

A BILL

21-3

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To establish within the Department of Energy and Environment an Emergency Response and Rail Safety Division authorized to carry out rail safety inspection activities and coordinate with federal and state rail safety offices; to transfer the functions of the state safety oversight agency for DC Streetcar to the Department of Energy and Environment; to authorize the Department of Energy and Environment to carry out security and emergency response functions related to railroads; and to amend An Act To authorize the District of Columbia government to establish an Office of Civil Defense and for other purposes to require the DC Homeland Security and Emergency Management Agency to review railroad transportation security plans and create a Rail Advisory Board.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this

act may be cited as the “Rail Safety and Security Amendment Act of 2016.”

TITLE I. EMERGENCY RESPONSE AND RAIL SAFETY DIVISION

Sec. 101. The District Department of the Environment Establishment Act, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 8-151.01) is amended as follows:

(1) New paragraphs (5A), (5B), (5C), and (5D) are added to read as follows:

“(5A) “FRA” means the Federal Railroad Administration.

“(5B) “Federal railroad safety laws” means Federal laws, or regulations orders issued under the authority of such laws, addressing the safety of railroad equipment and operations, including:

(A) The Federal Railroad Safety Act of 1970, as amended, approved July

32 5, 1994 (108 Stat. 63; 49 U.S.C. § 20101 *et seq.*);

33 (B) The Safety Appliance Acts, as amended, approved July 5, 1994 (108
34 Stat. 881; 9 U.S.C. 20301 *et seq.*);

35 (C) The Locomotive Inspection Act, as amended, approved July 5, 1994
36 (108 Stat. 885; 49 U.S.C. 20701 *et. seq.*);

37 (D) The Signal Inspection Act, as amended, approved July 5 1994 (108
38 Stat. 883; 49 U.S.C. 20501 *et. seq.*);

39 (E) The Accident Reports Act, as amended, approved July 5 1994 (108
40 Stat. 886; 49 U.S.C. 20901 *et. seq.*);

41 (F) The Hours of Service Act, as amended, approved July 5 1994 (108
42 Stat. 888; 49 U.S.C. 21101-21108); and

43 (G) The Hazardous Materials Transportation Act, as amended, approved
44 July 5 1994 (108 Stat. 759; 49 U.S.C. 5101 *et seq.*), as it pertains to shipment or transportation by
45 railroad.

46 “(5C) “FTA” means the Federal Transit Administration.

47 “(5D) “Hazardous materials” means substances or materials in a quantity and form
48 that may pose an unreasonable risk to health, safety, or property when transported in commerce,
49 including explosives, radioactive materials, etiological agents, flammable liquids or solids,
50 combustible liquids or solids, poisons, oxidizing or corrosive materials, compressed gases, and all
51 materials designated as hazardous materials by the United States Department of Transportation in
52 the Hazardous Materials Table under 49 CFR § 172.101.”.

53 (2) A new paragraph (10A) is added to read as follows:

54 “(10A) “Person” means an individual, corporation, company, association, firm,
55 partnership, society, joint stock company, or any other commercial entity.

56 (3) New paragraphs (11A), (11B), (11C) are added to read as follows:

57 (11A)(A) “Rail system” means all forms of non-highway ground transportation that
58 run on rails or electromagnetic guideways, including rail-fixed guideway public transportation
59 systems and railroads as defined by 49 CFR § 659.5.

60 (B) The term “Rail system” does not include public rail system operations,
61 conducted by or on behalf of the Washington Metropolitan Area Transit Authority or any rail
62 system that is connected to the general railroad system of transportation.

63 (11B)(A) “Railroad” means:

64 (i) Any form of non-highway ground transportation that runs on
65 rails or electromagnetic guideways, including commuter or other short-haul railroad passenger
66 service in the District; and

67 (ii) High-speed ground transportation systems that connect the
68 District with metropolitan areas, without regard to whether those systems use new technologies
69 that are not associated with traditional railroads;

70 (B) The term “railroad” does not include public rail system operations,
71 conducted by or on behalf of the Washington Metropolitan Area Transit Authority, the District
72 Department of Transportation, or other rail system operators in the District that are not connected
73 to the general railroad system of transportation.

