

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 486**

Introduced by McGill, 26

Read first time January 17, 2007

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to railroads; to amend sections 75-401 and  
2 75-402, Reissue Revised Statutes of Nebraska, and section  
3 75-109.01, Revised Statutes Cumulative Supplement, 2006;  
4 to provide powers and duties for the Public Service  
5 Commission; to require railroad carriers to provide  
6 security personnel as prescribed; to adopt the Local  
7 Community Rail Security and Employee Education Act;  
8 to harmonize provisions; and to repeal the original  
9 sections.  
10 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 75-109.01, Revised Statutes Cumulative  
2 Supplement, 2006, is amended to read:

3           75-109.01 Except as otherwise specifically provided by  
4 law, the Public Service Commission shall have jurisdiction, as  
5 prescribed, over the following subjects:

6           (1) Common carriers, generally, pursuant to sections  
7 75-101 to 75-158;

8           (2) Grain pursuant to the Grain Dealer Act and the Grain  
9 Warehouse Act and sections 89-1,104 to 89-1,108;

10           (3) Manufactured homes and recreational vehicles  
11 pursuant to the Uniform Standard Code for Manufactured Homes and  
12 Recreational Vehicles;

13           (4) Modular housing units pursuant to the Nebraska  
14 Uniform Standards for Modular Housing Units Act;

15           (5) Motor carrier registration and safety pursuant to  
16 sections 75-301 to 75-322, 75-369.03, 75-370, and 75-371;

17           (6) Pipeline carriers and rights-of-way pursuant to the  
18 State Natural Gas Regulation Act and sections 75-501 to 75-503;

19           (7) Railroad carrier safety pursuant to sections 74-918,  
20 74-919, 74-1323, and 75-401 to 75-430, section 4 of this act, and  
21 the Local Community Rail Security and Employee Education Act;

22           (8) Telecommunications carriers pursuant to the  
23 Automatic Dialing-Announcing Devices Act, the Emergency Telephone  
24 Communications Systems Act, the Enhanced Wireless 911 Services  
25 Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska

1 Telecommunications Regulation Act, the Nebraska Telecommunications  
2 Universal Service Fund Act, the Telecommunications Relay System  
3 Act, the Telephone Consumer Slamming Prevention Act, and sections  
4 86-574 to 86-580;

5 (9) Transmission lines and rights-of-way pursuant to  
6 sections 70-301 and 75-702 to 75-724;

7 (10) Water service pursuant to the Water Service  
8 Regulation Act; and

9 (11) Jurisdictional utilities governed by the State  
10 Natural Gas Regulation Act. If the provisions of Chapter 75  
11 are inconsistent with the provisions of the State Natural Gas  
12 Regulation Act, the provisions of the State Natural Gas Regulation  
13 Act control.

14 Sec. 2. Section 75-401, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 75-401 The commission shall exercise jurisdiction over  
17 the service, facilities, and equipment of all railroad carriers  
18 in this state. This jurisdiction shall extend and apply to the  
19 general public, as well as those having business relations with the  
20 railroad carrier. Sections 75-401 to 75-430 and section 4 of this  
21 act shall not be construed as giving the commission jurisdiction  
22 or control over the relations between any railroad carrier and  
23 its employees, or its employees' order, union, or other bargaining  
24 agent, either contractual or otherwise, except as provided in  
25 sections 75-419 to 75-426.

1           The commission shall enforce the standards of railroad  
2 safety set forth in 49 C.F.R. parts 213, 215, 223, 228, 229, 231,  
3 and 232.

4           Sec. 3. Section 75-402, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6           75-402 As used in sections 75-401 to 75-430 and section  
7 4 of this act, and in all rules and regulations prescribed by the  
8 commission, unless the context otherwise requires:

9           (1) Railroad carrier ~~shall mean~~ means any common carrier  
10 engaged in the carrying of freight or passengers over any line of  
11 railroad, or part thereof, within the State of Nebraska; and

12           (2) Railroad ~~shall mean~~ means any line of railroad track,  
13 or part thereof, located within the State of Nebraska.

