

SENATE

STATE OF MINNESOTA

EIGHTY-NINTH SESSION

S.F. No. 3352

(SENATE AUTHORS: JENSEN and Dibble)

DATE	D-PG	OFFICIAL STATUS
03/30/2016	5381	Introduction and first reading Referred to Transportation and Public Safety
04/04/2016	5484a	Comm report: To pass as amended and re-refer to Finance

A bill for an act
relating to transportation; amending requirements governing preparedness,
response, and information regarding transportation of oil and other hazardous
substances; establishing certain requirements for railroads; amending
appropriations; making technical changes; amending Minnesota Statutes
2014, sections 115E.042; 219.015; 299A.55; proposing coding for new law in
Minnesota Statutes, chapter 219.

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

Section 1. Minnesota Statutes 2014, section 115E.042, is amended to read:

115E.042 PREPAREDNESS AND RESPONSE FOR CERTAIN RAILROADS.

Subdivision 1. **Application.** In addition to the requirements of section 115E.04,
a person who owns or operates railroad car rolling stock transporting a unit train must
comply with this section.

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

(b) The training must address the general hazards of oil and hazardous substances,
techniques to assess hazards to the environment and to the safety of responders and the
public, factors an incident commander must consider in determining whether to attempt to
suppress a fire or to evacuate the public and emergency responders from an area, and other

strategies for initial response by local emergency responders. The training must include suggested protocol or practices for local responders to safely accomplish these tasks.

Subd. 3. **Coordination.** ~~Beginning June 30, 2015,~~ Each railroad must communicate at least annually with each county or city emergency manager, safety representatives of railroad employees governed by the Railway Labor Act, and a senior fire department officer of each fire department having jurisdiction along the route of a unit train routes over which oil and other hazardous substances are transported, to:

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

(2) assist emergency managers identify and assess local threats, hazards, and risks in areas (i) having high population concentration, or (ii) in which key facilities are located.

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

(b) Within one hour of confirmation of a discharge, a railroad must provide a qualified company employee to advise the incident commander. The employee may be made available by telephone, and must be authorized to deploy all necessary response resources of the railroad.

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

(d) Within three hours of confirmation of a discharge, a railroad must provide qualified personnel at a discharge site to assess the discharge and to advise the incident commander.

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

(1) training and caching equipment with local jurisdictions;

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

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

(4) deployment of a contractor;

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

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

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

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

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

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

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

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

Subd. 5a. **Prevention and response plans; capacity information.** In addition to other requirements, a prevention and response plan under section 115E.04 must include a description of the capacity and methods a railroad intends to utilize in order to meet the requirements under subdivision 4.

Subd. 6. **Prevention and response plans; submission requirements.** (a) By ~~June 30, 2015,~~ A railroad shall submit the prevention and response plan required under section 115E.04, as necessary to comply with the requirements of this section, to the commissioner 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. **Financial responsibility.** (a) ~~Each railroad must file with the commissioner of transportation a financial responsibility plan that complies with the requirements of this subdivision, in a form and manner determined by the commissioner.~~

(b) The financial responsibility plan must include (1) evidence demonstrating that the railroad has the financial ability to pay for the environmental costs that may arise while the financial responsibility plan is in effect, and (2) business information required by the commissioner.

(c) Evidence of the railroad's financial ability to pay, in the form, at the amount, and with such contractual terms, conditions, or defenses required by the commissioner can be demonstrated by:

(1) insurance meeting the requirements of chapter 60A;

(2) self-insurance;

(3) surety bond; or

(4) irrevocable letter of credit, as defined in section 336.5-102.

(d) The commissioner must set the amount of financial ability to pay in consultation with the commissioner of the Pollution Control Agency: (1) using a calculation based on the volume of oil or other hazardous substances to be transported within or through the state; and (2) at a level no less than the expected environmental costs from a worst-case discharge.

(e) A financial responsibility plan must be continuous until canceled. The commissioner must receive 90 days' written notice prior to cancellation of any evidence of the railroad's ability to pay. A railroad shall notify the commissioner promptly following a material change in ability to pay.

Sec. 2. Minnesota Statutes 2014, 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 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 nine~~ state rail safety inspector ~~position~~ 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 ~~include in the assessment calculation all program or additional position start-up or re-establishment costs;~~ 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.

Subd. 5. **Inspection program information.** (a) The commissioner must maintain on the department's public Web site information on state rail safety inspection program activity under this section.

