

105TH CONGRESS
2D SESSION

S. 2063

To authorize activities under the Federal railroad safety laws for fiscal years 1999 through 2002, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 12, 1998

Mr. HOLLINGS (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To authorize activities under the Federal railroad safety laws for fiscal years 1999 through 2002, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Railroad Safe-
5 ty Authorization Act of 1998”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds and declares that—

8 (1) consistent with the purposes of the Govern-
9 ment Performance and Results Act, the Federal
10 Railroad Administration has reshaped the regulatory

1 and compliance components of the Federal railroad
2 safety program to ensure that the entire program is
3 squarely focused on achieving demonstrable results,
4 i.e., reducing the number of deaths and injuries as-
5 sociated with railroading in the United States. The
6 foundation of the program is its emphasis on inclu-
7 sion of all interested parties—railroad employees
8 and labor unions, railroad management, manufactur-
9 ers, State government groups, and public associa-
10 tions—in identifying safety problems and imple-
11 menting solutions. This emphasis on safety partner-
12 ship has helped begin a transformation of the safety
13 culture of the Nation’s railroads that is producing
14 safety and business benefits;

15 (2) the Safety Assurance and Compliance Pro-
16 gram is an approach to safety that emphasizes the
17 active partnership of the Federal Railroad Adminis-
18 tration, rail labor representatives, and railroad man-
19 agement in identifying current safety problems and
20 jointly developing effective solutions to those prob-
21 lems. One fundamental principle of this approach is
22 tracing a safety problem to its root cause and at-
23 tacking that cause rather than only its symptoms.
24 Where a problem is determined to be system-wide,
25 this approach calls for a system-wide solution.

1 Under this approach, FRA seeks to focus its inspec-
2 tion and enforcement resources on the most serious
3 safety problems. This approach has demonstrated
4 significant capacity for identifying and eliminating
5 the root cause of system-wide safety problems by en-
6 listing those most directly affected by such prob-
7 lems—railroad employees and managers—in a part-
8 nership effort. Used together with FRA’s regular in-
9 spections and enforcement tools, this approach pro-
10 vides a firm basis for addressing the safety chal-
11 lenges facing the changing railroad industry and ad-
12 vancing toward the safety program’s ultimate goal
13 of zero tolerance for any safety hazard in the rail-
14 road industry; and

15 (3) the Railroad Safety Advisory Committee,
16 which was established under the Federal Advisory
17 Committee Act (5 U.S.C. App. 2), is proving to be
18 an effective means of involving interested members
19 of the railroad community in the development of
20 railroad safety rules issued by the Federal Railroad
21 Administration. The Congress strongly encourages
22 the continued use of this collaborative method of de-
23 veloping safety regulations, which is more likely to
24 produce rules that are based on an industry consen-
25 sus and, accordingly, more readily understood and

1 more consistently complied with, than rules produced
 2 under more traditional methods.

3 **SEC. 3. AMENDMENT TO TITLE 49, UNITED STATES CODE.**

4 Except as otherwise expressly provided, whenever in
 5 this Act an amendment or repeal is expressed in terms
 6 of an amendment to, or a repeal of, a section or other
 7 provision, the reference shall be considered to be made to
 8 a section or other provision of title 49, United States
 9 Code.

10 **SEC. 4. TABLE OF CONTENTS.**

11 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Findings on the Railroad Safety Advisory Committee and the Safety Assurance and Compliance Program.
- Sec. 3. Amendment of title 49, United States Code.
- Sec. 4. Table of contents.

TITLE I—HOURS OF SERVICE

- Sec. 101. Definitions.
- Sec. 102. Limitations on duty hours of train employees.
- Sec. 103. Limitations on duty hours of signal employees.
- Sec. 104. Limitations on duty hours of dispatching service employees.
- Sec. 105. Conforming amendments regarding hours of service violations.
- Sec. 106. Fatigue management plans.
- Sec. 107. Electronic recordkeeping.

TITLE II—MONITORING OF RAILROAD RADIO COMMUNICATIONS

- Sec. 201. Enhanced inspection and investigation authority under the Federal railroad safety laws.
- Sec. 202. Exception to chapter 119 of title 18, United States Code.

TITLE III—RULEMAKING AUTHORITY

- Sec. 301. Railroad accident and incident reporting.
- Sec. 302. High-speed rail noise regulation.

TITLE IV—PROTECTION OF EMPLOYEES AND WITNESSES

- Sec. 401. Expansion of employee protections.
- Sec. 402. Interfering with or hampering major investigations.

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Expansion of emergency order authority.

Sec. 502. Safety considerations in grants or loans to commuter railroads.

Sec. 503. Technical amendments regarding adjustment of civil penalties for inflation.

Sec. 504. Emergency notification of grade crossing problems.

Sec. 505. Authorization of appropriations.

