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**RAILROAD AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

House Sponsor: Kay J. Christofferson

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**LONG TITLE**

**General Description:**

This bill establishes a rail ombudsman.

**Highlighted Provisions:**

This bill:

- establishes a rail ombudsman position within the rail division; and
- modifies implementation dates of certain provisions or changes relating to rail.

**Money Appropriated in this Bill:**

This bill appropriates in fiscal year 2025:

- to Transportation - Operations/Maintenance Management - Maintenance Administration as an ongoing appropriation:
  - from the Rail Transportation Restricted Account, \$800,000

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**

AMENDS:

- 56-1-12**, as repealed and reenacted by Laws of Utah 2023, Chapter 232
- 56-1-13**, as repealed and reenacted by Laws of Utah 2023, Chapter 232
- 56-1-39**, as enacted by Laws of Utah 2023, Chapter 41 and last amended by Coordination Clause, Laws of Utah 2023, Chapter 41
- 72-2-131**, as last amended by Laws of Utah 2021, Chapter 387
- 72-17-101**, as enacted by Laws of Utah 2023, Chapter 42
- 72-17-102**, as enacted by Laws of Utah 2023, Chapter 42
- 72-17-103**, as enacted by Laws of Utah 2023, Chapter 42
- 72-17-104**, as enacted by Laws of Utah 2023, Chapter 42

28 **72-17-105**, as enacted by Laws of Utah 2023, Chapter 42

29 **72-17-106**, as enacted by Laws of Utah 2023, Chapter 42

30 **72-17-107**, as enacted by Laws of Utah 2023, Chapter 42

31 **72-17-108**, as enacted by Laws of Utah 2023, Chapter 42

32 ENACTS:

33 **56-1-12.1**, Utah Code Annotated 1953

34 **56-1-13.1**, Utah Code Annotated 1953

35 **63I-2-256**, Utah Code Annotated 1953

36 **72-18-101**, Utah Code Annotated 1953

37 **72-18-102**, Utah Code Annotated 1953

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

40 Section 1. Section **56-1-12** is amended to read:

41 **56-1-12 . Injury to livestock -- Notice -- Railroad Livestock Damages Fund and**  
 42 **Board -- Appeals -- Compensation and fees -- Rulemaking.**

43 (1) The provisions in this section apply beginning on May 7, 2025.

44 (2) As used in this section:

45 (a) "Actual fair market value" means the actual value of damages to livestock as  
 46 determined by the Livestock Damages Board.

47 (b) "Damage" means injury or loss to livestock resulting from a strike by a railroad  
 48 operation.

49 (c) "Department" means the Department of Agriculture and Food created in Section  
 50 4-2-102.

51 (d) "Estimated market value" means the market value of livestock as determined in rules  
 52 made in accordance with Subsection [(8)] (9).

53 (e) "Indemnification provision" means a covenant, promise, agreement or understanding  
 54 in, in connection with, or collateral to a railroad contract requiring the other entity to  
 55 insure, hold harmless, indemnify, or defend a railroad against liability if:

56 (i) the damages arise out of:

57 (A) damage to property, including livestock; or

58 (B) other related economic loss; and

59 (ii) the damages are caused by or resulting from the fault, in whole or in part, of the  
 60 railroad or the railroad's agents or employees.

61 (f) "Law enforcement agency" means the same as that term is defined in Section

- 62 53-1-102.
- 63 (g) "Livestock" means the same as that term is defined in Section 4-1-109.
- 64 (h) "Livestock Damages Board" means the Livestock Damages Board created in  
65 Subsection [~~(9)~~] (10).
- 66 (i) "Railroad" means the same as that term is defined in 49 C.F.R. Sec. 200.3.
- 67 (j) "Railroad Livestock Damage Fund" or "fund" means the Railroad Livestock Damage  
68 Fund created in Subsection [~~(7)~~] (8).
- 69 (k) "Statewide railroad engineer" means the statewide railroad engineer within the  
70 Department of Transportation.
- 71 [~~(2)~~] (3) Each railroad that operates in this state shall provide to the department current  
72 contact information suitable for communication between the department and the railroad  
73 regarding injury to livestock caused by a railroad.
- 74 [~~(3)~~] (4) (a) A railroad operator that strikes, injures, or kills livestock during the  
75 operation of an engine or car shall:
- 76 (i) immediately record the location of the strike; and
- 77 (ii) within 24 hours of the strike, notify and provide pertinent information to the  
78 department and the statewide railroad engineer.
- 79 (b) (i) If a railroad fails to report a strike as required in Subsection [~~(3)(a)~~] (4)(a), the  
80 railroad is liable for a civil penalty of at least \$5,000 per incident.
- 81 (ii) It is prima facie evidence that a railroad has failed to report if:
- 82 (A) an investigation described in Subsection [~~(3)(e)~~] (4)(c) determines that  
83 livestock was struck by railroad;
- 84 (B) the investigation under Subsection [~~(3)(e)~~] (4)(c) resulted from a notification  
85 from a livestock owner of a potential strike as described in Subsection [~~(4)(e)~~]  
86 (5)(c); and
- 87 (C) the railroad has not reported a corresponding strike under Subsection [~~(3)(a)~~]  
88 (4)(a).
- 89 (iii) If the department determines that a railroad has failed to report as described in  
90 Subsection [~~(3)(b)(ii)~~] (4)(b)(ii):
- 91 (A) the department shall notify the railroad and assess a civil penalty; and
- 92 (B) the railroad shall pay the civil penalty assessed by the department.
- 93 (iv) The department shall deposit into the Railroad Livestock Damage Fund any  
94 money received for a civil penalty under this Subsection [~~(3)(b)~~] (4)(b).
- 95 (v) Payment of a civil penalty described in this Subsection [~~(3)(b)~~] (4)(b) does not

96 release a railroad from liability for damage to livestock.

