

1 **OFFICE OF RAIL SAFETY**

2 2023 GENERAL SESSION

3 STATE OF UTAH

4
5 **LONG TITLE**

6 **General Description:**

7 This bill creates the Office of Rail Safety within the Department of Transportation.

8 **Highlighted Provisions:**

9 This bill:

- 10 ▶ creates the Office of Rail Safety;
- 11 ▶ requires application and a request for certification with the Federal Railroad
- 12 Administration;
- 13 ▶ upon certification, requires the Office of Rail Safety to assume the inspection and
- 14 investigation functions in certain aspects of the railroad operations;
- 15 ▶ allows the Office of Rail Safety to regulate and monitor time limits on the blocking
- 16 of railroad-highway grade crossings;
- 17 ▶ requires railroads to pay a fee to cover the costs of the inspections;
- 18 ▶ grants rulemaking power to the Department of Transportation; and
- 19 ▶ makes technical changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **72-1-203**, as last amended by Laws of Utah 2019, Chapter 479

27 ENACTS:

28 **72-17-101**, Utah Code Annotated 1953

29 **72-17-102**, Utah Code Annotated 1953

30 **72-17-103**, Utah Code Annotated 1953

31 **72-17-104**, Utah Code Annotated 1953

32 **72-17-105**, Utah Code Annotated 1953

33 **72-17-106**, Utah Code Annotated 1953

34

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

36 Section 1. Section **72-1-203** is amended to read:

37 **72-1-203. Deputy director -- Appointment -- Qualifications -- Other assistants**
38 **and advisers -- Salaries.**

39 (1) The executive director shall appoint two deputy directors, who shall serve at the
40 discretion of the executive director.

41 (2) (a) The deputy director of engineering and operations shall be a registered
42 professional engineer in the state and is the chief engineer of the department.

43 (b) The deputy director of engineering and operations shall assist the executive director
44 with areas of responsibility that may include:

45 (i) project development, including statewide standards for project design and
46 construction, right-of-way, materials, testing, structures, and construction;

47 (ii) oversight of the management of the region offices described in Section 72-1-205;

48 (iii) operations and traffic management;

49 (iv) oversight of operations of motor carriers and ports;

50 (v) oversight and enforcement of railroad safety requirements as described in Chapter
51 17, Office of Rail Safety;

52 ~~(v)~~ (vi) transportation systems safety;

53 ~~(vi)~~ (vii) aeronautical operations; and

54 ~~(vii)~~ (viii) equipment for department engineering and maintenance functions.

55 (c) The deputy director of planning and investment shall assist the executive director
56 with areas of responsibility that may include:

57 (i) oversight and coordination of planning, including:

58 (A) development of statewide strategic initiatives for planning across all modes of
59 transportation;

60 (B) coordination with metropolitan planning organizations and local governments; and

61 (C) corridor and area planning;

62 (ii) asset management;

63 (iii) programming and prioritization of transportation projects;

- 64 (iv) fulfilling requirements for environmental studies and impact statements;
 65 (v) resource investment, including identification, development, and oversight of
 66 public-private partnership opportunities;
 67 (vi) data analytics services to the department;
 68 (vii) corridor preservation;
 69 (viii) employee development;
 70 (ix) maintenance planning; and
 71 (x) oversight and facilitation of the negotiations and integration of public transit
 72 providers described in Section 17B-2a-827.

73 Section 2. Section **72-17-101** is enacted to read:

74 **CHAPTER 17. Office of Rail Safety Act**

75 **Part 1. Office of Rail Safety Act**

76 **72-17-101. Office of Rail Safety -- Creation -- Applicability.**

77 (1) In accordance with 49 C.F.R. Part 212, State Safety Participation Regulations, there
 78 is created within the department an Office of Rail Safety.

79 (2) As described in 49 C.F.R. Secs. 212.105 and 212.107, to organize the Office of
 80 Rail Safety, the executive director shall:

81 (a) enter into an agreement with the Federal Railroad Administration to participate in
 82 inspection and investigation activities; and

83 (b) obtain certification from the Federal Railroad Administration to undertake
 84 inspection and investigative responsibilities and duties.

85 (3) The department may establish the Office of Rail Safety personnel and duties in
 86 phases and according to the duties described in 49 C.F.R. Part 212.

87 (4) This chapter applies to:

88 (a) a class I railroad; and

89 (b) commuter rail.

90 Section 3. Section **72-17-102** is enacted to read:

91 **72-17-102. Definitions.**

92 As used in this chapter:

93 (1) "Class I railroad" means the same as that term is defined in 49 U.S.C. Sec. 20102.

