

2011 HOUSE TRANSPORTATION

HB 1406

# 2011 HOUSE STANDING COMMITTEE MINUTES

## House Transportation Committee Fort Totten Room, State Capitol

HB 1406  
02/04/2011  
Job # 14039

☐ Conference Committee

Committee Clerk Signature

### Explanation or reason for introduction of bill/resolution:

HB 1406 is a bill relating to warning devices at rail crossings.

### Minutes:

Attachment 1-3

**Representative Weisz** introduced HB 1406. He stated that there is a procedure to continue blowing the whistle at a specific private crossing, and explained that this legislation will ensure that the people that are the most affected by the petition to blow a whistle will be at the hearing.

**Representative Onstad:** Do we have a definition of a private crossing?

**Representative Weisz:** A county road would not be considered a private crossing, but an individual's road going into their farm or a dirt trail on a section line, would be an example of a private crossing.

**Chairman Ruby:** When we passed the bill before, it was my understanding that the railroad could decide that they would not blow their whistle at private crossings unless someone requested it. Did they always have the ability to decide to blow at a certain crossing, even if it was a private road?

**Representative Weisz:** It was my understanding when we passed the law that it said the railroad would not blow the whistle at any private crossing unless it was requested by the individual. I do not know for sure. It says: "Must be sounded at a public crossing, and it may not be sounded at a private crossing." So, if the railroad has a crossing that they think is dangerous, then they need to petition the PSC to blow the whistle through the crossing. It can be accepted or denied by the PSC. The problem that we are hearing about is that no one is showing up at the hearings because they aren't aware that there is a hearing taking place.

**Chairman Ruby:** Has the problem been that the railroad is petitioning to blow the whistle at some crossings, or a landowner is requesting the hearing and no one else knows about it?

**Representative Weisz:** The railroad is requesting to blow the whistles, and my assumption is after they start blowing the whistles, the people near the crossing do not

want the whistle blown. This is for notification of the people in the area, so they have the ability to be at the hearing.

**Representative Hogan:** Does this law keep an engineer from sounding a horn in an emergency situation?

**Representative Weisz:** No, this is just a routine sounding.

**Tony Clark, Public Service Commissioner,** spoke in support of HB 1406. He stated that they have handled many of these cases in the last two years since the legislature changed the law in regard to when trains have to sound the warning devices at private crossings. If the railroad believes that there is a safety consideration, they can petition the Commission to blow the whistle. If the PSC determines that, based on safety needs of the public, the whistle need to continue to blow at a private crossing, we issue that order. What came up in the processing of these cases was that the railroad would present its testimony, and then we would ask what the landowner in the area thinks. The answer would usually be, "We don't know." The individual that may live nearby was not notified. Under the law they are not required to be notified. As a Commission it is difficult for us to be the one supplementing the record by trying to get someone to testify that may or may not wish to testify. This bill indicates that the person who files the petition needs to contact the person leasing the land or the landowner, so that they have an opportunity to testify in front of the Commission if they wish to.

**Representative Owens:** Have you had any cases where the land owners have requested that the whistle be blown?

**Tony Clark:** We have not. All the cases that have been initiated have come from the railroad, BN/SF.

**Representative Owens:** It says "the party filing the petition shall file a copy of the notice and *proof* that the notice was served". What type of proof are we talking about? Particularly if it is the landowner making the request, it may be too costly.

**Tony Clark:** It shouldn't be too difficult. If it is the landowner, they will have notice about it. In the case of the railroad initiating the procedure, it is fairly easy to prove. It is similar to language that we have in other areas of the law that require proof of service using registered certified mail.

**Chairman Ruby:** Can you give me some information explaining when the railroad thinks that they should blow the whistle at certain crossing?

**Tony Clark:** We have heard about a dozen crossings. Most have been very noncontroversial. All but one, have been in very rural areas. The railroad will give us a list of whistle posts that they think should continue to blow. They will bring us photos of the area and explain to the Commission why they think they should continue to blow the whistle. Typically it is visibility issues. There may be a curve in the track, or there may be a wind row. The train crew always has the opportunity to blow the whistle if they feel the need to.

**Representative Onstad:** Have you ever had a request that have been denied?

**Tony Clark:** In almost all cases we have determined that they should continue to blow the whistles, except for Fraine Barracks. In that case we ruled that they do not need to blow the whistles any more.

**Representative Onstad:** How does someone request to add lights to a crossing?

**Tony Clark:** There is a separate provision in law that deals with crossing disputes.

**Marc Halvorson, State Director for the United Transportation Union,** spoke in support of HB 1406. He provided written testimony. See attachment #1.

