

LOCAL COMMUNITY RAIL SECURITY ACT

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ed Mayne

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Transportation Code by amending provisions relating to rail security.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ enacts flag, milepost marker, and sign requirements for railroad corporations;
- ▶ enacts the Local Community Rail Security Act;
- ▶ requires operators of a rail facility to submit a risk assessment and an infrastructure protection program to the Division of Emergency Services and Homeland Security;
- ▶ specifies the requirements for a risk assessment and an infrastructure protection program;
- ▶ enacts security requirements for rail facilities that handle hazardous cargo;
- ▶ enacts communications capability requirements for rail operators; and
- ▶ provides a severability clause for the Local Community Rail Security Act.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **53-2-102**, as last amended by Chapter 214, Laws of Utah 2005

30 ENACTS:

31 **53-2-401**, Utah Code Annotated 1953

32 **53-2-402**, Utah Code Annotated 1953

33 **53-2-403**, Utah Code Annotated 1953

34 **53-2-404**, Utah Code Annotated 1953

35 **53-2-405**, Utah Code Annotated 1953

36 **53-2-406**, Utah Code Annotated 1953

37 **53-2-407**, Utah Code Annotated 1953

38 **53-2-408**, Utah Code Annotated 1953

39 **72-14-101**, Utah Code Annotated 1953

40 **72-14-102**, Utah Code Annotated 1953

41 **72-14-103**, Utah Code Annotated 1953

42 **72-14-104**, Utah Code Annotated 1953

43 **72-14-105**, Utah Code Annotated 1953

44 **72-14-106**, Utah Code Annotated 1953

45 **72-14-107**, Utah Code Annotated 1953

46

47 *Be it enacted by the Legislature of the state of Utah:*

48 Section 1. Section **53-2-102** is amended to read:

49 **53-2-102. Definitions.**

50 As used in this [part] chapter:

51 (1) "Attack" means a nuclear, conventional, biological, or chemical warfare action
52 against the United States of America or this state.

53 (2) "Director" means the division director appointed under Section 53-2-103.

54 (3) "Disaster" means a situation causing, or threatening to cause, widespread damage,
55 social disruption, or injury or loss of life or property resulting from attack, internal disturbance,
56 natural phenomena, or technological hazard.

57 (4) "Division" means the Division of Emergency Services and Homeland Security
58 created in Section 53-2-103.

59 (5) "Energy" includes the energy resources defined in Section 63-53a-1.

60 (6) "Expenses" means actual labor costs of government and volunteer personnel,
61 including workers compensation benefits, fringe benefits, administrative overhead, cost of
62 equipment, cost of equipment operation, cost of materials, and the cost of any contract labor
63 and materials.

64 (7) "Hazardous materials emergency" means a sudden and unexpected release of any
65 substance that because of its quantity, concentration, or physical, chemical, or infectious
66 characteristics presents a direct and immediate threat to public safety or the environment and
67 requires immediate action to mitigate the threat.

68 (8) "Internal disturbance" means a riot, prison break, disruptive terrorism, or strike.

69 (9) "Natural phenomena" means any earthquake, tornado, storm, flood, landslide,
70 avalanche, forest or range fire, drought, or epidemic.

71 (10) "State of emergency" means a condition in any part of this state that requires state
72 government emergency assistance to supplement the local efforts of the affected political
73 subdivision to save lives and to protect property, public health, welfare, or safety in the event
74 of a disaster, or to avoid or reduce the threat of a disaster.

75 (11) "Technological hazard" means any hazardous materials accident, mine accident,
76 train derailment, air crash, radiation incident, pollution, structural fire, or explosion.

77 Section 2. Section **53-2-401** is enacted to read:

78 **Part 4. Local Community Rail Security Act**

79 **53-2-401. Title.**

80 This part is known as the "Local Community Rail Security Act."

81 Section 3. Section **53-2-402** is enacted to read:

82 **53-2-402. Rail facility risk assessment.**

83 (1) Prior to July 1, 2007, every operator of a rail facility shall provide a risk assessment
84 to the division for each rail facility in the state that is under its ownership, operation, or control.

85 (2) The risk assessment under Subsection (1) shall, for each rail facility, describe the
86 following:

87 (a) the location and functions of the rail facility;

88 (b) all types of cargo that are moved through, or stored at, the rail facility;

89 (c) any hazardous cargo that is moved through, or stored at, the rail facility;

90 (d) the frequency that any hazardous cargo is moved through, or stored at, the rail
91 facility;

92 (e) the practices of the rail operator to prevent acts of sabotage, terrorism, or other
93 crimes of the rail facility;

94 (f) the training programs that the rail operator requires for its employees at the rail
95 facility;

96 (g) the emergency response procedures of the rail operator to deal with acts of
97 sabotage, terrorism, or other crimes at the rail facility; and

98 (h) the procedures of the rail operator to communicate with local and state law
99 enforcement personnel, emergency personnel, transportation officials, and other first
100 responders in the event of acts of sabotage, terrorism, or other crimes at the rail facility.