(b) At a minimum, the Web site information must include:

(1) summaries of defects and violations by (i) railroad company, (ii) shipper company, (iii) State Rail Safety Participation Program discipline, (iv) type of defect or violation, (v) level of severity, and (vi) geographic location such as city or region;

(2) to the extent permitted by federal law, inspection reports or basic details regarding any identified critical or major defects, or critical or major violations;

(3) a summary of any enforcement activity;

(4) a review of corrective actions taken; and

(5) a review of revenue sources for and summary of expenditures from the state rail safety inspection account.

(c) In addition, the Web site information must include railroad bridge inspection reports provided to the commissioner under section 219.925, subdivision 5.

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

Sec. 3. **[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) "Oil" has the meaning given in section 115E.01, subdivision 8.

(e) "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.

7.1 Subd. 2. **Emergency response capability notification.** (a) A rail carrier must
7.2 provide an emergency response capability notification to each emergency manager and fire
7.3 chief having jurisdiction along the routes over which oil and other hazardous substances
7.4 are transported and to the commissioner of public safety. At a minimum, the notification
7.5 must include geographic inventories of:

7.6 (1) life-safety emergency response equipment and related major supplies, including
7.7 details on fire-suppression equipment, equipment capacity, and supply amounts; and
7.8 (2) response staff, including information on number and expertise areas of personnel
7.9 responding from each geographic location.

7.10 (b) Each inventory under paragraph (a), clauses (1) and (2), must specify storage
7.11 or starting locations of equipment, supplies, and personnel, and must provide estimates
7.12 of travel times to a sample of reasonable locations along the routes over which oil and
7.13 other hazardous substances are transported.

7.14 (c) A rail carrier must promptly provide an updated notification following any
7.15 material change in the information under this subdivision.

7.16 Subd. 3. **Route planning risk assessment.** A rail carrier must provide a copy of
7.17 the route planning and analysis, including risk assessment information, required under
7.18 Code of Federal Regulations, title 49, section 172.820, or successor requirements, to each
7.19 emergency manager and fire chief having jurisdiction along the routes over which oil and
7.20 other hazardous substances are transported and to the commissioner of public safety.

7.21 Subd. 4. **Hazardous materials response plans.** A rail carrier must provide a copy of
7.22 the carrier's hazardous materials emergency response plan to each emergency manager and
7.23 fire chief having jurisdiction along the routes over which oil and other hazardous substances
7.24 are transported for integration and coordination with local emergency operations planning.

7.25 Subd. 5. **Bridge inspection reports.** A rail carrier must provide a copy of bridge
7.26 inspection reports on railroad bridges along the routes over which oil and other hazardous
7.27 substances are transported to:

7.28 (1) each emergency manager, for those bridges located within the emergency
7.29 manager's jurisdiction;

7.30 (2) each city or county engineer, for those bridges over a roadway under the
7.31 engineer's jurisdiction; and

7.32 (3) the commissioner of transportation, for all applicable bridges.

7.33 Subd. 6. **Software program; comprehensive oil and other hazardous materials**
7.34 **transportation tracking.** (a) All rail carriers subject to this section shall collectively
7.35 maintain a single software program that must be accessible both by a downloadable
7.36 application and by means of the Internet. The program must provide comprehensive,

8.1 accurate, and real-time information regarding transportation of oil and other hazardous
8.2 substances.

8.3 (b) At a minimum, the software program must:

8.4 (1) contain data that is updated on a real-time basis, including, as practicable,
8.5 updates due to rail car switching, assembly and disassembly, and storage operations;

8.6 (2) contain information on all tanker railcars carrying oil and other hazardous
8.7 substances in this state, which must include:

8.8 (i) identification of the specific substance in each railcar; and

8.9 (ii) reasonable estimates of the volume of the substance in each railcar;

8.10 (3) be available to emergency first responders having jurisdiction along the routes
8.11 over which oil and other hazardous substances are transported, and to employees in the
8.12 Department of Public Safety designated by the commissioner of public safety; and

8.13 (4) provide a user interface that is accessible by authorized individuals through a
8.14 Web site.

8.15 (c) The requirement under paragraph (b), clause (3), does not prevent access through
8.16 software applications on wireless communications devices if it is made available for
8.17 each operating system commonly in use.

8.18 Subd. 7. **Data-sharing requirements.** (a) A rail carrier must provide all data
8.19 required under subdivisions 2 to 6 in its entirety, without abridgment.