**Marc Halvorson:** In regards to the 49-11-21, the law went into effect after December 31, 2009. I wanted to point out to the committee that we still have at least 145 crossing that are not in compliance with the North Dakota Century Code. I gave a list to the Public Service Commission in June and have yet to get a response from BN/SF in regards to bringing these private crossings into compliance.

**Chairman Ruby:** In compliance in what way?

**Marc Halvorson:** It is my understanding that at the private crossings, under the definition of the law effective January 1, 2010, the whistle posts would come down. Then the process is in place to petition the PSC based upon the concerns of the public to put the whistle posts back in. We have approximately 145 whistle posts across the state of North Dakota on the BN/SF line that aren't taken down. I have a copy of the list if you would like to see it. See attachment # 2.

**Representative Onstad:** In the language that was added, it just says notification. Is there a recommendation of when the notification should take place?

**Marc Halvorson:** There is no time frame that I am aware of.

**Mike Muscha, the State Chairman representing the Brotherhood of Locomotive Engineers & Trainmen in North Dakota,** spoke in support of HB 1406. He provided written testimony. See attachment # 3.

**Chairman Ruby:** I can't imagine that if the railroad requests a whistle be blown at a crossing, that it would be denied. I'm sure that there would be a good reason for it, because I know that the railroad is very concerned about safety.

**Mike Muscha:** Countless times we will blow our whistles if we see someone coming, and think it needs to be blown. If it is private and the whistle is unnecessary, pull the whistle posts. Most of them have been removed.

**Representative Hogan:** What about the short lines in the state?

**Mike Muscha:** It is a nuisance to have the signs up. Their speeds are a little slower, but as far as I know they have come into compliance.

**There was no further support for HB 1406.**

**John Olson, Burlington Northern Santa Fee Railroad and Canadian Pacific,** spoke in opposition to HB 1406. He explained that this bill simply deals with the petition by the railroad to blow at a private crossing and what kind of notices there are going to be. It is all about safety and saving lives. The Federal Railroad Administration says that blowing horns saves lives. When the railroad comes in and petitions, the PSC has usually granted that petition, with the exception of one case. That was the case at Fraine Barracks. Once the crossing was secured and determined to be a private crossing, the railroad was prohibited from blowing its horn.

**John Olson:** Let me talk about some of the things that Mr. Clark indicated. He stated that this bill provides that you could give notice to either the land owner or the lessee. That is not true. It says, "A party filing for petition under this subsection must provide written notice of the petition to each adjacent land owner and each lessee of record." Then the notice has to include various things. The party filing petition has to show that the notice was actually served on the adjacent landowners and each of the lessees. That is where we have concern. I am going to give you an illustration of how complicated this could be. Say a couple owns some land, they move to the Grand Caymens, and lease the farmstead to a young couple with small children. The railroad feels that it is in the interest of safety to blow the whistle at the crossing going across the road going into the farmstead. The railroad attorney will have to go to the courthouse and research all of the adjacent owners of the property. There could be more than one owner on the adjacent properties. Then there will have to be research on all of the lessees if they are of record. The next step is to serve a certified letter on all of these people and show proof with a return receipt. This was requested to make sure that the party who is the adjacent land owner and/or the lessee and their wives or whoever actually received the document. Maybe someone will just want to avoid the whole thing because the land owners are on a cruise or trip somewhere and can't be served. Can you see the problem? It is a very complex method of having to serve people these notices. It will not work.

**John Olson:** What can we do? The landowners aren't here today. I don't see anyone overly concerned with this bill. Some of them should be interested in it. Maybe the PSC should schedule a hearing and put a notice in the local newspaper. Maybe, the railroad should put a stake in the ground with a notice on it. Then the people who are crossing the private crossing will have a notice that the PSC is going to have a hearing about blowing whistles. It is not an easy thing for the railroad to do, the way this bill is written. It comes down to public safety. Mr. Clark has indicated that the petitions are serious, and they are taken seriously by the PSC, and that they are granted.

**Representative Delmore:** How many of these cases do you think there might be?

**John Olson:** I don't know. One of my concerns is what is happening in oil country right now. The landscape and the dynamics are changing. When you put us through these kinds of hoops, in the meantime, we can't get notice out and are not getting our petitions

heard, and there are unsafe crossings. I assume that the engineers are correct. They can blow their horns in an emergency, but if there is no established blowing of the horn at a private crossing, the emergencies are subject to on site judgments. Things are changing, and I think that we need a process that works quickly. I don't think this bill accomplishes that.