74 (11C) “Railroad carrier” means a person providing railroad transportation.”.

75 (3) A new paragraph (13A) is added to read as follows:

76 (13A) “State safety oversight agency” means the entity designated in the District to
77 implement the requirements of 49 U.S.C. § 5329 and 49 C.F.R. §§ 659 and 674.

78 (b) Section 106 (D.C. Official Code § 8-151.06) is amended as follows:

79 (1) Paragraph (5) is amended by striking the phrase “; and” and inserting a
80 semicolon in its place.

81 (2) Paragraph (6) is amended by striking the phrase “materials.” and inserting the
82 phrase “materials; and” in its place.

83 (3) A new paragraph (7) to read as follows:

84 “(7) An Emergency Response and Rail Safety Division to do the following, to the
85 extent permissible under federal railroad safety laws or 49 USCS § 5329:

86 “(A) Implement and administer rail safety and security programs and
87 initiatives for rail systems within the District, including the DC Streetcar when section 101(c) of
88 the Rail Safety and Security Amendment Act of 2016, as approved by the Committee on Judiciary
89 on November 9, 2016 (Committee print for Bill 21-003) have been met;

90 “(B) To coordinate and conduct emergency responses to spills and releases
91 of hazardous substances and pollutants within the District and District waters;

92 “(C) To enter into inter-governmental agreements with appropriate federal
93 and state agencies to enhance the capabilities of the District to respond to emergencies and to
94 oversee the safety and security of railroad operations within the District;

95 “(D)(1) Conduct inspection, investigative, enforcement, and surveillance
96 activities related to the safety and security of railroad operations within the District;

97 (2) If the Director determines that enforcement is permitted under
98 49 U.S.C. § 20113, the Director may refer a matter to the Attorney General for appropriate
99 enforcement action in federal district court.

100 (c) New sections 108a-108g are added to read as follows:

101 “Sec. 108a. State safety oversight agency designation for DC Streetcar.

102 “DDOE is designated as the state safety oversight agency, as described in 49 U.S.C.§
103 5329(e) and regulations issued thereunder, for the DC Streetcar when:

104 (1) The federal government provides its approval of the operation of the District’s state
105 safety oversight program by the Department, pursuant to 49 U.S.C. § 5329(e); and

106 (2) The Mayor publishes a notice in the District of Columbia Register:

107 (A) Stating that the approval referred to in paragraph (1) of this section
108 was provided; and

109 (B) Identifying the date on which the Department shall assume the
110 responsibility of serving as the state safety oversight agency.

111 “Sec. 108b. Duties, powers, and requirements related to DC Streetcar safety oversight.

112 “(a) The Director, in carrying out the duties and exercising the powers described in this
113 section, shall not be supervised by, or under the direction or control of, any District officer or
114 employee, or anyone acting on behalf of a District officer or employee, responsible for any aspect
115 of the operation of the DC Streetcar.

ENGROSSED ORIGINAL

116 “(a-1) The state safety oversight agency shall be a separate Administration in the
117 Department with a separate budget and staff that shall be clearly delineated from the rest of the
118 Department.

119 “(b) The Director shall, in accordance and to the extent permissible under 49 USCS § 5329:

120 “(1) Oversee the operations of the DC Streetcar insofar as those operations affect, or
121 could affect, the safe operation of the DC Streetcar;

122 “(2) Conduct, or cause to be conducted, investigations, independently or in
123 cooperation with federal or District offices or agencies, into the operations of the DC Streetcar,
124 including any accident or incident involving the operations or assets of the DC Streetcar, insofar
125 as those operations affect, or could affect, the safe operation of the DC Streetcar. This authority
126 includes the authority to inspect DC Streetcar equipment, property, and operations, and to inspect
127 and copy DC Streetcar records, reports, and other information;

128 “(3) Audit the DC Streetcar system for compliance with safety and security-related
129 plans, or for any other purpose that the Director concludes would promote the safe operation of
130 the DC Streetcar.

