

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1835

H. P. 1632

House of Representatives, June 2, 1977

Reported by Mr. Pearson from Committee on Public Utilities. Sent up for concurrence and ordered printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Provide for the Department of Transportation to Participate in the Federal Railroad Administration Track and Equipment Safety and Inspection Program and to Administer Railroad Safety Investigation Provisions of the Maine Statutes.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 23 MRSA § 4206, sub-§ 1, ¶ J is enacted to read:

J. To oversee matters relating to railroad safety, provided that jurisdiction of the commissioner shall in no way diminish, infringe upon or replace the jurisdiction of the United States Department of Transportation, Federal Railroad Administration with regard to employee safety.

Sec. 2. 23 MRSA c. 410, sub-cc. II and III are enacted to read:

SUBCHAPTER II

INSPECTION AND INVESTIGATION
OF RAILROADS

§ 4211. Railroads examined; annual report

The commissioner, or some competent person duly appointed by the commissioner, on application or whenever he thinks necessary, shall carefully examine the tracks, rolling stock, bridges, viaducts and culverts of any railroad; and shall annually make a report to the Governor with such facts as the public interest may require. All persons managing railroads shall give the commissioner such information as he at any time requires.

§ 4212. Certificate of safety for passenger trains

No passenger train shall be run over any new railroad, or over any railroad in process of construction, until the commissioner has made an inspection of such railroad and granted a certificate of its safety for public travel. A copy of this certificate, attested by the commissioner, shall be furnished to the corporation operating the railroad. Any person or corporation violating this section forfeits to the State \$100 for each offense, to be recovered in a civil action or by complaint and indictment, and the Attorney General shall institute proceedings to recover the same.

§ 4213. Experienced engineer to examine bridges

Every railroad corporation shall, when requested by the commissioner, have an examination made of any iron bridge or other structure by a competent and experienced mechanical engineer, who shall report to the commissioner forthwith the results of his examinations, his conclusions and recommendations, and transmit a copy of the same to the corporation. The report shall furnish such information in detail and with such drawings and prints as may be in writing requested by the commissioner.

§ 4214. Managers notified when road unsafe

If the commissioner at any examination finds the track, culverts, bridges or rolling stock in use so out of repair as to be unsafe for travelers, he shall immediately notify the managers of the road of its condition and the time in which the repairs shall be made; and may require them to reduce the speed of all trains until the repairs are made.

§ 4215. Court proceedings for noncompliance

If the managers do not comply with such requirements, the commissioner shall file a complaint to the Superior Court in any county where the railroad extends, setting forth their examination, the condition of the road, the notice and requirement and refusal to comply; and shall notify the Attorney General or the district attorney of such county of the filing of the complaint, one of whom shall appear and take charge of the proceedings in court. The court shall order a notice thereon and appoint a hearing; and after a hearing, may order such things to be done by the managers of the road as they deem necessary to secure the safety of travelers. Unless such managers execute a bond to the State, with sufficient sureties, for such sum as the court deems necessary to make the repairs, conditioned that they will, within the time fixed by the court, make the repairs or otherwise satisfy the court that they will be so made, the court shall issue an injunction against the corporation and its managers, prohibiting the running of any passenger trains over the portion of the road found to be unsafe until the order has been complied with or revoked.

§ 4216. Passenger trains prohibited from running over unsafe roads

When, in the opinion of the commissioner, the passage of passenger trains over any portion of a railroad would be attended with imminent danger, he may notify the president or superintendent of such road and order the im-

mediate stopping of all passenger trains about to run over such portion thereof. If his order is not obeyed, the commissioner shall at once apply to the Superior Court which may, upon satisfactory proof of the necessity for such order and without notice to the company, issue an injunction prohibiting the running of passenger trains over the road until further order of the court.

