

**2001 DRAFTING REQUEST**

**Bill**

Received: **01/08/2001**

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **Eugene Hahn (608) 266-3404**

By/Representing: **Mike (aide)**

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Transportation - railroads**

Extra Copies: **TNF, PJH**

Submit via email: **NO**

Requester's email:

**Pre Topic:**

No specific pre topic given

**Topic:**

Minimum number of railroad employees present in cab of locomotive

**Instructions:**

Wants redraft of 99 AB 827 with the assembly amendment 1 and additional amendment of further exemption per attached letter.

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 02/21/2001	jdye 02/22/2001		_____			State
/1			rschluet 02/27/2001	_____	lrb_docadmin 02/27/2001		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	agary 03/20/2001	jdyer 03/21/2001	jfrantze 03/21/2001	_____	lrb_docadmin 03/21/2001	lrb_docadmin 04/16/2001	

FE Sent For:

<END>

→ At  
Intro.

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Minimum number of railroad employees present in cab of locomotive

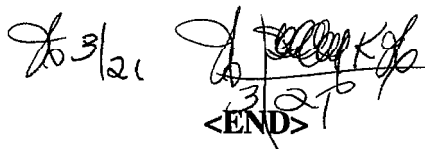
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/?	agary 02/21/2001	jdyer 02/22/2001					State
/1		1/2 3/21 jld	rschluet 02/27/2001		lrb_docadmin 02/27/2001		

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**Bill**

Received: **01/08/2001**

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Subject: **Transportation - railroads**

Extra Copies: **TNF, PJH**

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No specific pre topic given

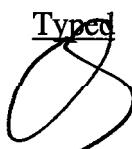
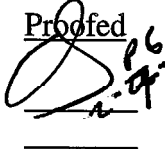
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17	agary	1/26 jld	 2-26-1	 2-26-1			

FE Sent For:

<END>

ARG  
2

LAW OFFICES  
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OF COUNSEL

JEROME M. ALPER (D.C., TENN., ILL.) (RETIRED)  
DAVID A. SELTZER (D.C., MD)  
SHELDON E. BERNSTEIN (DECEASED)



January 2, 2001

Via U.S. Mail

T.P. Dwyer, Director  
Wisconsin State Legislative Board  
United Transportation Union  
7 North Pinckney Street  
Suite 50-C  
Madison, Wisconsin 53703-28

Dear Tom:

I have revised Assembly Bill 827 requiring two persons on the lead locomotive, which I am attaching. Also, I would add a new section to the bill which states that:

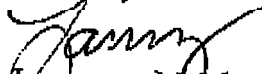
"This act shall not apply to:

- a) Commuter or other short-haul railroad passenger service owned or operated by a state or local government;
- b) High speed ground transportation systems;
- c) Rapid transit operations in an urban area; or
- d) Tourist, historic, scenic or excursion railroad carriers."

I hope this will take care of the issues you raised.

Have a happy and healthy New Year!

Sincerely,

  
Lawrence M. Mann

Enclosures

2001 Bill

RMC Not Km

D-Note

# 1999 ASSEMBLY BILL 827

March 7, 2000 - Introduced by Representatives HAHN, BRANDEMUEHL, HUEBSCH, TURNER, LA FAVE, MUSSER, JOHNSRUD, SUDER, BLACK, PLALE, ALBERS, SINICKI, SERATTI, TRAVIS, YOUNG, PORTER, FREESE, POCAN, GRONEMUS, SYKORA, BOYLE and ZIEGELBAUER, cosponsored by Senators BRESKE, RISSER, DRZEWIECKI, ROSENZWEIG, RUDE, ERPENBACH, SCHULTZ, COWLES, JAUCH, WIRCH, PLACHE and GROBSCHMIDT. Referred to Committee on Transportation.

Regen

- 1 AN ACT to amend 192.25 (2) of the statutes; relating to: the minimum number
- 2 of railroad employe<sup>e</sup>s required to be present in the cab of the lead control
- 3 locomotive when the railroad train or locomotive is in motion.

