

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON LABOR & EMPLOYMENT RELATIONS**

**Call to Order:** By CHAIR CAROLYN SQUIRES, on February 14, 1991,  
at 3:00 p.m.

#### **ROLL CALL**

**Members Present:**

Carolyn Squires, Chair (D)  
Tom Kilpatrick, Vice-Chairman (D)  
Gary Beck (D)  
Steve Benedict (R)  
Vicki Cocchiarella (D)  
Ed Dolezal (D)  
Jerry Driscoll (D)  
Russell Fagg (R)  
H.S. "Sonny" Hanson (R)  
David Hoffman (R)  
Royal Johnson (R)  
Thomas Lee (R)  
Mark O'Keefe (D)  
Bob Pavlovich (D)  
Jim Southworth (D)  
Fred Thomas (R)  
Dave Wanzienried (D)  
Tim Whalen (D)

**Staff Present:** Eddye McClure, Legislative Council  
Jennifer Thompson, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

#### **HEARING ON HOUSE JOINT RESOLUTION**

**Motion/Vote:** REP. WANZENRIED MOVED HOUSE JOINT RESOLUTION TO  
ENCOURAGE THAT ORGANIZED LABOR, MONTANA JOB TRAINING PARTNERSHIP  
INC., MONTANA DEPARTMENT OF LABOR AND INDUSTRY, AND THE  
DEPARTMENT OF COMMERCE SEEK ADDITIONAL FEDERAL EMPLOYMENT AND  
TRAINING DOLLARS TO HELP WORKERS DISLOCATED IN THE WOOD PRODUCTS  
INDUSTRY BE INTRODUCED AND SPONSORED BY THE COMMITTEE ON LABOR  
AND EMPLOYMENT RELATIONS. EXHIBIT 1. Motion carried  
unanimously.

**HEARING ON HB 506**

**Presentation and Opening Statement by Sponsor:**

REP. JOHN COBB, House District 42, Augusta, said before a 1987 amendment, an injured worker entitled to a biweekly payment under Workers' Compensation could apply to the Division for a lump-sum payment with the concurrence of the insurer. If there was a controversy between the claimant and the insurer regarding biweekly payments into a lump-sum, they could go to a mediator or the Workers' Compensation judge. In 1987 the Workers' Compensation laws were changed where no application for a lump-sum conversion could be made to the Department unless it was agreed to by the claimant and the insurer. If they failed to agree the mediator or judge could not intervene. The intent was to stop many lump-sum payments. The Supreme Court told the Legislature that it could not delegate authority to the insurer and worker to make an agreement. If there wasn't an agreement, the worker had no recourse to go before the Workers' Compensation judge. He proposed an amendment. **EXHIBIT 2, Section 1.** HB 506 clarifies that workers can go to the Workers' Compensation judge to resolve a dispute, and the judge has jurisdiction over lump-sum payments.

**Proponents' Testimony:**

Tim Reardon, Workers' Compensation Judge, said he suggested the amendment to Rep. Cobb. With the amendment, the bill would address the Supreme Court concerns.

George Wood, Executive Secretary, Montana Self Insurers Association, stated support with his proposed amendment. **EXHIBIT 2, Section 2.**

Gene Phillips, Alliance of American Insurers, stated his support with George Wood's amendment.

Jacqueline Terrell, American Insurance Association, stated her support with Rep. Cobb's and Mr. Wood's amendments.

**Opponents' Testimony:** None

**Questions From Committee Members:** None

**Closing by Sponsor:** REP. COBB closed the hearing on HB 506.

**HEARING ON HB 271**

**Presentation and Opening Statement by Sponsor:**

REP. JERRY DRISCOLL, House District 92, Billings, stated HB 271 would require railroads in mountainous terrain to have a rear-end telemetric device that would operate through a radio signal to set the brakes and stop the train if the train came uncoupled

from the engine. The Supreme Court ruled that cabooses didn't have to be on trains. In 1989, there was a train wreck in Helena because it had no caboose. The engines were being switched on top of the mountain. Once the engines were unhooked, the train started rolling backward, and there was no way to stop it. With this device and a radio signal, the brakes could have been set to stop the train from coming back down the mountain. He proposed an amendment to say if the railroad has an occupied caboose on the train, it doesn't have to have the telemetric device.

**EXHIBIT 3**

**Proponents' Testimony:**

**David Ditzel, Brotherhood of Locomotive Engineers**, presented and explained a packet of information. The caboose had a brake valve where the brakes could be set from the rear of the train. With technology today the brakes can be applied from the rear of the train similarly to the caboose. The safety devices would be used in mountain grade territory. **EXHIBIT 4**

**Don Slaybaugh, Burlington Northern Locomotive Engineer**, presented written testimony. **EXHIBIT 5**

**Philip "Mitch" Dahl, Montana Rail Link Engineer**, presented written testimony. **EXHIBIT 6**

**Bob Anderson, Public Service Commission**, submitted a petition of August 2, 1990. **EXHIBIT 7**. Since cabooses are no longer required on trains, there is less rail safety. In the absence of a caboose, a comparable electronic substitute should be made to provide at least the same safety as with a caboose.

**Francis Marceau, United Transportation Union**, presented written testimony. **EXHIBIT 8**

**Chris Little, Attorney, Alper & Man, Washington, DC, representing Brotherhood of Locomotive Engineers**, said HB 271 is not preempted by federal law. This statute should be adopted, the Public Service Commission should then go forward with rulemaking to apply the rear-end telemetry device in local hazards where safety is a vital concern to Montana, rail workers, and people traveling on the rail line in the United States.

**Don Judge, Executive Secretary, AFL-CIO**, presented written testimony. **EXHIBIT 9**. He stated his support of Rep. Driscoll's amendment.

**Jim Jensen, Executive Director, Montana Environmental Information Center**, said two cement kilns have recently applied to the United States Environmental Protection Agency and the Montana Department of Health and Environmental Sciences for permission to begin incinerating hazardous waste imported into Montana by rail. Both of those facilities are next to important water resources for the

state. Improving safety of railroad operations is an important environmental safety law.

**James Mular, Chairman, Montana Joint Rail Labor Legislative Council,** stated his support with the amendment.

**Matt Pepos, Brotherhood of Maintenance of Way Employees (BMWE) Rail Labor,** stated his support for HB 271.

**SEN. FRED VAN VALKENBURG, Senate District 30,** stated the State of Montana should regulate the safety of railroads in a reasonable way with modern technology. Reasonable arguments can be made to overcome the preemption argument.

**Ed Flies, Montana State Counsel of Professional Firefighters and Montana Fireman Association,** stated his support of HB 271.

**Raymond West, State Legislative Director, United Transportation Union,** presented written testimony. EXHIBIT 10

**Bill Hendershott, United Transportation Union Local 981, Whitefish,** stated that HB 271 would allow the engineer to put the train into emergency application and give the public and workers better safety.

**Craig Gilchrist and Cecil Ozark, Legislative Representatives, Brotherhood of Locomotive Engineers,** sent written testimony. EXHIBIT 10A

**Opponents' Testimony:**

**Leo Berry, Attorney, Burlington Northern Railroad,** presented written testimony. EXHIBIT 11

**John Greene, Montana Western Railroad, Butte and Anaconda,** stated that it would cost \$39,550 to equip the Montana Western Railroad with rear-end devices according to the quote from Dynamic Sciences Limited (DSL). It is a small business, and customers would be charged more to pay for them. In the future, it will be a Federal Railroad Administration (FRA) Regulation, and the railroads will have to have the safety devices. It shouldn't be done now but in conjunction with the FRA.

**Dick Hitchcock, Central Montana Rail, Denton and Geraldine,** said that Central Montana Rail is smaller than Montana Western Railroad and will be impacted even more.

**Pat Keim, Director of Government Affairs, Burlington Northern Railroad,** stated that FRA has specifically considered the type of device proposed and has rejected it. The device does not contribute to safety and has potential to cause an undesired emergency brake application, which can cause derailments. The derailment at Essex, Montana, was caused by an undesired emergency brake application. The National Transportation Safety

Board (NTSB) recommended that the FRA reduce the potential for undesired emergency brake applications. The proposed devices run contrary to that recommendation because they can fail internally or by response to radio interference. The derailment and explosion in Helena in 1989 was the result of human failure to comply with rules when un-coupling engines from trains on the mountain grade. According to the NTSB, the probable cause of the accident was the failure of the crew to properly secure their train by placing the brakes in emergency and applying hand brakes when left standing on the mountain grade or when the locomotives were uncoupled. It would have been impossible to set the brakes from the rear-end manually or by telemetry signal because there was no air-lift to set the brakes. The signal from the head-end telemetry device was obstructed by the terrain when the train approached the west end of Austin where the engines were to be cut off. By the time the crew realized that the train had rolled away, it would have been out of radio range in the telemetry device. The NTSB does not say that a rear-end train device would have prevented the accident. It only recommends that the requirements of the devices are within the jurisdiction of the FRA. Devices are used that are permitted but not required by the FRA. August through October 10, 1990, train records were randomly checked for cabooses or end-of-train devices. With the exception of Amtrack trains, which do not have end-of-train devices or cabooses, only 5 out of 3,120 had no devices or cabooses. 99.84 percent of all of the trains going through Havre were equipped with a permitted device or a caboose. In each case of run-away trains, the train was stopped, the brakes were inspected and tested, and the braking system was found to be in working order. In cold weather brakes sometimes take longer to stop a train. The requirements of HB 271 will not improve safety and could cause accidents. It would require an unsafe apparatus, which has not been approved, on trains, but it will establish a direct conflict with federal law.

#### Questions From Committee Members:

REP. WANZENRIED asked Mr. Little to give a reaction to the argument of preemption. Mr. Little said in 1970 it was very important with the FRA and in the passage of the Federal Railroad Safety Act that the states have some powers because the railroads had been running without much federal or state oversight for 150 years. In 1970 they adopted rail labor, rail management, states involved and passage of the Rail Safety Act. Local safety hazards would not be statewide in character, there is no intent to establish statewide standards. A caboose bill can't apply to the whole state. Unique circumstances are not always amenable to broad federal regulatory authority and are more readily identified and corrected at the local level. Florida doesn't have mountains, passes, or problems with trains running backwards down hills, and Montana does. The local safety exception was adopted because there are unique areas even though there are overall federal regulations. With the grade areas there are definite safety concerns where there wouldn't be in other areas.

REP. PAVLOVICH asked Mr. Greene how often the train runs between Butte and Anaconda. Mr. Greene said six days per week. REP. PAVLOVICH asked how long is the longest run. Mr. Greene said from Butte to Garrison is 52 miles.

REP. JOHNSON asked Mr. Little if he was familiar with the device that has been proposed. Mr. Little said he was familiar with the technical aspects and how it has been proposed in other states. REP. JOHNSON asked if the device was used on other railroads in the United States. Mr. Little stated that this was the first time that a railroad admitted to using it with Burlington Northern saying it was being used on their Pacific Division. REP. JOHNSON said he didn't understand that they were using this device but they were testing a device. Mr. Little said it's a device that allows for an emergency application of the brakes from the rear-end of the train forward. He didn't know the specific device, but it would probably be the Pulse Device which is generally used throughout the industry.

REP. JOHNSON asked Mr. Berry if he knew if it was the same device as the one being tested on the western end of the railroad. Mr. Berry said there are ten devices, which meet the standards under this bill, being tested currently under the Pacific Division. REP. JOHNSON asked if any of those devices had been accepted by the FRA. Mr. Berry said no; the FRA notes that the currently available devices generally do not incorporate a safety feature. Developmental work remains to be done before a reliable system is available. They can't be used system-wide until the FRA approves them.

REP. BECK asked Mr. Berry if he could foresee a safety problem with the trains as they are running now. Mr. Berry said that the FRA has concluded that running trains without cabooses or the devices was not a safety issue. Safety could be improved if the devices were perfected and utilized; they are not unsafe right now. REP. BECK asked what was the purpose of cabooses on trains. Mr. Berry said that cabooses were never part of the statute or safety requirements. They were a negotiated provision between the rail unions and the railroad. In 1983, at the national level the rail unions removed the caboose requirement. Two months later the unions requested legislation requiring mandatory cabooses in Montana. REP. BECK asked why cabooses were first put on trains. Mr. Berry said at that time crews often traveled with the trains, and the caboose was their home. They were used for switching. The trains were not as long with as many individual cars switched on and off. REP. BECK asked if the cabooses were ever used for safety. Mr. Berry read from a provision stating that nothing in the current FRA regulation requires a caboose on any train nor does anything in the final rule issued in the docket authorize the removal of cabooses. The determination of whether a railroad uses a caboose is made through the collective bargaining process. REP. BECK asked if he believed that the railroad had a safety problem especially when engineers and workers have testified of the danger of runaway trains even

without a mountain grade. **Mr. Berry** said considering the size of trains, there are safety issues. If the device is perfected and approved by the FRA, the trains will operate in a safer manner.

**REP. WHALEN** asked **Mr. Berry** if he was aware that the Canadian railroads have been using the devices for a couple of years. **Mr. Berry** said yes. **REP. WHALEN** asked if he knew if it was true that they were not using the devices on a test basis. **Mr. Berry** said he didn't know.

**Closing by Sponsor:**

**REP. DRISCOLL** said the devices would be used in mountain grade territory on Page 2, Lines 3-6. Because there are no mountains, Montana Western Railroad which runs from Butte to Garrison wouldn't need the devices. The terrain is flat for Central Montana Railroad, so the device is not needed. In 1983 he carried a caboose bill that passed; the lobbyist said the bill wasn't needed because rear-end telemetric devices would be put on the trains. The bill was passed anyway and it was taken to the Supreme Court and overturned. Then the rear-end telemetric devices were not installed. **Leo Berry** has rules that are five to ten years old, and everything done is not illegal by those rules. Previous testimony said that legislatures shouldn't have to make the decision on whether the air should be placed in the front or the back. The professional engineers will make the decision on where to apply the air to the brakes. The railroad says that the devices are not needed to apply from the back. There should be a device so the engineer has the option.

**HEARING ON HB 628**

**Presentation and Opening Statement by Sponsor:**

**REP. TIM WHALEN, House District 93, Billings,** said in 1969 Rep. Sheehy carried legislation that mandated a population requirement in the depot statute. It required that every town with a population of 500 or more where the railroad ran through, or every county seat had to have a railroad depot. It was subsequently amended up to 1,000. In the early 1980s the railroad challenged that statute claiming that a population requirement for depots could not be put into statute. The railroad lost the decision. In 1987 a bill removed the population criteria and said unless the public convenience and necessity requires that a depot be in a particular community, the Public Service Commission (PSC) upon proper application can allow the depot to be closed. There was no definition in the statute of what public convenience and necessity meant. The PSC considered only shipper testimony and not the general public. The shippers could lose their business upon the termination of the agency. HB 628 has the identical language as the Idaho statute which gives a solid definition of public convenience and necessity. In some of the less populated areas, personal contact is needed with the railroad for coordination with local law

enforcement, ambulances, fire departments, and other safety concerns as a result of the hazards of the railroad in the communities. The PSC will continue to interpret that public convenience and necessity applies only to the shippers, unless it is made more specific.

**Proponents' Testimony:**

**James Mular, State Legislative Director, Transportation & Communications Union, and Chairman, Joint Rail Labor Legislative Council,** stated that the PSC ruled only the shipper or people who paid freight had standing in agency closures, and the public didn't have standing because they were not shippers. Idaho has been successful. Employees have standing relating to safety and standing for the public that need the depots for emergency responses. He presented a handout. **EXHIBIT 12.** The public convenience and necessity standard outlined in HB 628 covers the broad spectrum of small, rural communities on certain population factors.

**Danny Oberg, Commissioner, Montana Public Service Commission,** presented written testimony. **EXHIBIT 13**

**Matt Pepos, BMW Rail Labor,** said he attended his first PSC hearing in Stanford where farmers, ranchers, grain elevator operators, and local businessmen were upset they were going to lose their depot. Safety is important. There are no depots between Great Falls and Laurel. The dispatcher is contacted by radio to find out where a train is. Through the canyon there are places where the radios can't get reception. By eliminating depots, the life lines to the outside world from the trains are being eliminated.

**Don Judge, Executive Secretary, AFL-CIO,** presented written testimony. **EXHIBIT 14**

**Opponents' Testimony:**

**Mr. Leo Berry, Attorney, Burlington Northern Railroad,** said the shippers haven't supported keeping the agencies open. There is no legitimate public function that relates to the job of the agent. The bill sets up an impossible standard. An Idaho public utility law, not a railroad agency law, designed to cover all utilities in Idaho has been made to fit into specific railroad agency statutes. There is difficulty in interpreting this bill. There is nothing wrong with the stricken language. The general public is a factor in determining public convenience and necessity.

**Dennis Lind, Washington Corporation and Montana Rail Link,** stated that there is confusion on how the bill defines public convenience and necessity. The current language adequately protects the public. This bill places an emphasis on the employees impacted rather than to balance all factors. The PSC



should balance all factors including the public interest, shippers, and communities.

**Bonnie Ardisson, Holnam Inc. Ideal Cement,** stated her opposition.

**Roger Sammons, Pardue Grain Inc.,** stated that HB 628 was unfair to the railroads because it was mandating employment. The local agent in Cutbank always had to contact Great Falls because the information was not at his disposal. With modern communications calls can be made 24 hours a day. The employment has to be justified. The State of Montana does need jobs, but the jobs should be productive.

**Jerrold Weissman, President, Carl Weissman & Sons,** sent written testimony for HB 628 and HB 730. **EXHIBIT 14A**

**William Carrier, Distribution Coordinator, Cypros Industrial Minerals Company,** sent written testimony HB 628 and HB 730. **EXHIBIT 14B**

**Questions From Committee Members:**

**REP. FAGG** asked **REP. WHALEN** why the language was struck that defined public convenience and necessity, and why he didn't like the PSC looking at public comments. **REP. WHALEN** said in the decision from a PSC hearing under the 1987 law, after some analysis and setting forth the two different statutes, the PSC stated on Page 12 of its order that it interprets the new statutory language as indicating the Legislature's intent that the analysis be expanded to include impacts of a proposed closure on persons other than shippers. Page 15 of the order, states for the Commission to deny an application of this kind primarily on the basis of impact on persons other than shippers. It needs to be convinced either in the absence of an agent the community will experience serious safety problems as a result of railroad operations or will experience other problems that an agent is uniquely able to prevent or solve. None of this legislation was needed in the first place. The PSC managed to define public and convenience out of public convenience and necessity. If this bill passes the PSC will continue to close railroad depots, but it will be doing it contrary to the clear language in the statute. The District Courts won't give it the same kind of deference, and the agencies could be saved at that level. **REP. FAGG** suggested the following language: "It needs to be proven where in the absence of an agent the community will experience serious safety problems as a result of railroad operations or will experience other significant problems related to railroad operations that an agent is uniquely able to prevent or solve." **REP. WHALEN** suggested he read the preceding four pages of that order which summarize the testimony given at the time about railroad fires: in that case the depot was closed and the people were given a toll-free number with a recording and were disconnected. The concerns of the community are not addressed by

the PSC. The language has been in the Idaho law for many years and the courts haven't had problems interpreting it.

REP. JOHNSON asked Mr. Oberg what the gap was between what legislators expect and what the law says in paragraph 2 of his written testimony. Mr. Oberg said that he had held many depot hearings in rural areas which sometimes resulted in closures of those depots. The legislators have said the law was changed so that the testimony heard should have been enough to keep the depot open. The PSC has a different interpretation. He welcomes clarification from the Legislature.

REP. BENEDICT said in Ravalli County the depot employees said there was nothing to do. The people in this area are grateful for the depot closure coupled with improved service. There are more trains and better service. He asked Mr. Lind to expand on the relationship between being able to make some of these decisions that would improve service in other areas. Mr. Lind said Montana Rail Link had petitioned the PSC to close many of its agencies. They were very inefficient, the workers didn't have anything to do, and the jobs were to create employment. The PSC used the present language and all factors to determine that it was not in the public convenience and necessity to keep the agencies open.

REP. COCCHIARELLA asked Mr. Mular about those employees. Mr. Mular said the employees that Mr. Lind referred to were hired by a MSLA employment agency which had no previous rail experience, were told to sit and answer the phone, and give the public the toll-free number.

Closing by Sponsor:

REP. WHALEN stated that HB 628 requires the depots be maintained and staffed with equipment and instruments necessary to promote safety. The employees are playing cards because copy machines, radio equipment, weigh bill information, bills of lading, car wheel reports, livestock record reports, etc. have been removed from the depots. The Burlington Northern Railroad wants to consolidate down to Fort Worth, Texas, and the Union Pacific to St. Louis, Missouri. It was said at a hearing in Hardin, when the depot operator wasn't working, the local law enforcement had to call a toll-free number in Nebraska if they had a problem. For example, a train car was on fire, there was no caboose and the engineer didn't notice. A driver on the highway saw the fire and called the toll-free number in Nebraska and the operator tried to figure out where Forsyth Montana was. Those safety concerns are ignored by the PSC. Since the 1987 law, the PSC has closed 60 depots and the 31 remaining will probably be closed before 1993. There will be no control over the hazards of the trains traveling through communities. In Hardin a shipper that had opened a business said if it wasn't for the local depot agent, he wouldn't have been able to get his product shipped for another six months because he was dealing with someone in Fort Worth. There will be

no depots left if this legislation is not passed. The Burlington Northern Railroad doesn't care about public concerns.

**HEARING ON HB 663**

**Presentation and Opening Statement by Sponsor:**

REP. TIM DOWELL, House District 5, Kalispell, presented amendments. EXHIBIT 15. The purpose of HB 663 as amended will allow arbitration under labor agreements to be compelled or enforced under the Uniform Arbitration Act.

**Proponents' Testimony:**

Phil Campbell, Montana Education Association, presented sections of the Uniform Arbitration Act pertinent to HB 663. EXHIBIT 16. Currently, parties to a labor agreement can use the Uniform Arbitration Act, Section 312-313, only to vacate an arbitrator's award or modify an arbitrator's award. With the amendment, the bill will allow the parties to use the Arbitration Act to compel or enforce arbitration if arbitration is in the contract.

**Opponents' Testimony:** None

**Questions From Committee Members:**

REP. JOHNSON asked Mr. Campbell if he had talked with Rep. Kimberley about his bill similar to this bill. Mr. Campbell said HB 663 has nothing to do with the bill sponsored by Rep. Kimberley. That bill deals with arbitration in lieu of striking. HB 663 pertains to parties, who have agreed to include arbitration in the contract, can compel arbitration when one party doesn't want to participate and can go into court.

REP. BENEDICT asked Mr. Campbell what the procedure was now. Mr. Campbell said because of the recent Supreme Court Decision relating particularly to school employees, they must go through the Administrative Procedures Act before going to court. For example, there is a contract with grievance arbitration and the employer doesn't want to participate. Under the current law, school employees have to go through the county superintendent and state superintendent. Section 27-5-115 of the Uniform Arbitration Act says upon application to the court, the court can compel arbitration if there is arbitration in the contract. It is a procedural matter and simplifies the process for all parties. REP. BENEDICT said that the bill bypasses the different steps and allows somebody to go to District Court and to direct arbitration. Mr. Campbell said yes.

REP. HANSON said that if everybody agrees and it is in the agreement but the items given are mandatory in each case. It reads, "and enforceful and may be subject to all or portions of this chapter if the agreement so specifies except these will apply in every case." That means automatically when there is an

arbitration problem everything is bypassed and immediately goes to court. Mr. Campbell said that the current law says there are two exceptions that apply in all cases which are Section 312 and 313. That means the Arbitration Act can be used to vacate an award. It can be vacated in Court. They would also like to be able to do under the Uniform Arbitration Act, they can go into Court anyway. This is just a procedure of the route that is used. This is a simpler route. The Uniform Arbitration Act can be used because there is a section that deals directly with the issue of compelling arbitration or enforcement of the award. The route that is used now is a breach of contract. The whole act is not to apply because many procedures in the arbitration process are taken care of in the collective bargaining agreements.

Closing by Sponsor:

REP. DOWELL closed the hearing on HB 663.

