

**SENATE
STATE OF MINNESOTA
NINETIETH SESSION**

S.F. No. 1595

(SENATE AUTHORS: NEWMAN)

DATE
03/01/2017

D-PG
920

Introduction and first reading
Referred to Transportation Finance and Policy

OFFICIAL STATUS

1.1 A bill for an act

1.2 relating to transportation; providing for railroad oil and hazardous materials

1.3 emergency preparedness; amending Minnesota Statutes 2016, sections 13.6905,

1.4 by adding a subdivision; 13.7411, by adding a subdivision; 115E.042; 219.015;

1.5 299A.55; proposing coding for new law in Minnesota Statutes, chapter 219.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2016, section 13.6905, is amended by adding a subdivision

1.8 to read:

1.9 Subd. 34. **Oil and other hazardous substances transportation data.** Certain data on

1.10 oil and other hazardous substances transportation by railroads are governed by section

1.11 219.925, subdivision 7.

1.12 Sec. 2. Minnesota Statutes 2016, section 13.7411, is amended by adding a subdivision to

1.13 read:

1.14 Subd. 10. **Prevention and response plans.** Certain data on prevention and response

1.15 plans are governed by section 115E.042, subdivision 7.

1.16 Sec. 3. Minnesota Statutes 2016, section 115E.042, is amended to read:

1.17 **115E.042 PREPAREDNESS AND RESPONSE FOR CERTAIN RAILROADS.**

1.18 Subdivision 1. **Application.** In addition to the requirements of section 115E.04, a person

1.19 who owns or operates railroad car rolling stock transporting a unit train must comply with

1.20 this section.

2.1 Subd. 2. **Training.** (a) Each railroad must offer training to each fire department and
2.2 each local organization for emergency management under section 12.25 having jurisdiction
2.3 along the ~~route of unit trains~~ routes over which oil and other hazardous substances are
2.4 transported. ~~Initial training under this subdivision must be offered to each fire department~~
2.5 ~~by June 30, 2016,~~ and Refresher training must be offered to each fire department and local
2.6 organization for emergency management at least once every three years thereafter ~~thereafter~~ after
2.7 initial training under this subdivision.

2.8 (b) The training must address ~~the general hazards of oil and hazardous substances,~~
2.9 ~~techniques to assess hazards to the environment and to the safety of responders and the~~
2.10 ~~public, factors an incident commander must consider in determining whether to attempt to~~
2.11 ~~suppress a fire or to evacuate the public and emergency responders from an area, and other~~
2.12 ~~strategies for initial response by local emergency responders. The training must include~~
2.13 ~~suggested protocol or practices for local responders to safely accomplish these tasks~~ rail
2.14 car and hazardous substance content identification, responder safety issues, rail response
2.15 tactics, public evacuation considerations, environmental contamination response, coordination
2.16 of railroad response personnel and resources at an incident, and other protocols and practices
2.17 to ensure safe initial local response.

2.18 Subd. 3. **Emergency response planning; coordination.** ~~Beginning June 30, 2015,~~ (a)
2.19 Each railroad must communicate at least annually with each ~~county or city~~ emergency
2.20 manager, security qualified safety representatives of railroad employees governed by the
2.21 Railway Labor Act, and a senior fire department officer of each fire department having
2.22 jurisdiction along the ~~route of a unit train~~ routes over which oil and other hazardous
2.23 substances are transported, to:

2.24 (1) ensure coordination of emergency response activities between the railroad and local
2.25 responders;

2.26 (2) upon request, assist emergency managers to identify and assess local rail-specific
2.27 threats, hazards, and risks; and

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

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

3.1 (c) The commissioner of public safety must compile and make available to railroads a
3.2 listing of emergency managers and fire chiefs, which must include contact information.

3.3 Subd. 4. **Response capabilities; time limits.** (a) Following confirmation of a discharge,
3.4 a railroad must deliver and deploy sufficient equipment and trained personnel to (1) contain
3.5 and recover discharged oil or hazardous substances, and (2) to protect the environment and
3.6 assist local public safety officials.

3.7 (b) Within 15 minutes of the arrival of local emergency responders on the scene of a
3.8 rail incident involving oil or other hazardous substances, a railroad must assist the incident
3.9 commander in determining the nature of hazardous substances known to have been released
3.10 and hazardous substances transported on the train, by providing information that includes
3.11 the chemical content of the hazardous substances, contact information for the shipper, and
3.12 instructions for dealing with release of the material. A railroad may provide the information
3.13 through the train orders on board the train, facsimile, or electronic transmission.

