

OFFICE OF RAIL SAFETY

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: Michael K. McKell

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ creates the Office of Rail Safety;
- ▶ requires application and a request for certification with the Federal Railroad Administration;
- ▶ upon certification, requires the Office of Rail Safety to assume the inspection and investigation functions in certain aspects of the railroad operations;
- ▶ allows the Office of Rail Safety to regulate and monitor time limits on the blocking of railroad-highway grade crossings;
- ▶ requires railroads to pay a fee to cover the costs of the inspections;
- ▶ grants rulemaking power to the Department of Transportation to make rules related to the implementation of the Office of Rail Safety and employee safety standards related to walkways and clearances; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides a coordination clause.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **72-1-203**, as last amended by Laws of Utah 2019, Chapter 479

32 ENACTS:

33 **72-17-101**, Utah Code Annotated 1953

34 **72-17-102**, Utah Code Annotated 1953

35 **72-17-103**, Utah Code Annotated 1953

36 **72-17-104**, Utah Code Annotated 1953

37 **72-17-105**, Utah Code Annotated 1953

38 **72-17-106**, Utah Code Annotated 1953

39 **72-17-107**, Utah Code Annotated 1953

40 **72-17-108**, Utah Code Annotated 1953

41 **Utah Code Sections Affected by Coordination Clause:**

42 **72-7-102**, Utah Code Annotated 1953

43 **72-7-601**, Utah Code Annotated 1953

44 **72-7-602**, Utah Code Annotated 1953

45 **72-17-201**, Utah Code Annotated 1953

46 **72-17-202**, Utah Code Annotated 1953



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

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

50 **72-1-203. Deputy director -- Appointment -- Qualifications -- Other assistants**
51 **and advisers -- Salaries.**

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

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

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

- 58 (i) project development, including statewide standards for project design and
59 construction, right-of-way, materials, testing, structures, and construction;
- 60 (ii) oversight of the management of the region offices described in Section 72-1-205;
- 61 (iii) operations and traffic management;
- 62 (iv) oversight of operations of motor carriers and ports;
- 63 (v) oversight and enforcement of railroad safety requirements as described in Chapter
64 17, Office of Rail Safety;

- 65 [~~(v)~~] (vi) transportation systems safety;
- 66 [~~(vi)~~] (vii) aeronautical operations; and
- 67 [~~(vii)~~] (viii) equipment for department engineering and maintenance functions.

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

- 70 (i) oversight and coordination of planning, including:
 - 71 (A) development of statewide strategic initiatives for planning across all modes of
72 transportation;
 - 73 (B) coordination with metropolitan planning organizations and local governments; and
 - 74 (C) corridor and area planning;
- 75 (ii) asset management;
- 76 (iii) programming and prioritization of transportation projects;
- 77 (iv) fulfilling requirements for environmental studies and impact statements;
- 78 (v) resource investment, including identification, development, and oversight of
79 public-private partnership opportunities;
- 80 (vi) data analytics services to the department;
- 81 (vii) corridor preservation;
- 82 (viii) employee development;

83 (ix) maintenance planning; and
84 (x) oversight and facilitation of the negotiations and integration of public transit
85 providers described in Section [17B-2a-827](#).

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

87 **CHAPTER 17. RAIL SAFETY**

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

89 **72-17-101. Office of Rail Safety -- Creation -- Applicability.**

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

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

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

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

98 (3) In establishing the Office of Rail Safety in accordance with the duties described in
99 49 C.F.R. Part 212, the department may hire personnel and establish the duties of the office in
100 phases.

101 (4) This chapter applies to:

102 (a) a class I railroad; and

103 (b) commuter rail.

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

105 **72-17-102. Definitions.**

106 As used in this chapter:

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

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

109 (3) "Federal Railroad Administration" means the Federal Railroad Administration

110 created in 49 U.S.C. Sec. 103.

111 (4) "Office" means the Office of Rail Safety created in accordance with Section
112 72-17-101.

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

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

115 **72-17-103. Duties of the Office of Rail Safety.**

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

119 (a) grade crossings;

120 (b) hazardous materials;

121 (c) motive power and equipment;

122 (d) operating practices;

123 (e) signal and train control; and

124 (f) track.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

182 (A) the unsafe or unlawful practice; or

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

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

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

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

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

191 regarding the blocking of grade crossings, which standards and limits shall be commensurate
192 with reasonable requirements of train and vehicular traffic operations;

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

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

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

196 **72-17-104. Federal Railroad Administration Grant Program.**

197 After reaching an agreement with and receiving the certification from the Federal
198 Railroad Administration as described in Section 72-17-101, the office may apply for Railroad
199 Safety Grants as often as permitted by the Federal Railroad Administration.

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

201 **72-17-105. Establishment of administrative fees -- Payment -- Expenditures.**

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

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

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

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

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

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

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

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

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

218 and each railroad shall pay a fee based on the tonnage of hazardous materials transported in this
219 state during a given year.

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

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

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

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

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

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

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

241 (3) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
242 the department shall make rules to establish each of the fee amounts described in Subsection
243 (2):

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

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

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

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

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

252 **72-17-106. Office of Rail Safety Account.**

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

255 (2) The account shall be funded by:

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

257 (b) fees collected pursuant to Section [72-17-105](#); and

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

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

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

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

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

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

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

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

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

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

273 **72-17-107. Rulemaking regarding railroad clearances and walkways.**

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

- 276 (1) walkways adjacent to railroad track;
- 277 (2) clearances of structures and other obstructions near railroad track;
- 278 (3) the safety of office personnel conducting inspections in accordance with this part;
- 279 (4) railroad infrastructure and work spaces for railroad workers;
- 280 (5) signage related to railroad worker safety; and
- 281 (6) other safety standards as the department finds necessary.

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

283 **72-17-108. Agreements to indemnify in a railroad contract.**

284 (1) As used in this section:

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

286 (i) a railroad; and

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

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

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

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

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

297 (3) If an indemnification provision is included in a railroad contract, in any action for
298 damages described in Subsection (1)(b)(i), the railroad may seek indemnification from another

299 party to a railroad contract pro rata based on the proportional share of fault of each party, if:

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

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

303 (4) This section may not be construed to impair a contract in existence before May 3,
304 2023.

305 Section 10. **Effective date.**

306 This bill takes effect on March 31, 2024.

307 Section 11. **Coordinating H.B. 63 with H.B. 232 -- Substantive and technical**
308 **amendments.**

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

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

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

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

317 (4) replacing the language "Section 72-7-602" with "Section 72-17-202" in Section
318 72-7-102.