HEARING ON HJR 18

Presentation and Opening Statement by Sponsor:

REP. DAN HARRINGTON, House District 68, Butte, said the McBride Principles are nine equality of opportunity guidelines for United States Companies doing business in Northern Ireland. Proponents of the McBride Principles hope by pressuring United States firms operating in Northern Ireland to follow non-discriminatory hiring and promotion practices, they will combat persuasive, religious and discrimination in employment practice in the province. The nine principles are: (1) Increasing representation for individuals from unrepresented religious groups in workplace including managerial, supervisory, administrative, clerical, and technical jobs. (2) Adequate security for the workplace and while traveling to and from work. (3) Banning of provocative, religious, or political emblems at the workplace. (4) All job openings should be publicly advertised, and special recruitment efforts should be made to attract applicants from under-represented religious groups. (5) Layoffs, recalls, or termination procedures should not practice favor particular religious groups. (6) The abolishment of job reservations, apprenticeships, restrictions, and differential employment criteria which discriminates on the basis of religion and ethnic origin. (7) The development of training programs that will prepare substantial number of current minority employees for skill works including expansion of existing programs and the creation of new programs to train, upgrade, and approve skills of minority employees. (8) The establishment of procedures to assess, identify, and actively recruit minority employee's potential for further advancement. (9) The appointment of senior management staff members to oversee the company's affirmative action efforts in setting up a timetable to carry out affirmative action principles. In Northern Ireland, 40 percent of the population is Catholic, and only 3 percent are given factory jobs. Presently, twelve states have accepted the principles and

are pointed toward the American companies doing business in Northern Ireland who are promulgating the problems. This resolution asks that rights and equal representation be granted and the religious discrimination be ceased immediately. It is not a part of the political battle of North and South Ireland.

**Proponents' Testimony:**

**Don Judge, Executive Secretary, AFL-CIO, presented written testimony. EXHIBIT 17**

**Tom Monahan, State Chairman, Ancient Order of Hybernians who sponsor the McBride Principles in the State of Montana, stated the conflict began in 1155 when Pope Adrian commissioned Henry II to invade Ireland and make it a province of England. The problems are similar in occupied countries where an outside force has brought their people in and established special laws to protect them in employment. It is the primary problem in Northern Ireland and not a religious war. It is Irish fighting English. This is a civil rights issue. The Ford Motor Company and others who do business should have the same standards as in South Africa.**

**Ed Sheehy, Helena Retiree, stated his support because it is a civil rights movement. People are denied employment. It is a sad commentary on American investments overseas where discrimination is practiced.**

**Opponents' Testimony: None**

**Questions From Committee Members: None**

**Closing by Sponsor:**

**REP. HARRINGTON said that HJR 18 will help to solve the problems in Northern Ireland.**

**HEARING ON HB 600**

**Presentation and Opening Statement by Sponsor:**

**REP. JERRY DRISCOLL, House District 92, Billings, presented an amendment. EXHIBIT 18. HB 600 changes the duration of weeks scheduled in the Unemployment Insurance Law. On Page 2, Line 7, to qualify for 26 weeks a person has to make 3.25 times in the base year the amount of money made in the high quarter. For example, if a person made \$5,000 in his high quarter, he has to make \$17,500 in the year to qualify for 26 weeks. The problem is with 3.25 a person must work in every quarter or he would not qualify for 26 weeks. There are many seasonal jobs and plants that close down for three months for one quarter. Those employees can't become qualified for the 26 weeks. Under the formula of HB 600, a person would have to work three quarters instead of four. The average duration of unemployment in Montana**

is fourteen weeks. The formula is closer to the formula in the law prior to 1979. There is not much money in the bill; the Fiscal Note shows between zero and \$900,000. In certain industries, especially asphalt paving and logging, because of the season people get less unemployment. If a person worked every shift, Saturdays, and overtime he has a substantially higher quarter than the person who doesn't. Consequently, that employee may make \$10,000 in that high quarter and then he has to make \$32,500 in the year which is almost impossible in asphalt construction to qualify for the 26 weeks. The other employee who doesn't work on Saturdays and leaves early and makes \$8,000, his ratio in the high quarter to get the 26 weeks would have to be about \$26,000. Under this formula the hard working employee would get less weeks than the employee who goes home early.

#### Proponents' Testimony:

**Don Judge, Executive Secretary, AFL-CIO,** stated HB 600 provides an incentive for employees to perform their best when employers need it the most.

#### Opponents' Testimony:

**Forrest Boles, President, Montana Chamber of Commerce,** said that the Fiscal Note shows the worst case would be \$900,000. The business community has worked hard to build up the Fund. Good workers shouldn't be penalized, but the law can't be manipulated to fit little particular situations. With the mill closing down in Missoula recently, it is estimated it will cost the Fund \$8,000 per month. That would deplete a \$90 million Fund quickly. According to national standards, the Fund should have \$135 million. There is a responsibility to all Montana workers, not just a select few.

**Riley Johnson, National Federation of Independent Business,** said the Legislature hasn't even reached the spending and tax bills yet. There is already a \$1.5 to \$1.7 million attack on the present Unemployment Insurance Fund. The businesses have to pay for the money spent. There may be other spending bills, and businesses can only take so many increases in spending and taxation.

#### Questions From Committee Members:

**REP. THOMAS** asked **REP. DRISCOLL** if the bill could be amended to continue current benefits for the hard working employee and taper back the benefits for the employee who isn't. **REP. DRISCOLL** said he could not figure out a formula to do that.

#### Closing by Sponsor:

**REP. DRISCOLL** said taxes were just decreased between \$5 to \$10 million January 1, 1991. It was triggered down from Schedule 3 to Schedule 1. For the most favored employer by not having

layoffs, the tax is an administration tax of 1/10 of 1 percent of the first \$13,200. Construction workers and loggers usually work for more than one employer in a year. Each employer must pay 6.5 percent of the first \$13,200 of wages by each employee. When the bill was passed that reduced the total by the formula, where by schedules in the law when the fund balance reached a certain amount each January a Schedule is triggered down. Taxes on employers have been reduced from \$80 to \$37 million. HB 600 will not increase taxes this biennium. It could in the future, but it will go up anyway because of the formula at Schedule 1 which is mathematically figured that less money will be taken in than paid out. The Fund balance is never to exceed \$100 million. There should be fairness to the good worker.

### HEARING ON HB 730

#### Presentation and Opening Statement by Sponsor:

**REP. DAVE BROWN, House District 72, Butte,** said HB 730 retains rail station facilities in communities of 2,000 or more inhabitants and at least one in each county where a railroad operates. It does not require railroads to reopen agencies that were closed before January 1, 1991, but it does lock in those population figures that were in place under the 1980 Federal Decennial Census. It is vital in keeping the laws of agencies for railroads in Montana. This is a companion bill to HB 628. Six agencies will be petitioned for closure this year. Railroad agencies are imperative for Montana agriculture.

#### Proponents' Testimony:

**James Mular, Montana Joint Rail Labor Legislative Council and Transportation Communication Union,** said a complete exodus of agency service is being done by the Union Pacific resulting in shippers in southwestern Montana having to deal with a customer service center located in St. Louis, Missouri. In April, Burlington Northern adopted a customer billing center located in Ft. Worth, Texas. Before, that work was done in Great Falls. He presented an in-house memo of National Rail Passenger Corporation (Amtrack) regarding the closure of rail stations. **EXHIBIT 19.** In closing the agencies Burlington Northern took all agency functions away from the existing agent. The agent is being instructed to have people call a toll-free number. A local shipper would not be able to get a bill of lading or contract to do business with Burlington Northern or other Railroads in this state. He presented written testimony for Don Judge. **EXHIBIT 20**

**Matt Pepos, Brotherhood of Maintenance of Way Employees Rail Labor,** said in the last few years with computers the railroad has been consolidating agencies. Burlington Northern is moving everything out of Montana leaving a track running through the state with only box and freight cars. There is work for the agencies if the billing would be brought back, and it could be tied to the computers in Ft. Worth.

**Opponents' Testimony:**

**Fred Simpson, Vice President, Montana Rail Link,** said the bill is an attempt to create jobs in Montana. If an agent wasn't in place by 1991 the position wouldn't have to be filled if the town had 2,000 people. The bill reads if a town has over 2,000 people after 1980, an agent would be needed. An agent would be needed in each county regardless of the population. Eleven agency jobs were not filled on Montana Rail Link because there was no role for employees. The PSC held hearings where only one shipper was interested in preserving an agent at one of the locations. The PSC considered the testimony and closed those eleven agencies. It is not a function that serves a purpose with the railroad. Montana is far from markets, and an efficient railroad is needed to transport grain, coal, cement, etc. HB 730 does not create a job; it creates a check every two weeks with no function. The Brotherhood of Locomotive Engineering testified in favor of closing the agencies. Inefficiency should not be legislated into businesses. With the money saved by closing the eleven agencies, lines have been rehabilitated.

**Bonnie Ardisson, Holnam Inc. Ideal Cement, Trident,** said her duties were tracking cars, customer service, insure switching at the yard, etc. These duties originally done by an agent ended in 1987. Holnam negotiated with the railroad to handle the activities themselves so they could lower their rates. They don't have a problem with shipping or communication with the railroads.

**John Fitzpatrick, Director, Community and Governmental Affairs for Pegasus Gold Corp.,** said Pegasus Gold ships 16,000 - 18,000 ton of zinc concentrate with Burlington Northern in the past and currently with Montana Rail Link. There has never been a need for a local agency. The efficiency gained with the central management functions of the railroad is very desirable.

**George O'Dore, Transportation Manager, Pacific Hide and Fur, Great Falls,** said Pacific Hide operates very well due to the improvements in communications technology, centralized car ordering locations, and billing procedures of the railroads.

**Pete Vanderven, Centennial Mills,** said he was a Burlington Northern shipper and does not use the local agent but goes through Great Falls or Seattle. In the past, there was more confusion and irresponsibility with local agents.

**Roger Sammons, Farmer and Intermittent Shipper on Burlington Northern, Cutbank,** said the communications system is centered in Ft. Worth and offers better communications. Cars can be tracked and there are more advantages than what a local agent can do.

**Questions From Committee Members:**



REP. THOMAS asked Mr. Simpson if there was enough work for Montana Rail Link to go through the Bitterroot. Mr. Simpson said since the sawmills at Darby shut down, they are on call. REP. THOMAS asked if he was able to reduce costs by becoming more competitive, would there be a need to hire more people to continue to supply this service. Mr. Simpson said yes. The traffic has grown every year, and the workforce has continued to grow.

REP. THOMAS said to REP. BROWN, for Montana to have a healthy economy, a competitive rail system is needed. REP. BROWN said the rail service wasn't competitive in Montana except in Butte. REP. THOMAS asked if there was another similar freight or transportation industry that would have requirements in the law where people were employed in certain places. REP. BROWN said there are none in the same category where there is a regulated transportation of the size and volume as the rail system. REP. THOMAS said the trucking industry would compete. REP. BROWN said yes, to some extent.

**Closing by Sponsor:**

REP. BROWN proposed an amendment. EXHIBIT 21. Montana Rail Link only has four agencies left. Nothing is being changed. HB 730 asks that the status quo stay the same so the service level stays up. There has to be a problem there or the bill wouldn't have the 90 to 100 bi-partisan signatures from across the state. This bill maintains the status quo. It doesn't create new jobs, but it might save some and provide better service in the process.

**EXECUTIVE ACTION ON HB 506**

**Motion:** REP. O'KEEFE MOVED HB 506 DO PASS.

**Motion/Vote:** REP. BENEDICT moved to amend HB 506. EXHIBIT 2. Motion carried unanimously.

**Motion:** REP. WHALEN MADE A SUBSTITUTE MOTION THAT HB 506 DO PASS AS AMENDED.

**Discussion:**

REP. WHALEN asked Ms. McClure what the bill does. Ms. McClure said the bill conforms the law to the Supreme Court Ingram Case. REP. WHALEN asked if the language was being eliminated that says if the parties agree that it is not the basis for approving a lump-sum settlement. REP. DRISCOLL said with the amendments, benefits may be converted in whole to a lump-sum if they come to an agreement. If an agreement is not made the parties can go to court. Ms. McClure said when the Court removed the language of Subsection (ii), which said if the claimant and the insurer agree to a settlement, everywhere else in the bill says "an agreement"; it doesn't say who that agreement is between with the language

gone. The amendment of subsection (8) clarifies that the agreement is between the claimant and the insurer.

**Vote:** HB 506 DO PASS AS AMENDED. Motion carried unanimously.

**EXECUTIVE ACTION ON HJR 18**

**Motion:** REP. PAVLOVICH MOVED HJR 18 DO PASS.

**Discussion:**

REP. JOHNSON said his reservation is about Page 4, Item 4. The state's retirement system should be trying to earn as much money as possible. Montana's funds shouldn't be limited.

**Vote:** HJR 18 DO PASS. Motion carried 17 to 1 with Rep. Johnson voting no.

**EXECUTIVE ACTION ON HB 663**

**Motion:** REP. PAVLOVICH MOVED HB 663 DO PASS.

**Motion/Vote:** REP. PAVLOVICH moved to amend HB 663. EXHIBIT 22. Motion carried unanimously.

**Vote:** HB 663 DO PASS AS AMENDED. Motion carried unanimously.

**EXECUTIVE ACTION ON HB 271**

**Motion:** REP. WHALEN MOVED HB 271 DO PASS.

**Motion/Vote:** REP. DRISCOLL moved to amend HB 271. EXHIBIT 3. Motion carried unanimously.

**Motion/Vote:** REP. WHALEN MADE A SUBSTITUTE MOTION THAT HB 271 DO PASS AS AMENDED. Motion carried 15 - 3 with Reps. Benedict, Thomas, and Johnson voting no.

**EXECUTIVE ACTION ON HB 628**

**Motion/Vote:** REP. WHALEN MOVED HB 628 DO PASS. Motion carried 11 - 7. EXHIBIT 23

**EXECUTIVE ACTION ON HB 730**

**Motion:** REP. WHALEN MOVED HB 730 DO PASS.

**Discussion:**

REP. WHALEN asked Ms. McClure if a coordinating clause was needed for HB 628 and HB 730. Ms. McClure said HB 730 amends Section 1, which changes the population, and HB 628 amends Section 2, which changes the definition of public convenience and necessity. There isn't a conflict.

**Motion/Vote:** REP. WHALEN moved to amend HB 730. Motion carried unanimously.

**Motion:** REP. WHALEN MADE A SUBSTITUTE MOTION THAT HB 730 DO PASS AS AMENDED.

REP. JOHNSON said his reason for voting against HB 730 was because the seven Montana business representatives said it would cause problems in their businesses. It is the wrong time to cause problems to Montana based businesses.

**Vote:** HB 730 DO PASS AS AMENDED. Motion carried 11 - 7.  
**EXHIBIT 24.**

**EXECUTIVE ACTION ON HB 600**

**Motion:** REP. DRISCOLL MOVED HB 600 DO PASS.

**Discussion:**

REP. DRISCOLL said the amendments restore the bill to exactly the same as the 1977 law. **EXHIBIT 18.** The Department ran five schedules and this one is more technically correct. The potential fiscal impact is \$172,000 to a maximum high \$1,247,000. The average 14 week duration is not expected to change. The average potential duration changes from 20 - 21 weeks. The average person drawing unemployment in Montana stays at 14 weeks.

**Motion:** REP. DRISCOLL moved to amend HB 600.

REP. JOHNSON asked REP. DRISCOLL on Page 1, Line 23, if the 1.00 - 1.35 was left in. REP. DRISCOLL said no. The 1.00 was left in, 1.35 was stricken, and 1.75 was inserted. REP. JOHNSON asked if the 1.00 - 1.75 was full benefits for 12 weeks. REP. DRISCOLL said yes.

REP. THOMAS said the amendments do drive the cost up. The minimum is \$172,000 versus zero. It may be best to amend the bill because it may be harder to pass it through the system in the long run.

**Vote:** Motion to amend carried 15 to 3 with Reps. Lee, Benedict, and Johnson voting no.

**Ms. McClure** proposed a coordination amendment. **EXHIBIT 25**

**Motion/Vote:** REP. DRISCOLL moved to amend HB 600. Motion carried unanimously.

**Motion:** REP. DRISCOLL MADE A SUBSTITUTE MOTION THAT HB 600 DO PASS AS AMENDED.

REP. BENEDICT said the high cost estimate on this bill is \$1,247,000. It is one more "chunk" to be taken from the Fund.

Several years ago there was a 4.5 percent payroll tax on employers to fix a broke Fund. Actuarial estimates say that the Fund is still short of where it should be. There were over 100 layoffs in Missoula and Libby and 300 in Ravalli County in the timber industry.

**REP. DRISCOLL** said taxes have been cut to the employers \$10 million, asking for a little back will not break the Fund.

**REP. WANZENRIED** said the Fund is in as good a shape since the Fund was created and that was because of legislation passed in 1985. Careful compromises were made to restore the solvency of the Fund. Sacrifices were made on both sides including limiting the maximum weekly benefits that could be paid. If this bill is not passed, good faith would not be shown toward the compromises and sacrifices made.

**REP. BECK** said unemployment money was usually spent in downtown businesses in Montana.

**REP. THOMAS** said the tax on unemployment compensation is actually very high for most small town business people. In small town businesses they don't have as many layoffs. **REP. SQUIRES** said to **REP. THOMAS** that many people who work at an establishment that is closed down, do live in that area and they will be circulating those dollars back.


**REP. DRISCOLL** said in HB 726, Page 49, the tax for the most favorable employer is zero. The average rate for all employers is 1.4. In Schedule Rate Class 1 the tax is zero, and that is the people in small towns. **REP. THOMAS** asked how does an employer get in that class. **REP. DRISCOLL** said by a ratio of taxes paid in payroll to paid-out benefits of a very low amount. There is more paid in than taken out. Small businessmen might be in Rate Class 2 or 3 which would be two tenths or three tenths, but contractors and loggers are at 6.5. **REP. THOMAS** said his business has never had a claim, and it pays a certain percent.


**REP. WHALEN** said his business was small and it pays \$36 every three months. This tax is nothing compared to other taxes paid.

**Vote:** HB 600 DO PASS AS AMENDED. Motion carried 11 - 7.  
**EXHIBIT 26**

**ADJOURNMENT**

**Adjournment:** 7:00 p.m.

  
CAROLYN SQUIRES, Chair

  
JENNIFER THOMPSON, Secretary

CS/jt

# HOUSE OF REPRESENTATIVES

## LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE 2/14/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JERRY DRISCOLL	✓		
REP. MARK O'KEEFE	✓		
REP. GARY BECK	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE	✓		
REP. BOB PAVLOVICH	✓		
REP. JIM SOUTHWORTH	✓		
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED	✓		
REP. TIM WHALEN	✓		
REP. TOM KILPATRICK, V.-CHAIR	✓		
REP. CAROLYN SQUIRES, CHAIR	✓		

HOUSE STANDING COMMITTEE REPORT

February 15, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House Bill 506 (first reading copy -- white) do pass as amended .

Signed: Carolyn Squires  
Carolyn Squires, Chairman

And, that such amendments read:

1. Page 5, line 9.

Following: "lump-sum"

Strike: "advance under subsection (4)"

2. Page 5, line 17.

Following: line 16

Insert: "(8) As used in this section, "agreement" means an agreement between the claimant and the insurer."

HOUSE STANDING COMMITTEE REPORT

February 15, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House Bill 271 (first reading copy -- white) do pass as amended.

Signed: Carolyn Squires  
Carolyn Squires, Chairman

And, that such amendments read:

1. Title, line 6.

Following: "TRAINS;"

Insert: "PROVIDING AN EXEMPTION FOR A CABOOSE-EQUIPPED TRAIN;"

2. Page 1, line 12.

Following: "systems"

Insert: "-- exemption for a caboose-equipped train"

3. Page 1, line 25.

Strike: "The"

Insert: "Except as provided in subsection (4), the"

4. Page 3, line 25.

Following: line 24

Insert: "(4) The commission may not require the installation and use of a telemetry system as described in this section on a train equipped with a caboose that:

(a) meets the requirements of Montana law;

(b) is placed as the last car of the train; and

(c) is occupied by a member of the train crew."



Jennifer

CLERICAL

House Bill No. 506

Date: 2/16/91

Time: 220 pm

MER  
(Legislative Council Staff)

☒ S / H Standing Committee

Chairman: Carolyn Squires

☐ S / H Committee of the Whole

(Sponsor)

In accordance with the Rules of the Montana Legislature, the following clerical errors may be corrected:

Amendment # 1

Following "lump-sum" e

Strike "lump-sum advance..."

Insert "lump sum"

^ ^ ^

HOUSE STANDING COMMITTEE REPORT

February 15, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House  
Joint Resolution 18 (first reading copy -- white) do pass .

Signed: \_\_\_\_\_  
Carolyn Squires, Chairman

HOUSE STANDING COMMITTEE REPORT

February 15, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House Bill 663 (first reading copy -- white) do pass as amended.

Signed: Carolyn/Squires, Chairman

And, that such amendments read:

1. Page 1, line 17.  
Following: "except"  
Insert: "27-5-115,"

HOUSE STANDING COMMITTEE REPORT

February 15, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House  
Bill 628 (first reading copy -- white) do pass.

Signed: Carolyn Squires, Chairman

HOUSE STANDING COMMITTEE REPORT

February 15, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House Bill 730 (first reading copy -- white) do pass as amended .

Signed: Carolyn Squires, Chairman

And, that such amendments read:

1. Page 2, lines 1 through 3.

Following: "1991"

Strike: remainder of line 1 through "2,000" on line 3

Following: "." on line 3

Insert: "This subsection does not apply to a short-line railroad operating in three counties or less."

HOUSE STANDING COMMITTEE REPORT

February 15, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House Bill 600 (first reading copy -- white) do pass as amended .

Signed: \_\_\_\_\_  
Carolyn Squires, Chairman

And, that such amendments read:

1. Page 1, line 23 through page 2, line 7.

Following: line 22

Strike: "1.00" through "1.56" on line 25

Insert: "1.00"

Strike: "1.76" on page 2, line 1.

Insert: "1.75"

Strike: "1.96" on line 2

Insert: "1.95"

Strike: "2.16" on line 3

Insert: "2.15"

Strike: "2.36" on line 4

Insert: "2.35"

Strike: "2.56" on line 5

Insert: "2.55"

Strike: "2.76" on line 6

Insert: "2.75"

Strike: "2.96" on line 7

Insert: "2.95"

2. Page 2, line 8.

Following: line 7

Insert: "NEW SECTION. Section 2. Coordination instruction. If House Bill No. 256 is passed and approved and if it includes a section that amends 39-51-2204, then the schedule of the individual's ratio of total base period earnings in [section 1 of this act] replaces the schedule of the individual's ratio of total base period earnings in House Bill No. 256."

Renumber: subsequent section

**Exhibit 4 also contains a large map of Montana railroads. The original is available at the Montana Historical Society, 225 North Roberts, Helena, MT 59601. (Phone 406-444-4775)**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING THAT ORGANIZED LABOR, MONTANA JOB TRAINING PARTNERSHIP, INC., MONTANA DEPARTMENT OF LABOR AND INDUSTRY AND THE DEPARTMENT OF COMMERCE, SEEK ADDITIONAL FEDERAL EMPLOYMENT AND TRAINING DOLLARS TO HELP WORKERS DISLOCATED IN THE WOOD PRODUCTS INDUSTRY.

WHEREAS, workers in Montana's wood products industry have experienced massive layoffs and plant closures throughout the state in recent years, with 2,000 Montana wood products workers losing their jobs in the past year alone; and

WHEREAS, the existing formula EDWAA funds for 1990-91 have been allocated and are currently depleted; and

WHEREAS, the Job Training Partnership Act Economic Dislocated Workers Adjustment Assistance Act (EDWAA) funding allocations for fiscal year 1991-92 has been reduced by approximately \$300,000; and

WHEREAS, the future of the timber industry in Montana remains uncertain, layoffs and plant closures are likely to continue, and workers in Montana need to have access to retraining programs that enable them to remain competitive in today's ever-changing job market; and

WHEREAS, the Montana job training system has funded since 1980 the Montana State AFL-CIO's Project Challenge: Work Again, a program that helps dislocated workers return to the job market; and

WHEREAS, the Montana State AFL-CIO's Project Challenge: Work Again has proven its value time and again by setting and achieving higher standards for serving workers and by being fiscally accountable for public dollars used; and

WHEREAS, monies presently allocated to the Montana State AFL-CIO's Project Challenge: Work Again are not sufficient to help all the workers dramatically affected by the recent closures in the woods products industry;

NOW, THEREFORE BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That we encourage the Montana State AFL-CIO, Montana Job Training Partnership, Inc., Montana Department of Labor and Industry's Research, Safety Training and Job Service Division and Department of Commerce's Business Development Division to actively seek additional federal discretionary and other monies to assist in the employment and training needs of workers across the state affected by the depressed wood products market; and

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the President of the United States, to each member of the Montana Congressional Delegation, to the Speaker of the United States House of Representatives, to the Majority Leader of the United States Senate, and to the United States Secretary of Labor.



