

S 1889 IS

110th CONGRESS

1st Session

**S. 1889**

To amend title 49, United States Code, to improve railroad safety by reducing accidents and to prevent railroad fatalities, injuries, and hazardous materials releases, and for other purposes.

**IN THE SENATE OF THE UNITED STATES**

**July 26, 2007**

Mr. LAUTENBERG (for himself, Mr. SMITH, Mrs. CLINTON, Mr. KERRY, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

**A BILL**

To amend title 49, United States Code, to improve railroad safety by reducing accidents and to prevent railroad fatalities, injuries, and hazardous materials releases, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS; AMENDMENT OF TITLE 49.**

(a) SHORT TITLE- This Act may be cited as the `Railroad Safety Enhancement Act of 2007'.

(b) TABLE OF CONTENTS- The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents; amendment of title 49.

Sec. 2. Definitions.

Sec. 3. Authorization of appropriations.

## **TITLE I--RAILROAD RISK REDUCTION AND STRATEGY**

Sec. 101. Establishment of chief safety officer.

Sec. 102. Railroad safety strategy.

Sec. 103. Railroad safety risk reduction pilot program.

Sec. 104. Railroad safety risk reduction program.

Sec. 105. Positive train control system implementation.

Sec. 106. Hours of service reform.

Sec. 107. Protection of railroad safety risk analyses information.

## **TITLE II--HIGHWAY-RAIL GRADE CROSSING AND PEDESTRIAN SAFETY AND TRESPASSER PREVENTION**

Sec. 201. Pedestrian crossing safety.

Sec. 202. State action plans.

Sec. 203. Improvements to sight distance at highway-rail grade crossings.

Sec. 204. National crossing inventory.

Sec. 205. Telephone number to report grade crossing problems.

Sec. 206. Operation Lifesaver.

Sec. 207. Trespasser prevention and highway-rail crossing safety.

Sec. 208. Fostering introduction of new technology to improve safety at highway-rail grade crossings.

### **TITLE III--FEDERAL RAILROAD ADMINISTRATION**

Sec. 301. Human capital increases.

Sec. 302. Civil penalty increases.

Sec. 303. Enforcement report.

Sec. 304. Prohibition of individuals from performing safety-sensitive functions for a violation of hazardous materials transportation law.

Sec. 305. Railroad radio monitoring authority.

Sec. 306. Emergency waivers.

Sec. 307. Federal rail security officers' access to information.

Sec. 308. Update of Federal Railroad Administration's website.

### **TITLE IV--RAILROAD SAFETY ENHANCEMENTS**

Sec. 401. Employee training.

Sec. 402. Certification of certain crafts or classes of employees.

Sec. 403. Track inspection time study.

Sec. 404. Study of methods to improve or correct station platform gaps.

Sec. 405. Use of distracting devices in locomotive cabs.

Sec. 406. Railroad safety technology grants.

Sec. 407. Railroad safety infrastructure improvement grants.

Sec. 408. Amendment to the movement-for-repair provision.

Sec. 409. Development and use of rail safety technology.

Sec. 410. Employee sleeping quarters.

## **TITLE V--RAIL PASSENGER DISASTER FAMILY ASSISTANCE**

Sec. 501. Assistance by National Transportation Safety Board to families of passengers involved in rail passenger accidents.

Sec. 502. Rail passenger carrier plan to assist families of passengers involved in rail passenger accidents.

Sec. 503. Establishment of task force.

## **TITLE VI--CLARIFICATION OF FEDERAL JURISDICTION OVER SOLID WASTE FACILITIES**

Sec. 601. Clarification of Federal jurisdiction over solid waste facilities.

(c) Amendment of Title 49- Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

## **SEC. 2. DEFINITIONS.**

(a) IN GENERAL- In this Act:

(1) CROSSING- The term `crossing' means a location within a State, other than a location where one or more railroad tracks cross one or more railroad tracks either at grade or grade-separated, where--

(A) a public highway, road, or street, or a private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks either at grade or grade-separated; or

(B) a pathway explicitly authorized by the property owner that is

dedicated for the use of nonvehicular traffic, including pedestrians, bicyclists, and others, that is not associated with a public highway, road, or street, or a private roadway, crosses one or more railroad tracks either at grade or grade-separated.

(2) DEPARTMENT- The term `Department' means the Department of Transportation.

(3) RAILROAD- The term `railroad' has the meaning given that term by section 20102 of title 49, United States Code.

(4) RAILROAD CARRIER- The term `railroad carrier' has the meaning given that term by section 20102 of title 49, United States Code.

(5) SECRETARY- The term `Secretary' means the Secretary of Transportation.

(6) STATE- The term `State' means a State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) In Title 49- Section 20102 is amended--

(1) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively;

(2) by inserting before paragraph (2), as redesignated, the following:

`(1) `Class I railroad' means a railroad carrier that has annual carrier operating revenues that meet the threshold amount for Class I carriers, as determined by the Surface Transportation Board under section 1201.1-1 of title 49, Code of Federal Regulations.'; and

(3) by adding at the end thereof the following:

`(4) `safety-related railroad employee' means--

`(A) a railroad employee who is subject to chapter 211;

`(B) another operating railroad employee who is not subject to chapter 211;

- ^ (C) an employee who maintains the right of way of a railroad carrier;
- ^ (D) an employee of a railroad carrier who is a hazmat employees as defined in section 5102(3) of this title;
- ^ (E) an employee who inspects, repairs, or maintains locomotives, passenger cars or freight cars; and
- ^ (F) any other employee of a railroad who directly affects railroad safety, as determined by the Secretary.'

### **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

Section 20117(a) is amended to read as follows:

^ (a) In General- (1) There are authorized to be appropriated to the Secretary of Transportation to carry out this part and to carry out responsibilities under chapter 51 as delegated or authorized by the Secretary--

- ^ (A) \$245,000,000 for fiscal year 2008;
- ^ (B) \$260,000,000 for fiscal year 2009;
- ^ (C) \$270,000,000 for fiscal year 2010;
- ^ (D) \$280,000,000 for fiscal year 2011;
- ^ (E) \$290,000,000 for fiscal year 2012; and
- ^ (F) \$300,000,000 for fiscal year 2013.

^ (2) With amounts appropriated pursuant to paragraph (1), the Secretary shall purchase 6 Gage Restraint Measurement System vehicles and 5 track geometry vehicles or other comparable technology to enable the deployment of 1 Gage Restraint Measurement System vehicle and 1 track geometry vehicle or other comparable technology in each region.

^ (3) There are authorized to be appropriated to the Secretary \$18,000,000 for the period encompassing fiscal years 2008 through 2011 to design,

develop, and construct the Facility for Underground Rail Station and Tunnel Testing and Training at the Transportation Technology Center, Inc., in Pueblo, Colorado. The facility shall be used to test and evaluate the safety and security vulnerabilities of above-ground and underground rail tunnels to prevent accidents and incidents in such tunnels, to mitigate and remediate the consequences of any such accidents or incidents, and to provide a realistic scenario for training emergency responders.

` (4) Such sums as may be necessary from the amount appropriated pursuant to paragraph (1) for each of the fiscal years 2008 through 2013 shall be made available to the Secretary for personnel in regional offices and in Washington, DC, whose duties primarily involve rail security.'

## **TITLE I--RAILROAD SAFETY RISK REDUCTION AND STRATEGY**

### **SEC. 101. ESTABLISHMENT OF CHIEF SAFETY OFFICER.**

Section 103 is amended--

(1) by redesignating subsections (c), (d), and (e) as subsections (e), (f), and (g); and

(2) by inserting after subsection (b) the following:

` (c) Safety as Highest Priority- In carrying out its duties, the Administration shall consider safety as the highest priority, recognizing the clear intent, encouragement, and dedication of Congress to the furtherance of the highest degree of safety in railroad transportation.

` (d) Chief Safety Officer- The Administration shall have an Associate Administrator for Railroad Safety appointed in the career service by the Secretary. The Associate Administrator shall be the Chief Safety Officer of the Administration. The Associate Administrator shall carry out the duties and powers prescribed by the Administrator.'

### **SEC. 102. RAILROAD SAFETY STRATEGY.**

(a) Safety Goals- In conjunction with existing federally-required and voluntary strategic planning efforts ongoing at the Department and the Federal Railroad Administration on the date of enactment of this Act, the Secretary shall develop a long-term strategy for improving railroad safety to cover a period of not less than 5 years. The strategy shall include an annual

plan and schedule for achieving, at a minimum, the following goals:

- (1) Reducing the number and rates of accidents, injuries, and fatalities involving railroads including train collisions and derailments and human factors.
- (2) Improving the consistency and effectiveness of enforcement and compliance programs.
- (3) Improving the identification of high-risk highway-rail grade crossings and strengthening enforcement and other methods to increase grade crossing safety.
- (4) Improving research efforts to enhance and promote railroad safety and performance.
- (5) Preventing railroad trespasser accidents, injuries, and fatalities.

(b) Resource Needs- The strategy and annual plan shall include estimates of the funds and staff resources needed to accomplish the goals established by subsection (a). Such estimates shall also include the staff skills and training required for timely and effective accomplishment of each such goal.

(c) Submission With the President's Budget- The Secretary shall submit the strategy and annual plan to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure at the same time as the President's budget submission.

(d) Achievement of Goals-

(1) PROGRESS ASSESSMENT- No less frequently than annually, the Secretary shall assess the progress of the Department toward achieving the strategic goals described in subsection (a). The Secretary shall identify any deficiencies in achieving the goals within the strategy and develop and institute measures to remediate such deficiencies.

(2) REPORT TO CONGRESS- Not later than November 1st of each year, the Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on

the performance of the Federal Railroad Administration containing the progress assessment required by paragraph (1) toward achieving the goals of the railroad safety strategy and annual plans under subsection (a).

## **SEC. 103. RAILROAD SAFETY RISK REDUCTION PILOT PROGRAM.**

(a) IN GENERAL- Subchapter II of chapter 201 is amended by adding at the end thereof the following:

### **Sec. 20156. Railroad safety risk reduction pilot program**

(a) Pilot Program-

(1) IN GENERAL- The Secretary of Transportation shall develop a 2-year railroad safety risk reduction pilot program to systematically evaluate and manage railroad safety risks with the goal of reducing the numbers and rates of railroad accidents, injuries, and fatalities. Not later than 9 months after the date of enactment of the Railroad Safety Enhancement Act of 2007, the Secretary shall, in coordination with selected railroads, railroad facilities, and the nonprofit employee labor organizations that represent safety-related railroad employees employed at such railroad or railroad facility, at a minimum--

(A) identify the aspects of a selected railroad or railroad facility, including operating practices, infrastructure, equipment, employee levels and schedules, safety culture, management structure, employee training, and other matters, including those not covered by railroad safety regulations or other Federal regulations, that impact railroad safety;

(B) evaluate how these aspects of a selected railroad or railroad facility increase or decrease risks to railroad safety;

(C) develop a safety risk reduction program to improve the safety of a selected railroad or railroad facility by reducing the numbers and rates of accidents, injuries, and fatalities through--

(i) the mitigation of the aspects of a selected railroad or railroad facility that increase risks to railroad safety; and

(ii) the enhancement of aspects of a selected railroad or

railroad facility that decrease risks to railroad safety; and

` (D) incorporate into the program the consideration and use of existing, new, or novel technology, operating practices, risk management practices or other behavior-based practices that could improve railroad safety at the selected railroad or railroad facility.

