LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 5603
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: JANUARY 7, 2022

SUMMARY

Synopsis: Requires owner or operator of certain trains to have discharge response, cleanup, and contingency plans to transport certain hazardous materials by rail; requires DEP to request bridge inspection reports from US DOT.

Type of Impact: Increased State revenue and expenditures, decreased local expenditures.

Agencies Affected: Department of Environmental Protection, New Jersey Office of Emergency Management, Department of Transportation, local emergency planning committees.

Office of Legislative Services Estimate

Fiscal Impact	Year 1	Year 2	Year 3
Potential State Cost Increase		Indeterminate	
State Revenue Increase		Indeterminate	
Local Cost Decrease		Indeterminate	

- The Office of Legislative Services (OLS) projects that the bill will increase the annual administrative expenditures of the Department of Environmental Protection (DEP). The magnitude of the increase depends, in part, on DEP operating decisions, which the OLS cannot anticipate. At a minimum, however, a new full-time staff member may be required to evaluate, approve, and retain high hazard train discharge response, cleanup, and contingency plans at a compensation level of $80,000 to $120,000 per year, with approximately $10,000 annually in equipment and materials to support these activities.

- In addition, annual DEP revenue collections may increase to the extent that the department assesses civil administrative penalties of up to $25,000 per violation of the bill's requirements. It is unknown how many violations will occur and what penalties the department may impose. Accordingly, the OLS cannot determine the frequency and scale of the potential revenue gain.

- Lastly, local governments may experience recurring cost decreases insofar as the bill requirement that owners and operators of high hazard trains newly offer specialized training for local government emergency services personnel along the travel routes of the high hazard

trains obviates the need for concerned local governments to provide this training at their own expense.

BILL DESCRIPTION

This bill requires the owner or operator of a high hazard train traveling within this State to submit to the DEP within six months of the effective date of the bill a discharge response, cleanup, and contingency plan (plan) that contains certain information.

The bill requires the plan to be renewed every five years with the department unless the department requires a more frequent submission and any amendments to the plan are to be filed with the department within 30 days of the date of any modification of the high hazard train, rail yards, fueling stations, or the high hazard train's route of travel. The owner or operator of a high hazard train is required to retain on file with the department evidence of financial responsibility for the cleanup and removal costs of a discharge or release of a hazardous substance, and for the removal of any damaged or disabled high hazard train equipment or parts. A copy of the plan, plan renewal, and all plan amendments are to be filed by the owner or operator of a high hazard train with the New Jersey Office of Emergency Management.

Under the bill, the owner or operator of a high hazard train is required to make available to the public on its website, to the extent the release of the information does not conflict with federal law, an analysis of the consequences of maximum discharges from the high hazard trains owned or operated in the State and a copy of the most current plan.

The bill requires the owner or operator of a high hazard train to offer training to the emergency services personnel of every local unit having jurisdiction along the travel route of the high hazard train. The initial training is to be offered within one year of the effective date of this bill and renewal training is to be offered at least once every three years thereafter.

The bill requires the owner or operator of a high hazard train, which has experienced a discharge that requires emergency response action, to deliver and deploy sufficient emergency response, recovery, and containment equipment and trained personnel to contain and recover the discharged materials and protect environmentally sensitive areas and potable water intakes within certain timeframes.

The provisions of the bill are not applicable to the owner or operator of a Class III carrier, as defined by the federal Surface Transportation Board, that operates within a single municipality on not more than 25 total track miles and is engaged in switching or terminal railroad services. The bill clarifies that it is not to be construed to exempt major facilities from the provisions of the "Spill Compensation and Control Act."

The bill requires the DEP to review plans or plan renewals within six months of filing and plan amendments within 60 days of filing. If a plan, plan renewal, or plan amendment is disapproved, the owner or operator of the high hazard train is required to submit a revised plan, plan renewal, or plan amendment within 30 days from the receipt of written notice of the disapproval. The bill permits the department to issue civil administrative penalties for violations under the bill and bring an action for civil penalties. Under the bill, the owner or operator of a high hazard train that experiences a discharge is subject to the penalty and injunctive relief provisions of the "Spill Compensation and Control Act."

The New Jersey Office of Emergency Management is to provide certain information to certain county offices of emergency management and emergency services.

The bill requires the DEP to, annually or whenever deemed necessary, request from the U.S. Department of Transportation a copy of the most recent bridge inspection report generated

pursuant to the federal "Rail Safety Improvement Act of 2008" for every bridge owned by a railroad or upon which a railroad is located. The DEP is to submit any bridge inspection report acquired from the U.S. Department of Transportation to the Governor and the Legislature.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that the bill will likely result in an indeterminate increase in State expenditure and State revenue, and an indeterminate decrease in local expenditures.

The OLS projects that the bill will increase the annual administrative expenditures of the DEP. The magnitude of the increase depends, in part, on DEP operating decisions, which the OLS cannot anticipate. At a minimum, however, a new full-time staff member may be required to evaluate, approve, and retain high hazard train discharge response, cleanup, and contingency plans. Although some existing staff resources could be used, it is likely that a dedicated staff member with expertise in the transport of hazardous materials may be needed to develop standards concerning this new responsibility of the department. The bill provides a general framework for items that are required to be included in the plan. However, until standards are developed by the department, it is unclear how complex each plan will have to be or the amount of labor that will be required to review the plans. Assuming a single professional staff member is capable of handling plan review, the pay grade of the employee would likely entail total compensation in the range of $80,000 to $120,000 per year, with approximately $10,000 annually in equipment and materials to support these activities. Additional staff members may be required if the complexity of the plans is too great for a single staff member to handle the workload.

The bill permits the department to assess a civil administrative penalty of up to $25,000 per violation of the bill's requirements. It is unknown how many violations will occur and what penalties the department may impose. Accordingly, the OLS cannot determine the frequency and scale of the potential revenue gain.

Lastly, local governments may experience recurring cost decreases insofar as the bill requirement that owners and operators of high hazard trains newly offer specialized training for local government emergency services personnel along the travel routes of the high hazard trains obviates the need for concerned local governments to provide this training at their own expense. It is unclear how much training related to the rail transport of hazardous materials is currently provided to local government emergency services personnel.

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).