

MINUTES OF THE MEETING  
LABOR AND EMPLOYMENT RELATIONS COMMITTEE  
MONTANA STATE SENATE

March 24, 1987

The twenty-first meeting of the Labor and Employment Relations Committee was called to order by Chairman Lynch on March 24, 1987, at 1:00 p.m. in Room 413/415 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 302: Rep. Dorothy Bradley, House District 79, sponsor of the bill, stated House Bill 302 is an Agency bill. (See Exhibit 1) Rep. Bradley feels this is an outdated law as the current law requires the establishing of jobs based on the size of the population base in a county seat. She stated this bill will change the standard from population to public convenience and necessity. She explained the current requirement is a population of 1,000 for maintaining an agency. She stated she is not proposing to eliminate those agencies, but to change the standard to public convenience and necessity and also to have a demonstration of public hearing. This would not start an immediate phase-out of Montana agencies. Rep. Bradley stated there was a time when a population base made sense, but times have changed. This bill would create a system that every transportation agency in the United States is currently using. It would be a centralized system which would use an 800 phone number to deal with the work. Rep. Bradley feels the only reason the outdated system is still being used is to maintain a handful of jobs. The centralized system will be in 5 communities - Great Falls, Missoula, Whitefish, Laurel, and Glendive. Rep. Bradley stated she has received over a dozen letters of support from shippers. She said in other states where this system is in operation already, there seems to be a correlation of lower freight rates. Rep. Bradley stated she has statistics that prove there is no evidence of a correlation between the closure of agencies and the abandonment of branch lines. She stated the current employees are going to be taken care of, they will be offered positions in other areas. Rep. Bradley reserved the right to close.

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PROPOSERS: Mr. Pat Keim, representing Burlington Railroad, gave testimony in support of this bill. A copy of his testimony is attached as Exhibit 2.

Mr. John Palmer, representing Harvest States Cooperative Bean Plant, gave testimony in support of this bill. A copy of his testimony is attached as Exhibit 3.

Mr. Russ Ritter, representing the Montana Chamber of Commerce, gave testimony in support of this bill. A copy of his testimony is attached as Exhibit 4.

Mr. Bill Marquart, representing Fisher Industries, stated House Bill 302 would give shippers in Montana a competitive edge. This bill would lead to a savings for freight rates.

Mr. John Fitzpatrick, representing Pegasus Gold Corporation, stated they are anticipating shipping their products from the mine to as yet unknown destinations, but most likely to Japan. With such distances they are concerned with freight rates.

Mr. Mike Strawbridge, representing the Montana Division of Ideal Basic Industries at Trident, Montana, gave testimony in support of this bill. A copy of his testimony is attached as Exhibit 5.

Ms. Lorna Frank, representing the Montana Farm Bureau, stated they believe the greater efficiency is the answer to the railroad financial burden rather than increase freight rates. Ms. Frank stated they support the closure of stations because it would contribute to greater efficiency of the company.

Ms. Kathy Sparr, representing Glendive Forward, gave testimony in support of this bill. A copy of her testimony is attached as Exhibit 6.

OPPOSERS: Mr. James T. Mular, representing the Brotherhood of Railway & Airline Clerks, gave testimony in opposition of this bill. A copy of his testimony is attached as Exhibit 7.

Mr. Ed White, representing Brotherhood of Railway & Airline Clerks, gave testimony in opposition to this bill. A copy of his testimony is attached as Exhibit 8.

Mr. Joe Shannon, representing the Brotherhood of Railway & Airline Clerks, gave testimony in opposition to this bill. A copy of his testimony is attached as Exhibit 9.

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Mr. Alex Hansen, representing Fort Benton, Conrad, Choteau and Denton, stated these small towns have concerns of the consequences of this bill on railroad service and employment in their area. He urged the committee to oppose the bill.

Mr. Don Bromley, representing the Brotherhood of Railway & Airline Clerks from Kalispell, stated all work was removed from the Kalispell office in 1985. In effect, that was a dry run of what this bill is proposing. The patrons of the Burlington Northern Railroad in Kalispell petitioned the Public Service Commission under the present law, and obtained a hearing. The result of the hearing was all work was returned to the station in Kalispell with the exception of centralized billing. House Bill 302 would not allow the patrons to have the privilege of petitioning the Public Service Commission under these circumstances.

Terry Carmody, representing the Montana Farmers Union of Today, stated they oppose this bill. They have supported tax breaks for the railroad, low interest loans for the railroad, and the railroad in return promised equity and competitive freight rates. However, the railroad has not kept their side of the bargain, so they are going to withhold giving anything else to the railroad until Montana sees some results in those areas.

Mr. Joe Brand, representing United Transportation Union, The Brotherhood of Maintenance of Way Employees, and the Brotherhood of Locomotive Engineers, gave testimony in opposition to this bill. A copy of his testimony is attached as Exhibit 10.

Mr. Rick VanAken, representing the Brotherhood of Railway & Airline Clerks, Lodge 43, gave testimony in opposition of this bill. A copy of his testimony is attached as Exhibit 11.

Mr. Jim Murry, representing the Montana AFL-CIO, gave testimony in opposition to this bill. A copy of his testimony is attached as Exhibit 12.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 302: Senator Keating asked Mr. Shannon if there are agencies in existence now in communities with a population of less than 1,000. Mr. Shannon replied yes, in Stanford, since it is the county seat.

Senator Keating asked Mr. White if in the past few years, have the Montana railroad rates decreased. Mr. White stated

he was unable to answer because as rate supervisor in his area, he does not deal with tariffs.

Senator Keating asked Mr. Mular if House Bill 302 passes, would any agencies automatically close. Mr. Mular replied no, the Public Service Commission has jurisdiction over the closing of any station. Senator Keating asked Mr. Mular why the Public Service Commission does not request for the closure of an agency in a town of more than 1,000 people. He asked if it is because the statute would preclude any jurisdiction action. Mr. Mular replied that is correct.

Senator Thayer asked Mr. Mular if he is aware there are two other railroads in Montana that are competing for freight. Mr. Mular replied yes, he is aware of the Sioux Railroad Line and the Union Pacific Railroad, but there is no competition from the Sioux Railroad Line.

Senator Thayer stated he owns a grain elevator in that area and he believes there is plenty of competition from the Sioux Railroad Line.

Senator Manning asked Mr. Ritter if with the passage of House Bill 302, would there be lower rates in Montana. Mr. Ritter stated he was not here to debate the numbers, he is concerned with a better way to do business in Montana, and if House Bill 302 will do that, the Montana Chamber of Commerce would support the bill.

Senator Manning asked Mr. Keim if this bill passed, would there be any loss of jobs. Mr. Keim replied no, not immediately, but over a course of a number of years, agencies could possibly be reduced.

Senator Lynch asked Rep. Bradley if the Burlington Northern Railroad is currently seeking relief with the U. S. District Court, and would this preclude that.

Mr. Leo Barry answered the question for Rep. Bradley and said there was a petition before the Public Service Commission to consolidate three agencies. The petition was denied on the grounds there was the 1,000 population standard, and therefore those agencies could not be consolidated. There was an action filed challenging that decision by the Public Service Commission.

Senator Lynch asked Mr. Barry if this bill passes, will it take away the court action. Mr. Barry replied it will move the court actions involving cities in which an agency has been retained due to the 1,000 population standard.

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Rep. Bradley closed by discussing the closure of agencies. (See attached Exhibit 13) Rep. Bradley believes this is a fair bill to everyone involved.

CONSIDERATION OF HOUSE BILL NO. 772: Rep. Raymond Brandewie, House District 49, sponsor of the bill, stated this bill requires there be at least 10 prevailing wage rate districts and at the present time there are 5 districts. Rep. Brandewie does not feel the Little Davis-Bacon Act serves the small communities of Montana. The wages placed upon small communities' construction projects are artificially high because of the involvement with unions. One step taken to try to address the problem is there be 10 prevailing wage rate districts, and also the presence of a collective bargaining agreement. A collective bargaining agreement is not the sole basis for the changing or creating of boundaries. There is also a provision included in the bill for \$25,000 work exemption. The basis for determining the prevailing wage will be from the basis of the weighted average. Rep. Brandewie stated there are some technical amendments that have to be fixed.

PROPOSERS: Mr. Gene Fenderson, representing the Montana State Building and Construction Trades Union, stated they support this bill, with some reluctance. Mr. Fenderson stated this is the fifth hearing he has attended concerning prevailing wage rates this 50th Legislative Session. He said there has been a clear message sent that the Davis-Bacon Act should be updated and reflect more of what is happening in the communities today. The Labor Commissioner set up an Advisory Council to update the Davis-Bacon Act, and Mr. Fenderson was on that council. He said the results of the meeting were that there needs to be a threshold to care for small every-day type jobs and there should be more wage rate districts. In the current law there is a \$7,500 threshold for every-day type repair jobs, and there are 5 wage rate districts. There was a feeling the Labor Commissioner should make some more changes. People involved with labor disagree, but they realize they have to give some to keep the Davis-Bacon law in the statutes. People representing labor worked with Rep. Brandewie and Rep. Driscoll, and the result was this bill. He stated the support given is tied to no amendments to vital issues of this bill.

Mr. Curt Wilson, representing Construction and General Laborers Local 1334, stated there has been much hard work and thought put into this compromise. They support the bill in its original form.

Mr. Jerry E. Pottratz, representing the District Council of Laborers, stated they support this bill. They feel the Little Davis-Bacon Act is important to their members as it guarantees a fair living wage and is equally important to the Montana taxpayers because it assures good quality products from good quality craftsmen. He urged the committee to support this bill.

Mr. Robert G. Kukowda, representing the Montana State Council of Carpenters, stated they support House Bill 772.

Mr. John Manzer, representing the Joint Council of Teamsters, Local 2, urged the committee to support this compromised bill. This bill will benefit small communities and school districts, yet still protect the wage scale for the craftsmen in Montana.

Mr. Jim Murry, representing the Montana State AFL-CIO, gave testimony in support of this bill. A copy of his testimony is attached as Exhibit 14.

Mr. Reggie McMurdo, representing Montana Council of Electrical Workers, Local 768 in Kalispell, stated they support this bill. Mr. McMurdo suggested the following items be amended: The \$25,000 threshold is rather low; and there should be a definition of prevailing. He urged support of the committee.

Mr. Len F. Blancher, representing the Operating Engineers, Local 400, urged the committee to support this bill in its original form.

OPPONENTS: Ms. Lorna Frank, representing the Montana Farm Bureau Federation, gave testimony in opposition to this bill. A copy of her testimony is attached as Exhibit 15.

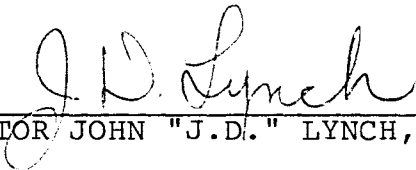
QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 772: Senator Blaylock asked Mr. Gene Fenderson if it would be possible for construction companies from right-to-work states to bid on Montana jobs, and could this lower the prevailing wage. Mr. Fenderson replied North Dakota contractors coming into Montana have always been a threat. It has been observed Montana rates are too high for small local areas. Currently laborers entering their community have had to take wage cuts to keep the Montana contractors competitive.

Senator Lynch asked Ms. Frank if she would be opposed to this bill even if Senate Bill 10 fails. Ms. Frank replied yes.

Senator Lynch closed for Rep. Brandewie since he had to return to the House Session.

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ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 2:55 p.m.

  
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SENATOR JOHN "J.D." LYNCH, Chairman

jr

ROLL CALLLABOR AND EMPLOYMENT RELATIONS COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3/24/87

NAME	PRESENT	ABSENT	EXCUSED
John "J.D." Lynch Chairman	X		
Gene Thayer Vice Chairman	X		
Richard Manning	X		
Thomas Keating	X		
Chet Blaylock	X		
Delwyn Gage	X		
Jack Haffey	X		
Jack Galt	X		

Each day attach to minutes.



DATE March 24, 1987  
COMMITTEE ON Labor

DATE March 24, 1987

# VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

## MONTANA'S OUTDATED RAILROAD AGENCY LAW

Montana is the only state which mandates that railroads maintain agencies on the basis of location and population. This law is a wasteful expense for Montana's shippers, consumers and railroads because the need for service is unrelated to location or population. In all other states, agency functions have been streamlined and consolidated at centralized locations and decisions to do so have been based on service and demand rather than population. For instance, under this law, Burlington Northern has in excess of sixty agents in Montana and fewer than seven in both North Dakota and Nebraska.

When this law is discussed, those who advocate its continuation usually do so on the following beliefs: that when an agency is closed, line abandonment will follow, service will suffer, or the agent will be unemployed.

In each instance, the belief is incorrect.

**Agency closures will not cost agents their jobs, railroad service will not suffer and the action is not a prelude to abandonment.**

If the Montana statute mandating local agencies is changed, the decision on whether or not an agency remains open will be made based on the service that a community needs, not on an artificial population or location standard required by law.

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 1  
DATE 3/24/87  
BILL NO. HB 302

## **QUESTIONS AND ANSWERS ABOUT RAILROAD AGENCIES IN MONTANA**

### **1. WHAT WILL HAPPEN TO LOCAL AGENCIES IF THE PROPOSED LEGISLATION PASSES?**

Under the proposed legislation the Public Service Commission will determine if an agency is required based upon the demands of public convenience and necessity. Business levels at the local agency will determine whether it remains open.

### **2. WHAT IS A LOCAL AGENCY?**

An agency is a local railroad office staffed by an agent responsible for receiving car orders and billing instructions from customers. The agent acts as a middleman in relaying requests for service to a regional customer service center.

### **3. WHAT FUNCTIONS DID THE LOCAL AGENCY HISTORICALLY PERFORM?**

Agencies date back to the era when railroads ran passenger trains and before computers had been invented. Local agents had a multitude of assignments including selling passenger tickets, loading milk cans and baggage and handling U.S. Mail. They were also responsible for loading and unloading merchandise which was shipped in less than full carloads, handling livestock, collecting charges, salvaging and selling damaged freight, and physically checking on all cars. They handled a variety of paper work and delivered and billed Western Union telegrams.

### **4. WHAT EFFECT HAS MODERN TECHNOLOGY HAD ON THE DUTIES OF LOCAL AGENTS?**

Because of changes in society and advances in business technology, the local agent no longer handles Western Union telegraphs and seldom serves passengers or performs most of the functions once necessary. Car orders, record keeping, freight billing and yard handling are, for the most part, computerized and handled through a customer service center.

### **5. ARE LOCAL AGENCIES STILL NEEDED TO SERVE LOCAL CUSTOMERS?**

No. Modern business practices have changed the way railroads operate and the way customers can best be served. Historically, agents ordered cars and provided customers with information about their shipments. Today that information is handled by a customer service center. The customer service center, via computer, can instantly determine the location, content, destination and shipper and receiver on virtually any car on the U.S. rail system. The local agent does not order cars, instead the order is relayed to a regional service center where the order is made.

Now, railroad customers can gain immediate access to the information and service needed by directly phoning regional customer service centers. This is no different than the way people routinely contact the reservation centers of airlines, car rental agencies, hotels or the regional service offices of trucking companies.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1

DATE 3/24/87

BILL NO. HB 302

**6. WITHOUT A LOCAL AGENCY, HOW DOES A CUSTOMER GET SERVICE OR ASSISTANCE?**

Customers simply call the customer service center using toll-free lines. These centers are on call 24 hours a day to handle requests for service, and inquiries about shipments. If personal contact with a railroad representative is required, staff members at the customer service centers can arrange it.

**7. HOW IS THE CLOSING OF A LOCAL AGENCY RELATED TO TRACK ABANDONMENT?**

The presence of an agency does not assure continued rail service nor does removal of an agency lead to abandonment -- traffic volume and operating costs are the determining factors. Some branch lines are in question because of low traffic volume and high costs. Eliminating local agencies is one way railroads can reduce costs, making the continuation of service feasible. Railroads have closed many agencies in important main and branch line communities and the customers are often better served by customer service centers. Agency closings have NO effect on train schedules or service.

**8. WHEN A LOCAL AGENCY IS CLOSED, WHAT HAPPENS TO THE AGENT?**

There are currently more than 60 agents in Montana. They all have seniority as union members and are guaranteed employment. They might move to other locations with the railroad where jobs are available. Or they might remain in their present location and receive compensation until retirement.

At some agency locations there are also other railroad employees. These employees would remain at those locations and continue the work they now do.

**9. ARE OTHER RAILROADS DOING THE SAME THING?**

Agency consolidations are an industry trend. All major railroads face the same pressure to become more efficient and to better serve their customers. As a result, all railroads are instituting consolidated customer service centers.

**10. DO ANY OTHER STATES MANDATE AGENCY RETENTION BASED ON POPULATION OR LOCATION?**

No, Montana's law is unique. No other state requires that agencies be maintained on the basis of population or location. The cost of maintaining unnecessary agencies imposed by this eighty-year-old law is estimated at more than \$2 million per year -- a cost ultimately borne in part by Montana shippers and consumers. By way of comparison, Burlington Northern maintains six agencies in North Dakota, eight in Wyoming and more than 60 in Montana.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1

DATE 3/24/87

BILL NO. HB 302

## GAZETTE OPINION

# Caboose law at end of line

## Time to switch it off

Burlington Northern is not the most popular business in Montana. It isn't even in second place.