94 (2) "Commuter rail" means the same as that term is defined in Section 63N-3-602.

95 (3) "Federal Railroad Administration" means the Federal Railroad Administration
96 created in 49 U.S.C. Sec. 103.

97 (4) "Office" means the Office of Rail Safety created in accordance with Section
98 72-17-101.

99 (5) "Railroad" means the same as that term is defined in 49 C.F.R. Sec. 200.3.

100 Section 4. Section **72-17-103** is enacted to read:

101 **72-17-103. Duties of the Office of Rail Safety.**

102 (1) In accordance with 49 C.F.R. Part 212, and the authorization granted from the
103 Federal Railroad Administration, the office shall perform the inspection, compliance, and
104 enforcement duties in the following areas:

105 (a) grade crossings;

106 (b) hazardous materials;

107 (c) motive power and equipment;

108 (d) operating practices;

109 (e) signal and train control; and

110 (f) track.

111 (2) As part of the responsibilities described in Subsection (1), the office shall:

112 (a) inspect and investigate railroad rights-of-way, facilities, equipment, and operations
113 of railroads in this state;

114 (b) notify a railroad of any violation or lack of compliance with applicable state and
115 federal laws, rules, regulations, orders, and directives;

116 (c) enforce applicable state and federal laws, rules, regulations, orders, and directives
117 relating to the transportation by rail of persons or commodities; and

118 (d) issue orders to require compliance with state and federal laws, rules, regulations,
119 orders, and directives.

120 (3) The office shall employ a sufficient number of federally certified inspectors and
121 staff to ensure that railroad equipment, facilities, and tracks are inspected as frequently as
122 reasonably required to ensure compliance and safety as required under state and federal law.

123 (4) (a) The power to establish and regulate the length of time a railroad may block a
124 highway-railroad grade crossing is vested exclusively in the office.

125 (b) Upon petition of a political subdivision, or upon the office's own motion, the office

126 may:

127 (i) conduct an investigation of the conditions related to a grade crossing; and

128 (ii) if necessary, conduct a hearing, make findings, and issue an order to establish

129 reasonable limits on the length of time a railroad may block a railroad-highway grade crossing.

130 (c) A railroad that violates a time limit established pursuant to this Subsection (4) and

131 rules made according to Subsection (6) is subject to a civil penalty not less than \$500 and no

132 more than \$10,000 for each offense.

133 (5) (a) The office shall examine and inspect the physical condition of all railroad

134 facilities in this state to ensure compliance with safety requirements.

135 (b) If an inspector determines that a railroad facility is noncompliant, the office shall

136 provide notice to the railroad.

137 (c) If a railroad receives a notice described in Subsection (5)(b), the railroad shall

138 remedy condition or practice within 30 days of the date of the notice.

139 (d) If after 30 days from the date of the notice the railroad has not remedied the

140 condition or practice to the office's satisfaction, the office shall set the matter for hearing.

141 (e) After a hearing described in Subsection (5)(d), if the office determines that the

142 condition or practice is noncompliant and the railroad has not made reasonable efforts to

143 remedy the condition or practice, the office may issue an order requiring the railroad to:

144 (i) eliminate or remedy the unsafe or unlawful condition or practice; or

145 (ii) make any necessary repairs, alterations, or other changes to the relevant condition

146 or practice to ensure compliance with state and federal law.

147 (f) In addition to any order issued under Subsection (5)(e), after a hearing described in

148 Subsection (5)(d), if the office determines that the condition or practice is noncompliant and

149 the railroad has not made reasonable efforts to remedy the condition or practice, and the

150 condition or practice is so hazardous as to place a railroad employee or the public in immediate

151 danger, the office may issue an order requiring the railroad:

152 (i) after 48 hours' written notice to the railroad, issue an order prohibiting:

153 (A) the unsafe or unlawful practice; or

154 (B) the use of the facility until completion of the necessary repair, alteration, or other

155 necessary changes; and

156 (ii) pay a civil penalty of not more than \$10,000 per violation or per day of violation of

157 state or federal law, or a rule made in accordance with Subsection (6).

158 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
159 department shall make rules necessary to:

160 (a) establish the Office of Rail Safety as required in this part;

161 (b) establish and enforce rules regarding safe and reasonable procedures and standards
162 regarding the blocking of grade crossings, which standards and limits shall be commensurate
163 with reasonable requirements of train and vehicular traffic operations;

164 (c) enforce this part and relevant state and federal law related to this part; and

165 (d) administer the Office of Rail Safety as described in this part.

