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REPORT OF THE

LEGISLATIVE TASK FORCE ON RAILROADS

MEMBERS

Rep. Donald V. Carter, Chair

Sen. Charles G. Dow
Sen. Zachary E. Matthews
Sen. Jerome A. Emerson
Rep. Donnell P. Carroll
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Rep. Paul Parent
Rep. Donald A. Strout

Pursuant to PL 1985

Chapter 813

January 1988

LEGISLATIVE TASK FORCE ON RAILROADS

REPORT

I. Background

The Maine Legislative Task Force on Railroads was authorized by PL 1985 Chapter 813 to conduct a study, the purpose of which is to "identify the most efficient role to be played by the State in retaining and enhancing rail transportation in this state". The Task Force was originally composed of 13 members, one of whom resigned from the Legislature and consequently from the Task Force. Membership included representatives from the Joint Standing Committees of the Legislature having jurisdiction over taxation, transportation, appropriations and financial affairs and labor. A list of the members is provided as Appendix A to this report.

The Task Force established as its primary objectives

- 1) to preserve the option of rail transportation for the future;
- 2) to provide a complete range of transportation options to Maine business and industry;
- 3) to preserve economic development opportunities for geographically isolated areas of Maine; and
- 4) to benefit Maine's existing and potential businesses and industries that require long-haul bulk transportation.

Secondary objectives were also identified by the Task Force. They are:

- 1) to provide well-paying rail-related jobs for Maine workers;
- 2) to maximize the advantages of rail as the safest form of land transportation of hazardous materials;
- 3) to maximize the advantages of rail as the most energy efficient form of land transportation; and
- 4) to conserve Maine's highway system by diverting heavy truck hauls to rail to the maximum extent possible.

The Task Force met to gather information in August, September and October 1987. Information was presented by representatives of rail users, rail labor, rail management and members of the general public including the Executive Director of the North Kennebec Regional Planning Commission and the Maine Potato Board

and transportation consultants. A public hearing was held in October 1987 to which all members of the public were invited. Representatives of Maine Department of Transportation and the Federal Railroad Administration also presented information for the Task Force's consideration.

II. Federal Pre-emption

Throughout the course of the Task Force's deliberation the role of the federal government was a major concern. Federal law regulating railroads is comprehensive and federal pre-emption language limits actions on the part of the State with regard to some essential matters including a number of safety related issues and the role of government in assuring adequate service to consumers.

The federal agencies with jurisdiction over the railroad industry include the Interstate Commerce Commission which oversees questions of railroad operations and the Federal Railroad Administration which inspects railroads for compliance with safety rules established by the agency. Railroads themselves have inspectors so the Federal inspectors have the role of determining whether the private inspectors are performing their duties adequately.

These two agencies, the ICC and the FRA, exercise exclusive jurisdiction over many matters of concern to the Task Force. Specifically, the ICC has pending before it two petitions concerning rail activity in Maine. The first is a petition of the Canadian National Railway Company to acquire trackage rights over the Maine Central Railroad system. This would allow CN direct access to customers who currently must use the Springfield Terminal Rail Company to get shipments to or from CN. The second is a petition by rail labor challenging the authority of Guilford Transportation Industries to lease the Maine Central Railroad to Springfield Terminal. Both petitions have been pending a long time and the uncertainty produced by their pendency is, in itself, having a disruptive effect on rail transportation in the State.

The Federal Railroad Administration has the sole jurisdiction over many safety matters which affect not only the safety of railroad workers but of the general public as well. The Task Force is concerned that the FRA is not able to respond to complaints in a thorough and timely fashion and that when violations of Federal standards are discovered, it is far from certain that corrections in the conditions are made or that sanctions are imposed or enforced. In addition, the FRA has announced plans to discontinue operations from its office in Bangor, the only FRA facility located in Maine.

The Task Force also finds that State officials, including the Legislature, should be better informed of Federal activity affecting railroads and should become more active in advocating the interests of the State.

Recommendations

- 1) The Task Force urges the Interstate Commerce Commission to act with dispatch on petitions pending before it with regard to rail service in Maine, specifically on the question of trackage rights requested by Canadian National Railway over the line of Guilford Transportation Industries and with regard to the lease by Guilford Transportation Industries of its Maine Central and Boston and Maine lines to Springfield Terminal Rail Company.
- 2) The Task Force urges the Federal Rail Administration to work with State officials to respond to and follow through on complaints concerning safety of rail operations.
- 3) The Task Force urges Congress to fund the Federal Rail Administration adequately to provide sufficient inspectors for track, motive power and equipment, hazardous materials, operating practices and signals in Maine and to amend the Federal Rail Safety Act to include requirements for sanitation and safety in living and working quarters on rolling stock and to provide licensing or other provisions to assure the qualifications of railroad personnel.
- 4) Finally, the Task Force recommends an on-going State involvement in the federal decision-making and administrative processes. The Task Force recommends that the Department of Transportation be the lead State Agency in this involvement and that the Attorney General's office and such other State agencies as may be helpful, provide assistance as required.

III. The Railroad Industry in Maine

The Task Force finds that rail transportation is essential to many Maine businesses and industries and that the exclusive nature of rail transportation to most points within the State creates a virtual monopoly for railroad providers. This places a special obligation on the railroad industry to provide adequate service at reasonable costs. The Task Force further acknowledges the responsibility to provide for State assistance to assure this objective where necessary. In addition the Task Force recognizes the challenges facing the railroad industry at this time. The deregulation of the rail industry in 1981 and the coincident deregulation of the trucking industry has presented the railroads with the need to modernize operations in order to reduce costs, thereby enhancing their competitiveness with the trucking industry. The Task Force recognizes this need to modernize and that modernization may include changes in the work rules affecting rail labor. With regard to labor relations

it is the policy of the Legislature not to interfere with labor-management negotiations or agreements. At the same time, there is an expectation that the parties will deal in good faith, especially where the safety of rail workers or the general public is concerned.

