

related to railroad safety until the Secretary of Transportation prescribes a regulation or issues an order covering the subject matter of the State requirement." Since this limitation on federal regulatory pre-emption is limited by its terms to "state" rail safety requirements, it could be argued that it implicitly precludes rail safety requirements (including whistle-ban ordinances) adopted by local governmental authorities below the state level.

We understand that some railroads have taken one or two legal positions on this subject: either (1) the very enactment of Section 20153 immediately displaced all state and local authority to adopt and enforce grade-crossing whistle bans; or (2) that Section 20106 independently precludes locally enacted whistle bans, and allows only state-promulgated requirements in this area, prior to adoption and effectiveness of final FRA regulations.

This is an issue of immediate and pressing concern to our states. As FRA acknowledged in its proposed regulations [65 Fed. Reg. 2230, 2234 (Jan. 13, 2000)], well over half of all whistle-banned grade crossing in the United States are located in Wisconsin and Illinois. It is our understanding that many, if not most, of the bans now being ignored by some railroads were promulgated by local rather than state governmental units.

We are therefore requesting the formal legal opinion of the ERA on the following questions:

(1) Does Section 20153, Title 49, United States Code, pre-empt adoption and enforcement of state-issued or locally issued whistle bans prior to promulgation and legal effectiveness of final regulations issued by FRA under that section?

(2) Does Section 20106, Title 49, United States Code, pre-empt the adoption or enforcement of whistle bans issued by local governments prior to promulgation and legal effectiveness of final regulations issued by FRA under Section 20153 of that title?

Thank you for your prompt assistance on this important matter of rail safety policy.

Sincerely,

WILLIAM O. LIPINSKI,  
*Ranking Member,*  
*Aviation Subcommittee.*

THOMAS E. PETRI,  
*Chairman, Ground*  
*Transportation Subcommittee.*

Second, I have also prepared legislation which would spell out the ground rules governing local, state, and federal jurisdiction in this area, while the FRA rulemaking is still pending, and no fully effective regulations are in place. As with the request for the legal opinion, this legislation may prove to be an important option in clarifying the authority of state and local governments in the field of railroad noise abatement at grade crossings.

Finally, I want to commend the gentleman from Illinois, Mr. LIPINSKI, for arranging this evening's discussion of this important transportation safety issue. I look forward to working with him as we address this problem.

Mr. PORTER. Mr. Speaker, I rise today as one of the many Members of Congress opposed to the Federal Railroad Administration's proposed rule for trains to sound their horns at public crossings. Let me first state that I do not oppose efforts by the FRA or any other part of the Department of Transportation to improve safety. Each year there are over 35,000 transportation related deaths in America. We must reduce this terrible statistic. In fact, safer travel is the basis for my opposition to this proposed regulation.

In my opinion, the approach taken by the FRA to prevent train crossing accidents is extreme. I believe that the spending mandated by this regulation would be wasteful and ultimately not improve safety. These scarce dollars and resources can be used more effectively, saving more lives, if spent in other areas. Implementing this rule would draw funds away from other important safety measures for drivers, pedestrians, and other travelers on Americas roads in Illinois and elsewhere.

The main parts of the proposed rule are now well known: trains must blow their horns at all public grade crossings unless a new level of safety measures is installed. While there is flexibility in the types of safety measures and the time in which they must be installed, this sweeping regulation is flawed for several reasons.

First, the FRA data used to conclude that blowing horns at crossings reduces accidents fails to count a significant number of crossings and fails to properly classify and incorporate the nature of the accident. In fact, data has been compiled which indicates that in certain regions of the country, my district being one of them, there is a decrease in the number of accidents in places where train horns are prohibited from sounding. Further, the data does not account for the vast differences in vehicular traffic at the rail crossings where information was gathered.

Second, the majority of the data used by the FRA to formulate this proposal came from a multiyear study of areas in Florida that had implemented and then repealed bans on train horns at crossings. In my opinion, the specific data from the Florida crossings is neither applicable nor appropriate to determine the need for horn bans in the majority of the other states. In Cook County, Illinois there are more gate crossings than in the majority of states in the country.

Third, a recent Illinois study of detailed data compiled between 1988 and 1998 highlights several important facts that should be considered by the FRA. For example, train accidents involving vehicles remains a rare occurrence resulting in less than one percent of highway fatalities. Further, the study found that of train related vehicular accidents, over forty percent occurred because the driver circumvented the existing safety measures. Of the remaining accidents, a significant percentage occurred when a vehicle impacted against the side of a train, rather than the train striking a vehicle. From these facts, we can conclude that in many cases the safety measures currently in place are adequate for those citizens who chose to use them, and expenditures to further improve these safety measures would be better spent.

Mr. Speaker, little consensus exists on whether the data and analysis used by the FRA to support their position is correct, and whether the proposed rule is good public policy from any standpoint. Before forcing states and communities to pay for massive investments in rail crossing safety measures, this issue must be resolved. I ask the Federal Railroad Administration to consider the tens of thousands of citizens in Illinois and millions across the country that would be greatly impacted both financially and physically by this onerous proposal and to change the rule. At a minimum, the individual states should have much more flexibility to decide where they need to spend funds for transportation safety.

## RECESS

The SPEAKER pro tempore (Mr. HAYES). Pursuant to clause 12 of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 8 o'clock and 5 minutes p.m.), the House stood in recess subject to the call of the Chair.

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## AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. DREIER) at 10 o'clock and 53 minutes p.m.

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## REPORT ON RESOLUTION WAIVING A REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO SAME DAY CONSIDERATION OF CERTAIN RESOLUTIONS REPORTED BY THE COMMITTEE ON RULES

Mr. REYNOLDS, from the Committee on Rules, submitted a privileged report (Rept. No. 106-605) on the resolution (H. Res. 488) waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules, which was referred to the House Calendar and ordered to be printed.

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## SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. MCDERMOTT) to revise and extend their remarks and include extraneous material:)

Mr. FILNER, for 5 minutes, today.

Ms. STABENOW, for 5 minutes, today.

Mr. HOYER, for 5 minutes, today.

Mr. DAVIS of Illinois, for 5 minutes, today.

Mr. NADLER, for 5 minutes, today.

Mr. GREEN of Texas, for 5 minutes, today.

(The following Members (at the request of Mr. WICKER) to revise and extend their remarks and include extraneous material:)

Mr. JONES of North Carolina, for 5 minutes, today.

Mr. WHITFIELD, for 5 minutes, May 4.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. BROWN of Ohio for 5 minutes today; and,

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. STEARNS for 5 minutes today.

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## SENATE CONCURRENT RESOLUTION

A concurrent resolution of the Senate of the following title was taken