DATE 2/14/91  
HJR 38

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING THAT ORGANIZED LABOR, MONTANA JOB TRAINING PARTNERSHIP, INC., MONTANA DEPARTMENT OF LABOR AND INDUSTRY AND THE DEPARTMENT OF COMMERCE, SEEK ADDITIONAL FEDERAL EMPLOYMENT AND TRAINING DOLLARS TO HELP WORKERS DISLOCATED IN THE WOOD PRODUCTS INDUSTRY.

WHEREAS, workers in Montana's wood products industry have experienced massive layoffs and plant closures throughout the state in recent years, with 2,000 Montana wood products workers laid off in the past 12 months; and

WHEREAS, the existing Job Training Partnership Act Economic Dislocation Workers Adjustment Assistance Act (EDWAA) formula funds for 1990-91 have been allocated and are currently depleted; and

WHEREAS, the EDWAA funding allocation for fiscal year 1991-92 has been reduced by approximately \$300,000; and

WHEREAS, the future of the timber industry in Montana remains uncertain, layoffs and plant closures are likely to continue, and workers in Montana need to have access to retraining programs that enable them to remain competitive in today's ever-changing job market; and

WHEREAS, the Montana programs serving dislocated workers since 1980 have set standards for performance, coordinated effectively statewide, and have been fiscally accountable for public dollars used; and

WHEREAS, the Montana job training system has funded since 1980 the Montana State AFL-CIO's Project Challenge: Work Again, one such program that helps dislocated workers return to the job market; and ~~has time and time again~~

~~WHEREAS, the Montana State AFL-CIO's Project Challenge: Work Again has proven its value time and again by setting and achieving high standards for serving workers; and~~

WHEREAS, monies presently allocated to the state of Montana are not sufficient to help all the workers dramatically affected by the recent closures in the woods products industry;

NOW, THEREFORE BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That we encourage the Montana State AFL-CIO, Montana Job Training Partnership, Inc., Montana Department of Labor and Industry and Department of Commerce to actively seek additional federal discretionary and other monies to assist in the employment and training needs of workers across the state affected by the depressed wood products market; and

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the President of the United States, to each member of the Montana Congressional Delegation, to the Speaker of the United States House of Representatives, to the Majority Leader of the United States Senate, and to the United States Secretary of Labor.

Amendments to House Bill No. 506  
First Reading Copy

For the House Committee on Labor and Employee Relations

Prepared by Eddye McClure  
February 14, 1991

1. Page 5, line 9.

Following: "lump-sum"

Strike: "advance under subsection (4)"

2. Page 5, line 17.

Following: line 16

Insert: "(8) As used in this section, "agreement" means an  
agreement between the claimant and the insurer."

Amendments to House Bill No. 271  
First Reading Copy

Requested by Rep. Driscoll  
For the House Committee on Labor and Employee Relations

Prepared by Eddye McClure  
February 14, 1991

1. Title, line 6.

Following: "TRAINS;"

Insert: "PROVIDING AN EXEMPTION FOR A CABOOSE-EQUIPPED TRAIN;"

2. Page 1, line 12.

Following: "systems"

Insert: "-- exemption for a caboose-equipped train"

3. Page 1, line 25.

Strike: "The"

Insert: "Except as provided in subsection (4), the"

4. Page 3, line 25.

Following: line 24

Insert: "(4) The commission may not require the installation and use of a telemetry system as described in this section on a train equipped with a caboose that:

- (a) meets the requirements of Montana law;
- (b) is placed as the last car of the train; and
- (c) is occupied by a member of the train crew."

House Bill 271 will require all railroads operating in Montana to place two-way telemetry devices on all trains:

- (1) when traveling through mountain grade,
- (2) all trains which both originate and terminate in Montana.

There are four major areas in Montana which are classified as "mountain grade" by the railroads: (1) The Bozeman pass between Livingston and Bozeman, (2) between Bison and Java on the Highline, (3) between Blossburg and Tobin west of Helena, all of which are on Burlington Northern track although Montana Rail Link trains operate over the portion from Blossburg to Tobin. Additionally, trackage on the Union Pacific over the Monida pass,

These devices will allow an engineer using an electronic device in the locomotive to cause the train to go into "emergency" and apply the brakes rapidly to their fullest extent on all cars on the train, and to do this not from the head end as is usually done, but from the rear end of the train.

Essentially, it replaces a function that the rear end caboose crew used to fulfill whereby he could cause the train to go into emergency from the caboose at the end of the train. Now the two-way device can accomplish the same thing.

Presently, there is no federal regulation in place to require the use of these devices.

They are in full time use on all trains in Canada.

The use of these two-way devices on all cabooseless trains was recommended by the National Transportation Safety Board as a result of its investigation of the MRL accident in February of 1989.

The provide an extra dimension and layer of safety and enhance the potential for stopping the development of dangerous situations that can lead to a catastrophe on the railroad

**PULSE** Electronics, Inc.

**TRAINLINK®**

CODE

DISTANCE COUNTER

11

LAST CAR DATA

MOVING	HVM ON	VALVE FAILURE
STOPPED	WEAK TLY BATTERY	48 PSI

85

0 8 8 8 4

FEET

Count  
Hold  
Off

F + R OK

PSI

COM TEST

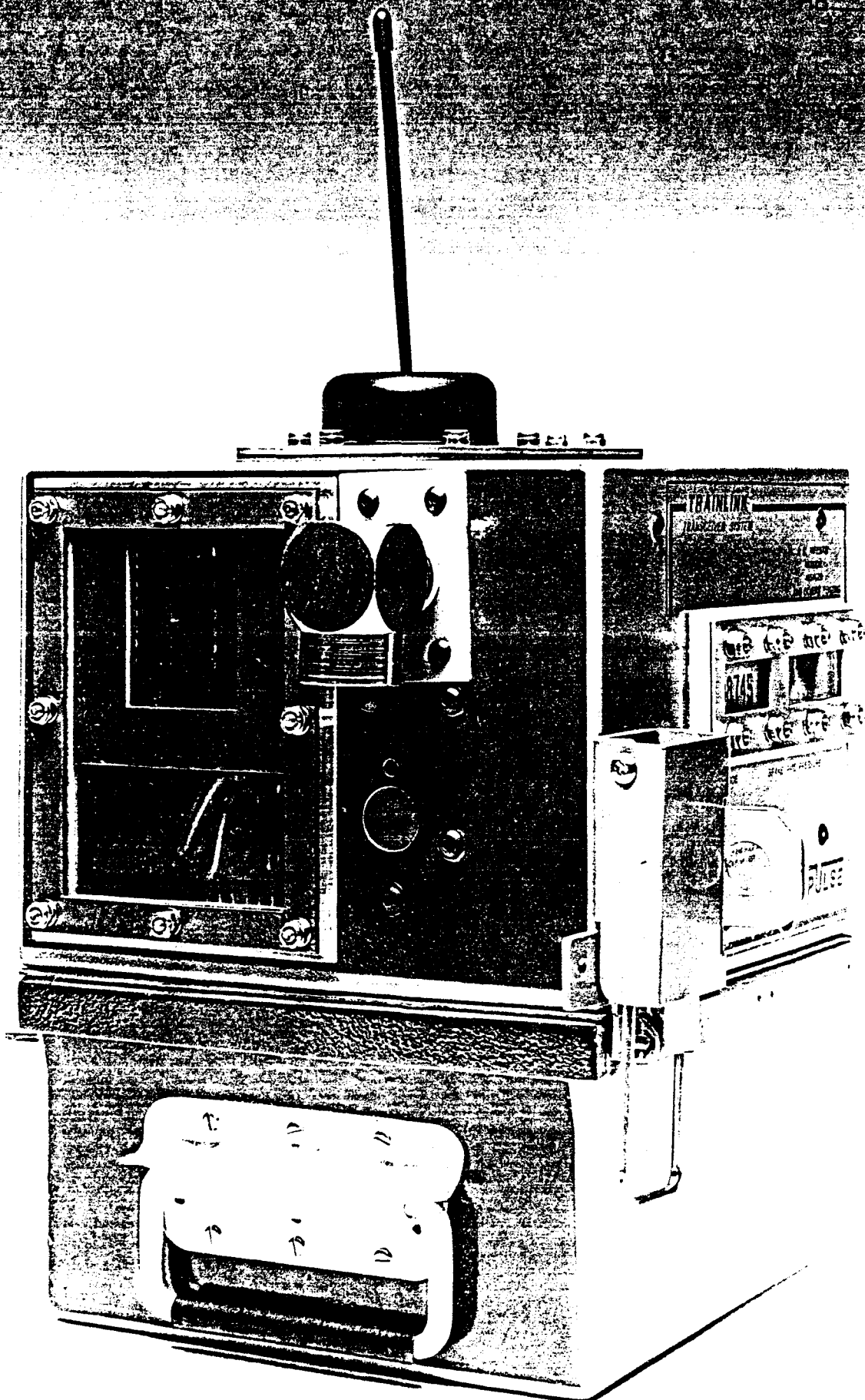
BEEP

PM

EMERGENCY

EXHIBIT 4

DATE 2/14/91



# TRAINLINK

## **TRAINLINK II Two-way End-of-Train Monitoring System**

Pulse Electronics brings new advances to end-of-train telemetry. TRAINLINK® continuously monitors brake pipe pressure on the last car, as well as other key conditions. The rear unit of the system transmits this information for display in the locomotive cab. Should brake line integrity be interrupted, the system will alert the engineman so that corrective action can be taken before a dangerous situation arises. An audible alarm warns him if brake pipe pressure on the last car drops below a pre-set threshold.

TRAINLINK II features new safety mechanisms that allow the engineman to control functions at the end of the train, such as initiating a remote emergency brake application or turning the marker light on or off. A unique security system developed by Pulse prevents accidental or unauthorized access to the remote emergency brake control. Following installation on a train, the system is armed by keying the rear unit to

the cab unit's unique ID code, thus locking the rear unit into the cab unit's commands. Any emergency brake command from a different unit will be rejected.

Modular in design, TRAINLINK II offers users of one-way TRAINLINK systems an economical option to upgrade their existing locomotive equipment. A newly designed cab unit provides complete test and function displays.

TRAINLINK is well proven in millions of miles of use, offering unprecedented reliability and efficiency. Through careful attention to design detail and a stringent Quality Assurance program, we ensure that maintenance requirements are minimized. The result is that TRAINLINK is the number one choice in end-of-train monitoring systems among the leading railroads in the nation.

**PULSE**  
Electronics, Inc.

## REAR UNIT

### Monitoring Unit

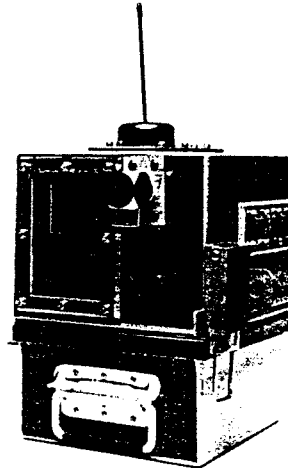
- Senses and transmits brake pipe pressure on the last car.
- Senses and transmits motion.
- Motor-driven valve dumps air at the end of the train on command from the cab unit.
- All components housed in a single enclosure to ensure maximum protection.

### Highly Visible Marker (HVM) light

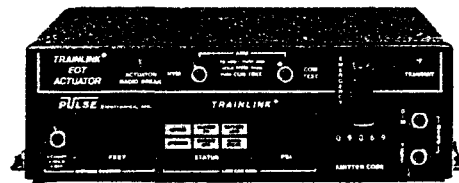
- Unique Pulse designed efficient circuitry provides maximum battery life and minimum maintenance.
- Photo-electric cell automatically turns the light off during the day, on in darkness. Optionally, the light may be turned on during the day from the locomotive under conditions of low visibility.
- FRA approved.

### SmartPack® Battery Pack

- Single pack provides power for all rear unit functions and HVM.
- Rechargeable; detaches from unit for easy replacement.
- Indicator shows remaining SmartPack life to prevent premature scrapping.



REAR UNIT



CAB UNIT

- Charge used is displayed digitally (0 to 100) and may be checked either on the rear or cab units at any time.

## CAB UNIT

- Consists of a transceiver, micro-processor circuits and displays in a single package, simplifying installation and minimizing cable connections.
- LED status displays provide wide viewing angle under all ambient cab lighting, in green, yellow, or red according to condition.
- Separate alpha-numeric display for test or short-term data. Key information displays are not pre-empted by other data displays.
- Rear brake pipe pressure available in PSI, kPa, or kg/cm<sup>2</sup> displays.
- Manual and automatic communication tests with rear unit.
- Protected remote rear emergency brake toggle switch.
- Odometer measures net true distance in feet or meters.

\*Not available on all models.

#### Rear Unit Specifications

<b>Environmental</b>		
Temperature Range	Operation	-40°C to +70°C
	Storage	-40°C to +70°C
Humidity @ 50°C		95% non-condensing
Vibration Any Axis	0-15 Hz	3 G peak to peak
	15-500 Hz	5 G peak to peak
Shock Any Axis		10 G peak for 0.1 sec.
<b>Physical/Housing Dimensions</b>		
		inches mm
	Height	8.0 203
	Width	9.0 229
	Depth	9.0 229
<b>Power Requirements</b>		
12 Volt DC Input	Voltage Range	10.5 to 15 VDC
SmartPack Battery Charge Life (50% HVM duty cycle @ 20°C)		150 hours
<b>Radio Telemetry</b>		
Receiver	Frequency	452.9375 MHz ✓
	Sensitivity	0.35 uV
Transmitter	Frequency	457.9375 MHz ←
	Power Output	2 watt
Air Pressure	Operating	0 - 110 PSI
	No Damage	0 - 200 PSI
	Initial Accuracy	1 PSI
	Accuracy Over Temp	3 PSI
Marker	Meets FRA specifications and certification requirements.	

#### Cab Unit Specifications

<b>Environmental</b>		
Temperature Range	Operation	0°C to +70°C
	Storage	-40°C to +70°C
Humidity @ 50°C		95% non-condensing
Vibration Any Axis	0-15 Hz	0.5 G peak to peak
Shock Any Axis		2 G peak for 0.1 sec.
<b>Physical/Housing Dimensions</b>		
		Two-Way Version Upgraded One-Way Version
		inches mm inches mm
	Height	4.6 117 4.0 102
	Width	11.3 287 13.4 341
	Depth	10.5 267 7.0 178
<b>Power Requirements</b>		
72 Volt DC Input	Voltage Range	60 to 100 VDC
	Current	0.8 amp, max.
	Hi Pot	1 KVDC, min.
	Transients	4 KVDC, min.
<b>Radio Telemetry</b>		
Receiver	Frequency	452.9375 MHz ✓
	Sensitivity	0.35 uV
Transmitter	Frequency	457.9375 MHz ←
	Power Output	2 or 8 watt
<b>Displays</b>		
Odometer	Reads to ± 19,999 feet/meters, 0.5% accuracy	
Air Pressure	Reads to 125 PSI/0-800 kPa	

For more information, call your Pulse representative.

**PULSE**  
Electronics, Inc.

5706 Frederick Avenue Rockville, MD 20852 U.S.A.  
(301) 230-0600 Telex: WUI 650-2218919  
Fax: (301) 230-0606



# TRANSPORTATION

M. H. Steele, Director Transportation, St. Paul  
 R. L. Aase, Superintendent Transportation, Minneapolis  
 E. B. Savage, Superintendent Transportation, Seattle

J. W. MILLER	Regional Chief Dispatcher	Seattle
B. G. PORTSMOUTH	Chief Dispatcher	Seattle
C. C. STENGEM	Chief Dispatcher	Seattle
W. A. FRY	Manager Train Operations	Seattle
G. L. SKILLMAN	Manager Train Operations	Seattle
H. W. GILBERT	Manager Train Operations	Seattle
B. R. EDMONDS	Manager Train Operations	Seattle
D. R. CASEY	Regional Chief Dispatcher	Minneapolis
D. D. LOONAN	Chief Dispatcher	Minneapolis
M. L. ROHR	Chief Dispatcher	Minneapolis
J. D. CROWLEY	Manager Train Operations	Minneapolis
J. L. HAUBRICK	Manager Train Operations	Minneapolis
J. J. KEIGLEY	Manager Train Operations	Minneapolis
R. R. ROBY	Manager Train Operations	Minneapolis

## MONTANA DIVISION

P. C. Keim, Superintendent Operations, Havre

D. J. BOEN	Manager Operating Practices	Havre
D. G. BOESFELG	Trainmaster	Havre
J. E. ENGEL	Trainmaster	Shelby
L. J. SHEFFELBINE	Trainmaster	Glasgow
C. E. KEELER	Trainmaster	Great Falls
D. L. SCHUCH	Trainmaster	Whitefish
R. P. OLSON	Trainmaster	Whitefish
A. V. WETSCH	Trainmaster	Whitefish

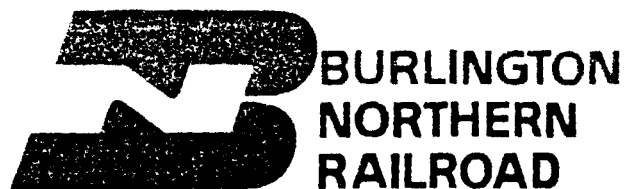
G. D. Allen, Terminal Manager, Havre

W. R. WALTERS	Trainmaster	Havre
M. A. VOELKER	Trainmaster	Havre

S. A. Millsap, Supt. Maintenance. & Engineering, Havre

A. E. Dunaway, Division Maintenance Engineer, Havre

K. D. OLSEN	Divisional Roadmaster	Williston
G. A. NYBERG	Divisional Roadmaster	Glasgow
S. W. PFEFFER	Divisional Roadmaster	Havre
J. A. OHMART	Divisional Roadmaster	Shelby
B. L. ROSE	Divisional Roadmaster	Essex
J. E. WHETHAM	Divisional Roadmaster	Whitefish
T. E. FLOREA	Divisional Roadmaster	Bonnors Ferry
E. K. SHERMAN	Divisional Roadmaster	Great Falls
N. J. NIMEY	Divisional Roadmaster	Lewiston
B. M. OLSON	Divisional Roadmaster	Helena



## NORTHERN REGION

# MONTANA DIVISION

## TIMETABLE NO. 2

IN EFFECT AT 0001  
 Continental Central Time  
Continental Mountain Time  
 Continental Pacific Time

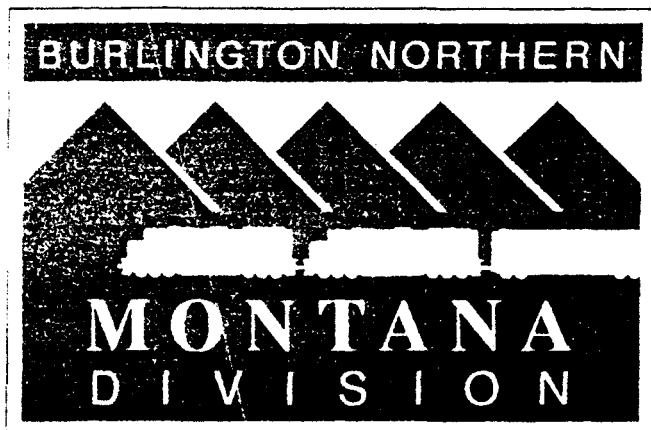
**Sunday  
October 29, 1989**

Including National Railroad Passenger Corporation (NRPC) Trains

Region Vice President  
**W. W. FRANCIS**

Division General Manager  
**W. V. EISENMAN**

Vice President Service Design  
**W. A. HATTON**



Printed in U.S.A.

Approximate cost of two-way telemetry systems:

Front unit:       \$ 3,200

Rear unit:       4,500  
-----  
              7,700

Manuafacturers:

Pulse Electronics, Rockville, MD

Dynamic Sciences Limited (DSL), Montreal, Ontario

## **MISSOULA**

M. G. Dinius	Chief Mechanical Officer
R. L. Keller	Chief Engineer
B. P. Heikkila	Director, Training, Rules and Safety
P. L. Adams	Manager, Training, Rules and Safety
R. L. Strending	Trainmaster
T. A. Jones	Trainmaster
O. P. Cantu	Roadmaster
D. J. Raber	Mechanical Foreman
J. S. Griffin	Signal & Communication Supervisor
D. W. Cook	B & B Supervisor

## **LAUREL**

G. W. Harper	Assistant Superintendent
G. E. Waddell	Trainmaster
K. A. Kautzman	Trainmaster/Roadforeman
T. L. Benson	Roadmaster
R. W. Wegh	General Mechanical Foreman
G. E. Brown	Signal & Communications Supervisor

## **LIVINGSTON**

J. C. Wiesch	General Mechanical Foreman
--------------	----------------------------

## **HELENA**

M. R. Lemm	Trainmaster
P. M. Christensen	Roadmaster
M. L. VanOrman	Roadforeman/Assistant Trainmaster
C. J. Hazard	Assistant General Mechanical Foreman

## **PLAINS**

R. A. Woodruff	Roadmaster
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## **SPOKANE**

B. C. Bidwell	Trainmaster
---------------	-------------



# **TIMETABLE NO. 4**

IN EFFECT AT 0001  
CONTINENTAL MOUNTAIN TIME

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**TUESDAY  
MAY 1, 1990**

---

**SUPERINTENDENT**

**J. L. GREWELL**

**DIRECTOR OF TRAIN  
MOVEMENT**

**I. J. GJERSING**

# MONTANA DIVISION

DATE 2/4/91  
HB 271 21

## 1. Maximum Speeds Permitted- Zone-Between

Helena and Phosphate .....	60 MPH.
MP 0.0 and MP 7.1 .....	45 MPH.
MP 7.1 and MP 10.0 .....	35 MPH.
MP 10.0 and MP 20.4 .....	25 MPH.
MP 20.4 and MP 27.3 .....	45 MPH.
MP 36.5 and MP 41.4 .....	45 MPH.
MP 41.4 and MP 44.6 .....	35 MPH.
MP 44.6 and MP 46.6 .....	45 MPH.
MP 49.0 and MP 52.4 .....	45 MPH.
MP 52.4 and MP 54.6 .....	55 MPH.

**Up to 100      Over 100**  
**Tons/OB      Tons/OB**

PM 7.1 and MP 10.1 between Tobin and Austin .....		
Ascending .....	35 MPH.	35 MPH.
Descending .....	35 MPH.	35 MPH.
Austin and Blossburg .....		
Ascending .....	25 MPH.	25 MPH.
Descending .....	25 MPH.	20 MPH.

Helena and Phosphate the following head  
end restrictions are in effect:  
Head end of Eastward Trains:

Signal 19.6 .....	20 MPH.	15 MPH.
Signal 17.0 .....	20 MPH.	20 MPH.
Signal 14.6 .....	25 MPH.	15 MPH.
Signal 59-R (Austin West) .....	25 MPH.	20 MPH.
Signal 10.6 .....	25 MPH.	20 MPH.
Through Mullin tunnel .....	25 MPH.	20 MPH.
Trains descending mountain grades .....		20 MPH.
Westward trains between Blossburg and Elliston .....		30 MPH.

Helena-Between Benton Street and Roberts Street .....	25 MPH.	25 MPH.
West Helena crossovers .....		
West crossover .....	12 MPH.	12 MPH.
East crossover .....	25 MPH.	25 MPH.
MP 2.2 and MP 0.0 .....	45 MPH.	

East and West switches of the following controlled sidings: Austin, Blossburg, Avon .....	12 MPH.	12 MPH.
At Elliston, West Garrison and Phosphate .....	20 MPH.	

The following sidings only are authoriz-  
ed for use by trains over 100 tons O/B ..... 10 MPH.

Tobin      Avon
Austin      Garrison
Blossburg      Phosphate
Elliston

When temperature is zero or below, all trains must reduce speed to 10  
MPH below authorized speed limit except when authorized speed is 25  
MPH or less.

