



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

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April 25, 2023

Gelene Savage, Chief Counsel
Kansas Department of Transportation
Eisenhower State Office Building
3rd Floor West
700 SW Harrison Street
Topeka, KS 66603

RE: **K.A.R. 36-43-1**

Dear Gelene Savage,

Pursuant to the Rules and Regulations Filing Act, K.S.A. 77-415, *et seq.*, we have reviewed the above-referenced regulation for legality. Finding no issues of concern, we have approved it. The stamped original regulation is enclosed.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL
KRIS W. KOBACH

Robert C. Hutchison
Deputy Attorney General

RCH:CB
Enclosure

cc: Rep. Barbara Wasinger, Chair, Joint Committee on Rules and Regulations
Sen. Kellie Warren, Vice Chair, Joint Committee on Rules and Regulations
Rep John Carmichael, Ranking Minority Member, Joint Committee on Rules and Regulations
Jill Shelley, Legislative Research, State Capitol, Room 68-W
Jenna Moyer, Office of Revisor, State Capitol, Room 24-E

Regulations Transmittal Memo, Permanent

To: Charles Long, Regulations Editor, c/o Department of Administration, Curtis
State Office Building, Suite 500, 1000 SW Jackson Street

From: Kansas Department of Transportation

Date: April 21, 2023

Re: Permanent K.A.R. 36-43-1

The Kansas Department of Transportation (KDOT) is resubmitting the above-referenced permanent regulations after disapproval from the Office of the Attorney General. An identical regulation was approved by the Department of Administration (DOA) on August 5, 2020. The Director of Budget (DOB) approved the regulation the same day. However, the Office of the Attorney General disapproved of the regulation after determining that the regulation was preempted by federal laws and questioned KDOT's statutory authority to enact the legislation.

Since that time, federal case law has found in opposition to the Attorney General's arguments made by the Attorney General and KDOT has formulated arguments to support that it does have the regulatory authority to move the regulation forward.

The Economic Impact Statement (EIS) submitted in this packet has been updated in Section II from what was approved in August 2020. Therefore, KDOT is asking for DOA and DOB for re-approval of the regulation and EIS.

The agency contact person is: Name: Gelene Savage, Chief Counsel
Agency: Kansas Department of Transportation
Address: Eisenhower State Office Building
3rd Floor West
700 SW Harrison Street
Topeka, Kansas 66603
E-mail: gelene.savage@ks.gov

Article 43. Train Crew Requirements

K.A.R. 36-43-1. Crew requirements; exceptions. (a) Each entity operating a railroad in Kansas shall maintain at least two crew members in the control compartment of the lead locomotive unit of each train.

(b) Compliance with subsection (a) shall not be required during switching operations, brake testing, or safety inspections; while stopped at a customer location; or while reducing the number of cars in a train when on a siding track. (Authorized by K.S.A. 66-1,216 and K.S.A. 75-5078; implementing K.S.A. 66-105, K.S.A. 66-1,215, and K.S.A. 66-1,216; effective P-_____.)

APPROVED

APR 25 2023

DEPT. OF ADMINISTRATION

**Kansas Administrative Regulations
Economic Impact Statement (EIS)**

Kansas Department of Transportation
Agency

Gelene Savage, Chief Counsel (785) 250-6216
Agency Contact Contact Phone Number

K.A.R. 36-43-1
K.A.R. Number(s)

☒ Permanent ☐ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.
- ☒ No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?
- ☒ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.
- ☐ No If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

DOB APPROVAL STAMP (If Required)

Section I

Brief description of the proposed rule(s) and regulation(s).

The Kansas Department of Transportation is proposing the promulgation of a new rule and regulation relating to the minimum railroad crew size as authorized by K.S.A. § 75-5078 and K.S.A. § 66-1,216.

Proposed K.A.R. 36-43-1 -This regulation identifies the minimum crew requirements for railroads operating in the State of Kansas with six exceptions.

Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

A. Federal Level.

1. Regulations.

This proposed rule and regulation is not yet mandated by Federal law. However, the Federal Railroad Administration (FRA) of the United States Department of Transportation (USDOT) has proposed a rule regulating rail crew sizes for safety purposes.¹

2. Statutes.

Pursuant to 49 U.S.C.A. 20106(a)(2), "[a] State may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order-

- A) is necessary to eliminate or reduce an essentially local safety or security hazard;
- B) is not incompatible with a law, regulation or order of the United States Government; and
- C) does not unreasonably burden interstate commerce."

3. Caselaw.

On February 23, 2021, the United States Court of Appeals, Ninth Circuit, issued an opinion

¹ [2022-15540.pdf \(govinfo.gov\)](#)

DOB APPROVAL STAMP (If Required)

regarding the May 29, 2019, FRA order effectively preempting any state laws concerning crew size. The Court held that FRA's order does not implicitly preempt state safety rules, the FRA failed to comply with the Administrative Procedure Act's (APA) notice-and-comment provisions in issuing the order, and the order is arbitrary and capricious. The order was vacated and remanded to the FRA. *Transportation Div. of the Int'l Ass'n of Sheet Metal, Air, Rail, & Transportation Workers v. Fed. R.R. Admin.*, 988 F.3d 1170 (9th Cir. 2021). As of March 27, 2023, the decision has not been appealed.

4. No Preemption.

The Interstate Commerce Commission Termination Act (ICCTA) does not preempt K.A.R. 36-43-1 because the ICCTA is limited to economic legislation, not safety. When it comes to public health and safety concerns, states retain certain traditional police power under the principle of federalism. *See State v. BNSF Railway Company*, 56 Kan.App.2d 503, 511, 517 (2018).

The ICCTA confers upon the Surface Transportation Board (STB) all regulatory power over the economic affairs and non-safety operating practices of railroads." [Emphasis added] *Petition of Paducah & Louisville Ry., Inc.*, FRA Docket No. 1999-6138, at 6-7 (Jan. 13, 2000); *See also*, S. Rep. No. 104-176, at 5-6 (1995). The relevant statute for any safety preemption analysis is the Federal Railroad Safety Act of 1970 (FRSA). While the STB may consider safety, along with other issues under its jurisdiction, it cannot adopt safety rules or standards. That is the duty of the Secretary of Transportation, or the states if the USDOT has not prescribed a regulation covering the subject matter involved.

The history of rail safety rulemaking since the passage of the ICCTA is equally indicative of how the STB and the FRA each have construed the ICCTA as not vesting preemptive jurisdiction for railroad safety in the STB. In the ensuing years of its existence, the STB has not issued any railroad safety regulations; however, the FRA and states continue to issue numerous railroad safety regulations. Notably, the STB and FRA both filed *amicus* briefs in *Tyrrell v. Norfolk Southern Ry.*, 248 F.3d 517 (6th Cir. 2001) arguing that the FRSA, not the ICCTA, is the appropriate statute to determine state safety preemption. The court reversed the district court stating that its decision erroneously preempted "state safety law that is saved under FRSA if it tangentially touches upon an economic area regulated under the ICCTA." *Id.* at 522-523. The court also concluded,

While the STB must adhere to federal policies encouraging "safe and suitable working conditions in the railroad industry," the ICCTA and its legislative history contains no evidence that Congress intended for the STB to supplant the FRA's authority over rail safety. 49 U.S.C. 10101(11) ...while recognizing their joint responsibility for promoting rail safety in their 1998 Safety Integration Plan rulemaking, the FRA exercised primary authority over rail safety matters under 49 U.S.C. 20101 *et seq.*, while the STB handled economic regulation and environmental impact assessment.

Id. at 523.

DOB APPROVAL STAMP (If Required)

Furthermore, the STB's own order delineated the extent of its jurisdiction to emphasize that the ICCTA did not preempt federal safety laws. In *Borough of Riverdale*, STB Finance Docket N. 33466 (Sept. 9, 1999), the STB stated,

Our view [is] that not all state and local regulations that affect railroads are preempted...state or local regulation is permissible where it does not interfere with interstate rail operations, and that localities retain certain police powers to protect public health and safety.

Decision at 6.

Thus, both the STB and FRA take the position that the FRA and the states retain primary jurisdiction over railroad safety regulation, while assisting the STB with its expertise in matters of principal concern to the STB. Substantial deference should be given to the positions of the affected agencies that the ICCTA does not preempt/preclude the congressional scheme for railroad safety.

Ultimately, requiring a minimum of a two-person crew for trains operating in the state is a public health and safety concern for Kansans. *See Emerson v. Kansas City Southern Ry. Co.*, 503 F.3d 1126, 1132-33 (2007) (stating state and local regulation of railroads is "permissible where it does not interfere with interstate rail operations, and localities retain certain police powers to protect public health and safety."). This is evidenced by the derailments, explosions, hazardous chemical spills, environmental issues, property damage, injuries, and fatalities that have occurred as a result from or in connection with trains operating with minimal crew members *See Exhibit 2*. In fact, according to 2022 FRA statistics, there were 71 train accidents in Kansas with reportable damage totaling \$10,779,925.00. *See Exhibit 3*.² Additionally, Kansas was one of the states with the most collisions and fatalities involving trains, with 38 collisions, five deaths, and 14 injuries. *See Exhibit 4*.³ As further evidenced in Exhibit 2, damage, fatalities, and injuries may have been preventable by having a minimum crew.

B. Kansas.

Even if the FRA's proposed rule is not adopted, Kansas law authorizes KDOT to adopt this proposed rule and regulation pursuant to K.S.A. § 66-1,216 and K.S.A. § 75-5078.

Prior to 2005, the Kansas Corporation Commission (KCC) had legal authority under state law to issue rules and regulations concerning common carriers in the state of Kansas, including the safety of users and employees. *See K.S.A. § 66-1,216* ("The [KCC] is given full power, authority and

² Exhibit 3 - *See 2022 State of Kansas Summary of Train Accidents With Reportable Damage, Casualties, and Major Causes*, Federal Railroad Administration, available at <https://safetydata.fra.dot.gov/OfficeofSafety/publicsite/Query/TrainAccidentDamage.aspx> (last visited Apr. 12, 2023).

³ Exhibit 4 - *See Collisions & Fatalities by State – Highway-Rail Grade Crossings – Top 25 States*, Operation Lifesaver, available at <https://oli.org/track-statistics/collisions-fatalities-state> (last updated Apr. 10, 2023).

DOB APPROVAL STAMP (If Required)

jurisdiction to supervise and control the common carriers ... doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.”); *see also* K.S.A. § 66-1,222 (“As applied to regulation of common carriers, the provisions of this act and all grants of power, authority and jurisdiction herein made to the [KCC] shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of this act are expressly granted to and conferred upon the [KCC].”). Kansas law defines railroads as common carriers. *See* K.S.A. § 66-105.