` (2) IMPLEMENTATION DEADLINE- Not later than 12 months after the date of enactment of the Railroad Safety Enhancement Act of 2007, the selected railroad or railroad facility shall implement the safety risk reduction program developed under paragraph (1)(C) on the selected railroad or railroad facility and ensure that all employees at the selected railroad or railroad facility have received and are complying with training related to the program.

` (b) SELECTION OF RAILROAD OR RAILROAD FACILITY FOR PILOT PROGRAM- Not later than 3 months after the date of enactment of the Railroad Safety Enhancement Act of 2007, the Secretary shall develop a voluntary application process to select 1 or more railroad or railroad facilities where the pilot project will be implemented. The application process shall include criteria for rating applicants, such as safety performance, accident and incident history, existence of risk management or behavior-based practices at the railroad or railroad facility, number of employees employed at the railroad or railroad facility, and other relevant criteria determined by the Secretary.

` (c) EVALUATION- Not later than 6 months after the completion of the safety risk reduction program pilot program, the Secretary shall submit a report to Congress evaluating the pilot program, which shall include--

` (1) a summary of the railroad safety risk reduction pilot program and description of the actions taken by the Secretary and selected railroad or railroad facilities during the program;

` (2) an analysis of the difference in the number and rates of accidents, injuries, and fatalities at a selected railroad or railroad facility before and after the implementation of the risk reduction pilot program at a selected railroad or railroad facility; and

` (3) guidelines on the preparation and implementation of railroad safety risk reduction program for the railroad carriers required to

develop such plans under section 20157 that reflect that best practices developed during the pilot program.'.

(b) CONFORMING AMENDMENT- The chapter analysis for chapter 201 is amended by inserting after the item relating to section 20155 the following:

ˆ 20156. Railroad safety risk reduction pilot program.'.

## **SEC. 104. RAILROAD SAFETY RISK REDUCTION PROGRAM.**

(a) IN GENERAL- Subchapter II of chapter 201, as amended by section 103, is amended by adding at end thereof the following:

### **ˆ Sec. 20157. Railroad safety risk reduction program**

ˆ (a) In General-

ˆ (1) PROGRAM REQUIREMENT- Not later than 2 years after the Secretary of Transportation submits the report required by section 20156, the Secretary, by regulation, shall require each railroad carrier that is a Class I railroad, a railroad carrier that has inadequate safety performance (as determined by the Secretary), or a railroad that provides intercity passenger or commuter rail passenger transportation--

ˆ (A) to develop a railroad safety risk reduction program under subsection (d) that systematically evaluates railroad safety risks and manages those risks in order to reduce the numbers and rates of railroad accidents, injuries, and fatalities;

ˆ (B) to submit its program, including any required plans, to the Federal Railroad Administration for its review and approval; and

ˆ (C) to implement the program and plans approved by the Federal Railroad Administration.

ˆ (2) RELIANCE ON PILOT PROGRAM- The Secretary shall use the information and experience gathered through the pilot program under section 20156 in developing regulations under this section.

ˆ (3) WAIVERS- The Secretary may grant a waiver under section 20103

(d) to a railroad carrier from compliance with all or a part of the requirements of this section if the Secretary determines that the safety performance of the railroad carrier is sufficient to warrant the waiver.

^ (4) VOLUNTARY COMPLIANCE- A railroad carrier that is not required to submit a railroad safety risk reduction program under this section may voluntarily submit a program that meets the requirements of this section to the Federal Railroad Administration. The Federal Railroad Administration shall approve or disapprove any program submitted under this paragraph.

^ (b) CERTIFICATION- The chief official responsible for safety of each railroad carrier required to submit a railroad safety risk reduction program under subsection (a) shall certify that the contents of the program are accurate and that the railroad will implement the contents of the program as approved by the Federal Railroad Administration.

^ (c) RISK ANALYSIS- In developing its railroad safety risk reduction program each railroad required to submit such a program under subsection (a) shall identify and analyze the aspects of its railroad, including operating practices, infrastructure, equipment, employee levels and schedules, safety culture, management structure, employee training, and other matters, including those not covered by railroad safety regulations or other Federal regulations, that impact railroad safety.

^ (d) Program Elements-

^ (1) IN GENERAL- Each railroad required to submit a railroad safety risk reduction program under subsection (a) shall develop a comprehensive safety risk reduction program to improve safety by reducing the number and rates of accidents, injuries, and fatalities that is based on the risk analysis required by subsection (c) through--

^ (A) the mitigation of aspects that increase risks to railroad safety; and

^ (B) the enhancement of aspects that decrease risks to railroad safety.

^ (2) REQUIRED COMPONENTS- Each railroad's safety risk reduction program shall include a technology implementation plan that meets the requirements of subsection (e) and a fatigue management plan

that meets the requirements of subsection (f).

` (e) Technology Implementation Plan-

` (1) IN GENERAL- As part of its railroad safety risk reduction program, a railroad required to submit a railroad safety risk reduction program under subsection (a) shall develop a 10-year technology implementation plan that describes the railroad's plan for development, adoption, implementation, and use of current, new, or novel technologies on its system over a 10-year period to reduce safety risks identified under the railroad safety risk reduction program.

` (2) TECHNOLOGY ANALYSIS- A railroad's technology implementation plan shall include an analysis of the safety impact, feasibility, and cost and benefits of implementing technologies, including processor-based technologies, positive train control systems (as defined in section 20158(b)), electronically controlled pneumatic brakes, rail integrity inspection systems, rail integrity warning systems, switch position indicators, trespasser prevention technology, highway rail grade crossing technology, and other new or novel railroad safety technology, as appropriate, that may mitigate risks to railroad safety identified in the risk analysis required by subsection (c).

` (3) IMPLEMENTATION SCHEDULE- A railroad's technology implementation plan shall contain a prioritized implementation schedule for the development, adoption, implementation, and use of current, new, or novel technologies on its system to reduce safety risks identified under the railroad safety risk reduction program.

` (f) Fatigue Management Plan-

` (1) IN GENERAL- As part of its railroad safety risk reduction program, a railroad required to submit a railroad safety risk reduction program under subsection (a) for which the analysis under subsection (c) has shown fatigue to be a significant source of risk shall develop a fatigue management plan that is designed to reduce the fatigue experienced by safety-related railroad employees and to reduce the likelihood of accidents, injuries, and fatalities caused by fatigue.

` (2) TARGETED FATIGUE COUNTERMEASURES- A railroad's fatigue management plan shall take into account the varying circumstances of operations by the railroad on different parts of its system, and shall

prescribe appropriate fatigue countermeasures to address those varying circumstances.

ˆ (3) ADDITIONAL ELEMENTS- A railroad shall consider the need to include in its fatigue management plan elements addressing each of the following items, as applicable:

ˆ (A) Employee education and training on the physiological and human factors that affect fatigue, as well as strategies to reduce or mitigate the effects of fatigue, based on the most current scientific and medical research and literature.

ˆ (B) Opportunities for identification, diagnosis, and treatment of any medical condition that may affect alertness or fatigue, including sleep disorders.

ˆ (C) Effects on employee fatigue of an employee's short-term or sustained response to emergency situations, such as derailments and natural disasters, or engagement in other intensive working conditions.

ˆ (D) Scheduling practices for employees, including innovative scheduling practices for employees, including scheduling procedures, on-duty call practices, work and rest cycles, increases in consecutive days off for employees, changes in shift patterns, appropriate scheduling practices for varying types of work, and other aspects of employee scheduling that would reduce employee fatigue and cumulative sleep loss.

ˆ (E) Methods to minimize accidents and incidences that occur as a result of working at times when scientific and medical research have shown increased fatigue disrupts employees' circadian rhythm.

ˆ (F) Alertness strategies, such as policies on napping, to address acute sleepiness and fatigue while an employee is on duty.

ˆ (G) Opportunities to obtain restful sleep at lodging facilities, including employee sleeping quarters provided by the railroad carrier.

ˆ (H) The increase of the number of consecutive hours of off-duty

rest, during which an employee receives no communication from the employing railroad carrier or its managers, supervisors, officers, or agents.

` (I) Avoidance of abrupt changes in rest cycles for employees.

` (J) Additional elements that the Secretary considers appropriate.

` (g) Consensus-

` (1) IN GENERAL- Each railroad required to submit a railroad safety risk reduction program under subsection (a) shall consult with, employ good faith and use its best efforts to reach agreement with, all of its directly affected employees on the contents of the safety risk reduction program.

` (2) STATEMENT- If the railroad carrier and its directly affected employees, including any nonprofit employee labor organization representing a class or craft of directly affected employees of the railroad carrier, cannot reach consensus on the proposed contents of the plan, then directly affected employees and such organization may file a statement with the Secretary explaining their views on the plan on which consensus was not reached. The Secretary shall consider such views during review and approval of the program.

` (h) ENFORCEMENT- The Secretary shall have the authority to assess civil penalties pursuant to chapter 213 for a violation of this section, including the failure to submit, certify, or comply with a safety risk reduction program, technology implementation plan, or fatigue management plan.'

(b) CONFORMING AMENDMENT- The chapter analysis for chapter 201, as amended by section 103, is further amended by inserting after the item relating to section 20156 the following:

` 20157. Railroad safety risk reduction program.'

## **SEC. 105. POSITIVE TRAIN CONTROL SYSTEM IMPLEMENTATION.**

(a) IN GENERAL- Subchapter II of chapter 201, as amended by section 104, is further amended by adding at end thereof the following:

### **` Sec. 20158. Positive train control system implementation**

` (a) IN GENERAL- The Secretary of Transportation shall ensure that each railroad required to submit a railroad safety risk reduction program pursuant to section 20157 that includes in its technology implementation plan a schedule for implementation of a positive train control system complies with that schedule and implements its positive train control system by December 31, 2018, unless the Secretary determines that a railroad shall implement its positive train control system by an earlier date.

` (b) POSITIVE TRAIN CONTROL SYSTEM DEFINED- The term ` positive train control system' means a system designed to prevent train-to-train collisions, overspeed derailments, and incursions into roadway worker work limits.'

(b) CONFORMING AMENDMENT- The chapter analysis for chapter 201, as amended by section 104, is further amended by inserting after the item relating to section 20157 the following:

` 20158. Positive train control system implementation.'

## **SEC. 106. HOURS OF SERVICE REFORM.**

(a) CHANGE IN DEFINITION OF SIGNAL EMPLOYEE- Section 21101(4) is amended--

(1) by striking ` employed by a railroad carrier'; and

(2) by inserting ` railroad' after ` maintaining'.

(b) LIMITATION ON DUTY HOURS OF TRAIN EMPLOYEES- Section 21103 is amended--

(1) by striking subsection (a) and inserting the following:

` (a) IN GENERAL- Except as provided in subsection (c) of this section, a railroad carrier and its officers and agents may not require or allow a train employee to remain or go on duty--

` (1) for a period in excess of 12 consecutive hours;

` (2) unless the employee has had at least 10 consecutive hours off duty during the prior 24 hours; or

` (3) unless the employee has had at least one period of at least 24 consecutive hours off duty in the past 7 consecutive days.