14           Sec. 4. (1) If a railroad carrier stops a train or  
15 issues instructions to store a train at an unsecured location with  
16 locomotive power attached and the employees as defined in section  
17 49 C.F.R. 228.5 have worked all their allowable hours at such  
18 time under 49 C.F.R. Part 228, the railroad carrier shall provide  
19 adequate, trained personnel to secure the train within fifteen  
20 minutes after the expiration of the allowable hours. The railroad  
21 carrier shall continue to secure the train, and the railroad  
22 carrier shall not be relieved of the duty to secure the train  
23 until adequate employees who have adequate time to perform duties  
24 as prescribed in 49 C.F.R. Part 228 resume the preparation to move  
25 the train.

1           (2) A railroad carrier and its officers shall be subject  
2 to a civil fine of not less than five hundred dollars for a  
3 first violation of this section, one thousand dollars for a second  
4 violation of this section, one thousand five hundred dollars for a  
5 third violation of this section, two thousand dollars for a fourth  
6 violation of this section, and two thousand five hundred dollars  
7 for a fifth or subsequent violation of this section.

8           (3) The Public Service Commission shall enforce this  
9 section pursuant to sections 75-101 to 75-158. The commission shall  
10 remit fines collected under this section to the State Treasurer  
11 for distribution in accordance with Article VII, section 5, of the  
12 Constitution of Nebraska.

13           Sec. 5. Sections 5 to 13 of this act shall be known and  
14 may be cited as the Local Community Rail Security and Employee  
15 Education Act.

16           Sec. 6. The Legislature declares that the purpose of  
17 the Local Community Rail Security and Employee Education Act is  
18 to provide for the security and safety of local communities and  
19 local community facilities, to protect local communities from  
20 transportation practices that fail to secure rail facilities and  
21 equipment from the threat of terrorism, and to ensure proper  
22 communication between the owners and operators of rail facilities  
23 and equipment with local and state first responders.

24           Sec. 7. For purposes of the Local Community Rail Security  
25 and Employee Education Act:

- 1           (1) Commission means the Public Service Commission;
- 2           (2) Director means the Director of State Homeland  
3 Security;
- 4           (3) Railroad means any line of railroad track, or part  
5 thereof, located within the State of Nebraska; and
- 6           (4) Railroad carrier means any common carrier engaged in  
7 the carrying of freight or passengers over any line of railroad, or  
8 part thereof, within the State of Nebraska.
- 9           Sec. 8. (1) By July 1, 2008, every railroad carrier shall  
10 provide a risk assessment to the commission, the director, and the  
11 Nebraska Emergency Management Agency for each railroad and related  
12 facility in the state that is under its ownership, operation, or  
13 control.
- 14           (2) The risk assessment shall, for each railroad and  
15 related facility, describe all of the following:
- 16           (a) The location and functions of the railroad and  
17 related facility;
- 18           (b) All types of cargo that are moved through or stored  
19 at the railroad or related facility;
- 20           (c) Any hazardous cargo that is moved through or stored  
21 at the railroad or related facility;
- 22           (d) The frequency that any hazardous cargo is moved  
23 through or stored at the railroad or related facility;
- 24           (e) A description of the practices of the railroad  
25 carrier to prevent acts of sabotage, terrorism, or other crimes on

1 the railroad or related facility;

2 (f) All training programs that the railroad carrier  
3 requires for its employees at the railroad or related facility;

4 (g) The emergency response procedures of the railroad  
5 carrier to deal with acts of sabotage, terrorism, or other crimes  
6 at the railroad or related facility; and

7 (h) The procedures of the railroad carrier to communicate  
8 with local and state law enforcement personnel, emergency  
9 personnel, transportation officials, and other first responders in  
10 the event of acts of sabotage, terrorism, or other crimes at the  
11 railroad or related facility.

12 Sec. 9. The Nebraska Emergency Management Agency may  
13 provide the risk assessment provided pursuant to section 8 of this  
14 act to other law enforcement or emergency personnel.

15 Sec. 10. (1) By January 1, 2009, every railroad carrier  
16 shall develop and implement an infrastructure protection program  
17 to protect rail infrastructure in the state from acts of sabotage,  
18 terrorism, or other crimes.

19 (2)(a) The infrastructure protection program shall  
20 address the security of all critical railroad infrastructure.

