

MINUTES OF THE MEETING
HIGHWAYS AND TRANSPORTATION COMMITTEE
MONTANA STATE SENATE

March 26, 1985

The nineteenth meeting of the Highways and Transportation was called to order at 1 p.m. on March 26, 1985 by Chairman Lawrence G. Stimatz in Room 410 of the Capitol Building.

ROLL CALL: All members were present except for Senator Weeding who was excused.

There were visitor's in attendance. (SEE ATTACHMENT)

CONSIDERATION OF HOUSE JOINT RESOLUTION 30: Representative Glaser, House District 98, was the sponsor of this resolution. He stated that the intent of this resolution was to try to get the Congress of the United States to release some 4-R money that they were holding do to the cost estimate formula. This legislation was dated, and 90% of it was past tense. The U.S. Congress left the money addressed in the first six "where as's". The seventh "where as" still dealt with the formula which had not yet been determined. Representative Glaser stated that the House committee on Highways felt that unless this committee felt they would have time to address it, the bill may be tabled.

Senator Stimatz stated that since the House agreed to table the resolution, then the committee would probably do just that. However, the committee may have some time later to work with it and set it up with the current cost estimate.

Representative Glaser stated that if the committee did work with HJR 30 later, then it may be valuable in the regard. He also stated that the House Highways Committee would be pleased to work on the next moneys if the Highway Committee wished, but they would also concur if it was tabled. The general summary of this bill is attached as EXHIBIT 1A.

PROPOSERS: Representative Glaser, House District 98, spoke in support of HJR 30.

Bill Gosnell, representing the Department of Highways, spoke in support of HJR 30. He stated that the department would be willing to work on some language for the resolution, but it would be effecting the 86-87 Highway Act in Washington, D.C.

OPPOSERS: There were no opponents to HJR 30.

Questions from the committee were called for. There were none.

The hearing was closed on HJR 30.

CONSIDERATION OF HOUSE BILL 452: Representative Rapp-Svrcek, House District 51, was the sponsor of this bill. This bill was by request of the Department of Commerce. He stated that HB 452 was a relatively minor tourist promotion bill with a lot of possibilities. This bill released the requirement for tour buses coming into the state to purchase a special fuel permit, only in the case when the buses do not have bulk storage facilities within the state. The reason for that exception was because those buses with no bulk storage facilities, within the state, already pay the tax that the permit would normally cover when they buy the fuel at the pump. He stated that it was felt that by passing this bill it would be deleting some of the red tape that tour bus companies have to go through to bring tours into the state. He also stated that testimony would be presented to show the increase in the number of buses coming into the state. The general summary of this bill is attached as EXHIBIT 1B.

PROPONENTS: Representative Rapp-Svrcek, House District 51, spoke in support of HB 452.

John Wilson, Director of the Montana Promotion Division of the Department of Commerce, spoke in support of HB 452. (SEE EXHIBIT 2)

Pat Melby, representing Northern Ski Area Operators, spoke in support of HB 452. He stated that many of their members are destination resort-type ski areas and they would benefit greatly from additional bus tours. They support any effort by Legislature to encourage this type of activity.

Norris Nichols, Administrator of Motor Fuels, spoke in support of HB 452. He stated that the Department of Revenue would have no problem administering the act.

Don Copley, representing the Department of Highways, stated that the Department of Highways had taken a neutral position on HB 452, however they had no problem with the bill.

OPPONENTS: There were no opponents to HB 452.

Questions from the committee were called for.

Senator Farrell asked John Wilson if the ICC required that liability insurance be obtained before authority was issued? Mr. Wilson replied that was correct. He stated that the ICC registers to a bus company, this gave them the ICC authority and the only way they knew the company had the the authority before they entered the state was by being registered with the PSC. So, in effect, they did not get ICC authority, they registered their authority with the PSC.

Senator Farrell asked John Wilson if they could assume that the ICC had asked them to have the insurance? Mr. Wilson replied that you could assume that, but if a bus turned over with 40 people on it and had no insurance, then there would be a problem.

Senator Farrell asked John Wilson on the fuel users permit; the posting

of the bond and the application, if that was a continuous bond? Mr. Wilson replied that it was renewed annually.

Norris Nichols answered the question by stating that the bond itself was continuous.

Senator Farrell then asked if all they had to do was sign a form at the end of each year? Mr. Nichols replied that was correct if they were going to file annually, and in January they would be notified if they were on annual filing and the file would show where they purchased their fuel.

Senator Farrell asked if they did that would they have to buy a special fuel permit? Mr. Nichols replied that was correct, but they also had an option of purchasing a 72-hour temporary trip permit.

Representative Rapp-Svrcek closed by stating that the fiscal impact would not be a lot, and with the International Exposition coming in Vancouver next year and the Olympics coming in Calgary in 1988, he felt this would bring in great revenue increases into the state.

The hearing was closed on HB 452.

CONSIDERATION OF HOUSE BILL 530: Senator Farrell, Senate District 31, introduced this bill on behalf of Representative Smith, whom was the sponsor of the bill. Senator Farrell stated that this bill pertained to retractable axles that some larger trucks had. It stated that the retractable axles, when on the ground, had to carry a proportionate share of the weight. The general summary of this bill is attached as EXHIBIT 1C.

PROPOSERS: Senator Farrell, Senate District 31, spoke in support of HB 530.

Don Copley, representing the Department of Highways, spoke in support of HB 530. He stated that the department had concern with the use of new equipment that had come on board during the last few years with retractable axles. The equipment, when properly used, was a benefit to the carrier because it allowed a higher gross weight. Through observation, it was found that the equipment was not always used as intended, and when not used it placed a much higher gross weight on the axles than what was allowed by law. The department's purpose in trying to address the problem was because of the overweight and also because of the large amount of money the department had been entrusted with for the past two years and for the years to come. They hoped that through the enactment of the bill, they could address the problem and protect the investment of the present highway system. A fact sheet on this bill was submitted as EXHIBIT 3.

Keith Olson, Executive Director of the Montana Logging Association, spoke in support of HB 530. He stated that their membership represents many logging contractors, of which approximately one-third were involved with the hauling of logs, and a small percentage of those had drop axles on their trucks. They put the axles on their trucks so they could haul extra weight, but if the axles aren't down

then they were in violation of the intent of doing damage to the highways.

Senator Lybeck, Senate District 4, spoke in support of HB 530. He stated that he had the privilege of being with Representative Smith when they met with the GVW people in Kalispell last fall, in regard to the lift axle. As it had been pointed out, when the axle is down and operated properly, it not only distributes the weight much better over the highways and bridges, but it also benefits the truck driver. He stated that he felt this could be a safety factor as well.

OPPONENTS: There were no opponents to HB 530.

Questions from the committee were called for.

Senator Williams asked Senator Lybeck if the axle improved the stability and safety of the truck, how could it be because of the wear and tear on the tire that the axles are raised? Senator Lybeck replied that they raise the axles to negotiate the sharp angle turns that have to be made. In some case, the Highway Department and the GVW people have said that the driver was negligent in lowering the axle as soon as he made the corner. When this takes place, there is additional damage to the highway because of the increased load.

Senator Bengston asked how difficult it was to put the tag axle back in operation? Senator Farrell replied they normally have an air valve on the side of the seat; when they make the turn they dump the air and turn the valve down to the pressure they need to put the axle back down on the ground. It is no great problem to do this, but the driver just usually forgets to put the axle back down and this was what the bill was addressing.

Senator Bengston asked since it was just a matter of forgetting, then how enforceable would the bill be? Senator Farrell replied if the GVW officer saw the truck with the axle down, under this law the driver would get a ticket.

Senator Bengston asked how many GVW people there are patrolling? Don Copley replied that there are problems with enforcement, and they presently have 13 patrol cars assigned throughout the state. He pointed out that presently they had no control.

Senator Bengston asked how much education the truckers association or the highway motor carriers had to encourage responsibility? Senator Farrell replied the Montana Motor Carriers are after carriers all the time to see that they are operating in a responsible manner, but a lot of people that have these axles are not members of the Montana Motor Carriers Association, or they are drivers for an owner/operator; so the power of the Montana Motor Carriers and the carriers themselves is greatly limited to the amount of people they can enforce.

Senator Tveit stated that in his area where the truckers haul heavy salt water, he felt they did not forget to put the axle down, they were just saving tires. They keep the axle up because there is no-

body out in that area to see them. He felt that this bill would get them to use that fifth wheel and the highways would be protected.

Senator Williams asked Senator Farrell what the reason was behind keeping the axle up? Senator Farrell replied the idea for being retractable was because when the trucks are empty the axle can be lifted up so the tire won't be on the ground wearing out.

Senator Bengston asked Don Copley if this would necessitate the department asking for additional FTE? Don Copley replied no.

The hearing was closed on HB 530.

ACTION ON HOUSE BILL 530: Senator Tveit moved HB 530 BE CONCURRED IN. The motion carried and passed with Senator Shaw voting NO. Senator Farrell was assigned to carry this bill on the floor.

ACTION ON HOUSE BILL 452: Senator Lybeck moved HB 452 BE CONCURRED IN. The motion carried and passed with Senator Farrell voting NO. Senator Lybeck was assigned to carry this bill on the floor.

CONSIDERATION OF HOUSE BILL 383: Representative Nathe, House District 19, was the sponsor of this bill. He stated he had amendments to offer the committee on HB 383. (SEE EXHIBIT 4) House Bill 383 was a unique approach to solve a problem with highways in Montana. It was stimulated by the overall railroad abandonment that had been going on in the state, and the subsequent impact of the increase from traffic on the highways in the State of Montana and their subsequent deterioration. Representative Nathe showed a map of all the branch lines which were subject to abandonment in the State of Montana. Bill Fogarty, ~~Administrator~~ of the Transportation Division for the Department of Commerce, explained the map that was presented to the committee. He stated that there were many categories that branch lines fell into when they became eligible for abandonment. Branch lines which were in category I, which meant that their application for abandonment was being prepared, were as follows: the Drummond/Philipsburg line, the Lewistown/Heath line, the Manhattan/Anceney line, the Mission/Willsall line, the Sappington/Harrison line, and the Whitehall/Butte line. Other lines that were not in a category, which the department was concerned with, were as follows: the Missoula/Darby line, the DeSmet/Dixon line, the Plentywood/Opheim line, the Whithall/Alder line, the Fort Benton/Great Falls line, the Big Sandy/Havre line, the Kalispell/Summers line, and the Striker/Eureka line. These lines were not in category I, but there was some concern that in the future these lines would possibly be abandoned. Representative Nathe continued with his presentation. He stated that basically this was all about the degree of profit or the maximized profit of these lines. He went on to say the bill stated that the railroad had to pick up 50% of the cost of the impacts on the highways do to the increased truck traffic if any branch line or any portion of the main line, that was potentially profitable, was abandoned by the railroad. This was essentially what the bill asked for. In going through the bill, Representative Nathe pointed out that the term "legislative findings" was included, and this was dif-

ferent than an ordinary bill. He read through the sections of the bill for the committee. He stated that on the fiscal note it showed that if all the branch lines that were under study for abandonment took place, a \$20 million impact would occur on the highways in Montana. He stated that profitability was determined under the Staggers Act and that was when the railroad's revenue exceeded their avoidable costs. He presented a table to the committee that showed them what was involved with that. (SEE EXHIBIT 5) Representative Nathe stated that this bill was researched extensively and passed out a research memorandum which included summaries of the lawsuits involved with this matter that had been researched. (SEE EXHIBIT 6)

PROPOSERS: Representative Nathe, House District 19, spoke in support of HB 383.

Keith Cobol, Director of the Montana Department of Commerce, spoke in support of HB 383. He stated his department wanted to express their concern on rail abandonments and the resulting impacts both socially economic and on the highways. Montana is a major shipper of bulk commodities, such as grain, lumber, and coal, and we rely to a great extent on the efficiency of rail transportation to keep Montana's products competitive in the market place. He stated that because Montana is essentially a single railroad state with no direct access to water transportation, abandonments provide us with only one alternative; the use of highways to get to the main line and market place.

Joe Brand, Montana State Director of the United Transportation Union, also representing the Brotherhood of Locomotive Engineers, and the Brotherhood of Weigh Employees, spoke in support of HB 383. He stated that in 1979 the Government allowed the merger of the Northern Lines Railroad Companies. They allowed this for the purpose of more service and less cost to the lines they had previously served. At the time when the merger was consummated on the railroad, they had a local service that stopped at all the communities giving services of goods. These services are no longer in existence, and today you have less services and increased costs. Mr. Brand also stated a monopoly had been created in the State of Montana as far as the railroad industry was concerned. Two acts which allowed them deregulation were the 4-R Act and the Staggers Act which allowed, in his opinion, a wholesale slaughter in the railroad industry. He pointed out that these same railroad companies own truck lines, and they could've provided additional services, which they did not do, and so they finally abandoned their truck routes, or sold them. He gave as an example, the Burlington Northern Railroad, which received in the last quarter, the largest profits they had ever received in the history of the railroad company. When they talk about shipping on railroads today, it isn't that they are shipping anything into us, they are actually taking everything out from us; lumber, coal, wheat, etc. They are making Montana a bridge state to cross, and he felt the railroads owe an obligation to the people of Montana.

Mary Nielsen, Transportation Chariman for Women Involved in Farm Economics (W.I.F.E.), spoke in support of HB 383. (SEE EXHIBIT 7) A report made by the Department of Commerce, Transportation Division,

which was referred to in Mary Nielsen's testimony, is attached as EXHIBIT 8.

Orville Nash, President of the Association for Branch Line Equality, submitted testimony in support of HB 383. (SEE EXHIBIT 9)

Jim Malar, State Legislative Director for Burlington Northern, spoke in support of HB 383. He stated that in 1980 there was a movement to close the branch lines. He had 36 years of railroad experience; he worked when there were steam engines and watched the branch lines get nothing less than normalized maintenance. He didn't see too much of branch lines being repaired, and he felt it seemed more profitable to abandon the branch lines for salvage than it was to operate them. The theory of railroads was that the branch lines would be the basic concept of generating money for the railroads, and now that theory is in reverse. He felt Representative Nathe covered the very element of the Staggers Act. He stated that the burden is now on the carrier, and the minute he alleges that it is losing money, under the Staggers Act, that line can be abandoned by operation of law. He stated three key elements to consider when deliberating on this bill; who measures profitability, what is the impact, and how much money will the taxpayer lose.

