

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON HIGHWAYS & TRANSPORTATION**

**Call to Order:** By **CHAIRMAN SHIELL ANDERSON**, on February 10, 1995, at 3:28 p.m.

#### **ROLL CALL**

**Members Present:**

Rep. Shiell Anderson, Chairman (R)  
Rep. Rick Jore, Vice Chairman (Majority) (R)  
Rep. Patrick G. Galvin, Vice Chairman (Minority) (D)  
Rep. Joe Barnett (R)  
Rep. Matt Brainard (R)  
Rep. Robert C. Clark (R)  
Rep. Charles R. Devaney (R)  
Rep. Marian W. Hanson (R)  
Rep. Don Larson (D)  
Rep. Rod Marshall (R)  
Rep. Linda McCulloch (D)  
Rep. Daniel W. McGee (R)  
Rep. Jeanette S. McKee (R)  
Rep. Dore Schwinden (D)  
Rep. Roger Somerville (R)  
Rep. Joe Tropila (D)

**Members Excused:** Rep. William M. "Bill" Ryan (D)  
Rep. Jack Wells (R)

**Members Absent:** None

**Staff Present:** Valencia Lane, Legislative Council  
Kim Greenough, Committee Secretary

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

**Committee Business Summary:**

Hearing: HB 396, HB 364, 133  
Executive Action: None

HEARING ON HB 396Opening Statement by Sponsor:

**REP. HARRIET HAYNE** introduced HB 396. She said the bill clarified who would be responsible for cutting or raising utility wires or moving utility poles when the wires or poles impede the movement of certain houses, buildings, derricks or other structures. She said the bill was a collaborative effort between the utility companies and the house movers association. She explained that Montana electric cooperatives have been willing to absorb such costs on an occasional basis. However, there are plans by developers in the state to move 50 or more exceptionally high structures from a single site. Current law does not anticipate such large-scale movements of buildings. The bill reflects a compromise with the house movers industry that states an electric utility will pay for the expenses related to moving a structure under 25 feet in height through a cooperative service area which includes lifting of electric wires, pole moves and wire cutting. The expenses associated with building moves with numbers of six or larger will be paid by the owners of the structures. The cooperatives believe their members should not have to pay for related moving costs of these buildings, especially since the movers are doing this for profit. She explained the rates established by the Public Service Commission is not enough to cover the costs incurred by the rural cooperatives.

Proponents' Testimony:

**Bill Chapman, General Manager, Glacier Electric Cooperative, Cut Bank,** supported the bill as presented. He discussed the membership of the cooperative which includes 5,000 members within a total of 4,000 square miles. He pointed out the unemployment problems on the Blackfeet Indian Reservation which is an area serviced by the co-op. Since the cooperative is a non-profit organization, additional costs incurred by house moving projects are not budgeted costs.

**Mike Strand, Montana Independent Telecommunications Systems,** testified in support of HB 396. He said their organization consists of small independent companies that serve rural areas. He pointed out that moving lines were expensive. He cited some examples of multiple moves and the resulting costs to customers. This bill would make improvements in existing law.

*{Tape: 1; Side: A; Approx. Counter: 191; Comments: None.}*

**Don Tamietti, Montana House Movers Association,** testified in favor of the bill. He explained the House Movers Association and the cooperative companies had a good working relationship. The bill would be a long term benefit to both groups.

**Jay Downen, Montana Electric Cooperative Association, Great Falls,** testified in support of the bill. He said the bill was a result of a compromise between both groups. Montana is one of only two states where consumers subsidize the owners of houses that have to be moved on the highway. He noted that with this bill, the cooperatives would still pay a portion as a subsidy to the business owner.

**Maureen Cleary-Schwinden, Women Involved in Farm Economics,** spoke in favor of the bill.

**Opponents' Testimony:**

**Pat Kelly, owner of Valley Park, Inc., Glasgow AFB housing project, St. Marie,** spoke against the bill. EXHIBITS 1a and 1b He said the bill was aimed directly at the St. Marie project. He explained in 1985 the housing at the base was sold by the government with the intent of salvaging the base and moving 1,223 homes off. He purchased 100% of the property in order to keep the homes in place and create a Military Retirement Community. He described the difficult situations he encountered in getting his project working. He pointed out the economic impacts and the job creation that have resulted. He sold a few units which were purchased by a buyer in Billings and Laurel. He discussed the problems moving the buildings through Fergus County, who demanded extreme charges for the utilities when compared to other utilities.

*{Tape: 1; Side: B; Approx. Counter: 0; Comments: None.}*

**Mr. Kelly** said the rural electric cooperative should be responsible for the negotiations they made. He needs to be able to move these houses under the law by which he bought the property. The current 50/50 split would ensure that the most economical way will be found to move these buildings. He purchased the homes in good faith nine years ago at which time they were all to be moved from Glasgow. He built a tax base and created jobs through his project development. He suggested a grandfather clause for him or not pass the bill.

**Carlo Porteen, Glasgow EXHIBIT 2**

**Questions From Committee Members and Responses:**

**REP. DON LARSON** asked **Mr. Chapman** why the house movers couldn't use independent contractors to move the lines. He replied there were liability issues to consider such as whether the contractors were qualified, certified or trained employees doing that work.

**REP. MATT BRAINARD** asked how many crossings were identified in this operation and in what time-frame it occurred. **Mr. Chapman** replied that he was not familiar with Fergus Electric crossings but in their own case there were crossings that included distribution facilities and transmissions. The transmission

lines were fairly large conductors which would create an extensive outage to a major part of the system.

**REP. DAN MCGEE** questioned the Fergus Electric fees which were six times higher in comparison to the Montana Power Company or other utilities (See Exhibit 1b). **Mr. Chapman** replied that most large structure movers picked rural areas. Fergus Electric is a very large cooperative spread over a large distance and would encounter a number of higher voltage lines.

**Mr. Tamietti** explained that the charges depended on the types of line, voltage, height, difficulty to take them down, etc. would have some bearing on this. He pointed out that there were ways to make the houses lower. **Mr. Chapman** noted the differences in voltages, routes, equipment and man power also had some bearing in the charges by Fergus Electric.

**REP. ROD MARSHALL** asked about the historical perspective, when rates were not charged. **Mr. Downen** replied that in 1983 the Legislature established the fixing of fees. Prior to 1983, all costs went to the consumers. The decision now is whether or not those individuals moving a large number of structures should absorb the costs or should they continue being subsidized.

**Closing by Sponsor:**

**REP. HAYNE** closed on HB 396. She said the bill was not aimed at the Fergus County move. The bill is important to the customers of electric cooperatives and other utility companies so they would not have to absorb unreasonable expenses that are not created by the utility itself. She said by allowing six moves free is more than fair. More than that is too much of a financial burden.

**HEARING ON HB 364**

**Opening Statement by Sponsor:**

**REP. NORM MILLS** presented HB 364. **EXHIBIT 3** He explained the bill as a telecommunications bill rather than a railroad agency bill. The reason is that the work of the agencies can be performed by computer. Car orders done formerly by mail can now be done by telephone and telefax. The bill encourages the use of modern day equipment and allows for a test period for the use of such systems.

**Proponents' Testimony:**

**Pat Kiem, Burlington Northern Railroad**, spoke in favor of the bill. **EXHIBIT 4** He discussed the law requiring railroads to maintain agencies in specific locations. Agencies are local offices where shippers contact the railroad to determine rates, order cars, offer bills of lading, and pay accounts. Local

agencies also handle passengers. However, communication technology has taken over most of these functions bypassing the local agent. As a result, local agencies are no longer needed to transact business.

The problem is that Montana law requires the railroad to obtain authority from the Public Service Commission to close an agency. The bill would set up a mechanism to protect the shipper while eliminating costly and unnecessary hearings, allowing for a 90-day trial closure. He pointed out that the railroad believes they can provide better service if given a chance to implement changes instead of incurring needless government expenses.

*{Tape: 2; Side: A; Approx. Counter: 0; Comments: None.}*

**Russ Ritter, Montana Rail Link**, testified in support of this bill. He said the state of the art, computerized dispatch and communication center in Missoula is proof that the movement of rail cars (some 25,000 per month in their case), in today's competitive transportation world is absolutely necessary. The customer's ability to schedule a car or trace its whereabouts is a result of this communications center. A result of Montana Rail Link's ability to close some of its agencies has allowed the perfection of one of the finest systems in the rail industry. The legislation will further streamline the process and further improve rail transportation in the state.

**Stan Kaleczyc, attorney, Watkins Shepard Trucking, Inc., Missoula**, testified in support of the bill. He noted the various offices and distribution centers in the state for the company. He presented a letter from **Ray Kuntz, Vice President of Operations and Sales of Watkins Shepard**. **EXHIBIT 5** He pointed out that with today's technology, most Burlington Northern (BN) agents serve no purpose for Watkins and Shepard when they order out rail cars. All communication is handled direct with BN via fax machines, computers and telephones. Unneeded overhead in the system makes little sense and results in higher rates. He urged the committee to pass HB 364.

**Bob Stephens**, a retired travel agent from Bozeman, spoke in favor of the bill. He pointed out that the agencies are located in smaller communities. However, since the improvements of the highway system, most of these communities were now accessible to larger markets. Since the railroads were deregulated, they received no subsidies and had to make it on their own. They began to restructure the industry, displacing people into different jobs. He demonstrated how changes in the industry could produce a variety of other opportunities.

**Carla Allen, Central Montana Rail, Inc.**, testified in support of HB 364. **EXHIBIT 6** She discussed the unnecessary expenses that occurred when their company tried to donate the depot to the Geraldine Historical Committee.

Vince Goecke, Columbia Grain International, Inc., Great Falls  
EXHIBIT 7

George T. O'Dore, Pacific Steel and Recycling, Great Falls  
EXHIBIT 8

W. M. Vaughey, Jr., Havre EXHIBIT 9

Kerry Schaefer, Northwest Grain Operations, General Mills, Inc.,  
Great Falls EXHIBIT 10

Opponents' Testimony:

James T. Mular, Transportation Communication Union, testified in opposition to the bill. EXHIBIT 11 He explained the bill provided a convenience for the railroad to abandon agency services. However, the result would deny due process for small shippers who rely on the local agency shipping and receiving services. He referred to a copy of the BN Employee Bulletin Notice (attached to Exhibit 11). The notice reflects BN's intention to implement a national customer service center in Fort Worth, Texas by early 1995. This bill would provide an avenue to accomplish this goal. HB 364 does not take the public interest into consideration regarding safety and economic impacts. It also relieves the railroads of the burden to prove the necessity of maintaining and staffing rail agency facilities. He noted the passage of the bill would have the effect of expediting the railroad's time-frame to close all stations in Montana. He urged a no vote on the bill.

{Tape: 3; Side: A; Approx. Counter: 0; Comments: None.}

Danny Oberg, Montana Public Service Commission, testified against the bill. EXHIBIT 12 He provided a historical perspective of railroad statutes in dealing with a railroad's obligation to maintain a depot and agent in communities they serve. He discussed the widespread closure of the agency service in Montana and the consolidation of services. He asked the committee to consider the real reason for the bill. He pointed out that the BN was asking the Legislature to cooperate and provide a vehicle for BN to close and move all of their operations to Fort Worth, Texas. However, this would not be in the best interest of Montana's grain, timber and business communities. He pointed out that this bill would be a major shift in public policy. It would allow virtually no chance for the PSC to hold hearings on closures, the 50% protest figure would become insurmountable shifting the burden of proof from the railroad to the shippers. He said the bill would also have the effect of Montana job losses and hamper the shipping business. Passing this bill will only expedite transfer of Burlington Northern jobs and services to Fort Worth, Texas. He urged a no vote on the bill.

Don Judge, AFL-CIO, spoke against the bill. EXHIBIT 13 He presented a letter from Fran Marceau of the United Transportation

**Union**, in opposition to the bill. **EXHIBIT 14** **Mr. Judge** said the bill was about the economic self-interest of the railroad in closing down the stations in Montana. He pointed out that the bill rigs the process so BN can go through the motions of satisfying "public convenience and necessity" tests in order to get the go-ahead to leave the state. It is unfair to rural areas and small shippers. He urged a no vote on HB 364.

**Questions From Committee Members and Responses:**

**REP. LARSON** asked how many jobs were involved. **Mr. Kiem** replied there were not a lot of people who would loose their jobs.

*{Tape: 3; Side: A; Approx. Counter: 916; Comments: None.}*

**REP. LARSON** asked if this would affect the maintenance operation. **Mr. Kiem** replied that it would not but would affect shipping.

**REP. PAT GALVIN** asked about the hundreds of small shippers that would be denied agency services, especially when they close Great Falls.

*{Tape: 3; Side: B; Approx. Counter: 0; Comments: None.}*

**REP. GALVIN** asked if there were any stations being considered for closure at the present time under the Public Service Commission. **Mr. Kiem** replied currently pending decisions were Shelby, Eureka, Libby and Forsyth. **REP. GALVIN** asked if this affected Amtrak. **Mr. Kiem** replied it did not. **REP. GALVIN** asked about any current challenges by judicial review. **Mr. Kiem** replied that Troy was under review.

**REP. GALVIN** presented a letter from Gwynn Lumber & Reload, Inc. regarding railroad depot closures. **EXHIBIT 15**

**REP. JOE TROPILA** asked if this bill was intended to bypass the public hearing process. **Mr. Kiem** replied that it was not, rather it was intended the need to hold a public hearing where there is no opposition. He noted the process can be a waste of time, railroad money and public money.

**REP. TROPILA** asked **Mr. Mular** how many jobs would be leaving Montana. **Mr. Mular** responded that many of the jobs were already moved to Fort Worth. The total jobs would effect 12 agencies. He noted that BN had been removing things without asking permission.

*{Tape: 3; Side: B; Approx. Counter: 135; Comments: None.}*

**REP. TROPILA** asked **Mr. Oberg** how long the process took on closure procedures. **Mr. Oberg** said it took several months. **REP. TROPILA** asked about stations that may have been closed without hearings. **Mr. Oberg** replied some of the buildings are dilapidated and that may have been the reason.

**REP. JOE BARNETT** said he was concerned about cutting services to small shippers. He cited an example of having Triple A Insurance and when he called for service he got St. Louis, Missouri. However, it only took 15 minutes to get a wrecker. He asked if small shippers would get as rapid and adequate service? **REP. MILLS** said they would although they need to take into account the remote areas where it may take longer to respond. **REP. MILLS** said there was no doubt that they were able to provide this service, the question was whether they would be allowed to do it or would they be kept in the "stone age."

