

RAILROAD AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Kay J. Christofferson

LONG TITLE

General Description:

This bill establishes a rail ombudsman.

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

56-1-12 (Effective 04/01/24), as repealed and reenacted by Laws of Utah 2023, Chapter 232

56-1-13 (Effective 04/01/24), as repealed and reenacted by Laws of Utah 2023, Chapter 232

56-1-39 (Effective 03/31/24), as enacted by Laws of Utah 2023, Chapter 41 and last amended by Coordination Clause, Laws of Utah 2023, Chapter 41

72-17-101 (Effective 03/31/24), as enacted by Laws of Utah 2023, Chapter 42

72-17-102 (Effective 03/31/24), as enacted by Laws of Utah 2023, Chapter 42



- 28 **72-17-103 (Effective 03/31/24)**, as enacted by Laws of Utah 2023, Chapter 42
- 29 **72-17-104 (Effective 03/31/24)**, as enacted by Laws of Utah 2023, Chapter 42
- 30 **72-17-105 (Effective 03/31/24)**, as enacted by Laws of Utah 2023, Chapter 42
- 31 **72-17-106 (Effective 03/31/24)**, as enacted by Laws of Utah 2023, Chapter 42
- 32 **72-17-107 (Effective 03/31/24)**, as enacted by Laws of Utah 2023, Chapter 42
- 33 **72-17-108 (Effective 03/31/24)**, as enacted by Laws of Utah 2023, Chapter 42

34 ENACTS:

- 35 **56-1-12.1**, Utah Code Annotated 1953
- 36 **56-1-13.1**, Utah Code Annotated 1953
- 37 **63I-2-256**, Utah Code Annotated 1953
- 38 **72-18-101**, Utah Code Annotated 1953
- 39 **72-18-102**, Utah Code Annotated 1953



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

42 Section 1. Section **56-1-12 (Effective 04/01/24)** is amended to read:

43 **56-1-12 (Effective 04/01/24). Injury to livestock -- Notice -- Railroad Livestock**
 44 **Damages Fund and Board -- Appeals -- Compensation and fees -- Rulemaking.**

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

46 (2) As used in this section:

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

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

51 (c) "Department" means the Department of Agriculture and Food created in Section
52 **4-2-102**.

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

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

58 (i) the damages arise out of:

- 59 (A) damage to property, including livestock; or
- 60 (B) other related economic loss; and
- 61 (ii) the damages are caused by or resulting from the fault, in whole or in part, of the
- 62 railroad or the railroad's agents or employees.

63 (f) "Law enforcement agency" means the same as that term is defined in Section
 64 [53-1-102](#).

65 (g) "Livestock" means the same as that term is defined in Section [4-1-109](#).

66 (h) "Livestock Damages Board" means the Livestock Damages Board created in
 67 Subsection ~~[(9)]~~ [\(10\)](#).

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

69 (j) "Railroad Livestock Damage Fund" or "fund" means the Railroad Livestock
 70 Damage Fund created in Subsection ~~[(7)]~~ [\(8\)](#).

71 (k) "Statewide railroad engineer" means the statewide railroad engineer within the
 72 Department of Transportation.

73 ~~[(2)]~~ [\(3\)](#) Each railroad that operates in this state shall provide to the department current
 74 contact information suitable for communication between the department and the railroad
 75 regarding injury to livestock caused by a railroad.

76 ~~[(3)]~~ [\(4\)](#) (a) A railroad operator that strikes, injures, or kills livestock during the
 77 operation of an engine or car shall:

- 78 (i) immediately record the location of the strike; and
- 79 (ii) within 24 hours of the strike, notify and provide pertinent information to the
- 80 department and the statewide railroad engineer.

81 (b) (i) If a railroad fails to report a strike as required in Subsection ~~[(3)(a)]~~ [\(4\)\(a\)](#), the
 82 railroad is liable for a civil penalty of at least \$5,000 per incident.

