



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5365/1
ZDW:emw

2017 SENATE BILL 762

February 1, 2018 - Introduced by Senators SHILLING, WIRCH, MILLER, RISSER, L. TAYLOR, CARPENTER, HANSEN, RINGHAND and LARSON, cosponsored by Representatives BILLINGS, CONSIDINE, ANDERSON, BERCEAU, CROWLEY, DOYLE, HEBL, POPE, WACHS and ZEPNICK. Referred to Committee on Transportation and Veterans Affairs.

1 **AN ACT to create** 20.155 (2) (h), 189.02 (8), 192.11, 192.45, 323.63 and 778.25 (1)
2 (a) 9. of the statutes; **relating to:** preparation and response required by
3 railroad corporations in the event of discharge of transported materials and
4 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

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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:
- 2 20.155 (2) (h) *Rail inspection, safety training, and response preparedness.* All
- 3 moneys received under s. 189.02 (8) for activities of the office of the commissioner of
- 4 railroads under s. 192.45 and for payments under s. 192.45 (3) (b).

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1 **SECTION 2.** 189.02 (8) of the statutes is created to read:

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

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

9 **192.11 Rail inspectors. (1)** The department shall employ rail safety
10 inspectors who shall be responsible for all of the following:

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

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

16 (c) Inspection of railroad yards and physical plants.

17 (d) Review and enforcement of safety requirements.

18 (e) Review of maintenance and repair records.

19 (f) Review of railroad security measures.

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

23 **(3)** A rail safety inspector who has been trained and certified in any of the
24 federal state rail safety participation program disciplines may perform the duties
25 relevant to that discipline.

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1 (4) To the extent authorized by the federal railroad administration, the
2 department, and the office, rail safety inspectors may issue citations for violations
3 of requirements under chs. 190 to 192 that are punishable by forfeiture.

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

5 **192.45 Emergency prevention and response. (1)** In this section:

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

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

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

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

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

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

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

18 1. Railroad employees who are responding to a discharge.

19 2. Federal, state, and local officials.

20 3. Other individuals providing emergency response equipment and personnel.

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

23 (e) Contains copies of contracts, correspondence, and other documents in
24 support of the description provided in par. (d).

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1 (f) Describes the actions that will be taken by the individuals identified in par.

2 (c) if there is a discharge.

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

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

9 1. Methods to identify rail cars and hazardous substance contents.

10 2. Responder safety issues.

11 3. Rail response tactics.

12 4. Public evacuation considerations.

13 5. Environmental contamination response.

14 6. Railroad response personnel and resources coordination at an incident.

15 7. Other protocols and practices for safe initial local response.

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

19 1. Actual training costs.

20 2. Purchase, maintenance, and replacement of gear and equipment.

21 3. Supplies procured for training or for gear and equipment.

22 4. Costs associated with emergency planning.

23 (c) The office shall prioritize the allocation of funds under par. (b) based on the
24 following factors:

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1 1. Training needs of fire departments and local organizations for emergency
2 management.

3 2. Risk to the community.

4 3. Balanced distribution of funds through the state.

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

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

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

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

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

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

23 **(6)** In the event of a discharge, the railroad corporation operating the train that
24 discharged material shall do all of the following:

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1 (a) Within 15 minutes of the arrival of local emergency responders to the scene
2 of a discharge, assist the incident commander to determine the nature of hazardous
3 substances known to have been released and hazardous substances transported on
4 the train by providing information that includes the chemical content of the
5 hazardous substances, contact information for the shipper, and instructions for
6 dealing with the release of the material. The railroad corporation may satisfy the
7 requirements of this paragraph with orders on board the train, a facsimile, or an
8 electronic transmission.

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

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

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

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

23 (f) Within 60 hours of confirmation of a discharge, deliver equipment capable
24 of containing 100 percent of the discharge.

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1 **(7)** The office shall plan and coordinate activities necessary to carry out the
2 purposes of this section, including rail safety inspection.

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

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

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

14 (b) A copy of the data and information, including risk assessment information,
15 used to develop the railroad corporation's route analysis as required under 49 CFR
16 172.820.

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

22 (a) A review of the railroad corporation's emergency response planning and
23 capability, including railroad response timelines and resources to provide technical
24 advice and recommendations, trained response personnel, specialized equipment,
25 and any other available resources to support an incident commander who conducts

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1 a public safety emergency response under the National Incident Management
2 System.

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

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

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

11 **323.63 Safety requirements for railroads.** (1) The division shall do all of
12 the following:

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

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

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

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

21 (e) Review prevention and response plans submitted to the division under s.
22 192.45 (2).

23 (f) Receive and disseminate emergency response information from railroad
24 corporations and emergency responders as provided under P.L. 114-94, section 7302,
25 and federal regulations adopted under that section. Information received by the

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1 division under this paragraph is not a public record and is not subject to the right to
2 inspection under s. 19.35 (1).

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

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

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

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

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

24 778.25 (1) (a) 9. Under chs. 190 to 192.

25 **SECTION 7. Nonstatutory provisions.**

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

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

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

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

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

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

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

23 (f) Recommendations for proposed legislative changes.

24 (3) EVALUATION OF RESPONSE PREPAREDNESS FUNDING. No later than November
25 1, 2019, the division of emergency management shall submit to the appropriate

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1 standing committees of the legislature under section 13.172 (3) of the statutes a
2 report that includes all of the following:

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

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

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

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

13 (e) Recommendations for proposed legislative changes.

14 (4) REPORT BY THE DEPARTMENT OF TRANSPORTATION. No later than November 1,
15 2019, the secretary of transportation shall submit to the appropriate standing
16 committees of the legislature under section 13.172 (3) of the statutes a report that
17 includes all of the following:

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

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

21 (c) Recommendations for safety improvements.

22 (d) Analysis of state rail inspection activities.

23 (END)