In 2005, the Kansas Legislature transferred to KDOT all powers, duties, and functions of the KCC with regards to regulating railroads in the State of Kansas via K.S.A. § 75-5078. Subsection (a) of that statute provides that “[e]xcept as otherwise provided by law, all of the powers, duties and functions of the [KCC] as it relates to railroads are hereby transferred to and conferred upon the [KDOT].” Therefore, KDOT has specific statutory authority to issue its proposed rule and regulation.

C. Other States.

Washington, Wisconsin, Arizona, Oregon, California, West Virginia, Colorado, Nevada and Illinois, have enacted legislation on minimum railroad crew requirements. Furthermore, Arizona has enacted both statutes and regulations on the issue of railroad crew size. Specifically, ARS 40-881 provides crew size requirements and ARS 40-882 provides for penalties for violating the statute. Furthermore, like proposed Kansas regulation 36-43-1, Arizona regulation R14-5-111 provides a requirement that at least two employees must be in the control compartment of the lead locomotive.

Section III

Agency analysis specifically addressing the following:

- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The proposed rule and regulation likely would not restrict Kansas business growth and activities as it pertains to rail service for the transport of finished products for retail distribution in Kansas or export to regional, national and international markets for Kansas made products, agricultural grains or raw materials. It may enhance business growth and activities by ensuring safe operation of rail services and avoiding property damage and injuries or loss of life. Likewise, the proposed rule and regulation likely would not have a negative impact on the transport of inbound raw materials for use in Kansas manufacturing and agricultural production.

DOB APPROVAL STAMP (If Required)

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

Nearly all railroads in Kansas are currently operating two-person crews and will have no increased labor costs from the implementation of this regulation. The primary economic effect for the few railroads operating one-person crews would be the labor. However, railroads operating one-person crews may see reduced accidents which will likely reduce operating costs and may offset any increased labor costs. It is anticipated that some portion of any additional railroad operating costs, based on two-person crews, would be passed on to railroad customers. It is not known to what degree this would occur, or the potential dollar amounts involved. Additionally, it would be expected that operating a two-person crew would have a positive impact on various governmental entities due to more disposable income, purchases and associated sales tax in local economies.

Based on the assumptions provided in Exhibit 1, there are 510 locomotive conductor positions throughout the state. The assumptions in Exhibit 1 show a salary and fringe benefit calculation of \$98,441.00 for a locomotive conductor. Approximately 94% of existing train traffic in Kansas is currently operating a two-person crew. According to information and belief, Class I railroads operate with two-person crews pursuant to union agreement. Assuming the remaining 6% would require an additional crew member, and based on the assumptions provided in Exhibit 1, including that Short Line railroads run 15 trains a day, Short Line railroads would need to add 15 locomotive conductor positions. The increased cost to the railroads for adding a crew member totals 15 X \$98,441.00 annually, resulting in an annual increase of \$1,476,615.00.

*Assumptions and calculations are attached as Exhibit 1.

- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

Those railroads operating in Kansas with one person crews and the businesses they serve, assuming any additional costs are passed on to their customers.

- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

The benefits of the proposed rule and regulation is railroad and community safety. The largest railroad operating union in North America, SMART Transportation Division ("SMART"), provided KDOT information (Exhibit 2), which in part delineates multiple rail accidents, survey data of support for two-person crews, and the life-saving benefits of a two-person crew involved in two rail accidents. SMART indicates that two-person crews not only help prevent potential accidents or derailments, they play a critical role in emergency situations. See Exhibit 2. However, Exhibit 2 provides no dollar amount benefit and savings attributable to two-person crews preventing accidents and derailments or statistical analysis.

DOB APPROVAL STAMP (If Required)

No mechanism is found within the language of the proposed regulation regarding how the regulation will be implemented or enforced and no penalty for violations exists. Therefore, implementation and enforcement costs are unknown, and recoupment of those cost is unknown as no penalty for violations exists under the proposed rule and regulation. However, pursuant to the assumptions in Exhibit 1, it is anticipated that the annual combined labor cost of \$1,476,615.00 annually will be incurred by all Kansas railroads combined.

- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

The regulation is to create a two-person crew rule in Kansas; thus, there is no method to minimize the labor cost of the crew. However, minimization of cost and impact to economic development could be through enforcement and/or fines associated with any violations. But the proposed rule and regulation provides no penalty or enforcement measure. A penalty could be a warning for the first two years following enactment of the regulation and then impose a penalty; however, the rule and regulation will require additional language to include a penalty.

- F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.
Note: Do not account for any actual or estimated cost savings that may be realized.

It is anticipated that some portion of additional railroad operating costs to railroads would be passed on to railroad customers. At this time, it is not known to what degree this would occur, or the potential dollar amounts involved. The labor cost of \$1,476,615.00 may be passed on to railroad customers and, eventually, businesses shipping by rail and members of the public.

Costs to Affected Businesses – \$1,476,615.00

Costs to Local Governmental Units – \$N/A

Costs to Members of the Public – \$N/A

Total Annual Costs – \$1,476,615.00
(sum of above amounts)

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

See Exhibit 1

DOB APPROVAL STAMP (If Required)

- ☐ Yes If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.
- ☒ No
- ☐ Not Applicable

If applicable, click [here](#) to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

The proposed rule and regulation does not provide for enforcement. Therefore, KDOT estimates there will be little to no change in aggregate state revenues and expenditures.

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

It is anticipated that some portion of additional railroad operating costs to railroads would be passed on to railroad customers. At this time, it is not known to what degree this would occur, or the potential dollar amounts involved. The labor cost of \$1,476,615.00 may be passed on to railroad customers and, eventually, businesses shipping by rail and members of the public.

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

The proposed rule and regulation does not provide for enforcement. Unless enforcement functions and responsibilities are put on cities, counties, or school districts, there should not be an increased cost to them. Therefore, the League of Kansas Municipalities, Kansas Association of Counties, and the Kansas Association of School Boards were not consulted.

DOB APPROVAL STAMP (If Required)

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

KDOT relied on Exhibit 2.

Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

- ☐ Yes If yes, complete the remainder of Section IV.
☒ No If no, skip the remainder of Section IV.

- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

Click here to enter agency response.

- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

Click here to enter agency response.

- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

Click here to enter agency response.

- D. Provide a detailed statement of the data and methodology used in estimating the costs used.

Click here to enter agency response.

DOB APPROVAL STAMP (If Required)

**Kansas Administrative Regulations
Economic Impact Statement
Public Hearing Certification**
(To be completed after the public hearing)

Agency: [Click here to start typing](#)

Agency Contact: [Click here to start typing](#)

Phone Number or Email: [Click here to start typing](#)

K.A.R. Number(s): [Click here to start typing](#)

Public Hearing Date: [Select date](#)

Public Hearing Time: [Click here to start typing](#)

Public Hearing Location: [Click here to start typing](#)

Public Hearing Attendance: [Click here to start typing](#)

DOB APPROVAL STAMP (If Required)

**Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the
Budget**

Kansas Department of Transportation

K.A.R. 36-43-1

K.A.R. Number(s)

Assumptions:

1. Economic Impact Statement comparison based on:
 - a. Two-person crew (locomotive engineer and locomotive conductor) salary plus fringe benefits.
 - b. One-person crew (locomotive engineer) salary plus fringe benefits.
2. One-person crew = locomotive engineer.
3. Two-person crew = locomotive engineer and locomotive conductor.
4. Class 1 railroads currently operate two-person crews.
5. Short Line railroads currently operate one-person crews.
6. Short Line railroads operate approximately 15 trains per day.
7. Average locomotive conductor salary in Kansas = \$63,840.00 (Bureau of Labor Statistics, 2021).
8. Average locomotive conductor fringe benefits in Kansas = 54.2% (KDOT/KTA average).
9. Average locomotive conductor salary in Kansas = \$30.69 (2,080 hours per year, no overtime).
10. Average locomotive conductor salary plus fringe benefits = \$98,441.00.
11. Short Line railroads would need to add 15 locomotive conductor positions.

K.S.A. § 66-105. Common carriers defined. As used in this act, "common carriers" shall include all freight-line companies, equipment companies, pipe-line companies, and all persons and associations of persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property within this state.

History: L. 1911, ch. 238, § 4; L. 2005, ch. 21, § 3; July 1.

([66-105 \(ksrevisor.org\)](#))

K.S.A. § 66-1,215. Common carriers; definitions. As used in this act:

(a) "Common carrier" means any common carrier, as defined in K.S.A. 66-105 and 66-1,110, and amendments thereto, except any radio common carrier.

(b) "Commission" means the state corporation commission.

History: L. 1985, ch. 225, § 5; July 1.

(66-1,215 (ksrevisor.org))

K.S.A. § 66-1,216. Same; power, authority and jurisdiction of state corporation commission. The commission is given full power, authority and jurisdiction to supervise and control the common carriers, as defined in K.S.A. 66-1,215, doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.

History: L. 1985, ch. 225, § 12; July 1.

(66-1,216 (ksrevisor.org))

K.S.A. § 66-1,222. Same; liberal construction; incidental powers granted. As applied to regulation of common carriers, the provisions of this act and all grants of power, authority and jurisdiction herein made to the commission shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of this act are expressly granted to and conferred upon the commission.

History: L. 1985, ch. 225, § 48; July 1.

([66-1,222 \(ksrevisor.org\)](#))

K.S.A. § 75-5078. Railroads; transfer of powers; duties and functions from corporation commission to department of transportation. (a) Except as otherwise provided by law, all of the powers, duties and functions of the state corporation commission as it relates to railroads are hereby transferred to and conferred and imposed upon the Kansas department of transportation.

(b) All rules and regulations of the state corporation commission referencing railroads in existence on the date of passage of this act shall be reviewed by the Kansas department of transportation prior to July 1, 2005. Any such rules and regulations which the Kansas department of transportation does not notify the state corporation commission to retain shall be revoked by the state corporation commission prior to the effective date of this act. Any rules and regulations which the Kansas department of transportation notified the state corporation commission to retain shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the Kansas department of transportation until revised, amended, revoked or nullified pursuant to law.

(c) When any conflict arises as to the disposition of any power, function or duty in relation to the transfer of this authority, such conflict shall be resolved by the governor, whose decision shall be final.