**Representative Delmore:** Do we still require the railroad to blow whistles at any crossings where there is a visibility problem, even if it is a private crossing?

**John Olson:** If it is a private crossing, no. All private crossings were taken out and will only be put back in on petition by the railroad.

**Representative Gruchalla:** If we took out the part that requests the proof that notice was served, would that work?

**John Olson:** Then define that for me? How will the notification take place?

**Representative Gruchalla:** Can we just send a registered letter with no return notification?

**John Olson:** It still puts the attorney with the billable hours in the courthouse looking up all the adjacent landowners and lessees. Also define adjacent. It might not be just the person that is right on the border of the crossing. It may be those who are "not too distant" as defined in the dictionary. Who has an interest? It may be more than what we would presume.

**Representative Onstad:** Finding the land owner or the renter is not difficult. I do that kind of work myself. We could use the same kind of notification that we use for planning and zoning does for landowners.

**John Olson:** I am sure that we could come up with reasonable notices, but what problem are we trying to fix. I don't see anyone in the room saying that they didn't get notice about the whistle blowing at a private crossing.

**Representative R. Kelsch:** Do you think the law as it is currently written is working well for BNSF?

**John Olson:** Yes, it is. We were not real happy when this law was passed, because we thought that the railroad should have some input into whether or not the horns should be blown. You took all the private crossing out, so it is the law, and we live with it. We make petitions to the PSC, and it seems to be going okay.

**Representative R. Kelsch:** You don't see any changes in the law at this point?

**John Olson:** Not at all.

**Representative Gruchalla:** Apparently there are 145 crossings that are not compliant with this law. Is BNSF working with this issue?

**John Olson:** I don't know. I assume they are and have to be under the law. They should be because the law is fairly clear. Don't blow your horn at private crossings unless you get a petition granted with the PSC.

**Connie Sprynczynatyk,** League of Cities, spoke in opposition to HB 1406. The process is long and complicated, and safety is always the first concern, but the process that is in place works. Maybe we could amend this by saying that if someone petitions the PSC, the PSC could be required to print a notice in the official county newspaper. I can see the concerns of the railroad.

**There was no further opposition to HB 1406 and the hearing was closed.**

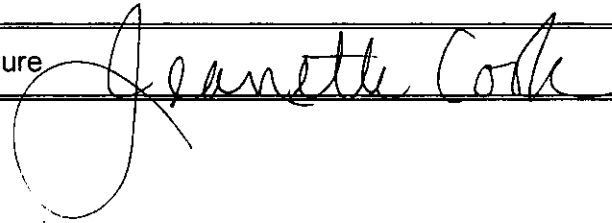
# 2011 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee  
Fort Totten Room, State Capitol

HB 1406  
02/10/2011  
Job # 14386

☐ Conference Committee

Committee Clerk Signature



## Minutes:

**Chairman Ruby** brought HB 1406 before the committee. He reviewed the intent of the bill. He asked if the committee wanted to make an amendment to address the notification of public hearing.

**Representative Weisz:** I think that there is a bigger issue here about one railroad ignoring the PSC and not taking out the whistle posts. They have been sent a letter and have not responded.

**Chairman Ruby:** I think that would need some time to work out, and it would need a hearing.

**Representative Weisz:** I think it would be good to pass the bill to the Senate. We could just amend it down to require public notice. Then we would have the opportunity to have a hearing and discuss some of the other options.

**Chairman Ruby:** What language are you suggesting?

**Representative Weisz:** "A party filing a petition under this subsection must provide public notice of the petition in the county of record." In other words, it is put in the local paper.

**Representative Weisz** moved the amendment to HB 1406.  
**Representative Owens** seconded the motion.

A voice vote was taken. The motion passed.

**Representative Weisz** moved a DO PASS as amended on HB 1406.  
**Representative Gruchalla** seconded the motion.

A roll call vote was taken. Aye 14 Nay 0 Absent 0 The motion carried.  
**Representative Frantsvog** will carry HB 1406.



February 10, 2011

VK  
2/11/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1406

Page 1, line 12, remove "A party filing a petition under this subsection must provide written"

Page 1, remove lines 13 through 17

Page 1, line 18, replace "lessee of record." with "The party filing a petition under this subsection shall publish notice of the petition in the official county newspaper in the county of record."

