

2009 HOUSE TRANSPORTATION

HB 1342

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1342

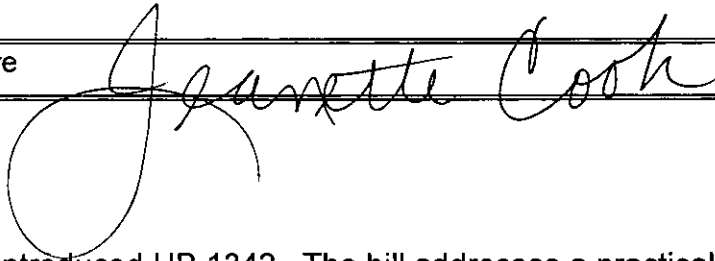
House Transportation Committee

☐ Check here for Conference Committee

Hearing Date: 01/29/09

Recorder Job Number: 8123

Committee Clerk Signature



Minutes:

Representative Weisz introduced HB 1342. The bill addresses a practical issue of how long the engineers have to blow the whistle at all crossings. The unnecessary noise has been an issue for people living near crossings. There are many private crossings across our state, and the current law requires the whistle to be blown for one quarter of a mile before a crossing.

This law doesn't prohibit the engineer from blowing the whistle when he feels it is necessary.

Representative Weiler asked for clarification on the words "when approaching".

Representative Weisz explained that in current law it means 80 rods, or ¼ mile. That is what this bill change. Federal law requires 15-20 second prior to a public crossing.

John presented prepared testimony in support of HB 1342 because they feel that North Dakota state law needs to be updated to work with current federal regulations. See attached testimony #1 including Exhibits 1-3.

Representative Weiler: When trains go very slow, they are required to blow the whistle for one quarter of a mile, which can be a long time. Is that the problem?

John Risch: North Dakota law does say that. But, that portion of the law at public crossings is preempted by Federal regulations. So, it is confusing to have it on the books and needs to

be corrected. The Federal regulations clearly state that any state law preempts how we blow the whistle at public crossings only. We blow the whistle the same at all crossings.

Representative Weiler: When a train is going slow, and a crew member blows the whistle a quarter mile away, some of those places may be in residential areas. That could be a lot of noise for a long period of time.

John Risch also explained that the new whistles built differently and are extremely loud. He stated that there is pressure on the crew members to blow the whistle or face severe consequences. So, they blow the whistle.

Representative Vigesaa asked how the railroad knows that the whistle is blown at a crossing.

John Risch explained that many locomotives are very high tech. They may have a "black box" that records what happens. Some have satellite connections that connect them to a command center in Fort Worth. Trains go by "readers" that transmit information back to computers that track information and will red flag any mistakes. That information will be forwarded to a supervisor.

John Risch confirmed that currently we are following the federal regulations that require blowing the whistle 15-20 seconds before the crossing. It is somewhat difficult to know just when to blow the whistle at different speeds. John explained to Chairman Ruby that in section 4 the wording "lease holder" has been dropped because no one thought it was appropriate that someone who just leases a locomotive would have liability. It should be either the railroad or the crew that would be liable. No one knew why it was in the law.

Representative Vigesaa questioned how property owners would know that they could request that a whistle be blown at a crossing, if this bill becomes law.

John Risch: They would not be notified. They would probably have a contact with someone involved with the railroad to get that information. Most property owners know who to contact.

There was some concern that the property owners may not know about this change and may count on the whistles to blow to warn them of trains at private crossings. There should possibly be a notification. It was explained that a property owner just has to notify the railroad, if they want a whistle blown at a private crossing, they do not have to prove why.

Melissa Rosales, a resident of Highland Acres in Bismarck, spoke in support of HB 1342. She lives about 800 feet away from the Frame Barracks railroad crossing. She would like this bill passed, so that if the Fraine Barracks crossing were to be deemed private, the engineers would not have to blow their whistles at this crossing. This would eliminate much of the noise. **Melissa Rosales** presented testimony relating to the damaging effects of noise and the effects that train whistle noise has on her neighborhood. See attachment #2.

Discussion confirmed that Fraine Barracks crossing is a public crossing at this time. However, it has limited usage. This bill will not benefit Highland Acres if the Fraine Barracks crossing continues to be considered a public crossing.

Representative Thorpe wondered if there had been other alternatives explored at this crossings, such as a cross-arm stop. He stated that the committee has to be concerned with safety issues as well as the noise.

Bruce Schwartz, a Highland Acre resident from Bismarck, spoke in support of HB 1342. He represented the residents of Highland Acres. He explained that Highland Acres is an area in the southwestern part of Bismarck southeast of BSC. The railroad tracks are straight south of Highland Acres. He explained that what used to be whistles are now air horns, which makes a huge difference in the noise. See attached testimony #3 which explains the problems that the Highland Acres residents are experiencing.

There was discussion about the location of the Fraine Barracks crossing and the limited traffic using the crossing. Mr. Schwartz repeated that the residents of Highland Acres would like to

have this crossing be considered private rather than public, and then this bill would be beneficial to their noise problem.

Mike Muscha, the Chairman of the Brotherhood of Locomotive Engineers and Trainmen, spoke on behalf of members of BLET and also represented engineers and trainmen that work in North Dakota from bordering states. He spoke in support of HB 1342. See attachment #4.

Kevin Brown, a Highland Acres resident, spoke in support of HB 1342. He said that the Fraine Barracks crossing is not an access to the Highland Acres development. The road services one gated access to the water treatment plant. It is an access into a single entity. Kevin also wanted to reiterate that the horns are **extremely disruptive**. There are horns that blow in the middle of the night for very long periods of time. He feels that he lives in a beautiful neighborhood, but it is extremely disruptive.

Robert Fode, North Dakota Department of Transportation, clarified that the access in discussion is not an access to the water treatment plant, rather it is an rear access to Fraine Barracks (National Guard). The employees that work at Fraine Barracks use that road to go to work.

John Olson, a representative of BNSF Railway, related that they are in opposition to HB 1342. He introduced people from BNSF Railway to speak in opposition to the bill.

Cheryl Bonebrake, coordinator of field safety for BNSF Railway Company in Minot, spoke in opposition to HB 1342. See attached testimony # 5 and attachment #6.

Steve Clambeck, a lawyer with the Nilles Law Firm in Fargo, represented the BNSF Railway and the Canadian Pacific Sioux Line Railroad. He deals with the consequences of what happens when the horn is not sounded. The entities that he represents oppose HB 1342. See attached testimony #7. Mr. Clambeck also presented some examples that he felt

would pertain to this bill. He thinks that is bill is very poorly thought out, and it will remove a safety tool used by the railroad to reduce accidents.

Representative R. Kelsch: I don't understand why railroad engineers would support this bill if they felt that this was unsafe. Do you know how many busses cross these private crossings?

Steve Clambeck: I do not know have information about the busses. That is the problem with this bill, is that it makes a blanket decision about not sounding horns at all private crossings irrespective of what an individual crossing might present. The bill says that the whistle "may" be sounded, but not routinely sounded. It may be sounded if a crew member feels that it is appropriate. There are no guidelines for "appropriate". The whistle will be blown if the landowner requests it. What if the landowner doesn't request it? Is the landowner prepared to assume the responsibility if doesn't request that the horn be sounded? That is an unintended consequence.

There was general discussion on alternatives to solving the problems addressed in this bill.

Mr. Clambeck emphasized that the railroads have always put a strong emphasis on safety. He also stated that he Legislature has traditionally deferred to Federal law when it comes to railroad safety. **Mr. Clambeck** feels that there should be engineering studies on individual crossings to determine if it is safe to eliminate the horn sounding. The Public Service Commission should be able to determine this on a case by case basis.

Mr. Clambeck could not answer **Representative Delmore's** question as to whether the railroads that he represents are enforcing the whistle requirements at this time. The whistle requirements are stated in North Dakota law at private crossings.

It was determined that the railroads share in the costs of creating a "quiet zone".

Mr. Clambeck thinks that the whistle posts at 80 rods are nice to have there for safety. The Federal regulations have gone to the 15-20 second time rule .