The Secretary may waive paragraph (3) if a collective bargaining agreement provides a different arrangement and such arrangement provides an equivalent level of safety and protection against fatigue for affected employees.';

(2) by striking subsection (b)(4) and inserting the following:

` (4)(A)(i) Time spent waiting for or in deadhead transportation to a duty assignment and, except as provided in clauses (ii) and (iii), time spent waiting for or in deadhead transportation from a duty assignment to the place of final release is time on duty.

` (ii) Time spent waiting for or in deadhead transportation from a duty assignment to a place of final release is neither time on duty nor time off duty in situations involving delays in the operations of the railroad carrier, when delays were caused by--

` (I) a casualty;

` (II) an accident;

` (III) a track obstruction;

` (IV) an act of God;

` (V) a severe weather event;

` (VI) a severe snowstorm;

` (VII) a landslide;

` (VIII) a track or bridge washout;

` (IX) a derailment;

` (X) a major equipment failure which prevents a train from advancing; or

` (XI) any other delay from a cause unknown or unforeseeable to a railroad carrier and its officers and agents in charge of the employee when the employee left a designated terminal.

` (iii) In addition to any time qualifying as neither on duty nor off duty under clause (ii), the railroad carrier may elect to treat not more than 4 hours a day and not more than 30 hours a month per employee of time spent waiting for or in deadhead transportation to the place of final release as neither time on duty nor time off duty for 3 years after the date of enactment of the Railroad Safety Enhancement Act of 2007.

` (B) Each railroad shall report to the Secretary, in accordance with the procedures contained in section 228.19 of title 49, Code of Federal Regulations, each instance in which an employee subject to this section spends time waiting for of in deadhead transportation from a duty assignment to the place of final release that is not time on duty.

` (C) If--

` (i) the time spent waiting for or in deadhead transportation from a duty assignment to the place of final release, that is not time on duty, plus

` (ii) the time on duty,

exceeds 12 consecutive hours, the railroad carrier and its officers and agents shall provide, at the election of the employees subject to this section, employees with additional time off duty equal to the number of hours that such sum exceeds 12 hours.'; and

(3) by adding at the end the following:

` (d) COMMUNICATION DURING TIME OFF DUTY- During a train employee's minimum off-duty period of 10 consecutive hours, as provided under subsection (a), or during an interim period of at least 4 consecutive hours available for rest under subsection (b)(7), a railroad carrier, and its managers, supervisors, officers, and agents, shall not communicate with the train employee by telephone, by pager, or in any other manner that could disrupt the employee's rest. Nothing in this subsection shall prohibit communication necessary to notify an employee of an emergency situation (as defined by the Secretary). The Secretary may waive the requirements of this paragraph, subject to section 20103, for a railroad that provides

commuter or intercity passenger transportation if the Secretary determines that it is necessary to maintain that railroad's efficient operations and on-time performance of its trains.'

(c) LIMITATION ON DUTY HOURS OF SIGNAL EMPLOYEES- Section 21104 is amended--

(1) by striking subsection (a) and inserting the following:

` (a) IN GENERAL- Except as provided in subsection (c) of this section, a railroad carrier, its officers and agents, and a contractor or subcontractor to a railroad may not require or allow a signal employee to remain or go on duty--

` (1) for a period in excess of 12 consecutive hours; or

` (2) unless the employee has had at least 10 consecutive hours off duty during the prior 24 hours.';

(2) by striking ` duty, except that up to one hour of that time spent returning from the final trouble call of a period of continuous or broken service is time off duty.' in subsection (b)(3) and inserting ` duty.';

(3) by adding ` A signal employee may not be allowed to remain or go on duty under the emergency authority provided under this subsection to conduct routine repairs, maintenance, or inspection of signal systems.' at the end of subsection (c); and

(4) by adding at the end the following:

` (d) COMMUNICATION DURING TIME OFF DUTY- During a signal employee's minimum off-duty period of 10 consecutive hours, as provided under subsection (a), a railroad carrier, and its managers, supervisors, officers, and agents, shall not communicate with the signal employee by telephone, by pager, or in any other manner that could disrupt the employee's rest. Nothing in this subsection shall prohibit communication necessary to notify an employee of an emergency situation (as defined by the Secretary).

` (e) EXCLUSIVITY- The hours of service, duty hours, and rest periods of signal employees shall be governed exclusively by this chapter. Signal employees operating motor vehicles shall not be subject to any hours of service rules, duty hours, or rest period rules promulgated by any Federal

authority, including the Federal Motor Carrier Safety Administration, other than the Federal Railroad Administration.'.

(d) REGULATORY AUTHORITY-

(1) IN GENERAL- Chapter 211 is amended by adding at the end thereof the following:

**Sec. 21109. Regulatory authority**

(a) IN GENERAL- The Secretary of Transportation may issue regulations--

(1) to reduce the maximum hours an employee or class of employees may be required or allowed to go or remain on duty to a level less than the level established under this chapter;

(2) to increase the minimum hours an employee or class of employees may be required to rest to a level greater than the level established under this chapter; or

(3) to make other changes to the maximum hours or minimum hours an employee or class of employees may be allowed to go or remain on duty, or may be required to rest, that will significantly increase safety.

(b) REDUCTION OF LIMBO TIME- Not later than 2 years after the date of enactment of the Railroad Safety Enhancement Act of 2007, the Secretary shall issue regulations that limit the time an employee spends waiting for or in deadhead transportation to the place of final release to be considered neither on duty nor off duty under section 21103(b)(4)(A)(iii) to a number of hours per day and per month per employee that is necessary to maintain an adequate level of safety, not to exceed 20 hours per month.

(c) CONSIDERATIONS- In issuing regulations pursuant to subsection (a) and (b), the Secretary shall consider the variations in freight and passenger railroad scheduling practices, the variations in duties performed by employees subject to this chapter, the railroad's required or voluntary use of fatigue management plans covering employees subject to this chapter, scientific or medical research or knowledge related to fatigue, the railroad's use of new or novel technology intended to eliminate human error, and any other relevant factors.

(d) TIME LIMITS- If the Secretary requests that the Railroad Safety

Advisory Committee accept the task of developing regulations under subsection (a) and (b) and the Committee accepts the task, the Committee shall reach consensus on the rulemaking within 24 months after accepting the task. If the Committee does not reach consensus within 24 months after the Secretary makes the request, the Secretary shall prescribe appropriate regulations within 1 year. If the Secretary does not request that the Railroad Safety Advisory Committee accept the task of developing regulations under subsections (a) and (b), the Secretary shall issue regulations within 3 years.

` (e) Pilot Projects-

` (1) IN GENERAL- Not later than 2 years after the date of enactment of the Railroad Safety Enhancement Act of 2007, the Secretary shall conduct 2 pilot projects to analyze specific practices which may be used to reduce fatigue for railroad employees as follows:

` (A) A pilot project at a railroad or railroad facility to evaluate the efficacy of communicating to employees notice of their assigned shift time 10 hours prior to the beginning of their assigned shift as a method for reducing employee fatigue.

` (B) A pilot project at a railroad or railroad facility to evaluate the efficacy of requiring railroads who use employee scheduling practices that subject employees to periods of unscheduled duty calls to assign employees to defined or specific unscheduled call shifts that are followed by shifts not subject to call, as a method for reducing employee fatigue.

` (2) WAIVER- The Secretary may temporarily waive the requirements of this section, if necessary, to complete a pilot project under this subsection.

` (f) DUTY CALL DEFINED- In this section the term `duty call' means a telephone call that a railroad places to an employee to notify the employee of his or her assigned shift time.'

(2) CONFORMING AMENDMENT- The chapter analysis for chapter 211 is amended by adding at the end thereof the following:

` 21109. Regulatory authority.'

## **SEC. 107. PROTECTION OF RAILROAD SAFETY RISK ANALYSES**

## INFORMATION.

(a) Amendment- Subchapter I of chapter 201 is amended by adding at the end thereof the following:

### **Sec. 20118. Prohibition on public disclosure of required railroad safety analyses records**

(a) IN GENERAL- Notwithstanding section 552 of title 5 or any other provision of law, except as necessary for enforcement of any provision of Federal law by the Secretary of Transportation or by another Federal agency, the Secretary shall not disclose publicly any part of any record (including, but not limited to, a railroad carrier's analysis of its safety risks and its statement of the mitigation measures it has identified with which to address those risks) that the Secretary has obtained pursuant to a provision of, or regulation or order under, this chapter related to the establishment, implementation, or modification of a railroad safety risk reduction program if the record is--

(1) supplied to the Secretary pursuant to that safety risk reduction program; or

(2) made available for inspection and copying by an officer, employee, or agent of the Secretary pursuant to that safety risk reduction program.

(b) EXCEPTION- Notwithstanding subsection (a), the Secretary may disclose any part of any record comprised of facts otherwise available to the public if, in the Secretary's sole discretion, the Secretary determines that disclosure would be consistent with the confidentiality needed for that safety risk reduction program.

(c) DISCRETIONARY PROHIBITION OF DISCLOSURE- The Secretary may prohibit the public disclosure of risk or risk mitigation analyses that the Secretary has obtained under other provisions of, or regulations or orders under, this chapter if the Secretary determines that the prohibition of public disclosure is necessary to promote railroad safety.

### **Sec. 20119. Discovery and admission into evidence of certain reports and surveys**

Notwithstanding any other provision of law, no part of any report, survey, schedule, list, or data compiled or collected for the purpose of evaluating,

planning, or implementing a railroad safety risk reduction program or other risk or risk mitigation analysis designated by the Secretary of Transportation under section 20118(c) pursuant to a provision of, or regulation or order under, this chapter (including a railroad carrier's analysis of its safety risks and its statement of the mitigation measures with which it will address those risks) shall be subject to discovery or admitted into evidence in a Federal or State court proceeding, or considered for another purpose, in any action by a private party or parties for damages against the carrier, or its officers, employees, or contractors. The preceding sentence does not apply to any report, survey, list, or data otherwise available to the public.'

(b) Conforming Amendment- The chapter analysis for chapter 201 is amended by inserting after the item relating to section 20117 the following:

- ` 20118. Prohibition on public disclosure of required railroad safety risk analyses.
- ` 20119. Discovery and admission into evidence of certain reports and surveys.'

## **TITLE II--HIGHWAY-RAIL GRADE CROSSING AND PEDESTRIAN SAFETY AND TRESPASSER PREVENTION**

### **SEC. 201. PEDESTRIAN CROSSING SAFETY.**

Not later than 1 year after the date of enactment of this Act, the Secretary shall provide guidance to railroads on strategies and methods to prevent pedestrian accidents, injuries, and fatalities at or near passenger stations, including--

- (1) providing audible warning of approaching trains to the pedestrians at railroad passenger stations;
- (2) using signs, signals, or other visual devices to warn pedestrians of approaching trains;
- (3) installing infrastructure at pedestrian crossings to improve the safety of pedestrians crossing railroad tracks;
- (4) installing fences to prohibit access to railroad tracks; and
- (5) other strategies or methods as determined by the Secretary.