Notwithstanding the essentially private nature of the railroad industry, the exclusive nature of federal regulations with regard to many issues of great concern and the independent nature of labor-management relations, the Task Force finds that the safety of property, rail workers and the general public must be protected and that railroads are critical to the movement of certain commodities necessary to Maine's industrial base and that movement of those commodities must be assured.

The Task Force has generally considered the railroad industry as a whole in developing its findings and recommendations. However, it would be misleading not to note the attention which has been devoted to Guilford Transportation Industries during the course of the Task Force's proceedings. As part of its study the Task Force obtained the services of a national railroad consulting firm, R. L. Banks and Associates, to evaluate industry practices and their effect on rail transportation in Maine. Guilford was a focus of that work as well. While there is a general understanding of the reasons for the aggressive actions taken by the management of Guilford, there remains frustration at the lack of communication, openness and apparent commitment to maintaining a high quality of service and safe operating conditions on the part of Guilford.

The Task Force is concerned about this situation and urges the Federal officials with jurisdiction in these areas to be especially mindful of these concerns.

IV. State Action

Existing Programs

Maine's Department of Transportation has, within the Bureau of Transportation Services, a Rail Transportation Division. This Division consists of a Director, three professional personnel and part-time support staff. These individuals administer the Department's cost-sharing programs. These programs include the federal cost-sharing program for development of rail-crossings and more recently, the State cost-sharing program for maintenance of railroad crossings.

The State cost-sharing program is a result of the 1985 Railroad Transportation Policy and Plan. The Legislature authorized the Department of Transportation to provide reimbursement to railroad companies of up to 50 percent of the cost of maintaining at-grade crossings, including protective devices at crossings such as signals, gates or highway bridges over railroads.

In order to participate in this program, a railroad company must submit an annual report describing its grade crossing and highway over railroad maintenance programs. This program is funded by the Highway Fund and expenditures have been and are expected to be approximately \$1 million per calendar year.

The Federal cost-sharing program is for construction or installation of new crossing improvements. This program will pay for surface improvements or installation of protective devices at crossings, including highways over or under railroads. The Federal Highway Administration covers 80 percent of the cost, the State pays 10 percent and either the railroad or local government pays the other 10 percent. The Department of Transportation expects projects costing a total of \$5.2 million to be funded during fiscal years 1988 and 1989.

In addition to the administration of cost-sharing programs the Department has, since 1975, had the authority to enter into temporary arrangements to continue service over lines abandoned by a railroad company. In 1985, that authority was expanded to allow the Department to purchase any portion of an abandoned right-of-way if the Department determines that the "welfare of the State would be significantly and adversely affected by the loss of the line..."

In November of 1985 the voters ratified an \$850,000 bond issue to provide funds to acquire three branch lines which had been listed for abandonment. In 1987 the Legislature determined that a General Fund appropriation would be a better mechanism to fund these acquisitions and de-authorized the bonds. One of the lines, the Mountain Division from Steep Falls to Fryeburg has not yet been abandoned. The other two, the Brunswick to Rockland Branch and the Brewer to Calais Branch have been abandoned and the Department has recently entered into a series of agreements to acquire them. The Department is investigating the feasibility of restoring service along these lines.

The Local Rail Service Assistance Program of the federal government has been administered by the Department but does not currently receive funding. This has left the Department with little ability to assist railroads in need of short-term assistance to maintain service on their lines. During the operation of the LRSA program, several branch lines were upgraded, which has allowed rail service to continue to Loring Air Force Base in Aroostook County, along the Belfast and Moosehead Lake Railroad in Waldo County and in other locations around the State. In addition to these formal assistance programs, Rail Division personnel have attempted to provide informal dispute resolution between rail users and rail providers.

Other laws affect railroads in the areas of taxation, safety, and a variety of miscellaneous provisions which reflect the unique regard in which the railroads have been held.

Generally railroad companies are treated like other corporations for the purposes of sales and income taxes. In 1983 railroads paid a total of \$795,000 in sales tax, including sales tax on diesel fuel. The only sales tax treatment specific to railroads is an exemption enacted in 1985 for railroad track materials purchased and installed on railroad lines in Maine. When the exemption was proposed, it was estimated that \$180,000 would be claimed; however, the Sales Tax Division of the Bureau of Taxation reports that in FY 1986 only \$6,100 was claimed. The Division projects that \$9,200 will be claimed for FY 1987. One reason for this may be that in order to qualify for the sales tax exemption a railroad company may not require another landowner to maintain or assume liability for private road crossings, nor may the railroad remove a crossing if there is objection to its being removed.

Railroads may be eligible for a fuel tax exemption certificate from the State Bureau of Taxation. Those companies which take the exemption pay a 5% sales tax on their fuel; those who pay the fuel tax do not pay sales tax on diesel fuel and are entitled to a refund of 13 cents per gallon of the 14 cent fuel tax for fuel used in railroad engines themselves. Most railroad companies have fuel tax exemptions and pay the sales tax on diesel fuel.

The major differences in tax treatment for railroads are in the property and excise taxes. Railroad companies are subject to property tax for their land outside of their rights-of-way or in rights-of-way where service has been abandoned and for all of their buildings. Railroad corporations do not pay a property tax for land within their rights-of-way provided that rail service operates over that right-of-way.

Each railroad company is required to pay an excise tax for the privilege of operating in Maine. The basis for this tax has changed slightly over the years and is now the greater of a sliding percentage of profits reduced by a 5 3/4 percent rate of return on investment or a minimum tax of 1/4 of 1 percent of the gross transportation receipts.

In 1987 all rail companies paid the minimum tax which is calculated by taking that percentage of the company's total track which is located in Maine and applying that percentage to the total gross transportation receipts of the company. Both Canadian National Railway and Canadian Pacific Railroad have asked the Legislature several times to adjust the basis on which the tax is calculated to reflect the fact that relatively little of their revenues are generated within Maine.

The amount of the excise tax has declined severely in the past two years from over \$1.2 million in each FY 1984 and 1985 to \$562,000 in FY 1986 and \$336,000 through May in FY 1987.