Brian J. Sweeney, legislative council for BNSF, addressed Representative Delmore question and related that they do not require blowing the horns at all private crossings. He continued that there are a number of locations that it has been deemed necessary to blow the horns for safety purposes. He explained that the railroads did not bring in amendments. They did offer the United Transportation Union to review the private crossings on a case by case basis and remove the whistle posts if they thought it could be done safely. That offer was rejected in favor of this legislation. The railroad feels that this is not a one size fits all situation and wants to keep safety at the forefront.

Additional written testimony was provided by **Randy Marsh, on behalf of Canadian Pacific** railway in opposition to HB 1342. He was unable to present the testimony in person. See attachment # 8.

Donald Polasky, a retired highway patrolman, spoke in a neutral position on HB 1342. He presented three situations that he felt were pertinent to this bill.

- 1) He was with his daughter test driving a car. He and his daughter were paying more attention to the functions of the car than the roadway. When they looked up, a train was coming. It hadn't sounded its horn.
- 2) He was on duty and behind two other vehicles at a crossing. A train was coming and the cross arms were down. A vehicle in front of him decided to go around the cross arms. He as a patrolman did not take action.
- 3) Referring to the Highland Acres area, since there are ways of tracking horn activation, he thinks that the engineer who activates the horn needs to be talked to. I understand that there are people that can be contacted in that situation.

There was no additional testimony, and the hearing on HB 1342 was closed.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1342

House Transportation Committee

☐ Check here for Conference Committee

Hearing Date: 02/12/09

Recorder Job Number: 9311

Committee Clerk Signature

Janette Cook

Minutes:

Chairman Ruby brought HB 1342 before the committee.

Representative Weisz stated that after the hearing, the different parties got together and came to an agreement. The amendment was explained. These points were made:

- The engineers would not have to blow the whistle at a private crossing.
- It eliminates the part of landowners requesting to have the whistle blown; it says instead that ANYBODY can petition the commission to have a horn blown at a private rail crossing.
- It also allows the engineer to sound the horn at any crossing that they feel it is necessary.
- It eliminates the liability on the railroad for not blowing the horn.

Representative Weisz moved a **Do Pass** on the amendments on HB 1342.

Representative R. Kelsch seconded the motion.

Representative Weisz stated that the new definition of public and private is exactly what is in the federal language. That seemed to make the most sense, since the federal rules are mainly followed.

Representative Gruchalla: The line that reads “ a party may not be subject to any liability as a result of not making a request”. Does that line come out of the federal?

Representative Weisz: No, that is not federal. I believe that came out of Montana law. It reads that way because it doesn't release the railroad of liability for negligence. It just releases the liability of not requesting that the whistle be blown at a private crossing. If they're negligent of any other issue at a private crossing then they are still liable. The *only* liability that is being taken away is the liability of not blowing the horn at a private crossing. This does not change anything with a public crossing. This section only applies to 49-11-21, which is the exception to having to blow the whistle.

A voice vote was taken on the amendment to HB 1342. All were in favor. Motion passed.

Representative R. Kelsch moved a Do Pass on HB 1342 as amended.

Representative Delmore seconded the motion.

A roll call vote was taken. **Aye 12 Nay 0 Absent 2**

The motion passed.

Representative Weisz will carry HB 1342.

V/R
2/12/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1342

Page 1, line 15, after the underscored comma insert "road, or street,"

Page 1, line 16, remove "which is open for public travel."

Page 1, line 17, replace "and a governmental" with ". The term includes a crossing if a public" and remove "regularly"

Page 1, line 18, replace "highway" with "roadway"

Page 1, line 19, after the second "railroad" insert "at" and replace "that" with "of a roadway which"

Page 2, line 1, after "and" insert "the device on the lead locomotive"

Page 2, line 6, remove "routinely"

Page 2, replace line 7 with ". However, a party may petition the commission to request that a horn be sounded at a private railroad crossing. The commission shall review the request and issue an order approving or denying the request based on the safety concerns of the public. A party may not be subject to any liability as a result of not making a request."

Page 2, remove line 8

Page 2, line 14, overstrike "A crew member may sound a warning device", remove "at any crossing", and overstrike "as determined"

Page 2, line 15, overstrike "appropriate by that crew member" and insert immediately thereafter "Notwithstanding any other provision of this section, a locomotive engineer may sound a locomotive horn at any crossing to provide a warning to animals, vehicle operators, pedestrians, trespassers, or crews on other trains in an emergency situation if in the locomotive engineer's judgment the action is appropriate to prevent imminent injury, death, or property damage"

Page 2, line 20, overstrike "person" and insert immediately thereafter "railroad", overstrike "owns", and after "in" insert "has operational control of"

Page 2, line 22, overstrike "and is liable for all damages that are sustained by any person"

Page 2, line 23, overstrike "by reason of neglect"

Page 2, line 26, overstrike "person" and insert immediately thereafter "railroad", overstrike "any interest in" and insert immediately thereafter "operational control of", overstrike "is" and insert immediately thereafter "may", and after "not" insert "be"

Renumber accordingly

Date: 2-12-09

Roll Call Vote #: Voice Vote
#1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1342 Amendment

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do pass ☐ Don't Pass ☐ Amended

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Representative Ruby - Chairman			Representative Delmore		
Rep. Weiler - Vice Chairman			Representative Griffin		
Representative Frantsvog			Representative Gruchalla		
Representative Heller			Representative Potter		
Representative R. Kelsch			Representative Schmidt		
Representative Sukut			Representative Thorpe		
Representative Vigasaa					
Representative Weisz					

Total Yes _____ No _____

Absent _____

Bill Carrier _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-12-09

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1342

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do pass ☐ Don't Pass ☒ Amended

Motion Made By Kelsch Seconded By Delmore

Representatives	Yes	No	Representatives	Yes	No
Representative Ruby - Chairman	✓		Representative Delmore	✓	
Rep. Weiler - Vice Chairman	✓		Representative Griffin	✓	
Representative Frantsvog	A		Representative Gruchalla	✓	
Representative Heller	✓		Representative Potter	✓	
Representative R. Kelsch	✓		Representative Schmidt	A	
Representative Sukut	✓		Representative Thorpe	✓	
Representative Vigesaa	✓				
Representative Weisz	✓				

Total Yes 12 No 0

Absent 2

Bill Carrier Weisz

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1342: Transportation Committee (Rep. Ruby, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1342 was placed on the Sixth order on the calendar.

Page 1, line 15, after the underscored comma insert "road, or street,"

Page 1, line 16, remove "which is open for public travel,"

Page 1, line 17, replace "and a governmental" with ". The term includes a crossing if a public" and remove "regularly"

Page 1, line 18, replace "highway" with "roadway"

Page 1, line 19, after the second "railroad" insert "at" and replace "that" with "of a roadway which"

Page 2, line 1, after "and" insert "the device on the lead locomotive"

Page 2, line 6, remove "routinely"

Page 2, replace line 7 with ". However, a party may petition the commission to request that a horn be sounded at a private railroad crossing. The commission shall review the request and issue an order approving or denying the request based on the safety concerns of the public. A party may not be subject to any liability as a result of not making a request."

Page 2, remove line 8

Page 2, line 14, overstrike "A crew member may sound a warning device", remove "at any crossing", and overstrike "as determined"

Page 2, line 15, overstrike "appropriate by that crew member" and insert immediately thereafter "Notwithstanding any other provision of this section, a locomotive engineer may sound a locomotive horn at any crossing to provide a warning to animals, vehicle operators, pedestrians, trespassers, or crews on other trains in an emergency situation if in the locomotive engineer's judgment the action is appropriate to prevent imminent injury, death, or property damage"

Page 2, line 20, overstrike "person" and insert immediately thereafter "railroad", overstrike "owns", and after "~~in~~" insert "has operational control of"

Page 2, line 22, overstrike "and is liable for all damages that are sustained by any person"

Page 2, line 23, overstrike "by reason of neglect"

Page 2, line 26, overstrike "person" and insert immediately thereafter "railroad", overstrike "any interest in" and insert immediately thereafter "operational control of", overstrike "is" and insert immediately thereafter "may", and after "not" insert "be"

Renumber accordingly

2009 SENATE TRANSPORTATION

HB 1342

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. Engrossed HB 1342

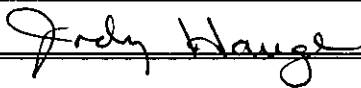
Senate Transportation Committee

☐ Check here for Conference Committee

Hearing Date: March 6, 2009

Recorder Job Number: 10378

Committee Clerk Signature



Minutes:

Chairman Gary Lee opened the hearing on Engrossed HB 1342 relating to public and private railroad crossings.