83 (ii) It is prima facie evidence that a railroad has failed to report if:

84 (A) an investigation described in Subsection ~~[(3)(c)]~~ [\(4\)\(c\)](#) determines that livestock
 85 was struck by railroad;

86 (B) the investigation under Subsection ~~[(3)(c)]~~ [\(4\)\(c\)](#) resulted from a notification from
 87 a livestock owner of a potential strike as described in Subsection ~~[(4)(c)]~~ [\(5\)\(c\)](#); and

88 (C) the railroad has not reported a corresponding strike under Subsection ~~[(3)(a)]~~
 89 [\(4\)\(a\)](#).

90 (iii) If the department determines that a railroad has failed to report as described in
91 Subsection ~~[(3)(b)(ii)]~~ (4)(b)(ii):

92 (A) the department shall notify the railroad and assess a civil penalty; and

93 (B) the railroad shall pay the civil penalty assessed by the department.

94 (iv) The department shall deposit into the Railroad Livestock Damage Fund any money
95 received for a civil penalty under this Subsection ~~[(3)(b)]~~ (4)(b).

96 (v) Payment of a civil penalty described in this Subsection ~~[(3)(b)]~~ (4)(b) does not
97 release a railroad from liability for damage to livestock.

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

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

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

104 (A) investigate the scene of the strike;

105 (B) identify the livestock that was struck;

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

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

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

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

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

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

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

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

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

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

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

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

129 ~~[(6)]~~ (7) The department shall:

130 (a) within 30 days after the day the department receives a proof of loss form from a
131 livestock owner, either accept or deny the claim for damages to livestock; and

132 (b) to the extent money is available in the Railroad Livestock Damage Fund created in
133 Subsection ~~[(7)]~~ (8), pay all accepted claims in accordance with the livestock estimated market
134 value established pursuant to Subsection ~~[(8)]~~ (9).

135 ~~[(7)]~~ (8) (a) There is created an expendable special revenue fund called the Railroad
136 Livestock Damage Fund.

137 (b) The fund shall consist of:

138 (i) deposits by the Legislature;

139 (ii) an initial deposit by each railroad as described in Subsection ~~[(7)(c)]~~ (8)(c);

140 (iii) periodic payments by each railroad as required in Subsection ~~[(7)(d)]~~ (8)(d);

141 (iv) annual deposits by each railroad for administrative costs as provided under
142 Subsection ~~[(7)(e)]~~ (8)(e);

143 (v) money deposited by the department from a civil penalty described in Subsection
144 ~~[(3)]~~ (4);

145 (vi) other donations or deposits into the fund; and

146 (vii) interest earned on the balance of the fund.

147 (c) Before December 31, 2023, each railroad shall pay into the Railroad Livestock
148 Damage Fund:

149 (i) an initial, one-time fee of \$150 per mile of railroad track owned by the railroad in
150 this state, in accordance with rules made under Subsection ~~[(8)(b)]~~ (9)(b), to capitalize the fund
151 for payment of claims as provided in this section; and

152 (ii) an initial, one-time fee of \$75 per mile of railroad track owned by the railroad in
153 this state, in accordance with rules made under Subsection ~~[(8)(b)]~~ (9)(b), to pay for staff
154 salaries and other costs to administer the fund and the department responsibilities under this
155 section.

156 (d) (i) If the department issues payment from the fund in accordance with Subsection
157 ~~[(6)]~~ (7), the department shall notify the relevant railroad that is liable for the 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 Subsection
166 ~~[(7)(d)(iii)]~~ (8)(d)(i), the railroad shall remit to the department the value of the damage.

167 (iv) If a railroad fails to remit to the department the value of the damage as required in
168 Subsection ~~[(7)(d)(i)]~~ (8)(d)(i), the department may impose a civil penalty up to \$10,000:

169 (A) for the failure to pay within 30 days as described in Subsection ~~[(7)(d)(iii)]~~
170 (8)(d)(iii); and

171 (B) for every additional 30-day period of delinquency.

172 (v) Payment of a civil penalty described in Subsection ~~[(7)(d)(iv)]~~ (8)(d)(iv) does not
173 release a railroad from liability for damage to livestock.

174 (e) (i) Between July 1, 2023, and December 31, 2023, the department shall gather data
175 from livestock strikes reported as required in this section to determine how many livestock
176 strikes occurred during that six months.