3.14 (c) Within one hour of confirmation of a discharge, a railroad must provide a qualified
3.15 company employee representative to advise the incident commander, help assess the situation,
3.16 initiate railroad response actions as needed, and provide advice and recommendations to
3.17 the incident commander regarding the response. The employee may be made available by
3.18 telephone, and must be authorized to deploy all necessary response resources of the railroad.

3.19 ~~(e)~~ (d) Within three hours of confirmation of a discharge, a railroad must be capable of
3.20 delivering monitoring equipment and a trained operator to assist in protection of responder
3.21 and public safety. A plan to ensure delivery of monitoring equipment and an operator to a
3.22 discharge site must be provided each year to the commissioner of public safety.

3.23 ~~(d)~~ (e) Within three hours of confirmation of a discharge, a railroad must provide (1)
3.24 qualified personnel at a discharge site to assess the discharge and to advise the incident
3.25 commander, and (2) resources to assist the incident commander with ongoing public safety
3.26 and scene stabilization.

3.27 ~~(e)~~ (f) A railroad must be capable of deploying containment boom from land across
3.28 sewer outfalls, creeks, ditches, and other places where oil or hazardous substances may
3.29 drain, in order to contain leaked material before it reaches those resources. The arrangement
3.30 to provide containment boom and staff may be made by:

3.31 (1) training and caching equipment with local jurisdictions;

3.32 (2) training and caching equipment with a fire mutual-aid group;

3.33 (3) means of an industry cooperative or mutual-aid group;

4.1 (4) deployment of a contractor;

4.2 (5) deployment of a response organization under state contract; or

4.3 (6) other dependable means acceptable to the Pollution Control Agency.

4.4 ~~(f)~~ (g) Each arrangement under paragraph ~~(e)~~ (f) must be confirmed each year. Each
4.5 arrangement must be tested by drill at least once every five years.

4.6 ~~(g)~~ (h) Within eight hours of confirmation of a discharge, a railroad must be capable of
4.7 delivering and deploying containment boom, boats, oil recovery equipment, trained staff,
4.8 and all other materials needed to provide:

4.9 (1) on-site containment and recovery of a volume of oil equal to ten percent of the
4.10 calculated worst case discharge at any location along the route; and

4.11 (2) protection of listed sensitive areas and potable water intakes within one mile of a
4.12 discharge site and within eight hours of water travel time downstream in any river or stream
4.13 that the right-of-way intersects.

4.14 ~~(h)~~ (i) Within 60 hours of confirmation of a discharge, a railroad must be capable of
4.15 delivering and deploying additional containment boom, boats, oil recovery equipment,
4.16 trained staff, and all other materials needed to provide containment and recovery of a worst
4.17 case discharge and to protect listed sensitive areas and potable water intakes at any location
4.18 along the route.

4.19 Subd. 5. ~~Railroad drills~~ **Environmental response exercises.** (a) Each railroad must
4.20 conduct at least one oil containment, recovery, and sensitive area protection drill exercises
4.21 as follows: (1) at least one tabletop exercise every year; and (2) at least one full-scale exercise
4.22 every three years. Each exercise must be at a location and, date, time, and in the manner
4.23 chosen by the Pollution Control Agency, and attended by safety representatives of railroad
4.24 employees governed by the Railway Labor Act.

4.25 (b) To the extent feasible, the commissioner of the Pollution Control Agency must
4.26 coordinate each exercise with exercises required by federal agencies.

4.27 Subd. 6. **Prevention and response plans; requirements, submission.** (a) By June 30,
4.28 2015, A railroad shall must submit the prevention and response plan required under section
4.29 115E.04, as necessary to comply with the requirements of this section, to the commissioner
4.30 of the Pollution Control Agency on a form designated by the commissioner.

(b) ~~By June 30 of~~ In every third year following a plan submission under this subdivision, or sooner as provided under section 115E.04, subdivision 2, a railroad must update and resubmit the prevention and response plan to the commissioner.

Subd. 7. Environmental response plan data. A prevention and response plan provided under this section is nonpublic data, as defined under section 13.02, subdivision 9.

