S T A T E O F N E W Y O R K

6455

2009-2010 Regular Sessions

I N A S S E M B L Y

March 4, 2009

Introduced by M. of A. ORTIZ, JOHN, LAVINE, HOOPER -- Multi-Sponsored by -- M. of A. PEOPLES -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to providing for the security and safety of local communities and community facilities, by protecting local communities from practices that fail to secure rail facilities and equipment from the threat of terrorism and by ensuring proper communication between the owners and operators of rail facilities and equipment with local and state first responders

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

Section 1. Short Title. This act may be cited as the "Local Community Rail Security Act of 2009."

S 2. Legislative intent; findings and purposes. The legislature hereby finds and declares it necessary to protect this state's rail facilities and the local communities where these facilities are located and/or operated from possible sabotage resulting from acts of terrorism or other crimes. The legislature finds it necessary for the state emergency management agency and the department of transportation, in a collaborative effort, to conduct a risk assessment of the safety and security of this state's rail facilities and rail equipment.

The legislature further finds it necessary to implement an advanced plan of protection for all local communities where rail facilities are located and/or operated. This plan shall be uniformly adopted and strictly adhered to by all such communities. Further, this plan shall improve the quality of communication between the owners and operators of rail facilities and the local and state first responders.

The legislature recognizes the dire need for the owners, operators and employees of rail facilities to receive proper training on how to deal with security threats or breaches effecting rail facilities since they are the best persons to identify and respond to any security threat or

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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breach and to recognize the resulting threats to local communities. Therefore, this plan establishes training requirements including how owners, operators, and employees must deal with hazardous materials or oil being transported or stored on the premises of rail facilities, and how to prevent the sabotage of rail facilities or equipment by conducting proper inspections of the facilities, adequately storing hazardous materials, oil or equipment, and by properly identifying and quickly responding to security threats.

S 3. The public authorities law is amended by adding a new article 9-A to read as follows:

ARTICLE 9-A

LOCAL COMMUNITY RAIL SECURITY ACT OF 2009

FOR PROTECTING OUR RAIL FACILITIES FROM THREAT OF TERRORISM

SECTION 2990. RISK ASSESSMENT.
2991. COMMUNITY PROTECTION PLAN.
2992. WORKER PROTECTION PLAN.
2993. SCOPE.

S 2990. RISK ASSESSMENT. NOT LATER THAN ONE HUNDRED EIGHTY DAYS AFTER THIS ARTICLE TAKES EFFECT, EVERY OPERATOR OF A RAIL FACILITY IN THIS STATE SHALL PROVIDE TO THE STATE EMERGENCY MANAGEMENT AGENCY AND THE DEPARTMENT OF TRANSPORTATION ANY NECESSARY DATA OR INFORMATION FOR A RISK ASSESSMENT OF ALL RAIL FACILITIES IN THIS STATE TO BE CONDUCTED BY SUCH AGENCY AND DEPARTMENT. SUCH ASSESSMENT SHALL CONTAIN INFORMATION INCLUDING:

(A) ALL FACILITIES AND THEIR FUNCTIONS;

(B) THE TYPES OF CARGO THAT HAVE MOVED THROUGH SUCH FACILITIES WITHIN THE PRECEDING TWELVE MONTHS, INCLUDING THE APPROXIMATE QUANTITIES OF HAZARDOUS MATERIALS AND OIL SUBJECT TO CHAPTER I OF TITLE 49 OF THE CODE OF FEDERAL REGULATIONS;

(C) THE EXTENT TO WHICH HAZARDOUS MATERIALS OR OIL ARE STORED IN RAIL FACILITIES, INCLUDING THE LOCATION OF SUCH FACILITIES AND THE APPROXIMATE QUANTITIES OF HAZARDOUS MATERIALS OR OIL STORED;

(D) THE LOCATION OF ANY RAIL FACILITY THROUGH WHICH HAZARDOUS MATERIALS OR OIL ARE TRANSPORTED OR AT WHICH SUCH CARGO IS STORED THAT LIES WITHIN A FIFTEEN MILE RADIUS OF A SCHOOL, HOSPITAL, NURSING HOME, PUBLIC UTILITY OR PUBLIC SAFETY FACILITY; AND

(E) THE RAIL OPERATOR'S CURRENT SECURITY PLAN, WHICH SHALL INCLUDE:

(I) A DESCRIPTION OF THE PRACTICES OF THE RAIL OPERATOR DESIGNED TO PREVENT ACTS OF SABOTAGE, TERRORISM OR OTHER CRIMES ON RAIL FACILITIES;

(II) THE TRAINING PROGRAM THE RAIL OPERATOR PROVIDES TO ITS EMPLOYEES;

(III) THE EMERGENCY RESPONSE PROCEDURES OF THE RAIL OPERATOR IN DEALING WITH ACTS OF SABOTAGE, TERRORISM OR OTHER CRIMES; AND

(IV) THE PROCEDURES OF THE RAIL OPERATOR IN COMMUNICATING WITH LOCAL AND STATE LAW ENFORCEMENT PERSONNEL, EMERGENCY PERSONNEL, TRANSPORTATION OFFICIALS AND OTHER FIRST RESPONDERS IN THE EVENT OF ACTS OF SABOTAGE, TERRORISM OR OTHER CRIMES.

S 2991. COMMUNITY PROTECTION PLAN. 1. NOT LATER THAN THREE HUNDRED SIXTY DAYS AFTER THE DATE THIS ARTICLE TAKES EFFECT, ALL RAIL OPERATORS SHALL HAVE IN PLACE A COMMUNITY PROTECTION PLAN DESIGNED TO PROTECT RAIL INFRASTRUCTURE AND TRAFFIC IN THIS STATE FROM ACTS OF SABOTAGE, TERRORISM OR OTHER CRIMES. THE COMMUNITY PROTECTION PLAN SHALL PROVIDE SPECIFICALLY FOR THE SECURITY OF CRITICAL INFRASTRUCTURE, INCLUDING ALL POINTS OF VULNERABILITY OF THE RAIL SYSTEM WHICH HANDLE HAZARDOUS CARGO OR OIL, INCLUDING RIGHTS OF WAY, YARDS, BRIDGES, TUNNELS AND SIGNAL SYSTEMS.

2. WITH RESPECT TO RAIL INFRASTRUCTURE, GENERALLY, THE COMMUNITY PROTECTION PLAN SHALL SET FORTH AND DESCRIBE:

(I) THE RAIL OPERATOR'S METHODS FOR PROTECTING CRITICAL INFRASTRUCTURE FROM ACTS OF SABOTAGE, TERRORISM OR OTHER CRIMES;

(II) THE MANNER AND SUBSTANCE OF INITIAL AND RECURRENT TRAINING PROVIDED BY THE RAIL OPERATOR TO ITS EMPLOYEES TO ENABLE THEM TO IDENTIFY SECURITY THREATS AND RESPOND APPROPRIATELY TO ACTS OF SABOTAGE, TERRORISM OR OTHER CRIMES;

(III) THE EMERGENCY RESPONSE PROCEDURES OF THE RAIL OPERATOR IN DEALING WITH ACTS OF SABOTAGE, TERRORISM OR OTHER CRIMES; AND

(IV) THE PROCEDURES OF THE RAIL OPERATOR IN COMMUNICATING WITH LOCAL AND STATE LAW ENFORCEMENT PERSONNEL, EMERGENCY PERSONNEL, TRANSPORTATION OFFICIALS, AND OTHER FIRST RESPONDERS IN THE EVENT OF ACTS OF SABOTAGE, TERRORISM OR OTHER CRIMES.

3. WITH RESPECT TO ANY RAIL FACILITY THROUGH WHICH HAZARDOUS MATERIALS OR OIL IS TRANSPORTED OR AT WHICH SUCH CARGO IS STORED THAT LIES WITHIN A FIFTEEN MILE RADIUS OF A SCHOOL, HOSPITAL, NURSING HOME, PUBLIC UTILITY OR PUBLIC SAFETY FACILITY, THE COMMUNITY PROTECTION PLAN SHALL ALSO PROVIDE FOR THE

(I) REGULAR ROUTINE INSPECTION OF THE CONDITION OF THE FACILITY AND ITS SUSCEPTIBILITY TO SABOTAGE, RESULTING FROM TERRORISM OR OTHER CRIMES, BY TRAINED PERSONNEL;

(II) STORAGE OF HAZARDOUS MATERIALS OR OIL ONLY IN SECURE FACILITIES DESIGNED FOR SUCH STORAGE, WHICH SHALL NOT INCLUDE RIGHTS OF WAY;

(III) PROCEDURES TO PREVENT LEAVING LOCOMOTIVE EQUIPMENT RUNNING WHILE UNATTENDED, AND LEAVING UNATTENDED LOCOMOTIVE EQUIPMENT UNLOCKED;

(IV) METHODS BY WHICH THE CABS OF OCCUPIED LOCOMOTIVES MAY BE SECURED AGAINST UNAUTHORIZED ENTRY; AND

(V) SECURITY FOR ALL REMOTE CONTROL DEVICES TO PREVENT ACCESS TO SUCH DEVICES BY UNAUTHORIZED PERSONNEL.