177 (ii) Based on the information gathered under Subsection ~~[(7)(e)(i)]~~ (8)(e)(i) and
178 extrapolated and adjusted to estimate annual strike rates, beginning on July 1, 2024, the
179 department shall establish and charge an administrative fee for each claim the department
180 processes under this section sufficient to cover the staff salary and other administrative costs
181 directly related to the administration of this section.

182 (iii) The department shall establish and publish the fee amount in rules made pursuant

183 to Subsection [~~(8)~~] (9).

184 (iv) The department may not charge more than necessary to cover the costs of salary
185 and administration directly related to the duties under this chapter.

186 (f) In addition to payment of claims for damage to livestock as described in this
187 section, the department may use money in the Railroad Livestock Damage Fund to pay for the
188 costs of administration, staff salary, and other support related to the Railroad Livestock
189 Damage Fund and administration of this section.

190 [~~(8)~~] (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
191 Act, the department shall make rules necessary to implement and enforce this section,
192 including rules to establish the:

193 (a) estimated market value of each type of livestock;

194 (b) official mileage calculation for each railroad for the fee established in Subsection
195 [~~(7)(c)~~] (8)(c); and

196 (c) administrative fee per claim as described in Subsection [~~(7)(c)~~] (8)(e).

197 [~~(9)~~] (10) (a) A livestock owner may appeal the estimated market value granted by the
198 department for damage to livestock by appealing to the Livestock Damages Board.

199 (b) There is created the Livestock Damages Board, which shall consist of three
200 members appointed as described in Subsection [~~(9)(c)~~] (10)(c).

201 (c) The commissioner of the department shall appoint three members to the Livestock
202 Damages Board as follows:

203 (i) one member who owns or administers a livestock auction;

204 (ii) one member who owns livestock and is engaged in a livestock business; and

205 (iii) one member who works for the department.

206 (d) Except as described in Subsection [~~(9)(c)(ii)~~] (10)(e)(ii), a member of the Livestock
207 Damages Board may serve for up to two terms of four years.

208 (e) (i) The commissioner shall appoint the first members to the Livestock Damages
209 Board on or before January 1, 2024.

210 (ii) The commissioner shall stagger the initial terms of the members of the Livestock
211 Damages Board appointed on or before January 1, 2024, by:

212 (A) designating one appointee to serve an initial term of five years; and

213 (B) designating one appointee to serve an initial term of three years.

214 (f) (i) The Livestock Damages Board may convene twice each year to hear appeals
215 regarding the value of livestock damaged by a railroad operation.

216 (ii) If a livestock owner provides clear and convincing evidence that the value of the
217 damage to livestock caused by a railroad operation exceeds the estimated market value
218 established pursuant to Subsection [~~(8)~~] (9), the Livestock Damages Board may issue payment
219 from the fund at the actual fair market value amount established in the hearing.

220 [~~(10)~~] (11) An indemnification provision in a contract between a railroad and another
221 entity that operates on a railroad facility is against public policy and is void and unenforceable
222 to the extent the indemnification provision is related to damages to livestock or another
223 provision in this section.

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

225 **56-1-12.1. Injury to livestock -- Notice.**

226 Every person operating a railroad within this state that injures or kills any livestock of
227 any description by the running of any engine or engines, car or cars, over or against any such
228 livestock shall within three days thereafter post at the first railroad station in each direction
229 from the place of such injury or killing in some conspicuous place on the outside of such
230 station a notice in writing of the number and kind of animals so injured or killed, with a full
231 description of each, and the time and place as near as may be of such injury or killing. Such
232 notice shall be dated and signed by some officer or agent of such railroad, and a duplicate
233 thereof shall be filed with the county clerk of the county in which stock is so injured or killed.
234 Every person willfully failing, neglecting or refusing to comply with the provisions of this
235 section is guilty of a class B misdemeanor and shall be fined in any sum not exceeding \$50.