But that's no reason to saddle the giant with antiquated laws.

There are two particularly onerous sections in current Montana statutes.

1. All trains in Montana must have cabooses.

2. Resident agents are required in all county seats and towns of more than 1,000 residents served by the railroad.

Both laws are obsolete.

BN Vice President William W. Francis told legislators in Missoula last fall that cabooses came into use when trains typically had 40 cars.

Modern trains are so long that a caboose does not offer sufficient visibility. New, automatic equipment provides better surveillance, Francis said.

At that same meeting, Joe Brand, state director of the United Transportation Union, defended the requirement of cabooses on long trains. He said they prevent accidents and help spot problems that automatic monitoring equipment would overlook.

"There are many things seen by the human eye that devices do not pick up," he said. "I don't know what the problem is. They (BN) are on a big binge to amend the law."

The problem is considerable.

Using cabooses in Montana costs BN about \$6 million annually, and as the recent wreck on the bridge nine miles west of Columbus indicates, the cabooses are no guarantee of safety.

Only Oregon and Virginia have caboose laws similar to Montana's. It's time to make that requirement a quaint piece of the state's history.

The agency law is equally irksome.

Montana law requires BN to maintain 66 agents in the state. North Dakota, by comparison, has only two. Some of these Montana offices do virtually no business.

Pat Keim, superintendent for the Havre division of BN, said agents once handled all customer-related functions for the railroad, including ticket sales, freight car orders, billing, telegraph and delivery of small shipments.

Now they are mainly middle-men between customers and centralized offices, he said, and maintaining the agency rule costs BN about \$2.5 million a year more than it should. Four agents — stationed in Laurel, Glendive, Missoula and Whitefish — could easily handle the work, Keim said.

A recent poll of the legislators in Helena indicates that the majority is amenable to taking the caboose and agency laws off the state's books.

That is good news.

New businesses are chary about entering a state that permits this kind of nonsense. The Legislature should dispatch these two statutes and get on to more important work.

The Billings Gazette  
Wed., Jan. 21, 1987

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1

DATE 3/24/87

BILL NO. HB 302

JAN 26 1987

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# opinions

## Freight-agent law outdated

This is the year Montana and its legislature are supposed to be searching their makeup and reviewing their attitude toward business. A lot of the state — this town and county included — have borne the brunt of the state's "anti-business" reputation.

The Burlington Northern brought the attitude to the front burner by cutting back its operations in Montana, including the shutdown of the local locomotive shops. There's a railroad bill being debated at the legislature that should be a real bellwether about how seriously the state wants to tackle its anti-business reputation.

The bill deals with freight agencies. Current Montana law, which dates in this case back to 1977, requires every county

seat on a rail line, and every town of over 1,000 persons on a rail line, to have a full-time freight agent. The idea dates back to when agents did a lot of things they don't do now — including servicing passengers, taking telegrams and loading milk cans.

Times, they are a-changing. No other state requires freight agents on the basis of location or population, but Montana still does. It costs the railroad an estimated \$2 billion a year to keep 60 freight agents on the job around Montana, when they could get by nicely with a small handful. In all of North Dakota there are only six agents, and Wyoming has only eight.

Rep. Dorothy Bradley of Bozeman has introduced HB302, a bill to abolish the agency requirement based on population or location, and make the requirement bas-

ed on need or traffic. The Public Service Commission would be empowered to decide if an agency is needed or not, based on evidence presented by the railroad and the general public.

That's quite a departure from tradition, or at least reputation, for Rep. Bradley. A few years ago, she was branded as being the most anti-business legislator in Helena, because of her strong stands on environmental issues. Rep. Bradley is a very sharp legislator, and can readily see the freight-agent law is outdated and needs repealing.

Most folks would have to agree. There's no sense requiring freight agents where they are not needed. A state which retains that kind of law on its books deserves an anti-business reputation.

Arguments against the repeal hold little water. Critics say shutting down the agencies just paves the way to abandonment of a line — but abandonment has to go through a review process based on traffic and need. In fact, the more we can help the railroad lower its overheads, by shutting down unneeded agencies, the more the railroad is likely to operate a line.

Other critics want to hang onto the law, just to protect the people who are currently freight agents from losing their jobs. It's just that kind of protectionism that gives the state a bad name for business.

The freight-agency law needs to be abolished, and Rep. Bradley's bill is a fair solution. The state would be silly not to enact it.

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 1  
DATE 3/24/87  
FILE NO. HB 302

# OPINIONS

## A railroad bill that should pass

Montana is unique in many ways and some of the unique aspects of this state deserve to be treasured.

On the other hand, we have some unique features that aren't so great.

One of the not-so-great aspects of Montana is a law regarding railroad station agents.

Montana has a law on the books that dates back to the turn of the century. It requires railroad agents and an agency in every town of 1,000 or more population and every county seat.

It's the only state in the nation with such a law on the books.

In other states, agencies are either required or closed based on public convenience and necessity.

The Burlington Northern Railroad has some 60 agents in Montana, while North Dakota and Nebraska have fewer than seven. Montana's agency requirement costs BN in excess of \$2 million a year.

That's \$2 million a year that has to be borne by the shippers in this state. Like it or not, artificial costs such as those required by Montana's unique law do have an effect on rates.

Agencies date back to an era when railroads ran passenger trains and before the advent of computers. Local agents had a multitude of assignments, including selling passenger tickets, loading milk cans and baggage and handling the U.S. mail. They also had many other duties.

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VIEW

Because of changes in society and advances in business technology, the local agent no longer handles Western Union telegraphs and seldom serves passengers or performs most of the functions once necessary. Car orders, record keeping, freight handling and yard handling are, for the most part, computerized and handled through a customer service center.

Rep. Dorothy Bradley, D-Bozeman, is the principal sponsor of House Bill 302 which would take Montana's "unique law" off the books, bring this state fully into the 20th century and send a positive signal to business.

Bradley's bill would eliminate the agency requirement for an agency in every community with 1,000 people and/or county seat.

The bill states that "if a person, corporation, or association operating a railroad demonstrates to the public service commission, following an opportunity for a public hearing, that a facility is not required for public convenience and necessity, the commission shall authorize the closure, consolidation, or centralization of the facility."

Many agents have virtually nothing to do. We're sure there are a lot of good people, all but sitting on their hands, who would like to have their talents fully utilized. Bradley's bill gives the BN the opportunity to do just that.

Furthermore, it's highly unlikely that passage of HB 302 would result in immediate and wholesale closure of agencies in Montana.

The hearing process before the state Public Service Commission is going to take time and the BN is going to have to prove its case before the PSC will act.

It's probable that four, five or six years from now there will only be a handful of agents doing the work once handled by the 60 or so now on the job.

But, unlike the present law, Bradley's bill provides realistic criteria for keeping or closing an agency — public convenience and necessity.

It's a long overdue bill that deserves to become a law.

EMPLOYMENT  
3/24/87  
HB 302

## *Network of 60 rail agencies is too costly for ratepayers*

A committee hearing this morning may go a long way toward determining if the Burlington Northern Railroad's image is permanently tarnished in Montana — or seeing if the Legislature is willing to take off the boxing gloves and seek a partnership for economic improvement and lower rail rates.

At issue is House Bill 302, sponsored by Rep. Dorothy Bradley, D-Bozeman, which would give the Public Service Commission the option of holding hearings leading to the closure of some — or most — of the 60 freight agencies in Montana which BN says are outmoded and expensive to maintain.

The railroad is spending \$2 million per year to keep the agencies open. That cost is borne by customers through their rates.

State law presently requires the BN to maintain a freight agency in all county seats and other communities with 1,000 or more population. BN officials claim that local station agents no longer handle any vital business. Customers arrange for grain and freight shipments by telephone to a computerized service center. Car orders, record keeping, freight billing and yard handling are coordinated through a central office.

This trend toward consolidation and cost-saving is evident in all states but Montana, the railroad adds. North Dakota currently has six agencies and Wyoming has eight.

If agencies are closed, station agents would keep their jobs through union seniority agreements. Their most likely options would be to relocate or take early retirement.

Opposition to this measure will come from those who feel that rail service would suffer or that agency closures would be a prelude to branch line abandonment.

Bradley says, however, the experience in North Dakota is just the opposite. She quotes a member of that state's regulatory agency who says centralized service costs less and tends to keep marginal branch lines in operation.

We agree. Railroad regulation in Montana has remained in the dark ages, particularly with regard to mandated business and operational practices that are as outdated as steam locomotives.

If the BN demonstrates that agency closures will result in lower rates, the House Business and Labor Committee should approve the measure.

SENATE LABOR &amp; EMPLOYMENT

EXHIBIT NO. 1DATE 3/24/87BILL NO. HB 302



# Railroad bills should be passed

**T**wo of Montana's laws regulating railroads have outlived their usefulness, and the Legislature should repeal them. Neither the state's mandatory caboose law nor the statute dictating where and how many railroad agents must be stationed is justified on the basis of public need, convenience or safety.

Both laws provide a large measure of job security for certain railroad employees. Changing the laws is a first step toward negotiated reductions in the number of people working on the railroad. That makes the changes painful.

But the two laws also are an illogical and unwarranted intrusion by state government into the business affairs of the railroads. The state's uneasy working relationship with Burlington Northern Railroad makes such intrusion politically popular, although not well justified.

Montana is one of three states that require trains over 2,000 feet long to have an occupied caboose in tow. The Legislature adopted the requirement in 1983 in hopes of protecting public safety. The law was intended to head off steps by railroads and national rail unions to phase out the use of cabooses.

Cabooses, in most cases, are obsolete. Their use began when brakemen had to apply brakes manually on each car. Acting on an engineer's whistle, the brakemen had to scramble to each car to engage and disengage the brakes, and having men positioned at the end of the train allowed faster braking.

Flagmen were stationed in the caboose to signal approaching trains. Crewmen riding in the caboose also watched for equipment failure, fires and other hazards.

Today, brakes for the entire train are controlled by a brakeman riding in the engine; modern signaling technology has replaced the flagman's function; and electronic monitoring equipment can do — in the railroad's view — a better job than people of detecting equipment problems.

Burlington Northern Railroad disputes the rationale behind Montana's caboose law — that cabooses improve train safety. BN cites statistics from the National Railway Labor Conference, which found in a study that trains with and without cabooses have essentially the same frequency of accidents. However,

accidents in trains with cabooses were more severe in terms of employee injuries.

Caboose proponents claim crews in cabooses prevent accidents or reduce their severity. But they haven't proved their case. What's more, a federal appeals court in St. Louis overturned Nebraska's caboose law last year, declaring the statute an illegal barrier to interstate commerce.

The other railroad law in need of change — the one requiring a railroad agency in every county and every town of more than 1,000 residents served by the railroad — is tantamount to legislated featherbedding. The law requires BN to have more than 60 railroad agencies, despite the fact the railroad says it doesn't have enough work to keep a fraction of the agents busy. Most of the car-ordering, record-keeping and billing work traditionally done by local agents can now be handled on a regional basis by computer.

In Nebraska, a state that doesn't interfere in the assignment of private employees, BN has 7 agencies. Whether BN can adequately serve Montana with significantly fewer agencies is a matter the state Public Service Commission must decide.

Changing the agency law won't result in any immediate office closures. Any plan to eliminate or consolidate offices must be approved by the PSC, which would hold hearings and accept public testimony. To win PSC approval, BN would have to show that the change is in the interest of public convenience and necessity. If the railroad can persuade Montana's adversarial PSC to close agencies on those grounds, then they ought to be closed.

The caboose and agency laws mandate inefficiency. They require anyone who ships or receives goods via rail to subsidize unproductive, obsolete jobs. One of the greatest roadblocks to economic development in Montana is its expensive, uncompetitive rail transportation. The caboose and agency laws only make the problem worse.

Sen. Tom Keating, R-Billings, has introduced a bill (SB 154) to repeal Montana's caboose law; Rep. Dorothy Bradley, D-Bozeman, has drafted legislation (HB 302) to allow BN to close unnecessary agencies. Both bills should be approved.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1

DATE 2/24/87

BILL NO. HB 302



# Public Service Commission

State of North Dakota

## COMMISSIONERS

Leo M. Reinbold  
President  
Dale V. Sandstrom  
Bruce Hagen

State Capitol  
Bismarck, North Dakota 58505  
701-224-2400  
800-932-2400  
Toll Free in North Dakota

January 14, 1987

Secretary, Janet A. Elkin

The Honorable Dorothy Bradley  
Montana State House of Representatives  
Capitol Station  
Helena, MT 59620

Dear Representative Bradley:

I understand that you have introduced a bill that proposes to modify railroad agency requirements in Montana. I have been a public service commissioner for over 25 years, and I thought you might appreciate my thoughts on the subject.

Both of North Dakota's major railroads now utilize centralized agency services. The initial railroad application to centralize agency services in North Dakota was filed over ten years ago. Our Commission held a hearing on the proposal and, perhaps somewhat reluctantly, granted the application. Since that time, we have considered many proposals and have approved them all, either in whole or in part. Virtually all of North Dakota's agencies have now been "centralized".

If "The proof is in the pudding," I must say that the railroads' approach to centralized agency services is well received. We have had virtually no complaints regarding services. Extended hours, toll-free numbers, etc., have resulted in excellent services to shippers.

Centralized agency service has helped lower our railroads' operating costs in North Dakota, have contributed to obtaining lower freight rates, and have helped retain branchline viability. Our Commission encourages carrier efficiencies if they can be accomplished without adversely affecting services. Centralized agency services have been a success story in this regard.

Warmest regards,

Bruce Hagen  
Commissioner

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1

DATE

3/24/87

BILL NO.

HB 302

BH/cg

# AGENCY WORK PERFORMED

AGENCIES	Bills of Lading			Car Orders	Demurr.	Match/Tracing
	None	Lading	Orders			
62	36	12	20	8	15	

The agents at the agencies sometimes perform other non-agency work. Non agency work includes: train orders, track lineup, completing RUIA claims, handling switching instructions, crew calling, compares reporting and paying utility bills. All this work except compass reporting and Amtrak work could be accomplished from a central agency or by personnel on the train crews.

Eight of the agents who perform no Agency work also have no non-agency work. Four approve their utility bills for payment by St. Paul as the only non-agency work.

## Definitions

Bills of Lading: The agent receives the paperwork for the shipments that are outbound. The initial paperwork on the shipment is completed by the shipper.

Car Orders: The agent orders cars for delivery to shipper at a specific time and location.

Demurrage: The agent logs the cars are "spot time" or delivered time and then the "released time" to determine if a charge is owed for "car rent."

Matching and Tracing Inbound Revenue Waybills: The agent is responsible for identifying that an inbound shipment has the appropriate transportation charges -- matches the revenue waybill with car movement waybill.

Train Orders: Train orders are specific instruction for operation of the train and movement of the train.

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 3/24/87  
AB 302

# OPEN STATIONS

	MONTANA	WASHINGTON	OREGON	WYOMING	NORTH DAKOTA
# OF AGENCIES	62	16	6	8	6
BN MILES OF TRACK	3,137	3,031	643	966	3,246
9 MONTHS OF 1986					
Carloads originated	257,851	249,041	56,215	658,284	115,673
Carloads terminated	<u>31,212</u>	<u>242,991</u>	<u>64,595</u>	<u>45,135</u>	<u>27,968</u>
TOTAL	289,063	492,032	120,810	703,419	143,641

SENATE LABOR & EMPLOYMENT  
 EXHIBIT NO. 1  
 DATE 3/24/87  
 BILL NO. HPB 302

## /

302

307

Green

20+ Agencies

only state

TE

- [Handwritten signature]*

BILL NO. 40302

AND 5. DEMURRAGE.

*Central agency location*  
IN MONTANA, ALL OF THE WORK IS ALREADY DONE IN FIVE CENTRAL AGENCIES LOCATED AT GLENDIVE, LAUREL, MISSOULA, WHITEFISH AND GREAT FALLS.

THE LOCAL AGENCIES DO NOT HANDLE ANY OF THESE FUNCTIONS LOCALLY. IF ASKED BY THE SHIPPER TO DO ANY OF THEM, THE LOCAL AGENT HANDLES THE REQUEST WITH THE CENTRAL AGENCY THE SAME AS MOST SHIPPERS ALREADY DO.

*Customer's car needs*  
OPPONENTS OFTEN TELL ABOUT LOCAL AGENTS MAKING SURE THE CUSTOMER'S CAR NEEDS ARE MET. THE FACT IS, THIS PROCESS IS HANDLED BY THE CENTRAL AGENCY WHICH DISPATCHES THE CARS, THE CREWS TO SPOT THEM AND, WHEN NEEDED, REPAIRMEN TO SERVICE THEM. IT MAKES NO DIFFERENCE WHETHER THE SHIPPER CONTACTS THE LOCAL AGENT OR THE CENTRAL AGENCY EXCEPT THAT WHEN THE SHIPPER CONTACTS THE LOCAL AGENT HE/SHE DOES NOT DEAL DIRECTLY WITH THE PARTY DOING THE WORK.

