

Montana Rail Service Competition Council 2005-2019 Final Report

June 2019

Introduction

The Rail Service Competition Council (RSCC) was created in 2005 by the Montana Legislature to promote rail service competition in Montana. The Legislature repealed the statutory authority for the RSCC in 2019 through House Bill 59.

The RSCC was statutorily established under [section 2-15-2511](#), Montana Code Annotated (MCA) and provided a forum for dialogue among representatives of railroads, shippers, and others to address issues and opportunities for improving rail transportation for commodities and passengers in Montana.

Legislative History

The Montana Legislature enacted Senate Bill (SB) 315 (Ch. 337, L. 2003) in 2003, which directed the Governor's Office of Economic Development to conduct a study to assess conditions affecting rail competition in Montana, and analyze possibilities to improve rail freight competition. The 2004 report, *Rail Freight Competition Study as Provided by Montana Senate Bill 315¹*, offers a thorough discussion of competition issues facing the state. The study found that limited rail competition is only one of a series of factors that foster the dual problems of high rates and limited service. Other factors include:

- Montana's relatively small transportation market;
- geographic position, and distance from the more robust markets on the West Coast and in the Midwest;
- Staggers Rail Act emphasis on financial health of the railroads, and interpretation of that law by the Interstate Commerce Commission (ICC) and its successor entity, the Surface Transportation Board (STB); and
- limited transportation options in Montana other than rail (distance to waterway transportation via barge, and long trucking distances).

Based on the report's recommendations, in 2005, the Montana Legislature created the Rail Service Competition Council (RSCC). The bill that established the RSCC, House Bill (HB) 769 (Ch. 605, L. 2005), was sponsored by Rep. George Golie.

The law was amended several times, and funding fluctuated, before the statutory authority for the Rail Service Competition Council was repealed by the Montana Legislature. Substantive changes are highlighted below.

2007 HB 26, Rep. Tom McGillvray (Ch. 248, L. 2007)

- Provided for staggered 4-year terms for members appointed by the Governor.
- Revised the membership to add a person with knowledge and experience related to transportation for the coal industry in Montana and eliminated the requirement to appoint a person employed as a railroad employee of a railroad engaged in interstate commerce in Montana.
- Expanded the RSCC duties to add promotion of the expansion of existing rail lines and the construction of new rail lines in the state.

- Required the RSCC to report to the 2009 Legislature on its activities and progress in performing its duties.
- Transferred administration of the RSCC from the Governor's Office to the Montana Department of Transportation (MDT).
- Provided for appropriations from the general fund of \$50,000 per year for the 2009 biennium.

2009

- The Legislature did not fund the RSCC.
- HB 537 by Rep. Mike Milburn (failed) would have funded the RSCC with \$50,000 per year from the general fund. The bill died in standing committee.
- SB 291 by Sen. Jerry W. Black (failed) would have created a Montana Railroad Authority.

2011

- Funding of \$50,000 per year from the highway state special revenue fund was included as a line item appropriation in HB 2.
- SB 181 by Sen. Kendall Van Dyk (failed) would have dissolved the RSCC and placed its responsibilities under the Transportation Commission. The bill passed the Senate but died in the House Local Government Committee.

2013

- Funding of \$50,000 per year from the highway state special revenue fund was included as a line item appropriation in HB 2.

2015 SB 117 Sen. Bruce Tutvedt (Ch. 58, L. 2015)

- Revised the membership to add a person with substantial knowledge and experience related to rail passenger service provided by Amtrak in Montana.

2019 HB 59 Rep. Ryan Lynch (Ch. 11, 2019)

- Repealed the statutory authority for the RSCC. The bill was requested by the Economic Affairs Interim Committee.

Responsibilities

The duties of the RSCC were prescribed in state law ([2-15-2511, MCA](#)) and are listed below:

- Promote rail service competition in the state that results in reliable and adequate service at reasonable rates.
- Develop a comprehensive and coordinated plan to increase rail service competition in the state.
- Reevaluate the state's railroad taxation practices to ensure reasonable competition while minimizing any transfer of tax burden. The reevaluation of the state's railroad taxation practices should include, but is not limited to, a reevaluation of property taxes, taxes that minimize highway damage, special fuel taxes, and corporate tax rates.