1 **TITLE I—HOURS OF SERVICE**

2 **SEC. 101. DEFINITIONS.**

3 Section 21101 is amended—

4 (1) in paragraph (2), by inserting “, including
5 any manager, supervisor, official, agent, or other
6 employee of a railroad carrier or any employee of an
7 independent contractor to a railroad carrier” after
8 “affecting train movements”;

9 (2) in paragraph (4), by striking “employed by
10 a railroad carrier who is engaged in installing, re-
11 pairing, or maintaining signal systems” and sub-
12 stituting “who is engaged in installing, repairing, or
13 maintaining signal systems, including any manager,
14 supervisor, official, agent, or other employee of a
15 railroad carrier or any employee of an independent
16 contractor to a railroad carrier”;

17 (3) in paragraph (5), by inserting “, and any
18 manager, supervisor, official, agent, or other em-
19 ployee of a railroad carrier or any employee of an
20 independent contractor to a railroad carrier” after
21 “including a hostler”; and

22 (4) by inserting the following new paragraphs:

1 “(6) ‘dually employed’ means being at the same
 2 time in the employ of two or more railroad carriers,
 3 of two or more independent contractors to a railroad
 4 carrier, or of both a railroad carrier and one or more
 5 independent contractors to a railroad carrier.

6 “(7) ‘independent contractor to a railroad car-
 7 rier’ or, in context, ‘independent contractor,’ means
 8 an independent contractor to a railroad carrier or a
 9 subcontractor to an independent contractor to a rail-
 10 road carrier.”.

11 **SEC. 102. LIMITATIONS ON DUTY HOURS OF TRAIN EM-**
 12 **PLOYEES.**

13 (a) Section 21103(a) is amended by—

14 (1) striking “officers” and substituting “man-
 15 agers, supervisors, officers,”;

16 (2) redesignating the text of the subsection as
 17 paragraph (1) of the subsection, and redesignating
 18 paragraphs (1) and (2) as subparagraphs (A) and
 19 (B), respectively, of the paragraph; and

20 (3) inserting the following at the end:

21 “(2) Except as provided in subsection (c) of
 22 this section, a railroad carrier and its managers, su-
 23 pervisors, officers, and agents may not, if the rail-
 24 road carrier has actual knowledge that a train em-
 25 ployee is dually employed and actual knowledge of

1 the individual's schedule for the time period in ques-
2 tion, require or allow a dually employed train em-
3 ployee to remain or go on duty, nor may a dually
4 employed train employee remain or go on duty—

5 “(A) unless that employee has had at least
6 8 consecutive hours off duty during the prior
7 24 hours; or

8 “(B) after that employee has been on duty
9 for 12 consecutive hours, until that employee
10 has had a least 10 consecutive hours off duty.”.

11 (b) Section 21103(b) is amended—

12 (1) in paragraph (b)(3), by striking “the rail-
13 road carrier” and substituting “a railroad carrier or
14 independent contractor to a railroad carrier”; and

15 (2) by inserting the following new paragraph at
16 the end:

17 “(8) All time on duty for any railroad carrier
18 or independent contractor to a railroad carrier shall
19 be included.”.

20 (c) Section 21103 is amended by adding the following
21 at the end:

22 “(d) NOTICE ABOUT DUAL EMPLOYMENT.—(1) Not
23 later than January 31 each year, a railroad carrier shall
24 inform each of its train employees in writing—

1 “(A) that all time spent performing aggregate
 2 duty on one or more railroad carriers or one or more
 3 independent contractors to a railroad carrier counts
 4 towards the limitations on duty hours of this section;
 5 and

6 “(B) about the employee’s responsibility under
 7 this subsection to notify each employer when the em-
 8 ployee enters into a multi-employer relationship.

9 “(2) A dually employed train employee shall inform
 10 each of his or her railroad carrier and independent con-
 11 tractor employers in writing within 5 days of establishing
 12 a multi-employer relationship.

13 “(3) A railroad carrier or independent contractor re-
 14 ceiving written notification of dual employment shall re-
 15 tain one copy of the notification for a period of two years
 16 at its system and division headquarters, and shall make
 17 the record available to representatives of the Secretary for
 18 inspection and copying during normal business hours.”.

19 **SEC. 103. LIMITATIONS ON DUTY HOURS OF SIGNAL EM-**
 20 **PLOYEES.**

21 (a) Section 21104(a)(2) is amended by—

22 (1) striking “officers” and substituting “man-
 23 agers, supervisors, officers,”;

24 (2) redesignating the text of the paragraph as
 25 subparagraph (A) of the paragraph, and redesignat-

1 ing subparagraphs (A), (B), and (C) as clauses (i),
2 (ii), and (iii), respectively, of the subparagraph; and
3 (3) inserting the following at the end:

4 “(B) Except as provided in subsection (c)
5 of this section, a railroad carrier and its man-
6 agers, supervisors, officers, and agents may not,
7 if the railroad carrier has actual knowledge that
8 a signal employee is dually employed and actual
9 knowledge of the individual’s schedule for the
10 time period in question, require or allow a du-
11 ally employed signal employee to remain or go
12 on duty, nor may a dually employed signal em-
13 ployee remain or go on duty—

14 “(i) unless that employee has had at
15 least 8 consecutive hours off duty during
16 the prior 24 hours;

17 “(ii) after that employee has been on
18 duty for 12 consecutive hours, until that
19 employee has had at least 10 consecutive
20 hours off duty; or

21 “(iii) after that employee has been on
22 duty a total of 12 hours during a 24-hour
23 period, or after the end of that 24-hour pe-
24 riod, whichever occurs first, until that em-

1 ployee has had at least 8 consecutive hours
2 off duty.”.

3 (b) Section 21104(b) is amended—

4 (1) in paragraph (b)(2), by striking “the rail-
5 road carrier” and substituting “a railroad carrier or
6 independent contractor to a railroad carrier”;

7 (2) in paragraph (b)(3), by striking “, except
8 that up to one hour of that time spent returning
9 from the final trouble call of a period of continuous
10 or broken service is time off duty”; and

11 (3) by inserting the following new paragraph at
12 the end:

13 “(8) All time on duty for any railroad carrier
14 or independent contractor to a railroad carrier shall
15 be included.”.