4. EACH RAIL OPERATOR IN THIS STATE SHALL PROVIDE A COPY OF ITS COMMUNITY PROTECTION PLAN TO THE STATE EMERGENCY MANAGEMENT AGENCY AND THE DEPARTMENT OF TRANSPORTATION. THE DEPARTMENT OF TRANSPORTATION SHALL REVIEW THE COMMUNITY PROTECTION PLAN AND SHALL HAVE THE AUTHORITY TO ORDER A RAIL OPERATOR TO IMPROVE, MODIFY OR CHANGE ITS PLAN TO COMPLY WITH THE REQUIREMENTS OF THIS ARTICLE. THE DEPARTMENT OF TRANSPORTATION SHALL HAVE THE AUTHORITY TO FINE A RAIL OPERATOR UP TO FIFTY THOUSAND DOLLARS PER DAY FOR FAILURE TO COMPLY WITH ANY PROVISION OF THIS ARTICLE. THE COMMUNITY PROTECTION PLAN SHALL BE UPDATED BY THE RAIL OPERATOR AT LEAST ONCE EVERY YEAR AND THE UPDATED PLAN SHALL BE SUBMITTED TO THE STATE EMERGENCY MANAGEMENT AGENCY AND THE DEPARTMENT OF TRANSPORTATION WITHIN THE TIME FRAME SO PROVIDED.

S 2992. WORKER PROTECTION PLAN. NO RAIL OPERATOR OR ANY OTHER PERSON COVERED BY THIS ARTICLE MAY DISCHARGE OR IN ANY WAY DISCRIMINATE AGAINST AN EMPLOYEE WHO REPORTS A VIOLATION OF THIS ARTICLE. AN EMPLOYEE WHO ALLEGES A VIOLATION OF THIS ARTICLE MAY SEEK PUNITIVE DAMAGES OF UP TO ONE MILLION DOLLARS FOR THE VIOLATION, IN ADDITION TO ANY OTHER REMEDY AVAILABLE UNDER A PROVISION OF THE LAW.

S 2993. SCOPE. THIS ARTICLE SHALL APPLY TO RAIL OPERATORS, CONTRACTORS OR SUBCONTRACTORS WORKING ON THE FACILITIES OF A RAIL OPERATOR, AND ANY OTHER INDIVIDUAL OR CORPORATION PERFORMING WORK ON RAIL FACILITIES IN THIS STATE. ALL EMPLOYEES OF RAIL OPERATORS, CONTRACTORS OR SUBCONTRACTORS, AND OTHER INDIVIDUALS OR CORPORATIONS PERFORMING WORK ON RAIL FACILITIES IN THIS STATE, SHALL RECEIVE THE TRAINING PRESCRIBED IN SECTION TWENTY-NINE HUNDRED NINETY-ONE OF THIS ARTICLE. IN ADDITION, EMPLOYEES OF RAIL CONTRACTORS OR SUBCONTRACTORS, AND OTHER INDIVIDUALS OR CORPORATIONS PERFORMING WORK ON RAIL FACILITIES IN THIS STATE, SHALL BE REQUIRED TO UNDERGO THE SAME BACKGROUND, SKILLS AND FITNESS FOR DUTY

CHECKS AS EMPLOYEES OF THE RAIL OPERATOR. IF ANY PROVISIONS OF THIS ARTICLE SHALL BE DETERMINED TO BE IN CONFLICT WITH ANY OTHER PROVISION OF LAW, SUCH PROVISIONS WILL CONTINUE IN EFFECT ONLY TO THE EXTENT PERMITTED BY SUCH LAW. IF ANY PROVISIONS OF THIS ARTICLE ARE OR BECOME INVALID OR UNENFORCEABLE, SUCH INVALIDITY OR UNENFORCEABILITY WILL NOT AFFECT OR IMPAIR ANY OTHER TERM OR PROVISION OF THIS ARTICLE.

S 4. This act shall take effect on the sixtieth day after it shall have become a law.