

AMENDED IN ASSEMBLY APRIL 18, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1935

Introduced by Assembly Member Bermudez
(Coauthor: Assembly Member Matthews)

February 1, 2006

An act to amend Sections 765.5, 1231.1, 7604, and 7711 of, and to add Sections 1202.7, 2115.1, ~~7662~~ 7665, and 7711.1 to, the Public Utilities Code, relating to railroads, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1935, as amended, Bermudez. Railroads: maintenance and safety.

(1) The existing Federal Railroad Safety Act (FRSA) authorizes the Secretary of Transportation to prescribe regulations and issue orders for railroad safety and requires the Secretary of Homeland Security, when prescribing a security regulation or issuing a security order that affects the safety of railroad operations, to consult with the Secretary of Transportation. The FRSA provides for state participation in the enforcement of the safety regulations and orders issued by the Secretary of Transportation or Secretary of Homeland Security, pursuant to an annual certification, and authorizes the respective secretaries to make an agreement with a state to provide investigative and surveillance activities. The FRSA provides that to the extent practicable, laws, regulations, and orders related to railroad safety and security are required to be nationally uniform, but authorizes a state to adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation

(with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the state requirement. A state is additionally authorized to adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security, when necessary to eliminate or reduce an essentially local safety or security hazard, that is not incompatible with a federal law, regulation, or order, and that does not unreasonably burden interstate commerce.

~~(1) Existing~~

Existing law requires the Public Utilities Commission to inspect railroad locomotives, equipment, and facilities located in class I railroad yards in California not less frequently than every 180 days, and inspect all branch and main line track not less frequently than every 12 months.

This bill would require that the inspection of railroad ~~equipment and operating procedures~~ *locomotives, equipment, and facilities* occur not less frequently than every 120 days, and the inspection of branch and main line track, ~~and operating procedures~~ occur not less frequently than every 6 months.

(2) Existing law establishes the safety division of the commission. The safety division is responsible for inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and operations of railroads and public mass transit guideways, and for enforcing state and federal laws, regulations, orders, and directives relating to transportation of persons or commodities, or both, of any nature or description, by rail.

This bill would require that ~~usable, functioning automatic grade crossing safety equipment that is removed because of improvement or upgrade work be installed at a crossing that does not have an automatic warning device~~ *existing automatic grade crossing safety signal equipment that was installed within the previous 10 years that is removed pursuant to a specified provision of federal law, that the commission determines will meet the same performance criteria and inspection standards as new equipment, be made available for use at certain other crossings.*

Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

Because this provision of this bill would be a part of the act, the bill would impose a state-mandated local program by creating a new crime.

(3) Existing law requires the Department of Transportation to prepare and submit to the Governor a proposed budget and to include within the proposed budget, the portion of that budget that is to be funded from the State Highway Account. Existing law requires the Department of Transportation to set aside \$1,000,000 in each annual proposed budget, for allocation to the commission for the purpose of paying to the railroad or street railroad corporations the share of the costs to cities, counties, and cities and counties of maintaining automatic grade-crossing protection. Existing law authorizes the commission to recommend an amount greater than \$1,000,000 if this sum is not sufficient due to an increase in the number of grade-crossing protection devices, or increase in the cost of maintenance of those devices.

This bill would require the Department of Transportation to set aside \$4,000,000 in each annual proposed budget, for allocation to the commission for the purpose of paying to the railroad or street railroad corporations, the share of the costs to cities, counties, and cities and counties of maintaining automatic grade-crossing protection. The bill would authorize the commission to recommend an amount greater than \$4,000,000 if this sum is not sufficient due to an increase in the number of grade-crossing protection devices, or increase in the cost of maintenance of those devices.

~~(3)~~

(4) Existing law authorizes the commission, whenever the commission determines that a railroad corporation has violated any order of the commission concerning the adequacy, condition, or safety of the corporation's cars or tracks or any related fixture or appliance, to impose a fine for each violation or day a violation continues uncorrected.