**CHAIRMAN ANDERSON** asked about the cutoff dates for protest from the shippers at 60 days which is the busiest months. **Mr. Kiem** replied that in looking at other states, they found a similar law in Kansas. The tests could be up and running in 60 days and then the parties could make a decision whether or not to protest. This would require the railroad to report to the commission the history of activities at that station so the commission could make the determination of what the heaviest months were.

**CHAIRMAN ANDERSON** noted that concerning the small shipper, the 50% protest may not be fair. **Mr. Kiem** replied that this would require all shippers of record, during a three-year period prior to application of closure, would have to be notified of the pending petition for closure. It is the obligation of the railroad to provide to the Public Service Commission this notification, even to someone who only shipped one car. The small shippers are the reason for the two phase 50% test. It is either 50% of all of the shippers of a station or 50% the traffic in the station. He cited some examples.

*{Tape: 3; Side: B; Approx. Counter: 373; Comments: None.}*

**CHAIRMAN ANDERSON** asked how the shipper would get in touch with the Dallas operation. **Mr. Kiem** replied that there were not a whole lot of walk-in's, but had people with experience. However, if there was someone that wanted to ship they would look up Burlington Northern's phone number. He noted the quick telephone response routed by computer.

**MR. BRAINARD** asked how much money this would be saving whether this was efficiency or economics. **Mr. Kiem** said the point is not savings. The point is to bring customer service to the 21st century to have the ability to get the job done.

**REP. BRAINARD** asked if there was any reason the telecommunications system could not be handled in the local areas so there was a person that could be talked to. **Mr. Kiem** said the cost of bringing this kind of technology to this kind of location is astronomical.

**REP. ROGER SOMERVILLE** asked how many people would loose jobs. **Mr. Mular** responded with how many jobs per station. **Mr. Kiem** discussed the number of positions that would be gone.



{Tape: 3; Side: A; Approx. Counter: 700; Comments: None.}

REP. BARNETT asked if there were any attempts to get people out to protest the closing of any of the stations. Mr. Mular said there were services provided at the local agencies that could not be done at Fort Worth, Texas. Train arrivals, for example, number of cars and various other types of information would not be provided. REP. BARNETT asked what type of offers to shippers were made to get them to not protest. Mr. Mular replied offers of fax machines, leases on right of ways, etc.

{Tape: 4; Side: A; Approx. Counter: 0; Comments: None.}

#### Closing by Sponsor:

REP. MILLS closed on the bill. He said there was no intent in this bill to avoid the hearing process, but only to avoid unnecessary hearings where there are not adequate protests to the closure. The bill provides for contested areas to hold hearings. The small number of jobs being lost may be offset by the creation of new ones. This happens in every business. The railroads need to implement modern communication systems and be brought up to speed.

#### HEARING ON HB 133

#### Opening Statement by Sponsor:

REP. RED MENAHAN presented HB 133. He said the bill established liability insurance on drivers and not on vehicles. This would work on drivers that owned more than one vehicle but could only drive one at a time.

#### Proponents' Testimony:

Stan Frasier testified for the bill. He said vehicles are inanimate objects and do not have any liability. Liability insurance should be on the driver, comprehensive insurance should be on the vehicle. Only one vehicle can be driven at a time, but if someone owns more than one, they have to pay on all of them.

Roger McGlynn, Independent Insurance Agents, spoke in favor of the bill. He provided a study to the committee called the Steering Automobile Coverage from Owners to Drivers. EXHIBIT 16 He noted the disadvantages and problems that would result from this bill.

#### Opponents' Testimony:

Ron Ashabraner, State Farm Insurance, spoke in opposition to the bill. He said they insure one third of the vehicles in the state. This policy would only be efficient for households with a

single driver or a husband and wife. This would not cover permissive users. Under statutory language it may not be possible to cover driving other cars. The insured would have the responsibility to follow up to see if a person using their vehicle had insurance, which could expose them to a liability. He discussed examples and problems that could arise. He urged a do not pass on this bill.

**Jacqueline Lenmark, American Insurance Association,** spoke against the bill. She pointed out the price of the policy would go up but the choices would go down.

**Larry Akey, National Association of Independent Insurers,** testified against the bill. He said their members are mostly small and would not have the resources to develop policies in the state. That has an anti-competitive effect. He urged the committee to not pass this bill.

**Questions From Committee Members and Responses:** None

**Closing by Sponsor:**

**REP. MENAHAN** closed on the bill. He pointed out that even though a person can only drive one vehicle, they are paying for the other vehicles they own even though they are not on the highway. He suggested starting a pilot project to see how this concept could work.

HOUSE HIGHWAYS & TRANSPORTATION COMMITTEE

February 10, 1995

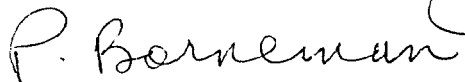
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ADJOURNMENT

Adjournment: 6:30 p.m.

  
\_\_\_\_\_  
REP. SHIELL ANDERSON, Chairman

  
\_\_\_\_\_  
KIMBERLEE GREENOUGH, Secretary

  
\_\_\_\_\_  
for DEB THOMPSON, Recording Secretary

SA/ksg/dt

# HOUSE OF REPRESENTATIVES

## Highways

ROLL CALL

DATE 02-10-95

| NAME                                     | PRESENT | ABSENT | EXCUSED      |
|--|---------|--------|--------------|
| Rep. Shiell Anderson, Chairman           | ✓       |        |              |
| Rep. Rick Jore, Vice Chairman, Majority  | ✓       |        |              |
| Rep. Pat Galvin, Vice Chairman, Minority | ✓       |        |              |
| Rep. Joe Barnett                         | ✓       |        |              |
| Rep. Matt Brainard                       | ✓       |        |              |
| Rep. Bob Clark                           | ✓       | Late   | 3:33 PM 4:30 |
| Rep. Charles Devaney                     | ✓       |        | back 5:30    |
| Rep. Marian Hanson                       | ✓       |        |              |
| Rep. Don Larson                          | ✓       |        |              |
| Rep. Rod Marshall                        | ✓       |        |              |
| Rep. Linda McCulloch                     | ✓       |        |              |
| Rep. Daniel McGee                        | ✓       |        |              |
| Rep. Jeanette McKee                      | ✓       | Late   | 3:56 PM      |
| Rep. Bill Ryan                           |         |        | ✓            |
| Rep. Dore Schwinden                      | ✓       |        |              |
| Rep. Roger Somerville                    | ✓       |        |              |
| Rep. Joe Tropila                         | ✓       |        |              |
| Rep. Jack Wells                          |         |        | ✓            |

— PROXY —

REP MCGEE IS

DESIGNATED TO

VOTE MY PROXIES,

ON 10 FEB 95 —

(FOR BOTH BILLS AND AMENDMENTS)

REP WELLS

Jack M. Wells



*The Big Sky Country*

**MONTANA HOUSE OF REPRESENTATIVES**

Horse Highways Don Larson

Prox ✓

Friday 10<sup>th</sup> Feb

Wm Ryan

Don votes NO on HB364

" " Yes on HB396

" " Yes on HB133 (NO ON A TABLE MOTION)

R Larson

Ryan votes No on HB364

" " Yes " HB396

" " Yes " HB133 (NO ON A TABLE MOTION)

To the Highways and Transportation Committee concerning house bill no. 396

(This was written today, 10 February 1995, as I was unaware of the committee meeting. I found out about the meeting when in Helena on other business.)

*sorry  
poorly written!*

*PATRICK KELLY, OWNER VALLEY PARK INC, ST MARIE, MT.*

1. In 1985 the housing at Glasgow AFB was sold by the government at public auction. The top three bidders were to salvage the base and move all 1223 homes off. A new state law was in effect requiring that the people buying the homes to be moved must pay 50% of the cost of raising utility lines.

2. In 1986 I purchased 100% of the property to try and keep the homes in place and make a Military Retirement Community. Many People (Most People) said, "Who would retire in Glasgow." I was ridiculed by nearly everyone, including the local community of Glasgow, because no one could visualize people moving from California and other states to retire in Northeastern Montana.

3. I won't go into detail but I did not want to develop the Glasgow AFB for Money, Recognition or any such reason. I have an overwhelming desire to be an Artist. Yes an Artist, I have studied art at many top schools and under many top artist. I said I would give two years of my life to do this development, because of commitments to people who had invested in the original company, because I thought it would benefit my State and especially Eastern Montana which I think is the best place in the world to live, and also because the lower ranking military retirees needed a retirement community such as I had envisioned. Nine years later and after a heart attack and the death of my wife (both I feel as a result of the pressures of fighting to do what we considered right) I still want to be an Artist, but I am committed to completing what I started and I have more responsibility because I am committed to the over 200 people who have purchased homes at St. Marie and have invested in Montana.

4. We have proven that the concept is sound and people want what we have at St. Marie. We have not been able to get a loan to develop and put in amenities. We do not have a way for the people purchasing the homes to finance their purchase. We have lost money as a company, but the economic impact has been tremendous on the local economy and the state. Using figures from the Dept of Commerce we have created over 200 jobs from the 130 plus families currently spending their retirement in the local community. The 200 homes that were sold will have the affect of over 300 jobs created. 1200 homes sold to retirees could have the affect of creating over 1800 jobs for Glasgow and Northeastern Montana.

If I and Judy had not made our commitment there would be no tax base at St. Marie for the state. Currently we have approximately a 12 million dollar tax base, with a potential of 60 to 100 million dollar tax base. The great thing about selling to retirees is that they do not burden the schools and they help support the local hospital and business community. Unlike the retirees moving into the Kalispell and other populated areas there is no negative affect on roads or facilities - only positive growth for the state and area.

The utilities have benefited with electric, telephone, and gas hook ups and are getting a sizable income from residents who would not even be in Montana if it were not for St. Marie. They have a potential for an additional 1000 "new" customers.

5. Since my heart attack in October 1991 and my wife's heart attack and death in 1992, I have been trying to either sell the property, to obtain a loan, and to also obtain end financing for those purchasing homes. My health and personal situation kept me out of commission for a period of time and sales suffered. In November of 1993 I knew I needed to sell a few units to create a cash flow.

(Note: It is imperative that we keep as many homes as possible at St. Marie. The amenities and things that support a retirement community needs numbers to support. The water system is very expensive and must have every customer possible to support it. The water is brought 25 miles from below Fort Peck Dam. The whole community, the jobs created, and the tax base depends on having enough people at St. Marie to support that water system. I do not want to move any homes off!)

When I knew I had to move some units I tried to sell them locally and there was limited demand. I found that there was a critical demand throughout Montana for additional housing. There seemed to be no housing available, especially for the low to moderate income people. In Billings and Great Falls where the need was the largest I had people who were very interested, but when they figured the costs to refurbish and move the units it was not an easy sell. I did however find Wayne Dean in Great Falls, Sam Picard in Billings, and a local individual from Glasgow who was trying to move some homes to Laurel.

In their checking out the cost of raising utilities they received good cooperation except in Fergus County who was demanding extreme charges, many times that of the other utilities. (Fergus County said it would take 6 days to get through their area and when they finally complied it only took one day.)

Being short of cash and the future of St. Marie on the line I became very concerned and asked the PSC to assist. Fergus County basically told the PSC to not interfere and that they knew how to interpret the regulation. After much delay the PSC did get Fergus County to understand the law did apply to them as well as the other utilities.

The delay really hurt me. If we could have moved a few units early in the year we possibly would not have had to move any more. The delay also added costs to those who were trying to move homes and most backed away because of the difficulties and uncertainties it caused. We are now in more financial need than we were last year basically because Fergus County felt that they were basically above the law and that the good of others was not their concern. (Why should they have complied? (1) Because it was the law. (2) Because they agreed to the law that was passed. (3) Because many people have spent lots of money figuring that the law would be complied with. (Indirectly the 200 plus couples who have purchased homes at St. Marie. (4) Because there is a bigger good than the few dollars they illegally saved their customers. (5) Because if their customers knew that was the law there REA agreed to and helped make them, would be willing to say OK we benefited from



the law over the years it is time now for us to pay back some of that savings - plus it is the law and it will hurt others if we do not comply.

It is almost one o'clock and altho I have many more points to make I must summarize to get to your committee by three.

This Bill should be tossed out of committee for many reasons. Here are a few and not in any well thought out order.

1. These homes should be left at St. Marie and as few as possible should be moved.

2. This is an important asset of the State and if not utilized at St. Marie they should be used to the best advantage where needed. They will add to the tax base and the quality of life of those using these homes where ever they are located. (The logical place for these homes to go would be into Canada , to Regina (200,000 population) 230 miles away and hardly any lines. Also to Moosejaw and surrounding areas.)

3. St. Marie has built a large tax base from nothing. Has created many jobs and could create many more, it needs to be protected.

4. The utilities negotiated the current law and have benefited from it. We tell our children to be responsible for their decisions and when circumstances change it is still their decision. The utilities have saved a lot of money from the law they changed in 1983 - it was a good decision and a good law even though they may have to pay some of that savings back now. They are using a public access and they have benefited and will continue to benefit. The few dollars that some customer "may" have to pay is for the public access they are using and can be taken from the money they have saved in the past.

5. The current 50/50 split will ensure that the most economical way will be found to move these buildings. Each party has an interest in keeping the costs down.

6. Hopefully only a few homes will be needed to be moved, I have proven my commitment to that end. However, from the States point of few, if they are to be moved and continue to be an asset (and not be dismantled or sent to Canada) they need to be moved by house movers in the most efficient manner to the locations they are needed and will do the most good.

7. This is the case of the big guys beating up on the little guy. It is discriminatory. I purchased these homes in good faith 9 years ago at which time they were all to be moved from Glasgow. I have built a tax base and created jobs. Either grandfather me or toss this bill out. I have worked hard for community and state on this project in good faith with that law in place.

8. It needs to be tossed from the committee if you feel the bill is not in the best interest of the state because if not I and Northeastern Montana are not strong enough to defeat it.

9. What the State needs is Positive Economic Growth, Jobs, People (the right kind of people who have high standards and have served their country well.), tax income, quality housing for low and moderate income people of Montana, growth and assistance for Northeastern Montana, and to protect the law system and make people responsible for their decisions and not let might be right.