*Reduced freight rates*  
MONTANANS ARE CONCERNED ABOUT RATES AND ABOUT MAINTAINING RAIL SERVICE ON BRANCH LINES. THE ABILITY TO HOLD DOWN RATES AND MAINTAIN THE VIABILITY OF BRANCHLINE SERVICE IS DEPENDENT ON THE ABILITY TO CONTROL AND REDUCE COSTS. WHEN NEEDLESS COSTS, SUCH AS 60+ UNNECESSARY AGENCIES, ARE IMPOSED YOU INCREASE RATES AND DECREASE THE VIABILITY OF MARGINAL OPERATIONS.

THAT IS WHAT THIS BILL IS REALLY ABOUT.

*Agents to be utilized*  
YOU OFTEN HEAR CONCERNS EXPRESSED ABOUT THE SECURITY OF THE AGENTS. MANY OF THEM ARE NEAR RETIREMENT AGE. MOST OTHERS ~~WILL~~ *CAN* BE UTILIZED IN DIFFERENT POSITIONS. THESE ARE GOOD EMPLOYEES AND MOST OF THEM WOULD PREFER A MORE PRODUCTIVE POSITION BECAUSE

EXHIBIT NO. 2

DATE 3/24/87

BILL NO. HB 302

111  
THERE ISN'T ANYTHING MORE DEMEANING THAN TO SIT FOR 8 HOURS A DAY *WITH*  
NOTHING MEANINGFUL TO DO.

AGAIN, I STRESS THAT WHAT THIS BILL DOES IS REMOVE THE  
ARBITRARY POPULATION REQUIREMENT FOR THESE AGENCIES AND ALLOWS  
THE PSC TO DECIDE EACH CASE ON THE MORE PROPER BASIS OF PUBLIC  
NEED.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 2

DATE 3/24/87

BILL NO. HR 302

NAME: Pat Leary DATE: 3-24-87

ADDRESS: 25 Airport Rd., Haver, Mt. 5-9501

PHONE: 406-265-1141

REPRESENTING WHOM? Burlington Northern Railroad

APPEARING ON WHICH PROPOSAL: HB 302

DO YOU: SUPPORT?  AMEND?            OPPOSE?           

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE LABOR &amp; EMPLOYEE REL.

EXHIBIT NO. 2

DATE 3/24/87 —

BILL NO. 1302



March 24, 1987

Montana State Senate  
Labor and Employee Relations Committee

Chairman Lynch, members of the Committee:

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 3  
DATE 3/24/87  
BILL NO. HB 302

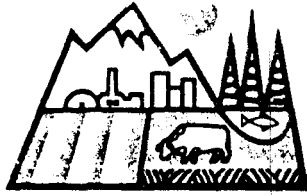
For the record, my name is John Palmer. I reside at 301 South Montana Ave. Fairview Mt. I am manager of the Harvest States Cooperatives Bean plant. I've been manager since 1979.

Since December 1985 we have done our railroad business directly with B.N.'s office in Glendive Mt. <sup>even</sup> ~~even~~ though there is a depot agent stationed in Fairview. We order cars, bill and release cars and monitor their movements all by telephone or ~~the~~ <sup>by</sup> mail. I was at first skeptical of this system but I can now testify to its merits. *Public Service Hearings*

Prior to 1985 we averaged from 11 to 18 single car shipments per year. Because of Company restructuring and economic factors we have seen a large increase in the edible bean business. Similar factors have led to a reduction in our local work force. We have had to become more efficient to stay in business. During fiscal year 1986-87 we have shipped 68 single-car shipments and have not had one major problem with *any of* those shipments. *†*

If there had been some sort of law on the books which would have limited our ability to become <sup>more</sup> efficient in our work, I'm sure we would be closed and boarded up like many of main street Montana's businesses.

House bill 302 will permit the Montana Public Service Commission to allow railroad Co's in Montana to become more efficient where possible. Forcing them to maintain unnecessary stations will surely limit their efficiency and who knows where that may lead to. *I encourage your support of this*  
*bill* *✓* *11/1/87* *Mont.*



# MONTANA CHAMBER OF COMMERCE

P O BOX 1730

HELENA, MONTANA 59624

PHONE 442-2405

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 302  
DATE 3/24/87  
BILL NO. 302

Testimony  
of the  
Montana Chamber of Commerce  
by  
Russ Ritter, Chairman of the Board  
to the  
~~House Labor & Industry~~ Committee  
in support of HB 302  
~~January 30, 1987~~  
Mar. 24

Mr. Chairman, and members of the Committee, my name is Russ Ritter and I am here today to speak in favor of House Bill 302 from personal perspective and in my position as Chairman of the Board of Directors of the Montana Chamber of Commerce.

You have heard data and statistics from proponents, and I'm reasonably certain you'll hear more from opponents. But my support for this measure is philosophical and would apply if we were talking about any business or industry in Montana during these days of economic struggle and collapse.

We do not mine gold as we did earlier this century. In 1987, the mining of gold in Montana requires consultants, computers and engineers -- professions and technologies un-needed or unknown when Helena consisted of Last Chance Gulch.

Industries are constantly undergoing modernization. They must keep pace, for if they once fall behind their competitors the effort and expense to catch up becomes staggering, and often futile.

For a state government to forbid modernization of any industry is poor economics -- at best -- and dictatorship at worst.

Testimony  
by Russ Ritter  
HB 302  
January 30, 1987  
Page 2

Crippling the transportation of our agricultural and natural resource production threatens today's employment in those industries and jobs for the future of our state.

We strongly believe that the roadblocks to economic development for Montana are the dis-incentives we have enrolled into our laws. Surely, laws that deny an industry the right to keep up with modern technology and change must stand as a prime example of dis-incentive.

I urge your favorable consideration of House Bill 302.

Thank you.

~~SENATE LABOR & EMPLOYMENT~~  
EXHIBIT NO. 4  
DATE 3/24/87  
BILL NO. HB 302

Mr. Mike Strawbridge  
Vice President and General Manager  
Ideal Cement Company  
Trident, Montana

Presentation before the Senate Committee on House Bill #302  
March 24, 1987  
Helena, Montana

Members of the committee, I am Mike Strawbridge, vice president and general manager of the Montana Division of Ideal Basic Industries at Trident, Montana. On behalf of Ideal, I am here in support of House Bill 302.

Ideal has operated in this state for nearly 77 years and employs over 100 people in Montana. The Trident plant has always relied on rail service to transport our finished cement to customers. In 1986, over half of our production (2000 rail cars) was shipped outside of Montana. The most economical method of shipping long distances is by rail. Without the economy of rail transportation, Ideal would face more and longer layoffs of employees. If the product can not be shipped out to customers, production must be curtailed.

Passage of House Bill 302 will signal a start in reducing the financial burden imposed on railroad systems operating in Montana. The easing of their burden will ultimately be financially beneficial to those Montana businesses that rely on rail transportation for the shipment of products.

I want to emphasize that Ideal is not advocating the elimination of current railroad agent jobs. We are, however, supporting the fact that this bill would allow motions to be brought before the public service commission to close, consolidate or centralize agent offices in those locations where fewer

SENATE LABOR & EMPLOYMENT

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page -2-, House Bill 302, Mike Strawbridge

agents are needed than now required by state law.

The burden of paying for non-productive jobs, such as unneeded railroad agents, is being passed on to Montana customers through increased freight rates. House Bill 302 will help ease this burden by placing control of how railroads run their business back in the hands of the railroads and their customers. After all, it is to the railroad's advantage to provide quality service if they are to maintain a profitable business.

Montana's state government can no longer afford to retain laws that protect unproductive work. Montana businesses face too much interstate competition. Again, members of the committee, I urge you to vote for passage of House Bill 302.

SENATE LABOR & EMPLOYMENT

EXHIBIT 5

DATE 3/24/87

BILL NO. HB 302

# CITY of GLENDIVE

300 SOUTH MERRILL

GLENDIVE, MONTANA 59330

TELEPHONE  
365-3318

Office of: Mayor

March 23, 1987

J D Lynch, Chairman  
Labor and Employment Relations  
Capitol Station  
Helena MT 59620

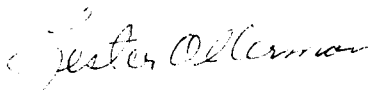
Dear Senator Lynch:

As Mayor of the City of Glendive, I ask that you support HB-302. Burlington Northern contributes very much to the economy of our City. We must foster a good business climate in our State for those corporations whether they be big or small who are willing to invest in our communities.

The Burlington Northern is a major employer in our City. We have a large supply of coal in Eastern Montana and we need to encourage its development. Burlington Northern is critical to this industry.

The Agency Bill will correct a poor business practice and save the Burlington Northern money. Let us encourage and promote business in our State. We cannot be competitive unless we correct some of the undesirable laws.

Sincerely,



Lester Ollerman  
Mayor

SENATE LAB. &

EXHIBIT NO. 6

DATE 3/24/87

BILL NO. HB 302

BEFORE THE  
LABOR AND EMPLOYMENT COMMITTEE MONTANA SENATE  
50TH LEGISLATIVE ASSEMBLY, 24-MARCH-1987

STATEMENT OF JAMES T. MULAR, STATE LEGISLATIVE DIRECTOR  
BROTHERHOOD OF RAILWAY & AIRLINE CLERKS,  
440 ROOSEVELT DRIVE, BUTTE, MONTANA 59701

Mr. Chairman: Members of the Committee, my office has been directed to appear before this committee in opposition to HB 302. BRAC opposes this bill for many reasons.

1. If you would look at your packet. We've prepared a sided by side comparison of the existing statute. ( Sec.69-14-202MCA) And a reproduction of representative Bradleys bill along side. Note: That existing law defines the illusive common law term "PUBLIC CONVENIENCE AND NECESSITY"

-----  
Our Montana Rail Station statute defines Public Convenience & Necessity by establishing a population criterion of 1,000 inhabitants, and least one in each county, preferably the county seat. This definition has been upheld in three court cases. (a) the first was in 1970 a year after the law was amended by Senator Skeff Sheehy. (re-Mular v Mont PSC and Milw RR. (b) the second action took place in Federal District Court Billings in 1983 (BN v MPSC/Rwy. Labor Exec. Assoc. Cause No. CV 82 1/3 Biggs. Judge Battin) The law was upheld on a constitutional challenge by BNRy.Co.(c) BN appealed from the Fed. Dist. Court Decision. A three judge panel upheld the lower court decisions.(re:US Ct.Appeals 9th Circ. case no.84-3491 Jun 21, 1985) We've included a copy of that decision in your packet.

Note: On page 8 of that decision the court held in part\*  
"...we cannot conclude that the legislature's 1969 decision was arbitrary, or irrelevant to the statute's dpurpose of SATISFYING PUBLIC CONVENIENCE AND NECESSITY....."

Nothing has changed since this 1985 decision. Montana towns of 1,000 or more people deserve resident railroad agents and facilities. Opponents would have you believe that removing station facilities, and transacting railroad transportation business with a remote toll free number, satisfies public convenience and necessity. It's nothing more than closing a business in our communities and directing the patrons to make their orders in another out of state community.

OPPONENTS: would also have you believe that Montana's station law is unique, and that no other jurisdiction has such laws applying to railroads.

ILLINOIS requires maintenance of passenger and freight depot in all towns having a population of 200 or more. Ill. Ann. Stat. Ch. 114, Sec 48 (Smith-Hurd 1954)

TEXAS requires maintenance of depots in every county seat. Tex. Stat. Ann. Art.6354 (Vernon 1925)

SENATE LABOR & EMPLOYMENT

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DATE 3/24/87

BILL NO. 40302

2. B.N. has not stopped trying to withdraw its' agency services from Montana. We are presently down to 63 railroad stations in Montana. When the Sheehy legislation was enacted there were over 250 RR stations. The Public Service Commission over the past 18 years has either consolidated and/or closed all but 63 stations.

As we stated BN has again appealed to the 13th Jud. Dist. in Billings, challenging the reasonableness of our Montana PSC's decision not to close Fairview^^ (over 1,000 people)^^Circle (county Seat Micone County less than 1,000) and Terry Montana (less than 1,000 county seat Valley)...We allege that representative Bradley's HB 302 is seeking legislative judicial remedy. Because BN's pleadings surrounded the Public Convenience and Necessity Issue. (re BN v PSC/BRAC cause DV 86-1548 Mt. 13th Judicial Dist.)

We allege that if HB 302 passes this session the State Dist. Court will dismiss the above cited action for mootness.

On the other hand if that court finds for BN Ry. Remedial PSC orders would consolidate communitys of 1,000 or more and also county seats. WE SUBMIT TO THE COMMITTEE THAT WE OUGHT TO WAIT UNTIL OUR STATE COURTS RESOLVE EXISTING PUBLIC CONVENIENCE & NECESSITY CRITERION.

3. Another problem with HB 302 appears on the cut off date beginning on line 25 page 1 and ending on line 1 page 2. Shortline acquisitions would be exempt from complying with existing law, and exempt from complying with HB 302. Because there are no provisions dealing with public interest or for that matter any proviso's dealing with a community request for shortline station facilities.

WE SUGGEST THAT THE COMMITTEE INCLUDE AN AMENDMENT THAT IMPOSE STATION AGENCY SERVICES ON SHORTLINE OPERATIONS. RR shortline operators owe a public duty to perform agency functions and services.

4. Another ambiguous provision begins on beginning on line 3 of page 2 after the word 'operating'....."a railroad demonstrates to the public service commission".....  
This language does not define what must be DEMONSTRATED.

Does it mean that even if a station is profitable there is no shippers necessity for having the station remain staffed?

It would appear that a profitable station is one that enjoys shippers patronage. Would you close a shoe store or any other business if it was profitable?

Does the word DEMONSTRATE mean that during the course of a hearing local government asserts public and economic interest this would fail the demonstrated test, because shippers were not involved in the hearing process.

SENATE LABOR & EMPLOYMENT

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## CONCLUSIONS

Mr. Chairman, members of the Committee. We submit to you that during your deliberations on HB 302 you consider the merits of our testimony. The facts we've presented address the grave consequences of future rail services in our state.

FIRST: Is BN a captive carrier operating Montana? Don't they owe a public duty as a common carrier by rail to enhance local community economic development? Or is there an implied scheme to close all Montana stations and skim the dollar fat from our towns by having local shippers perform agency work without freight rate reductions.

SECONDLY: With BN's announcement to sell off portions of their rail system in Montana what obligations should shortline operator have in serving Montana Communities. Especially when they will not be computerized like BN Ry Co.

LAST: Should this legislature interfere in judicial litigation now pending state district court.

WHWREFORE: We respectfully request this Committee kill HB302 until the courts of this state can resolve the issue of Public Convenience & Necessity, and its reasonableness to our communities.

