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Revised Fiscal Note

(replaces fiscal note dated April 24, 2024)

Drafting Number: LLS 24-0247 Date: May 1, 2024
Prime Sponsors: Rep. Mabrey; Mauro Bill Status: Senate Appropriations
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Bill Topic: RAILROAD SAFETY REQUIREMENTS

Summary of Fiscal Impact: [X] State Revenue [] State Transfer [X] Local Government
[X] State Expenditure [] TABOR Refund [] Statutory Public Entity

The bill establishes new safety requirements on railroads operating in the state and creates the Office of Rail Safety and rail safety advisory committees. It increases state and local government expenditures, and increases state revenue, on an ongoing basis.

Appropriation Summary: For FY 2024-25, the bill requires an appropriation of \$391,057 to the Department of Regulatory Agencies.

Fiscal Note Status: This revised fiscal note reflects the reengrossed bill, as amended by the Senate Transportation and Energy Committee. The bill was recommended by the Transportation Legislation Review Committee.

Table 1
State Fiscal Impacts Under HB 24-1030

Table with 5 columns: Category, Sub-category, Budget Year FY 2024-25, Out Year FY 2025-26, Out Year FY 2026-27. Rows include Revenue (Fixed Utility Fund, Total Revenue), Expenditures (Fixed Utility Fund, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (TABOR Refund).

Summary of Legislation

The bill establishes safety requirements on railroads operating trains in the state, as discussed below.

Railroad safety measures. The bill specifies that, with certain exceptions for class II and III railroads:

- on or before July 1, 2026, railroads are required to have an operational and properly maintained wayside detector system, including a hot bearings detector and dragging equipment detector installed at least every 10 miles, with certain terrain-based exceptions;
- on or before January 1, 2025, and each year thereafter, railroads must submit a report to the Public Utilities Commission (PUC) on installed wayside detector systems, hot bearings detectors, and dragging equipment detectors;
- railroads must stop a train after receiving a message from a wayside detector system. If an inspection indicates the train is safe for movement, the train must travel no more than 10 miles per hour if the train is carrying a hazardous material or dangerous goods, and no more than 30 miles per hour if the train is not carrying a hazardous material or dangerous goods;
- trains, freight cars, passenger cars, and railroad passenger engines may not obstruct a public crossing for more than 10 minutes, unless they are continuously moving or circumstances beyond the railroad's control prevent them from moving. They must also minimize obstruction of emergency vehicles at highway-rail crossings;
- any crew member of a train may report to the crew member's designated union representative a safety violation, injury, or death that occurred during the operation of a train. Upon receiving notice of a violation, the representative may enter a railroad's place of operation to investigate the report;
- each railroad must conduct an oil or hazardous substance containment exercise each year and at least one full-scale exercise every five years, in coordination with local emergency management organizations and fire chiefs. The PUC must develop rules concerning training content, safety drills, and railroad incident response requirements;
- the PUC may impose a fine for a railroad's denying a union representative access to a railroad's place of operation ranging from \$10,000 to \$25,000 for each day of a continuing violation, and a fine of up to \$100,000 for repeated and/or intentional violations related to union activities; and
- the PUC must develop guidelines for determining, imposing, and appealing fines.

Front Range Passenger Rail District Maintenance and Safety Fund. The bill creates the Front Range Passenger Rail District Maintenance and Safety Fund, which will receive fines imposed by the PUC for violations of this bill's safety requirements. The money is continuously appropriated to the state treasurer for the purpose of safety planning and development during the research, development, and construction of a passenger rail system; maintaining a passenger rail system; and completing capital development projects to improve the safety of a passenger rail system.

Fire department training. The bill requires that by July 1, 2025, and at least once every three years thereafter, railroads offer training to each fire department with jurisdiction along railroad tracks. The training must address hazardous materials and emergency responder strategies for railroad incidents involving hazardous materials.

Hazardous materials insurance. The bill requires railroads transporting hazardous materials to maintain adequate insurance and submit to the PUC a certificate of insurance or similar documentation on or before January 1, 2025, and each year thereafter. By November 1, 2024, the PUC must promulgate rules establishing minimum insurance coverage requirements for railroads transporting hazardous materials. At least once a year, the PUC must also hold a public hearing concerning the implementation of these rules. Railroads that violate these rules are subject to fines of at least \$1,000, but not exceeding \$5,000, for each day of noncompliance.

Emergency response. The bill requires railroads transporting hazardous materials to coordinate with the Department of Public Safety (CDPS) on emergency response planning. Railroads must also conduct at least two tabletop exercises with other federal, state, and local agencies on scenarios involving derailment and release of crude oil or other flammable materials. In addition, within 30 minutes after an emergency involving a train transporting hazardous materials, the railroad must notify the CDPS with a detailed explanation of the emergency, help coordinate an emergency response, and provide follow-up reports.