Rep. Weisz introduced the bill and explained that this bill allows the railroads not to blow their whistle at private crossings. When the bill was heard in the house it did receive a lot of opposition from the railroads and so changes were made to make it more acceptable to all parties.

John Risch representing the United Transportation Union testified in support of Engrossed HB 1342. Written testimony #1

Senator Potter asked if there are private crossing in Bismarck-Mandan area.

Risch said he didn't believe so the way the bill is written.

Senator Potter asked if train whistles are louder today than ever.

Risch said that is correct. They push an electronic button and Federal Government regulates that.

Senator Fiebiger asked a question on page 2, paragraph 2 about the party petitioning and whether we are clear enough who the party is.

Risch said they first tried a list of who would be in this party but decided they might miss people so they left it broad.

Mike Muscha, North Dakota Legislative Chairman of the Brotherhood of Locomotive Engineers and Trainmen testified in support of Engrossed HB 1342. Written testimony #2 **John Olson** representing the BNFS offered an amendment which will change the effective date to January 1, 2010. They urge a do pass on engrossed HB 1342.

No opposing testimony

Senator Lee closed the hearing on engrossed HB 1342.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. Engrossed HB 1342

Senate Transportation Committee

☐ Check here for Conference Committee

Hearing Date: March 12, 2009

Recorder Job Number: 10860

Committee Clerk Signature

Jody Hauge

Committee Work on Engrossed HB 1342 relating to warning devices at railroad crossings.

Senator Nething moved a Do Pass on Engrossed HB 1342.

Senator Fiebiger seconded.

Senator Potter asked about the amendment suggested.

Senator Nething and Senator Fiebiger withdrew their motions.

Senator Nething moved the Olson amendment.

Senator Fiebiger seconded.

Roll call vote: 6-0-0

Senator Nething moved a Do Pass as amended.

Senator Fiebiger seconded.

Roll call vote 6-0-0

Senator Fiebiger will carry the bill.

#3

Prepared by John M. Olson

Lobbyist #142

John M. Olson, P.C.
418 E. Broadway Ave., Suite 9
Bismarck, ND 58501
(701) 222-3485
(701) 222-3091 (fax)
olsonpc@midconetwork.com

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1342

Page 1, line 4, remove “.” and add “; and to provide an effective date.”

Page 3, line 7, add “**SECTION 5. EFFECTIVE DATE.** This Act becomes effective January 1, 2010.”

Renumber Accordingly

Date: 3-12-09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. Engrossed 342

Senate Transportation

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Olson amendment

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Other

Olson amendment

Motion Made By Senator Nothing Seconded By Senator Fiebiger

Senator	Yes	No	Senator	Yes	No
Chairman Senator Gary Lee	✓		Senator Tom Fiebiger	✓	
Senator George Nodland	✓		Senator Richard Marcellais	✓	
Senator Dave Nothing	✓		Senator Tracy Potter	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3-12-59
Roll Call Vote #3

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1342

Engrossed

Senate Transportation

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Other

as amended

Motion Made By Senator Nething Seconded By Senator Fiebiger

Senator	Yes	No	Senator	Yes	No
Chairman Senator Gary Lee	✓		Senator Tom Fiebiger	✓	
Senator George Nodland	✓		Senator Richard Marcellais	✓	
Senator Dave Nething	✓		Senator Tracy Potter	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Fiebiger

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1342, as engrossed: Transportation Committee (Sen. G. Lee, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1342 was placed on the Sixth order on the calendar.

Page 1, line 2, remove the second "and"

Page 1, line 4, after "crossings" insert "; and to provide an effective date"

Page 3, after line 6, insert:

"SECTION 5. EFFECTIVE DATE. This Act becomes effective on January 1, 2010."

Renumber accordingly

2009 TESTIMONY

HB 1342



united transportation union

JOHN RISCH

North Dakota Legislative Director

750 Augsburg Avenue
Bismarck, ND 58504-7009
Office: 701-223-0061
Fax: 701-223-0061
E-mail: utu@bis.midco.net

Testimony of John Risch Before the House Transportation Committee In Support of HB 1342 January 29, 2009

Mr. Chairman and members of the committee, my name is John Risch. I am the elected North Dakota legislative director of the United Transportation Union. The UTU is the largest rail labor union in North America. Our membership includes conductors, engineers, switchmen, trainmen, and yardmasters.

I am here today in support of HB 1342 because North Dakota state law needs to be updated to work with current federal regulations.

In 2006 the federal government adopted regulations regarding train whistles at public railroad crossings. Prior to 2006, state laws and railroad operating rules governed how train whistles were to be blown.

The new federal regulations **do** preempt our state law as it applies to "**public**" crossings but specifically **do not** preempt state law regarding "**private**" crossings. That's why we are here today.

Sections 1 and 2 of this bill define public and private crossings and provide for the Public Service Commission to resolve any disputes in determining whether a crossing is considered public or private.

Section 3, part 1, dictates when a whistle is to be blown. The new federal regulations require that a train whistle be blown as a train approaches a crossing for a period of 15 to 20 seconds. This is completely different from current North Dakota state law which requires that the whistle begin 440 rods (1/4 mile) from a crossing.

HB 1342 still requires that the whistle be blown, but it does not specify the interval of time. This was done deliberately to allow state law to remain consistent with federal regulations in the event federal regulators change the time interval requirement in the future.

Section 3, part 2, relates to the blowing of whistles at "**private**" crossings. This is the meat of the bill which states, "The warning device may not be routinely sounded at a private railroad crossing..."

Private crossings are just that. They are usually located between two fields or a pasture. They are seldom used, sometimes only three or four times a year, and many are blocked with snow during the winter months. Other private crossings lead only to one destination and are not open for public use.

Currently North Dakota law requires that we blow the whistle at each and every crossing in the state, something that is not happening today. Many private railroad crossings already are marked private with stop signs and whistles are not routinely blown. (See Exhibit A.)

Section 3 also allows for a property owner to request that a whistle be blown at a specific private crossing and is modeled after a similar law in Montana.

Section 4 addresses liability. Like a quiet zone, the failure to blow the whistle at a private crossing **when not required** will not put additional liability on the railroad or on a crew member.

Before this bill was introduced, we held a meeting with the state's railroads and labor representatives to come up with language everyone could agree on. That is the basis of this bill. I kept the railroads informed via e-mail during the development process and encouraged them to make some proposals to update our law. I'm told BNSF is still opposed to the bill based on two premises, namely, preemption and the threat of increased liability.

Premise #1: North Dakota law is preempted.

This is partially true. The new federal regulations preempt state laws regarding the sounding of whistles at "**public**" crossings, but in regards to "**private**" crossings, the federal regulations specifically state:

§ 222.25 How does this rule affect private highway-rail grade crossings?

This rule **does not** require the routine sounding of locomotive horns at **private** highway-rail grade crossings. However, where State law requires the sounding of a locomotive horn at private highway-rail grade crossings, the locomotive horn shall be sounded in accordance with § 222.21 of this part.

Subpart B—Use of Locomotive Horns

§ 222.21 When must a locomotive horn be used?

(a) Except as provided in this part, the locomotive horn on the lead locomotive of a train, **the locomotive consist, individual locomotive or lead cab car shall be sounded when such locomotive or lead cab car is approaching a public highway-rail grade crossing.**

Sounding of the locomotive horn with two long blasts, one short blast and one long blast shall be initiated at a location so as to be in accordance with paragraph (b) of this section and shall be repeated or prolonged until the locomotive occupies the crossing. This pattern may be varied as necessary where crossings are spaced closely together. (b)(1) Railroads to which this part applies shall comply with all the requirements contained in this paragraph (b) beginning on December 15, 2006. On and after June 24, 2005, but prior to December 15, 2006, a railroad shall, at its option, comply with this section or shall sound the locomotive horn in the manner required by State law, or in the absence of State law, in the manner required by railroad operating rules in effect immediately prior to June 24, 2005. (2) Except as provided in paragraphs (b)(3) and (d) of this section, or when the locomotive horn is defective and the locomotive is being moved for repair consistent with section 229.9 of this chapter, **the locomotive horn shall begin to be sounded at least 15 seconds, but no more than 20 seconds, before the locomotive enters the crossing.**

If we do not change our state law, locomotive engineers will be required to sound the horn at all crossings that are not in a quiet zone. The problem is the state's railroads, including BNSF, have already pulled whistle posts on lots of "private" crossings and we are currently violating North Dakota law all across the state.