10. The house movers received no benefit from this bill! That in itself indicates they were pressured into going along with this bill. Might is not right!

11. The reason I am in love with Eastern Montana is the rural people who I was part of and grew up with. I cannot believe that the rural people of this state would renige on a negotiated agreement after benefiting for years on that agreement and then want to change the rules. I cannot believe that they would use a public right of way without feeling they had some oblication in letting all people use those roads in the same manner and not pick out one individual (this bill does that) because his structures are higher than others. I do not think that these people believe that Might Is Right even when they could benefit from it .

12. Their is no benefit to the state or its people in this bill. I think that the people of Montana would like to benefit from my efforts and St. Marie and I believe they would like Fergus County and the rest of the REA's to be responsible for their past negotiations and decisions. This bill needs to be stopped in committee.

A handwritten signature in cursive script that reads "Patrick Kelly". The signature is written in dark ink and is centered on the page.

**PUBLIC SERVICE COMMISSION**  
**STATE OF MONTANA**

EXHIBIT 1a  
DATE 2-10-95  
HB 396

Bob Anderson, Chairman  
Bob Rowe, Vice Chairman  
Dave Fisher  
Nancy McCaffree  
Danny Oberg



1701 Prospect Avenue  
PO Box 202601  
Helena, MT 59620-2601  
Telephone: (406) 444-6199  
FAX: (406) 444-7618  
Compuserve: 70642,1607

July 14, 1994

J. David Penwell  
Attorney at Law  
125 West Mendenhall Street  
Bozeman, MT 59771-1677

RE: Valley Park, Inc., and § 69-4-603, MCA, utility line moving

Dear Mr. Penwell:

In your representation of Valley Park, Inc., you wrote the Montana Public Service Commission a letter dated July 12, 1994. You requested a legal opinion on the application of § 69-4-603, MCA, to the movement of houses from Glasgow Air Force Base. Valley Park, Inc., intends to move a number of houses to various locations. Its president, Pat Kelly, and you understand from Mr. William Spoja, attorney for Fergus Electrical Co-op, that the electric cooperatives believe that § 69-4-603, MCA, does not apply to multiple moves of structures from the Base.

As you outline in your letter, an independent contractor built the wood frame houses for the Air Force on site on foundations. No part of the houses were pre-manufactured or pre-assembled. Neither the contractor nor the Air Force could foresee or intend the eventuality of moving these houses.

Under this scenario, § 69-4-603(2) and (3), MCA, dictate the amounts charged by rural electric cooperatives to move lines or poles, or raise or cut lines as necessary to facilitate the house moves. The electric cooperative and the house mover each pay half the expense of raising or cutting the wires or removing the poles, as determined by the Commission in Administrative Rules of Montana (ARM) 38.5.2403 and 38.5.2405.

These houses do not come under the exception in § 69-4-603(4), MCA, which states that owners of prefabricated structures built with the intention of moving shall pay all the costs of raising or cutting wires or cables or moving poles to facilitate the movement. The rural electric cooperative "may not exceed the charges established by the public service commission for utilities subject to its jurisdiction" under § 69-4-603(3), MCA. The procedure to give notice is established in § 69-4-602, MCA, which dictates requirements for both the owners of the wires or poles and the person, firm, or corporation moving the structure.

In our telephone conversation, I informed you that I had previously discussed the issue with Mr. Spoja on June 17, 1994. Mr. Spoja was concerned that the cost of moving

J. David Penwell  
July 14, 1994  
Page 2

utility lines to accommodate so many house moves would cost the co-ops one-half million dollars when done, and would cost Fergus Electric \$100,000, in his estimation. He believed that the legislature had not contemplated this kind of move when passing the legislation. First, he read the statute and said that the co-ops were "stuck." Then he "analogized" the houses at the Base to prefabricated houses and concluded that the legislation was not intended to cover a large commercial venture.

I told Mr. Spoja that the statute was plain on its face and obligated the cooperatives to pay one-half the average costs as determined by the Commission every two years in ARM 38.5.2405. I informed him that the statute covered commercial ventures and anticipated house-moving. Rather than litigate the matter, I suggested to Mr. Spoja that the parties meet and work out a solution within the law. Mr. Spoja agreed that this approach would be reasonable.

This letter represents a legal opinion from a staff attorney and not a declaratory ruling of the Commission. The Commission does not have jurisdiction over rural electric cooperatives. However, under subpoena I would have to testify that Title 69, Chapter 4, Part 6 applies the same standards alike to cooperatives and public utilities in what they may charge for line-moving upon movement of structures. The houses at Glasgow Air Force Base do not come under the prefabrication exception.

Incidentally, the original intention of the legislation was to put some burden on the house mover. Before that time, the utility had to cover all the cost. The members of the cooperatives will not be unduly harmed. For the privilege of having and using facilities on the public right of way, the cooperatives and the utilities should pay part of the price to accommodate house moves.

By a copy of this letter to Mr. Spoja I am notifying the parties that it would be a good idea to meet and try to minimize the costs to all interested persons. It is possible that the cooperatives may over-estimate the costs of the move. It is possible that by working together Valley Park, Inc., could minimize its costs, along with those of the cooperatives, by developing a moving schedule to require less line/pole interference.

Sincerely,



Denise Peterson  
Staff Attorney

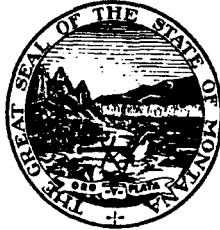
DP/dlp

cc: Bob Anderson, Chairman  
Danny Oberg, Commissioner  
William Spoja

EXHIBIT 1a  
DATE 2-10-95  
HB 396

PUBLIC SERVICE COMMISSION  
STATE OF MONTANA

Bob Anderson, Chairman  
Bob Rowe, Vice Chairman  
Dave Fisher  
Nancy McCaffree  
Danny Oberg



1701 Prospect Avenue  
PO Box 202601  
Helena, MT 59620-2601  
Telephone: (406) 444-6199  
FAX: (406) 444-7618  
Compuserve: 70642,1607

August 5, 1994

William A. Spoja  
Attorney at Law  
P.O. Box 882  
Lewistown, MT 59457

RE: Fergus Electric Cooperative, Inc., and utility line moving

Dear Mr. Spoja:

Thank you for your letter dated August 1, 1994 updating the house moving project at St. Marie's. As the attorney for Fergus Electric Cooperative, Inc., you indicate that Valley Park, Inc., house movers, and your client have likely reached an understanding that will allow the house moving to go forward. You stated, however, that if the house moving involved a lot more houses your position would change.

Title 69, Chapter 4, Part 6, Montana Code Annotated (MCA) provides unambiguous requirements for moving structures that involve interference with wires and poles of both public utilities and rural electric cooperatives. Section 69-4-601, MCA, requires any "person, firm, or corporation moving, hauling or transporting" a house or structure to give notice to the "owner or agent" of electric or telephone wires or poles if it is necessary to move, raise or otherwise interfere with these wires or poles. Section 69-4-602, MCA, requires a minimum of 10 days written notice of the proposed time and place of moving a structure. The owner or agent of the wires or poles is then required to give the mover a written estimate of the costs at least 3 days before the move, or within 10 days after receiving the notice, whichever is sooner. Also see, ARM 38.5.2406.

The duty of your client, an electric cooperative, is unequivocal. After receiving notice, the owner or operator of the poles or wires is required to furnish competent persons to remove poles or raise or cut wires as necessary to facilitate the structure movement. See, § 69-4-603(1), MCA. The costs allowed for the electric cooperatives to charge for this service are determined by the Public Service Commission. The

William A. Spoja  
August 5, 1994  
Page 2

necessary and reasonable expenses, as determined in a biennial review by the PSC, are shared equally with the mover of the structure. See, § 69-4-602, MCA; ARM 38.5.2402, 38.5.2403 and 38.5.2405.

As stated in the letter to Mr. Penwell, attorney for Valley Park, Inc., these houses do not come under the prefabricated housing exception in § 69-4-603(4), MCA. Therefore, the cooperative cannot charge the house mover the total necessary and reasonable costs. Please note, if this exception applied, the cooperative could not charge whatever it chooses, but rather only the full amount determined necessary and reasonable by the PSC.

The legislature was clear in its intention to impose half the expenses of wire/pole cutting and moving on the electric and telephone cooperatives in Title 69, Chapter 4, Part 6, MCA, and to have the PSC determine these costs. "Member-patrons" of the cooperatives are the same as a public utility's shareholders in absorbing any losses under these provisions. The legislature has determined that there is a duty associated with the privilege of owning or operating wires and poles on a utility right of way.

I am glad if I was able to assist you in resolving some concerns on the house moving project from St. Marie's and the cooperative's role in facilitating the movement. The duty of the cooperative and the allowable charges, whether for 1 house or 1,200 houses, are provided in the statutes and rules. Therefore, it was a good idea for parties to work out a mitigating strategy.

Sincerely,

Denise Peterson  
Staff Attorney

DP/dlp

cc: Bob Anderson, Chairman  
Danny Oberg, Commissioner  
David Penwell

WAGNER SERVICES  
BOX 169  
GLASGOW, MONTANA 59230  
(406) 228-4319

EXHIBIT 16  
DATE 2/10/95  
HB 396

2/8/95

Dear Representatives:

Attached are the estimates for power line to be raised for moving a building from St. Marie to Laurel.

The mover estimated 3 days to make entire trip. All of these estimates seem reasonable except for Fergus Electric out of Lewistown.

### Questions

1. Are our highway public highways or does Fergus Electric effectively have to right to put these "toll" bridges on our roads.

2. If you approve the proposed fee schedules - will you audit the fees + costs of the project?

(2)

OR will the companies be given free rein such as the Fergus company seems to exercise.

3. Wouldn't an easier solution be to bury lines under roads?

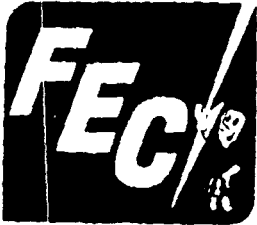
4. If the mover is to bear 100% of the costs - shouldn't the mover have the right to hire a private contractor to provide the service?

This would cost the "cooperatives" nothing.

Please give these questions consideration when you vote on the bill - restricting growth in Montana.

MA





# FERGUS ELECTRIC COOPERATIVE INC.

HC 85 BOX 4040 • LEWISTOWN MT 59457-9402 • PHONE (406) 538-3465

June 2, 1994

Mony Wagner Associates  
PO Box 169  
Glasgow, MT 59230

Dear Mr. Garsjo,

Below are estimated costs to move the 28' high structure through our system using the proposed route given by you. There will be 32 line crossings involved, the first being 9 miles east of Winnett and the last 9 miles north of Lavina.

All costs will be based on our crews doing the work. Due to the size of the load, it will be necessary to have two crews, one ahead and one behind, for each trip. The costs given are for each trip, however, after the moves are completed you will be billed for actual labor, mileage and bucket time. Fergus Electric Cooperative will require the estimated total as pre-payment before any work begins.

Also, we are in the busiest time of the year and probably will have to hire a contractor to do the work. Either case, the cost will be the same:

|   |                    |
|---|--------------------|
| Labor - 5 days 2 3-Man Crews @ \$166/hr         | \$ 6,640.00        |
| Mileage - 250 miles/day for 5 days @ \$.50/mile | \$ 625.00          |
| 2 bucket trucks - 40 hrs @ \$100/hr             | \$ 4,000.00        |
| <u>ESTIMATED TOTAL</u>                          | <u>\$11,265.00</u> |

If you have any questions, you may contact me at (406) 538-3465.

Sincerely,

*Don Criswell*

Don Criswell  
Staking Technician

DC/ld

*9 miles East of  
Winnett*

*to  
9 miles North of  
Lavina  
70 miles*



164 - 21ST AVENUE WEST, HAVRE, MONTANA 59501

**MONTANA POWER COMPANY**

May 5, 1994

Dennis L Garsjo  
Mony Wagner Associates  
98 Hiway 2 East  
PO Box 169  
Glasgow, Mt 59230

Dear Dennis;

In regard to your request for a cost for a house move from St Marie to Laurel; the cost of this move from St Marie to South East of Glasgow is \$120.00.

I have sent your request to the Billings Division and they will estimate their area.

Thank You,

A handwritten signature in cursive script that reads 'Duane K Johnston'.

Duane K Johnston  
City foreman-Havre

DKJ/jf  
copy

St. Marie  
to  
Milk River  
20 miles

---

# VALLEY RURAL TELEPHONE OR VALLEY ELECTRIC CO-OP

## ESTIMATE

### ON STRUCTURE MOVING COSTS

EXHIBIT 1b  
 DATE 2-10-95  
 # HB 396

TO: Name DENNIS GARSJO

Company \_\_\_\_\_

Address Glasgow

Job Description HOUSE MOVE 5-25-94

#### QUANTITY

#### TOTALS

|           |                                   |                                    |
|-----------|-----------------------------------|------------------------------------|
| <u>24</u> | Initial Wires Moved per Structure | @ \$40 <u>\$ 960.<sup>00</sup></u> |
| <u>14</u> | 2nd Wires Moved per Structure     | @ \$33 <u>462.<sup>00</sup></u>    |
| <u>4</u>  | 3rd Wires Moved per Structure     | @ \$26 <u>104.<sup>00</sup></u>    |
| <u>3</u>  | 4th Wires Moved per Structure     | @ \$19 <u>57.<sup>00</sup></u>     |
| _____     | Wires Cut                         | @ \$70 _____                       |
| _____     | Increments of 25 pair per cable   | @ \$3.75 _____                     |
| _____     | Poles Moved                       | @ \$105 _____                      |

Estimate Total for Move \$ 1583.<sup>00</sup>

No 106

Chargeable Total \$ 791.<sup>50</sup>

St Marie  
 to  
 West End of  
 Ft Rock Dam  
 33 miles

West End of Dam.