101 (3) The division may provide the risk assessment provided under Subsection (2) to
102 other law enforcement or emergency personnel.

103 Section 4. Section **53-2-403** is enacted to read:

104 **53-2-403. Rail facility infrastructure protection program.**

105 (1) Prior to January 1, 2008, every rail operator shall develop and implement an
106 infrastructure protection program to protect rail infrastructure in the state from acts of sabotage,
107 terrorism, or other crimes.

108 (2) The infrastructure protection program under Subsection (1) shall:

109 (a) address the security of all critical infrastructure; and

110 (b) provide training to all employees of the rail operator performing work at a rail
111 facility on how to recognize, prevent, and respond to acts of sabotage, terrorism, or other
112 crimes.

113 (3) All employees of a contractor or subcontractor of a rail operator, and any other
114 person performing work at a rail facility that is not the employee of the rail operator, shall:

115 (a) receive training equivalent to that received by employees of the rail operator under
116 Subsection (2)(b) within a reasonable period of time; and

117 (b) undergo an equivalent evaluation of their background, skills, and fitness as the rail
118 operator implements for its employees pursuant to its infrastructure protection plan.

119 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
120 division may adopt rules to implement the requirements of this section.

121 (5) (a) Each rail operator in the state shall provide a copy of its infrastructure protection
122 program to the division.

123 (b) An infrastructure protection program provided as required under Subsection (5)(a)
124 is classified as a protected record under Title 63, Chapter 2, Government Records Access and
125 Management Act.

126 (6) (a) An infrastructure protection program shall be updated by the rail operator at
127 least once every year.

128 (b) The updated infrastructure protection program shall be submitted to the division.

129 (7) The division:

130 (a) shall review each infrastructure protection program submitted by a rail operator;

131 (b) may conduct inspections to facilitate the review; and

132 (c) may order a rail operator to improve, modify, or change its program to comply with
133 the requirements of this part.

134 (8) The division may fine a rail operator for failure to comply with the requirements of
135 this section or an order of the department in accordance with this section.

136 Section 5. Section **53-2-404** is enacted to read:

137 **53-2-404. Rail facilities handling hazardous cargo requirements.**

138 (1) Every rail operator, for all facilities handling hazardous cargo, shall:

139 (a) secure all facilities that handle or store hazardous materials by providing adequate
140 security personnel;

141 (b) store hazardous materials only in secure facilities designed for storage, which may
142 not include mainline, branch, industrial, or passing tracks not designed or retrofitted for
143 hazardous materials storage;

144 (c) ensure that the cabs of occupied locomotives are secured from hijacking, sabotage,
145 or terrorism; and

146 (d) secure remote control devices to prevent access to those devices by unauthorized
147 personnel.

148 (2) Every rail operator, for all facilities handling hazardous cargo, may not:

149 (a) leave locomotive equipment running while unattended;

150 (b) leave any unattended locomotive equipment unlocked; or

151 (c) use remote control locomotives to move hazardous materials over a public crossing

152 unless the remote control operator is able to:

153 (i) maintain line-of-sight visibility of the public crossing; and

154 (ii) visually ensure that:

155 (A) all automatic highway-rail grade crossing warning devices are functioning as

156 intended; and

157 (B) it is safe for the train to enter the public crossing.

158 Section 6. Section **53-2-405** is enacted to read:

159 **53-2-405. Rail operator communications capability requirements.**

160 Every rail operator shall provide communications capability that:

161 (1) timely alerts local and state law enforcement personnel, emergency personnel,

162 transportation officials, and other first responders in the event of sabotage, terrorism, or other

163 crimes;

164 (2) timely provides bridge tenders on moveable bridges the ability to alert local and

165 state law enforcement personnel, emergency personnel, transportation officials, and other first

166 responders in the event of sabotage, terrorism, or other crimes; and

167 (3) notifies rail workers of the local or national threat level for the rail industry.

168 Section 7. Section **53-2-406** is enacted to read:

169 **53-2-406. Notification of accidents or incidents.**

170 A railroad corporation shall provide immediate notification to the division of accidents,

171 incidents, and other events, concurrent with those provided to the Federal Railroad

172 Administration's National Response Center, as required by 49 C.F.R. Part 225.9.

173 Section 8. Section **53-2-407** is enacted to read:

174 **53-2-407. Violations reported by employees -- Civil damages.**

175 (1) A rail operator or any other person covered under this part may not punish an

176 employee who reports a violation of this part.

177 (2) An employee may seek civil damages of up to \$1,000,000 from an employer if the

178 employer acts to punish the employee for reporting a violation of this part.

179 Section 9. Section **53-2-408** is enacted to read:

180 **53-2-408. Severability.**

181 If any provision of this part or the application of a provision to any person or

182 circumstance is held invalid:

183 (1) the invalidity may not affect other provisions or applications of this part that may
184 be given effect without the invalid provision or application; or

185 (2) the provisions of this part are severable.