(d) The Kansas department of transportation shall take custody of all state corporation commission records, memoranda, writings, entries, prints, representations or combinations thereof relating to railroads. Any conflict as to the proper disposition of records arising under this section and resulting from the transfer shall be determined by the governor, whose decision shall be final.

(e) No suit, action or other proceeding, judicial or administrative, lawfully commenced or which could have been commenced, by or against any state agency mentioned in this act, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of the act. The court may allow any such suit, action or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

(f) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this act.

History: L. 2005, ch. 21, § 1; July 1.

(75-5078 (ksrevisor.org))



PEOPLE AROUND THE U.S. UNDERSTAND: A TWO-PERSON FREIGHT CREW IS SAFER FOR YOU

Legislation requiring a crew of at least two individuals has been made law in four states and is being considered in many others. This is a matter of public safety. At all hours, day and night, trains up to two miles long or longer carrying cargo and hazardous materials roll through our communities.

WHY THIS MATTERS:

- On July 6, 2013, an unattended freight train carrying crude oil derailed and exploded in Lac-Mégantic, Quebec, killing 47 people and destroying the town. The train rolled away because its single crew member could not properly secure it by himself.

- Engineers and conductors each are responsible for a long list of unique duties, most of which must be carried out simultaneously for the train's safe and efficient operation.

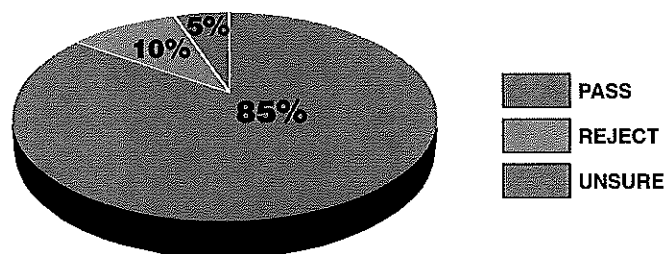
- Two-person crews not only help prevent potential accidents or derailments, they play a critical role in emergency situations. The back of this sheet shows one of many instances where the presence of more than one crew member helped to save a life.

- Having two-person crews is one of the most-effective ways to combat fatigue among operating employees — the most critical safety issue facing the rail industry today.

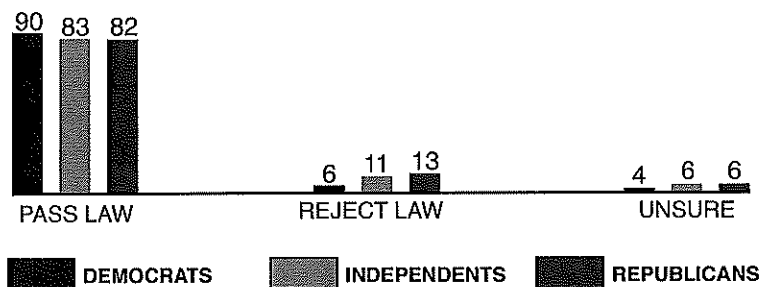
- Positive Train Control (PTC), while an important safety technology, cannot replace the vital role a second crew member fills in freight rail operations.



85% of respondents to a series of surveys **avored** legislation requiring two-person crews.*



IT'S AN ISSUE THAT'S BEYOND POLITICAL PARTY...



No matter who you are, where you live or what your partisan inclinations, Americans strongly support two-person crew legislation.

* Combined data is from 8,649 interviews from 18 statewide and congressional district surveys (January 2015 to January 2019). Results are weighted by congressional district. For full methodology and question wording, look for National Survey Compilation at www.dfmresearch.com.

A rail carrier group says: "There is no data showing that two-person crews are safer than one-person crews."



"On January 20, 2018, two SMART TD members were on a train with an engineer from another union when they encountered an unfortunate incident. SMART TD members **Donovan Neely** and **Noah Messlein** were working a transfer job to the Port of Stockton. After delivering their rail cars to the port and picking up some return cars, they began heading back to Mormon yard in Stockton, Calif. After the crew members heard a strange noise, the engineer looked in the rearview mirror and noticed something out of the ordinary. The three-man crew decided the best course of action was to stop the train and walk back to investigate.



Donovan

"Noah and Donovan noticed a man laying near the tracks with a severed arm. Noah immediately began coordinating emergency services with the dispatcher, and Donovan realized that the man was going to bleed out if nothing was done to help him. Relying on training from his time in the U.S. Navy, Donovan had Noah hand his belt over and fashioned a tourniquet around the man's limb to stop the bleeding.



Noah

"Emergency services arrived and took the man to the hospital for treatment, but they noted that if the bleeding had not been stopped with the tourniquet before they arrived, the man would not have survived.

"Our local is very proud of Noah and Donovan's actions in such a stressful and difficult situation. Their immediate action saved this man's life, and is a great compliment to their personal character and a testament to the great brothers and sisters we have working alongside us every day."

— **Andrew Andrakowicz**,
SMART Transportation Division Secretary and Treasurer,
Local 1241 (Richmond, Calif.)

What would have happened with one person or no crew on the train?





KANSAS CHAPTER of the SIERRA CLUB

**Before the Senate Transportation Committee
Written Testimony of Zack Pistora, Kansas Sierra Club
Proponent to SB 164
February 19th, 2015**

Chairman Petersen and Honorable Members of the Committee,

Thank you for the opportunity to submit written testimony in strong support of SB 164; which requires freight trains to be operated by at least two crew members.

Recent disasters involving oil trains highlights a growing problem

This past Monday, a 106-car freight train carrying about 3 millions of gallons of crude oil derailed in Fayette County, West Virginia. Some twenty tank cars exploded into huge fireballs, including one that ignited a nearby home, while another landed in the tributary of the Kanawha River. Fortunately, no human life was lost, but some 6000 locals were without water following a water treatment plant shut-down because of oil contamination upstream.

However, less than two years ago, 47 people were killed in an oil-train disaster in Quebec in July 2013. That derailment spilled 1.6 million gallons of oil, 26,000 gallons of which drained into Chaudiere River. The disaster is estimated to cost \$2.7 billion in town repairs, but \$200 million alone in clean-up costs to remediate some 12.3 million gallons of contaminated water according to federal agency data.

Oil Trains problems cost us dearly; they damage our environment and are expensive to clean up

These latest rail accidents are part of a growing trend of derailments of oil trains across the United States and Canada. Since July 2013, 11 major oil-train derailments have occurred, as more freight trains are transporting crude oil than ever before due to all-time highs in domestic oil production, especially from the North Dakota Bakken. It is estimated that 10% of US Crude now moves by rail, amounting to 15,000 carloads per week and 1.5 million barrels a day, according to the U.S. Energy Information Administration. In 2013, crude oil by rail was roughly 45 times greater than that in 2008.

In 2013, over a million gallons of oil were spilled during U.S. rail incidents, a total greater than the previous 40 years combined! The US Pipeline and Hazardous Materials Safety Administration calculates that an oil-train explosion can cost more than \$300 per gallon in property remediation. When these oil trains often carry more 100 cars, each containing 30,000 gallons at a time, the associated costs and danger from a derailment is pretty high. To give you context, there were 141 spills logged in 2014. These spills involving crude oil often leak into water bodies, which can contaminate water with known-carcinogenic toxins like benzene and cause severe respiratory problems



KANSAS CHAPTER of the SIERRA CLUB

if inhaled during ignition. Moreover, these oil train explosions cause significant environmental damage and devastate the surrounding natural ecosystems.

Problems with Oil Trains require more onboard supervision

To benefit the overall security of freight transportation by rail, especially concerning trains carrying crude oil, we support today's legislation requiring at least two operators. We feel that the more eyes and ears monitoring the ongoing safety of the train, the better the odds in preventing mishaps and thus reduce the chance for a derailment and avoid human and environmental disaster. Even if a derailment were to happen, an additional operator could mean the difference in the severity of the damage.

Pass SB 164 for increased safety and security among freight trains

Lawmakers, thank you for your leadership and public service to Kansas. Now please take leadership today in enhancing our state's safety by passing SB 164 and adding much-needed safeguards on potentially disastrous freight transportation.

Thank you for your attention.

Sincerely,

Zack Pistora | Legislative Director and State Lobbyist, Kansas Chapter of Sierra Club

zack@kansas.sierraclub.org | 785-865-6503

The Sierra Club is the largest grassroots environmental organization dedicated to preserving, protecting, and enjoying our great outdoors. The Kansas Chapter represents our state's strongest grassroots voice on environmental matters for more than forty years now.

February 19, 2015

The Honorable Mike Peterson
Chairman of Standing Committee on Transportation
Distinguished Members of the Committee
Kansas State Legislature Senate
State Capitol, Room 546-S
Topeka, KS 66612

Re: **SB 164**—A act requiring two employees for train operation.

Dear Sen. Peterson and Members of the Committee:

The Sheet Metal Air Rail and Transportation Workers (SMART) is a proponent of SB164.

SB164 will protect communities and continue to provide a timely response to emergency responders. SB164 requires two crew members in the cab of operating locomotives. Many of our members have experienced an emergency, had another crew member not been there the results could have been disastrous.

In Lynchburg VA a hazardous material train derailed sending a giant fireball into the sky, fifteen cars derailed. Thanks to the quick actions of the two man crew the conductor was able to go back and cut away as many explosive cars as he could. Therefore preventing a major disaster, much like Lac-Megantic, Canada which was a one-man operation that killed 47 people.

Railroads claim commuter agencies throughout the nation operate passenger trains everyday with one person in the cab, safely. Sadly, the railroads have chosen to ignore accidents as recent as December 1st 2013 in New York's Metro Hudson line in which 61 people were injured and 4 people lost their lives. Reports found that one-man in the cab contributed to signal violations resulting in an over speed derailment.

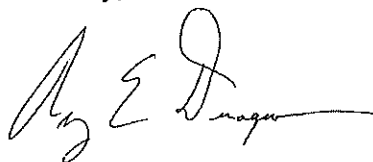
Despite what major railroads would have you believe, current technology cannot be relied upon, nor is the railroad serious about installing PTC. As recently as February 4th 2015 the National Safety Transportation Board released an urgent safety recommendation over faulty safety alerter's that were not functioning as intended. This resulted in a head on collision killing two. Positive Train Control or (PTC) is another safety device that in theory can stop or slow trains automatically. We welcome anything that makes operating trains in our communities safer; however, major railroads have lobbied congress to postpone implementing PTC by at least 7 years. Railroad executives have stated in those lobbying efforts that PTC is "untested and unproven" ^[1]

We believe the time is now for the State of Kansas to protect and lessen the risks of a serious accident in our state. This legislation would not be preempted by federal laws because none exists. Title 49 US Code section 20106 of the FRSA explicitly authorizes state regulation of railroad safety. "A state may regulate railroad safety until such time as the FRA has adopted a regulation covering the same specific subject matter." As such we now see as many as sixteen states pursuing the same legislation as Kansas along with three, Arizona, Wisconsin, and West Virginia that have signed it into law.

