

SB0235S01 compared with SB0235

~~text~~ shows text that was in SB0235 but was deleted in SB0235S01.

text shows text that was not in SB0235 but was inserted into SB0235S01.

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Senator Wayne A. Harper proposes the following substitute bill:

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~~ division; 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:

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56-1-12 (Effective 04/01/24), as repealed and reenacted by Laws of Utah 2023, Chapter 232

56-1-13 (Effective 04/01/24), as repealed and reenacted by Laws of Utah 2023, Chapter 232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

72-17-103 (Effective 03/31/24), as enacted by Laws of Utah 2023, Chapter 42

72-17-104 (Effective 03/31/24), as enacted by Laws of Utah 2023, Chapter 42

72-17-105 (Effective 03/31/24), as enacted by Laws of Utah 2023, Chapter 42

72-17-106 (Effective 03/31/24), as enacted by Laws of Utah 2023, Chapter 42

72-17-107 (Effective 03/31/24), as enacted by Laws of Utah 2023, Chapter 42

72-17-108 (Effective 03/31/24), as enacted by Laws of Utah 2023, Chapter 42

ENACTS:

56-1-12.1, Utah Code Annotated 1953

56-1-13.1, Utah Code Annotated 1953

63I-2-256, Utah Code Annotated 1953

72-18-101, Utah Code Annotated 1953

72-18-102, Utah Code Annotated 1953

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

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

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

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

(2) As used in this section:

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

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

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

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

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

(i) the damages arise out of:

(A) damage to property, including livestock; or

(B) other related economic loss; and

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

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

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

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

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

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

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

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

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

(i) immediately record the location of the strike; and

(ii) within 24 hours of the strike, notify and provide pertinent information to the department and the statewide railroad engineer.

(b) (i) If a railroad fails to report a strike as required in Subsection [~~(3)(a)~~] (4)(a), the

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railroad is liable for a civil penalty of at least \$5,000 per incident.

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

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

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

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

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

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

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

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

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

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

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

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

(A) investigate the scene of the strike;

(B) identify the livestock that was struck;

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

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

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

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

(ii) The department shall create and maintain a website to document and provide notice

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and information to the public regarding livestock strikes within this state.

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

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

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

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

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

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

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

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

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

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

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

(b) The fund shall consist of:

(i) deposits by the Legislature;

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

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

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

(v) money deposited by the department from a civil penalty described in Subsection

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~~[(3)]~~ (4):

- (vi) other donations or deposits into the fund; and
- (vii) interest earned on the balance of the fund.

(c) Before December 31, 2023, each railroad shall pay into the Railroad Livestock

Damage Fund:

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

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

(d) (i) If the department issues payment from the fund in accordance with Subsection ~~[(6)]~~ (7), the department shall notify the relevant railroad that is liable for the damage.

(ii) The department shall include in the notice to the railroad described in Subsection ~~[(7)(d)(i)]~~ (8)(d)(i) relevant information, including:

- (A) the date or approximate date that the damage occurred;
- (B) the location where the damage occurred;
- (C) the type of livestock that was damaged;
- (D) the name of the owner of the livestock that was damaged; and
- (E) the estimated market value of the damage for which the railroad is responsible.

(iii) Within 30 days of the date the railroad receives the notice described in Subsection ~~[(7)(d)(iii)]~~ (8)(d)(i), the railroad shall remit to the department the value of the damage.

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

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

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

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

(e) (i) Between July 1, 2023, and December 31, 2023, the department shall gather data

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from livestock strikes reported as required in this section to determine how many livestock strikes occurred during that six months.

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

(iii) The department shall establish and publish the fee amount in rules made pursuant to Subsection [~~(8)~~] (9).

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

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

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

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

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

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

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

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

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

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

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

(iii) one member who works for the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) As used in this section:

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

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

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

(a) land owned by a private owner; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

56-1-39 (Effective 03/31/24). Assessment for ~~{}right-of-way infrastructure~~ improvements.

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

(2) As used in this section:

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

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

(c) (i) "Railroad" means a rail carrier that is a Class I railroad, as classified by the

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federal Surface Transportation Board.

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

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

(B) owned by a government entity.

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

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

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

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

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

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

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

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

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

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

(iv) an environmental improvement; or

(v) any other improvement similar to the improvements described in Subsections [~~(1)(e)(i)~~] (2)(e)(i) through (iv).

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

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

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

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

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government entity.

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

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

(ii) assess the railroad for the total of all amounts described in Subsection ~~[(3)(a)(i)]~~ (4)(a)(i); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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the office in phases.

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

- (a) a class I railroad; and
- (b) commuter rail.

