Public Law 96-423
96th Congress

# An Act

To amend the Federal Railroad Safety Act of 1970 to authorize additional appropriations, and for other purposes.

Oct. 10, 1980
[S. 2730]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Federal Railroad Safety Authorization Act of 1980".

Federal Railroad Safety Authorization Act of 1980.
45 USC 421 note.

## AUTHORIZATION FOR APPROPRIATIONS

SEC. 2. The Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.) is amended by striking out section 212 and by adding at the end thereof the following new section:

*Post*, p. 1815.
45 USC 441.

**"SEC. 214. AUTHORIZATION FOR APPROPRIATIONS.**

45 USC 444.

"(a) There are authorized to be appropriated to carry out the provisions of this Act not to exceed $38,000,000 for the fiscal year ending September 30, 1981, and not to exceed $40,000,000 for the fiscal year ending September 30, 1982.

"(b) The amounts appropriated under subsection (a) of this section for a fiscal year shall be available for expenditure in such fiscal year as follows:

"(1) For the Office of Safety, including salaries and expenses for not more than (A) six hundred safety inspectors, (B) forty-five signal and train control inspectors, and (C) one hundred and twenty-five clerical personnel, not to exceed $22,500,000 for the fiscal year ending September 30, 1981, and not to exceed $24,000,000 for the fiscal year ending September 30, 1982. Such funds shall be available for travel expenses of safety inspectors for not less than twenty days per month.

"(2) To carry out the provisions of section 206(d) of this Act, relating to State safety programs, not to exceed $2,000,000 for the fiscal year ending September 30, 1981, and not to exceed $2,500,000 for the fiscal year ending September 30, 1982.

45 USC 435.

"(3) For the Federal Railroad Administration, for salaries and expenses not otherwise provided for, not to exceed $3,500,000.

"(4) For conducting safety research and development activities under this Act, not to exceed $10,000,000, of which not less than $500,000 shall be available for assisting in the treatment of alcohol and drug abuse problems of railroad employees.

"(c) Sums appropriated under this section for research and development, automated track inspection, and the State safety grant program are authorized to remain available until expended.".

## EMERGENCY SAFETY ORDERS

SEC. 3. Section 203 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 432) is amended to read as follows:

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"SEC. 203. EMERGENCY POWERS.

Unsafe conditions or practices; order.

"(a) If the Secretary determines, on the basis of testing, inspection, investigation, or research carried out pursuant to this title, that an unsafe condition or practice, or a combination of unsafe conditions or practices, or both, create an emergency situation involving a hazard of death or injury to persons, the Secretary may immediately issue an order, without regard to the provisions of section 202(b) of this title, imposing such restrictions or prohibitions as may be necessary to bring about the abatement of such emergency situation.

45 USC 431.

Review.

"(b) After the issuance of an order under this section, opportunity for review of such order shall be provided in accordance with section 554 of title 5, United States Code.

"(c) If a petition for review of an order has been filed under subsection (b) of this section but administrative review of such order has not been completed by the end of the thirty-day period beginning on the date such order was issued, such order shall cease to be effective at the end of such period unless the Secretary determines in writing that the emergency situation remains in existence.

Relief, standards and procedures.

"(d) In issuing any order under this section, the Secretary shall describe the conditions or practices which create an emergency situation (as determined by the Secretary), and shall establish standards and procedures under which relief from such order may be obtained. Nothing in this subsection shall be construed to affect the discretion of the Secretary under this section to maintain an order in effect until the emergency situation has been abated.

Court action.

"(e) Any employee of a common carrier by railroad engaged in interstate or foreign commerce who may be exposed to imminent physical injury in the course of his employment because of the Secretary's failure, without any reasonable basis, to seek relief under subsection (a) of this section, or the authorized representative of such an employee, shall have the right to bring an action against the Secretary in the United States district court for the judicial district in which the emergency situation is alleged to exist or in which the employer has its principal executive office, or for the District of Columbia, to compel the Secretary to issue an order under this section. The failure of the Secretary to seek relief under subsection (a) of this section shall be reviewed solely under the standards of section 706 of title 5, United States Code.".