OPPONENTS: Leo Berry, representing the Montana Railroad Association, spoke against HB 383. (SEE EXHIBIT 10)

Lisa Swan, representing the Union Pacific Railroad in the State of Montana, for the Corrette, Smith, Pohlman, & Allen law firm in Butte, Montana, spoke against HB 383. She stated that the Union Pacific understood that the intent of this bill was to prevent abandonment of branch lines, however, the Union Pacific did not believe this bill would accomplish that purpose for the following reasons; the assessments to the railroad shippers through higher freight rates, these shippers would be forced to contribute to Montana's highway fund even though their freight moves by rail and they would not be causing any damage to the highways, the need to increase rates to cover payments for abandonments would make rail transportation less competitive and traffic would be diverted to the highways and cause further problems. The reason why rail trackage must be abandoned is because the freight rates are not as competitive as moving the freight over the highways. All of the agreements advanced in support of HB 383 are also reasons why this bill should not be passed. Montana is going to force the highways to pay the state for highway maintenance, then perhaps the legislature could also consider having the state contribute towards railroad track maintenance. She stated the traffic that moves by rail prevents highway damage, and it would be no more unfair to force the state to subsidize the railroads, than to force the railroads and HB 383 to subsidize the highways.

Keith Anderson, President of the Montana Taxpayers Association, spoke against HB 383. (SEE EXHIBIT 11)

John Alke, Legal Counsel for the Montana Taxpayers Association, spoke against HB 383. (SEE EXHIBIT 11) He stated the problem he had with the bill was that it was literally saying that if railroads exercised their federal right under the federal law, to abandon, then they must

March 26, 1985

pay for that right. The last point he made was that there would be serious do process procedural problems because the bill was saying that the fee or tax was based on the state's impact analysis and that was not developed in any type of contested case procedure. The railroads have no opportunity to say that the model formula, as a result of capitalization, is incorrect, they have no opportunity to say the tax is unfair or incorrectly calculated, and this would be invalidated for those reasons.

Dick Panasuk, representing the Montana Grain Elevator Association, spoke against HB 383. (SEE EXHIBIT 12)

Janelle Fallan, representing the Montana Chamber of Commerce, spoke against HB 383. Their concern was not centered at the railroads directly, they were concerned because it sounded like plant closure legislation.

Mike Fitzgerald, President of the Montana Trade Commission, spoke against HB 383. (SEE EXHIBIT 13)

John Delano, representing the Montana Railroad Association, submitted a settlement agreement between Burlington Northern Railroad Company and the State of Montana, for informational purposes. (SEE EXHIBIT 14)

Wayne Hatton, Norwest Bank Center, Billings, sent in his comments on HB 383. (SEE EXHIBIT 15)

The hearing was closed on HB 383.

ANNOUNCEMENTS: Senator Stimatz stated that because time had run out, the hearing on HB 383 would be finished on Thursday, March 28, 1985 at 12:30 p.m., for the purpose of questions from the committee members.

ADJOURNMENT: The meeting was adjourned at 2:45 p.m.


LAWRENCE G. STIMATZ
Chairman

ROLL CALL

HIGHWAY AND TRANSPORT. COMMITTEE

49

48th LEGISLATIVE SESSION -- 1985

Date 3-26-85

SENATE
SEAT
#

NAME	PRESENT	ABSENT	EXCUSED
#7 SENATOR STIMATZ	X		
SENATOR MANNING			
#27 SENATOR BENGTON	X		
#8 SENATOR DANIELS	X		
#32 SENATOR FARRELL	X		
#42 SENATOR HAGER	X		
#48 SENATOR LYBECK	X		
#23 SENATOR SHAW	X		
#3 SENATOR TVEIT	X		
#39 SENATOR WILLIAMS	X		
#26 SENATOR WEEDING			X

Each day attach to minutes.

DATE

3-26-85

COMMITTEE ON

Highways & Transportation

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
OVE J. NIELSEN	Hiways & TRANS	383	✓	
Mary Nielsen	W.I.F.E & F.B.L.E	383	✓	
W. J. - [unclear]	Ut. Trade Commission	383		✓
Jack Panasuk	Mont. Grain Elev. Assocn.	383		✓
Tom Spence	B.N.	383		✓
John Nelson	Dept of Commerce	452	✓	
W. H. HARTON	BN	383		
JT Bickmore	BN Billings	383		✓
Janette Fallon	Nat. Chamber	383		X
DS m.l. 0.00	BN	383		
Lavina Lubinus	WIFE	383	✓	
JAMES T. MULAR	B.R.A.C.	383	✓	
JOE BRAND	U.T.U.	383	✓	
CARL KMITZON	B.M.U.	383	✓	
CALVIN BURK	BLE	383	✓	
Pat Melby	Northen Ski Area Operators	452	✓	
Keith L. Colbo	Dept. of Commerce	383	✓	
Don Copley	Dept. of Highways	452		
Don Cowley	Dept. of Highways	530	✓	
Keith Anderson	Montano Tarzana Assocn	383		✓
Leo Berry	Nat P.R. Ass.	383		✓
Jim Augusten	Conoco Inc			✓
Mike [unclear]	W.R.A.	383		

SUMMARIES OF BILLS TO BE HEARD BY
SENATE COMMITTEE ON HIGHWAYS AND TRANSPORTATION
TUESDAY, MARCH 26, 1985

- 1A HJR 30, introduced by Representative Glaser by request of the House Committee on Highways and Transportation, urges Congress to approve a revised two-year unincumbered cost estimate for the national interstate highways system, and requests that the current funding formula be maintained for resurfacing, restoring, rehabilitating, and reconstructing the federal interstate system.
- 1B HB 452, introduced by Representative Rapp-Svrcek, authorizes issuance of a special fuel user's courtesy vehicle permit to a person engaged in a tourist-type activity who buys special fuel, tax paid, from a licensed dealer.
- 1C HB 530, introduced by Representative Smith, clarifies the application of overweight vehicle penalties and imposes a fine of \$100 for failure to use a retractable axle on an overweight vehicle.
- 1D HB 383, introduced by Representative Nathe, establishes an abandoned railroad highway assistance account to consist of contributions by railroads that abandon branch lines. Money from the account will be used by the Department of Highways to repair roads damaged by increased traffic caused by railroad abandonment.

Department of Commerce

Testimony HB 452

Submitted by: John Wilson, Administrator
Montana Promotion Division

One tour bus expends an estimated \$2000 per day while in Montana. The American Bus Association estimates that in 1983 the expenditures by bus traffic in Montana was \$65 million.

Motorcoach tour business is a growing industry nationally and in Montana. The Department of Commerce actively promotes the state as a destination for tour buses. Since September of 1983 the Department has been successful in garnering 71 new tour itineraries to and through Montana.

However, tour operators and bus operators have often pointed out to us that the permitting of a motorcoach to operate in Montana is a bureaucratic maze for them. And thus serves as a barrier and a deterrent for them to operate in Montana. Under current law, a bus operator must obtain three permits to bring their bus into the state.

1. They must register their I.C.C. authority with the Public Service Commission.
2. They must purchase a temporary trip permit from the Department of Highways or involve their state's reciprocity agreement.

3. They must either purchase a \$30 Special Fuel Users permit every time they enter the state or post an annual special Fuel Users Surety Bond with the Department of Revenue.

We support the registration of I.C.C. authority with the Public Service Commission. This is the only way to assure the operator has liability insurance.

The Department of Highways has agreed to extend reciprocity to 48 states for motorcoaches. Currently 31 states have reciprocity with Montana. This action effectively eliminates the requirement of the temporary trip permit for motorcoaches.

House Bill 452 addresses the need for a special fuel users permit and/or surety bond posting.

Because motorcoaches pay special fuels tax at the pump when they purchase their diesel fuel and because the revenue gained through the Special Fuel Users \$30 permit is insignificant relative to the total tax that would be paid due to increasing bus tour business, House Bill 452 reduces the barriers and deterrents to bus operators by extending a courtesy permit, obtained at the weigh station, for those bus operators carrying persons engaged in tourist type activities.

To assure that the special fuel tax is paid at the pump, courtesy permits would not be issued to motorcoach operators who have bulk storage facilities in Montana.

This provision would be enforced by requiring the bus driver/operator to sign an affidavit certifying that they have no bulk storage facility in Montana. The affidavit would be signed at the weigh station while they are showing their I.C.C. authority.

The courtesy permit would be issued at the weigh station upon completion of the affidavit.

The net effect of passage of House Bill 452 would be to eliminate both the special fuel users permit and the \$30 fee for buses engaged in tourist type activity. Together with the Department of Highways action to grant reciprocity to 48 states for temporary trip permits for buses two of the three permits would be eliminated.

This would reduce the bureaucratic barriers and create a much improved business climate for tour buses. In turn more buses will choose Montana as a destination.

This would bring more money into the state and thereby help the travel industry to continue to grow and to continue to provide new jobs for Montanans.

What HB 452 does:

1. Extends a courtesy permit to tour bus operators engaged in tourist type activities in lieu of \$30 Special Fuel Users permit.
2. Does not extend the courtesy permit to tour bus operators who have bulk storage facilities in Montana.

Why HB 452 is needed:

Currently tour bus operators must obtain 3 separate permits from 3 separate state agencies. This is an unnecessary bureaucratic maze which serves as a "barrier" to choosing Montana as a tour destination.

Necessary permits:

1. Register I.C.C. authority with the Public Service Commission.
2. Temporary trip permit with the Department of Highways.
3. Special Fuel Users permit with Department of Revenue

By eliminating the Special Fuel Users permit through House Bill 452 and by granting reciprocity to 48 states for the Highway's Temporary Trip permit two of the three permits would be eased.

How much revenue would the state lose?

None. Tour buses currently pay fuel taxes at the pump from licensed fuel dealers.

In fact, by reducing barriers and creating a better business climate for tour buses Montana will attract more buses. This would increase fuel taxes paid. This would increase bus expenditures and help the travel industry to continue growing in Montana.

Fact Sheet - Lift or Retractable Axles

Purpose: To require that if a vehicle is equipped with a retractable axle, the axle shall carry its proportionate share of the load and to provide a penalty for failure to use the retractable axle.

Background: During the past few years there has been a trend within the trucking industry to equip some vehicles with retractable axles. The purpose of the retractable axle is to attain a higher gross weight and thereby increase the productivity of the equipment. Logging, wood chip and petroleum vehicles are examples of equipment where retractable axles are presently being used.

The use of these axles will increase the allowable gross weight from at least 5,000 pounds up to approximately 8,000 pounds when added to a typical five axle combination. When the lift axles are properly used there is no problem since the gross weight and axle group weights are in conformance with the axle weight and gross weight limits of the formula in 61-10-107, MCA.

The problem with this retractable equipment is that there are abuses because the axle is not always used as intended when the vehicle is loaded. This results in axle loads that cause increased wear and damage to our highways. Reasons cited for non-use include vehicle instability, particularly on snow and ice, and damage to the axle in tight turning movements.

The Department of Highways believes that if the trucking industry wants to carry the heavier loads, then the extra axle must be utilized while the equipment is loaded. This bill would address this problem by imposing a penalty for improper use while still allowing the use of the retractable axles if used properly.

The Department of Highways supports this bill on the grounds that improper use of retractable axles accelerates pavement damage as a result of the increased axle loads.

Financial impact: None if compliance with the law is obtained. A positive impact on highway maintenance costs are likely to occur over the long term if compliance is accomplished.

Proposed Amendment to House Bill No. 383.

1. Title, line 10.
Following: "BY"
Strike: "RAILROADS"
Insert: "A RAILROAD COMPANY"
Following: "ABANDONING"
Insert: "RAILROAD"
2. Page 4, line 10.
Following: "RAILROAD"
Insert: "company"
3. Page 4, line 21.
Following: "railroad"
Insert: "company"
4. Page 5, line 8.
Following: "railroad"
Insert: "company"

HIGHWAYS & TRANSPORTATION

TABLE 3
ESTIMATED REVENUES AND COSTS
Bainville to Opheim

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

(1) Parentheses Indicates Gain

SOURCE: Montana Department of Commerce

HIGHWAYS & TRANSPORTATION

Montana Legislative Council

State Capital
Helena, MT. 59620

(406) 444 3064

Research Memorandum

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ROBERT C. PYFER

DIRECTOR, LEGAL SERVICES

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

FROM: Tom Gomez, Researcher
Legislative Council

DATE: February 16, 1985

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

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

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

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

Page 2
Representative John Harp
February 16, 1985

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

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

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

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

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

eg:Misc:Harp

APPENDIX D: 4-R Litigation
Summary

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

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

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

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

- * Held for the carrier (railroad or trucking firm)
- ** Held for the State
- *** No disposition on the merits

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

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

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

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

§ 11503. Tax discrimination against rail transportation property

(a) In this section—

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

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

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

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

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

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

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

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

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

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

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

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

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

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
11503	49:26c	Feb. 4, 1857, ch. 104, 24 Stat. 379, § 2S; added Feb. 5, 1976, Pub.L. 94-210, § 306, 90 Stat. 54; Oct. 19, 1976, Pub.L. 94-555, § 220(o), 90 Stat. 2630.

In subsection (a), the words "for purposes of" in 49:26c(3) are omitted as surplus. The words "such as a State or a county, city, township, or special purpose district . . . which is a unit" are omitted as unnecessary in view of the restatement. The words "all other commercial and industrial property" are omitted as unnecessary in view of the restatement. The words "real or personal" are omitted as surplus. The words "providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title" are substituted for "subject to this part" for clarity and to conform to the revised title. The words "National Railroad Passenger Corporation" are omitted as unnecessary in view of the restatement and the Act establishing the Corporation.

