

**Representative Mike Schultz** proposes the following substitute bill:

**OFFICE OF RAIL SAFETY**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Mike Schultz**

Senate Sponsor: \_\_\_\_\_

---

---

**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ creates the Office of Rail Safety;
- ▶ requires application and a request for certification with the Federal Railroad

Administration;

- ▶ upon certification, requires the Office of Rail Safety to assume the inspection and investigation functions in certain aspects of the railroad operations;

- ▶ allows the Office of Rail Safety to regulate and monitor time limits on the blocking of railroad-highway grade crossings;

- ▶ requires railroads to pay a fee to cover the costs of the inspections;

- ▶ grants rulemaking power to the Department of Transportation to make rules related to the implementation of the Office of Rail Safety and employee safety standards related to walkways and clearances; and

- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **72-1-203**, as last amended by Laws of Utah 2019, Chapter 479

31 ENACTS:

32 **72-17-101**, Utah Code Annotated 1953

33 **72-17-102**, Utah Code Annotated 1953

34 **72-17-103**, Utah Code Annotated 1953

35 **72-17-104**, Utah Code Annotated 1953

36 **72-17-105**, Utah Code Annotated 1953

37 **72-17-106**, Utah Code Annotated 1953

38 **72-17-107**, Utah Code Annotated 1953

39 **72-17-108**, Utah Code Annotated 1953



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

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

43 **72-1-203. Deputy director -- Appointment -- Qualifications -- Other assistants**  
44 **and advisers -- Salaries.**

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

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

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

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

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

54 (iii) operations and traffic management;

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

56 (v) oversight and enforcement of railroad safety requirements as described in Chapter

57 17, Office of Rail Safety;

58 [~~(v)~~] (vi) transportation systems safety;

59 [~~(vi)~~] (vii) aeronautical operations; and

60 [~~(vii)~~] (viii) equipment for department engineering and maintenance functions.

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

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

64 (A) development of statewide strategic initiatives for planning across all modes of  
65 transportation;

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

67 (C) corridor and area planning;

68 (ii) asset management;

69 (iii) programming and prioritization of transportation projects;

70 (iv) fulfilling requirements for environmental studies and impact statements;

71 (v) resource investment, including identification, development, and oversight of  
72 public-private partnership opportunities;

73 (vi) data analytics services to the department;

74 (vii) corridor preservation;

75 (viii) employee development;

76 (ix) maintenance planning; and

77 (x) oversight and facilitation of the negotiations and integration of public transit  
78 providers described in Section 17B-2a-827.

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

80 **CHAPTER 17. RAIL SAFETY**

81 **Part 1. Office of Rail Safety**

82 **72-17-101. Office of Rail Safety -- Creation -- Applicability.**

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

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

87 (a) enter into an agreement with the Federal Railroad Administration to participate in

88 inspection and investigation activities; and

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

91 (3) In establishing the Office of Rail Safety in accordance with the duties described in  
92 49 C.F.R. Part 212, the department may hire personnel and establish the duties of the office in  
93 phases.

94 (4) This chapter applies to:

95 (a) a class I railroad; and

96 (b) commuter rail.

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

98 **72-17-102. Definitions.**

99 As used in this chapter:

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

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

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

104 (4) "Office" means the Office of Rail Safety created in accordance with Section  
105 [72-17-101](#).

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

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

108 **72-17-103. Duties of the Office of Rail Safety.**

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

112 (a) grade crossings;

113 (b) hazardous materials;

114 (c) motive power and equipment;

115 (d) operating practices;

116 (e) signal and train control; and

117 (f) track.

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

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

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

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

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

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

130 (4) (a) The office shall investigate railroad practices related to the length of time a  
131 railroad blocks a highway-railroad grade crossing.

132 (b) Upon petition of a political subdivision, or upon the office's own motion, the office  
133 may:

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

135 (ii) if necessary, conduct a hearing, make findings, and issue an order to determine  
136 whether highway-railroad crossing blocking practices of the railroad are reasonable.

