

2001 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-SB55)

Received: **06/21/2001**

Received By: **fasttn**

Wanted: **Soon**

Identical to LRB:

For: **Assembly Republican Caucus 267-0898**

By/Representing: **Hartsough**

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:

ARC:.....Hartsough - AM9,

Topic:

Requiring two crew members in the cab of a locomotive

Instructions:

See Attached

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>
/1	agary 06/21/2001	jdyer 06/22/2001	jfrantze 06/22/2001	_____	lrb_docadmin 06/22/2001		
/2	agary 06/27/2001	jdyer 06/27/2001	pgreensl 06/27/2001	_____	lrb_docadmin 06/27/2001		

FE Sent For:

<END>

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1/2 6/27 jld
6/27 ps
scub

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/1	agary	1/22 jld	6/22	6/22			

FE Sent For:

<END>

Budget Amendments 2001 - 2003

Prepared by the Assembly Republican Caucus

Statement of Intent Requires 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 for the purpose of switching.

Legislator Hahn **Amendment** 9

Legislator 2 **Pass or Fail** Pass

Legislator 3 **Spending Cut**

Legislator 4 **Withdrawn**

Staff contact Heather Schubert **Package**

Agency Transportation

Summary 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.

This amendment would require 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 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, unless the railroad train or locomotive is carrying freight only.

Fiscal Impact No state fiscal effect.

Drafting Inst

ARC Analyst Hartsough

Request # 118

2001 - 2002 LEGISLATURE
AA to ASAI to SB 55

b1289/1
LRB/10/07/02

ARG:jld:jf

ARC stays
D-Note

2001 ASSEMBLY BILL 404

May 18, 2001 - Introduced by Representatives HAHN, SCHNEIDER, LIPPERT, STARZYK, RYBA, HUEBSCH, J. LEHMAN, SERATTI, KESTELL, POWERS, ALBERS, FREESE, GRONEMUS, LASSA, POCAN, MUSSER, BOYLE, JOHNSRUD, SHERMAN, KREIBICH, PETROWSKI, HUBLER, TURNER, PLOUFF, WASSERMAN, MILLER, COLON, LA FAVE and SHILLING, cosponsored by Senators BRESKE, JAUCH, HANSEN, COWLES, BURKE, ERPENBACH, WIRCH and GROBSCHMIDT. Referred to Committee on Transportation.

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

ASSEMBLY BILL 404

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, unless the railroad train or locomotive is carrying freight only.

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:

#. Page 985, line 20:
 → after that line insert:

1

SECTION ^{2972g. ✓} 192.25 (1) of the statutes is repealed.

2

SECTION ^{2972h. ✓} 192.25 (2) of the statutes is amended to read:

3

192.25 (2) No person operating or controlling any railroad, as defined in s.

4

85.01 (5), may allow the operation of any railroad train or locomotive in this state

5

unless the railroad train or locomotive has a crew of at least 2 individuals. One of

6

the individuals shall be ~~a certified railroad locomotive engineer.~~ The other

7

~~individual shall be either a certified railroad locomotive engineer or a qualified~~

8

~~railroad trainman. A certified railroad locomotive engineer shall present in the cab~~

9

and shall operate the lead control locomotive at all times that the railroad train or

10

locomotive is in motion. The other crew member shall be present in the cab of the

11

lead control locomotive at all times that the railroad train or locomotive is in motion,

12

except when the railroad train or locomotive is in motion for the purpose of switching.

13

When the railroad train or locomotive is not in motion, the other crew member may

14

dismount the railroad train or locomotive when necessary to perform switching

15

activities and other duties in the course of his or her job.