## 2. Bridge, Engine and Heavy Car Restrictions-

**Phosphate-** Locomotives in Groups G, H and I not permitted on lower  
yard tracks.

## 3. Train Register Instructions- None.

## 4. Rule 99- When flagging is required, distance against westward trains is 2.0 miles except:

MP 5.0 to MP 20.5 .....	1.0 miles
MP 20.5 to MP 32.0 .....	2.5 miles

Flagging distance against eastward trains is 2.0 miles except:

MP 27.0 to MP 20.5 .....	1.5 miles
--------------------------	-----------

## .5 Phosphate Lower Yard- No clearance at loading dock.

## 6. Rule 350 (B)-

Following switch is not equipped with an electric lock:

Avon House Track- 4,250 feet west of MP 37.0

## 7. Helena- On Crossover between South Main and old GN Main at

Benton Avenue engine must stop before occupying crossing and  
movement protected by man on crossing.

## 8. Mountain Grade Operation- Air Brake and Train handling Rules for mountain grade operations apply on:

Mountain grade between Blossburg and Tobin. Ruling grade descen-  
ding: east 2.2.

Ruling grade descending westbound between Blossburg and Elliston is  
1.4.

When shoving cars on descending grade a trainman must ride the  
leading car and sufficient hand brakes must be set on low end of cut  
to control slack.

## Manned Helper Operation

### Mixed Freight Operation

Not more than 24 powered axles can be used in helper service, or in  
head consist when helpers are being used. When more than 12  
powered axles are being used in helper service, helpers must be cut in  
train ahead of trailing tonnage.

### Unit Coal Train Operation

Unit coal trains equipped entirely with type E or F couplers cast in  
Grade E steel, may have head end consist of 36 powered axles  
maximum. Helpers will be cut in train in accordance with tonnage  
ratings.

### Unit Grain Train Operation

Unit grain trains may have head end consist of 30 powered axles  
maximum. Helpers will be cut in accordance with tonnage ratings.

Train Dispatcher will advise Conductor of tonnage rating of helper so  
that Conductor can determine proper location in train, arranging that  
tonnage trailing the helper approximately equals combined tonnage  
rating of helper locomotives.

Trailing tonnage restrictions are as follows:

**Between Helena and Elliston-Westward-** When all locomotive  
power is operated at head end of train on ascending grade, trailing  
tonnage must not exceed 5000, except trains with head end power  
only, consisting entirely of Grade E steel couplers, must not exceed  
8150 tons.

**Between Elliston and Helena-Eastward-** When all locomotive power  
is operated at head end of train on ascending grade, trailing tonnage  
must not exceed 7500, except trains with head end power only,  
consisting entirely of Grade E steel couplers, must not exceed 12,000  
trailing tons.

## 9. None.

## 10. Handling 80 Feet or Longer Cars-

### Between Helena and Blossburg-Westward-

Trains of greater than 2800 trailing tons must handle empty cars, 80  
feet and longer, in the rear 2800 tons. Trains of greater than 4300  
trailing tons must handle loaded cars, 80 feet and longer, in the rear  
4300 tons except 80 feet and longer cars in excess of 100 gross tons  
will have no restriction on location in train.

When helper locomotives are used at rear of train, a buffer of at least  
1100 tons must be provided to separate helper from the rear most  
empty car 80 feet or longer.

When helper locomotives are cut into train in accordance with Item 3,  
All Subdivisions, and cars exceed 2800 tons between lead locomotives  
and helper, or behind helper locomotives, empty cars 80 feet and  
longer must be in the rear 2800 tons of such cuts.

Certain loaded cars, 80 feet and longer, must be regarded the same  
as an empty car.

## 11. Mullin Tunnel-

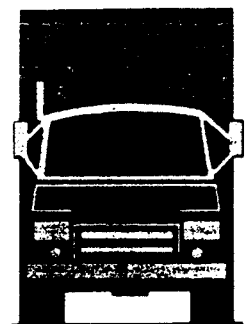
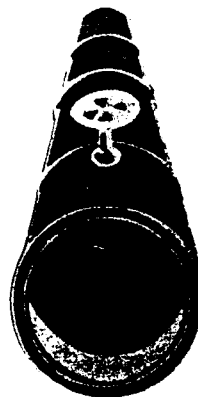
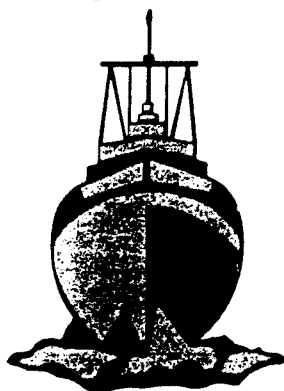
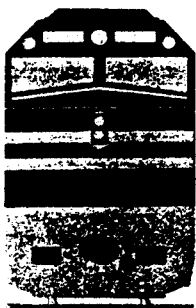
If for any reason a westward train is stopped in tunnel in emergency  
conditions and communications fail, trains may make a reverse move-  
ment out of tunnel until the locomotives have cleared the east portal  
passing all signals at restricted speed.

Dispatchers will not reverse dual controlled switch at Skyline or allow  
any following movement out of Weed until westward train has cleared  
Mullin Tunnel unless absolutely necessary. If a following movement  
becomes necessary, all trains involved and train dispatcher will have a  
clear understanding of movements to be made before the movement is  
allowed.

# **NATIONAL TRANSPORTATION SAFETY BOARD**

## **RAILROAD ACCIDENT REPORT**

**COLLISION AND DERAILMENT  
OF MONTANA RAIL LINK FREIGHT TRAIN  
WITH LOCOMOTIVE UNITS  
AND HAZARDOUS MATERIALS RELEASE  
HELENA, MONTANA  
FEBRUARY 2, 1989**



--to the Burlington Northern Railroad Company:

Improve the efficiency testing procedures and provide training on Burlington Northern (BN) operating rules for Montana Rail Link train crews when operating over BN trackage. (Class II, Priority Action) (R-89-78)

Develop and implement procedures to verify the accuracy and completeness of hazardous material shipping documentation for cars received at interchange from other carriers or shippers. (Class II, Priority Action) (R-89-79)

--to the Secretary, U.S. Department of Transportation:

Evaluate present safety standards for tank cars transporting hazardous materials by using safety analysis methods to identify the unacceptable levels of risk and the degree of risk from the release of a hazardous material, and then modify existing regulations to achieve an acceptable level of safety for each product/tank car combination. (Class II, Priority Action) (R-89-80)

--to the Federal Railroad Administration:

Amend the Road Train and Intermediate Terminal Train Air Brake Tests, 49 CFR 232.13, to require additional testing of a train airbrake system when operating in extreme cold weather, especially when the feed valve setting is changed and the train will be operated in mountain grade territory. (Class II, Priority Action) (R-89-81)

Require the use of two-way end-of-train telemetry devices on all cabooselless trains for the safety of railroad operations. (Class II, Priority Action) (R-89-82)

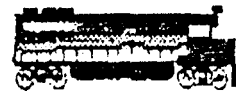
--to the Research and Special Programs Administration:

Develop procedures to update and correct, in a timely manner, errors in the Emergency Response Guidebook. (Class II, Priority Action) (R-89-83)

--to the City of Helena:

Develop, in cooperation with Montana Rail Link, specific instructions and procedures for responding to reports of rail accidents. (Class II, Priority Action) (R-89-84)

Review and revise, in cooperation with Montana Rail Link, the emergency response procedures to address handling the unintentional release of hazardous materials. (Class II, Priority Action) (R-89-85)



## Congressional panel rips FRA for failure to implement law

by Ira Rosenfeld

**A** congressional panel, its patience worn thin by two years of delays, put the Federal Railroad Administration and its chief, Gil Carmichael, on notice last week that the time has come to implement and enforce the 1988 Rail Safety Improvement Act.



Carmichael

"Unless the federal government cleans up its act our communities, rail passengers, railroad employees and our environment are at risk from unsafe rail practices," said Rep. Thomas A. Luken, D-Ohio, chairman of the subcommittee on transportation and hazardous materials.

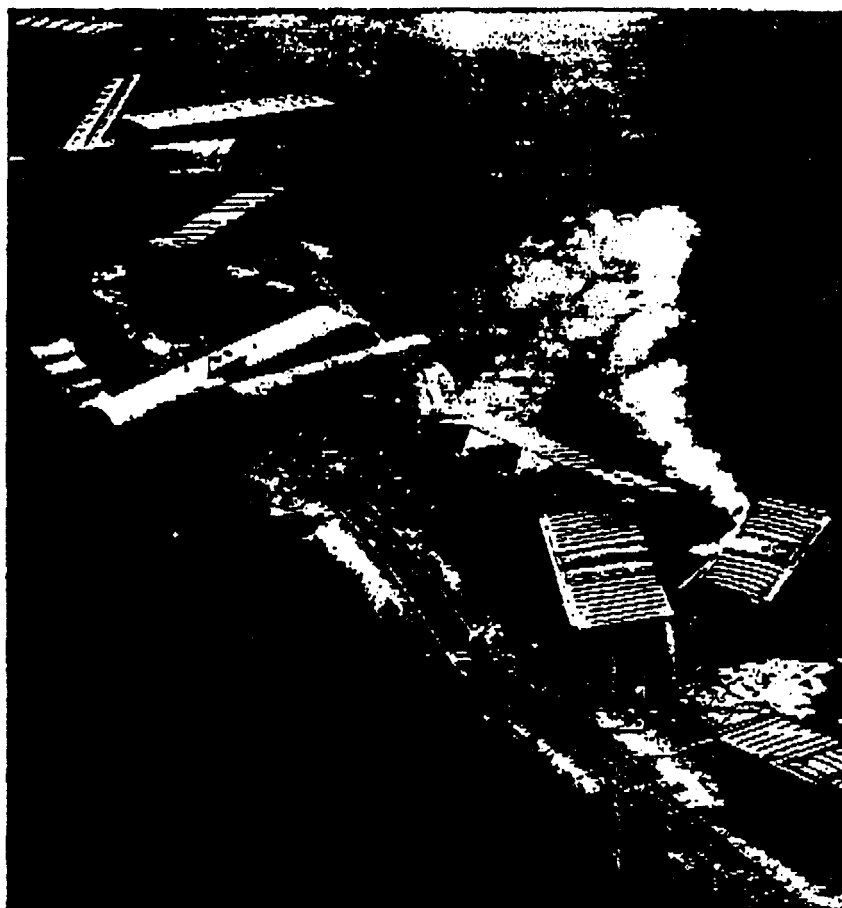
The panel met Oct. 5 to review a highly critical General Accounting Office review of FRA.

Rep. Gerry Sikorski, D-Minn., disgusted with FRA's foot dragging, shook his finger at Carmichael during the hearing and said he was "through with bureaucratic baloney. This is raw, cold malfeasance."

The GAO report revealed that during 1989, of 580 railroad companies in the United States, the FRA made no inspection whatsoever of 32, while 168 had no inspection of their operating practices, 151 had no inspection of equipment and 75 railroads received no inspection of their track.

Carmichael, who has been in office just over a year, jumped to his agency's defense, noting that 12 matters mandated in the 1988 rail safety legislation have been implemented and that four additional rule-making projects have reached an advanced stage.

Among the items FRA was to have addressed within passage of



Lawmakers call the lack of federal railroad safety enforcement "raw, cold malfeasance."

the 1988 Rail Safety Improvement Act but as yet still in the "planning stage" are safety standards for bridge workers and grade-crossing standards.

"There is frustration with FRA's inaction and their blatant delaying of implementation of bridge safety standards," said Mac Fleming, recently elected president of the 55,000-member Brotherhood of Maintenance of Way Employees.

A proposed rule-making on bridge safety is scheduled to be published this month, according to Carmichael.

**T**he federal railroad administrator was also quick to note that since he has been at the controls of

the railroad watchdog agency it has assessed \$15.5 million in fines, collecting and turning over to the Treasury Department \$8 million, including \$2.2 million in haz-mat penalties.

The answers did not satisfy Sikorski, who noted that the 1988 legislation had recognized a simple principle still in effect today. "On matters of fundamental safety there can be no bargaining."

Among its findings, the GAO investigation — which covered an 18-month period — cited the FRA for failing to target high-risk practices.

As an example, at the same time accidents in Idaho on the Union Pacific were doubling between

1986 and 1988, the FRA inspections of the railroad decreased by 40 percent.

"The FRA does not analyze existing inspection and accident data to target railroads for inspection," said John W. Hill, associate director of the GAO's Resources, Community and Economic Development Division. "The selection of railroads for inspection is based on individual inspector judgment and knowledge."

That judgment and knowledge was also called into question by the GAO, which noted that because of outdated or minimal written guidance, limited training and a lack of coordination within the agency, safety standards are not uniform.

In their defense, the FRA has hired a director of training and communication to design training programs for inspectors and to update training manuals. Carmichael has also announced a realignment of safety procedures under a new national inspection plan that will emphasize six separate disciplines, including track and haz-mat. The agency also is looking to increase its inspection of regional carriers.

That alone, however, may not be enough to provide assurances that the nation's railroads are operating safely.

Especially troubling to the GAO was the failure of FRA to require railroads to report actions taken to correct identified safety problems or for the agency to have a systematic follow-up inspection program to determine if the railroads have actually corrected safety problems.

"Although railroads generally respond voluntarily in writing about having corrected track and signal defects, about 11 percent of the track defects and 46 percent of the signal defects that have been assessed civil penalties of at least \$5,000 did not have a recorded response," said Hill.

"Because of limited reinspections and the absence of a requirement that a railroad respond in writing to indicate a defect has been corrected, FRA has little assurance that the railroads are actually correcting the defects," Hill concluded.

Fred Hardin, president of the United Transportation Union, was not so polite.

"The FRA was established by Congress to regulate and be a watch dog over safety in railroad operations. In many instances it has been more like a lap dog in carrying out its assigned duties," Hardin told the panel, a branch of the Energy and Commerce Committee.

While there is no follow-up, federal and state inspectors in 1989 detected 378,000 safety violations.

With the FRA inspection force now standing at 355, more than one-third of all railroad inspections are being done by state inspectors. The question is, for how much longer?

According to Hill, officials in 10 states have said they will be forced to cut back on inspections because of federal budget cutbacks.

An alternative, and one that has united both management and labor in opposition, is a proposal currently before Congress to have the railroads taxed \$170 million over the next five years to cover the cost of railroad safety inspections by FRA.

The administration has not offered the specifics of how the tax would be applied.

"The ones causing the greatest impact on inspections, the bad boys, should bear the brunt of the user fees," said Rep. Bob Whittaker, R-Kan.

Both management and labor have questioned the wisdom of possibly impugning the inspections if the penalties are earmarked to sustain operations.

"The user fee seems like a conflict of interest if the railroads are paying someone to arrest them," said Hardin.

## Deramus leaves posts at Kansas City Southern

*Traffic World Staff*

**W**illiam N. Deramus IV, president and chief executive officer of the Kansas City Southern Railway Co., and a director and officer of Kansas City Southern Industries, has resigned from the companies.

This marks the end of a 76-year association between the Deramus family and the related companies of Kansas City Southern.

Kansas City Southern Industries, the holding company that owns the railroad, announced Deramus' Oct. 4 departure, but gave no reasons for his decision to leave.

Landon H. Rowland, president and chief executive officer of KCSI,

will assume additional responsibilities as president and chief executive officer of Kansas City Railway Co. on an interim basis. Larry Parson, vice president-marketing of the railway, will become the railroad's acting chief operating officer.

Some industry insiders speculate Deramus' exit marks the end of an internal fight for control of the company prompted by the death of his father, William N. Deramus III, last November.

During the elder Deramus' final illness, rumors circulated that KCSI was considering selling off all its non-rail properties, including its highly profitable DST Systems

unit. The DST unit, which transmits information for mutual and other funds, is one of the jewels in KCSI's corporate crown. It was considered one of the main reasons behind a hostile takeover attempt in 1988.

Since the younger Deramus headed the rail unit he presumably would remain as a driving force in the restructured Kansas City Southern Industries.

The sell-offs never took place and earlier this year KCSI named a three-man board consisting of Roland Deramus and Thomas R. McDonnell, head of DST, to run the company following the elder Deramus' death.



Social security permits workers who retire at 62 to collect 80 percent of their benefits and the payment moves upward until it reaches 100 percent at age 65.

An occupational disability change also is a big issue. Under current law a railroad worker is considered disabled if he is unable to perform the job he held before

the disability occurred. Under social security, disability is granted only if the worker is unable to perform any task.

Since legislation is needed to make the changes recommended by the commission it will be a year or more before the chances of any of the changes being enacted into law become clear.

Rail labor appears to have problems with several of the changes, especially privatization of the pension portion of the retirement system and the new disability standards.

This indicates that the program may face an uphill fight in Congress.

## GAO blasts FRA safety operations; Hill may open oversight hearings

**T**he Federal Railroad Administration's safety programs are so poor there is no guarantee the nation's railroads are operating safely, a General Accounting Office report has concluded.

This latest GAO report, released Sept. 10, is the third in a series on FRA activities requested by House Energy and Commerce Committee Chairman John D. Dingell, D-Mich.

Congressional hearings on rail safety issues are likely to be held before Congress leaves town this fall now that the GAO report has been released.

Rail labor, meanwhile, views the GAO's conclusions as "confirming everything we have complained about that is wrong with the FRA safety program."

The composite portrait that emerges from the three GAO studies of FRA is of an agency adrift, with little idea of its safety responsibilities, the resources available to it, or how to use those resources efficiently.

"Inspectors do not have guidance on how often railroads' equipment, track, signals or operating practices need to be inspected," the GAO said.

"Because there are no coverage standards, FRA does not know whether its staff of 249 inspectors who conduct inspections for FRA is adequate," the report added.

FRA meanwhile is eliminating all U.S. funding for state inspection programs, which will further re-

duce the number of available inspectors.

All this is being done while FRA officials based outside Washington complain they do not have enough available resources to do their inspections, the GAO observed.

**A**s a result, many railroads received no inspection of any type during 1989, GAO said. Thirty-two railroads that operated at least 1,000 miles of track were not inspected, and there were no operating practices inspections at 168 of the nation's 580 railroads.

Railroads falling through the safety net often are the most dangerous in the industry, GAO said. These are the smaller, short-line railroads that consistently post higher accident and injury rates than the rest of the railroads, the GAO said.

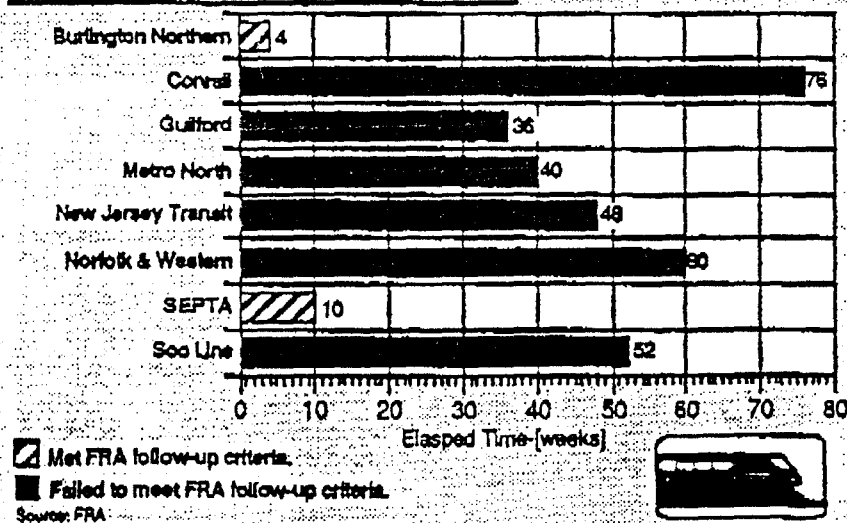
The trackage of smaller railroads increased 38 percent between 1985 and 1988, and these regional carriers now account for about 11 percent of the total rail activity in the United States.

Of 484 railroads filing accident or incident reports during the year, 265 were never inspected to verify the accuracy of their reporting.

Due largely to inattention at the top, the GAO said, safety and inspection standards vary widely from region to region.

One regional signal specialist defined adequate coverage as inspecting every signal at least once every 12 to 18 months, GAO said, while a specialist in another region defined adequate coverage as an

### FRA Follow-Up Reviews



inspection once every 24 to 30 months.

Some freight car inspectors inspect 50 percent of the rolling stock operating in their region each year, while another region is satisfied with inspecting only 20 percent of the cars each year.

FRA also fails to use available data to focus inspection on high-risk operating locations and railroads with poor safety records, the GAO said. Despite being required by Congress to do so, it said, FRA has never developed a way to give priority to inspecting passenger trains and hazardous materials routings.

Safety data is not analyzed to ensure that railroads with deteriorating safety records receive additional inspections.

"For example, while the number of CSX accidents due to human error increased in Tennessee by nearly 67 percent between 1986 and 1988, FRA decreased operating practices inspections on the railroad by about 45 percent," the report said.

Inspection on the nearby Norfolk Southern system increased by 41 percent during the same period, even though that railroad reported only four accidents.

The FRA also decreased track inspection on the Union Pacific system from 4,100 miles in 1988 to 2,880 in 1989 even though the number of track-caused accidents on the UP nearly doubled between 1987 and 1988.

UP also carries heavy levels of hazardous materials traffic over more than 2,800 miles of its 6,158 miles of track in the region and also many Amtrak trains operate in the region, GAO said.

FRA also performs few re-inspections to determine if safety defects have been corrected; nor are carriers required to notify it in writing that steps to correct problems have been taken, the GAO said.

"As a result, FRA cannot be certain that the railroads have corrected the safety defects it has identified," the report said.

Re-inspections that do take place indicate that carriers often do

not correct safety problems, GAO said.

Rail labor views the GAO report as vindication in its 10-year fight with FRA over the quality of government safety programs.

"Frankly, this report really confirms everything we have complained about in the last 10 years about the FRA enforcement program," said Larry Mann, an attorney for the Railway Labor Executives' Association.

"This is the first independent body that has looked at the issue objectively and our points have been sustained by GAO," Mann added.

Initial Capitol Hill reaction indicates that FRA officials will have their hands full if the House Energy and Commerce Committee holds hearings on the rail safety issue before Congress adjourns.

"The office of safety at FRA is hurting," one Hill aide, who asked not to be identified, said.

"If this report is to be believed, the office doesn't give good directions, uses poor judgment and is miserable at allocating resources," he explained.

The department's data base appears to be relatively reliable, but the safety office doesn't seem to do much with the information, he said.

The GAO's criticisms of the FRA are warranted, Gilbert E. Carmichael, FRA administrator, conceded last week, but he questioned the conclusion that the rail system is unsafe.

"All available data indicate that the nation's huge railroad system is a very safe mode of transportation and that its safety has improved sharply over the past decade," Carmichael said in a Sept. 10 letter to Dingell.

The inspectors must be deployed as scientifically and strategically as possible, Carmichael conceded, and better data analysis may help FRA do this.

"Carmichael recognizes there is a problem and wants to do what he can to change things," one congressional aide said. "This should help him at the hearings," the staffer said.

— by David M. Cawthorne

## ICC votes to reaffirm car allocation ruling

The Interstate Commerce Commission has reaffirmed its earlier decision in a controversial grain car allocation case.

At a Sept. 11 open conference the agency denied petitions to review last year's ruling barring carriers from prohibiting the use of privately owned covered-hopper cars on their lines.

In that ruling the commission said that the ability of carriers to exclude shipper-owned cars from their lines had created needless uncertainty for private car owners and discouraged freight car investment.

As a result, the agency barred the carriers from prohibiting the use of private covered-hopper cars on their lines. There are about 114,226 privately owned covered-hopper cars and 124,967 railroad-owned covered-hopper cars in use today.

Shippers asked the commission to review the ruling and explain what grounds carriers can use to justify refusing to accept the freight cars.

The Burlington Northern Railroad was refusing to accept some privately owned hopper cars on grounds it did not have enough trackage space to store the cars when they weren't needed.

Limits contained in the commission's decision were cited by BN to justify the refusal. ■

## Speakman named RLEA vice chairman

V.M. Speakman has been elected vice chairman of the Railway Labor Executives' Association.

Speakman, who is president of the Brotherhood of Railroad Signalmen, replaces Geoffrey N. Zeh who last July lost his bid for another term as head of the Brotherhood of Maintenance of Way Employees.