Railroads are finite in number and are guided ways over which cars are moved. State and federal law require inspections of crossings and track conditions by both railroad and government officials. However, railroad trains in motion are slow to stop and therefore state law imposes some burden for safety on highway users where rail and highways intersect. For example, buses carrying passengers, motor vehicles carrying hazardous materials and cargo tank vehicles used for transporting flammable or explosive materials are required to stop before proceeding across railroad tracks.

There are a number of statutory provisions dealing with special violations against railroads. For example, snowmobiles and ATV's are specifically prevented from using railroad rights-of-way without permission; malicious mischief to rail property is a distinct crime; there is a specific prohibition against damaging trains as part of a labor dispute.

While these do not have a major effect on railroads in Maine, they do tend to show the special relationship that has existed in statute for over 100 years.

New Initiatives

The Task Force finds that the objectives which it identified at the beginning of this study can best be served by focusing attention on ways to improve service, including infrastructure improvements, and utilization and on safety and sanitation issues.

The Task Force finds that the provision of adequate service is essential to support the State's manufacturing base and that the general public must be assured of safe operations within the State. With regard to service improvements the Task Force finds that there is a need for the Department of Transportation to become more active in identifying rail lines or segments which are at risk of abandonment and to intervene to retain the infrastructure and service levels on those lines.

The Task Force also finds that it is in the State's interest to encourage the utilization of rail or to transport certain commodities, specifically those which put a heavy burden on the highway system, those which are considered hazardous materials and solid waste which is being transported long distances to disposal or recycling facilities. With regard to increasing utilization of rail services, the Task Force finds that the railroad industry must bear responsibility for marketing its services to potential customers.

The Task Force finds however that in some cases one reason for declining utilization is the failure of railroad companies to provide adequate service. The significance of this failure is to effectively deny rail service to Maine business and industry for which it is essential or desirable. This issue is complicated by

the limits on State action imposed by Federal pre-emption through the Interstate Commerce Commission, and also by the reluctance of the Legislature to become involved in essentially private transactions.

Recommendations for service and utilization improvements

- 1) The Task Force recommends that the Department of Transportation be provided with funding to 1) conduct economic studies, physical rail plant condition surveys, short-line operator searches, and other activities leading to the preservation of rail line segments which appear to be candidates for future abandonment; 2) to allow the Department to acquire or lease, maintain and insure active railroad lines when the owning carrier can no longer provide a satisfactory level of service; and 3) to provide low-interest loans to rail operators in order to allow such operators time to establish or re-establish a firm traffic base from which to derive operating revenues. (See draft legislation, Appendix B-1.)
- 2) The Task Force also recommends that the Department of Transportation be directed to require as a condition of State assistance through these programs, the cost-sharing programs or other State efforts that certain service and safety conditions be met and maintained. (See draft legislation, Appendix B-2.)
- 3) Despite considerable federal jurisdiction over service, marketing and utilization, the Task Force recommends that the issue of how to increase service and marketing on the part of the railroads and utilization on the part of rail users be studied further.

The issue of safety on railroads is one with which the Task Force has been concerned since the outset of this study. It manifests itself in ongoing labor disputes and complaints to the Federal Railroad Administration. The public policy which underlies this issue is the obligation of the State to assure the health, safety and general welfare of its citizens. The Federal Railroad Administration is the agency which is charged with assuring safety on railroads. In fact, many areas of safety in which the State might have an interest are pre-empted by the Federal Rail Safety Act.

The FRA does have a program through which the State can increase the level of safety-related activity on rail lines within its boundaries. This State participation program allows state employees to become certified as inspectors and to supplement FRA activity in the State. There is a possibility that a Federal share of 24 per cent would be available to fund this State participation.

In addition, repeated concerns have been expressed at the state and federal levels about the use of under-trained or untrained personnel to operate railroad equipment. The Task Force acknowledges ongoing congressional attempts at requiring certification of rail employees. However in the absence of federal standards this issue must be addressed.

Sanitation requirements are imposed in stationary railroad work places under the federal Occupational Safety and Health Act. However, no state or federal agency has jurisdiction over sanitation on rolling stock. Specifically, reports of unhealthy living and working conditions in locomotives and camp cars are of concern to the Task Force. This issue has been discussed in Congress but in the absence of federal action the Task Force finds that the State Department of Labor should exercise jurisdiction over sanitation issues on rolling stock.

Recommendations concerning safety and sanitation

- 1) The Task Force recommends that the Maine Department of Transportation participate in the Federal Railroad Administration inspection program by providing three additional staff positions to be filled with personnel who will be trained and certified as State railroad safety inspectors in the disciplines of track, motive power and equipment and hazardous materials. (See appropriation, Appendix B-1.)
- 2) The Task Force recommends that the State impose a licensing requirement on certain categories of railroad personnel. Consistent with other State licensing and registration activities, the Task Force recommends that a Board of Licensure of Railroad Personnel be established with membership from rail labor, rail management, the State Department of Labor, the Department of Professional and Financial Regulation and the State Department of Transportation Rail Safety Inspector Program. The duties of the Board would include establishing minimum standards for railroad training programs for personnel authorized to operate railroad equipment and assuring that they have received this minimum training and are capable of performing the duties assigned to them. (See legislation, Appendix B-3.)
- 3) The Task Force recommends that the Maine Department of Labor adopt rules to assure that workers on rolling stock have potable water and sanitary living and working conditions. (See legislation, Appendix B-4.)

The Task Force has reviewed the State's rail acquisition policy and finds that, in general, it is adequate in terms of the State's acquisition of abandoned rail lines. However transfers of operations between railroads now requires no involvement on the part of the State. The Task Force finds that transfers of

this sort could significantly affect transportation service in Maine and that the State has an interest in assuring that any transfer will not adversely affect rail service.

Recommendation on acquisition

The Task Force recommends that legislation be enacted to create a legal requirement for a new operator to notify and seek approval of the Department of Transportation of its plan of operation within the State. The Task Force further recommends that language proposed by the Department of Transportation be the basis for that legislation. (See legislation, Appendix C.)