Renumber accordingly

Date: 2/10/11Roll Call Vote #: 1

## 2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1406House TRANSPORTATION Committee☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment☐ Rerefer to Appropriations ☐ ReconsiderMotion Made By Weisz Seconded By Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Ruby			Representative Delmore		
Vice Chairman Weiler			Representative Gruchalla		
Representative Frantsvog			Representative Hogan		
Representative Heller			Representative Onstad		
Representative R. Kelsch					
Representative Louser					
Representative Owens					
Representative Sukut					
Representative Vigesaa					
Representative Weisz					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Amendment

Date: 2/10/11Roll Call Vote #: 2

## 2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1406House TRANSPORTATION Committee☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment☐ Rerefer to Appropriations ☐ ReconsiderMotion Made By Weisz Seconded By Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Chairman Ruby	X		Representative Delmore	X	
Vice Chairman Weiler	X		Representative Gruchalla	X	
Representative Frantsvog	X		Representative Hogan	X	
Representative Heller	X		Representative Onstad	X	
Representative R. Kelsch	X				
Representative Louser	X				
Representative Owens	X				
Representative Sukut	X				
Representative Vigesaa	X				
Representative Weisz	X				

Total (Yes) 14 No 0Absent 0Floor Assignment Frantsvog

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

**REPORT OF STANDING COMMITTEE**

**HB 1406: Transportation Committee (Rep. Ruby, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1406 was placed on the Sixth order on the calendar.

Page 1, line 12, remove "A party filing a petition under this subsection must provide written"

Page 1, remove lines 13 through 17

Page 1, line 18, replace "lessee of record." with "The party filing a petition under this subsection shall publish notice of the petition in the official county newspaper in the county of record."

Renumber accordingly

2011 SENATE TRANSPORTATION

HB 1406

# 2011 SENATE STANDING COMMITTEE MINUTES

**Senate Transportation Committee**  
Lewis and Clark Room, State Capitol

HB 1406  
March 24, 2011  
15971

☐ Conference Committee

*Hauge*

## **Explanation or reason for introduction of bill/resolution:**

Relating to warning devices at rail crossings.

## **Minutes:**

*Written testimony/action*

**Chairman Senator G. Lee** opened the hearing on HB 1406.

**Tony Clark**, Public Service Commissioner said that this bill was originally put in at the request of the Public Service Commission. The Public Service Commission does not support the amended bill (engrossed HB 1406) from the House.

**Senator Lee** asked for supporting testimony.

**Marc Halvorson**, State Director for the United Transportation Union, testified in support of HB 1406. Written testimony #1

In addition to his testimony he wanted to bring to the attention of the Senate Transportation Committee the crossing bill law that went into effect December 31, 2009 and as of June 28, 2010 there are approximately 135 crossings that aren't in compliance with the law.

A lengthy discussion followed on public crossings and private crossing and why the whistle posts have not been taken down at these private crossings and why the whistles are still required to be blown at them. Discussion evolved into who should be responsible for removing them and reasons for why they haven't been removed.

**Senator Nething** asked the question concerning HB 1406. This bill will require public notice of the petition. He asked who would pay for that.

**Mr. Halvorson** replied that he didn't know that answer.

**Senator Nething** said the bill simply relates to publishing the notice and he doesn't see how that will bring about any remedy by the filing of it. He said that he understands the petition part.

**Mr. Halvorson** replied that he couldn't speak for the Public Service Commission but being present at their meeting the last year, it would be a tool to provide additional input from affected land owners relating to those specific crosses. Landowners would have the ability to come before the Public Service Commission and give their input to that particular petition that affects them.

**Senator Lee** said that he had indicated that Burlington Railroad had the responsibility for these posts. If they would remove them, would this issue go away?

**Mr. Halvorson** replied that was correct.

**Representative Weisz**, District 14, spoke in support of HB 1406. He said that the original bill would have required certified notification to all those in the area surrounding a private crossing that the railroad was intending to keep blowing the whistle at. Last session a bill was passed that said they no longer were to blow whistles at private crossings. A procedure was set up that the railroad could petition the PSC to continue to blow the whistle at a private crossing for reasons that they felt necessary. The reason for HB 1406 is that it didn't appear that the public was ever aware of these petitions to continue to blow horns at some of the crossings. The bill came forward to try to insure that people with private crossings close to their homes and landholding would have the opportunity to have notice so they can show up at the PSC and make their views known. He stated that the bill was put in for notification reasons.

**Senator Nething** asked who would pay for publishing notice.

**Representative Weisz** answered the railroad; they are the ones that are petitioning to continue to blow a whistle at a private crossing.

**Senator Sitte** asked how we can put pressure on the railroads to remove the whistle poles.

**Representative Weisz** said that he didn't disagree with that but it is a separate issue. The bill was brought forward to deal with the petition process.