137 (c) (i) The office shall examine and inspect the physical condition of all railroad  
138 facilities in this state to ensure compliance with safety requirements.

139 (ii) As part of the inspection and examination of railroad facilities and crossings, the  
140 office shall include an examination and inspection of:

141 (A) the condition of railroad facilities and crossing infrastructure;

142 (B) whether expansion of grade crossing infrastructure or other changes are justified  
143 based on the traffic and safety conditions; and

144 (C) other safety considerations required by federal law.

145 (d) If the office determines that a railroad's highway-railroad crossing blocking  
146 practices are unreasonable, the office shall:

147 (i) request the Federal Rail Administration take enforcement actions pursuant to 49  
148 C.F.R. Sec. 212.115; and

149 (ii) notify the Surface Transportation Board defined in 49 U.S.C. Sec. 10102 of the

150 unsafe and unreasonable practices.

151 (e) If the office finds a violation of safety requirements as described in this section or  
152 in federal law, and the office requests an enforcement action and Federal Rail Administration  
153 does not take enforcement action as described in 49 C.F.R. Sec. 212.115, the office may seek a  
154 civil penalty not less than \$500 and no more than \$10,000 for each offense.

155 (5) (a) The office shall examine and inspect the physical condition of all railroad  
156 facilities in this state to ensure compliance with safety requirements.

157 (b) If an inspector determines that a railroad facility is noncompliant, the office shall  
158 provide written notice to the railroad.

159 (c) If a railroad receives a notice described in Subsection (5)(b), the railroad shall  
160 remedy the condition or practice within 30 days of the date of the notice.

161 (d) If after 30 days from the date of the notice the railroad has not remedied the  
162 condition or practice to the office's satisfaction, the office may set the matter for hearing.

163 (e) After a hearing described in Subsection (5)(d), if the office determines that the  
164 condition or practice is noncompliant and the railroad has not made reasonable efforts to  
165 remedy the condition or practice, the office may issue an order requiring the railroad to:

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

167 (ii) make any necessary repairs, alterations, or other changes to the relevant condition  
168 or practice to ensure compliance with state and federal law.

169 (f) In addition to any order issued under Subsection (5)(e), after a hearing described in  
170 Subsection (5)(d), if the office determines that the condition or practice is noncompliant and  
171 the railroad has not made reasonable efforts to remedy the condition or practice, and the  
172 condition or practice is so hazardous as to place a railroad employee or the public in immediate  
173 danger, the office may issue an order requiring the railroad:

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

175 (A) the unsafe or unlawful practice; or

176 (B) the use of the facility until completion of the necessary repair, alteration, or other  
177 necessary changes; and

178 (ii) pay a civil penalty of not more than \$10,000 per violation or per day of violation of  
179 state or federal law, or a rule made in accordance with Subsection (6).

180 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

181 department shall make rules necessary to:

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

183 (b) establish and enforce rules regarding safe and reasonable procedures and standards

184 regarding the blocking of grade crossings, which standards and limits shall be commensurate

185 with reasonable requirements of train and vehicular traffic operations;

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

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

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

189 **72-17-104. Federal Railroad Administration Grant Program.**

190 After reaching an agreement with and receiving the certification from the Federal

191 Railroad Administration as described in Section [72-17-101](#), the office may apply for Railroad

192 Safety Grants as often as permitted by the Federal Rail Administration.

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

194 **72-17-105. Establishment of administrative fees -- Payment -- Expenditures.**

195 (1) (a) The office shall annually determine a fee to be paid by each railroad that

196 operated within the state and is subject to the jurisdiction of the office on a pro rata basis as

197 described in Subsection (2).

198 (b) The office and the department shall establish the annual fee to produce a total

199 amount not less than the amount required to regulate railroads and carry out the duties

200 described in this part.

201 (c) The office shall use the revenue generated by the fees paid by each railroad for the

202 investigation and enforcement activities of the office as authorized under this part.

