

Federal inaction creates problems for rail safety

By: Roger Koopman

Federal power grabs have been quite common in the past several decades, with the end result in most cases being sloppy policy outcomes that states are left to clean up. Too often the consequence of the federal government seizing traditional state authority is a regulatory landscape that is flat-out dangerous. Such is the case with railroad safety.

Rail safety has come back into policymakers focus in a big way, and it is only natural that legislators, editorial boards, and others are asking who in state government is responsible for safety. The unfortunate reality is: no one. If, for example, you're concerned about the regulated speed and types of cars required to haul Bakken crude, you'll need to call the Federal Railroad Administration (FRA) in Washington, D.C. Congress and the courts have essentially stripped the states of all jurisdiction in these areas.

When analyzing rail safety programs across the United States, it's important to note that the responsibility for inspection of tracks and equipment did, at one time, reside at the state level. In fact, the Montana Public Service Commission was originally established as the Board of Railroad Commissioners, charged with enforcing both economic and safety regulations related to railroads. However, those days are long gone, and PSC legal efforts to recover lost authority have been unsuccessful.

With a series of laws passed by Congress, the traditional rail safety functions have been consolidated at the federal level, enforced primarily by the FRA, and the inspectors they employ across the country. The states' role is entirely "optional", and has been reduced to little more than functioning as deputies for the FRA, with almost no federal funding. In other words, the states can choose to enforce federal laws, but they must do so on their own dime.

A recent analysis conducted by the state Legislative Audit Division took the position that the state of Montana isn't enforcing federal law as much as it could in the all-important area of rail safety. The audit concluded that, with the increased transportation of oil by rail in recent years, owing, in part, to failed efforts at increased pipeline capacity, it is becoming essential that policymakers find ways to further reduce the potential for tragic accidents, a goal that the Montana Public Service Commission fully embraces.

Ironically, while the Legislative Audit Division suggests that the PSC hire more rail safety inspectors, the Legislature recently cut 1.5 positions out of the PSC's budget during the last legislative session.

Although some would like to claim that the PSC's lack of resources to enforce federal rail safety regulations is "passing the buck", that is simply not the case. While private rail companies like BNSF, Montana Rail Link, and Union Pacific perform weekly inspections of tracks and equipment, the PSC believes that it is important to have an independent group of inspectors to ensure the highest degree of safety possible. That is why we have participated in the federal government's optional rail safety program since 1999, employing twice as many inspectors as

North Dakota, which only recently entered the program, drawing high praise for hiring their one inspector.

Make no mistake; we at the PSC are anxious to increase our role in rail safety enforcement if the legislature sees fit to provide us with the dollars to do so. Either that, or legislators should tell us who among our amazingly dedicated staff we should terminate to make room for the new inspectors who we currently cannot pay.

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