This bill would require that the commission develop a citation process for violations subject to fines pursuant to this provision.

(5) Pursuant to the FRSA, the Secretary of Transportation has adopted regulations to provide for safety at public highway-rail grade crossings, as defined, by requiring use of a locomotive horn, as defined, except in quiet zones, as defined, established and maintained in accordance with those regulations. These regulations expressly preempt any state law, rule, regulation, or order governing the

sounding of locomotive horns at public highway-rail grade crossings, but are not intended to affect, nor do they preempt, any state law, rule, regulation, or order governing the sounding of locomotive horns at private highway-rail grade crossings, as defined, or pedestrian crossings, as defined.

Existing state law requires locomotives to be equipped with a bell of specified weight or equivalent sound-producing capability and requires that the bell be sounded from a locomotive engine at least 1,320 feet before the intersection of the railroad and a street, road, or highway with certain exceptions. Existing law imposes a civil fine of \$100 on a railroad corporation that violates these provisions.

This bill would delete existing state law relative to the equipping and sounding of locomotive bells and would instead require that a locomotive horn be sounded when a locomotive is approaching a public highway-rail grade crossing in accordance with the regulations adopted by the Secretary of Transportation, except in a quiet zone. The bill would additionally require that a locomotive horn be sounded when a locomotive is approaching a private highway-rail crossing or pedestrian crossing in the same manner and circumstances that the locomotive horn would be required to be sounded when a locomotive is approaching a public highway-rail grade crossing. The bill would authorize the sounding of a locomotive horn in an emergency or when appropriate to prevent imminent injury, death, or property damage, or as otherwise authorized by federal regulation. The bill would authorize the commission to adopt rules for the sounding of audible warning devices at public highway-rail grade crossings, private highway-rail grade crossings, and pedestrian crossings for certain railroad and rapid transit operations that are excepted from the operation of the above-described requirements. The bill would impose a civil penalty of \$2,500 for violation of these provisions.

~~(4)~~

(6) Existing law requires the commission to require every railroad corporation operating in this state to develop, in consultation with, and with the approval of, the Office of Emergency Services, a protocol for rapid communications with that office, the Department of the California Highway Patrol, and designated county public safety agencies in an endangered area if there is a runaway train or any other uncontrolled train movement that threatens public health and safety. Existing law requires a railroad corporation to promptly notify the office, the department, and the public safety agencies, through a

communication to the warning center of the office, if there is a runaway train or other uncontrolled train movement threatening public safety, in accordance with the developed communications protocol.

This bill would require the California Highway Patrol or a designated ~~county~~ *local* public safety agency that responds to a railroad accident to report the accident to the Office of Emergency Services ~~and to the commission~~. By placing additional reporting requirements upon ~~county~~ *local* public safety agencies, the bill would impose a state-mandated local program.

(5)

(7) Existing law requires the commission to annually report to the Legislature on sites on railroad lines in the state that it finds to be hazardous, including a list of all commodities transported on railroad lines that could pose a hazard to the public or the environment in the event of a train derailment or other accident, a description of the quantities of these commodities, and the locations and routes that these materials are transported, and a list of all railroad derailment accident sites in the state on which accidents have occurred within at least the previous 5 years.

This bill would require the annual report to include a list of the root causes and significant contributing factors of all train accidents or derailments investigated.

The bill would require the commission to collect and analyze ~~“near miss”~~ *“near-miss”* data generated from incidents occurring at railroad crossings and along the rail right-of-way, including data relative to runaway trains or any other uncontrolled train movements that threaten public health and safety reported to the commission pursuant to the bill.

(6)

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(7)

(9) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 765.5 of the Public Utilities Code is
2 amended to read:

3 765.5. (a) The purpose of this section is to provide that the
4 commission takes all appropriate action necessary to ensure the
5 safe operation of railroads in this state.