In subsection (b), the words "Notwithstanding the provisions of section 202(b)" are omitted as unnecessary because of the restatement of the source provisions of section 10521(b)(4) of the revised title. The word "unreasonably" is substituted for "unreasonable and unjust" for consistency. See the revision note to section 10101 of the revised title. The words "is declared" are omitted as surplus. The words "may not do any of them" are substituted for "any action described in this subsection" and "It is unlawful for . . . to commit any of the following prohibited acts" for clarity. The word "political" is omitted as surplus. The words "for a State" are substituted for "on behalf of such State" for clarity. The words "for purposes of" in 49:26c(1) are omitted as surplus. The words

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

NAME: Mary Nielsen DATE: 3-26-85

ADDRESS: Medicine Lake, MT

PHONE: 286-5593

REPRESENTING WHOM? WIFE of ABLE

APPEARING ON WHICH PROPOSAL: HB 383

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

WIFE

Women Involved in Farm Economics

H.B. 383.

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

34,370 miles of ⁸⁰trackage have already been abandoned between the years 1979- 1984, which means that those lines which were no longer being used, or which were unprofitable for the railroads should have already been taken out of service. (1217.5 total mileage!)

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

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

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

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

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

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

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

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

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

The net operating income on the nations' railroads soared to \$1.332 billion in the first half of 1984, nearly 2½ times greater than the \$543 million netted in the first half of the previous year.

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

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

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

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

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

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

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

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

Mary Nielsen

BEFORE THE
INTERSTATE COMMERCE COMMISSION
EX PARTE NO. 274 (SUB-NO. 11)
ABANDONMENT REGULATIONS COSTING
COMMENTS OF
MONTANA DEPARTMENT OF COMMERCE

Represented By:

David W. Rouleau
Registered Practitioner
Chief, Litigation and Analysis Bureau
Transportation Division
Montana Department of Commerce
1424 Ninth Avenue
Helena, Montana 59620
406/444-4268

Dated: March 18, 1985

Due Date: March 25, 1985

COMES NOW the Montana Department of Commerce (MDOC) and files this, its comments in the titled proceeding pursuant to the invitation of the Interstate Commerce Commission in its decision of January 11, 1985, served January 22, 1985.

The Montana Department of Commerce is an agency of the State of Montana authorized and assigned to represent the interests of the state in transportation matters before the Interstate Commerce Commission.

Montana is the fourth largest state geographically and forty-fourth in population. It is primarily an agriculture, lumber and mining state. Other economic activities are manufacturing and tourism.

In years past, the state was served by many railroads: the Northern Pacific; Great Northern; Chicago, Milwaukee, St. Paul and Pacific (Milwaukee); Soo Line; Butte Anaconda and Pacific (BA&P); Oregon Short Line; and Union Pacific (UP). In 1979 the total operated main line and branch line trackage in Montana of the seven railroads was 4,708 miles.

With the merger of the Northern Pacific and Great Northern into the Burlington Northern (BNRR), the cessation of operations by the Milwaukee and the abandonment of the Oregon Short Line, there are now four railroads in Montana. Of the four, Burlington Northern operates ninety-one percent of the trackage. It is only in Montana's extreme northeast (Soo Line) and southwest (BA&P, UP) where there are railroads other than the BNRR - and the BA&P has applied for complete abandonment.

The current route miles in Montana now total 3,457, of which 58 miles are in Category 3 (application for abandonment pending) and 125 miles are in Category 1 (abandonment contemplated within three years). Of the Category 1 trackage, 58 miles have passed the stage of Notice of Intent to Abandon. Since 1979, 1,251 miles have already been abandoned or approved for abandonment. Almost three quarters of this was the Milwaukee. While the BNRR bought a small portion of Milwaukee trackage, it has abandoned some of it along with trackage combined under the merger.

The primary freight moving within and from Montana is grain, coal, and to a lesser extent, forest products. They are all heavy loading and, particularly for coal and grain, move in shipments of large quantities, i.e., multiple cars or unit trains. In the areas where these products originate, the highways are mostly secondary roads not designed for heavy truck freight. Therefore, rail transportation for freight is the only practical and efficient means for the transportation of Montana's bulk commodities.

The ease with which the railroads obtain authorization for abandonment has become a source of frustration for Montana.

COMMENTS

It is anticipated that there will be many erudite dissertations on the various general concepts mentioned in the order. Therefore, these comments will delve into some of the finer points of determining true avoidable costs that are frequently overlooked to the distinct advantage of the railroad applicant.

System Averages

One recurring method used by railroads to overstate avoidable costs is the use of system averages when beneficial to their goal of abandonment.

For example, many of the lines abandoned or contemplated for abandonment are those that have been permitted to deteriorate (possibly to enhance abandonment justification) so that speed restrictions are imposed. Maximum limits of ten miles per hour are not uncommon. In spite of this, the railroads' computation of avoidable fuel costs are based upon the system average hourly fuel consumption. A locomotive observing a maximum speed of ten miles per hour would consume considerably less fuel per hour than one in a line haul move at 40 to 60 miles per hour, which is the lion's share in the average. The regulations should require more precise computations of

avoidable fuel costs for the operation sought to be abandoned than system averages. This self-serving error is compounded by the calculated avoidable cost of fueling locomotives. With a lesser actual fuel consumption, there would be a lesser time for fueling - most likely fewer fueling intervals. There are probably other costs that are overstated because of their being based upon overstated fuel use.

Much of the freight originating in Montana moves in multiple car shipments. There are tremendous operating cost savings realized by railroads because of this. However, the stated avoidable costs in an abandonment application ignores this by the use of system averages. Switching is a good example. By actual observation by staff of the Transportation Division of MDOC at a location in Montana, a 52 car unit train was switched in twenty-one minutes. The system average used at the time of the observation was 19.66 minutes per car or 1022.32 minutes - over seventeen hours! In other words, in this instance, avoidable switching costs computed with system averages overstates the costs almost forty-nine fold! Many other averages, such as clerical costs, would be overstatements in multiple car shipments.

By the use of system averages, railroads can grossly overstate avoidable costs to justify an abandonment. The costing regulations should require methods reflecting the actual situation. With the way railroads monitor their costs these days, the data are available but not used because averages better serve their purposes. Using fueling records,

train crew time sheets and speed recorders in the locomotives, a more accurate fuel consumption figure than system averages can easily be calculated.

Contrived Avoidable Costs

Just because certain expenses are incurred or anticipated to be incurred does not necessarily mean that they would be proper and astute avoidable costs.

It is a generally accepted maxim that regular preventive maintenance is more practical and cheaper in the long run than deferred maintenance followed by rehabilitation. Yet, this is one of the methods railroads use to increase the avoidable costs to justify abandonment.* In considering these costs as justification for abandonment, the lesser of the two - maintenance vs rehabilitation - should be the one to use, regardless of the self-serving strategy practiced.

Another method of inflating avoidable costs is the practice of performing unnecessary operations or performing necessary operations in an inefficient manner. For example, in Montana, four locomotives and a caboose have been observed running out and back on a branch line in Category 1, when there were no loaded or empty cars to be moved. This is particularly effective in increasing costs when system average hourly fuel costs are attributed to the move and the crew has to stay

* Beyond the scope of this proceeding is the side benefit of discouraging traffic by imposing speed and weight restrictions.

overnight at the end of the branch line if there is some place there to stay. Frequently, in Montana, the crew has to travel some distance to find lodging.

Community Impact

Past experience in abandonment proceedings has indicated to this commentor that the financial impact to a community is frequently understated and discounted.

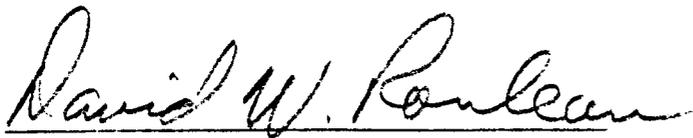
When a line is abandoned because of low, but not a total lack of, tonnage, the freight still has to move. In Montana, it is usually a highway movement to another station of the abandoning railroad for the long haul to the ultimate destination. In other words, the railroad gets the freight anyway. This increase of truck traffic over secondary roads accelerates deterioration of the roads and increases maintenance costs. We have yet to note a railroad seeking abandonment to offer to even share in the increased cost to the community for this. These rural roads are not designed for this heavy traffic.

Therefore, the avoidable costs stated by the railroad should be offset by the impact costs on the community before the issuance of a decision finding that public convenience and necessity is served by the granting of an abandonment application.

CONCLUSION

While proper and logical accounting methods are essential in computing avoidable costs, they should be refined in each case to reflect the actual cost experiences on the line, projected intelligent operation and the impacts upon communities involved in the application.

Respectively submitted;

A handwritten signature in cursive script that reads "David W. Rouleau". The signature is written in dark ink and is positioned above a horizontal line.

David W. Rouleau

Registered Practitioner

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

A. B. L. E.

— Association for Branch Line Equality —
& Branch Line Marketing & Shipping Assoc.

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

Involving the Economic &
Cultural Survival of the
following communities—

H.B. 383.

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

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

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

REDSTONE, Mont. 59297
Ph. 895-2551 or -2244
Box 4

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

SCOBEEY, Mont. 59263
Box 530 Ph 487-2757, -5301
or 783-5601

and other adjoining
communities

the 23 shipping points and the 16 communities from being adversely impacted by the unit train rates being

used by the facilities on the Burlington Northern's main line.

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

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

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

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

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

2.A.B.L.E.

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

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

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

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

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

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

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

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

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

Built in 1928



MONTANA



MONTANA
 Showing Lines of the
GREAT NORTHERN
RAILWAY

Scale in Statute Miles
 0 10 20 30 40 50

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Parable of Opheim-Bainville Branch Line Likened Unto a Marriage

The marriage was performed in 1911; the bride being the people (farmers, ranchers, businessmen, employees and people along the branch line) and the groom being the Great Northern Railroad.

It was a happy marriage, the bride's family putting in the dowry (land, business, farming, ranching and other allied assets) and later in 1926 adding to it by financing the remainder of the branch line from Scobey to Opheim.

This was a happy and prosperous union that was profitable to both parties of the marriage with good timely services of all kinds. Daily freight, passenger and mail services being performed.

But, as in many marriages, things slowly began to deteriorate, especially with the improvement of the roads and vehicles of transportation.

As time went on the groom deliberately abused and lost the petroleum and livestock traffic, the passenger service, the local freight, lost the mail service and finally quit the daily freight service.

The bride had used a lot of these services less and less so it wasn't really all one-sided. Although the marriage was deteriorating she tried to keep a hand in there anyway, but the groom had gotten bigger ideas and merged with other railroads and changed his name to Burlington Northern.

The bride still hung in there because she desperately needed his last services—overland shipment of grain from all of the local elevators and shipments of fertilizer, machinery, etc. on this branch line.

But the groom went on to bigger things. More mergers and a holding company to keep his companies separate and make use of some of the public laws he had influenced in their making.

Some of them were written in such a way that if there wasn't any competition he could charge more and more to offset his losses where he had competition.

Some others were by a unique acrobatic type of accounting where he would be allowed three or four times his avowed rate of return and increase rates until he had a fair rate of return on his investment based on replacement cost, although much of this had been depreciated out.

In other words, with the form of accounting allowed, when he said he made 3-4% return under standard accounting practices he probably made 13-14%. This was all legal, somehow.

So now he was making more money than ever, to say nothing of the minerals, coal, timber, land and other companies that the families in the U.S. had contributed to but were now separated from due to the holding company.

But the bridegroom was getting tired of the old bride. She was pretty much in the same old rut and wasn't as attractive to him

any more so he wanted to divorce her. He didn't want his image to look bad so he said he would cooperate and help in any way he could. After two years of attempts to work with him the bride had exhausted all means of agreement to try to save her family from a large loss.

Her dowry would be badly depreciated and she had found out that cooperation meant to him that he should have whatever he wanted or what he was forced to do.

There were laws in regard to settlement so that he couldn't use the Moslem statement saying "I divorce thee" three times and she would be abandoned. Trying to appear as the good fellow he wanted everyone to think he was, he said "I will give you three years to make other arrangements."

So now she is consulting with some of her people. They agree that he should give her back her dowry and one half of what he made during their marriage or else make an annual alimony payment equal to half of the increased cost to roads, taxes, business losses, schools, etc.

She is hoping that he will agree to this without going to court, or else furnish service to all stations at a rate that will keep their business where it belongs.

ORVILL NASH
Pres. A.B.L.E.

March 26, 1985

Leo Barry
OpponentTESTIMONY BURLINGTON NORTHERN - H.B. 383

HB 383 is revolutionary in principle, a radical departure from historical highway funding mechanisms, and discriminatory in application.

The underlying principle of the Bill appears to be that the railroads will abandon profitable lines and thereby cause increased highway use by motor vehicles and trucks which will result in increased maintenance costs to those highways. There are several flaws in the underlying principle that must be considered.

CONDITION OF HIGHWAYS

A substantial portion of the cost of highway maintenance results from a utilization of highways beyond their design life and a policy of deferred maintenance.

According to the Department of Highways report to the 48th Legislature in 1981, 50 percent of Montana's primary highways (2,660 miles) needed reconstruction or repair with 40 percent of the bridges being substandard. The majority of the rural primary roads were constructed in the 30's, 40's and 50's. There has been little construction since 1965. According to the report, the design life of a Montana rural primary road is generally twenty years. Therefore, virtually all of Montana's rural primary roads have far exceeded their design life.

HB 383 seems to conclude that in areas of rail abandonment, 50 percent of the deterioration of these aging roads is caused by increased truck traffic directly attributable to rail abandonment. There is no logical basis for the 50 percent figure. There are many other causes for deterioration such as age, deferred maintenance and increased use of heavier trucks. There simply is no rational basis for concluding that there is a direct, proportional correlation between rail line abandonment and increased maintenance of Montana highways, particularly at the 50 percent level.

The Department of Highways "Report to the 49th Legislature" states:

"The age of Montana's highway system is a big contributing factor to many of the problems identified. A prime example of this is the roadways which comprise the primary system. Half of these roadways are over 25 years old with over 25 percent over 40 years old. Another contributing factor was that the major emphasis and resources in past years had been placed on completing the interstate

system. Consequently, Montana's other highway systems did not receive equal attention.

As expected, the Department's 1981 Sufficiency Study found that a fairly direct correlation exists between roadway age and its overall condition."