131 “(4) Issue reports and findings regarding all aspects of the safety and security of the
132 DC Streetcar, including operations and accidents, when:

133 “(A) The issuance of reports and findings is required by federal or District
134 law; or

135 “(B) The Director determines that such action would promote the safe
136 operation of the DC Streetcar.

ENGROSSED ORIGINAL

137 (5) Require the DC Streetcar to develop and submit safety and security-related plans
138 pursuant to 49 U.S.C. §5239(e)(4)(A)(iv) and approve or disapprove them as appropriate.

139 (6)(A) Enforce District statutes, regulations, and executive orders related to the safe
140 operation of the DC Streetcar.

141 (B) In order to carry out this authority under subparagraph (A) of this paragraph,
142 the Director may order the partial or complete cessation of any activity undertaken by the District
143 government, or any entity acting on the District government's behalf, in connection with the
144 operation of the DC Streetcar.

145 (7) Conduct all operations or take any other action required of a state safety oversight
146 agency by the federal government pursuant to 49 U.S.C. § 5329, and any regulations issued
147 thereunder.

148 (c) Neither the Director nor the Department shall receive funds from the District
149 Department of Transportation or DC Streetcar related to, or for purposes of, the operation or
150 oversight of the DC Streetcar.

151 (d) The Director may, in accordance with 49 U.S.C. §5349, execute and file one or more
152 applications on behalf of the District (and any required certifications, assurances, or other
153 documents) with the FTA for federal grants or financial assistance authorized by 49 U.S.C. §
154 5329(e), Title 23 of the United States Code, or other federal statutes authorizing a project
155 administered by the FTA, and enter into one or more grants or cooperative agreements with the
156 FTA on behalf of the District.

157 “Sec. 108c. Railroad safety and security authority.

158 “(a) The Director may enter into agreements with, and provide any necessary certifications,
159 documents, and other information to the FRA in order to perform the functions of a state railroad
160 safety agency, subject to any limitations that may be specified by 49 U.S.C. 20101 *et seq.* or any
161 regulations issued thereunder.

162 (b) The Director may engage in investigative and surveillance activities related to the
163 safety of facilities, equipment, rolling stock, and operations of railroads and railroad carriers
164 operating in the District in accordance with 49 U.S.C. § 20105.

165 (c) The Director may impose fees or take enforcement action necessary to address the
166 security of railroad operations in the District for railroad carriers that transport hazardous materials
167 within or through the District, to the extent permitted under 49 U.S.C. § 5125.

168 (d)(1) To the extent permissible under 49 U.S.C. § 20106, the Director shall require that a
169 train or light engine used in the movement of railroad freight or shares the same rail corridor as a
170 passenger or commuter train in the District, excluding a train or light engine used for the movement
171 of railroad freight involving hostler service or utility employees in yard service, shall not be
172 operated unless it has a crew of at least 2 individuals.

173 (2)(A) For the purposes of this subsection, the term:

174 (B) “Hostler” means one who moves locomotives in and out of a
175 roundhouse.

176 (C) “Light engine” means a locomotive operating without cars attached or
177 with the caboose only.

178 (D) “Railroad freight” means a train with goods aboard it or a group of
179 freight cars hauled by one or more locomotives on a railway.

180 “Sec. 108d. Emergency response.

181 “The Director, in accordance with 49 U.S.C. § 5329 may take any action necessary to
182 address emergency response planning and operations related to rail systems in the District,
183 including:

184 “(a) Development of emergency response plans as may be required by the FTA for the DC
185 Streetcar; and

186 “(b) Coordination and support in accordance with the District Response Plan as drafted by
187 the Homeland Security and Emergency Management Agency regarding the planning for and
188 response to emergencies involving railroad operations in the District.