Respectfully submitted,

James T. Mular, State  
Legislative Director BRAC

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 7

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B.N. APPLICATIONS FOR AGENCY REMOVAL  
January 1, 1979 to January 20, 1987

3/6/79	T-4331	Glacier Park Agency	Granted	3/3/80	#5856a
4/23/79	T-4411	Dualize Polson/Ronan	Denied	11/26/79	#2816a
1/18/80	T-4901	Close Fairview agency & use DSA from Watford, North Dakota at Sidney	Denied	4/16/80	#2951a
1/18/80	T-4902	Discontinue Caretaker Service and Remove Depot at Stevensville	Granted	8/12/80	#2933
5/18/81	T-5695	Dualize Eureka/Fortine	Granted	4/26/82	#4247
5/18/81	T-5696	Discontinue Troy Agency	Denied	4/26/82	#4245
11/6/81	T-6081	Lodge Grass Agency Consolidation (Jurisdiction)	Dismissed	3/26/84	#4674
1/8/82	T-6191	Centralize Customer Service Center in Glendive (Circle, Wibaux, & Terry)	Granted in part	10/25/82	#4425
3/17/82	T-6329	Browning consolidation	Dismissed	8/23/82	#4364
3/17/82	T-6330	Poplar consolidation	Granted	2/7/83	#4826
4/9/82	T-6375	Consolidate Belt, Carter, Choteau	Belt/Carter Granted Choteau Denied		#4529
4/9/82	T-6376	Centralized Customer Center Sidney for Richey, Lambert & Fairview	Granted in Part	11/13/82	#4456
5/11/82	T-6452	Whitehall/Three Forks Consolidation	Denied	8/16/82	#4403
5/11/82	T-6453	St. Regis/ <u>Superior</u> Consolidation	Granted	11/29/82	#4457
5/11/82	T-6454	Hamilton/ <u>Darby</u> Consolidation	Withdrawn ---- by Applicant		
5/13/82	T-6455	Columbus & Rapalje Consolidation with <u>Laurel</u> Agency	Dismissed	11/15/82	#4429
5/18/82	T-6457	Big Timber consol. with <u>Livingston</u>	Denied	8/16/82	#4428

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 7  
DATE 8/16/82 3/24/83  
BILL NO. #0 302

8/2/82	T-6603	Shelby Centralized Service Center	Granted	3/23/83	#4461
8/2/82	T-6604	Glasgow Centralized Service Center	Granted	11/10/82	#4447
8/2/82	T-6605	Laurel Centralized Service Center	Granted in Part	11/15/82	#4429
12/27/82	T-6952	Consolidate Opheim & Glentana, DSA, Richland & Peerless DSA & Four Buttes with Scobey Agency	Denied	4/6/84	#4854a
12/27/82	T-6953	Consolidate Bainville agency with Williston, ND	Withdrawn ----	----	
12/27/82	T-6954	Consolidate Froid & Homestead DSA, Medicine Lake, Reserve & Agency TSA, Redstone & Flaxville DSA into Plentywood agency	Grant in part/denied in part	1/4/84	----
4/13/83	T-7203	Dualize Avon/Elliston	Granted	4/10/83	#4088
5/5/83	T-7249	Bainville/Culbertson Consolidation	Granted	7/30/84	#5025a
5/5/83	T-7251	Turner/Hogeland depot facilitiesn Line Abandonment)	Withdrawn (ICC approved		
5/24/83	T-7284	Manhattan/Three Forks Consolidation	Granted	3/29/84	#4891
6/8/83	T-7323	Garrison/Deer Lodge Consolidation	Denied	3/21/85	#5285
6/21/83	T-7343	Consolidate Sheridan & Twin Bridges with Alder & Dualize/Alder & <u>Whitehall</u>	Granted	----	#4901
6/21/83	T-7344	Bonner/Missoula Consolidation	Granted	3/5/85	#5268a
7/13/83	T-7377	Havre Centralized Customer Service Cen.	Granted in part/denied in part	4/30/84	#4839
7/26/83	T-7401	Triailize Conrad with Ledger & <u>Valier</u>	Granted	9/19/84	#5075a
7/26/83	T-7402	Consolidate Dutton, Brady & Power with Gt Falls (into Dutton)	Granted in part	2/4/85	#5284
7/26/83	T-7403	Dualize Harlem/Chinook	Denied	4/30/84	#4810

SENATE LABOR & EMP

EXHIBIT NO. 7

DATE 3/24/87

48 302

7/29/83	T-7406	Dualize Polson/Ronan	Granted	3/5/85	#5269a
7/29/83	T-7407	Dualize Belgrade/ Bozeman	Denied	3/26/84	#4871a
7/29/83	T-7408	Trialize Big Timber with Columbus & Rapalje	Granted	1/85	#5189a
9/9/83	T-7503	Consolidate Trident & Toston with Townsend	Withdrawn by Applicant	1/9/84	----
9/9/83	T-7504	Consolidate Silver Bow with Butte	Denied	7/16/84	#4892
5/8/84	T-8018	Trialize Hamilton/ Stevensville and Darby	Pending	----	----
8/5/84	T-8187	Consolidate Trident/ <u>Three Forks</u>	Granted	3/25/85	#5308
10/29/84	T-8400	Discontinue Stanford DSA	Denied	9/20/85	#5625a
12/18/84	T-8502	Dualize Bozeman/ Belgrade	Granted	6/10/85	#5339
3/4/85	T-8689	Dualize Harlem/ Chinook	Denied	10/28/85	#5632
5/7/85	T-8764	Dualize Troy/Libby	Granted	12/16/85	#5655
9/5/85	T-8808	Trialize Sidney, Fairview & Circle	Dismissed	6/6/86	#5705
11/19/85	T-8837	Dualize Silver Bow/ Butte	Denied	2/19/86	#5673
2/7/86	T-8878	Miles City/Terry Dualization	Denied	----	----
4/16/86	T-8908	Dualize Conrad/ Choteau/Close Dutton	Pending	-----	----
4/16/86	T-8909	Dualize Big Sandy/ Fort Benton	Pending	----	----
4/16/86	T-8910	Dualize Chester/ Rudyard	Pending	----	----
4/16/86	T-8911	Dualize Forsyth/Hysham	Pending	----	----
4/16/86	T-8912	Dualize Cut Bank/Brown- ing	Pending	----	----

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 7  
DATE 3/24/87  
BILL NO. HB 302

RECEIVED

For Publication

FILED

JUN 24 1985

JUN 21 1985

MONT. P. S. COMMISSIONED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PHILLIP B. WINBERRY  
CLERK, U.S. COURT OF APPEALS

BURLINGTON NORTHERN  
RAILROAD COMPANY,

Plaintiff-Appellant,

v.

DEPARTMENT OF PUBLIC SERVICE  
REGULATION; PUBLIC SERVICE  
COMMISSION; GORDON E. BOLLINGER;  
CLYDE E. JARVIS; THOMAS E.  
SCHNEIDER; JOHN DRISCOLL; and  
HOWARD ELLIS,

Defendants-Appellees.

No. 84-3941

DC No. CV 82-173-BLG

O P I N I O N

Appeal from the United States District Court  
for the District of Montana

James F. Battin, Chief Judge, Presiding

Argued and submitted January 18, 1985

Before: GOODWIN and SKOPIL, Circuit Judges, and VUKASIN,\*  
District Judge

GOODWIN, Circuit Judge

Burlington Northern Railroad Company appeals from a judgment  
for the Department of Public Service Regulation, in which the  
district court, on cross motions for summary judgment, upheld as  
constitutional a Montana statute requiring the railroad to  
maintain and staff certain freight offices in the state of  
Montana. We affirm.

Burlington Northern operates in Montana a railroad which is

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\*The Honorable Robert P. Vukasin, Jr., United States District  
Judge for the Northern District of California, sitting by  
designation.

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1 regulated by the Montana Public Service Commission pursuant to  
2 statute. Mont. Code Ann. § 60-14-111. The Commission has  
3 statutory authority to compel the railroad to maintain and operate  
4 adequate train service (both freight and passenger), to provide  
5 suitable accommodation for the public and to provide facilities  
6 for passengers and freight at all stations. Mont. Code Ann. § 69-  
7 14-117. Burlington Northern has a virtual monopoly over rail  
8 service in Montana.

9 The statute compels the railroad to maintain and staff  
10 station facilities in towns of at least 1,000 persons.<sup>1</sup>  
11 Burlington Northern has challenged the statute by attacking the  
12 regulation promulgated by the Commission. That regulation tracks  
13 closely the statutory language:

14 (1) No railway company now or hereafter  
15 operating within the State of Montana shall:

16 -----  
17 1 Mont. Code Ann. § 69-14-202 provides:

18 (1) Every person, corporation, or association operating a  
19 railroad in the state shall maintain and staff facilities for  
20 shipment and delivery of freight and shall ship and deliver  
21 freight and accommodate passengers in at least one location,  
22 preferably the county seat, in each county through which the  
23 line of the railway passes and at any point upon the line of  
such railway where there is a city or town having a  
population, according to the last federal census, of not less  
than 1000; provided, however, that this section shall not  
require the maintenance and staffing of such facilities in  
any county or at any city or town in which such facilities  
were not maintained and staffed on July 1, 1969.

24 (2) Nothing in this section authorizes the discontinuance of  
25 any facility presently established in any city, town, or  
26 other location having a population of less than 1,000 without  
a hearing before the public service commission, as provided  
by law.

1 (a) Discontinue a station agent who now is or  
2 may hereafter be installed, without first giving  
3 notice thereof to and receiving permission from the  
4 Public Service Commission of the State of Montana to  
5 make such change.

6 Mont. Admin. R. § 38.4.301.

7 Burlington Northern filed petitions with the Commission  
8 seeking authority to close, discontinue or consolidate freight  
9 agency operations at a number of towns in Montana including  
10 Browning, Choteau, Whitehall, Big Timber, Columbus, Wibaux, Circle  
11 and Terry. Burlington Northern claims that station agents are no  
12 longer needed in these towns because many of the duties  
13 historically performed by station agents are currently performed  
14 in centralized, computerized service centers. Now that the  
15 railroad no longer handles less-than-carload freight, freight  
16 traffic from these small stations has declined significantly in  
17 recent years, so much so that some station agencies rarely handle  
18 any freight at all. The railroad alleges that operation of the  
19 compelled stations is redundant and economically wasteful.

20 The Commission dismissed all the petitions without a  
21 hearing, taking judicial notice that the population of each of  
22 these communities is 1,000 or more. Citing Mont. Code Ann. § 69-  
23 14-202, the Commission said it had no authority to consider the  
24 petitions and did not, therefore, have to hold a hearing or  
25 consider the financial burden of these stations on Burlington  
26 Northern before denying its petitions.

Burlington Northern's suit challenges the constitutionality

1 of the statute and of the Commission regulation under the due  
2 process clause, the equal protection clause and the commerce  
3 clause of the Constitution. The railroad has the burden of  
4 proving unconstitutionality under a rationality review; statutes  
5 are presumed to be constitutional. Brown v. Maryland, 25 U.S.  
6 419, 436 (1827).

7 The standard for judging the constitutionality of a statute  
8 such as Mont. Code Ann. § 69-14-202, which regulates economic  
9 activity, is the same under the due process, equal protection or  
10 commerce clauses. Legislation will be upheld if it bears a  
11 rational relationship to a legitimate state interest. Williamson  
12 v. Lee Optical Co., 348 U.S. 483, 488 (1955) (due process);  
13 Dandridge v. Williams, 397 U.S. 471, 485 (1970) (equal  
14 protection); Southern Pacific Co. v. Arizona, 325 U.S. 761, 781-8  
15 (1945) (commerce).

16 In the context of state regulation of transportation  
17 utilities, it is generally agreed that legitimate state interest  
18 is defined by the state's need to ensure that carriers serve the  
19 public convenience and necessity. See Chicago, M.St.P. & P.R.R.  
20 v. Board of R.R. Comm'rs, 255 P. 2d 346, 349 (Mont.), cert.  
21 denied, 346 U.S. 823 (1953). The public convenience and necessity  
22 may require a railroad to provide adequate and suitable facilities  
23 for the convenience of the communities served by the railroad.  
24 Atchison, T. & S.F.R.R. v. R.R. Comm'n, 283 U.S. 380, 394-95  
25 (1931). See Norfolk & W. Ry. v. Pub. Service Comm'n, 265 U.S. 70,  
26 74 (1924) (state may require railroads to provide stations to



1 serve railroad customers). The scope of permissible regulation  
2 over carriers is comprehensive so long as the regulation is  
3 designed to serve the public convenience and necessity, see  
4 Chicago, M. St. P. & P. R. R., 255 P.2d at 351; such regulation can be  
5 effected either directly through legislation or through a public  
6 service commission. See Atchison, T. & S. F. R. R. v. R. R. Comm'n.,  
7 283 U.S. at 394.

8 It is clear on the face of the statute that Mont. Code Ann.  
9 § 69-14-202, when enacted, was designed to serve the public  
10 convenience and necessity and that the statutory and regulatory  
11 requirements were related, therefore, to a legitimate state  
12 interest. The Montana statute and regulation can withstand  
13 constitutional attack today unless the railroad can prove that the  
14 regulatory scheme is no longer rationally related to that interest  
15 in fostering public convenience and necessity.

16 Montana has had a statutorily defined population criteria  
17 for minimum rail facilities since the turn of the century. See  
18 Sec. 1, Ch. 26 L. 1905 (codified as R.C.M. § 72-627) (railroads  
19 must maintain facilities at any platted townsite along the  
20 railroad route with a population of at least 100 persons). In  
21 1969, the Montana legislature revised this section to require  
22 railroads to maintain any existing station facilities in towns of  
23 at least 1,000 persons. Sec. 1, Ch. 266 L. 1969. The Commission  
24 cites to hearings in the legislative history which suggest that  
25 the legislature considered, but rejected, leaving to Commission  
26 discretion the appropriateness of requiring railroad facilities in

1 towns of at least 1,000 population. In part because Burlington  
2 Northern has a virtual monopoly on Montana rail service, the  
3 legislature apparently wanted to avoid the risk that the railroad  
4 itself would exercise undue influence over what constitutes the  
5 public convenience and necessity.

#### 6 Rationality of Statute and Regulation

7 Current railroad statistics reveal that the Montana statute  
8 today is only imperfectly related to the state's interest in  
9 ensuring that towns receive a minimum level of service. But only  
10 rationality, not a perfect relation is required. See Metropolis  
11 Theatre Co. v. Chicago, 228 U.S. 61, 69 (1913). In Minnesota v.  
12 Clover Leaf Creamery Co., 449 U.S. 456 (1981), the Supreme Court  
13 outlined the analysis which we must follow in determining whether  
14 the railroad station requirement is rational. So long as the  
15 purposes cited or relied upon by the legislature are legitimate  
16 state purposes (as they are here), courts do not challenge the  
17 theoretical correctness of the legislature's conclusion or the  
18 empirical correlation between staffed railroad facilities and  
19 local freight needs. Id. at 463. It is "not our function to  
20 weigh evidence . . . to determine whether the regulation is sound  
21 or appropriate; nor is it our function to pass judgment on its  
22 wisdom." Railway Express Agency, Inc. v. New York, 336 U.S. 106,  
23 109 (1949).

24 Whether in fact the public convenience and necessity are  
25 benefitted by Mont. Code Ann. § 69-14-202 is not essentially a  
26 judicial inquiry; it is enough that the Montana legislature

rationally could have decided that public convenience and necessity require these stations to remain open. Clover Leaf Creamery, 449 U.S. at 466. Among other reasons for restraint, this court should be appropriately cautious about deciding questions of local or regional economic policy in two-party litigation. We do not know what intermediate positions might be presented by other interested parties who are not before this court but who may be equally concerned about operation of Burlington Northern freight stations. Questions of economic policy are appropriate issues for the political arena which spill over into the judiciary only when they implicate constitutional rights. We do not, therefore, express any view on the political or economic merits of the Montana statute; Montana is not required to convince this court of the correctness of its legislative judgment that these towns need freight facilities.<sup>2</sup> On the contrary, Burlington Northern has the burden of showing that the "legislative facts on which [the statute] is apparently based could not reasonably be conceived to be true" by the legislature. Clover Leaf Creamery, 449 U.S. at 464, quoting Vance v. Bradley, 440 U.S. 93, 111 (1979). See In re Lara, 731 F.2d 1455, 1460 (9th Cir. 1984). Burlington Northern has presented no evidence to

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<sup>2</sup> To a court sitting in a major urban center, a town of 1,000 persons may seem inconsequentially small. Recognizing that the populations of many Montana counties are less than even a small suburb in California, we are particularly wary of substituting our social and economic beliefs for those of the Montana legislature. See Ferguson v. Skrupa, 372 U.S. 726, 730 (1963). While a population cut-off of 1,000 persons may no longer be wise, we leave that question to the state legislature.

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1 establish that the Montana legislature, in 1969, acted  
2 irrationally when it fixed a statutorily-defined population  
3 criteria for minimum rail-station service. Given our deferential  
4 standard of review, we cannot conclude that the legislature's 1969  
5 decision was arbitrary, or irrelevant to the statute's purpose of  
6 satisfying public convenience and necessity. See Department of  
7 Agriculture v. Moreno, 413 U.S. 528, 534 (1973).<sup>3</sup>

8 The Supreme Court has been ambivalent on whether changed  
9 circumstances can transform a once-rational statute into an  
10 irrational law. Compare Lindsley v. Natural Carbonic Gas Co., 220  
11 U.S. 61, 78 (1911) (a court must consider legislative facts at  
12 time statute was enacted) with Leary v. United States, 395 U.S. 6,  
13 38 n. 68 (1969) (a statute is subject to constitutional attack if  
14 legislative facts upon which statute was based no longer exist).  
15 See also United States v. Carolene Products Co., 304 U.S. 144,  
16 153 (1938) (constitutionality of a statute may be

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18 3 In construing statutory language, a court must ordinarily  
19 consider the circumstances at the time of passage, rather than  
20 later interpretations or statements of purpose. United States v.  
21 Wise, 370 U.S. 405, 414 (1962). Accord Murillo v. Bambrick, 681  
22 F.2d 898, 907-11 (3rd Cir. 1982); United States v. Curtis-Nevada  
23 Mines, Inc., 611 F.2d 1277, 1280 (9th Cir. 1980). See 2 Sands,  
24 Sutherland Statutory Construction § 34.05 (Courts must not  
25 abrogate statutes merely on the ground that changed conditions  
26 have rendered them superfluous, and will not intrude upon the  
responsibility of the legislature to clear the statute books of  
such laws, unless enforcement would be inconsistent with the  
original purpose underlying the law's enactment.). Where courts  
have invalidated archaic statutes, there is often an independent  
constitutional basis for so doing (i.e., a belated recognition  
that the statutes were unconstitutional as written). See Reed v.  
Reed, 404 U.S. 71 (1971) (statutory preference for men as estate  
administrators); Loving v. Virginia, 388 U.S. 1 (1967) (anti-  
miscegenation statute).