SCOPE OF STATE PARTICIPATION

SEC. 4. (a) Section 206 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 435) is amended by adding at the end thereof the following new subsection:

Investigation and surveillance.

"(g) In addition to the provisions for State participation set forth in subsections (a) and (c) of this section, the Secretary may enter into agreements with any State to provide investigative and surveillance activities with respect to those functions transferred to the Secretary by section 6 (e)(1), (e)(2), and (e)(6)(A) of the Department of Transportation Act (49 U.S.C. 1655 (e)(1), (e)(2), and (e)(6)(A)).".

(b) Section 206(d) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 435(d)) is amended by inserting "or (g)" immediately after "subsection (c)".

STATE ENFORCEMENT POWER

SEC. 5. Section 207 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 436) is amended to read as follows:

**"SEC. 207. ENFORCING COMPLIANCE WITH FEDERAL RAILROAD SAFETY RULES, REGULATIONS, ORDERS, AND STANDARDS.**

"(a)(1) In any case in which the Secretary has failed to assess the civil penalty applicable under section 209 of this title with respect to a violation of any railroad safety rule, regulation, order, or standard issued under this title or under any law transferred by section 6 (e)(1), (e)(2), or (e)(6)(A) of the Department of Transportation Act, within sixty days after the date on which notification was received by the Secretary from a State agency participating in investigative and surveillance activities under the provisions of section 206 of this title, that State agency may apply to the United States district court for the judicial district in which the violation occurred or in which the defendant has its principal executive office for the assessment and collection of the civil penalty included in or made applicable to such rule, regulation, order, or standard.

Civil penalty, application for assessment and collection. 45 USC 438. 49 USC 1655.

"(2) The provisions of this subsection shall not apply in any case in which the Secretary has affirmatively determined in writing that no violation has occurred.

Exception.

"(b)(1) In any case in which the Secretary has not commenced an action for injunctive relief under section 210 of this title with respect to a violation of any railroad safety rule, regulation, order, or standard issued under this title or under any law transferred by section 6 (e)(1), (e)(2), or (e)(6)(A) of the Department of Transportation Act, within 15 days after the date on which the Secretary received notification of the violation, together with a request that an injunctive action be instituted, from a State agency participating in investigative and surveillance activities under the provisions of section 206 of this title, that State agency may apply to the United States district court for the judicial district in which the violation occurred or in which the defendant has its principal executive office for injunctive relief to restrain further violation of such rule, regulation, order, or standard.

Injunctive relief. 45 USC 439.

"(2) The provisions of this subsection shall not apply in any case in which the Secretary has affirmatively determined in writing that (A) no violation has occurred, or (B) an action for injunctive relief is not necessary because of other enforcement action undertaken by the Secretary with respect to the subject violation.

Exception.

"(c) A State agency may not bring an action under this section in any United States district court located outside the boundaries of the State.".

Geographic limitation.

CONSOLIDATION OF ADMINISTRATIVE POWERS

SEC. 6. (a) Section 208(b) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437(b)) is amended by inserting "and under the functions transferred by section 6 (e)(1), (e)(2), and (e)(6)(A) of the Department of Transportation Act (49 U.S.C. 1655 (e)(1), (e)(2), and (e)(6)(A))" immediately after "this title".

(b) Section 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437) is amended by adding at the end thereof the following new subsection:

"(d)(1) In carrying out the functions formerly vested in the Interstate Commerce Commission and transferred to the Secretary by section 6 (e)(1), (e)(2), and (e)(6)(A) of the Department of Transportation Act (49 U.S.C. 1655 (e)(1), (e)(2), and (e)(6)(A)), the Secretary is authorized to perform any act authorized in subsection (a) of this section that he considers necessary to carry out such transferred functions, including, but not limited to, conducting investigations,

DOT Secretary, authorized actions.

making reports, issuing subpenas, requiring production of documents, taking depositions, and prescribing recordkeeping and reporting requirements. The Secretary is further authorized to issue orders directing compliance with the laws transferred by section 6 (e)(1), (e)(2), and (e)(6)(A) of the Department of Transportation Act or with any regulation or order issued thereunder.

Orders.

49 USC 1655.

Enforcement.