Sec. 4. Minnesota Statutes 2016, section 219.015, is amended to read:

219.015 STATE RAIL SAFETY ~~INSPECTOR~~ INSPECTION PROGRAM.

Subdivision 1. **Positions established; duties.** (a) The commissioner of transportation ~~shall~~ must establish three state rail safety inspector positions ~~in the Office of Freight and Commercial Vehicle Operations of the Minnesota Department of Transportation. On or after July 1, 2015, and~~ the commissioner may establish ~~a fourth~~ up to six state rail safety ~~inspector position~~ inspection program positions following consultation with railroad companies. The commissioner shall apply to and enter into agreements with the Federal Railroad Administration (FRA) of the United States Department of Transportation to participate in the federal State Rail Safety Participation Program for training and certification of an inspector under authority of United States Code, title 49, sections 20103, 20105, 20106, and 20113, and Code of Federal Regulations, title 49, part 212.

(b) A state rail safety inspector ~~shall~~ may inspect mainline track, secondary track, and yard and industry track; inspect railroad right-of-way, including adjacent or intersecting drainage, culverts, bridges, overhead structures, and traffic and other public crossings; inspect yards and physical plants; inspect train equipment; review and enforce safety requirements; review maintenance and repair records; and review railroad security measures.

(c) A state rail safety inspector may perform, but is not limited to, the duties described in the federal State Rail Safety Participation Program. An inspector may train, be certified, and participate in any of the federal State Rail Safety Participation Program disciplines, including: track, signal and train control, motive power and equipment, operating practices compliance, hazardous materials, and highway-rail grade crossings.

(d) To the extent delegated by the Federal Railroad Administration and authorized by the commissioner, an inspector may issue citations for violations of this chapter, or to ensure railroad employee and public safety and welfare.

Subd. 2. **Railroad company assessment; account; appropriation.** (a) As provided in this subdivision, the commissioner shall annually assess railroad companies that are (1) defined as common carriers under section 218.011; (2) classified by federal law or regulation

as Class I Railroads, Class I Rail Carriers, Class II Railroads, or Class II Carriers; and (3) operating in this state.

(b) The assessment must be ~~by a division of~~ calculated to allocate state rail safety ~~inspector inspection~~ program costs ~~in equal proportion between~~ proportionally among carriers based on route miles operated in Minnesota, ~~assessed in equal amounts for 365 days of the calendar year at the time of assessment.~~ The commissioner ~~shall assess~~ must include in the assessment calculation all program or additional position start-up or re-establishment costs; all ~~related~~ costs of ~~initiating~~ the state rail safety ~~inspector inspection~~ program, including but not limited to inspection, administration, supervision, travel, equipment, and training; and costs of ongoing state rail inspector duties.

(c) The assessments collected under this subdivision must be deposited in a ~~special account in the special revenue fund, to be known as the~~ state rail safety inspection account, which is established in the special revenue fund. The account consists of funds as provided by this subdivision, and any other money donated, allotted, transferred, or otherwise provided to the account. Money in the account is appropriated to the commissioner for the establishment and ongoing responsibilities of the state rail safety ~~inspector inspection~~ program.

Subd. 3. **Work site safety coaching program.** The commissioner may exempt a common carrier not federally classified as Class I from violations for a period of up to two years if the common carrier applies for participation in a work site safety coaching program, such as the "MNSharp" program administered by the Minnesota Department of Labor and Industry, and the commissioner determines such participation to be preferred enforcement for safety or security violations.

Subd. 4. **Appeal.** Any person aggrieved by an assessment levied under this section may appeal within 90 days any assessment, violation, or administrative penalty to the Office of Administrative Hearings, with further appeal and review by the district court.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 5. [219.925] INCIDENT EMERGENCY RESPONSE; PREPAREDNESS AND INFORMATION.

Subdivision 1. Definitions. (a) For purposes of this section, the following terms have the meanings given them.

(b) "Emergency manager" means the director of a local organization for emergency management under section 12.25.

(c) "Hazardous substance" has the meaning given in Code of Federal Regulations, title 49, section 171.8.

(d) "Incident commander" means the official who has responsibility, following National Incident Management System guidelines, for all aspects of emergency response operations at an incident scene, including directing and controlling resources.

(e) "Oil" has the meaning given in section 115E.01, subdivision 8.

(f) "Rail carrier" means a railroad company that is:

(1) defined as a common carrier under section 218.011;

(2) classified by federal law or regulation as Class I Railroad, Class I Rail Carrier, Class II Railroad, Class II Carrier, Class III Railroad, or Class III Carrier; and

(3) operating in this state.