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1 attacked on the basis that the facts upon which it is premised  
2 have ceased to exist); Nashville, C. & St. L. Ry. v. Walters, 294  
3 U.S. 405, 415 (1935) ("[a] statute valid when enacted may become  
4 invalid by change in the conditions to which it is applied");  
5 Chastleton Corp. v. Sinclair, 264 U.S. 543, 547 (1924) ("[a] Court  
6 is not at liberty to shut its eyes to an obvious mistake, when the  
7 validity of the law depends upon the truth of what is declared").  
8 Even if, as Burlington Northern urges, we consider the rationality  
9 of the Montana requirement as of 1985 instead of 1969, Burlington  
10 Northern has failed to meet its burden. The railroad has not  
11 presented evidence sufficient to persuade the court that changes in  
12 rail service in the last 16 years have so drastically altered the  
13 need for stations that the bases for the 1969 enactment no longer  
14 exist. See Brotherhood of Locomotive Firemen & Engineers v.  
15 Chicago, B. & P.R.R., 393 U.S. 129, 135-39 (1968) (inconclusive  
16 evidence of changing railroad safety needs insufficient to  
17 conclude that regulation was unconstitutional).

18 Even under our post-Lochner deferential review of state  
19 economic regulation, there remain some constitutional limits.<sup>4</sup>  
20 The Commission cannot make regulations for "the furnishing of  
21 services or facilities which are obviously unnecessary and which  
22 can serve no useful purpose." Ann Arbor R. v. Michigan Pub.  
23 Service Comm'n, 91 F.Supp. 668, 671 (E.D. Mich. 1950). The

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25 <sup>4</sup> See Lochner v. New York, 198 U.S. 45 (1905). See generally  
26 Bice, Rationality Analysis in Constitutional Law, 65 Minn. L. Rev.  
1, 33-37 (1980).

1 determining factor, again, is whether the requirement imposed by  
2 the Commission is arbitrary and void or essentially reasonable:

3 The state, in the exercise of its police power  
4 . . . may require railroad carriers to provide  
5 reasonably adequate and suitable facilities for the  
6 convenience of the communities served by them. But  
7 its power to regulate is not unlimited. It may not  
8 unnecessarily or arbitrarily trammel or interfere  
9 with the operation and conduct of railroad  
10 properties and business. . . . [If regulations are  
11 challenged as unconstitutional,] the duty of the  
12 court in light of the facts in the case [is] to  
13 determine whether the regulation is reasonable and  
14 valid or essentially unreasonable, arbitrary and  
15 void . . . . [Railroads] may be compelled by state  
16 legislation to establish stations at proper places  
17 for the convenience of their patrons.

18 Norfolk & W. Ry., 265 U.S. at 74.

19 A public service commission cannot reasonably order a  
20 railroad to engage in a service which results in economic waste  
21 and which is merely incidental to its real obligation to provide  
22 transportation service. Arizona Corp. Comm'n v. Southern Pacific  
23 Co., 350 P.2d 765, 768-69 (Ariz. 1960); Matter of Missouri P.R.R.,  
24 605 P.2d 1152, 1154 (New Mex. 1980). Burlington Northern has  
25 presented uncontradicted evidence that operation of the Browning  
26 station agency results in a loss. Operation of a service at a  
loss is not, however, necessarily dispositive. Chicago, M.St.P. &  
P. R.R., 255 P.2d at 351. See Petition of Town of Grenville, 119  
P.2d 632, 636 (New Mex. 1941); Matter of Missouri P. R.R., 605  
P.2d at 1154; Arizona Corp. Comm'n, 350 P.2d at 767-68.

The evidence Burlington Northern presents about the losses  
incurred from operating the Browning station is not, standing  
alone, enough for the court to conclude that the losses are severe

1 enough to threaten the railroad's operations,<sup>5</sup> cf. In re Chicago,  
2 M.St.P. & P.R.R., 611 F.2d 662, 668-69 (7th Cir. 1979) (railroad  
3 facing "imminent cashlessness" may be allowed to abandon  
4 services); that a "revolutionary [change] incident to  
5 transportation . . . in recent years" has made the statute  
6 invalid, Nashville, C. & St.L. Ry. v. Walters, 294 U.S. 405, 416  
7 (1935); or that the station requirement is "essentially  
8 unreasonable, arbitrary and void." Norfolk & W. Ry., 265 U.S. at  
9 74. We express no opinion on whether further evidence of useless  
10 or underused stations would support an inference that the station  
11 requirement is unconstitutionally arbitrary.

#### 12 Lack of a Hearing

13 Burlington Northern further argues that the regulation is  
14 defective because it does not afford the railroad a hearing on its  
15 petition. The Montana Public Service Commission, however, did not  
16 have discretion to consider the Burlington Northern petitions  
17 because the legislature had already made the determination that  
18 minimum rail service demands a station in all towns of at least  
19 1,000 persons. See Chicago, B. & O. R.R. v R.R. Comm'n, 237 U.S.  
20 220, 226 (1915). The Commission role properly can be seen as  
21 largely clerical, see e.g. Dixon v. Love, 431 U.S. 105, 113-14  
22 (1977), because its only function is to determine whether or not a

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24 <sup>5</sup> A court must consider more than just the cost of the small  
25 station operations in evaluating the burden on BN of maintaining  
26 the Browning station. See Brooks-Scanlon Co. v. R.R. Comm'n, 251  
U.S. 396, 399 (1920); Bullock v. R. R. Comm'n. of Florida, 254  
U.S. 513, 520-21 (1921).

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2 the Commission is arbitrary and void or essentially reasonable:

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1 enough to threaten the railroad's operations.<sup>5</sup> Cf. In re Chicago  
2 N.H.P. & R.R., 411 F.2d 461, 484-85 (7th Cir. 1979) (railroad  
3 facing "imminent cashlessness" may be allowed to abandon  
4 services); that a "revolutionary (change) incident to  
5 transportation . . . in recent years" has made the statute  
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19 1,000 persons. See Chicago, R. & O. R.R. v R.R. Comm'n, 237 U.S.  
20 220, 126 (1915). The Commission role properly can be seen as  
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22 (1977), because its only function is to determine whether or not a

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24 <sup>5</sup> A court must consider more than just the cost of the small  
25 station operations in evaluating the burden on BN of maintaining  
26 the Browning station. See Brooks-Spann Co. v. R.R. Comm'n, 251  
U.S. 396, 399 (1920); Bullock v. R. R. Comm'n. of Florida, 254  
U.S. 513, 520-21 (1921).

1 community has a population of at least 1,000 persons. The  
2 railroad does not challenge the Commission conclusion that all of  
3 the communities involved in the petitions had populations of 1,000  
4 or more. The Commission is not constitutionally obligated to  
5 provide Burlington Northern with a hearing if such a proceeding  
6 would be unnecessary or meaningless. See United States v. Storer  
7 Broadcasting Co., 351 U.S. 192, 205 (1956); Citizens for Allegan  
8 County, Inc. v. FPC, 414 F.2d 1125, 1128 (D.C. Cir. 1969). An  
9 irrebutable presumption is not per se unconstitutional and does  
10 not demand an individualized hearing so long as it is rational.  
11 See Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 22-24 (1976);  
12 Weinberger v. Salfi, 422 U.S. 749, 768-70, 785 (1975). Once the  
13 legislature has made its determination about which communities  
14 should have stations, the Commission is performing its statutory  
15 duty in enforcing the letter of the statute. See Angelina &  
16 N.R.R. v. Railroad Comm'n, 212 S.W. 703, 705 (Tex. Civ. App.  
17 1919). If the statute is constitutional, the lack of a hearing  
18 does not make it unconstitutional.

19 A state does not violate due process by making a  
20 legislative determination rather than a particularized inquiry if  
21 the subject of the legislation does not interfere with the  
22 exercise of fundamental rights. See Salfi, 422 U.S. at 768-70. A  
23 statutorily defined irrebutable presumption (e.g., that the public  
24 convenience and necessity demand station agencies in all towns of  
25 at least 1,000 persons) is not unconstitutional in statutes which  
26 regulate economic matters. Turner Elkhorn Mining Co., 428 U.S. at

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1 23-24 (1976).

2 Because the Commission did not have discretion to consider  
3 the financial impact on Burlington Northern of station operations,  
4 a hearing would have changed nothing. We conclude, therefore,  
5 that the Commission did not deny Burlington Northern due process  
6 by denying the railroad a hearing. Moreover, for the same reasons  
7 that we found that the Montana statute passes constitutional  
8 muster, we conclude that the Public Service Commission regulation  
9 does not violate due process.

#### 10 Equal Protection

11 Burlington Northern also challenges the Montana statute and  
12 Commission regulation on equal protection grounds because similar  
13 requirements are not imposed on other common carriers by Montana  
14 law. The refutation of this claim is almost self evident.

15 Railroads are legitimately treated differently from other  
16 carriers in state regulation because "railroads are a special  
17 class for which there are and should be special laws." Chicago &  
18 N.W.R.R. v. Bishop, 390 P.2d 731, 735 (Wyo. 1964). See e.g.,  
19 Brotherhood of Locomotive Firemen & Engineers v. Chicago, R.I. &  
20 P.R.R., 393 U.S. 129 (1968) (no equal protection violation for  
21 state to attack safety problems in railroad industry without  
22 regulating other competing industries); W. Virginia Motor Truck  
23 Ass'n v. Pub. Service Comm'n, 123 F.Supp. 206 (S.D.W.Va.), aff'd  
24 348 U.S. 881 (1954) (rejecting equal protection challenge by motor  
25 carriers against regulation of railroad). The courts will defer  
26 to a legislative classification if the state interest is

1 unquestionably legitimate and the classification is related to the  
2 statutory purpose. Texaco, Inc. v. Short, 454 U.S. 516, 529-30,  
3 538-40 (1982). Where a regulation or statute affects only  
4 economic and not fundamental interests, and concerns an issue of  
5 intense local importance, the state is free to create a  
6 classification scheme so long as that classification has a  
7 relation to the purpose for which it is made and does not result  
8 in invidious discrimination. Railway Express Agency, 336 U.S. at  
9 110. We reject the railroad's assertion that the Commission must  
10 show compelling government interest to treat railroads differently  
11 than it treats other carriers. See Shapiro v. Thompson, 394 U.S.  
12 618 (1969).

13 On an issue as intensely local as the location and staffing  
14 of rail freight stations, we must allow the Montana legislature  
15 wide latitude in choosing how to regulate the railroads. Railway  
16 Express Agency, 336 U.S. at 109. Because the Montana statute  
17 passes muster under the due process challenge as rationally  
18 related to the public convenience and necessity, and because  
19 railroads are legitimately treated as a special class of common  
20 carriers, the statute also passes equal protection review.

#### 21 Burden on Interstate Commerce

22 Finally, Burlington Northern challenges the statute and  
23 regulation as an undue burden on interstate commerce in violation  
24 of the commerce clause.

25 Although the commerce clause confers on the federal  
26 government the power to regulate interstate commerce, the

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1 Constitution does not exclude all state power to regulate  
2 commerce. Southern Pacific Co. v. Arizona, 325 U.S. 761, 766  
3 (1945). The limits on state regulation of commerce "necessarily  
4 [involve] a sensitive consideration of the weight and nature of  
5 the state regulatory concern in light of the extent of the burden  
6 imposed on the course of interstate commerce." Raymond Motor  
7 Transp., Inc. v. Rice, 434 U.S. 429, 441 (1978). Particularly in  
8 matters of local concern, the states may regulate commerce even if  
9 there is an incidental effect on interstate commerce. Southern  
10 Pacific Co. v. Arizona, 325 U.S. at 767. When the regulation of  
11 "matters of local concern is local in character and effect and its  
12 impact on the national commerce does not seriously interfere with  
13 its operation . . . such regulation has generally been held to be  
14 within state authority." Id. at 767; See Railway Express Agency,  
15 336 U.S. at 111 (statute can withstand constitutional attack even  
16 if it materially interferes with interstate commerce).

17 The most cogent argument that the Montana statute burdens  
18 commerce is that egregious economic waste adversely affects both  
19 railroad operating efficiency and rates paid by the public. While  
20 the Commerce Clause does not permit a state to cripple the  
21 interstate operations of a common carrier merely to infuse  
22 railroad money into the local economy, the record on summary  
23 judgment in this case falls short of showing the kind of burden  
24 that would justify striking down the statute.

25 Had Montana restricted the frequency and service of  
26 interstate trains, a restraint on interstate commerce might be

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1 found. Chicago, B. & O. R.R., 237 U.S. at 231. The claims by  
2 Burlington Northern that operation of the Browning station results  
3 in a loss to the company does not, without more, suggest that the  
4 Montana statute "impede[s] substantially the free flow of commerce  
5 from state to state" or that the location and staffing of local  
6 rail stations, "because of the need of national uniformity," can  
7 only be regulated by the national government. Southern Pacific  
8 Co., 325 U.S. at 767. It is clear, therefore, that Montana's  
9 regulation of the location of local station agencies is an  
10 intensely local matter, with, at worst, a minimal effect upon  
11 interstate commerce.

12 Burlington Northern has failed to overcome the presumption  
13 of constitutionality by showing that the Montana statute or  
14 regulation are not rationally related to the state's legitimate  
15 interest in ensuring a minimum level of rail service.  
16 Accordingly, the judgment of the district court is affirmed.

# Glendive

## Forward



### Of Montana

200 N. Merrill Ave. • P.O. Box 930  
Glendive, Montana 59330  
(406) 365-8612

March 20, 1987

Senators  
Labor and Employment Relations Committee  
Capitol Station  
Helena, MT 59620

Dear Senator,

This letter is written in support of HB-302. Glendive Forward is an economic development Corporation, and as such we are interested in enhancing not only the economic stability and development of Glendive, but the State of Montana, as well. We feel HB-302 will be a move toward improving economic conditions in Montana.

Glendive Forward has made a commitment to assist and support those industries that are vital to our continuing economic stability. Burlington Northern employs 271 people--an increase of 50 jobs in the last two years--with an annual payroll of over \$8 million. They have been good corporate citizens to our community, contributing thousands of dollars to our Hospital Development Corporation, and well over \$100,000 to Dawson Community College and Vo-Tech Center.

We are proud to be a community willing to stand up and say that BN's presence and the jobs that they provide are vital to our economic base. The willingness to work together has made a difference. We sincerely believe that the State of Montana needs to re-evaluate it's attitude toward it's corporate family and to establish the same motto that we have:

"WORKING TOGETHER CAN AND DOES MAKE A DIFFERENCE"

We ask that you support HB-302. In doing so, you will help assure the continuing relationship that Glendive Forward and our community has strived to develop with Burlington Northern. Economic development in many cases, means "one new job, one new family at a time." We sincerely hope that BN is allowed the space to continue to grow and develop in our community.

Sincerely,

*Kathy Sparr*

Kathy Sparr

Executive Director

SENATE CLERK

FILE NO. 6

DATE 3/24/87

BILL NO. HB 302

KS/dlh

Beginning on line 25 page 1:

Strike period add comma: "and/or any such facilities that exist after January 1, 1987 that are the subject of an acquisition, transaction or service operating agreement as defined in the Staggers Act of 1980.

Beginning on line 3 page 2 after the word 'hearing, add:

"in the community where the facility is situated".....

Line 4 page 2 after the word THAT strike 'a' add THE .....

and after the word NOT add PROFITABLE, AND required for public convenience and necessity,.....

WITH AMENDMENTS BILL WOULD READ:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-14-202, MCA, is amend to read:

"69-14-202. Duty to furnish shipping and passenger facilities. (1) Every person, corporation, or association operating a railroad in the state shall maintain and staff facilities for shipment and delivery of freight and shall ship and deliver freight and accomodate passengers in such facilities as were maintained and staffed on January 1, 1987, AND/OR ANY SUCH FACILITIES THAT EXIST AFTER JANUARY 1, 1987 THAT ARE THE SUBJECT OF AN ACQUISITION TRANSACTION, OR SERVICE OPERATING AGREEMENT AS DEFINED IN THE STAGGERS ACT OF 1980. (BRAC amendment one)

(2) However, if a person, corporation, or association operating a railroad demonstrates to the public service commission, following a hearing, IN THE COMMUNITY WHERE THE FACILITY IS SITUATED, that THE facility is not PROFITABLE, AND required for public convenience and necessity, the commission shall authorize the closure, consolidation, or centralization of the facility.

NEW SECTION. Section 2. Extension of authority. Any existing authority of the public service commission to make rules on the subject of the provisions of this act is extended to the provisions of this act. -End-

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 7  
DATE 3/24/87  
BILL NO. #13302



File HB302b

Proposed amendments to HB 302

Beginning on line 25 page 1:

Strike period add comma: "and/or any such facilities that exist  
after January 1, 1987 that are the  
subject of an acquisition, transaction  
or service operating agreement as  
defined in the Staggers Act of 1980.

Beginning on line 3 page 2 after the word 'hearing, add:

"in the community where the facility is situated".....

Line 4 page 2 after the word THAT strike 'a' add THE .....

and after the word NOT add PROFITABLE, AND required for public  
convenience and necessity,.....

