AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
FACT SHEET
S. 576, THE "RAILWAY SAFETY ACT OF 2023"
May 29, 2024

On May 10, 2023, the Senate Committee on Commerce, Science, and Transportation reported S. 576, the "Railway Safety Act of 2023", by a bipartisan vote of 16-11.[1] President Joseph Biden and Senate Majority Leader Charles Schumer have voiced strong support for the bill. S. 576 was introduced by Senator Sherrod Brown (D-OH), together with Senator J.D. Vance (R-OH) and a bipartisan group of Senators, in response to the February 3, 2023 Norfolk Southern freight train derailment in East Palestine, Ohio, in which hazardous materials were spilled, leading residents to evacuate. On May 23, 2024, Norfolk Southern agreed to pay more than $500 million as a result of the derailment. Beyond health and environmental cleanup, the proposed settlement mandates rail safety upgrades, including the installation of Hot Bearing Detectors and revisions to Norfolk Southern's operating rules.

Senate Majority Leader Schumer lists the bill as a potential item for Senate Floor consideration, and in an April 5, 2024 Dear Colleague referenced rail safety as a potential issue for consideration in the Senate. The House Committee on Transportation and Infrastructure has not considered rail safety legislation. The National Transportation Safety Board (NTSB) has scheduled a public board meeting in East Palestine, Ohio, on June 25. During the meeting, NTSB board members will vote on final findings, changes to the draft final report, probable cause, and recommendations concerning the East Palestine derailment. Issuance of a final NTSB report may spur action on S. 576.

Summary

S. 576 imposes a new safety regime for Class I freight railroads that operate high-hazard trains. Key provisions include revised safety inspection requirements; a new Class I freight railroad defect detector program (including required plans and installation of defect detectors); and significantly enhanced civil penalties for safety violations. Many of these provisions will impact commuter and intercity passenger railroads, especially commuter railroads that host Class I freight railroads that operate high-hazard trains.

Emergency Response Coordination

Section 102 of S. 576, as amended, mandates new safety requirements for high-hazard trains operated by Class I railroads. High-hazard trains are those single trains transporting certain flammable liquids or gas, toxic or poisonous materials, radioactive waste, explosives, or a combination of those materials.

The bill limits high-hazard trains to a maximum speed of 50 miles per hour, or 40 miles per hour in certain urban areas. It also directs the Secretary of Transportation (Secretary) to issue new

[1] S. 576, The Railway Safety Act.

rules that require Class I railroads transporting hazardous materials to provide reports of the hazardous materials being transported, emergency response resource information, route identification, and railroad contact information to State Emergency Response Commissions.

State Emergency Response Commissions are required to provide such information to local subdivisions and public agency emergency response providers upon request. Class I railroads operating high-hazard trains will also be required to submit Hazardous Material Emergency Response Plans to the Secretary, in coordination with relevant States and Tribes.

Inspection Requirements

Section 105 prohibits railroads (including commuter railroads) from imposing time limitations on inspectors to complete a railcar, locomotive, or brake inspection. However, the bill requires employees to perform their inspection duties promptly and not delay unless for reasons related to safety. The bill also requires the Secretary to amend the pre-departure inspection requirements for Class I railroads, which could impose new inspection requirements on commuter railroads (e.g., identifying inspection locations and inspectors for Class I freight inspections).

In addition, the bill requires the Secretary to review and amend 49 C.F.R. Part 229 (Railroad Locomotive Safety Standards) and 49 C.F.R. 243 (Training, Qualifications, and Oversight for Safety-related Railroad Employees) to ensure appropriate training and proficiency of the employees, including mechanical inspectors, conducting locomotive inspections. The Secretary is also directed to initiate audits of federal railcar, locomotive, and brake system inspection compliance within 60 days of enactment.

The legislation specifies that Class I railroads be audited no less than every five years, and a limited number of Class II and III railroads must be audited annually. There is no instruction to the Secretary on the frequency of audits for passenger railroads, other than an exemption for tourist and excursion passenger rail operations. In addition, audits must be conducted in consultation with the railroad and its employees, including employee labor organizations representing the inspectors.

Finally, the bill requires the Secretary to determine whether to update any other railroad safety regulations to ensure the adequacy of railcar, locomotive, and train brake system inspections.