FINANCING

Because of the general concern for the condition of the highways, Montana has recently made significant commitments to reconstruction and repair of its highway system. The principle behind the historic funding mechanisms for highway construction or repair has been user fees. That principle is one based on equity and logic. If the impact to rural roads has been caused by increased use, then the historic funding mechanisms should be used to finance construction and repair based on the simple principle that those who use them should pay for them.

The Department's report further states:

"Highway use and finance are closely related subjects since the financing for Montana's highways comes primarily from user fees such as fuel taxes and Gross Vehicle Weight fees. Historically, highway revenues rose steadily as highway use increased. The trend toward more fuel-efficient vehicles interrupted this pattern, allowing vehicle miles traveled to outpace user revenues.

A less widely recognized trend is the growth in percentage of trucks in the total vehicle stream. The larger trucks are the most rapidly growing component of the truck segment. This shift to heavier trucks means that the highway pavements are being subjected to more traffic loading than in the past."

If increased truck traffic is contributing disproportionately to highway deterioration then an increase in the users fees or a related funding structure should be considered. Such a mechanism would certainly tie the solution to the problem more directly to its cause and would be more legally defensible than the vague concept and method proposed by HB 383.

INCREASED USE

The Department's report concludes that Montana's highways will increase in use in the foreseeable future and that use will be compounded by conditions in the airline and rail industries in the state. The report states that since 1979 the BN has abandoned 348 miles of track on 13 branch lines.

During that time the Milwaukee abandoned a net total of 850 miles of line. HB 383 concludes that such abandonments have caused increased highway use and deterioration. However, the Department's report shows an increase in both truck and automobile registration since 1972 before any significant abandonments occurred. Montana's population increased 13 percent from 1972 to 1983 while vehicle registration increased 19 percent and travel volumes on the federal aid system increased 33 percent. The increased use and vehicle registration started well before any significant abandonments.

ABANDONMENT OF PROFITABLE LINES/I.C.C. CRITERIA

The rail industry in general, and Burlington Northern in particular, does not routinely abandon profitable lines. The criteria for abandonment are established by the I.C.C. and all abandonments are approved by that body. To the extent that this legislation attempts to establish different criteria for abandonment through the definition of the term "profitable" is submitted that the Bill is preempted by Federal rules and regulations established by the Interstate Commerce Commission.

HB 383 IS VAGUE AND ARBITRARY

The Bill in concept and implementation is vague as to how the impact of rail abandonment on roads would be measured. Unless there can be a fair and logical measurement, the monetary compensation required by the Bill can only be termed as arbitrary. As stated above, there are a variety of reasons for the deterioration of Montana secondary highways, including normal wear and tear, deferred maintenance and age. It is simply not possible to determine how much of the deterioration and related increased maintenance costs are attributable to increased truck traffic directly related to rail abandonment as opposed to other causes.

Another factor that substantially contributes to the difficulty in defending the apportionment of 50 percent of increased maintenance costs to an abandoning rail carrier is that the Highway Department's 1981 Sufficiency Rating Report makes it clear that there are many highways capable of adequately handling, not only existing traffic, but additional traffic.

HB 383 IS A TAX BILL

Despite the contrary statements in the Bill, the assessment provided for in HB 383 is a tax. To the extent that it is a tax, it violates the federal prohibition against the imposition of discriminatory property and nonproperty taxes upon railroads (49 U.S.C. § 11503). Courts have consistently looked to the substance of the legislation, not its form or label imposed by the Legislature, to determine

whether a tax is in fact being imposed. A tax is commonly defined as an enforced contribution to raise revenue and not to reimburse the state for special services rendered to regulate an activity. Judged by this standard, there can be no doubt that HB 383 imposed a tax upon railroads. Additionally, there can be no doubt but that Section 306 of the 4R Act (49 U.S.C. § 11503) applies to property and nonproperty taxes which are discriminatory and, therefore, would apply to the tax imposed by HB 383.

It is submitted that case law also indicates that the tax imposed by HB 383 is discriminatory. The Bill discriminates against railroads because it attempts only to measure the railroad impact on roads theoretically caused by rail abandonments. The Bill makes no attempt to measure increased cost in maintaining highways resulting from additional truck traffic actually encouraged by the state. For example, the grain terminal at Butte has resulted in a situation where loaded grain trucks pass existing rail grain facilities to deliver their cargo at the Butte terminal. The philosophy of HB 383, carried to its logical conclusion, would dictate that any truck traffic passing an existing grain facility, thereby causing additional wear and tear on Montana's highways, should be subject to the same imposition of maintenance costs directly attributable to the extra travel. Similarly, the Bill makes no attempt to extract a tax from new industries that might choose to locate in Montana, that would rely heavily upon truck traffic to deliver or distribute their goods. In other words, if the concern that has prompted HB 383 is increased maintenance caused by increased traffic on Montana highways, it makes no attempt to consider or address impacts to Montana's roads caused by any industrial or commercial activity other than rail line abandonment. This is discriminatory.

If, it is contended that the payments required by HB 383 are not a tax but in fact some other form of payment, it is submitted that the Bill is less defensible for it then creates a situation where the State of Montana, which has the obligation of constructing and maintaining this state's highways, is shifting that responsibility to private industry.

CONCLUSION:

The Bill as amended is legally flawed in many respects, and it is doubtful that it could stand a court challenge:

a. To the extent that the criteria triggering payment of the tax differ from I.C.C. abandonment criteria, the Bill is preempted by Federal law.

b. There is no reasonable basis for the tax in that it cannot be shown that there is a logical, proportional relationship between the generic concept of "abandonment" and

the payment of 50 percent of the increased highway maintenance costs directly attributable to that abandonment. Lacking that logical basis, the tax is arbitrary.

c. The tax is discriminatory in that it does not consider other potential causes for increased maintenance such as age, new industry, heavier trucks or the state promotion of highway use by trucks.

d. The Bill attempts to shift the burden of upgrading and maintaining Montana's rural highway system from the state to private industry - a concept that is not only revolutionary, but patently unfair when one considers the fact that the majority of Montana's highways have far outlived their design life and that the state has deferred maintenance of its highways in many instances.

In conclusion, it is submitted that the Bill should be rejected in its entirety as being flawed in concept and practical implementation, and can only result in protracted and expensive litigation that would be detrimental to the interests of the rail industry and the State of Montana, and to the general business climate in the state.

MONTANA TAXPAYERS Association



P O BOX 4909

1706 NINTH AVENUE

HELENA, MONTANA 59604

406 442-2111

MARCH 26, 1985

S. KEITH ANDERSON, PRESIDENT
MONTANA TAXPAYERS ASSOCIATION
IN OPPOSITION TO: H.B. 383

I TRY TO GIVE MOST BILLS A CURSORY REVIEW AS TO POTENTIAL TAX OR SPENDING IMPACT OR COST TO THE STATE. SINCE NEITHER THE BURLINGTON NORTHERN OR THE UNION PACIFIC ARE MEMBERS OF THE MONTANA TAXPAYERS ASSOCIATION I HAD LITTLE INTEREST IN THIS LEGISLATION, BECAUSE I THOUGHT IT WOULD BE KILLED IN THE HOUSE BECAUSE OF SOME LEGAL QUESTIONS. OBVIOUSLY THEY WEREN'T DETECTED AND THE BILL IS BEFORE YOU TO DAY. AS THE LEGAL QUESTIONS ARE STILL PRESENT, THAT CAN ULTIMATELY BE OF CONSIDERABLE COST TO THE STATE OF MONTANA, I ASKED OUR LEGAL COUNSEL, JOHN ALKE, TO MAKE AN ANALYSIS OF THE BILL. THESE ARE IMPORTANT ISSUES AND I THINK THEY SHOULD BE BROUGHT TO YOUR ATTENTION. OVER THE YEARS I HAVE NEVER THOUGHT THAT IT MAKES MUCH LEGISLATIVE SENSE TO PASS SOMETHING THAT WILL BE TIED UP IN THE COURTS WITH COSTLY LITIGATION AND POSSIBLE LOSS --IN THIS CASE THE LOSS WOULD BE TO THE STATE OF MONTANA.

I WOULD LIKE TO ASK OUR COUNSEL MR. ALKE TO DISCUSS THE LEGAL IMPLICATIONS OF THIS BILL AND THEN I REQUEST ANOTHER COUPLE OF MINUTES TO FURTHER DISCUSS THIS LEGISLATION.

IT IS OBVIOUS TO US THAT IF THIS LEGISLATION PASSES, AS IT IS WRITTEN, IT WILL END UP IN COURT. I AM SURE YOU ARE ALL AWARE THAT

THE RAILROADS ARE NOT SHY ABOUT HAULING GOVERNMENT INTO COURT. OVER THE YEARS THEY HAVE BEEN LIBERAL IN BRINGING LEGAL ACTION CONCERNING PROPERTY TAX IRREGULARITIES OR OTHER MATTERS THAT HAVE A DOLLAR IMPACT TO THEIR CORPORATION.

THE FISCAL NOTE MAKES A NUMBER OF ASSUMPTIONS AND NUMBER 3 ALLUDES TO THE ASSUMPTIONS BEING CORRECT IF, "NO LEGAL CHALLENGES OF PROCEDURES ARE MADE". I THINK WE CAN ASSUME THAT LEGAL CHALLENGES WILL BE MADE AGAINST THE STATE OF MONTANA, IF H.B. 383 IS PASSED.

IF THIS IS WHAT THE LEGISLATURE WANTS, THEN AN APPROPRIATION BILL TO FINANCE LEGAL COSTS SHOULD BE PREPARED TO ACCOMPANY THE BILL. THIS MIGHT WELL BE A COSTLY NO WIN SITUATION, WITH MONTANA THE ULTIMATE LOSER IN THE COURTS.

I WANT TO DISCUSS ONE MORE ASPECT OF THIS LEGISLATION. WHAT KIND OF A MESSAGE DOES IT SEND TO THOSE WHO MIGHT WANT TO DO BUSINESS IN MONTANA?

THOSE OF US OPERATING FREE ENTERPRISE ASSOCIATIONS WERE CONCERNED ABOUT THE DRIVE TO ENACT "PLANT CLOSURE" LEGISLATION A COUPLE OF YEARS AGO. PLANT CLOSURE LEGISLATION WOULD HAVE MEANT GOVERNMENT INTERFERING IN BUSINESS DECISIONS THAT SHOULD BE MADE BY MANAGEMENT. IN MY OPINION THIS LEGISLATION IS SIMILIAR AND WOULD SEND A NEGATIVE MESSAGE TO THOSE WHO MIGHT DO BUSINESS IN MONTANA.

I HOPE YOU CONSIDER THE LIABILITIES PRESENT IN PASSING THIS LEGISLATION. ALL THINGS CONSIDERED I HAVE TO RECOMMEND AGAINST PASSAGE.

MONTANA

GRAIN ELEVATOR ASSOCIATION

TESTIMONY OF MONTANA GRAIN ELEVATOR ASSOCIATION IN OPPOSITION TO HOUSE BILL 383

The Montana Grain Elevator Association opposes HB#383. While the Grain Elevator Association has not always walked hand in hand with the Burlington Northern, the grain elevators join with Burlington Northern in pointing out that legislation like HB#383 is discriminating in nature and is another example of why industry cannot take the "risk" of doing business in Montana.

In a state that purports to welcome new business with the theme "Build Montana" and a state that needs to attract other business and industry to bolster its economy, this type of legislation sends out a message to business that the climate in Montana is not favorable to business.

We of the Grain Elevator Association and other business must ask ourselves if a bill like this passes, when will we be asked to pay for the highways or other public services if we have to close an unprofitable elevator. If we start a new business that increases use of a public service (but also adds jobs and dollars to the economy), will we be asked to pay for other public services.

Can we afford to do business in Montana given "unknown" cost of potential legislation?

If we start a new business, will we be singled out to pay for increased use of highways or will we be immune like the grain terminal in Butte, where increased use of the highways is not taxed but encouraged. There is no rhyme or reason to the assessment.

In conclusion, we oppose HB#383 as discriminating and a classic example of "Anti-Business", sentiment which ultimately damages the economy of the state.

HIGHWAYS & TRANSPORTATION

TESTIMONY

OPPOSE HB 383

By:

Mike Fitzgerald
President & Managing Director
Montana International Trade Commission
Suite 612 - Power Building
Helena, Montana 59601

Before
The Senate Highway Committee
Montana State Legislature

March, 1985

Along with the Citizens Freight Rate Committee, MITC initiated and led the effort to save the western lines of the Milwaukee Railroad.

I served on the Board of the new Milwaukee Lines Co. which would have taken over the railroad if our litigation had been successful and I was the trustee of the New Milwaukee Fund.

Last session MITC initiated and led the lobby effort to repeal the ban on coal slurry.

I mention these because BN was against both of them, however, today I want to point out some considerations to your committee that address and go beyond the issue of branch lines. Maybe even beyond the railroad but weighed heavily on Montana's economic future.

- This bill will likely be unconstitutional, and I believe without justification either rationally or legally. If litigated, Montanans will pay the cost no matter whose the winner.
- Five years ago 50% of Montana's grain was hauled to markets by trucks.
- Today 85% is hauled by the railroad. That results in less, not more, wear and tear on our roads.
- BN's operations in Montana have 10 times as many agents as N.D. (75 in Montana - 6 in N.D.). Because they are not needed to run the railroad.
- In Montana we force the railroad to have cabooses - most other western states don't - another unnecessary forced operating expense we impose on the railroad.
- I am most familiar with railroad freight rates for coal. In 1984 BN coal rates from Montana were 1.636 cents per ton mile and from Wyoming 1.655 cents per ton mile. Montana's were lower.
- Since the UP and the CNW began serving the Powder River Coal Basin @ 28 million "new" tons of coal have been contracted for - 19 have gone to BN. That wouldn't be the case if BN wasn't competitive.
- We are forcing operating inefficiencies by our laws that result in unnecessary costs to the railroad that the railroad passes through to Montana shippers. We are hurting ourselves by these measures.
- These retaliatory actions are hurting our general economic performance.
- I know how bitter Montanans are about the state's corporate history, however, we hurt ourselves even more by permitting this bitterness to invade our every decision regarding commerce in Montana.