**Ron Huff**, Brotherhood of Locomotive Engineers, testified in support of HB 1406. He handed out pictures of private crossing with the whistle posts. They are trying to eliminate blowing at these private crossings.

Discussion continued on private crossings where whistles poles are still located and whose responsibility it is to remove the whistle pole at private crossings.

### **Opposing Testimony**

**Tony Clark**, Public Service Commission testified in opposition to HB 1406. The current version of this bill is significantly different than the original regarding notices in private railroad crossing petition cases. As amended, the bill simply duplicates the Commission's formal process for publishing notice which is unnecessary and wasteful.

Written testimony #2

**Senator Nodland** asked why the whistle posts haven't been taken down.

**Commissioner Clark** replied that they don't have the authority to force the railroad to take them down. Their sole role is to hear the petitions when they are brought to them.

**Senator Lee** asked if he would prefer that the Senate Transportation Committee go back to the original bill that they supported.

**Commissioner Clark** replied that seeing the concerns of the House Transportation Committee our other option is to handle it the best we can through administrative procedures and through each individual hearing process.

**Senator Sitte** asked if the PSC would like to have the authority to enforce.

**Commissioner Clark** replied that has not been considered by the Commission as a whole. It would put the commission in an odd position. The PSC is a judicature body in these cases.

**John Olson**, representing BNSF Railroad testified in opposition to HB 1406. The original bill draft was a very cumbersome process to get the notice to the right people. The discussion has gone from publishing a notice to why isn't the railroads taking these sign post down. He said that if we go down that path we need a separate hearing. He said they don't have any objection to the present bill before the committee, including the railroad giving that notice. They are willing to publish that notice.

He said that in regard to the horns, we blow horns loud in accordance to Federal Regulations. Blowing horns has been a proven mechanism in saving lives. He took the opportunity to explain the long list of poles that hadn't been pulled. He said that he had inquired about this and the response he got from the people in the railroad office that deal with these whistle crossings is that in reviewing the list, a major percentage of the crossings listed are defined as public. It is a work in progress on the remaining crossings. The point to be made is that the major percentage of those crossings that the UTU have indicated are public crossings by law.

**Senator Sitte** asked how many of the 135 crossings are not considered private crossings by the railroad.

**Mr. Olson** said that he could get that information for them but he emphasized that we are not prepared to have a public hearing on this issue. This bill only relates to the notice.

**Senator Lee** summarized what he thought he heard from Mr. Olson that they would prefer going back to the current law and let the railroads and the unions work out the issue.

**Mr. Olson** replied yes. He thinks the railroad will work with the PSC. If there are additional administrative things that they are going to require then obviously they can impose those additional requirements on us.

**Senator Lee** closed the hearing on HB 1406.



**Senator Lee** opened committee work discussion on HB 1406.

**Senator Nodland** said that after the testimony he could go either way on the bill. The basic question is does it hurt to do a little extra notice.

**Senator Oehlke** said that John Olson said that between the railroad, the union and the PSC they can and will make this work. He said that it seems we could Do Not Pass HB 1406 and not hurt the issue at all.

**Senator Mathern** said he heard him say they will pay for the notice. He thinks having the notice in the county paper is the way to go. He feels we should pass it just the way it is.

**Senator Sitte** said that she concurred with Senator Mathern. She also commented on the need for a hearing in the future on the removal of the whistle poles at private crossings.

A brief discussion followed on the removal of the poles and the mixing of the two issues. This bill deals with only the public notice.

**Senator Mathern** moved a **Do pass**.

**Senator Sitte** seconded the motion.

**Senator Mathern** said he had asked Mr. Halvorson where he got the list and he said that he got it from the public site. So if there is a difference from this list and what the railroad said should be on the list, it isn't in the public record yet.

Roll call vote: 2-3-0. **Motion failed.**

**Senator Oehlke** moved a **Do Not Pass** on Engrossed HB 1406.

**Senator Nodland** seconded the motion.

Roll call vote: 3-2-1. **Motion passed.**

**Senator Nodland** is the carrier.

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1406

Senate Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Mathern Seconded By Senator Sitte

Senators	Yes	No	Senators	Yes	No
Chairman Gary Lee		✓	Senator Tim Mathern	✓	
Vice Chairman Dave Oehlke		✓			
Senator Dave Nething					
Senator George Nodland		✓			
Senator Margaret Sitte	✓				

Total (Yes) 2 No 3

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Failed*

Date: 3-24-11  
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1906

Senate Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations      ☐ Reconsider