6 (b) The commission shall dedicate sufficient resources
7 necessary to adequately carry out the State Participation Program
8 for the regulation of rail transportation of hazardous materials as
9 authorized by the Hazardous Material Transportation Uniform
10 Safety Act of 1990 (P.L. 101-615).

11 (c) On or before July 1, 1992, the commission shall hire a
12 minimum of six additional rail inspectors who are or shall
13 become federally certified, consisting of three additional motive
14 power and equipment inspectors, two signal inspectors, and one
15 operating practices inspector, for the purpose of enforcing
16 compliance by railroads operating in this state with state and
17 federal safety regulations.

18 (d) On or before July 1, 1992, the commission shall establish,
19 by regulation, a minimum inspection standard to ensure, at the
20 time of inspection, that railroad locomotives, equipment, and
21 facilities located in class I railroad yards in California will be
22 inspected not less frequently than every 120 days, and inspection
23 of all branch and main line track not less frequently than every
24 six months.

25 SEC. 2. Section 1202.7 is added to the Public Utilities Code,
26 to read:

27 1202.7. ~~Whenever usable, functioning automatic grade~~
28 ~~crossing safety equipment is removed from, and not reinstalled~~
29 ~~at a railroad crossing because of improvement or upgrade work,~~
30 ~~rather than be discarded, the removed equipment shall be~~
31 ~~installed at a railroad crossing that does not have an automatic~~
32 ~~warning device. existing automatic grade crossing safety signal~~
33 ~~equipment that was installed within the previous 10 years is~~

1 *planned for removal due to upgrade or closure projects*
2 *undertaken pursuant to Section 130 of Title 23 of the United*
3 *States Code, and the commission determines that it will meet the*
4 *same performance criteria and inspection standards as new*
5 *equipment and therefore be safe to use, the signal equipment*
6 *shall be made available to the following:*

7 *(a) With the consent of the participating railroad, to a state*
8 *agency designated by the commission, for storage and potential*
9 *use at a railroad crossing currently nominated by the*
10 *commission for funding to eliminate hazards of railway-highway*
11 *crossings pursuant to Section 130 of Title 23 of the United States*
12 *Code.*

13 *(b) To other railroads for use at other railway-highway*
14 *crossings within the state.*

15 *SEC. 3. Section 1231.1 of the Public Utilities Code is*
16 *amended to read:*

17 1231.1. *(a) In each annual proposed budget prepared by the*
18 *Department of Transportation under Section 165 of the Streets*
19 *and Highways Code, the sum of ~~one~~ four million dollars*
20 *(~~\$1,000,000~~) (\$4,000,000) shall be set aside for allocations to the*
21 *~~Public Utilities Commission~~ commission for the purpose of*
22 *paying to the railroad or street railroad corporations the share of*
23 *the costs to cities, counties, and cities and counties of*
24 *maintaining automatic grade-crossing protection. ~~The Public~~*
25 *~~Utilities Commission~~*

26 *(b) The commission may recommend a sum greater than ~~one~~*
27 *four million dollars (~~\$1,000,000~~) (\$4,000,000) be set aside for*
28 *allocations to the ~~Public Utilities Commission~~ commission for the*
29 *purpose of making those payments, if the ~~Public Utilities~~*
30 *~~Commission~~ commission finds that the sum of ~~one~~ four million*
31 *dollars (~~\$1,000,000~~) (\$4,000,000) is not sufficient due to an*
32 *increase in the number of grade-crossing protection devices, or*
33 *increase in the cost of maintenance of those devices. The specific*
34 *amount of the total allocation shall be determined by the*
35 *California Transportation Commission and shall constitute the*
36 *amount necessary for that maintenance. In arriving at the amount,*
37 *the California Transportation Commission shall consult with the*
38 *~~Public Utilities Commission~~ commission. Payment shall be made*
39 *on the basis of verified claims filed with the ~~Public Utilities~~*
40 *~~Commission~~ commission by the railroad or street railroad*

1 corporation responsible for maintenance of automatic
2 grade-crossing protection. Any amounts not expended by the
3 ~~Public Utilities Commission~~ *commission* in any one fiscal year
4 may be credited to subsequent annual allocations.

