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Details:

(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

**2009-10**

(session year)

**Senate**

(Assembly, Senate or Joint)

**Committee on ... Commerce, Utilities, Energy, &  
Rail (SC-CUER)**

### **COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### **INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

## Senate

### Record of Committee Proceedings

#### **Committee on Commerce, Utilities, Energy, and Rail**

##### **Assembly Bill 314**

Relating to: pesticide use by railroads, granting rule-making authority, and making an appropriation.

By Representatives Molepske Jr., Berceau, Richards, Sinicki, Milroy, Black, Benedict, Turner, Zigmunt, Jorgensen, Roys, A. Williams, Soletski and Smith; cosponsored by Senators Wirch, Lassa, Plale, Hansen and Lehman.

September 24, 2009 Referred to Committee on Commerce, Utilities, Energy, and Rail.

March 23, 2010 **PUBLIC HEARING HELD**

Present: (7) Senators Plale, Wirch, Erpenbach, Kreitlow, Cowles, Harsdorf and Kedzie.

Absent: (0) None.

##### Appearances For

- Louis Molepske — Representative, 71st Assembly District
- Mike Koziara, Holmen — BMWED/IBT
- Tim Deneen, Madison — United Transportation Union
- David W. Cole, Baraboo
- Jessica Cole, Reedsburg
- Dan Cole, Madison — Physician/Former EMT
- Paul Aird, Fond du Lac — Brotherhood of Locomotive Engineers and Trainman
- Anthony Dimond, Reedsburg — Brotherhood of Locomotive Engineers and Trainmen

##### Appearances Against

- None.

##### Appearances for Information Only

- Sam Gratz, Madison — BNSF, CN, CP, UP Railroads
- Ken Lucht, Madison — Wisconsin & Southern Railroad

##### Registrations For

- Justin Johnson, Rio — BLET
- Joanne Ricca, Milwaukee — WI State AFI-CIO
- Bevra Cole, Baraboo
- Danny McGowan, Green Bay — WI Teamsters J.C. 39

Registrations Against

- None.

Registrations for Information Only

- None.

April 7, 2010

**EXECUTIVE SESSION HELD**

Present: (7) Senators Plale, Wirch, Erpenbach, Kreitlow,  
Cowles, Harsdorf and Kedzie.

Absent: (0) None.

Moved by Senator Wirch, seconded by Senator Kreitlow that  
**Senate Amendment 1** be recommended for adoption.

Ayes: (7) Senators Plale, Wirch, Erpenbach, Kreitlow,  
Cowles, Harsdorf and Kedzie.

Noes: (0) None.

ADOPTION OF SENATE AMENDMENT 1 RECOMMENDED,  
Ayes 7, Noes 0

Moved by Senator Wirch, seconded by Senator Cowles that  
**Assembly Bill 314** be recommended for concurrence as amended.

Ayes: (7) Senators Plale, Wirch, Erpenbach, Kreitlow,  
Cowles, Harsdorf and Kedzie.

Noes: (0) None.

CONCURRENCE AS AMENDED RECOMMENDED, Ayes 7,  
Noes 0

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Summer Shannon-Bradley  
Committee Clerk

# Vote Record

## Committee on Commerce, Utilities, Energy, and Rail

Date: 4/7/10

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

AB 314

SB \_\_\_\_\_

Clearinghouse Rule \_\_\_\_\_

AJR \_\_\_\_\_

SJR \_\_\_\_\_

Appointment \_\_\_\_\_

AR \_\_\_\_\_

SR \_\_\_\_\_

Other \_\_\_\_\_

A/S Amdt 1 to AB 314 (as amended)

A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_

A/S Sub Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

Be recommended for:

- Passage
- Introduction
- Adoption
- Rejection
- Confirmation
- Tabling
- Concurrence
- Nonconcurrence
- Indefinite Postponement

*amend with 2nd Kreitlow*

Committee Member

**Senator Jeffrey Plale, Chair**

**Senator Robert Wirth**

**Senator Jon Erpenbach**

**Senator Pat Kreitlow**

**Senator Robert Cowles**

**Senator Sheila Harsdorf**

**Senator Neal Kedzie**

Aye      No      Absent      Not Voting

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 7 - 0

AB 314

*Pres. adop. as amended - Wirth*  
*second - Cowles*

7-0

Motion Carried

Motion Failed

**Shannon-Bradley, Summer**

**From:** Shannon-Bradley, Summer  
**Sent:** Thursday, February 25, 2010 12:15 PM  
**To:** Tradewell, Becky  
**Subject:** AB 314 amendment

Please draft the following amendment.

- p. 2 line 13: add the word "approximate" before the word time
- p. 2 line 13: add the phrase "given weather conditions" after the word applied
- p. 3 lines 7-14 delete this entire section (d)
- p. 3 line 21 delete the word "may" before the word work

Please contact me with any questions. Thank you.

Summer R. Shannon-Bradley  
Office of Senator Jeff Plale  
(608) 266-7505  
State Capitol, 313 South  
P.O. Box 7882  
Madison, WI 53707-7882





Date?

Dear Legislators,

I would like to take this opportunity to respond to Wisconsin's Class I Railroads and AB-3 14 (Revised)

In Representative Molepske's new form, the current legislation no longer causes great problems for Wisconsin railroad companies. The onerous parts have been changed or eliminated; however, the main topics are still covered under federal regulations. With the onerous parts of the bill no longer a problem, let's consider what is covered by federal regulation.

The EPA protects the "Environment;" that is not challenged in AB314. The environment has rights that railroad workers do not, i.e. "protection." That is, protection from entering a contaminated area before the proper reentry time has been observed after application.

I have not found any federal regulation in FRA, OSHA or, EPA that requires a railroad to notify workers of the application of herbicide/pesticide in any given area. Railroads notify workers for their own protection. There are regulations for agricultural worker notification. Railroads do not train employees on reading product label, reentry times and, long term /short term effects of said products.

After doing extensive research, I find OSHA and EPA do not have any regulatory control over the training of railroad workers. Why is it such a problem for rail workers to make sure these applicators are doing a proper application of herbicide/pesticide? Currently railroad workers do not know if "licensed applicators" are following product labels. As a railroad worker, I am sure that knowing the safe reentry time under FIFRA (Federal Insecticide Fungicide Rodenticide Act) would benefit the railroad.

The problem is substantiated by railroad workers not knowing product labeling, reentry times and, long term and short term effects of the product being applied. This is not the case of a solution in search of a problem, but more a solution to mitigate future problems in regards to herbicide/pesticide applications.

**§ 213.37 Vegetation.** Vegetation on railroad property which is on or immediately adjacent to roadbed shall be controlled so that it does not—

- (a) Become a fire hazard to track-carrying structures;
- (b) Obstruct visibility of railroad signs and signals:
  - (1) Along the right-of-way, and
  - (2) At highway-rail crossings; (This paragraph (b) (2) is applicable September 21, 1999.)
- (c) Interfere with railroad employees performing normal trackside duties;
- (d) Prevent proper functioning of signal and communication lines; or
- (e) Prevent railroad employees from visually inspecting moving equipment from their normal duty stations.

Nowhere does the above statute pertain to reading labels and reentry times for locomotive Engineers, Conductors and maintenance personnel.

## § 20106. Preemption

### **(a) National Uniformity of Regulation.—**

**(1)** Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable.

**(2)** A State may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. A State **may adopt** or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order—

**(A)** is necessary to eliminate or reduce an essentially local safety or security hazard;

**(B)** is not incompatible with a law, regulation, or order of the United States Government; and

**(C)** does not unreasonably burden interstate commerce.

### **(b) Clarification Regarding State Law Causes of Action.—**

**(1)** Nothing in this section shall be construed to preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party—

**(A)** has failed to comply with the Federal standard of care established by a regulation or order issued by the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), covering the subject matter as provided in subsection (a) of this section;

**(B)** has failed to comply with its own plan, rule, or standard that it created pursuant to a regulation or order issued by either of the Secretaries; or

**(C)** has failed to comply with a State law, regulation, or order that is not incompatible with subsection (a)(2).

**(2)** This subsection shall apply to all pending State law causes of action arising from events or activities occurring on or after January 18, 2002.

**(c) Jurisdiction.—** Nothing in this section creates a Federal cause of action on behalf of an injured party or confers Federal question jurisdiction for such State law causes of action

Only if the federal regulation on this matter is more stringent would it supersede state legislation, but Wisconsin would be more stringent this case.

The reason one may think this proposed legislation fails to acknowledge the broad scope of existing federal regulation is the railroad worker falls not within OSHA, Agricultural, or any FRA regulation. This legislation is informational to rail workers and emergency dispatchers about what and when herbicide/pesticide products are sprayed.

No one is trying to prohibit vegetation management, but only to regulate it in the interests of safety for railroad workers and state populace. Commonly used herbicides have been shown to be carcinogens, for instance. Note that the claim of 'low acute toxicity,' by admitting that there is ANY toxicity, contradicts the claim of inherent safety. Concern only for Acute toxicity does not address the problems associated with long term exposure.

What was sprayed? Why is my child sick? The railroads spray during the day when most parents are at work. Not knowing the exact questions to ask is not the crime; but not being forthcoming is. Why is this



material such a secret after it has been sprayed? The information about products sprayed on railroad property would give emergency responders a helpful edge in chemical poisoning to the person who eats that "poison berry" next to their yard and to the trespasser. If this new state regulation helps to improve the safe co-existence between national railroads and state populace, then take a few extra minutes for the benefit of railroad and state.

I ask you to vote yes on this legislation. Railroad workers are not asking for penalties to be assessed- just the knowledge to prevent future needless exposure to herbicide/pesticides. I ask for all my friends and co-workers who have had trouble breathing and had rashes that developed after an application, as well as for those among my fellow workers who have not gone home, but have instead gone to the emergency room when these symptoms became severe.

To all that say it's safe to drink, have a glass!

Anthony Dimond, Chairman  
IBT/BLET/WSLB  
Radiation Safety analyst  
DIV 176 LR  
E9775 Buckhorn RD  
Reedsburg, WI 53959



Tony Diamond  
448-8175

### The necessity of AB314-

AB314 was born out of a gap in federal legislation regarding the management of vegetation on railroad properties. According to the code of federal regulation vegetation must be controlled.

**§ 213.37 Vegetation.** Vegetation on railroad property which is on or immediately adjacent to roadbed shall be controlled so that it does not—

- (a) Become a fire hazard to track-carrying structures;
- (b) Obstruct visibility of railroad signs and signals:
  - (1) Along the right-of-way, and
  - (2) At highway-rail crossings; (This paragraph (b) (2) is applicable September 21, 1999.)
- (c) Interfere with railroad employees performing normal trackside duties;
- (d) Prevent proper functioning of signal and communication lines; or
- (e) Prevent railroad employees from visually inspecting moving equipment from their normal duty stations.

It is agreed by all parties that the elimination of vegetation on railroad properties is essential. The application of these herbicide/pesticide products must be done in as safe a manner as possible.

AB 314 is the legislation that fills this safety gap. This proposed legislation provides safety for the railroad employee in performance of their duties and also safety for Wisconsin citizens.

Along with railroad worker safety training AB314 would require:

- The location and description of the area to be treated;
- The name of the pesticide;
- Its active ingredients, and its registration number under federal law;
- The time and date the pesticide is to be applied;
- Any restricted entry interval specified on the pesticide labeling;
- A description of where in the information required to be on the pesticide label under federal law is available for review; and
- Emergency medical contact information. application information to be provided to county emergency response centers.



## DIRECTORY OF COUNTY EMERGENCY MANAGEMENT DIRECTORS

### **ADAMS (SW)**

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### **DANE (SW)**

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### MENOMINEE (NE)

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### MENOMINEE INDIAN

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## DIRECTORY OF COUNTY EMERGENCY MANAGEMENT DIRECTORS

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## DIRECTORY OF COUNTY EMERGENCY MANAGEMENT DIRECTORS

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