Motion Made By Senator Bekke Seconded By Senator Nolland

[illegible]

Total (Yes) 3 No 2

Absent

Floor Assignment Senator Rodland

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

**REPORT OF STANDING COMMITTEE**

HB 1406, as engrossed: Transportation Committee (Sen. G. Lee, Chairman)  
recommends **DO NOT PASS** (3 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING).  
Engrossed HB 1406 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1406

## UNITED TRANSPORTATION UNION

February 4, 2011

RE: HB 1406

Mr. Chairman, Members of the Transportation Committee

I would like to thank the committee for the opportunity to speak in support of House Bill 1406. My name is Marc Halvorson and I am the State Director for the United Transportation Union. I represent approximately 1200 active and retired union members in our great state of North Dakota. John Risch was my predecessor and was our state director for 23 years and did an outstanding job for the United Transportation Union.

Chapter 49-11-21 of the NDCC, paragraph 2, which went into effect after December 31, 2009 states in part, "a party may petition the commission to request that a horn be sounded at a **private railroad crossing**". In previous PSC hearings that dealt with this part of the law, one observation can be made. There was **no provision in the law that required notification** to adjacent land owner and each lessee of record regarding Chapter 49-11-21, paragraph 2 of the NDCC. Subsequently, there was **no input** from the adjacent landowner and lessee of record.

House Bill 1406 would require that the adjacent landowner and each lessee of record **be notified** of a pending hearing regarding a private crossing. The adjacent landowner and lessee of record would have the opportunity to provide testimony before the PSC.

I ask that the committee support HB 1406. If the committee has any questions, please feel free to ask. Thank you.

Marc Halvorson  
ND Legislative Director, UTU



**united  
transportation  
union**

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RC HALVORSON  
North Dakota Legislative Director

June 28, 2010

State of North Dakota  
Public Service Commission  
600 E. Boulevard Ave., Dept. 408  
Bismarck, ND 58505

Dear Commissioners:

I have compiled a list of the private crossings on the KO Subdivision, Hillsboro, Warwick, and Prosper Subdivisions on BNSF territory in the state of North Dakota that are not in compliance with NDCC 49-11-21. The list is relatively accurate but we reserve the right for additions or deletions to the list.

The KO Subdivision runs from Dilworth, Minnesota to Minot, North Dakota. The private crossings that are not in compliance with NDCC 49-11-21 are:

- |                          |                               |
|--------------------------|-------------------------------|
| MP 30.93....DOT# 0711215 | MP 97.69.....DOT# 093196C     |
| MP 3.34X...DOT# 102937N  | MP 101.58...DOT# 093415N      |
| MP 3.60X...DOT# 102938V  | MP 107.42...DOT# 093424M      |
| MP 4.76X...DOT# 102940W  | MP 109.41...DOT# 093428P      |
| MP 15.66X..DOT# 102959N  | MP 111.31...DOT# 093432E      |
| MP 18.67X..DOT# 102965S  | MP 114.24...DOT# 093438V      |
| MP 19.31X..DOT# 102966Y  | MP 116.33...DOT# 093441D      |
| MP 20.89X..DOT# 102969U  | MP 128.11...DOT# 093498E      |
| MP 22.02X..DOT# 102971V  | MP 129.04...DOT# 093500D      |
| MP 24.06X..DOT# 102973J  | MP 132.32...DOT# 093506U.     |
| MP 43.97....DOT# 093039J | MP 133.16...DOT# 093507B      |
| MP 46.03....DOT# 093043Y | MP 134.46...DOT# 093510J      |
| MP 46.14....DOT# 093044F | MP 135.50...DOT# 093511R      |
| MP 48.70....DOT# 093098L | MP 135.82...DOT#(unavailable) |
| MP 49.38....DOT# 093100K | MP 136.75... DOT# 093541L     |
| MP 51.53....DOT# 093105U | MP 140.65....DOT# 093517G     |
| MP 56.99....DOT# 093116G | MP 144.76...DOT# 093533K      |
| MP 61.49....DOT# 093124Y | MP 150.20...DOT# 093533R      |
| MP 67.86....DOT# 093134E | MP 151.04....DOT# 093534X     |
| MP 72.60....DOT# 093146Y | MP 152.44....DOT# 093536L     |
| MP 72.88....DOT# 093148M | MP 156.06...DOT# 093543W      |
| MP 78.87....DOT# 093163P | MP 156.77...DOT# 093546S      |
| MP 87.23....DOT# 093180F | MP 159.91...DOT# 093553C      |
| MP 89.94....DOT# 093184H | MP 165.09...DOT# 093564P      |
| MP 90.75....DOT# 093185P | MP 177.27...DOT# 093588D      |