Signed Gary Hardner  
 Company Valley Electric

# McCONE ELECTRIC CO-OP., INC.

## ESTIMATE

### ON STRUCTURE MOVING COSTS

TO: Name: Dennis L. Garajo

Company: MOMY Wagner Associates

Address: 98 Hiway East P.O.Box 169  
Glasgow, Mt. 59230

Job Description: High Structure Move

| QUANTITY          |                                   | TOTALS                    |
|-------------------|-----------------------------------|---------------------------|
| <u>36</u>         | Initial Wires Moved per Structure | @ \$ 40 <u>1440</u>       |
| <u>26</u>         | 2nd Wires Moved per Structure     | @ \$ 33 <u>858</u>        |
| <u>9</u>          | 3rd Wires Moved per Structure     | @ \$ 26 <u>234</u>        |
| <u>4</u>          | 4th Wires Moved per Structure     | @ \$ 19 <u>76</u>         |
| <u>21</u>         | Wires Cut                         | @ \$ 52 <u>1092</u>       |
| <u>          </u> | Poles Moved                       | @ \$147 <u>          </u> |

*Ft. Peck Dam  
to  
9 miles East of  
Winnett  
161 miles*

Estimate Total for Move \$ 3700.00

Chargeable Total \$ 1850.00

Reduction for alternate route-300.00  
 Alternate route total-----1550.00

*485-337*  
 \_\_\_\_\_ned Henry L. Green *Henry L. Green*

Company McCone Electric Co-op., Inc..

McCone Electric Co-op., Inc. serves only Electric consumers, we do not serve Telephone

EXHIBIT 1b  
DATE 2-10-95  
1 HB 396

May 17, 1994

Dennis Garsjo  
MONY Wagner Associates  
P.O. Box 169  
Glasgow, MT 59230

### LETTER OF AGREEMENT

We have been informed that you will be moving a 28 feet loaded height prefabricated structure from St. Marie to Laurel. It will involve Montana Power Company facilities in the St. Marie - Glasgow area and the Lavina - Commanche - Molt vicinity. The costs associated with crossing Montana Power Company facilities in the St. Marie - Glasgow area will be submitted to you by Montana Power's Havre office. This letter of agreement will cover those costs associated with crossing the Montana Power Company facilities in the Lavina - Commanche - Molt area.

According to Montana Law, 69-4-602 MCA, you are obligated to pay 50% of the average costs associated with the moving of Montana Power Company facilities for an existing structure and 100% for all others. I have gone over the route and have prepared an estimate determining your share of these costs for the Lavina - Molt area to be \$1839.00. Upon completion of this move we will bill you for this amount. If any changes in route or total building height affects the number of types of crossings involved the invoiced amount will be adjusted accordingly.

If you are in agreement with this proposal, please sign one copy of this letter and return in the enclosed stamped addressed envelope. This signed copy must be received before this project can proceed.

Sincerely,

OWNER:

*9 miles north of  
LAUVIA  
to  
Commanche  
31 miles*

THE MONTANA POWER COMPANY

*[Signature]*  
Division Engineer

STATEMENT  
YELLOWSTONE VALLEY ELECTRIC COOPERATIVE, INC.  
P O BOX 8  
HUNTLEY MT 59037

DATE 6/16/94

INVOICE NO. 8016

ACCOUNT NO. 583

Mony Wagner Assoc.  
PO Box 169  
Glasgow, MT 59230

Upon notice by Mony Wagner Assoc., to  
Yellowstone Valley Electric Co-operative, Inc. of Huntley MT that  
a structure, 28' high, 24½' wide, 98' long  
is to be moved through a portion of the Co-operative system on the  
1st day of July 1994, at the hour of approx. 8:00  
o'clock A M., beginning at Commanche  
and terminating at or near Laurel  
and the Co-operative having considered the necessary and reasonable  
expenses thereof chargeable by law to the owner of the structure, It is  
therefore estimated that the cost chargeable by law is \$ 338.00  
and the Co-operative charges the owner Mony Wagner Assoc.  
of, 96 HWY 2 East  
Glasgow, Montana, said sum, due and  
payable at the office of the Co-operative in Huntley, Montana 59037  
on or before the 29th day of June 1994  
but no later than one business day prior to the movement of the  
structure.

TOTAL DUE

Commanche  
to  
Laurel  
30 miles

EXHIBIT 2  
DATE 2/10/95  
HB 396

February 10, 1995

Montana House of Representatives  
Highways and Transportation Standing Committee  
Capitol Station  
Helena, MT 59620

re: House Bill 396; written testimony.

Dear Legislators:

Background: As a professional planner, I have worked in the arena of developing the former Glasgow Air Force Base and in developing affordable housing projects for low income property owners. I have spent approximately 15 years in this endeavor. I have seen the circumscribed success of the developer in converting the air base into a retirement community. I have worked with and served on a number of community development organizations and housing authorities. I have also had the opportunity to utilize housing structures from St. Marie, Montana, once relocated, for use in our small towns and cities in Northeastern Montana. These housing units are sold on a periodic basis and have helped resolve the budgetary restraints of our low income families needing "affordable" housing. Relocating and rehabilitating duplex and four-plex units is an economical method of securing additional housing for our rural communities versus the inflationary aspects of overpriced new construction. At no time have I been aware of the budgetary problems now being painted by rural co-op electrics for wire charges.

Reasons for opposition to HB 396:

1. Even with the present splitting of costs for wire charges, the co-op electrics are receiving a fair payment. Current wire charges by rural electric co-ops for moving a duplex from St. Marie, Montana to Poplar, Montana (85 miles) is approximately \$14,000. of which 1/2 of the cost is paid by a building owner directly to the co-op. Most co-ops spend one day with a crew for this particular trip. The move is dependant on route and house movers are very cognizant in selecting a route which has minimum wire crossings.
2. This bill is focused on the former Glasgow Air Force Base for all intent. One co-op apparently had a problem with a house mover in the Lewistown area, thereby creating legislation. One developer may have caused an upturned eyebrow from a rural electric co-op manager by saying "We intend on bringing 50 residences thru", reality says this will never happen!

3. House movers will simply pass the additional cost on to the structure's owner and may even endorse this bill. Those movers located in the Northeastern Montana region could have a sharp reduction in business as a result of this bill. I don't foresee the developer at the former Glasgow Air Base moving more than a few structures annually in order to help his cash flow. Re-Use of the former air base has been a struggle and the developer should be complimented and assisted instead of proposing virtual road blocks by passing this bill. Business and investment opportunities are what this state needs and I don't know of any public utility who doesn't need additional customer hookups.
4. This bill is arbitrary and capricious in all aspects of its content, and a fair share of the cost of moving wire is recommended at 1/2 the total bill. Future billing rates of co-op electrics should be reviewed by the Public Service Commission.

Respectfully submitted;



Carlo Porteen  
P.O. Box 226  
Glasgow, Montana, 59230  
Phone: (406) 228-2202



EXHIBIT 3  
DATE 2/10/95  
HB 364

Testimony - House Bill 364  
by  
Representative Norm Mills

By reading the title to this bill, you may conclude that it's a railroad agency bill. Well, it's really a telecommunications bill. That is why I agreed to sponsor it. Designing telecommunication systems is my business, although I don't do the kind of work involved in this bill.

You've all been given a fact sheet explaining what a railroad agency does. Not many years ago, every railroad had to maintain an agent in every town of greater than 1,000 population. However, changes made in 1987 established a process which allows the railroad to petition the Public Service Commission to close an agency. If the railroad can demonstrate that the agency is not needed for public convenience and necessity, the agency can be closed. In 1987, there were 67 agencies scattered throughout Montana. Today there are 10. What does this mean? It means that bills formerly done by hand are now being done by computer, that car orders formally done by mail are now being done by telephone and telefax. It means that the railroad business has moved into the 20th Century.

Like many things, though, the old ways die hard. Some fight and even refuse to adapt to the new ways. This bill encourages the use of modern day equipment and allows for a test period for the use of such systems. If they are successful, both the customer and the railroad will benefit. Others can speak to the specifics. Following the testimony I would like to close.

EXHIBIT 4  
DATE 2/10/95  
HB 364

HB 364 Railroad Agency Testimony

by

Pat Keim

Burlington Northern Railroad

Montana law requires that railroads doing business in the state must maintain agencies at locations where they existed heretofore. Historically, agencies were local offices where shippers could contact the railroad to determine rates, order cars, offer bills of lading, pay accounts, etc. Passengers also were handled at local agencies.

Over time communication technology has advanced to the point where all of these functions can now be handled by phone, fax, and computer right from the shippers' place of business. The communication is direct with the appropriate departments of the railroad, bypassing the local agent who in reality was a middleperson in the process relaying information between the shipper and the railroad service centers. Local agencies are no longer needed to transact business.

But Montana law requires that before a railroad can close an agency they must obtain authority from the Public Service Commission. In order to grant the authority the Commission must hold a hearing. To do so the Commission sends a Commissioner to hold the hearing, a staff attorney and a transportation staff member to assist, and a court reporter to record the testimony. All hearings are held at the locale of the agency.

If there is shipper opposition at the hearing the request is usually denied. Absent that, experience has shown that the closure is usually granted. In many cases there is no shipper opposition. That was in fact the case at Sidney, Culbertson, Terry, Glasgow, Harlem, Malta, Wolf Point, Browning, Hardin, Chinook, Rudyard, Columbia Falls, all on the BN. In every instance where BN has been granted a closure it has followed a hearing where no shippers opposed. That was also the case at about 10 locations on the Montana Rail Link. More recently hearings have been held at Forsyth and Libby at which no shippers objected. Yet in each of these cases the PSC had to undergo the time and expense to hold a formal hearing.

This bill would set up a mechanism that would fully protect the shipper while eliminating most of these costly, time consuming, and unnecessary hearings by allowing a 90 day trial closure. The time of the test would be selected by the PSC and must include the two consecutive months of historically heaviest volumes at the agency. During the test period the railroad would provide all agency services directly from its centralized location. During the test period the railroad would be required to keep its agency in place at the location. This test period would give the railroad the opportunity to demonstrate its proposed services capability to the shipper. It would also give the shipper a chance to evaluate the system before being forced to decide whether or not to protest the closure.

The current law often compels shippers to make that decision before they have had a chance to try the proposed service change. Faced with that dilemma they often register protests based on fear of the unknown. Such objections then cause the PSC

to reject the closure without the railroad having a chance to show what it can do. That's really not fair. Under this bill if within thirty days before the end of the test period half of the shippers or more, or shippers representing half or more of the volume of business, at that agency notify the Commission that the new system fails to meet their needs, the Commission would have to hold a hearing or the railroad could withdraw its petition to close. If less than half register an objection the Commission could grant the closure without holding a hearing. The result would be greater efficiency and less waste of Commission time and money holding needless hearings. At the same time the railroad would be put under pressure to prove its proposed service system to the satisfaction of the shippers. The PSC would still have authority over the closure process.

The opponents will tell you that the local agent is needed for safety and to communicate with emergency personnel. The fact is that such communication is handled directly between the emergency services dispatchers and the railroad dispatchers. Emergency dispatchers have 1-800 numbers to emergency phones in the BN Security Department command center. That center is staffed around the clock with security personnel trained to work with police and fire departments. They have access to our train dispatchers and our computers to access shipment and other needed information. I myself am an emergency responder and have seen the system work from the emergency services side of the coin. The local agencies are staffed 8 hours per day, 5 days per week and are not always available to assist.

You will probably also hear that the local agent inspects passing trains for defects. Here again technology has taken over. Trackside detectors on mainlines scan equipment every thirty miles or so and report defects automatically to train crews. These detectors check both sides and underneath trains around the clock. Local agents are only there 40 hours a week and can only get a cursory look at one side of the train. I could go on and on countering the opposition's probable arguments. I've heard them all time and again at numerous hearings.

The point is that modern communication technology has eliminated the need for middleperson functions in many businesses by allowing the customer direct access to the actual service providers. The same is the case with the railroad. This bill will not remove any shipper protections. But it will eliminate needless government expenditures.

QUESTIONS AND ANSWERS ABOUT RAILROAD AGENCIES  
IN MONTANA

1. **WHAT IS A RAILROAD AGENCY?**

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

2. **WHAT FUNCTIONS DID THE RAILROAD AGENCY HISTORICALLY PERFORM?**

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

3. **WHAT EFFECT HAS MODERN TECHNOLOGY HAD ON THE DUTIES OF RAILROAD AGENCIES?**

Because of changes in society and advances in business technology, the agencies no longer handle Western Union telegraphs, passengers or perform most of the functions once necessary. Car orders, record keeping, freight billing and yard handling are computerized and handled through a customer service center.

4. **WHAT WILL HAPPEN TO RAILROAD AGENCIES IF THE PROPOSED LEGISLATION PASSES?**

The Public Service Commission will still determine if an agency is required based upon the need. The only change is that railroads will be allowed 90 days to demonstrate and prove to the shippers' satisfaction that the proposed agency service change will work. If the majority of the shippers are satisfied, the Commission will not have to hold an unnecessary expensive hearing. During the test period the railroad must keep its local agency in place. *The benefit to the state* is that the PSC may be relieved of the expense of holding hearings. If the affected shippers are not satisfied, a PSC hearing and approval would be required before the agency could be closed. *The benefit to the shippers* is that they will have the opportunity to evaluate the service change before being forced to decide whether or not to oppose it. *The benefit to the railroads* is that they will have the chance to prove their proposed agency service change to the shippers and adjust it if necessary to accommodate the shippers' needs.

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

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

Railroad customers gain immediate access to the information and services needed by directly phoning customer service centers. This is no different than the way people routinely contact the customer service centers of airlines, car rental agencies, hotels or trucking companies. Many customers have direct computer links to the railroads' computers by which they routinely transact business.

6. **HOW MANY RAILROAD AGENCIES ARE LEFT IN MONTANA?**  
Currently there are only eleven left on Burlington Northern (compared to over 60 ten years ago), and two on the Union Pacific.
7. **WHAT WILL HAPPEN TO THE AFFECTED RAILROAD EMPLOYEES?**  
In nearly all instances those not eligible to retire will be absorbed into other positions as per existing union agreements.
8. **IF AN AGENCY IS CLOSED, HOW DOES A BN CUSTOMER GET SERVICE?**  
Customers simply call the regional service center using toll-free lines. This is no different than the way customers routinely contact the regional reservation centers of airlines, car rental agencies, hotels or the regional service offices of trucking companies. There is no cost to the customer.
9. **WHAT HAPPENS IF THERE IS A PROBLEM WITH A SHIPMENT? HOW DOES A CUSTOMER GET HELP WITHOUT A LOCAL AGENT?**  
Regional customer service centers are on call 24 hours a day to handle requests for service or inquiries about problems with shipments. If personal contact with a railroad representative is required, staff members at the customer service centers can arrange for it.
10. **HOW IS THE CLOSING OF AN AGENCY RELATED TO THE DEPOT?**  
Many agencies are located in rented buildings. Others are in depots which will continue to be used by other departments. In some cases, the closing of an agency can lead to the closing of a depot, but each community is different. BN works with community groups which are interested in preserving their depots.
11. **HOW IS THE CLOSING OF AN AGENCY RELATED TO TRACK ABANDONMENTS?**  
There is no relationship between agency closings and track abandonments. BN has closed many agencies in important main and branch line communities because their customers can be better served by regional customer service centers. Agency closings have NO effect on train schedules or service.
12. **WHAT WILL CLOSING OF AN AGENCY DO TO BN'S LOCAL TAX BILL?**  
The closing of an agency almost never has a significant impact on local taxes because typically an agency consists of some furniture and office equipment. Many buildings will continue to be used by other departments. Due to the amount of property held by the railroad and assessed for taxes, in most cases the closing of an agency won't even be noticed by local taxing bodies.
13. **ARE OTHER RAILROADS DOING THE SAME THING?**  
Agency consolidations are an industry trend because all major railroads face the same pressure to become more efficient, to compete more effectively and to better serve their customers.