§ 4217. Crossings and bridges

1. Company to erect and maintain bridge guards. Every railroad corporation shall erect and maintain suitable bridge guards at every bridge or other structure, any portion of which crosses the railroad less than 20 feet above the tracks. The guards shall be approved by the commissioner and be erected and adjusted to the commissioner's satisfaction. Any corporation refusing or neglecting to comply with this section, for each month of continuance in such neglect or refusal, forfeits \$50. Whoever willfully destroys or breaks any such bridge guard forfeits more than \$100 and may be imprisoned for not more than 30 days.

2. Railroads crossing each other; application, notice and hearing. The commissioner shall determine the manner and conditions of one railroad of any kind crossing another. Any corporation or party operating such railroad may apply to the commissioner for a change in the then existing condition, construction or manner of any such crossing. Such application shall be in writing, giving the location of the crossing, and the commissioner shall give a hearing thereon after he has ordered notice to be given by the applicants as to the time, place and purposes of the hearing as the commissioner shall deem proper. The commissioner shall determine at the hearing what changes, if any, are necessary, and how such crossings shall be constructed and maintained, the expense thereof to be borne as the commissioner may order.

3. Crossing over railroad already built; application, notice and hearing. In the case of a railroad company of any kind whose tracks are to be constructed across the tracks of any railroad already built, such crossings shall be made, constructed and maintained in such manner and under such conditions as shall be ordered by the commissioner, the expense thereof to be borne as the commissioner may order. The parties contemplating making such crossing shall apply to the commissioner in writing, giving the location of the crossing desired, and the commissioner shall give a hearing thereon after he shall have ordered such notice to be given by the applicants of the time, place and purposes of such hearing as the commissioner shall deem proper. At the hearing, the commissioner shall determine the manner and conditions of construction and maintenance of such crossing and make his report as provided.

4. Report of decisions and copies to parties interested. The commissioner shall make a report in writing of his decision in all matters named in subsections 2 and 3 and the commissioner shall send a copy of his decision to each of the railroad corporations and to the municipal officers of the cities or towns interested therein.

5. Clearances set by Commissioner of Transportation. The Commissioner of Transportation shall have the right to prescribe a minimum distance for

clearance of any structure, pole or other object over or beside any railroad track. This section shall not apply to any structure, pole or other object in existence over or beside any railroad track on or before September 1, 1955.

§ 4218. Safety provisions

1. Size and construction of caboose cars; penalty. Except as otherwise provided in subsection 2, no common carrier by railroad shall use on its lines any caboose car, or other car used for like purposes, unless such caboose or other car shall be at least 29 feet in length, exclusive of platforms, and equipped with 2 4-wheel trucks and shall be of constructive strength equal, at least, to that of the 20-ton capacity freight cars constructed according to master car-builder standards and shall be provided with a door in each end thereof and an outside platform across each end of the car. Each platform shall be not less than 24 inches in width and shall be equipped with proper guardrails, and with grab irons and steps for the safety of persons getting on and off the car. The steps shall be equipped with a suitable rod, board or other guard at each end and at the back thereof, properly designed to prevent slipping from the step. Caboose cars shall be of standard height with a cupola or with an observation compartment extending from each side of the car, and with necessary closets and windows. Any common carrier who violates any of the provisions of this subsection shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$500 for each offense, to be enforced on complaint or by indictment.

2. Application of provisions. Subsection 1 shall apply to any corporation, or to any person or persons, while engaged as common carriers in the transportation by standard gauge railroad of passengers or property within this State to which the regulative power of this State extends. Subsection 1 shall not apply to any railroad company operating less than 20 miles of single track, nor to caboose cars used between the following points, namely: Between Waterville and Skowhegan; between Pittsfield and Hartland; between Burnham and Belfast; between Leeds Junction and Farmington; between Calais and Princeton; between Bangor and Bucksport; between Livermore Falls and Canton; and between Lewiston lower station and Bath, via Brunswick.

