

**1999 HOUSE POLITICAL SUBDIVISIONS**

**HB 1272**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1272

House Political Subdivisions Committee

Conference Committee

Hearing Date 1-21-99

Tape Number	Side A	Side B	Meter #
2	x		36.6-59
		x	0.0-20.0
Committee Clerk Signature <i>Pam Dever</i>			

Minutes: BILL SUMMARY: Relating to the sounding of a warning device on a locomotive engine. Chairman Froseth called the hearing to order with all members present.

Rep. Berg, Dist 45 : testified in support of HB1272. This bill is a small piece, in an effort to redevelop downtown Fargo. There is federal legislation that governs these rail crossings.

Recently, the FRA (Federal Railroad Association) has begun finishing new rules that would allow a train not to have to blow it's whistle, if the crossing meets certain criteria. The guidelines are strict. From Fargo's prospective, if we can meet these guidelines, then there is a question brought up, because there is a statute in the book that says in N.D. you have to blow your horn. All this bill does, if we meet the other guidelines, is to allow the trains not to have to blow their whistles. The federal rules aren't in place yet.

Rep. Delmore : e.g. Say it's blizzarding and my sight is impaired at a crossing. I get maimed or killed. Is there no chance for me to get recovery for my loss because there is no liability?

Rep. Berg : The second section deals with that, I believe. I don't think you will be able to drive a car through those crossings. You can sue, but you couldn't use "they didn't blow the horn" as the reason for collecting damages.

Chairman Froseth : The railroad would be free of negligence, if the city ordinance directed the railroad "not to blow it's whistle". Does this free the railroad and put liability back to the city?

Rep. Berg: Correct.

Rep. Koppelman : Will there be any other safety mandate in place for the crossings in the new federal rules? We don't know this future thing.

Rep. Ekstrom : Some places the train does cross at grade in Fargo. Has Moorhead looked at quiet zones?

Rep. Berg : Don't know, but Fargo has always been the more progressive!

Rep. Severson : Is the quiet zone 24 hours?

Rep. Berg : Not sure. The local municipalities sets this up. I think Fargo wants 24 hours.

Rep. N. Johnson : City is still liable.

Rep. Berg : The city is liable for passing ordinance. The defense for the city would be they are following federal safety guidelines. The intent of this bill is not to create any additional liability for anyone. Tim Dawson of Leg. Council helped draft this bill.

Bob Graveline, N.D. Safety Council : 49.8 I am neutral on the bill. Just came to give you information and answer questions. (See attached testimony) The new federal rules will be in place by 2000.

Rep. Delmore : Please explain pg. 2 of testimony.

Bob : 53.7 If passed the way we see it, the city must follow FRA regulations.

Rep. Delmore : If we pass this bill now, and those rules aren't ready until 2000, what's are liability we're putting on people in-between?

Bob : I don't know. I'll have to let the railroad people answer that.

tape 2, side B, John Risch, Railroad Engineers Association, : testified as neutral. I'm one of the guys who has blown the whistle as an engineer. I have some proposed amendments to protect railroad workers from liability. We are neutral. (See attached testimony)

Rep. Delmore :.7 Why do we need this bill now. Why not wait until 2000 and see what new rules are in place at federal level.

John : The rules will go into effect early in 2000 which is before the next legislature meets.

Rep. Eckre : Why do you blow the horn?

John : To alert people. I'll blow the horn anyway, whether it's a quiet zone or not, if people are on the track.

Rep. Koppelman : Is there anything in legislation that you see would prohibit you from blowing a whistle in a city with a quiet zone for safety reasons?

John : I can't speak for everyone. I will blow the horn to protect public at all times.

Al Wolf, N.D. Trial Lawyers Assoc. : testified in opposition to the bill, representing the Railroad Association. We have many questions. What is a penalty if the engineer blows the whistle in a quiet zone. If you go across state lines, one may not have to whistle in the next state, what if the engineer doesn't know where he is for sure. There may be a mistake when there is a shift change. I don't know why we should be jumping ahead of the game. Let's see what the federal regulations say. Maybe we should give this bill an effective date of 7-1-01. I'm a little concerned about the people wondering around during the day, and those arms at crossings will be

up; then at night time with no whistles, we have lots of possible harm to people. We are concerned with safety. If people are injured, we want to make sure there are no legal guards set up to prevent awarding damages to injured people. 2.1-7.7

Gene Shannon, Fargo : 7.8 testified in support of the bill. In Fargo, we are trying to enhance downtown. We have two railroad lines going through, about 100 trains per day and 532 whistle blows. Some counts have it at 838 blows per day. We're asking for developers to put risk capital into additional housing to get more population into downtown area. Right now, there is no chance anyone will do that unless we try to eliminate the whistle blow problem. These are not the railroads of yesterday. These are coal and freight trains that high ball through town at high speed. The decibel readings from blows are over 100 decibels. Federal law says over 70 is reason for concern and needs protection. At one apartment building, the level was measured at 95 dc. Hard to keep people in these apartments. The cities are trying to be proactive to upgrade the safety of cross guards.

Chairman Froseth : 12.4 If we put an effective date of 7-1-01, would that give property owners a comfort level and maybe start development?

Gene : Not, sure. I think that would be O.K. The mayors and other city officials are very mindful of safety issues.

Rep. Delmore :13.6 How will the pedestrians be protected?

Gene : Fencing may be put up along the tracks. This is something that can be done now for safety reasons.

Rep. Delmore : 14.7 What if we amend the bill. What is the liability if an engineer doesn't blow his horn for pedestrians. Where is the liability?

Rep. Eckre : The issue is “Development Vs Safety”. We don’t want people on the tracks getting hit.

Gene : The legislation can’t rewrite or supersede FRA regulations.

Rep. Severson : 19.7 You think fences would be appropriate now. Do you expect this to be a federal regulation in the future; to line the railroad tracks with fences?

Gene : It’s a wonderful idea now, yes.

Rep. Disrud : I’m envisioning the new arms at the crossings. Do you see any federal money with this mandate?

Gene : It’s not a mandate, it’s an enabling thing to allow cities to choose; and if they have the money. No federal assistance.

Hearing no more testimony, Chairman Froseth closed the hearing on HB1272.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1272-a

House Political Subdivisions Committee

Conference Committee

Hearing Date 2-4-99

Tape Number	Side A	Side B	Meter #
1		x	1.0-16.9
2	x		19.4-24.5
Committee Clerk Signature <i>Pam Deves</i>			

Minutes: Chairman Froseth opened the discussion. Cindy Gray came from Fargo to help clear up some concerns the committee had with safety issues.

Cindy Gray, Fargo Transportation Planner : 1.0-5.8 brought forth some information that was handed out to committee. She also went through the amendments that Rep. Koppelman brought forth. (See attached testimony)

Rep. Eckre : Who will pay for the upgrades?

Cindy : 6.3 In Fargo, we will have to use local funds. If the city has urban funds they get from the state of N.D., they could use those.

Rep. Glassheim : 6.9 Would you have to do all of the changes to have a quiet zone? That will be a great deal of money.

Cindy : Yes, that is right. In order to have a quiet zone, not spot by spot, you have to make all the changes. The double gates cost \$130,000 to add to the gates already there with two crossings. The railroad will not pay for these, from input we have had so far.

Rep. Glassheim : I still see some concern with pedestrians. What is the likelihood you will see people wondering even at the new crossings?

Cindy : Any engineer will blow the whistle, if they see a person on the track. The blow is very loud. It's our understanding that the earliest the federal rules will be in place in the end of 1999.

Rep. Koppelman ; A few changes need to be made to these amendments, and we will get that done during the noon to bring back this afternoon.

2-4-99 AFTERNOON: Revised amendments were brought forward.