- Montana has some severe economic disadvantages without our self-imposition of others.
- Montana is the most geographically remote state in the U.S. Every other state is 500 miles closer to a major city and market.
- Many of Montana's basic industries are in a state of decline.
- Montana has declined from 37th to 38th in per capita income over the past year.
- In 1984 Montana's union membership declined 20%. Only one other state in the U.S. lost as much.
- With no exception all neighboring states have increased employment opportunities better than we have.
- Montana is 49th in manufactured exports - nearly off the chart.
- The improvement of Montana's basic industries - agriculture, timber, minerals and energy - is to manufacture and process higher value products from these basic resources, which will create a local market for the producers and expand the market reach of the product.
- To do so requires large investments which will have to come from outside Montana.
- We are going to continue to have a very difficult time attracting large investors to Montana because of how we treat the ones who are already here - namely the railroad, the utilities, the coal companies, the oil and gas companies, the mining companies, the timber companies - our primary industries...
- Most government entities, some of the news media and others treat these industries like they are not wanted. There is a continual inference that Montana would some how be better off if these businesses would just leave, unfortunately some have and others likely will.

Consider these things:

- Burlington Northern's companies employ 6,489 people in Montana at an average salary of about \$30,000 each.
- The annual payroll is @ \$208 million per year.
- BN pays state and local taxes of another \$18.5 million.
- Their foundation gives away over \$1 million per year to worthy projects in Montana.

Two years ago Montana had a \$50 million surplus - today we have a projected deficit of about \$50 million.

- The economic pie is shrinking...

The tragedy of statistics is that they don't ever reflect the human element of lost jobs, lost income, lost careers, broken dreams, and broken families that are the result of economic decline.

- In Montana we must learn a new form of cooperation among government, the people of Montana, and our corporate citizens.
- If we aren't able to, we can be sure that further economic decline will result.
- Because corporations are people, they will only stay and come to places where they feel welcome.
- The test before us is not so much what we say to businesses that we would like to come to Montana, but how we treat those who are already here - that's what the rest of the business world is watching and will base their investment decisions on - whether or not to come to Montana.

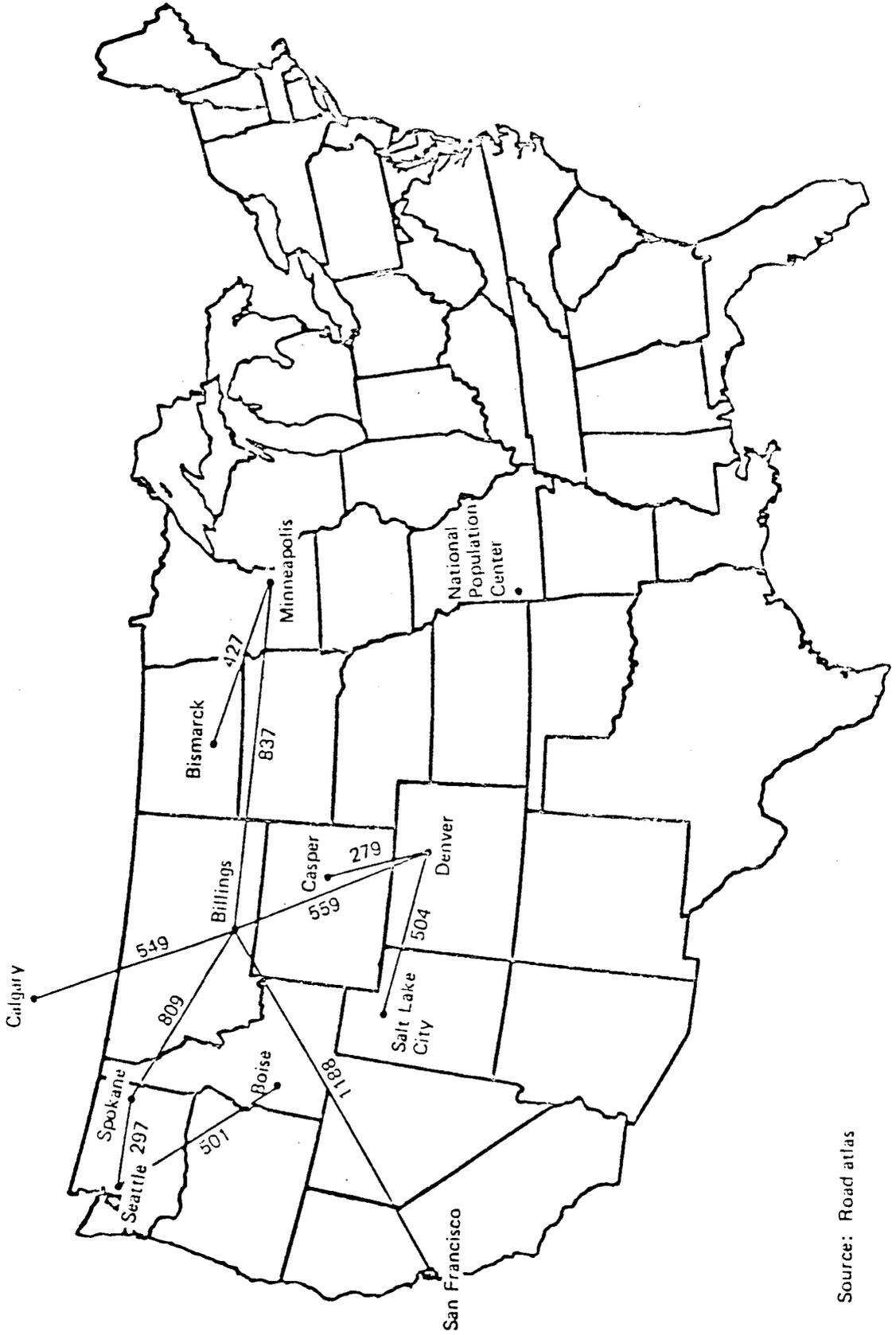
I recommend that you kill HB 383 and allow the state and BN to put their energies into constructive projects that can help rebuild Montana's economy.

Thank you.

Markets

Montana is at least 500 miles further from major markets than any other state in the U.S. National and even regional population and market centers are far away, relative to other western states. There are no significant regional markets within 500 miles, except Alberta.

MONTANA'S ACCESS TO MARKETS



Source: Road atlas

SETTLEMENT AGREEMENT
BETWEEN BURLINGTON NORTHERN RAILROAD COMPANY
AND
THE STATE OF MONTANA

Dated: September 5, 1984

INDEX

<u>SECTION</u>	<u>CONTENT</u>	<u>PAGE</u>
1	MONETARY CONSIDERATION	2
2	LOAN REPAYMENT	3
3	MOORE-SIPPLE CONNECTION; TRUST ACCOUNT	4
4	BRANCHLINE PURCHASE OPTION	7
5	EQUIPMENT AND MATERIAL PURCHASE OPTION	8
6	REHABILITATION	9
7	ABANDONMENT MORATORIUM	10
8	BRANCHLINE DONATIONS	11
9	SHORT LINE ARRANGEMENT	13
10	STATE COMMITMENT	15
11	REPRESENTATIONS AND WARRANTIES	17
12	EFFECTIVE DATE	18
13	NOTICES	18
14	INTERPRETATION	19
	APPENDICES	

PREAMBLE

This Agreement made and entered into this 5th day of September, 1984, by and between BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation, hereinafter called "BN", and the STATE OF MONTANA, a body politic, acting through the Montana Department of Commerce and the Director of said Department, hereinafter called "State".

WITNESSETH:

WHEREAS, BN, an interstate common carrier by rail, is the owner of a line of standard gauge railroad in the State of Montana, known as the Spring Creek Junction to Geraldine Line, hereinafter called "the Geraldine Line", which has been authorized for abandonment by the Interstate Commerce Commission by decision served July 30, 1984 in Finance Docket No. AB-6 (Sub-No. 175); and

WHEREAS, the State desires that alternate rail service arrangements for the communities served by the Geraldine Line be implemented to preserve rail service for the benefit of the public; and

WHEREAS, the State has brought suit against BN in the District Court of the Eighth Judicial District of the State of Montana, County of Chouteau, No. BV-83-075 alleging that BN breached an agreement to rehabilitate the Geraldine Line; and

WHEREAS, BN desires that the State dismiss said lawsuit with prejudice; and

WHEREAS, both BN and the State mutually desire that their present disagreements relating to the proposed abandonment of the Geraldine Line and the State lawsuit be settled to facilitate a constructive BN-State relationship relative to rail service matters in the State of Montana.

NOW THEREFORE, BN and the State mutually agree to settle the aforementioned controversies under the terms and conditions and for the consideration hereinafter set forth:

Section 1. MONETARY CONSIDERATION

1.1 On the Effective Date of this Agreement as determined under Section 12 hereof, BN shall pay the State the sum of \$8,000,000 in cash or other legal tender or by wire transfer to the order of The First Bank of Helena, Helena, Montana, Account No. _____ to be distributed in accordance with Sections 1.2 and 1.3 hereof.

1.2 The parties understand and agree that \$5,000,000 of said cash payment constitutes a donation to the State and that the State is not obligated to account to BN for disposition of such donation or make any repayment thereof. These monies shall be deposited in a trust fund with the State of Montana for the benefit of rehabilitation of the Geraldine Line, development and operation of a railroad association and the operation of a short line railroad.

1.3 The parties also agree that \$3,000,000 of the \$8,000,000 monetary consideration represents a cash advance by BN to the State which shall be used by the State for the

purpose of establishing a trust account to assure availability of funding for the construction of a connector line between Moore and Sipple, Montana in accordance with Section 3 hereof.

Section 2. LOAN REPAYMENT

2.1 As additional consideration for the State's promises herein, BN agrees to accelerate payment of its principal and interest obligations under two branchline rehabilitation loan agreements with the State.

2.2 On the Effective Date of this Agreement, BN shall pay the State the sum of \$3,574,490 in cash or other legal tender or by wire transfer to the order of The First Bank of Helena, Helena, Montana, Account No. _____, in full payment and discharge of its loan repayment obligations under BN-State rehabilitation agreements dated March 17, 1982 and September 24, 1982.

2.3 Upon BN repayment of these loan obligations, the State shall acknowledge that BN has fulfilled its loan repayment commitments under the said agreements. The parties shall thereafter take appropriate action to ensure that property and court records reflecting the improvement of the involved BN branchlines with funds provided under the March 17, 1982 and September 24, 1982 agreements are supplemented to indicate BN discharge of the loan obligation.

2.4 The parties agree that \$2,258,600 represents the outstanding principal loan balance which BN owes the State as of September 5, 1984 under the March 17, 1982 rehabilitation agreement pertaining to the Fairfield-Choteau and Power-Eastham Junction, Montana lines. Under this Agreement, the State provided BN with an interest free loan from federal funds.

2.5 The parties agree that \$1,296,870 and \$19,020 represent the outstanding principal and 5.5 percent administrative fee loan balances, respectively, as of September 5, 1984 under the September 24, 1982 rehabilitation agreement pertaining to the Valier to Valier Junction, Montana line.

Section 3. MOORE-SIPPLE CONNECTION; TRUST ACCOUNT

3.1 Within a period of three (3) years from the Effective Date of this Agreement, BN agrees to undertake construction of a railroad line between Moore and Sipple, Montana, subject to this Section 3 and the prior receipt of any necessary state or federal regulatory approvals or exemptions from such approvals for such construction.

3.2 The State shall deposit the \$3,000,000 referenced in Section 1.3 in a non-expendable trust fund to ensure availability of funds necessary to construct the Moore-Sipple connection.

3.3 The initial State funding of said trust account shall be a minimum of \$3,000,000, it being the intention of the parties that BN's cash advance to the State

under Section 1.3 of this Agreement should constitute an interest free advance of funds required to build the Moore-Sipple connection. Following this initial contribution of principal, the State may deposit additional sums into the trust account as in its sole judgment it may determine appropriate. The State may authorize the Trustee of the account to invest the principal as it deems appropriate, provided, however, that an amount equal to the original trust account deposit of \$3,000,000 adjusted for inflation by the relationship of the Association of American Railroad's (or successor organization) Interim Mid-Quarter Index in effect on the Effective Date and the Mid-Quarter Index in effect on any subsequent date must not be invested in such a manner as to preclude the use of such funds for construction of the Moore-Sipple connection on sixty (60) day's notice consistent with Section 3.5 hereof.

3.4 The State shall assume responsibility for obtaining funds in an amount equal to the original trust account deposit of \$3,000,000 ("Minimum Required Deposit") adjusted by the Association of American Railroad's (or successor organization) Interim Mid-Quarter Index in effect on the Effective Date and the Mid-Quarter Index prevailing on the third anniversary date of this Agreement. It is the State's intention to seek funding for the Moore-Sipple connection. Sixty (60) days prior to the third anniversary date of this Agreement, the State shall notify BN and the Trustee whether it has been able to procure funds from other

sources to build the Moore-Sipple connection. If the State has been able to obtain such funds, it shall direct the Trustee to pay BN on the first business day after the third anniversary date of this Agreement the Minimum Required Deposit (adjusted by the relationship of the Association of American Railroads' (or successor organization) Interim Mid-Quarter Index in effect on the Effective Date and the Mid-Quarter Index in effect on the third anniversary date of this Agreement) less the total of all funds which the State has made available for construction of the Moore-Sipple connection from other sources. If the State has been unable to procure funds for the connector line from other sources, BN shall have the option of being relieved of its obligation to build the Moore-Sipple connection or of receiving the Minimum Required Deposit on the same basis as set forth in the preceding sentence.

3.5 BN retains the option of building the Moore-Sipple connection at any time prior to the date three (3) years from the Effective Date of this Agreement upon payment by the State to BN of: (a) the Minimum Required Deposit (adjusted by the relationship of the Association of American Railroad's (or successor organization) Interim Mid-Quarter Index in effect on the Effective Date and the Mid-Quarter Index in effect on the date the Trustee distributes the funds to BN); (b) funds from other sources equal to the amount determined under Part (a) of this Section 3.5; or (c) a combination of funds from other sources and funds

distributed from the trust account equal to the amount determined under Part (a) of this Section 3.5 BN will be responsible for any such construction of the connection and shall be the owner of same.