### Analysis by the Legislative Reference Bureau

Insert A ✓

Current law prohibits any railroad train or locomotive from operating in this state unless the crew consists of at least two qualified persons. A locomotive engineer must operate the control locomotive at all times that the railroad train or locomotive is in motion. The other crew member may dismount the railroad train or locomotive when necessary to perform switching activities and other duties in the course of his or her job. ~~These requirements are preempted by federal law except to the extent that they prohibit over-the-road train operation unless the railroad train or locomotive has a train crew of at least two persons. Over-the-road operations, however, may also be exempted from this two-person train crew requirement by specific agreement between the Federal Railway Administration and an individual railroad. Burlington Northern and Santa Fe Railway Co. v. Doyle, 186 F3d 446 (1999).~~

This bill requires that the two crew members be present in the cab of the lead control locomotive at all times that the railroad train or locomotive is in motion.

The commissioner of railroads may grant exceptions to these requirements, if the exceptions will not endanger life or property.

**ASSEMBLY BILL 827**

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 192.25 (2) of the statutes is amended to read:

192.25 (2) No person operating or controlling any railroad, as defined in s. 85.01 (5), may allow the operation of any railroad train or locomotive in this state unless the railroad train or locomotive has a crew of at least 2 individuals. One of the individuals shall be a certified railroad locomotive engineer. The other individual shall be either a certified railroad locomotive engineer or a qualified railroad trainman. A certified railroad locomotive engineer shall be present in the cab and shall operate the lead control locomotive at all times that the railroad train or locomotive is in motion. The other crew member shall be present in the cab of the lead control locomotive at all times that the railroad train or locomotive is in motion. ~~may~~ may dismount the railroad train or locomotive when necessary to perform switching activities and other duties in the course of his or her job.

SECTION 2. Initial applicability.

(1) This act first applies to railroad trains or locomotives operated on the effective date of this subsection.

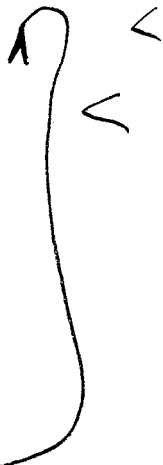
(END)

PWF

insert C

insert B

J-Note





2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1943/lins  
ARG:.....

(no P) The office of the commissioner of railroads, by rule, may grant an exception to these requirements if the exception will not endanger the life or property of any person. Also, under state law, these requirements do not apply to the extent they are contrary to or inconsistent with federal law.

In *Burlington Northern and Santa Fe Railway Co. v. Doyle*, 186 F.3d 790 (7th Cir. 1999), the federal Court of Appeals held that these requirements are preempted by federal law except to the extent a train crew of at least two persons is required for over-the-road train operation (hauling train cars between terminals). However, the requirement of a train crew of at least two persons for over-the-road train operation may also be preempted if the Federal Railroad Administration enters into an agreement with a railroad that expressly permits the railroad to conduct over-the-road train operation with a one-person crew.

This bill requires that two crew members be present in the cab of the lead control locomotive at all times that the railroad train or locomotive is in motion, except when the railroad train or locomotive is in motion for the purpose of switching. This requirement does not apply to a railroad train or locomotive being operated as part of a rail passenger system providing commuter rail service, high-speed rail service, urban rail transit service, or excursion rail service.

SECTION 1. 192.25 (3) (am)<sup>X</sup> of the statutes is created to read:

192.25 (3) (am) Subsection (2)<sup>✓</sup> does not apply to a railroad train or locomotive being operated as part of any of the following rail passenger systems:

1. Commuter rail service operated by the state or any local governmental unit, as defined in s. 85.055 (1).

2. High-speed rail service.

3. Urban rail transit service.

4. Excursion rail service provided only for pleasure or recreation and having the same daily origination and destination point.

SECTION 2. 192.25 (3) (b)<sup>X</sup> of the statutes is amended to read:

192.25 (3) (b) ~~Subsection (2)~~ This section<sup>✓</sup> does not apply to the extent that it is contrary to or inconsistent with a regulation or order of the federal railroad administration.

(end ins C)

Insert  
A

Insert  
C

ASSEMBLY AMENDMENT 1,  
TO 1999 ASSEMBLY BILL 827

March 16, 2000 - Offered by COMMITTEE ON TRANSPORTATION.

1 At the locations indicated, amend the bill as follows:

2 In Page 2, line 11: delete "but" and substitute "except when the railroad train  
3 or locomotive is in motion for the purpose of switching. When the railroad train or  
4 locomotive is not in motion, the other crew member <sup>NO</sup>

5 (END)

insert  
B

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1943/1dn

ARG:.....

