

SENATE, No. 4049

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 27, 2023

Sponsored by:

Senator PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

Senator GORDON M. JOHNSON

District 37 (Bergen)

Co-Sponsored by:

Senator Cryan

SYNOPSIS

Concerns railroad safety.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/27/2023)

1 AN ACT concerning railroad safety and supplementing Title 27 of
2 the 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
8 Legislature 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
16 section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined
17 pursuant to 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
21 temperature, 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
31 by a local unit to clean up, remove, prevent, contain, or mitigate a
32 discharge that poses an immediate threat to the environment or to
33 the public health, safety, or welfare.

34 “Emergency services provider” means a law enforcement
35 agency, emergency medical services unit, fire department,
36 emergency communications provider, hazardous material response
37 unit, 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” as defined in 49 C.F.R. s.173.403; any material poisonous by inhalation or material toxic by inhalation as defined in 49 C.F.R. s.171.8; and any environmentally sensitive chemicals which shall include, but not be limited to:

- a. AllylChloride;
- b. Carbon Tetrachloride;
- c. Chlorobenzene;
- d. Chloroform;
- e. O-Dichlorobenzene;
- f. Dichloropropane (Propylene dichloride);
- g. Dichloropropane/Dichloropropene Mixture;
- h. Dichloropropene;
- i. Ethyl Chloride;
- j. Ethylene Dibromide;
- k. Ethylene Dibromide and Methyl Bromide Mixtures;
- l. Ethylene Dichloride;
- m. Epichlorohydrin;
- n. Methyl Chloroform (1,1,1 Trichloroethane);
- o. Methylene Chloride (Dichloromethane);
- p. Methylene Chloride/Chloroform Mixture;
- q. Perchloroethylene (Tetrachloroethylene);
- r. Perchloroethylene/Trichloroethylene Mixture; and
- s. Trichloroethylene.

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

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

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

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

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

“Owner” or “operator” means, with respect to any high hazard train, any person owning the high hazard train, or operating it by lease, contract, or other form of agreement; provided, however, that the owner or operator shall not mean a person who operates a high 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
5 meaning as set forth in section 3 of P.L.1976, c.141 (C.58:10-
6 23.11b).

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

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

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

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

30 “Wayside detector system” means an electronic device or a
31 series of connected devices that scan passing trains, rolling stock,
32 on-track equipment, and their component equipment and parts for
33 defects.
34

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

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

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

47 c. within eight hours of a discharge, deliver and deploy
48 emergency response, recovery, and containment equipment, trained

1 personnel, and all other materials needed to provide on-site
2 containment of the discharged petroleum, petroleum products, and
3 hazardous substances and to protect environmentally sensitive areas
4 and potable water intakes within one mile of the discharge site and
5 within eight hours of calculated water travel time in any river or
6 stream that the discharge site intersects; and

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

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

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

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

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

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

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

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

37 c. Any owner or operator of a high hazard train who violates
38 the provisions of P.L. , c. (C.) (pending before the
39 Legislature as this bill), or any rule or regulation adopted pursuant
40 thereto, or who fails to pay in full a civil administrative penalty
41 levied pursuant to subsection b. of this section, or who fails to make
42 a payment pursuant to a penalty payment schedule entered into with
43 the department, or who knowingly makes any false or misleading
44 statement, representation, or certification on any application,
45 record, report, or other document required to be submitted to the
46 department, shall be subject, upon order of a court, to a civil penalty
47 not to exceed \$25,000 for each day during which the violation
48 continues. Any civil penalty imposed pursuant to this subsection

1 may be collected, and any costs incurred in connection therewith
2 may be recovered, in a summary proceeding pursuant to the
3 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
4 et seq.). In addition to any penalties, costs or interest charges, the
5 court may assess against the violator the amount of economic
6 benefit accruing to the violator from the violation. The Superior
7 Court shall have jurisdiction to enforce the "Penalty Enforcement
8 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

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

13
14 5. a. No railroad company, including a short line, operating
15 within this State on any main line or branch line shall operate, or
16 permit to be operated, on any part of a main line or branch line, any
17 train which exceeds 8,500 feet in length.

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

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

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

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

44
45 7. In accordance with the federal regulations promulgated
46 pursuant to section 11405 of the federal "Fixing America's Surface
47 Transportation Act," Pub.L.114-94, the Commissioner of
48 Environmental Protection shall, at least annually and whenever the

1 Commissioner of Environmental Protection shall deem necessary,
2 request from the United States Secretary of Transportation a copy
3 of the most recent bridge inspection report generated pursuant to the
4 federal "Fixing America's Surface Transportation Act," Pub.L.114-
5 94, for every bridge owned by a railroad or upon which a railroad is
6 located.

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

12

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

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

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

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

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

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

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

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

1 owner or operator of a high hazard train is to further require that all
2 high hazard trains clearly display the name of the rail company that
3 owns the high hazard train.

4 Whenever, on the basis of available information, the
5 Commissioner of Environmental Protection (commissioner) finds
6 that the owner or operator of a high hazard train is in violation of
7 the provisions this bill, or any rule or regulation adopted pursuant
8 thereto, the commissioner may levy a civil administrative penalty or
9 bring an action for a civil penalty. The commissioner is authorized
10 to assess a civil administrative penalty of not more than \$25,000 for
11 each violation, and each day during which each violation continues
12 will constitute an additional, separate, and distinct offense. The
13 owner or operator of a high hazard train that experiences a
14 discharge is also subject to penalty and injunctive relief provisions
15 under the "Spill Compensation and Control Act."

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

25 In accordance with federal regulations, the Commissioner of
26 Environmental Protection is required to, at least annually, request
27 from the United States Secretary of Transportation a copy of the
28 most recent bridge inspection report for every bridge owned by a
29 railroad or upon which a railroad is located. The commissioner is
30 required to submit any bridge inspection report, acquired by the
31 department, to the Governor and Legislature.

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

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1 railroad company for the safety violations discovered through the
2 investigation. The bill requires the board and the Department of
3 Transportation to send a copy of the report to the Governor and
4 Legislature.