



2013 ASSEMBLY BILL 614

January 10, 2014 - Introduced by Representatives BILLINGS, WACHS, YOUNG, BERNARD SCHABER, OHNSTAD, GOYKE, MILROY, BERCEAU, ZEPNICK, KOLSTE, ZAMARRIPA and BARCA, cosponsored by Senators HANSEN, SHILLING, MILLER, LASSA and VINEHOUT. Referred to Committee on Transportation.

1 **AN ACT to amend** 192.31 (3); and **to create** 192.51, 192.53 (5e), (5m) and (5s) and
2 192.55 (8) of the statutes; **relating to:** railroad track clearance and railroad
3 walkways and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, most of this state's regulatory authority over railroads resides with the Office of Commissioner of Railroads (OCR), which is generally charged with receiving complaints, conducting hearings, and entering orders related to railroad operations and safety.

Under current law, unless an exception applies, no building or loading platform may be constructed or reconstructed that has a horizontal clearance of less than 8.5 feet between it and the center line of a railroad track. The same horizontal clearance is also required with respect to any material used in and about the construction of a building or loading platform. Certain exceptions apply to platforms at passenger stations used for loading and unloading passengers, baggage, and mail and platforms for handling baggage, mail, and freight to and from cars on other than main tracks. Subject to specified exceptions, a railroad or shipper may not do any of the following: 1) place or construct, within 8.5 feet of the center line of any railroad track, any retaining walls, fences, signs, conveyors, or similar obstructions; or 2) permit, within 8.5 feet of the center line of any railroad track, the accumulation of waste or other material. However, OCR may exempt structures or materials from these horizontal clearance requirements if OCR finds that doing so will not imperil life or limb and that the public interest requires or permits the exemption from these

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requirements. Any railroad or shipper that violates these horizontal clearance requirements, or that fails, neglects, or refuses to obey a lawful order of OCR, must forfeit not less than \$100 nor more than \$200.

Current law also prohibits the construction or reconstruction, after December 31, 1993, of any overhead structure that has a vertical clearance of less than 23 feet above the top of the rail of a railroad track. However, OCR may exempt an overhead structure from this minimum vertical clearance requirement if OCR finds that the structure will not imperil life or limb and that the public interest requires or permits the structure to be exempted from the vertical clearance requirement. Telltales (arrangements of long strips of rope, wire, or other material hanging from a bar over railroad tracks to warn of an upcoming low overhead structure) are generally not required above railroad tracks unless required under federal law or unless OCR orders installation of a telltale after finding that the absence of a telltale would create an unreasonable risk of harm to the public or a railroad employee on a railroad not under the jurisdiction of the Federal Railroad Administration. An employee of a railroad who is injured by or because of the existence of a bridge or other structure over railroad tracks at a height less than 23 feet, which has not been protected by telltales, is not to be considered to have assumed the risk of the injury.

Also under current law, whenever a complaint is made with OCR that a railroad bridge lacks walks or railings and is therefore dangerous to railroad employees and the safety of these employees requires alteration of the bridge to provide for walks and railings, or OCR determines that the safety of railroad employees requires the alteration of a railroad bridge, OCR must hold a hearing. After the hearing, OCR may order alteration of the bridge, at the railroad's expense.

This bill requires railroads to provide walkways adjacent to those portions of yard tracks where railroad employees frequently work on the ground performing switching activities. These walkways must meet certain requirements, including that they be at least two feet wide, be maintained in a safe condition, be free of hazards and obstructions, and be surfaced with certain types of materials. These walkway requirements generally apply only to new construction and reconstruction of yard track completed after the bill's effective date (which is approximately six months after enactment) and only to class one and class two rail carriers as classified by the federal Surface Transportation Board. There are certain exceptions to these walkway requirements and OCR may also waive these requirements under specified circumstances. OCR may also impose these walkway requirements by order if OCR finds that railroad employees who frequently work adjacent to a portion of track performing switching activities are exposed to safety hazards due to the lack of a walkway or to the condition of a walkway constructed on or before the bill's effective date. A railroad that violates these walkway requirements or fails to obey an order made by OCR must forfeit \$500 for each violation.

The bill also creates additional horizontal clearance requirements for railroads. Under the bill, with limited exceptions, a railroad may not construct or reconstruct, after the bill's effective date, any of the following: 1) any railroad track used for moving cars engaged in the movement of traffic the center line of which is within 14 feet from the center line of any other parallel track to which it adjoins; 2) any ladder

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track closer than 19 feet to an adjacent ladder track, as measured from the center line of each track; or 3) any ladder track closer than 17 feet to any other parallel track, as measured from the center line of each track. A railroad also may not permit the space between or beside any railroad tracks that is ordinarily used by employees in the discharge of their duties and that is within 8.5 feet of the center line of the track to become or remain obstructed by a foreign obstacle that will interfere with the work of the employees or subject the employees to any unnecessary hazard. The bill also provides that an employee of a railroad who is injured by or because of the existence of a structure or materials within a distance from tracks that is less than the required horizontal clearance is not considered to have assumed the risk of the injury.