189 “Sec. 108e. Public reporting.

190 “(a) The Director shall, consistent with applicable federal railroad safety laws and
191 regulations, publish in a manner calculated to provide reasonable public notice on a biannual basis,
192 information related to rail safety and security, including:

193 “(1) The quantity of hazardous materials that were transported within or through
194 the District by rail during the reporting period; and

195 “(2) The railroad inspection, investigation, and surveillance activities performed by
196 the Department under section 108c during the reporting period.

197 “(b) In publishing the information required by subsection (a) of this section, the Director
198 shall take into account public safety and confidentiality necessary for public security.

199 “Sec. 108f. Entry and inspection.

200 “To carry out sections 108c, 108d, and 108e the Director shall have the authority,
201 at any reasonable time and upon the presentation of appropriate credentials to the owner, operator,
202 or person in charge, to inspect railroad equipment, facilities, rolling stock, or operations or to
203 inspect any record related to the safety, security, and operations of the railroad, to the extent
204 permissible under federal railroad safety laws.”

205 “Sec. 108g. Rail Safety and Security Fund.

206 (a) There is established as a special fund the Rail Safety and Security Fund (“Fund”), which
207 shall be administered by the Mayor in accordance with subsection (c) of this section.

208 (b) Revenue from the following sources shall be deposited into the Fund:

209 (1) Fees assessed pursuant to this title;

210 (2) Fines collected for violations of this title or the regulations issued thereunder;

211 and

212 (3) Revenue assessed or collected pursuant to this title.

213 (c) Money in the Fund shall be used to administer and manage expenses of the emergency
214 response, rail safety, and rail security programs for railroad operations in the District.

215 (d)(1) The money deposited into the Fund, and interest earned, shall not revert to the
216 unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal
217 year, or at any other time.

218 (2) Subject to authorization in an approved budget and financial plan, any funds

219 appropriated in the Fund shall be continually available without regard to fiscal year limitation.”.

220 (d) Section 110 (D.C. Official Code § 8-151.10) is amended by adding a new subsection
221 (c) to read as follows:

222 “(c) The Mayor, pursuant to the District of Columbia Administrative Procedure Act,
223 approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), and to the extent
224 permissible by federal railroad safety laws or 49 U.S.C. § 5329 , shall issue rules to:

225 (1) Promote rail safety, to the extent permitted by 49 U.S.C. § 20106;

226 (2) Establish railroad civil penalties or fines for violations of this title or regulations
227 issued thereto;

228 (3)(A) Establish fees to be paid by railroad carriers for the inspection,
229 surveillance, enforcement, and investigative activities performed pursuant to section 204 of the
230 Rail Safety and Security Amendment Act of 2016, as approved by the Committee on Judiciary on
231 November 9, 2016 (Committee print for Bill 21-003) and the railroad security functions performed
232 pursuant to section 205 of the Rail Safety and Security Amendment Act of 2016, as approved by
233 the Committee on Judiciary on November 9, 2016 (Committee print for Bill 21-003);

234 (B) The fees under paragraph (A) of this paragraph shall be established at
235 amounts reasonably calculated to reimburse the cost to the District of implementing and enforcing
236 the provisions of sections 204 and 205 of the Rail Safety and Security Amendment Act of 2016,
237 as approved by the Committee on Judiciary on November 9, 2016 (Committee print for Bill 21-
238 003);

239 (4) Require reimbursement of costs from railroad carriers for emergency response
240 services related to actions of the railroad carriers in the District; and

241 (5) Any other rules necessary to implement the provisions of this title.