The Task Force has also considered the issue of equity with respect to rail operators and the trucking industry. There has been some concern expressed that some highway users, specifically commercial truckers, may not be paying their "fair share" of the cost of maintaining the highway system, and are therefore being subsidized by other users. The Maine Department of Transportation is conducting a study to determine whether the cost of the highway system is being equitably allocated among the various classes of highway users. That study is scheduled to be completed by January, 1989. At that time the Legislature will be able to determine whether commercial trucks are being subsidized by other highway users and if so whether highway costs should be reallocated to remove any subsidy or perhaps whether rail providers should receive an equivalent subsidy in the interest of equity.

The Task Force is aware that overweight trucks present a special problem in terms of cost allocation and in terms of providing an unfair advantage to truckers who violate weight limitations. The Legislature has recently increased the number of personnel involved in truck weight enforcement in an effort to address this problem.

The Task Force finds that there is insufficient data concerning the extent of truck weight violations to take any further action at this time. However, there is a need to improve the availability of data. In addition to the records currently available, the Task Force believes that bills of lading, freight bills, scale tickets and similar documents may provide accurate records of truck weights and that when these are compared with the maximum weight for which a vehicle is licensed a more accurate indication of the extent of overweight violations can be ascertained. The State of Minnesota has adopted a law which allows the use of these documents as evidence of a civil violation of the State's truck weight laws. The Task Force finds that the Maine Department of Public Safety should have access to these documents and should use them to assist the Department of Transportation in the management of information on truck weight violations.

Recommendations on equity between rail and highway transportation

- 1) The Department of Transportation is currently conducting a cost allocation study and the Task Force recommends that any action on this issue be deferred until the results of that study are known. The Task Force further recommends that the Department of Transportation report the results of its cost allocation study to the Joint Standing Committee on Transportation by January, 1989.
- 2) The Task Force recommends that the Department of Transportation, with the assistance of the Department of Public Safety, the Secretary of State and the Judicial Department collect and manage information concerning the percentage of trucks in violation of weight limits, the percentage of those apprehended for violating truck weight laws and the percentage of those paying fines and the amount of fines collected. (See legislation, Appendix B-5.)
- 3) The Task Force recommends that the State be given authority to inspect bills of lading, freight bills, scale tickets and similar documents for the purpose of preparing statistics showing the extent of trucks operating in excess of the weight for which they are licensed. (See legislation, Appendix B-5.)

The Task Force also finds that certain changes should be made to existing statutory language at the suggestion of the Maine Department of Transportation. Specifically these changes would be required in the section of statute requiring partial reimbursement of costs for the maintenance of public railroad crossings. Those changes would include changing the base on which reimbursement is calculated, contracting for maintenance on critical crossings and allowing the department to withhold monies from any railroad which fails to maintain a safe rail system or fails to cooperate with the State agency. Another change recommended by the Department of Transportation is to allow the department to post certain railroad crossings as exempt from motor vehicle laws requiring certain vehicles to stop before passing over the crossing. These exempt crossings would be on those lines over which traffic is infrequent and would require that railroad personnel bring any train approaching such a crossing to a complete stop and to assure that no traffic is on-coming.

Recommendations for changes in existing statute

- 1) The Task Force recommends that the state partial reimbursement program for maintenance of crossings be amended to change the basis for calculating the amount of reimbursement and to allow the Department to contract for critical maintenance work and withhold payment from railroads where public safety requires that this be done. (See legislation, Appendix B-2.)

- 2) The Task Force recommends that the Department of Transportation be authorized to exempt certain railroad crossings from motor vehicle laws where there is no rail traffic, provided that should a railroad wish to operate a train through such a crossing it will be required to stop the train and warn or stop any approaching motor vehicle. (See legislation, Appendix B-6.)

Finally, it is the hope of the Legislature that the Department of Transportation and such as agencies as the Department finds to be necessary will maintain a public presence with regard to issues concerning railroad operations within the State of Maine.

The Task Force finds that rail transportation is an essential mode of transportation in this State and deserves the on-going attention of both the Executive and the Legislative branch. In particular the issues of State action to increase utilization and to assure adequacy of service should be addressed in the near-term. With respect to the issue of adequate service, the Attorney General's office has indicated that at least two approaches should be considered. The first is the possibility that the State have authority to take a railroad by eminent domain in order to provide or cause to be provided the service necessary to the welfare of the State. This would require payment by the State of just compensation to the railroad. The second approach is to petition, or join in a petition to the Interstate Commerce Commission requesting that it direct another entity to provide the necessary rail service. The availability and effect of either of these approaches is not entirely clear and the Task Force will require additional time to study these matters.

Recommendations for on-going State Agency involvement

- 1) The Task Force recommends that the Department of Transportation present a biennial rail transportation improvement program in which issues affecting safety, operations, infrastructure improvements and other factors influencing the provision of rail service in Maine are presented to the Legislature along with the recommendations which will assure the retention and enhancement of rail service within the State.
- 2) The Task Force recommends that funds required to implement the recommendations in this report be taken from the General Fund and reflect the amount of railroad excise tax which comes to the general fund under the provisions of Title 36. In addition the Department is encouraged to solicit federal funds as they may become available, for the purposes of implementing the recommendations in this report.
- 3) With respect to the issue of State action which will assure the increased utilization of railroad transportation and the issue of eminent domain or other State action which will

assure the provision of adequate rail service the Task Force will continue its work and will issue a supplemental report later in this session.

Attached as Appendix B is a draft Legislation which will accomplish the purposes of this report.

APPENDIX A

MEMBERS OF THE LEGISLATIVE TASK FORCE ON RAILROADS

Rep. Donald Carter (D-Winslow, Chair)
Rep. Donnell Carroll (D-Gray)
Rep. Lorraine Chonko (D-Pejepscot)
Rep. Edward Dexter (R-Kingfield)
Rep. Thomas Duffy (D-Bangor)
Rep. Gennette Ingraham (R-Houlton) - resigned September 8, 1987
Rep. Ruth Joseph (D-Waterville)
Rep. Rita Melendy (D-Rockland)
Rep. Paul Parent (R-Benton)
Rep. Donald Strout (R-Corinth)
Sen. Charles Dow (D-Kennebec)
Sen. Jerome Emerson (R-Penobscot)
Sen. Zachary Matthews (D-Kennebec)

APPENDIX B
DRAFT LEGISLATION

1. Rail Preservation and Assistance Act
2. Revise the Laws Concerning Cost Sharing
3. Board of Licensure of Railroad Personnel
4. Sanitary Conditions on Rolling Stock
5. Capability to Assess Impact of Overweight Trucks
6. Permit Exempt Crossings

AN ACT to Create the Rail Preservation and Assistance Act, and to Provide for Annual Track Inspections

Sec. 1. 23 MRSA § is enacted to read:

Sec. A. Findings of Fact.

The Legislature makes a finding of fact that a viable and efficient rail transportation system is necessary to the economic wellbeing of the State.

The Legislature makes a further finding of fact that the State must take active steps to protect and promote rail transportation in order to further the general welfare.

Sec. 2. 23 MRSA § is enacted to read:

Sec. B. Rail Preservation and Assistance Fund.

1. Deposit of Funds. All revenues derived from the tax levied pursuant to 36 MRSA Chapter 361 shall be deposited by the Treasurer in a separate account to be known as the Rail Preservation and Assistance Fund.

2. Legislative Approval of Budget. Expenditures from the Rail Preservation and Assistance Fund are subject to legislative approval in the same manner as allocations from the General Fund.

3. Use of Funds. Subject to the Civil Service Law, money in the fund may be expended to hire employees and to defray other costs authorized by law for the Department of Transportation, Bureau of Transportation Services as follows:

A. To conduct studies relating to the economic impact of rail transportation on the State including benefit/cost analyses associated with the possible retention or loss of individual rail lines;

B. To conduct periodic condition surveys of rail track and other related facilities;

C. To acquire, lease, and maintain rail lines when these actions are determined to be in the best interest of the State;

D. To provide grants or low-interest loans to the operators of rail lines when such grants or loans are determined to be the most practical ways of maintaining service on a line, and the continued operation of the line is determined to be in the best interest of the State. The Department may require that any loans provided pursuant to this section be secured by the assets of the rail corporation or operator receiving the loans. The Department shall develop guidelines with respect to qualifying for any programs instituted under this section. The Department shall also develop guidelines for the administration of this section.

4. Any balance in the fund in excess of that required for the purposes of this section shall not lapse, but shall be carried forward. Any allocation of this balance shall be identified as to source.

Sec. 4. Appropriation. The following funds are appropriated from the General Fund.

Transportation	1988-89
Personal Services	\$100,000

Provides funds for three
railroad inspectors

Statement of Fact

The purpose of this bill is to create the Rail Preservation and Assistance Act. Specifically, this bill creates a Fund to be used to protect, preserve, and promote rail transportation in the state. The fund would be financed from the excise tax on railroad gross receipts.

The Fund would be administered by the Department of Transportation, and could be used to conduct studies to determine the effect on the State's economy of losing or maintaining rail service; to survey track condition; to acquire, lease or maintain rail lines; and to provide grants and loans.

This bill also provides for three full time inspectors.

AN ACT to Revise the Laws Concerning
Cost Sharing for Maintenance of Railroad
Grade and Highway Bridge Crossings and
the Allocation and Appropriation of Funds
for Transportation Purposes.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 23 MRSA §2930 is repealed and the following is enacted in its place.

§2930. Partial reimbursement of cost

The State, by or through the Department of Transportation, may reimburse railroad corporations for up to 50 percent of their annual cost of maintaining public at-grade railroad/highway crossings and crossing protection devices. These crossing protection devices shall include signals, gates, crossbucks, and grade separation bridges carrying highways over railroad lines. The actual reimbursement shall be calculated for each railroad based on the formula below. "Cost" shall include all reimbursable costs incurred by the railroad, as determined by the Commissioner, less any payments made to the railroad by any other entities.

For the purpose of this section, public at-grade crossings shall be those crossings determined by the Commissioner of Transportation to be public crossings. Public crossings shall not include crossings on rail lines abandoned, embargoed, or lines listed by the railroad corporation in Category I, Category II or Category III, as defined by the Interstate Commerce Commission, on the railroad corporation's most recent system diagram map filed with the Interstate Commerce Commission.

The State may provide annually each railroad corporation with a reimbursement payment. For at-grade crossings, the payment shall be determined based on each railroad corporation's verified average cost for crossing maintenance multiplied by the number of eligible crossings, with a maximum payment of \$1500 per crossing. For grade separation bridges, the payment shall be determined based on each railroad corporation's verified average maintenance cost for grade separation bridges multiplied by the number of eligible structures, with a maximum payment of \$2500 per structure.

Payment to any railroad corporation may be made contingent upon the railroad corporation performing specified maintenance on specific crossings or grade separation bridges when, in the judgment of the Commissioner, the public welfare or safety requires that the maintenance be performed. If the railroad corporation fails to perform the required maintenance, the Department may contract with others for the work or perform the work itself. In either case, reimbursement of the actual costs

shall be made to the entity performing the maintenance or causing the maintenance to be performed. The reimbursement payment to each railroad corporation shall be adjusted to reflect the costs of any maintenance performed by others on lines for which the railroad corporation is responsible under this provision. The adjustment shall also reflect an amount to cover the Department's administrative costs for arranging the maintenance to be performed

Each railroad corporation which seeks reimbursement under this section must report annually its actual maintenance costs for the previous calendar year which shall be used to calculate the reimbursement. The Department shall establish guidelines to determine allowable maintenance costs.

This annual report shall describe its maintenance program for public grade crossings and highway over railroad grade separation bridges. The report shall include the total actual costs incurred, total quantities of materials used and work-hours expended for the previous year. The Department may audit records and supporting documentation relating to costs incurred by railroad corporations.

The Commissioner shall develop guidelines to require that any railroad corporation, prior to receiving a reimbursement for the maintenance of the line on which an eligible crossing is located shall file an annual plan by December 1 of each calendar year. The plan shall describe the condition of the line, the maintenance to be performed in the year for which reimbursement is sought, the speed at which trains will be allowed to operate over that line, the posted vehicle load limit on grade separation bridges and any other information required by the Commissioner. The Commissioner may also require as a condition of reimbursement that certain non-crossing maintenance or repairs be performed on the line or that the line be maintained to allow trains to operate at a certain speed, that vehicle load limits on grade separation bridges be maintained or that other measures affecting the safety and maintenance of the track be taken by the railroad corporation.