8.20 (b) A railroad is prohibited from, as a condition of providing any data required under
8.21 this section, requiring an emergency manager or fire chief to enter into an agreement that
8.22 restricts the ability of the emergency manager or fire chief to share the data with:

8.23 (1) local emergency responders in the same jurisdiction; or

8.24 (2) other emergency managers or fire chiefs, if information sharing is for emergency
8.25 life-safety response planning and coordination purposes.

8.26 Subd. 8. **Transported substances community notice.** (a) As provided in this
8.27 subdivision, each rail carrier must provide a community notice concerning all oil and other
8.28 hazardous substance transportation within or through the state. The notice requirement
8.29 under this subdivision does not apply to transportation of goods that are not oil or other
8.30 hazardous substances. All rail carriers subject to this section must collectively maintain
8.31 the community notices on a public Web site.

8.32 (b) A notice under this subdivision must include:

8.33 (1) the specific routes over which the oil or other hazardous substance is transported;

8.34 (2) the transportation schedule, including the time, frequency, and volume of oil or
8.35 other hazardous substance transported on a daily or other reasonable basis as authorized
8.36 by the commissioner;

- 9.1 (3) the number of tanker railcars transported;
- 9.2 (4) a description of the material transported, including, as applicable, the gravity as
- 9.3 measured by industry standards and the vapor pressure;
- 9.4 (5) all applicable emergency response information required under Code of Federal
- 9.5 Regulations, title 49, part 172, subpart G, or successor requirements; and
- 9.6 (6) contact information, including name, title, telephone number, and address, of
- 9.7 at least one qualified company employee who is responsible for serving as a point of
- 9.8 contact for discharge response.
- 9.9 (c) A railroad must provide a community notice prior to transporting oil and other
- 9.10 hazardous substances, and must provide an updated notice prior to any material change in
- 9.11 the information under paragraph (b).

9.12 **EFFECTIVE DATE.** This section is effective July 1, 2016, except that subdivision

9.13 6 is effective July 1, 2017.

9.14 Sec. 4. Minnesota Statutes 2014, section 299A.55, is amended to read:

9.15 **299A.55 RAILROAD AND PIPELINE SAFETY INCIDENT**

9.16 **PREPAREDNESS; OIL AND OTHER HAZARDOUS MATERIALS SUBSTANCES.**

9.17 Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms

9.18 have the meanings given them.

9.19 (b) "Applicable rail carrier" means a railroad company that is subject to an

9.20 assessment under section 219.015, subdivision 2.

9.21 (c) "Hazardous substance" has the meaning given in ~~section 115B.02, subdivision 8~~

9.22 Code of Federal Regulations, title 49, section 171.8.

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

9.24 (e) "Pipeline company" means any individual, partnership, association, or public

9.25 or private corporation who owns and operates pipeline facilities and is required to show

9.26 specific preparedness under section 115E.03, subdivision 2.

9.27 Subd. 2. **Railroad and pipeline safety incident account.** (a) A railroad and

9.28 pipeline safety incident account is created in the special revenue fund. The account

9.29 consists of funds collected under subdivision 4 and funds donated, allotted, transferred, or

9.30 otherwise provided to the account.

9.31 (b) ~~\$104,000~~ \$250,000 is annually appropriated from the railroad and pipeline ~~safety~~

9.32 incident account to the commissioner of the Pollution Control Agency for environmental

9.33 protection activities related to railroad discharge preparedness under chapter 115E.

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

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

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

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

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

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

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

(1) firefighter training needs;

(2) community risk from discharge incidents or spills;

(3) geographic balance; ~~and~~

(4) risks to the general public; and

(5) recommendations of the Fire Service Advisory Committee.

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

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

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

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

(4) emergency preparedness planning and coordination;₂

(5) life-safety emergency response exercises, including coordinated or comprehensive exercises in conjunction with the requirements under section 115E.042, subdivision 5; and

(6) public education and outreach, including but not limited to: (i) informing and engaging the public regarding hazards of derailments and discharge incidents; (ii) assisting in development of evacuation readiness; (iii) undertaking public information campaigns; and (iv) providing accurate information to the media on likelihood and consequences of derailments and discharge incidents.

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

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

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

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

Sec. 5. **REVISOR'S INSTRUCTION.**

The revisor of statutes shall recodify Minnesota Statutes, section 115E.042, subdivision 2, as Minnesota Statutes, section 219.925, subdivision 9, and Minnesota Statutes, section 115E.042, subdivision 3, as Minnesota Statutes, section 219.925, subdivision 10. The revisor shall correct any cross-references made necessary by this recodification.

Sec. 6. **EFFECTIVE DATE.**

Unless specified otherwise, this act is effective July 1, 2016.