AN ACT to create 20.155 (2) (h), 189.02 (8), 192.11, 192.45, 323.63 and 778.25 (1)

(a) 9. of the statutes; relating to: preparation and response required by railroad corporations in the event of discharge of transported materials and making an appropriation.

Analysis by the Legislative Reference Bureau

This bill establishes the emergency preparedness required of railroad corporations transporting hazardous materials in the state and the response required by railroad corporations if a discharge of hazardous materials occurs. The bill requires each railroad corporation operating routes over which oil or other hazardous materials are transported to submit to the Division of Emergency Management (commonly known as Wisconsin Emergency Management or WEM) a plan detailing the measures the corporation will take to prevent the discharge of hazardous materials and to respond to discharges that may occur. Each railroad corporation is required to provide training to each fire department and local organization for emergency management along the route upon which the corporation’s trains operate. The training must include response preparedness relating to discharge and derailments. Each railroad corporation must complete these requirements once every three years.

The bill requires a railroad corporation operating a train that discharges material to notify emergency responders of the chemical contents of the discharged material within 15 minutes of the arrival of the responders to the scene of the discharge. Within one hour, the corporation must provide a representative to advise...
the local incident commander. Within three hours, the corporation must deliver monitoring equipment and qualified personnel to assess the discharge. Within eight hours, the corporation must deliver equipment capable of containing 10 percent of the discharge. Within 60 hours, the corporation must deliver equipment capable of containing 100 percent of the discharge.

The bill increases the authorized positions at the Department of Transportation by four and requires DOT to employ rail safety inspectors who will inspect railroad tracks, rights-of-way, yards, and physical plants and review railroad safety requirements, security measures, and maintenance and repair records.

The bill requires the Office of the Commissioner of Railroads to reimburse fire departments and local organizations for emergency management for certain expenses associated with the training required under the bill. The bill requires OCR to assess each railroad corporation a proportionate share, based on route miles operated in this state, of OCR's expenses related to the rail inspection and training required by the bill.

The bill requires WEM to review emergency preparedness plans submitted as required under the bill and to work with OCR to provide emergency preparedness training. The bill requires WEM to compile data about incidents and to report findings to the legislature. The bill requires WEM to submit to the legislature no later than January 15, 2019, a report on the emergency preparedness response framework within the state relating to incidents involving hazardous materials transported by rail. The report must include an assessment of training needs and must establish benchmarks for assessing training needs in the future. The bill also requires WEM to submit to the legislature no later than November 1, 2019, an update to the initial report that evaluates the effectiveness of training conducted and identifies funding sources and future funding needs.

The bill requires DOT to submit to the legislature no later than November 1, 2019, a report that includes information to assist in risk management associated with rail transportation of hazardous materials, criteria for prioritizing at-grade crossing improvements, recommendations for safety improvements, and an analysis of rail inspection activities.

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. 20.155 (2) (h) of the statutes is created to read:

20.155 (2) (h) Rail inspection, safety training, and response preparedness. All moneys received under s. 189.02 (8) for activities of the office of the commissioner of railroads under s. 192.45 and for payments under s. 192.45 (3) (b).
SECTION 2. 189.02 (8) of the statutes is created to read:

189.02 (8) In addition to any assessment under s. 195.60, the office shall annually assess each railroad corporation operating in this state routes over which oil or other hazardous substances are transported a proportionate share, based on route miles operated in this state, of the actual cost of the expenses of the office under s. 192.45 and the payments under s. 192.45 (3) (b). The office shall credit all moneys received under this subsection to the appropriation account under s. 20.155 (2) (h).

SECTION 3. 192.11 of the statutes is created to read:

192.11 Rail inspectors. (1) The department shall employ rail safety inspectors who shall be responsible for all of the following:

(a) Inspection of mainline track, secondary track, railroad yard tracks, and industry track.

(b) Inspection of railroad rights-of-way, including adjacent or intersecting drainage, culverts, bridges, overhead structures, traffic crossings, and other public crossings.

(c) Inspection of railroad yards and physical plants.

(d) Review and enforcement of safety requirements.

(e) Review of maintenance and repair records.

(f) Review of railroad security measures.

(2) The department shall apply to and enter into agreements with the federal railroad administration to participate in the federal state rail safety participation program for training and certification of rail safety inspectors.

(3) A rail safety inspector who has been trained and certified in any of the federal state rail safety participation program disciplines may perform the duties relevant to that discipline.
(4) To the extent authorized by the federal railroad administration, the
department, and the office, rail safety inspectors may issue citations for violations
of requirements under chs. 190 to 192 that are punishable by forfeiture.

SECTION 4. 192.45 of the statutes is created to read:

192.45 Emergency prevention and response. (1) In this section:

(a) “Discharge” means the discharge of oil or other hazardous substances.

(b) “Incident commander” means the official who has responsibility under the
National Incident Management System guidelines for all aspects of emergency
response operations at an incident scene.

(c) “Railroad corporation” means a railroad corporation operating in this state
routes over which oil or other hazardous substances are transported.

(2) Each railroad corporation shall submit to the division of emergency
management a prevention and response plan that does all of the following:

(a) Describes the measures taken to prevent discharges from occurring.