- Develop various means to assist Montanans impacted by high rates and poor rail service.
- Analyze the feasibility of developing legal structures to facilitate growth of producer transportation investment cooperatives and rural transportation infrastructure authorities.
- Provide advice and recommendations to the Department of Transportation on the Department's activities under the Montana Essential Freight Rail Act (60-11-113 through 60-11-116, MCA).
- Coordinate efforts and develop cooperative partnerships with other states and federal agencies to promote rail service competition.
- Act as the State's liaison in working with Class I railroads to promote rail service competition.
- Promote the expansion of existing rail lines and the construction of new rail lines in the state.

Council Membership

The RSCC had 12 members when it was first created and 14 members when the statutory authority for the RSCC was repealed. The membership of the RSCC was prescribed by statute ([2-15-2511, MCA](#)) as follows:

Cabinet Members

- Director of the Department of Agriculture
- Director of the Department of Transportation
- Director of the Department of Revenue
- Chief Business Development Officer of the Office of Economic Development

Persons Appointed by the Governor

- Person with substantial knowledge and experience related to Class I railroads
- Person with substantial knowledge and experience related to Class II railroads
- Person who is a farm commodity producer in the state and who has substantial knowledge and experience related to transportation of farm commodities
- Person with substantial knowledge and experience in the trucking industry in the state
- Person with substantial knowledge and experience related to transportation for the mineral industry in the state
- Person with substantial knowledge and experience related to transportation for the wood products industry in the state
- Person with substantial knowledge and experience related to transportation for the coal industry in the state (added in 2007)
- Person with substantial knowledge and experience related to rail passenger service provided by Amtrak in Montana (added in 2015)

Legislative Branch Appointments

- Two members from the Montana Legislature's Economic Affairs Interim Committee, one from the majority party and one from the minority party and one from each house of the Legislature

Council Organization and Administration

The RSCC was attached to the Governor's Office for administrative purposes during the first biennium. In 2007 the administrative role was transferred to the MDT.

The RSCC created subcommittees at various times to address specific issues and sectors, including agriculture, energy, coal, forest and paper products, economic development, ports and intermodal transportation, and taxation.

Funding

Table 1 shows appropriations and expenditures to fund the RSCC's activities for each fiscal year. Funding for the 2007, 2013, 2015, 2017, 2019 bienniums was appropriated from the MDT highway state special revenue account (HSSRA). Funds were appropriated from the state general fund for the 2009 biennium. No funds were appropriated for the 2011 biennium.

Table 1

State Fiscal Year	Appropriation	Expenditures	Revenue Source	Agency Administering
2006	\$50,000	\$5,081	HSSRA Fund	Governor's Office
2007	\$50,000	\$7,017	HSSRA Fund	Governor's Office
2008	\$50,000	\$8,382	General Fund	MDT
2009	\$50,000	\$13,244	General Fund	MDT
2010	\$0	n/a	n/a	n/a
2011	\$0	n/a	n/a	n/a
2012	\$50,000	\$7,759	HSSRA Fund	MDT
2013	\$50,000	\$42,831	HSSRA Fund	MDT
2014	\$50,000	\$32,380	HSSRA Fund	MDT
2015	\$50,000	\$21,547	HSSRA Fund	MDT
2016	\$32,382	\$18,524	HSSRA Fund	MDT
2017	\$32,382	\$5,150	HSSRA Fund	MDT
2018	\$31,041	\$10,773	HSSRA Fund	MDT
2019	\$31,041	\$13,246	HSSRA Fund	MDT

Meetings and Public Involvement

The frequency of RSCC meetings varied according to the issues to be addressed. The RSCC met three times per year during the 2019 biennium.

In addition to providing the opportunity for public comment as required by law, the RSCC encouraged nonmembers to participate in all RSCC discussions.

The RSCC maintained a mailing list of interested persons. All those in attendance at meetings or on the mailing list were provided with all meeting materials.

The RSCC maintained a comprehensive [website](#) with meeting information and links to completed projects.

Projects Completed

The 2007 Montana Legislature required the RSCC to report to the 2009 Legislature on its activities and progress in performing its duties. A report covering the period from September 2006 through September 2008 was submitted to the Legislature in December 2008. RSCC work products are listed below.