16

SECTION ^{2972i. ✓} 192.25 (3) (am) of the statutes is created to read:

ASSEMBLY BILL 404

1 192.25 (3) (am) Subsection (2) does not apply to a railroad train or locomotive,
2 other than a railroad train or locomotive carrying freight only, that is being operated
3 as part of any ~~of the following rail passenger systems:~~ ← NO
FF

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

6 2. ~~High-speed rail service.~~

7 3. ~~Urban rail transit service.~~ →

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

10 SECTION ^{2972j.} 192.25 (3) (b) ^X of the statutes is amended to read:

11 192.25 (3) (b) ~~Subsection (2)~~ This section does not apply to the extent that it
12 is contrary to or inconsistent with a regulation or order of the federal railroad
13 administration. ✓

14 ^{letter} SECTION 5. Initial applicability.
15 ^{11(8b)} The treatment of section ^{11(8b)} 192.25 (1), (2), ^{and} (3) (am.) ^{and} (3) (b) of the statutes
16 ~~and this act~~ first applies to railroad trains or locomotives operated on the
effective date of this subsection. ✓

17 (END)

D-Note

#. Page 1411, line 2: after that line insert =

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

6/28/01 dn
LRB:10/28/01
ARG:jld:rs
↑
stays

February 26, 2001 } new date

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

in the attached draft may

The ^{treatments} ~~amendments~~ in the attached draft to the ^{statute} reviewed in Doyle affect some but not all of the items discussed in Doyle, and ^{NO} ~~it~~ ^{ital.}

ital.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1289/1dn
ARG:jld:jf

June 22, 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.

The treatments in the attached draft to the statute reviewed in *Doyle* affect some but not all of the items discussed in *Doyle*, and the amended s. 192.25 in the attached draft may 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



State of Wisconsin
2001 - 2002 LEGISLATURE

ARC

LRBb1289/2

ARG:jld:jf

RMR

ARC:.....Hartsough – AM9, Requiring two crew members in the cab of a locomotive

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS ASSEMBLY AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

D - Note

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 985, line 20: after that line insert:

3 **"SECTION 2972g.** 192.25 (1) of the statutes is repealed.

4 **SECTION 2972h.** 192.25 (2) of the statutes is amended to read:

5 192.25 (2) No person operating or controlling any railroad, as defined in s.

6 85.01 (5), may allow the operation of any railroad train or locomotive in this state

7 unless the railroad train or locomotive has a crew of at least 2 individuals. One of

8 the individuals shall be ~~a certified railroad locomotive engineer. The other~~

9 ~~individual shall be either a certified railroad locomotive engineer or a qualified~~

10 ~~railroad trainman. A certified railroad locomotive engineer shall present in the cab~~

1 and shall operate the lead control locomotive at all times that the railroad train or
2 locomotive is in motion. The other crew member shall be present in the cab of the
3 lead control locomotive at all times that the railroad train or locomotive is in motion,
4 except when the railroad train or locomotive is in motion for the purpose of switching.
5 When the railroad train or locomotive is not in motion, the other crew member may
6 dismount the railroad train or locomotive when necessary to perform switching
7 activities and other duties in the course of his or her job.

8 **SECTION 2972i.** 192.25 (3) (am) of the statutes is created to read:

9 192.25 (3) (am) Subsection (2) does not apply to a railroad train or locomotive,
10 other than a railroad train or locomotive carrying freight only, that is being operated
11 as part of any commuter rail service operated by the state or any local governmental
12 unit, as defined in s. 85.055 (1).

13 **SECTION 2972j.** 192.25 (3) (b) of the statutes is amended to read:

14 192.25 (3) (b) ~~Subsection (2)~~ This section does not apply to the extent that it
15 is contrary to or inconsistent with a regulation or order of the federal railroad
16 administration.”.

17 **2.** Page 1411, line 2: after that line insert:

18 ^{RAILROAD TRAIN OR LOCOMOTIVE CREWS. ← CS}
“(8b) The treatment of section 192.25 (1), (2), and (3) (am) and (b) of the statutes
19 first applies to railroad trains or locomotives operated on the effective date of this
20 subsection.”.

21 (END)

D - Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1289/2dn

ARG:.....

↑
jld

The attached draft makes a minor, technical change to LRBb1289/1.

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

LRBb1289/2dn
ARG:jld:pg

June 27, 2001

The attached draft makes a minor, technical change to LRBb1289/1.