Subd. 2. **Traffic review.** Within ten business days of receiving a written request, a rail carrier must provide a traffic review to a requesting emergency manager or fire chief having jurisdiction along the routes over which oil and other hazardous substances are transported. The traffic review under this subdivision must include information on the types and volumes of oil and other hazardous substance transported through the requester's jurisdiction during the prior calendar year.

Subd. 3. **Emergency response planning; information sharing.** Upon written request, a rail carrier must provide to an emergency manager or fire chief having jurisdiction along the routes over which oil and other hazardous substances are transported:

(1) a complete copy of prevention and response plans submitted under section 115E.042, subdivision 6; and

(2) a copy of the data and information, including risk assessment information, used to develop the rail carrier's route analysis required under Code of Federal Regulations, title 49, section 172.820, or successor requirements.

Subd. 4. **Emergency response planning; coordination meetings.** (a) Within 30 days of receiving a written request, a rail carrier must be available to meet with a requesting emergency manager or fire chief having jurisdiction along the routes over which oil and other hazardous substances are transported regarding emergency response planning and coordination.

(b) At a meeting held under this subdivision, a rail carrier must provide:

(1) a review of the rail carrier's emergency response planning and capability, including railroad response timelines and resources to provide (i) technical advice and recommendations, (ii) trained response personnel, (iii) specialized equipment, and (iv) any other available resources to support an incident commander who conducts a public safety emergency response under the National Incident Management System; and

(2) inventory information on emergency response involving oil or other hazardous substance, consisting of:

(i) equipment owned by the rail carrier, including equipment type and location;

(ii) response personnel of the rail carrier, including contact information and location; and

(iii) resources available to the rail carrier through contractual agreements.

Subd. 5. Real-time emergency response information. (a) The commissioner of public safety must, through the Minnesota Fusion Center, receive and disseminate emergency response information as provided under section 7302 of the FAST Act of 2015, Public Law 114-94, and federal regulations adopted under that section.

(b) On and after July 1, 2018, all rail carriers subject to this section must collectively provide emergency responders with the information regarding transportation of oil and other hazardous substances that rail carriers provide through a wireless communications device application in an Internet-based format.

Subd. 6. Public safety response exercises. (a) Each rail carrier must conduct one tabletop public safety emergency response exercise in each emergency management region in which the rail carrier transports oil and other hazardous substances. The exercises must be conducted by July 1, 2018, and July 1 every two years thereafter.

(b) Each rail carrier must conduct one full-scale exercise every four years.

(c) In a emergency management region in which more than one rail carrier operates, the rail carriers may conduct the exercises jointly or may alternate among rail carriers to conduct the exercise.

(d) To the extent feasible, the rail carriers must coordinate the exercises among each other and with exercises under section 115E.042, subdivision 5.

Subd. 7. Transportation and response planning data. Any data provided under subdivisions 3 to 6 to an emergency manager, incident commander, emergency first

9.1 responder, fire chief, or the commissioner of public safety are nonpublic data, as defined
9.2 under section 13.02, subdivision 9.

9.3 Sec. 6. Minnesota Statutes 2016, section 299A.55, is amended to read:

9.4 **299A.55 RAILROAD AND PIPELINE SAFETY INCIDENT PREPAREDNESS;**
9.5 **OIL AND OTHER HAZARDOUS MATERIALS SUBSTANCES.**

9.6 Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have
9.7 the meanings given them.

9.8 (b) "Applicable rail carrier" means a railroad company that is subject to an assessment
9.9 under section 219.015, subdivision 2.

9.10 (c) "Hazardous substance" has the meaning given in ~~section 115B.02, subdivision 8~~
9.11 Code of Federal Regulations, title 49, section 171.8.

9.12 (d) "Oil" has the meaning given in section 115E.01, subdivision 8.

9.13 (e) "Pipeline company" means any individual, partnership, association, or public or
9.14 private corporation who owns and operates pipeline facilities and is required to show specific
9.15 preparedness under section 115E.03, subdivision 2.

9.16 Subd. 2. **Railroad and pipeline ~~safety~~ safety incident account.** (a) A railroad and pipeline
9.17 ~~safety incident~~ safety incident account is created in the special revenue fund. The account consists of funds
9.18 collected under subdivision 4 and funds donated, allotted, transferred, or otherwise provided
9.19 to the account.