Please support SB164 in the interest of public safety.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ty Dragoo', with a stylized flourish at the end.

Ty Dragoo
SMART-TD
Kansas State Legislative Board
Director/Chairman

[1] NY times article Train Had a Warning System, Just Not in the Operator's Cab By MATT FLEGENHEIMER, Published: December 4, 2013

Kansas State Legislative Board
International Association of Sheet Metal, Air, Rail, and Transportation Workers

TYE DRAGOO
Director/Chairman
Email: Ty@SMARTKS.org
Website: <http://kansas.utu.org>



March 17th, 2022

The Honorable Senator Carolyn McGinn
Chair of Standing Committee on Local Government
Distinguished Members of the Committee
Kansas State Legislature Senate
State Capitol, Room 142-S
Topeka, KS 66612

Re: **SB 530**—The Kansas Rail Safety Improvement Act.

Dear Sen. McGinn and Members of the Committee:

The Sheet Metal Air Rail and Transportation Workers (SMART) is a proponent of SB530.

SB530 Is much-needed legislation when it comes to public safety in Kansas. It has been many decades since rail safety laws were updated and it is long past time that this industry and its workers see improvements. For years, transportation workers have called for a myriad of safety reforms in the railroad industry. Only to be dismissed. The railroads' vague response of "well fix it just call us" for that last 20 years is not acceptable.

One cannot discuss the state of the rail industry without addressing safety. While the industry has made meaningful progress in this regard over the past 50 years, much more needs to be done. More importantly, the progress that has been made should never be used as an excuse to ignore ongoing safety problems, or worse, roll back regulations or undermine protocols that have delivered these safety improvements. Unfortunately, this is precisely what railroads are currently attempting to do.

To understand the need for this legislation, I want to present a realistic snapshot of the current state of rail safety. At every opportunity, the railroads state that safety in the industry is improving each year. However, the numbers present a different story. When normalized against drastic reductions in employment, the number of trains being operated, trackage, and grade crossings, etc., the safety figures are not satisfactory. In fact, in recent years the numbers are getting worse. Between 2015 and 2018, fatalities on the railroads increased by 13.9%.¹ Between 2017 and 2018 alone, railroad fatalities increased from 821 to 853, and employee deaths increased from 11 to 17 during the same period.

¹ Data is based upon official statistics of the Federal Railroad Administration's Office of Safety Analysis

Collisions increased from 80 in 2017 to 86 in 2018, an increase of 5.6%. Similarly, derailments increased from 1,263 in 2017 to 1,341 in 2018, an increase of 6.2%.

Without question, one of the biggest threats to railroad safety is the push to decrease the number of onboard personnel trains from two crew members down to one or none. Today, freight trains are operated safely because they have a minimum of two crew members: a federally certified conductor and a federally certified locomotive engineer. This has been standard practice for decades, and for a good reason. Both conductors and engineers have a long list of responsibilities. They must work together as a team to ensure safety, efficiency, and compliance with regulations while operating freight trains that are over two miles long and often carrying hazardous materials. Unfortunately, driven by hedge-fund investors, the railroad lobby has aggressively fought efforts to mandate two-person crews across the industry.

SB530 will protect communities and continue to provide a timely response to emergency responders. SB530 requires two crew members in the cab of operating locomotives. Many of our members have experienced an emergency either themselves, such as a heart attack or responding to a pedestrian the train hit. Had another crew member not been there, the results could have been disastrous.

In Lynchburg, VA, fifteen cars derailed a hazardous material train and sent a giant fireball into the sky. Thanks to the quick actions of the two-person crew, the conductor was able to go back and cut away as many explosive cars as he could. Therefore preventing a major disaster, much like the Lac-Mégantic, Canada disaster, which was a one-person operation that killed 47 people.

Despite what major railroads would have you believe, current technology cannot be relied upon; many times throughout a tour of duty, crews have documented several instances where the technology has failed. In many of those cases, the crew is ordered to “cut out” the technology and proceed en route. Our organization is not against technology; we embrace it as it can provide assistance with a safety-sensitive task. What we raise a concern about is the railroad's full insistence on technology. Mechanical devices fail. To go all in without a human overlay or responder is risking disaster.

Efforts to irresponsibly reduce crew size are consistent with another troubling trend among railroad operations: operating changes often referred to as “Precision Scheduled Railroading” (PSR). This name is misleading since the goal is not better scheduling or more precision but rather increased quarterly stock market returns. As of today, many railroad customers have filed complaints with the Surface Transportation Safety Board due to lack of access and service due to PSR.

Another aspect of Precision Scheduled Railroading is the increased reliance on extra-long trains, many of which exceed three miles in length. This creates many safety problems, mechanical and logistical, such as the inability to maintain adequate brake pipe pressure, which is needed to safely slow and stop trains. As trains lengthen, incidences of them breaking apart are far more frequent, and a crewmember cannot observe and monitor an entire three-mile-long train by looking out of the window. A conductor is required to walk a long train, often on uneven terrain and during all weather conditions.

A train's two-way telemetry device and distributed locomotives often lose contact with the lead locomotive. One such incident caused a runaway train on the Union Pacific in 2018, killing two

crewmembers. And yes, the track had PTC active at the time. When a train is too long, and there is a loss of communication with the rear of the train, the locomotive engineer cannot activate the brakes on the rear of the train. Most importantly, when a long train is disabled and blocks a crossing, it is far more difficult to uncouple the train to open the crossing. Such trains constantly block crossings and cause communities to endure incredible safety problems related to, among many others, hindering the movement of emergency responders. The complications and safety hazards caused by extra-long trains can no longer be ignored by the legislature. Reasonable regulations are needed to ensure that excessive train lengths are not jeopardizing safety or needlessly disrupting communities. SB530 has provisions that address long trains, walkways, and crossings.

Freight train length has increased in recent years; all seven Class I freight railroads told the Government Accountability Office, according to a July 2020 report, that their average train lengths had grown 25 percent or more since 2008, with some trains stretching longer than three miles.

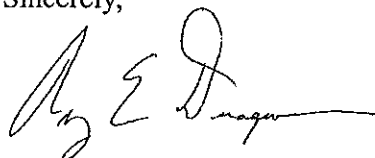
Longer trains are affecting our people. Blocked crossings are making it difficult, and sometimes impossible, for employees to reach work on time. Longer trains lead to crossings being blocked more often and for longer periods. In the report, state and local officials told the GAO of anecdotes of children across the country crawling through stalled trains to get to school, instances of emergency responders unable to reach the destination to get lifesaving help to citizens. And people marooned in their homes or farms because of single driveway access on a rail crossing.

Railroads have fought for decades not to be regulated. We regulate truck weight, we regulate speed limits, why are they different? Because they are the railroad? No doubt they will do all they can to raise the preemption and interstate commerce smoke screen. But that is just something said to hopefully get local and state legislators to drop the issue. 49 U.S. Code § 20106, On preemption states, a State may adopt or continue in force a law, regulation, or order related to railroad safety or security.

We believe the time is now for the State of Kansas to protect and lessen the risks of a serious accident in our state. This legislation would not be preempted by federal laws because none exists. Title 49 US Code section 20106 of the FRSA explicitly authorizes state regulation of railroad safety. "A state may regulate railroad safety until such time as the FRA has adopted a regulation covering the same specific subject matter." As such, we now see as many as sixteen states pursuing the same legislation as Kansas along with multiple states that have similar regulations encoded in their statutes.

Please support SB530 in the interest of public safety.

Thank you for your consideration.
Sincerely,

A handwritten signature in black ink, appearing to read 'Ty Dragoo', with a long horizontal flourish extending to the right.

Ty Dragoo
SMART-TD
Kansas Legislative Board
Director/Chairman

The Railroads will say...

THE STATE DOES NOT HAVE THE POWER TO REGULATE RAIL OPERATIONS.

Title 49 U.S. code §20106 grants the states the right to "adopt or continue in force, a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security.

THE FRA (FEDERAL RAILROAD ADMINISTRATION) SHOULD REGULATE TRAIN LENGTH.

In May 2019, the U.S. G.A.O. (Government Accountability Office) released a study entitled "Freight Trains Are Getting Longer" The study identified the problem. Still, as is too often the case with our Federal Government, they failed to take action. After the examination, Keith Washington, Deputy Assistant Secretary for the U.S. Department of Transportation, concluded, "While F.R.A. is concerned about blocked crossings as well as every rail-related accident and incident, a Federal one-size-fits-all approach is not the best way to respond to every issue. Specifically, for blocked crossings, State and local governments are better positioned to address each community's unique road network and emergency service characteristics and needs".

THIS IS PREEMPTED BY THE INTERSTATE COMMERCE COMMISSION.

A favorite argument of railroads is that the Interstate Commerce Commission Termination Act preempts state regulation. However, the ICCTA is limited to economic legislation. The Federal Railroad Safety Act of 1970 (FRSA), not the ICCTA, governs this issue. Congress allowed states to regulate safety and took into consideration that a safety law will have some economic impact on railroads. To adopt the railroad's preemption argument would mean that a state could never regulate railroad safety. That is contrary to congressional intent. In 1995 Congress enacted the ICCTA to limit the economic regulation of various modes of transportation and created the Surface Transportation Board to administer that Act. The S.T.B. has exclusive jurisdiction over the "construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team switching, or sidetracks, or facilities" 49 U.S.C. 10501 (b) The ICCTA confers upon the S.T.B. "regulatory power over the economic affairs and non-safety operating practices of railroads."

THE RAILROADS HAVE INVESTED IN TECHNOLOGY TO MAKE THESE CHANGES POSSIBLE.

There have been no investments made in the infrastructure, equipment, or operating methods to accommodate growing train lengths. Not one mainline siding in Kansas can hold a train 20,00ft+

THIS SHOULD BE HANDLED THROUGH THE COLLECTIVE BARGAINING PROCESS.

While we appreciate the railroads confidence in the collective bargaining process, it was not intended to protect Kansans'. Organized labor is a democracy with elected officials meant to act in the best interest of its membership. Our State Legislature is the democratic body elected to represent the constituents' interest, the citizens of Kansas. Labor and Management should not be deciding public safety policy. Collective bargaining is a place to discuss, healthcare and wages. Not minimum public safety standards.