166 Section 5. Section **72-17-104** is enacted to read:

167 **72-17-104. Federal Railroad Administration Grant Program.**

168 After reaching an agreement with and receiving the certification from the Federal
169 Railroad Administration as described in Section 72-17-101, the office may apply for Railroad
170 Safety Grants as often as permitted by the Federal Rail Administration.

171 Section 6. Section **72-17-105** is enacted to read:

172 **72-17-105. Establishment of administrative fees -- Payment -- Expenditures.**

173 (1) (a) The office shall annually determine a fee to be paid by each railroad that
174 operated within the state and is subject to the jurisdiction of the commission on a pro rata basis
175 as described in Subsection (2).

176 (b) The office and the department shall establish the annual fee to produce a total
177 amount not less than the amount required to regulate railroads and carry out the duties
178 described in this part.

179 (c) The office shall use the revenue generated by the fees paid by each railroad for the
180 investigation and enforcement activities of the office as required under this part.

181 (2) (a) For grade crossings inspections and services, the office shall establish and each
182 railroad shall pay a fee based on:

183 (i) as of January 1 of each year, the number of crossings the railroad operates within
184 this state that cross a highway, whether at grade, by overhead structure, or subway; and

185 (ii) the frequency of use of each crossing the railroad operates, including:

186 (A) the frequency of train operation at the crossing; and

187 (B) the frequency of highway traffic at the crossing.

188 (b) For hazardous materials related inspections and services, the office shall establish
189 and each railroad shall pay a fee based on the tonnage of hazardous materials transported in this
190 state during a given year.

191 (c) For motive power and equipment related inspections and services, the office shall
192 establish and each railroad shall pay a fee based on the number of motive power units and other
193 equipment units operated by the railroad in this state.

194 (d) For track related inspections and services, the office shall establish and each
195 railroad shall pay a fee based on the number of miles of track owned or operated by the railroad
196 within this state.

197 (e) For signal and train control inspections and services, as well as operating practices
198 inspections and services, the office shall establish and each railroad shall pay a fee based on
199 gross operating revenue of each railroad generated within this state.

200 (f) (i) For inspection services related to commuter rail, notwithstanding any other
201 agreement, a county, city, or town with commuter rail service provided by a public transit
202 district may request local option transit sales tax in accordance with Section 59-12-2206 and
203 spend local option transit sales tax in the amount requested by the office.

204 (ii) A county, city, or town that requests local option transit sales tax as described in
205 Subsection (2)(f)(i) shall transmit to the office all of the funds requested under Subsection
206 (2)(f)(i) and transmitted to the county, city, or town under Subsection 59-12-2206(5)(b).

207 (iii) A county, city, or town that requests local option transit sales tax as described in
208 Subsection (2)(f)(i) may not request more local option transit sales tax than is necessary to
209 carry out the safety inspection and functions under this chapter.

210 (3) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
211 the department shall make rules to establish each of the fee amounts described in Subsection
212 (2):

213 (i) according to the data described in Subsection (2); and

214 (ii) to collect an amount sufficient to cover the budget and costs to administer the
215 duties of the office.

216 (b) The department shall annually adjust the fees established in accordance with
217 Subsection (3)(a) to account for inflation and other budgetary factors.

218 (4) Each railroad that operated within this state shall pay to the office the fees

219 described and established by the office.

220 Section 7. Section **72-17-106** is enacted to read:

221 **72-17-106. Office of Rail Safety Account.**

222 (1) There is created the Office of Rail Safety Account.

223 (2) The account shall be funded by:

224 (a) deposits into the account by the Legislature;

225 (b) fees collected pursuant to Section 72-17-105; and

226 (c) other deposits or donations into the account.

227 (3) The office shall provide a detailed budget to account for the office's expenditures

228 related to the enforcement of this part, including:

229 (a) salaries, per diem, and travel expenses of employees performing the duties

230 described in this part;

231 (b) expenditures for clerical and support staff directly associated with the duties

232 described in this part;

233 (c) expenditures for legal staff who pursue and administer complaints and compliance

234 issues related to this part; and

235 (d) reasonable overhead costs related to Subsections (3)(a) through (c).

236 (4) The office, in performing the duties under this part:

237 (a) shall limit the expenditure of funds to the total amount of fees collected from the

238 railroads as described in this section; and

239 (b) may not expend funds from other sources accessible to the department.