
ASSEMBLY BILL NO. 340—ASSEMBLYMEN ANDERSON, SMITH, BEERS, BOBZIEN, CARPENTER, CLABORN, CONKLIN, DENIS, GOEDHART, GOICOECHEA, GRADY, HOGAN, HORNE, KIRKPATRICK, MORTENSON, MUNFORD, OCEGUERA, PARKS, PARNELL, PIERCE, SEGERBLOM AND WOMACK

MARCH 15, 2007

Referred to Committee on Transportation

SUMMARY—Enacts provisions relating to the safety and security of railroads and railroad facilities. (BDR 58-779)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to railroads; requiring each railroad operator in this State to submit a risk assessment of its railroad facilities and to implement a railroad infrastructure protection program; imposing certain safety and notice requirements on railroads; prohibiting certain conduct relating to the operation of railroads; providing remedies and penalties; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing state law establishes certain procedures and requirements governing
2 the operation of railroads. (Chapter 705 of NRS) The Federal Railroad Safety Act
3 provides that, to the extent practicable, all laws, regulations and orders related to
4 railroad safety or security must be nationally uniform. However, the Act authorizes
5 a state to adopt or continue in force a law, regulation or order related to railroad
6 safety or security until the United States Secretary of Transportation or Secretary of
7 Homeland Security prescribes a regulation or issues an order covering the same
8 subject matter. Additionally, when necessary to eliminate or reduce an essentially
9 local safety or security hazard, a state is authorized to adopt or continue in force an
10 additional or more stringent law, regulation or order related to railroad safety or
11 security so long as it is compatible with federal law and does not unreasonably
12 burden interstate commerce. (49 U.S.C. § 20106)



13 This bill enacts provisions relating to the safety and security of railroads and
14 railroad facilities in this State, including: (1) requiring a railroad operator to
15 complete and submit a risk assessment for each of its railroad facilities to the Public
16 Utilities Commission of Nevada, the Nevada Commission on Homeland Security
17 and the Division of Emergency Management of the Department of Public Safety;
18 (2) requiring a railroad operator to develop and implement a railroad infrastructure
19 protection program designed to protect its railroad facilities from acts of sabotage
20 or terrorism and other crimes; (3) protecting from public disclosure any information
21 contained in a risk assessment or railroad infrastructure protection program; and (4)
22 prohibiting a railroad operator and other employers from taking punitive action
23 against an employee who reports a violation of the provisions governing railroad
24 safety and security.

25 This bill also imposes certain requirements on railroads operating in this State
26 regarding: (1) the use of signage, markers and flagging systems; (2) the duty to
27 provide notice of any new utilization of remote control locomotives in this State;
28 and (3) the duty to notify the Division of Emergency Management of railroad
29 accidents, incidents and other events.

30 This bill is modeled after provisions of California law, which went into effect
31 on January 1, 2007. (Chapter 867, 2006 Cal. Stat., codified as Cal. Gov't Code
32 § 6254.23 and Cal. Pub. Util. Code §§ 7662, 7665-7667)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** The Legislature hereby finds and declares that the
2 purposes of this act are to:

- 3 1. Provide for the security and safety of railroad facilities and
4 equipment in this State;
- 5 2. Protect local communities from transportation practices that
6 fail to secure railroad facilities and equipment from the threat of
7 sabotage, terrorism and other crimes;
- 8 3. Ensure proper communication between response agencies
9 and the operators of railroads; and
- 10 4. Promote the safe operation of railroads.

11 **Sec. 2.** Chapter 705 of NRS is hereby amended by adding
12 thereto the provisions set forth as sections 2 to 20, inclusive, of this
13 act.

14 **Sec. 3.** *As used in sections 2 to 20, inclusive, of this act,*
15 *unless the context otherwise requires, the words and terms defined*
16 *in sections 4 to 8, inclusive, of this act have the meanings ascribed*
17 *to them in those sections.*

18 **Sec. 4.** *“Division of Emergency Management” means the*
19 *Division of Emergency Management of the Department of Public*
20 *Safety.*

21 **Sec. 5.** *“Locomotive” means any locomotive, diesel engine or*
22 *other motorized equipment, regardless of its power source, used to*
23 *propel trains or switch or move rail cars.*



1 **Sec. 6.** *“Operator of a railroad” or “operator” means any*
2 *individual, company or corporation operating a railroad or a*
3 *railroad facility in this State.*

4 **Sec. 7.** *“Railroad facility” means a railroad facility in this*
5 *State and any related equipment.*

6 **Sec. 8.** *“Response agency” means an agency of this State or*
7 *of a political subdivision that provides services related to law*
8 *enforcement, firefighting, emergency medical care or public*
9 *safety, including, without limitation, the Nevada National Guard.*

10 **Sec. 9. 1.** *The Public Utilities Commission of Nevada may*
11 *adopt any regulations that are necessary to carry out the*
12 *provisions of sections 2 to 20, inclusive, of this act.*

13 **2.** *Before adopting any regulations, the Public Utilities*
14 *Commission of Nevada shall consult with the Nevada Commission*
15 *on Homeland Security and the Division of Emergency*
16 *Management.*

17 **Sec. 10. 1.** *As soon as practicable but not later than July 1,*
18 *2008, each operator of a railroad shall:*

19 **(a)** *Complete a risk assessment for each railroad facility in this*
20 *State that is under its ownership, operation or control; and*

21 **(b)** *Provide the risk assessment to the Public Utilities*
22 *Commission of Nevada, the Nevada Commission on Homeland*
23 *Security and the Division of Emergency Management.*

24 **2.** *The risk assessment must describe, for each railroad*
25 *facility, all the following:*

26 **(a)** *The location and functions of the railroad facility.*

27 **(b)** *Each type of nonhazardous cargo that is moved through or*
28 *stored at the railroad facility.*

29 **(c)** *Each type of hazardous cargo, if any, that is moved*
30 *through or stored at the railroad facility and the frequency with*
31 *which each type of hazardous cargo is moved through or stored at*
32 *the railroad facility.*

33 **(d)** *The measures, practices and procedures developed or*
34 *implemented by the operator to prevent acts of sabotage or*
35 *terrorism and other crimes at the railroad facility.*

36 **(e)** *All training programs required by the operator for its*
37 *employees who work at the railroad facility.*

38 **(f)** *The emergency response measures, practices and*
39 *procedures developed or implemented by the operator to respond*
40 *to and deal with acts of sabotage or terrorism and other crimes at*
41 *the railroad facility.*

42 **(g)** *The measures, practices and procedures developed or*
43 *implemented by the operator to effectuate and ensure that the*
44 *operator and its employees are able to communicate with response*



1 *agencies in the event of acts of sabotage or terrorism and other*
2 *crimes at the railroad facility.*

3 **Sec. 11.** 1. *As soon as practicable but not later than*
4 *January 1, 2009, each operator of a railroad shall develop and*
5 *implement a railroad infrastructure protection program which is*
6 *designed to protect its railroad infrastructure in this State from*
7 *acts of sabotage or terrorism and other crimes.*

8 2. *Each railroad infrastructure protection program must:*

9 (a) *Address the security of all critical railroad infrastructure*
10 *under the ownership, operation or control of the operator; and*

11 (b) *Include a training program with regard to infrastructure*
12 *protection for the employees of the operator. The training program*
13 *must include, without limitation, information on how to recognize,*
14 *prevent and respond to acts of sabotage or terrorism and other*
15 *crimes.*

16 3. *Each operator of a railroad shall:*

17 (a) *As soon as practicable but not later than January 1, 2009,*
18 *submit a copy of its railroad infrastructure protection program to*
19 *the Public Utilities Commission of Nevada, the Nevada*
20 *Commission on Homeland Security and the Division of*
21 *Emergency Management; and*

22 (b) *At least once each year thereafter, review its railroad*
23 *infrastructure protection program and, as soon as practicable*
24 *after its review is completed but not later than December 31 of*
25 *each year, submit the results of its review and any additions or*
26 *modifications to its railroad infrastructure protection program to*
27 *the Public Utilities Commission of Nevada, the Nevada*
28 *Commission on Homeland Security and the Division of*
29 *Emergency Management.*

30 4. *The Public Utilities Commission of Nevada, in*
31 *consultation with the Division of Emergency Management:*

32 (a) *Shall review the railroad infrastructure protection program*
33 *submitted by each operator of a railroad;*

34 (b) *May conduct inspections to facilitate the review; and*

35 (c) *May order the operator of a railroad to improve, modify or*
36 *change its program to comply with the requirements of sections 2*
37 *to 20, inclusive, of this act.*

38 **Sec. 12.** *As soon as practicable after the operator of a*
39 *railroad has developed and implemented its railroad infrastructure*
40 *protection program pursuant to section 11 of this act:*

41 1. *Any person who is employed by the operator and who*
42 *works at a railroad facility must, in accordance with the*
43 *infrastructure protection program:*

44 (a) *Undergo an evaluation of his background, skills and*
45 *fitness; and*



1 (b) *Within a reasonable period, receive training with regard to*
2 *infrastructure protection, including, without limitation, training*
3 *on how to recognize, prevent and respond to acts of sabotage or*
4 *terrorism and other crimes.*

5 2. *Any person who is not employed by the operator but who*
6 *works at a railroad facility, including, without limitation, any*
7 *employee of a contractor or subcontractor of the operator, must:*

8 (a) *Undergo an evaluation of his background, skills and*
9 *fitness that is equivalent to the evaluation required by the operator*
10 *under its infrastructure protection program for its employees who*
11 *work at the railroad facility; and*

12 (b) *Within a reasonable period, receive training that is*
13 *equivalent to the training required by the operator under its*
14 *infrastructure protection program for its employees who work at*
15 *the railroad facility.*

16 **Sec. 13.** 1. *Notwithstanding any other provision of law and*
17 *except as otherwise provided in this section:*

18 (a) *Any information contained in a risk assessment or a*
19 *railroad infrastructure protection program and any other sensitive*
20 *information concerning a railroad that is necessary to carry out*
21 *the provisions of sections 2 to 20, inclusive, of this act is*
22 *confidential and must be securely maintained by each person or*
23 *entity that has possession, custody or control of the information.*

24 (b) *A person or entity that has possession, custody or control of*
25 *such information shall not disclose the information except:*

26 (1) *As is reasonably necessary to carry out the provisions of*
27 *sections 2 to 20, inclusive, of this act or the operations of the*
28 *railroad, as determined by the Public Utilities Commission of*
29 *Nevada in consultation with the Division of Emergency*
30 *Management;*

31 (2) *As is reasonably necessary in the event of any acts of*
32 *sabotage or terrorism and other crimes or emergencies involving*
33 *public health or safety, as determined by the Division of*
34 *Emergency Management; or*

35 (3) *Upon the lawful order of a court of competent*
36 *jurisdiction.*

37 2. *The provisions of this section do not prohibit the Division*
38 *of Emergency Management from providing a response agency*
39 *with a copy of a risk assessment or any information contained*
40 *therein.*

41 3. *If a person knowingly and unlawfully discloses any*
42 *information contained in a risk assessment or railroad*
43 *infrastructure protection program or assists, solicits or conspires*
44 *with another person to disclose the information, the person is*
45 *guilty of:*



1 (a) A gross misdemeanor; or

2 (b) A category C felony and shall be punished as provided in
3 NRS 193.130 if the person acted with the intent to:

4 (1) Commit, cause, aid, further or conceal, or attempt to
5 commit, cause, aid, further or conceal, any unlawful act involving
6 sabotage or terrorism; or

7 (2) Assist, solicit or conspire with another person to
8 commit, cause, aid, further or conceal any unlawful act involving
9 sabotage or terrorism.

10 **Sec. 14.** If the operator of a railroad owns, operates or
11 controls a railroad facility where any type of hazardous cargo is
12 handled or stored, the operator:

13 1. Shall secure the railroad facility by providing adequate
14 security personnel.

15 2. Shall store the hazardous cargo only in a secure facility
16 which is designed for storage of that type of hazardous cargo. The
17 operator shall not store the hazardous cargo on any mainline,
18 branch, industrial or passing tracks if those tracks have not been
19 designed or retrofitted to provide for the secure storage of that type
20 of hazardous cargo.

21 3. Shall not leave any locomotive at the railroad facility
22 running while it is unattended or unlocked while it is unattended.

23 4. Shall ensure that the cabs of locomotives at the railroad
24 facility are secured from hijacking, sabotage or terrorism when
25 the cab is occupied and the locomotive is running.

26 5. Shall not use remote control locomotives at the railroad
27 facility to move the hazardous cargo through a railroad grade
28 crossing at a public highway unless:

29 (a) The person operating the remote control device is able to
30 maintain line-of-sight visibility of the railroad grade crossing and
31 visually ensure that all automatic warning devices at the railroad
32 grade crossing are functioning as intended; and

33 (b) It is safe for the train to enter and move through the
34 railroad grade crossing.

35 6. Shall secure all remote control devices for locomotives at
36 the railroad facility to prevent access to those devices by
37 unauthorized personnel.

38 **Sec. 15.** The operator of a railroad shall provide and
39 maintain communication systems that have the capability to:

40 1. Provide the employees of the operator and any other
41 person who works at a railroad facility with the ability to alert
42 response agencies in a timely manner in the event of acts of
43 sabotage or terrorism and other crimes;



1 2. *Provide bridge tenders on moveable bridges with the ability*
2 *to alert response agencies in a timely manner in the event of acts*
3 *of sabotage or terrorism and other crimes; and*

4 3. *Notify the employees of the operator and any other person*
5 *who works at a railroad facility of the national or local threat level*
6 *for the railroad industry.*

7 **Sec. 16.** 1. *The operator of a railroad shall, consistent with*
8 *federal law, place appropriate signage to notify a locomotive*
9 *engineer of an approaching railroad grade crossing. Whistle signs*
10 *that comply with subsection 2 shall be deemed to satisfy this*
11 *requirement.*

12 2. *The operator of a railroad shall place whistle signs, to the*
13 *right of the track in the direction of approach, exactly one-quarter*
14 *mile from the entrance to any railroad grade crossing to serve as a*
15 *point of reference for locomotive engineers who blow the whistle*
16 *and ring the bell as a warning to the public when approaching the*
17 *railroad grade crossing. The whistle signs:*

18 (a) *Must consist of an "X" or "W" or another identifiable*
19 *mark or symbol on a square plate mounted on a post;*

20 (b) *Must be readily visible to the locomotive engineer from*
21 *within the cab of the locomotive; and*

22 (c) *Must be kept in good repair and replaced when necessary.*

23 3. *The operator of a railroad shall place permanent speed*
24 *signs, to the right of the track in the direction of approach, 2 miles*
25 *in advance of the point where the allowable speed for a passenger*
26 *train or freight train is either increased or decreased. The signs:*

27 (a) *Must indicate whether the change in allowable speed*
28 *applies to passenger trains or freight trains or all trains;*

29 (b) *Must be readily visible to the locomotive engineer from*
30 *within the cab of the locomotive; and*

31 (c) *Must be kept in good repair and replaced when necessary.*

32 4. *The operator of a railroad shall place milepost markers, to*
33 *the right of the track in the direction of approach, at accurate 1-*
34 *mile intervals. The markers must be:*

35 (a) *Readily visible to the locomotive engineer from within the*
36 *cab of the locomotive; and*

37 (b) *Kept in good repair and replaced when necessary.*

38 **Sec. 17.** 1. *If the operator of a railroad issues written or*
39 *verbal instructions to its employees to restrict or stop the*
40 *movement of a train because of track conditions or structures*
41 *within a restricted area or because of persons or equipment*
42 *working within a restricted area, one or more warning flags of*
43 *appropriate color must be displayed as quickly as practicable and*
44 *in accordance with the provisions of this section.*

45 2. *A warning flag:*



1 (a) Must be readily visible to and easily recognizable by the
2 crew members of both passenger trains and freight trains; and

3 (b) Must be displayed:

4 (1) To the right of the track in the direction of approach;

5 (2) Only on the track affected so long as there is a warning
6 flag displayed at all possible points of rail access to the restricted
7 area; and

8 (3) In the proper location on the track affected as required
9 by subsection 3 or 4.

10 3. A yellow warning flag must be used to warn a train to
11 restrict its movement because of track conditions or structures
12 within a restricted area. A yellow warning flag:

13 (a) Except as otherwise provided in paragraph (b), must be
14 displayed 2 miles before the restricted area to ensure that the
15 movement of the train is restricted at the proper location.

16 (b) May be displayed less than 2 miles before the restricted
17 area if the restricted area is close to a terminal, a junction or
18 another restricted area. This information must be included in the
19 written or verbal instructions that the operator issues to its
20 employees pursuant to subsection 1.

21 4. A yellow-red warning flag must be used to warn a train to
22 be prepared to stop because of persons or equipment working
23 within a restricted area. A yellow-red warning flag:

24 (a) Except as otherwise provided in paragraph (b), must be
25 displayed 2 miles before the restricted area to ensure that the train
26 is prepared to stop at the proper location.

27 (b) May be displayed less than 2 miles before the restricted
28 area if the restricted area is close to a terminal, a junction or
29 another restricted area. This information must be included in the
30 written or verbal instructions that the operator issues to its
31 employees pursuant to subsection 1.

32 **Sec. 18.** 1. The operator of a railroad shall notify the
33 Public Utilities Commission of Nevada and the representative of
34 any labor organization representing an affected employee
35 regarding any new utilization of a remote control locomotive in
36 this State by the operator that occurs on or after July 1, 2007.

37 2. The operator of a railroad shall provide immediate
38 notification to the Division of Emergency Management of
39 accidents, incidents and other events at the same time that the
40 operator provides notification to the Federal Railroad
41 Administration's National Response Center as required by 49
42 C.F.R. § 225.9.

43 **Sec. 19.** 1. The operator of a railroad or any other
44 employer whose employees work at a railroad facility shall not
45 retaliate or otherwise take punitive action against an employee



1 *who reports any violation of the provisions of sections 2 to 20,*
2 *inclusive, of this act.*

3 2. *An employee who is harmed by an employer's violation of*
4 *subsection 1 may bring a civil action against the employer to*
5 *recover:*

6 (a) *Civil damages and any other remedies the court deems*
7 *appropriate; and*

8 (b) *Reasonable costs and attorney's fees.*

9 3. *The remedies provided in this section are in addition to and*
10 *do not preclude any other remedies or penalties provided by law.*

11 **Sec. 20.** *The operator of a railroad is liable for the civil*
12 *penalty provided for in NRS 703.380 if the operator:*

13 1. *Violates any provision of sections 2 to 20, inclusive, of this*
14 *act;*

15 2. *Violates any rule or regulation of the Public Utilities*
16 *Commission of Nevada adopted pursuant to sections 2 to 20,*
17 *inclusive, of this act; or*

18 3. *Fails, neglects or refuses to obey any order of the Public*
19 *Utilities Commission of Nevada issued pursuant to sections 2 to*
20 *20, inclusive, of this act, or any order of a court requiring*
21 *compliance with such an order of the Commission.*

22 **Sec. 21.** This act becomes effective on July 1, 2007.