Jld

In *Burlington Northern and Santa Fe Railway Co. v. Doyle*, 186 F.3d 790 (7th Cir. 1999), the Seventh Circuit Court of Appeals held that s. 192.25, stats., is, in part, unenforceable because the Federal Railroad Administration (FRA), under authority of the Federal Rail Safety Act ~~(FRA)~~, promulgated regulations covering some of the same subject matter as s. 192.25, stats. The court held that s. 192.25, stats., is preempted by federal law to the extent the statute defines railroad employee qualifications, requires a locomotive engineer to be at the controls of a locomotive whenever the locomotive moves, and requires a two-person crew for railroad hostling and helper movements (operations occurring within the railroad yard). The court also held that s. 192.25, stats., is not presently preempted to the extent it requires a two-person crew for over-the-road operations (hauling train cars between terminals). However, the FRA may preempt the state requirement of a two-person crew for over-the-road train operations by entering into an agreement with a railroad allowing use of a one-person crew. The FRA has also considered allowing one-person crews for over-the-road operations, and if the FRA proceeds to allow one-person crews, the FRA's implementation of this decision would further preempt s. 192.25, stats.

If the attached bill is enacted, the amended s. 192.25 will likely continue to be preempted in part by federal law.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: aaron.gary@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1943/1dn  
ARG:jld:rs

February 26, 2001

In *Burlington Northern and Santa Fe Railway Co. v. Doyle*, 186 F.3d 790 (7th Cir. 1999), the Seventh Circuit Court of Appeals held that s. 192.25, stats., is, in part, unenforceable because the Federal Railroad Administration (FRA), under authority of the Federal Rail Safety Act, promulgated regulations covering some of the same subject matter as s. 192.25, stats. The court held that s. 192.25, stats., is preempted by federal law to the extent the statute defines railroad employee qualifications, requires a locomotive engineer to be at the controls of a locomotive whenever the locomotive moves, and requires a two-person crew for railroad hostling and helper movements (operations occurring within the railroad yard). The court also held that s. 192.25, stats., is not presently preempted to the extent it requires a two-person crew for over-the-road operations (hauling train cars between terminals). However, the FRA may preempt the state requirement of a two-person crew for over-the-road train operations by entering into an agreement with a railroad allowing use of a one-person crew. The FRA has also considered allowing one-person crews for over-the-road operations, and if the FRA proceeds to allow one-person crews, the FRA's implementation of this decision would further preempt s. 192.25, stats.

If the attached bill is enacted, the amended s. 192.25 will likely continue to be preempted in part by federal law.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: aaron.gary@legis.state.wi.us

3/6/01 & 3/8/01 Telephone conferences with Mike in Rep. Hahn's office. 6-3404. Would like to remove references in the draft to defined terms. Wants to delete defined terms from sub. (2). OK to repeal sub. (1) accordingly. Also would like to make sure passenger rail systems operating without passengers (i.e., carrying freight only) have two crew members. That is, if a passenger system runs a special of freight only, it is not exempted from the two person crew requirement. Discussed language changes in subs. (2) and (3). Will confer with Rep. Hahn and get back to me.

3/19/01 Telephone conference with Mike. Proceed with redraft as discussed.

ARG



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-1943/2

ARG:jld:rs

RMR

2001 BILL

D-Note

Regen

1 AN ACT *to amend* 192.25 (2) and 192.25 (3) (b); and *to create* 192.25 (3) (am) of  
2 the statutes; **relating to:** the minimum number of railroad employees required  
3 to be present in the cab of the lead control locomotive when the railroad train  
4 or locomotive is in motion.

---

***Analysis by the Legislative Reference Bureau***

Current law prohibits any railroad train or locomotive from operating in this state unless the crew consists of at least two qualified persons. A locomotive engineer must operate the control locomotive at all times that the railroad train or locomotive is in motion. The other crew member may dismount the railroad train or locomotive when necessary to perform switching activities and other duties in the course of his or her job. The office of the commissioner of railroads, by rule, may grant an exception to these requirements if the exception will not endanger the life or property of any person. Also, under state law, these requirements do not apply to the extent they are contrary to or inconsistent with federal law.