3. Walks and handrails on railroad bridges. The Commissioner of Transportation shall have the right, upon complaint and after hearing, to require any common carrier by railroad to equip their bridges and trestles with suitable walks and handrails, if after such hearing the commissioner finds that such walks and handrails are necessary for the safety of the public or railroad employees.

4. Frogs and guardrails. Every railroad corporation operating a railroad or part of a railroad in the State shall adjust, fill or block the frogs and guardrails on its track, with the exception of guardrails on bridges, in a manner satisfactory to the Commissioner of Transportation, so as to prevent the feet of employees from being caught therein. Any railroad corporation failing to do so shall be punished by a fine of not less than \$100 nor more than \$500.

5. Method of heating cars approved. No passenger, mail or baggage car on any railroad in the State shall be heated by any method of heating or by any furnace or heater, unless such method or the use of such furnace or heater shall first have been approved in writing by the Commissioner of Transportation. In no event shall a common stove be allowed in any such car. Any railroad corporation may, with the permission of the commissioner, make such experiment in heating their passenger cars as the commissioner may deem proper. Any railroad corporation violating any provision of this subsection forfeits not more than \$500.

6. Head and rear lights on cars. Every person, firm or corporation operating or controlling any railroad running through or within the State shall equip each of its track motor cars used during the period from 30 minutes before sunset to 30 minutes after sunrise with a headlight of such construction and with sufficient candle power to render plainly visible at a distance of not less than 300 feet in advance of such track motor car, any track obstruction, landmark, warning sign or grade crossing, and shall equip such track motor car with a red rear light of such construction and with sufficient candle power as to be plainly visible at a distance of at least 300 feet. It shall be unlawful for any person, firm or corporation operating or controlling any railroad running through or within this State to operate or use any track motor car from 30 minutes before sunset to 30 minutes after sunrise, which is not equipped with lights of the candle power, construction and utility described in this subsection.

Any person, firm or corporation operating or controlling any railroad running through or within this State using or permitting to be used on its line in this State a track motor car in violation of this subsection shall be liable to a penalty of \$100 for each violation, to be recovered in a suit or suits to be brought by the district attorney in the Superior Court of the county having jurisdiction in the locality where such violation occurred. Upon duly verified information being given him of such violation, such district attorney shall bring such suits.

7. Safety switches and switch lights at every siding. Every railroad company running trains in this State shall place safety switches of an approved sort at every siding connecting with the main track. Switch lights shall be maintained in addition to switch targets with a reflective type surface or with an adequate reflector attached thereto throughout that portion of every railroad where trains are run after dark. The commissioner shall have authority to relieve any railroad from the requirements of this subsection as to maintaining switch lights and reflectorized targets, upon proper petition therefor, after notice and hearing, and for good cause shown, to such extent as the commission shall deem consistent with public safety.

This subsection shall not apply to areas of the railroad controlled by block signals.

8. Speed at crossings; signals to warn approaching trains. When one railroad crosses another on the same grade, every engineman on both, when approaching the point of intersection with an engine with or without a train, shall stop his engine within 500 feet of such point and before reaching it

and shall pass it at a rate not exceeding 8 miles an hour, except when, from the condition of the track or train, it shall be necessary to run at greater speed. In that case, the conductor or person in charge of the train shall station some person at the crossing, with a flag by day and a lantern by night, to warn trains approaching on the other road. When 2 or more crossings on the same road are within 400 feet of each other, one stop is sufficient. Any such engineman, conductor or person in charge of the train violating this provision forfeits, for each offense, \$100, and the corporation on whose road the offense is committed forfeits \$200.

9. Signals at crossings; signals for approaching trains; preference to passenger trains. When railroads cross each other at grade, the parties operating the railroad last located there shall build and maintain a suitable signal station at the crossing, at which a competent signal officer shall be kept at the joint expense of the parties operating the railroads. The signal shall not be set for a train to cross until the engine of such train shall have arrived within 500 feet of the intersection and stopped. No train or engine shall cross the track of the other road until the proper signal for it to cross shall have been set in position by the signal officer. Only one train or engine shall be allowed to cross under one setting of the signal unless coming from opposite directions on the same railroad. When the signal has been set for the trains on one of the railroads, it shall not be changed until those trains shall have passed entirely over the crossing. When trains on both railroads approach the crossing at about the same time, preference shall be given to passenger trains and the signal shall be set for the trains on each road in alternate order.

10. Automatic signals; exemptions. The Commissioner of Transportation may, on the application of any railroad whose road crosses another railroad at the same level, after due notice and hearing of the parties, authorize the applicant to establish and maintain a system of interlocking or automatic signals at any crossing of such roads, at its own expense, and erect and maintain the necessary wires, rods, signal posts and signals in such manner as the commissioner shall prescribe. When the system is established and has been approved in writing by the commissioner, the corporation establishing the system and its railroad shall be excepted, as to that crossing, from subsections 8 and 9.

11. Sharing of signal cost by nonparticipating railroad; exemption. Whenever, after establishment and approval of the system of signals, the nonparticipating railroad under subsection 10 shall have paid the applicant railroad such part of the cost of establishing the system of signals as shall be awarded by the Commissioner of Transportation after hearing on petition of the nonparticipating railroad, both railroads shall be excepted as to that crossing from subsections 8 and 9, as provided in subsection 10. Until payment is made, the nonparticipating railroad shall contribute toward the expense of operating the signals, in semiannual payments, a sum equal to the cost to it of operating the signals used by it at the crossing before the establishment of the signals provided for in subsection 10. After payment of the award, the expense of maintaining and operating the system of signals shall be borne by the 2 railroad corporations according to the proportions fixed by the award

for paying the original cost of the signals, and the award, so far as it relates to the cost of maintaining and operating the signals, may, at the request of either party, be revised after an interval of 5 years from the original award or from the award next preceding the request.

12. Diesels or diesel-electric may not operate in reverse or backup position. No railroad corporation operating diesel or diesel-electric locomotives in the State shall be permitted to operate such locomotives in reverse or backup position on any passenger or freight train on any main line or branch line, except that such locomotives may be operated in reverse in emergencies, while doing switching operations, while operating turn-around service, and except where no facilities are available for turning such locomotives at the point of departure. Any railroad corporation violating this subsection shall be punished by a fine of \$100 for each violation.

13. Illuminated switchings leads. In order to provide maximum safety to train and yard service employees, who are required to work on or about moving railroad freight equipment, all railroad companies operating in the State shall have all switching leads in yards, where frequent switching service is normally performed, reasonably and adequately illuminated during the hours of darkness. This subsection shall be subject to rules and regulations promulgated by the Commissioner of Transportation.

§ 4219. Orders of the commissioner

The Superior Court is given full jurisdiction to enforce compliance with any order issued by the Commissioner of Transportation under this chapter. It shall be the duty of the commissioner to see that the rights of the public under this subchapter are fully protected.

§ 4220. Prior orders and rules effective

All rules, regulations, orders and decrees in effect prior to the effective date of this Act which were issued by the Public Utilities Commission pursuant to the provisions in Title 35, which provisions are embraced in this subchapter, shall remain in full force and effect until the Commissioner of Transportation has acted pursuant to applicable provisions of this subchapter.

§ 4221. Investigation and reports of accidents

1. Investigation. The Commissioner of Transportation shall investigate all accidents resulting in loss of human life, or personal injury requiring 3 full days of hospitalization, occurring upon the premises of any railroad company or directly or indirectly arising from or connected with its maintenance or operation. Any accident so occurring and which results in property damage or personal injury that requires less than 3 full days hospitalization also may be investigated if, in the judgment of the commissioner, the public interest requires it. The commissioner may hold hearings in connection with any investigation and shall reasonably notify the railroad company of the time and place of the hearing and the railroad company may then be heard; and the commissioner shall have the power to make such order or recommendation with respect thereto as deemed just and reasonable.

2. Reports of accidents. Every railroad company is required to file with the Commissioner of Transportation, under such rules and regulations as the commissioner may prescribe, reports of accidents so occurring, in the manner and form designated by the commissioner. In case of accidents resulting in loss of human life, such reports shall be made immediately by telephone or telegraph, followed by a detailed written report.

3. Disposition of reports. The orders and recommendations of the Department of Transportation, and accident reports and all other materials in the department's file pertaining to such railroad company accidents, shall be made available, upon request, to the railroad company, the injured person or their representatives.

4. Reports inadmissible as evidence. The orders and recommendations of the Department of Transportation, accident reports and any other material in the department's file pertaining to such accidents obtained or prepared pursuant to an investigation under this section shall not be admitted as evidence in any suit or action for damages growing out of any matter mentioned in any such investigation.

SUBCHAPTER III

TRACK AND EQUIPMENT INSPECTION PROGRAM

§ 423I. Participation in the Federal Railroad Administration Track and Equipment Safety and Inspection Program

The commissioner shall have the authority to participate in carrying out investigative and surveillance activities in connection with any rule, regulation, order or standard prescribed by the Secretary of Transportation of the United States under the authority of the Federal Railroad Safety Act, United States Code, Title 45, chapter 13, provided that the commissioner shall comply with all the requirements imposed by the United States Code, Title 45, section 435. The commissioner may employ such expert, professional or other assistance as is necessary to carry out the activities authorized by this section.

Sec. 3. 35 MRSA § 141 is amended by adding a new paragraph to read: Railroad companies shall not be subject to the provisions of this section.

Sec. 4. 35 MRSA § 142, as enacted by PL 1973, c. 497, is repealed.

Sec. 5. 35 MRSA § 771 is repealed.

Sec. 6. 35 MRSA § 772, as amended by PL 1965, c. 91, § 7, is repealed.

Sec. 7. 35 MRSA §§ 773-776 are repealed.

Sec. 8. 35 MRSA § 820, as last amended by PL 1973, c. 210, is repealed.

Sec. 9. 35 MRSA §§ 823 and 824 are repealed.

Sec. 10. 35 MRSA § 825, 1st sentence, is repealed and the following enacted in its place:

Sections 811, 812, 821 and Title 23, sections 1251 to 1254, section 2902 and section 4217, subsections 2 and 3, so far as applicable, shall apply to plant railroads.

Sec. 11. 35 MRSA § 827 is amended to read:

§ 827. Report of decisions and copies to parties interested

The commission shall make a report in writing of their decision in all matters named in ~~sections section 823, 824, and~~ 826, file the same in their office, and cause a copy of such decision to be sent by mail to each of the railroad corporations and to the municipal officers of the cities or towns, as the case may be, interested therein.

Sec. 12. 35 MRSA § 861 is repealed.

Sec. 13. 35 MRSA §§ 1172-1177 are repealed.

Sec. 14. 35 MRSA 1179, as amended by PL 1971, c. 188, §§ 1 to 3, is repealed.

Sec. 15. 35 MRSA §§ 1182-1185 are repealed.

Sec. 16. 35 MRSA § 1197 is repealed.

Sec. 17. 35 MRSA § 1198, as enacted by PL 1965, c. 73, is repealed.

STATEMENT OF FACT

The intent of this new draft is to transfer the Railroad Track and Equipment Safety and Inspection program to the Department of Transportation. In addition, the bill transfers the responsibility of railroad safety inspection from the Public Utilities Commission to the Department of Transportation. The Public Utilities Commission, which is heavily burdened with many other duties, is unable to provide the staff and resources that it would like to provide railroad safety inspection. The Department of Transportation will be able to provide more resources and time to the program and thereby increase railroad employee protection.