"(2) The district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce by appropriate means any order issued by the Secretary under paragraph (1) of this subsection.".

CRIMINAL PENALTY FOR FALSE REPORTING

Penalties.

SEC. 7. Section 209 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438) is amended by adding at the end thereof the following new subsection:

"(e) Any person who knowingly and willfully—

"(1) makes a false entry in any record or report required under this title to be made, prepared, or preserved;

"(2) destroys, mutilates, changes, or by another means falsifies any such record or report;

"(3) does not enter required specified facts and transactions in any such record or report;

"(4) makes, prepares, or preserves any such record or report in violation of a regulation or order issued under this title; or

"(5) files a false record or report with the Secretary,

shall be fined not more than $5,000, or imprisoned for not more than two years, or both.".

VENUE

SEC. 8. (a) Section 209(c) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(c)) is amended by striking out "having jurisdiction in the locality where such violation occurred" and inserting in lieu thereof "for the judicial district in which such violation occurred or in which the defendant has its principal executive office".

(b) Section 6 of the Act of March 2, 1893 (45 U.S.C. 6), is amended by striking out "having jurisdiction in the locality where such violation shall have been committed" and inserting in lieu thereof "for the judicial district in which such violation occurred or in which the defendant has its principal executive office".

(c) Section 9 of the Act of February 17, 1911 (45 U.S.C. 34), is amended by striking out "having jurisdiction in the locality where such violation shall have been committed" and inserting in lieu thereof "for the judicial district in which such violation occurred or in which the defendant has its principal executive office".

(d) Section 25(h) of the Act of February 4, 1887 (49 U.S.C. 26(h)), is amended by striking out "having jurisdiction in the locality where such violation shall have been committed" and inserting in lieu thereof "for the judicial district in which such violation occurred or in which the defendant has its principal executive office".

INJUNCTIVE RELIEF

SEC. 9. (a) Section 210(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 439(a)) is amended by inserting "and to restrain violations of or to enforce rules, regulations, orders, or standards established under any statute transferred to the Secretary under section 6 (e)(1),

(e)(2), and (e)(6)(A) of the Department of Transportation Act (49 U.S.C. 1655 (e)(1), (e)(2), and (e)(6)(A))" immediately before the period at the end thereof.

(b) Section 210 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 439) is amended by adding at the end thereof the following new subsection:

"(c) Subject to section 207(d) of this title, any action under subsection (a) of this section may be brought in the United States district court for the judicial district in which the violation occurred or in which the defendant has its principal executive office.". Location. *Ante* p. 1812.

PROTECTION AND RIGHTS OF EMPLOYEES

SEC. 10. The Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.) is amended by inserting after section 211 the following new section:

"SEC. 212. PROTECTION AND RIGHTS OF EMPLOYEES. 45 USC 441.

"(a) A common carrier by railroad engaged in interstate or foreign commerce may not discharge or in any manner discriminate against any employee because such employee, whether acting in his own behalf or in a representative capacity, has—

"(1) filed any complaint or instituted or caused to be instituted any proceeding under or related to the enforcement of the Federal railroad safety laws; or

"(2) testified or is about to testify in any such proceeding.

"(b)(1) A common carrier by railroad engaged in interstate or foreign commerce may not discharge or in any manner discriminate against any employee for refusing to work when confronted by a hazardous condition related to the performance of the employee's duties, if—

"(A) the refusal is made in good faith and no reasonable alternative to such refusal is available to the employee;

"(B) the hazardous condition is of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that—

"(i) the condition presents an imminent danger of death or serious injury; and

"(ii) there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory channels; and

"(C) the employee, where possible, has notified his employer of his apprehension of such hazardous condition and of his intention not to perform further work unless such condition is corrected immediately.

"(2) The provisions of this subsection shall not apply to security personnel employed by a railroad to protect persons and property transported by such railroad. Security personnel, exemption.

"(c)(1) Any dispute, grievance, or claim arising under this section shall be subject to resolution in accordance with the procedures set forth in section 3 of the Railway Labor Act (45 U.S.C. 153). Dispute resolution.