Speakman's "leadership and experience will greatly benefit the interest of all rail workers," said RLEA Chairman Richard I. Kilroy. ■

9-11-90

## GAO Report Blasts FRA On Safety

Journal of Commerce Staff

WASHINGTON — A study released Monday by the General Accounting Office says the Federal Railroad Administration's safety inspection program does not provide assurances that the nation's railroads are operating safely.

The GAO said the agency does not have minimum inspection coverage standards defining the frequency of railroad inspections or the size of the territory an inspector could be expected to cover.

"Without such standards, some railroads go uninspected, and the FRA does not know whether its staff is adequate," the study concluded.

Rep. John D. Dingell, D-Mich., chairman of the House Energy and Commerce Committee, which has jurisdiction over railroads, asked the GAO to undertake the study.

Rep. Dingell said that "for the third time in the last 15 months, the GAO has demonstrated that the Federal Railroad Administration's past claims of an effective rail safety program are suspect or hollow."

The GAO's two previous reports, also requested by Rep. Dingell, focused on the accuracy of accident and injury data reported by railroads to the FRA and on hazardous materials transportation.

The GAO said it has discussed its findings with Gilbert E. Carmichael, the FRA's administrator. The study says Mr. Carmichael generally agreed with the GAO's findings, especially the need to make the inspection approach less random and more scientific by using available data.



EXHIBIT

4

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# GAO charges rail administration with mismanaging civil penalties

by Ira Rosenfeld

**T**he Government Accounting Office, completing a series of scathing 1990 reports on the operation of the Federal Railroad Administration, has accused the agency of mismanaging its penalties program.

The report (GAO/RCED-91-47) concluded that internal control weaknesses in the financial management of the civil penalties program have undermined compliance with federal standards for settlement, collection, accounting, and record-keeping. FRA failed to comply with its own internal operating procedures and policies in this area, the report said.

FRA Deputy Administrator Perry A. Rivkind, while generally agreeing with the GAO's findings, asked for more time to study the specific allegations before commenting.

Among the GAO's findings:

- FRA's Office of Chief Counsel failed to keep adequate records of railroad correspondence in numerous cases. As a result, the agency cannot readily determine which railroads have or have not responded to notifications of safety violations or to potential civil penalty assessments.

A review of 197 civil penalty cases officially closed during fiscal year 1988 revealed only 27 with records of railroad responses. Similarly, only 25 of 40 official files for "top priority" civil penalty cases initiated between October 1985 and December 1989 contained records of railroad responses to notifications of violations.

- FRA's Office of Financial Services, which assesses penalties for violations of safety regulations that pose an immediate safety hazard, failed to establish an accounts receivable system for millions of dollars in civil penalties, losing control over government receipts.

Investigators noted that between October 1988 and Jan. 31, 1990, civil

penalty checks totaling \$3.26 million were received by OFS without corresponding accounts receivable records.

- By failing to process and deposit some receipts in a timely manner, FRA repeatedly lost interest income. Between Oct. 1, 1987, and Dec. 31, 1989, FRA failed to deposit 24 payments of \$1.68 million in a timely manner, postponing interest earnings. These late deposits represented 19 percent of all civil penalties collected during the period.

Another example of failing to promptly process checks occurred in October 1988, when two penalty checks totaling \$139,000 sent by

FRA six or 12 months earlier, the federal government could have saved up to \$240,000.

This GAO report concluded a series of critical fact-finding investigations of the FRA conducted at the behest of the House Committee on Energy and Commerce. FRA is responsible for establishing and enforcing safety regulations for the railroad industry.

Once a railroad has been notified by FRA of a safety violation and of associated civil penalties, the process for settling the case begins.

Under federal statute, railroads have 30 days to reply in cases involving violations of hazardous-

*Once a railroad has been notified by  
FRA of a safety violation and of  
associated civil penalties, the process  
for settling the case begins.*

the railroads to an OCC attorney remained in his "in-box" until January 1989. The attorney said he did not sort through the box until that time because he was temporarily assigned to writing regulations.

- Potential revenue has been lost through the repeated failure of the Office of Chief Counsel to enforce provisions for charging interest and administrative costs for overdue civil penalty payments.

Investigators noted that between Oct. 1, 1987, and Dec. 31, 1990, 10 accounts totaling over \$325,000 were either overdue or paid in installments. FRA sent settlement notices to these railroads telling them that interest and administrative charges would be levied, but such charges were never assessed.

The GAO noted that if the \$3.04 million from pre-fiscal year 1987 cases that were settled in fiscal year 1989 had been collected by

materials regulations. If the railroad fails to reply within the allowed time, it must pay the fine immediately and forfeit its rights to an administrative hearing.

**I**n cases involving other areas of rail safety, including accident reports, safety compliance, and locomotive and signal inspections, the FRA gives the railroads more time to investigate. After their own investigation, the railroads may negotiate a settlement with FRA.

Class I carriers generally negotiate settlements with FRA in conferences that include technical experts and attorneys from both the railroads and the agency. Once the two sides have agreed on the penalty, the railroad has 30 days to pay in full and avoid interest and late charges.

In fiscal year 1989, FRA sent letters to railroads concerning vio-

MORE ON BACK PAGE →

CONTINUED FROM PAGE 37

lations potentially worth \$5.6 million in civil penalties. These cases occurred mostly in fiscal year 1987 or before. Additionally, through negotiation of 800 cases, FRA settled 5,577 violation reports, received in fiscal year 1989 and before, totaling \$4.62 million in civil penalties.

The backlog of cases is a continuing problem that regularly results in civil penalty procedures taking three years from initial notification to settlement. Agency officials have blamed the backlog on attorney staff turnover and man-

power shortages, combined with an increase in the number of violations being reported.

In May 1988, FRA issued its 1988 enforcement procedures that set Dec. 31 of that year as the target date for settlement of all pre-1987 civil penalty cases. However, as the backlog of cases has continued to swell, the agency has been forced to revise its self-imposed deadline.

In May 1986, there were 5,334 violation reports in the backlog. In February 1988, the backlog had grown to 11,000 violations reports.

By the end of 1989, it had reached nearly 18,000.

When it became apparent that the 1988 goal would not be met, a new agency memorandum was issued that changed the settlement goal for pre-1987 cases to Dec. 31, 1989.

When the date passed, however, there were still 1,241 pre-1987 cases outstanding. That did not include the 353 pre-1987 violation reports submitted by FRA's regional offices on which no action had been initiated by the Office of the Chief Counsel. ■

CANADIAN TRANSPORT COMMISSION  
RAILWAY TRANSPORT COMMITTEE

ORDER NO.: R-41300

December 14, 1987

IN THE MATTER OF an application filed by Canadian Pacific Limited, for approval of amendments to Rules 19, 19A, 90A and 102 of the Canadian Transport Commission's Regulations No. 0-8, Uniform Code of Operating Rules, C.R.C. 1978, c. 1175;

IN THE MATTER OF an application filed by the Canadian National Railway Company for relief from Rule 90A of the Canadian Transport Commission's Regulations No. 0-8, Uniform Code of Operating Rules, C.R.C. 1978, c. 1175;

IN THE MATTER OF tests, conducted to evaluate the reliability of the end-of-train unit and associated devices and to evaluate the risks associated with train operation without rear train crew, required by the Railway Transport Committee pursuant to its decision of September 16, 1985 which dealt with the matter of testing caboosless trains.

File Nos. 4357R90-A.1  
4357R90-A.2

Canadian Pacific Limited and Canadian National Railway Company are hereby exempted, for purposes of operating caboosless trains, from the provisions of Rule 90A of the Canadian Transport Commission's Regulations No. 0-8, Uniform Code of Operating Rules, C.R.C. 1978, c. 1175 that require operating crew to be located at the rear of trains.

1. 1 A train may be operated without a caboose and with the rear crew located in the cabs of the lead locomotive consist provided the train is equipped with a Digitair II end-of-train-information-system with a rear train emergency braking feature and a red flashing marker light operated by an automatic light sensitive cell (switch), and with a distance measuring device where no other distance measuring device is installed on that train, or an equivalent end-of-train information system approved by the Railway Transport Committee, that train hereinafter referred to as a caboosless train.

1. 2 A conductor on a caboosless train shall be stationed in the operating cab of the lead locomotive.

1. 3 No caboosless train shall be operated for a distance in excess of 60 miles without having passed an operational hot box and dragging equipment detector or without having been inspected on each side of the train by employees referred to in item 1.11, or without having been stopped and inspected.

1. 4 Prior to the operation of any caboosless train all gateway hot box and dragging equipment detectors shall be equipped with hot wheel detectors.

1. 5 Prior to the operation of any caboosless train and within six (6) months of the date of this Order, Canadian Pacific Limited and Canadian National Railway Company shall file a plan with the Railway Transport Committee for the expeditious equipping

R14-5-114. End-of-train device

Any railroad carrier subject to the provisions of  
49 CFR § 221, amended and revised through October 1, 1989,  
incorporated herein by reference and on file with the Office of  
the Secretary of State, operating trains outside of yard limits  
without an occupied caboose at the rear of the train, shall have  
an operable end-of-train device capable of activating the train's  
emergency air brake system electronically from the control panel  
of the locomotive controlling the train.



I am a locomotive engineer working out of Whitefish, Montana. I now have over 35 years service with the Burlington Northern Railroad and the former Great Northern Railway, 33 years of this time has been in engine service. I welcome the opportunity to testify before this committee with reference to HB 271.

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On January 25, 1991 I was manning the helper engine on the rear of Grain Train G23-23 when we crested Summit, Montana at 6:30AM. Train G23-23 had 108 loads, 13866 tons and was 6650 feet in length. Allowable train speed at this point and down the continental divide is 25 MPH. As we started our descent, I was monitoring the air guages and speed indicator when i noticed that we were up to 27 MPH, the air guage showed a reduction of only 6 pounds of air. I knew that this amount of reduction was inadequate. I called the engineer on the lead locomotive and he replied that he had made 12 pound reduction, it did not go through the train as it should have. With the speed increasing to 30 MPH, I suggested to him that he make a further reduction, he went to 18 pound reduction. Again the air did not respond as it should as the helper engine only reduced to 9 pounds. This indicated to me that there was something definitely wrong with the train air brake system as any reduction of the head end of the train should repeat itself on the rear of the train. At 35 MPH I called him and requested that he place the train into emergency brake application, he responded that he had. There was no action of the brakes on the rear of the train nor on the helper engine. Within 30 seconds I placed the helper engine into emergency brake application and the train brakes did respond. The train speed increased to 37 MPH and then did slow to a stop.

This train was held at Essex, Montana, was air tested by the company but they were unable to find anything wrong with the train, it was allowed to continue on its way west. In talking with a company officer the next day, the only explanation that he could offer was that there was some kind of restriction in the train air line. The Burlington Northern is concerned about the problems of the grain trains running away on the mountain. Mr. Dennis G. Anderson, General Manager, Montana Division addressed this very point in his letter to All Engine and Train Employees on January 28, 1991.

For whatever reason that caused the failure of the train brakes on Grain Train G23-23, this should be reason enough to demand that all trains operating down the continental divide be equipped with duplex rear end devices that will allow the engineer of the train to place the train into emergency from the rear of the train. If the helper had not been on the rear of G23-23, it is very possible that the Burlington Northern would again have had a very serious derailment with the possibility of fatalities involved. 13,866 tons of train roaring down the continental divide is nothing to take lightly. The safety and lives of the on train employees is very much at risk with the current operating practices of the Burlington Northern.

We, as engineers, are required to use and abide by a large book of operating rules during our tour of duty. The first rule in the book is, "Safety is of the first importance in the discharge of duty". On February 8, 1991 I received a letter from Mr. William E. Greenwood, Chief Operating Office, Burlington Northern. I have included a copy of this letter. I would like to just read the first paragraph which states "Eleven BN employees lost their lives in work-related accidents last year, a tragic loss to us and to their families. Other BN people— to many others— were injured, some of them seriously. Instead of trying to explain away these accidents as the work of fate, let's renew our commitment to making safety our first priority in everything we do on our railroad."

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I, as a locomotive engineer, do know that we need the duplex rear end devices for safe train operation. If the Burlington Northern, as they have stated, is truly interested in the safety of their employees, then I feel that they should be here with it's employees testifying for passage of this legislation.

I urge a do pass recomendation for HB271.

Thank you for your time.



BURLINGTON NORTHERN RAILROAD

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OPERATIONS DEPARTMENT  
Montana Division

Dennis G. Anderson  
General Manager  
48 Second Avenue  
Havre, Montana 59501

January 28, 1991

All Engine and Train Employees:

I would like to acquaint you with a study team that has been formed on the Montana Division and ask for your assistance in an effort at analyzing our operation of loaded grain trains from Havre to Whitefish. I am concerned with the recent problems encountered by some of our trains. I am sure that if we work together we can solve these problems.

A study team has been formed to examine all aspects involved and to make recommendations concerning our operations. The members of this study team are:

Jack Brady	Engineer	Havre
Tom Hanning	Conductor	Havre
John Bartlett	Engineer	Whitefish
Ken Eyre	Conductor	Whitefish
Jim Bradley	Machinist	Havre
Roger Brown	Asst Gen Car Fmn	Havre
Doug Schuch	Trainmaster	Whitefish
David Boen	Mgr Op Practices	Havre
Jerry Stutesman	Supt. Mech.	Havre
Michael Weissmann	Supt. Ops.	Havre

The committee will be looking at all issues that pertain to the safe operation of our trains. This group will be talking to you about how we operate our trains, how we make air tests, what you think we do right or wrong and what we should do in the future.

Please be open and honest when they ask your opinion.

They recommended that westward trains that are 100 ton per operative brake or more not exceed 20 mph when cresting the summit. We have instituted that speed restriction on a trial basis.

It is our goal to operate trains on the Montana Division in the safest and most efficient manner possible. With everyone cooperating we will accomplish that goal.

Sincerely;

Dennis G. Anderson  
General Manager



## BURLINGTON NORTHERN RAILROAD

WILLIAM E. GREENWOOD  
Chief Operating Officer

777 Main Street  
Ft. Worth, TX 76102-5384  
Telephone (817) 878-2100

February 6, 1991

Dear Fellow BN Employee:

Eleven BN employees lost their lives in work-related accidents last year, a tragic loss to us and to their families. Other BN people--too many others--were injured, some of them seriously. Instead of trying to explain away these accidents as the work of fate, let's renew our commitment to making safety our first priority in everything we do on our railroad.

Three months ago, a group of BN managers met with General Chairmen from across the system to discuss how to continue improving safety on our railroad. The purpose of that meeting was not to find "quick fixes" but to start a process in which everyone--management and union-represented employees alike--would jointly and cooperatively search for, discover and implement long-term solutions to safety problems throughout Burlington Northern.

Since then, we have begun a system-wide effort, involving everyone at BN, to refocus on our commitment to making our railroad the safest in the country. The effort will not be easy. Every one of us must get involved in the process in every way we feel appropriate.

If you have ideas for a safer way to do things, please contact your division general manager, your supervisor, your union representative or me directly to make your ideas known. Your contributions will play a vital part in helping us accomplish our objective of making the BN workplace the safest it can be for all of us.

I will write again when there is more to share with you, and we'll also keep you posted through *Inside BN* and your division and local newsletters. In the meantime, please remember that at BN getting the job done safely is more important than the job itself.

Sincerely,

William E. Greenwood

cc: General Chairmen

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Date: June 30, 1990  
Time: Approximately 03:15 a.m.  
Engineer: Philip M. Dahl Jr.  
Assistant Eng.: Robert L. Chandler  
Location: Clinton, Montana  
Train Number: 01-123-29  
Engine Numbers: BN 2928, BN 3511, BN 8085  
Train Consist: 61 Loads, 4 empties, 6460 Tons, 3706 Feet Long  
Comments: Train was equipped with a standard Fred and Mary device. There was no air flow meter or caboose.

On June 30, 1990, at Clinton, Montana I was engineer of train number 01-123-29 with Assistant Engineer Robert Chandler. We were westbound toward Missoula, with Chandler operating the locomotive, when we experienced a runaway which was caused by a transient apparently inadvertently closing an angle cock behind the first car of the train. This bottled the air in the train and the air brakes could not be applied from the engine. Assistant Engineer Chandler had used the air brakes at Bearmouth and Nimrod to slow down for curves; the brakes were in working condition at that time. At the Nimrod detector, Chandler observed that the brake pipe pressure had dropped from eighty-five (85) pounds to approximately eighty-one (81) pounds on the rear end of the train. The train was not equipped with a flow meter and it appeared as if a leak had developed in the brake pipe. As the train approached Clinton, at sixty (60 MPH), we had two yellow blocks telling us to slow down, and initially used dynamic brakes to control the train speed when we passed the first yellow block. When we approached the second yellow block, Chandler made a minimum brake pipe reduction and we noted that there was very little exhaust from the brake valve, indicating a problem, and that the brake pipe pressure on the rear

end device did not drop. Within moments he made a heavier brake pipe reduction, and Assistant Engineer Chandler commented to me, "Something is wrong with the air." He then made another reduction and the brakes still did not set on the train.

At approximately Mile Post 99, he placed the brake valve into emergency and the train did not react. When this step was taken, the dynamic brake no longer functioned and he applied full engine brakes. At that time, we contacted the Missoula west dispatcher and reported that an emergency situation had arisen. Our train's speed slowed from sixty (60) MPH to forty-five (45) MPH at the switch at east Clinton, Mile Post 101, and we were lined into the siding which is a twenty (20) MPH siding.

I then told Train Number 22, which was on the mainline at Clinton and not yet clear of the west switch, to get his train in the clear as soon as possible. He was in the clear momentarily thereby preventing a collision of the two trains. The dispatcher had told Train Number 92, which was at Bonner, to stop his train and then lined our train out of the west switch at Clinton onto the mainline.

In the meantime, we recovered from the emergency brake pipe application we had made earlier and were able to use the dynamic brakes again. At the time we were going by the west switch, we were moving at thirty (30) MPH. In another two (2) miles our speed had dropped to between ten (10) and fifteen (15) MPH and we were unable to stop the train with the engine brakes because they had been mostly burned off.

I then dropped off of the engine and tied hand brakes on six cars of the train by hopping onto each car, climbing a ladder up to the hand brake and then tying the brake and repeating the procedure for each of the six cars. The train finally came to a stop at Mile Post 105, six miles from where we had made our emergency application.

At the time I had dropped off the engine, I observed a transient on the east end of the first car. When walking back to engine, I inspected the angle cocks on each car and observed that the one behind the first car, where I had seen the transient, had been closed causing the brakes to be inoperable from the locomotive. The transient was moving away from me on the other side of the train, so I returned to the engine and called for law enforcement officers to come and apprehend the man.

Later as we inspected the engines, the transient returned and asked what was going on. We questioned him briefly and observed that he was very drunk. His story was that he was urinating and must have caught his foot on the angle cock. Upon further investigation, however, we decided that the angle cock would have been difficult to accidentally turn as it took a fair amount of effort to do so. After inspecting the locomotives and determining that we had air in the train, we proceeded to Missoula at a reduced speed.

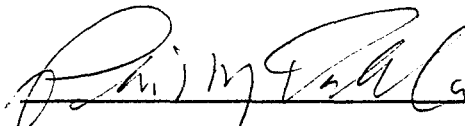
This could have been an accident of major proportions by evolving into a head-on collision of trains and resulting in the loss of lives. Also, considering the facts that we were travelling

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along a major highway and within a residential district, had an accident occurred and had there been hazardous material on board, it would not have just effected the lives of the crews members of the three trains, but would have affected the people living within the area and the ecology of the area. We were very fortunate that everyone involved in this incident did their job in an exemplary manner.

I believe that this incident would not have occurred with a manned caboose or a rear end device that would initiate an emergency application of the brakes.

I am, therefore, requesting that you pass House Bill 271 to see that these devices are mandatory on trains in Montana. It is only a matter of time before a major accident, that could have been prevented, happens because of not having one of these rear end devices on that train.

2/14/91  
Philip M. Dahl Jr. Date



BEFORE THE FEDERAL RAILROAD ADMINISTRATION  
UNITED STATES DEPARTMENT OF TRANSPORTATION

FRA DOCKET NO. \_\_\_\_\_

Petition of the Montana Public Service Commission  
for Rulemaking

Pursuant to the provisions of 49 C.F.R., §§ 211.7 and 211.9, the Montana Public Service Commission (Montana) petitions the Federal Railroad Administration, Department of Transportation (FRA/DOT) for issuance of a rule requiring the use of two-way end-of-train telemetry devices on all cabooseless trains for the safety of railroad operations.

Section 211.9(a). The substance of the proposed rule will require that a train operating without a caboose shall be equipped with an FRA approved two-way end-of-train information system with a rear train emergency braking feature and a red flashing marker light operated by an automatic light sensitive cell (switch), and with a distance measuring device if no other distance measuring device is installed on the train, or an equivalent two-way end-of-train information system approved by the FRA. Trains shall carry an additional charged battery in the engine for replacement in the end-of-train information system to use if the battery should fail en route.

Section 211.9(b). Petitioner is the agency of the State of Montana statutorily charged with the duty of general supervision of all railroads, to the extent permitted by and in conformity with federal law, in accordance with Sections 69-14-101 et seq.,

Montana Code Annotated. Petitioner has authority as provided to investigate, enforce and report concerning railroad safety laws, in concern for general protection of health and safety on railroads.

On December 6, 1989 the National Transportation Safety Board issued Railroad Accident Report No. NTSB/RAR-89/05 on the Collision and Derailment of Montana Rail Link in Helena, Montana on February 2, 1989. After extensive investigation and a three-day hearing, NTSB concluded that the probable cause of the accident was the failure of the crew to secure its train left unattended on the mountain grade by placing the train brakes in emergency and applying hand brakes. In addition to other recommendations, the NTSB has recommended that the FRA require the use of two-way, end-of-train telemetry devices on all caboosless trains for the safety of railroad operations. [NTSB/RAR-89/05, page 76 (Class II, Priority Action) (R-89-82).] In its Finding No. 19, page 73 of its report, the NTSB found that a two-way transmitting end-of-train telemetry device would have allowed the road engineer to determine the status of the telemetry device on the end of the train and to initiate an emergency application of the train brakes from the rear of the train. As it was, the road engineer and other crew had no idea that the brakes of rear cars were not, in fact, in emergency application and that the cars were not secured before being detached from the engines. Whatever other mistakes the crew made in the frigid early hours of Feb-

ruary 2, 1989, an adequate two-way informational system could have helped prevent this mishap.

Section 211.9(c). Petitioner is not equipped with staff or expertise sufficient at this time to make the economic analysis and evaluation of anticipated impacts of requiring two-way end-of-train telemetry devices or to determine any resulting costs to the private sector, consumers or governmental entities. Petitioner points out that use of caboosless trains, as now permitted by federal legislation, was in response to the costs to the railroads of manning and maintaining cabooses. The presence of cabooses and crew at the end of the train permitted reasoned and accepted procedural responses to situations requiring application of the brakes, whether or not the crew members received communications from the front end of the train. The crew at the front of the train had the means to communicate to the caboose when an emergency application of the brakes was required at the end of the train, and the crew at the end of the train further had the independent ability to determine when such application was required.

Any system which replaces the train configuration with caboose should have similar capability in order to be equally safe. Otherwise, the costs and impacts of the train-with-caboose versus the caboosless train with end-of-train telemetry device cannot be effectively compared and evaluated. As evidenced in the accident on February 2, 1989, the lack of a two-way end-of-train telemetry device prevented any communication

from the engineer to the end of the train and any ability to initiate an emergency application of the brakes at the end of the train. Obviously, there was no crew member at the end of the train to independently determine and to do what was necessary. The cost to Montana Rail Link, not including damage to private property, was \$6,000,000. By some miracle, there was no loss of life. The city of Helena was thrown into chaos. The impacts to the individuals and the town, including pain, suffering, inconvenience and expense, will never be fully tallied.

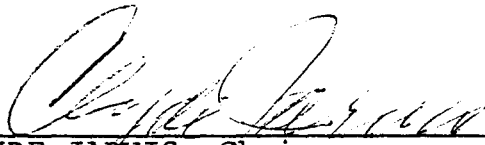
In analyzing and evaluating the costs of equipping cabooselless trains with two-way end-of-train telemetry devices, comparison should be made to trains with cabooses and not to cabooselless trains with one-way end-of-train devices. As the extensive investigation, hearing, evaluation and recommendations indicate, the presently used one-way devices are not a safe replacement for the train with caboose. If cabooselless trains are used by railroads, they should have capabilities approximating the system they replaced.