Rep. Koppelman : tape 2, side A 19.4 explained the new changes and said he discussed them with Mr. Risch and Miss Gray and Leg. Council. They were satisfied. If this goes forward and we pass this; we will, in reality, be increasing the safety because of all the provisions that are mandated for this quiet zone. Rep. Koppelman made a motion, Rep. Delmore second. Voice vote with all yes to accept the amendments.

ACTION: Rep. Koppelman made a motion to DO PASS as amended and Vice Chair Maragos seconded the motion. VOTE: 15 YES and 0 NO and 0 ABSENT. Passed. Rep. Koppelman will carry the bill.



VR  
2/4/99

HOUSE AMENDMENTS TO HOUSE BILL NO. 1272 2-5-99 PS

Page 1, line 12, remove "protected"

Page 1, line 13, after the underscored period insert "A crew member may sound a warning device as determined appropriate by that crew member."

Page 1, line 17, overstrike "The" and insert immediately thereafter "A" and overstrike "owning" and insert immediately thereafter "with an interest in"

Page 1, line 20, replace "The person owning" with "If a crew member of" and remove "that"

Page 1, line 21, after "ordinance" insert ", any crew member or person with any interest in the locomotive"

Page 1, line 23, after the underscored period insert "This section does not exempt a railroad corporation from any liability created under chapter 49-16 or the Federal Employers' Liability Act [45 U.S.C. 51 et seq.] for injuries to its employees or agents."

Renumber accordingly

Please type or use black pen to complete

Date 2-4-99

Roll call vote # 1

### 1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1272

House POLITICAL SUBDIVISIONS Committee

- Subcommittee on \_\_\_\_\_
- Conference Committee

} Identify or check where appropriate

Legislative Council Amendment Number 90450.0202

Action Taken Do Pass as Amended

Motion Made By Rep. Koppelman Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman Froseth	✓		Rep. Wikenheiser	✓	
Vice Chair Maragos	✓				
Rep. Delmore	✓				
Rep. Disrud	✓				
Rep. Eckre	✓				
Rep. Ekstrom	✓				
Rep. Glassheim	✓				
Rep. Gunter	✓				
Rep. Johnson, N	✓				
Rep. Koppelman	✓				
Rep. Niemeier	✓				
Rep. Rose	✓				
Rep. Severson	✓				
Rep. Thoreson, B	✓				

Total 15 0  
(Yes) (No)

Absent 0

Floor Assignment Rep. Koppelman

If the vote is on an amendment, briefly indicate intent:

DO NOT USE HIGH PENCIL OR LIGHTER ON ANY FORMS

REPORT OF STANDING COMMITTEE

HB 1272: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1272 was placed on the Sixth order on the calendar.

Page 1, line 12, remove "protected"

Page 1, line 13, after the underscored period insert "A crew member may sound a warning device as determined appropriate by that crew member."

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Page 1, line 23, after the underscored period insert "This section does not exempt a railroad corporation from any liability created under chapter 49-16 or the Federal Employers' Liability Act [45 U.S.C. 51 et seq.] for injuries to its employees or agents."

Renumber accordingly

**1999 SENATE POLITICAL SUBDIVISIONS**

**HB 1272**


1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HOUSE BILL 1272

Senate Political Subdivisions Committee

Conference Committee

Hearing Date MARCH 4, 1999

Tape Number	Side A	Side B	Meter #
1		X	2299 to end
2	x		0 to 1736
Committee Clerk Signature 			

Minutes:

SENATOR LEE: open hearing on HOUSE BILL 1272

GENE SHANNON: introduce HOUSE BILL 1272

SENATOR KELSH: are there not crossing arms at every crossing in Fargo, with lights and do the trains need to whistle to give fair warning

GENE SHANNON: all crossings have the arms as state law allows, what is proposed is when the crossings are safer than they have ever been, would the blowing exemption be allowed for locomotives. Until then, trains will still have to blow the whistles

SENATOR WATNE: looking at this bill, how could the bill get safer when you remove some of the safety devices and whom is responsible. for accidents and replacing the warning systems if the train whistle will not be used

GENE SHANNON: 2 million dollars worth of upgrades to make the crossings safer

SENATOR WATNE: what are the safety upgrades

GENE SHANNON: engineering studies and the looking at these safety issues that will allow the crossing's to be safer in a better spot than they are now

SENATOR WATNE: Those are they required safety measures that are in this picture and the quiet zones as they appear now and we will here about them

GENE SHANNON: correct and we will hear about quiet zones now that have killed people across the country, talking about a piece of history which involved little safety concern and no upgrades to the crossing where done, safest in country today

SENATOR LEE: any further questions

BEV WILSON: apartments by the train crossings and how it effects each person who dwells in these apartments. Items that can be added to an apartment to cut down the noise of the trains, quiet zones in evening hours

SENATOR LEE: what is the address of your apartment complex

SENATOR LEE: questions

CINDI GRAY: see testimony

SENATOR LEE: is the Minnisota statue close to this one

CINDI GRAY: provides train whistle to be blown at all crossing except within the city, no additional detail

Coon Rapids is looking at the raised median and have ability to look at different avenues

SENATOR KELSH: does federal government law supersede state law

CINDI GRAY: law would supersede whistle band but cities that have extreme whistle noise would be allowed to have an exception. Crossing must have safety zones and must be included in quiet area's

SENATOR WATNE: who is liable in an accident between a train and another automobile

CINDI GRAY: portion underlined is updating language that is already in the century code and when in house Political Subcommittee, language was added to exempt the crew members from being penalized for blowing the whistle during quiet hours. Courts could determine liability and with having the safest crossings possible, only the courts would tell

SENATOR LEE: clarification, section at the end would put the corporation would be liable

SENATOR WATNE: I read this differently, see railroad as being liable.

SENATOR LEE: two different sections, which deal with this

SENATOR WATNE: taking away responsibility from injured and company and putting the liability on the city

SENATOR LEE: city wouldn't want either

SENATOR KELSH: how could you ask the railroad not to blow the whistle, then be held liable for not blowing the whistle

SENATOR LEE: chapter 49-16 is liability of railroad for negligence would not exempt the railroad from liability. Legislative Council will answer this

SENATOR FLAKOLL: handicapped people and what alarms tell these people that a train is coming

CINDI GRAY: yes, that is correct that the alarm goes off before the train arrives and that is the first indication that a train is coming

SENATOR FLAKOLL: pedestrian traffic in this type of situation. particularly within proximity to bars. Allowing a train to go different speeds

CINDI GRAY: no this will not impact train speeds because the speeds are set by different statutes already

SENATOR LEE: any further questions

JOHN RISCH: neutral position on this issue and liability concerns when a train is at a crossing and no whistle is blown

## TAPE 2

JOHN RISCH: (continued) banning of whistles from being blown. Amendments in the bill and small correction on line 18 through line 21 and other lines dealing with workers compensation and railroads and how railroad workers are delta with when injured. Line 18 on the first page and how an engineer is liable when the whistle isn't blown. Law must apply to workers as well and changing the word "person's to corporation". That would make things clearer

SENATOR KELSH: elevator pulling grain cars and would law effect the engine pulling the cars.

JOHN RISCH: lawyers can answer that but allot of elevators don't have locomotives that don't use the main lines.

SENATOR LEE: any further questions

TOM KELSH: leasing of trains and contractual relations with other companies, interest is cutting these kinds of practices out. Contractual interest when you hook onto a train



SENATOR LEE: does the bill as it stands comply with all federal regulations

TOM KELSH: as far as we understand, it does and permits you from being liable when you don't blow your horn and that would be the limit

SENATOR WATNE: liability would then go to the city, correct?