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MP 183.35....DOT# 093605S  
MP 188.68....DOT# 093619A  
MP 192.44....DOT# 093628Y  
MP 192.71....DOT# 093629F  
MP 198.88....DOT# 093639L  
MP 204.70....DOT# 093648K  
MP 217.18....DOT# 104422B  
MP 218.78....DOT# 102424P  
MP 219.32....DOT# 102425W  
MP 222.59....DOT# 102429Y  
MP 224.71....DOT# 102433N

**The Warwick Subdivision runs from Page to Tolna, North Dakota. The lists of private crossings that are not in compliance with 49-11-21 are as follows:**

MP 24.43..DOT# 102975X  
MP 28.06..DOT# 102938P  
MP 28.86..DOT# 102984W  
MP 31.59..DOT# 102989F  
MP 37.41..DOT# 103002A  
MP 41.72..DOT# 103010S  
MP 41.82..DOT# 103011Y  
MP 42.81..DOT# 103012F  
MP 43.93..DOT# 103019D  
MP 48.99..DOT# 103021E  
MP 50.45..DOT# 103023T  
MP 54.59..DOT# 103031K  
MP 55.24..DOT# 103032S  
MP 57.75..DOT# 103036U  
MP 58.89..DOT# 103039P  
MP 66.31..DOT# 103053D  
MP 68.68..DOT# 103058U  
MP 69.16..DOT# 103059B  
MP 75.76..DOT# 103071H  
MP 76.20..DOT# 103072P

**The Prosper Subdivision runs from Fargo to Page, North Dakota. The list of private crossings that are not in compliance with 49-11-21 are as follows:**

MP 9.62..DOT# 092959H  
MP 18.52..DOT# 092980N  
MP 20.80..DOT# 092985X

MP 29.86..DOT# 093013G  
MP 32.67..DOT# 093017J  
MP 35.32..DOT# 093020S





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MP 24.25..DOT# 092995D  
MP 25.89..DOT# 093002U  
MP 28.08..DOT# 093009S

MP 38.53..DOT# 093028W  
MP 40.17..DOT# 093032L

**The Hillsboro Subdivision runs from Fargo to Grand Forks, North Dakota. The lists of private crossings that are not in compliance with 49-11-21 are as follows:**

MP 73.42..DOT# 086868N  
MP 72.91..DOT# 086869V  
MP 70.89..DOT# 086873K

**The above mentioned private crossings need to be in compliance with NDCC 49-11-21. Please advise when private crossings are in compliance.**

**If you have any questions regarding the above mentioned private crossings, please feel to contact me at 710-282-2888 or e-mail address at utu4nd@gmail.com.**

**Thank you.**

**Sincerely,**

**Marc Halvorson  
UTU State Legislative Director**

**Brotherhood of Locomotive Engineers and Trainmen**

**North Dakota State Legislative**

Chairman: Mike Muscha

February 4, 2011

RE: HB 1406

Mr. Chairman, Members of the Transportation Committee

My name is Mike Muscha and as State Chairman represent the Brotherhood of Locomotive Engineers & Trainmen here in North Dakota. I'm also BLE&T Regional #4 Chairman, so I represent the BLE-T members across the Northwest US who cross over from Montana and Minnesota with BNSF and CP Rail. **I'm here today to speak in favor of HB 1406.**

Mr. Chairman and Committee members who were not here two years ago, I would like to give you a brief history of this law and why we brought it forward. All the Engineers and Trainmen want, as we operate our locomotives from state to state, is uniformity. This means we blow the whistle for public crossings and we do not blow for private crossings that are not signed. Signed means a whistle post is posted in advance of the crossing. In Montana, BNSF has removed most of the whistle posts at private crossings. If no whistle post, we do not blow. The law also states that if we deem it necessary to blow the whistle, we will and we do. CP Rail has pretty much complied with the law, but we feel BNSF has some work to do. This being said, if the crossings are private remove the whistle post.

Now, I will speak on the changes in HB 1406. Two years ago I stated there may be a time to replace a whistle post and again start blowing for a crossing. An example would be a lake that has become a popular fishing spot and vehicle traffic has increased on what was an abandoned road due to the lake's revival. I believe there needs to be a mechanism to replace the whistle post and notify the public. The language in HB 1406 would provide this mechanism.