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 7  
DATE 3/24/87  
BILL NO. HB 302

## PRESENT LAW READS:

## ) AMENDED LAW WILL READ:

Sec.69-14-202.Duty to furnish ) Sec.69-14-202. Duty to furnish  
shipping and passenger facil- ) shipping and passenger facilities  
ities.(1) Every person, corp- ) (1)Every person, corporation, or  
oration,or association operat- ) association operating a railroad  
ing a railroad in the state ) in the state shall maintain and  
shall maintain and staff fac- ) staff facilities for shipment and  
ilities for shipment and deli- ) delivery of freight and shall  
very of freight and shall ship ) ship and deliver freight and acc-  
and deliver freight and accom- ) omodate passengers IN SUCH FACIL-  
odate passengers in at least ) ITIES AS WERE MAINTAINED AND  
one location, preferably the ) STAFFED ON JANUARY 1, 1987.  
county seat, in each county ) (2) HOWEVER, IF A PERSON, CORPOR-  
through which the line of the ) ATION, OR ASSOCIATION OPERATING A  
railway passes and at any ) RAILROAD DEMONSTRATES TO THE PUB-  
point upon the line of such ) LIC SERVICE COMMISSION, FOLLOWING  
railway where there is a city ) AN OPPORTUNITY FOR A PUBLIC HEAR-  
or town having a population, ) ING, THAT A FACILITY IS NOT REQU-  
according to the last federal ) IRED FOR PUBLIC CONVENIENCE AND  
census, of not less than 1,000 ) NECESSITY, THE COMMISSION SHALL  
provided, however, that this ) AUTHORIZE THE CLOSURE, CONSOLIDA-  
sectin shall not require the ) TION, OR CENTRALIZATION OF THE  
maintenance and staffing of ) FACILITY.  
such facilities in any county ) NEW SECTION: Section 2. Extension  
or at any city or town in ) of Authority. Any existing autho-  
which such facilities were not ) rity of the Public Service Comm-  
maintained and staffed on ) ission to make rules on the subj-  
July 1, 1969..... ) ect of the provisions of this act  
(2)Nothing in this section ) is extended to the provisions of  
authorizes the discontinuance ) this act. -End-  
of any facility presently est- )  
ablished in any city, town, or )  
other location having a pop- )  
lation of less than 1,000 )  
without a hearing before the )  
public service commission as )  
provided by law..... )

## QUESTION OF FACTS:

1. HB 302 does not define what PUBLIC CONVENIENCE AND NECESSITY MEANS?
2. The present law defines PUBLIC CONVENIENCE AND NECESSITY is serving cities/towns with 1,000 population, and at least one in each county.
3. Repr. Bradley's Bill does not address the 'BAD BUSINESS CLIMATE' issue heralded by Burlington Northern. If BN has bad business at its Montana Stations why not include station

SENATE LABOR &amp; COMMERCE

EXHIBIT NO. 7

DATE 3/24/87

BILL NO. HB 302

4. We would ask if this bill addresses the continuance of agency service if BN sells a rail line segment to a shortline operator. More specifically refer to lines 24 and 25 of the Bill. The bill freezes existing stations only for those persons, corporation(s), or association(s) presently operating a rail line. QUESTION: Does this exclude successor(s) entities operating a railroad.
5. Line 3 page 2 of the bill gives opportunity for a public hearing. WILL THE OPPORTUNITY FOR A PUBLIC HEARING BE HELD IN THE COMMUNITYS WHERE THE STATION FACILITY IS LOCATED? *AMENDED IN HOUSE*  
We allege that the new section beginning on line 12 page 2 would give the Railroad the right to petition for a hearing at the Commission headquarters in Helena. Thus inconveniencing cities and towns from attending and protesting the closures. This supported by the new section extending rule making powers to the Commission. The Montana Administrative Procedure Act does not require a public hearing be held where the matter at issue arises.
6. B.N. alleges that keeping Montana Rail Stations open is a part of 'Bad Business Climate'. HB 302 does not address or define profitability of a rail station. At all the station closure hearings I've attended BN enters cost/profit statistics in evidence supporting their applications for closure. IS IT REASONABLE TO CLOSE A PROFITABLE BUSINESS?
7. Reference is made to line 4 page 2 of the bill. Note that the Public Convenience & Necessity test is illusive, it does not mention PROFITS: which is the reasonable factor for closure. If a station is PROFITABLE wouldn't it be REASONABLE to keep it open, because NECESSITY DICTATES agency continuance for the SHIPPERS PATRONAGE????

#### CONCLUSIONS

1. HB 302 does not address PROFITABILITY as a factor for Public Convenience and Necessity.
2. BN could sell a rail line segment to a shortline operator and that entity would not be subject to Montana Station Laws. Because the cut-off applies to those facilities in existence on January 1, 1987. This not address subsequent rail-line sale
3. Public Hearings could be held in Helena under the Montana Adm. Procedures Act, and cities/or towns would have to travel miles to protest BN's next massive application to close stations.
4. The legislature should keep a population criterion defining PUBLIC CONVENIENCE AND NECESSITY.

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 7  
DATE 3/24/87  
BILL NO. HB 302

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 8  
DATE 3/24/87  
BILL NO. HB 302 ✓

Good Afternoon Gentlemen--

My name is Ed White

I work as the Rate Supervisor/Cashier at the BN Yard Office in Great Falls.

I strongly urge you to oppose this House Bill 302

We are concerned here with a change in an existing statute.

This law was established due to what was considered Public Convenience & necessity. The smaller communities in this state were in need of transportation. The railroad was GIVEN land to build, establish and maintain a railroad to satisfy these needs. I might add that this given land has produced many mineral, land and timber profits to the railroad over the years. Profits which, under the new "Holding Company" format, never show as railroad income.

In order to insure that the railroad lived up to their obligations and promises of maintaining service to these smaller communities, the law envisioned some minimum requirements imposed on the carriers. It did not require the impossible, that is, service to every community. Transportatation is still important to these smaller communities. This law is still important on the books & for the same reasons as when it was passed, as a deterrent to leaving these communities high & dry without any railroad service. The Railroad Representatives say they have no intention of abandoning these smaller communities. I believe that is probably what they told the areas around the Denton and Geraldine branch and the State when they took it over from a withdrawing MILW Ry. Most all of you probably know what happened there. "A point to ponder" -- If they have no

intention of abandoning these small communities, why do they spend this high priced effort attempting to change the law.

Lets look a little deeper into motives. The railroad has all kinds of experts who can come up with a large figure of savings if stations are abandoned. They may hint of lower rates possible if these savings are allowed. This does not seem to historically be the case. Small stations not subject to this law have been allowed to close by the Public Service Comm. and segments of lines abandoned, but did you see any noticeable general rate reduction directly attributed to these cost reductions. Any rate reductions were done via the method of issuing private contracts to individual shippers. I also note in a recent news article that the railroad announced it was planning to go out of the contracts business & revert back to regular tariff rates, which are generally higher. All this should generally tell proponents of this House Bill that if they think there will be lowered rates out of this, they had better take a second look.

Lets examine any potential savings to the carrier that may be realized thru this bill. The carriers seem to agree that there will be no reduction in wages paid due to the Union Agreements for Job Protection that were signed . Therefore there would seem to be no savings to the railroad with regard to wage cost. So the only apparent savings seems to be if the station is torn down and/or removed which would reduce the railroads tax liability. You people who are representing these smaller communities should consider this loss to the community.

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 8  
DATE 3/24/87  
H.B. 302

The employees of the B.N. were recently invited to attend an Economics Seminar at many various places on the System at considerable expense to the carrier. At that seminar the economics of an imaginary company were examined. The figures used were supposed to be B.N.'s actual figures. The bottom line was the Company was making money but in order to get more money for the stockholders, or what is called "R.O.I.", (Return on investment) something had to be done. The only "apparent" solution in the seminar was to reduce employee costs and you were left to your own imagination as to how to accomplish this. They indicated they were making money but wanted more.

I believe that public convenience & necessity would dictate that we leave the present law intact as it is. Somewhere down the line, as times change and as technology advances with its' customary leaps and bounds, the time may appear that the railroads should be released from the requirements imposed by the existing law. BUT that time is not now.

I urge you to vote down this ill-timed proposal calld HB302.

SENATE LABOR & EMP. ORIENT  
EXHIBIT NO. 8  
DATE 3/24/87  
BILL NO. HB 302

HONORABLE SENATORS

MY NAME IS JOE SHANNON. I AM THE LEGISLATIVE REPRESENTATIVE FOR B. R. A. C. LODGE # 528 OF GREAT FALLS, MT.

I HAVE 43 YEARS RAILROAD SERVICE, 40 OF THESE YEARS AS A STATION AGENT.

WHEN THE MILWAUKEE ROAD LEFT THE STATE, MY STATION JOB AT DENTON WAS TRANSFERRED TO THE B.N. RAILROAD. THE PAST 7 YEARS I HAVE WORKED AS AGENT AT STANFORD, MT AND DIRECT SERVICE AGENT, SERVING ON A DAILY BASIS FERGUS, JUDITH BASIN, AND WHEATLAND COUNTIES. CUSTOMERS INCLUDE GRAIN ELEVATORS, TERMINAL, FERTILIZER & FEED, LUMBER MILL, FARMERS, AND SMALL BUSINESSES.

COMPUTERS AND 800 NUMBERS WILL NEVER REPLACE HUMAN CONTACT AS AN EFFECTIVE TOOL OF CUSTOMER RELATIONS

STATION AGENTS PROVIDE PERSONAL, CARING CUSTOMER SERVICE. THAT PERSON LIVES AMONG HIS/HER CUSTOMERBASE ON A DAILY BASIS. THIS AFFORDS THE RAILROAD THE BEST OPPORTUNITY FOR ANALYZING CUSTOMER PREFERENCES AND NEEDS IN THE LOCAL AREA.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO

9

DATE

3/24/87

BILL NO

HB 302

2. The constant, visible presence of a station agent in a community enables the customer to identify personally with railroad. This allows the railroad the opportunity to capitalize on the loyalties built by an agent's relationships with shippers.

## B. STATION AGENT IS VOICE OF CUSTOMER WITHIN RAILROAD ---

The station agent is usually the only person in the corporate structure of the railroad who affords the customer a voice to decision makers within the railroad company. It is customarily the station agent to whom shippers voice their concerns. The station agent alone has the advantage of understanding local/regional market conditions and conveying those conditions to railroad management.

## C. STATION AGENT SERVES AS PROTECTOR OF RAILROAD ASSETS

Traditionally, the physical assets of a railroad are vulnerable to vandalism and theft. Although the presence of an agent within an area will not eliminate this problem, it is arguable that the presence of such a person may keep the problem from escalating.

## D. STATION AGENT TRADITIONALLY WALKS A TIGHT ROPE

Historically, relations between shippers and railroads are somewhat strained. The station agent must walk the no man's land between them and balance the tension between the factions. The dilemma for the agent is to what degree does one side with either party when tensions become too high. One of the results of this situation for the station agent is H.B. #302 which proposes their elimination.

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 9  
DATE 3/24/87  
BILL NO. HB 302

## E. ELIMINATION OF STATION AGENCIES IS A WOLF IN SHEEP'S CLOTHING

### THE RAILROAD

Although ) is advocating the passage of H.B. #302 as necessary for increased profitability in Montana, it is highly speculative at best. The question that has never been explored is the effect the elimination of agency positions will have on customer satisfaction and how that will translate into lost revenues.

THEREFORE, I AM ASKING YOU TO KILL  
HB 302 IN YOUR COMMITTEE THANK YOU.



MY NAME IS JOE BRAND, I AM THE MONTANA STATE DIRECTOR OF THE UNITED TRANSPORTATION UNION. I RESIDE IN HELENA, MONTANA. I AM ALSO SPEAKING IN BEHALF OF THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES AND THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS.

WE ARE OPPOSED TO H.B. 302, BECAUSE IT IS A DRASTIC CHANGE FROM THE PRESENT LAW. I WAS A MEMBER OF THE HOUSE IN 1969 WHEN SENATOR SNEEZY INTRODUCED LEGISLATION THAT WOULD ALLOW RAILROADS TO DISCONTINUE AGENCIES IN COMMUNITIES UNDER 1,000 POPULATION, AND AMENDED THE OLD LAW WHICH REQUIRED 300 POPULATION. THIS WAS DONE TO HELP RELIEVE THE BURDEN ON THE RAILROADS DOING BUSINESS IN MONTANA.

~~PRESENTLY~~ THE BURLINGTON NORTHERN HAS APPROXIMATELY 94 POSITIONS IN MONTANA AT A WAGE COST OF \$3,881,203, AND PROPERTY TAXES OF \$31,214,78. WHICH DOES NOT INCLUDE 21 STATIONS, BECAUSE NO FIGURES WERE GIVEN. OF THESE, 6 ARE THE ONLY AGENCIES IN A COUNTY WHERE THE RAILROAD TRAVERSES. THE NET SAVINGS TO THE BURLINGTON NORTHERN WOULD HAVE BEEN \$2,448,343. THESE FIGURES ARE TAKEN FROM TESTIMONY IN 1984 OF J. TIMOTHY BICKMORE, WHOSE POSITION AT THAT TIME WAS DIRECTOR OF OPERATIONS ANALYSIS BURLINGTON NORTHERN RAILROAD COMPANY, BEFORE THE UNITED STATES COURT OF APPEALS 9th CIRCUIT IN SAN FRANCISCO. HE SAID THE REASON THAT 60 OF THE STATION AGENCIES PRESENTLY OPERATED BY THE BURLINGTON NORTHERN ARE OPERATED ONLY TO COMPLY WITH MONTANA CODE ANN. S6914-202. IF OPERATION OF THESE DEPOTS WERE NOT REQUIRED BY THE STATUE, BURLINGTON NORTHERN WOULD CLOSE THEM SINCE THE OPERATION SERVES NO USEFUL FUNCTION.

IN MOST INSTANCES THIS CLOSURE WOULD BE ACHIEVED BY TRANSFERRING THE STATION AGENT TO ANOTHER EMPLOYMENT LOCATION. WHAT HE IS REALLY SAYING, IN MY OPINION, IS THE JUNIOR EMPLOYEES IF NOT PROTECTED WILL BE UNEMPLOYED, AND A TOTAL OF 4 OR 6 SENIOR EMPLOYEES WILL HAVE EMPLOYMENT WITH THIS CORPORATION AS AGENTS. WHEN THE AGENCIES ARE DISCONTINUED DEPOTS WILL BE DESTROYED AND YOU WILL HAVE THE EROSION OF THE TAX BASE, BOTH PROPERTY PAID BY BURLINGTON NORTHERN RAILROAD, AND EMPLOYEES PLUS EMPLOYEES'S WAGES WILL BE LOST.

EXH. TO 10  
DATE 3/24/87  
BILL NO. HB 302

ACCORDING TO FORBES MAGAZINE JUNE 30, 1986, ISSUE IT STATES, WHEREAS THE DOW JONES INDUSTRIAL AVERAGE INCREASED SOME 80% OVER THE PAST DECADE, STANDARD & POOR'S INDEX OF RAILROAD STOCKS HAS INCREASED SOME 200%. INSTEAD OF DYING THE RAILROADS HAVE SHOWN ASTOUNDING VIGOR.

AND TO WHAT DO THEY ATTRIBUTE THIS OUTSTANDING SUCCESS? THE "ALMOST INCREDIBLE" PRODUCTIVITY OF ITS WORKFORCE. OR AS THEY EXPLAIN FURTHER IN THE ARTICLE, "SHEER PRODUCTIVITY HAS MADE THE DIFFERENCE".

BURLINGTON NORTHERNS PROFITS HAVE INCREASED SIGNIFICANTLY FROM \$113.5 MILLION IN 1978 TO \$551.3 MILLION IN 1984. IN PROFITS DURING 1985, BURLINGTON NORTHERN WAS RATED 34th OF THE TOP 500 LARGEST COMPANIES THAT'S UP FROM 41st THE PREVIOUS YEAR.

PROFITS PER EMPLOYEES

CONSOLID FREIGHT WAYS	\$3,700
ROADWAY SERVICES	\$3,600
YELLOW FREIGHT SYSTEMS	\$2,682
LEASEWAY TRANSPORTATION	\$3,280
 BURLINGTON NORTHERN	 \$14,621.

DO YOU KNOW OF ANY OTHER BUSINESS IN MONTANA THAT GETS THIS KIND OF PRODUCTIVITY?