16 (c) Section 21104 is amended by adding the following
17 at the end:

18 “(d) NOTICE ABOUT DUAL EMPLOYMENT.—(1) Not
19 later than January 31 each year, a railroad carrier shall
20 inform each of its signal employees in writing—

21 “(A) that all time spent performing aggregate
22 duty on one or more railroad carriers or one or more
23 independent contractors to a railroad carrier counts
24 towards the limitations on duty hours of this section;
25 and

1 “(B) about the employee’s responsibility under
 2 this subsection to notify each employer when the em-
 3 ployee enters into a multi-employer relationship.

4 “(2) A dually employed signal employee shall inform
 5 each of his or her railroad carrier and independent con-
 6 tractor employers in writing within 5 days of establishing
 7 a multi-employer relationship.

8 “(3) A railroad carrier or independent contractor re-
 9 ceiving written notification of dual employment shall re-
 10 tain one copy of the notification for a period of two years
 11 at its system and division headquarters, and shall make
 12 the record available to representatives of the Secretary for
 13 inspection and copying during normal business hours.”.

14 **SEC. 104. LIMITATIONS ON DUTY HOURS OF DISPATCHING**
 15 **SERVICE EMPLOYEES.**

16 (a) Section 21105(b) is amended by—

17 (1) striking “or allowed” and substituting “or
 18 allowed by a railroad carrier or its managers, super-
 19 visors, officers, and agents”;

20 (2) redesignating the text of the subsection as
 21 paragraph (1) of the subsection, and redesignating
 22 paragraphs (1) and (2) as subparagraphs (A) and
 23 (B), respectively, of the paragraph; and

24 (3) inserting the following at the end:

1 “(2) Except as provided in subsection (d) of
 2 this section, a railroad carrier and its managers, su-
 3 pervisors, officers, and agents may not, if the rail-
 4 road carrier has actual knowledge that a dispatching
 5 service employee is dually employed and actual
 6 knowledge of the individual’s schedule for the time
 7 period in question, require or allow a dually em-
 8 ployed dispatching service employee to remain or go
 9 on duty, nor may a dually employed dispatching
 10 service employee remain or go on duty, for more
 11 than—

12 “(A) a total of 9 hours during a 24-hour
 13 period in a tower, office, station, or place at
 14 which at least 2 shifts are employed; or

15 “(B) a total of 12 hours during a 24-hour
 16 period in a tower, office, station, or place at
 17 which only one shift is employed.”.

18 (b) Section 21105(c) is amended to read as follows:

19 “(c) DETERMINING TIME ON DUTY.—In determining
 20 under subsection (b) of this section the time a dispatching
 21 service employee is on or off duty, the following rules
 22 apply:

23 “(1) Time spent performing any other service
 24 for one or more railroad carriers or independent con-
 25 tractors to railroad carriers (or a combination there-

1 of) during a 24-hour period in which the employee
2 is on duty in a tower, office, station, or other place
3 is time on duty in that tower, office, station, or
4 place, and counts toward the employee's aggregate
5 time on duty.

6 “(2) If during a 24-hour period an employee
7 performs the duties of a dispatching service em-
8 ployee for more than one railroad carrier or inde-
9 pendent contractor to a railroad carrier, and at least
10 one of those tours of duty is in a tower, office, sta-
11 tion, or other place at which at least two shifts are
12 employed, then the duty limits of paragraph (b)(1)
13 of this section apply.

14 “(3) All time on duty by the employee for any
15 railroad carrier or independent contractor to a rail-
16 road carrier shall be included.”.

17 (c) Section 21105 is amended by adding the following
18 at the end:

19 “(e) NOTICE ABOUT DUAL EMPLOYMENT.—(1) Not
20 later than January 31 each year, a railroad carrier shall
21 inform each of its dispatching service employees in writ-
22 ing—

23 “(A) that all time spent performing aggregate
24 duty on one or more railroad carriers or one or more
25 independent contractors to a railroad carrier counts

1 towards the limitations on duty hours of this section;
 2 and

3 “(B) about the employee’s responsibility under
 4 this subsection to notify each employer when the em-
 5 ployee enters into a multi-employer relationship.

6 “(2) A dually employed dispatching service employee
 7 shall inform each of his or her railroad carrier and inde-
 8 pendent contractor employers in writing within 5 days of
 9 establishing a multi-employer relationship.

10 “(3) A railroad carrier or independent contractor re-
 11 ceiving written notification of dual employment shall re-
 12 tain one copy of the notification for a period of two years
 13 at its system and division headquarters, and shall make
 14 the record available to representatives of the Secretary for
 15 inspection and copying during normal business hours.”.

16 **SEC. 105. CONFORMING AMENDMENTS REGARDING HOURS**
 17 **OF SERVICE VIOLATIONS.**

18 (a) Section 21106 is amended by striking “officers
 19 and agents” and substituting “managers, supervisors, offi-
 20 cers, agents, and independent contractors”.

