

**COOPERATIVE EFFORT TO DEVELOP THE MODEL STATE BILLS**  
**AND**  
**HIGHLIGHTS OF THE BILLS**

**BACKGROUND**

By 1994, the Nation had experienced four consecutive years in which more than 1,000 people were either killed or seriously injured while trespassing on railroad property other than at rail-highway crossings. In 1995, 494 people were killed and 461 people were seriously injured while trespassing on railroad property other than at rail-highway grade crossings. According to preliminary figures, in the first ten months of 1996, the Nation has experienced an 18.6 percent reduction in the number of rail-highway grade crossing injuries and fatalities, and fatalities and injuries among trespassers other than at rail-highway grade crossings are down 6.6 percent and up .7 percent respectively, when compared to the same period in 1995. As part of the continuing effort to reduce the number of injuries and fatalities occurring while trespassing on railroad property, the Department of Transportation's Rail-Highway Crossing Safety Action Plan includes initiatives to develop model railroad trespass and vandalism legislation for consideration by State legislatures.<sup>1</sup> Congress affirmed the validity of these initiatives by passing the Federal Railroad Safety Authorization Act of 1994 (49 U.S.C. § 20151) (Safety Act), which requires the Secretary of Transportation, in consultation with State and local governments and railroad carriers, to develop and make available to State and local governments model State legislation covering trespassing and vandalism on railroad property. The following is a summary of the development of the model State railroad trespass and vandalism bills and highlights of the bills.

**Review of Existing Laws**

As required by the Safety Act, the Department reviewed and evaluated current local, State, and Federal laws regarding trespassing on railroad property and vandalism affecting railroad safety.<sup>2</sup> An independent firm was hired to conduct the necessary preliminary legal research. Its findings on the existence of relevant State railroad laws were compiled into various chapters pertaining to different railroad subject matters. Chapters 10 and 11 (Enclosure 3) specifically address laws related to trespassing and vandalism on railroad property.

As you will note from the findings, 20 States and the District of Columbia lack any codified law that applies specifically to trespassing on railroad property.<sup>3</sup> Nine States lack any codified law

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<sup>1</sup> See U.S. Department of Transportation Rail-Highway Crossing Safety Action Plan Summary, June 13, 1994.

<sup>2</sup> To date, no Federal railroad trespass law exists, although a Federal statute against wrecking trains is found at 18 U.S.C. § 1992.

<sup>3</sup> These States are Alaska, Hawaii, Idaho, Iowa, Kansas, Maryland, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Washington, Wyoming, and the

that applies specifically to vandalism of railroad property.<sup>4</sup> For the States that do have codified laws related to trespassing and vandalism of railroad property, the Department believes most of them need to be strengthened. The most pervasive deficiencies in the laws are weak penalties. For example, one State prescribes a fine of not less than \$10 but not more than \$100 for a first offense of vandalism. Another pervasive weakness in the State laws is categorizing the offenses of trespassing and vandalism as relatively innocuous crimes. For example, in one State, vandalism of any railroad sign or signal is a Class B traffic infraction. The model State bills would remedy these deficiencies.

### **Consultation in the Development of the Model State Bills**

The Department, through its Federal Railroad Administration (FRA), held four regional conferences with State and local governments, railroad and labor representatives, and others during the process of developing the model State bills. A copy of the attendee or guest lists from these conferences is available from FRA upon request. These conferences and workshops were held jointly with Operation Lifesaver, Inc., an independent organization dedicated to educating the public on ways to reduce the number of grade crossing and trespass fatalities. The conferences were held in the following locations: Atlanta, Georgia; Sacramento, California; El Paso, Texas; and Uniondale, New York. FRA's strategy was to meet with people throughout the country to discuss general railroad trespass and vandalism problems, as well as to focus on issues specific to their particular part of the country. This was accomplished through several days of formal presentations, followed by informal question, answer, and comment sessions.

By listening to people's points of view on the issues of railroad trespassing and vandalism, FRA learned what people wanted, and conversely, what they did not need or find acceptable, in a railroad trespass and vandalism law. Specifically, the Atlanta conference emphasized the need for stronger vandalism and graffiti laws, while the El Paso conference focused more on seeking solutions to the problems of train robberies and other cross-border issues, particularly the smuggling of undocumented aliens into the United States. In Sacramento, as well as Atlanta, representatives from larger railroads expressed strong concerns that a model civil law requiring fencing or expansion of land owner liability to trespassers might be acceptable to railroads with few track miles, particularly those in the eastern States, but would prove to be unduly burdensome and therefore unacceptable to those railroads with many track miles, particularly in the western States. Taking these and related ideas into account, FRA shaped the model State bills to reflect a consensus among the diverse and sometimes conflicting views people expressed

and shared with each other at these conferences, using existing State statutory provisions to the extent possible.

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District of Columbia.

<sup>4</sup> These States are Alabama, Indiana, Kentucky, Mississippi, Missouri, Montana, New Mexico, Ohio, and Utah.

### **MODEL STATE RAILROAD TRESPASS PREVENTION BILL**

Much of the language in the model State railroad trespass prevention bill was borrowed from Rhode Island and Indiana statutes. The two statutes combined seem to touch upon most of the issues related to trespassing on railroad property. Moreover, Rhode Island law focuses on more urban issues while Indiana provides a good model for trespassing on railroad property in rural areas. The penalty provision in the model bill reflects a compromise between the strongest and weakest penalties that currently exist for trespassing on railroad property.

The model State railroad trespass prevention bill accomplishes the following:

- ! **Makes entering or remaining upon a railroad right-of-way or other railroad property a misdemeanor subject to not more than a \$100 fine, imprisonment for not more than 30 days, or both.** The trespass bill prohibits trespassing, whether by walking, jogging, snowmobiling, or other activities. Aside from the right-of-way, railroad property also includes structures, appurtenances, and equipment used in the operation of any railroad.
- ! **Makes stowing away on trains a misdemeanor subject to not more than a \$1,000 fine, imprisonment for not more than six months, or both.** Such illegal activity includes riding on the outside of a train, popularly called “train surfing,” and riding in freight cars and containers.
- ! **Enumerates certain persons authorized by law to be on railroad property and excludes certain railroad property from coverage.** The trespass bill does not apply to railroad passengers, railroad employees, police officers, firefighters, rescuers, owners of adjacent land crossing at railroad carrier-approved private crossings, State and Federal transportation department or National Transportation Safety Board personnel in the performance of their official duties, and persons with written permission from the railroad carrier. The bill does not apply to trespass on railroad administrative offices or urban rapid transit property.

### **MODEL STATE RAILROAD VANDALISM PREVENTION BILL**

Much of the language in the model State railroad vandalism law was borrowed from Texas, Idaho, and Washington statutes. Combined, these laws seem to touch upon most of the issues related to vandalism of railroad property.

The model State railroad vandalism prevention bill accomplishes the following:

- ! **Makes reckless acts of vandalism that do not cause bodily injury or railroad**

**property damage that exceeds \$500 a misdemeanor, subject to restitution, and if available, subject to not more than 120 hours of community service. If community service is not available, the person shall be subject to not more than a \$500 fine, imprisonment for not more than six months, or both.** The bill proscribes acts of vandalism including putting coins on a rail, marking areas with graffiti, or throwing eggs at trains.

- !** **Makes reckless acts of vandalism that cause bodily injury or railroad property damage that exceeds \$500 a felony, subject to restitution, and not more than a fine of \$10,000, imprisonment for 10 years, or both. If serious bodily harm, or death results from the vandalism, the person shall be subject to not more than a \$20,000 fine, imprisonment for not more than 20 years, or both.** The bill proscribes acts of vandalism including dropping a brick from a bridge, or throwing rocks at locomotives.
  
- !** **Makes willful acts of vandalism or attempts to damage railroad property or to endanger the safety of another a felony, subject to enhanced penalties.** The bill proscribes acts of vandalism such as throwing rocks, dropping bricks, shooting a firearm, destroying signal systems, tampering with switches, or tampering with freight cars. If no bodily injury occurs or railroad property damage does not exceed \$500, such acts are punishable by a fine of not more than \$10,000, imprisonment for not more than ten years, or both. If the vandalism results in bodily injury or railroad property damage exceeds \$500, the person shall be subject to not more than a \$20,000 fine, imprisonment for not more than 20 years, or both. Where serious bodily injury results from the vandalism, the person shall be punished by a fine of not more than \$25,000, any term of years or for life, or both. If death results from the vandalism, the person shall be subject to not more than a \$100,000 fine, any term of years or for life, or both.
  
- !** **Makes stealing railroad freight and receiving such stolen freight a felony.** These acts are punishable by a fine of not more than \$5,000, imprisonment for not more than five years, or both.