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

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

As used in this chapter:

- (1) "Class I railroad" means the same as that term is defined in 49 U.S.C. Sec. 20102.
- (2) "Commuter rail" means the same as that term is defined in Section 63N-3-602.
- (3) "Federal Railroad Administration" means the Federal Railroad Administration created in 49 U.S.C. Sec. 103.
- (4) "Office" means the Office of Rail Safety created in accordance with Section 72-17-101.

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

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

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

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

- (1) The provisions in this section apply beginning on May 7, 2025.
- (2) In accordance with 49 C.F.R. Part 212, and the authorization granted from the Federal Railroad Administration, the office shall perform the inspection, compliance, and enforcement duties in the following areas:

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

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

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

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

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

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

~~[(3)]~~ (4) The office shall employ a sufficient number of federally certified inspectors and staff to ensure that railroad equipment, facilities, and tracks are inspected as frequently as reasonably required to ensure compliance and safety as required under state and federal law.

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

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

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

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

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

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

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

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

(C) other safety considerations required by federal law.

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

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

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

(e) If the office finds a violation of safety requirements as described in this section or

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in federal law, and the office requests an enforcement action and Federal Railroad Administration does not take enforcement action as described in 49 C.F.R. Sec. 212.115, the office may seek a civil penalty not less than \$500 and no more than \$10,000 for each offense.

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

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

(c) If a railroad receives a notice described in Subsection ~~[(5)(b)]~~ (6)(b), the railroad shall remedy the condition or practice within 30 days of the date of the notice.

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

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

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

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

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

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

(A) the unsafe or unlawful practice; or

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

(ii) pay a civil penalty of not more than \$10,000 per violation or per day of violation of state or federal law, or a rule made in accordance with Subsection ~~[(6)]~~ (7) or Section 72-17-107.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) as of January 1 of each year, the number of crossings the railroad operates within this state that cross a highway, whether at grade, by overhead structure, or subway; and
- (ii) the frequency of use of each crossing the railroad operates, including:
 - (A) the frequency of train operation at the crossing; and

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

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

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

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

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

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

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

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

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

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

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

(ii) to collect an amount sufficient to cover the budget and costs to administer the

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duties of the office.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) As used in this section:

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

(i) a railroad; and

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

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

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

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

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

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

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

(b) the cause of the damages arose at a time when the party other than the railroad was

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operating pursuant to the railroad contract.

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

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

CHAPTER 18. RAIL OMBUDSMAN

Part 1. Creation and Duties

72-18-101. Rail ombudsman.

(1) There is created the position of rail ombudsman in the rail ~~{office}~~ division of the ~~{Department of Transportation}~~ department.

(2) The executive director of the ~~{Department of Transportation}~~ department shall appoint the rail ombudsman.

~~{~~ ~~——~~ (3) ~~The rail ombudsman is a career service exempt position.~~

~~}~~ Section 16. Section 72-18-102 is enacted to read:

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

(1) The rail ombudsman shall:

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

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

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

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

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

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

(e) arrange and facilitate meetings between a rail company ~~that owns or operates a class I railroad~~ and one or more of the following, to resolve a rail dispute described in Subsection

(2):

(i) a local government entity;

(ii) ~~{the Department of Transportation;~~

~~——~~ (iii) the Utah Transit Authority; or

~~——~~ (iv) a large public transit district; or

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(iii) a private property or livestock owner.

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

(a) ~~f a~~ safety;

(b) at-grade and grade-separated rail ~~f crossing~~ crossings;

(~~f b~~ c) fencing;

(~~f c~~ d) injury to or loss of livestock;

(~~f d~~ e) railroad maintenance, including maintenance agreements and road closures;

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

~~{ (f) safety;~~

~~{ (g) track realignment;~~

(h) track consolidation;~~{~~

~~— (i) intersections where a railroad track crosses a highway or another railroad track;~~}~~ or~~

(~~f i~~ i) any other issue that has caused a dispute between a rail company and a party

described in Subsection (1)(e).

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

(a) attend the meeting; and

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

(4) A ~~rail company and a~~ party described in Subsections (1)(e)(i) through (iv) shall provide notice to the rail ombudsman before:

(a) closing a highway for railroad maintenance;~~{~~

~~— (b) entering into a railroad maintenance agreement;~~}~~ or~~

(~~f c~~ b) starting a construction project involving:

(i) an ~~f intersection where a railroad track crosses:~~

~~— (A) a highway at the same level; or~~

~~— (B) another railroad track at the same level;~~}~~ at-grade rail crossing; or~~

(ii) the realignment or consolidation of railroad tracks.

(5) The rail ombudsman may not address ~~nor participate in:~~

(a) organized labor issues or disputes; ~~or~~

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(b) rail company employee safety issues.

Section 17. **Effective date.**

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

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