21 (b) Section 21303(a)(1) is amended by striking “or
 22 violating any provision of a waiver applicable to that per-
 23 son that has been granted under section 21108 of this
 24 title, is liable to the United States Government for a civil
 25 penalty” and substituting “any provision of a waiver appli-

1 cable to that person that has been granted under section
 2 21108 or 21109 of this title, or any provision of a regula-
 3 tion issued under section 21109 of this title, is liable to
 4 the United States Government for a civil penalty”.

5 (c) Section 21303(c) is amended by striking “officers
 6 and agents” and substituting “managers, supervisors, offi-
 7 cers, agents, and independent contractors”.

8 **SEC. 106. FATIGUE MANAGEMENT PLANS.**

9 (a) AMENDMENT.—Chapter 211 is amended by add-
 10 ing at the end the following new section:

11 **“§ 21109. Fatigue management plans**

12 “(a) PLAN SUBMISSION.—(1) Each Class I and Class
 13 II railroad carrier, each railroad carrier providing intercity
 14 rail passenger service, and each railroad carrier providing
 15 commuter passenger service, shall submit to the Secretary
 16 of Transportation a fatigue management plan that is de-
 17 signed to reduce the fatigue experienced by railroad em-
 18 ployees covered by the hours of service laws and to reduce
 19 the likelihood of accidents and injuries caused by fatigue.
 20 The plan shall be submitted not more than 1 year after
 21 enactment of this section, or not less than 45 days prior
 22 to commencing operations, whichever is later.

23 “(2) The fatigue management plan shall—

24 “(A) include a summary of each railroad car-
 25 rier’s analysis supporting each plan element;

1 “(B) describe how every condition on the rail-
2 road carrier’s property that is likely to be affected
3 by fatigue is addressed in the plan; and

4 “(C) include the name, title, address, and tele-
5 phone number of the primary person to be contacted
6 with regard to review of the plan.

7 “(3)(A) The Secretary is authorized to review each
8 proposed plan and proposed amendment to a plan to de-
9 termine whether the elements prescribed in subsection (b)
10 of this section are sufficiently and rationally addressed
11 and discussed in the railroad’s plan submission or pro-
12 posed amendment to the plan.

13 “(B) If the proposed plan or amendment to the plan
14 is reviewed and not approved, the Secretary shall notify
15 the affected railroad carrier as to the specific points in
16 which the proposed plan or amendment to the plan is defi-
17 cient, and the carrier shall correct all deficiencies within
18 30 days following receipt of written notice from the Sec-
19 retary.

20 “(C) To carry out this section, the Secretary may
21 conduct periodic audits of a plan to determine compliance.

22 “(4) Each affected railroad carrier shall file any pro-
23 posed amendment to its plan with the Secretary not less
24 than 60 days prior to the proposed effective date of the
25 amendment.

1 “(5)(A) Each affected railroad carrier shall employ
2 good faith and use its best efforts to reach agreement by
3 consensus with all of its directly affected covered service
4 employee groups on the contents of the fatigue manage-
5 ment plan and amendments to the plan, and jointly submit
6 the plan and each amendment to the plan to the Secretary.

7 “(B) In the event that labor organizations represent
8 classes or crafts of directly affected covered service em-
9 ployees of the railroad carrier, the railroad carrier shall
10 consult with these organizations in drafting the plan and
11 amendments to the plan. The Secretary shall be author-
12 ized to provide assistance to the parties involved in a nego-
13 tiation.

14 “(C) If the railroad carrier and its employees (includ-
15 ing any labor organization representing a class or craft
16 of directly affected covered service employees of the rail-
17 road carrier) cannot reach consensus on the proposed con-
18 tents of the plan or an amendment to the plan, then—

19 “(i) the railroad carrier shall file the plan or
20 amendment with the Secretary and

21 “(ii) directly affected covered service employees
22 and labor organizations representing a class or craft
23 of directly affected covered service employees may,
24 at their option, file a statement with the Secretary

1 explaining their views on the plan or amendment on
2 which consensus was not reached.

3 “(6) During the first two years after enactment of
4 this section, compliance with a fatigue management plan
5 approved by the Secretary not requiring a waiver of a pro-
6 vision of law is not required. However, compliance with
7 a plan approved by the Secretary involving waiver of one
8 or more statutory provisions under subsection (c) of this
9 section is mandatory. No plan involving a waiver shall be
10 implemented unless approved by the Secretary.

11 “(7) Effective two years after the date of enactment
12 of this section—

13 “(A) Compliance with a fatigue management
14 plan and amendments becomes mandatory and en-
15 forceable by the Secretary. No plan or amendment
16 involving a wavier shall be implemented unless ap-
17 proved by the Secretary.

18 “(B) In the interest of railroad safety, addi-
19 tional categories or classes of railroad carriers may
20 be required to submit a fatigue management plan, as
21 determined under regulations prescribed by the Sec-
22 retary.

23 “(8) The Secretary may require resubmission or revi-
24 sion of a fatigue management plan at any time.

1 “(b) ELEMENTS OF THE FATIGUE MANAGEMENT
2 PLAN.—(1) Each plan filed with the Secretary under the
3 procedures of subsection (a) of this section shall take into
4 account the varying circumstances of operations by the
5 railroad carrier on different parts of its system, and shall
6 prescribed appropriate fatigue countermeasures to address
7 those varying circumstances.

8 “(2) With respect to all employees, whether working
9 in scheduled or nonscheduled service, the plan shall ad-
10 dress the following issues:

11 “(A) Education and training on the physio-
12 logical and psychological factors that affect fatigue,
13 as well as strategies to counter fatigue, based on
14 current and evolving scientific and medical research
15 and literature.