5 (c) Funds appropriated for the purposes of this section shall be
6 available for allocation and expenditure without regard to fiscal
7 years.

8 ~~SEC. 3.~~

9 *SEC. 4.* Section 2115.1 is added to the Public Utilities Code,
10 to read:

11 2115.1. The commission shall develop a citation process for
12 violations of Section 2115.

13 *SEC. 5.* Section 7604 of the Public Utilities Code is amended
14 to read:

15 7604. (a) For purposes of this section, the following terms
16 have the following meanings:

17 (1) “Locomotive” means a piece of on-track equipment other
18 than hi-rail, specialized maintenance, or other similar equipment
19 with one or more propelling motors designed for moving other
20 equipment, to carry freight, or carry passenger traffic, or without
21 propelling motors, but with one or more control stands.

22 (2) “Locomotive horn” means a locomotive air horn, steam
23 whistle, or similar audible warning device mounted on a
24 locomotive or control cab car.

25 (3) “Pedestrian crossing” means a separate designated
26 sidewalk or pathway where pedestrians, but not vehicles, cross
27 railroad tracks. Sidewalk crossings contiguous with, or separate
28 but adjacent to, public highway-rail grade crossings are part of
29 the public highway-rail grade crossing and are not a “pedestrian
30 crossing.”

31 (4) “Private highway-rail crossing” means a highway-rail at
32 grade crossing which is not a public highway-rail grade
33 crossing.

34 (5) “Public highway-rail grade crossing” means a location
35 where a public highway, road, or street, including associated
36 sidewalks or pathways, crosses one or more railroad tracks at
37 grade. A crossing is a “public highway-rail grade crossing” if
38 the roadway on both sides of the crossing is maintained by the
39 state, a city, county, or city and county.

1 (6) “Quiet zone” means a segment of a rail line, within which
2 is situated one or a number of consecutive public highway-rail
3 grade crossings, private highway-rail crossings, or pedestrian
4 crossings at which locomotive horns are not routinely sounded
5 consistent with Subpart C (commencing with Section 222.33) of
6 Part 222 of Title 49 of the Code of Federal Regulations.

7 (7) (A) “Railroad” means any form of nonhighway ground
8 transportation that runs on rails or electromagnetic guideways
9 and any entity providing that transportation, including:

10 (i) Commuter or other short-haul railroad passenger service
11 in a metropolitan or suburban area and commuter railroad
12 service that was operated by the Consolidated Rail Corporation
13 on January 1, 1979.

14 (ii) High-speed ground transportation systems that connect
15 metropolitan areas, without regard to whether those systems use
16 new technologies not associated with traditional railroads.

17 (B) “Railroad” does not include any of the following:

18 (i) A railroad that exclusively operates freight trains only on
19 track that is not part of the general railroad system of
20 transportation.

21 (ii) Passenger railroads that operate only on track that is not
22 part of the general railroad system of transportation and that
23 operate at a maximum speed of 15 miles per hour over public
24 highway-rail grade crossings.

25 (iii) Rapid transit operations within an urban area that are not
26 connected to the general railroad system of transportation.

27 (b) Except in a quiet zone, a locomotive horn shall be sounded
28 when a locomotive is approaching a public highway-rail grade
29 crossing in accordance with Section 222.21 of Title 49 of the
30 Code of Federal Regulations.

31 (c) Except in a quiet zone, a locomotive horn shall be sounded
32 when a locomotive is approaching a private highway-rail
33 crossing or pedestrian crossing in the same manner and
34 circumstances that the locomotive horn would be required to be
35 sounded pursuant to subdivision (b).