## **SEC. 202. STATE ACTION PLANS.**

(a) In General- Beginning not later than 6 months after the date of enactment of this Act, the Secretary shall identify on an annual basis the 10 States that receive Federal funds for highway-rail grade crossing safety projects that have had the most highway-rail grade crossing collisions in the preceding fiscal year. The Secretary shall require as a condition of receiving such funds in the future (in addition to any requirements imposed under any other provision of law) that each of these States develop a State Grade Crossing Action Plan that identifies specific solutions for improving safety at crossings, including highway-rail grade crossing closures or grade separations, particularly at crossings that have experienced multiple accidents, and shall provide assistance to the States in developing the plan.

(b) Review and Approval- Not later than 60 days after the Secretary receives a plan under subsection (a), the Secretary shall review and approve or disapprove it. If the proposed plan is not approved, the Secretary shall notify the affected State as to the specific points in which the proposed plan is deficient, and the State shall correct all deficiencies within 30 days following receipt of written notice from the Secretary.

## **SEC. 203. IMPROVEMENTS TO SIGHT DISTANCE AT HIGHWAY-RAIL GRADE CROSSINGS.**

(a) In General- Subchapter II of chapter 201, as amended by section 105 of this Act, is further amended by inserting after section 20158 the following:

### **Sec. 20159. Roadway user sight distance at highway-rail grade crossings**

(a) In General- Not later than 18 months after the date of enactment of the Railroad Safety Enhancement Act of 2007, the Secretary of Transportation shall prescribe regulations that require each railroad carrier to remove from its rights-of-way at all public highway-rail grade crossings, and at all private highway-rail grade crossings open to unrestricted public access (as declared in writing by the holder of the crossing right), grass, brush, shrubbery, trees, and other vegetation which may obstruct the view of a pedestrian or a vehicle operator for a reasonable distance in either direction of the train's approach, and to maintain its rights-of-way at all such crossings free of such vegetation. In prescribing the regulations, the Secretary shall take into consideration to the extent practicable--

- ˘ (1) the type of warning device or warning devices installed at such crossings;
- ˘ (2) factors affecting the timeliness and effectiveness of roadway user decisionmaking, including the maximum allowable roadway speed, maximum authorized train speed, angle of intersection, and topography;
- ˘ (3) the presence or absence of other sight distance obstructions off the railroad right-of-way; and
- ˘ (4) any other factors affecting safety at such crossings.

˘ (b) Protected Vegetation- In promulgating regulations pursuant to this section, the Secretary may make allowance for preservation of trees and other ornamental or protective growth where State or local law or policy would otherwise protect the vegetation from removal and where the roadway authority or private crossing holder is notified of the sight distance obstruction and, within a reasonable period specified by the regulation, takes appropriate action to abate the hazard to roadway users (such as by closing the crossing, posting supplementary signage, installing active warning devices, lowering roadway speed, or installing traffic calming devices).

˘ (c) Model Legislation- Not later than 18 months after the date of enactment of the Railroad Safety Enhancement Act of 2007, the Secretary, after consultation with the Federal Railroad Administration, the Federal Highway Administration, and States, shall develop and make available to States model legislation providing for improving safety by addressing sight obstructions, at highway-rail grade crossings that are equipped solely with passive warnings, as recommended by the Inspector General of the Department of Transportation in Report No. MH-2007-044.'

(b) Conforming Amendment- The chapter analysis for chapter 201, as amended by section 105 of this Act, is amended by inserting after the item relating to section 20158 the following new item:

- ˘ 20159. Roadway user sight distance at highway-rail grade crossings.'

## **SEC. 204. NATIONAL CROSSING INVENTORY.**

(a) In General- Subchapter II of chapter 201, as amended by section 203 of

this Act, is further amended by adding at the end the following new section:

**Sec. 20160. National crossing inventory**

(a) Initial Reporting of Information About Previously Unreported Crossings- Not later than 1 year after the date of enactment of the Railroad Safety Enhancement Act of 2007 or 6 months after a new crossing becomes operational, whichever occurs later, each railroad carrier shall--

(1) report to the Secretary of Transportation current information, including information about warning devices and signage, as specified by the Secretary, concerning each previously unreported crossing through which it operates; or

(2) ensure that the information has been reported to the Secretary by another railroad carrier that operates through the crossing.

(b) Updating of Crossing Information-

(1) On a periodic basis beginning not later than 2 years after the date of enactment of the Railroad Safety Enhancement Act of 2007 and on or before September 30 of every year thereafter, or as otherwise specified by the Secretary, each railroad carrier shall--

(A) report to the Secretary current information, including information about warning devices and signage, as specified by the Secretary, concerning each crossing through which it operates; or

(B) ensure that the information has been reported to the Secretary by another railroad carrier that operates through the crossing.

(2) A railroad carrier that sells a crossing or any part of a crossing on or after the date of enactment of the Railroad Safety Enhancement Act of 2007 shall, not later than the date that is 18 months after the date of enactment of that Act or 3 months after the sale, whichever occurs later, or as otherwise specified by the Secretary, report to the Secretary current information, as specified by the Secretary, concerning the change in ownership of the crossing or part of the crossing.

` (c) Rulemaking Authority- The Secretary shall prescribe the regulations necessary to implement this section. The Secretary may enforce each provision of the Department of Transportation's statement of the national highway-rail crossing inventory policy, procedures, and instruction for States and railroads that is in effect on the date of enactment of the Railroad Safety Enhancement Act of 2007, until such provision is superseded by a regulation issued under this section.

` (d) Definitions- In this section:

` (1) CROSSING- The term ` crossing' means a location within a State, other than a location where one or more railroad tracks cross one or more railroad tracks either at grade or grade-separated, where--

` (A) a public highway, road, or street, or a private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks either at grade or grade-separated; or

` (B) a pathway explicitly authorized by the property owner that is dedicated for the use of nonvehicular traffic, including pedestrians, bicyclists, and others, that is not associated with a public highway, road, or street, or a private roadway, crosses one or more railroad tracks either at grade or grade-separated.

` (2) STATE- The term ` State' means a State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.'

(b) Conforming Amendment- The chapter analysis for chapter 201, as amended by section 203 of this Act, is amended by inserting after the item relating to section 20159 the following:

` 20160. National crossing inventory.'

(c) Reporting and Updating- Section 130 of title 23, United States Code, is amended by adding at the end the following:

` (I) National Crossing Inventory-

` (1) INITIAL REPORTING OF CROSSING INFORMATION- Not later than 1 year after the date of enactment of the Railroad Safety Enhancement Act of 2007 or within 6 months of a new crossing becoming operational, whichever occurs later, each State shall report to the

Secretary of Transportation current information, including information about warning devices and signage, as specified by the Secretary, concerning each previously unreported crossing located within its borders.

` (2) PERIODIC UPDATING OF CROSSING INFORMATION- On a periodic basis beginning not later than 2 years after the date of enactment of the Railroad Safety Enhancement Act of 2007 and on or before September 30 of every year thereafter, or as otherwise specified by the Secretary, each State shall report to the Secretary current information, including information about warning devices and signage, as specified by the Secretary, concerning each crossing located within its borders.

` (3) RULEMAKING AUTHORITY- The Secretary shall prescribe the regulations necessary to implement this subsection. The Secretary may enforce each provision of the Department of Transportation's statement of the national highway-rail crossing inventory policy, procedures, and instructions for States and railroads that is in effect on the date of enactment of the Railroad Safety Enhancement Act of 2007, until such provision is superseded by a regulation issued under this subsection.

` (4) DEFINITIONS- In this subsection, the terms `crossing' and `State' have the meaning given those terms by section 20160(d)(1) and (2), respectively, of title 49.'

(d) Civil Penalties- (1) Section 21301(a)(1) is amended--

(A) by inserting `with section 20160 or' after `comply' in the first sentence; and

(B) by inserting `section 20157 of this title or' after `violating' in the second sentence.

(2) Section 21301(a)(2) is amended by inserting `The Secretary shall impose a civil penalty for a violation of section 20160 of this title.' after the first sentence.

## **SEC. 205. TELEPHONE NUMBER TO REPORT GRADE CROSSING PROBLEMS.**

(a) IN GENERAL- Section 20152 is amended to read as follows:

**Sec. 20152. Notification of grade crossing problems**

Not later than 18 months after the date of enactment of the Railroad Safety Enhancement Act of 2007, the Secretary of Transportation shall require each railroad carrier to--

(1) establish and maintain a telephone service, which may be required to be a toll-free telephone for specific railroad carriers as determined by the Secretary to be appropriate, for rights-of-way over which it dispatches trains, to directly receive calls reporting--

(A) malfunctions of signals, crossing gates, and other devices to promote safety at the grade crossing of railroad tracks on those rights-of-way and public or private roads;

(B) disabled vehicles blocking railroad tracks at such grade crossings;

(C) obstructions to the view of a pedestrian or a vehicle operator for a reasonable distance in either direction of a train's approach; or

(D) other safety information involving such grade crossings;

(2) upon receiving a report pursuant to paragraph (1)(A) or (B), immediately contact trains operating near the grade crossing to warn them of the malfunction or disabled vehicle;

(3) upon receiving a report pursuant to paragraph (1)(A) or (B), and after contacting trains pursuant to paragraph (2), contact, as necessary, appropriate public safety officials having jurisdiction over the grade crossing to provide them with the information necessary for them to direct traffic, assist in the removal of the disabled vehicle, or carry out other activities as appropriate;

(4) upon receiving a report pursuant to paragraph (1)(C) or (D), timely investigate the report, remove the obstruction if possible, or correct the unsafe circumstance; and

(5) ensure the placement at each grade crossing on rights-of-way

that it owns of appropriately located signs, on which shall appear, at a minimum--

` (A) a telephone number to be used for placing calls described in paragraph (1) to the railroad carrier dispatching trains on that right-of-way;

` (B) an explanation of the purpose of that telephone number; and

` (C) the grade crossing number assigned for that crossing by the National Highway-Rail Crossing Inventory established by the Department of Transportation.'.

(b) CONFORMING AMENDMENT- The chapter analysis for chapter 201 is amended by striking the item relating to section 20152 and inserting the following:

` 20152. Notification of grade crossing problems.'.

## **SEC. 206. OPERATION LIFESAVER.**

(a) Grant- The Federal Railroad Administration shall make a grant or grants to Operation Lifesaver to carry out a public information and education program to help prevent and reduce pedestrian, motor vehicle, and other incidents, injuries, and fatalities, and to improve awareness along railroad rights-of-way and at highway-rail grade crossings. This includes development, placement, and dissemination of Public Service Announcements in newspaper, radio, television, and other media. It will also include school presentations, brochures and materials, support for public awareness campaigns, and related support for the activities of Operation Lifesaver's member organizations. As part of an educational program funded by grants awarded under this section, Operation Lifesaver shall provide information to the public on how to identify and report to the appropriate authorities unsafe or malfunctioning highway-rail grade crossings.