9.20 (b) ~~\$104,000~~ An amount necessary for environmental protection activities related to
9.21 railroad discharge preparedness under section 115E.042 is annually appropriated from the
9.22 railroad and pipeline ~~safety incident~~ safety incident account to the commissioner of the Pollution Control
9.23 Agency for ~~environmental protection activities related to railroad discharge preparedness~~
9.24 ~~under chapter 115E~~ those purposes.

9.25 (c) Following the appropriation in paragraph (b), the remaining money in the account
9.26 is annually appropriated to the commissioner of public safety for the purposes specified in
9.27 subdivision 3.

9.28 Subd. 3. **Allocation of funds.** (a) Subject to funding appropriated for this subdivision,
9.29 the commissioner shall provide funds for training and response preparedness related to (1)
9.30 derailments, discharge incidents, or spills involving trains carrying oil or other hazardous
9.31 substances, and (2) pipeline discharge incidents or spills involving oil or other hazardous
9.32 substances.

10.1 (b) The commissioner shall allocate available funds as follows:

10.2 (1) \$100,000 annually for emergency response teams; and

10.3 (2) the remaining amount to the Board of Firefighter Training and Education under
10.4 section 299N.02 and the Division of Homeland Security and Emergency Management.

10.5 (c) Prior to making allocations under paragraph (b), the commissioner shall consult with
10.6 the Fire Service Advisory Committee under section 299F.012, subdivision 2.

10.7 (d) The commissioner and the entities identified in paragraph (b), clause (2), shall
10.8 prioritize uses of funds based on:

10.9 (1) firefighter training needs;

10.10 (2) community risk from discharge incidents or spills;

10.11 (3) geographic balance; ~~and~~

10.12 (4) risks to the general public; and

10.13 (5) recommendations of the Fire Service Advisory Committee.

10.14 (e) The following are permissible uses of funds provided under this subdivision:

10.15 (1) training costs, which may include, but are not limited to, training curriculum, trainers,
10.16 trainee overtime salary, other personnel overtime salary, and tuition;

10.17 (2) costs of gear and equipment related to hazardous materials readiness, response, and
10.18 management, which may include, but are not limited to, original purchase, maintenance,
10.19 and replacement;

10.20 (3) supplies related to the uses under clauses (1) and (2); ~~and~~

10.21 (4) emergency preparedness planning and coordination;~~;~~

10.22 (5) public safety emergency response exercises under section 219.925, subdivision 6;

10.23 and

10.24 (6) public education and outreach, including but not limited to:

10.25 (i) informing and engaging the public regarding hazards of derailments and discharge
10.26 incidents;

10.27 (ii) assisting the development of evacuation readiness;

10.28 (iii) undertaking public information campaigns; and

11.1 (iv) providing accurate information to the media on likelihood and consequences of
11.2 derailments and discharge incidents.

11.3 (f) Notwithstanding paragraph (b), clause (2), from funds in the railroad and pipeline
11.4 ~~safety incident~~ account provided for the purposes under this subdivision, the commissioner
11.5 may retain a balance in the account for budgeting in subsequent fiscal years.

11.6 Subd. 4. **Assessments.** (a) The commissioner of public safety shall annually assess
11.7 \$2,500,000 to railroad and pipeline companies based on the formula specified in paragraph
11.8 (b). The commissioner shall deposit funds collected under this subdivision in the railroad
11.9 and pipeline ~~safety incident~~ account under subdivision 2.

11.10 (b) The assessment for each railroad is 50 percent of the total annual assessment amount,
11.11 divided in equal proportion between applicable rail carriers based on route miles operated
11.12 in Minnesota. The assessment for each pipeline company is 50 percent of the total annual
11.13 assessment amount, divided in equal proportion between companies based on the yearly
11.14 aggregate gallons of oil and hazardous substance transported by pipeline in Minnesota.

11.15 (c) The assessments under this subdivision expire July 1, 2017.

11.16 Sec. 7. **REVISOR'S INSTRUCTION.**

11.17 The revisor of statutes shall recodify Minnesota Statutes, section 115E.042, subdivision
11.18 2, as Minnesota Statutes, section 219.925, subdivision 8, and Minnesota Statutes, section
11.19 115E.042, subdivision 3, as Minnesota Statutes, section 219.925, subdivision 4. The revisor
11.20 shall correct any cross-references made necessary by this recodification.