97 (c) After receiving the notification described in Subsection [~~(3)~~(a)] (4)(a), the department  
98 shall:

99 (i) notify the relevant law enforcement agency with jurisdiction over the location of  
100 the livestock strike; and

101 (ii) in consultation with the relevant law enforcement agency and the statewide  
102 railroad engineer, make reasonable efforts to:

103 (A) investigate the scene of the strike;

104 (B) identify the livestock that was struck;

105 (C) determine ownership of the livestock that was struck;

106 (D) assess the state of repair of the fences along the railroad right-of-way; and

107 (E) document and preserve relevant evidence of the scene of the strike.

108 (d) (i) After the investigation described in Subsection [~~(3)~~(b)] (4)(b), if possible, the  
109 department and relevant law enforcement agency shall notify the owner of the  
110 livestock that was struck.

111 (ii) The department shall create and maintain a website to document and provide  
112 notice and information to the public regarding livestock strikes within this state.

113 (iii) If the relevant law enforcement agency and department are unable to identify the  
114 owner of the injured livestock as described in Subsection [~~(3)~~(b)] (4)(b), the  
115 department shall post and maintain relevant information regarding the strike on a  
116 website to provide notice to the public regarding each livestock strike.

117 [~~(4)~~] (5) (a) If livestock is struck by an implement of railroad operations, the owner of the  
118 livestock may receive compensation for the estimated market value or the actual fair  
119 market value of the damage.

120 (b) To obtain compensation, the owner of the damaged livestock shall notify the  
121 department as soon as possible after discovering the damage.

122 (c) A livestock owner shall notify the department each time the owner believes livestock  
123 has been damaged by railroad operations.

124 [~~(5)~~] (6) A livestock owner shall file a proof of loss form, provided by the department, no  
125 later than 30 days after the date of the original notification livestock damage:

126 (a) has been received by the livestock owner pursuant to Subsection [~~(3)~~(e)] (4)(c); or

127 (b) has been received by the department pursuant to Subsection [~~(4)~~(e)] (5)(c).

128 [~~(6)~~] (7) The department shall:

129 (a) within 30 days after the day the department receives a proof of loss form from a

- 130 livestock owner, either accept or deny the claim for damages to livestock; and
- 131 (b) to the extent money is available in the Railroad Livestock Damage Fund created in
- 132 Subsection ~~[(7)]~~ (8), pay all accepted claims in accordance with the livestock
- 133 estimated market value established pursuant to Subsection ~~[(8)]~~ (9).
- 134 ~~[(7)]~~ (8) (a) There is created an expendable special revenue fund called the Railroad
- 135 Livestock Damage Fund.
- 136 (b) The fund shall consist of:
- 137 (i) deposits by the Legislature;
- 138 (ii) an initial deposit by each railroad as described in Subsection ~~[(7)(e)]~~ (8)(c);
- 139 (iii) periodic payments by each railroad as required in Subsection ~~[(7)(d)]~~ (8)(d);
- 140 (iv) annual deposits by each railroad for administrative costs as provided under
- 141 Subsection ~~[(7)(e)]~~ (8)(e);
- 142 (v) money deposited by the department from a civil penalty described in Subsection [
- 143 ~~(3)]~~ (4);
- 144 (vi) other donations or deposits into the fund; and
- 145 (vii) interest earned on the balance of the fund.
- 146 (c) Before December 31, 2023, each railroad shall pay into the Railroad Livestock
- 147 Damage Fund:
- 148 (i) an initial, one-time fee of \$150 per mile of railroad track owned by the railroad in
- 149 this state, in accordance with rules made under Subsection ~~[(8)(b)]~~ (9)(b), to
- 150 capitalize the fund for payment of claims as provided in this section; and
- 151 (ii) an initial, one-time fee of \$75 per mile of railroad track owned by the railroad in
- 152 this state, in accordance with rules made under Subsection ~~[(8)(b)]~~ (9)(b), to pay
- 153 for staff salaries and other costs to administer the fund and the department
- 154 responsibilities under this section.
- 155 (d) (i) If the department issues payment from the fund in accordance with Subsection [
- 156 ~~(6)]~~ (7), the department shall notify the relevant railroad that is liable for the
- 157 damage.
- 158 (ii) The department shall include in the notice to the railroad described in Subsection [
- 159 ~~(7)(d)(i)]~~ (8)(d)(i) relevant information, including:
- 160 (A) the date or approximate date that the damage occurred;
- 161 (B) the location where the damage occurred;
- 162 (C) the type of livestock that was damaged;
- 163 (D) the name of the owner of the livestock that was damaged; and

- 164 (E) the estimated market value of the damage for which the railroad is responsible.
- 165 (iii) Within 30 days of the date the railroad receives the notice described in
- 166 Subsection [~~(7)(d)(iii)~~] (8)(d)(i), the railroad shall remit to the department the
- 167 value of the damage.
- 168 (iv) If a railroad fails to remit to the department the value of the damage as required
- 169 in Subsection [~~(7)(d)(i)~~] (8)(d)(i), the department may impose a civil penalty up to
- 170 \$10,000:
- 171 (A) for the failure to pay within 30 days as described in Subsection [~~(7)(d)(iii)~~]
- 172 (8)(d)(iii); and
- 173 (B) for every additional 30-day period of delinquency.
- 174 (v) Payment of a civil penalty described in Subsection [~~(7)(d)(iv)~~] (8)(d)(iv) does not
- 175 release a railroad from liability for damage to livestock.
- 176 (e) (i) Between July 1, 2023, and December 31, 2023, the department shall gather
- 177 data from livestock strikes reported as required in this section to determine how
- 178 many livestock strikes occurred during that six months.
- 179 (ii) Based on the information gathered under Subsection [~~(7)(e)(i)~~] (8)(e)(i) and
- 180 extrapolated and adjusted to estimate annual strike rates, beginning on July 1,
- 181 2024, the department shall establish and charge an administrative fee for each
- 182 claim the department processes under this section sufficient to cover the staff
- 183 salary and other administrative costs directly related to the administration of this
- 184 section.
- 185 (iii) The department shall establish and publish the fee amount in rules made pursuant
- 186 to Subsection [~~(8)~~] (9).
- 187 (iv) The department may not charge more than necessary to cover the costs of salary
- 188 and administration directly related to the duties under this chapter.
- 189 (f) In addition to payment of claims for damage to livestock as described in this section,
- 190 the department may use money in the Railroad Livestock Damage Fund to pay for
- 191 the costs of administration, staff salary, and other support related to the Railroad
- 192 Livestock Damage Fund and administration of this section.
- 193 [~~(8)~~] (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 194 department shall make rules necessary to implement and enforce this section, including
- 195 rules to establish the:
- 196 (a) estimated market value of each type of livestock;
- 197 (b) official mileage calculation for each railroad for the fee established in Subsection [

- 198           ~~(7)(e)~~ (8)(c); and
- 199           (c) administrative fee per claim as described in Subsection ~~[(7)(e)]~~ (8)(e).
- 200 ~~[(9)]~~ (10) (a) A livestock owner may appeal the estimated market value granted by the
- 201 department for damage to livestock by appealing to the Livestock Damages Board.
- 202           (b) There is created the Livestock Damages Board, which shall consist of three members
- 203 appointed as described in Subsection ~~[(9)(e)]~~ (10)(c).
- 204           (c) The commissioner of the department shall appoint three members to the Livestock
- 205 Damages Board as follows:
- 206           (i) one member who owns or administers a livestock auction;
- 207           (ii) one member who owns livestock and is engaged in a livestock business; and
- 208           (iii) one member who works for the department.
- 209           (d) Except as described in Subsection ~~[(9)(e)(ii)]~~ (10)(e)(ii), a member of the Livestock
- 210 Damages Board may serve for up to two terms of four years.
- 211           (e) (i) The commissioner shall appoint the first members to the Livestock Damages
- 212 Board on or before January 1, 2024.
- 213           (ii) The commissioner shall stagger the initial terms of the members of the Livestock
- 214 Damages Board appointed on or before January 1, 2024, by:
- 215           (A) designating one appointee to serve an initial term of five years; and
- 216           (B) designating one appointee to serve an initial term of three years.
- 217           (f) (i) The Livestock Damages Board may convene twice each year to hear appeals
- 218 regarding the value of livestock damaged by a railroad operation.
- 219           (ii) If a livestock owner provides clear and convincing evidence that the value of the
- 220 damage to livestock caused by a railroad operation exceeds the estimated market
- 221 value established pursuant to Subsection ~~[(8)]~~ (9), the Livestock Damages Board
- 222 may issue payment from the fund at the actual fair market value amount
- 223 established in the hearing.
- 224 ~~[(10)]~~ (11) An indemnification provision in a contract between a railroad and another entity
- 225 that operates on a railroad facility is against public policy and is void and unenforceable
- 226 to the extent the indemnification provision is related to damages to livestock or another
- 227 provision in this section.

228           Section 2. Section **56-1-12.1** is enacted to read:

229           **56-1-12.1 . Injury to livestock -- Notice.**

230           Every person operating a railroad within this state that injures or kills any livestock

231 of any description by the running of any engine or engines, car or cars, over or against

232 any such livestock shall within three days thereafter post at the first railroad station in  
 233 each direction from the place of such injury or killing in some conspicuous place on the  
 234 outside of such station a notice in writing of the number and kind of animals so injured  
 235 or killed, with a full description of each, and the time and place as near as may be of  
 236 such injury or killing. Such notice shall be dated and signed by some officer or agent of  
 237 such railroad, and a duplicate thereof shall be filed with the county clerk of the county in  
 238 which stock is so injured or killed. Every person willfully failing, neglecting or refusing  
 239 to comply with the provisions of this section is guilty of a class B misdemeanor and  
 240 shall be fined in any sum not exceeding \$50.

241 Section 3. Section **56-1-13** is amended to read:

242 **56-1-13 . Fencing right-of-way -- Gates.**

243 (1) The provisions in this section apply beginning on May 7, 2025.

244 (2) As used in this section:

245 (a) "Livestock" means the same as that term is defined in Section 4-1-109.

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

247 ~~[(2)]~~ (3) Each railroad shall erect and maintain a fence on each side of any railroad  
 248 right-of-way owned or operated by the railroad that passes through:

249 (a) land owned by a private owner; or

250 (b) public land upon which grazing of livestock occurs.

251 ~~[(3)]~~ (4) A railroad shall ensure that a fence required under Subsection ~~[(2)]~~ (3) is:

252 (a) at least four and one-half feet high;

253 (b) constructed with barbed or other fencing wire, with at least five wires;

254 (c) constructed with substantial posts no more than 16.5 feet apart; and

255 (d) reasonably constructed to ensure livestock are unable to pass through the fence.

256 ~~[(4)]~~ (5) A railroad shall ensure that fences required under Subsection ~~[(2)]~~ (3) include  
 257 proper gates and cattle guards at each private crossing.

258 ~~[(5)]~~ (6) A railroad is liable to a livestock owner for all damages to livestock resulting from  
 259 a railroad's failure to construct or maintain a fence as required in this section.

260 ~~[(6)]~~ (7) (a) If a fence falls into disrepair or is damaged, the railroad shall ensure that the  
 261 fence is repaired as soon as possible, but not later than 30 days after the date the  
 262 railroad receives notice of the disrepair or damage.

263 (b) To recover damage to livestock caused by a damaged fence as described in this  
 264 section, a livestock owner shall follow the procedures described in Section 56-1-12.

265 ~~[(7)]~~ (8) (a) If a railroad fails to repair a fence within 30 days after the date the railroad

266 receives notice as described in Subsection [~~(6)~~(a)] (7)(a), the owner of the adjacent  
 267 property may construct or repair the fence.

268 (b) If a land owner repairs a fence as described in Subsection [~~(7)~~(a)] (8)(a):

269 (i) the railroad is liable for the full value of the work and materials for the  
 270 construction or repair; and

271 (ii) if the railroad fails to timely reimburse the land owner, the land owner may file a  
 272 civil action in a court of competent jurisdiction.

273 [~~(8)~~] (9) Any work by a land owner to repair a fence required by this section does not:

274 (a) shift liability for damage to livestock as described in Section 56-1-12 to the land  
 275 owner; or

276 (b) relieve the railroad from liability for damage to livestock as described in Section  
 277 56-1-12.

278 Section 4. Section **56-1-13.1** is enacted to read:

279 **56-1-13.1 . Fencing right-of-way -- Gates.**

280 Every railroad company shall erect and maintain a fence on each side of its rights of  
 281 way where the same passes through lands owned and improved by private owners,  
 282 and at all public road crossings shall connect the same with cattle guards. Such fence  
 283 shall not be less than four and one-half feet in height and may be constructed of  
 284 barbed or other fencing wire with not less than five wires, and good, substantial posts  
 285 not more than one rod apart with a stay midway between the posts attached to the  
 286 wires to keep said wires in place; and whenever such railroad company shall provide  
 287 gates for private crossings for the convenience of the owners of the land through  
 288 which such railroad passes, such gates shall be so constructed that they may be easily  
 289 operated; and every railroad company shall be liable for all damages sustained by the  
 290 owner of any domestic animal killed or injured by such railroad in consequence of  
 291 the failure to build or maintain such fence. The owner of such lands shall keep such  
 292 gate closed at all times when not in actual use, and if such owner fails to keep such  
 293 gates closed, and in consequence thereof, any animal owned by him strays upon such  
 294 railroad, and is killed or injured, such owner shall not be entitled to recover damages  
 295 therefor.

296 Section 5. Section **56-1-39** is amended to read:

297 **56-1-39 . Assessment for right-of-way infrastructure improvements.**

298 (1) The provisions in this section apply beginning on May 7, 2025.

299 (2) As used in this section:

- 300 (a) "Benefit" includes enhanced property value, enhanced safety or efficiency, reduced  
 301 costs, and liability avoidance.
- 302 (b) "Government entity" means the state or a county, city, town, metro township, local  
 303 district, or special service district.
- 304 (c) (i) "Railroad" means a rail carrier that is a Class I railroad, as classified by the  
 305 federal Surface Transportation Board.
- 306 (ii) "Railroad" does not include a rail carrier that is:  
 307 (A) exempt from assessment under 49 U.S.C. Sec. 24301; or  
 308 (B) owned by a government entity.
- 309 (d) (i) "Right of way infrastructure improvement" means construction, reconstruction,  
 310 repair, or maintenance of public infrastructure that:  
 311 (A) is paid for by a government entity; and  
 312 (B) is partially or wholly within a railroad's right of way or crosses over a  
 313 railroad's right of way.
- 314 (ii) "Right of way infrastructure improvement" includes any component of  
 315 construction, reconstruction, repair, or maintenance of public infrastructure,  
 316 including:  
 317 (A) any environmental impact study, environmental mitigation, or environmental  
 318 project management; and  
 319 (B) any required or requested review by a non-governmental entity.
- 320 (e) "Public infrastructure" means any of the following improvements:  
 321 (i) a system or line for water, sewer, drainage, electrical, or telecommunications;  
 322 (ii) a street, road, curb, gutter, sidewalk, walkway, or bridge;  
 323 (iii) signage or signaling related to an improvement described in Subsection [~~(1)~~(e)(~~i~~)]  
 324 (2)(e)(i) or (ii);  
 325 (iv) an environmental improvement; or  
 326 (v) any other improvement similar to the improvements described in Subsections [~~(1)~~(e)(~~i~~)] (2)(e)(i) through (iv).  
 327
- 328 [~~(2)~~] (3) A government entity may, to the extent allowed under federal law, assess a railroad  
 329 for any portion of the cost of a right of way infrastructure improvement, including any  
 330 cost attributable to delay, if:  
 331 (a) the government entity determines that the right of way infrastructure improvement  
 332 provides a benefit to the railroad;  
 333 (b) the amount of the assessment is proportionate to the benefit the railroad receives, as

- 334 determined by the government entity; and
- 335 (c) the government entity uses the assessment to pay for or as reimbursement for the cost
- 336 of the right of way infrastructure improvement and not for the general support of the
- 337 government entity.
- 338 ~~[(3)]~~ (4) (a) If two or more government entities have authority under this section to assess
- 339 a railroad for the same right of way infrastructure improvement, the Office of Rail
- 340 Safety created in Section 72-17-101 shall:
- 341 (i) determine the amount of each government entity's assessment in accordance with
- 342 Subsection ~~[(2)]~~ (3);
- 343 (ii) assess the railroad for the total of all amounts described in Subsection ~~[(3)(a)(i)]~~
- 344 ~~(4)(a)(i)~~; and
- 345 (iii) distribute the collected assessments to each government entity.
- 346 (b) The total amount of an assessment under this Subsection ~~[(3)]~~ (4) may not exceed the
- 347 amount described in Subsection ~~[(2)(b)]~~ (3)(b).
- 348 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 349 Department of Transportation may make rules to establish a process for
- 350 implementing the provisions of this Subsection ~~[(3)]~~ (4).

351 Section 6. Section **63I-2-256** is enacted to read:

352 **63I-2-256 . Repeal dates: Title 56.**

- 353 (1) Section 56-1-12.1, relating to injury to livestock, is repealed May 7, 2025.
- 354 (2) Section 56-1-13.1, relating to fencing right-of-way, is repealed May 7, 2025.

355 Section 7. Section **72-2-131** is amended to read:

356 **72-2-131 . Rail Transportation Subaccount -- Grants for railroad crossing safety.**

- 357 (1) As used in this section, "eligible entity" means:
- 358 (a) a public entity; or
- 359 (b) a private entity that is exempt from federal income taxation under Section 501(c)(3),
- 360 Internal Revenue Code.
- 361 (2) There is created in the Transit Transportation Investment Fund, created in Section
- 362 72-2-124, the Rail Transportation ~~[Restricted Account]~~ Subaccount.
- 363 (3) The ~~[account]~~ subaccount shall be funded by:
- 364 (a) appropriations to the ~~[account]~~ subaccount by the Legislature;
- 365 (b) private contributions;
- 366 (c) donations or grants from public or private entities; and
- 367 (d) interest earned on money in the account.

- 368 (4) Upon appropriation, the department shall:
- 369 (a) use an amount equal to 10% of the money deposited into the [~~account~~] subaccount to
- 370 provide grants in accordance with Subsection (5);
- 371 (b) use an amount equal to 10% of the money deposited into the [~~account~~] subaccount to
- 372 pay:
- 373 (i) the costs of performing environmental impact studies in connection with
- 374 construction, reconstruction, or renovation projects related to railroad crossings on
- 375 class A, class B, or class C roads; or
- 376 (ii) the appropriate debt service or sinking fund for the repayment of bonds issued
- 377 under Subsection 63B-31-101(6); and
- 378 (c) use the remaining money deposited into the [~~account~~] subaccount to pay:
- 379 (i) the costs of construction, reconstruction, or renovation projects related to railroad
- 380 crossings on class A, class B, or class C roads;
- 381 (ii) debt service related to a project described in Subsection (4)(b); [~~or~~]
- 382 (iii) the appropriate debt service or sinking fund for the repayment of bonds issued
- 383 under Subsection 63B-31-101(5)[~~]~~ ; or
- 384 (iv) ongoing maintenance costs of at-grade crossings between rail lines and public
- 385 highways.
- 386 (5) (a) The department may award grants to one or more eligible entities to be used for
- 387 the purpose of improving safety at railroad crossings on class A, class B, or class C
- 388 roads.
- 389 (b) An eligible entity may use grant money for any expense related to improving safety
- 390 at railroad crossings on class A, class B, or class C roads, including:
- 391 (i) signage; and
- 392 (ii) safety enhancements to a railroad crossing.
- 393 (c) The department shall prioritize, in the following order, grants to applicants that
- 394 propose projects impacting railroad crossings that:
- 395 (i) have demonstrated safety concerns, including emergency services access; and
- 396 (ii) have high levels of vehicular and pedestrian traffic.

397 Section 8. Section **72-17-101** is amended to read:

398 **72-17-101 . Office of Rail Safety -- Creation -- Applicability.**

- 399 (1) The provisions in this section apply beginning on May 7, 2025.
- 400 (2) In accordance with 49 C.F.R. Part 212, State Safety Participation Regulations, there is
- 401 created within the department an Office of Rail Safety.

- 402 [~~(2)~~] (3) As described in 49 C.F.R. Secs. 212.105 and 212.107, to organize the Office of  
403 Rail Safety, the executive director shall:
- 404 (a) enter into an agreement with the Federal Railroad Administration to participate in  
405 inspection and investigation activities; and
- 406 (b) obtain certification from the Federal Railroad Administration to undertake inspection  
407 and investigative responsibilities and duties.
- 408 [~~(3)~~] (4) In establishing the Office of Rail Safety in accordance with the duties described in  
409 49 C.F.R. Part 212, the department may hire personnel and establish the duties of the  
410 office in phases.
- 411 [~~(4)~~] (5) This chapter applies to:
- 412 (a) a class I railroad; and
- 413 (b) commuter rail.
- 414 Section 9. Section **72-17-102** is amended to read:
- 415 **72-17-102 . Definitions.**
- 416 As used in this chapter:
- 417 (1) "Class I railroad" means the same as that term is defined in 49 U.S.C. Sec. 20102.
- 418 (2) "Commuter rail" means the same as that term is defined in Section 63N-3-602.
- 419 (3) "Federal Railroad Administration" means the Federal Railroad Administration created  
420 in 49 U.S.C. Sec. 103.
- 421 (4) "Office" means the Office of Rail Safety created in accordance with Section 72-17-101.
- 422 (5) "Railroad" means the same as that term is defined in 49 C.F.R. Sec. 200.3.
- 423 (6) The provisions in this section apply beginning on May 7, 2025.
- 424 Section 10. Section **72-17-103** is amended to read:
- 425 **72-17-103 . Duties of the Office of Rail Safety.**
- 426 (1) The provisions in this section apply beginning on May 7, 2025.
- 427 (2) In accordance with 49 C.F.R. Part 212, and the authorization granted from the Federal  
428 Railroad Administration, the office shall perform the inspection, compliance, and  
429 enforcement duties in the following areas:
- 430 (a) grade crossings;
- 431 (b) hazardous materials;
- 432 (c) motive power and equipment;
- 433 (d) operating practices;
- 434 (e) signal and train control; and
- 435 (f) track.

- 436 [~~(2)~~] (3) As part of the responsibilities described in Subsection [~~(1)~~] (2), the office shall:
- 437 (a) inspect and investigate railroad rights-of-way, facilities, equipment, and operations
- 438 of railroads in this state;
- 439 (b) notify a railroad of any violation or lack of compliance with applicable state and
- 440 federal laws, rules, regulations, orders, and directives;
- 441 (c) enforce applicable state and federal laws, rules, regulations, orders, and directives
- 442 relating to the transportation by rail of persons or commodities; and
- 443 (d) issue orders to require compliance with state and federal laws, rules, regulations,
- 444 orders, and directives.
- 445 [~~(3)~~] (4) The office shall employ a sufficient number of federally certified inspectors and
- 446 staff to ensure that railroad equipment, facilities, and tracks are inspected as frequently
- 447 as reasonably required to ensure compliance and safety as required under state and
- 448 federal law.
- 449 [~~(4)~~] (5) (a) The office shall investigate railroad practices related to the length of time a
- 450 railroad blocks a highway-railroad grade crossing.
- 451 (b) Upon petition of a political subdivision, or upon the office's own motion, the office
- 452 may:
- 453 (i) conduct an investigation of the conditions related to a grade crossing; and
- 454 (ii) if necessary, conduct a hearing, make findings, and issue an order to determine
- 455 whether highway-railroad crossing blocking practices of the railroad are
- 456 reasonable.
- 457 (c) (i) The office shall examine and inspect the physical condition of all railroad
- 458 facilities in this state to ensure compliance with safety requirements.
- 459 (ii) As part of the inspection and examination of railroad facilities and crossings, the
- 460 office shall include an examination and inspection of:
- 461 (A) the condition of railroad facilities and crossing infrastructure;
- 462 (B) whether expansion of grade crossing infrastructure or other changes are
- 463 justified based on the traffic and safety conditions; and
- 464 (C) other safety considerations required by federal law.
- 465 (d) If the office determines that a railroad's highway-railroad crossing blocking practices
- 466 are unreasonable, the office shall:
- 467 (i) request the Federal Railroad Administration take enforcement actions pursuant to
- 468 49 C.F.R. Sec. 212.115; and
- 469 (ii) notify the Surface Transportation Board defined in 49 U.S.C. Sec. 10102 of the

- 470 unsafe and unreasonable practices.
- 471 (e) If the office finds a violation of safety requirements as described in this section or in  
472 federal law, and the office requests an enforcement action and Federal Railroad  
473 Administration does not take enforcement action as described in 49 C.F.R. Sec.  
474 212.115, the office may seek a civil penalty not less than \$500 and no more than  
475 \$10,000 for each offense.
- 476 ~~[(5)]~~ (6) (a) The office shall examine and inspect the physical condition of all railroad  
477 facilities in this state to ensure compliance with safety requirements.
- 478 (b) If an inspector determines that a railroad facility is noncompliant, the office shall  
479 provide written notice to the railroad.
- 480 (c) If a railroad receives a notice described in Subsection ~~[(5)(b)]~~ (6)(b), the railroad shall  
481 remedy the condition or practice within 30 days of the date of the notice.
- 482 (d) If after 30 days from the date of the notice the railroad has not remedied the  
483 condition or practice to the office's satisfaction, the office may set the matter for  
484 hearing.
- 485 (e) After a hearing described in Subsection ~~[(5)(d)]~~ (6)(d), if the office determines that  
486 the condition or practice is noncompliant and the railroad has not made reasonable  
487 efforts to remedy the condition or practice, the office may issue an order requiring the  
488 railroad to:
- 489 (i) eliminate or remedy the unsafe or unlawful condition or practice; or  
490 (ii) make any necessary repairs, alterations, or other changes to the relevant condition  
491 or practice to ensure compliance with state and federal law.
- 492 (f) In addition to any order issued under Subsection ~~[(5)(e)]~~ (6)(e), after a hearing  
493 described in Subsection ~~[(5)(d)]~~ (6)(d), if the office determines that the condition or  
494 practice is noncompliant and the railroad has not made reasonable efforts to remedy  
495 the condition or practice, and the condition or practice is so hazardous as to place a  
496 railroad employee or the public in immediate danger, the office may issue an order  
497 requiring the railroad:
- 498 (i) after 48 hours' written notice to the railroad, issue an order prohibiting:  
499 (A) the unsafe or unlawful practice; or  
500 (B) the use of the facility until completion of the necessary repair, alteration, or  
501 other necessary changes; and
- 502 (ii) pay a civil penalty of not more than \$10,000 per violation or per day of violation  
503 of state or federal law, or a rule made in accordance with Subsection ~~[(6)]~~ (7) or

504 Section 72-17-107.

505 [(6)] (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
506 department shall make rules necessary to:

- 507 (a) establish the Office of Rail Safety as required in this part;
- 508 (b) establish and enforce rules regarding safe and reasonable procedures and standards  
509 regarding the blocking of grade crossings, which standards and limits shall be  
510 commensurate with reasonable requirements of train and vehicular traffic operations;
- 511 (c) enforce this part and relevant state and federal law related to this part; and
- 512 (d) administer the Office of Rail Safety as described in this part.

513 Section 11. Section **72-17-104** is amended to read:

514 **72-17-104 . Federal Railroad Administration grant program.**

515 (1) The provisions in this section apply beginning on May 7, 2025.

516 (2) After reaching an agreement with and receiving the certification from the Federal  
517 Railroad Administration as described in Section 72-17-101, the office may apply for [  
518 ~~Railroad Safety Grants~~] railroad safety grants as often as permitted by the Federal  
519 Railroad Administration.

520 Section 12. Section **72-17-105** is amended to read:

521 **72-17-105 . Establishment of administrative fees -- Payment -- Expenditures.**

522 (1) [(a)] The provisions in this section apply beginning on May 7, 2025.

523 (2) The office shall annually determine a fee to be paid by each railroad that operated  
524 within the state and is subject to the jurisdiction of the office on a pro rata basis as  
525 described in Subsection [(2)] (3).

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

529 [(c)] (b) The office shall use the revenue generated by the fees paid by each railroad for  
530 the investigation and enforcement activities of the office as authorized under this part.

531 [(2)] (3) (a) For grade crossings inspections and services, the office shall establish and  
532 each railroad shall pay a fee based on:

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

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

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

- 538 (B) the frequency of highway traffic at the crossing.
- 539 (b) For hazardous materials related inspections and services, the office shall establish  
540 and each railroad shall pay a fee based on the tonnage of hazardous materials  
541 transported in this state during a given year.
- 542 (c) For motive power and equipment related inspections and services, the office shall  
543 establish and each railroad shall pay a fee based on the number of motive power units  
544 and other equipment units operated by the railroad in this state.
- 545 (d) For track related inspections and services, the office shall establish and each railroad  
546 shall pay a fee based on the number of miles of track owned or operated by the  
547 railroad within this state.
- 548 (e) For signal and train control inspections and services, as well as operating practices  
549 inspections and services, the office shall establish and each railroad shall pay a fee  
550 based on gross operating revenue of each railroad generated within this state.
- 551 (f) (i) For inspection services related to commuter rail, notwithstanding any other  
552 agreement, a county or municipality with commuter rail service provided by a  
553 public transit district may request local option transit sales tax in accordance with  
554 Section 59-12-2206 and spend local option transit sales tax in the amount  
555 requested by the office.
- 556 (ii) A county or municipality that requests local option transit sales tax as described  
557 in Subsection ~~[(2)(f)(i)]~~ (3)(f)(i) may transmit to the office the funds requested  
558 under Subsection ~~[(2)(f)(i)]~~ (3)(f)(i) and transmitted to the county or municipality  
559 under Subsection 59-12-2206(5)(b).
- 560 (iii) A county or municipality that requests local option transit sales tax as described  
561 in Subsection ~~[(2)(f)(i)]~~ (3)(f)(i) may not request more local option transit sales tax  
562 than is necessary to carry out the safety inspection and functions under this  
563 chapter.
- 564 (iv) The office is not required to charge or collect a fee related to inspections of  
565 commuter rail.
- 566 ~~[(3)]~~ (4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking  
567 Act, the department shall make rules to establish each of the fee amounts described in  
568 Subsection ~~[(2)]~~ (3):
- 569 (i) according to the data described in Subsection ~~[(2)]~~ (3); and  
570 (ii) to collect an amount sufficient to cover the budget and costs to administer the  
571 duties of the office.

572 (b) The department shall annually adjust the fees established in accordance with  
 573 Subsection [~~(3)~~](a) (4)(a) to account for inflation and other budgetary factors.  
 574 [~~(4)~~] (5) Each railroad that operates within this state shall pay to the office the fees described  
 575 and established by the office.

576 Section 13. Section **72-17-106** is amended to read:

577 **72-17-106 . Office of Rail Safety Account.**

578 (1) The provisions in this section apply beginning on May 7, 2025.

579 (2) There is created an expendable special revenue fund called the Office of Rail Safety  
 580 Account.

581 [~~(2)~~] (3) The account shall be funded by:

- 582 (a) deposits into the account by the Legislature;
- 583 (b) fees collected pursuant to Section 72-17-105; and
- 584 (c) other deposits or donations into the account.

585 [~~(3)~~] (4) The office shall provide a detailed budget to account for the office's expenditures  
 586 related to the enforcement of this part, including:

- 587 (a) salaries, per diem, and travel expenses of employees performing the duties described  
 588 in this part;
- 589 (b) expenditures for clerical and support staff directly associated with the duties  
 590 described in this part;
- 591 (c) expenditures for legal staff who pursue and administer complaints and compliance  
 592 issues related to this part; and
- 593 (d) reasonable overhead costs related to Subsections [~~(3)~~](a) (4)(a) through (c).

594 [~~(4)~~] (5) The office, in performing the duties under this part:

- 595 (a) shall limit the expenditure of funds to the total amount of fees collected from the  
 596 railroads as described in this section; and
- 597 (b) may not expend funds from other sources accessible to the department.

598 Section 14. Section **72-17-107** is amended to read:

599 **72-17-107 . Rulemaking regarding railroad clearances and walkways.**

600 (1) The provisions of this section apply beginning on May 7, 2025.

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

- 603 [~~(1)~~] (a) walkways adjacent to railroad track;
- 604 [~~(2)~~] (b) clearances of structures and other obstructions near railroad track;
- 605 [~~(3)~~] (c) the safety of office personnel conducting inspections in accordance with this

606 part;  
607 ~~[(4)]~~ (d) railroad infrastructure and work spaces for railroad workers;  
608 ~~[(5)]~~ (e) signage related to railroad worker safety; and  
609 ~~[(6)]~~ (f) other safety standards as the department finds necessary.

610 Section 15. Section **72-17-108** is amended to read:

611 **72-17-108 . Agreements to indemnify in a railroad contract.**

612 (1) The provisions of this section apply beginning on May 7, 2025.

613 (2) As used in this section:

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

615 (i) a railroad; and

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

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

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

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

625 ~~[(2)]~~ (3) Except as provided in Subsection ~~[(3)]~~ (4), an indemnification provision in a  
626 railroad contract is against public policy and is void and unenforceable.

627 ~~[(3)]~~ (4) If an indemnification provision is included in a railroad contract, in any action for  
628 damages described in Subsection ~~[(1)(b)(i)]~~ (2)(b)(i), the railroad may seek  
629 indemnification from another party to a railroad contract pro rata based on the  
630 proportional share of fault of each party, if:

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

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

634 ~~[(4)]~~ (5) This section may not be construed to impair a contract in existence before May 3,  
635 2023.

636 Section 16. Section **72-18-101** is enacted to read:

637

## CHAPTER 18. RAIL OMBUDSMAN

638

### Part 1. Creation and Duties

639 **72-18-101 . Rail ombudsman.**640 (1) There is created the position of rail ombudsman in the rail division of the department.641 (2) The executive director of the department shall appoint the rail ombudsman.642 Section 17. Section **72-18-102** is enacted to read:643 **72-18-102 . Rail ombudsman -- Duties.**644 (1) The rail ombudsman shall:645 (a) develop and maintain expertise in and understanding of laws and regulations relating  
646 to rail;647 (b) coordinate, consult, and provide information to private citizens, government entities,  
648 rail operators, stakeholders, and other interested parties about rail related issues;649 (c) on the rail ombudsman's website, provide:650 (i) updated, easily accessible information about the duties of the rail ombudsman; and651 (ii) a form that a member of the public, including a railroad company employee, may  
652 use to submit a report or complaint;653 (d) provide education and training regarding rail laws and regulations; and654 (e) arrange and facilitate meetings between a rail company and one or more of the  
655 following, to resolve a rail dispute described in Subsection (2):656 (i) a local government entity;657 (ii) a large public transit district; or658 (iii) a private property or livestock owner.659 (2) The rail ombudsman shall facilitate meetings described in Subsection (1)(e) to resolve  
660 issues relating to:661 (a) safety;662 (b) at-grade and grade-separated rail crossings;663 (c) fencing;664 (d) injury to or loss of livestock;665 (e) railroad maintenance, including maintenance agreements and road closures;666 (f) improvements to railroad right-of-way infrastructure;667 (g) track realignment;668 (h) track consolidation; or669 (i) any other issue that has caused a dispute between a rail company and a party  
670 described in Subsection (1)(e).671 (3) If the rail ombudsman invites a rail company or another party described in Subsection  
672 (1)(e) to a meeting to resolve a rail dispute, the rail company or other person shall:

- 673 (a) attend the meeting; and
- 674 (b) attempt to resolve the dispute through the rail ombudsman before filing an action in
- 675 court or seeking another remedy.
- 676 (4) A rail company and a party described in Subsections (1)(e)(i) through (iii) shall provide
- 677 notice to the rail ombudsman before:
- 678 (a) closing a highway for railroad maintenance; or
- 679 (b) starting a construction project involving:
- 680 (i) an at-grade rail crossing; or
- 681 (ii) the realignment or consolidation of railroad tracks.
- 682 (5) The rail ombudsman may not address nor participate in:
- 683 (a) organized labor issues or disputes; or
- 684 (b) rail company employee safety issues.

685 Section 18. **FY 2025 Appropriation.**

686 The following sums of money are appropriated for the fiscal year beginning July 1,  
 687 2024, and ending June 30, 2025. These are additions to amounts previously  
 688 appropriated for fiscal year 2025.

689 Subsection 18(a) **Operating and Capital Budgets**

690 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act,  
 691 the Legislature appropriates the following sums of money from the funds or accounts  
 692 indicated for the use and support of the government of the state of Utah.

693 ITEM 1 To Transportation - Operations/Maintenance Management

694 From Rail Transportation Restricted Account \$800,000

695 Schedule of Programs:

696 Maintenance Administration \$800,000

697 Section 19. **Effective date.**

- 698 (1) Except as provided in Subsection (2), if approved by two-thirds of all the members
- 699 elected to each house, this bill takes effect upon approval by the governor, or the day
- 700 following the constitutional time limit of Utah Constitution, Article VII, Section 8,
- 701 without the governor's signature, or in the case of a veto, the date of the veto override.
- 702 (2) If this bill is not approved by two-thirds of all members elected to each house, this bill
- 703 takes effect May 1, 2024.