructions: I will vote on any amendments
that hurt (n.o.)

Henry Keyser
Representative Signature

John G. Harp
Rep. John G. Harp, Chairman