(b) Identifies the individual with authority to implement response actions.

(c) Identifies how communication and incident command relationships will be
established between the individual identified in par. (b) and all of the following:

  1. Railroad employees who are responding to a discharge.

  2. Federal, state, and local officials.

  3. Other individuals providing emergency response equipment and personnel.

(d) Describes how the railroad corporation will ensure adequate equipment and
personnel will be provided if there is a discharge.

(e) Contains copies of contracts, correspondence, and other documents in
support of the description provided in par. (d).
(f) Describes the actions that will be taken by the individuals identified in par.
(c) if there is a discharge.

(g) Describes the training and equipment testing that will be provided to
ensure that the persons identified in par. (c) are prepared to respond to a discharge.

(3) (a) Each railroad corporation shall provide training to each fire department
and local organization for emergency management having jurisdiction along the
route upon which the railroad corporation’s trains operate that addresses all of the
following:

1. Methods to identify rail cars and hazardous substance contents.
2. Responder safety issues.
3. Rail response tactics.
4. Public evacuation considerations.
5. Environmental contamination response.
6. Railroad response personnel and resources coordination at an incident.
7. Other protocols and practices for safe initial local response.

(b) From the appropriation under s. 20.155 (2) (h), the office shall make
payments to fire departments and local organizations for emergency management
to cover the following expenses relating to training provided under this subsection:

1. Actual training costs.
2. Purchase, maintenance, and replacement of gear and equipment.
3. Supplies procured for training or for gear and equipment.

(c) The office shall prioritize the allocation of funds under par. (b) based on the
following factors:
1. Training needs of fire departments and local organizations for emergency
management.

2. Risk to the community.

3. Balanced distribution of funds through the state.

(4) Each railroad corporation required to comply with subs. (2) and (3) (a) shall
complete the requirements of subs. (2) and (3) (a) within one year after the effective
date of this subsection .... [LRB inserts date], and once every 3 years thereafter.

(5) (a) Each railroad corporation shall communicate at least once annually with
the emergency manager of each county and city and the fire chief of each fire
department having jurisdiction along the route upon which the railroad
corporation’s trains operate to:

1. Ensure coordination of emergency response activities between the railroad
corporation and local responders.

2. Upon request, assist emergency managers to identify and assess local
rail-specific threats, hazards, and risks.

3. Obtain information from emergency managers regarding specific local
natural and technical hazards and threats in the local area that may impact rail
operations or public safety.

(b) The coordination under par. (a) 2. and 3. shall include identification of
increased risks and potential special responses due to high population
concentration, critical local infrastructure, key facilities, significant venues, or
sensitive natural environments.

(6) In the event of a discharge, the railroad corporation operating the train that
discharged material shall do all of the following:
(a) Within 15 minutes of the arrival of local emergency responders to the scene of a discharge, assist the incident commander to determine the nature of hazardous substances known to have been released and hazardous substances transported on the train by providing information that includes the chemical content of the hazardous substances, contact information for the shipper, and instructions for dealing with the release of the material. The railroad corporation may satisfy the requirements of this paragraph with orders on board the train, a facsimile, or an electronic transmission.

(b) Within one hour of confirmation of a discharge, provide a qualified representative of the railroad corporation to advise the local incident commander, help assess the situation, initiate railroad corporation response actions as needed, and provide advice and recommendations to the incident commander regarding the response. The representative may be made available by telephone and shall be authorized to deploy all necessary response resources of the railroad corporation.

(c) Within 3 hours of confirmation of a discharge, deliver monitoring equipment and a trained operator to assist in the protection of responders and the public.

(d) Within 3 hours of confirmation of a discharge, deliver qualified personnel to assess the discharge and advise the local incident commander and provide resources to assist the incident commander with ongoing public safety and scene stabilization.

(e) Within 8 hours of confirmation of a discharge, deliver equipment capable of containing 10 percent of the discharge.

(f) Within 60 hours of confirmation of a discharge, deliver equipment capable of containing 100 percent of the discharge.
(7) The office shall plan and coordinate activities necessary to carry out the purposes of this section, including rail safety inspection.

(8) Within 10 business days of receiving a written request from the office or a county or city emergency manager or a fire chief having jurisdiction along the routes over which oil or other hazardous substances are transported, a railroad corporation shall provide a traffic review to the requester that includes information on the types and volumes of oil or other hazardous substances that were transported through the requester’s jurisdiction in the previous calendar year.

(9) Upon written request from the office or a county or city emergency manager or a fire chief having jurisdiction along the routes over which oil or other hazardous substances are transported, a railroad corporation shall provide all of the following:

   (a) A complete copy of prevention and response plans submitted to the division of emergency management under sub. (2).

   (b) A copy of the data and information, including risk assessment information, used to develop the railroad corporation’s route analysis as required under 49 CFR 172.820.

(10) Within 30 days of receiving a written request from the office or a county or city emergency manager or a fire chief having jurisdiction along the routes over which oil or other hazardous substances are transported, a railroad corporation shall meet with the requester concerning emergency response planning and coordination and shall provide all of the following:

   (a) A review of the railroad corporation’s emergency response planning and capability, including railroad response timelines and resources to provide technical advice and recommendations, trained response personnel, specialized equipment, and any other available resources to support an incident commander who conducts
a public safety emergency response under the National Incident Management System.