21 (b) The infrastructure protection program shall provide  
22 training to all employees of the railroad carrier performing work  
23 at a railroad or related facility on how to recognize, prevent, and  
24 respond to acts of sabotage, terrorism, or other crimes.

25 (3)(a) All employees of a contractor or subcontractor

1 of a railroad carrier, and any other person performing work  
2 at a railroad or related facility that is not the employee  
3 of the railroad carrier, shall receive training equivalent to  
4 that received by employees of the railroad carrier pursuant to  
5 subdivision (2)(b) of this section within a reasonable period of  
6 time. The commission, in consultation with the director, may adopt  
7 and promulgate rules and regulations to implement this subdivision.

8 (b) All employees of a contractor or subcontractor of  
9 a railroad carrier, and any other person performing work at a  
10 railroad or related facility that is not the employee of the  
11 railroad carrier, shall undergo an equivalent evaluation of their  
12 background, skills, and fitness as the railroad carrier implements  
13 for its employees pursuant to its infrastructure protection plan.  
14 The commission, in consultation with the director, may adopt and  
15 promulgate rules and regulations to implement this subdivision.

16 (4) Each railroad carrier in the state shall provide  
17 to the commission, the director, and the Nebraska Emergency  
18 Management Agency a copy of its infrastructure protection program.  
19 The infrastructure protection program shall be confidential and  
20 shall be exempt from sections 84-912 to 84-912.09.

21 (5) The infrastructure protection program shall be  
22 updated by the railroad carrier at least once every year, and the  
23 updated plan shall be submitted to the commission, the director,  
24 and the Nebraska Emergency Management Agency.

25 (6) The commission, in consultation with the Nebraska



1 Emergency Management Agency, shall review the infrastructure  
2 protection program submitted by a railroad carrier, may conduct  
3 inspections to facilitate the review, and may order a railroad  
4 carrier to improve, modify, or change its program to comply with  
5 the requirements of the Local Community Rail Security and Employee  
6 Education Act.

7 (7) The commission may fine a railroad carrier for  
8 failure to comply with the requirements of this section or an order  
9 of the commission pursuant to this section.

10 Sec. 11. (1) Every railroad carrier shall, for all of its  
11 railroad and related facilities that handle hazardous cargo:

12 (a) Secure all facilities that handle or store hazardous  
13 materials by providing adequate security personnel;

14 (b) Store hazardous materials only in secure facilities  
15 designed for storage, which shall not include mainline, branch,  
16 industrial, or passing tracks not so designed or retrofitted;

17 (c) Not leave locomotive equipment running while  
18 unattended or leave any unattended locomotive equipment unlocked;

19 (d) Ensure that the cabs of occupied locomotives are  
20 secured from hijacking, sabotage, or terrorism;

21 (e) Not use remote control locomotives to move hazardous  
22 materials over a public crossing unless the remote control operator  
23 is able to maintain line-of-sight visibility of the public  
24 crossing, visually ensure that all automatic highway-rail grade  
25 crossing warning devices are functioning as intended, and ensure

1 that it is safe for the train movement to enter the public  
2 crossing; and

3 (f) Secure remote control devices to prevent access to  
4 those devices by unauthorized personnel.

5 (2) The commission may adopt and promulgate rules and  
6 regulations to carry out this section.

7 Sec. 12. Every railroad carrier shall provide  
8 communications capability which is able to:

9 (1) Timely alert local and state law enforcement  
10 personnel, emergency personnel, transportation officials, and other  
11 first responders in the event of sabotage, terrorism, or other  
12 crimes; and

13 (2) Notify its employees of the local or national threat  
14 level for the rail industry.

15 Sec. 13. No railroad carrier or any other person covered  
16 by the Local Community Rail Security and Employee Education Act  
17 may act to punish an employee who reports a violation of the Local  
18 Community Rail Security and Employee Education Act. An employee  
19 against whom a punitive action is taken may seek civil damages  
20 from his or her employer and officers of the employer that act to  
21 punish an employee who reports a violation of the Local Community  
22 Rail Security and Employee Education Act, in addition to any other  
23 remedies the court deems appropriate.

24 Sec. 14. Original sections 75-401 and 75-402, Reissue  
25 Revised Statutes of Nebraska, and section 75-109.01, Revised

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1 Statutes Cumulative Supplement, 2006, are repealed.