STATEMENT OF FACT

This bill changes the state cost sharing program for maintenance of railroad crossings in three ways. First, it changes the basis of reimbursement to reflect a railroad company's actual costs up to a specific dollar amount. Second, it allows the Department to make reimbursement contingent on railroad compliance with specific requests of the Department necessary for the preservation of public safety and welfare. Third, it allows the Department to contract with entities other than railroad companies to assure that necessary crossing maintenance is done.

AN ACT to Require Licensure of
Certain Railroad Personnel

Be it enacted by the People of the State of Maine as follows:

Section 1. 5 MRSA s 12004, sub- s 1, paragraph a is amended by adding after sub-paragraph 34, sub-paragraph 34-A, as follows:

Board of Licensure of Railroad Personnel	Expenses only	32 MRSA s 4145
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Section 2. 32 MRSA c. 60 enacted as follows:

Chapter 60

Railroad Personnel

Subchapter I General Provisions

s 4140. Declaration of purpose.

It is the purpose of this chapter to provide for the safety of property and of railroad workers and the general public by requiring certain railroad personnel to demonstrate adequate training and competency.

s 4141. Definitions.

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings:

1. Applicant. "Applicant" shall mean the individual who wishes to act as a brakeman, carman, conductor, flagman, locomotive operator, or train dispatcher.
2. Board. "Board" shall mean the Board of Licensure of Railroad Personnel.
3. Commissioner. "Commissioner" shall mean the Commissioner of the Department of Professional and Financial Regulation.
4. Department. "Department" shall mean the Department of Professional and Financial Regulation.
5. Railroad Personnel. For the purposes of this chapter, an individual is acting as one of the following personnel if he performs the duties of that personnel, without regard to the job title given him in his employment.
 - a. Brakeman. "Brakeman" means a person who applies the brakes to stop a train during the normal operation of the

train and who assists the locomotive operator in making observations of the track and other conditions during the operation of a train.

- b. Carman. "Carman" means a person who inspects railroad cars for compliance with the standards of the Federal Railroad Administration and certifies or withholds certification of the suitability of a car for service.
- c. Conductor. "Conductor" means a person who is responsible for all movements of a train including the consist of a train and the location of cars on the train, who keeps and implements all work orders for operation of the train and who is responsible for manifests showing the cargo of the train.
- d. Flagman. "Flagman" means a person who is responsible for stopping vehicular traffic at a railroad crossing and for signaling the locomotive operator when it is safe to continue.
- e. Locomotive Operator. "Locomotive operator" means a person who operates a locomotive by controlling the locomotive throttle and who is responsible for signaling the train's approach to a rail-highway crossing.
- f. Train dispatcher. "Train dispatcher" means a person who controls the operation of all train activity on track within a given territory.

Subchapter II Board of Licensure of Railroad Personnel

s 4145. Board of Licensure; Appointment; vacancies; removal; compensation

1. Establishment and membership. A Board of Licensure of Railroad Personnel is hereby established within the Department and shall be composed of nine members, one of whom shall be the Commissioner, one of whom shall be the Commissioner of Labor or his representative, one of whom shall be a State Railroad Inspector and six of whom shall be appointed by the Governor.

Two of the members appointed by the Governor shall represent railroad labor; two shall represent railroad management and two shall be a representative of the general public.

2. Terms of appointment. Members appointed by the Governor shall be appointed for a term of 3 years. To the first board established under this chapter, the Governor shall appoint 2 board members for terms of one year, 2 for terms of 2 years and two for terms of 3 years.

Any appointive member of said board may be removed from office for cause by the Governor.

3. Compensation. The members of the Board, shall be compensated according to the provisions of Title 5, Chapter 379 provided that expenses do not exceed the fees collected by the board. If the fees to be collected under this chapter are insufficient to pay the expenses provided by this section, the board members shall be entitled to a pro rate payment in any years in which such fees are insufficient.
4. Vacancies. Any vacancy on the board caused by death, resignation or removal of any member shall be filled by the appointment of a person qualified as was the board member being replaced, to hold office during the unexpired term of the member whose place is thus filled.
5. Chair. Annually, in the month of January, the members of the board shall choose one of their members to act as chair.

s 4146. Administrative provisions.

1. Employees. The Commissioner shall be empowered to appoint, subject to the Personnel Law, such employees as may be necessary to carry out this chapter. Any person so employed shall be located in the Department and under the administrative and supervisory direction of the Commissioner.
2. Meetings. The board shall hold regular meetings semi-annually and such meetings as it determines are necessary. The board shall keep correct records of all its proceedings and shall be authorized to make such rules and regulations as it shall deem necessary for carrying out this chapter, and to provide for reciprocity of licensing with similar boards of other states which maintain standards at least equal to this State.
3. Budget. The Board shall submit to the commissioner its budgetary requirements in the same manner as provided in Title 5, Section 1665.

s 4147. Board of Licensure; powers and duties

1. Powers. The board shall administer and enforce this chapter and evaluate the qualifications of applicants for licensing. The board may examine witnesses, administer oaths and shall investigate or cause to be investigated any complaints made to it or any cases of non-compliance with or violation of this chapter.
2. Rules. The board may adopt, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, rules relating to qualifications of personnel to carry out the policy of

this chapter, including, but not limited to, rules relating to licensing and to the establishment of adequate standards of training for persons licensed to act as brakemen, carmen, conductors, flagmen, locomotive operators or train dispatchers on any railroad operating in the State.

3. Hearings. Hearings may be conducted by the board to assist with investigations, to determine whether grounds exist for suspension, revocation or denial of a license or as otherwise deemed necessary to the fulfillment of its responsibilities under this chapter. Hearings shall be conducted in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, to the extent applicable.