- 2012 *Montana Freight Assessment: Trends and Opportunities to Improve Access and Create Freight Efficiencies for Montana Companies.*²
- 2012 *Montana Coal: Economic Impact of Anticipated Expanded Production.*³
- 2013 *The Impact of Paper Barriers on Montana Rail Shippers' Competitiveness.*⁴
- 2013 *Agricultural Commodity Storage Facilities Map.*⁵
- 2014 *Montana Freight Rail Transportation Synthesis.*⁶

Related Studies and Significant Actions

- 2004 R.L. Banks *Rail Competition Study*¹: The study found that limited rail competition is only one of a series of factors that foster the dual problems of high rates and limited service for general freight, agricultural, and intermodal rail shippers in Montana. Other factors include:
 - Montana's relatively small transportation market;
 - geographic position and distance from the more robust markets on the West Coast and in the Midwest;
 - Staggers Rail Act emphasis on financial health of the railroads and interpretation of that law by the ICC and the STB; and
 - limited transportation options in Montana other than rail (distance to barge option and long trucking distances).
- 2009 *Railroad Rate Report*: Based on the initial findings of the Council in 2007, the Montana Legislature appropriated funding to the State Attorney General's Office to further examine rail competition issues for Montana shippers, particularly grain shippers. That report was published by the State Attorney General in February 2009.⁷ Findings included:
 - Montana grain shippers are charged exceptionally high rates.
 - Montana shippers pay excessive fuel surcharges.
 - Montana shippers receive inadequate services.
- 2009 *Rail Rate Arbitration Agreement*: A rail rate arbitration agreement was entered into between BNSF Railway (BNSF), the Montana Grain Growers Association, and the Montana Farm Bureau Federation to enable joint resolution of rate and service disputes. The Federal Surface Transportation Board has been the traditional arbitrator of freight rate disputes, but it limits cases to customers of the railroads. This agreement gives farmers legal standing in rail rate disputes and sets up a formal system to mediate and

arbitrate rail freight rates. This was recognized in a May 27, 2010 *Argus Rail Business* publication as a “Win-Win.” By that publication’s report, the first formal mediation of grain rates between BNSF and grain growers took place in December 2009 and resulted in a significant rate reduction for a number of customers.

References

¹*Rail Freight Competition Study: As Provided by Montana Senate Bill (SB) 315*. Helena, MT: R.L. Banks & Assoc., Inc., 2004. Accessed June 2019.

https://www.mdt.mt.gov/publications/docs/brochures/railways/railcomp_study.pdf.

²Miller, Nicole Hagerman. *Montana Freight Assessment: Trends and Opportunities to Improve Access and Create Freight Efficiencies for Montana Companies*. Missoula, MT: Montana World Trade Center, 2012. Accessed June 2019.

https://www.mdt.mt.gov/business/rscc/docs/freight_assessment.pdf.

³Kambich, Jim. *Montana Coal: Economic Impact of Anticipated Expanded Production*. Butte, MT: Montana Economic Research and Development Institute, 2012.

⁴Whiteside, Terry C. and Gerald W. Fauth III. *The Impact of Paper Barriers on Montana Rail Shippers’ Competitiveness*. Billings, MT: Whiteside & Associates, 2013. Accessed June 2019.

<https://www.mdt.mt.gov/business/rscc/docs/rscc-paper-barrier.pdf>.

⁵*Agricultural Commodity Storage Facilities Map*. Helena, MT: MDT, 2013. Accessed June 2019. <https://www.mdt.mt.gov/business/rscc/docs/agricultural-storage-facilities-map.pdf>.

⁶*Montana Freight Rail Transportation Synthesis*.⁶ Missoula, MT: Montana World Trade Center, 2014. Accessed June 2019.

https://www.mdt.mt.gov/business/rscc/docs/freight_assessment_synthesis.pdf.

⁷Cutler, John and Andrew Goldstein, G.W. Fauth III, Thomas Crowley, and Terry Whiteside. *Railroad Rates and Services Provided to Montana Shippers: A Report Prepared for the State of Montana, State Attorney General’s Office*. Helena, MT, 2009.