242 (d) Any civil penalties or fines established by the Mayor pursuant to subsection (c) of this
243 section, shall be a civil infraction for purposes of Department of Consumer and Regulatory Affairs
244 Civil Infractions Act of 1985, effective July 16, 1985 (D.C. Law 6-42; D.C. Official Code § 2-
245 1801.01 *et seq.*).

246 (e) At the time the proposed rules developed pursuant to subsection (c) of this section are
247 submitted to the District of Columbia Register for public notice and comment, the Mayor shall
248 provide the proposed rules to the Rail Advisory Board, established by section 202 of the Rail
249 Safety and Security Amendment Act of 2016, as approved by the Committee on Judiciary on
250 November 9, 2016 (Committee print for Bill 21-003) for comment. If the Mayor does not
251 incorporate the Board’s suggested modifications provided pursuant to section 203(b)(4) of the Rail
252 Safety and Security Amendment Act of 2016, as approved by the Committee on Judiciary on
253 November 9, 2016 (Committee print for Bill 21-003) into the final rules, the Mayor shall provide
254 the Board with a detailed written explanation as to why the proposed modifications were not
255 incorporated.

256 **TITLE II. RAIL ADVISORY BOARD**

257 Sec. 201. Definitions

258 For the purposes of this title, the term:

259 (1) “Board” means Rail Advisory Board.

260 (2) “Railroad carrier” shall have the same meaning as provided in section

261 101(11C) of the District Department of the Environment Establishment Act, effective February
262 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.01(11C)).

263 (3) “Federal railroad safety laws” shall have the same meaning as provided in
264 section 101(5B) of the District Department of the Environment Establishment Act, effective
265 February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.01(5B)).

266 Sec. 202. Rail Advisory Board.

267 “(a) There is hereby established the Rail Advisory Board.

268 (b) The Board shall be composed of 9 members, appointed as follows:

269 (1) One member from a railroad carrier authorized to operate in the District of
270 Columbia, appointed by the Mayor.

271 (2) Two labor representatives, appointed by the Mayor.

272 (3) One community representative appointed by the Chairperson of the Council
273 committee with oversight over the Homeland Security and Emergency Management Agency.

274 (4) One community representative appointed by the Chairperson of the Council
275 committee with oversight over the Department of Energy and Environment.

276 (5) The Director of Homeland Security and Emergency Management Agency or
277 the Director’s designee,

278 (6) The Chief of the Fire and Emergency Medical Services Department or the
279 Chief’s designee;

280 (7) The Director of the District Department of Transportation or the Director’s
281 designee, and

282 (8) Director of the Department of Energy and the Environment or the Director's
283 designee.

284 ~~(c) The members of the board established in (b)(1) and (b)(2) of this section shall serve~~
285 ~~for terms of three years, and the members of established in (b)(3) and (b)(4) of this section shall~~
286 ~~serve for terms of two years.~~

287 (c)(1) The members of the Board appointed under subsections (b)(1) and (b)(2) of this
288 section shall serve 4-year terms.

289 “(2) The members of the Board appointed under subsections (b)(3) and (b)(4) of this
290 section shall serve for 3-year terms.

291 (d) The chairperson of the Board shall be elected at the first meeting of the Board by a
292 majority vote, and every 2 years thereafter. The chairperson shall serve a 2-year term.

293 (e) The Board shall elect, by a majority vote, one of its members to serve as vice-
294 chairperson.

295 (f) Vacancies shall be filled in the same manner as the initial appointment. A member
296 appointed to fill a vacancy shall serve for the remainder of the unexpired term.

297 (g) The Board shall meet, at a minimum, on a quarterly basis, at times to be determined
298 by the Board at the Board's first meeting.

299 Sec. 203. Functions and operations of the Board.

300 (a) The purpose of the Board shall be to serve as the advisory body to the Mayor, the
301 Council, the Homeland Security Emergency Management Agency, and the Department of Energy

302 and Environment on matters pertaining to investigation and surveillance of federal railroad safety
303 laws.