(b) Pilot Program- The Secretary may allow funds provided under subsection (a) also to be used by Operation Lifesaver to implement a pilot program, to be known as the Railroad Safety Public Awareness Program, that addresses the need for targeted and sustained community outreach on the subjects described in subsection (a). Such a pilot program shall be established in 1 or more States identified under section 202 of this Act. In carrying out such a pilot program Operation Lifesaver shall work with the State, community

leaders, school districts, and public and private partners to identify the communities at greatest risk, to develop appropriate measures to reduce such risks, and shall coordinate the pilot program with the State grade crossing action plan.

(c) Authorization of Appropriations- There are authorized to be appropriated to the Federal Railroad Administration for carrying out this section--

(1) \$2,000,000 for each of fiscal years 2008, 2009, and 2010; and

(2) \$1,500,000 for each of fiscal years 20011, 2012, and 2013.

## **SEC. 207. TRESPASSER PREVENTION AND HIGHWAY-RAIL CROSSING SAFETY.**

(a) TRESPASSER PREVENTION AND HIGHWAY-RAIL GRADE CROSSING WARNING SIGN VIOLATIONS- Section 20151 is amended--

(1) by striking the section heading and inserting the following:

**Sec. 20151. Railroad trespassing, vandalism, and highway-rail grade crossing warning sign violation prevention strategy';**

(2) by striking subsection (a) and inserting the following:

(a) EVALUATION OF EXISTING LAWS- In consultation with affected parties, the Secretary of Transportation shall evaluate and review current local, State, and Federal laws regarding trespassing on railroad property, vandalism affecting railroad safety, and violations of highway-rail grade crossing warning signs and develop model prevention strategies and enforcement laws to be used for the consideration of State and local legislatures and governmental entities. The first such evaluation and review concerning violations of grade crossing signals shall be completed within 1 year after the date of enactment of the Railroad Safety Enhancement Act of 2007. The Secretary shall revise the model prevention strategies and enforcement codes periodically.';

(3) by inserting 'for Trespassing and Vandalism Prevention' in the subsection heading of subsection (b) after 'Outreach Program';

(4) in subsection (c)--

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(B) by inserting ` (1)' after ` Model Legislation- ' ; and

(C) by adding at the end the following new paragraph:

` (2) Within 18 months after the date of enactment of the Railroad Safety Enhancement Act of 2007, the Secretary, after consultation with State and local governments and railroad carriers, shall develop and make available to State and local governments model State legislation providing for civil or criminal penalties, or both, for violations of highway-rail grade crossing warning signs.'; and

(5) by adding at the end the following new subsection:

` (d) Definition- In this section, the term ` violation of highway-rail grade crossing warning signs' includes any action by a motorist, unless directed by an authorized safety officer--

` (1) to drive around a grade crossing gate in a position intended to block passage over railroad tracks;

` (2) to drive through a flashing grade crossing signal;

` (3) to drive through a grade crossing with passive warning signs without ensuring that the grade crossing could be safely crossed before any train arrived; and

` (4) in the vicinity of a grade crossing, who creates a hazard of an accident involving injury or property damage at the grade crossing.'.

(b) Conforming Amendment- The chapter analysis for chapter 201 of title 49, United States Code, is amended by striking the item relating to section 20151 and inserting the following:

` 20151. Railroad trespassing, vandalism, and highway-rail grade crossing warning sign violation prevention strategy.'.

(c) EDUCATIONAL OR AWARENESS PROGRAM ITEMS FOR DISTRIBUTION- Section 20134(a) is amended by adding at the end of the subsection the

following: ` The Secretary may purchase items of nominal value and distribute them to the public without charge as part of an educational or awareness program to accomplish the purposes of this section and of any other sections of this title related to improving the safety of highway-rail crossings and to preventing trespass on railroad rights of way, and the Secretary shall prescribe guidelines for the administration of this authority.'

## **SEC. 208. FOSTERING INTRODUCTION OF NEW TECHNOLOGY TO IMPROVE SAFETY AT HIGHWAY-RAIL GRADE CROSSINGS.**

(a) Amendment- Subchapter II of chapter 201, as amended by section 204 of this Act, is further amended by adding at the end the following:

### **` Sec. 20161. Fostering introduction of new technology to improve safety at highway-rail grade crossings**

` (a) Findings- The Congress finds the following:

` (1) Collisions between highway users and trains at highway-rail grade crossings continue to cause loss of life and serious personal injury and also threaten the safety of rail transportation.

` (2) While elimination of at-grade crossings through consolidation of crossings and grade separations offers the greatest long-term promise for optimizing the safety and efficiency of the two modes of transportation, over 140,000 public grade crossings remain on the general rail system--approximately one for each route mile on the general rail system.

` (3) Conventional highway traffic control devices such as flashing lights and gates are effective in warning motorists of a train's approach to an equipped crossing.

` (4) Since enactment of the Highway Safety Act of 1973, over \$4,200,000,000 of Federal funding has been invested in safety improvements at highway-rail grade crossings, yet a majority of public highway-rail grade crossings are not yet equipped with active warning systems.

` (5) The emergence of new technologies supporting Intelligent Transportation Systems presents opportunities for more effective and affordable warnings and safer passage of highway users and trains at

remaining highway-rail grade crossings.

` (6) Implementation of new crossing safety technology will require extensive cooperation between highway authorities and railroad carriers.

` (7) Federal Railroad Administration regulations establishing performance standards for processor-based signal and train control systems provide a suitable framework for qualification of new or novel technology at highway-rail grade crossings, and the Federal Highway Administration's Manual on Uniform Traffic Control Devices provides an appropriate means of determining highway user interface with such new technology.

` (b) Policy- It is the policy of the Department of Transportation to encourage the development of new technology that can prevent loss of life and injuries at highway-rail grade crossings. The Secretary of Transportation shall carry out this policy in consultation with States and necessary public and private entities.

` (c) Effect of Secretarial Approval- If the Secretary approves new technology to provide warning to highway users at a highway-rail grade crossing and such technology is installed at a highway-rail grade crossing in accordance with the conditions of the approval, this determination preempts any State law concerning the adequacy of the technology in providing warning at the crossing. Under no circumstances may a person (including a State, other public authority, railroad carrier, system designer, or supplier of the technology) be held liable for damages for any harm to persons or property because of an accident or incident at the crossing protected by such technology based upon the carrier's failure to properly inspect and maintain such technology, if the carrier has inspected and maintained the technology in accordance with the terms of the Secretary's approval.'

(b) Conforming Amendment- The chapter analysis for chapter 201, as amended by section 204 of this Act, is further amended by inserting after the item relating to section 20160, the following:

` 20161. Fostering introduction of new technology to improve safety at highway-rail grade crossings.'

### **TITLE III--FEDERAL RAILROAD ADMINISTRATION**

## **SEC. 301. HUMAN CAPITAL INCREASES.**

(a) IN GENERAL- The Secretary shall increase the number of Federal Railroad Administration employees by--

- (1) 25 employees in fiscal year 2008;
- (2) 50 employees in fiscal year 2009;
- (3) 50 employees in fiscal year 2010;
- (4) 25 employees in fiscal year 2011;
- (5) 25 employees in fiscal year 2012; and
- (6) 25 employees in fiscal year 2013.

(b) FUNCTIONS- In increasing the number of employees pursuant to subsection (a), the Secretary shall focus on hiring employees--

- (1) specifically trained to conduct on-site railroad and highway-rail grade crossing accident investigations;
- (2) to implement the Railroad Safety Strategy;
- (3) to administer and implement the Railroad Safety Risk Reduction Pilot Program and the Railroad Safety Risk Reduction Program;
- (4) to implement section 20166 of title 49, United States Code, and to focus on encouragement and oversight of the use of new or novel rail safety technology;
- (5) to conduct routine inspections and audits of railroad and hazardous materials facilities and records for compliance with railroad safety laws and regulations; and
- (6) to support the Federal Railroad Administration's safety mission.

## **SEC. 302. CIVIL PENALTY INCREASES.**

(a) General Violations of Chapter 201- Section 21301(a)(2) is amended--

(1) by striking ` \$10,000' and inserting ` \$25,000'; and

(2) by striking ` \$20,000' and inserting ` \$100,000'.

(b) Accident and Incident Violations of Chapter 201; Violations of Chapters 203 Through 209- Section 21302(a)(2) is amended--

(1) by striking ` \$10,000' and inserting ` \$25,000'; and

(2) by striking ` \$20,000' and inserting ` \$100,000'.

(c) Violations of Chapter 211- Section 21303(a)(2) is amended--

(1) by striking ` \$10,000' and inserting ` \$25,000'; and

(2) by striking ` \$20,000' and inserting ` \$100,000'.

### **SEC. 303. ENFORCEMENT REPORT.**

(a) IN GENERAL- Subchapter I of chapter 201, as amended by section 107 of this Act, is amended by adding at the end the following:

#### **Sec. 20120. Enforcement Report.**

(a) IN GENERAL- Not later than December 31, 2008, the Secretary of Transportation shall make available to the public and publish on its public website an annual report that--

(1) provides a summary of railroad safety and hazardous materials compliance inspections and audits that Federal or state inspectors conducted in the prior fiscal year organized by type of alleged violation, including track, motive power and equipment, signal, grade crossing, operating practices, accident and incidence reporting, and hazardous materials;

(2) provides a summary of all enforcement actions taken by the Secretary or the Federal Railroad Administration during the prior fiscal year, including--

(A) the number of civil penalties assessed against railroad

carriers, hazardous material shippers, and individuals;

` (B) the initial amount of civil penalties assessed against railroad carriers, hazardous materials shippers, and individuals;

` (C) the number of civil penalty cases settled against railroad carriers, hazardous material shippers, and individuals;

` (D) the final amount of civil penalties assessed against railroad carriers, hazardous materials shippers, and individuals;

` (E) the difference between the initial and final amounts of civil penalties assessed against railroad carriers, hazardous materials shippers, and individuals;

` (F) the number of administrative hearings requested and completed related to hazardous materials transportation law violations or enforcement actions against individuals;

` (G) the number of cases referred to the Attorney General for civil or criminal prosecution;

` (H) the number and subject matter of all compliance orders, emergency orders or precursor agreements;

` (3) analyzes the effect of the number of inspections conducted and enforcement actions taken on the number and rate of reported accidents and incidents and railroad safety;

` (4) identifies the number of locomotive engineer certification denial or revocation cases appealed to and the average length of time it took to be decided by--

` (A) the Locomotive Engineer Review Board;

` (B) an Administrative Hearing Officer or Administrative Law Judge; or

` (C) the Administrator of the Federal Railroad Administration;

` (5) provides any explanation regarding changes in the Secretary's or

the Federal Railroad Administration's enforcement programs or policies that may substantially affect the information reported; and

` (6) includes any additional information that the Secretary determines is useful to improve the transparency of its enforcement program.'

(b) CONFORMING AMENDMENT- The chapter analysis for chapter 201, as amended by section 107 of this Act, is amended by inserting after the item relating to section 20119 the following:

` 20120. Enforcement report.'