Premise #2: Potential liability issues for the railroads will increase.

This bill will do just the opposite. Under North Dakota law, crews must sound the whistle at all crossings and the railroad has strict liability under 49-11-22. HB 1342 would lessen that burden by not requiring the routine sounding of the whistle at "private" crossings.

Section 4, part 2, specifically provides immunity for the railroads for failure to sound a whistle at any crossing where sounding of that device is "**not required**". This does not take the railroads completely off the hook; it only provides immunity for not sounding the whistle when it is not required. The effect of this provision is to decrease the railroads' potential liability at the state's private crossings (See Exhibit B.). To do nothing with current law increases the railroads' potential for liability, particularly since the law isn't being complied with now.

There is one last reason the railroad unions support this legislation. Since the federal regulations were enacted, BNSF has taken a hard stand against crew members for failing to blow a whistle exactly right, up to and including termination (See Exhibit C.).

Blowing whistles at private crossings that are not being used or are seldom used causes serious noise pollution and does nothing to enhance safety.

In closing, this bill is a good one. It updates North Dakota law to work with current federal regulations and operating rules on the state's railroads.

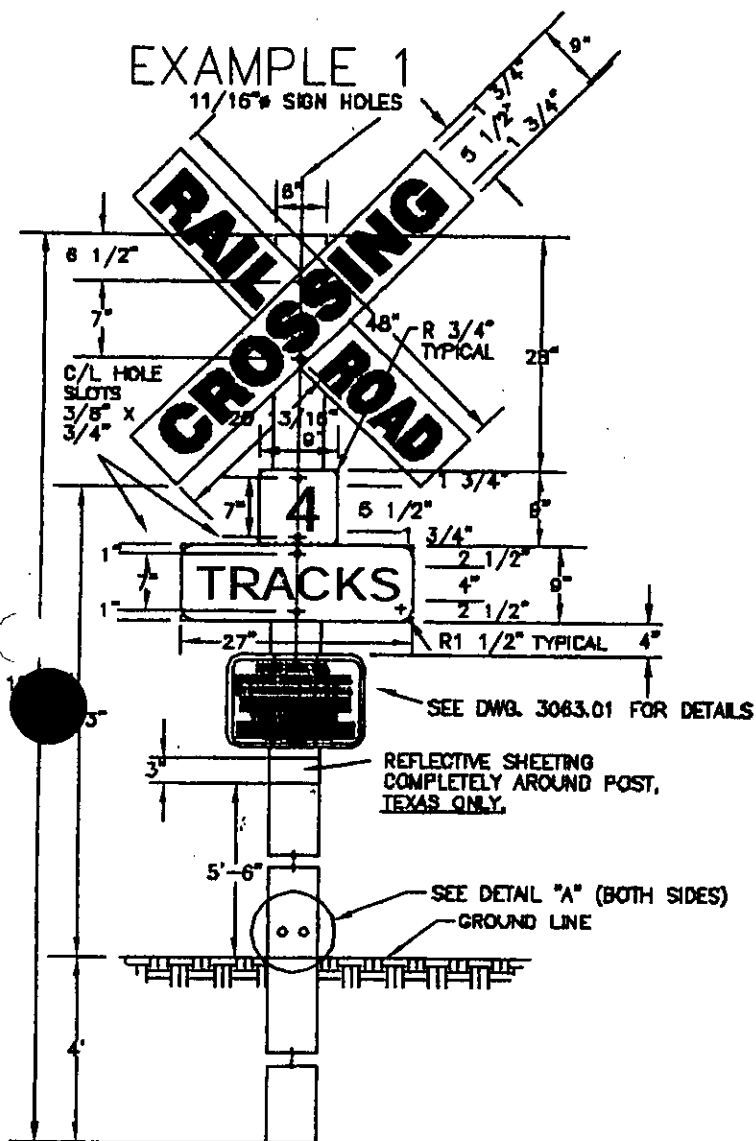
For all these reasons, I urge this committee to recommend a "**Do Pass**" on HB 1342. I would be happy to answer any questions. There are some folks here from Bismarck who will testify about the Fraine Barracks crossing.

Exhibit A

*Same hardware
given to
Senate.*

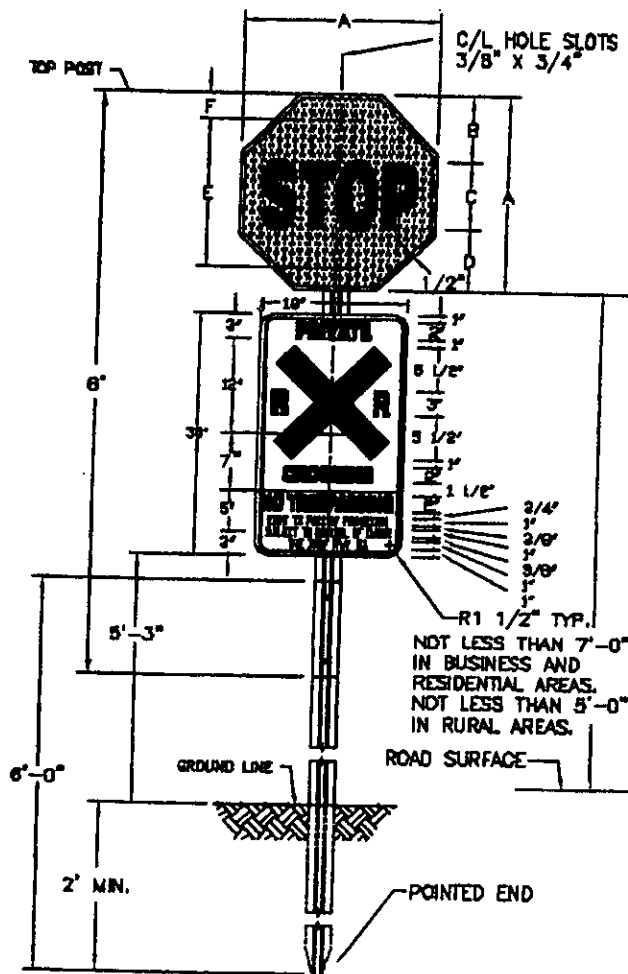
PUBLIC CROSSINGPRIVATE CROSSING

EXAMPLE 1



HIGHWAY CROSSING - UNITED STATES.
A.A.R./D.O.T. AS WELL AS STATE CROSSING
IDENTIFICATION NUMBER MARKERS SHOULD
BE SHOWN ON THE HIGHWAY SIDE OF POST.
PLACED 5'-6" FROM TOP OF SIGN TO
GROUND LINE.

EXAMPLE 1



North Dakota Hwy/Rail Crossings

Public At Grade Crossings

RAILROAD	GATES & FLASHERS	FOUR QUAD	FLASHERS ONLY	STOP SIGNS	CROSSBUCKS	NO DEVICES	TOTAL CROSSINGS	RR UNDER	RR OVER	PRIVATE	PED XING	GRAND TOTAL CROSSINGS
BNSF	341	4	17	33	1,210	12	1,617	56	87	560	10	2,330
CP RAIL	97	0	1	17	376	10	501	12	9	177	2	701
DMVW	22	0	2	8	336*	9	377	3	0	145	0	525
DN	13	0	2	1	98	0	114	0	0	38	0	152
MHC	0	0	0	0	42	0	42	0	0	17	0	59
NPR	15	0	1	0	303	6	325	3	0	178	3	509
RRVW	43	0	8	3	469	1	524	3	1	174	0	702
YSVR	2	0	0	0	8	0	10	0	0	9	0	19
ACS CO.	0	0	0	0	0	0	0	0	0	1	0	1
TOTALS	533	4	31	62	2,842	38	3,510	77	97	1,299	15	4,998

AMERICAN CRYSTAL SUGAR'S TWO SPUR TRACKS THAT CROSS OVER ND HWY 200 WERE COMBINED INTO ONE CROSSING.