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

Gary, Aaron

From: Fast, Timothy
Sent: Thursday, June 28, 2001 9:48 AM
To: Gary, Aaron
Subject: FW: LRB Draft: 01b1289/2 Requiring two crew members in the cab of a locomotive

-----Original Message-----

From: Fast, Timothy
Sent: Wednesday, June 27, 2001 5:54 PM
To: Hartsough, Melanie
Cc: Hurley, Peggy
Subject: FW: LRB Draft: 01b1289/2 Requiring two crew members in the cab of a locomotive

Melanie,

The motion provided that "this requirement does not apply to a railroad train or locomotive being operated as part of a rail passenger system providing commuter rail service, unless the railroad train or locomotive is carrying freight only". We took this to exclude the other rail passenger systems, i.e., high-speed rail service, urban rail transit service, and excursion rail service. Please let me know if you'd like us to redraft. Thanks!

Peace again, Tim

-----Original Message-----

From: Hanaman, Cathlene
Sent: Wednesday, June 27, 2001 4:31 PM
To: Gary, Aaron; Fast, Timothy
Subject: FW: LRB Draft: 01b1289/2 Requiring two crew members in the cab of a locomotive

-----Original Message-----

From: Hartsough, Melanie
Sent: Wednesday, June 27, 2001 4:29 PM
To: Hanaman, Cathlene
Subject: LRB Draft: 01b1289/2 Requiring two crew members in the cab of a locomotive

After line 8 on the second page, shouldn't there be a line regarding High-speed rail service, urban rail transit service and excursion rail service provided only for pleasure recreation as stated in Assembly Bill 404, lines 6-8, page two?

-----Original Message-----

From: Hartsough, Melanie
Sent: Wednesday, June 27, 2001 3:24 PM
To: Schubert, Heather
Subject: LRB Draft: 01b1289/2 Requiring two crew members in the cab of a locomotive

Melanie Hartsough
Wisconsin's Assembly Republican Caucus
Melanie.Hartsough@legis.state.wi.us
Toll-free: (888) 394-1452
Direct: (608) 267-0898

ARC:.....Hartsough – AM9, Requiring two crew members in the cab of a locomotive

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS ASSEMBLY AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

1 At the locations indicated, amend the substitute amendment as follows:

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6 85.01 (5), may allow the operation of any railroad train or locomotive in this state

7 unless the railroad train or locomotive has a crew of at least 2 individuals. One of

8 the individuals shall be ~~a certified railroad locomotive engineer. The other~~

9 ~~individual shall be either a certified railroad locomotive engineer or a qualified~~

10 ~~railroad trainman. A certified railroad locomotive engineer shall present in the cab~~

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2 locomotive is in motion. The other crew member shall be present in the cab of the
3 lead control locomotive at all times that the railroad train or locomotive is in motion,
4 except when the railroad train or locomotive is in motion for the purpose of switching.
5 When the railroad train or locomotive is not in motion, the other crew member may
6 dismount the railroad train or locomotive when necessary to perform switching
7 activities and other duties in the course of his or her job.

8 **SECTION 2972i.** 192.25 (3) (am) of the statutes is created to read:

9 192.25 (3) (am) Subsection (2) does not apply to a railroad train or locomotive,
10 other than a railroad train or locomotive carrying freight only, that is being operated
11 as part of any commuter rail service operated by the state or any local governmental
12 unit, as defined in s. 85.055 (1).

13 **SECTION 2972j.** 192.25 (3) (b) of the statutes is amended to read:

14 192.25 (3) (b) ~~Subsection (2)~~ This section does not apply to the extent that it
15 is contrary to or inconsistent with a regulation or order of the federal railroad
16 administration.”.

17 **2.** Page 1411, line 2: after that line insert:

18 “(8b) RAILROAD TRAIN OR LOCOMOTIVE CREWS. The treatment of section 192.25 (1),
19 (2), and (3) (am) and (b) of the statutes first applies to railroad trains or locomotives
20 operated on the effective date of this subsection.”.

21 (END)