186 Section 10. Section **72-14-101** is enacted to read:

187 **CHAPTER 14. RAILROAD SAFETY ACT**

188 **Part 1. General Provisions**

189 **72-14-101. Title.**

190 This chapter is known as the "Railroad Safety Act."

191 Section 11. Section **72-14-102** is enacted to read:

192 **72-14-102. Definitions.**

193 As used in this chapter, "railroad" has the same meaning as defined in 49 C.F.R. Part
194 225.5.

195 Section 12. Section **72-14-103** is enacted to read:

196 **72-14-103. Railroad sign and flag requirements.**

197 (1) (a) A railroad corporation shall place appropriate signage to notify an engineer of
198 an approaching grade crossing, consistent with federal law.

199 (b) Whistle post signs satisfy the requirement under Subsection (1)(a).

200 (2) (a) Appropriate flags that are readily visible and easily recognizable to the crews on
201 both passenger and freight trains shall be displayed as quickly as practicable when a railroad
202 issues written or verbal instructions to employees that may restrict or stop train movements
203 because of:

204 (i) track conditions;

205 (ii) structures;

206 (iii) persons; or

207 (iv) equipment working.

208 (b) The requirements of this section shall be included in the written instructions to the
209 employees issued in accordance with Subsection (2)(a).

210 (3) (a) Yellow flags shall be used:

211 (i) in accordance with Subsection (3)(b) for temporary speed restrictions; and

212 (ii) in accordance with Subsection (3)(c) when a train may be required to stop.

213 (b) (i) Yellow flags shall be used to warn trains to restrict movement because of track

214 conditions or structures.

215 (ii) Except as provided in Subsection (3)(b)(iii), a yellow flag shall be displayed two
216 miles before a restricted area in order to ensure that train movement is restricted at the proper
217 location.

218 (iii) When a restricted area is close to a terminal, junction, or other area, the yellow flag
219 may be displayed less than two miles before the restricted area.

220 (c) (i) Yellow flags shall be used to warn trains to be prepared to stop because of
221 persons or equipment working.

222 (ii) Except as provided in Subsection (3)(c)(iii), a yellow-red flag shall be displayed
223 two miles before a restricted area in order to ensure that the train is prepared to stop at the
224 proper location.

225 (iii) When a restricted area is close to a terminal, junction, or other area, the yellow-red
226 flag may be displayed less than two miles before the restricted area.

227 (4) Flags shall be displayed:

228 (a) only on the track affected;

229 (b) to the right side of the track as viewed from the approaching train; and

230 (c) to protect all possible access to a restricted area.

231 Section 13. Section **72-14-104** is enacted to read:

232 **72-14-104. Railroad milepost marker requirements.**

233 (1) A railroad corporation shall provide milepost markers to train crews at accurate
234 quarter-mile intervals.

235 (2) The milepost markers under Subsection (1) shall be:

236 (a) readily visible to the locomotive engineer within the locomotive cab; and

237 (b) kept in good repair and replaced when necessary.

238 Section 14. Section **72-14-105** is enacted to read:

239 **72-14-105. Railroad sign requirements.**

240 (1) (a) A railroad corporation shall place whistle signs to the right of the main track in
241 the direction of approach, exactly 1/4 mile from the entrance to any grade crossing as a point of
242 reference for locomotive engineers who blow the whistle and ring the bell upon approaching
243 grade crossings as a warning to the public.

244 (b) The whistle signs under Subsection (1)(a) shall:

245 (i) consist of an "X" or "W" or other identifiable mark or symbol on a square plate
246 mounted on a post;

247 (ii) be readily visible to a locomotive engineer within the locomotive cab;

248 (iii) be kept in good repair; and

249 (iv) be replaced when necessary.

250 (2) (a) A railroad corporation shall place permanent speed signs to the right of the track
251 in the direction of approach, two miles in advance of the point where the speed is either
252 increased or decreased for both passenger and freight trains.

253 (b) The signs under Subsection (2)(a) shall be:

254 (i) readily visible to a locomotive engineer within the locomotive cab;

255 (ii) kept in good repair; and

256 (iii) replaced when necessary.

257 Section 15. Section **72-14-106** is enacted to read:

258 **72-14-106. Notification of remote control locomotive utilization.**

259 Beginning on or after January 1, 2007, a railroad corporation shall notify the department
260 and the collective bargaining representative of any affected employee of any new utilization of
261 remote control locomotives in the state.

262 Section 16. Section **72-14-107** is enacted to read:

263 **72-14-107. Department may fine for violation.**

264 The department may fine a railroad corporation for failure to comply with the
265 requirements of this part or an order of the department.

Legislative Review Note
as of 1-29-07 3:46 PM

Office of Legislative Research and General Counsel

S.B. 79 - Local Community Rail Security Act

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Provisions of this bill could have a significant impact on owners and operators of rail facilities to meet requirements and potential fines provided in the bill.
