



S.B. 363

126th General Assembly
(As Introduced)

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BILL SUMMARY

- Requires every owner or operator of a rail facility in Ohio to develop not later than 180 days after the effective date of the bill a vulnerability assessment of each rail facility that must describe specified information.
- Requires every owner or operator of a rail facility in Ohio to establish and implement not later than 360 days after the bill's effective date a rail infrastructure protection program to protect rail facilities from acts of sabotage, terrorism, or other crimes and provide for the security of critical infrastructure, requires that owner or operator to comply with specified related obligations, and imposes a civil penalty for violation of the requirement.
- Requires every owner or operator of a rail facility that handles cargo within 15 miles of a community facility to comply with specified obligations regarding the handling and storage of hazardous cargo, the security of rail equipment, the training of employees, and other employee and equipment issues and imposes a civil penalty for violation of the requirement.
- Requires every rail owner or operator in Ohio to provide communications capability regarding alerts in the event of sabotage, terrorism, or other crimes.
- Prohibits a rail owner or operator from taking punitive action against an employee who reports violations of the bill and permits such employee to seek damages and other remedies.

- Prohibits a railroad from operating a locomotive, other than on a passenger train, over the road between two terminals with less than two crew members present in the crew compartment.

CONTENT AND OPERATION

Rail facility security

Background

The existing Emergency Planning Law permits the owner or operator of a facility where chemicals are produced, or the owner or operator of any other facility or business of any type, to provide a copy of any vulnerability assessment of the facility or business or of any other security-sensitive information developed regarding the facility or business to any of the following: (1) the local emergency planning committee of the emergency planning district in which the facility or business is located, (2) the fire department with jurisdiction over the facility or business, (3) the sheriff of the county in which the facility or business is located, (4) the chief of police of any municipal corporation with jurisdiction over the facility or business, or (5) any state agency involved in the development of plans to protect businesses of any type against terrorist attack including the Ohio Department of Public Safety, the Ohio Highway Patrol, the Office of Homeland Security, and the Emergency Management Agency.

A local emergency planning committee, fire department, sheriff, or chief of police or other public office that receives a vulnerability assessment or other security-sensitive information may provide a copy of that assessment or information to any local emergency planning committee, fire department, sheriff, or chief of police or to any other public office described in the preceding sentence but cannot share that vulnerability assessment or security-sensitive information with any other public or private office unless required to do so by federal or state law. Any vulnerability assessment or other security-sensitive information a public office receives as described above is not a public record under the Public Records Law, and that assessment or information is not subject to the mandatory disclosure requirements of that Law.

The above provisions are not to be construed to exempt any owner or operator of a facility where chemicals are produced or the owner or operator of any other facility or business of any type from providing information contained in a vulnerability assessment or other security-sensitive information to the public when the provision of that information otherwise is required by federal or state law. (R.C. 3750.22--not in the bill.)

Rail facility vulnerability assessment

The bill requires that, not later than 180 days after its effective date, every owner or operator of a "rail facility" in Ohio must develop a vulnerability assessment of each rail facility in Ohio. The vulnerability assessment must describe all of the following (R.C. 3750.23(B)(1); see "*Definitions*," below, for definitions of the terms in quotation marks):

- (1) All facilities and their functions;
- (2) The types of cargo that move through such facilities, including any "hazardous cargo," the classes of hazardous cargo, and the approximate annual amounts of such hazardous cargo;
- (3) Any storage of hazardous cargo in rail facilities;
- (4) The distances from rail facilities that transport or store hazardous cargo to "community facilities" located within 15 miles of the rail facility;
- (5) The practices or measures the rail owner or operator employs to prevent acts of sabotage, terrorism, or other crimes on rail facilities;
- (6) All required employee security training programs;
- (7) The emergency response procedures of the rail owner or operator with regard to acts of sabotage, terrorism, or other crimes;
- (8) The procedures the rail owner or operator has established to communicate with "public authorities" in the event of acts of sabotage, terrorism, or other crimes.

Under the bill, every owner or operator of a rail facility must update its vulnerability assessment at least once every year and provide a current copy of the assessment to each "public authority" (see "*Definitions*," below). The assessment must be broken down by the classes and annual amounts of hazardous cargo that move through each rail facility. (R.C. 3750.23(B)(2).)

A public authority that receives a vulnerability assessment may provide a copy of that assessment to a public authority but is prohibited from sharing that vulnerability assessment with any other public office (i.e., other than a "public authority," as defined) or private office unless required to do so by federal or state law. Any vulnerability assessment that a public authority receives under the bill is not a public record under the Public Records Law, and that assessment is not subject to the mandatory disclosure requirements of that Law. (R.C. 3750.23(B)(3), by reference to R.C. 3750.22(A)(2) and (B)(1)--not in the bill.)

Rail infrastructure protection program

The bill requires that, not later than 360 days after its effective date, every owner or operator of a "rail facility" in Ohio must establish and implement a rail infrastructure protection program to protect rail facilities from acts of sabotage, terrorism, or other crimes and provide for the security of "critical infrastructure." Each rail owner or operator must do all of the following (R.C. 3750.23(C)(1); see "**Definitions**," below):

(1) Notify each public authority of the location, size, function, and importance of its critical infrastructure;

(2) Protect critical infrastructure from acts of sabotage, terrorism, or other crimes by providing, at a minimum, 24-hour-per-day surveillance, monitoring, and protection of the facilities;

(3) Train and equip rail personnel to prevent acts of sabotage, terrorism, or other crimes, and to respond in the event of such acts;

(4) Inspect any rail facility located within 15 miles of a "community facility" that handles "hazardous cargo" on a regular basis to determine the condition of the rail facility and the vulnerability of the rail facility to acts of sabotage, terrorism, or other crimes;

(5) Update its infrastructure protection program at least once every year and provide a current copy of the program to each public authority.

The bill requires the Office of Homeland Security to review the infrastructure protection program of each rail owner or operator and authorizes that Office to order the rail owner or operator to improve, modify, or change its program to comply with the bill (R.C. 3750.23(C)(2)).

Prohibitions; penalty

The bill prohibits a rail owner or operator from failing to establish and implement, within 360 days after the bill's effective date, a rail infrastructure protection program to protect rail facilities from acts of sabotage, terrorism, or other crimes and provide for the security of "critical infrastructure"; from failing to comply with the obligations described in paragraphs (1) to (5), above, in "**Rail infrastructure protection program**"; or from failing to comply with an order issued by the Office of Homeland Security to improve, modify, or change its rail infrastructure protection program to comply with the bill. A rail owner or operator that violates of any of those prohibitions must pay a civil penalty of not more than \$50,000 for each day of the violation. (R.C. 3750.23(G) and 3750.20(B)(4).)

Handling cargo near community facilities

The bill requires that, for any "rail facility" that handles cargo within 15 miles of a "community facility," the owner or operator of the rail facility must do all of the following (R.C. 3750.23(D); see "Definitions," below):

(1) Provide adequate security personnel for a rail facility that handles or stores "hazardous cargo";

(2) Store hazardous cargo only in secure facilities designed for such storage, which cannot include railroad rights-of-way;

(3) Require rail personnel to be present when locomotive equipment is running and lock unattended locomotive equipment;

(4) Make adequate, qualified personnel available to assist, replace, or relieve train operators who need assistance;

(5) Ensure that the cabs of occupied locomotives can be secured against outsiders who threaten hijack, sabotage, or terrorism;

(6) Limit the use of remote control locomotives to equipment not involving hazardous cargo;

(7) Secure remote control devices to prevent access to such devices by unauthorized personnel, including persons intent on acts of sabotage, terrorism, or other crimes;

(8) Ensure that all employees connected with rail facilities that transport hazardous cargo within 15 miles of a community facility receive, at least once every 12 months, training related to security, shipment of hazardous cargo, and terrorism prevention.

The bill prohibits an owner or operator of a rail facility that handles cargo within 15 miles of a community facility from failing to comply with the obligations described in paragraphs (1) to (8), above. A rail owner or operator that violates that prohibition must pay a civil penalty of not more than \$50,000 for each day of the violation. (R.C. 3750.23(G) and 3750.20(B)(4).)

Communications capability

The bill requires each rail owner or operator in Ohio to provide communications capability, other than a railroad radio, to do all of the following (R.C. 3750.23(E)):

(1) Alert "public authorities" (see "Definitions," below) in the event of sabotage, terrorism, or other crimes;

(2) Allow bridge tenders on movable bridges to alert public authorities in the event of sabotage, terrorism, or other crimes;

(3) Notify rail workers of the local or national threat level for the rail industry.

Applicability; training of railroad contractor employees

The bill specifies that it applies to any rail owner or operator, any contractor or subcontractor working on facilities of the rail owner or operator, and any other individual or corporation performing work on rail facilities in Ohio. All employees of a railroad contractor or subcontractor, and any other individual or corporation performing work on rail facilities in Ohio, must receive training adequate to make them as well-trained as employees of the rail owner or operator performing such work and must be required to undergo the same background, skills, and fitness for duty checks as employees of the rail owner or operator. (R.C. 3750.23(F)(1).)

Prohibition against retaliatory punitive action

The bill prohibits any rail owner or operator from taking punitive action of any kind against an employee who reports violations of the bill. An employee subject to such punitive action may seek damages in an amount not to exceed \$1 million from any employer who takes such action, in addition to other remedies, including back pay, reinstatement, and other damages. (R.C. 3750.23(F)(2).)

Other sanctions

The existing Emergency Planning Law (R.C. Chapter 3750.) provides that whoever violates a provision of that Law (including a violation of any provision of the bill) or a rule adopted under it for which no civil penalty is otherwise provided must pay a civil penalty of not more than \$10,000 for each day of violation. The Attorney General, the prosecuting attorney of the county, or the city director of law of the city where a violation of the Emergency Planning Law or of a rule adopted or order issued under it has occurred or is occurring, upon the written request of the Executive Committee of the Emergency Response Commission, the committee of the emergency planning district, or of the fire department having jurisdiction where the offense has occurred or is occurring, must bring an action against any person who has committed or is committing any such violation. (R.C. 3750.20(B)(5).)

Enforcement

Under the existing Emergency Planning Law, the Attorney General, the prosecuting attorney of the county, or the city director of law of the city where a violation of that Law (including a violation of the provisions of the bill) has occurred or is occurring, upon the written request of the Executive Committee of the Emergency Response Commission, the local emergency planning committee, or the fire department having jurisdiction where the violation has occurred or is occurring, must prosecute to termination or bring an action for injunction against any person who has violated or is violating any section of R.C. Chapter 3750. (Emergency Planning Law) or rules adopted or orders issued under it. The court of common pleas in which an action for injunction is filed has the jurisdiction to and must grant preliminary and permanent injunctive relief upon a showing that the person against whom the action is brought has violated or is violating any section of that chapter or a rule adopted or order issued under it. The court must give precedence to such an action over all other cases.

Upon the certified written request of any person, the Director of Environmental Protection is required to conduct any investigations and make any inquiries that are necessary to secure compliance with R.C. Chapter 3750. and the rules adopted or orders issued under it. The Director or the Emergency Response Commission, upon request or upon their own initiative, may investigate or make inquiries into any alleged violation of that chapter or rules adopted or orders issued under it. (R.C. 3750.20(A).)

Definitions

The bill defines the following terms for purposes of its provisions (R.C. 3750.23(A)):

"Community facilities" include schools, hospitals, nursing homes, and other similar sensitive or vulnerable public facilities.

"Critical infrastructure" includes bridges, tunnels, signal systems, and other points of vulnerability on a rail system that handles hazardous cargo.

"Hazardous cargo" means any "hazardous chemical" or "hazardous material" (see **COMMENT 1** for definitions).

"Hazardous material" has the meaning given to that term in federal law (see **COMMENT 2**). The term also includes any substance or material that an owner or operator of a rail facility transports, stores, or handles as a hazardous material.

"Public authority" means any of the following: (1) the local emergency planning committee of the "emergency planning district" (see **COMMENT 1**) in

which the rail facility is located, (2) the fire department with jurisdiction over the rail facility, (3) the sheriff of the county in which the rail facility is located, (4) the chief of police of any municipal corporation with jurisdiction over the rail facility, or (5) any state agency involved in the development of plans to protect railroads or other businesses against terrorist attack, including the Department of Public Safety, the State Highway Patrol, the Office of Homeland Security, the Emergency Management Agency, the Public Utilities Commission, and the Department of Transportation.

"Rail facilities" include tracks, terminals, stations, structures, rolling stock, rights-of-way, bridges, tunnels, signal systems and any other rail property or equipment of the owner or operator that is considered necessary for the operation of rail services.

Locomotive crew requirements

Under the bill no railroad operating in this state may allow the over-the-road operation of a locomotive between two terminals unless the locomotive has a crew of at least two individuals. One of the crew members must be present in the crew compartment at all times and must operate the unit that controls the movement of multiple units. The other crew member must be present in the crew compartment at all times that the locomotive is in motion, except that the bill allows this crew member to dismount the locomotive when necessary to perform switching activities or other duties in the course of employment. The bill specifies that these crew requirements do not apply to any passenger train operating in this state. (R.C. 4999.09(A) and (B).)

The Public Utilities Commission is required to enforce the crew requirements and may issue any proper order to ensure compliance with the requirements. Whoever violates the crew requirements is subject to a \$1,000 fine for each offense. (R.C. 4999.09(C) and (D).)

COMMENT

1. The definitions of the following terms in the existing Emergency Planning Law apply to the bill (R.C. 3750.01(C), (G), and (H)--not in the bill):

"Hazardous chemical" has the same meaning as in 29 C.F.R. 1910.1200 (c). The term also includes chemicals identified or listed in rules adopted under R.C. 3750.02(C)(5), but does *not* include any of the following: (1) any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration of the United States Department of Health and Human Services, (2) any substance present as a solid in any manufactured item, to the extent that exposure to the substance does not occur under normal conditions of use, (3) any

substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public, including, without limitation, household and consumer products that are stored prior to or displayed for distribution to the consumer when in the same form and concentration and products that are not intended for distribution to the general public and are in the same form and concentration as products packaged for distribution to and use by the general public, unless the chemical is subject to a reporting requirement for which a variance has been issued under R.C. 3750.11(B) or (C), (4) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual, or (5) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

"Emergency planning district" means an emergency planning district or joint emergency planning district designated under R.C. 3750.03 or a joint interstate emergency planning district established by agreement under that section.

2. Under 49 C.F.R. 171.8 "hazardous material" means "a substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 C.F.R. 172.101), and materials that meet the defining criteria for hazard classes and divisions...."

HISTORY

ACTION	DATE
Introduced	08-17-06

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