IF THIS WERE TO HAPPEN, WE WILL RAISE RATES / WE WON'T BE COMPETITIVE WITH TRUCKING.

Railroads have seen record growth to the tune of billions in quarterly profits. Almost all shippers have seen shipping costs go up, not down. The argument that shorter trains will change rates does not hold. If that were the case, rates should be historically down. 78 percent of freight stations across the United States are captive to a single Class I railroad. There's been a 71 percent increase in freight rates since the last railroad merger in 2001, which brought the tally of major railroads to seven, down from 26 in 1980. These increases, came at 2.8 times the rate increases seen in the trucking industry. Trucking companies are regulated by weight and length. If anything, this will even the playing field.

WE WILL JUST GO AROUND KANSAS

By law, railroads must service many sectors of industry, including industry and agriculture in Kansas. This is just a baseless threat. Also, trucks abide by different state laws when traveling through multiple states.

JUST CALL WE WILL MOVE THE TRAIN

We can provide numerous accounts of the exact opposite happening. In many cases, the crew will inform dispatching that trains will block crossings. They are instructed to proceed anyway to keep freight moving. The problem is system congestion. Because of new industry practices (PSR), including longer trains, there is extreme pressure to get trains out of yards and onto the mainline. Think of it this way. The mainlines (lines that go thru communities) are now the parking lot for trains.

Minnesota



219.09 MULTIPLE TRACKS ACROSS ROAD; RAILROAD DUTY.

When a railroad company has more than one track crossing a highway, it is unlawful to raise or maintain one track at a higher grade than the other tracks; and the company shall raise or lower such tracks to about the same level so as not to endanger the safe passage of teams and other vehicles over the tracks at those crossings.

219.14 RAILROAD CROSSING PROTECTED. Subdivision 1. Investigation. The commissioner of transportation on the commissioner's own motion may investigate and determine whether a railroad crossing over a street or public highway, that is or will be opened to public travel, is or will be dangerous to life or property. The commissioner may order the crossing protected in any manner the commissioner finds reasonable and proper, including requiring the company to separate the grades.

Subd. 2. Hearing. The commissioner shall give the interested railroad company and road authority notice of the investigation as the commissioner deems reasonable, and an opportunity to be heard before an order is made.

§Subd. 3. Not to block public road or street. No railway corporation shall permit a public road or street crossing a railroad track to be closed for traffic by a standing car, train, engine, or other railroad equipment, or by a switching movement which continuously blocks a crossing for longer than ten minutes. This subdivision does not apply to cities of the first class which regulate obstruction of streets by ordinance.

219.384 REMOVAL OF DANGEROUS OBSTRUCTION.

Subdivision 1. Removal ordered. If a railroad company, road authority, or abutting property owner fails to control the growth of trees or vegetation or the placement of structures or other obstructions on its right-of-way or property so as to interfere with the safety of the public traveling on a public or private grade crossing, the local governing body of the town or municipality where the grade crossing is located may, by notice, require the obstruction to be removed as necessary to provide an adequate view of oncoming trains at the crossings. The commissioner shall adopt rules establishing minimum standards for visibility at public and private grade crossings.

Oregon

ORS 824.223



Authority to regulate distance from grade crossing at which railroad may stop or park equipment

ANNOTATIONS

(1)The power to regulate the distance from a public railroad-highway grade crossing at which a railroad may stop or park equipment is vested exclusively in the state.

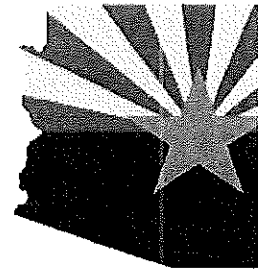
(2)(a) Upon petition of the public authority in interest, or of any railroad or upon the Department of Transportation's own motion, the department shall, after due investigation and hearing, unless hearing is not required under ORS 824.214 (Procedure to obtain permission for crossings), enter an order establishing a safe distance from a public railroad-highway grade crossing at which a railroad may stop or park equipment.

(b)Upon petition of a person, the department shall investigate and may hold a hearing and, following a hearing, may enter an order establishing a safe distance from a public railroad-highway grade crossing at which a railroad may stop or park equipment.

(3)In determining what constitutes a safe distance under subsection (2) of this section, the department shall consider issues including, but not limited to, hazards associated with public railroad-highway grade crossings that do not have active protective devices.

(4)Violation of an order issued under subsection (2) of this section is punishable by a civil penalty of not less than \$100 nor more than \$3,000 for each offense. [2001 c.909 §3]

Arizona



40-852. Allowing engine or car to remain upon public crossing; classification.

Statute text

An engineer, conductor or other employee or officer of a railroad company who permits a locomotive or cars to be

or remain upon the crossing of a public highway over such railway so as to obstruct travel over the crossing for a

period exceeding fifteen minutes, except in cases of unavoidable accident, is guilty of a class 2 misdemeanor.

Whether there is a reason for the train to be standing at the crossing is a circumstance which the trier of fact can

consider in deciding whether the railroad breached its duty to act in a reasonably prudent manner. *Terranova v.*

Southern P. Transp. Co., 158 Ariz. 125, 761 P.2d 1029 (1988).

Not only must the railroad give reasonable warning of the crossing and the approach of a train, but it must take

precautions commensurate with the danger involved at the crossing to avoid injury to the traveling public.

Missouri



7 CSR 265-8.030 - Visual Obstructions at Public Grade Crossings

Current through Register Vol. 46, No. 19, October 1, 2021

PURPOSE: This amendment moves the rule from Title 4 to Title 7 and eliminates unnecessary restrictive wording.

(1) It shall be the duty of every corporation, company or person owning or operating any railroad or branch of a railroad in this state to maintain the railroad right-of-way at public grade crossings so that it will be reasonably clear of vegetation, undergrowth or other debris for a distance of two hundred fifty feet (250') each way from the crossings where those things would materially obscure approaching trains from the view of travelers on the highway.

(2) Railroads operating within Missouri are required to maintain certain minimum distances from the near edge railroad crossings to railroad rolling stock stored on sidings. Stored rolling stock as used in this rule means rolling stock not used for the pickup or delivery of freight and whose placement on a railroad-owned siding by a railroad is for the sole convenience of the railroad. The minimum distance for the storage of railroad rolling stock shall be two hundred fifty feet (250') unless the division determines a lesser or greater distance is necessary at a particular location and permits or orders a railroad to maintain the lesser or greater distance. If physical conditions require the use of a track temporarily or minimum distances cannot be obtained, then the provisions of this section shall not apply to-

(A) Cars placed for loading or unloading or awaiting removal after loading or unloading; and

(B) Bad order cars set out from trains.

(3) The provisions of this section do not apply to rolling stock stored on yard tracks unless the division orders otherwise.

Notes

7 CSR 265-8.030

Renumbered from 4 CSR 265-8.030 by Missouri Register September 17, 2018/Volume 43, Number 18, effective 10/31/2018

Michigan



APPENDIX B

CLEAR VISION AREAS

Tables A and B of this appendix provide desirable dimensions for clear vision areas at highway-railroad grade crossings that need to be considered, along with other factors, in determining crossing safety treatments. These clear vision areas are graphically shown in the drawings below. All quadrants of a crossing (or all approach quadrants of a one-way street) would ideally have these minimum clear vision areas.

Two clear vision areas need to be physically measured and investigated for each quadrant. The first is for a stopped highway vehicle condition (see drawing below). The distance down the track (d_T) is taken from the shaded stopped condition column of Table A, while the distance down the highway will be the actual measured distance from the nearest rail to the driver's eye position while stopped behind the stop line (if one exists).

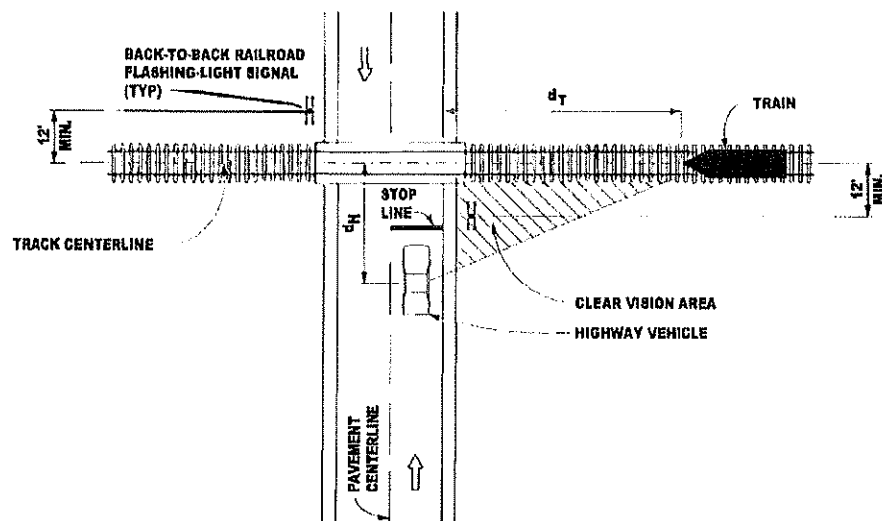


Figure 31: Clear Vision Area, Stopped Condition

The second clear vision area to be investigated is for a moving highway vehicle condition (see drawing below). The distance down the track (d_T) is taken from Table A, using the posted highway speed and the maximum timetable train speed. The distance down the highway (d_H) is obtained from Table B. A driver needs to be able to see the train and the crossing from a distance down the highway (d_H). These moving vehicle clear vision areas apply to all quadrants of any crossing where highway vehicles are not required to come to a complete stop.