#### Conclusion


Petitioner respectfully requests that the Federal Railroad Administration grant this petition and initiate rulemaking which will result in a rule requiring two-way end-of-train telemetry devices on all cabooselless trains.

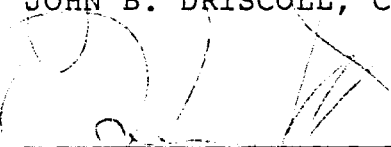
Done and Dated this 2nd day of April, 1990 by a vote of 5-0.

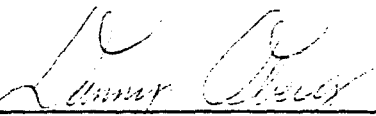
BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

  
CLYDE JARVIS, Chairman

  
HOWARD L. ELLIS, Vice Chairman

  
JOHN B. DRISCOLL, Commissioner

  
WALLACE W. "WALLY" MERCER, Commissioner

  
DANNY OBERG, Commissioner

ATTEST:



Ann Peck  
Commission Secretary

(SEAL)

EXHIBIT 0  
DATE 2/14/91  
HB 271

TESTIMONY ON HOUSE BILL 271

Presented by: Francis Marceau  
for the United Transportation Union

I am Francis Marceau, the Representative for the United Transportation Union from Whitefish. I want to thank you for the opportunity to speak regarding House Bill 271.

Many of you may remember testimony given a few years ago on a bill to require cabooses on all trains. At that time, who would have thought a bill requesting telemetry devices on the rear of trains would be necessary? The railroads spokesmen made it clear that their intention was to replace cabooses with new end of train devices known as telemetry devices. In the seven page decision by the 9th Circuit Court allowing cabooseless operation of inter-state trains the fact that telemetry devices would be used in place of cabooses was mentioned 6 times. (A copy of this decision is attached.)

I have enclosed several documented incidents where train crews headquartered at Whitefish, Montana were required to operate trains without telemetry devices or cabooses. These trains that were required to be operated without telemetry devices weighed up to 7600 Tons and were over 5000 feet long.

There have been several incidents on the mountain grade between Summit, Montana and Essex, Montana, where trains have not handled properly. Surely most of you remember reading about derailments that caused massive corn spills in Glacier Park. The crews that were involved in these incidents feel most of these derailments, as well as the tank car explosion in Helena, could have been avoided if the type of device being requested in House Bill 271 had been provided.

These devices would allow the air brakes to be put in emergency from the rear of the train by a radio signal from the locomotive. With this device air brakes could be set from either end of the train even if there was a blockage or some other malfunction in the train line.

Page Two  
House Bill 271

In a letter dated January 28, 1991, to all Engine and Train Employees on the Montana Division, the B.N. General Manager states "I am quite concerned with recent problems encountered by some of our trains." He goes on to say that a study team has been formed on the Montana Division to analyze the operation of loaded grain trains between Havre and Whitefish. The members I represent feel the type of device asked for in H.B. 271 would make for a safer operation for employees and the public.

It is my understanding that there are other railroad personnel who will testify about trains braking systems malfunctioning in the last two months. A workers body does not have much of a chance to escape serious injury wen involved in a derailment of freight cars and locomotives weighing over 100 tons each.

I feel the devices requested in this bill have the potential to provide a safety feature which could not only prevent many workers from being permanently disabled or killed but would also provide a higher degree of safety for the general public.

I strongly encourage your support of this bill.





***united transportation union***

69 Scarborough  
Kalispell, MT 59901  
March 30, 1990

Ray West  
1245 12th Street  
Havre, MT 59501

Dear Brother West,

I am writing to inform you that Conductor Delange was called on duty at Yardley, Washington on 3/27/90 at 0130 for Train # 1/102/27. He was required to depart without a head end or rear end pulse device.

He was furnished with a flashing red light for the rear of the train and an air gauge for air tests. He had instructions to make a pick up at Sandpoint and a set out at Libby.

Hopefully information like Conductor Delange has furnished the organization will help show that there is a need for state and federal statutes requiring operating pulse devices on all trains.

Fraternally yours,

F. G. Marceau

EXHIBIT 8  
DATE 2/14/91  
HB 271



***united transportation union***

Local 891  
69 Scarborough  
Kalispell, MT 59901  
August 27, 1990

Ray West  
UTU State Leg. Director  
1245 12th Street  
Havre, MT 59501

Dear Brother West:

Roger F. Wagner, who is employed as a conductor in the Whitefish West Interdivisional freight pool has supplied me with a Train Activity/Delay report for 8/11/90. The report indicates he was caled on duty for Train 1-100 at Yardley for 4:35 p.m.. He was required to depart without being furnished a head-end telemetry device. The train consisted of 69 loads, 17 empties, 7600 tons and was 5394 feet long.

This information should prove valuable when attempting to have legislation or FRA rules requiring telemetry devices on all caboosseless trains enacted.

Fraternally,

*F. G. Marceau*

F. G. Marceau  
UTU Local 891  
Legislative Representative

*united transportation union*

69 Scarborough  
Kalispell, MT 59901  
May 29, 1990

Ray West  
1245 12th Street  
Havre, MT 59501

Dear Brother West:

I am forwarding a report from Engineer Rob Riley concerning the lack of telemetry devices and portable radios.

Please advise of your handling.

Fraternally,

F. G. Marceau



Mr. Fran Marceau

EXHIBIT 8  
DATE 2/14/91  
HB 271

Duty  
15  
6 pm

FF Duty  
100  
1 p

On March 26, 1990 I was called on duty at Whitefish to dog catch a grain mty's at Twin Meadows. When we relieved the crew they informed us that there was no Fred or Mary on the train. We had 106 mty's for 6388 feet and no way of knowing the air pressure on the rear of the train. This train had a flashing red light on the rear end and this is the same way it departed Whitefish.

On May 9, 1990 I was called on duty for 11<sup>30</sup> pm in Spokane, WA for train 01-622. We traded crews out front on the East bound. This train did not have a Mary, it did have a working Fred. We had 106 mty's with 6511 feet of train.

On May 6, 1990 I was called on duty for 8<sup>30</sup> pm for 01-622-05 in Whitefish, MT. Condr Quisen requested a radio and was informed that there wasn't any. At Sun Dance we got a reading to inspect the 183<sup>rd</sup> axle. A radio would have

would have ~~been handy~~.

Thank you



FOR PUBLICATION  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

BURLINGTON NORTHERN RAILROAD  
COMPANY,

*Plaintiff-Appellee.*

v.

STATE OF MONTANA; THE MONTANA  
DEPARTMENT OF PUBLIC SERVICE  
REGULATION, PUBLIC SERVICE  
COMMISSION; AND MICHAEL GRIELY,  
Attorney General,

*Defendants-Appellants,*  
and

UNITED TRANSPORTATION UNION,  
*Defendant-Intervenor-  
Appellant.*

Nos. 87-4428  
87-4455

D.C. No.  
CV-83-187-JFB

OPINION

Appeal from the United States District Court  
for the District of Montana  
James F. Battin, District Judge, Presiding

Argued and Submitted  
February 10, 1989—Seattle, Washington

Filed July 26, 1989

Before: Procter Hug, Jr., William A. Norris and  
David R. Thompson, Circuit Judges.

Opinion by Judge Norris

**SUMMARY**

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**Administrative Law**

Affirming the district court's judgment, the court held that federal safety regulations preempted state statutory regulations requiring occupied cabooses.

The State of Montana enacted a law requiring an occupied caboose on trains that are more than two-thousand feet in length. Burlington Northern Railroad Company challenged this legislation claiming that the Federal Railroad Administration (FRA) safety regulations, as issued under the Federal Railroad Safety Act (FRSA) (45 U.S.C. § 434), preempted the state statute because the FRA was given comprehensive regulatory authority over national railroad safety issues. Montana conceded that its regulation was designed to reduce or eliminate any safety hazard not addressed by the FRA telemetry regulations. The district court held against Montana's statute, finding that state statutes may regulate railroad safety only to the extent no federal action had been taken covering the subject matter of the state regulation. On appeal, Montana argued that because the FRA regulations were not designed to prevent or even discourage the use of cabooses on trains, Montana's caboose law was perfectly consistent with the regulations and was free to require trains to have cabooses.

[1] Montana's caboose law was preempted by the FRA regulations permitting the use of telemetry devices as substitutes for visual inspection at the rear of trains, which reflected the FRA's judgment that telemetry devices may be substituted for occupied cabooses to perform the safety function of monitoring the operation of brakes and signals at the rear of trains.

[2] Montana's argument that the FRA did not discuss cabooses in general missed the point because the FRSA did not merely preempt state statutes that impaired or were inconsistent with FRA regulations, but it preempted *all* state

BURLINGTON NORTHERN RAILROAD CO. V. MONTANA 8225

regulations aimed at the same safety concerns addressed by FRA regulations. [3] The Caboose requirement had already been explicitly considered and rejected by the FRA.

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**COUNSEL**

Timothy R. Baker, Montana Department of Public Service Regulation, Public Service Commission, Helena, Montana, and Joe R. Roberts, Assistant Attorney General, Department of Justice, Helena, Montana, for the defendants-appellants.

Betty Jo Christian, Steptoe & Johnson, Washington, D.C., for the plaintiff-appellee.

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**OPINION**

NORRIS, Circuit Judge:

The State of Montana appeals a decision of the United States District Court for the District of Montana holding that a Montana statute requiring an occupied caboose on trains more than two-thousand feet in length is preempted by Federal Railroad Administration ("FRA") safety regulations. Those regulations were issued under the Federal Railroad Safety Act ("FRSA"), Pub. L. No. 91-458, 84 Stat. 971 (1970), codified at 45 U.S.C. §§ 421-500 (1982), which gives the FRA comprehensive regulatory authority over national railroad safety issues. The FRSA requires that "laws, rules, regulations, orders, and standards, relating to railroad safety shall be nationally uniform to the extent practicable," and provides that a state may regulate railroad safety only to the extent no federal action has been taken "covering the subject matter" of the state regulation. 45 U.S.C. § 434 (1982). Our appellate jurisdiction rests on 28 U.S.C. § 1291.



Pursuant to its authority under the FRSA, the FRA in 1986 promulgated two regulations affecting cabooses. The first regulation amended existing rules for monitoring rear-end marking devices on passenger, commuter and freight trains. Under the previous rules, a train crew member was required to perform specified visual observations to monitor the condition of the rear-end marking device, which as a practical matter involved stationing an employee in the last car of the train. See 51 Fed. Reg. 25,181-82 (1986). As amended, the regulations permit the use of radio telemetry equipment as an alternative to visual observation. 49 C.F.R. §§ 221.5-16 (1987). By offering an alternative to visual observation, the amended rules dispense with the need for occupied cabooses.

The second FRA regulation amended the FRA's rules for monitoring the operation of rear-train power brakes. The amended rules likewise have the effect of accommodating cabooseless trains by permitting the use of a telemetry device to monitor brake pipe pressure in the rear car of a train in lieu of visual observation. See 49 C.F.R. §§ 232.13, 232.19 (1987).

In the FRA rulemaking proceedings, those opposing the amendments focused on the caboose issue, arguing that "the elimination of a caboose from the end of the train adversely affects safety" and requesting that the FRA affirmatively require the use of occupied cabooses on trains. 51 Fed. Reg. 17,300 (1986). The FRA, however, rejected "this line of analysis." *Id.* After considering the evidence and arguments presented, the agency refused to impose any caboose requirement, based on its determination that it "does not consider the lack of a caboose to be a safety issue per se." *Id.* at 17,301.

The question presented by this appeal is whether the FRA's actions preempt Montana's law requiring occupied cabooses. The FRSA contains its own preemption provision, preserving a limited role for the states in rail safety regulation:

A State may adopt or continue in force any law, rule, regulation, order, or standard relating to railroad

BURLINGTON NORTHERN RAILROAD CO. v. MONTANA 8227

*safety until such time as the Secretary has adopted a rule, regulation, order, or standard covering the subject matter of such State requirement. A State may adopt or continue in force an additional or more stringent law, rule, regulation, order, or standard relating to railroad safety when necessary to eliminate or reduce an essentially local safety hazard, and when not incompatible with any Federal law, rule, regulation, order, or standard, and when not creating an undue burden on interstate commerce.*

45 U.S.C. § 434 (emphasis added). The State of Montana concedes that its caboose law is not designed to reduce an "essentially local" safety hazard. *See* Brief of Appellants at 10. Consequently, the sole question before us is whether the FRA actions have "cover[ed] the subject matter" of the Montana caboose law.

For purposes of § 434 of the FRSA, a state regulation "covers the same subject matter" as an FRA regulation if it addresses the same safety concerns as the FRA regulation. *See, e.g., Southern Pacific Transportation Co. v. Public Utilities Comm. of California*, 647 F. Supp. 1220, 1225 (N.D. Cal. 1986), *aff'd*, 820 F.2d 1111 (9th Cir. 1987) (per curiam). The Fifth Circuit's decision in *Donelon v. New Orleans Terminal Co.*, 474 F.2d 1108, 1112 (5th Cir. 1973), *cert. denied*, 414 U.S. 855 (1973), is instructive. In *Donelon*, local authorities sought to compel a railroad to improve the condition of tracks that caused train derailments, even though the FRA had declared the tracks safe. The Fifth Circuit held that because the FRA had adopted track safety standards, a city could not take additional steps to prevent derailments. *See id.* at 1110-12. *See also National Ass'n of Regulatory Utility Commissioners v. Coleman*, 542 F.2d 11 (3d Cir. 1976) (holding a state requirement that railroads file monthly accident reports preempted by an FRA regulation which also required monthly accident reports). *Cf. Southern Pacific Transportation Co. v. Public Utilities Comm. of California*, 820 F.2d

1111 (9th Cir. 1987) (per curiam), *affg*, 647 F. Supp. 1220 (N.D. Cal. 1986) (holding that a state rule regulating the distance between train tracks and surrounding buildings was not preempted by FRA regulations of track drainage and visibility, because the state regulations were designed to guarantee a safe working environment for train employees, while the federal regulations were designed simply to facilitate speedy maintenance work).

[1] Applying this standard, we hold that Montana's caboose law is preempted by the FRA regulations permitting the use of telemetry devices as substitutes for visual inspection at the rear of trains. The new regulations reflect the FRA's judgment that telemetry devices may be substituted for occupied cabooses to perform the safety function of monitoring the operation of brakes and signals at the rear of trains. Visual inspection is no longer necessary, the FRA has decided, because electronic monitoring is an equally effecting method of assuring train safety. See 51 Fed. Reg. 17300 (1986)(use of telemetry in lieu of visual inspection of brakes "offer[s] safety benefits"); 51 Fed. Reg. 25180 (1986)(use of telemetry in lieu of visual inspection of rear-end markers "enhance[s] railroad safety").

Montana does not argue that its caboose law serves any safety functions different from those served by the FRA regulations. Instead, it argues that the FRA regulations leave open the possibility of state caboose requirements because the regulations "neither encourage nor discourage" the use of cabooses. In essence, the state's position is that because the FRA regulations are not designed to prevent or even discourage the use of cabooses on trains, Montana's caboose law is perfectly consistent with the regulations. Therefore, the state says, it is free to require trains to have cabooses.

[2] This argument misses the point. The FRSA does not merely preempt those state laws which impair or are inconsis-

BURLINGTON NORTHERN RAILROAD CO. v. MONTANA 8229

tent with FRA regulations.<sup>1</sup> It preempts all state regulations aimed at the same safety concerns addressed by FRA regulations. The FRA has addressed the subject of monitoring safety conditions at the rear of trains and has concluded that telemetry devices are adequate for the purpose. Montana makes no argument that its caboose law is designed to reduce or eliminate any safety hazard not addressed by the FRA telemetry regulations. As in the *Donelon* case, Montana is attempting to regulate train safety problems that the FRA has already addressed.

[3] Our conclusion is reinforced by the fact that the FRA explicitly considered and rejected a caboose requirement during the course of its deliberations on rear-train safety regulation. During the rear-end safety rulemaking proceedings, the FRA received objections from several parties who argued that cabooseless trains were unsafe. The FRA made the following response:

The major objection raised by commentators opposed to the proposed rule was the opinion that elimination of a caboose from the end of the train adversely affects safety. For example, the comments of the Railway Labor Executives' Association and the United Transportation Union called for new requirements, *e.g.*, overheated bearing/wheel detectors, train length restrictions, and dragging equipment detectors, to counteract the perceived safety detriment of cabooseless trains. FRA does not agree with this line of analysis . . . . *[T]he FRA does not consider the lack of a caboose to be a safety issue per se.* While this final rule may facilitate railroads' obtaining economic benefits from cabooseless operations, it does not in any way determine whether a caboose will or will not be used.

---

<sup>1</sup>Which is not to deny that Montana's law interferes with the operation of the FRA regulations. It may well do so; our point is that such interference need not be shown for preemption to occur.

51 Fed. Reg. 17,300-01 (1986)(emphasis added).

The Supreme Court has held that " 'where failure of . . . federal officials affirmatively to exercise their full authority takes on the character of a ruling that no such regulation is appropriate or approved pursuant to the policy of the statute,' States are not permitted to use their police power to enact such regulation." *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 178 (1978) (citations omitted). Applying this principle, our court has stated that the FRA's rejection, like its adoption, of particular safety regulations may preempt state regulations on the same subject matter. In *Marshall v. Burlington Northern, Inc.*, 720 F.2d 1149 (9th Cir. 1983), we held that a state requirement that locomotives be equipped with strobe or oscillating lights was preempted by, among other things, the FRA's considered refusal to adopt such a requirement itself. The FRA had held rulemaking proceedings on the subject of strobe or oscillating lights, and had concluded they were ineffective. *See id.* *See also Southern Pacific Transportation Co. v. Public Utilities Comm. of California*, 647 F. Supp. 1220, 1226 (N.D. Cal. 1986) ("[I]f after due consideration the FRA determines that a particular regulation is not justified, that determination has the same preemptive effect as the adoption of a regulation."), *aff'd*, 820 F.2d 1111 (9th Cir. 1987) (per curiam).

These decisions are controlling in today's case. The FRA's refusal to adopt a federal caboose requirement reflects its judgment that telemetry devices are an adequate substitute for the old method of having a crew member ride at the rear of the train so he or she could make visual inspections. In its deliberations, the FRA explicitly considered whether train safety would be better served by a caboose requirement, and decided it would not. Section 434 of the Act preempts the states from second-guessing that judgment.

Montana argues that we cannot assign preemptive effect to the FRA's comments in the rulemaking proceeding because

BURLINGTON NORTHERN RAILROAD CO. v. MONTANA 8231

the FRA has not given "due consideration" to a caboose requirement, in the sense that it has not held a rulemaking proceeding on the question. The Act requires the FRA to follow the rulemaking procedures set forth in § 553 of the Administrative Procedure Act, 5 U.S.C. § 553, which generally calls for adequate notice of a proposed rule and an opportunity for parties to respond in a hearing. In this instance, the FRA has not held a rulemaking proceeding on cabooses per se, but only on electronic monitoring devices. Montana argues that because the FRA never proposed a rule regarding the appropriateness or inappropriateness of cabooses, any conclusion the FRA drew about the utility of caboose regulations cannot be given preemptive effect.

This argument is unpersuasive. The rulemaking proceedings underlying the 1986 regulations were initiated for the express purpose of considering the adequacy of electronic monitoring devices as an alternative to visual observation by crew members. Consideration of this subject necessarily encompassed the question whether electronic devices were an adequate substitute for occupied cabooses; or, put the other way around, whether cabooses were necessary to abate the hazards the electronic devices were designed to protect against. The whole point of the proceeding was to determine whether trains that relied on electronic devices instead of visual inspection would be safe. The FRA concluded that telemetry devices could do the job and that cabooses were unnecessary for train safety. Under § 434, this is enough to preempt state legislation to the contrary.

The judgment is AFFIRMED.



EXHIBIT 7  
DATE 2/14/91  
HB 271

DONALD R. JUDGE  
EXECUTIVE SECRETARY

110 WEST 13TH STREET  
P.O. BOX 1176  
HELENA, MONTANA 59624

(406) 442-1708

Testimony of Don Judge on House Bill 271 before the House Labor Committee,  
February 14, 1991.

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Madam Chair, members of the Committee, I am Don Judge, Executive Secretary of the Montana State AFL-CIO, here today to support House Bill 271.

Senate Bill 271 is really a public safety bill. Train accidents seem to occur on a regular basis these days. Fortunately, Montana has not experienced a catastrophic loss of life to date -- how long will our luck hold?

Our luck, as far as human life was concerned, almost gave out on Thursday morning, February 2, 1989, when 48 cars rolled down from the Continental Divide and collided into 3 parked locomotives just below Carroll College. A tanker car containing hydrogen peroxide exploded; \$5,000,000 worth of property damage was caused to Carroll College and thousands of residents were forced to evacuate their homes in sub-zero weather.

If it hadn't of been for the early morning hour, we can only imagine the injuries and deaths that could have resulted. I live close to the blast site, and my daughter had two friends sleeping over that night. They were in the living room asleep on the couch when the shockwave hit. Fortunately, the window glass didn't shatter, it only cracked. I am convinced those two little girls could just have well died in a shower of glass shards.

An employee in our office was not so lucky. The window in her room did break and she was covered with flying glass. The doctor removed glass from her arms and eyes; it could have been a lot worse.

The City of Helena is replete with similar miracle stories. The irony of this accident is that it could have been prevented had a two-way radio device been in place at the end of the train which would have allowed the crew to set the brakes by radio.

Imagine how many telemetry devices the cost of this one preventable accident could have paid for. But, we are not talking about money alone, we are talking about investing in the safety of our families, our communities, our children.

We owe it to the worker, the public and to our children to make rail transportation as safe as possible including the use of the most up to date technology available?

Testimony of Don Judge, HB 271  
February 14, 1991  
Page Two

Can company representatives here today tell the people of Montana that they have done everything possible to prevent a catastrophe when they refuse to install a two-way telemetry device designed to help prevent accidents?

When more rail accidents happen, and they will happen -- if there is loss of life -- workers want to be counted on the side of those that worked to improve safety, not on the side of the company that will again plead that they need to save a buck, or that this legislation would create a regulatory nightmare.

The AFL-CIO urges you to support the installation of telemetry devices for the safety of the public by supporting House Bill 271. Thank you.



HOUSE BILL 271  
END-OF-TRAIN DEVICE

EXHIBIT  
DATE 2/14/91  
HB 271

RAYMOND WEST  
STATE LEG. DIRECTOR, UTU  
9 N. Rodney St.  
Helena, MT 59601

Madam Chairman and members of the committee:

I rise in support of house bill 271 for various reasons, the bill would require the railroads operating in mountain grade territory to use the two-way end-of-train device, that are not equipped with occupied caboose as the last car of the train. The two-way system is the only option left that would require railroads to operate their trains safely. This system would not create a burden on the railroads, as they would have you to believe. It is a safety device if used that would keep the engineer informed of what the pressure is on the rear car of the train. It is important that the engineer know this at all times for safe train handling of the train. When the temperature is 20 or 30 degrees below zero makes a big difference to the engineer if the train is safe on mountain grade. Why would the railroads oppose the end-of-train devices, when in facts they testified to what advantages there were by using that system.

The problems that railroad train crews are having, there are no FRA rules or regulations that requires the railroads to use the end-of-train device. The only requirement by the FRA is a red light at the rear end of train at night.

I feel that it should be appropriate for states to pass laws that would protect railroad workers and the public. With all the train accidents that have occurred on mountain grades in last couple of years in Montana. That it certainly indicates there are a need for improvement As an experienced railroad Trainman I concur with the National Transportation Safety Board's recommendation that two-way train devices are badly needed on trains operating in mountain grade territory. It is time railroads should be put back on the right track and stop some of the accidents before there are some casualties.

I urge your support for House Bill 271.

Thank you

EXHIBIT 10A

DATE 2/14/91

HB 271

# BROTHERHOOD OF LOCOMOTIVE ENGINEERS

## MONTANA STATE LEGISLATIVE BOARD

Post Office Box 642 -- Livingston, Montana 59047

Telephone (406) 222-8739

### BOARD MEMBERS:

David B. Ditzel, Chairman  
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Craig A. Gilchrist  
Wlad W. Kukowski  
Horn G. Stanich



Serving Since 1863

Feb. 14, 1991

Dear Sir,

Please support and give a Do Pass recommendation to H.B.271 as Locomotive Engineers we need this legislation to safe guard the public and ourselves. We feel that this bill will take a large step in this area. Thankyou for your kind concentration.