Section 4. BRANCHLINE PURCHASE OPTION

4.1 BN grants the State the option of purchasing the following Montana branchline segments at the indicated net salvage values during the time period commencing on the Effective Date of this Agreement and ending three (3) calendar years thereafter, subject to the advance approval or exemption from advance approval for such sale from the Interstate Commerce Commission:

- (a) From Plentywood to Opheim (\$958,000)
- (b) From Saco to Loring (\$250,500)
- (c) From Whitehall to Butte (\$1,182,200)
- (d) From Lewistown to Heath (\$124,300)
- (e) From Drummond to Philipsburg (\$921,300)

The parties agree that the first station listed under items (a)-(e) above shall be excluded from the sale, and that the last station listed and all intermediate stations shall be included. Precise mileposts shall be determined at the time that the State notifies BN of its intent to exercise an option right with respect to the pertinent line.

4.2 In the event that the State elects to purchase any of these lines under this Section, it shall give BN formal notice of such intent pursuant to Section 13

hereof. Thereafter, BN and the State shall jointly request the Interstate Commerce Commission to approve or exempt the proposed sale of the involved line segment to the State and terminate BN's common carrier obligations over such trackage. Upon Interstate Commerce Commission approval or exemption from such approval of a sale, the State may consummate the purchase of the involved line by paying BN the net salvage value indicated for the line under Section 4.1 by cash or other legal tender or by wire transfer as directed by BN within thirty (30) days of final Interstate Commerce Commission action. BN agrees to convey the property underlying the involved line by quit-claim deed. BN shall obtain any necessary releases from railroad mortgages applicable to properties sold to the State under this Section within a reasonable period of time after the sale transaction closes.

Section 5. EQUIPMENT AND MATERIAL PURCHASE OPTION

5.1 BN grants the State an option to purchase certain equipment and material described in this Section exercisable for a period of three (3) years from the Effective Date of this Agreement.

5.2 The State shall have an option to purchase any combination of equipment listed in APPENDIX "A" hereto at the price indicated for such equipment in APPENDIX "A" up to a total purchase price of \$700,000. The State shall provide BN with notice pursuant to Section 13 hereof of its

intent to exercise this option. Such notice shall state:
(1) the specific equipment which the State would like to purchase from BN with reference to APPENDIX "A"; and (2) the total purchase price for all equipment using the prices reflected on APPENDIX "A". Closing on any such sale shall occur within sixty (60) days of the State's notice to BN. At closing, BN shall deliver an appropriate Bill of Sale to the State, and the State shall pay BN the total purchase price by cash or other legal tender or by wire transfer as BN may direct. The parties agree that any sale of equipment to the State under this Section will carry no warranties, express or implied, as to the condition of the equipment. All equipment sold to the State under this Section shall be sold in an "as is" condition. BN shall permit the State to inspect any equipment included in APPENDIX "A" at reasonable times in advance of any sale. BN shall be responsible for the delivery of any equipment sold to the State under this provision.

5.3 The State shall have an option to purchase up to 100,000 new number _____ ties and 121,500 cubic yards of crushed ballast at BN's delivered cost at Lewistown, Montana prevailing on the date that BN receives notice from the State under Section 13 of its intent to exercise this option.

Section 6. REHABILITATION

6.1 BN will provide rehabilitation (ties, ballast and surfacing) of the following Montana railroad lines in a three (3) year program:

- (a) From Circle to Glendive
- (b) From Bainville to Plentywood
- (c) From Columbia Falls to Somers
- (d) From Dixon to Polson

Section 7. ABANDONMENT MORATORIUM

7.1 The parties recognize that the following Montana lines were identified on BN's June, 1984 Amended System Diagram Map in Category 1 (abandonment) status:

- (a) Drummond-Philipsburg
- (b) Gerber-Lavin Spur End
- (c) Lewistown-Heath
- (d) Manhattan-Anceney
- (e) Mission-Wilsall
- (f) Moccasin-Lewistown
- (g) Newlon Junction-Richey
- (h) Phosphate-M.P. 4
- (i) Sappington-Harrison
- (j) Whitehall-Butte

7.2 BN agrees that it will not place any rail lines other than those itemized in Section 7.1 on its June, 1985 or June, 1986 Amended System Diagram Maps in a Category 1 abandonment status, provided, however, that in the event that a BN rail line is rendered unserviceable by flood,

high-water, landslide, or other damage by the elements, Act of God or by acts of aggression by third parties or governmental action, and if it is uneconomic and imprudent in BN's judgment to reinstate the line for continued service, this Section 7.2 shall not preclude BN from seeking abandonment of such line.

7.3 BN agrees that during the period of time ending on the date three (3) years from the Effective Date of this Agreement it will not seek to abandon any of the rail lines listed in Section 4 hereof unless otherwise agreed by the parties.

7.4 The parties understand and agree that notwithstanding this Section 7, BN shall be free to seek abandonment of any or all of the Montana lines currently listed in Category 1 on BN's 1984 Amended System Diagram Map referenced in Section 7.1 hereof as in its sole judgment it deems appropriate except for the Whitehall to Butte, Lewistown-Heath and Drummond to Philipsburg lines which are covered under Section 7.3 of this Agreement.

Section 8. BRANCHLINE DONATIONS

8.1 BN agrees to donate its railroad line between Spring Creek Junction (M.P. 71.00) and Geraldine (M.P. 137.14) to the State by appropriate instruments and quit-claim deed(s) as soon as practicable following the execution of this Agreement and the prior receipt of any

required approval of said donation or this Agreement from the Interstate Commerce Commission.

8.2 If the State selects Lewistown as the permanent point of interchange between BN and the State's short line under Section 9.2(a), BN agrees to donate its railroad line between Spring Creek Junction (M.P. 71.00) and Lewistown (M.P. _____) (exclusive of the station of Lewistown) to the State by appropriate instruments and quit-claim deed(s) as soon as practicable following the completion of construction of a Moore-Sipple connection (if same shall occur under Section 3 hereof) and the prior approval, or exemption from such approval, by the Interstate Commerce Commission of the transfer of this line to the State and the termination of BN's common carrier obligations over such trackage. If the State selects Moccasin as the permanent point of interchange between BN and the State's short line under Section 9.2(a), BN agrees to donate its railroad line between Moccasin (M.P. _____) and Lewistown (M.P. _____) via Spring Creek Junction (exclusive of the station of Lewistown) to the State by appropriate instruments and quit-claim deed(s) as soon as practicable following the completion of construction of a Moore-Sipple connection (if same shall occur under Section 3 hereof) and the prior approval, or exemption from such approval, by the Interstate Commerce Commission of the transfer of this line to the State and the termination of BN's common carrier obligations over such trackage.

8.3 BN grants to the State the option to receive a donation of its railroad line between Loring (M.P. 37.0) and Hogeland (M.P. 77.0) exercisable within three (3) years from the Effective Date of this Agreement, upon at least ninety (90) days advance notice under Section 13 hereof. Any such donation shall be effected by appropriate instruments and quit-claim deed(s).

8.4 The State and BN agree to jointly and diligently seek any necessary approvals or exemptions from approvals of the donations described in Sections 8.1 and 8.2 from the Interstate Commerce Commission.

8.5 BN shall obtain any necessary releases from railroad mortgages applicable to properties donated to the State under this Section 8 within a reasonable time from the date the donation is finalized.

Section 9. SHORT LINE ARRANGEMENT

9.1 The parties contemplate that the State will obtain a short line railroad operator to perform rail service on the Spring Creek Junction to Geraldine Line following BN's donation of this trackage to the State under Section 8.1 hereof.

9.2 The State agrees that it will require its short line operator to enter into an agreement for the interchange of railroad cars with BN in the form and substance attached hereto as APPENDIX "B". The APPENDIX "B" agreement provides, and the parties hereto agree, that:

- (a) the short line shall interchange cars with BN at Lewistown or Spring Creek Junction or Moccasin. The State shall designate one of these three locations as the interchange point prior to the execution of the APPENDIX "B" agreement. In the event that the State initially designates Spring Creek Junction as the interchange point, the parties agree that prior to the third anniversary date of this Agreement, the State must select either Moccasin or Lewistown as the permanent point of interchange. The selection of either Moccasin or Lewistown as the designated interchange point shall be deemed permanent unless otherwise agreed by the parties.
- (b) BN will pay the short line \$275 per loaded car for each car handled in interchange with short line;
- (c) the \$275 per car charge will be subject to an annual inflationary adjustment;
- (d) BN will perform repairs to short line equipment in accordance with the Interchange Agreement and Field Manual of the Association of American Railroads;
- (e) the short line will receive up to a maximum of seventy-two (72) hours "free time" for per diem purposes; and
- (f) the short line shall have trackage rights over either BN's line between Spring Creek Junction and

Lewistown (if Lewistown is designated as the Short Line interchange point) or between Moccasin and Spring Creek Junction (if either Moccasin or Spring Creek Junction is designated as the Short Line interchange point) for interchange purposes.

BN also agrees to establish combination rates with the State's short line operator based on BN's rates at Lewistown (in the event that the State elects to interchange with BN at Spring Creek Junction or Lewistown) or Moccasin (in the event the State elects to interchange with BN at Moccasin).

The parties agree to maintain competitive rates for traffic originating or terminating in Fergus, Chouteau, Cascade, and Judith Basin Counties. The parties recognize the present rates to be competitive. Competitive rate relationships are further defined as rate adjustments which do not have a predatory impact on either party.

Section 10. STATE COMMITMENT

10.1 As consideration for BN's performance of its obligations hereunder, the State agrees:

- (a) not to appeal the Interstate Commerce Commission's decision served July 30, 1984 authorizing the abandonment of the Geraldine Line to the Circuit Courts of the United States and to withdraw its request that the Interstate Commerce Commission

stay the effect of the Commission's July 30 decision;

- (b) to promptly request the District Court of the Eighth Judicial District of the State of Montana, County of Chouteau, to dismiss its lawsuit against BN in No. BV-83-075 with prejudice and to diligently pursue said dismissal to completion;
- (c) to support BN in its efforts to obtain Interstate Commerce Commission approval or exemption from approval of the transactions under this Agreement involving lines donated or purchased by the State, and with respect to such lines, to give BN an unequivocal release from any future obligation to perform rail service thereover;
- (d) to jointly request with BN that the Interstate Commerce Commission modify the condition imposed on the Geraldine Line abandonment in its July 30 decision that BN maintain certain truck substitution allowances in effect for a period of three (3) years, by permitting BN to discontinue the allowance during periods when the State's short line operation is performing rail service on the Geraldine Line; and
- (e) to release, acquit, and forever discharge Burlington Northern Railroad Company, its holding company, its subsidiaries or any of its affiliated companies and the officers, agents and employees

of any of those companies and from and against any and all causes of action, costs, charges, claims, or demands in any manner arising or resulting from the Interstate Commerce Commission proceeding whereby BN acquired the Geraldine Line (Finance Docket No. 29328) and the conversations, correspondence, or any other communications between BN, the State, the Montana Railway Corporation or their respective officers or agents prior to, during, and after the Commission's August 21, 1980 decision in Finance Docket No. 29328.

Section 11. REPRESENTATIONS AND WARRANTIES

11.1 BN represents and warrants the following:

- (a) That it is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and is duly qualified to do business in the State of Montana;
- (b) That it has the full power and authority to enter into this Agreement and to carry out the obligations which it has hereby undertaken; and
- (c) That all corporate and other proceedings required to be taken by or on the part of BN to authorize its entrance into this Agreement, have been or will be duly taken.

11.2 The State represents and warrants the following:

- (a) That it has the power and authority to enter into this Agreement and to carry out its obligations under this Agreement; and
- (b) That entering into and performance of this Agreement on the part of the State does not violate any statute, rule, regulation, order, writ, injunction or decree of any Court, administrative agency or governmental body.

Section 12. EFFECTIVE DATE

12.1 This Agreement shall become effective on September 5, 1984, the day and date of execution by the parties hereto.

Section 13. NOTICES

13.1 Any notice, request, consent, demand, report, statement or submission which is required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered personally to the respective party set forth below, or if mailed by certified United States mail, postage prepaid, to the respective parties at the addresses set forth below, or to such other addresses as the parties may from time to time advise by notice in writing. The date of receipt of any such notice, demand, request or submission shall be presumed (which presumption is rebuttable) to be

the date of delivery if served personally, or if mailed as aforesaid on the seventh business day following the date of such mailing.

NOTICES IN THE CASE OF BN:

General Counsel - Corporate Law
Burlington Northern Railroad Company
3800 Continental Plaza
777 Main Street
Fort Worth, Texas 76102

cc: Regional Vice President & General Manager
Burlington Northern Railroad Company
1st NW Bank
Billings, Montana 59101

NOTICES IN THE CASE OF STATE:

Director
Montana Department of Commerce
1424 9th Avenue
Helena, Montana 59620

cc: Administrator Transportation Division
Montana Department of Commerce
1424 9th Avenue
Helena, Montana 59620

Section 14. INTERPRETATION

14.1 This Agreement shall be construed liberally so as to secure to each party hereto all of the rights, privileges and benefits herein provided or manifestly intended. This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of

a third party to recover by way of damages or otherwise against the State or BN.

14.2 If any covenant or provision of this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation or performance of any other covenant or provision which in itself is valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision.

14.3 This Agreement and APPENDICES hereto contain the entire Agreement of the parties and supersede any and all prior agreements and/or oral understandings between the parties.

14.4 This Agreement, and the interpretation of this Agreement, shall be governed by the laws of the State of Montana, unless otherwise provided by law.

This Agreement is executed by Gary Buchanan, Director of the Montana Department of Commerce, not as an individual incurring personal obligation and liability, but solely by, for and on behalf of the State of Montana, in his capacity as Director of the Montana Department of Commerce, pursuant to authority as aforesaid.

IN WITNESS WHEREOF, BN has caused this Agreement to be executed in duplicate by its duly authorized corporate officer

and its corporate seal to be affixed hereunder, and the State has hereunder set its hand and seal the day and year first hereinabove written.