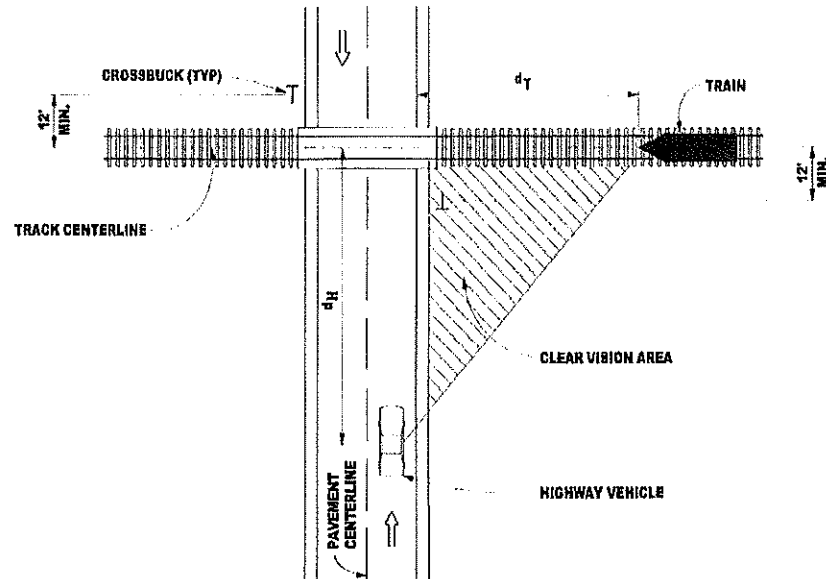


Figure 32: Clear Vision Area, Moving Condition

Table A – Distance (dT) Down Track (feet)

Pedestrian / Highway Vehicle Speed (mph)

Train Speed (mph)	Pedestrian / Highway Vehicle Speed (mph)												
	Peds	Stop	25	30	35	40	45	50	55	60	65	70	75
10	179	255	104	102	101	102	104	106	109	112	116	119	123
15	268	382	156	153	152	153	156	160	164	169	174	179	185
20	357	509	208	203	203	205	208	213	219	225	232	239	246
25	446	637	260	254	253	256	260	266	273	281	290	299	308
30	536	764	312	305	304	307	312	319	328	337	347	358	370
35	625	891	365	356	355	358	364	373	382	393	405	418	431
40	714	1,019	417	407	405	409	416	426	437	450	463	478	493
45	804	1,146	469	458	456	460	468	479	492	506	521	537	554
50	893	1,273	521	509	507	511	520	532	546	562	579	597	616
55	982	1,401	573	559	557	562	572	585	601	618	637	657	678
60	1,071	1,528	625	610	608	614	624	639	656	675	695	717	739
65	1,161	1,655	677	661	659	665	676	692	710	731	753	776	801
70	1,250	1,783	729	712	709	716	728	745	765	787	811	836	862
75	1,339	1,910	781	763	760	767	780	798	820	843	869	896	924
80	1,428	2,037	833	814	811	818	832	852	874	899	927	956	986
85	1,518	2,164	885	865	861	869	884	905	929	956	985	1,015	1,047
90	1,607	2,292	937	915	912	920	936	958	983	1,012	1,042	1,075	1,109
95	1,696	2,419	989	966	963	972	989	1,011	1,038	1,068	1,100	1,135	1,170
100	1,786	2,546	1,041	1,017	1,013	1,023	1,041	1,064	1,093	1,124	1,158	1,194	1,232
105	1,875	2,674	1,094	1,068	1,064	1,074	1,093	1,118	1,147	1,180	1,216	1,254	1,294
110	1,964	2,801	1,146	1,119	1,115	1,125	1,145	1,171	1,202	1,237	1,274	1,314	1,355

Table B – Distance (dH) Down Highway (feet)

Highway Vehicle Speed (mph)	Peds	Stop	25	30	35	40	45	50	55	60	65	70	75
dH(feet)	20	23	175	220	269	324	383	447	515	589	667	751	839

NOTES:

- 1) Information contained in this appendix is based on AASHTO's *A Policy on Geometric Design of Highways and Streets, 2011*. The highway vehicle is assumed to be a 73.5-foot truck.
- 2) Values taken from Tables A and B may need to be modified if any of the following conditions exist: multiple tracks, skewed crossing angles, or vertical grades on the highway approaches.
- 3) A 23-foot distance down-highway for a stopped vehicle represents the sum of the distances from the nearest rail to the stop bar location or statutory vehicle stopping point (15 feet) and the position of the driver in relation to the front of the vehicle (8 feet). The latter is the AASHTO standard for a full-sized automobile.
- 4) Pedestrian values are based on a 3-foot-per-second pedestrian velocity and a 12-foot distance from the front of the detectable warning to the nearest track.
- 5) See the section on pavement markings on pages 10 - 12 for more information on the proper placement of stop lines.

Louisiana



§386.1. Maintenance of railroad rights-of-way at public road or highway railroad grade crossings; notice; penalty

A. As used in this Section, the following definitions shall apply:

(1) "Maintenance length" means a distance of three hundred feet on each side of the centerline of the public road or highway.

(2) "Maintenance width" means a distance of fifty feet on each side of the centerline between the rails or the width of the operating right-of-way, whichever is shorter. The measurement for grade crossings with multiple tracks shall be from the centerlines of the outside tracks.

(3) "Structures and other obstructions" means man-made items placed within the required maintenance area but shall not include:

(a) Any device or structure which is necessary for the safe operation of the railroad.

(b) Any device or structure which is necessary for the safe operation of a motor vehicle.

(c) Any device or structure installed by any governing authority having regulatory authority over the public road or highway.

(d) Fences.

(e) Any device or structure legally placed by public utility or telecommunication companies.

(f) Any permanent structures or buildings in existence prior to June 1, 2002.

(4) "Vegetation" means grass, high weeds, brush, climbing vines, shrubbery, and trees.

B. In addition to the requirements set forth in R.S. 45:323, all railroad companies operating in this state shall maintain their rights-of-way at any public road or highway railroad grade crossing that is not protected by an active warning device that includes lights and cross-arms, in such a manner that the vegetation and structures and other obstructions do not obstruct the view of motorists approaching such public road or highway railroad grade crossing.

C. Railroad companies shall cut vegetation and remove structures and other obstructions that obstruct the view of the operator of any motor vehicle approaching any public road or highway railroad grade crossing that is not protected by an active warning

device that includes lights and cross-arms, from either direction and that are located within the maintenance width and maintenance length of the crossing.

D.(1) The Department of Transportation and Development may periodically inspect and evaluate all state highway railroad grade crossings on state highways to determine whether such grade crossings are maintained in compliance with the provisions of this Section. If the Department of Transportation and Development determines that a particular grade crossing is not in compliance with the provisions of this Section, the department shall inform the parish or municipal governing authority in whose jurisdiction the crossing is located of such determination and the respective governing authority shall notify the respective railroad company.

(2) Each parish or municipal governing authority may periodically inspect and evaluate all nonstate public road or highway railroad grade crossings located within its jurisdiction to determine whether such grade crossings are maintained in compliance with the provisions of this Section. If a parish or municipal governing authority determines that a particular grade crossing is not in compliance with the provisions of this Section, the governing authority shall notify the respective railroad company.

(3) Every notification to a railroad company, as authorized under the provisions of this Subsection, shall be in writing transmitted by certified mail, return receipt requested, to the person listed as the registered agent of the railroad company for service of process.

(4) Every railroad company who fails or refuses to maintain, or to cause a grade crossing to be in compliance with the provisions of this Section within fifteen working days after receipt of notification, as provided in this Subsection, shall be subject to a civil fine of not less than one hundred dollars for each day of the violation after receipt of the notification subject to a maximum fine not to exceed a total of five thousand dollars, payable to the appropriate parish or municipal governing authority.

E. In any civil action to recover damages arising from or out of a railroad grade crossing accident, the failure of the Department of Transportation and Development or any parish or municipal governing authority to inspect and evaluate a public road or highway railroad grade crossing and notify a railroad company of noncompliance, as provided for in Subsection D of this Section, shall not be considered as comparative negligence and shall not be discoverable or admissible as evidence in any civil trial.

Acts 2002, 1st Ex. Sess., No. 155, §1, eff. April 25, 2002.

§389.1. Parish public roadways; designation as public crossings

Each parish governing authority is authorized to designate parish public roadways, as defined in R.S. 48:753(F), intersecting a railroad right of way as public crossings. Upon a formal designation as a public crossing, the parish public roadways and public crossings may be eligible for the same safety and crossings improvements as are other public crossings.

Acts 1993, No. 479, §1.

§391. Obstruction of railroad grade crossings

A.(1) It shall be unlawful for any train, railroad car or equipment, or engine to obstruct vehicular traffic at a public highway railroad grade crossing for a period in excess of twenty consecutive minutes, except when such train, railroad car or equipment, or engine is moving or when such movement is prevented by any of the following:

- (a) A power brake failure or other mechanical failure.
- (b) Enforcement of the Hours of Service Act.
- (c) Derailment or other accident.
- (d) A directive of the Federal Railway Administration.
- (e) Circumstances over which the railroad company or carrier has no reasonable control, such as a natural disaster or acts of third parties.

(2) No employee performing his duties under the operating rules or orders of the railroad company or carrier or its supervisory personnel shall be prosecuted for any violation of this Section.

(3) Any rail carrier violating the provisions of Paragraph (1) of this Subsection shall be fined as follows:

(a) If the duration of the obstruction is in excess of twenty minutes, but not longer than twenty-five minutes, the fine shall be not less than two hundred dollars nor more than five hundred dollars.

(b) If the duration of the obstruction is in excess of twenty-five minutes, but not longer than thirty minutes, the fine shall be five hundred dollars.

(c) If the duration of the obstruction is in excess of thirty minutes, but not longer than thirty-five minutes, the fine shall be seven hundred dollars.

(d) If the duration of the obstruction is in excess of thirty-five minutes, but not longer than forty minutes, the fine shall be nine hundred dollars.

(e) If the duration of the obstruction is in excess of forty minutes, but not longer than forty-five minutes, the fine shall be one thousand dollars.

(f) If the duration of the obstruction is in excess of forty-five minutes, the fine shall be one thousand dollars plus an additional five hundred dollars for each five minutes of obstruction in excess of forty-five minutes. However, the maximum fine shall not exceed five thousand dollars for an obstruction which occurs within a twenty-four hour period.

B.(1) Every railroad shall be operated in such a manner as to minimize obstruction of emergency vehicles at public highway grade crossings.

(2) Upon receiving notification from a law enforcement officer, member of a fire department, operator of an emergency vehicle, or a member of an emergency services provider that emergency circumstances require the clearing of a public highway railroad grade crossing, the members of the train crew of the train, railroad car or equipment, or engine blocking such crossing shall immediately notify the appropriate railroad dispatcher of

the pending emergency situation and request the clearing of such crossing, consistent with the safe operation of the train.

(3) Every railroad dispatcher or other person responsible for the movement of a train, railroad car or equipment, or engine in a specific area who receives notification that a train, railroad car or equipment, or engine is obstructing the movement of an emergency vehicle at any crossing within such area shall immediately notify the train crew through use of existing communication facilities. Upon notification, the train crew shall take immediate action in accordance with this Subsection.

C.(1) Any person riding upon a train, railroad car or equipment, or engine which is running through or within this state who is accountable for the movement of the train, car or equipment, or engine shall keep on his person or upon the train, railroad car or equipment, or engine written identification of the person, corporation, firm, or agent by whom he is employed.