TOM KELSH: city passes state law and gets permission from the state government then the city would not be liable, unless they could show that some of the laws from the federal government where not met or the city was given permission to put this law into effect when it was not a safe crossing. Don't see that happening

SENATOR LEE: questions

#### DISCUSSION

AL WOLF: concerns with the acting of this bill before the federal railroad commission acts upon recent legislation regarding this issue. Would like an effective date of July 1, 2001. City should not proceed until federal rail road commission has discussed this issue, Last sentence of the bill and covering rail road workers injured on the tracks, amendment necessary. Reading over the amended language and liability for wrong doing and who is liable for damages. Confusing to me and a concern

SENATOR LEE: July 2001, instead have an effective date when the federal rail road commission makes it's ruling on this issue, if they finish the ruling this year, could we enact this bill this year.

GENE SHANNON: we could because the bill in federal regulation is already delayed, I have not researched this question and when the law is fully in effect verses a certain date, notification to the insurance carrier and this concern

CINDI GRAY: concern with effective date and when it should take effect as to the federal rules being passed. July 2000, six month time frame and engineering duties.

SENATOR LEE: amendment goes until 2001

CINDI GRAY: rules will be in place by that time and we would like to see this bill in place by the time that federal rules are granted

SENATOR LEE: taking consideration of the date, would you like a specific date or upon the city determining that the rules had taken effect

CINDI GRAY: yes, when the city determines that the federal ruling has taken effect, line 10-11 and those measures are in place

GENE SHANNON: simple yes or no on following the federal regulations will be. Safety aspects of putting this law into effect and funding and needing an sure effective date. Cities voting for an economic development plan and that is why this is so important

SENATOR LEE: thought delayed date would be important and that is why I support this measure

SENATOR LEE: anything else on 1272.

MOTION: close public hearing on HB1272

MOTION: do pass as amended 5,0

SENATOR FLAKOLL: to carry

SUGGESTED AMENDMENTS TO HB-1272 BEING HEARD BY THE SENATE POLITICAL  
SUBDIVISIONS COMMITTEE ON MARCH 4, 1999.

ON PAGE 1, LINE 11, FOLLOWING THE WORD "ADMINISTRATION'S" INSERT  
THE FOLLOWING WORDS: "REGULATIONS ISSUED IN ACCORDANCE WITH  
SECTION 20153 OF TITLE 49 OF THE UNITED STATES CODE WHICH  
INCLUDE"

ON PAGE 2, LINE 4, ADD THE FOLLOWING: "SECTION 2. EFFECTIVE DATE.  
THIS ACT BECOMES EFFECTIVE IMMEDIATELY FOLLOWING THE  
EFFECTIVE DATE OF THE FEDERAL RAILROAD ADMINISTRATION'S  
REGULATIONS REFERRED TO IN SECTION 1 OF THIS BILL."

RENUMBER THE LINES AND PAGES ACCORDINGLY

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL 1272

Page 1, line 2, after "engine" insert "; and to add an effective date"

Page 2, after line 3, insert "**SECTION 3. EFFECTIVE DATE. This measure becomes effective July 1, 2001.**"

Renumber accordingly.

NO!

March 5, 1999

*Senate*  
~~PROPOSED~~ AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1272

*QNN*  
*PS 3/8 3/5/99*

Page 1, line 18, remove "A", overstrike "person", and after "~~owning~~" insert "A corporation"

Page 1, line 23, replace "person" with "corporation"

Renumber accordingly

Date: 3-5-99  
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1272

Senate Political Subdivisions Committee Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do pass as amended

Motion Made By Watne Seconded By Flakoll

Senators	Yes	No	Senators	Yes	No
Senator Lee (Chairman)	/				
Senator Lyson (Vice-Chairman)	/				
Senator Flakoll	/				
Senator Watne	/				
Senator Kelsh	/				
Senator Nelson					

Total (Yes) 5 No 0

Absent Nelson

Floor Assignment Flakoll

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

HB 1272, as engrossed: Political Subdivisions Committee (Sen. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1272 was placed on the Sixth order on the calendar.

Page 1, line 18, remove "A", overstrike "person", and after "~~owning~~" insert "A corporation"

Page 1, line 23, replace "person" with "corporation"

Renumber accordingly

**1999 HOUSE POLITICAL SUBDIVISIONS**

**HB 1272**

**CONFERENCE COMMITTEE**



1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1272-conf.

House Political Subdivisions Committee

Conference Committee

Hearing Date 3-23-99

Tape Number	Side A	Side B	Meter #
1	x		0.1--1.7
Committee Clerk Signature <i>Pam Dever</i>			

Minutes: Chairman of the conference committee was Rep. Koppelman. Members of the conference committee are Rep. Koppelman, Rep. Wikenheiser, Rep. Ekstrom, Sen. J. Lee, Sen. Flakoll, and Sen. C. Nelson.

Rep. Koppelman : I call this committee on HB 1272 to order. I think you all received a letter from Mr. Risch from the transportation union. Mr. Risch proposed some language that would meet the approval of his group and all the groups that testified before both houses. I had LC draw these amendments I'm passing out. What this would require, if you approve these, is the senate to recede its amendments and we re-amend the bill. It would be neither the house nor the senate amendment, but this final version from this conference committee.

Sen. Lee moved to accept amendment and recede senate amendment, and Sen. Nelson second.

Rep. Koppelman : There is a motion on the floor that the senate recede from its amendments and that the conference committee further amend HB 1272 as shown in #90450.0302.

ROLL CALL VOTE: 6 YES and 0 NO & 0 ABSENT. PASSED. Rep. Koppelman will carry.

VR  
3/23/99

**CONFERENCE COMMITTEE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1272 3-24-99 PS**

That the Senate recede from its amendments as printed on page 790 of the House Journal and page 643 of the Senate Journal and that Engrossed House Bill No. 1272 be amended as follows:

Page 1, line 18, replace "with an" with "that owns or has a leasehold"

Renumber accordingly

(Bill Number) HB 1272 (, as (re)engrossed):

Your Conference Committee

For the Senate:

Lee	-	yes
Flakoll	-	yes
C. Nelson	-	yes

For the House:

Koppelman	-	yes
Wikenheiser	-	yes
EKstrom	-	yes

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from) the (Senate/House) amendments on (SJ/HJ) page(s) 790 - ~~791~~

and place \_\_\_\_\_ on the Seventh order.

, adopt (further) amendments as follows, and place HB 1272 on the Seventh order:

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

DATE: 3/23/99

CARRIER: KK

LC NO. 90450 . 12302 of amendment

LC NO. \_\_\_\_\_ of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_

(1) LC (2) LC (3) DESK (4) COMM.

**REPORT OF CONFERENCE COMMITTEE**

**HB 1272, as engrossed:** Your conference committee (Sens. Lee, Flakoll, C. Nelson and Reps. Koppelman, Wikenheiser, Ekstrom) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 790, adopt further amendments as follows, and place HB 1272 on the Seventh order:

That the Senate recede from its amendments as printed on page 790 of the House Journal and page 643 of the Senate Journal and that Engrossed House Bill No. 1272 be amended as follows:

Page 1, line 18, replace "with an" with "that owns or has a leasehold"

Renumber accordingly

Engrossed HB 1272 was placed on the Seventh order of business on the calendar.

1999 TESTIMONY

HB 1272

# united transportation union



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JOHN RISCH  
Legislative Director  
NORTH DAKOTA LEGISLATIVE BOARD

Testimony of John Risch  
Before the House Committee on  
Political Subdivisions  
Concerning  
House Bill 1272  
January 21, 1999

Mr. Chairman and members of the committee, my name is John Risch. I am the North Dakota Legislative Director of the United Transportation Union. The UTU is the largest rail labor union in North America. Our membership includes conductors, engineers, switchmen, trainmen and yardmasters.

We neither support or oppose HB 1272. We are however concerned about this bill's possible effects and for that reason we would like to offer some amendments that address our concerns.

I work as a railroad engineer for the Burlington Northern Santa Fee Railway and operate trains on the line through downtown Fargo. The train traffic through Fargo is heavy, sometimes reaching 85 trains a day. In addition to that heavy traffic our new locomotives have whistles that are louder than ever and there are many crossings involved. Add it all up and we have lots of whistle noise.