36 (d) A locomotive horn may be sounded in an emergency when
37 appropriate to prevent imminent injury, death, or property
38 damage, or as otherwise authorized pursuant to Section 222.23
39 of Title 49 of the Code of Federal Regulations.

1 (e) Except as authorized in subdivision (d), a locomotive horn
2 shall not be sounded in a designated or approved quiet zone.

3 (f) The commission may adopt rules for the sounding of
4 audible warning devices at public highway-rail grade crossings,
5 private highway-rail crossings, and pedestrian crossings that are
6 applicable to any entity excluded from the definition of a
7 “railroad” pursuant to subparagraph (B) of paragraph (7) of
8 subdivision (a).

9 A bell, of at least 20 pounds weight or of equivalent
10 sound-producing capability, shall be placed on each locomotive
11 engine, and shall be rung at a distance of at least 1,320 feet from
12 the place where the railroad crosses any street, road, or highway,
13 and be kept ringing until it has crossed the street, road, or
14 highway; or a steam whistle, air siren, or an air whistle shall be
15 attached, and be sounded at the like distance, and be kept
16 sounding at intervals until it has crossed the street, road, or
17 highway, except as follows:

18 (1) In a city, the ringing of the bell or the sounding of the
19 steam whistle, air siren, or air whistle shall be at the discretion of
20 the operator of the locomotive engine.

21 (2) When a locomotive engine is engaged in a switching
22 operation or comes to a stop at any point within a distance of
23 1,320 feet from the place at which the railroad crosses any street,
24 road, or highway, it shall not be necessary that the bell be rung or
25 the whistle, air siren, or air whistle be sounded, until the time and
26 from the place that the locomotive begins an uninterrupted
27 movement to and across the place at which the railroad crosses
28 the street, road, or highway.

29 (3) (A) The ringing of the bell or the sounding of the steam
30 whistle, air siren, or air whistle is not required when approaching
31 a railroad crossing that has a permanently installed audible
32 warning device authorized by the commission that begins to
33 sound automatically no less than twenty seconds before an
34 approaching train enters the place where the railroad crosses any
35 street, road, or highway, and that keeps sounding until the lead
36 locomotive has crossed the street, road, or highway.

37 (B) The operator of the locomotive may ring the bell or sound
38 the steam whistle, air siren, or air whistle at crossings equipped
39 as set forth in subparagraph (A).

40 (b)

1 (g) Any railroad corporation violating this section shall be
2 subject to a penalty of ~~one hundred dollars (\$100)~~ *two thousand*
3 *five hundred dollars (\$2,500)* for every violation. The penalty
4 may be recovered in an action prosecuted by the district attorney
5 of the proper county, for the use of the state. The corporation is
6 also liable for all damages sustained by any person, and caused
7 by its locomotives, train, or cars, when the provisions of this
8 section are not complied with.

9 ~~SEC. 4. Section 7662~~

10 *SEC. 6.* Section 7665 is added to the Public Utilities Code, to
11 read:

12 ~~7662.~~

13 7665. Whenever the California Highway Patrol or a
14 designated ~~county~~ *local* public safety agency responds to a
15 railroad accident, the accident shall be reported to the Office of
16 Emergency Services ~~and to the commission.~~

17 ~~SEC. 5.~~

18 *SEC. 7.* Section 7711 of the Public Utilities Code is amended
19 to read:

20 7711. ~~Annually and on or before July 1, the commission shall~~
21 ~~report to the Legislature~~ *The commission shall annually report to*
22 *the Legislature, on or before July 1,* on sites on railroad lines in
23 the state it finds to be hazardous. The report shall include, but not
24 be limited to, information on all of the following:

25 (a) A list of all railroad derailment accident sites in the state on
26 which accidents have occurred within at least the previous five
27 years. The list shall describe the nature and probable causes of
28 the accidents, if known, and shall indicate whether the accidents
29 occurred at or near sites that the commission *has determined,*
30 pursuant to subdivision (b), ~~has determined~~ pose a local safety
31 hazard.