236 Section 3. Section 56-1-13 (Effective 04/01/24) is amended to read:

237 **56-1-13 (Effective 04/01/24). Fencing right-of-way -- Gates.**

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

239 (2) As used in this section:

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

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

242 [~~(2)~~] (3) Each railroad shall erect and maintain a fence on each side of any railroad
243 right-of-way owned or operated by the railroad that passes through:

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

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

246 [~~(3)~~] (4) A railroad shall ensure that a fence required under Subsection [~~(2)~~] (3) is:

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

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

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

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

251 [~~(4)~~] (5) A railroad shall ensure that fences required under Subsection [~~(2)~~] (3) include
252 proper gates and cattle guards at each private crossing.

253 [~~(5)~~] (6) A railroad is liable to a livestock owner for all damages to livestock resulting
254 from a railroad's failure to construct or maintain a fence as required in this section.

255 [~~(6)~~] (7) (a) If a fence falls into disrepair or is damaged, the railroad shall ensure that
256 the fence is repaired as soon as possible, but not later than 30 days after the date the railroad
257 receives notice of the disrepair or damage.

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

260 [~~(7)~~] (8) (a) If a railroad fails to repair a fence within 30 days after the date the railroad
261 receives notice as described in Subsection [~~(6)(a)~~] (7)(a), the owner of the adjacent property
262 may construct or repair the fence.

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

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

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

268 [~~(8)~~] (9) Any work by a land owner to repair a fence required by this section does not:

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

271 (b) relieve the railroad from liability for damage to livestock as described in Section
272 56-1-12.

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

274 **56-1-13.1. Fencing right-of-way -- Gates.**

275 Every railroad company shall erect and maintain a fence on each side of its rights of

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

289 Section 5. Section **56-1-39 (Effective 03/31/24)** is amended to read:

290 **56-1-39 (Effective 03/31/24). Assessment for right-of-way infrastructure**
291 **improvements.**

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

293 (2) As used in this section:

294 (a) "Benefit" includes enhanced property value, enhanced safety or efficiency, reduced
295 costs, and liability avoidance.

296 (b) "Government entity" means the state or a county, city, town, metro township, local
297 district, or special service district.

298 (c) (i) "Railroad" means a rail carrier that is a Class I railroad, as classified by the
299 federal Surface Transportation Board.

300 (ii) "Railroad" does not include a rail carrier that is:

301 (A) exempt from assessment under 49 U.S.C. Sec. 24301; or

302 (B) owned by a government entity.

303 (d) (i) "Right of way infrastructure improvement" means construction, reconstruction,
304 repair, or maintenance of public infrastructure that:

305 (A) is paid for by a government entity; and

306 (B) is partially or wholly within a railroad's right of way or crosses over a railroad's

307 right of way.

308 (ii) "Right of way infrastructure improvement" includes any component of
309 construction, reconstruction, repair, or maintenance of public infrastructure, including:

310 (A) any environmental impact study, environmental mitigation, or environmental
311 project management; and

312 (B) any required or requested review by a non-governmental entity.

313 (e) "Public infrastructure" means any of the following improvements:

314 (i) a system or line for water, sewer, drainage, electrical, or telecommunications;

315 (ii) a street, road, curb, gutter, sidewalk, walkway, or bridge;

316 (iii) signage or signaling related to an improvement described in Subsection [~~(1)(e)(i)~~]

317 (2)(e)(i) or (ii);

318 (iv) an environmental improvement; or

319 (v) any other improvement similar to the improvements described in Subsections

320 [~~(1)(e)(i)~~] (2)(e)(i) through (iv).

321 [~~(2)~~] (3) A government entity may, to the extent allowed under federal law, assess a
322 railroad for any portion of the cost of a right of way infrastructure improvement, including any
323 cost attributable to delay, if:

324 (a) the government entity determines that the right of way infrastructure improvement
325 provides a benefit to the railroad;

326 (b) the amount of the assessment is proportionate to the benefit the railroad receives, as
327 determined by the government entity; and

328 (c) the government entity uses the assessment to pay for or as reimbursement for the
329 cost of the right of way infrastructure improvement and not for the general support of the
330 government entity.

331 [~~(3)~~] (4) (a) If two or more government entities have authority under this section to
332 assess a railroad for the same right of way infrastructure improvement, the Office of Rail
333 Safety created in Section 72-17-101 shall:

334 (i) determine the amount of each government entity's assessment in accordance with
335 Subsection [~~(2)~~] (3);

336 (ii) assess the railroad for the total of all amounts described in Subsection [~~(3)(a)(i)~~]

337 (4)(a)(i); and

338 (iii) distribute the collected assessments to each government entity.

339 (b) The total amount of an assessment under this Subsection [~~(3)~~] (4) may not exceed
340 the amount described in Subsection [~~(2)(b)~~] (3)(b).

341 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
342 Department of Transportation may make rules to establish a process for implementing the
343 provisions of this Subsection [~~(3)~~] (4).

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

345 **63I-2-256. Repeal dates: Title 56.**

346 (1) Section 56-1-12.1, relating to injury to livestock, is repealed May 7, 2025.

347 (2) Section 56-1-13.1, relating to fencing right-of-way, is repealed May 7, 2025.

348 Section 7. Section **72-17-101 (Effective 03/31/24)** is amended to read:

349 **72-17-101 (Effective 03/31/24). Office of Rail Safety -- Creation -- Applicability.**

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

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

353 [~~(2)~~] (3) As described in 49 C.F.R. Secs. 212.105 and 212.107, to organize the Office
354 of Rail Safety, the executive director shall:

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

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

359 [~~(3)~~] (4) In establishing the Office of Rail Safety in accordance with the duties
360 described in 49 C.F.R. Part 212, the department may hire personnel and establish the duties of
361 the office in phases.

362 [~~(4)~~] (5) This chapter applies to:

363 (a) a class I railroad; and

364 (b) commuter rail.

365 Section 8. Section **72-17-102 (Effective 03/31/24)** is amended to read:

366 **72-17-102 (Effective 03/31/24). Definitions.**

367 As used in this chapter:

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

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

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

372 (4) "Office" means the Office of Rail Safety created in accordance with Section
373 72-17-101.

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

375 (6) The provisions in this section apply beginning on May 7, 2025.

376 Section 9. Section 72-17-103 (Effective 03/31/24) is amended to read:

377 **72-17-103 (Effective 03/31/24). Duties of the Office of Rail Safety.**

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

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

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

388 [~~2~~] (3) As part of the responsibilities described in Subsection [~~1~~] (2), the office
389 shall:

- 390 (a) inspect and investigate railroad rights-of-way, facilities, equipment, and operations
391 of railroads in this state;
- 392 (b) notify a railroad of any violation or lack of compliance with applicable state and
393 federal laws, rules, regulations, orders, and directives;
- 394 (c) enforce applicable state and federal laws, rules, regulations, orders, and directives
395 relating to the transportation by rail of persons or commodities; and
- 396 (d) issue orders to require compliance with state and federal laws, rules, regulations,
397 orders, and directives.

398 [~~3~~] (4) The office shall employ a sufficient number of federally certified inspectors
399 and staff to ensure that railroad equipment, facilities, and tracks are inspected as frequently as

400 reasonably required to ensure compliance and safety as required under state and federal law.

401 ~~[(4)]~~ (5) (a) The office shall investigate railroad practices related to the length of time a
402 railroad blocks a highway-railroad grade crossing.

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

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

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

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

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

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

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

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

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

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

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

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

426 ~~[(5)]~~ (6) (a) The office shall examine and inspect the physical condition of all railroad
427 facilities in this state to ensure compliance with safety requirements.

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

430 (c) If a railroad receives a notice described in Subsection ~~[(5)(b)]~~ (6)(b), the railroad

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

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

434 (e) After a hearing described in Subsection [~~(5)(d)~~] (6)(d), if the office determines that
435 the condition or practice is noncompliant and the railroad has not made reasonable efforts to
436 remedy the condition or practice, the office may issue an order requiring the railroad to:

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

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

440 (f) In addition to any order issued under Subsection [~~(5)(e)~~] (6)(e), after a hearing
441 described in Subsection [~~(5)(d)~~] (6)(d), if the office determines that the condition or practice is
442 noncompliant and the railroad has not made reasonable efforts to remedy the condition or
443 practice, and the condition or practice is so hazardous as to place a railroad employee or the
444 public in immediate danger, the office may issue an order requiring the railroad:

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

446 (A) the unsafe or unlawful practice; or

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

449 (ii) pay a civil penalty of not more than \$10,000 per violation or per day of violation of
450 state or federal law, or a rule made in accordance with Subsection [~~(6)~~] (7) or Section

451 [72-17-107](#).

452 [~~(6)~~] (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
453 Act, the department shall make rules necessary to:

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

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

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

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

460 Section 10. Section **72-17-104 (Effective 03/31/24)** is amended to read:

461 **72-17-104 (Effective 03/31/24). Federal Railroad Administration grant program.**

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

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

467 Section 11. Section **72-17-105 (Effective 03/31/24)** is amended to read:

468 **72-17-105 (Effective 03/31/24). Establishment of administrative fees -- Payment --**
469 **Expenditures.**

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

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

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

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

479 [~~(2)~~] (3) (a) For grade crossings inspections and services, the office shall establish and
480 each railroad shall pay a fee based on:

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

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

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

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

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

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

492 (d) For track related inspections and services, the office shall establish and each

493 railroad shall pay a fee based on the number of miles of track owned or operated by the railroad
494 within this state.

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

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

502 (ii) A county or municipality that requests local option transit sales tax as described in
503 Subsection ~~[(2)(f)(i)]~~ [\(3\)\(f\)\(i\)](#) may transmit to the office the funds requested under Subsection
504 ~~[(2)(f)(i)]~~ [\(3\)\(f\)\(i\)](#) and transmitted to the county or municipality under Subsection
505 [59-12-2206\(5\)\(b\)](#).

506 (iii) A county or municipality that requests local option transit sales tax as described in
507 Subsection ~~[(2)(f)(i)]~~ [\(3\)\(f\)\(i\)](#) may not request more local option transit sales tax than is
508 necessary to carry out the safety inspection and functions under this chapter.

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

511 ~~[(3)]~~ [\(4\)](#) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
512 Act, the department shall make rules to establish each of the fee amounts described in
513 Subsection ~~[(2)]~~ [\(3\)](#):

514 (i) according to the data described in Subsection ~~[(2)]~~ [\(3\)](#); and

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

517 (b) The department shall annually adjust the fees established in accordance with
518 Subsection ~~[(3)(a)]~~ [\(4\)\(a\)](#) to account for inflation and other budgetary factors.

519 ~~[(4)]~~ [\(5\)](#) Each railroad that operates within this state shall pay to the office the fees
520 described and established by the office.

521 Section 12. Section **72-17-106 (Effective 03/31/24)** is amended to read:

522 **72-17-106 (Effective 03/31/24). Office of Rail Safety Account.**

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

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

526 ~~[(2)]~~ (3) The account shall be funded by:

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

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

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

530 ~~[(3)]~~ (4) The office shall provide a detailed budget to account for the office's
531 expenditures related to the enforcement of this part, including:

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

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

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

538 (d) reasonable overhead costs related to Subsections ~~[(3)(a)]~~ (4)(a) through (c).

539 ~~[(4)]~~ (5) The office, in performing the duties under this part:

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

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

543 Section 13. Section 72-17-107 (Effective 03/31/24) is amended to read:

544 **72-17-107 (Effective 03/31/24). Rulemaking regarding railroad clearances and**
545 **walkways.**

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

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

549 ~~[(1)]~~ (a) walkways adjacent to railroad track;

550 ~~[(2)]~~ (b) clearances of structures and other obstructions near railroad track;

551 ~~[(3)]~~ (c) the safety of office personnel conducting inspections in accordance with this
552 part;

553 ~~[(4)]~~ (d) railroad infrastructure and work spaces for railroad workers;

554 ~~[(5)]~~ (e) signage related to railroad worker safety; and

555 [~~(6)~~] (f) other safety standards as the department finds necessary.