(2) It shall be the responsibility of any railroad company or carrier operating any railroad, engine, or train within this state to inform the chief law enforcement officer of each parish or municipality in which it operates of the telephone numbers of the railroad dispatch center having jurisdiction over such railroad, engine, or train in the parish or municipality. The information shall be updated within forty-eight hours of any change, but no less than once every six months.

D.(1) Any railroad or public agency may, by formal application to the Department of Transportation and Development, request a variance from the requirements of this Section or have different regulations provided in connection with operation over a specific crossing where local conditions so require. The application shall list any public agencies within the geographic area or any railroads which may be affected by the variance and shall detail any previous steps which may have been taken in an attempt to reach an agreement on or alternative to the proposed variance.

(2) The department shall promulgate rules and regulations for the implementation and administration of the application process provided in this Subsection.

Acts 1998, 1st Ex. Sess., No. 120, §1.

§392. Obstruction of railroad grade crossings; moving or nonmoving trains

A.(1) It shall be unlawful for any moving or non-moving train, railroad car or equipment, or engine to obstruct vehicular traffic at a public highway railroad grade crossing for a period in excess of twenty consecutive minutes.

(2) No employee performing his duties under the operating rules or orders of the railroad company or carrier or its supervisory personnel shall be prosecuted for any violation of this Section.

(3) Any rail carrier violating the provisions of Paragraph (1) of this Subsection shall be fined as provided for in R.S. 48:391(A)(3).

Arkansas



23-12-201. Maintenance of right-of-way free from obstructions -- Penalty.

(a) (1) All railroad corporations operating in this state shall maintain their right-of-way at or around any railroad crossing of a public road or highway free from grass, trees, bushes, shrubs, or other growing vegetation which may obstruct the view of pedestrians and vehicle operators using the public highways.

(b) Any railroad corporation failing or refusing to comply with the provisions of this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation.

Ark. Code Ann. § 23-12-201 (2012) Excerpt from applicable statute published.

23-12-301. Railroad crossings to be under supervision of the State Highway Commission

The State Highway Commission shall have exclusive power to:

(1) Determine and prescribe the manner, including the particular point, of crossing and the terms of installation, operation, maintenance, apportionment of expenses, use, and protection of each crossing of one (1) railroad by another railroad or street railroad by a railroad, so far as applicable;

(2) Alter or abolish any such crossing; and

(3) Require, where, in its judgment, it would be practical, a separation of grades of any such crossing and prescribe the terms upon which the separation shall be made and the proportions in which the expense of the alteration or abolition of the crossings or the separation of the grades shall be divided between the railroad or street railroad corporations affected or between the corporations and the state, county, municipality, or other public authority in interest.

Ark. Code Ann. § 23-12-301 (2012)

Illinois



§ 625 ILCS 5/18c-7402. Safety Requirements for Railroad Operations
Sec. 18c-7402. Safety Requirements for Railroad Operations. (1) Obstruction of Crossings.

(a) Obstruction of Emergency Vehicles. Every railroad shall be operated in such a manner as to minimize obstruction of emergency vehicles at crossings. Where such obstruction occurs and the train crew is aware of the obstruction, the train crew shall immediately take any action, consistent with safe operating procedure, necessary to remove the obstruction. In the Chicago and St. Louis switching districts, every railroad dispatcher or other person responsible for the movement of railroad equipment in a specific area who receives notification that railroad equipment is obstructing the movement of an emergency vehicle at any crossing within such area shall immediately notify the train crew through use of existing communication facilities. Upon notification, the train crew shall take immediate action in accordance with this paragraph.

(b) Obstruction of Highway at Grade Crossing Prohibited. It is unlawful for a rail carrier to permit any train, railroad car or engine to obstruct public travel at a railroad-highway grade crossing for a period in excess of 10 minutes, except where such train or railroad car is continuously moving or cannot be moved by reason of circumstances over which the rail carrier has no reasonable control.

In a county with a population of greater than 1,000,000, as determined by the most recent federal census, during the hours of 7:00 a.m. through 9:00 a.m. and 4:00 p.m. through 6:00 p.m. it is unlawful for a rail carrier to permit any single train or railroad car to obstruct public travel at a railroad-highway grade crossing in excess of a total of 10 minutes during a 30 minute period, except where the train or railroad car cannot be moved by reason or circumstances over which the rail carrier has no reasonable control. Under no circumstances will a moving train be stopped for the purposes of issuing a citation related to this Section.

However, no employee acting under the rules or orders of the rail carrier or its supervisory personnel may be prosecuted for a violation of this subsection (b).

(c) Punishment for Obstruction of Grade Crossing. Any rail carrier violating paragraph (b) of this subsection shall be guilty of a petty offense and fined not less than \$ 200 nor more than \$ 500 if the duration of the obstruction is in excess of 10 minutes but no longer than 15 minutes. If the duration of the obstruction exceeds 15 minutes the violation shall be a business offense and the following fines shall be imposed: if the duration of the obstruction is in excess of 15 minutes but no longer than 20 minutes, the fine shall be \$ 500; if the duration of the obstruction is in excess of 20 minutes but no longer than 25 minutes, the fine shall be \$ 700; if the duration of the obstruction is in excess of 25 minutes, but no longer than 30 minutes, the fine shall be \$ 900; if the duration of the obstruction is in excess of 30 minutes but no longer than 35 minutes, the fine shall be \$ 1,000; if the duration of the obstruction is in excess of 35 minutes, the fine shall be \$ 1,000 plus an additional \$ 500 for each 5 minutes of obstruction in excess of 25 minutes of obstruction.

625 Ill. Comp. Stat. Ann. 5/18c-7402(a-b-c) (2012) Excerpt from applicable statute published.

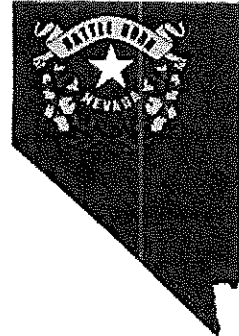
§ 625 ILCS 5/18c-7401. Safety Requirements for Track, Facilities, and Equipment
Sec. 18c-7401. Safety Requirements for Track, Facilities, and Equipment.

(3) Railroad Crossings. Every rail carrier operating within this State shall remove from its right of way at all railroad-highway grade crossings within the State, such brush, shrubbery, and trees as is reasonably practical for a distance of not less than 500 feet in either direction from each grade crossing. The Commission shall have power, upon its own motion, or upon complaint, and after having made proper investigation, to require the installation of adequate and appropriate luminous reflective warning signs, luminous flashing signals, crossing gates illuminated at night, or other protective devices in order to promote and safeguard the health and safety of the public. Luminous flashing signal or crossing gate devices installed at grade crossings, which have been approved by the Commission, shall be deemed adequate and appropriate. The Commission shall have authority to determine the number, type, and location of such signs, signals, gates, or other protective devices which, however, shall conform as near as may be with generally recognized national standards, and the Commission shall have authority to prescribe the division of the cost of the installation and subsequent maintenance of such signs, signals, gates, or other protective devices between the rail carrier or carriers, the public highway authority or other public authority in interest, and in instances involving the use of

the Grade Crossing Protection Fund, the Illinois Department of Transportation. Except where train crews provide flagging of the crossing to road users, yield signs shall be installed at all highway intersections with every grade crossing in this State that is not equipped with automatic warning devices, such as luminous flashing signals or crossing gate devices. A stop sign may be used in lieu of the yield sign when an engineering study conducted in cooperation with the highway authority and the Illinois Department of Transportation has determined that a stop sign is warranted. If the Commission has ordered the installation of luminous flashing signal or crossing gate devices at a grade crossing not equipped with active warning devices, the Commission shall order the installation of temporary stop signs at the highway intersection with the grade crossing unless an engineering study has determined that a stop sign is not appropriate. If a stop sign is not appropriate, the Commission may order the installation of other appropriate supplemental signing as determined by an engineering study. The temporary signs shall remain in place until the luminous flashing signal or crossing gate devices have been installed. The rail carrier is responsible for the installation and subsequent maintenance of any required signs. The permanent signs shall be in place by July 1, 2011.

625 Ill. Comp. Stat. Ann. 5/18c-7401(3) (LexisNexis 2012) Excerpt from applicable statute published.

Nevada



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 705 of NRS is hereby amended by adding
thereto a new section to read as follows:

1. Except as otherwise provided in subsection 2, any Class I freight railroad, Class I railroad or Class II railroad for transporting freight which operates a train or locomotive in this State, and any officer of such a railroad, shall ensure that the train or locomotive contains a crew of not less than two persons.
2. The provisions of subsection 1 do not apply to a train or locomotive engaged in helper or hostling services.
3. As used in this section:
 - (a) "Class I freight railroad" has the meaning ascribed to it in 40 C.F.R. § 1033.901.
 - (b) "Class I railroad" has the meaning ascribed to it in 40 C.F.R. § 1033.901.

(c) "Class II railroad" has the meaning ascribed to it in 40 C.F.R. § 1033.901.

(d) "Helper services" includes connecting a locomotive to the front or back of a train to assist the train in ascending or descending a grade.

(e) "Hostling services" includes moving a train or locomotive a short distance in a railroad yard.

Sec. 2. NRS 705.420 is hereby amended to read as follows:

705.420 Any railroad [company or receiver of any railroad company, and any person engaged in the business of common carrier doing business in the State of Nevada, which] or officer of a railroad who violates [any of] the provisions of [NRS 705.390] section 1 of this act is liable to the Public Utilities Commission of Nevada for a civil penalty of [\$500] :

1. Not less than \$5,000 for [each] the first violation [.] ;
2. Not more than \$10,000 for the second violation within 3 years of the first violation; and
3. Not more than \$25,000 for a third and any subsequent violation within 3 years of the first violation.

