

## HB0063S02 compared with HB0063

~~{deleted text}~~ shows text that was in HB0063 but was deleted in HB0063S02.

inserted text shows text that was not in HB0063 but was inserted into HB0063S02.

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Representative Mike Schultz proposes the following substitute bill:

### OFFICE OF RAIL SAFETY

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Mike Schultz**

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

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#### LONG TITLE

~~{Committee Note:~~

~~\_\_\_\_\_ The Transportation Interim Committee recommended this bill.~~

~~\_\_\_\_\_ Legislative Vote: 14 voting for 0 voting against \_\_\_\_\_ 4 absent~~

~~{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;

## HB0063S02 compared with HB0063

- ▶ 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

### Other Special Clauses:

~~{ None }~~ This bill provides a coordination clause.

### Utah Code Sections Affected:

AMENDS:

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

ENACTS:

72-17-101, Utah Code Annotated 1953

72-17-102, Utah Code Annotated 1953

72-17-103, Utah Code Annotated 1953

72-17-104, Utah Code Annotated 1953

72-17-105, Utah Code Annotated 1953

72-17-106, Utah Code Annotated 1953

72-17-107, Utah Code Annotated 1953

72-17-108, Utah Code Annotated 1953

### Utah Code Sections Affected by Coordination Clause:

72-7-102, Utah Code Annotated 1953

72-7-601, Utah Code Annotated 1953

72-7-602, Utah Code Annotated 1953

72-17-201, Utah Code Annotated 1953

72-17-202, Utah Code Annotated 1953

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

## HB0063S02 compared with HB0063

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

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

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

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

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

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

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

(iii) operations and traffic management;

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

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

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

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

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

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

(i) oversight and coordination of planning, including:

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

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

(C) corridor and area planning;

(ii) asset management;

(iii) programming and prioritization of transportation projects;

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

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

## HB0063S02 compared with HB0063

- (vi) data analytics services to the department;
- (vii) corridor preservation;
- (viii) employee development;
- (ix) maintenance planning; and
- (x) oversight and facilitation of the negotiations and integration of public transit providers described in Section 17B-2a-827.

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

### CHAPTER 17. ~~OFFICE OF~~ RAIL SAFETY ~~ACT~~

#### Part 1. Office of Rail Safety ~~Act~~

##### 72-17-101. Office of Rail Safety -- Creation -- Applicability.

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

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

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

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

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

(4) This chapter applies to:

(a) a class I railroad; and

(b) commuter rail.

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

##### 72-17-102. Definitions.

As used in this chapter:

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

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

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

## HB0063S02 compared with HB0063

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

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

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

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

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

- (a) grade crossings;
- (b) hazardous materials;
- (c) motive power and equipment;
- (d) operating practices;
- (e) signal and train control; and
- (f) track.

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

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

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

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

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

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

(4) (a) The ~~{power to establish and regulate}~~ office shall investigate railroad practices related to the length of time a railroad ~~{may block}~~ blocks a highway-railroad grade crossing ~~{is vested exclusively in the office}~~.

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

## HB0063S02 compared with HB0063

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

(ii) if necessary, conduct a hearing, make findings, and issue an order to ~~establish~~ reasonable limits on the length of time a railroad may block a railroad-highway grade crossing.

~~(c) A railroad that violates a time limit established pursuant to this Subsection (4) and rules made according to Subsection (6) is subject to~~ determine whether highway-railroad crossing blocking practices of the railroad are reasonable.

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

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

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

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

(C) other safety considerations required by federal law.

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

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

(ii) notify the Surface Transportation Board defined in 49 U.S.C. Sec. 10102 of the unsafe and unreasonable practices.

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

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

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

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

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

## HB0063S02 compared with HB0063

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

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

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

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

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

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

(A) the unsafe or unlawful practice; or

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

(ii) pay a civil penalty of not more than \$10,000 per violation or per day of violation of state or federal law, or a rule made in accordance with Subsection (6) or Section 72-17-107.

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

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

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

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

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

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

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

After reaching an agreement with and receiving the certification from the Federal Railroad Administration as described in Section 72-17-101, the office may apply for Railroad

## HB0063S02 compared with HB0063

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) (i) For inspection services related to commuter rail, notwithstanding any other



## HB0063S02 compared with HB0063

agreement, a county ~~{, city,}~~ or ~~{town}~~ municipality with commuter rail service provided by a public transit district may request local option transit sales tax in accordance with Section 59-12-2206 and spend local option transit sales tax in the amount requested by the office.

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

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

~~(iv) The office is not required to charge or collect a fee related to inspections of commuter rail.~~

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

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

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

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

(4) Each railroad that ~~{operated}~~ operates within this state shall pay to the office the fees described and established by the office.

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

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

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

(2) The account shall be funded by:

(a) deposits into the account by the Legislature;

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

(c) other deposits or donations into the account.

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

## HB0063S02 compared with HB0063

related to the enforcement of this part, including:

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

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

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

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

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

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

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

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

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

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

(1) walkways adjacent to railroad track;

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

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

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

(5) signage related to railroad worker safety; and

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

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

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

(1) As used in this section:

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

(i) a railroad; and

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

(b) "Indemnification provision" means a covenant, promise, agreement, or understanding in, in connection with, or collateral to a railroad contract that requires the person

## **HB0063S02 compared with HB0063**

to insure, hold harmless, indemnify, or defend the railroad against liability, if:

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

(ii) the damages are caused by or resulting from the fault of the railroad or the

railroad's agents or employees.

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

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

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

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

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

### Section 10. Coordinating H.B. 63 with H.B. 232 -- Substantive and technical amendments.

If this H.B. 63 and H.B. 232, Railroad Crossing Maintenance Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel shall prepare the Utah Code database for publication as follows:

(1) renumbering Title 72, Chapter 7, Part 6, Regulation of Highway-Railroad Grade Crossings, in H.B. 232 to be Title 72, Chapter 17, Part 2, Regulation of Highway-Railroad Grade Crossings;

(2) renumbering Section 72-7-601 in H.B. 232 to be Section 72-17-201;

(3) renumbering Section 72-7-602 in H.B. 232 to be Section 72-17-202; and

(4) replacing the language "Section 72-7-602" with "Section 72-17-202" in Section 72-7-102.