## **SEC. 304. PROHIBITION OF INDIVIDUALS FROM PERFORMING SAFETY-SENSITIVE FUNCTIONS FOR A VIOLATION OF HAZARDOUS MATERIALS TRANSPORTATION LAW.**

Section 20111(c) is amended to read as follows:

` (c) Orders Prohibiting Individuals From Performing Safety-Sensitive Functions-

` (1) If an individual's violation of this part, chapter 51 of this title, or a regulation prescribed, or an order issued, by the Secretary under this part or chapter 51 of this title is shown to make that individual unfit for the performance of safety-sensitive functions, the Secretary, after providing notice and an opportunity for a hearing, may issue an order prohibiting the individual from performing safety-sensitive functions in the railroad industry for a specified period of time or until specified conditions are met.

` (2) This subsection does not affect the Secretary's authority under section 20104 of this title to act on an emergency basis.'

## **SEC. 305. RAILROAD RADIO MONITORING AUTHORITY.**

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

` (c) Railroad Radio Communications-

` (1) IN GENERAL- To carry out the Secretary's responsibilities under this part and under chapter 51, the Secretary may authorize officers,

employees, or agents of the Secretary to conduct the following activities in circumstances the Secretary finds to be reasonable:

` (A) Intercepting a radio communication, with or without the consent of the sender or other receivers of the communication, but only where such communication is broadcast or transmitted over a radio frequency which is--

` (i) authorized for use by one or more railroad carriers by the Federal Communications Commission; and

` (ii) primarily used by such railroad carriers for communications in connection with railroad operations.

` (B) Communicating the existence, contents, substance, purport, effect, or meaning of the communication, subject to the restrictions in paragraph (3).

` (C) Receiving or assisting in receiving the communication (or any information therein contained).

` (D) Disclosing the contents, substance, purport, effect, or meaning of the communication (or any part thereof of such communication) or using the communication (or any information contained therein), subject to the restrictions in paragraph (3), after having received the communication or acquired knowledge of the contents, substance, purport, effect, or meaning of the communication (or any part thereof).

` (E) Recording the communication by any means, including writing and tape recording.

` (2) ACCIDENT PREVENTION AND ACCIDENT INVESTIGATION- The Secretary, and officers, employees, and agents of the Department of Transportation authorized by the Secretary, may engage in the activities authorized by paragraph (1) for the purpose of accident prevention and accident investigation.

` (3) USE OF INFORMATION- (A) Information obtained through activities authorized by paragraphs (1) and (2) shall not be admitted into evidence in any administrative or judicial proceeding except--

` (i) in a prosecution of a felony under Federal or State criminal law; or

` (ii) to impeach evidence offered by a party other than the Federal Government regarding the existence, electronic characteristics, content, substance, purport, effect, meaning, or timing of, or identity of parties to, a communication intercepted pursuant to paragraphs (1) and (2) in proceedings pursuant to section 5122, 5123, 20702(b), 20111, 20112, 20113, or 20114 of this title.

` (B) If information obtained through activities set forth in paragraphs (1) and (2) is admitted into evidence for impeachment purposes in accordance with subparagraph (A), the court, administrative law judge, or other officer before whom the proceeding is conducted may make such protective orders regarding the confidentiality or use of the information as may be appropriate in the circumstances to protect privacy and administer justice.

` (C) No evidence shall be excluded in an administrative or judicial proceeding solely because the government would not have learned of the existence of or obtained such evidence but for the interception of information that is not admissible in such proceeding under subparagraph (A).

` (D) Information obtained through activities set forth in paragraphs (1) and (2) shall not be subject to publication or disclosure, or search or review in connection therewith, under section 552 of title 5.

` (E) Nothing in this subsection shall be construed to impair or otherwise affect the authority of the United States to intercept a communication, and collect, retain, analyze, use, and disseminate the information obtained thereby, under a provision of law other than this subsection.

` (4) APPLICATION WITH OTHER LAW- Section 705 of the Communications Act of 1934 (47 U.S.C. 605) and chapter 119 of title 18 shall not apply to conduct authorized by and pursuant to this subsection.'

## **SEC. 306. EMERGENCY WAIVERS.**

Section 20103 is amended--

(1) by striking subsection (e) and inserting the following:

` (e) Hearings- Except as provided in subsection (g) of this section, the Secretary shall conduct a hearing as provided by section 553 of title 5 when prescribing a regulation or issuing an order under this chapter, including a regulation or order establishing, amending, or waiving compliance with a railroad safety regulation prescribed or order issued under this chapter. An opportunity for an oral presentation shall be provided.'; and

(2) by adding at the end thereof the following:

` (g) Emergency Waivers-

` (1) IN GENERAL- The Secretary shall prescribe procedures concerning the handling of requests for waivers of regulations prescribed or orders issued under this chapter in emergency situations and may prescribe temporary emergency waiver procedures without first providing an opportunity for public comment. The Secretary may grant a waiver request if the waiver is directly related to the emergency event or necessary to aid in any recovery efforts and is in the public interest and consistent with railroad safety. The relief shall not extend for a period of more than 9 months, including the period of the relief granted under any renewal of the waiver pursuant to the emergency waiver procedures. For matters that may impact the missions of the Department of Homeland Security, the Secretary of Transportation shall consult and coordinate with the Secretary of Homeland Security as soon as practicable.

` (2) WAIVER BEFORE HEARING- If, under the emergency waiver procedures established under paragraph (1) of this subsection, the Secretary determines the public interest would be better served by addressing a request for waiver prior to providing an opportunity for a hearing under section 553 of title 5 and an oral presentation, the Secretary may act on the waiver request and, if the request is granted, the Secretary shall subsequently provide notice and an opportunity for a hearing and oral presentation pursuant to procedures prescribed under paragraph (1) of this subsection. Should the Secretary receive comment or a request for oral presentation on a waiver request after granting the waiver, the Secretary may take any necessary action with regard to that waiver (including rescission or modification) based on

the newly acquired information.

` (3) EMERGENCY SITUATION; EMERGENCY EVENT- In this subsection, the terms `emergency situation' and `emergency event' mean a natural or manmade disaster, such as a hurricane, flood, earthquake, mudslide, forest fire, snowstorm, terrorist act, biological outbreak, release of a dangerous radiological, chemical, explosive, or biological material, or a war-related activity, that poses a risk of death, serious illness, severe injury, or substantial property damage. The disaster may be local, regional, or national in scope.'

## **SEC. 307. FEDERAL RAIL SECURITY OFFICERS' ACCESS TO INFORMATION.**

(a) Amendment- Chapter 281 is amended by adding at the end thereof the following:

### **` Sec. 28104. Federal rail security officers' access to information**

` (a) Access to Records or Database Systems by the Administrator of the Federal Railroad Administration-

` (1) IN GENERAL- The Administrator of the Federal Railroad Administration is authorized to have access to a system of documented criminal justice information maintained by the Department of Justice or by a State for the purpose of carrying out the civil and administrative responsibilities of the Administrator to protect the safety, including security, of railroad operations and for other purposes authorized by law, including the National Crime Prevention and Privacy Compact (42 U.S.C. 14611-14616). The Administrator shall be subject to the same conditions or procedures established by the Department of Justice or State for access to such an information system by other governmental agencies with access to the system.

` (2) LIMITATION- The Administrator may not use the access authorized under paragraph (1) to conduct criminal investigations.

` (b) Designated Employees of the Federal Railroad Administration- The Administrator shall, by order, designate each employee of the Administration whose primary responsibility is rail security who shall carry out the authority described in subsection (a). The Administrator shall strictly limit access to a system of documented criminal justice information to persons with security

responsibilities and with appropriate security clearances. Such a designated employee may, insofar as authorized or permitted by the National Crime Prevention and Privacy Compact or other law or agreement governing an affected State with respect to such a State--

^ (1) have access to and receive criminal history, driver, vehicle, and other law enforcement information contained in the law enforcement databases of the Department of Justice, or of any jurisdiction in a State in the same manner as a police officer employed by a State or local authority of that State who is certified or commissioned under the laws of that State;

^ (2) use any radio, data link, or warning system of the Federal Government and of any jurisdiction in a State that provides information about wanted persons, be-on-the-lookout notices, or warrant status or other officer safety information to which a police officer employed by a State or local authority in that State who is certified or commissioned under the laws of that State has access and in the same manner as such police officer; or

^ (3) receive Federal, State, or local government communications with a police officer employed by a State or local authority in that State in the same manner as a police officer employed by a State or local authority in that State who is commissioned under the laws of that State.

^ (c) System of Documented Criminal Justice Information Defined- In this section, the term ^ system of documented criminal justice information' means any law enforcement database, systems, or communications containing information concerning identification, criminal history, arrests, convictions, arrest warrants, or wanted or missing persons, including the National Crime Information Center and its incorporated criminal history databases and the National Law Enforcement Telecommunications System.'.

(b) Conforming Amendment- The chapter analysis for chapter 281 is amended by adding at the end the following:

^ 28104. Federal rail security officers' access to criminal history and other law enforcement records, systems, and communications.'.

## **SEC. 308. UPDATE OF FEDERAL RAILROAD ADMINISTRATION'S WEBSITE.**

(a) IN GENERAL- The Secretary shall update the Federal Railroad Administration's public website to better facilitate the ability of the public, including those individuals who are not regular users of the public website, to find current information regarding the Federal Railroad Administration's activities.

(b) PUBLIC REPORTING OF VIOLATIONS- On the Federal Railroad Administration's public website's home page, the Secretary shall provide a mechanism for the public to submit written reports of potential violations of Federal railroad safety and hazardous materials transportation laws, regulations and orders to the Federal Railroad Administration.

## TITLE IV--RAILROAD SAFETY ENHANCEMENTS

### SEC. 401. EMPLOYEE TRAINING.

(a) IN GENERAL- Subchapter II of chapter 201, as amended by section 208 of this Act, is further amended by adding at the end the following:

#### Sec. 20162. Employee training

(a) IN GENERAL- Not later than 1 year after the date of enactment of the Railroad Safety Enhancement Act of 2007, the Secretary of Transportation shall issue regulations requiring railroad carriers and railroad carrier contractors and subcontractors to develop training plans for crafts and classes of employees, as the Secretary determines appropriate.

(b) CONTENTS- The Secretary shall require that each training plan--

(1) clearly identify the class of craft of employees to which the plan applies;

(2) require that employees be trained on the requirements of relevant Federal railroad safety laws, regulations, and orders;

(3) require employees to be tested or otherwise demonstrate their proficiency in the subject matter of the training; and

(4) contain any other relevant information that the Secretary deems appropriate.

` (c) SUBMISSION FOR APPROVAL- The Secretary shall require each railroad carrier, railroad carrier contractor, and railroad carrier subcontractor to submit its training plan to the Federal Railroad Administration for review and approval.

` (d) EXEMPTION- The Secretary may exempt railroad carriers and railroad carrier contractors and subcontractors from submitting training plans covering employees for which the Secretary has issued training regulations before the date of enactment of the Railroad Safety Enhancement Act of 2007.'.

(b) CONFORMING AMENDMENT- The chapter analysis for chapter 201, as amended by section 208 of this Act, is further amended by adding at the end thereof the following:

` 20162. Employee training.'.

## **SEC. 402. CERTIFICATION OF CERTAIN CRAFTS OR CLASSES OF EMPLOYEES.**

(a) REPORT- Not later than 1 year after the date of enactment of this Act, the Secretary shall issue a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure about whether the certification of certain crafts or classes of railroad carrier or railroad carrier contractor or subcontractor employees is necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.