Mr. Chairman, members of the committee, for the reasons listed above I recommend a due pass on HB 1406. My personal information is listed below and I would be happy to answer any questions and would respond to your e-mails.

Mike Muscha, Chairman

North Dakota State Legislative Board

701-793-0325 cell

701-437-3881 home

701-437-3881 Fax

[LocEng671E@mlgc.com](mailto:LocEng671E@mlgc.com)

**UNITED TRANSPORTATION UNION**

**March 24, 2011**

**RE: HB 1406**

**Mr. Chairman, Members of the Transportation Committee**

**I would like to thank the committee for the opportunity to speak in support of HB 1406. My name is Marc Halvorson and I am the State Director for the United Transportation Union. I represent approximately 1200 active and retired union members in our great state of North Dakota.**

**Chapter 49-11-21 of the NDCC, paragraph 2, which went into effect after December 31, 2009 states in part, "a party may petition the commission to request that a horn be sounded at a private railroad crossing". In previous PSC hearings that dealt with this part of the law, one observation can be made. There was no provision in the law that required notification to affected land owners concerning NDCC Chapter 49-11-21, paragraph 2.**

**House Bill 1406 would require that the party filing a petition to publish notice of the petition in the official county newspaper in the county of record. With the published notice in the official county newspaper, individuals affected by this petition would have the opportunity to provide valuable testimony before the PSC.**

**I ask that the committee support HB 1406.**

**Thank you.**

**Marc Halvorson  
ND Legislative Director, UTU**



ERIC HALVORSON  
North Dakota Legislative Director

# **united transportation union**

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**June 28, 2010**

**State of North Dakota  
Public Service Commission  
600 E. Boulevard Ave., Dept. 408  
Bismarck, ND 58505**

**Dear Commissioners:**

**I have compiled a list of the private crossings on the KO Subdivision, Hillsboro, Warwick, and Prosper Subdivisions on BNSF territory in the state of North Dakota that are not in compliance with NDCC 49-11-21. The list is relatively accurate but we reserve the right for additions or deletions to the list.**

**The KO Subdivision runs from Dilworth, Minnesota to Minot, North Dakota. The private crossings that are not in compliance with NDCC 49-11-21 are:**

MP 30.93....DOT# 0711215  
MP 3.34X...DOT# 102937N  
MP 3.60X...DOT# 102938V  
MP 4.76X...DOT# 102940W  
MP 15.66X..DOT# 102959N  
MP 18.67X..DOT# 102965S  
MP 19.31X..DOT# 102966Y  
MP 20.89X..DOT# 102969U  
MP 22.02X..DOT# 102971V  
MP 24.06X..DOT# 102973J  
MP 43.97....DOT# 093039J  
MP 46.03....DOT# 093043Y  
MP 46.14....DOT# 093044F  
MP 48.70....DOT# 093098L  
MP 49.38....DOT# 093100K  
MP 51.53....DOT# 093105U  
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MP 90.75....DOT# 093185P

MP 97.69.....DOT# 093196C  
MP 101.58...DOT# 093415N  
MP 107.42...DOT# 093424M  
MP 109.41...DOT# 093428P  
MP 111.31...DOT# 093432E  
MP 114.24...DOT# 093438V  
MP 116.33...DOT# 093441D  
MP 128.11...DOT# 093498E  
MP 129.04...DOT# 093500D  
MP 132.32...DOT# 093506U.  
MP 133.16...DOT# 093507B  
MP 134.46...DOT# 093510J  
MP 135.50...DOT# 093511R  
MP 135.82...DOT#(unavailable)  
MP 136.75... DOT# 093541L  
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**Thank you.**

Sincerely,

**Marc Halvorson  
UTU State Legislative Director**

## Engrossed House Bill 1406

**Presented by:** Tony Clark, Chairman  
Public Service Commission

**Before:** Senate Transportation Committee  
Honorable Gary A. Lee, Chairman

**Date:** March 24, 2011

### TESTIMONY

Mister Chairman and Committee members, I am Commissioner Tony Clark with the Public Service Commission. I am here today to testify for the Commission in opposition to Engrossed House Bill 1406. The Commission supported the original bill but due to the changes incorporated by the House, we now oppose the bill.

The current version of this bill is significantly different than the original regarding notices in private railroad crossing petition cases. As amended, the bill simply duplicates the Commission's formal process for publishing notice which is unnecessary and wasteful. Rather than seeking further amendments to Engrossed House Bill 1406, the Commission respectfully recommends that the bill be defeated.

Mister Chairman, this concludes our testimony. I will be happy to answer any questions you may have.