Emergency Brake Signals

Section 106 requires the Administrator of the Federal Railroad Administration (FRA) to convene the Railroad Safety Advisory Committee (RSAC) for the purpose of considering a regulatory safety task on the functioning of emergency brake signals. RSAC will consider end-of-train and head-of-train device communications and develop recommendations and an accompanying work plan for implementation of the recommendations.

Class I Freight Railroads Defect Detector System Plans Impact on Host Commuter Railroads

Section 107 requires Class I railroads to submit risk-based defect detection systems plans to the FRA, including a summary of the proposed defect detector network; a description of how the network will be implemented by the deadline; a description of how the railroad's defect detection system meets or exceeds the defect detection performance standards; and a risk-based approach on identifying overheated wheel bearings, safety alerts, data sharing, and employee training.

Importantly, the plans must cover those routes or segments of commuter rail passenger networks over which Class I high-hazard freight rail trains operate. As part of the plan, Class I railroads must outline the type and placement of defect detectors:

- at least 10 miles before entering urbanized areas with 75,000 or more people;
- an average of every 15 miles for routes not equipped with acoustic bearing detectors or other similar technology; and
- an average of every 20 miles for routes equipped with acoustic bearing detectors or similar technology.

The bill also allows the use of an alternative hot-bearing detection plan if it would provide an equivalent or higher level of safety than the performance standards that the Secretary is required to issue under the legislation. The Secretary must issue regulations no later than two years after the date of enactment to implement these requirements. Railroads must implement the plan within three years after issuance of the final rule.

Applicability to Commuter Railroads

Commuter railroads that host Class I freight railroads operating high-hazard trains may be required to install and maintain these detection systems depending on the terms of their operating agreements. Commuter railroads have expressed concern about the costs of implementing this requirement, especially where the defect detection technology will not be beneficial to commuter rail operations.

Section 107(c) addresses this concern by directing the FRA Administrator to establish a formula grant program to assist commuter railroads with the costs for installing defect detection technology. A commuter railroad that has a contract with a Class I railroad, as of May 1, 2023, that requires the commuter railroad to install defect detection technology under the Class I freight railroad defect detection system plan is eligible to receive a grant under the program. The formula grant funds are to be allocated based on the number of wayside defect detectors that a commuter railroad would be required to install on its right-of-way under the plan. The bill authorizes such sums as may be necessary to carry out the formula grant program.

Civil Penalties

Section 109 increases the maximum fine for noncompliance with a requirement, regulation, or order under 49 U.S.C. chapters 201 through 211 from $25,000 to $1 million, except for small business concerns (including Class III railroads), where the maximum fine is $200,000. In addition, the bill notes that any act by an individual that causes a railroad carrier to violate 49 U.S.C. chapters 201 through 211, constitutes a violation subject to penalties under this section.

For safety violations that result in death, serious illness, or severe injury, causes an imminent hazard of death or injury or results in the substantial destruction of property, the maximum fine is $5 million; for small business concerns, the maximum fine for such violations is $500,000. The Secretary is authorized to double fines in cases where there is a pattern of repeated violations or otherwise reflects a deliberate indifference or conscious disregard for the consequences of the conduct.

The bill also includes additional penalty language for violations of hours-of-service regulations, including a two-year statute of limitations for bringing an action unless certain notifications are given, and provisions pertaining to employee sleeping quarters. Railroad carriers are deemed to have knowledge of the acts of its officers and agents under this section.

Last, the bill provides for inflationary adjustments to the civil penalties noted above.

Alcohol and Drug Testing

Section 117 directs the Secretary to amend 49 C.F.R. Part 219 (Control of Alcohol and Drug Use) to require any employee who, on behalf of a railroad, inspects locomotives, passenger cars, railcars, or other on-track equipment, to be subject to breath or body fluid testing under the regulation.

Railroad Crossing Elimination Program

Section 104 amends the Railroad Crossing Elimination program to add a consideration for awarding grants under the program to whether the proposed project improves the mobility of a bus route to a school or within one mile of a school. The Federal share of the cost of a bus route-related project is 85 percent.

Roadway Worker Safety Report

Section 114 directs the Government Accountability Office to review currently available technologies to protect roadway workers from the hazards of being struck by a train or other on-track equipment and to submit the report, including any recommendations, to Congress.

Two-Person Crews

Section 108 requires that freight trains operated by Class I railroads have two-person crews consisting of one certified conductor and one certified engineer. This provision does not apply to commuter railroads. However, FRA still may apply the provision more broadly in a rulemaking.