## THE RAILROAD AGENCY

### Outdated requirements restrict railroad flexibility

Railroads were the first industry to be placed under price controls in the 1880's and the last to be freed in 1980. Congress finally mandated that railroads would survive and grow like other businesses only if they were competitive and successful in adapting to change and meeting the changing needs of the transportation marketplace.

Railroads have proved that they can adapt to change--quickly and successfully--and provide better service to their customers while doing so. However, in Montana, restrictive regulations enacted decades ago prevent the railroad from reducing its operating cost and taking advantage of technology used by competing modes of transportation.

Being forced to maintain unneeded freight agencies when there is no economic rationale is a flagrant example of business being denied the freedom to adapt to technology, improve productivity and offer better service to customers.

### Historical Purpose of Agencies

The railroad agent's original purpose was to provide service for local railroad customers. Agents were located in virtually every community simply because that's where railroad customers were located. Unlike today, most businesses were small and communications technology was essentially non-existent. The needs of the customers were also different. Shipment of goods and products were often in small quantities (less than carload). While agricultural products comprised a large part of the railroad's business, quantities shipped were generally small due to smaller farms and limited production.

Administrative work performed by the agent for the railroad was also different than it is today. It included preparing bills of lading and waybills for individual shipments; collecting and remitting monies due the railroad; relaying orders and messages to train crews, and handling all customer claims. The agent also played a large role in rail passenger service. He sold tickets and handled baggage and mail. For over a decade now, railroads have been out of the passenger business. It is the exclusive service of Amtrak.

### Agencies no longer needed.

By 1980, a century of change had wreaked havoc on the railroad industry. Competition, almost non-existent in 1880, had reduced the railroad's share of the transportation market from 75 percent in 1929 to less than 38 percent in 1980.

Farmers and ranchers found they could truck their products to a larger market area to take advantage of better prices, both for the products sold and purchased. Today, railroad customers are larger and more centralized and their transportation needs have changed. They want larger shipments, faster deliveries, and current information on those shipments.

Rail passenger travel has dramatically declined as the public chose to use highways and airlines. Gone is the need for a local agent to sell tickets, handle mail, express and baggage.

### Technology provides better customer service

In 1980, following the collapse of the Penn Central, Milwaukee, and Rock Island systems, came the realization that if railroads were to survive as a viable and independent transportation system, two things were required: they would have to reduce costs to become price competitive with other modes and secondly, service must be improved to retain and attract new rail customers.

Technology played a major role in both respects. Costly computer and communications systems have been installed to efficiently manage car fleets, perform billing and collecting procedures, and other administrative tasks. Customer service centers have been established to provide the latest information 24 hours a day, seven days a week, on shipment location and delivery times. In essence, all services needed by rail customers can now be obtained through the full service agencies as compared to the limited service available through a local agency, staffed only eight hours per day, five days a week.

### Summary

Regulatory bodies in virtually every state have recognized that local agencies are no longer needed. Public Service Commissions have responded by authorizing necessary changes in the railroad's customer service centers. The benefits to the railroads include opportunities to reduce operating costs; improve rail service and become more efficient. Rail customers benefit with improved service and help ensure long term viability of rail service by allowing railroads to become more competitive in the marketplace.

EXHIBIT 5DATE 2/10/95HB 364

HELENA TERMINAL  
P.O. BOX 5055  
HELENA, MONTANA 59604-5055  
WATS 800-824-0913  
406 / 442-9536

TRUCKING INC.

HOME OFFICE  
P.O. BOX 5328  
MISSOULA, MONTANA 59806-5328  
WATS 800-548-8895  
406 / 728-6121

### Testimony for HB 364

Watkins and Shepard is in support of HB 364.

Watkins and Shepard loads about 300 boxcars of furniture per month at our Mississippi terminals and ships them to 7 western locations for redistribution, including two locations in Montana; Helena and Shelby.

With today's technology most BN agents serve no purpose for Watkins and Shepard. All communication is handled direct with BN via fax machines, computers and telephones.

It makes little sense to keep unneeded overhead in the system which ends up effecting us in the form of higher rates.

For our business to continue to grow we need a railroad that is competitive and very service oriented. Fortunately, Montana is served by the Burlington Northern and their service ranks at the very top of all rail service. We urge you to pass HB 364 so BN can continue to utilize technology advances to provide better service to its customers in Montana.

Thank you,

A handwritten signature in cursive script that reads 'Ray Kuntz'.

Ray Kuntz  
Vice President of Operations and Sales

RJK/lmd



HB 364 Testimony

Carla Allen, Central Montana Rail, Inc.

February 10, 1995

Hopefully, my testimony today will help demonstrate how this legislation would have helped Central Montana Rail and saved Montana taxpayers unnecessary expense had it been in place 10 years ago or even last year.

Central Montana Rail's one and only office is located in Denton and has always been located in Denton. Our shippers order the majority of their cars directly from BN in Fortworth and they bill their cars directly with BN in Great Falls. CMR has not had an agent in Geraldine since it took over the line in 1985.

When we decided in July of last year to donate the depot to the Geraldine Historical Committee I expected the transfer to be a matter of some simple paperwork. Since CMR leases the right-of-way from the State of Montana, I contacted the Rail & Transit Division of the Department of Transportation. It was their opinion that any decision regarding the Depot was Central Montana Rail's.

I happened to see Pat Keim on the local news one night in a situation similar to ours. The BN was giving a depot to a local group in Rudyard. So I called him to see what I needed to do. In the course of our conversation he asked if a petition had ever been filed with the Public Service Commission to remove the agent and abandon the depot. I didn't really know if it had or not. I thought perhaps it had been part of the original proceedings to turn the right-of-way over to the State. The PSC did not have record of any such petition. I asked if the process could possibly be waived since we had never had an agent in Geraldine. It was the PSC's decision that CMR would have to go through the formal process of filing a petition.

It was frustrating and disappointing that CMR would have to spend unnecessary time and expense on a formality. Naturally, the Geraldine Historical Committee was disappointed too. They had hoped to start renovations last fall - at least put on a new roof to prevent any further deterioration.

The petition was filed January 25, 1995 so on approximately March 13, 1995 a hearing will be held in Geraldine to close an agency that has not been in use for 10 years.

**COLUMBIA GRAIN INTERNATIONAL, INC.**

900 - 2nd Avenue North, Suite 1  
P.O. Box 1969  
Great Falls, Montana 59403  
406-453-6506



EXHIBIT

DATE

HB

7

2/10/95

364

February 10, 1995

To: Members  
Montana State Legislature  
Helena, Montana 59620

From: Vince Goecke  
Manager Montana Division  
Great Falls, Montana 59401

Re: HB 364

As manager of Columbia Grain Montana Division I'd like to submit this letter in support of House Bill 364.

The process set forth in this bill to determine the viability and necessity of a facility is fair and equitable to all parties involved. It provides for efficiency and overall cost reductions.

As a company Columbia Grain ships over 10,000 car loads of grain annually. These shipments originate from Montana and move to all corners of the United States and Mexico. One person in our Great Falls office bill and track these shipments with the aide of an inexpensive computer. As a course of business we also bill and track rail cars for producers and small independent elevators.

While I realize this bill is designed to save time, money and expedite the procedure of closing agencies it is not a reduction of service to Montana customers. The current system we use of tracking and billing railcars is far superior to the agency system. Its fast, accurate and requires minimal training.

I sincerely hope as members of the committee you'll support HB 364.

Sincerely,

Vince Goecke  
Montana Branch Manager  
Columbia Grain International, Inc.

Buying and selling  
the basics.

# Pacific

## Steel & Recycling

EXHIBIT

8

DATE

2/10/95

HB

364

Corporate Office  
1401 3rd Street N.W.  
P.O. Box 1549  
Great Falls, Montana 59403  
(406) 727-6222  
MT 1-800-332-9930  
FAX: (406) 453-4269

February 1, 1995

Chairman  
House Highways and  
Transportation Committee  
Helena, Montana

Dear Mr. Chairman:

I am writing this letter to support proposed legislation to amend Section 69-14-202, MCA.

This proposed legislation would allow a person, corporation, or association operating a railroad to test a service system before modifying or discontinuing a facility.

Currently, after proper notice is given of the desire to modify or discontinue service to a facility, a hearing is held at the location to be modified or discontinued. This involves considerable expense for the State of Montana (sending PSC staff to the hearing), as well as the railroad involved. In cases where the shipping public does not show up to testify, this is a total waste of money.

I believe the proposed amendment makes sense. Allow the railroad to file a formal application, notify the shippers involved and run the 90 day test period.

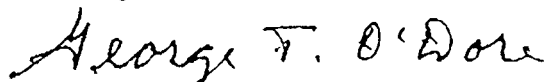
Let the shippers test the new service system. If the Public Service Commission does not receive written protests from the required number of shippers, they would have the authority to modify or discontinue the service. The PSC has fulfilled its obligation with no additional cost.

If, however, sufficient number of written protests are submitted to the PSC, they can set a hearing and feel reasonably sure that people will show up to testify. This would allow the PSC to more fully justify the expense of sending staff to the hearing.

If feel the proposed amendment to Section 69-14-202, MCA would be more fiscally responsible.

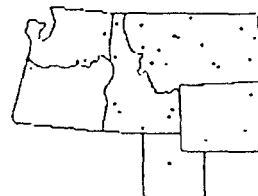
I apologize for not presenting my thoughts in person. Other job responsibilities do not allow me to leave my office.

Sincerely,



George T. O'Dore  
Transportation Manager

Serving the Northwest for over 100 years.



W. M. VAUGHEY, JR.

P.O. BOX 46

HAVRE, MONTANA 59501-0046

(406) 265-5421

EXHIBIT 9  
DATE 2/10/95  
HB 364

February 8, 1995

The Honorable Shiell Anderson, Chairman  
Highways and Transportation Committee  
Montana State House of Representatives  
Capitol Station  
Helena, MT 59620

RE: In support of House Bill 364

Dear Chairman Anderson:

A 26-year resident of Havre, I naturally would have an interest in the good continuing financial health of the Burlington Northern Railroad, a major employer of our area.

In this context I write to express strong support for HB 364. I have read the entire bill through and find that the 90-day test period for any elimination of an agent's position gives fair chance for expression to both sides in any instance where there is contention.

Through my years in the Havre area it has become obvious to me that of primary importance to continued good railroad jobs for Havre area residents is the good financial health of the Burlington Northern Railroad.

In light particularly of the fairness aspects of HB 364, I hope this measure is given a DO PASS recommendation by your Committee.

Sincerely,

W. M. Vaughey, Jr.

WMV/blp

cc: All members of the House Highways and Transportation Committee  
State Representative Norm Mills  
✓ Pat Keim, Director of Govt. Affairs, Burlington Northern



**General Mills, Inc.** EXHIBIT 10

**Northwest Grain Operations** DATE 2/10/95

#2 Fifth Street North, Suite 200

Post Office Box 5022

Great Falls, Montana 59403

(406) 761-6252

HB 364

February 7, 1995

Chairman of the House Highway and Transportation Committee  
Montana State Legislature  
Helena, MT 59601

Chairman and Members of the Committee:

General Mills, Inc. supports House Bill 364 in an effort to simplify the status of an agency closure. Increased technology and consolidation in the industry have allowed Burlington Northern Railroad to reduce unnecessary agencies. This bill provides an effective compromise between random closures and unreasonable political pressure that forces unneeded agencies to remain open. We urge you to pass this piece of legislation.

Sincerely,

Kerry Schaefer  
Regional Manager  
NW Grain Operations  
General Mills, Inc.

KS/sl

BEFORE THE MONTANA HOUSE HIGHWAYS & TRANSPORTATION  
COMMITTEE

EXHIBIT 11  
DATE 2/10/95  
HB 364

STATEMENT OF JAMES T. MULAR  
MONTANA STATE LEGISLATIVE  
DIRECTOR  
TRANSPORTATION COMMUNICATION UNION (TCU)

Mr. Chairman, members of the Committee:

I am appearing in opposition to HB 364. Commonly referred to as the BNR's CONVENIENCE AND NECESSITY BILL. TCU opposes this bill because it denies due process for small shippers. Who rely on local agency shipping and receiving services. TCU represents the interests of local agents and customer service employees. As members of the public - we appear before the MPSC - Whenever public hearings are conducted on railroad station closures/consolidations or modifications. Submitting testimony germane to station agency functions, public safety, and other factors. That enable the commission to determine adequate and reasonable accommodations for freight and passenger accommodations.

Our appearances in these proceedings are inherent in the present law. (See Sections 1 & 2 of HB 364- relating to general public testimony)

Legislative history relating to Section 69-14-202 MCA.

Prior to the 1987 Legislative session. Montana station law required a railroad to maintain and staff station facilities in communities of 1,000 inhabitants, and at least 1 station in each county. There were 52 railroad stations that existed in Montana communities with a 1,000 or more people, and 18 communities with less than 1,000. A total of 70 open rail agencies.

HB 302 was passed in 1987 as reflected in Sections 1 & 2 of HB 364 now before this committee. The 1987 session witnessed a strong lobby by the BN. They argued that it was burden on the railroads to maintain and staff 70 railroad station facilities. The pre-1987 statute was upheld as being constitutional after a court case before the U.S. 9th Circuit Court of Appeals.