16 “(B) Opportunities for identification, diagnosis,
17 and treatment of sleep disorders, including:
18 screenings as part of required physical examinations;
19 questionnaires to identify employees at risk; home
20 screening of employees; and results assessed by phy-
21 sicians with a specialization in sleep disorders.

22 “(C) Effects on employee fatigue of emergency
23 response involving both short-term emergency situa-
24 tions, including derailments, and long-term emer-
25 gency situations, including natural disasters.

1 “(D) Scheduling practices involving train line-
2 ups and calling times, including work/rest cycles for
3 shift workers and on-call employees that permit em-
4 ployees to compensate for cumulative sleep loss by
5 guaranteeing a minimum number of consecutive
6 days off (exclusive of time off due to illness or in-
7 jury).

8 “(E) Minimizing the scheduling of a nighttime
9 split shift.

10 “(F) An analysis demonstrating that staffing
11 levels and workloads were considered when the plan
12 was formulated.

13 “(G) Alertness strategies, such as policies on
14 napping, to address acute sleepiness and fatigue
15 while an employee is on duty.

16 “(H) Opportunities to obtain restful sleep at
17 lodging facilities, including sleeping quarters pro-
18 vided by the railroad carrier.

19 “(3) With respect only to employees working in non-
20 scheduled service, the plan shall address the following
21 areas:

22 “(A) Increasing the number of consecutive
23 hours of undisturbed rest to an employee in connec-
24 tion with the scheduling of a duty call.

1 “(B) Lengthening the notice provided to an em-
2 ployee of the time to report for duty, to afford great-
3 er scheduling predictability.

4 “(C) Work/rest cycles that guarantee a greater
5 minimum number of consecutive days off than is af-
6 forded to employees working in scheduled service
7 (exclusive of time off due to illness or injury).

8 “(D) Avoiding abrupt changes in rest cycles for
9 employees returning to duty after an extended ab-
10 sence due to circumstances including illness, injury,
11 or vacation.

12 “(E) Ways to minimize the amount of time that
13 employees spend awaiting the arrival of deadhead
14 transportation to their points of final release, and to
15 mitigate the fatigue consequences of excessive wait-
16 ing time.

17 “(F) Scheduling of employees so that the rest
18 period occurring at the home terminal generally ex-
19 ceeds that given at the away-from-home terminal.

20 “(c) WAIVER.—A railroad carrier (including a Class
21 III railroad carrier) and all labor organizations represent-
22 ing any class or craft of directly affected covered service
23 employees of the railroad carrier may jointly request, as
24 part of a proposed fatigue management plan, the waiver
25 of any provisions of this chapter where the waiver would

1 enhance the ability of the plan to achieve the objective of
2 reducing fatigue and enhancing safety. The Secretary is
3 authorized to waive any provision of this chapter if a waiver
4 is jointly requested by the railroad carrier and the labor
5 organizations representing the directly affected employees,
6 and if the railroad carrier and labor organizations demonstrate
7 to the Secretary's satisfaction that the waiver is
8 essential to achieving the objectives of reducing fatigue
9 and enhancing safety and that the plan effectively protects
10 the safety interest addressed by the provision to be waived.
11 In the event that labor organizations do not represent
12 classes or crafts of directly affected covered employees of
13 the railroad carrier, the railroad carrier shall instead consult
14 with all of its directly affected employee groups in
15 drafting the waiver request. No waiver shall be approved
16 unless the Secretary makes a finding that the waiver permits
17 procedures that reduce fatigue and enhance safety,
18 and which would not be lawful without the waiver.

19 “(d) DEFINITIONS.—For purposes of this section, the
20 term ‘directly affected covered service employees’ means
21 covered service employees to whose hours of service the
22 terms of the approved plan specifically apply, and the term
23 ‘scheduled employee’ means an employee who is assigned
24 to work a tour of duty with a regular and predictable
25 starting and stopping time.”.

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections for chapter 211 is amended by adding at the end the following new item:

“21109. Fatigue management plans.”.

SEC. 107. ELECTRONIC RECORDKEEPING.

(a) AMENDMENT.—Chapter 211 is amended by adding at the end the following new section:

“§ 21110. Electronic recordkeeping

“In rules or waivers issued under this part concerning recordkeeping related to compliance with this chapter, the Secretary may, and is encouraged to, permit that records be made, maintained, or submitted by electronic means in order to reduce the paperwork burden on railroad carriers.”.

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections for chapter 211 is amended by adding after item 21109 the following new item:

“21110. Electronic recordkeeping.”.

TITLE II—MONITORING OF RAILROAD RADIO COMMUNICATIONS

SEC. 201. ENHANCED INSPECTION AND INVESTIGATION AUTHORITY UNDER THE FEDERAL RAILROAD SAFETY LAWS.