"(2) In the case of any violation of subsection (a) or (b) of this section, the Adjustment Board (or any division or delegate thereof) or any other board of adjustment created under section 3 of the Railway Labor Act shall, where appropriate, award backpay to the aggrieved employee and order such employee reinstated to his position. Backpay; reinstatement.

"(d) Whenever an employee of a railroad is afforded protection under this section and under any other provision of law in connection Election of provision.

with the same allegedly unlawful act of an employer, if such employee seeks protection he must elect either to seek relief pursuant to this section or pursuant to such other provision of law.

"Federal railroad safety laws."

"(e) As used in this section, the term 'Federal railroad safety laws' means this Act, the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.), and those laws transferred to the jurisdiction of the Secretary of Transportation by subsection (e) (1), (2), and (6)(A) of section 6 of the Department of Transportation Act (49 U.S.C. 1655(e) (1), (2), and (6)(A)).".

PAY CLASSIFICATIONS

SEC. 11. The Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.) is amended by inserting after section 212, as added by section 10 of this Act, the following new section:

45 USC 443.

"SEC. 213. PAY CLASSIFICATIONS.

"Notwithstanding any other provision of law—

5 USC 5101 *et seq.*.

"(1) the position held by a fully experienced and qualified railroad safety inspector employed by the Department of Transportation shall be classified in accordance with chapter 51 of title 5, United States Code, but not lower than Grade GS-12 of the General Schedule; and

5 USC 5332 note.

"(2) the position held by a railroad safety specialist employed by the Department of Transportation shall be classified in accordance with chapter 51 of title 5, United States Code, but not lower than Grade GS-13 of the General Schedule.".

HOURS OF SERVICE ACT AMENDMENT

SEC. 12. Section 5(a) of the Act of March 4, 1907 (45 U.S.C. 64a(a)), commonly known as the Hours of Service Act, is amended to read as follows:

Penalties.

"SEC. 5. (a)(1) Any common carrier subject to this Act, or any officer or agent thereof, that requires or permits any employee to go, be, or remain on duty in violation of section 2, section 3, or section 3A of this Act, or that violates any other provision of this Act, shall be liable for a penalty of $500 for each violation, to be recovered in an action to be brought by the United States attorney in the district court of the United States for the judicial district in which such violation occurred or in which the defendant has its principal executive office. It shall be the duty of the United States attorney to bring such an action upon satisfactory information being lodged with him. In the case of a violation of section 2 (a)(3) or (a)(4) of this Act, each day a facility is in noncompliance shall constitute a separate offense.

45 USC 62-63a.

Time limitation.

"(2) No action may be brought under this section after the expiration of the two-year period beginning on the date the violation occurred unless administrative notification pursuant to the Federal Claims Collection Act (31 U.S.C 951-953) has been provided to the common carrier within such two-year period, but in no event may any such action be brought after the expiration of the period specified in section 2462 of title 28, United States Code.".

LOCOMOTIVE INSPECTION ACT AMENDMENT

Inspection report.

SEC. 13. Section 6 of the Act of February 17, 1911 (45 U.S.C. 29), is amended by striking out the fourth and fifth sentences and inserting in lieu thereof the following: "Each carrier subject to such sections shall keep on file the report of each inspection required by such rules

and regulations and the report showing the repair of the defects disclosed by the inspection. The rules and regulations referred to in this section shall prescribe the manner in which such reports shall be kept.".

SAFETY OF RAILROAD PASSENGER EQUIPMENT

SEC. 14. Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended by adding at the end thereof the following new subsection:

"(h)(1) The Secretary shall, within two years after the date of enactment of this subsection, issue such initial rules, regulations, orders, and standards as may be necessary to insure the safe construction, maintenance, and operation of railroad passenger equipment. The Secretary shall periodically review such rules, regulations, orders, and standards and shall, after a hearing in accordance with subsection (b) of this section, make such revisions in such rules, regulations, orders, and standards as may be necessary. Rules and regulations. Review.