During the 1987 session BN lobby convinced the legislature. That the Public Service Commission could determine adequate, just and reasonable station agency services under the common law doctrine of "PUBLIC CONVENIENCE AND NECESSITY". Of course the burden was on the railroad to prove that 'public convenience and necessity' no longer requires agency services.

When the 1987 law was passed. Burlington Northern, and Montana Rail Link (MRL) submitted closure applications. Closing 51 fifty one stations between 1987 and 1994. An average of over 7 stations per year. Their applications sought to consolidate each station to a CENTRAL CUSTOMER SERVICE CENTER (CCSC). Today there are three (3) CCSC on the BN located in WHITEFISH, GREAT FALLS, and GLENDIVE. MRL has one (1) CCSC located in MISSOULA.

The CCSC's perform traditional rail agency functions. That formerly existed in the 51 closed stations. Montana's rail customers call a toll free numbers which are based in 4 CCSC offices.

**WHAT IS THE REASON WHY BURLINGTON NORTHERN IS SEEKING  
PASSAGE OF HB 364???**

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I have handed out a copy of BN Employee Bulletin Notice dated July 20th 1992. On the reverse side. You will note that we have boxed a notice relating to BN's 'strategic initiatives'. Reflecting that they intend to implement a NATIONAL CUSTOMER SERVICE CENTER IN FORT WORTH TEXAS....BY EARLY 1995.

This means that BN intends to close all station agency facilities in Montana. AND THERE IS ONLY ONE WAY THEY CAN ACCOMPLISH THIS FEAT! By asking this legislature to AMEND a law that they SUPPORTED IN 1987. HB 364 permits them to close a station for a 90 day test period. It is presumed that the railroad will remove agency functions to Ft. Worth, Texas. Thirty Days Prior to the end of the 90 day test period over 50% of the shippers must protest. And of that percentage OVER 50% MUST GENERATE OVER 50% OF THE TRAFFIC VOLUME ATTRIBUTABLE TO THE STATION AGENCY. If this did not occur the PSC would NOT Conduct Public hearings. (See lines 12 thru 16 p-2 HB 364)

A CLEVER WAY TO CREATE A LAWFULL DOCTRINE FOR BN'S CONVENIENCE AND NECESSITY. Also a conflict with Sections 1 & 2 of the Bill. Because DUE PROCESS IS DENIED. Also the Railroad does not have A BURDEN to prove public convenience & Necessity no Longer Requires Agency service.

HB 364 discriminates against the SMALL SINGLE CAR SHIPPER. Percentages appearing in the Bill clearly indicate that 50% of shippers could constitute a MAJORITY of 20 Small Shippers. And 4 Large shippers (ie: 52 Car Unit Train and 100 Car Unit Coal Train Shippers) WOULD EXCEED OVER 50% of the Traffic Volume at the facility. If THESE LARGE SHIPPERS DID NOT PROTEST - THERE WOULD NOT BE ANY PUBLIC HEARINGS. THE STATIONS WOULD CLOSE BY OPERATION OF LAW.

The railroads are desperate. They need this legislation. I have distributed another handout. Reflecting all open Montana Railroad stations. It is interesting to note. That there are 11 BN open stations - 4 MRL open stations - 2 MWR and 2 Union Pacific stations in Montana. You will note that 4 BN stations are under consideration by the PSC for closure. Hearings have been held. Note that the little town of FROID (about 200 people) is being contested by BN in Helena district court.

Froid is a unique case. PSC Hearings were conducted in Froid in November 1993. The Commission denied BN's application. Premised on the findings of fact. The Froid agent was directed to provide agency service, and customer problems, by traveling to Scobey, Plentywood, Culbertson, Sidney, Poplar and Malta. These directives were given him by his supervisor in Glasgow. Customers at these locations opposed the Froid closure. For want of agency service. Bearing in mind that these points were closed (except for Froid) between 1987 and 1993. The Commission offered an Olive Branch to BN in their denial order. That is that the Froid Agent should continue servicing these shippers. BN didn't like the order, and appealed for judicial review seeking to over turn the Commissions findings.

One month after the Froid hearing. BN directed the agent to no longer provide agency services to those communities.

HB 364 does in fact allow the agent to remain during the test period. BUT- WILL THEY BE ORDERED NOT TO PERFORM AGENCY CUSTOMER SERVICES DURING THE TEST PERIOD?


IN CONCLUSION: I submit to you that HB 364 discriminates Against Small shipper denying them due process.

Does not take the 'public interest into consideration' Such as Public Safety, and Economic Impacts.

Relieves the railroads burden to prove that public convenience no longer requires the maintenance and staffing of rail agency facilities.

And expidites the railroads time frame to close all stations in Montana.

We urge a No vote against this BAD BILL. Thank you.



James T. Mular, SLD MT TCU



and already has contributed some \$20 million in revenues. Our Regional Sales organization has demonstrated it can be successful selling BN services to new, small- and medium-size customers, some of whom shipped on BN years ago. In the next 60 days, we will strengthen this sales effort with additional people from operations being moved into this group. You will be hearing more about this program next month.

### **Strategic Initiatives:**

We are launching today two strategic initiatives: One is a three-year effort to create an integrated train dispatching center and the other, a similar multi-year effort to build a customer service center. Both centers will be world-class, state-of-the-art undertakings and are planned to be located in Fort Worth.

BN will benefit immensely from combining its dispatching activities into a single center, equipped with the necessary computing and telecommunications capability to improve management of our entire network on a real-time basis. Another benefit will be better communications with our customers regarding shipment status, arrival times and pickup times. A project team is being put together to define the specific operating procedures, equipment needs and migration plan to move from our current system of multiple dispatching offices to a single center that will include the current Network Control Center. As a result of this initiative, there will be further improvement in customer service and precision execution. There will also be significant savings.

NE SC The concept for a BN Customer Service Center is also the result of many years of study. By Sept. 1, a complete implementation plan will be developed for review by BN's senior management team. Recognizing the need to consolidate all customer service activities within a single center is another strategic step toward adjusting the size of BN's work force while providing higher levels of customer service. We will invest in information technology support and physical facilities, beginning in 1993, and we expect the Center to be in full operation early in 1995.

Further study and economic analysis will be required to implement both of these centers efficiently.

All of these actions are correct for BN at this time. They grow out of the strategic study we undertook called Shaping BN's Future. They are timely as we go about bringing into balance our resources with our business demand. We want a nimble operation that has a manageable fixed cost, with the agility to respond to opportunities for improved volumes at the lowest possible expense. Only in this way, can we achieve high levels of customer service at the right operating costs to produce an operating ratio of 80 percent and below. This operating ratio will be necessary to compete and survive now and in the years ahead.

A number of these actions will affect BN people. We are committed to smooth, orderly transitions in all of our consolidation actions. We will strive to treat all affected employees with fairness and respect. For those people whose work and, therefore, positions will not be necessary, we will provide an appropriate severance package. For those people who may be asked to relocate, the company will provide a relocation package and it's unlikely that many relocations will occur before mid-1993. In all instances, we will make every effort to handle the situation of each employee affected by these actions with utmost care and concern for the individual.

As we move through the planning and implementation phases of these actions, as well as create others, we are committed to keeping all BN people informed.

Richard Russack, VP,  
Communications

COMPASS POINTS  
COMPASS POINTS  
**COMPASS POINTS**  
**COMPASS POINTS**

07/20/92

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PLEASE POST ON A BULLETIN BOARD FOR ALL EMPLOYEES TO READ.

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●● Grinstein announces actions and strategic initiatives  
to strengthen BN's competitiveness

Ten days ago, BN's senior management met for two days to review and discuss the progress of G-30 and our revenue situation for the balance of 1992. We concluded that BN has a long ways to go to reach the performance levels we are capable of.

G-30's work has been good, but the rate with which we have reduced operating costs and uncovered new sources of revenue is not fast enough to reach our 1992 performance goals. We are not changing our goals, but we must adapt our business to the competitive and pricing pressures that have impacted our revenues. Therefore, we agreed to take a number of actions immediately to stimulate significant, lasting operating cost reductions that we will watch closely so as not to impact adversely on essential customer service levels. These actions and others to follow will also help move BN toward becoming the kind of railroad we must become -- the best in our industry.

We are in an urgent, competitive battle and all of us in senior management are committed to not just surviving, but winning. I'm sure each of you share that commitment, too.

Today, all of us perform some tasks that either can be done differently and more efficiently, or completely eliminated. By eliminating unnecessary work and prioritizing other activities, we will continue the process aimed at reaching a stable and secure work force level.

In addition, we are taking the following actions:

- Freezing hiring;
- Reviewing in advance any relocations in order to achieve a 50 percent reduction in moving expenses for the balance of the year; developing a strategic plan to reduce significantly these expenses on a long-term basis;
- Cutting by 10 percent our business travel expenses for the balance of the year.

These actions can provide us with \$5 to \$10 million in savings.

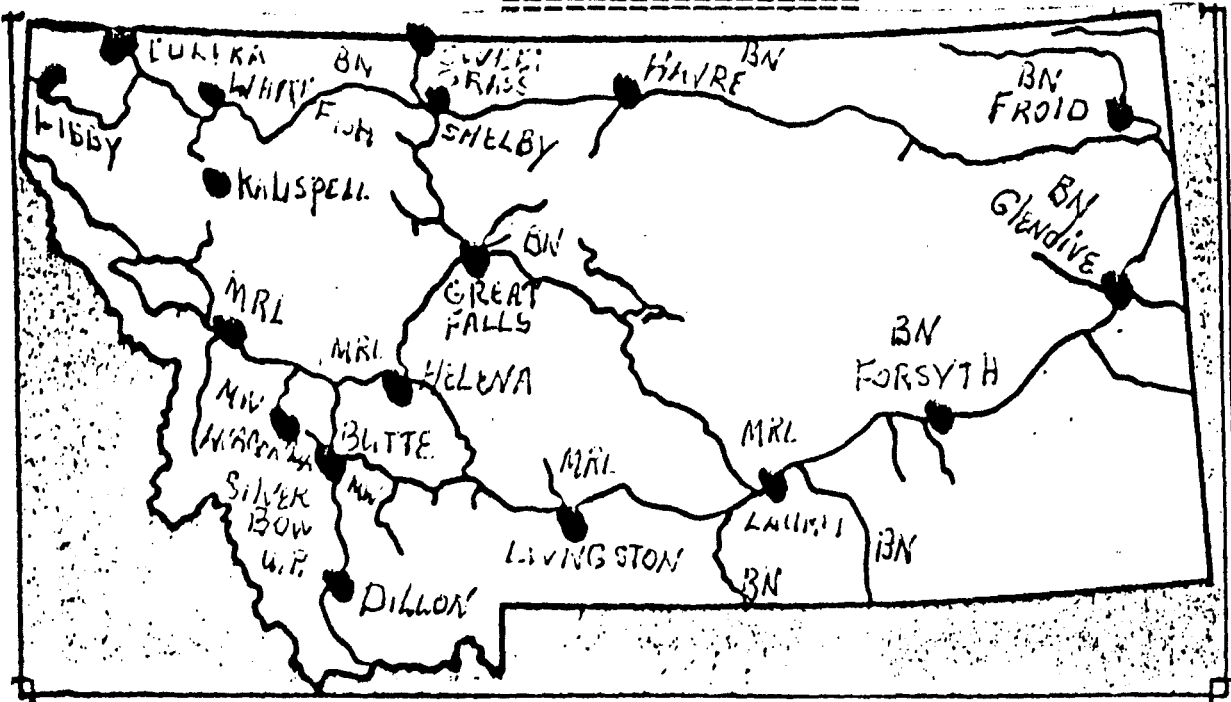
We also are exploring ways to reduce trains starts, fill excess car and train capacity, and reroute existing trains to improve cycle times -- all as part of the precision execution process, and all done with a continuing focus on improving our safety performance. Further, our sales and marketing people are meeting to analyze business opportunities by customer in the central and southern corridors, following

(SEE REVERSE SIDE)

# MONTANA RAILROAD STATIONS

HB 364

EXHIBIT 11  
DATE 2-10-95  
HB 364



MONTANA STATIONS LOCATED ON BURLINGTON NORTHERN RAILROAD

1. LIBBY MONTANA \*
2. EUREKA MONTANA \*
3. KALISPELL MONTANA
4. WHITE FISH MONTANA
5. SHELBY MONTANA \*
6. SWEET GRASS MONTANA
7. HAVRE MONTANA
8. GREAT FALLS MONTANA
9. FROID MONTANA \*\*
10. FORSYTH MONTANA \*
11. GLENDIVE MONTANA

\* NOTE: Libby, Eureka, Shelby, and Forsyth station closures are pending before the Montana Public Service Commission. Public hearings have been held, awaiting Commission orders.....

\*\*NOTE: MPSC Denied BN station closure authority. BN appealed for judicial review. Case pending in 1st. Judicial District, Helena.....

[illegible]

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1. WOLF POINT \*
2. GLASGOW \*
3. MALTA \*
4. HAVRE
5. SHELBY \* (GREAT FALLS & BUTTE BUS CONNECTION)
6. CUT BANK \*
7. BROWNING \*
8. GLACIER PARK (CLOSED SEASONALLY)
9. ESSEX (STOPS AT IZAAK WALTON INN)
10. WEST GLACIER \*
11. WHITEFISH
12. LIBBY \*

**Danny Oberg**  
**Montana Public Service Commission**  
**Helena MT 59620**  
**444-6199**

Testimony of the Montana Public Service Commission on HB 364

**Statute Designed to Insure Quality Service**

Mr. Chairman, Members of the Committee, the MPSC appreciates this opportunity to appear before you and comment on this modification to railroad statutes dealing with a railroad's obligation to maintain a depot and agent in communities they serve.

There is a rich and colorful history dating back 50 years and more at the Commission with the closure of railroad depots. In fact, if you ask your parents most of them will still refer to the PSC as the Railroad Commission.

The Staggers Act largely transferred regulation of the railroads from the state Government to the Federal Government. For the last dozen years the MPSC's oversight of railroads has largely been limited to depots, certain safety considerations, and complaint resolution.

**The Law Has Worked**

During my tenure on the PSC I have participated in the widespread closure of the agency service in Montana and the consolidation of services into a handful of centralized service centers. **I probably have the dubious distinction of closing more railroad depots than any other Commissioner in Montana history.**

These closures have resulted from hearings that are held in local communities where shippers, community leaders, and elected officials like yourself have had an opportunity to offer testimony to the PSC on the proposed depot closure. While it has taken BN 3 or 4 tries to close some depots, the fact of the matter is that the present statute has worked as I believe the Legislature intended. When BN was able to meet the needs and concerns of its shippers their closure requests are granted.