304 (b) The Board shall:

305 (1) Develop and evaluate policy and recommendations on the allocation of
306 District funding, rail enhancements, development initiatives, rail safety, homeland security, and
307 community relations programs;

308 (2) Identify and develop projects and policies that mitigate environmental impact
309 of railroad operation and enhance the availability and utilization of rail transportation in the
310 District of Columbia;

311 (3) At the request of the Mayor, the Council, the Director of Homeland Security
312 Emergency Management Agency, or the Director of the Department of Energy and Environment,
313 advise on any other matters pertaining to rail transportation in the District of Columbia; and

314 (4) Submit comments on proposed rules developed pursuant to section 110 of the
315 District Department of the Environment Establishment Act, effective February 15, 2006 (D.C. Law
316 16-51; D.C. Official Code § 8-151.10), including any proposed modifications, to the Mayor prior
317 to the expiration of the public comment period.

318 (c) Members of the Board shall receive no compensation, but shall be reimbursed their
319 actual and necessary expenses incurred in the connection with their official duties. Staff support
320 for the Board shall be provide by the District Columbia Department of Transportation with
321 supplemental support from Department of Energy and Environment.

322

323 **TITLE III. CONFORMING AMENDMENTS**

324 Sec. 302. An Act To classify the officers and members of the fire department of the District
325 of Columbia, and for other purposes, approved June 20, 1906 (34 Stat. 314; D.C. 26 Official Code
326 § 5-401 *et seq.*), is amended as follows:

327 (a) Section 1 (D.C. Official Code § 5-401) is amended by repealing subsection (c).

328 (b) Section 1a (D.C. Official Code § 5-401.01) is repealed.

329 Sec. 303. Title II of An Act To authorize the District of Columbia government to establish
330 an Office of Civil Defense, and for other purposes, approved August 11, 1950 (64 Stat. 438; D.C.
331 Official Code § 7-2231.01 *et seq.*), is amended by adding a new section 211 to read as follows:

332 “Sec. 211. Rail security plan review.

333 “To the extent permissible under 6 U.S.C. § 1162, the Agency shall review and provide
334 recommendations to railroad carriers on conducting vulnerability assessments and developing
335 security plans required by 6 U.S.C. § 1162.

336 **TITLE IV. APPLICABILITY**

337 Sec. 401. Applicability

338 (a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget
339 and financial plan.

340 (b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in
341 an approved budget and financial plan, and provide notice to the Budget Director of the Council
342 of the certification.

343 (c)(1) The Budget Director shall cause the notice of the certification to be published in the
344 District of Columbia Register.

345 (2) The date of publication of the notice of the certification shall not affect the
346 applicability of this act.

347 (d) Section 302 of the Rail Safety and Security Amendment Act of 2016, as approved by
348 the Committee on Judiciary on November 9, 2016 (Committee print for Bill 21-0003) shall apply
349 on the date the requirements under section 101(c) have been met.

350 (e) Sections 204, 205, 207 through 211 of the Rail Safety and Security Amendment Act of
351 2016, as approved by the Committee on Judiciary on November 9, 2016 (Committee print for Bill
352 21-0003) shall apply after the Mayor enters an agreement to participate in railroad investigative
353 and surveillance activities with the Federal Railroad Administration (“FRA”) and the FRA
354 delegates investigative and surveillance authority with respect to all or any part of the federal
355 railroad safety laws pursuant to 49 CFR 212.105.

356 **TITLE V. FISCAL IMPACT STATEMENT**

357 Sec. 501. Fiscal impact statement.

358 The Council adopts the fiscal impact statement in the committee report as the fiscal
359 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
360 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

361 **TITLE VI. EFFECTIVE DATE**

362 Sec. 601. Effective date.

ENGROSSED ORIGINAL

363 This act shall take effect following approval by the Mayor (or in the event of veto by the
364 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
365 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
366 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
367 Columbia Register.