556 Section 14. Section **72-17-108 (Effective 03/31/24)** is amended to read:

557 **72-17-108 (Effective 03/31/24). Agreements to indemnify in a railroad contract.**

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

559 (2) As used in this section:

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

561 (i) a railroad; and

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

563 chapter.

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

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

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

569 railroad's agents or employees.

570 [~~(2)~~] (3) Except as provided in Subsection [~~(3)~~] (4), an indemnification provision in a
571 railroad contract is against public policy and is void and unenforceable.

572 [~~(3)~~] (4) If an indemnification provision is included in a railroad contract, in any action
573 for damages described in Subsection [~~(1)(b)(i)~~] (2)(b)(i), the railroad may seek indemnification
574 from another party to a railroad contract pro rata based on the proportional share of fault of
575 each party, if:

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

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

579 [~~(4)~~] (5) This section may not be construed to impair a contract in existence before
580 May 3, 2023.

581 Section 15. Section **72-18-101** is enacted to read:

582 **CHAPTER 18. RAIL OMBUDSMAN**

583 **Part 1. Creation and Duties**

584 **72-18-101. Rail ombudsman.**

585 (1) There is created the position of rail ombudsman in the rail office of the Department

586 of Transportation.

587 (2) The executive director of the Department of Transportation shall appoint the rail
588 ombudsman.

589 (3) The rail ombudsman is a career service exempt position.

590 Section 16. Section **72-18-102** is enacted to read:

591 **72-18-102. Rail ombudsman -- Duties.**

592 (1) The rail ombudsman shall:

593 (a) develop and maintain expertise in and understanding of laws and regulations
594 relating to rail;

595 (b) coordinate, consult, and provide information to private citizens, civil groups,
596 government entities, rail operators, stakeholders, and other interested parties about rail related
597 issues;

598 (c) on the rail ombudsman's website, provide:

599 (i) updated, easily accessible information about the duties of the rail ombudsman; and

600 (ii) a form that a member of the public may use to submit a report or complaint;

601 (d) provide education and training regarding rail laws and regulations; and

602 (e) arrange and facilitate meetings between a rail company and one or more of the

603 following, to resolve a rail dispute described in Subsection (2):

604 (i) a local government entity;

605 (ii) the Department of Transportation;

606 (iii) the Utah Transit Authority; or

607 (iv) a private property or livestock owner.

608 (2) The rail ombudsman shall facilitate meetings described in Subsection (1)(e) to
609 resolve issues relating to:

610 (a) a rail crossing;

611 (b) fencing;

612 (c) injury to or loss of livestock;

613 (d) railroad maintenance, including maintenance agreements and road closures;

614 (e) improvements to railroad right-of-way infrastructure;

615 (f) safety;

616 (g) track realignment;

617 (h) track consolidation;

618 (i) intersections where a railroad track crosses a highway or another railroad track; or

619 (j) any other issue that has caused a dispute between a rail company and a party

620 described in Subsection (1)(e).

621 (3) If the rail ombudsman invites a rail company or another party described in
622 Subsection (1)(e) to a meeting to resolve a rail dispute, the rail company or other person shall:

623 (a) attend the meeting; and

624 (b) attempt to resolve the dispute through the rail ombudsman before filing an action in
625 court or seeking another remedy.

626 (4) A party described in Subsections (1)(e)(i) through (iv) shall provide notice to the
627 rail ombudsman before:

628 (a) closing a highway for railroad maintenance;

629 (b) entering into a railroad maintenance agreement; or

630 (c) starting a construction project involving:

631 (i) an intersection where a railroad track crosses:

632 (A) a highway at the same level; or

633 (B) another railroad track at the same level; or

634 (ii) the realignment or consolidation of railroad tracks.

635 (5) The rail ombudsman may not address organized labor issues or disputes.

636 Section 17. **Effective date.**

637 (1) Except as provided in Subsection (2), if approved by two-thirds of all the members
638 elected to each house, this bill takes effect upon approval by the governor, or the day following
639 the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's
640 signature, or in the case of a veto, the date of the veto override.

641 (2) If this bill is not approved by two-thirds of all members elected to each house, this
642 bill takes effect May 1, 2024.