Sincerely

A handwritten signature in black ink that reads "Craig A. Gilchrist". The signature is written in a cursive style.

Craig A. Gilchrist

Leg. Rep. BLE Div.298

Glasgow, Mt.

EXHIBIT 10A  
DATE 2/14/91  
HB 271

Feb 14, 1991

Dear Sir .

Please support and Give a Do Pass  
temommendation to H. B. 271. as Rail Road  
employees we feel that this is nessary  
~~to~~ to safeguard Rail Road Employee and  
the residents of Montana. Thank you  
for your support.

Cecil F. Ozark  
Leg Rep BmWE Loc 1189  
Glasgow Mt.

TESTIMONY OF LEO BERRY  
IN OPPOSITION TO HB 271  
House Labor and Employment Relations Committee  
February 14, 1991

The Federal Railroad Safety Act of 1970, 45 U.S.C. §421 et seq. provides that railroad safety rules, regulations, orders, and standards are to be nationally uniform. The Act's legislative history articulates its purpose by finding that the railroad industry's interstate character calls for a uniform body of regulation and enforcement in order to avoid an undue burden on interstate commerce. House Report, 1970 U.S. Code Cong. & Admin. News, 91st Cong., 2d Sess. pp. 4104, 4110-11. Congress' intent to establish a national uniform control of railroad safety and to preempt other regulation in this field has been consistently upheld by the Courts. Donelon v. New Orleans Terminal Company, 474 F.2d 1108 (5th Cir. 1973), cert. denied, 414 U.S. 855 (1973); Chicago Transit Authority v. Flohr, 570 F.2d 1305 (7th Cir. 1977); Southern Pacific Transportation Co. v. United States, 462 F.Supp. 1193 (E.D. Ca. 1978); Atchison, Topeka and Santa Fe Railway Company v. Illinois Commerce Commission, 453 F. Supp. 920 (N.D. Ill. 1977); National Association of Regulatory Commissioners v. Coleman, 542 F.2d 11,13 (3d. Cir. 1976).

The Federal Railroad Safety Act sets out a framework for determining when state requirements are preempted by federal law:

A state may adopt or continue in force any law, rule, regulation, order, or standard relating to railroad safety until such time as the Secretary has adopted a rule, regulation, order or standard covering the subject matter of such State requirement. A state may adopt or continue in force an additional or more stringent law, rule, regulation, order or standard relating to railroad safety when necessary to eliminate or reduce an essentially local safety hazard, and when not incompatible with any Federal law, rule, regulation, order, or standard, and when not creating an undue burden on interstate commerce.

45 U.S.C. § 434.

Under this statute, The threshold inquiry is whether the Federal Railroad Administration (FRA) has taken action (either affirmatively or negatively) covering the subject matter of the challenged state rule. Covering the subject matter means that the FRA has addressed it in whole or in part, either (i) by rule, regulation, etc., or (ii) by an agency decision that, for a particular subject matter, no rule or restriction is appropriate or necessary as a matter of rail safety. See Ray v. Atlantic Richfield Co., 435 U.S. 151, 178 (1977); Napier v. Atlantic Coast Laine R.R., 272 U.S. 605 (1926).

If the FRA has not taken action covering the subject matter, the state requirement would stand until the FRA does act. However, if the FRA has taken action, the additional or more stringent state rule will be preempted unless it is (1) necessary to eliminate or reduce an essentially local safety hazard; (2) not incompatible with any Federal rule; and (3) not an undue burden on interstate commerce.

In applying this analysis to HB 271, it is clear that the FRA has addressed the subject matter, i.e., the use of rear end telemetry devices on trains. The FRA issued a final rule on May 9, 1986 amending the power brake rules to permit use of a telemetry device (51 Fed. Reg. 17300). See 49 C.F.R. Part 232.19. This amendment allows a railroad to use a telemetry device in lieu of gauge and visual observation to convey information about the functioning of a train's air brake. The methods were found to provide equivalent levels of safety. The FRA also concluded that requiring telemetry devices capable of initiating an emergency brake application was unwarranted. 51 Fed. Reg. 17301.

Accordingly, since the FRA has addressed the use of rear end telemetry devices on trains, any requirement adopted by Montana concerning this subject must satisfy the three requirements of Section 434 of the Federal Railroad Safety Act outlined above. HB 271 fails the first test: that it address an essentially local safety hazard, i.e., one peculiar to a particular location. The bill addresses no localized safety hazards and by its terms would apply statewide.

The bill also fails the second test: incompatibility with a federal rule. The proposed requirement that telemetry devices be capable of initiating an emergency brake application from the rear of the train is incompatible with the FRA regulations, which require that rear end telemetry devices be designed so that an internal failure will not cause an undesired emergency brake application. 49 C.F.R. Part 232.19(b)(3). A telemetry device designed to have the ability to perform an emergency brake application, would be susceptible to an accident in the event of an internal failure.

Hence, under federal law, the proposed state legislation concerning rear end telemetry devices, would not be enforceable. Federal regulation generally preempts state requirements in order to give broad support to the Safety Act's mandate for national uniformity.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION

CSX TRANSPORTATION, INC., et al.,

Plaintiff,

Vs.

Civil Action No. 2:89-0480,

BOYCE GRIFFITH, et al.,

Defendants.

---

NORFOLK AND WESTERN RAILWAY  
COMPANY,

Plaintiff,

Vs.

Civil Action No. 2:89-0676,

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA, et al.,

Defendants.

MEMORANDUM OPINION

This case is before this Court on cross-motions of the parties for summary judgment. Plaintiffs, CSX Transportation, Inc., Consolidated Rail Corp., and Norfolk and Western Railway Company, filed suit seeking declaratory and injunctive relief against the Public Service Commission of West Virginia (PSC). Plaintiffs contend that W.Va. Code, § 24-3-1a (1989), requiring telemetry systems or as alternatives occupied cabooses, is preempted by the Locomotive Boiler Inspection Act, 45 U.S.C.

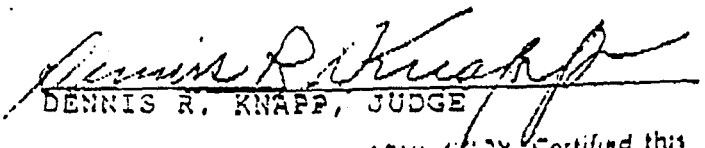
§ 22, et seq. (LBIA), and the Federal Railroad Safety Act of 1970 (FRSA), 45 U.S.C. § 421, et seq. The defendants, the PSC and its individual members, and intervenor, Railway Labor Executives' Association, contend that W.Va. Code, § 24-3-1a, is not preempted by federal law.

W.Va. Code, § 24-3-1a, requires that a railroad train over one thousand five hundred feet in length on any mainline track within any railroad yard be equipped with either a telemetry system or an occupied caboose. The telemetry system consists of a "head end device . . . located on the lead locomotive . . . .  
W.Va. Code, § 24-3-1a (a)(1)(4).

The Court, after considering the record, argument of counsel, and the applicable case law, is of the opinion that the statute at issue is preempted by the LBIA and FRSA. See Napier v. Atlantic Coast Line Railroad Company, 272 U.S. 605 (1926) (the LBIA was intended to occupy the field); Missouri Pacific R.R. v. Railroad Com'n of Texas, 850 F.2d 264 (5th Cir. 1988) ("MOPAC II") (Texas statute relating to cabooses is preempted by the LBIA and FRSA).

Accordingly, plaintiffs' motion for summary judgment is granted and defendants' motion is denied.

DATED: November 22, 1989

  
DENNIS R. KNAPP, JUDGE

A TRUE COPY. Certified this

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION

CSX TRANSPORTATION, INC., et al.,

Plaintiff,

Vs.

Civil Action No. 2:89-0480,

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Defendants.

---

NORFOLK AND WESTERN RAILWAY  
COMPANY,

Plaintiff,

Vs.

Civil Action No. 2:89-0676,

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA, et al.,

Defendants.

JUDGMENT ORDER

In accordance with the Court's Memorandum Opinion of even date herewith, which is now ORDERED filed and made a part of the record herein, it is hereby ORDERED that plaintiffs' motion for summary judgment be granted and defendant's like motion be denied.

It is further ORDERED that W.Va. Code, § 24-3-1a, is preempted by federal law and therefore is unenforceable.

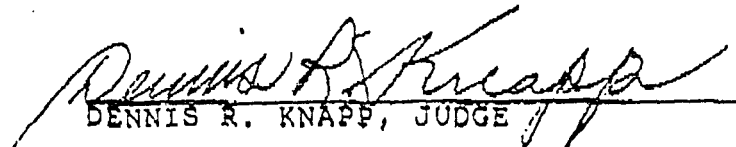
It is further ORDERED that this action be dismissed with



prejudice and stricken from the docket of this Court.

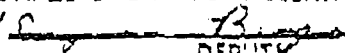
The Clerk is directed to mail certified copies of this order to counsel of record herein.

DATED: November 22, 1989

  
DENNIS R. KNAPP, JUDGE

A TRUE COPY, Certified this

NOV 22 1989

RONALD D. LAWSON, CLERK  
BY  DEPUTY

MONTANA RAIL LINK STATIONS (closed after January 1, 1987)

---

Thompson Falls - Plains/Paradise - Pablo/Pol. /Ronan -  
 Superior/St.Regis - Darby - Hamilton/Stevensville - Durmmond  
 Philipsburg - East Helena - Townsend/Toston - Three Forks/  
 Trident/Manhattan/Sappington/Harrison-Whitehall/Twin Bridges  
 Sheridan/Alder- Bozeman/Belgrade - Columbus/Big Timber -  
 Total 29.

MRL OPEN STATIONS AS OF JANUARY 1, 1991:

---

MISSOULA - HELENA - LIVINGSON - LAUREL TOTAL 4

UNION PACIFIC STATIONS:

---

BUTTE/SILVER BOW DILLON TOTAL 2

(note - these stations are pending closure decision by MPSC)

RARUS RAILROAD STATIONS:		MONTANA WESTERN RR	MONT CENRAL
ANACONDA TOTAL 1	BUTTE	TOTAL 1	DENTON TTL 1

---

Two laws suits are pending in State Disrict Courts relating to the 1987 and 1989 legislative amendments to Section(s) 69-14-202 MCA Montana Station Law:

Liberty County Commissioners vs. Montana PSC/and BN RR Co.  
 Helena 1st Judicial District. re: BNRC Chester Station

Treasure County/TCU vs. Montana PSC/BNRC 16th Judicial  
 Disrict - re: BNRC Hysham station closure

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Prior to the 1987 Amendment to Montana's Railroad Station Law the 9th Circuit Court of Appeals upheld the Montana Public Service Commission order that required railroads to maintain and staff station facilities as a Public Convenience and Necessity Standard requiring station facilities in communities of 1,000 or more inhabitants, and at least one in each county. See Burlington Northern Railroad Co. v. Dept. of Pub. Serv. Comm., 763 F.2d 1106 att 1109.

FACT SHEET  
MONTANA RAILROAD STATION FACILITIES CLOSED SINCE 1987  
-----

BURLINGTON NORTHERN:  
-----

Ophiem/Glentanna - Richland/Peerless - Scobey/Four Buttes -  
Plentywood - Medicine Lake/Reserve/Antelope - Culbertson  
Chinook- Big Sandy - Rudyard/Hingham - Chester- Cut Bank -  
Troy - Dutton - Conrad - Choteau - Lewistown -- Stanford-  
Mobile Agency serving Moccasin- Geyser- Hobson - Rynesford-  
and Judith Gap- Hysham - Miles City - Wibaux. Total 31

BN STATIONS PENDING PSC CLOSURE  
-----

HARDIN COLUMBIA FALLS TOTAL 2

BN STATIONS PETITIONED FOR CLOSURE:  
-----

SIDNEY FORT BENTON TOTAL 2

BN STATIONS SCHEDULED FOR CLOSURE PETITIONS:  
-----

WOLF POINT - MALTA - BROWNING - LIBBY - EUREKA - KALISPELL  
WHITEFISH - TOTAL 8

BURLINGTON NORTHERN STATIONS OPEN AS OF JANURAY 1, 1991:  
-----

Froid - Sidney - Glendive - Terry - Forsyth - Hardin- Laurel  
Billings - Great Falls- Fort Benton - Wolf Point - Glasgow -  
Malta - Harlem - Havre - Shelby - Sweet Grass - Browning -  
Columbia Falls - Whitefish - Kalispell - Eureka - Libby  
Helena - Garrison Total 25  
-----

(Note: where stations appear with / they were consolidated  
and considered open stations with agents performing staff  
functions. Source OPEN and PREPAY Tariff)

Prepared by Transportation Communications Union  
State Legislative Director James T. Mular

(more reverse side)

Testimony in Support of HB 628

Danny Oberg, Commissioner  
Montana Public Service Commission

The Montana Public Service Commission has chosen to remain neutral on this bill believing that it is a policy decision about depots that should be made by the Legislature. However, we have some concerns and believe that we can offer some insight into the policy decision before you. I have the Commission's permission to appear here on my own behalf as a proponent of the bill to highlight the choice you must make.

My primary concern about the current statute, which sets the criteria for evaluating the future of agency operations, is that it is my experience there is a gap between what many legislators expect and what the law says.

The Commission has interpreted the law passed last session as giving increased weight to public testimony in agency closure requests. Let me quote from a recent order:

DOCKET NO. T-9162, ORDER NO. 5982

16

39. The Commission determines that there are two tests to apply in determining whether an agency may be closed under § 69-14-202(2), MCA:

1. the narrower test (pre-1989 legislature) which requires a railroad to demonstrate that an agency is not required for the convenience and necessity of the shipping public; and
2. the broader test (per 1989 amendment) which requires the Commission to consider, in addition to testimony on shipping, any other facts and testimony related to burdens to the general public if the application were granted to close the agency.

OVER →

40. Public convenience and necessity is not an absolute standard that can be determined by a formula. It must be determined by the facts and circumstances of each case. Under the first test, the Commission must weigh the needs of the shippers served by the railroad for rail service against the railroad company's burden of maintaining agency service. The second test requires the additional consideration of the needs and concerns of the general public in the communities served by the railroad.

41. The Commission does not need to determine in this proceeding which test to apply. Application of either test results in a determination that public convenience and necessity does not require the agency at Chester to remain open.

The primary test remains Public Convenience and Necessity which largely centers on the testimony of bona fide shippers who actually pay the freight bills. In eastern Montana these are generally grain elevators.

When there is no testimony from shippers the Commission has generally granted the closures despite protests from the community over health and welfare concerns. It has been our experience that BN has been able to make its peace with most of its shippers.

As I read this bill the concerns of community members would be elevated to the same level as shipper testimony and the Commission could keep depots open even in the absence of shipper testimony.

You, as the policy makers of this state have a fundamental decision to make. If it is your intent to keep depots open, HB 628 will likely result in the Commission denying more BN applications for agency closures. If it is your intent to have depot closures based upon a two fold test (shipper testimony and the burdens on the public) then the present law should be kept. If you reject this measure, then I believe the bottom line is that depots will be closed.

I personally support HB 628 because I believe it reflects what Montanans want. They have told me time and time again that depots should be kept open not only to have a human and personal contact with the shippers but to have a local contact in the community for health and welfare community concerns.



EXHIBIT 14  
DATE 2/14/91  
HB 628

DONALD R. JUDGE  
EXECUTIVE SECRETARY

110 WEST 13TH STREET  
P.O. BOX 1176  
HELENA, MONTANA 59624

(406) 442-1708

Testimony of Don Judge on HB 628 before the House Labor Committee on Thursday, February 14, 1991.

-----

Madam Chair, members of the Committee, for the record I am Don Judge, Executive Secretary of the Montana State AFL-CIO here today to testify in favor of House Bill 628.

Members and affiliates of the Montana State AFL-CIO have adopted several resolutions on railroad station closures as a result of legislation passed in 1987. These resolutions make it clear that the labor movement is concerned with station closures and their impact on the economy and well being of Montana communities.

Union members believe that such stations or agencies provide many small and rural communities and local shippers with direct contact and personal attention that would otherwise be relegated to distant cities and long distance phone calls. It seems to us that such local agencies could generate more business for the railroad, which in turn could mean more revenue and could finally insure a brighter future for rail transportation in this state.

Clearly, workers feel that stations in local Montana communities serve an economic need as well as promoting the safety, health, comfort, and convenience of the railroad's patrons, its employees, and the public.

For these reasons and those outlined by the previous proponents, the Montana State AFL-CIO urges you to support HB 628 and give it a "do pass" recommendation. Thank you for considering our position.



# CARL WEISSMAN & SONS

INCORPORATED

EXHIBIT 14A Page 1 of 2  
DATE 2/14/91  
628 & 730

CORPORATE OFFICES • 420 THIRD STREET SOUTH • P.O. BOX 1809 • GREAT FALLS, MONTANA 59403-1809 • TELEPHONE (406) 781-4848

February 14, 1991

Carolyn Squires  
Chairperson, Labor and Relations Committee  
Capitol Station  
Helena, Montana 59620

Facsimile: 1-449-8610

Re: House Bills 628 & 730

Ms Squires,

Thank you for the opportunity to offer testimony. I do wish that my, and other business interests in Montana, have the opportunity to be heard.

Generally command economics constitutes bad economics; these bills constitute command economics. We struggle and maintain that in the U.S.A., we have a free market economy. Russia has a command economy. Russia is giving up their command economy because it just does not work. Why should we be so eager to adopt a command economy when the biggest communist experience in the world is collapsing?

The way I look at these bills is a continuation of the philosophy that has cost Montana, the chance to be competitive. What business does the State have in telling a business where and where not they may have employees? I stand here and tell you that the Rail Road is not perfect and I have some problems with how they do business; I equally feel that they have the right to operate their business on a profit and loss basis, not a political one. It is more than time for the Government to look to governance, and not commanding the private sector. I do not know of a private enterprise that can stand to continually operate at a demanded loss, without going into receivership. Eastern Air Lines, the latest large transportation company casualty, operated under the commands of regulators and excessive labor staffing demands. They went out of business and everyone lost their job. We do not need that to happen, eventually, to our main railroad in this state, because of state commanded station staffing levels.

CARL

WEISSMAN & SONS  
INCORPORATED

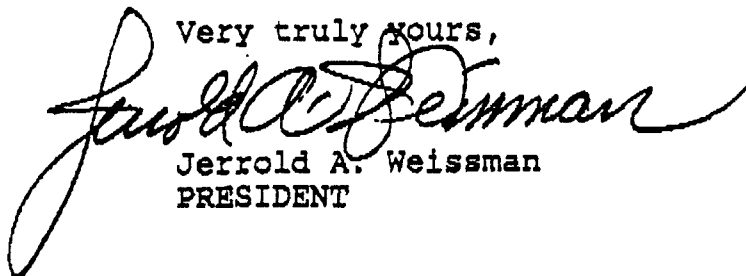
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Pg. 2 of 2

CORPORATE OFFICES • 420 THIRD STREET SOUTH • P.O. BOX 1809 • GREAT FALLS, MONTANA 59403-1809 • TELEPHONE (406) 781-4848

Carolyn Squires  
February 14, 1991  
Page -2-

I do hope that you will make the contents of this letter known to the  
LABOR AND EMPLOYMENT RELATIONS COMMITTEE. I am against any further  
consideration of House Bills 628 and 730.

Very truly yours,



Jerrold A. Weissman  
PRESIDENT





**Cyprus Industrial Minerals Company**  
An Affiliate of Cyprus Minerals Company

EXHIBIT 14 B

DATE 2/14/91

WESTERN TALC OPERATIONS HB 628 & 730  
767 Old Yellowstone Trail  
Three Forks, Montana 59752  
Telephone (406) 285-3271  
FAX (406) 285-3323

February 14, 1991

House Subcommittee

Ref: House Bill 628 & 730

Cyprus Industrial Minerals, which owns and operates three mines and one mill in Montana, is one of the world's largest producers of talc ore and talc products. Cyprus employs approximately 175 people within the state.

Examination of both House Bill 628 & 730 reveals no language which would provide any benefit to Cyprus. The impact of implementation of either bill, and the increased cost which the affected railroads would incur, may result in higher freight cost. Increased freight rates would have a negative impact on Cyprus. Higher costs are passed along to our customers which would place Cyprus at a competitive disadvantage to out of state talc producers. Any loss of business due to these increased costs would result in the loss of Montana jobs.

The present system of direct contact with the railroad for equipment needs and billing concerns has been an improvement over the old method of working through the local railroad agent.

Careful consideration should be given to the impact of this legislation on Montana businesses reliant on railroad service.

Sincerely,

William S. Carrier  
Distribution Coordinator

EXHIBIT 15  
DATE 2/14/91  
HB 663

## AMENDMENT FOR HB663

### AMENDMENT:

Page 1, Line 17, ADD: 27-5-115, after "except"

(4) Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters on the first page of the contract; and unless such notice is displayed thereon, the contract may not be subject to arbitration.

History: En. Sec. 4, Ch. 684, L. 1985; amd. Sec. 1, Ch. 236, L. 1989; amd. Sec. 1, Ch. 611, L. 1989.

#### Compiler's Comments

1989 Amendments: Chapter 236 in (2), at beginning of second sentence, inserted exception clause; inserted (3) allowing members of trade or professional organization to submit future controversies to arbitration; and made minor changes in phraseology and form.

Chapter 611 in (2)(b) changed dollar amount limitation from \$35,000 or less to \$5,000 or less; and made minor changes in form and phraseology.

#### Cross-References

Arbitration of unlawful termination of public employee, 2-18-621.

No specific performance of arbitration agreement prior to 1985, 27-1-412 (prior to 1985 amendment).

Statute of Limitations tolled by submission to arbitration, 27-2-405.

Illegal objects and provisions of contracts, Title 28, ch. 2, part 7.

Partner's authority to submit partnership claim to arbitration, 35-10-301.

Arbitration of public employees' collective bargaining issue, 39-31-306, 39-31-310, 39-31-311.

Arbitration of firefighters' collective bargaining issue, Title 39, ch. 34, part 1.

Arbitration of new motor vehicle warranty disputes, 61-4-515.

Arbitration of threshers' lien claims, 71-3-801.

**27-5-115. Proceedings to compel or stay arbitration.** (1) On the application of a party showing an agreement described in 27-5-114 and the opposing party's refusal to arbitrate, the district court shall order the parties to proceed with arbitration; but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of that issue raised and shall order arbitration if it finds for the applying party or deny the application if it finds for the opposing party.

(2) On application, the district court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if the court finds for the applying party. If the court finds for the opposing party, it shall order the parties to proceed to arbitration.

(3) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection (1), the application must be made in that court. Otherwise, and subject to 27-5-323, the application may be made in any court of competent jurisdiction.

(4) An action or proceeding involving an issue subject to arbitration must be stayed if an order or application for arbitration has been made under this section. If an issue is severable, the stay may be with respect to the severable issue only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(5) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or good faith or because no fault or grounds for the claim sought to be arbitrated have been shown.

History: En. Sec. 5, Ch. 684, L. 1985.

#### Cross-References

No specific performance prior to 1985, amendment).

Statute of Limitations on arbitration, 27-2-405.

#### 27-5-201 through

#### Compiler's Comments

##### *Histories of Repealed*

##### **27-5-201.** En. Sec.

Stat.; re-en. Sec. 362, p.

436, p. 122, Cod. Stat.

164, L. 1877; re-en. Sec.

1879; re-en. Sec. 476, 1st

re-en. Sec. 2274, C. Civ.

7369, Rev. C. 1907; re-

1921; Cal. C. Civ. Proc.

9976, R.C.M. 1935; R.C.

**27-5-202.** Ap. p. S.

Stat.; re-en. Sec. 361, p.

435, p. 122, Cod. Stat.

164, L. 1877; re-en. Sec.

1879; re-en. Sec. 475, 1st

re-en. Sec. 2273, C. Civ.

7368, Rev. C. 1907; re-

1921; Cal. C. Civ. Proc.

9975, R.C.M. 1935; Sec.

#### 27-5-204 through

##### **27-5-211.** Ap.

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History: En. Sec. 6,

**27-5-212.** Maj

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History: En. Sec. 7,

**27-5-213.** Hes

following apply:

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necessary and, on

Partner's authority to submit partnership claim to arbitration, 35-10-301.