203 (2) (a) For grade crossings inspections and services, the office shall establish and each

204 railroad shall pay a fee based on:

205 (i) as of January 1 of each year, the number of crossings the railroad operates within

206 this state that cross a highway, whether at grade, by overhead structure, or subway; and

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

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

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

210 (b) For hazardous materials related inspections and services, the office shall establish

211 and each railroad shall pay a fee based on the tonnage of hazardous materials transported in this

212 state during a given year.

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

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

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

222 (f) (i) For inspection services related to commuter rail, notwithstanding any other  
223 agreement, a county or municipality with commuter rail service provided by a public transit  
224 district may request local option transit sales tax in accordance with Section [59-12-2206](#) and  
225 spend local option transit sales tax in the amount requested by the office.

226 (ii) A county or municipality that requests local option transit sales tax as described in  
227 Subsection (2)(f)(i) shall transmit to the office all of the funds requested under Subsection  
228 (2)(f)(i) and transmitted to the county or municipality under Subsection [59-12-2206\(5\)\(b\)](#).

229 (iii) A county or municipality that requests local option transit sales tax as described in  
230 Subsection (2)(f)(i) may not request more local option transit sales tax than is necessary to  
231 carry out the safety inspection and functions under this chapter.

232 (3) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
233 the department shall make rules to establish each of the fee amounts described in Subsection  
234 (2):

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

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

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

240 (4) Each railroad that operates within this state shall pay to the office the fees described  
241 and established by the office.

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



243 72-17-106. Office of Rail Safety Account.

244 (1) There is created an expendable special revenue fund called the Office of Rail Safety  
245 Account.

246 (2) The account shall be funded by:

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

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

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

250 (3) The office shall provide a detailed budget to account for the office's expenditures  
251 related to the enforcement of this part, including:

252 (a) salaries, per diem, and travel expenses of employees performing the duties  
253 described in this part;

254 (b) expenditures for clerical and support staff directly associated with the duties  
255 described in this part;

256 (c) expenditures for legal staff who pursue and administer complaints and compliance  
257 issues related to this part; and

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

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

260 (a) shall limit the expenditure of funds to the total amount of fees collected from the  
261 railroads as described in this section; and

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

263 Section 8. Section 72-17-107 is enacted to read:

264 **72-17-107. Rulemaking regarding railroad clearances and walkways.**

265 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
266 department shall make rules to establish safety standards related to:

267 (1) walkways adjacent to railroad track;

268 (2) clearances of structures and other obstructions near railroad track;

269 (3) the safety of office personnel conducting inspections in accordance with this part;

270 (4) railroad infrastructure and work spaces for railroad workers;

271 (5) signage related to railroad worker safety; and

272 (6) other safety standards as the department finds necessary.

273 Section 9. Section 72-17-108 is enacted to read:

274 72-17-108. Agreements to indemnify in a railroad contract.

275 (1) As used in this section:

276 (a) "Railroad contract" means a contract or agreement between:

277 (i) a railroad; and

278 (ii) another person that could be subject to a civil penalty or fine issued pursuant to this  
279 chapter.

280 (b) "Indemnification provision" means a covenant, promise, agreement, or  
281 understanding in, in connection with, or collateral to a railroad contract that requires the person  
282 to insure, hold harmless, indemnify, or defend the railroad against liability, if:

283 (i) the damages arise out of a civil penalty issued pursuant to this chapter; and

284 (ii) the damages are caused by or resulting from the fault of the railroad or the  
285 railroad's agents or employees.

286 (2) Except as provided in Subsection (3), an indemnification provision in a railroad  
287 contract is against public policy and is void and unenforceable.

288 (3) If an indemnification provision is included in a railroad contract, in any action for  
289 damages described in Subsection (1)(b)(i), the railroad may seek indemnification from another  
290 party to a railroad contract pro rata based on the proportional share of fault of each party, if:

291 (a) the damages are caused in part by the party other than the railroad;

292 (b) the cause of the damages arose at a time when the party other than the railroad was  
293 operating pursuant to the railroad contract.

294 (4) This section may not be construed to impair a contract in existence before May 3,  
295 2023.