4. Records. The board shall keep such records and minutes as are necessary to the ordinary dispatch of its functions.

5. Contracts. The board may enter into contracts to carry out its responsibilities under this chapter.

6. Reports. No later than August 1st of each year, the board shall submit to the commissioner, for the preceding fiscal year, its annual report of its operations together with such comments and recommendations as the commissioner deems essential.

Sub-Chapter III License

s 4148. License required; issuance

1. License required

- a. No person shall act as a brakeman, carman, conductor, flagman locomotive operator, or train dispatcher in the operation of a railroad unless he has been licensed by the board to do so.
- b. No railroad company shall allow a person to act as a brakeman, carman, conductor, flagman, locomotive operator, or train dispatcher unless he has been licensed by the board to do so.

2. Penalties

- a. Any person who acts as a brakeman, carman, conductor, flagman, locomotive operator, or train dispatcher and who is not licensed to do so is guilty of a Class D crime.
- b. Any railroad company which allows any person to act as a brakeman, carman, conductor, flagman, locomotive operator, or train dispatcher who is not licensed to do so is guilty of a Class D crime.

3. Application; qualifications. The board shall issue a license to any person who files a sworn or attested application therefor and who meets the following qualifications:
 - a. Passage of an examination approved by the board, covering the rules of operation of the railroad for whom he is employed.
 - b. Successful completion of classroom and shop instruction approved by the board in the skills which the position requires.
 - c. Successful completion of a training program approved by the board, which provides actual or simulated experience in the job for which the person seeks licensure; and
 - d. Such other requirements as may be necessary to assure the safety of property, railroad workers and the general public. Such requirements shall be established by the board through rulemaking pursuant to Title 5, Chapter 375.
4. License. All persons who receive a license of authority to act as a brakeman, carman, conductor, flagman, locomotive operator, or train dispatcher shall have the license available for inspection any time at which he is performing the duties allowed by the license.
5. Term of License.
 - a. A license shall expire annually on December 31st or on such other date as the commissioner may determine. Notice of expiration shall be mailed to each licensee's last known address at least 30 days in advance of the expiration of the license. The notice shall include any requests for information necessary for renewal.

Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee of \$10 in addition to the renewal fee. Any person who submits an application for renewal more than 90 days after the licensing renewal date shall be subject to all requirements governing new applicants under this chapter.
 - b. Each license renewal shall be accompanied by evidence of continuing education or other requirements as established in rule by the board.
 - c. The board shall adopt rules establishing requirements for a temporary license within the scope of this chapter.

s 4149. Disciplinary actions.

1. Complaints. The board may order an investigation of a complaint on its own motion or on written complaint filed with it regarding non-compliance with or violation of any section of this chapter or of any rules adopted by the board.
2. Disciplinary actions; grounds. The board may suspend or revoke a license pursuant to Title 5, section 10004. In addition, the board may refuse to renew or the Administrative Court may revoke, suspend or refuse to renew any license issued under this chapter on any of the following grounds:
 - a. Fraud or deceit. The practice of any fraud or deceit in obtaining a license.
 - b. Negligence or misconduct. Any negligence, incompetency or misconduct in the performance of the work for which he is licensed.
 - c. Violation of this chapter. Violation of this chapter or of any rule or regulation of the board.
3. The board, for reasons it may deem sufficient, may reinstate any person whose license has been revoked, providing 6 or more members of the board vote in favor of such reissuance.

s 4150. Fees.

1. Amount. Application fees for licenses or renewals may be established by the board in amounts which are reasonable and necessary, not to exceed \$100.
2. Multiple licenses. The board may waive part or all of a fee or establish a special fees for individuals receiving more than one license.
3. Deposit of fees. All fees received by the board shall be paid to the Treasurer of State to be used for carrying out this chapter. Any balance of fees shall not lapse, but shall be carried forward as a continuing account to be expended for the same purposes in the following fiscal years.

Statement of Fact

The Legislative Task Force on Railroads heard repeated concerns about untrained or undertrained personnel operating trains. This bill would require certain railroad personnel to receive classroom and experiential training and to be licensed for the job they perform. Successful completion of approved railroad company training programs would qualify an applicant for a license.



AN ACT Concerning Sanitary
Conditions on Railroad Property

Be it enacted by the People of the State of Maine as follows:

26 MRSA c.5, sub-c. III-A is enacted to read:

SUB-CHAPTER III-A

RAILROAD PROPERTY

Section 351. Rules

The Commissioner of Labor shall adopt rules in accordance with the provision of the Maine Administrative Procedures Act, Title 5, chapter 375, relating to sanitation on railroad property as it affects the safety and health of railroad employees, including, but not limited to, enginemen, trainmen, yardmen, maintenance-of-way employees, clerical employees, carmen and enginehouse employees.

Section 352. Scope

This chapter applies to locomotives and caboose cars and other rolling stock, including campcars and any other work area in which sanitation is not governed by a Federal agency or another State agency. It does not apply to locomotives used only in yard switching service.

Section 353. Inspections

For the purposes of this subchapter, the Commissioner of the Department of Labor or his designee may, at any reasonable time and upon presentation of appropriate identification, enter and inspect a workplace.

Section 354. Prohibition; penalty

A person who violates any rule that is adopted by the commissioner under this chapter shall be subject to a civil penalty not to exceed \$1,000 for each violation. Each day on which a violation exists shall constitute a separate violation.

STATEMENT OF FACT

There are presently no rules enforceable by any state or federal agency that establishes basic standards of sanitation at

some work sites in the railroad industry in Maine. In particular, no sanitation standards are effective on rolling stock including "camp cars" which serve as temporary living quarters for railroad maintenance crews. This bill will place jurisdiction over these work sites within the Maine Department of Labor and will give the Commissioner the authority to enter and inspect such workplaces.

An Act to Provide
the Capability to Assess the
Impact of Overweight Trucks on
Maine Highways

Be it enacted by the People of the State of Maine as follows:

29 MRSA Section 1811 is enacted as follows:

1811. Collection and analysis of data.

1. Information collected; annual reports. Annually the Department of Transportation, with the assistance of the Department of Public Safety, the Secretary of State and the Judicial Department, shall collect and analyze available data on the number of overweight trucks, the amount by which they exceed their permissible weight, the penalties assessed for such violations and the amount paid in fines for such violations and make recommendations to the Legislature as to actions which could be taken to reduce the number of violations.