So I certainly can see why people would like to cut back on all the noise.

On the other hand train whistles are an effective means to reduce crossing accidents. Studies have shown that cities that have enacted whistle bans have had increases in the number of accidents at crossings.

This bill requires a city to comply with not yet enacted Federal Railroad Administration safety measures in order to enact a whistle ban.

While we don't know what those proposed regulations will include. I hope there will never be a total ban of blowing the whistle, because people cross and are on and about the tracks at places other than at crossings. As a railroad engineer if someone is on the tracks, whistle ban or not I plan to blowing my whistle.

With that we ask that this committee recommend the adoption of our proposed amendments.

saved:1272

- Primary purpose of requesting legislation is to make state century code consistent with rules that we know are being established at the nat'l level by the Federal Rail Admin.
- FRA has studied supplem. safety measures, which are being employed around the country even in advance of the rules, that make at-grade rail crossings safer than they've ever been. So safe, that FRA will <sup>support</sup> establishment of a quiet zone, where train whistles do not need to be blown.
- Fargo, for example, experiences about 100 trains a day, <sup>24 hrs. a day</sup>. As these trains whistle ~~at~~ prior to each of the 20 crossings, 1500-2000 times per day, residents are impacted by whistle noise 3-4 times louder than highway noise for which sound walls are built.

This is a nerve rattling/earsplitting noise level that stops all business from taking place, awakens nearby residents, and is very incompatible with a residential setting.

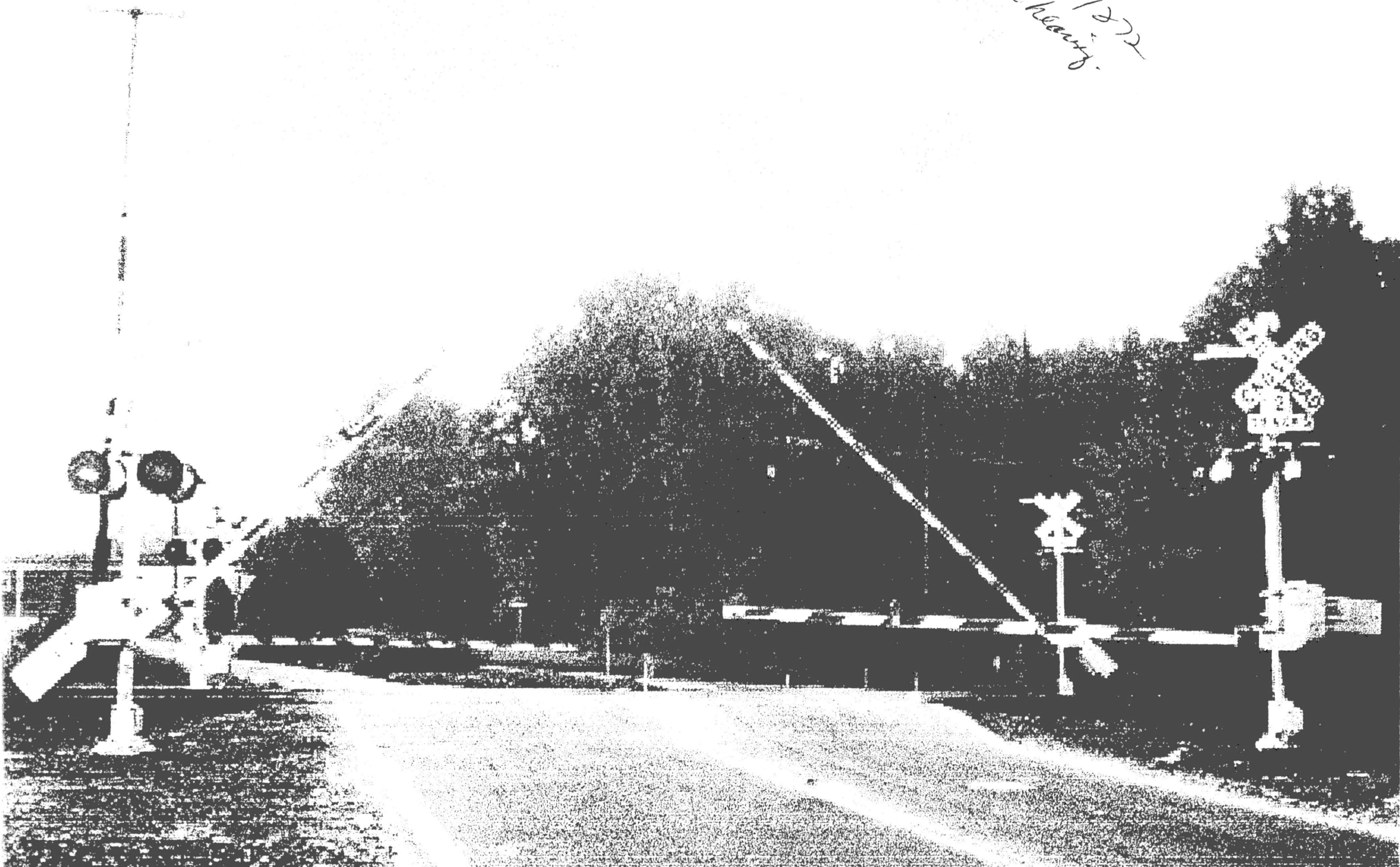
• The supplem. safety meas. of 4-quad gates & raised medians have been shown to decrease illegal crossings of the existing 2-quad. gates by 86-98%, depending on the measure used. With these safety improvements making at-grade crossings safer than they've ever been, engineers have the freedom of not blowing the whistle unless they determine it necessary for some reason.

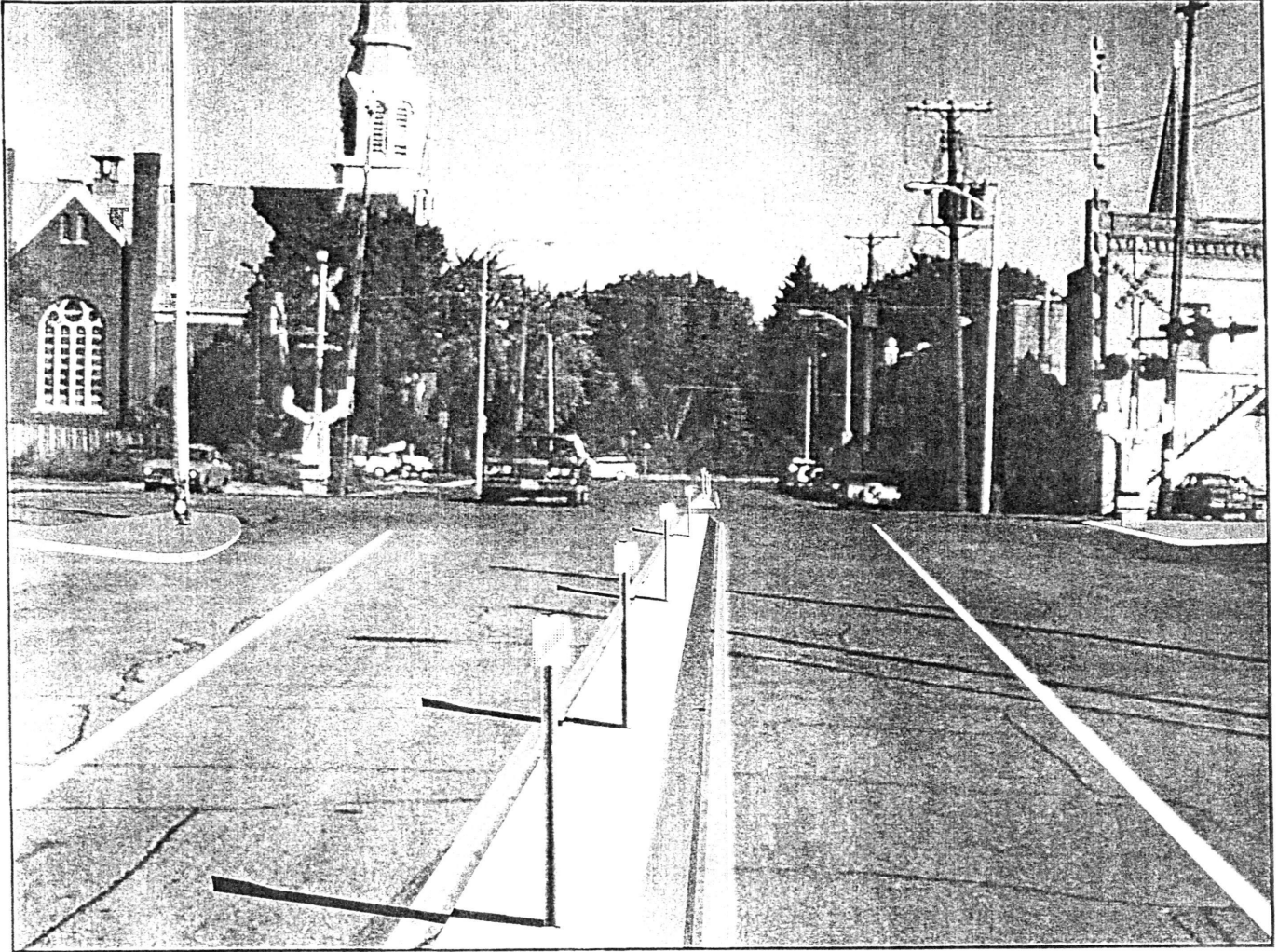
Pedestrians are well protected by the bells, lights, & sidewalk gates currently used at most of our crossings. The engineer ~~is always~~ would of course blow the whistle if an unexpected pedestrian was on the tracks.