ATTEST:

Assistant Secretary

(SEAL)

Approved as to legal form

By _____
Asst. Attorney General

BURLINGTON NORTHERN RAILROAD
COMPANY

By _____

STATE OF MONTANA
DEPARTMENT OF COMMERCE

By _____
Director, Montana
Department of Commerce

<u>QUANTITY</u>	<u>UNIT</u>	<u>COST EACH</u>	<u>TOTAL COST</u>	<u>NEW COST</u>	<u>SCRAP VALUE</u>
12	GP-9 Locomotives	\$ 25,000	\$300,000	\$683,900	\$10,500 ea.
3	Cabcooses	5,000	15,000	79,000	3,000 ea.
2	Burro Cranes	100,000	200,000	223,180	80 NT
2	Motor Cars	2,500	5,000	12,220	80 "
2	Hi-Rail Boom Trucks	25,000	50,000	172,000	80 "
1	Hi-Rail Pickup	5,000	5,000	19,000	80 "
1	Tamper	75,000	75,000	167,500	80 "
1	Ballast Regulator	35,000	35,000	82,300	80 "
1	Jordan Plow	75,000	75,000	225,000	80 "
1	Gradall	65,000	65,000	189,800	80 "
2	Bolt Machines	2,500	5,000	4,900	80 "
10	Ballast Cars	15,000	150,000	35,500	1,500 ea.
10	Flat Cars	3,000	30,000	30,000	1,250 ea.
3	Rail Rack Cars	None Available	-		
2	Snow Plows	25,000	50,000	120,300	80 NT
1	Weed Mower	20,000	20,000	16,644	80 "
2	Rail Saws	500	1,000	1,398	80 "
2	Air Dump Cars	60,000	120,000	60,000	2,000 ea.
	GRAND TOTAL COST		\$1,201,000		

APPENDIX "B"

THIS AGREEMENT is made and entered into this _____ day of _____, 1984, by and between Burlington Northern Railroad Company, a Delaware Corporation, hereinafter called "Northern", and the [insert name of the short line railroad procured by the State of Montana to operate the subject trackage] a [name of state] corporation, hereinafter called "Short Line".

WITNESSETH:

WHEREAS, the State of Montana, a body politic, hereinafter called "State" has acquired from Northern a line of railroad between Spring Creek Junction, Montana and Geraldine, Montana, hereinafter called "the Subject Line".

WHEREAS, the State has entered an agreement with the Short Line for the lease and operation of the Subject Line.

WHEREAS, Northern grants to Short Line the right to use (A) Northern's trackage between Spring Creek Junction (MP 71.00) and Lewistown, Montana (MP 63.38), a distance of 7.62 miles, (in the event that the State elects to interchange with BN at Lewistown) or (B) Northern's trackage between Moccasin (M.P. _____) and Spring Creek Junction, Montana (M.P. 71.00), a distance of _____ miles, (in the event that the State elects to interchange with BN at Moccasin or Spring Creek Junction) hereinafter called "the Joint

Trackage", for the sole purpose of interchanging traffic with Northern. Short Line shall not have any rights to serve any industry, team track located on the Joint Trackage.

WHEREAS, the parties hereto wish to establish _____
(State shall elect to have Short Line interchange traffic with BN at Lewistown or Spring Creek Junction or Moccasin), Montana as a designated interchange point for the interchange of freight cars between their respective railroads on Short Line's trackage colored red and Northern's trackage colored green on Exhibit "A" dated _____, 1984, attached hereto and made a part hereof. Unless otherwise agreed, the State's selection of either Moccasin or Lewistown as the interchange point shall be considered permanent. If the State initially selects Spring Creek Junction as the interchange point, the parties hereto understand that the State must select either Moccasin or Lewistown as the permanent interchange point within three (3) years from the Effective Date of the Settlement Agreement Between Burlington Northern Railroad Company and the State of Montana.

NOW, THEREFORE, it is mutually agreed:

1. The parties hereby establish Short Line trackage colored red and Northern trackage colored green on Exhibit "A" as the designated interchange track, hereinafter called "Interchange Track". The parties understand that if it shall be necessary to construct additional trackage for use as Interchange Track, or to

make improvements to or lengthen the designated Interchange Track, the cost of any such construction, improvement or lengthening shall be borne by the State or Short Line.

2. Short Line shall maintain at its sole expense the trackage colored red and Northern shall maintain at its sole expense the trackage colored green. The parties shall have the right to use the Interchange Track without charge.

It is understood and agreed that the trackage colored red is the property of Short Line and Short Line may use said track for other purposes so long as it does not unreasonably interfere with the interchange provided for herein, and this agreement does not vest any right of ownership to Northern in the trackage colored red. It is understood and agreed that the trackage colored green is the property of Northern and Northern may use said track for other purposes so long as it does not unreasonably interfere with the interchange provided for herein, and this agreement does not vest the right of ownership to Short Line in the trackage colored green.

3. Cars for delivery to Short Line shall be set out by Northern on the Interchange Track. Such cars shall be moved away by Short Line. Cars moving from Northern to Short Line shall be deemed interchanged to Short Line when placed by Northern on the Interchange Track and proper data for forwarding and to ensure

delivery is available to Short Line, in accordance with the Code of Car Service Rules of the Association of American Railroads. Cars for delivery to Northern shall be set out by Short Line on the Interchange Track. Such cars shall be moved away by Northern. Cars moving from Short Line to Northern shall be deemed interchanged to Northern when placed by Short Line on the Interchange Track and proper data for forwarding and to ensure delivery is available to Northern, in accordance with the Code of Car Service Rules of the Association of American Railroads. Northern agrees to pay Short Line the amount of \$275 per car for each loaded car it receives from Short Line or forwards to Short Line in interchange at the point designated for interchange above. The \$275 per car payment shall be subject to annual adjustment on the anniversary date of this agreement based on the relationship of the Association of American Railroad's (or successor organization) Interim Mid-Quarter Index.

4. The parties hereto and their employees and agents, while engaged in operation of the engines, cars, and trains upon Northern's portion of the Interchange Trackage or the Joint Trackage under the terms hereof, shall conform to the rules, regulations, and directions of Northern. Each party, in using the Interchange Track or the Joint Trackage and operating its engines, cars, and trains thereover, shall comply with all applicable laws, rules and regulations, and orders from any governmental body, board or commission having jurisdiction for the protection of persons or otherwise, and if any failure on the

part of either party so to comply therewith shall result in any fine, penalty, cost or charge being imposed or assessed against the other party, the party so failing to comply shall promptly reimburse and indemnify the other party for or on account of such fine, penalty, cost or charge, and all expenses and attorneys' fees incurred in defending any action against such other party on account thereof, and shall, in the event of any such action, upon notice thereof being given to it by such other party, defend such action free of expense to such other party.

Each of the parties hereto, in leaving any cars upon the Interchange Track, shall place such cars at a safe clearance distance from any track or tracks which may connect therewith or intersect same, so as not to interfere with, obstruct or endanger the operation of locomotives, trains or cars upon such other track or tracks.

5. Northern shall pay foreign lines, subject to reimbursement as set forth below, for car hire accruing on cars while in account of Short Line and delivered to Short Line by Northern. For the purposes of computing car hire charges, cars shall be considered to be in the account of the other party upon completion of the interchange as defined in Section 3, except that Northern shall allow a maximum of up to seventy-two (72) hours free time, which shall be computed on an individual basis for each car.

Short Line shall furnish to Northern a monthly report showing foreign line cars, private cars, and time accruing on foreign cars in Short Line's accounts. Short Line shall furnish this information in the format essentially as shown on Exhibit "B" by the tenth (10th) day of the following month, and Northern will insert per diem rates and compute the amount due from Short Line. Short Line shall pay amounts due Northern by check within thirty (30) days from the receipt of Northern's bill.

Short Line shall maintain all demurrage records and assess, account for, and retain all demurrage due on any cars while in its care, custody or control.

6. Short Line shall reimburse Northern for car hire accounting services at the base rate of One Thousand Two Hundred Dollars (\$1,200) annually, as billed by Northern on July 1 of each year, with the first billing to be prorated on a basis of use during that year. Except for the July 1, 1984 billing, the base rate for such services shall be increased or decreased annually as of July 1, for each calendar year, based on the relationship of the Association of American Railroads (or successor organization) Index of Railroad Material Prices and Wage Rates for Railroads of Class I, Western District (material prices, wage rates and supplements combined, excluding fuel) for the preceding year to the Index for the year 1983.

7. Northern agrees to perform repairs to Short Line owned freight cars or freight cars in the account of Short Line shall in accordance with Field Manual of the Association of American Railroads Interchange Rules. Repairs to Sort Line's locomotive will be agreed to in writing prior to repairs and shall be covered by purchase order issued by Short Line to authorize any repairs.

8. Short Line agrees to pay Northern for weighing of cars in accordance with Rule 11 of the Code of Car Service Rules and Interpretation Freight.

9. The parties hereto using the Interchange Track or the Joint Trackage shall assume, bear, settle, and pay all loss, cost, damage, or injury which its own property or property in its custody, or its employees or passengers, or the Interchange Track or the Joint Trackage may suffer as a result of or in connection with the operation of its engines, cars, or trains upon any portion of the Interchange Track or the Joint Trackage and caused solely by the negligence of enginemen or trainmen or other sole employees of either party, or in case of any other accident upon the Interchange Track or the Joint Trackage so caused, the party whose sole employees are at fault shall be responsible for and pay the entire loss caused thereby; and provided, further, that in case of collision or other accident occurring upon the Interchange Track or the Joint Trackage and caused by the fault of employees of both parties, each party hereto shall assume,

bear, settle, and pay all loss, cost, damage, or injury which its own property or property in its custody, or its employees or passengers may suffer, and each party shall bear an equal share of all damage to the Interchange Track, or the Joint Trackage, and to third persons or to property of third persons.

Except as hereinbefore provide, the parties hereto using the Interchange Track or the Joint Trackage shall assume and pay all loss and damage which its engines, cars, or trains may do to third persons or to property of third persons, and each party agrees to indemnify the other against all loss and damage which it herein agrees itself to bear. If any injury shall occur upon the Interchange Track or the Joint Trackage to third persons or to property of third persons by the operation of engines, cars, or trains in such a way that it cannot be determined what company's engines, cars, or trains caused the injury, the costs and compensation if any made to the injured party, shall be apportioned equally between the parties hereto.

If the use of the Interchange Track shall at any time be interrupted, or traffic thereon be delayed for any cause whatsoever, the party responsible for maintenance of the portion of the Interchange Track causing the problem shall proceed, with reasonable skill and diligence, to repair or restore the Interchange Track for the safe and prompt interchange of cars thereover. Neither party shall have or make any claim or demand against the other for loss or damage of any kind caused by or

resulting from interruption or delays to the movement of their respective trains, cars, or traffic over the Interchange Track, regardless of the manner in which the same may have occurred.

10. In case a suit shall be commenced against either of the parties hereto arising out of the use or operation of any facilities herein provided for, which suit is to recover damages for which the other party hereto is ultimately responsible hereunder, the party sued may give notice of such suit to the other party, and thereupon the latter shall assume the defense of the suit and save the notifying party harmless therefrom. The parties will settle as between themselves any claim for loss, damage, or injury according to the new terms of this agreement, notwithstanding any judgment or decree of a court or other tribunal in proceeding brought by third parties.

11. Short Line shall at its expense procure and maintain throughout the term of this agreement a Comprehensive General Liability policy or policies providing bodily injury and property damage coverage with a combined single limit of at least Five Million Dollars (\$5,000,000) for each occurrence. Each of such policies shall provide contractual liability coverage for all of the liability assumed by Short Line under this agreement, in the form attached hereto as Exhibit "C", and shall provide that the coverage shall not be cancelled or changed without giving Northern thirty (30) days' prior written notice. Northern shall not be named as either an insured or additional assured in any of

said policies. Short Line shall, before this agreement shall become effective, furnish Northern with satisfactory evidence of all such policies of insurance, properly endorsed.

12. If at any time a question or controversy shall arise between the parties hereto touching the construction of any part of this Agreement or concerning the business or manner to transacting business carried on under its provisions, or concerning the observance or performance of any of the conditions herein contained, or the rights or obligations of any party under or arising from this Agreement upon which question the parties cannot agree, such question or controversy shall be submitted to arbitration by a disinterested person or persons familiar with such business and experienced in railway management, as hereinafter provided. Such question or controversy shall be submitted to a single competent disinterested arbitrator if the parties hereto are able to agree upon such single arbitrator within twenty (20) days after the party desiring such arbitration shall notify in writing the other party to such question or controversy. If such single arbitrator cannot be agreed upon before the expiration of such period of twenty (20) days, such arbitration shall be had before a board of three competent and disinterested persons to be names as follows: The party demanding such arbitration shall give the other party notice of such demand, stating specifically the question or questions to be submitted for decision or the point or points in controversy, and nominating a person who has the required qualifications to act as

one arbitrator. The party hereto to whom such notice is given shall appoint a second arbitrator and give the party hereto demanding arbitration notice in writing of such appointment within twenty (20) days from the time of such notice. If at the expiration of twenty (20) days from the receipt of such notice the party receiving it has not notified the party demanding the arbitration of its nomination of a second arbitrator having like qualifications, the party making the demand may make such selection. The first and second arbitrators chosen shall select a third, and if the arbitrators chosen shall be unable to agree upon a third arbitrator within a period of twenty (20) days from the date of appointment of the second arbitrator, the third arbitrator may be appointed upon ten (10) days' notice upon motion or application of either party hereto by the Chief Judge (or Judge acting as Chief Judge) of the United States District Court for the District of the State of Montana.

13. This agreement shall be effective (insert date), and remain in full force until terminated by mutual agreement of the parties hereto or by thirty (30) days written notice by either party to the other party, and shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

14. The parties hereto agree to be bound by the rules and regulations of (a) Code of Car Service and Car Hire Rules, (b) Interchange Rules, and (c) Freight Claim Rules of the Association

of American Railroads, and said rules and regulations shall be and are incorporated herein by reference.

In Witness whereof, the parties hereto have executed this agreement on the day and year first above written.

BURLINGTON NORTHERN RAILROAD COMPANY

By _____

SHORT LINE RAILROAD COMPANY

BY _____

This page has been left blank intentionally.

Exhibit "A" will consist of a plat depicting the Interchange Track and will be prepared by BN.

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Exhibit "B" will consist of a monthly report showing foreign line cars, private cars, and time accruing on foreign cars in Short Line's accounts and will be furnished by BN.