In *Burlington Northern and Santa Fe Railway Co. v. Doyle*, 186 F.3d 790 (7th Cir. 1999), the federal court of appeals held that these requirements are preempted by federal law except to the extent a train crew of at least two persons is required for over-the-road train operation (hauling train cars between terminals). However, the requirement of a train crew of at least two persons for over-the-road train operation may also be preempted if the federal railroad administration enters into an agreement with a railroad that expressly permits the railroad to conduct over-the-road train operation with a one-person crew.

**BILL**

This bill requires that two crew members be present in the cab of the lead control locomotive at all times that the railroad train or locomotive is in motion, except when the railroad train or locomotive is in motion for the purpose of switching. This requirement does not apply to a railroad train or locomotive being operated as part of a rail passenger system providing commuter rail service, high-speed rail service, urban rail transit service, or excursion rail service.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*no*, unless the railroad train or locomotive is carrying freight only.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

*SECTION # 192.25(1) of the statutes is repealed.*

1 SECTION 1. 192.25 (2) of the statutes is amended to read:

2 192.25 (2) No person operating or controlling any railroad, as defined in s.  
3 85.01 (5), may allow the operation of any railroad train or locomotive in this state  
4 unless the railroad train or locomotive has a crew of at least 2 individuals. One of  
5 the individuals shall be ~~a certified railroad locomotive engineer.~~ The other  
6 individual shall be ~~either a certified railroad locomotive engineer or a qualified~~  
7 ~~railroad trainman.~~ A certified railroad locomotive engineer shall be present in the  
8 cab and shall operate the lead control locomotive at all times that the railroad train  
9 or locomotive is in motion. The other crew member shall be present in the cab of the  
10 lead control locomotive at all times that the railroad train or locomotive is in motion,  
11 except when the railroad train or locomotive is in motion for the purpose of switching.  
12 When the railroad train or locomotive is not in motion, the other crew member may  
13 dismount the railroad train or locomotive when necessary to perform switching  
14 activities and other duties in the course of his or her job.

15 SECTION 2. 192.25 (3) (am) of the statutes is created to read:

16 192.25 (3) (am) Subsection (2) does not apply to a railroad train or locomotive  
17 being operated as part of any of the following rail passenger systems:

*, other than a railroad train or locomotive carrying freight only, that is*

**BILL**

1           1. Commuter rail service operated by the state or any local governmental unit,  
2 as defined in s. 85.055 (1).

3           2. High-speed rail service.

4           3. Urban rail transit service.

5           4. Excursion rail service provided only for pleasure or recreation and having  
6 the same daily origination and destination point.

7           **SECTION 3.** 192.25 (3) (b)<sup>✓</sup> of the statutes is amended to read:

8           192.25 (3) (b) ~~Subsection (2)~~ This section does not apply to the extent that it  
9 is contrary to or inconsistent with a regulation or order of the federal railroad  
10 administration.

11           **SECTION 4. Initial applicability.**

12           (1) This act first applies to railroad trains or locomotives operated on the  
13 effective date of this subsection. ✓

14

(END)

D-Note



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1943/2dn

ARG:.....

Jld

The attached draft makes the following changes to LRB-1943/1:

1. Defined terms for crew members have been deleted from s. 192.25 (2).<sup>✓</sup> Since sub. (1) contains the corresponding definitions for the deleted terms, s. 192.25 (1) has also been repealed.

2. Language has been added to proposed s. 192.25 (3) (am).<sup>✓</sup> providing that the exceptions to the two-person crew requirement do not apply to a railroad train or locomotive carrying freight only, even if the railroad train or locomotive is part of an otherwise qualifying system.

These changes will affect some but not all of the items discussed in the drafter's note to LRB-1943/1.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: aaron.gary@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1943/2dn  
ARG:jld:jf

March 21, 2001

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2. Language has been added to proposed s. 192.25 (3) (am) providing that the exceptions to the two-person crew requirement do not apply to a railroad train or locomotive carrying freight only, even if the railroad train or locomotive is part of an otherwise qualifying system.

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E-mail: [aaron.gary@legis.state.wi.us](mailto:aaron.gary@legis.state.wi.us)



# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET  
5TH FLOOR  
MADISON, WI 53701-2037

STEPHEN R. MILLER  
CHIEF

LEGAL SECTION: (608) 266-3561  
LEGAL FAX: (608) 264-6948

March 21, 2001

### MEMORANDUM

To: Representative Hahn

From: Arron R. Gary, Attorney

Re: LRB-1943 Minimum number of railroad employees present in cab of locomotive

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY     JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 261-6926 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.