Section 20107 is amended by inserting at the end the following new subsection:

1 “(c) RAILROAD RADIO COMMUNICATIONS.—(1) To
2 carry out the Secretary’s responsibilities under this part,
3 officers, employees, or agents of the Secretary are author-
4 ized to conduct the following kinds of inspection and inves-
5 tigative activities at reasonable times and in a reasonable
6 manner:

7 “(A) to listen to a radio communication that is
8 broadcast or transmitted over a railroad’s dedicated
9 frequency not for the use of the general public, with
10 or without making their presence known to the send-
11 er or other receivers of the communication and with
12 or without obtaining the consent of the sender or
13 other receivers of the communication;

14 “(B) to communicate the existence, contents,
15 substance, purport, effect, or meaning of the com-
16 munication;

17 “(C) to receive or assist in receiving the com-
18 munication (or any information therein contained);

19 “(D) having received the communication or hav-
20 ing become acquainted with the contents, substance,
21 purport, effect, or meaning of the communication (or
22 any part thereof), to disclose the contents, sub-
23 stance, purport, effect, or meaning of the commu-
24 nication (or any part thereof of such communica-

1 tion) or use the communication (or any information
2 contained therein); and

3 “(E) to record the communications by any
4 means, including writing and tape recording.

5 “(2) The purposes for which officers, employees, or
6 agents of the Secretary are permitted to engage in the
7 activities set forth in paragraph (1) of this subsection in-
8 clude rulemaking, accident investigation, and acquiring
9 general information as to railroad operations.

10 “(3) Information obtained in compliance with para-
11 graphs (1) and (2) of this subsection may not be used
12 as evidence for the assessment or collection of civil pen-
13 alties or for the implementation of other enforcement
14 mechanisms provided in sections 5122, 20702(b), 20111,
15 20112, 20113, or 20114 of this title, but may be used
16 as background for further investigation which might lead
17 to the discovery of other useful evidence.

18 “(4) The authority granted by this subsection shall
19 be an exception to the general prohibitions of section 605
20 of title 47, United States Code, and chapter 119 of title
21 18, United States Code.”.

22 **SEC. 202. EXCEPTION TO CHAPTER 119, TITLE 118, UNITED**
23 **STATES CODE.**

24 Section 2511(2) of title 18, United States Code, is
25 amended by redesignating current paragraphs (c) through

1 (h) as paragraphs (d) through (i) and adding after para-
 2 graph (b), the following new paragraph:

3 “(c) Notwithstanding any other provision of this
 4 chapter or section 605 of title 47, United States Code,
 5 officers, employees, or agents of the Secretary of Trans-
 6 portation in the normal course of employment and in fur-
 7 therance of the Federal railroad safety laws at 49 U.S.C.
 8 chapter 51 and subtitle V, part A, may intercept railroad
 9 radio communications and disclose or use the information
 10 thereby contained, for the purposes and to the extent per-
 11 mitted by 49 U.S.C. 20107(c).”.

12 **TITLE III—RULEMAKING**

13 **AUTHORITY**

14 **SEC. 301. RAILROAD ACCIDENT AND INCIDENT REPORTING.**

15 Section 20901(a) is amended to read as follows:

16 “(a) GENERAL REQUIREMENTS.—On a periodic basis
 17 not less often than quarterly as specified by the Secretary
 18 of Transportation, a railroad carrier shall file a report
 19 with the Secretary on all accidents and incidents resulting
 20 in injury or death to an individual or damage to equipment
 21 or a roadbed arising from the carrier’s operations during
 22 that period. The report shall state the nature, cause, and
 23 circumstances of each reported accident or incident. If a
 24 railroad carrier assigns human error as a cause, the report
 25 shall include, at the option of each employee whose error

1 is alleged, a statement by the employee explaining any fac-
 2 tors the employee alleges contributed to the accident or
 3 incident.”.

4 **SEC. 302. HIGH-SPEED RAIL NOISE REGULATION.**

5 (a) AMENDMENT.—Chapter 201 is amended by add-
 6 ing a new section at the end as follows:

7 **“§ 20154. High-speed rail noise regulation**

8 “The Secretary of Transportation, in consultation
 9 with the Administrator of the Environmental Protection
 10 Agency, shall prescribe regulations addressing noise emis-
 11 sions from high-speed rail systems, including magnetic
 12 levitation systems, when operating at speeds greater than
 13 150 miles per hour. Regulations issued under this section
 14 shall be in lieu of railroad-related noise regulations issued
 15 pursuant to the Noise Control Act of 1972 (42 U.S.C.
 16 4916(a)) only for locomotives, cars, and consists of loco-
 17 motives and cars when operating at speeds greater than
 18 150 miles per hour.”.

19 (b) TABLE OF SECTIONS AMENDMENT.—The table of
 20 sections of subchapter II of chapter 201, is amended by
 21 adding at the end the following new item:

“20154. High-speed rail noise regulation.”.

22 **TITLE IV—PROTECTION OF**
 23 **EMPLOYEES AND WITNESSES**

24 **SEC. 401. EXPANSION OF EMPLOYEE PROTECTIONS.**

25 (a) Section 20109(a) is amended—

1 (1) by striking “AND TESTIFYING” in the sub-
 2 section catchline and substituting the following: “,
 3 TESTIFYING, REPORTING INJURIES AND ILLNESSES,
 4 AND COOPERATING WITH SAFETY INVESTIGATIONS”;

5 (2) by inserting “(1)” before “A railroad car-
 6 rier engaged in interstate or foreign commerce”;

7 (3) by redesignating paragraphs (1) through
 8 (2) as subparagraphs (A) through (B);

9 (4) by striking “or” following the semicolon in
 10 newly designated subparagraph (A);

11 (5) by striking the period at the end of newly
 12 designated subparagraph (B) and substituting a
 13 semicolon and the following:

14 “(C) notified, or attempted to notify, the
 15 railroad carrier of a work-related personal in-
 16 jury or work-related illness of an employee; or

17 “(D) cooperated with a safety investigation
 18 by the Secretary of Transportation or the Na-
 19 tional Transportation Safety Board.

