

2003 DRAFTING REQUEST

Bill

Received: **01/29/2003**

Received By: **agary**

Wanted: **Soon**

Identical to LRB:

For: **Dale Schultz (608) 266-0703**

By/Representing: **John O'Brien (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: **YES**

Requester's email: **Sen.Schultz@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Minimum number of employees required to be present in a locomotive cab

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>
/?	agary 01/30/2003	kfollett 01/30/2003 kfollett 01/31/2003		_____			
/1			jfrantze 01/31/2003	_____	lemery 01/31/2003	mbarman 02/03/2003	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

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1/2	agary	11/15/03	11/31/03	11/31/03			

FE Sent For:

<END>

ARGA

Legislative Reference Bureau
100 N. Hamilton Street
Legal Section. 266-3561

Bill Request Form

You may use this form or talk directly with the LRB attorney who will draft the bill.

Date 1-28-02

Legislator, agency, or other person requesting this draft SENATOR DALE SCHULTZ

Person submitting request (name and phone number) John O'Brien 266-0703

Persons to contact for questions about this draft (names and phone numbers) SAME ↑

Describe the problem, including any helpful examples. How do you want to solve the problem?

~~DRAFT~~ DRAFT AS SENATE COMPANION
TO Rep Hahn's LRB NO CHANGES

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 2001 LRB-2345/1 or 1999AB-67).

LRB-09831/1 ATTACHED

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? YES NO

If yes: Anyone who asks? YES NO
Any legislator? YES NO

Only the following persons Rep Hahn

Do you consider this request urgent? YES NO If yes, please indicate why COMPANION

Should we give this request priority over any pending request of this legislator, agency, or person? YES NO



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0983/1
ARG:kjf&cmh:jf

2003 BILL

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.

2003 BILL

SOON

D-Note

Regen

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.

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, 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:

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

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

1844/1dn
LRB-~~000000~~
ARG:kj/fj

~~December 10, 2002~~
Date

ATTN: John O'Brien

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 attached bill treats some, but not all, of the grounds for preemption discussed in *Burlington Northern and Santa Fe Railway Co. v. Doyle*. If the attached bill is enacted, the amended s. 192.25 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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1844/1dn
ARG:kjf:jf

January 31, 2003

ATTN: John O'Brien

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.

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

Barman, Mike

From: OBrien, John
Sent: Monday, February 03, 2003 6:24 AM
To: LRB.Legal
Subject: Draft review: LRB-1844/1 Topic: Minimum number of employees required to be present in a locomotive cab

It has been requested by <OBrien, John> that the following draft be jacketed for the SENATE:

Draft review: LRB-1844/1 Topic: Minimum number of employees required to be present in a locomotive cab