*SHORTLINES DO NOT ~~ABIDE~~ ABIDE BY LAW DEER Lodge Agent, Subsidize by Taxpayers*  
THANK YOU

JOE BRAND

*statue makes no sense  
out dated law - duties - psgrs. Trains milk cans*

*Truth about closing jobs  
\$26.00 addy Average cost Employee*

*bad business climate in Mont  
Testify for BN & They won't be here, Trident, Regasus, &*

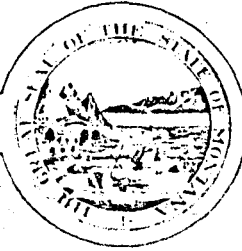
*Russ Ritter*

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 10

DATE 3/24/87

DEPARTMENT OF COMMERCE  
TRANSPORTATION DIVISION



TED SCHWINDEN, GOVERNOR

STATE OF MONTANA

(406) 444-4424

HELENA, MONTANA 59601

File: 2-1-13

February 10, 1987

The Honorable Ron Marlenee  
312 9th Street South  
Great Falls, Montana 59405

ATTENTION: Caseworker/Mrs. Meadors

Dear Congressman:

At your request, I have reviewed the employment subsidies with reference to the Montana Western Railroad and the Job Service Officers of Deer Lodge and Silver Bow Counties. It appears that Montana Western is utilizing the federal-state job training program for three of its employees. It has been verified that the Job Service solicited Montana Western's participation in the program. The railroad originally approached Job Service looking for experienced railroad personnel and were asked to utilize the federal job training program.

Under the program, three employees are employed for twenty-six weeks. They receive 50 percent of their wages from the training program and the remainder from Montana Western. I do not know the current status of the employment contracts, but at the end of the twenty-six week term, the total employment subsidy will be \$12,480.00.

Each employee receives \$320.00 per week. Subsidy would be \$160.00 from federal funds.

$$\begin{array}{r} \text{Employees} \\ 3 \end{array} \times \begin{array}{r} \text{Wage} \\ \$160 \end{array} \times \begin{array}{r} \text{Weeks} \\ 26 \end{array} = \$12,480$$

This \$12,480.00 will provide on-the-job training to three individuals to make them proficient railroad employees.

Job Service states that the program has been effective in finding employment for unskilled workers with chronic unemployment. Montana Western states that their three job trainees are working out very well.

1 - office manager  
2 - 2 class employees

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 10

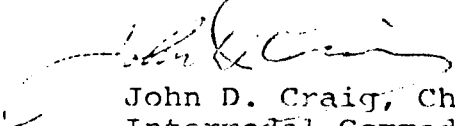
DATE 3/24/87

BILL NO. HB 302

Page 2  
The Honorable Ron Marlenee  
February 10, 1987

Montana Western offered no other explanation of why they chose Job Service over other resources to recruit employees. I hope this answers your questions to some extent. If we can be of further assistance, please let me know.

Sincerely,

  
John D. Craig, Chief  
Intermodal Commodities Bureau  
Transportation Division  
(406) 444-3423

JDC/sc

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 10

DATE 3/24/87

BILL NO. HB 382

RON MARLENEE  
MONTANA

WASHINGTON OFFICE  
409 CANNON HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
(202) 225-1555

Congress of the United States  
House of Representatives  
Washington, DC 20515

BOOK 10  
312 DTH  
GREAT FALLS, MT.  
(408) 453-  
2717 F-25  
C. L. F. 17  
(408) 7-  
17

February 2, 1987

William J. Fogarty, Administrator  
Transportation Division  
Department of Commerce  
1424 9th Avenue  
Helena, MT 59601

Dear Bill:

As you know, I was recently invited to attend a meeting consisting of several union crafts regarding the proposed sale of the BN Southern Line. At this meeting I received a formal request to obtain the following information.

Apparently several of the union crafts believe that a substantial amount of federal and/or state dollars was provided for the operation and training of railroad employees now working for Mr. Green in Butte, Montana.

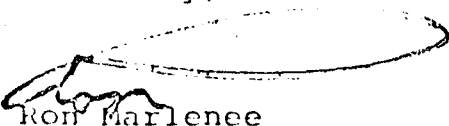
I would appreciate it if you would provide me with the actual dollar amount, if any, and its use in order that I may share this information with those individuals requesting it.

I would also like to take this opportunity to thank you for assisting my Casework Director, Kathy Meadors, in obtaining up-to-date information on the proposed sale. Your input was very helpful.

Please direct any correspondence concerning this inquiry to my district office located at the following address:

312 9th Street South  
Great Falls, Montana 59405  
Attention: Caseworker/Mrs. Meadors.

Sincerely,



Ron Marlenee

km/aw

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 10

DATE 3/24/87

BILL NO. HB 302

COUNTIES

BIG HORN BLAINE CARRON CARTER CASCADE CHOUTEAU CUSTER DANIELS DAWSON FALLON FERGUS GARFIELD GOLDEN VALLEY HILL JUDITH BASIN  
LIBERTY MCCONE MANDAN MUSKIESSIE PETROLEUM PHILLIPS SHERIDAN  
SHERIDAN STRAWATER SWITZERLAND TETON TOLSON TRAILER VALLEY WYOMING YONKERS

Congress of the United States  
House of Representatives  
Washington, DC 20515

MONTANA  
DISTRICT NO.  
LEGISLATIVE  
OFFICE  
2001 FIRST A  
EAST WING M  
ROOM 605  
BILLING  
MONTANA

February 11, 1987

Judith Bell  
District Director  
Railroad Retirement Board  
P.O. Box 1351  
Billings, Montana 59101

Dear Ms. Bell:

At the recent union meeting held in Great Falls on January 25th, at which Mr. Kamenski from your office participated, I was asked if federal funds were provided for job training of any employees on the short lines now operating in Montana.

I wrote to the State Department of Transportation to obtain this information and I now enclose for your information and review, a copy of that response. Needless to say, Judy, I am very dismayed to learn that the State Job Service reportedly solicited Montana Western's participation in a federal/state job training program that would train three employees in railroading. I find this very hard to understand inasmuch as your agency has access to the names of those individuals furloughed or unemployed who are experienced railroaders. To expend over \$12,000 in training of this sort is inexcusable.

I am wondering if the Job Service is required to contact your agency and to coordinate or seek information about furloughed railroad employees. I cannot imagine that the Job Service is not aware that your agency is a valuable source.

I would appreciate any information you can provide about this particular process. Please direct any correspondence concerning this inquiry to my district office located at the following address:

312 9th Street South  
Great Falls, Montana 59405  
Attention: Caseworker/Mrs. Meadors.

Sincerely,

  
Ron Marlenee

SENATE LABOR & IMMIGRATION  
EXHIBIT NO. 10  
DATE 3/24/87  
BILL NO. HB 382

km/aw

COUNTIES

BIGHORN BLAINE CARBON CARTER CASCADE CHOUTEAU CUSTER DANIELS DAWSON FALLON FERGUS GARFIELD GOLDEN VALLEY HILL JUDITH RIVER  
LIBERTY McCONE MEADHER MISSOULA PETROLEUM PHILLIPS PONDREA POWDER RIVER PRABH RUTLAND SHELBY SPOONER  
SHERIDAN STILLWATER SWEET GRASS TETON TOOLE TREASURE VALLEY WHEATLAND WYBARK YELLOWSTONE

FORBES magazine (possibly the most prominent business publication in the U.S.) in its June 30, 1986 issue, printed a major analysis of the rail industry. The article -- interestingly enough entitled "Here Come the Truckbusters" -- paints an entirely different picture right from its opening paragraphs.

"When World War II ended, 1.4 million people manned U.S. railroads. This year that same industry will carry 35% more tonnage than it did four decades ago, but with only 300,000 workers... one worker today does the work it once took six to do."

"Because of this almost incredible explosion of productivity", FORBES continues, "the railroads, an industry that predates even the smokestack era, have not only survived but

I  
flourished. Whereas the Dow Jones Industrial average increased some 80% over the past decade, Standard & Poor's index of railroad stocks has increased some 200%. Instead of dying, the railroads have shown astounding vigor."

So in the opinion of FORBES, railroads, far from presenting a dismal recent past and pessimistic future, reflect high profitability and attractiveness to investors that far out paces the stockmarket as a whole.

And to what do they attribute this outstanding success? The "almost incredible" productivity of its workforce. Or as they explain further in the article, "Sheer productivity has made the difference".

But it can be argued this is all opinion. What do the actual figures

show? And what do the actual numbers show specifically with respect to BN?

The actual figures give the lie to BN's entire video.

FORBES yearly puts out a special issue in which it compiles extensive statistical data on the top U.S. corporations and compares their performances on sales, profits, productivity, etc.

BN's profits have increased significantly from \$113.5 million in 1978 to \$551.3 million in 1984. In profits during 1985, BN was rated 34th of the top 500 largest companies. That's up from 41st the previous year.

In sales BN ranked 65th. BN's assets rank them 98th of the top 500 companies. And in comparison with

other railroads BN is first in all three categories.

On the all important productivity figure of profits per employee, FORBES compares not the top 500 companies but the top 798. BN was 235th or just about in the top 25%. In profits per employee this placed them ahead of all other railroads and all major trucking firms.

The actual profit per employee figure for BN was \$14,621.00. That's right -- you and every one of your fellow union members are each producing well over \$14,000 a year in profits for BN.

In light of recent remarks by BN President Gaskins claiming rail workers are grossly over paid compared to the trucking industry and asserting engineers should be paid no more than truck drivers, it's interesting to look how BN's figures compare with the four largest U.S. trucking firms.

Profits Per Employee	
Consolid. Freight Ways	\$3,700
Roadway Services	\$3,600
Yellow Freight Systems	\$2,682
Leaseway Transportation	\$3,280
Burlington Northern	\$14,621

We're told how the trucking industry is stealing the railroads blind of business. Yet according to U.S. Department of Commerce figures, the ratio of rail business to trucking has remained virtually unchanged since the early 1970's. Since then the rail share has fluctuated between 36-38% of all intercity freight and for 1985, the last year figures were available, it was 38%.

In fact the whole point of the FORBES article is railroads are no longer the innocent victims of the trucking industry, but the future "truckbusters", ready, willing and able to conquer new trucking

The video's most strident and persistent claim is that return on investment for investors is too low to continue to attract and hold necessary capital for the railroad. Again, what are the facts?

In its June 9, 1986 issue FORBES magazine published the key financial earning figures for the 50 largest transportation companies in the U.S.

Under the category "Total Return to Investors", over the last 10 years (1975-85) BN has averaged a return of 27.57%. This was the sixth highest of all 50 transportation companies including railroads, trucking firms, barge lines, pipelines and airlines. It was the highest return for any railroad.

It's true that BN has slashed capital expenditures for the upcoming year, and the reason gives for this action is too low a rate of return. But is that the real reason?

John Rutledge is one of the economists BN relied on heavily in its seminar and he is quoted in the video brochure. (By the way it's interesting to note just who Rutledge is. He's a 37 year old Reaganite economist who served Reagan's transition team in 1980 and then in the administration under Reagan's rabidly anti-union Treasury Secretary, William Simon.)

*Do you know of any other business in Montana that gets this kind of productivity?*

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 10

DATE 3/24/87

BILL NO. HB 302

# EXECUTIVE COMPENSATION

The following information is furnished for the year 1986 with respect to each of the five most highly compensated Executive Officers of the Company and its subsidiaries whose direct remuneration exceeded \$60,000, and all Executive Officers as a group:

Name of Individual or Number of Persons in Group	Principal Capacities in Which Served	Cash Compensation	
		Salaries Including Deferred Amounts Accrued (1)	Incentive Compensation and Bonuses Including Deferred Amounts Accrued (2)
R. M. Bressler(3) .....	Chairman of the Board, President and Chief Executive Officer, Burlington Northern Inc.	\$ 600,000	\$ 300,000
W. A. Drexel(4) .....	Vice Chairman of the Board, Burlington Northern Inc.	\$ 375,000	\$ 187,500
T. H. O'Leary(5) .....	Vice Chairman of the Board, Burlington Northern Inc.	\$ 400,000	\$ 200,000
T. H. Petty(6) .....	Vice Chairman of the Board, Burlington Northern Inc.	\$ 400,000	\$ 200,000
R. S. Morris, Jr. ....	President and Chief Executive Officer, El Paso Natural Gas Company	\$ 275,000	\$ 275,000
14 Executive Officers as a Group(7) .....		\$3,721,606	\$2,220,000

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1D

DATE 3/24/87

BILL NO. HB 302



### RESOLUTION 26

WHEREAS, Montana statute requires railroads to maintain and staff station facilities in communities of one thousand (1,000) or more population, and at least one in each county where the railroad operates; and

WHEREAS, it is very likely that an attempt will be made in the 1987 Montana legislature to repeal or amend said statute; and

WHEREAS, this statute insures that service to these communities will be maintained and the continuation of branch lines, which in turn is beneficial to the economy of the state; and

WHEREAS, a staffed station in said communities will generate more business for the railroad, which in turn will mean more revenue and will insure the future of rail transportation in this state;

THEREFORE BE IT RESOLVED, that this convention will adopt a position supporting said statute and will oppose any attempt to amend or repeal this statute during the 1987 Montana legislature.

SUBMITTED BY BRAC LODGE 43, AFL-CIO  
CONVENTION VOTED CONCURRENCE

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 10  
DATE 3/24/87  
BILL NO. HB 322

NAME: RICK VANAKEN DATE: 3/24/87 BILL NO. 1111 DATE: 3-24-87

ADDRESS: 102 COVE CT, MISSOULA, MT.

PHONE: 251-4401

REPRESENTING WHOM? BRO. RAILWAY & AIRLINE CLERKS LODGE 443

APPEARING ON WHICH PROPOSAL: HB 302

DO YOU: SUPPORT?            AMEND?            OPPOSE? X

COMMENTS: WOULD LIKE TO FOCUS ON ONE PARTICULAR  
ASPECT OF THIS PROPOSAL, I.E. SO-CALLED ADVAN-  
TAGES OF TELECOMMUNICATIONS / TELE-MARKETING  
OF CENTRALIZED AGENCIES, SO HIGHLY TOUTED BY PROPONENT.  
1.) INTERNALLY, WE HAVE HEARD SUGGESTIONS THAT,  
IN FACT, THE COMPANY INTENDS TO CENTRALIZE  
MUCH FURTHER THAN 5 AGENCIES IN MONTANA - TO  
AS FEW AS 3 OR 2, AND PERHAPS ENTIRELY OUT  
OF THE STATE TO REGIONAL AGENCIES (DENVER, HOUSTON)  
2.) HOW WELL DOES ~~THE~~ CENTRALIZED AGENCY SYSTEM  
ACTUALLY WORK? CONSIDER THE NEEDS OF THE  
SMALLEST LUMBER SHIPPER, I.E. ONE OR TWO CARS  
PER WEEK. SUCH SHIPPERS DON'T HAVE THE ADVAN-  
TAGES OF LARGE, OR EVEN MODERATE VOLUME GRAIN SHIPPERS  
AND CEMENT  
PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.  
USING HIGHLY STANDARDIZED CARS. SOME BOX CARS  
ARE 50', OTHERS ARE 52' - HI-CAP LO-CAP, SINGLE-DOOR  
DOUBLE-DOOR, ETC.\* SMALL SHIPPERS DON'T HAVE THE  
ADVANTAGE OF ASSIGNED POOLS OF CARS, DON'T HAVE  
THE ADVANTAGE OF INSTANT RESPECT FROM A DISTANT  
CO-ORDINATOR. THE SMALL-TOWN AGENT IS THERE

THEY ARE, HOWEVER, SHE HAS THE KNOWLEDGE OF  
CAR RATES, HOW THE INTERNAL RAILROAD CAR ALLOCAT-  
ION WORKS, AND HOW TO GET THE SAME SERVICE  
FOR THE VERY SMALL SHIPPER THAT IS MUCH  
MORE EASILY OBTAINED FOR THE LARGE SHIPPER.

2.) THE ~~24~~ 24-HOUR TOLL-FREE NUMBER  
SYSTEM IS, AT BEST, A NUISANCE — AT WORST, IT'S  
A FARLE. IT'S ACTUALLY THE SMALL SHIPPER  
WHO ~~HAS~~ <sup>HAS</sup> THE BIGGEST PROBLEM WITH TOLL-  
FREE CAR-CARDING, BILLING, ~~AND~~ <sup>FILED</sup> COMPLAINTS,  
AND GETTING SATISFACTION.

THE PRESENT LAW DOES NOT PROHIBIT THE RAILROAD  
FROM UTILIZING THOSE AGENTS TO A MUCH GREATER  
DEGREE. ONLY THE COMPANY'S DETERMINATION TO  
GET OUT OF ITS LOGICAL COMMUNITY RESPONSIBI-  
LITY IS PREVENTING THE AGENT FROM WORKING A  
FULL DAY'S WORK. WE ASK YOU TO LEAVE THE LAW  
AS IT IS.



JAMES W. MURRY  
EXECUTIVE SECRETARY

Box 1176, Helena, Montana

ZIP CODE 59624  
406/442-1708

TESTIMONY OF JIM MURRY ON HOUSE BILL 302 BEFORE THE SENATE LABOR AND EMPLOYMENT  
RELATIONS COMMITTEE, MARCH 24, 1987

-----

Good afternoon. For the record, my name is Jim Murry and I am here today to testify before the Senate Labor and Employment Relations Committee on behalf of the Montana State AFL-CIO in opposition to House Bill 302.

The delegates to the 30th Annual Convention of the Montana State AFL-CIO adopted, through Resolution 26, a position that our labor federation oppose any attempts to amend or repeal Montana's so-called "freight agent" law. This statute requires railroads to maintain and staff at least one freight station facility in each county which the line passes through and any point on the line where there are at least 1,000 people.