So much interest around Country - we've had req. ~~for~~ for info. about our study from the Wahpeton area, Rochester, MN, several cities in SD, other cities around the Country, like Louisville



from range  
Lively  
Glad  
HB 1272  
after heavy.





*Raised Median:  
Roberts Street, North of 4th Avenue N.*

TESTIMONY BEFORE THE  
HOUSE TRANSPORTATION COMMITTEE  
HB - 1272  
January 21, 1999

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS BOB GRAVELINE AND I AM THE EXECUTIVE DIRECTOR OF THE NORTH DAKOTA SAFETY COUNCIL, INC., A NON-GOVERNMENT, NON-PROFIT, MEMBERSHIP SUPPORTED ORGANIZATION. THE MISSION OF THE SAFETY COUNCIL IS TO HELP MAKE NORTH DAKOTA A SAFER AND HEALTHIER PLACE TO LIVE.

ONE OF THE COUNCIL'S ONGOING PROJECTS IS OPERATION LIFESAVER, A NATIONAL PROGRAM TO PREVENT RAILROAD GRADE CROSSING COLLISIONS AND TO PREVENT INJURIES ON RAIL ROAD PROPERTY AS A DIRECT RESULT OF TRESSPASSING INCIDENTS.

AS A GENERAL STATEMENT, PEOPLE INVOLVED IN RAILROAD SAFETY DO NOT FAVOR WHISTLE BANS. THE BEST WAY TO UNDERSTAND THEIR OPPOSITION TO WHISTLE BANS IS TO REVIEW THE RESULTS OF A STUDY OF SUCH BANS IN FLORIDA SEVERAL YEARS AGO.

BEGINNING IN THE LATE 1970'S GROUPS FORMED IN FLORIDA FOR THE PURPOSE OF PROHIBITING TRAIN WHISTLES FROM BEING SOUNDED DURING NIGHT TIME HOURS. BY DECEMBER 31, 1984, SOME 511 CROSSINGS OF THE FLORIDA EAST COAST RAILWAY COMPANY (FEC) WERE UNDER A NIGHTTIME WHISTLE BAN BETWEEN THE HOURS OF 10:00 PM AND 6:00 AM EACH DAY.

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SPECIAL SIGNS WERE ERECTED AT THE CROSSINGS TO INFORM MOTORISTS OF THE WHISTLE BAN BEING IN EFFECT.

IN SPITE OF THE ACTIVE CROSSING GATES AND THE SPECIAL SIGNS, FEC'S NIGHTTIME CRASH RATE AT THESE 511 CROSSINGS NEARLY TRIPLED AFTER THE WHISTLE BAN WAS IMPOSED. DAYTIME STATISTICS REMAINED NEARLY THE SAME.

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IN CONVERSATIONS WITH REPRESENTATIVES OF THE FRA, I UNDERSTAND THE AGENCY DOES NOT NECESSARILY OPPOSE WHISTLE BANS IF SUCH BANS STRICTLY ADHER TO THE FRA'S EXPECTED WHISTLE BAN RECOMMENDATIONS.

THESE RECOMMENDATIONS ARE EXPECTED TO BE EFFECTIVE SOME TIME IN LATE 2000 AND WOULD REQUIRE ANY AREA IMPLEMENTING A WHISTLE BAN TO ALSO PROTECT VEHICLE TRAFFIC BY ONE OF THE FOLLOWING METHODS:

1. MEDIAN BARRIERS
2. FOUR QUADRANT GATES
3. PAIRED ONE-WAY STREETS
4. TEMPORARY CLOSURES
5. PERMANENT CLOSURES

ALSO, I WOULD FURTHER SUGGEST SOME CONSIDERATION BE GIVEN TO THE PEDESTRIANS WHO MAY BE TEMPTED TO WALK AROUND AN ACTIVE WARNING GATE WHEN THE GATE IS LOWERED AND THERE IS NO TRAIN WHISTLE BEING HEARD.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, THE NORTH DAKOTA SAFETY COUNCIL AND THE NORTH DAKOTA OPERATION LIFESAVER ENCOURAGE YOU TO KEEP THESE SAFETY ISSUES IN MIND AS YOU DELIBERATE HB-1272.

## Information regarding the Supplemental Safety Measures Referred to in House Bill 1272

The Swift Rail Development Act supercedes all existing train whistle bans, thereby requiring whistles to be sounded at all at-grade intersections. This is not a concern for the Fargo-Moorhead area, because the City of Fargo does not have a whistle ban at this time. However, the Swift Rail Development Act also provided for exceptions to the whistle requirement, allowing for supplemental safety measures to be put in place in lieu of the whistles.

The Federal Rail Administration is in the process of preparing draft rules at this time. The FRA Crossing and Trespasser Manager who provided us with technical guidance has explained the five basic supplemental safety measures which will be included in the new rules. Implementation of these safety measures will allow for a waiver of the whistle requirement, allowing for the establishment of a quiet zone.

To establish a quiet zone, all of the crossings within a certain area must be included. If this was not the case, it would be too confusing for the locomotive engineers to keep track of which crossings require the whistle and which ones do not. The zone must be large enough to be of some significance from a noise reductions standpoint. In Fargo's case, the City will most likely work with Moorhead, Minnesota to establish a quiet zone throughout the central business district area of the two cities. Minnesota statues already allow local jurisdictions this option. It is important to note that if an engineer feels there is any circumstance which warrants the sounding of the whistle, he or she may do so. The lights and bells that currently warn drivers and pedestrians of an approaching train would remain in place under any supplemental safety measure (except full closure / elimination of a crossing).