Arbitration of new motor vehicle warranty disputes, 61-4-515.

**27-5-217. Change of award by arbitrators.** On the application of a party or, if an application to the court is pending under 27-5-311, 27-5-312, or 27-5-313, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in 27-5-313(1)(a) and (1)(c) or for the purpose of clarifying the award. The application must be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given immediately to the opposing party, stating that he must serve his objections thereto, if any, within 10 days from the notice. A modified or corrected award is subject to the provisions of 27-5-311 through 27-5-313.

History: En. Sec. 12, Ch. 684, L. 1985.

**27-5-218. Fees and expenses of arbitration.** Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, must be paid as provided in the award.

History: En. Sec. 13, Ch. 684, L. 1985.

#### Cross-References

Cost of arbitration between firefighter and public employer, 39-34-106.

## Part 3

### Procedure Following Award

**27-5-301 through 27-5-304. Repealed.** Sec. 28, Ch. 684, L. 1985.

#### Compiler's Comments

##### *Histories of Repealed Sections:*

**27-5-301.** En. Sec. 308, p. 108, Bannack Stat.; re-en. Sec. 364, p. 208, L. 1867; re-en. Sec. 438, p. 123, Cod. Stat. 1871; re-en. Sec. 465, p. 165, L. 1877; re-en. Sec. 465, 1st Div. Rev. Stat. 1879; re-en. Sec. 478, 1st Div. Comp. Stat. 1887; re-en. Sec. 2276, C. Civ. Proc. 1895; re-en. Sec. 7371, Rev. C. 1907; re-en. Sec. 9978, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1287; re-en. Sec. 9978, R.C.M. 1935; R.C.M. 1947, 93-201-7.

**27-5-302.** En. Sec. 309, p. 108, Bannack Stat.; re-en. Sec. 365, p. 209, L. 1867; re-en. Sec. 439, p. 123, Cod. Stat. 1871; re-en. Sec. 466, p. 165, L. 1877; re-en. Sec. 466, 1st Div. Rev. Stat. 1879; re-en. Sec. 479, 1st Div. Comp. Stat. 1887; re-en. Sec. 2277, C. Civ. Proc. 1895; re-en. Sec. 7372, Rev. C. 1907; re-en. Sec. 9979, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1288; re-en. Sec. 9979, R.C.M. 1935; R.C.M. 1947, 93-201-8.

**27-5-303.** En. Sec. 307, p. 108, Bannack Stat.; re-en. Sec. 363, p. 208, L. 1867; re-en. Sec. 437, p. 123, Cod. Stat. 1871; re-en. Sec. 464, p. 164, L. 1877; re-en. Sec. 464, 1st Div. Rev. Stat. 1879; re-en. Sec. 477, 1st Div. Comp. Stat. 1887; re-en. Sec. 2275, C. Civ. Proc. 1895; re-en. Sec. 7370, Rev. C. 1907; re-en. Sec. 9977, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1286; re-en. Sec. 9977, R.C.M. 1935; R.C.M. 1947, 93-201-6(part); amd. Sec. 26, Ch. 12, L. 1979.

**27-5-304.** En. Sec. 310, p. 109, Bannack Stat.; re-en. Sec. 366, p. 209, L. 1867; re-en. Sec. 440, p. 123, Cod. Stat. 1871; re-en. Sec. 467, p. 165, L. 1877; re-en. Sec. 467, 1st Div. Rev. Stat. 1879; re-en. Sec. 480, 1st Div. Comp. Stat. 1887; re-en. Sec. 2278, C. Civ. Proc. 1895; re-en. Sec. 7373, Rev. C. 1907; re-en. Sec. 9980, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1289; re-en. Sec. 9980, R.C.M. 1935; R.C.M. 1947, 93-201-9.

**27-5-305 through 27-5-310 reserved.**

**27-5-311. Confirmation of award by court.** Upon the application of a party, the district court shall confirm an award unless within the time limits

imposed in this chapter grounds are urged for vacating, modifying, or correcting the award, in which case the court shall proceed as provided in 27-5-312 and 27-5-313.

History: En. Sec. 14, Ch. 684, L. 1985.

**27-5-312. Vacating an award.** (1) Upon the application of a party, the district court shall vacate an award if:

- (a) the award was procured by corruption, fraud, or other undue means;
  - (b) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
  - (c) the arbitrators exceeded their powers;
  - (d) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of 27-5-213, as to prejudice substantially the rights of a party; or
  - (e) there was no arbitration agreement and the issue was not adversely determined in proceedings under 27-5-115 and the party did not participate in the arbitration hearing without raising the objection.
- (2) The fact that the relief was such that it could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

(3) An application under this section must be made within 90 days after delivery of a copy of the award to the applicant, except that if it is predicated upon corruption, fraud, or other undue means, it must be made within 90 days after such grounds are known or should have been known.

(4) In vacating the award on grounds other than those stated in subsection (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or, if the agreement does not provide a method of selection, by the court in accordance with 27-5-211 or, if the award is vacated on grounds set forth in subsection (1)(c) or (1)(d), the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with 27-5-211. The time within which the agreement requires the award to be made is applicable to the rehearing and commences on the date of the order for rehearing.

(5) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

History: En. Sec. 15, Ch. 684, L. 1985.

**27-5-313. Modification or correction of award by court.** (1) Upon application made within 90 days after delivery of a copy of the award to the applicant, the district court shall modify or correct the award if:

- (a) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;
- (b) the arbitrators awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
- (c) the award is imperfect in a matter of form not affecting the merits of the controversy.

(2) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

History: En. Sec. 16, Ch. 684, L. 1985.

**27-5-314. Judgment on award — costs.** (1) Upon the granting of an order confirming, modifying, or correcting an award, judgment must be entered in conformity with the order and be enforced as any other judgment. Costs of the application and of the proceedings subsequent thereto and disbursements may be awarded by the court.

(2) The judgment may be docketed as if rendered in an action.

History: En. Sec. 17, Ch. 684, L. 1985.

**27-5-315 through 27-5-320 reserved.**

**27-5-321. Applications to court — how made.** Except as otherwise provided, an application to the court under this chapter must be by motion and must be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order must be served in the manner provided by law for the service of a summons in an action.

History: En. Sec. 18, Ch. 684, L. 1985.

**27-5-322. Jurisdiction of district court.** The making of an agreement described in 27-5-114 providing for arbitration in this state confers jurisdiction on the district court to enforce the agreement under this chapter and to enter judgment on an award under the agreement.

History: En. Sec. 19, Ch. 684, L. 1985.

#### **Cross-References**

Statute of Limitations tolled by submission to arbitration, 27-2-405.

**27-5-323. Venue.** An initial application must be made to the court of the county in which the agreement provides the arbitration hearing must be held or, if the hearing has been held, in the county in which it was held. Otherwise, the application must be made in the county where the adverse party resides or has a place of business or, if he has no residence or place of business in this state, to the court of any county. All subsequent applications must be made to the court hearing the initial application unless the court otherwise directs. No agreement concerning venue involving a resident of this state is valid unless the agreement requires that arbitration occur within the state of Montana. This requirement may only be waived upon the advice of counsel as evidenced by counsel's signature thereto.

History: En. Sec. 20, Ch. 684, L. 1985.

**27-5-324. Appeals.** (1) An appeal may be taken from:

(a) an order denying an application to compel arbitration made under 27-5-115;

(b) an order granting an application to stay arbitration made under 27-5-115(2);



EXHIBIT 17  
DATE 2/14/91  
HB HJR 18

DONALD R. JUDGE  
EXECUTIVE SECRETARY

110 WEST 13TH STREET  
P.O. BOX 1176  
HELENA, MONTANA 59624

(406) 442-1708

Testimony of Don Judge on House Joint Resolution 18 before the  
House Labor Committee, February 14, 1991  
-----

Madam Chair, members of the Committee, for the record my name is  
Don Judge representing the Montana State AFL-CIO, and we are here  
today to give our strong support to House Joint Resolution 18.

This resolution would support the McBride principle of fair  
employment in Northern Ireland and urge private companies and the  
state to consider these principles before doing business in  
Northern Ireland. The question arises, why would unemployment in  
Northern Ireland cause Montana, or even the United States?  
Because many American, and perhaps even Montanan dollars are  
invested there, and may be adding to the problem.

Northern Ireland is an occupied land, controlled under the arms  
of Great Britain. The conflict in that country is over a century  
old and was said to have come about because of religion.  
Perhaps, but the consequences are fully economic. This occupied  
land should be of as much concern to Americans as any other  
occupied country, Kuwait for example.

In 1989, ten percent of all workers in Northern Ireland were  
employed by American companies. In that same year, the AFL-CIO  
adopted a resolution at our national convention that supports any  
legislation that would require American firms operating in  
Northern Ireland to adhere to the McBride principles. We firmly  
believe in fair employment world wide regardless of race, color,  
creed, sex, or religion.

Madam Chair, Members of the Committee, in this country we know  
all too well the ramifications of high unemployment among workers  
of our cities. Drug abuse, violent crime, poverty, homelessness,  
broken families, and much more can be attributed to workers not  
having meaningful productive jobs.

We know too, that we could address many of those problems if  
people could simply find meaningful work. In Northern Ireland,  
the problems are much the same. Until a significant sector of  
the nation's society becomes gainfully employed, we can expect  
the conflict will continue.

We strongly urge you to give House Joint Resolution 18 a do pass  
recommendation.

Thank you.

Amendments to House Bill No. 600  
First Reading Copy

Requested by Rep. Driscoll  
For the House Committee on Labor and Employee Relations

Prepared by Eddye McClure  
February 14, 1991

1. Page 1, line 23 through page 2, line 7.

Following: line 22

Strike: "1.00" through "1.56" on line 25

Insert: "1.00"

Strike: "1.76" on page 2, line 1.

Insert: "1.75"

Strike: "1.96" on line 2

Insert: "1.95"

Strike: "2.16" on line 3

Insert: "2.15"

Strike: "2.36" on line 4

Insert: "2.35"

Strike: "2.56" on line 5

Insert: "2.55"

Strike: "2.76" on line 6

Insert: "2.75"

Strike: "2.96" on line 7

Insert: "2.95"



Greg Talbot

TRANSPORTATION DIVISION

9401 Indian Creek Parkway  
P.O. Box 29136  
Overland Park, Kansas 66201-9136  
Telephone (913) 661-4320

November 15, 1990

Mr. J. T. Johnston  
Director Contract Administration  
National Railroad Passenger Corporation  
60 Massachusetts Avenue, N.E.  
Washington, D. C. 20002

Dear Mr. Johnston:

Reference my letters dated April 3 and July 20, 1990 regarding notice of intent to change job assignments and petition for closure of the "avoidable" passenger stations at Wolf Point and Malta, Montana.

This is to advise that in January 1991, Burlington Northern intends to file for petition of closure of the agency at Malta, Montana. The agency at Browning, Montana which also handles no freight business will likewise be included in petition for closure.

Since no reply has been received to date to the above referenced letters, would appreciate your involvement in insuring a response to this request before December 5, 1990. Please advise date and level of staffing, if any, Amtrak intends to provide at Malta and Browning, Montana.

Sincerely,

W. A. Peil  
NRPC Operations Officer

cc: ☒ L. W. Bullock  
☒ J. E. Lawrence

Jim Mulon  
Bob Penner thought you might  
like to read this.  
If you could call me sometime  
I would like to talk to you  
about this. Thank you  
Robert Swingen  
agent Malta work 654-1622  
Home 228-4736



EXHIBIT 20  
DATE 2/14/91  
HB 730

DONALD R. JUDGE  
EXECUTIVE SECRETARY

110 WEST 13TH STREET  
P.O. BOX 1176  
HELENA, MONTANA 59624

(406) 442-1708

Testimony of Don Judge of House Bill 730 before the House Labor Committee,  
February 14, 1991.

-----

Madam Chair, members of the Committee, I am of course Don Judge, Executive Secretary of the Montana State AFL-CIO. I would like to offer brief testimony in support HB 730.

I think the arguments given on behalf of HB 628 could apply equally as well to House Bill 730.

A station represents more than just another facility for the railroad to maintain. To a small rural community, in this case communities over 2,000 in population or a county seat, a station is part of their economic lifeline.

Support for such local station houses is not a sentimental hearkening back to the past, but a resolute move to prepare for the business, transportation, and economic needs of Montana in the future.

Unions and the members they represent recognize that staffed stations are a vital link to moving Montana forward. In an age where rural America, and rural Montana, are floundering, we don't think it's wise to pull another rug from under their feet. Economic growth and development depend on a vital and usable transportation system. HB 730 could move Montana forward towards a brighter future.

We urge you to support House Bill 730 and give it a "do pass" recommendation. Thank you for considering our position.

EXHIBIT 21  
DATE 2/14/91  
HB 730

Amendments to House Bill No. 730  
First Reading Copy

Requested by Rep. Brown  
For the House Committee on Labor and Employee Relations

Prepared by Eddye McClure  
February 14, 1991

1. Page 2, lines 1 through 3.

Following: "1991"

Strike: remainder of line 1 through "2,000" on line 3

Following: "." on line 3

Insert: "This subsection does not apply to a short-line railroad  
operating in three counties or less."

EXHIBIT 22  
DATE 2/14/91  
HB 663

Amendments to House Bill No. 663  
First Reading Copy

Requested by Rep. Dowell  
For the House Committee on Labor and Employee Relations

Prepared by Eddy McClure  
February 14, 1991

1. Page 1, line 17.  
Following: "except"  
Insert: "27-5-115,"

EXHIBIT 23  
DATE 2/14/91  
HB 628

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL VOTE

DATE 2/14 BILL NO. 628 NUMBER \_\_\_\_\_

MOTION: Do Pass

NAME	AYE	NO
REP. JERRY DRISCOLL	✓	
REP. MARK O'KEEFE	✓	
REP. GARY BECK	✓	
REP. STEVE BENEDICT		✓
REP. VICKI COCCHIARELLA	✓	
REP. ED DOLEZAL	✓	
REP. RUSSELL FAGG		✓
REP. H.S. "SONNY" HANSON		✓
REP. DAVID HOFFMAN		✓
REP. ROYAL JOHNSON		✓
REP. THOMAS LEE		✓
REP. BOB PAVLOVICH	✓	
REP. JIM SOUTHWORTH	✓	
REP. FRED THOMAS		✓
REP. DAVE WANZENRIED	✓	
REP. TIM WHALEN	✓	
REP. TOM KILPATRICK, VICE-CHAIRMAN	✓	
REP. CAROLYN SQUIRES, CHAIR	✓	
TOTAL	11	9

EXHIBIT 24  
DATE 2/14/91  
HB 730

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL VOTE

DATE 2/14/91 BILL NO. 730 NUMBER       

MOTION: Do Pass As Amended

NAME	AYE	NO
REP. JERRY DRISCOLL	✓	
REP. MARK O'KEEFE	✓	
REP. GARY BECK	✓	
REP. STEVE BENEDICT		✓
REP. VICKI COCCHIARELLA	✓	
REP. ED DOLEZAL	✓	
REP. RUSSELL FAGG		✓
REP. H.S. "SONNY" HANSON		✓
REP. DAVID HOFFMAN		✓
REP. ROYAL JOHNSON		✓
REP. THOMAS LEE		✓
REP. BOB PAVLOVICH	✓	
REP. JIM SOUTHWORTH	✓	
REP. FRED THOMAS		✓
REP. DAVE WANZENRIED	✓	
REP. TIM WHALEN	✓	
REP. TOM KILPATRICK, VICE-CHAIRMAN	✓	
REP. CAROLYN SQUIRES, CHAIR	✓	
TOTAL	11	7

Amendments to House Bill No. 600  
First Reading Copy

Requested by Rep. Driscoll  
For the House Committee on Labor and Employee Relations

Prepared by Eddy McClure  
February 14, 1991

1. Page 2, line 8.

Following: line 7

Insert: "NEW SECTION. Section 2. Coordination instruction. If House Bill No. 256 is passed and approved and if it includes a section that amends 39-51-2204, then the schedule of the individual's ratio of total base period earnings in [section 1 of this act] replaces the schedule of the individual's ratio of total base period earnings in House Bill No. 256."

Renumber: subsequent section

HOUSE OF REPRESENTATIVES  
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL VOTE

DATE 2/14/91 BILL NO. 600 NUMBER \_\_\_\_\_

MOTION: Do Pass As Amended

NAME	AYE	NO
REP. JERRY DRISCOLL	✓	
REP. MARK O'KEEFE	✓	
REP. GARY BECK	✓	
REP. STEVE BENEDICT		✓
REP. VICKI COCCHIARELLA	✓	
REP. ED DOLEZAL	✓	
REP. RUSSELL FAGG		✓
REP. H.S. "SONNY" HANSON		✓
REP. DAVID HOFFMAN		✓
REP. ROYAL JOHNSON		✓
REP. THOMAS LEE		✓
REP. BOB PAVLOVICH	✓	
REP. JIM SOUTHWORTH	✓	
REP. FRED THOMAS		✓
REP. DAVE WANZENRIED	✓	
REP. TIM WHALEN	✓	
REP. TOM KILPATRICK, VICE-CHAIRMAN	✓	
REP. CAROLYN SQUIRES, CHAIR	✓	
TOTAL	11	7



**HOUSE OF REPRESENTATIVES  
VISITOR REGISTER**

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO. 506

DATE 2/14/91

SPONSOR(S) Rep. John Cobb

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Tim Reardon	A. L. Church	✓	
GENE PHILLIPS	ALLIANCE AMER. INC.	Amend ✓	<del>✗</del>
Jaqueline Terrell	Am. Mus. Assoc.	Amend ✓	<del>✗</del>
George Wood	Int. Self Insur. Assoc.	Amend ✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

**HOUSE OF REPRESENTATIVES  
VISITOR REGISTER**

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO. 271

1062

DATE 2/14/91

SPONSOR(S) Rep. Jerry Driscoll

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ron Burke - Billings	IBEW	✓	
Ron Perring "	"	✓	
DAVID DITZEL	BRO. of Locomotive Engrs	✓	
Allan Oines	" " "	✓	
JAMES T. MULAR BUTTE	MONT VT RAIL LABOR LEGIS. COUNCIL TCY	✓	
mw Repos. Cascade MT	BMWIE Rail Labor	✓	
Fran Marcneau <del>W.T.</del> - Whitefish MT	U.T.U.	✓	
Don Slaybaker Whitefish	B.L.E	X	
W.S. HENDERSHOT Whitefish MT		X	
Chris Little	BLE	X	
Raymond West	UTU	X	
John Greene	Mont Western A.A.		✓
Dick Hitchcock	Cent. MT Rail, Inc		X
Paul Lein	BN		✓

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DON EDWARDS  
LEO BERRY

OCBLW  
BNRR

X

**HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER**

242

Lybor

COMMITTEE

BILL NO.

271

DATE

2-14-91

SPONSOR(S)

Driscoll

PLEASE PRINT

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PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
DJ Boen	BNAK		✓
JOE BRAND	SELF	X	
Edward L. LIES	MONTANA STATE COUNCIL OF POSTERIOR FETTER	X	
Ken D. Kemmerer	BLE.	X	
Teed Dagemo	BLE	X	
Don Judge	MT STATE AFL-CIO	✓	
Olga Kuning	MSCA	✓	
MARK LANGBOLT	AFSCME	✓	
JIM JENSEN	MT ENVIR INFO Center	X	

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**HOUSE OF REPRESENTATIVES  
VISITOR REGISTER**

1 of 2

LABOR & EMPLOYMENT RELATIONS COMMITTEE BILL NO. 628

DATE 2/14/91 SPONSOR(S) Rep. Tim Whalen

**PLEASE PRINT**

**PLEASE PRINT**

**PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
WILLIAM S. CARRIER William S. Carrier	CYPRUS IND. MIN.		X
JAMES T. MILLAR BUTTE	MONT. JT RAIL LABOR LEGIS. COUNCIL TOLD	X	
mw Pupus <sup>Cascade Mt</sup> <del>Rail Labor Union</del>	Bmw E Rail Labor	X	
Don Slaybaugh <sup>Whitefish</sup>	B.C.E	X	
W. Stenderliath <sup>Whitefish</sup>	UTU	X	
Fran Marceau - Whitefish	UTU	U	
Bonnie Ardisson <sup>Three Forks</sup>	Holnam Inc - Ideal Cement		X
Raymond West	UTU	X	
John Greeve	Mont Western RR		X
Dick Hitchcock	Cent. MT Rail		X
GEORGE O'DONN	PACIFIC HIRB & FUR		X
Lanny Chung	Self	✓	
Pat Zein	BN		✓
Loan Sammons	Pardue Grain Inc		X

**PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.**

Don Edwards

OLBW

Bernie

MEL

Bernie

BNRR

X  
/

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

2 of 2

Labour & Employment Relations COMMITTEE

BILL NO. 628

DATE 2/14/91 SPONSOR(S) Rep. Tim Whalen

PLEASE PRINT

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PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
D J Buem	B & N		—
FRED SIMPSON	MONTANA RAIL LINK		X
Don Judge	MT STATE AFL-CIO	✓	
John Fitzpatrick	Pegasus Gold Corp		X
MARK LANGDOFF	AFSCME	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO. 663

DATE 2/14/91

SPONSOR(S) Rep. Tim Dowell

PLEASE PRINT

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PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Phil Campbell	Mont. Ed. Assoc.	X	

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ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

**HOUSE OF REPRESENTATIVES  
VISITOR REGISTER**

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO. HJR 18

DATE 2/14/91

SPONSOR(S) Rep. Dan Harrington

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ron Burke Billings	IBEW	✓	
Ron Perring "	Electrical Workers International Brotherhood	✓	
Don Saybault Whitefish	BLE	X	
W.S. Henderson Whitefish	UTU	X	
Fran Marceau - whitefish	UPU	✓	
Philip M Dail Jr	BLE	✓	
Ed Sheehy	RETIRED	✓	
Don Judge	MT STATE AFL-CIO	✓	
J.C. Wengamier	HELENA AOH	✓	
Don Edwards	OCAW	X	

**PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.**

**HOUSE OF REPRESENTATIVES  
VISITOR REGISTER**

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO. 600

DATE 2/14/91

SPONSOR(S) Rep. Jerry Driscoll

**PLEASE PRINT**

**PLEASE PRINT**

**PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ron Pering - Billings	IBEW	✓	
RON BURKE BILLINGS	IBEW	✓	
DON SCARBASHT WHITEFISH	B.C.E	X	
Fran Marceau - Whitefish	UTU	✓	
Danny Olney	PSC	✓	
Chas. Kinner	MSA	✓	
Al Buck Boles	MT Chamber		✓
DON EDWARDS	OCBW	X	
Riley Johnson	NFIB		X
Don Judge	MT STATE AFL-CIO	X	

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**HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER**

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO. 730

1062

DATE 2/14/91

SPONSOR(S) Rep. Dave Brown

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
William S. Carrier	CYPRUS IND. MIN.		X
JAMES T. MULAR BUTTE	MONT JT. RAIL LABOR LEGIS. COUNCIL	X	
Matt Pepos	BmwE Rail Labor	X	
Don Sca-BAUGH	B.L.E. WHITEFISH	X	
Fran Marceau Fran Marceau	U.T.U - whitefish	✓	
W.S. Hruschak Whitefish	LETL	X	
Bonnie ARDISON Three Forks	Holnam Inc - Ideal Cement		X
Raymond WEST			
GEORGE O'DORIS	PACIFIC HIDE & FUR		X
PETE VANDER VEN	CENTENNIAL MILLS		✓
John Greeve	MONT W. COAST RR		X
Dick Hitchcock	Cent. MT Rail, Inc.		X
Lanny Oberg	self	X	
Pat Lenn	BN		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

DAN EDWARDS  
Les BERRY

ALOW  
BNRR

6  
X

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

LABOR COMMITTEE BILL NO. 730 2062  
DATE 2/14 SPONSOR(S) D. Brown

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
DJ Brown	BNXX		✓
Roger Sammons	Pardue Grain, Inc		X
FRED SIMPSON	MONTANA RAIL LINK		X
Dor Judge	MT STATE AFL-CIO	X	
Chet Kinner	MSCH	X	
John Fitzpatrick	Pegasus Gold Corp		X
MARK LANGRISH	AFSCME	X	
DAVE BROWN	HD#72-sponsor	X	
TED HAGENO	BLE	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.