2. Records. A person who weighs goods before or after unloading and who makes a record of the weight of each shipment, the date of loading or receipt, the name and address of the shipper, the total number of axles on the vehicle or combination of vehicles, or the registration number of the power unit or some other means of identification by which the shipment was transported shall retain the record for 30 days and that record shall be open to inspection and copying by a state law enforcement officer upon demand. No search warrant is required to inspect or copy the record. Records acquired under this paragraph shall be used solely for the purpose of providing the information and report required by subsection 1.

3. Violation. A person who fails to keep, maintain or open for inspection and copying, those documents as required in Subsection 2 is guilty of a Class E crime. A person who does not accurately record the information required to be contained in those documents required in subsection 2 is guilty of a Class E crime.

Statement of Fact

Overweight trucks create a disproportionate burden on the State's highway system for which they do not pay. This gives operators of overweight trucks an unfair competitive advantage over truckers who operate within weight limits and railroads operating within the State.

This bill will provide information to assess the extent of this problem and to provide recommendations for correcting it. It also allows the State access to weight records maintained in the normal course of business.

An Act to Permit Exempt Railroad Crossings

29 M.R.S.A. §998-B subsection 3(C) is repealed and replaced as follows:

C. A railroad crossing on a line which has no or limited rail traffic may be posted as an exempt crossing by the Department of Transportation by general order. The department may exempt such crossing after written notice of not less than 30 days to the railroad and municipality in which the crossing is located, or after hearing, if requested within 30 days either by the railroad, municipality or ten or more residents of the State. For each crossing which is deemed exempt the department may order and impose safety provisions as it deems expedient or necessary. Any crossing which is deemed exempt shall be posted with appropriate signs which shall be erected and maintained by the department.

STATEMENT OF FACT

Under current law, motor carriers transporting hazardous materials, public buses or school buses are required to stop at all railroad crossings whether those crossings have any rail traffic or limited rail traffic. Requiring these motor vehicles to stop at these crossings is unnecessary. This legislation would clarify the Department of Transportation's authority to designate such crossings as exempt crossings. This would be done after notice is provided to the railroad for an opportunity for a hearing.

APPENDIX C

AN ACT to Establish a Permit to Operate a Railroad

Be it enacted by the People of the State of Maine as follows:

23 MRSA 4211-A is enacted to read:

4211-A. Permit required

1. Permit required. No person, corporation or other entity may provide railroad transportation for compensation in the State, acquire or construct an additional line of railroad in this State or provide rail transportation over or by means of an extended or additional railroad line in this State, without first obtaining from the Commissioner of Transportation a permit for the privilege of operating a railroad in this State.

This section shall not apply to any operations ongoing as of the effective date of this Act as long as the ownership or management of that operation is not transferred to another entity.

2. Criteria. In determining whether to issue a permit, the commissioner shall consider, among other matters:

A. The need for this rail service;

B. The impact of this rail service on other rail carriers within this State;

C. The financial viability of the rail carrier proposing this rail service;

D. Whether the person, corporation or other entity proposing the rail service has the fitness and ability, including management, financial stability and employee complement, to provide safe, efficient and reliable rail service;

E. The effect of the rail service upon the health, safety and general welfare of the people of the State.

3. Application. A proceeding to obtain a permit from the commissioner under subsection 1 begins when an application is filed with the Department of Transportation. On receiving the application, the department shall:

A. Send an accurate and understandable summary of the application to a newspaper of general circulation in each

area that would be affected by the proposed rail service for publication at the applicant's expense;

B. Cause the applicant to send a copy of its application to all shippers which used the rail line during any of the 12 months prior to the date the application was filed, as well as to those shippers who may be expected to use that line.

C. Cause the applicant to send a copy of its application to the employee representatives of the employees who may be affected by the proposed rail service;

D. Cause the applicant to send a copy of its application to any municipality on which service may be affected; and

E. Take other reasonable and effective steps to publicize the application at the applicant's expense.

Any individual or representative required to be served with a copy of the application may intervene as of right in a proceeding under this section. Intervention of other parties shall be granted liberally in order that a complete record may be developed.

4. Proceeding. The commissioner shall hold a public hearing after notice as required by the provisions of the Maine Administrative Procedure Act, Title 5, Chapter 375.

5. Approval. Approval or denial shall be as follows;

A. At the conclusion of the proceedings the commissioner may:

(1) Approve the application as filed;

(2) Approve the application with such modifications as the commissioner determines necessary to assure that the proposed rail service will be and will remain consistent with the public interest; or

(3) Deny the application.

B. If the commissioner approves the application with or without conditions, he shall issue to the applicant a permit describing the rail service being approved and the specific conditions, if any, imposed upon the applicant.

6. Temporary permits. When the commissioner determines that an emergency exists and that the public interest requires immediate institution of services, he may issue a temporary permit for

a period not to exceed 90 days without following the procedure outlined in subsections 3 and 4.

7. Appeal. Any applicant or intervenor aggrieved by the decision of the commissioner under subsection 5 has a right to review in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII.

8. Rules. The commissioner shall promulgate rules, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, concerning the implementation and enforcement of this section, including procedures to ensure continuing compliance by persons, corporations or other entities subject to this section and to govern revocation of certificates in cases of noncompliance.

Statement of Fact

Under this bill any person, corporation or other entity wishing to establish a new railroad operation or to acquire a railroad operation through transfer of ownership or management in this State must receive a permit from the Commissioner of Transportation.

The bill establishes criteria to be used by the commissioner in his determination of whether to issue the permit, including the need for and impact of the rail service, the financial viability and stability of the railroad, the reliability and safety of the rail service to be provided and whether the railroad will comply with existing laws, rules and regulations and other obligations. The bill provides for review of the commissioner's decision under the Maine Administrative Procedure Act, the Maine Revised Statutes, Title 5, chapter 375, and directs the commissioner to promulgate rules covering implementation and enforcement of the permitting procedure and to ensure continuing compliance by railroads.