(b) CRAFTS AND CLASSES TO BE CONSIDERED- As part of the report, the Secretary shall consider--

- (1) conductors;
- (2) carmen;
- (3) onboard service workers;
- (4) rail welders; and
- (5) any other craft or class of employees that the Secretary determines appropriate.

(c) REGULATIONS- The Secretary may issue regulations requiring the certification of certain crafts or classes of employees that the Secretary determines pursuant to the report required by subsection (a) are necessary to reduce the number and rate of accidents and incidents or to improve railroad safety

## **SEC. 403. TRACK INSPECTION TIME STUDY.**

(a) FINDINGS- The Congress finds the following:

(1) Rail revenue ton miles have increased by approximately 25 percent in the past 10 years.

(2) Federal track safety regulations require track inspectors to complete inspections by walking or in a hi-rail vehicle and are often time intensive.

(3) Track inspectors are required to receive permission to occupy track to complete inspections, which often delays trains from operating through the segment of track being inspected, especially on high-density lines.

(4) Obtaining track time to complete required track repairs of defects identified during track inspections can further delay train operations.

(5) The competition for track time between track inspectors and trains potentially can leave serious rail defects undetected and unrepaired, increasing the risk of derailments, accidents and injuries.

(6) Results of rail and track defect detection technology studies have shown promise that such technologies can better identify or predict the most serious track problems, which could reduce inspection time or decrease the need for as frequent track inspections.

(7) Being able to better detect track defects or predict when track defects will occur by using new or novel inspection technology could assist railroads in maximizing track inspection time and more efficiently using track repair time.

(b) STUDY- Not later than 2 years after the date of enactment of this Act, the Secretary shall--

(1) complete a study to determine whether--

(A) the required intervals of track inspections for each class of track should be amended;

(B) track remedial action requirements should be amended;

(C) different track inspection and repair priorities or methods should be required; and

(2) issue recommendations for changes to the Federal track safety standards in part 213 of title 49, Code of Federal Regulations, based on the results of the study.

(c) CONSIDERATIONS- In conducting the study the Secretary shall consider--

(1) the most current rail flaw, rail defect growth, rail fatigue, and other relevant track- or rail-related research and studies;

(2) the availability and feasibility of developing and implementing new or novel rail inspection technology for routine track inspections;

(3) information from National Transportation Safety Board or Federal Railroad Administration accident investigations where track defects were the cause or a contributing cause; and

(4) other relevant information, as determined by the Secretary.

(d) UPDATE OF REGULATIONS- Not later than 2 years after the completion of the study required by subsection (b), the Secretary shall issue regulations implementing the recommendations of the study.

## **SEC. 404. STUDY OF METHODS TO IMPROVE OR CORRECT STATION PLATFORM GAPS.**

Not later than 2 years after the enactment of this Act, the Secretary shall complete a study to determine the most safe, efficient, and cost-effective way to improve the safety of rail passenger station platforms gaps in order to increase compliance with the requirements under the Americans with Disabilities Act (42 U.S.C. 12101 et seq.), including regulations issued

pursuant to section 504 of such Act (42 U.S.C. 12204) and to minimize the safety risks associated with such gaps for railroad passengers and employees.

## **SEC. 405. USE OF DISTRACTING DEVICES IN LOCOMOTIVE CABS.**

(a) IN GENERAL- Not later than 3 years after the date of enactment of this Act, the Secretary shall complete a study on the prevalence of the use of personal electronic devices, including cell phones, video games, and other distracting devices, by safety-related railroad employees (as defined in section 20102(4) of title 49, United States Code, during the performance of such employees' duties. The study shall consider the safety impact of the use of such devices.

(b) REPORT- Not later than 6 months after the completion of the study, the Secretary shall issue a report on the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(c) PROHIBITORY AUTHORITY- Based on the conclusions of the study required under (a), the Secretary of Transportation may prohibit the use of personal electronic devices, such as cell phones, video games, or other electronic devices that may distract employees from safely performing their duties, unless those devices are being used according to railroad operating rules or for other work purposes.

## **SEC. 406. RAILROAD SAFETY TECHNOLOGY GRANTS.**

(a) IN GENERAL- Subchapter II of chapter 201, as amended by section 401 of this Act, is further amended by adding at the end thereof the following:

### **Sec. 20163. Railroad safety technology grants**

(a) GRANT PROGRAM- The Secretary of Transportation shall establish a grant program for the deployment of train control technologies, train control component technologies, processor-based technologies, electronically controlled pneumatic brakes, rail integrity inspection systems, rail integrity warning systems, switch position indicators, remote control power switch technologies, track integrity circuit technologies, and other new or novel railroad safety technology.

(b) Grant Criteria-

^ (1) ELIGIBILITY- Grants shall be made under this section to eligible passenger and freight railroad carriers, railroad suppliers, and State and local governments for projects described in subsection (a) that have a public benefit of improved safety and network efficiency.

^ (2) CONSIDERATIONS- Priority shall be given to projects that--

^ (A) focus on making technologies interoperable between railroad systems, such as train control technologies;

^ (B) provide incentives for train control technology deployment on high-risk corridors, such as those that have high volumes of hazardous materials shipments or over which commuter or passenger trains operate; or

^ (C) benefit both passenger and freight safety and efficiency.

^ (3) TECHNOLOGY IMPLEMENTATION PLAN- Grants may not be awarded under this section to entities that fail to develop and submit to the Secretary a technology implementation plan as required by section 20157(d)(2).

^ (c) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to the Secretary of Transportation \$20,000,000 for each of fiscal years 2008 through 2013 to carry out this section. Amounts appropriated pursuant to this section shall remain available until expended.'

(b) CONFORMING AMENDMENT- The chapter analysis for chapter 201, as amended by section 401 of this Act, is further amended by inserting after the item relating to section 20163 the following:

^ 20163. Railroad safety technology grants.'

## **SEC. 407. RAILROAD SAFETY INFRASTRUCTURE IMPROVEMENT GRANTS.**

(a) IN GENERAL- Subchapter II of chapter 201, as amended by section 406 of this Act, is further amended by adding at the end thereof the following:

### **^ Sec. 20164. Railroad safety infrastructure improvement grants**

` (a) GRANT PROGRAM- The Secretary of Transportation shall establish a grant program for safety improvements to railroad infrastructure, including the acquisition, improvement, or rehabilitation of intermodal or rail equipment or facilities, including track, bridges, tunnels, yards, buildings, passenger stations, facilities, and maintenance and repair shops.

` (b) ELIGIBILITY- Grants shall be made under this section to eligible passenger and freight railroad carriers, and State and local governments for projects described in subsection (a).

` (c) CONSIDERATIONS- In awarding grants the Secretary shall consider, at a minimum--

` (1) the age and condition of the rail infrastructure of the applicant;

` (2) the railroad's safety record, including accident and incident numbers and rates;

` (3) the volume of hazardous materials transported by the railroad;

` (4) the operation of passenger trains over the railroad; and

` (5) whether the railroad has submitted a railroad safety risk reduction program, as required by section 20157.

` (d) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to the Secretary of Transportation \$15,000,000 for each of fiscal years 2008 through 2013 to carry out this section. Amounts appropriated pursuant to this subsection shall remain available until expended.'

(b) CONFORMING AMENDMENT- The chapter analysis for chapter 201, as amended by section 406 of this Act, is amended by inserting after the item relating to section 20163 the following:

` 20164. Railroad safety infrastructure improvement grants.'

## **SEC. 408. AMENDMENT TO THE MOVEMENT-FOR-REPAIR PROVISION.**

Section 20303 is amended by adding at the end the following:

˘ (d) Additional Conditions for Movement To Make Repairs to Defective or Insecure Vehicles-

˘ (1) IN GENERAL- The Secretary of Transportation may impose conditions for the movement of a defective or insecure vehicle to make repairs in addition to those conditions set forth in subsection (a) by prescribing regulations or issuing orders as necessary.

˘ (2) NECESSITY OF MOVEMENT- The movement of a defective or insecure vehicle from a location may be necessary to make repairs of the vehicle even though a mobile repair truck capable of making the repairs has gone to the location on an irregular basis (as specified in regulations prescribed by the Secretary).

˘ (e) DEFINITIONS- In this section:

˘ (1) NEAREST- the term `nearest' means the closest in the forward direction of travel for the defective or insecure vehicle.

˘ (2) PLACE AT WHICH THE REPAIRS CAN BE MADE- The term `place at which the repairs can be made' means--

˘ (A) a location with a fixed facility for conducting the repairs that are necessary to bring the defective or insecure vehicle into compliance with this chapter; or

˘ (B) a location where a mobile repair truck capable of making the repairs that are necessary to bring the defective or insecure vehicle into compliance with this chapter makes the same kind of repair at the location regularly (as specified in regulations prescribed by the Secretary).'

## **SEC. 409. DEVELOPMENT AND USE OF RAIL SAFETY TECHNOLOGY.**

(a) IN GENERAL- Subchapter II of chapter 201, as amended by section 407 of this Act, is further amended by adding at the end the following new section:

### **˘ Sec. 20165. Development and use of rail safety technology**

˘ (a) IN GENERAL- Not later than 1 year after enactment of the Railroad Safety Enhancement Act of 2007, the Secretary of Transportation shall issue

standards, guidance, regulations, or orders to encourage the development, use, and implementation of rail safety technology in dark territory, in arrangements not defined in section 20501 or otherwise not covered by Federal standards, guidance, regulations, or orders that ensures its safe operation, such as--

- ` (1) switch position monitoring devices;
- ` (2) radio, remote control or other power-assisted switches;
- ` (3) hot box, high water or earthquake detectors;
- ` (4) remote control locomotive zone limiting devices;
- ` (5) slide fences;
- ` (6) grade crossing video monitors;
- ` (7) track integrity warning systems; or
- ` (8) other similar rail safety technologies, as determined by the Secretary.

` (b) DARK TERRITORY DEFINED- In this section, the term `dark territory' means any territory in a railroad system that does not have a signal or train control system installed or operational.'

(b) CONFORMING AMENDMENT- The chapter analysis for chapter 201, as amended by section 407 of this Act, is amended by inserting after the item relating to section 20164 the following:

- ` 20165. Development and use of rail safety technology.'

## **SEC. 410. EMPLOYEE SLEEPING QUARTERS.**

Section 21106 is amended--

- (1) by inserting ` (a) In General- ' before `A railroad carrier'; and
- (2) by adding at the end the following new subsection:

^ (b) Camp Cars- Effective 12 months after the date of enactment of the Railroad Safety Enhancement Act of 2007, a railroad carrier and its officers and agents may not provide sleeping quarters through the use of camp cars, as defined in Appendix C to part 228 of title 49, Code of Federal Regulations, for employees and any individuals employed to maintain the right of way of a railroad carrier.'