BN can and has closed most of its wide- strung and expensive customer service operations. All as they have to do is take care of the concerns of their shippers and a closure becomes a matter of fact. When shippers present opposition to a closure then the Commission has generally ruled in favor of continued local service.

As the policy makers of this state, I would ask you to question what problem is attempted to be solve before you modify present statutes. I would submit to you that while BN may have had a problem a decade ago there is no problem now that you need to correct. The system has

worked- and BN has only 11 depots left. **Five of those depots they have never even asked to close.**

### **The Real Reason for this Bill...**

What I believe this bill is really about is BN asking the Legislature to cooperate and provide a vehicle for Burlington Northern Railroad to close its 3 Centralized Service Centers (in Great Falls, Glendive and Whitefish) and move all of those operations to Fort Worth, Texas. I would submit to you that it is not in the best interest of Montana's grain, timber and business community for you to rewrite Montana law to give BN an easy way out of the state. This session of the Legislature is being asked to appropriate several hundred thousand dollars to continue to fight BN's monopolistic pricing policies in the continuing battle known as McCurdy Farms. Removing their Montana customer service operations to Texas is another monopolistic business practice. **Most disturbing, is if this bill is enacted into law BurlingtonNorthern Railroad would have a much easier standard in moving all customer services out of the state than it had even closing one isolated depot in a small community. That just doesn't seem right or fair.**

### **HB 364 is a Major Shift in Public Policy**

In many ways this is a radical bill:

- \* We believe it virtually guarantees there will be no chance for the PSC to hold a hearing on a closure and transfer..

- the 50% protest figure is an insurmountable hurdle and will give only the appearance of regulation or public input.

- \* If passed, this bill shifts the burden of proof from the railroad to the shippers. Before they could even be heard, shippers would have to organize themselves to petition for a hearing.

- \* this bill represents a radical shift in policy most recently expressed by the 1987 Legislature. Rural legislators insisted on language in Section 69-14-202 (2) (Line 20 of the bill) that requires the Commission to take into consideration testimony presented by the general public. The proposed language beginning on line 23 does not give the public a chance to comment unless a required number of shippers request a hearing. These sections appear to be in direct conflict.

- **Legislators are our most frequent witnesses at agency closures and under this bill you may not even have an opportunity to represent your constituents.**

- \* I readily concede that many depots have been kept open when only an infrequent or

small shipper has opposed a closure on the basis of safety or shipper concerns. Rather than be a defect that needs to be corrected I would submit to you that is the purpose of the statute- to protect the small shipper who has no economic clout or market power from the monopoly railroad. We believe the small shipper is the loser in this bill.

\* The MPSC is precluded under this bill from holding a hearing and attaching reasonable conditions that might protect shippers if a transfer from operations to Ft. Worth must be approved.

- We might want to require certain service hours, times that calls must be responded to etc. However, unless the threshold level is reached there will be no hearing and no record established to develop a reasonable order.

It is clear to me that this bill is really about the Legislature being asked to approve an expedited and fast track procedure for Burlington Northern to transfer jobs and services to Fort Worth Texas.

This bill is simply about one company coming in and getting a long standing public policy changed for their own interests at the expense of many Montana businesses.

I recognize the people of Montana sent you down here with a new mandate. I don't think this bill meets any of the criteria that Montanans expect out of this Legislature:

- It is not about jobs, **in fact it will expedite losing good Montana jobs.**
- It's not about cutting government. **This bill won't affect our staff at all.**
- It's not about improving the business climate. **Grain elevators and shippers around the state would argue it will hamper their businesses..**
- It's not about fairness.- **it's not fair to change the rules in the middle of the game.** This Commission and Burlington Northern has assured it's shippers that, if and when, the day came that they sought to consolidate their operations out of state the people and shippers of Montana would have their day before the PSC to protect their interests. This bill severely limits and (in my opinion) takes away that right. Realistically, the 50% threshold will never be reached.

### **Don't fix what isn't broken!**

The Commission believes that HB 364 is not in the public interest and should be rejected. There are no amendments that can make it acceptable. Present law is the best vehicle to insure that Montana's shippers interests are considered when BN makes its upcoming application to close its Montana service centers and move jobs and services to Fort Worth.

*Danny Chung*  
*February 10, 1995*



# Montana State AFL-CIO

Donald R. Judge  
Executive Secretary

110 West 13th Street, P.O. Box 1176, Helena, Montana 59624

406-442-1708

EXHIBIT 13  
DATE 2/10/95  
HB 364

TESTIMONY OF DON JUDGE  
BEFORE THE HOUSE COMMITTEE ON HIGHWAYS AND TRANSPORTATION  
FEBRUARY 10, 1995

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Mr. Chairman, members of the committee, for the record my name is Don Judge and I am here representing the Montana State AFL-CIO.

The story of the land grant railroads and the role they played in the history of Montana and other western states is well known. The presence of Montana's first mechanized transportation system enhanced the quality of life for pioneers and expedited the settlement of the state. Railroads have always been encouraged by a generous government that believed the railroads would return the taxpayers' contribution by servicing remote areas of the country with delivery of goods, transportation of products to markets and passenger service. And to a greater or lesser degree, they have.

Now the Burlington Northern comes before the Legislature with a tortured mockery of a process that is guaranteed to yield the answer they are seeking, which is that they aren't doing a good enough job servicing customers in Montana that they'd be missed if they left. The goal, of course, is permission to abandon their last remaining facilities in Montana without a lot of fuss.

The process designed for this special interest bill is elitism at its finest. The largest customers who are far less dependent on the agencies than the small shippers, are given absolute say on whether the agency stays or goes. In at least one district, all of the small shippers put together aren't allowed the same voice as the one single large shipper under the formula in this bill.

This bill rigs the process so BN can go through the motions of satisfying the "public convenience and necessity" test in order to get the go-ahead to leave the state.

It's a cynical manipulation of the law. It is unfair to rural areas and small shippers. Please vote no on HB364.



F.G. Marceau, State Legislative Director  
United Transportation Union  
98 Sussex Drive  
Kalispell, Montana 59901  
Phone/fax: 406-755-5116

EXHIBIT 14  
DATE 2/10/95  
HB 364

February 10, 1995

Representative Shiell Anderson, Chairman  
House Highways and Transportation Committee  
Capitol Station  
Helena, Montana 59620

Dear Representative Anderson,

Mr. Chairman, members of the committee, I am unable to attend the hearing today, so I am writing to encourage the committee to oppose HB 364 for the following reasons:

There is presently a procedure in place which allows for the discontinuance of railroad agencies if the Public Service Commission deems such closure appropriate. It should be noted that the procedure presently used by the PSC has granted railroads the authority to close many agencies. There are only 11 stations on the entire Burlington Northern line in Montana. Closures are pending on four of the 11, awaiting a decision by the PSC.

What this bill is attempting to do is to interfere with the PSC's decision-making ability to require a railroad station to remain open for public convenience and necessity and for the safe operation of the railroad. Through gamesmanship and maneuvering, this bill will prevent the PSC from making the decisions and doing the job it is intended to do.

If this bill passes, I'm sure other modes of transportation and the utilities will have legislation introduced to see if they might also weaken the Commission's authority for their own self-interests.

Once again, I urge you to oppose HB364. Thank you.

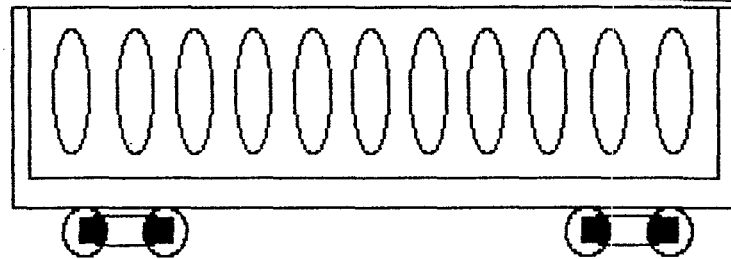
Respectfully submitted,



F.G. Marceau  
State Legislative Director  
United Transportation Union

## Gwynn Lumber & Reload Inc.

PO Box 911, #1 Railroad Street  
Eureka, MT 59917



February 8, 1995

State Representative Patrick Galvin  
Capitol Station  
Helena, MT. 59620

Concerning HB 364 that is planned for hearings in the Highway & Transportation Committee during this week and deals with Railroad Depot Closure.

I would request that you to vote against it. In past history BN has tried to remove the agency from Eureka and go with a central agency. It simply does not work. We have no way to complete our job in a timely fashion. And the Emergency Services has proved that there is too much of a delay when and situation arises that the train needs to be split to allow fire fighters or ambulance personnel through.

Some of the questions that I have are:

- 1.) What is wrong with the way the bill is currently written? This bill sounds like the railroads are trying for an easier way to get out of their agencies in Montana and it sounds like they are trying to run the State of Montana.
- 2.) Haven't they (the railroads) taken enough jobs out of the State of Montana?
- 3.) The Railroad has a hard time keeping their system running now, What are they going to do with less people?
- 4.) If this bill passes will there still be a need for the PSC? Could the railroads by-pass them all together?
- 5.) Will this stop the "due process" in closing an Agency?

Let me give you a hypothetical example of this bill in action.

On page 2 of the bill, lines 12 through 16. Burlington Northern would designate ALL of Montana a test area and propose a blanket closure of all depots. This would take-in all 11 depots that are still in Montana. Under the System Test over 50% of all Montana shippers would have to protest, and over 50% of these shippers would have to generate over 50% of the traffic. This leaves the little people in the Tobacco Valley without any avenue of protest. But it leaves the coal companies and the grain shippers with all of the say and maybe they can operate without an agent but we can not.

What is good for the Tobacco Valley is not necessarily good for all of Montana and visa versa.

I still believe that this Bill will stop the due process in closing an Agency. Please keep me advised of all happenings with regards to this bill.

Sincerely,

Mike Gwynn  
Owner

EXHIBIT 16  
DATE 2/10/95  
HB 133

STEERING AUTOMOBILE COVERAGE FROM  
OWNERS TO DRIVERS

212.0400

An Investigation of the Pros and Cons of "Insure the Driver" Auto Policies by  
Insurance Services Office, Inc.

## PURPOSE

This report investigates the concept of an "insure-the-driver" personal auto insurance policy. Information regarding the history of this approach to providing auto insurance will be provided. The problems experienced by insurers and insureds with the current "insure-the-owner" policy, the advantages and disadvantages of insuring the public with an "insure-the-driver" policy and the feasibility of adopting and implementing such a policy will be explored.

## DEFINITIONS

An "insure-the-driver" policy can be defined as a policy providing automobile liability coverage (with attendant provisions for Medical Payments Coverage, Death and Disability, Uninsured Motorists and others, if desired) for an individual with respect to operation of an automobile. In addition, other liability exposures, such as ownership liability, may be present and require coverage, since the driver of an auto may not be the only person to be held liable for damages sustained in an accident involving that auto.

Under the "insure-the-auto" policy concept, which is the basis for providing auto liability insurance today, the named insured buys insurance which provides coverage for himself and others using the insured vehicle. This is done through the definition of insured, which includes any person while using the covered auto.

## HISTORY

The concept of insuring the driver was utilized as early as 1915, when autos were first used by the public as a means of transportation. Under this type of insurance, the named insured received coverage. Additional insureds using the auto could be added onto the policy for an additional premium. The "insure-the-driver" approach for insuring auto owners became obsolete, due to the development of the law of agency, around 1920. Under the law of agency, car owners became responsible for the acts of others using the auto with the owner's permission.

In 1932 the National Conference of Commissioners on Uniform State Laws concluded that financial responsibility should be met by drivers rather than owners of vehicles. This decision was made with the concurrence of the American Bar Association and without input from the insurance industry. In 1934, the Department of Commerce sponsored the National Conference on Street and Highway Safety and developed an alternative model financial responsibility law. The Department concluded, with concurrence from the insurance industry, that financial responsibility laws should stress responsibility on vehicle owners, and not on drivers. The Department of Commerce model law developed in 1934 was widely adopted, and the 1932 model was withdrawn, and believed to be obsolete. Note that at that time, there were no computers, more drivers than cars and different moral and judicial climates than we have today. Thus, as far as insurers and regulators were concerned, they probably believed that insurance could be more easily provided by insuring cars than by insuring drivers at that time.<sup>3</sup>

Over the years, various groups have conducted research indicating the advantages and disadvantages of the use of an "insure-the-driver" policy. Each of these groups has rejected the "insure-the-driver" concept.

- . Around 1952, the National Bureau of Casualty Underwriters (NBCU) considered and rejected the "insure-the-driver" concept.
- . In 1953, representatives of several insurance companies discussed the "insure-the-driver" concept at the request of the Deputy Insurance Commissioner of New Hampshire. The Joint Industry Committee report stated that the drawbacks of such a policy would outweigh the advantages.
- . In 1957, the Special Commission of the Commonwealth of Massachusetts considered the question of affording coverage on an "insure-the-driver" basis. The Commission reached conclusions similar to those discovered in the reports of the other various committees researching this subject.
- . Research found one insurer that currently offers a "Broad Form Named Driver" policy. The coverage provided under this policy is similar in theory to that provided under the Personal Auto Policy Named Non-Owner endorsement, which provides coverage for an insured who does not own an auto, but provides coverage for owned vehicles. The insurer developed the policy as a marketing technique to provide coverage for youthful drivers in California owning several motor vehicles. Their policy covers only the named insured and no one else; permissive use of vehicles is not covered. The benefit for the insurer is that no one else but the named insured uses the vehicle. The insured also benefits, because the premium that applies to only one of all the vehicles that would otherwise be insured separately, is paid. This is due to the restriction that only the named insured is covered by the policy, and the named insured can drive only one owned vehicle at a time.

This policy was implemented by the insurer in about eight or ten states in 1983. However, due to poor loss experience, the policy is now only used in California.

#### PROBLEMS WITH CURRENT "INSURE-THE-OWNER" POLICY

The following have been cited by proponents of the "insure-the-driver" auto policy concept as the problems existing with the current method of providing coverage on an "insure-the-owner" basis:

Due to the omnibus definition of "insured", the policy not only covers the named insured, but covers others using the covered auto who are unknown to the underwriter or producer.