Each of the five supplemental safety measures are shown and described in the following pages. They include:

- four quadrant gates
- raised medians
- full closures
- night time closures
- one way pair streets at protected crossings

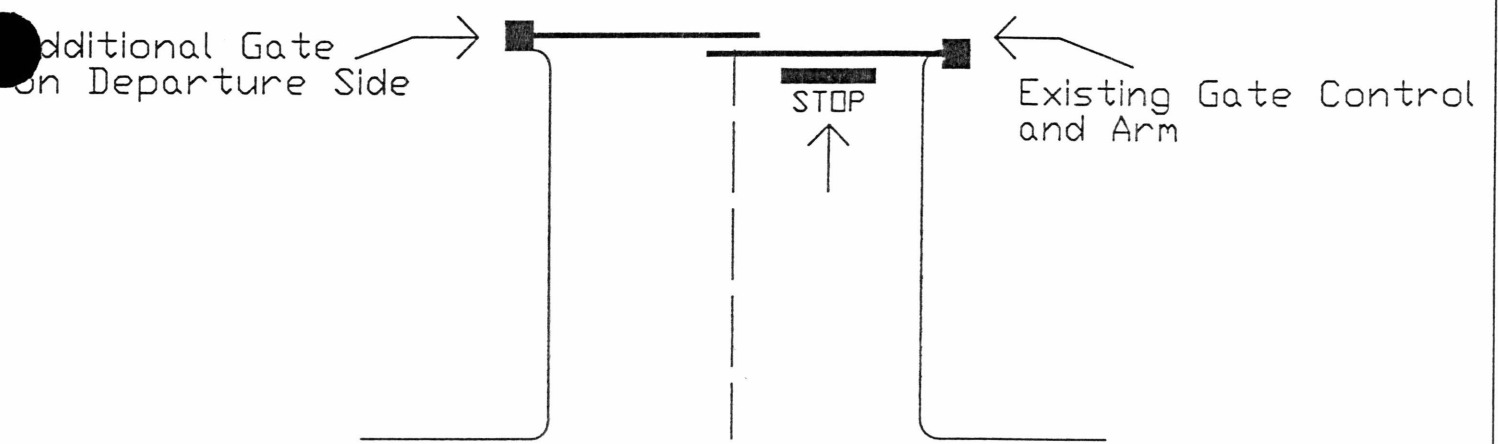
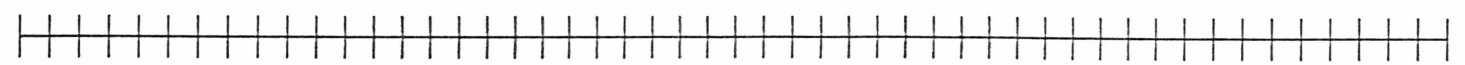
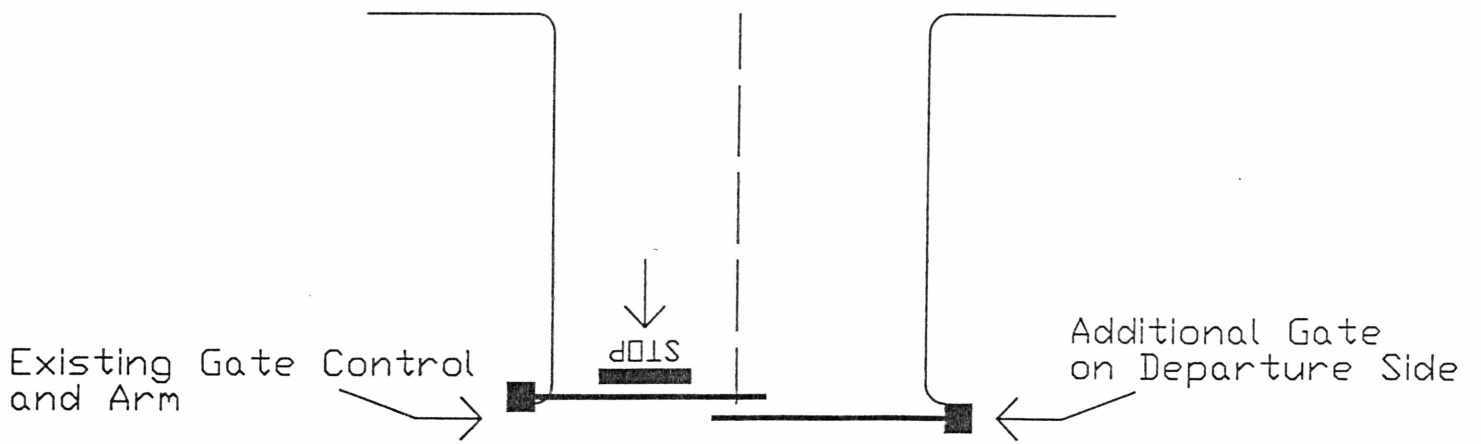
In the Fargo-Moorhead CBD study, only the first three measures were identified and adopted as future supplemental safety treatments.

## Four Quadrant Gates

Protected railroad/street intersections are equipped with two gates which are lowered to block traffic approaching the railroad tracks from both directions. The gates, combined with the sounding of the whistle are usually adequate to keep the majority of drivers from illegally crossing the tracks when a train is approaching. However, some drivers still take chances and illegally drive across the center line of the street and around the gate to cross in the 15 seconds between the time the gate is lowered and the train arrives. They do this despite the blowing of the whistle.

A four quadrant gate system is exactly like the gates currently provided at protected crossings, except there are four gates instead of two gates, and they block off the lanes approaching the tracks as well as the opposite lanes going away from the tracks. An illustration of a crossing with four quadrant gates is provided on the next page. The presence of gates on all four quadrants of the intersection makes it impossible for drivers to illegally drive around lowered gates. Elimination of the potential for illegal crossings by completely blocking off access across the tracks is considered an adequate supplemental safety measure to allow an exception to the train whistle requirements. Therefore, this is one of the supplemental safety measures being included in the Federal Rail Administration rules.

Installation of four quadrant gates is one of the supplemental safety measures being considered at several at-grade crossings in a potential future quiet zone in the central business districts of Fargo, North Dakota and Moorhead, Minnesota.



4-Quadrant  
Gates



## **Raised Median**

As previously described, the main safety concern at protected railroad crossings is illegal crossings of the tracks during the 15 seconds between the lowering of the gates and the arrival of the train. A raised median serves a similar function as a four quadrant gate. It prevents vehicles from crossing over the center line to drive around the lowered gate. In some cases, the placement of bollards may be used on the raised medians to further prevent drivers of large four-wheel drive vehicles from driving over the median. In its rules, the FRA will establish a minimum raised median length. The distances that have been discussed range from 150 to 200 feet in length.

An example of a raised median treatment is shown on the attached page. Here again, the FRA guidance which we have received to date indicates that the raised median will be one of the supplemental safety measures which will be allowed in the establishment of a quiet zone.

Installation of raised medians is one of the supplemental safety measures being considered at one at-grade crossing in a potential future quiet zone in the central business districts of Fargo, North Dakota and Moorhead, Minnesota.

Install Barrier



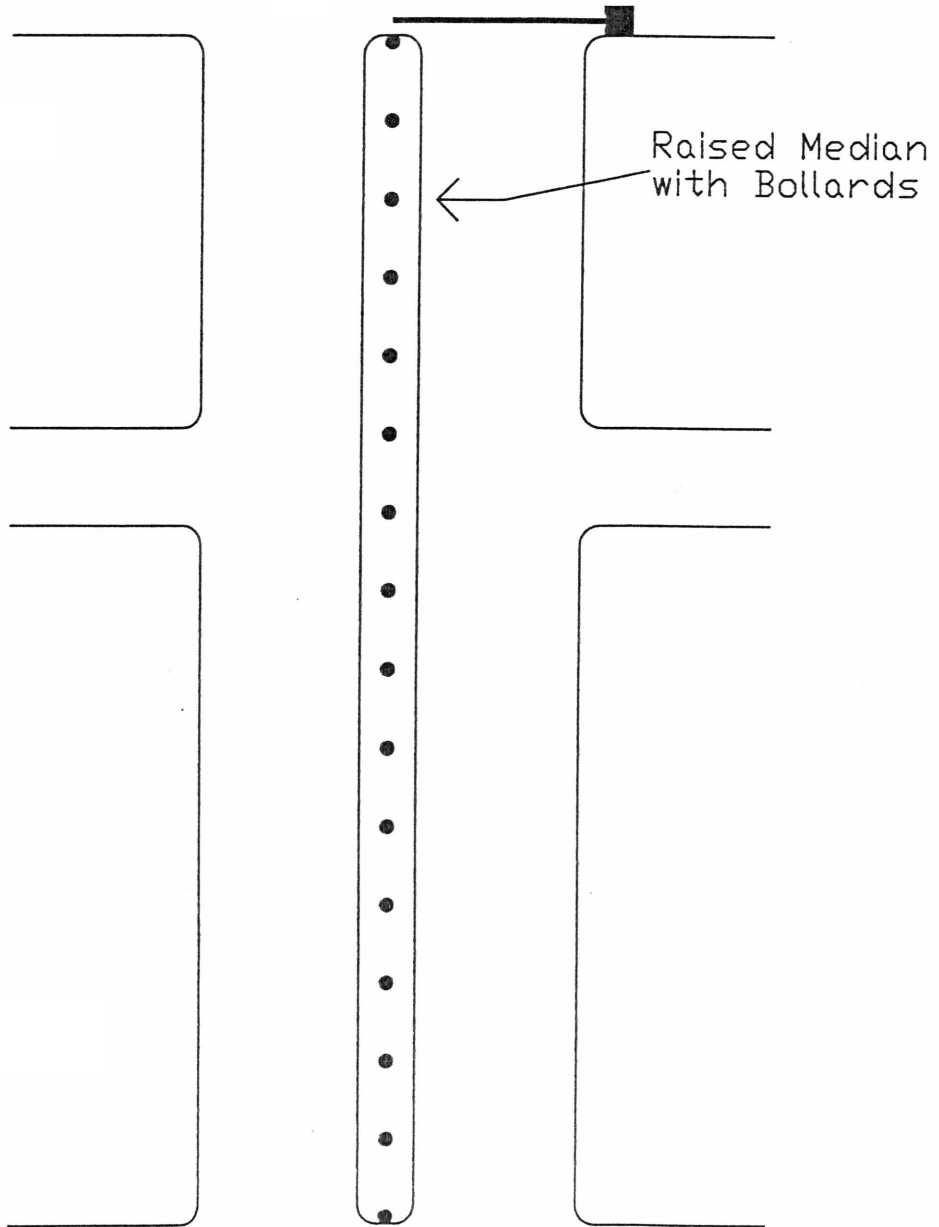
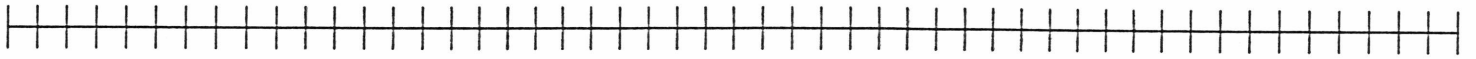
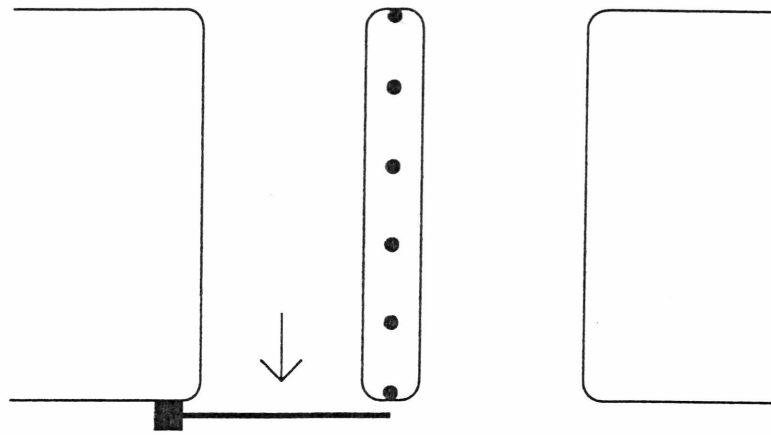
Install Barrier

Full Closure  
Elimination of Crossing

## **Full Closure - Elimination of a Crossing**

In situations where a local jurisdiction is willing to eliminate an at-grade rail crossing, this is obviously one safety measure which would automatically eliminate the need for the sounding of the whistle. This measure would require blocking the street on both sides of the railroad tracks through the use of an earth berm or some other type of physical barrier. In some communities, this is acceptable on low volume streets, where drivers can easily cross the tracks at another location. A full closure is illustrated on the next page.

A full closure of a crossing is one of the supplemental safety measures being considered in a potential quiet zone in Fargo's central business district in order to establish a quiet zone.



## **Night Time Closure**

Closure of an at-grade railroad crossing during the night is another supplemental safety measure that will be included in the FRA rules. This treatment would only result in a night time quiet zone. Whistles would still be sounded during certain hours of the day. Night time closures could be accomplished through the use of four-quadrant gates left in the down position or through some other type of barrier.

Night time closures are not being considered in the Fargo central business district, since this measure would not resolve daytime noise issues experienced by businesses in the area.

## **One Way Pairs with Gated Approach Lanes**

The FRA has also advised us that another supplemental safety measure will be converting of two way streets to one way streets on which all approach lanes would be gated by railroad arms, similar to the four quadrant gate system. This would prevent the illegal railroad crossings described above.

This supplemental safety measure is not being considered in the Fargo-Moorhead area at this time, because the central business district already has one-way pairs in the north/south and east/west directions. Additional one-way pairs are not being considered at this time.

TESTIMONY BEFORE THE  
SENATE POLITICAL SUBDIVISIONS COMMITTEE  
HB - 1272  
March 4, 1999

MADAM CHAIRPERSON, MEMBERS OF THE COMMITTEE, MY NAME IS BOB GRAVELINE AND I AM THE EXECUTIVE DIRECTOR OF THE NORTH DAKOTA SAFETY COUNCIL, INC., A NON-GOVERNMENT, NON-PROFIT, MEMBERSHIP SUPPORTED ORGANIZATION. THE MISSION OF THE SAFETY COUNCIL IS TO HELP MAKE NORTH DAKOTA A SAFER AND HEALTHIER PLACE TO LIVE.

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AS A GENERAL STATEMENT, PEOPLE INVOLVED IN RAILROAD SAFETY DO NOT FAVOR WHISTLE BANS. THE BEST WAY TO UNDERSTAND THEIR OPPOSITION TO WHISTLE BANS IS TO REVIEW THE RESULTS OF A STUDY OF SUCH BANS IN FLORIDA SEVERAL YEARS AGO.

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EACH OF THESE 511 CROSSINGS WERE EQUIPPED WITH ACTIVE GATES AND LIGHTS LIKE YOU SEE AT MOST HIGH TRAFFIC RAIL GRADE CROSSINGS.

FURTHER, SPECIAL SIGNS WERE ERECTED AT THE AFFECTED CROSSINGS TO INFORM MOTORISTS THAT THE WHISTLE BAN WAS IN EFFECT.

IN SPITE OF THE ACTIVE CROSSING GATES AND THE SPECIAL SIGNS, FEC'S NIGHTTIME CRASH RATE AT THESE 511 CROSSINGS NEARLY TRIPLED AFTER THE WHISTLE BAN WAS IMPOSED. DAYTIME STATISTICS REMAINED NEARLY THE SAME.

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FOLLOWING THE IMPOSITION OF THIS EMERGENCY ORDER, NIGHTTIME TRAIN GRADE CROSSING CRASHES DECREASED BY 68.6 PERCENT. CLEARLY, AS THE FLORIDA STUDY SHOWS, TRAIN WHISTLES, AS IRRITATING AS THEY MAY BE TO SOME PEOPLE, DO PREVENT CRASHES.

SHOULD THIS COMMITTEE AND THE LEGISLATURE DECIDE TO ALLOW QUIET ZONES, THE NORTH DAKOTA SAFETY COUNCIL AND NORTH DAKOTA OPERATION LIFESAVER URGES YOU TO MAKE CERTAIN THAT ANY WHISTLE BAN BE COMPLETED IN FULL AGREEMENT WITH THE FEDERAL RAILROAD ADMINISTRATION'S YET TO BE ENACTED RECOMMENDATIONS.

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IN ORDER TO ASSURE PUBLIC SAFETY AT THESE CROSSINGS, WE ENCOURAGE YOU TO ADOPT THE FOLLOWING AMENDMENTS:

ON PAGE 1, LINE 11, FOLLOWING THE WORD "ADMINISTRATION'S" INSERT THE FOLLOWING WORDS: "REGULATIONS ISSUED IN ACCORDANCE WITH SECTION 20153 OF TITLE 49 OF THE UNITED STATES CODE WHICH INCLUDE"

ON PAGE 2, LINE 4, ADD THE FOLLOWING: "SECTION 2. EFFECTIVE DATE. THIS ACT BECOMES EFFECTIVE IMMEDIATELY FOLLOWING THE EFFECTIVE DATE OF THE FEDERAL RAILROAD ADMINISTRATION'S REGULATIONS REFERRED TO IN SECTION 1 OF THIS BILL."



MADAM CHAIRPERSON AND MEMBERS OF THE COMMITTEE, THE NORTH DAKOTA SAFETY COUNCIL AND THE NORTH DAKOTA OPERATION LIFESAVER ENCOURAGE YOU TO KEEP THESE SAFETY ISSUES IN MIND AS YOU DELIBERATE HB-1272.

Cindi  
Gray  
bill 1272

- Primary purpose of requesting ~~legislation~~ is to make state century code consistent with rules that we know are being established at the nat'l level by the Federal Rail Admin.
- FRA has studied supplem. safety measures, which are being employed around the country even in advance of the rules, that make at-grade rail crossings safer than they've ever been. So safe, that FRA will <sup>support</sup> establish a quiet zone, where train whistles ~~do not need to be blown~~. The whistle ban problems are the main reason why the FRA is establishing new rules. The accidents that occurred under wh. bans were caused by banning whistles w/ no safety measures. The Swift Rail Dep. got was app. at Fed level supported these flat-out whistle bans.
- Fargo, for example, <sup>24 hrs. a day</sup> experiences about 100 trains a day. As these trains whistle ~~at~~ prior to each of the 20 crossings, 1500-2000 times per day, residents are impacted by whistle noise 3-4 times louder than highway noise for which sound walls are built.

This is a nerve rattling/earsplitting noise level that stops all business from taking place, awakens nearby residents, and is very incompatible with a residential setting. The measured noise levels are 95-105 dBA, which is nearly as loud as standing adjacent to a runway when jet engines are taking off, or at the end of a runway when ~~the~~ military jet is taking off.

- Rule simply provides exception,
- City has no intent to try to proceed until such time as FRA rules are in place.

o The supplem. safety meas. of 4-gate gates & raised medians have been shown to decrease illegal crossings of the existing 2-gate gates by 86-98%, depending on the measure used. With these safety improvements making at-grade crossings safer than they've ever been, engineers have the freedom of not blowing the whistle unless they determine it necessary for some reason.

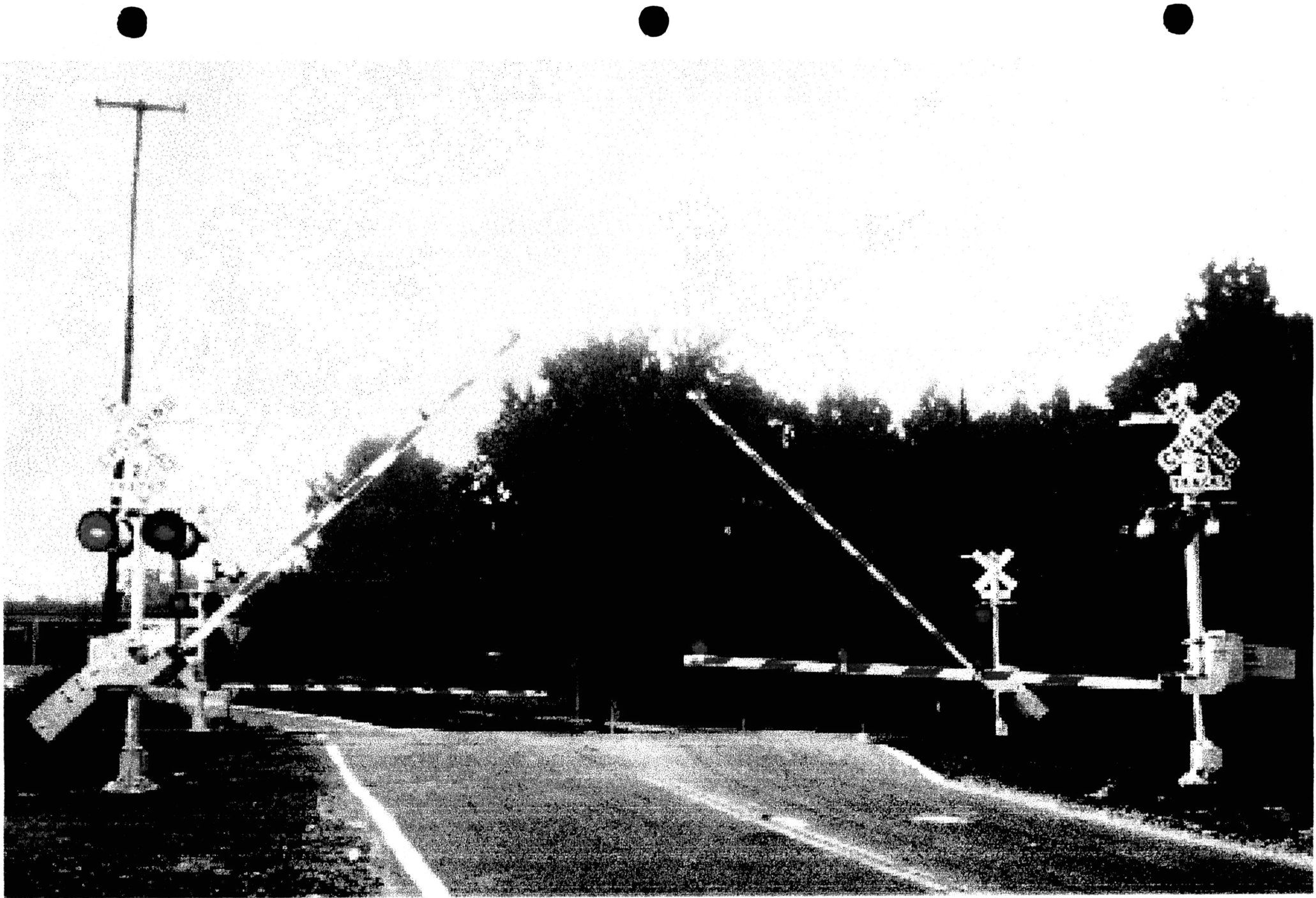
Refer to pictures. 4-gate gates similar to raised median, prevent cars from driving around.

Pedestrians are well protected by the bells, lights, & sidewalk gates currently used at most of our crossings. The engineer ~~will always~~ will of course blow the whistle if an unexpected pedestrian was on the tracks.

So much interest around country - we've had req. ~~for~~ for info. about our study from the Wahpeton area, Rochester, MN, several cities in SD, Other cities around the country, like Louisville have chosen not to wait for the FRA rules, & have est. a quiet zone under emerg. order. We are willing to wait till later this year when FRA

never know what could happen in court, but if we have safest crossing measures short of closing the gates crossings, and considering the fact that most accidents are the result of driver negligence & illegal gate crossings, we believe that ~~it~~ would

01/10/00 10:40 AM







***Raised Median:  
Roberts Street, North of 4th Avenue N.***