32 (b) A list of all railroad sites in the state that the commission
33 *determines,* pursuant to Section 20106 of Title 49 of the United
34 States Code, ~~determines~~ pose a local safety hazard. The
35 commission may submit in the annual report the list of railroad
36 sites submitted in the immediate prior year annual report, and
37 may amend or revise that list from the immediate prior year as
38 necessary. Factors that the commission shall consider in
39 determining a local safety hazard may include, but need not be
40 limited to, all of the following:

- 1 (1) The severity of grade and curve of track.
- 2 (2) The value of special skills of train operators in negotiating
- 3 the particular segment of railroad line.
- 4 (3) The value of special railroad equipment in negotiating the
- 5 particular segment of railroad line.
- 6 (4) The types of commodities transported on or near the
- 7 particular segment of railroad line.
- 8 (5) The hazard posed by the release of the commodity into the
- 9 environment.
- 10 (6) The value of special railroad equipment in the process of
- 11 safely loading, transporting, storing, or unloading potentially
- 12 hazardous commodities.
- 13 (7) The proximity of railroad activity to human activity or
- 14 sensitive environmental areas.
- 15 (8) A list of the root causes and significant contributing factors
- 16 of all train accidents or derailments investigated.

17 (c) In determining which railroad sites pose a local safety
 18 hazard pursuant to subdivision (b), the commission shall consider
 19 the history of accidents at or near the sites. The commission shall
 20 not limit its determination to sites at which accidents have
 21 already occurred, but shall identify potentially hazardous sites
 22 based on the criteria enumerated in subdivision (b) and all other
 23 criteria that the commission determines influence railroad safety.
 24 The commission shall also consider whether any local safety
 25 hazards at railroad sites have been eliminated or sufficiently
 26 remediated to warrant removal of the site from the list required
 27 under subdivision (b).

28 ~~SEC. 6.~~

29 *SEC. 8.* Section 7711.1 is added to the Public Utilities Code,
 30 to read:

31 7711.1. The commission shall collect and analyze ~~near-miss~~
 32 *near-miss* data generated from incidents occurring at railroad
 33 crossings and along the rail right-of-way. For purposes of this
 34 section, ~~“near-miss”~~ *“near-miss”* includes a runaway train or any
 35 other uncontrolled train movement that threatens public health
 36 and safety reported to the commission pursuant to Section 7661.

37 ~~SEC. 7.~~

38 *SEC. 9.* No reimbursement is required by this act pursuant to
 39 Section 6 of Article XIII B of the California Constitution for
 40 certain costs that may be incurred by a local agency or school

1 district because, in that regard, this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the
3 penalty for a crime or infraction, within the meaning of Section
4 17556 of the Government Code, or changes the definition of a
5 crime within the meaning of Section 6 of Article XIII B of the
6 California Constitution.

7 However, if the Commission on State Mandates determines
8 that this act contains other costs mandated by the state,
9 reimbursement to local agencies and school districts for those
10 costs shall be made pursuant to Part 7 (commencing with Section
11 17500) of Division 4 of Title 2 of the Government Code.

12 ~~SEC. 8.~~

13 *SEC. 10.* This act is an urgency statute necessary for the
14 immediate preservation of the public peace, health, or safety
15 within the meaning of Article IV of the Constitution and shall go
16 into immediate effect. The facts constituting the necessity are:

17 Five train derailments have occurred in less than two years,
18 three of them occurring in the span of one month. This is part of
19 a disturbing trend across California. The number of train
20 accidents has increased exponentially since 1997. In 1997, there
21 were 105 train accidents. By 2003, there were 187. In 2005 the
22 state was projected to have 228 train accidents. Because there is
23 a need to resolve this problem now, in order to keep Californians
24 safe, it is necessary that this act go into immediate effect.