Sec. 3. NRS 484B.553 is hereby amended to read as follows:

484B.553 1. Whenever any person driving a vehicle approaches a railroad grade crossing and a clearly visible official traffic-control or railroad device gives warning of the immediate approach of a train [,] or other on-track equipment, the driver of such vehicle shall stop within 50 feet but not less than 15 feet from the nearest track of such railroad and shall not proceed until the driver can do so safely. The foregoing requirements shall apply when:

- (a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train [.] or other on-track equipment.
 - (b) A crossing gate is lowered or when a flagger gives or continues to give a signal of the approach or passage of a railroad train [.] or other on-track equipment.
 - (c) A railroad train or other on-track equipment approaching within approximately 1,500 feet of the highway crossing emits a signal audible from such distance and such railroad train [,] or other on-track railroad equipment, by reason of its speed or nearness to such crossing, is an immediate hazard.
 - (d) An approaching railroad train or other on-track equipment is plainly visible and is in hazardous proximity to such crossing.
2. A person shall not drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

Federal Guidance



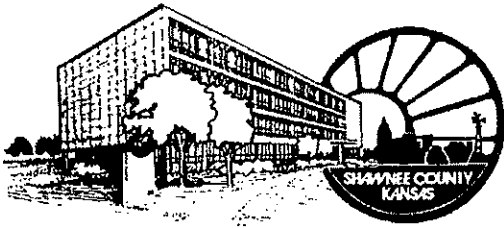
From the Highway-Rail Crossing Handbook - Third Edition Clearing Sight Dist

The third region of concern is the clearing sight distance, which pertains to the visibility available to a road user along the track when stopped ahead of the crossing. Usually, this area is located on railroad ROW. Vegetation is often desired along railroad ROW to serve as an environmental barrier to noise generated from train movements; however, safety at crossings is of more importance and, if possible, vegetation within the rail right-of-way should be removed or cut back periodically. States or other authorities may require clear sight lines of 500 feet in each direction (refer to prior discussion on Clear Zones). Also, if practical, this sight distance area should be kept free of parked vehicles and standing railroad cars or locomotives. Care should be taken to avoid the accumulation of snow in this area.

Table 3 provides clearing sight distance for cars, trucks, and pedestrians. The person or agency evaluating the crossing should determine the specific design vehicle, pedestrian, bicyclist, or other non-motorized conveyance and compute clearing sight distance if it is not represented in **Table 3** using formulas provided in AASHTO *A Policy on Geometric Design of Highways and Streets, 7th Edition*, Chapter 9, Section 12.⁽²²⁾ Note that the table values are for a level, 90-degree crossing of a single track. If other circumstances are encountered, the values should be recomputed using the equations shown in AASHTO.

Table 3. Clearing Sight Distance Criteria by Mode

Train Speed	73.5-foot Double Truck ^(a)	Car ^(b)	Pedestrian ^(b)
10	255	105	180
20	509	205	355
30	794	310	530
40	1,019	410	705
50	1,273	515	880
60	1,528	615	1,060
70	1,783	715	1,235



**SHAWNEE COUNTY
Department of
Emergency Management**

200 SE 7th Street SB 10
Emergency Operations Center
Topeka, KS 66603
Dave Sterbenz, Director
(785) 251-4150

Distinguished Members of the Committee on Transportation,
Kansas State Legislature Senate
State Capitol, Room 345-S
Topeka, KS 66612

Support SB164

Dear Sen. Peterson and Members of the Committee:

Hello my name is Dave Sterbenz I am the director of Shawnee County Emergency Management. Emergency Management is the creation of plans through which communities reduce vulnerability to hazards and cope with disasters. Emergency management consists of five phases: prevention, mitigation, preparedness, response and recovery.

We believe SB164 covers all five of these phases. There have been recent train accidents that are linked with one-man crews. Most notable the recent train disaster in Canada that killed 47 citizens. From an EM perspective it is imperative knowledgeable trained crew members are able to assist in emergency situations. We have to be able to ascertain what hazardous materials we are dealing with in derailment situations and in some situations like the recent Lynchberg, VA train derailment the 2nd crew member was able to split most of the train away from the punctured cars on fire thereby reducing much of the damage that could have been caused to the city.

Having crossings open if trains are blocking them is vital to public safety. With one man on a train this cannot be done in a timely manner in emergency situations. Having at a minimum two crew members on a train is essential for public safety.

Please support SB164. And I stand for questions.

Thank you for your consideration.

A handwritten signature in black ink, reading "David M. Sterbenz", is positioned below the "Thank you" text. The signature is written in a cursive, flowing style.

Mitigation ☐ Preparedness ☐ Response ☐ Recovery ☐

3.16 - Summary of Train Accidents With Reportable Damage, Casualties, and Major Causes

[Back to Query Page](#) [Print Version](#)???

TRAIN ACCIDENTS BY TYPE AND MAJOR CAUSE
SOURCE: FORM FRA F 6180.54

2022

Selections: Railroad - ALL
 State - KANSAS, County - ALL
 Type of Accident - ALL

Time Frame - From January 2022 To December 2022

	Total	Reportable Damage	Casualty		Causes						
	Cnt	Amount (\$)	Kld	Inj	Eqp	HRC	Hmn	Othr	Sig	Trk	
Derailments	56	9,292,273	0	0	9	-	22	10	-	15	
Side collision	5	525,116	0	0	1	-	3	1	-	-	
Raking collision	1	285,000	0	0	-	-	-	1	-	-	
Highway-rail impact	1	76,263	0	0	-	1	-	-	-	-	
Obstruction impact	2	306,009	0	0	-	-	1	1	-	-	
Other impacts	3	212,033	0	0	-	-	2	-	1	-	
Other events	3	83,231	0	0	1	-	-	2	-	-	
-- Total	71	10,779,925	0	0	11	1	28	15	1	15	

Causes: Eqp=Equipment Defect HRC=Highway-Rail Crossing Hmn=Human factor
 Sig=Signal Defect Trk=Track Defect Othr=Other

TRAIN ACCIDENTS BY TYPE TRACK AND CONSIST SPEED
SOURCE: FORM FRA F 6180.54

2022

Selections: Railroad - ALL
 State - KANSAS, County - ALL
 Type of Accident - ALL

Time Frame - From January 2022 To December 2022

Trk - Spd Rng		Total		Type of Accident				Reportable Damage	Casualty		Causes						
		Cnt	%	Coll	Der	HRC	Othr	Amount	Kld	Inj	Eqp	HRC	Hmn	Othr	Sig	Trk	
Main	?	2	2.8	-	2	-	-	518,642	0	0	-	-	-	1	-	1	
	1 - 9	6	8.5	-	4	-	2	469,337	0	0	2	-	3	-	-	1	
	10-19	2	2.8	-	1	1	-	153,140	0	0	1	1	-	-	-	-	
	20-29	1	1.4	-	1	-	-	558,238	0	0	1	-	-	-	-	-	
	30-39	3	4.2	1	2	-	-	3,932,836	0	0	-	-	-	1	-	2	
	--Sub	14	19.7	1	10	1	2	5,632,193	0	0	4	1	3	2	-	4	
Yard	?	2	2.8	-	1	-	1	54,081	0	0	-	-	-	1	1	-	
	1 - 9	37	52.1	5	28	-	4	2,838,425	0	0	6	-	19	8	1	3	
	10-19	7	9.9	-	6	-	1	1,156,629	0	0	-	-	2	3	-	2	
	--Sub	46	64.8	5	35	-	6	4,049,135	0	0	6	-	22	12	1	5	
Siding	1 - 9	3	4.2	-	3	-	-	131,897	0	0	1	-	1	1	-	-	
	--Sub	3	4.2	-	3	-	-	131,897	0	0	1	-	1	1	-	-	
Industry	1 - 9	8	11.3	-	8	-	-	966,700	0	0	-	-	2	-	-	6	
	--Sub	8	11.3	-	8	-	-	966,700	0	0	-	-	2	-	-	6	
Total		71	100	6	56	1	8	10,779,925	0	0	11	1	28	15	1	15	

**Causes: Eqp=Equipment Defect HRC=Highway-Rail Crossing Hmn=Human factor
 Sig=Signal Defect Trk=Track Defect Othr=Other**

Summary Table --- All Railroads
Originally on Old Query 3.12 (Accident Table By Railroad)

2022

Selections: State - KANSAS, County - ALL

Type of Accident - ALL

Time Frame - From January 2022 To December 2022

Railroad	Total	Reportable Damage	Casualty		Causes						
	Cnt	Amount (\$)	Kld	Inj	Eqp	HRC	Hmn	Othr	Sig	Trk	
Blackwell Northern Gateway RR	1	37,000	0	0	-	-	-	-	-	-	1
BNSF Rwy Co. [BNSF]	25	2,248,395	0	0	2	1	10	10	-	-	2
Kaw River RR [KAW]	2	55,000	0	0	-	-	-	-	-	-	2
Kansas City Term. Rwy Co. [KCT]	1	443,830	0	0	1	-	-	-	-	-	-
Kansas and Oklahoma RR [KO]	1	30,000	0	0	-	-	-	-	-	-	1
Kyle RR Co. [KYLE]	2	504,951	0	0	-	-	1	-	-	-	1
South Kansas & Oklahoma RR Co.	6	767,460	0	0	1	-	2	-	-	-	3
Union Pacific RR Co. [UP]	32	6,569,884	0	0	6	-	15	5	1	5	
Wichita Term. Association [WTA]	3	123,405	0	0	2	-	1	-	-	-	
Total Count all Railroads	73	10,779,925	0	0	12	1	29	15	1	15	

Causes: Eqp=Equipment Defect HRC=Highway-Rail Crossing Hmn=Human factor Sig=Signal Defect Trk=Track Defect Othr=Other

Collisions & Fatalities by State

Highway-Rail Grade Crossing Collisions - Top 25 States

(Based on Preliminary 2022 Federal Railroad Administration Statistics)

UPDATED 4/10/23

According to FRA statistics, **2,184** highway-rail grade crossing collisions occurred in **2022**. There were **274** crossing fatalities and **774** crossing injuries in 2022 across the U.S. Approximately 85% of all 2022 highway-rail grade crossing collisions occurred in these states.

RANK	STATE	COLLISIONS	DEATHS	INJURIES
1.	Texas	242	30	72
2.	California	171	42	38
3.	Illinois	148	25	44
4.	Florida	117	21	52
5.	Indiana	101	19	28
6.	Georgia	98	2	24
7.	Louisiana	92	4	42
8.	Alabama	87	0	27

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EXHIBIT 4

RANK	STATE	COLLISIONS	DEATHS	INJURIES
9.	Ohio	66	4	10
10.	North Carolina	58	6	12
11.	Michigan	55	4	21
12.	Iowa	54	6	25
13.	Pennsylvania	51	5	21
14.	Tennessee	51	4	22
15.	South Carolina	48	11	19
16.	Arkansas	44	1	14
17.	Nebraska	44	9	15
18.	Oklahoma	44	2	20
19.	New York	42	5	17
20.	Kentucky	41	4	10
21.	Minnesota	41	2	9
22.	Wisconsin	40	4	10
23.	Missouri	39	13	79
24.	Kansas	38	5	14
25.	Mississippi	38	5	14

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