CROSSINGS WERE FORMALLY OPERATED BY BNSF. THE CROSSING IS CURRENTLY PROTECTED BY A FULLY AUTOMATIC SIGNAL SYSTEM WITH SHORT ARM GATES. ACS HIRED THE SIGNAL SYSTEM TO BE INSTALLED. BNSF SERVICES THE PLANT FROM THEIR HILSBORO MAIN LINE.

*-BURNSTAD CROSSING HAS "OTHER SIGN" LISTED IN THE INVENTORY.

Public Crossbuck %

01/08/09

BNSF	42.57565%
RRVW	16.50246%
CP Rail	13.23012%
DMVW	11.82266%
NPR	10.66151%
DN	03.44828%
MHC	01.47783%
YSVR	00.28149%



John J. Fleps
Vice President
Labor Relations

BNSF Railway Company
2600 Lou Menk Drive OOB-GL
Fort Worth, TX 76131
(817) 352-1020
(817) 352-7319
john.fleps@bnsf.com

May 3, 2006

To All BNSF BLET and UTU General Chairmen

Re: Handling Whistle Violations

Gentlemen:

As you know, regulatory changes in 2005 resulted in specific requirements for sounding the locomotive whistle in advance of a public road crossing, specifying whistle timing, length and sequence. The purpose for this letter is to advise how we will handle a **complete** failure to sound the whistle at a grade crossing.

Failure to blow the whistle properly may pose a public safety hazard and will be a violation of both the new federal regulation and existing state laws. And, the FRA and law enforcement may hold the train crew personally responsible for proper sounding of the whistle.

More to the point, any complete failure to sound the whistle (i.e., no whistle in advance of the crossing), proven in a formal discipline investigation, will be treated as a rule violation calling for dismissal. This violation will be handled under Item 8, Appendix C of PEPA, "Knowingly placing the safety of themselves and others in immediate danger." Accordingly, a complete failure to sound the whistle in advance of a road crossing is considered a rule violation not eligible for Alternative Handling under Part I, Section III. E (conduct) of the Safety Summit Agreement.

This is a serious safety rule with serious consequences. Dave Dealy and I wanted you to be the first to hear how we would be handling this violation under PEPA so you can communicate with the BNSF people you represent the importance of compliance with this rule.

Sincerely,

A handwritten signature in black ink, appearing to read "John", written over a horizontal line.

cc: Dave Dealy
Regional Vice Presidents

HB 1342 Railroad Crossing Testimony
testimony of Melissa Rosales

Research shows that sound reaching 85 dB or stronger can cause permanent damage to a person's hearing. The amount of time a person listens to that sound affects how much damage it will cause. A quiet sound such as rustling leaves at 0 dB will not cause damage even listening to it for a very long time. Extended exposure to noises that reach a decibel level of 85 or greater can cause permanent damage to the hair cells in the inner ear, leading to hearing loss. A train whistle at 500' is 90 dB and considered an extremely loud noise level. I live 150' from the railroad tracks and 800' from the Fraine Barracks crossing. Much of the time the train whistle begins blowing behind my house and does not stop until after the crossing of a westbound train.

Dr. K.D. Kryter, a noise expert, defined noise as "acoustic signals which can negatively affect the physiological or psychological well-being of an individual." It affects our physical health, has psychological and social implications and affects our quality of life as well. Basically, noise is unwanted sound and a pollutant and hazard to human health and hearing. Noise has also been described as the most pervasive pollutant in America and my neighbors and I are part of the 30 million Americans that are exposed to hazardous sound levels on a regular basis.

I am here today to tell you about my family's quality of life living in Highland Acres. I want you to know how difficult it is to have company outside and talk over the train whistle. I want you to understand how sad it is that we grill outside but eat supper inside in order to enjoy a quiet meal. To enjoy a book in the hammock in our beautiful backyard is impossible as the whistle blows and the silence is broken frequently. We have a large garden and flowers all around our yard. This labor of love and passion of ours is interrupted each time the train whistle blows. We jump out of our skin not expecting the whistle while we were intent on our work in the garden and flowers. To have the windows open on a glorious spring or fall day is not worth the frustrations of noise. All of these activities that many of you take for granted cannot be enjoyed by neighbors and my family in the Highland Acres area.

It seems awareness of the hazardous affects of noise that is not related to work environments is minimal. We are here to give testimony of noise that affects us in our home environments. We have a noise ordinance sign posted coming into north Bismarck. We also have vehicle muffler related laws in Bismarck. Why are the trains exempt from noise related restrictions? Why aren't we protected as citizens in the case of train whistle noise? The fourth Wednesday in April has actually been declared International Noise Awareness Day to observe 60 seconds of no noise. In Highland Acres we would like a more permanent solution to the noise problem at Fraine Barracks crossing for our health and well being.

Thank you for your time.

References:

www.dangerousdecibels.org/hearingloss.cfm

www.asha.org/public/hearing/disorders/noise.htm

Attachment #3

HOUSE TRANSPORTATION COMMITTEE

Thursday, January 29, 2009

8:00 AM

Fort Totten Room---State Capitol Building---Bismarck, ND

House Bill: 1342---Railroad Crossing Quite Zones

Purpose: To reclassify railroad grade crossings as either public or private so that private crossings may become railroad quite zones.

**Presenter: Bruce Schwartz
1237 S. Highland Acres Rd.
Bismarck, ND 58501
701-258-1189
nmbBruce@bis.midco.net**

Testimony:

I come before this committee today in support of HB 1342.

This bill would delineate between public and private railroad crossings and would allow for eliminating train air horn noise at private crossings.

Let me relate my personal experience with railroad noise. My family and I moved to Bismarck 34 years ago and have lived in the same house ever since. We live across the railroad tracks from Fraine Barracks in close proximity to the so-called Fraine Barracks crossing. Thirty four years ago train traffic was much lighter and the whistle noise was not nearly as offensive as it is today. Also, train traffic has increased substantially over the years.

A few years ago train air horn noise suddenly became much, much louder and actually unbearable if you are outside. I have learned that the reason for this sudden increase in volume was prompted by improved automobile construction which make it difficult to hear air horns. Cars now are mostly air conditioned (windows are closed). Cars now have radios and sophisticated sound equipment. People are using cell phones. All these distractions are probably responsible for increased train noise.

We now have the technology to improve this outdated, nineteenth/twentieth century train air horn method of rail crossing safety. Train air horns are no longer as effective as they once were. House Bill 1342 would be an excellent means to clean up a fast growing pollution problem, that of sound pollution. And it can be done without raising taxes.

There is a lingering notion that comes from yesteryear about the nostalgic, mournful sound of the train whistle off in the distance. It sounded comforting and nice. That was then, this is now. Train air horns are no longer comforting or nice.

Let me say also that I know that I speak for thousands of people who live adjacent to railroad tracks.

I urge a do pass from this committee on HB 1342.



Attachment # 4

Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference-International Brotherhood of Teamsters

January 29, 2009

Re HB 1342

Mr. Chairman and Members of the Committee,

My name is Mike Muscha, I'm Chairman of the Brotherhood of Locomotive Engineers and Trainmen. I represent the BLET engineers and trainmen that move the trains across this fine state. I also represent the engineers and trainmen that work into North Dakota from our bordering states. I'm here today in support of **HB 1342** so that our state laws will become more in line with Federal Regulations.

Mr. Chairman we have crews that work into North Dakota from Montana, Minnesota and South Dakota as well as our North Dakota crew members working back into these same states. We also have two major Railroad Company's and short lines working in the state. **In working under these conditions we need uniformity in blowing the whistle.**

I work for Canadian Pacific RR and they take a different approach than BNSF to public and private crossings. I'm out there running these trains 250 Days per year so I understand what the membership is going through. The CP like the Federal Railroad Administration takes no exceptions to private crossings that are not signed. (Meaning whistle post and cross bucks). In other words I don't blow for private crossings that are not signed. We have hundreds of these across North Dakota. You have heard from my counterpart, so you understand BNSF's position on private crossings. We need to bring our state law more into compliance with Federal Regulations. I believe we need some relief of these private crossings and let us use some discretion in blowing the whistle for them.