20 “(2) It shall be unlawful for any officer or em-
 21 ployee of a railroad carrier to commit any act pro-
 22 hibited to a railroad carrier by this subsection.”.

23 (b) Section 20109(b) is amended—

24 (1) by striking “REFUSING TO WORK BECAUSE
 25 OF” in the subsection catchline;

1 (2) by inserting in paragraph (b)(1) “or against
2 an employee responsible for the inspection or repair
3 of safety-related equipment, track, or structures for
4 refusing to authorize the use of such equipment,
5 track, or structures when the employee believes that
6 the equipment, track, or structures are in a hazard-
7 ous condition and that the use of the equipment,
8 track, or structures would endanger human life,”
9 after “performance of the employee’s duties,”; and

10 (3) by striking subparagraph (C) and substitut-
11 ing the following new subparagraph:

12 “(C) the employee, where possible, has no-
13 tified the carrier of the existence of the hazard-
14 ous condition and the intention not to perform
15 further work or not to authorize the use of the
16 hazardous equipment, track, or structures, un-
17 less the condition is corrected immediately or
18 the equipment, track, or structures are repaired
19 properly or replaced.”.

20 (c) Section 20109(c) is amended—

21 (1) by striking “180 days after it is filed” and
22 substituting “60 days after it is filed if the violation
23 is a form of discrimination that involves discharge,
24 suspension, or another action affecting pay and 180
25 days after the dispute, grievance, or claim is filed if

1 the violation is a form of discrimination that does
 2 not involve discharge, suspension, or another action
 3 affecting pay”; and

4 (2) by striking the last sentence and substitut-
 5 ing the following: “If the employee has been found
 6 by the Board, division, delegate, or board of adjust-
 7 ment to have been discharged, suspended, or other-
 8 wise discriminated against in violation of subsection
 9 (a) or (b) of this section, the employee shall be made
 10 whole, including reinstatement, with an award of
 11 back pay, and with all benefits and accumulated se-
 12 niority. The employee may also be awarded punitive
 13 damages sufficient to deter the railroad carrier from
 14 such conduct in the future.”.

15 **SEC. 402. INTERFERING WITH OR HAMPERING MAJOR IN-**
 16 **VESTIGATIONS.**

17 (a) AMENDMENT.—Subchapter II of chapter 213 is
 18 amended by adding at the end the following new section:

19 **“§ 21313. Interfering with or hampering major inves-**
 20 **tigations**

21 “(a) IN GENERAL.—It shall be unlawful for any per-
 22 son knowingly to interfere with, obstruct, or hamper an
 23 investigation by the Secretary of Transportation con-
 24 ducted under section 20703 or 20902 of this title.

1 “(b) KNOWING INTIMIDATION AND OTHER ACTS.—

2 It shall be unlawful for any person, with regard to an in-
3 vestigation conducted by the Secretary under section
4 20703 or 20902 of this title, knowingly to use intimidation
5 or physical force, threaten, or corruptly persuade another
6 person, or attempt to do so, or engage in misleading con-
7 duct toward another person, with intent to—

8 “(1) influence, delay, or prevent the testimony
9 or statement of any person;

10 “(2) cause or induce any person to—

11 “(A) withhold testimony or statement, or
12 withhold a record, document, or other object
13 from the investigation;

14 “(B) alter, destroy, mutilate, or conceal an
15 object with intent to impair the object’s integ-
16 rity or availability for use in the investigation;

17 “(C) evade legal process summoning that
18 person to appear as a witness, or to produce a
19 record, document, or other object, in the inves-
20 tigation;

21 “(D) be absent from an investigation to
22 which such person has been summoned by legal
23 process; or

24 “(3) hinder, delay, or prevent the communica-
25 tion to a Federal railroad safety inspector or a State

1 railroad safety inspector, or their superiors, of infor-
2 mation relating to the commission or possible com-
3 mission of one or more violations of this part or of
4 chapter 51 of this title.

5 “(c) INTENTIONAL HARASSMENT.—It shall be unlaw-
6 ful, with regard to an investigation conducted by the Sec-
7 retary under section 20703 or 20902 of this title, to inten-
8 tionally harass another person and thereby hinder, delay,
9 prevent, or dissuade any person from—

10 “(1) attending a proceeding or interview, pro-
11 viding a written statement to a Federal railroad
12 safety inspector or State railroad safety inspector, or
13 their superiors, or testifying as part of the investiga-
14 tion;

15 “(2) reporting to a Federal railroad safety in-
16 spector or a State railroad safety inspector, or their
17 superiors, the commission or possible commission of
18 a violation of this part or of chapter 51 of this title;
19 or

20 “(3) recommending or using any legal remedy
21 available to the Secretary under this title.

22 “(d) DEFENSE.—In a prosecution for an offense
23 under this section, it is an affirmative defense, as to which
24 the defendant has the burden of proof by a preponderance
25 of the evidence, that the conduct consisted solely of lawful

1 conduct and that the defendant’s sole intention was to en-
 2 courage, induce, or cause the other person to testify or
 3 provide a statement truthfully.

4 “(e) ELEMENTS OF VIOLATION.—(1) For the pur-
 5 poses of this section, the testimony or statement, or the
 6 record, document, or other object need not be admissible
 7 in evidence or free from a claim of privilege.