## **TITLE V--RAIL PASSENGER DISASTER FAMILY ASSISTANCE**

### **SEC. 501. ASSISTANCE BY NATIONAL TRANSPORTATION SAFETY BOARD TO FAMILIES OF PASSENGERS INVOLVED IN RAIL PASSENGER ACCIDENTS.**

(a) IN GENERAL- Chapter 11 is amended by adding at the end of subchapter III the following:

#### **^ Sec. 1139. Assistance to families of passengers involved in rail passenger accidents**

^ (a) In General- As soon as practicable after being notified of a rail passenger accident within the United States involving a rail passenger carrier and resulting in a major loss of life, the Chairman of the National Transportation Safety Board shall--

^ (1) designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the rail passenger carrier and the families; and

^ (2) designate an independent nonprofit organization, with experience in disasters and posttrauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.

^ (b) Responsibilities of the Board- The Board shall have primary Federal responsibility for--

^ (1) facilitating the recovery and identification of fatally injured passengers involved in an accident described in subsection (a); and

` (2) communicating with the families of passengers involved in the accident as to the roles of--

` (A) the organization designated for an accident under subsection (a)(2);

` (B) Government agencies; and

` (C) the rail passenger carrier involved,

with respect to the accident and the post-accident activities.

` (c) Responsibilities of Designated Organization- The organization designated for an accident under subsection (a)(2) shall have the following responsibilities with respect to the families of passengers involved in the accident:

` (1) To provide mental health and counseling services, in coordination with the disaster response team of the rail passenger carrier involved.

` (2) To take such actions as may be necessary to provide an environment in which the families may grieve in private.

` (3) To meet with the families who have traveled to the location of the accident, to contact the families unable to travel to such location, and to contact all affected families periodically thereafter until such time as the organization, in consultation with the director of family support services designated for the accident under subsection (a)(1), determines that further assistance is no longer needed.

` (4) To arrange a suitable memorial service, in consultation with the families.

` (d) Passenger Lists-

` (1) REQUESTS FOR PASSENGER LISTS-

` (A) REQUESTS BY DIRECTOR OF FAMILY SUPPORT SERVICES- It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the rail passenger carrier involved in the accident a list, which is based on the best

available information at the time of the request, of the names of the passengers that were aboard the rail passenger carrier's train involved in the accident. A rail passenger carrier shall use reasonable efforts, with respect to its unreserved trains, and passengers not holding reservations on its other trains, to ascertain the names of passengers aboard a train involved in an accident.

` (B) REQUESTS BY DESIGNATED ORGANIZATION- The organization designated for an accident under subsection (a)(2) may request from the rail passenger carrier involved in the accident a list described in subparagraph (A).

` (2) USE OF INFORMATION- The director of family support services and the organization may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.

` (e) Continuing Responsibilities of the Board- In the course of its investigation of an accident described in subsection (a), the Board shall, to the maximum extent practicable, ensure that the families of passengers involved in the accident--

` (1) are briefed, prior to any public briefing, about the accident and any other findings from the investigation; and

` (2) are individually informed of and allowed to attend any public hearings and meetings of the Board about the accident.

` (f) Use of Rail Passenger Carrier Resources- To the extent practicable, the organization designated for an accident under subsection (a)(2) shall coordinate its activities with the rail passenger carrier involved in the accident to facilitate the reasonable use of the resources of the carrier.

` (g) Prohibited Actions-

` (1) ACTIONS TO IMPEDE THE BOARD- No person (including a State or political subdivision) may impede the ability of the Board (including the director of family support services designated for an accident under subsection (a)(1)), or an organization designated for an accident

under subsection (a)(2), to carry out its responsibilities under this section or the ability of the families of passengers involved in the accident to have contact with one another.

` (2) UNSOLICITED COMMUNICATIONS- No unsolicited communication concerning a potential action for personal injury or wrongful death may be made by an attorney (including any associate, agent, employee, or other representative of an attorney) or any potential party to the litigation to an individual (other than an employee of the rail passenger carrier) injured in the accident, or to a relative of an individual involved in the accident, before the 45th day following the date of the accident.

` (3) PROHIBITION ON ACTIONS TO PREVENT MENTAL HEALTH AND COUNSELING SERVICES- No State or political subdivision may prevent the employees, agents, or volunteers of an organization designated for an accident under subsection (a)(2) from providing mental health and counseling services under subsection (c)(1) in the 30-day period beginning on the date of the accident. The director of family support services designated for the accident under subsection (a)(1) may extend such period for not to exceed an additional 30 days if the director determines that the extension is necessary to meet the needs of the families and if State and local authorities are notified of the determination.

` (h) Definitions- In this section:

` (1) RAIL PASSENGER ACCIDENT- The term `rail passenger accident' means any rail passenger disaster occurring in the provision of--

` (A) interstate intercity rail passenger transportation (as such term is defined in section 24102); or

` (B) interstate or intrastate high-speed rail (as such term is defined in section 26105) transportation,

regardless of its cause or suspected cause.

` (2) RAIL PASSENGER CARRIER- The term `rail passenger carrier' means a rail carrier providing--

` (A) interstate intercity rail passenger transportation (as such

term is defined in section 24102); or

` (B) interstate or intrastate high-speed rail (as such term is defined in section 26105) transportation,

except that such term does not include a tourist, historic, scenic, or excursion rail carrier.

` (3) PASSENGER- The term `passenger' includes--

` (A) an employee of a rail passenger carrier aboard a train;

` (B) any other person aboard the train without regard to whether the person paid for the transportation, occupied a seat, or held a reservation for the rail transportation; and

` (C) any other person injured or killed in the accident.

` (i) Limitation on Statutory Construction- Nothing in this section may be construed as limiting the actions that a rail passenger carrier may take, or the obligations that a rail passenger carrier may have, in providing assistance to the families of passengers involved in a rail passenger accident.

` (j) Relinquishment of Investigative Priority-

` (1) GENERAL RULE- This section (other than subsection (g)) shall not apply to a railroad accident if the Board has relinquished investigative priority under section 1131(a)(2)(B) and the Federal agency to which the Board relinquished investigative priority is willing and able to provide assistance to the victims and families of the passengers involved in the accident.

` (2) BOARD ASSISTANCE- If this section does not apply to a railroad accident because the Board has relinquished investigative priority with respect to the accident, the Board shall assist, to the maximum extent possible, the agency to which the Board has relinquished investigative priority in assisting families with respect to the accident.'

(b) Conforming Amendment- The table of sections for such chapter is amended by inserting after the item relating to section 1138 the following:

` 1139. Assistance to families of passengers involved in rail passenger

accidents.'.

## **SEC. 502. RAIL PASSENGER CARRIER PLAN TO ASSIST FAMILIES OF PASSENGERS INVOLVED IN RAIL PASSENGER ACCIDENTS.**

(a) IN GENERAL- Chapter 243 is amended by adding at the end the following:

### **Sec. 24316. Plans to address needs of families of passengers involved in rail passenger accidents**

(a) SUBMISSION OF PLAN- Not later than 6 months after the date of the enactment of the Railroad Safety Enhancement Act of 2007, a rail passenger carrier shall submit to the Chairman of the National Transportation Safety Board, the Secretary of Transportation, and the Secretary of Homeland Security a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving a rail passenger carrier intercity train and resulting in a loss of life.

(b) CONTENTS OF PLANS- The plan to be submitted by a rail passenger carrier under subsection (a) shall include, at a minimum, the following:

(1) A process by which a rail passenger carrier will maintain and provide to the National Transportation Safety Board, the Secretary of Transportation, and the Secretary of Homeland Security, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the train (whether or not such names have been verified), and will periodically update the list. The plan shall include a procedure, with respect to unreserved trains and passengers not holding reservations on other trains, for a rail passenger carrier to use reasonable efforts to ascertain the number and names of passengers aboard a train involved in an accident.

(2) A plan for creating and publicizing a reliable, toll-free telephone number within 4 hours after such an accident occurs, and for providing staff, to handle calls from the families of the passengers.

(3) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, by suitably trained individuals.

` (4) A process for providing the notice described in paragraph (2) to the family of a passenger as soon as a rail passenger carrier has verified that the passenger was aboard the train (whether or not the names of all of the passengers have been verified).

` (5) A process by which the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within a rail passenger carrier's control; that any possession of the passenger within a rail passenger carrier's control will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation; and that any unclaimed possession of a passenger within a rail passenger carrier's control will be retained by the rail passenger carrier for at least 18 months.

` (6) A process by which the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

` (7) An assurance that a rail passenger carrier will provide adequate training to its employees and agents to meet the needs of survivors and family members following an accident.

` (c) USE OF INFORMATION- Neither the National Transportation Safety Board, the Secretary of Transportation, the Secretary of Homeland Security, nor a rail passenger carrier may release any personal information on a list obtained under subsection (b)(1) but may provide information on the list about a passenger to the family of the passenger to the extent that the Board or a rail passenger carrier considers appropriate.

` (d) LIMITATION ON LIABILITY- A rail passenger carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of a rail passenger carrier under this section in preparing or providing a passenger list, or in providing information concerning a train reservation, pursuant to a plan submitted by a rail passenger carrier under subsection (b), unless such liability was caused by a rail passenger carrier's conduct.

` (e) LIMITATION ON STATUTORY CONSTRUCTION- Nothing in this section may be construed as limiting the actions that a rail passenger carrier may take, or the obligations that a rail passenger carrier may have, in providing assistance to the families of passengers involved in a rail passenger accident.

` (f) FUNDING- Out of funds appropriated pursuant to section 20117(a)(1) (A), there shall be made available to the Secretary of Transportation \$500,000 for fiscal year 2008 to carry out this section. Amounts made available pursuant to this subsection shall remain available until expended.'.

(b) CONFORMING AMENDMENT- The chapter analysis for chapter 243 is amended by adding at the end the following:

` 24316. Plan to assist families of passengers involved in rail passenger accidents.'.

## **SEC. 503. ESTABLISHMENT OF TASK FORCE.**

(a) Establishment- The Secretary, in cooperation with the National Transportation Safety Board, organizations potentially designated under section 1139(a)(2) of title 49, United States Code, rail passenger carriers, and families which have been involved in rail accidents, shall establish a task force consisting of representatives of such entities and families, representatives of passenger rail carrier employees, and representatives of such other entities as the Secretary considers appropriate.

(b) Model Plan and Recommendations- The task force established pursuant to subsection (a) shall develop--

(1) a model plan to assist passenger rail carriers in responding to passenger rail accidents;

(2) recommendations on methods to improve the timeliness of the notification provided by passenger rail carriers to the families of passengers involved in a passenger rail accident;

(3) recommendations on methods to ensure that the families of passengers involved in a passenger rail accident who are not citizens of the United States receive appropriate assistance; and

(4) recommendations on methods to ensure that emergency services personnel have as immediate and accurate a count of the number of passengers onboard the train as possible.

(c) Report- Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit to Congress a report containing the model plan and recommendations developed by the task force under subsection (b).

## TITLE VI--CLARIFICATION OF FEDERAL JURISDICTION OVER SOLID WASTE FACILITIES

### SEC. 601. CLARIFICATION OF FEDERAL JURISDICTION OVER SOLID WASTE FACILITIES.

Section 10501 is amended--

(1) by striking ` facilities,' in subsection (b)(2) and inserting ` facilities (except solid waste management facilities (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903))),'; and

(2) by striking ` over mass transportation provided by a local governmental authority.' in subsection (c)(2) and inserting ` over--

` (A) mass transportation provided by a local governmental authority; or

` (B) the processing or sorting of solid waste.'

*END*