"(2) In issuing initial rules, regulations, orders, and standards under this subsection, and in making any subsequent revisions thereto, the Secretary shall—

"(A) concentrate on those areas which, in the judgment of the Secretary, present the greatest opportunity for enhancing the safety of railroad passenger equipment; and

"(B) give significant weight to the expenditures that would be necessary to retrofit existing equipment and to alter specifications for equipment on order;

"(3) In issuing initial rules, regulations, orders, and standards under this subsection, and in making any subsequent revisions thereto, the Secretary may consult with the National Railroad Passenger Corporation, public authorities that operate passenger service, other rail carriers that transport passengers, organizations of passengers, and organizations of employees. Such consultations shall not be subject to the Federal Advisory Committee Act, but minutes of such consultations shall be placed in the public docket of the rulemaking proceeding. Consultation. 5 USC app.

"(4) As used in this subsection, the term 'railroad passenger equipment' means all railroad equipment used for the transportation of passengers, whether in commuter or intercity service.". "Railroad passenger equipment."

ALASKA RAILROAD ACT AMENDMENT

SEC. 15. The first section of the Act of March 12, 1914 (43 U.S.C. 975), is amended by inserting immediately after the first undesignated paragraph the following new paragraph:

"Any security officer employed to protect life and property on the railroad is authorized to maintain law and order, to carry firearms, and to make arrests on railroad property with a warrant for any offense committed against the laws of the United States, and to make arrests without a warrant for any offense committed upon property of the railroad if there is reasonable ground to believe that the offense constitutes a felony under the laws of the United States and the person to be arrested has committed or is committing the felony.". Security officers.

STUDIES AND REPORTS

SEC. 16. (a) The Secretary of Transportation shall conduct a study regarding employee training in the railroad industry as it affects 45 USC 431 note.

railroad safety. Among other factors, such study shall consider the appropriate Federal role, if any, in such training, and the adequacy of such training. The results of such study, together with recommendations for any necessary legislation, shall be submitted to the Congress by December 31, 1980.

Submittal to Congress.

(b)(1) The Secretary of Transportation shall make every possible effort to expedite promulgation of a final rule regarding the retrofitting of Department of Transportation specification one hundred and five tank cars with shelf couplers. In the event that such rule is not promulgated prior to December 31, 1980, the Secretary of Transportation shall submit to the Congress a status report with respect to such rule, indicating the Federal Railroad Administration's activities to such date, the current status of such rule, and an estimate as to when a final rule will be promulgated.

Status report, submittal to Congress.

(2) Whenever the Secretary of Transportation submits a status report pursuant to the provisions of paragraph (1) of this subsection, or when the Federal Railroad Administration promulgates a final rule with respect to the retrofitting of Department of Transportation specification one hundred and five tank cars with shelf couplers, the Secretary shall transmit to the Congress any other recommendations and anticipated action by the Department of Transportation with respect to the retrofitting of such tank cars.

Recommendations and anticipated action, submittal to Congress.

(c)(1) The Secretary of Transportation shall submit to the Congress a systems safety plan relating to the activities of the Department of Transportation in carrying out rail safety laws. The Secretary shall complete such plan at the earliest possible date, but in no event shall the study be submitted later than January 31, 1981.

Systems safety plan, submittal to Congress.

(2) As part of the plan submitted to the Congress under paragraph (1) of this subsection, the Secretary of Transportation shall develop a methodology to determine frequency and schedules of safety inspections, giving appropriate priority to track and equipment involved with passenger trains and hazardous cargos. Such methodology shall further take into consideration safety records of the rail carriers, location of track and equipment in population centers, volume of usage of track and equipment, and any other factors that the Secretary considers relevant to railroad safety.

Methodology.

**EFFECTIVE DATE**

**SEC. 17.** (a) Except as provided in subsection (b) of this section, the provisions of this Act shall take effect on the date of enactment of this Act. 45 USC 431 note.

(b) Section 11 of this Act shall take effect on October 1, 1980, or on the date of enactment of this Act, whichever is later.

Approved October 10, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-1025 accompanying H.R. 7104 (Comm. on Interstate and Foreign Commerce).
SENATE REPORT No. 96-785 (Comm. on Commerce, Science, and Transportation).
CONGRESSIONAL RECORD, Vol. 126 (1980):
June 6, considered and passed Senate.
Sept. 22, H.R. 7104 considered and passed House; passage vacated, and S. 2730, amended, passed in lieu.
Sept. 24, Senate concurred in House amendments.