When an auto owner purchases insurance under the "insure-the-owner" policy, the policy not only benefits the auto owner, but others who may use the covered auto during the policy period. This coverage is provided by including these other drivers of the covered auto as insureds under the policy. The underwriter or producer who sells the policy and the named insured need not even be aware of who these other insureds are. Although the named insured may appear to be a desirable risk, the underwriter does not know the characteristics of the other persons who may be covered while they operate the auto. Perhaps this is why there is often much criticism on the current criteria for rating, selecting and cancelling policies for insureds.

The public may not be aware that their policy premium could be affected by someone else who uses their auto.

For example, the father of a college student may lend his car to his son. In turn, the son may lend the car to a friend. If the friend is negligent for damages sustained by others in a serious accident, the owner of the car (the named insured) could, under some companies' rating plans, be surcharged for this accident upon policy renewal. The negligent driver's policy and driving record could remain unaffected.

Of course, the named insured needs to be covered for damages caused by others who use the auto, since it is the named insured who could be found responsible for an accident such as the one in this example in a court of law. However, the named insured may not realize that, under some companies' rating plans, the negligent acts of others using his auto may result in a surcharge on the premium he pays.

Keeping up-to-date data on insureds, which requires constant review of the insurance application for changes and which results in changes in the premium charged, is difficult.

The data that insurers receive on insurance applications often changes without the insurer's knowledge. Families get larger or smaller, people move, and insureds age. The insured is not likely to offer information to an insurer that would result in premium increases. Insureds are, however, more likely to offer information that will decrease premiums. Therefore, the rates that are often charged do not correctly reflect the actual criteria that should be used in the rating of the policy.

Since liability insurance often consumes a large portion of some insureds' incomes, insureds may tell their agent that they are living at another address, or that their car is owned by someone else living at another address if the other address is located in a territory rated lower than the one in which the insured actually lives. The insured will be charged a lower premium than is actually appropriate.

When one member of a family is considered a high risk and the rest of the family is composed of otherwise desirable risks, the entire family may be unable to purchase insurance easily or at preferred rates.

If one member of a family is an undesirable risk, such as a seventeen-year-old male with several tickets, his whole family may be unable to purchase insurance, or be ineligible for preferred rates. Although some of the family members may individually be desirable risks, the insurer may decide to nonrenew the entire policy covering the family auto. Many insureds trapped in this kind of situation believe that they are unfairly discriminated against.

When someone other than the principal operator is driving a vehicle at the time of loss, loss experience is charged to the principal operator of a vehicle, which leads to rate classification inequities.

When a loss occurs, and is due to a driver's negligence, points may be assigned to the principal operator of the auto. Even though someone else may have been driving the auto and been determined negligent, the loss experience due to the accident goes on the driving record of the principal operator. Therefore, the loss data that insurers receive is often not always exact, and the class that the principal operator belongs to may be incorrectly rated.

Insurers can work more closely with Driver's License Bureaus in obtaining driving record information of insureds.

Insurers are more able to work in cooperation with Driver's License Bureaus, since a prerequisite for obtaining a driver's license is that the applicant must have a valid insurance policy. This will be beneficial when companies obtain information concerning the driving record of individuals.<sup>15</sup>

#### DISADVANTAGES OF THE "INSURE-THE-DRIVER" POLICY

The disadvantages of implementing and maintaining "insure-the-driver" policies include the following:

Since every licensed driver is required to have insurance, insurer administrative expenses and paperwork are increased.

Under the "insure-the-driver" concept, every licensed driver is required to have an insurance policy. This leads to increased administrative expenses and paperwork on the part of producers and insurers. Also, it necessitates an increase in communication between motor vehicle bureaus and insurers, as underwriters and producers will need information on all licensed drivers.

Auto owners must still be covered for ownership liability in certain situations.

Some problems regarding where coverage will be available to pay damages in certain situations also result. For example, confusion results when a driver of a non-owned vehicle injures a third party. Under the present "insure-the-owner" policy system, the owner's policy applies on a primary basis, and, if available, the driver's policy provides coverage on an excess basis. In order that protection be afforded for the owner's liability of a vehicle being operated by someone else, coverage for the owner should be provided under an "insure-the-driver" concept when the owner is operating an owned vehicle, and also when someone else is operating the owner's vehicle. This seems to dilute the purpose and concept of the "insure-the-driver" policy.

Coverage deficiencies are also created because the "insure-the-driver" policy does not provide coverage for the owner in those situations when the auto is used by someone else and an accident caused by improper maintenance of the vehicle by the owner results. Since the owner is often found to be negligent in this situation, coverage should apply for the owner.<sup>16</sup>

All licensed drivers must purchase insurance, which is not fair to the members of society who rarely drive but want to maintain a driver's license.

Since all licensed drivers are required to purchase insurance under the "insure-the-driver" system, it is not fair that licensed drivers who do not own autos have to purchase insurance. Older drivers who want to maintain their licenses or new or young drivers who rarely drive, but use another family member's auto need to carry their own insurance.<sup>17</sup> If these drivers were to be exempt from the requirement to have insurance, on whose policy would they be covered? To cover them under the owner's policy would again defeat the purpose for which the concept of an "insure-the-driver" policy is intended. Also, it would be difficult for an underwriter to determine which senior citizens or new drivers rarely drive and therefore qualify as those who do not need their own policy. Legislation would probably also need to be enacted to exempt these licensees.



ADVANTAGES OF THE "INSURE-THE-DRIVER" POLICY

The advantages of insuring the public under "insure-the-driver" policies include the following:

A fair premium is charged, since only the insured's own driving history affects the premium that is charged.

Under an "insure-the-driver" policy, each insured is charged a fair premium, since only the insured's driving record is considered in the determination of policy premiums. No one else's negligence can be considered as a factor in the determination of the named insured's premium. The rates used to determine premiums are based on the actual accident record of insureds of each age and sex. The data are unambiguous. Rates are therefore accurate. The spread of premiums from best to worst class of drivers will therefore be larger than under the owner's policy rating system. Also, since precise premiums are charged to each insured, the rating differentials based on the territory in which an insured lives are less significant.<sup>10</sup>

The "insure-the-driver" policy is simple and concise, as only the named insured is covered.

This leads to fewer coverage problems, since there is generally no dispute as to who is covered under the policy. Quicker claims settlement also results,<sup>11</sup> as there are fewer disputes and delays in the settlement of claims.

Responsibility is placed on every driver, and not just auto owners, as each person's driving record will determine the premium charged.

More responsibility is placed on those drivers who do not own autos and who, under the "insure-the-owner" policy concept, did not have their own insurance but were covered under someone else's policy. Because each driver is required to have their own insurance, more careful driving is practiced by all, as the financial incentive of lower premiums leads to greater efforts to maintain a clean driving record. If an insured does not have a good driving record, the insurability of only that insured - not their entire family - is jeopardized.<sup>12</sup>

The hazard present among one-car families is more appropriately measured.

Currently, one-car families often present a greater hazard than their insurance premium indicates. Under the "insure-the-driver" concept, the hazard that exists among large families with only one or two cars,<sup>13</sup> that are used by all members of the family is more appropriately measured.

More underwriting control is possible, as underwriters know exactly who their insureds are.

Greater underwriting and rating precision and control are achieved with the use of an "insure-the-driver" policy. Insurers know exactly who their insureds are under each policy, and they are better able to rely on the law of large numbers in predicting losses.<sup>14</sup>

The insurance costs for a one-car family are much more excessive than appropriate. HB 133

The head of a household also does not appreciate having to pay a separate premium for each family member who has a license. For example, it does not seem fair that a one-car family with many members, when compared to a one-car family with fewer members, pays more in premium dollars, when the autos in both families may be used for equal amounts of time.<sup>18</sup>

Since owners' policies have almost always been in use, statistics are not available on which to base "insure-the-driver" policy rates, and wide ranges of classification exposures exist.

Also, to avoid discrimination, rates that insureds are charged must be classified according to the type of operation the driver performs. A wider range of classification exposures than used under the owner's policy rating plans results, which leads to many inefficiencies in the rating system.<sup>19</sup>

It would not be beneficial to insureds to implement commercial automobile insurance on an "insure-the-driver" basis.

Commercial automobile insurance allows coverage to be provided for motor vehicle owners who own fleets of motor vehicles. The commercial auto exposures are considered to be quite large, due to the nature of the vehicles being covered, and due to laws which mandate certain high limits of liability that must be maintained. Since it would be a burden for drivers of these vehicles to each maintain the required limits of liability, commercial automobile insurance is best afforded on an owner's basis. The owners of a fleet of vehicles should maintain the necessary limits on the vehicles they own.

#### FEASIBILITY

The following are constraints that exist for the implementation of an "insure-the-driver" policy concept:

"Insure-the-driver" policies will not comply with many of the provisions of current compulsory insurance, financial responsibility and vicarious liability laws.

Compulsory insurance laws in those states having such laws would have to be changed if an "insure-the-driver" policy concept were adopted. These laws require owners of vehicles to purchase liability insurance before registering the vehicle. Since under an "insure-the-driver" policy concept all licensed drivers would need to be insured, instead of vehicle owners, the compulsory insurance laws would need revision.

Several states maintaining financial responsibility laws require owners of motor vehicles to prove security and/or proof of financial responsibility. Since all drivers, and not only owners, would have their own insurance, these laws would need to be changed, perhaps to indicate that all drivers must be able to show proof of financial responsibility as is required under the law.

The vicarious liability laws applicable in several states state that motor vehicle owners are responsible for the bodily injury or property damage that is caused by others legally using the motor vehicle with the express or implied permission of the owner. Therefore, when someone other than the driver is negligent in an auto accident, the "insure-the-driver" policy must provide coverage for the responsible non-driver (owners, parents, for example). Also consider an owner of a car who is not a driver, such as someone who has not learned to drive, is physically impaired and cannot drive, or has no license. This person is not a driver, but as an auto owner, must have coverage for ownership liability.<sup>20</sup>

The concept of vicarious liability does not apply only to insurance. It is unlikely that the laws would be revised if an "insure-the-driver" auto insurance concept were adopted. Under the various vicarious liability statutes, owners of motor vehicles would still be liable for actions of users of their vehicles, in certain situations, regardless of the auto policy coverage approach used.<sup>21</sup>

Extensive changes to the current rating and classification system would be necessary.

If the "insure-the-driver" concept were adopted, expansive changes to today's rating and classification systems would have to be made. It may be difficult to incorporate into rating of "insure-the-driver" policies the frequency of operation, nature of the vehicle, and the use of the vehicle as well as similar factors that are presently used. The rates that apply to a driver would have to reflect the actual and potential use of all the vehicles that driver may drive. A "loading" would need to be developed and included in the ratemaking formula to consider the age, make, model and other characteristics for any commercial or private passenger car that is or may be used by an insured. Serious rate inequities could develop. The rating of the policy would also have to be based to some extent on the use of vehicles (i.e., regular or incidental). The information provided to underwriters by applicants may not always be factual, and the "loading" made on policies may therefore be inequitable.<sup>22</sup>

It would be difficult to include the other auto coverages on an "insure-the-driver" policy.

Disadvantages are foreseeable in attempts to construct an "insure-the-driver" policy that would combine liability and other coverages in a single policy.<sup>23</sup> Due to the omnibus provision in Medical Payments Coverage of owners policies, "insureds" is defined as all occupants of owned autos, including non-drivers. It would be difficult to cover non-drivers under an "insure-the-driver" policy for Medical Payments coverage. Physical damage coverage would also need to be provided for a vehicle and its owners, not for drivers. Lienholders would still require owners to purchase protection for damage to their autos.<sup>24</sup>

#### IMPLEMENTING A CHANGE

Although several obstacles would have to be overcome before an "insure-the-driver" auto policy concept could become a reality, ISO can develop this new auto insurance product. However, extensive changes would be necessary in the statistical information collected, the experience gathered and used for determining loss costs and rates, and the forms, endorsements and manuals used. In addition, ISO would probably have to maintain and service two automobile policies for its participating insurers; "insure-the-driver" and "insure-the-owner" policies.

Additionally, implementation of an "insure-the-driver" policy might not HB 133 reduce the excessive loss ratios experienced by many insurers. Insurers will still need to charge the appropriate premiums that cover the losses that they experience. Therefore, the implementation of an auto insurance policy which only insures the driver may not be the answer to the question of how insurers can control their losses - it would just introduce a new method of providing auto insurance.

Most insureds would probably be reluctant to purchase a new type of auto insurance policy, especially one in which the way coverage is provided is changed so drastically. To develop such a policy for use in only those states where it is statutorily allowed and accepted would defeat the ISO goal of policy standardization and uniformity.

It may appear that since every driver must have auto insurance before being issued a driver's license, there would be no uninsured drivers. However, note that in states where compulsory insurance laws are in effect, and owners are currently required to show proof of insurance before registering motor vehicles, there are many motor vehicles being driven which are uninsured. For example, in New York, it is estimated that 105,000 motorists are uninsured.<sup>25</sup> Therefore, requiring drivers license applicants and those drivers renewing their licenses to show proof of insurance will probably not reduce the number of drivers who are uninsured in states where compulsory insurance laws currently exist.

#### AN ALTERNATIVE SOLUTION?

Many of the disadvantages of the current owner's policy which would supposedly be solved, according to its advocates, by an "insure-the-driver" policy could probably be achieved by providing coverage for insureds on a "pure" no-fault basis. This would completely eliminate the insureds' right to sue and instead offer comprehensive personal injury protection benefits.<sup>26</sup> Insurers, by providing insurance under a "pure" no-fault concept, would be able to control their losses, since they would be able to better forecast what their future losses will be. Damages for injuries that are sustained by an insurer's own policyholder would be paid by the insurer. Defense costs and legal costs would be greatly reduced, as insurers settle their insureds' claims directly for damages for injuries sustained under all coverages without the need to involve third parties. This would lead to greater stability in the payment of insureds' claims. Although the development of a "pure" no-fault policy would require legislative changes, there would be fewer of the radical changes needed for the development of an "insure-the-driver" policy. A no-fault concept is also relatively simple for insurers and producers to explain and for insureds to understand.

#### ISO DECISION

In light of all this information, and in recognition of the fact that many, if not most, of the problems in the current auto insurance market will not be solved by the "insure-the-driver" policy, the development of an "insure-the-driver" policy will not be pursued by ISO at this time. We will continue to maintain commercial and personal automobile insurance policies that provide coverage on an owner's basis.

# FOOTNOTES

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