House Bill 302 would amend this law by allowing the Public Service Commission to authorize closure of such facilities in the event any person, corporation or association demonstrates that a facility is not required for public convenience and necessity.

Mr. Chairman, it is our contention that public convenience and necessity are being served through our current statute which insures that service to these communities will be maintained. We believe that the existing law not only benefits the communities where these facilities are located but also helps generate more business and revenue for the railroad.

In our difficult economic times, many smaller cities and towns are fighting for their very survival. The presence of rail stations and branch lines may mean the difference between economic solvency or another boarded-up ghost town. Access to transportation is vital for the future economic growth of Montana's small cities and towns and therefore we oppose House Bill 302, which would only further isolate rural communities.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 12

DATE 3/24/87

BILL NO. HB 302

Bruce Graham  
617 N. 8th St.  
Livingston, Mt. 59047

March 24, 1987

Legislative Body of the State of Montana  
Capital Building  
Helena, Montana 59601

Dear Legislative Members:

Please accept this as my testimony in opposition to HB302. Don't believe the BN that the people working the Agencies will be protected by Union Agreements. Due to the closing of the Livingston Shops I was forced by Burlington Northern on June 13, 1986 to separate from the Company along with six other employees.

The protective agreement dated May 6, 1980 is just another contract for the Burlington Northern to break. This affects everyone who was hired since March of 1970, people with seventeen years seniority.

The Burlington Northern wanted me to move out of state. I wanted to stay in Montana so now I am competing in business with other Montanans for a declining share of the Economic pie. In reality, I am not adding anything to the economy of Montana. All I am doing is taking income away from my competition.

The Burlington Northern's only goal is to maximize profits and the fastest and easiest way is to get rid of the employees.

As of December 1980 there were 143 Clerks, BRAC protected, in the Livingston-Bozeman area. Today there are 31, one of whom the Burlington Northern claims does not exist, twenty-one of these Clerks moved, 3 stayed in Montana, and the others-to protect themselves-had to move out of State. It would be interesting for you to ask Burlington Northern what happened to the other 91.

We need to keep jobs and people in Montana, Burlington Northern does not agree.

I urge you to vote against HB302.

Sincerely,

  
Bruce Graham

Jeanne M. Oines  
P.O. Box 170  
Livingston, Mt. 59047

March 24, 1987

Legislative Body of the State of Montana  
Capital Building  
Helena, Montana 59601

Dear Legislative Members:

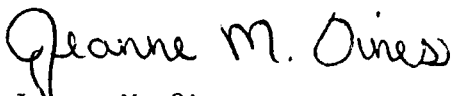
I would like to respond, in opposition, to HB302. The Burlington Northern is claiming that closing the Agencies in the State of Montana will not affect any clerks' employment as they all have job protection provided through their BRAC Union Agreement. The Company claims that since all the agents are protected they would have other BN jobs to go to.

I, too, was a "protected" clerk working for Burlington Northern Railroad with the same protective agreement which these agents have. However, when BN chose to close the Livingston Mechanical Shops they not only severed all mechanical shop employees but also several clerks. When the Shops were closed I was working in the BN Yard Office which is a completely separate department. My job had nothing to do with the work that was eliminated or transferred. The Company indicated that they had a certain "quote" of clerks that they needed to get rid of in Livingston. Therefore, my employment with Burlington Northern, along with several others, was terminated.

The Burlington Northern now has decided that they can do fine in the State of Montana with fewer agents and agencies. There is no assurance that this company will not do to these people exactly as they did to us just last year. They may also try to force these people to transfer out of state as they have in the past with many BN employees. There certainly is no "protection" provided that will insure these agents continued employment with the Burlington Northern.

I urge you to strongly oppose HB302.

Sincerely,

  
Jeanne M. Oines

417 So. 5th St.  
Livingston, MT 59047

March 13, 1987

TO: The Legislative Body of the State of Montana.

The following is testimony concerning the protection of Burlington Northern employees effected by agency closings and the sale of the Burlington Northern Southern Route through Montana.

I was employed by B.N. for 10-1/2 years: one year as a Laborer on a steel gang and 9-1/2 years as a Clerk at the Livingston Diesel Locomotive Shops. In 1980 I became a protected employee because of the B.N. merger with the Frisco. To come under this protection, an employee had to have at least 4 years of service with the carrier at the time of the merger.

Because of this merger I was to be guaranteed my wages in the case of a shop closure until the age of retirement or until I chose to quit my job, according to the BRAC agreement with the carrier. If I refused to transfer to a different location, I would forfeit my guarantee for a period of 6 months. After this 6-month period, I would be able to collect my guarantee.

When the Livingston Shops closed, I was told to bid on jobs in Iowa, Nebraska, or Illinois, which were not in my seniority district. I was informed that if I bid on jobs in my seniority district, the B.N. would veto my bid and I would not be allowed the moving benefits to the locations in which I had seniority rights.

When I did not bid on jobs at any location, I received a letter stating that I had two choices: (1) To lose my guaranteed protection in Livingston, my home zone, until I could hold a permanent position at the yard office (which would probably never happen), or (2) Take severance pay and relinquish all my seniority rights, as well as my job with the carrier.

Other locations on the system were offered 60% of their wages for life in Reserve Clerk status. I was not offered this option, and was forced to take the severance pay.

I sincerely hope the Legislature will take this incident into consideration when making their decisions on the matters of agency closings and the sale of the Southern Burlington Northern Route.

Truly Unemployed,

*Kester C. Romans*

Kester C. Romans

Chairman, Committee Members:

I am Betty Klingler, representing Halfway Lodge 402 of BRAC

I am against this bill (HB 302) because after twelve (12) years of working for Burlington Northern I am no longer employed. The reason I am no longer employed is because Burlington Northern tried to move me out of state to West Burlington, Iowa; I refused to go and thus was told to separate from BN or go home with no pay at all.

I was a protected employee and was suppose to have a life-time guarantee just like all the agents that they (BN) are telling you are protected.

I believe BN will try similar tactics on the agents who lose their jobs, if they don't leave the state they will have no job or protection.

BN maintains that shippers' rates would be lowered if they (BN) could do away with unproductive agencies. Did the shippers' rates get lowered when they got rid of myself and the thirty (30) other clerks at Livingston? NO!!

Many people have left our state because of BN. Do we want to lose even more?

I ask that you consider these facts and vote NO.

Thank you.

*Betty I. Klingler*  
Betty I. Klingler  
March 24, 1987





# Public Service Commission

State of North Dakota

State Capitol  
Bismarck, North Dakota 58505  
701-224-2400  
800-932-2400  
Toll Free in North Dakota  
Secretary, Janet A. Elkin

COMMISSIONERS  
Leo M. Reinbold  
President  
Dale V. Sandstrom  
Bruce Hagen

January 14, 1987

The Honorable Dorothy Bradley  
Montana State House of Representatives  
Capitol Station  
Helena, MT 59620

Dear Representative Bradley:

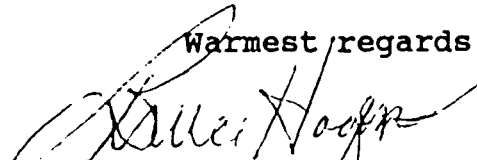
I understand that you have introduced a bill that proposes to modify railroad agency requirements in Montana. I have been a public service commissioner for over 25 years, and I thought you might appreciate my thoughts on the subject.

Both of North Dakota's major railroads now utilize centralized agency services. The initial railroad application to centralize agency services in North Dakota was filed over ten years ago. Our Commission held a hearing on the proposal and, perhaps somewhat reluctantly, granted the application. Since that time, we have considered many proposals and have approved them all, either in whole or in part. Virtually all of North Dakota's agencies have now been "centralized".

If "The proof is in the pudding," I must say that the railroads' approach to centralized agency services is well received. We have had virtually no complaints regarding services. Extended hours, toll-free numbers, etc., have resulted in excellent services to shippers.

Centralized agency service has helped lower our railroads' operating costs in North Dakota, have contributed to obtaining lower freight rates, and have helped retain branchline viability. Our Commission encourages carrier efficiencies if they can be accomplished without adversely affecting services. Centralized agency services have been a success story in this regard.

Warmest regards,

  
Bruce Hagen  
Commissioner

# AGENCY WORK PERFORMED

AGENCIES	Bills of Lading		Car Orders		Match/Tracing
	None	Lading	Orders	Demurr.	
62	36	12	20	8	15

The agents at the agencies sometimes perform other non-agency work. Non agency work includes: train orders, track lineup, completing RUIA claims, handling switching instructions, crew calling, compares reporting and paying utility bills. All this work except compass reporting and Amtrak work could be accomplished from a central agency or by personnel on the train crews.

Eight of the agents who perform no Agency work also have no non-agency work. Four approve their utility bills for payment by St. Paul as the only non-agency work.

## Definitions

Bills of Lading: The agent receives the paperwork for the shipments that are outbound. The initial paperwork on the shipment is completed by the shipper.

Car Orders: The agent orders cars for delivery to shipper at a specific time and location.

Demurrage: The agent logs the cars are "spot time" or delivered time and then the "released time" to determine if a charge is owed for "car rent."

Matching and Tracing Inbound Revenue Waybills: The agent is responsible for identifying that an inbound shipment has the appropriate transportation charges -- matches the revenue waybill with car movement waybill.

Train Orders: Train orders are specific instruction for operation of the train and movement of the train.

# OPEN STATIONS

	MONTANA	WASHINGTON	OREGON	WYOMING	NORTH DAKOTA
# OF AGENCIES	62	16	6	8	6
BN MILES OF TRACK	3,137	3,031	643	966	3,246
<u>9 MONTHS OF 1986</u>					
Carloads originated	257,851	249,041	56,215	658,284	115,673
Carloads terminated	<u>31,212</u>	<u>242,991</u>	<u>64,595</u>	<u>45,135</u>	<u>27,968</u>
TOTAL	289,063	492,032	120,810	703,419	143,641

RE: HB 772 Revising Prevailing Wage Rate

SENATE LABOR & EMPLOYMENT

EXHIBIT NO.

DATE 3/24/87

BILL NO.

HB 302

Mr. Chairman, and members of the Committee,

IF this legislature eliminates the Prevailing Wage Rates in Montana, when it meets again it will face another revenue shortage, this one of its own making!

With no prevailing wage rate law, our State will be flooded with non-resident, non-union, non-income or property tax paying workers!

In addition the revenues collected from Montana workers will drop or even disappear, forcing these former taxpayers out of the State or onto Public Assistance; both unacceptable options!

The prevailing wage rate law insures that working people in Montana will receive a fair wage and won't be pushed into the growing class of Americans known as "the working poor." Construction salaries may seem excessive, ~~until you~~ but the work is seasonal and if the salaries were averaged out over a fifty week work year they would hardly be excessive! We are proud to be members of the Working Class, who have always paid our fair share. Help us keep it that way!

Submitted by: JOAN C. MARSHALL  
33 MTN VIEW  
PRINCEDIA MT

John J. Marshall

AGENCY CLOSURES SINCE 1982

Closures Approved/Line Remains Open

Fallon	southern mainline
Lodge Grass	secondary line south from Billings
Belt	central secondary
Carter	branchline
St Regis	northern mainline
Poplar	northern mainline
Broadview	central secondary
Redstone/Flaxville	branchline
Manhattan	southern mainline
Twin Bridges	branchline
Sheridan	branchline
Kremlin/Gilford	northern mainline
Joplin/Inverness	northern mainline
Power/Brady	central secondary
Bonner	southern mainline
Ledger/Valier	branchline
Bainville	northern mainline

Agency Closure /Line Closed

Brockway	branchline (agency and line closed at the same time)
Richy/Lambert	branchline (agency and line closed at the same time)

Agency Closure Denied/Line Closed Later

Bridger	branchline
Chappell	branchline
Denton	branchline
Geraldine	branchline

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 13

DATE 3/24/87

BILL NO. HB 321

### RESOLUTION 26

WHEREAS, Montana statute requires railroads to maintain and staff station facilities in communities of one thousand (1,000) or more population, and at least one in each county where the railroad operates; and

WHEREAS, it is very likely that an attempt will be made in the 1987 Montana legislature to repeal or amend said statute; and

WHEREAS, this statute insures that service to these communities will be maintained and the continuation of branch lines, which in turn is beneficial to the economy of the state; and

WHEREAS, a staffed station in said communities will generate more business for the railroad, which in turn will mean more revenue and will insure the future of rail transportation in this state;

THEREFORE BE IT RESOLVED, that this convention will adopt a position supporting said statute and will oppose any attempt to amend or repeal this statute during the 1987 Montana legislature.

SUBMITTED BY BRAC LODGE 43, AFL-CIO  
CONVENTION VOTED CONCURRENCE



Box 1176, Helena, Montana

JAMES W. MURRY  
EXECUTIVE SECRETARY

ZIP CODE 59624  
406/442-1708

TESTIMONY OF JIM MURRY ON HOUSE BILL 772 BEFORE THE SENATE LABOR AND EMPLOYMENT  
RELATIONS COMMITTEE, MARCH 24, 1987

-----

Good afternoon. Mr. Chairman, members of the committee, for the record, my name is Jim Murry and I am the Executive Secretary of the Montana State AFL-CIO. We are here today to testify in support of House Bill 772.

Our labor federation has always been an adamant supporter of Montana's prevailing wage law, also known as the Little Davis-Bacon Act. The simple fact is that Little Davis-Bacon is a fair and equitable law. Almost everyone benefits under its provisions except unscrupulous contractors. Workers, fair-minded contractors, and state and local governments all profit from Montana's prevailing wage law. So do taxpayers, Mainstreet businesses and the general public.

Members of the committee, this measure before you today is obviously a compromise measure. It expands the number of prevailing wage districts in Montana, and raises the threshold as to when prevailing wage laws apply. The Montana State AFL-CIO supports this bill, but we will be monitoring it closely over the upcoming years to make sure that it is in the best interests of workers, fair contractors and the taxpaying public.

We urge you to give House Bill 772 a "do pass" recommendation.

SENATE LABOR & EMPLOYMENT  
EMPHASIS 14  
DATE 3/24/87  
BILL NO. HB 772



P.O. Box 6400  
~~502 South 19th~~

Bozeman, Montana 59715

Phone (406) 587-3153

TESTIMONY BY: Lorna Frank  
BILL # HB-772 DATE March 24, 1987  
SUPPORT \_\_\_\_\_ OPPOSE XXX

Mr. Chairman, members of the committee, for the record, my name is Lorna Frank, representing approximately 3500 Montana Farm Bureau members throughout the state.

Farm Bureau members believe that county and local governments should be exempt from the state prevailing wage law, when only locally generated funds are used, and that the wages should reflect actual conditions in each local community.

We feel HB-772 does not address our members concerns. It may be better than the present law, but it still sets up 10 districts with the rural communities being classified with the larger towns. It defines labor as all services in excess of \$25,000 performed in construction, maintenance, or remodeling in all state, county, municipal, and school work and does not include engineering, superintendence, management, or office or clerical work.

If a county or local government has a bond issue approved by the local taxpayers for a new school it is going to cost a lot more than \$25,000. Why should the landowners be forced to pay more than what the actual conditions in that community are?

Farm Bureau urges this committee to do not pass this bill. Thank you.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 15

DATE 3/24/87

BILL NO. HB 382

SIGNED: Lorna Frank



COMMITTEE ON

Labor

DATE

March 24, 1987

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Betty I. Klingler	BRAC - HALFWAY Lodge 42	HB 302		X
James T. Mullar	STATE Legis DIR BRAC	HB 302		X
JOE BRAND	✓ ✓ ✓ UTL	HB 302		X
BO WHITE	MAAC - 428	HB 302		X
Joe Shannon	BRAC 528	HB 302		X
CHAL BURR JR.	BLE.	HB 302		X
Maureen Stoll	DOC	302		
WJ HOGAN	BRAC 402	HB 302		X
Terry Connolly	Mont Farmers Union	AB 302		X
Gregg Fries	St Bldg Trades	HB 772	X	
Curt Wilk	CHGL 41334	HB 772	X	
Reggie McMurdo	MT. Council of Electrical <sup>WORKERS</sup>	HB 772		X
DAN JONES	MT. ST. Bldg Trades	HB 772	X	
PAULETTE GRONVOLD	MT ST Bldg Trades	HB 772	X	
John Foran	ST. ASSN. OF Plumbers & Fitters	772	X	
John A. Hays	Teamsters Joint Col. F2	772	X	
Michael S. Higgins	St. Assn of Plumbers & Fitters	772	X	
John Mathews	MT. ST. Bldg Trades	772	X	
Lorna Frank	MT. Farm Bureau	302	X	772
Pat Kinn	B. N. Railroad	302	X	
John B. Palmer	Bx 485 Farmers MT	302	X	
E. L. Brerley	BRAC	302		X
Bill Marguerit	Fisher Industries	302	X	
Kurtis Sparr	Glendora - Forward	302	X	
John M. Shattuck	Local Union	302	X	
Joseph E. Pittman	District Council of Laborers	HB 772	X	
John T. Hays	302		X	