8 “(2) In a prosecution for an offense under this sec-
 9 tion, no state of mind need be proved with respect to the
 10 circumstances that the investigation is being conducted by
 11 the Secretary under section 20703 or 20902 of this title.

12 “(f) CRIMINAL PENALTIES.—A person violating this
 13 section shall be fined under title 18, imprisoned for not
 14 more than two years, or both.”.

15 (b) TABLE OF SECTIONS AMENDMENT.—The table of
 16 sections of subchapter II of chapter 213, is amended by
 17 adding at the end the following new item:

“21313. Interfering with or hampering major investigations.”

18 **TITLE V—MISCELLANEOUS** 19 **PROVISIONS**

20 **SEC. 501. EXPANSION OF EMERGENCY ORDER AUTHORITY.**

21 Section 20104(a)(1) is amended by striking “death
 22 or personal injury” and inserting: “death, personal injury,
 23 or significant harm to the environment”.

1 **SEC. 502. SAFETY CONSIDERATIONS IN GRANTS OR LOANS**
 2 **TO COMMUTER RAILROADS.**

3 Section 5329 is amended by adding at the end the
 4 following new subsection:

5 “(c) COMMUTER RAILROAD SAFETY CONSIDER-
 6 ATIONS.—In making a grant or loan under this chapter
 7 that concerns a railroad subject to the Secretary’s safety
 8 jurisdiction under section 20102 of this title, the Federal
 9 Transit Administrator shall consult with the Federal Rail-
 10 road Administrator concerning relevant safety issues. The
 11 Secretary may use appropriate authority under this chap-
 12 ter, including the authority to prescribe particular terms
 13 or covenants under section 5334 of this title, to address
 14 any safety issues identified in the project supported by the
 15 loan or grant.”.

16 **SEC. 503. TECHNICAL AMENDMENTS REGARDING ADJUST-**
 17 **MENT OF CIVIL PENALTIES FOR INFLATION.**

18 (a) CHAPTER 201 GENERAL VIOLATIONS.—In sec-
 19 tion 21301(a)(2), insert after “\$10,000” and after
 20 “\$20,000” the following: “or within the range of such
 21 other amounts to which the stated minimum and maxi-
 22 mum penalties are adjusted if required by the Federal
 23 Civil Penalties Inflation Adjustment Act of 1990, Public
 24 Law 101–410, 104 Stat. 890, 28 U.S.C. 2461 note, as
 25 amended by the Debt Collection Improvement Act of

1 1996, Public Law 104–134, 110 Stat. 1321–358, 378,
 2 and as further amended from time to time”.

3 (b) CHAPTER 201 ACCIDENT AND INCIDENT VIOLA-
 4 TIONS AND CHAPTER 203–209 VIOLATIONS.—In section
 5 21302(a)(2), insert after “\$10,000” and after “\$20,000”
 6 the following: “or within the range of such other amounts
 7 to which the stated minimum and maximum penalties are
 8 adjusted if required by the Federal Civil Penalties Infla-
 9 tion Adjustment Act of 1990, Public Law 101–410, 104
 10 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt
 11 Collection Improvement Act of 1996, Public Law 104–
 12 134, 110 Stat. 1321–358, 378, and as further amended
 13 from time to time”.

14 (c) CHAPTER 211 VIOLATIONS.—In section
 15 21303(a)(2), insert after “\$10,000” and after “\$20,000”
 16 the following: “or within the range of such other amounts
 17 to which the stated minimum and maximum penalties are
 18 adjusted if required by the Federal Civil Penalties Infla-
 19 tion Adjustment Act of 1990, Public Law 101–410, 104
 20 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt
 21 Collection Improvement Act of 1996, Public Law 104–
 22 134, 110 Stat. 1321–358, 378, and as further amended
 23 from time to time”.

1 **SEC. 504. EMERGENCY NOTIFICATION OF GRADE CROSSING**
 2 **PROBLEMS.**

3 Section 20152 is revised to read as follows:

4 **“§ 20152. Emergency notification of grade crossing**
 5 **problems**

6 “(a) PROGRAM.—(1) The Secretary of Transpor-
 7 tation shall promote the establishment of emergency noti-
 8 fication systems utilizing toll-free telephone numbers that
 9 the public can use to convey to railroad carriers, either
 10 directly or through public safety personnel, information
 11 about malfunctions of automated warning devices or other
 12 safety problems at highway-rail grade crossings.

13 “(2) To assist in encouraging widespread use of such
 14 systems, the Secretary may provide technical assistance
 15 and enter into cooperative agreements. Such assistance
 16 shall include appropriate emphasis on the public safety
 17 needs associated with operation of small railroads.

18 “(b) REPORT.—Not later than 24 months following
 19 enactment of this section, as amended, the Secretary shall
 20 report to the Congress the status of such emergency notifi-
 21 cation systems, together with any recommendations for
 22 further legislation that the Secretary considers appro-
 23 priate.”.

24 **SEC. 505. AUTHORIZATION OF APPROPRIATIONS.**

25 Section 20117(a)(1) is amended by striking subpara-
 26 graphs (A) through (E), redesignating subparagraph (F)

1 as subparagraph (A), and inserting after newly designated
2 subparagraph (A) the following new subparagraphs:

3 “(B) \$82,086,000 for fiscal year 1999.

4 “(C) Such sums as may be necessary for
5 fiscal years 2000–2002.”.

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