The bill also specifies that, for purposes of required vertical clearance over railroad tracks, wires constructed or reconstructed after the bill's effective date are overhead structures.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 192.31 (3) of the statutes is amended to read:

2 192.31 (3) After December 31, 1993, no overhead structure shall be constructed
3 or reconstructed, not including ordinary repairs necessary for maintenance, which
4 shall have a vertical clearance of less than 23 feet above the top of rail, except as
5 provided in sub. (4). After the effective date of this subsection [LRB inserts date],
6 overhead structure shall include wires.

7 **SECTION 2.** 192.51 of the statutes is created to read:

8 **192.51 Railroad walkways. (1)** In this section, "frequently work" means to
9 work at least 3 days per week, one shift per day.

10 **(2)** Railroad companies shall provide walkways adjacent to those portions of
11 yard tracks where railroad company employees frequently work on the ground
12 performing switching activities.

13 **(3)** Walkways required under sub. (2) shall satisfy all of the following:

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1 (a) Be surfaced with asphalt, concrete, planking, grating, native material,
2 crushed material, or other similar material. If crushed material is used, 100 percent
3 of the material shall be capable of passing through a 1.5 inch square sieve opening
4 and at least 90 percent of the material shall be capable of passing through a one inch
5 square sieve opening, except that a de minimus variation is permissible if the
6 railroad company has made a good faith effort to comply with these requirements.

7 (b) Have a reasonably uniform surface and be maintained in a safe condition.

8 (c) Be at least 2 feet wide.

9 (d) Be kept reasonably clear of spilled fuel, oil, sand, posts, and other hazards
10 or obstructions.

11 (e) For walkways having cross slopes, have cross slopes not exceeding one inch
12 of elevation for each 8 inches of horizontal length in any direction.

13 **(4)** (a) Railroad companies are not required to comply with subs. (2) and (3)
14 during any of the following:

15 1. Maintenance activities.

16 2. Emergencies.

17 3. Any period, after an occurrence identified in subd. 1. or 2., reasonably
18 necessary to allow the railroad company to return to compliance with subs. (2) and
19 (3).

20 (b) Upon written application by a railroad company, the office may, after a
21 hearing in the manner provided in ss. 195.04 to 195.043, waive any portion of sub.
22 (2) or (3) if the office finds that conditions do not reasonably allow compliance by the
23 railroad company with subs. (2) and (3). If the office waives any portion of sub. (2)
24 or (3), the findings and order of the office shall set forth, in writing, the grounds for
25 the waiver and each specific provision of subs. (2) and (3) being waived.

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1 **(5)** (a) Except as provided in pars. (b) and (c), this section applies to new
2 construction and reconstruction of yard track completed after the effective date of
3 this paragraph [LRB inserts date].

4 (b) This section does not apply to a railroad company that owns or operates
5 track in this state other than class one and class two rail carriers as classified by the
6 federal surface transportation board.

7 (c) 1. If the office finds that railroad company employees who frequently work
8 adjacent to a portion of track performing switching activities are exposed to safety
9 hazards due to the lack of a walkway or to the condition of a walkway constructed
10 on or before the effective date of this paragraph [LRB inserts date], the office may
11 order a railroad company to construct a walkway adjacent to a portion of track where
12 employees are performing switching activities, or require a railroad company to
13 modify an existing walkway in conformity with the standards set forth in sub. (3),
14 within a reasonable period of time. Before the office may enter an order under this
15 paragraph, the office shall give notice to the railroad company and hold a hearing in
16 the manner provided in ss. 195.04 to 195.043. After the hearing, the office shall
17 determine what walkway construction or modification, if any, shall be made. The
18 expense of any walkway construction or modification shall be borne by the railroad
19 company.

20 **SECTION 3.** 192.53 (5e), (5m) and (5s) of the statutes are created to read:

21 192.53 **(5e)** (a) After the effective date of this paragraph [LRB inserts date],
22 except as provided in par. (b), no railroad company may construct or reconstruct, not
23 including ordinary repairs necessary for maintenance, any of the following:

ASSEMBLY BILL 614**SECTION 3**

1 1. Any railroad track used for moving cars engaged in the movement of traffic
2 the center line of which is within 14 feet from the center line of any other parallel
3 track to which it adjoins.

4 2. Any ladder track closer than 19 feet to an adjacent ladder track, as measured
5 from the center line of each track.

6 3. Any ladder track closer than 17 feet to any other parallel track, as measured
7 from the center line of each track.

8 (b) The distance under par. (a) between tracks may be diminished or closed up
9 a necessary distance for track intersections, gauntlet tracks, turnouts, or switch
10 points.

11 **(5m)** No railroad company may permit the space between or beside any
12 railroad tracks that is ordinarily used by employees in the discharge of their duties
13 and that is within 8 feet 6 inches of the center line of the track to become or remain
14 obstructed by a foreign obstacle that will interfere with the work of the employees
15 or subject the employees to any unnecessary hazard. This space between or beside
16 the tracks and between the rails of the tracks shall be kept in such a condition as to
17 permit the employees to pass over or between the tracks or to use the space day or
18 night and under all weather conditions without any unnecessary hazard.

19 **(5s)** An employee of a railroad company who is injured by or because of the
20 existence of any structure or material within a distance from tracks that is less than
21 that required by this section shall not be considered to have assumed the risk of the
22 injury, although the employee continues in the employ of the railroad company after
23 the existence of the structure or material has been brought to the employee's
24 knowledge.

25 **SECTION 4.** 192.55 (8) of the statutes is created to read:

