

ASSEMBLY, No. 5605

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 15, 2023

Sponsored by:

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

Assemblyman ROBERT J. KARABINCHAK

District 18 (Middlesex)

Assemblywoman ELLEN J. PARK

District 37 (Bergen)

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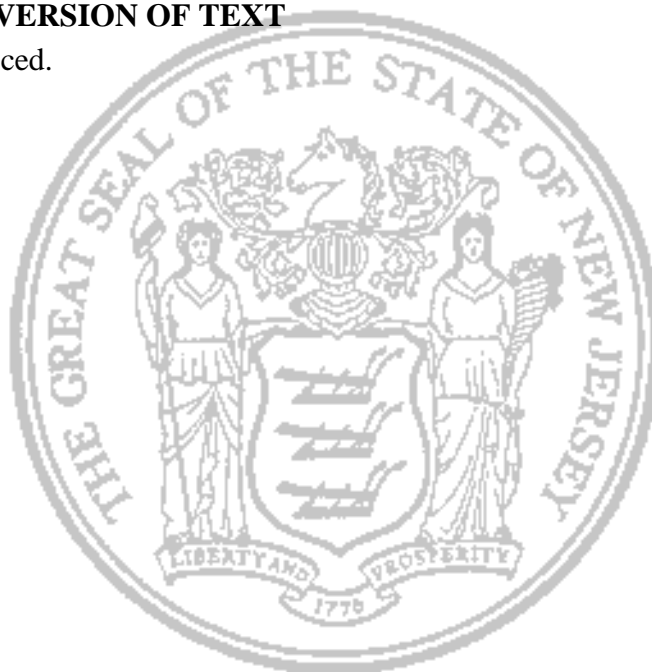
Assemblywomen Haider, Jasey and Assemblyman Giblin

SYNOPSIS

Concerns railroad safety.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/20/2023)

1 AN ACT concerning railroad safety and supplementing Title 27 of the
2 Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in P.L. , c. (C.) (pending before the Legislature
8 as this bill):

9 “Board” means the Board of Public Utilities.

10 “Branch line” means a secondary railroad track that branches off
11 from a main line.

12 “Commissioner” means the Commissioner of Environmental
13 Protection.

14 “Contamination” or “contaminant” means any discharged
15 hazardous substance, hazardous waste as defined pursuant to section
16 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to
17 section 3 of P.L.1977, c.74 (C.58:10A-3).

18 “Defects” include hot wheel bearings, hot wheels, defective
19 bearings that are detected through acoustics, dragging equipment,
20 excessive height or weight, shifted loads, low hoses, rail temperature,
21 and wheel conditions.

22 “Department” means the Department of Environmental
23 Protection.

24 “Discharge” means any intentional or unintentional action or
25 omission resulting in the releasing, spilling, leaking, pumping,
26 pouring, emitting, emptying, or dumping of hazardous substances
27 into the waters or onto the lands of the State, or into waters outside
28 the jurisdiction of the State when damage may result to the lands,
29 waters, or natural resources within the jurisdiction of the State.

30 “Emergency response action” means those activities conducted by
31 a local unit to clean up, remove, prevent, contain, or mitigate a
32 discharge that poses an immediate threat to the environment or to the
33 public health, safety, or welfare.

34 “Emergency services provider” means a law enforcement agency,
35 emergency medical services unit, fire department, emergency
36 communications provider, hazardous material response unit,
37 volunteer fire department, duly incorporated fire or first aid
38 company, or volunteer emergency, ambulance, or rescue squad
39 association, organization, or company which provides emergency
40 services for a local unit.

41 “Hazardous substances” means any Class 1 explosives as
42 categorized in Division 1.1, 1.2, or 1.3 (as such terms are defined in
43 49 C.F.R. s.173.50); any flammable gases as defined by section 49
44 C.F.R. s.173.115(a); any flammable liquids as defined in 49 C.F.R.
45 s.173.120(a); any hazardous material as designated by the Secretary
46 of Transportation as hazardous pursuant to 49 U.S.C. s.5103; any
47 high level radioactive waste and spent nuclear fuel with the same
48 meanings given to a “type B package” or a “fissile material package”

1 as defined in 49 C.F.R. s.173.403; any material poisonous by
2 inhalation or material toxic by inhalation as defined in 49 C.F.R.
3 s.171.8; and any environmentally sensitive chemicals which shall
4 include, but not be limited to:

- 5 a. AllylChloride;
- 6 b. Carbon Tetrachloride;
- 7 c. Chlorobenzene;
- 8 d. Chloroform;
- 9 e. O-Dichlorobenzene;
- 10 f. Dichloropropane (Propylene dichloride);
- 11 g. Dichloropropane/Dichloropropene Mixture;
- 12 h. Dichloropropene;
- 13 i. Ethyl Chloride;
- 14 j. Ethylene Dibromide;
- 15 k. Ethylene Dibromide and Methyl Bromide Mixtures;
- 16 l. Ethylene Dichloride;
- 17 m. Epichlorohydrin;
- 18 n. Methyl Chloroform (1,1,1 Trichloroethane);
- 19 o. Methylene Chloride (Dichloromethane);
- 20 p. Methylene Chloride/Chloroform Mixture;
- 21 q. Perchloroethylene (Tetrachloroethylene);
- 22 r. Perchloroethylene/Trichloroethylene Mixture; and
- 23 s. Trichloroethylene.

24 “High hazard train” means any railroad locomotive propelling a
25 railroad tank car or connection of railroad tank cars transporting
26 200,000 gallons or more of petroleum or petroleum products or
27 20,000 gallons or more of hazardous substances other than petroleum
28 or petroleum products.

29 “Local unit” means any county or municipality, or a fire district,
30 or any agency or other instrumentality thereof, or a duly incorporated
31 volunteer fire, ambulance, first aid, emergency, or rescue company
32 or squad.

33 “Main line” means a Class I railroad, as documented in current
34 timetables filed by the Class I railroad with the Federal Railroad
35 Administration, over which 5,000,000 or more gross tons of railroad
36 traffic is transported annually. “Main line” includes railroads used
37 for regularly scheduled intercity or commuter rail passenger service,
38 or both.

39 “Major facility” shall have the same meaning as set forth in
40 section 3 of P.L.1976, c.141 (C.58:10-23.11b).

41 “Natural resources” means all land, fish, shellfish, wildlife, biota,
42 air, waters, and other resources owned, managed, held in trust, or
43 otherwise controlled by the State.

44 “Owner” or “operator” means, with respect to any high hazard
45 train, any person owning the high hazard train, or operating it by
46 lease, contract, or other form of agreement; provided, however, that
47 the owner or operator shall not mean a person who operates a high
48 hazard train only for the purposes of positioning or moving railroad

1 tank cars within the confines of a major facility, or a person whose
2 interest in a high hazard train solely involves the ownership or lease
3 of one or more railroad tank cars without operational authority.

4 “Petroleum” or “petroleum products” shall have the same meaning
5 as set forth in section 3 of P.L.1976, c.141 (C.58:10-23.11b).

6 “Railroad” means any form of non-highway ground transportation
7 that runs on rails or electromagnetic guideways, including commuter
8 or other short-haul railroad passenger service in a metropolitan or
9 suburban area, commuter railroad service and high speed ground
10 transportation systems that connect metropolitan areas, without
11 regard to whether those systems use new technologies not associated
12 with traditional railroads. “Railroad” does not include rapid transit
13 operations in an urban area that are not connected to the general
14 railroad system of transportation.

15 “Short line” means an independent railroad company that operates
16 over a relatively short distance.

17 “Train” means one or more locomotives coupled with or without
18 cars, requiring an air brake test in accordance with either 49 C.F.R.
19 Part 232 or 49 C.F.R. Part 238, except during switching operations
20 or where the operation is that of classifying and assembling rail cars
21 within a railroad yard for the purpose of making or breaking up trains.
22 “Train” includes a single locomotive, multiple locomotives coupled
23 together, and one or more locomotives coupled with one or more cars.

24 “Waters” means the ocean and its estuaries to the seaward limit of
25 the State's jurisdiction, all springs, streams, and bodies of surface or
26 groundwater, whether natural or artificial, within the boundaries of
27 this State.

28 “Wayside detector system” means an electronic device or a series
29 of connected devices that scan passing trains, rolling stock, on-track
30 equipment, and their component equipment and parts for defects.

31

32 2. Following a discharge that requires emergency response
33 action, the owner or operator of a high hazard train shall:

34 a. within one hour of a discharge, identify an emergency
35 response coordinator to advise the emergency services provider of
36 the local unit. The emergency response coordinator may be made
37 available by telephone, but is required to have authorization to deploy
38 all necessary emergency response resources of the owner or operator
39 of the high hazard train;

40 b. within three hours of a discharge, deploy the emergency
41 response coordinator and trained personnel to the discharge site to
42 assess the discharge and to advise the emergency service provider of
43 the local unit;

44 c. within eight hours of a discharge, deliver and deploy
45 emergency response, recovery, and containment equipment, trained
46 personnel, and all other materials needed to provide on-site
47 containment of the discharged petroleum, petroleum products, and
48 hazardous substances and to protect environmentally sensitive areas

1 and potable water intakes within one mile of the discharge site and
2 within eight hours of calculated water travel time in any river or
3 stream that the discharge site intersects; and

4 d. within 60 hours of a discharge, deliver and deploy additional
5 emergency response, recovery, and containment equipment, trained
6 personnel, and all other materials needed to provide containment and
7 recovery of the discharged petroleum, petroleum products, and
8 hazardous substances and to protect environmentally sensitive areas
9 and potable water intakes at any location along the travel route of the
10 high hazard train or in any river or stream that the discharge site
11 intersects.

12

13 3. The owner or operator of a high hazard train shall require at
14 least a two person crew on all high hazard trains. The owner or
15 operator of a high hazard train shall further require that all high
16 hazard trains clearly display the name of the railroad company that
17 owns the high hazard train.

18

19 4. a. Whenever, on the basis of available information, the
20 Commissioner of Environmental Protection finds that the owner or
21 operator of a high hazard train is in violation of the provisions of
22 P.L. , c. (C.) (pending before the Legislature as this bill), or
23 any rule or regulation adopted pursuant thereto, the commissioner
24 may:

25 (1) levy a civil administrative penalty in accordance with
26 subsection b. of this section; or

27 (2) bring an action for a civil penalty in accordance with
28 subsection c. of this section.

29 The exercise of any of the remedies provided in this section shall
30 not preclude recourse to any other remedy so provided.

31 b. The commissioner is authorized to assess a civil
32 administrative penalty of not more than \$25,000 for each violation of
33 the provisions of P.L. , c. (C.) (pending before the Legislature
34 as this bill), or any rule or regulation adopted pursuant thereto, and
35 each day during which each violation continues shall constitute an
36 additional, separate, and distinct offense. Any amount assessed under
37 this section shall fall within a range established by regulation by the
38 commissioner for violations of similar type, seriousness, duration,
39 and conduct; provided, however, that prior to the adoption of the rule
40 or regulation, the commissioner may, on a case-by-case basis, assess
41 civil administrative penalties up to a maximum of \$25,000 per day
42 for each violation, utilizing the criteria set forth herein. In addition
43 to any civil administrative penalty assessed under this subsection and
44 notwithstanding the \$25,000 maximum penalty set forth above, the
45 commissioner may assess any economic benefits from the violation
46 gained by the violator. Prior to assessment of a penalty under this
47 subsection, the owner or operator of the high hazard train committing
48 the violation shall be notified by certified mail or personal service

1 that the penalty is being assessed. The notice shall: include a
2 reference to the section of the statute or regulation violated; recite the
3 facts alleged to constitute a violation; state the basis for the amount
4 of the civil penalties to be assessed; and affirm the rights of the
5 alleged violator to a hearing. The ordered party shall have 35
6 calendar days from receipt of the notice within which to deliver to
7 the commissioner a written request for a hearing. After the hearing
8 and upon finding that a violation has occurred, the commissioner may
9 issue a final order after assessing the amount of the fine specified in
10 the notice. If a hearing is not requested, the notice shall become a
11 final order after the expiration of the 35 calendar day period.
12 Payment of the assessment is due when a final order is issued or the
13 notice becomes a final order. The authority to levy an administrative
14 order is in addition to all other enforcement provisions in
15 P.L. , c. (C.) (pending before the Legislature as this bill), or
16 of any rule or regulation adopted pursuant thereto, and the payment
17 of any assessment shall not be deemed to affect the availability of
18 any other enforcement provisions in connection with the violation for
19 which the assessment is levied. The department may compromise
20 any civil administrative penalty assessed under this subsection in an
21 amount and with conditions the department determines appropriate.
22 A civil administrative penalty assessed, including a portion thereof
23 required to be paid pursuant to a payment schedule approved by the
24 department, which is not paid within 90 days of the date that payment
25 of the penalty is due, shall be subject to an interest charge on the
26 amount of the penalty, or portion thereof, which shall accrue as of
27 the date payment is due. If the penalty is contested, an additional
28 interest charge shall not accrue on the amount of the penalty until 90
29 days after the date on which a final order is issued. Interest charges
30 assessed and collectible pursuant to this subsection shall be based on
31 the rate of interest on judgments provided in the New Jersey Rules of
32 Court.

33 c. Any owner or operator of a high hazard train who violates the
34 provisions of P.L. , c. (C.) (pending before the Legislature
35 as this bill), or any rule or regulation adopted pursuant thereto, or
36 who fails to pay in full a civil administrative penalty levied pursuant
37 to subsection b. of this section, or who fails to make a payment
38 pursuant to a penalty payment schedule entered into with the
39 department, or who knowingly makes any false or misleading
40 statement, representation, or certification on any application, record,
41 report, or other document required to be submitted to the department,
42 shall be subject, upon order of a court, to a civil penalty not to exceed
43 \$25,000 for each day during which the violation continues. Any civil
44 penalty imposed pursuant to this subsection may be collected, and
45 any costs incurred in connection therewith may be recovered, in a
46 summary proceeding pursuant to the "Penalty Enforcement Law of
47 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any
48 penalties, costs or interest charges, the court may assess against the

1 violator the amount of economic benefit accruing to the violator from
2 the violation. The Superior Court shall have jurisdiction to enforce
3 the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-
4 10 et seq.).

5 d. The owner or operator of a high hazard train that experiences
6 a discharge shall be subject to the penalty and injunctive relief
7 provisions of section 22 of P.L.1976, c.141 (C.58:10-23.11u).

8
9 5. a. No railroad company, including a short line, operating
10 within this State on any main line or branch line shall operate, or
11 permit to be operated, on any part of a main line or branch line, any
12 train which exceeds 8,500 feet in length.

13 b. Notwithstanding section 4 of P.L. , c. (C.) (pending
14 before the Legislature as this bill):

15 (1) a person or railroad violating any provision of this section
16 shall be liable for a civil penalty. Any civil penalty imposed may be
17 collected, and any costs incurred in connection therewith may be
18 recovered, in a summary proceeding pursuant to the "Penalty
19 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
20 The Superior Court shall have jurisdiction to enforce the "Penalty
21 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

22 (2) the amount of the civil penalty shall be at least \$500 but not
23 more than \$1,000 per foot over the maximum train length provided
24 in subsection a. of this section; provided that, when a grossly
25 negligent violation or a pattern of repeated violations has caused an
26 imminent hazard of death or injury to individuals or has caused death
27 or injury, the amount of the civil penalty shall be not more than
28 \$250,000, regardless of the length of the train.

29
30 6. The provisions of P.L. , c. (C.) (pending before the
31 Legislature as this bill) shall not apply to the owner or operator of a
32 Class III carrier, as defined by the Surface Transportation Board
33 pursuant to 49 C.F.R. Part 1201 1-1, that operates within a single
34 municipality on not more than 25 total track miles and is engaged in
35 switching or terminal railroad services. Nothing contained herein
36 shall be construed to exempt a major facility from the provisions of
37 the "Spill Compensation and Control Act," P.L.1976, c.141
38 (C.58:10-23.11 et seq.).

39
40 7. In accordance with the federal regulations promulgated
41 pursuant to section 11405 of the federal "Fixing America's Surface
42 Transportation Act," Pub.L.114-94, the Commissioner of
43 Environmental Protection shall, at least annually and whenever the
44 Commissioner of Environmental Protection shall deem necessary,
45 request from the United States Secretary of Transportation a copy of
46 the most recent bridge inspection report generated pursuant to the

1 federal "Fixing America's Surface Transportation Act," Pub.L.114-
2 94, for every bridge owned by a railroad or upon which a railroad is
3 located.

4 The Commissioner of Environmental Protection shall submit any
5 bridge inspection report, acquired by the Department of
6 Environmental Protection pursuant to this section, to the Governor
7 and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the
8 Legislature.

9
10 8. a. The Board of Public Utilities in conjunction with the New
11 Jersey Department of Transportation shall work with each railroad
12 company that operates a train in the State to ensure that wayside
13 detector systems are installed and are operating along railroad tracks
14 on which the railroad operates and to ensure that such systems meet
15 all of the following standards:

16 (1) the wayside detector systems are properly installed,
17 maintained, repaired, and operational in accordance with the latest
18 guidelines issued by the United States Department of Transportation,
19 the Federal Railroad Administration, and the Association of
20 American Railroads;

21 (2) any expired, nonworking, or outdated wayside detector system
22 or component parts of a system are removed and replaced with new
23 parts or an entirely new system that reflects the current best practices
24 and standards of the industry;

25 (3) the railroad company has defined, written standards and
26 training for its employees pertaining to wayside detector system
27 defect alerts, the course of action that employees are required to take
28 to respond to an alert, and appropriate monitoring and responses by
29 the company if employees fail to take the required course of action;
30 and

31 (4) the distance between wayside detector systems is appropriate
32 when accounting for the natural terrain surrounding the railroad track
33 on which the railroad operates and the safety of the trains, rolling
34 stock, on-track equipment, their operators, their passengers, and the
35 persons and property in the vicinity of such railroad track so that if
36 defects are detected operators have sufficient time to do the
37 following:

38 (a) respond to the alerts projected by the wayside detector system;

39 (b) stop the train, rolling stock, or on-track equipment, if
40 necessary; and

41 (c) make all necessary repairs or, if repair is impossible at the
42 location, to remove the component parts or equipment that is
43 defective.

44 b. If a railroad company refuses to work or otherwise cooperate
45 with the board and the New Jersey Department of Transportation in
46 good faith in accordance with this section, the board and the
47 Department of Transportation shall investigate the railroad
48 company's safety practices and standards. The board and the

1 Department of Transportation shall determine whether the company
2 appears to be in compliance with federal railroad safety standards, as
3 defined in 49 C.F.R. Part 209.

4 c. (1) If the board and the Department of Transportation
5 determine that a railroad company does not appear to be in
6 compliance with the applicable federal standards pursuant to
7 subsection b. of this section, the board and the Department of
8 Transportation shall make a report to the Federal Railroad
9 Administration within 60 days of making the determination pursuant
10 to subsection b. of this section. The report shall detail the results of
11 the investigation and recommend that the administration take
12 enforcement action in accordance with its authority against the
13 railroad company for the safety violations discovered through that
14 investigation.

15 (2) The board and the New Jersey Department of Transportation
16 shall send a copy of the report to the Governor and, pursuant to
17 section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

18

19 9. a. The Department of Environmental Protection shall adopt
20 rules and regulations pursuant to the "Administrative Procedure
21 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to effectuate the purposes
22 of sections 2 through 4 and section 7 of this act within 18 months.

23 b. The Board of Public Utilities, in conjunction with the
24 Department of Transportation shall adopt rules and regulations
25 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
26 (C.52:14B-1 et seq.) to effectuate the purposes of section 8 of this act
27 within 18 months.

28

29 10. This act shall take effect immediately.

30

31

32

STATEMENT

33

34 This bill concerns various railroad safety provisions, including
35 requiring: certain actions to be taken if a high hazard train
36 experiences a discharge, limits on train length, and installation and
37 review of wayside detector systems.

38 Following a discharge that requires emergency response action,
39 the owner or operator of a high hazard train is required to meet certain
40 milestones at certain time periods.

41 Under the bill, the owner or operator of a high hazard train is to
42 require at least a two person crew on all high hazard trains. The owner
43 or operator of a high hazard train is to further require that all high
44 hazard trains clearly display the name of the rail company that owns
45 the high hazard train.

46 Whenever, on the basis of available information, the
47 Commissioner of Environmental Protection (commissioner) finds
48 that the owner or operator of a high hazard train is in violation of the

1 provisions this bill, or any rule or regulation adopted pursuant
2 thereto, the commissioner may levy a civil administrative penalty or
3 bring an action for a civil penalty. The commissioner is authorized
4 to assess a civil administrative penalty of not more than \$25,000 for
5 each violation, and each day during which each violation continues
6 will constitute an additional, separate, and distinct offense. The
7 owner or operator of a high hazard train that experiences a discharge
8 is also subject to penalty and injunctive relief provisions under the
9 “Spill Compensation and Control Act.”

10 The bill also prohibits any railroad company, including a short
11 line, from operating any train that exceeds 8,500 feet in length on any
12 main line or branch line, within the State. Any person or railroad
13 company found to be in violation will be liable for a civil penalty of
14 at least \$500 but not more than \$1,000 per foot over the maximum
15 train length allowed under the bill, though the penalty is increased in
16 instances of gross negligence or repeat violations that cause an
17 imminent hazard of death or injury or has caused death or injury.

18 In accordance with federal regulations, the Commissioner of
19 Environmental Protection is required to, at least annually, request
20 from the United States Secretary of Transportation a copy of the most
21 recent bridge inspection report for every bridge owned by a railroad
22 or upon which a railroad is located. The commissioner is required to
23 submit any bridge inspection report, acquired by the department, to
24 the Governor and Legislature.

25 Under the bill, the Board of Public Utilities (board), in conjunction
26 with the New Jersey Department of Transportation is required to
27 work with each railroad company that operates in the State to ensure
28 that wayside detector systems are installed and are operating along
29 railroad tracks on which the railroad operates and to ensure that such
30 systems meet certain standards. If a railroad company refuses to work
31 or otherwise cooperate with the board and the Department of
32 Transportation in good faith, the board and the Department of
33 Transportation are required to investigate the railroad company’s
34 safety practices and standards to determine whether the company
35 appears to be in compliance with federal railroad safety standards. If
36 the railroad company does not appear to be in compliance, the board
37 and the Department of Transportation are then required to make a
38 report to the Federal Railroad Administration (administration)
39 detailing the results of the investigation and recommending that the
40 administration take enforcement action in accordance with its
41 authority against the railroad company for the safety violations
42 discovered through the investigation. The bill requires the board and
43 the Department of Transportation to send a copy of the report to the
44 Governor and Legislature.