I urge a due pass on HB 1342 and will answer any questions.

Thank you,

Mike Muscha, Chairman
North Dakota Legislative Board

Attachment #5

TESTIMONY OF CHERYL BONEBRAKE BEFORE THE HOUSE TRANSPORTATION COMMITTEE IN OPPOSITION TO HB 1342

January 29, 2009

Good morning Mr. Chairman and members of the committee. My name is Cheryl Bonebrake and I am coordinator of field safety for BNSF Railway Company in Minot. I am here to testify in opposition to House Bill 1342. This bill would ban the use of an important safety device at many locations where it is now used and put railroad-related safety decisions in the hands of people who have no expertise or background in railroad safety.

I have been an employee of BNSF for 30 years. I started out in train service and have been a locomotive engineer for nearly all of that time. For the past nine years my job has been field safety coordinator, although I still have my locomotive engineer certification. In my current job I spend about half of the time educating various groups and individuals about rail crossing safety. I teach Operation Lifesaver classes for law enforcement personnel and work with them on grade crossing safety projects. I also conduct crossing safety education programs for, emergency responders, driver education instructors, school bus drivers, and members of the general public from professional drivers to schoolchildren.

The other half of my job involves evaluating the safety of crossings and working on the closure of unneeded crossings. I am in the field, checking the safety of crossings from both the road and the rail. Each crossing presents a safety situation because there is the possibility of a collision. If you saw the crossings each day as I do, I cannot imagine that you would consider barring the use of the locomotive horn.

There are about 1,300 private crossings in North Dakota, according to the Federal Railroad Administration. Many of them are simple farm crossings, where a farmer goes across the track to get from one field to another. But there are others that are far more active and involve far more people. There are private crossings for industry, where the general public uses the crossing. There are private crossings for gravel pits, which have large trucks going across them. In some states we have private crossings for campgrounds, where families with small children drive over our tracks.

This bill says that we cannot sound the horn at those crossings to warn the general public and families who cross the trucks unless the landowner asks us to or the engineer realizes there is an emergency.

In the early 1990s a number of communities in Florida banned the sounding of locomotive horns at public crossings unless the engineer perceived an emergency. The result was that the number of accidents skyrocketed. The Federal Railroad Administration issued an emergency order requiring the sounding of the horns at those

crossings. Congress then adopted legislation calling on the FRA to adopt permanent rules to mandate blowing the horn at public crossings in the interest of safety.

But here, we have bill that goes in the opposite direction. It would give a blanket prohibition to using the safety device at private crossings.

This ban on sounding the horn fails to take into account the layout of the private crossings. Some have very poor sight lines from the locomotive cab or the road. There may be buildings, vegetation or other things blocking the view. There is usually no lighting. The crossing may be on a curve. Private crossings include those where there is a public road on one side of the track and a private road on the other. Some of those involve motorists on a high speed public highway turning off to what is suddenly a private road. But this bill says there would be no standard use of the horn to warn them.

There are some locations where it just makes sense to sound the horn whenever a train is approaching. But this bill says we cannot do so unless the landowner asks us to. We would be barred from using a safety device in locations where it makes sense to use it. We would be barred from using the horn at crossings where we have used it for years and people have come to rely on it to warn them of an approaching train.

The FRA statistics don't break down public versus private crossings. So the statewide figures I'm about to give you cover both. In 2006 and 2007, there were a total of 25 grade crossing incidents in North Dakota. In those incidents, four people were killed and eight were injured. The goal of grade crossing legislation should be to improve public safety.

How will barring us from blowing the horn at private crossings make those numbers go down? It won't. It will make it that much harder to keep them from going up.

In the interest of safety, I urge you to vote against this bill. Thank you. I will be happy to answer any questions you may have.

Attachment #6

☐ FRA DOT IMAGE

You are Visitor# 3827743

[Home](#)[Crossing](#)[Forms/Publications](#)[Downloads](#)[Query](#)[FAQ](#)[AF/FP](#)**5.07 - Hwy/Rail Incidents By State/Railroad**[Back to Query Page](#)

Year=2007

HIGHWAY-RAIL INCIDENTS REPORTED ON FORM FRA F 6180-57

Selections: Railroad - ALL

State - NORTH DAKOTA County - ALL

Public & Private Crossings / All Accidents

January To December, 2007

[Click here for Kld/Inj \(Form 6180.55a\) definitions](#)

Obs	RR	Mo/Day	Incident #	Kld/Inj	ST.	County	City	Crossing ID	Type	Highway Road Name	Rail equipment	Consist Length	Highway User	Crossing Protection	Tr
1	BNSF	Mar 05	TC0307202	55A	ND	KIDDER		087717C	Public	MITCHELL AVE	Freight trn	45	Oth Mtr V.	Cross bucks	
2	CP	Apr 05	201048	55A	ND	WELLS	HARVEY	698766L	Public	TOWN ROAD	Freight trn	122	Pickup Trk	Gates	
3	BNSF	Apr 11	TC0407200	55A	ND	CASS	FARGO	070839F	Public	ROBERTS ST	Freight trn	126	Truck	Gates	
4	CP	Apr 27	201357	55A	ND	SHERIDAN	HARVEY	698795W	Public	Road Name not known	Freight trn	61	Trk& Trail	Cross bucks	
5	BNSF	Apr 28	TC0407201	55A	ND	KIDDER		087705H	Public	PUBLIC	Freight trn	121	Oth Mtr V.	Cross bucks	
6	BNSF	May 06	TC0507200	55A	ND	CASS	FARGO	070857D	Public	16TH ST N	Freight trn	118	Oth Mtr V.	Gates	
7	BNSF	May 15	TC0507201	55A	ND	CASS	FARGO	070807A	Public	4TH ST	Freight trn	119	Pedestrian	Gates	
8	BNSF	May 16	TC0507202	55A	ND	GRIGGS		093182U	Public	PUBLIC	Freight trn	72	Oth Mtr V.	Cross bucks	
9	BNSF	Aug 11	TC0807201	55A	ND	STUTSMAN	JAMESTOWN	071257E	Public	1ST AVE N	Freight trn	105	Pedestrian	Gates	
10	BNSF	Aug 22	TC0807203	55A	ND	GRIGGS		093140H	Public	PUBLIC	Freight trn	62	Truck	Cross bucks	
11	DMVW	Oct 11	I10248	55A	ND	SARGENT	COGSWELL	690410B	Public	COUNTY ROAD 4	Freight trn	6	Car	Cross bucks	
12	BNSF	Oct 25	TC1007202	55A	ND	TRAILL		081767K	Private	PRIVATE	Freight trn	108	Trk& Trail	Stop signs	
13	BNSF	Dec 12	TC1207201	55A	ND	WARD		102433N	Private	PRIVATE	Freight trn	59	Pickup Trk	Other	

Attachment # 1
1-29-09
Steve Clombeck

Legal problems with HB 1342 for Railroads, Landowners

HB 1342 is not well thought out from a legal perspective. It poses potential liability problems for railroads and landowners and conflicts with federal regulation of grade crossings.

The problems begin with the definition of a private crossing in Section 2. That definition does not track exactly the definitions of public and private crossings used by the Federal Railroad Administration in 49 CFR Sec. 222.9. This inconsistency creates confusion, leaving railroads and landowners unsure whether the federal regulations for public crossings or the state regulations for private crossings apply at a particular crossing. To ensure uniform interpretation and application of the federal and state regulations, it is critically important that definitions and terminology match as closely as possible.

Secondly, the use of the word "highway" in Section 2 is undefined and may or may not include county and township roads and city streets. The term "highway" is defined in Title 39 but that definition is limited to Title 39 and there is no definition of "highway" in Title 49.

Section 2 also uses the term "governmental authority" rather than the term "public authority," which is used in federal regulations or the terms "official" or "road authority," which are the terms used in the federal Manual on Uniform Traffic Control Devices, ("MUTCD"), which has been adopted in North Dakota (see N.D.C.C. sections 39-13-06, 07, 08). Again, since there is a need for uniformity and consistency between federal and state regulations, the terms used in the legislation are important, especially for railroads and landowners to know which set of regulations apply to a particular crossing and to avoid overlapping and inconsistent obligations to sound or not sound the horn.

HB 1342 also poses several problems in allocating legal liability for grade crossing accidents. The Federal Railroad Administration has determined that the horn is an important safety device. A number of Florida communities adopted whistle bans in the late '80s and early '90s. Thereafter the number of grade crossing accidents skyrocketed to the point where the Federal Railroad Administration issued an emergency order requiring that horns be sounded. This led to the development of federal regulations that mandate sounding the horn at all public crossing, except for designated "quiet zones," such as the one in Fargo-Moorhead. The federal regulations govern the use non-use of horns at public and private crossings in the designated "quiet zone," but also compensate for the lack of horns by requiring alternative safety measures. No such alternative safety measures are proposed here.

Forbidding the use at private crossings, especially those where it is now used, may duplicate the Florida experience and result in a tragic increase in the number of accidents. HB 1342 excuses the liability of the train crew (whose representatives are pushing this bill) but creates potential liability problems for everyone else, not to mention the person or persons who may be injured or killed or the potential for property damage and release of hazardous materials.

By prohibiting railroads and train crews from "routinely" sounding horns at private crossings, Section 3 excuses railroads and train crews from any liability for failing to sound the horn, but at the same time puts the burden on property owners to request in writing that the horn be sounded. If an accident should occur at a private crossing where the train did not sound its horn, it is highly likely a claim will be made that the property owner was negligent in failing to request that the horn be sounded.

There is also an issue as to the property owner. Should this liability rest with an owner who is not in possession or should the request to sound the horn come from the person who is actually in possession of the property, such as a lessee? The point is that this legislation does not consider the circumstance in which the owner of the property is not in possession of the land, a property owner who may not be familiar with the circumstances surrounding the crossing and whether or not a horn is needed as a matter of safety.

Section 3 is also ambiguous, leaving railroads and train crews in a quandary as to when a horn may be sounded. Subdivision 2 of Section 3 prohibits horns from being sounded "routinely" at private crossings unless requested in writing by the property owner; while Subdivision 4 of Section 3 states that a crew member "may" sound a warning "as determined appropriate by that crew member." No guidance is provided as to what is considered "routinely" sounding a horn or as to what circumstances would be considered "appropriate" for sounding a horn. Whether a horn is sounded or not, a railroad could be second guessed.

By its terms, Section 3 also presupposes a single property owner. A private crossing may serve properties owned and/or occupied by different people or entities. What if those parties disagree as to whether or not the horn should be sounded, with one making a request in writing that the horn be sounded, while the other objects? HB 1342 provides no mechanism for resolving such disputes.

Trains cannot stop on a dime or swerve off the track to avoid colliding with a motor vehicle, loaded grain truck, school bus, fuel truck, tractor hauling anhydrous ammonia or other equipment that may be on a crossing. Under North Dakota law, a train crew has no duty to try to stop the train to avoid an accident unless and until a reasonable person should know that the approaching vehicle or equipment is not yielding the right-of-way to the train. By that time the laws of physics take over and it is too late to stop the train and a horn sounded at that time comes too late to wake up the approaching driver.

Current law already contains some odd provisions. Federal law and regulation (49 CFR Part 222) preempts the state's statutory requirements regarding the use of horn at public crossings, and those statutory requirements should be repealed, not built upon. Also the existing law imposes liability for failing to sound a horn upon the railroad that has an ownership or "leasehold interest" in the locomotive instead of upon the railroad that is operating the locomotive. This is troubling, because the owner or lessor has no control over the crew operating the train and may have nothing to do with the accident.

Attachment # 7

It is common for one railroad to turn an entire train, including locomotives, over to another railroad. The second railroad provides the crew, which operates under the rules of that railroad. The first railroad has absolutely no control over how the train is operated or whether it sounds the horn. Responsibility for sounding the horn should rest with the railroad operating the train regardless of who has an ownership or leasehold interest in the locomotive. These provisions should also be repealed.

Also, contrary to federal regulations, this legislation on its face appears to require that each locomotive sound the horn rather than requiring that it be sounded by the lead locomotive. Trains commonly have two or more locomotives, and it is neither necessary for safety nor appropriate to require that more than one locomotive sound the horn. Any requirement to the contrary is preempted as it applies to public crossings and should be repealed for private crossings

The MUTCD and North Dakota law require engineering studies or at least the application of engineering judgment before making determinations about the installation of traffic control devices to regulate, warn and guide traffic. Yet here the Legislature is being asked to adopt a blanket prohibition against sounding horns at private crossings, as if all private crossings are in flat, wide open areas with unobstructed views of oncoming trains and roads that line up at 90 degree angles to the track. But that is not the real world and without an engineering study the Legislature cannot know if a particular private crossing has problems from sight obstructions like buildings, trees or shrubs or curves or angled roads that make seeing a train more difficult and for which a horn might provide the warning necessary to avoid a catastrophic accident.

Attachment #8



**CANADIAN
PACIFIC**

Randy Marsh
Director - Government
Midwest US and Ontario

Suite 604
40 University Avenue
Toronto Ontario
M5J 1T1

Tel (416) 595-3009
Fax (416) 595-3040
randy_marshall@cpr.ca

January, 28, 2009

Representative Dan Ruby
Chairman
House Transportation Committee
4620 46th Avenue NW
Minot, North Dakota
58703-8711

Dear Chairman Ruby:

On behalf of Canadian Pacific (CP) I respectfully offer the following comments to the House Transportation Committee in its consideration of House Bill 1342 regarding Private Railroad Crossing Warning Devices. Unfortunately, we are unable to attend the hearing in person on January 29, 2009, but we nevertheless felt it essential that we express our deep concerns about this proposed legislation.

While the strong pioneering spirit that characterized our company in 1881 continues, the CP of the 21st century is a modern and dynamic North American Class -1 railroad employing approximately 16,000 people, providing freight transportation services over a 14,000-mile network in the United States and Canada, through more than 900 communities. We have worked hard to establish and maintain a culture of safety within our railroad that stresses that the safety of our employees and of the people in the communities in which we operate is our number one priority.

In the past year we faced numerous, often unprecedented, obstacles: a record snowfall in the East, avalanches in the Rocky Mountains and flooding in the Mid-West United States, to name a few. But we tackled them all with remarkable professionalism and skill, and it is with great pride that we can say that our efforts have, once again, demonstrated our intense focus on safety. At the end of 2008, CP's Federal Railroad Administration (FRA) personal injury frequency rate was 1.47, a 30% reduction from 2007 and an 80% reduction from 12 years ago. This is the lowest injury rate ever experienced in the history of our company. Also, at the end of 2008, we had an FRA train accident frequency rate of 1.87, a 9% reduction from 2007, and a 65% reduction from 12 years ago. We have now had the best FRA train accident performance of all Class 1 railways in North America



**CANADIAN
PACIFIC**
OFFICIAL SUPPORTER

for 8 of the last 10 years. We feel that this record of achievement qualifies us well to speak to HB 1342 before the House Transportation Committee.

In our considered view, allowing adjacent land owners to determine whether or not a train shall blow its warning whistle at a private crossing is poor public policy, and will only lessen public safety, resulting in catastrophic personal injuries, emotional trauma, and significant property damage. In CP's view, warning whistles must be sounded at all crossings, public and private.

It takes a 100-car train traveling at 30 miles per hour approximately half a mile to stop, compared with 40 feet for the average passenger vehicle. At fifty miles per hour, a 100-car train's stopping distance increases to one and a third miles, compared to less than 150 feet for the average passenger vehicle. Collisions between trains and motor vehicles are eleven times more likely to result in fatalities than collisions between two motor vehicles on highways. Each year, road-rail grade crossing accidents claim hundreds of lives in the United States, with thousands more being injured.

The increase in level crossing accidents where whistling has been stopped has been confirmed through studies done on the effect of so-called whistle bans, as conducted by the FRA. In an FRA study done in 2000, "Updated Analysis of Train Whistle Bans", it was found that an average of 62 percent more collisions occurred at crossings across the nation which had whistle bans, compared to those without bans. In addition, this increase occurred at crossings which all had warning device gates. When the data was considered from all crossings, including those without gates, as in the case of private crossings, an 84 percent increase in collisions occurred. The FRA study also considered crossings where no gates existed, but flashing lights or similar active warning devices existed. At these crossings a 119 percent increase in collisions occurred. When the study considered crossings which had neither gates nor other types of active warning devices such as flashing lights, the crossings tended to be those on railroad branch lines or industrial spurs where there was very little rail traffic, operating at relatively slow speeds. The results therefore were skewed to much lower risk scenarios than those contemplated under HB 1342, but still resulted in an increase in collisions of 27 percent. Unlike this last scenario, CP's network through North Dakota is a Class 1 mainline operation. On a typical day CP can operate approximately 14 trains per day across its network in North Dakota with a maximum allowable track speed as high as 49 miles per hour. We would therefore argue that collisions at these crossings could increase higher than even the 119 percent figure found by the FRA, if whistle cessation were to occur.

It is clear from the facts, crossings where whistling does not occur will lead to greater collisions. We do not believe it is good public policy for North Dakota to promote an environment which increases risk to our operating employees and to the public at large, as HB 1342 would do.

We appreciate your consideration of these comments in your review of House Bill 1342 regarding Private Railroad Crossing Warning Devices.

Sincerely,

A handwritten signature in black ink that reads "Randy Marsh". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Randy Marsh
Canadian Pacific

Enclosed: "Updated Analysis of Train Whistle Bans"



JOHN RISCH
North Dakota Legislative Director

united
transportation
union

750 Augsburg Avenue
Bismarck, ND 58504-7009
Office: 701-223-0061
Fax: 701-223-0061
E-mail: utu@bis.midco.net

#1

Testimony of John Risch
Before the Senate Transportation Committee
In Support of HB 1342
March 6, 2009

Mr. Chairman and members of the committee, my name is John Risch. I am the elected North Dakota legislative director of the United Transportation Union. The UTU is the largest rail labor union in North America. Our membership includes conductors, engineers, switchmen, trainmen, and yardmasters.

I am here today in support of HB 1342 because North Dakota state law needs to be updated to work with current federal regulations.

In 2006 the federal government adopted regulations regarding train whistles at **public** railroad crossings. Prior to 2006, state laws and railroad operating rules governed how train whistles were to be blown.

The new federal regulations **do** preempt our state law as it applies to "**public**" crossings but specifically **do not** preempt state law regarding "**private**" crossings. That's why we are here today.

Sections 1 and 2 of this bill define public and private crossings and provide for the Public Service Commission to resolve any disputes in determining whether a crossing is considered public or private.

Section 3, part 1, dictates when a whistle is to be blown. The new federal regulations require that a train whistle be blown as a train approaches a crossing for a period of 15 to 20 seconds. This is completely different from current North Dakota state law which requires that the whistle begin 440 rods (1/4 mile) from a crossing.

Section 3, part 1, still requires that the whistle be blown, but it does not specify the interval of time. This was done deliberately to allow state law to remain consistent with federal regulations in the event federal regulators change the time interval requirement in the future.

Section 3, part 2, relates to the blowing of whistles at "**private**" crossings. This is the meat of the bill which states, "The warning device may not be sounded at a private railroad crossing..."

Private crossings are just that. They are usually located between two fields or a pasture. They are seldom used, sometimes only three or four times a year, and many are blocked with snow during the winter months. Other private crossings lead only to one destination and are not open for public use.

Section 3, part 2, also allows for anyone to request that a whistle be blown at a specific private crossing.

Section 3, part 4, is federal language that describes when an engineer may sound a horn and when sounding a horn is not required.

Section 4 addresses liability. Like a quiet zone, the failure to blow the whistle at a private crossing when not required will not put additional liability on the railroad or on a crew member. This does not take the railroads completely off the hook; it only provides immunity for not sounding the whistle when it is not required.

If we do not change our state law, locomotive engineers will be required to sound the horn at all crossings that are not in a quiet zone. The problem is our state's railroads have gotten a little ahead of themselves and many private railroad crossings already have been marked private with stop signs and whistles are not routinely being blown.

In closing, this bill is a good one. It updates North Dakota law to work with current federal regulations and operating rules on the state's railroads. Blowing whistles at private crossings that are seldom or never used causes serious noise pollution and does nothing to enhance safety.

For all these reasons, I urge this committee to recommend a **"Do Pass"** on HB 1342. I would be happy to answer any questions.

Federal Regulations referred to in HB 1342

222.9 49 CFR Definitions

Public highway-rail grade crossing means, for purposes of this part, a location where a public highway, road, or street, including associated sidewalks or pathways, crosses one or more railroad tracks at grade. If a public authority maintains the roadway on both sides of the crossing, the crossing is considered a public crossing for purposes of this part.

Private highway-rail grade crossing means, for purposes of this part, a highway-rail grade crossing which is not a public highway-rail grade crossing.

Public authority means the public entity responsible for traffic control or law enforcement at the public highway-rail grade or pedestrian crossing.

222.25 49 CFR How does this rule affect private highway-rail grade crossings?

This rule **does not** require the routine sounding of locomotive horns at **private** highway-rail grade crossings. However, where State law requires the sounding of a locomotive horn at private highway-rail grade crossings, the locomotive horn shall be sounded in accordance with § 222.21 of this part.

222.21 49 CFR When must a locomotive horn be used?

(a) Except as provided in this part, the **locomotive horn on the lead locomotive of a train, like locomotive consist, individual locomotive or lead cab car shall be sounded when such locomotive or lead cab car is approaching a public highway-rail grade crossing.**

Sounding of the locomotive horn with two long blasts, one short blast and one long blast shall be initiated at a location so as to be in accordance with paragraph (b) of this section and shall be repeated or prolonged until the locomotive occupies the crossing. This pattern may be varied as necessary where crossings are spaced closely together. (b)(1) Railroads to which this part applies shall comply with all the requirements contained in this paragraph (b) beginning on December 15, 2006. On and after June 24, 2005, but prior to December 15, 2006, a railroad shall, at its option, comply with this section or shall sound the locomotive horn in the manner required by State law, or in the absence of State law, in the manner required by railroad operating rules in effect immediately prior to June 24, 2005. (2) Except as provided in paragraphs (b)(3) and (d) of this section, or when the locomotive horn is defective and the locomotive is being moved for repair consistent with section 229.9 of this chapter, **the locomotive horn shall begin to be sounded at least 15 seconds, but no more than 20 seconds, before the locomotive enters the crossing.**

222.23 49 CFR How does this regulation affect sounding of a horn during an emergency or other situations?

(a)(1) Notwithstanding any other provision of this part, a locomotive engineer may sound the locomotive horn to provide a warning to animals, vehicle operators, pedestrians, trespassers or crews on other trains in an emergency situation if, in the locomotive engineer's sole judgment, such action is appropriate in order to prevent imminent injury, death, or property damage.

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March 6, 2009

Re HB 1342 Testimony before Senate Transportation Committee

Mr. Chairman and Members of the Committee:

My name is Mike Muscha. I'm the North Dakota State Legislative Chairman of the Brotherhood of Locomotive Engineers and Trainmen. I represent the BLET engineers and trainmen that move the trains across this fine state. I also represent the engineers and trainmen that work into North Dakota from our bordering states because I am the Region 4 Western Legislative Chairman for the BLET. I'm here today in support of HB 1342 in order to bring our state laws into compliance with current federal regulations.

Mr. Chairman, we have crews that work into North Dakota from Montana, Minnesota and South Dakota as well as our North Dakota crew members working back into these same states. We also have two major railroad companies and short lines working in the state. **In working under these conditions we need uniformity.**

I work for Canadian Pacific Railroad and I'm running trains 250 days a year. CP takes a different approach than Burlington Northern Santa Fe Railroad to private crossings. The CP, like the Federal Railroad Administration, takes no exceptions to private crossings that are not signed. (Meaning whistle posts and cross bucks) In other words, I don't blow for private crossings that are not signed. We have hundreds of these across North Dakota. This bill clearly has the definitions and the language that we need in order to operate within the state law and comply with federal regulations.

I urge a due pass on HB 1342.

I will answer any questions you may have.

Thank you,

Mike Muscha, Chairman
North Dakota State Legislative Board
loceng671e@mlgc.com