CONTRACTUAL LIABILITY ENDORSEMENT

In consideration of the premium at which this policy is written, the _____ agrees that the insuring agreements of the policy to which this Endorsement is attached are extended to cover liability for bodily injuries, including resulting death, and for damage to or destruction of property which liability the insured, Short Line Railroad, (in said agreement called "Short Line") has assumed by virtue of the following wording contained in the agreement entered into by and between the insured and BURLINGTON NORTHERN RAILROAD COMPANY (in said agreement called "Northern") dated August 14, 1984.

"The parties hereto using the Interchange Track or the Joint Trackage shall assume, bear, settle, and pay all loss, cost, damage, or injury which its own property or property in its custody, or its employees or passengers, or the Interchange Track or the Joint Trackage may suffer as a result of or in connection with the operation of its engines, cars, or trains upon any portion of the Interchange Track and caused solely by the negligence of enginemen or trainmen or other sole employees of either party, or in case of any other accident upon the Interchange Track or the Joint Trackage so caused, the party whose sole employees are

at fault shall be responsible for and pay the entire loss caused thereby; and provided, further, that in case of collision or other accident occurring upon the Interchange Track or the Joint Trackage and caused by the fault of employees of both parties, each party hereto shall assume, bear, settle, and pay all loss, cost, damage, or injury which its own property or property in its custody, or its employees or passengers may suffer, and each party shall bear an equal share of all damage to the Interchange Track or the Joint Trackage, and to third persons or to property of third persons.

Except as hereinbefore provided, the parties hereto using the Interchange Track or the Joint Trackage shall assume and pay all loss and damage which its engines, cars, or trains may do to third persons or to property of third persons, and each party agrees to indemnify the other against all loss and damage which it herein agrees itself to bear. If any injury shall occur upon the Interchange Track or the Joint Trackage to third persons or to property of third persons by the operation of engines, cars, or trains in such a way that it cannot be determined what company's engines, cars, or trains caused the injury, the costs and

compensation if any made to the injured party, shall be apportioned equally between the parties hereto."

This Endorsement is issued subject to all agreements, exclusions, conditions, declarations, and other terms contained in the policy, except as modified by this Endorsement.

This Endorsement forms a part of Policy No.

_____ issued to Short Line Railroad by the

_____ and is effective

_____ Central Standard Time.

Countersigned:

WAYNE A. HATTON
600 Norwest Bank Center
175 North 27th Street
Billings, Montana 59101

HB 383

March 12, 1985

Mr. Larry Stimatz, Chairman
Montana State Senator
1615 C Street
Butte, Montana 59701

Dear Mr. Stimatz:

Please accept this letter as an expression of my concern about House Bill 383, which would force railroads to pay part of the cost of highway maintenance and repair in areas where branch lines have been abandoned.

The Bill seems discriminatory, in that no other developments impacting highways are included. Especially conspicuous by its absence is any mention of increased truck traffic (and highway impact) caused by the State-supported grain terminal at Butte. The list of contributing factors to increased truck traffic and highway costs goes on and on, yet only rail abandonment is singled out in the bill.

In at least one case, an impartial third party found that cessation of rail service was not a factor in increasing highway maintenance and repair costs. In its decision permitting abandonment of the Geraldine Line, the Interstate Commerce Commission said, "It could not be found that the abandonment of the line was the proximate cause of any acceleration in the rate of deterioration in the highways."

Another independent study--done for the State Departments of Agriculture, Highways and Commerce in 1981--looked in part at the affect of grain sub-terminals on roads, which were made attractive by BN's multiple-car rates on grain. According to that study, "Sub-terminals lead to heightened usage of the rail system which, over the long term, removes trucks from the highway stem." It seems only fair that if BN is required to pay highway costs resulting from abandonment, BN also be compensated for highway costs avoided by the railroad's increased share of the Montana grain transportation market.

The issue presented by this bill is one of fairness, and it seems unfair to try to shift to rail customers in Montana and elsewhere a portion of the highway maintenance costs that have traditionally been paid by the people of the State as a whole.

Thank you for your consideration.

Yours truly,



W. A. Hatton

ECONOMIC IMPACTS OF BNI IN MONTANA

- BNI and its five companies operating in Montana employ over 6,400 Montanans with a total annual payroll of nearly \$210 million.
- BNI and its subsidiaries pay additional tens of millions of dollars in retirement benefits each year to thousands of pensioners who live in Montana.
- BNI and its operating companies spend substantial sums each year improving and expanding their facilities in Montana. BNRN spent more than \$70 million on track and other improvements in Montana in 1984.
- In 1984, in addition to expenditures for capital improvements, BNI and its subsidiaries spent more than \$35 million for Montana goods and services ranging from major equipment purchases to custom labor.
- BNI's real estate development subsidiary, Glacier Park Company, actively pursues the development of commercial sites in Montana. An example is the \$20 million shopping mall to be constructed in downtown Kalispell.
- In 1984, BNI and its subsidiary companies paid over \$18 million to Montana taxing authorities.
- Meridian Oil, Inc., BNI's oil and gas subsidiary, paid \$4.2 million in production taxes on 1.6 million barrels of oil and 705 million cubic feet of gas in Montana in 1984.
- In 1984, Plum Creek Timber Company marketed Montana logs and wood products with an approximate value of \$130 million.
- Meridian Minerals Company, headquartered in Billings, is one of the largest private holders of coal reserves in the U.S. with potential for sale of Montana coal to markets in the Pacific Northwest, Northern Great Plains and the Illinois Basin regions.

MYTHS AND REALITIES ABOUT RAILROAD TRANSPORTATION AND MONTANA

MYTH:

BN grain rates continue to rise as the price of grain falls.

REALITY:

The major recent grain transportation development has been the advent of the unit train. Using this highly efficient mode, most Montana farmers ship by rail at rates which are actually *lower* than five years ago. Wheat rates from Wolf Point provide a good example. The rates per hundredweight for single car and 54-car single origin BN unit trains moving to the Pacific Northwest from Wolf Point are shown below.

	Single Car	Unit Train
October, 1980	\$2.21	none prior to 1980
October, 1981	\$1.99	\$1.72
October, 1984	\$1.96	\$1.61

In the time since the introduction of the unit train, BNI's market share has grown from less than half to nearly 85% at present as more and more Montana shippers move their grain to market by unit train.

MYTH:

BN will absorb most of the tax reductions in Montana's coal tax by increasing its rates.

REALITY:

"BN will not take action by which it could recoup any reduction in the state's severance tax," stated a February 14, 1985, letter from John Hertog, Sr. Vice President, BNRN to Senator Tom Towce. Major consumers of Montana coal have written to the Montana Coal Council stating that under the contracts they have with BN, "if the State of Montana were to lower its severance tax, the railroad could not absorb the coal cost reduction."

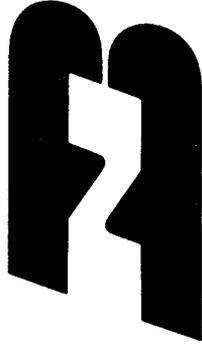
MYTH:

BN charges less to haul coal from Wyoming than from Montana because of the competitive transportation available to Wyoming producers.

REALITY:

In 1984, BN coal rates from Montana averaged 1.636 cents per ton mile and from Wyoming, 1.655 cents per ton mile. In the most recent contract negotiations for coal to be hauled either from Montana or Wyoming (where Chicago and Northwestern Railroad is seeking to compete to haul coal), the rates offered by BN were identical on a ton mile basis for both Montana and Wyoming coal.

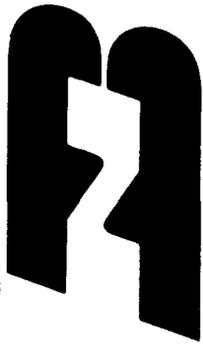
BURLINGTON NORTHERN INVESTMENT IN MONTANA'S FUTURE



BURLINGTON NORTHERN INC.

For Further Information:

BURLINGTON NORTHERN INC.
36 N. Last Chance Gulch
Suite 200
Helena, MT 59601
(406) 442-1296



BURLINGTON NORTHERN INC.



Burlington Northern's commitment to Montana began over 100 years ago and continues today as Burlington Northern Inc. and its operating companies work to strengthen Montana's economy. Burlington Northern companies are active partners in Montana business and they are making investments for Montana's future.

This brochure contains some facts and figures for you to consider when you think about Burlington Northern in Montana.

BNI SUBSIDIARIES AND

NUMBER OF MONTANA EMPLOYEES

Burlington Northern Railroad Company	4,811
Plum Creek Timber Company, Inc.	1,537
Meridian Oil, Inc.	94
Meridian Minerals Company	41
Glacier Park Company	6
TOTAL MONTANA EMPLOYEES	6,489

**TOTAL WAGES PAID TO
MONTANA EMPLOYEES IN 1984**
\$207,808,205

STATEMENT OF 1984 MONTANA PROPERTY TAXES BURLINGTON NORTHERN INC.

COUNTY	TOTAL
BEAVERHEAD	\$ 821.74
BIG HORN	103,309.31
BLAINE	137,574.08
BROADWATER	99,409.90
CARBON	135,949.13
CARTER	5,398.14
CASCADE	768,836.67
CHOTEAU	105,415.40
CUSTER	226,531.13
DANIELS	88,485.09
DAWSON	310,866.85
DEER LODGE	52,135.04
FALLON	37,291.42
FERGUS	161,703.34
FLATHEAD	708,683.57
GALLATIN	290,072.20
GARFIELD	25,122.10
GLACIER	199,995.73
GOLDEN VALLEY	60,340.84
GRANITE	113,962.97
HILL	359,777.37
JEFFERSON	114,191.90
JUDITH BASIN	206,520.74
LAKE	134,672.51
LEWIS AND CLARK	308,320.41
LIBERTY	80,206.03
LINCOLN	434,952.29
MADISON	53,650.80
McCONE	61,980.87
MEADHER	538.48
MINERAL	157,535.00
MISSOULA	666,398.30
MUSSELSHELL	6,107.58
PARK	339,853.62
PETROLEUM	1,517.00
PHILLIPS	116,900.47
PONDERA	79,562.15
POWDER RIVER	2,726.20
POWELL	170,908.60
PRAIRIE	110,022.26
RAVALLI	90,352.42
RICHLAND	152,301.19
ROOSEVELT	247,386.59
ROSEBUD	171,304.20
SANDERS	364,913.28
SHERIDAN	42,701.78
SILVER BOW	123,739.94
STILLWATER	121,753.66
SWEET GRASS	110,369.62
TETON	120,428.24
TOOLE	157,389.32
TREASURE	130,302.19
VALLEY	236,559.30
WHEATLAND	58,682.49
WIBAUX	30,675.34
YELLOWSTONE	921,708.09
TOTAL	\$ 10,116,814.88

In addition to the property taxes shown above, Burlington Northern Inc. pays over \$8 million in production and income taxes, and excise taxes on diesel and propane fuels used.

TOTAL TAX BILL IN EXCESS OF \$18.5 MILLION

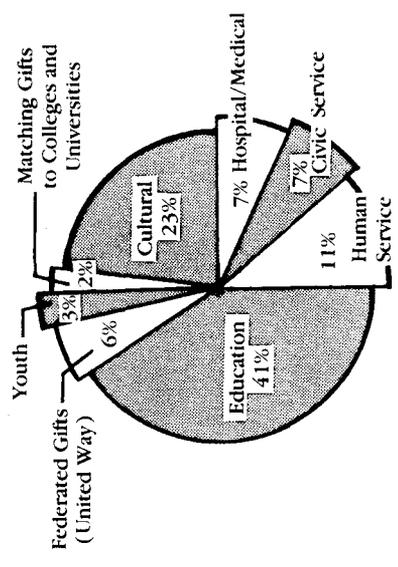
STATEMENT OF 1984 BURLINGTON NORTHERN FOUNDATION CONTRIBUTIONS

In the last few years, the Burlington Northern Foundation has grown into one of Montana's most active givers. The Foundation supports a wide range of worthwhile activities in Montana in recognition of BN's responsibility to support and improve the general welfare and the quality of life in the communities the company serves.

1984 BN FOUNDATION CONTRIBUTIONS IN MONTANA

COUNTY	AMOUNT
BIG HORN	\$ 1,000.00
CASCADE	44,250.00
CHOTEAU	7,500.00
CUSTER	7,000.00
DAWSON	25,270.00
DEER LODGE	3,000.00
FERGUS	26,000.00
FLATHEAD	10,540.00
GALLATIN	54,850.00
HILL	114,770.00
LAKE	9,130.00
LEWIS AND CLARK	173,420.00
LINCOLN	695.00
McCONE	25,000.00
MISSOULA	371,432.00
RICHLAND	1,500.00
ROOSEVELT	4,500.00
ROSEBUD	5,000.00
SANDERS	3,000.00
SILVER BOW	47,125.00
VALLEY	75,000.00
YELLOWSTONE	248,940.00
TOTAL	\$1,258,922.00

FOUNDATION GIFTS BY CATEGORY IN MONTANA



STANDING COMMITTEE REPORT

MARCH 26

19 85

MR. PRESIDENT

HIGHWAYS AND TRANSPORTATION

We, your committee on

having had under consideration..... HOUSE BILL No. 530

third reading copy (blue)
color

(SENATOR FARRELL)

\$100 FINE FOR FAILURE TO USE RETRACTABLE AXLE ON OVERWEIGHT VEHICLE

Respectfully report as follows: That..... HOUSE BILL No. 530

BE CONCURRED IN

~~XXXXX~~

~~XXXXXXXXXX~~

.....
LAWRENCE G. STINATS

Chairman.

STANDING COMMITTEE REPORT

MARCH 26

1985

MR. PRESIDENT

We, your committee on **HIGHWAYS AND TRANSPORTATION**

having had under consideration **HOUSE BILL** No. **452**

third reading copy (blue) (SENATOR LYBECK)
color

SPECIAL FUEL COURTESY PERMIT FOR OUT-OF-STATE TOURIST VEHICLES

Respectfully report as follows: That **HOUSE BILL** No. **452**

BE CONCURRED IN

~~XXXXXXXXXX~~

~~XXXXXXXXXX~~

LAWRENCE G. STIMATE

Chairman.