(b) Inventory information on emergency response involving oil or other hazardous substances, including the type and location of equipment owned by the railroad corporation, contact information and location of the railroad corporation's response personnel, and resources available to the railroad corporation through contractual agreements.

(11) Information provided or received under subs. (8) to (10) is not public record and is not subject to the right to inspection under s. 19.35 (1).

SECTION 5. 323.63 of the statutes is created to read:

323.63 Safety requirements for railroads.  (1) The division shall do all of the following:

(a) Assist the office of the commissioner of railroads in providing training as required under s. 192.45 (3) (a).

(b) Assist the office of the commissioner of railroads in conducting emergency preparedness drills and training.

(c) Assist railroad corporations in identifying measures to prevent environmental pollution.

(d) Conduct inspections and drills as necessary to ensure railroad corporation preparedness to prevent environmental pollution.

(e) Review prevention and response plans submitted to the division under s. 192.45 (2).

(f) Receive and disseminate emergency response information from railroad corporations and emergency responders as provided under P.L. 114–94, section 7302, and federal regulations adopted under that section. Information received by the
division under this paragraph is not a public record and is not subject to the right to inspection under s. 19.35 (1).

(g) Compile and make available to railroad corporations a listing of emergency managers of counties and cities and fire chiefs of fire departments having jurisdiction along the routes upon which the railroad corporations’ trains operate with contact information for each.

(2) (a) Following an incident compelling a significant response or upon request of a fire chief or emergency manager after any incident, the division shall ensure that a post-incident review and analysis is performed in a timely manner. The review and analysis shall be undertaken under an agreement with an entity having relevant knowledge and experience that is fully independent of the state, any local units of government involved in the incident, railroad corporations, and pipeline companies.

   (b) The review and analysis process shall include an after-action review and must evaluate, at a minimum, processes occurring during the incident for emergency assessment, hazard operations, population protection, and incident management. The review and analysis shall be designed to minimize duplication of topics and issues addressed in any federal review of the incident.

   (c) By March 1 of the calendar year following a year in which one or more post-incident reviews and analyses are performed, the division shall submit to the appropriate standing committees of the legislature under s. 13.172 (3) a report providing a summary of the incidents, identifying findings, lessons learned, and process changes, and making recommendations for legislative changes, if any.

SECTION 6. 778.25 (1) (a) 9. of the statutes is created to read:

778.25 (1) (a) 9. Under chs. 190 to 192.

(1) **RAIL INSPECTORS.** The authorized FTE positions for the department of transportation, funded from the appropriation under section 20.395 (4) (aq) of the statutes, are increased by 4.0 SEG positions for the purpose of increasing the number of rail safety inspector positions.

(2) **REPORT ON RESPONSE PREPAREDNESS.** No later than January 15, 2019, the division of emergency management shall submit to the appropriate standing committees of the legislature under section 13.172 (3) of the statutes a report that includes all of the following:

   (a) The emergency preparedness response framework within the state relating to incidents involving oil and other hazardous materials transported by rail.

   (b) An assessment of the training needs of fire departments and first responders to respond to discharges or spills involving oil and other hazardous materials transported by rail, including the estimated cost to provide such training and benchmarks for assessing training needs in the future.

   (c) An inventory of public and private resources for responding to a spill or discharge, including response equipment, equipment staging locations, mutual aid agreements, and the capacities across industries involved in the transportation and storage of oil and other hazardous materials.

   (d) Information on the amount assessed under section 189.02 (8) of the statutes and an explanation of how that assessment was calculated.

   (e) Recommendations for long-range incident preparedness related to oil and other hazardous materials.

   (f) Recommendations for proposed legislative changes.

(3) **EVALUATION OF RESPONSE PREPAREDNESS FUNDING.** No later than November 1, 2019, the division of emergency management shall submit to the appropriate
standing committees of the legislature under section 13.172 (3) of the statutes a
report that includes all of the following:

(a) An update to the initial report of response preparedness under subsection
(2) that identifies significant changes.

(b) An evaluation of the effectiveness of training using the benchmarks
identified in the initial report of response preparedness under subsection (2).

(c) Identification of current sources of funds, funding levels, and funding needs
for response preparedness activities.

(d) Analysis of equity in the distribution of funding sources for preparedness
activities, including an examination of the public-private partnership financing
model and a review of balance across industries involved in storage and distribution
of oil and other hazardous materials.

(e) Recommendations for proposed legislative changes.

(4) REPORT BY THE DEPARTMENT OF TRANSPORTATION. No later than November 1,
2019, the secretary of transportation shall submit to the appropriate standing
committees of the legislature under section 13.172 (3) of the statutes a report that
includes all of the following:

(a) Information that assists in risk management associated with
transportation of oil and other hazardous materials by rail.

(b) Criteria for prioritizing needs and improvements of at-grade crossings.

(c) Recommendations for safety improvements.

(d) Analysis of state rail inspection activities.