Office of Rail Safety. The bill creates the Office of Rail Safety, which is administered by the PUC. Through the office, the bill requires the PUC to:

- enter into an agreement with the Federal Railroad Administration to participate in inspection and investigation activities;
- coordinate with the CDPS on CDOT on inspection and investigation activities for Class I railroads, passenger railroads, and intercity railroads;
- accept gifts, grants, and donations for purchasing training materials and other equipment;
- along with CDOT, CDPS, and the Rail Safety Advisory Committee, provide a comprehensive report to the Governor and relevant legislative committees by December 1, 2024, on rail safety and emergency response. The report must include a legislative proposal concerning the creation of a fee structure and a governance body for the Office of Rail Safety that can be introduced as legislation by 2025 and begin operating no later than January 1, 2027; and,
- regularly engage with Class I railroads, railroad unions, and local governments of municipalities that contain railroads.

Advisory committees. The bill creates two advisory committees: the Community Rail Safety Advisory Committee and the Rail Industry Safety Committee. The Community Rail Safety Advisory Committee consists of seven members including representatives of union workers, disproportionately impacted communities, and statewide environmental organizations. The Rail Industry Safety Committee consists of nine members including representatives of railroad operators, first responder organizations, the PUC, the CDPS, and CDOT. Committee members must be appointed on or before August 1, 2024.

State Revenue

Beginning in FY 2025-26, the bill requires the PUC to create a fee structure to support the Office of Rail Safety. Fees will be assessed on regulated railroads and credited to the Fixed Utility Fund in an amount sufficient to cover the expenditures outlined below. Current railroad fee revenue to the Fixed Utility Fund can support these costs in FY 2024-25. The bill may also increase fine revenue to the Front Range Passenger Rail District Maintenance and Safety Fund by an indeterminate amount. Both revenue sources are subject to TABOR.

Fee impact on regulated railroad entities. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. The fee amounts in Table 2 are estimates only and assume that 14 railroad companies pay fees to support the Office of Rail Safety. Actual fees will be set administratively by the PUC through rulemaking based on cash fund balance, administrative costs, and the number of entities subject to the fee.

**Table 2
 Fee Impact on Regulated Railroad Entities**

Fiscal Year	Type of Fee	Fee Estimate	Number Affected	Fee Impact
FY 2025-26	Rail Safety Fee	\$31,434	14	\$440,070

Fine revenue. The bill may increase fine revenue to the newly created Front Range Passenger Rail District Maintenance and Safety Fund. The amount of fine revenue collected will depend on future enforcement actions and cannot not been estimated.

State Expenditures

The bill increases state expenditures in the PUC in the Department of Regulatory Agencies (DORA) by about \$467,000 in FY 2024-25, \$440,000 in FY 2025-26, and \$453,000 in FY 2026-27, paid from the Fixed Utility Fund. Expenditures are shown in Table 3 and detailed below.

**Table 3
 Expenditures Under HB 24-1030**

	FY 2024-25	FY 2025-26	FY 2026-27
Department of Regulatory Agencies			
Personal Services	\$359,897	\$359,897	\$365,914
Operating Expenses	\$4,480	\$4,480	\$4,480
Capital Outlay Costs	\$26,680	-	\$6,670
Centrally Appropriated Costs ¹	\$75,693	\$75,693	\$76,257
Total Cost	\$466,750	\$440,070	\$453,322
Total FTE	3.5 FTE	3.5 FTE	3.5 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Regulatory Agencies. The bill increases staffing in the PUC by 3.5 FTE beginning in FY 2024-25. Standard operating and capital outlay costs are included for all staff.

- **Office of Rail Safety.** The PUC requires 3.0 FTE for a professional engineer, project manager, and environmental protection specialist to establish and administer the Office of Rail Safety. Staff will conduct rulemaking on hazardous materials and railroad safety exercises; work with the Federal Railroad Administration on the required agreement; establish and coordinate the rail safety advisory committees; and coordinate and help deliver the required report to the Governor's Office and legislative committees. Expenditures assume a July 1, 2024 start date for this staff.
- **Legal assistance.** The PUC requires 0.5 FTE of an administrative law judge to assist with rulemaking development from July 2024 until June 2026.
- **Wayside detector compliance.** The PUC requires 0.5 FTE starting in July 2026 for professional engineering staff to review wayside detector reports; impose fines against railroads, officers, agents, or employees for violating the bill's requirements; determine proper levels of insurance coverage; review certificates of insurance showing compliance; and conduct compliance audits.

Supporting agencies. The bill increases workload for CDOT and the CDPS to support the PUC in administering the Office of Rail Safety, participate in required inspection activities, help produce the required report to the Governor's Office and relevant legislative committees, and represent CDOT and the CDPS on the Rail Safety Advisory Committee. The CDPS will must also coordinate with the PUC on emergency response planning. This workload increase is absorbable within existing resources.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

Local Government

The bill will increase workload for local fire departments and emergency management organizations that participate in the training required by the bill. Some local governments may also collaborate with the Office of Rail Safety on rulemaking and emergency response.

Effective Date

The bill takes effect July 1, 2024. The bill includes a severability clause.

State Appropriations

For FY 2024-25, the bill requires an appropriation of \$391,057 from the Fixed Utility Fund to the Department of Regulatory Agencies, and 3.5 FTE.

The bill currently includes an appropriation of \$11,651 to this agency, with 0.1 FTE.

State and Local Government Contacts

Labor	Law	Local Affairs
Personnel	Public Health and Environment	Public Safety
Regulatory Agencies	Revenue	Transportation
Treasury		

The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit: leg.colorado.gov/fiscalnotes.