

114TH CONGRESS
1ST SESSION

S. _____

To enhance rail safety and provide for the safe transport of hazardous materials, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MENENDEZ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To enhance rail safety and provide for the safe transport of hazardous materials, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Toxics by Rail Ac-
5 countability and Community Knowledge Act of 2015” or
6 the “TRACK Act”.

7 **SEC. 2. CHEMICAL EXPOSURE RIGHT-TO-KNOW.**

8 (a) DEFINITIONS.—In this section:

9 (1) LONG-LASTING OR IRREVERSIBLE HEALTH
10 CONSEQUENCES.—The term “long-lasting or irre-

1 versible health consequences” means those health
2 consequences occurring at the exposure threshold de-
3 fined in the Acute Exposure Guideline Level AEGL-
4 2 or AEGL-3, as established by the National Advi-
5 sory Committee for the Development of Acute Expo-
6 sure Guideline Levels for Hazardous Substances.

7 (2) POST-ACCIDENT PUBLIC HEALTH ASSESS-
8 MENT.—The term “post-accident public health as-
9 sessment” means a scientific assessment of the im-
10 pacts of a hazardous material release on public
11 health made by a qualified entity.

12 (3) QUALIFIED ENTITY.—The term “qualified
13 entity” means a Federal, State, or other govern-
14 mental entity responsible for emergency response,
15 public health, chemical safety or transportation, or
16 environmental protection.

17 (b) RIGHT-TO-KNOW PROTECTIONS.—Beginning 180
18 days after the date of the enactment of this Act, railroad
19 carriers that are found to be at fault by an administrative,
20 judicial, or investigatory process for an accident or inci-
21 dent during calendar year 2010 or later that led to an
22 unintended release of hazardous materials shall—

23 (1) periodically review any post-accident public
24 health assessments regarding the extent to which in-
25 dividuals exposed to the hazardous material that was

1 released could experience long-lasting or irreversible
2 health consequences;

3 (2) timely inform individuals exposed to the
4 hazardous material of any health information, in-
5 cluding information regarding long-lasting or irre-
6 versible health consequences, included in such re-
7 ports; and

8 (3) offer to renegotiate any legal settlements
9 made to individuals impacted by a hazardous mate-
10 rial release for which additional information about
11 the potential for long-lasting or irreversible health
12 consequences has been later disclosed in a post-acci-
13 dent public health assessment.

14 (c) ENFORCEMENT.—Any railroad carrier violating
15 subsection (b)(3), or a regulation prescribed pursuant to
16 subsection (b)(3), shall be liable to the Federal Govern-
17 ment for a civil penalty for each violation or for each day
18 the violation continues, as follows:

19 (1) A railroad carrier that has annual carrier
20 operating revenues that meet the threshold amount
21 for Class I carriers, as determined by the Surface
22 Transportation Board under section 1201.1–1 of
23 title 49, Code of Federal Regulations, shall be liable
24 for a civil penalty of not less than \$100,000 and not
25 more than \$1,000,000.

1 (2) A railroad carrier that has annual carrier
2 operating revenues that meet the threshold amount
3 for Class II carriers, as determined by the Surface
4 Transportation Board under section 1201.1–1 of
5 title 49, Code of Federal Regulations, shall be liable
6 for a civil penalty of not less than \$25,000 and not
7 more than \$250,000.

8 (3) A railroad carrier that has annual carrier
9 operating revenues that meet the threshold amount
10 for Class III carriers, as determined by the Surface
11 Transportation Board under section 1201.1–1 of
12 title 49, Code of Federal Regulations, shall be liable
13 for a civil penalty of not less than \$10,000 and not
14 more than \$100,000.

15 **SEC. 3. COMMODITY FLOW TRANSPARENCY.**

16 (a) RULEMAKING.—Not later than 2 years after the
17 date of the enactment of this Act, the Secretary of Trans-
18 portation shall prescribe regulations requiring a railroad
19 carrier transporting a hazardous material—

20 (1) to provide first responders, emergency re-
21 sponse officials, and law enforcement personnel in
22 the communities through which the hazardous mate-
23 rial is transported with accurate and current com-
24 modity flow data; and

1 (2) to assist with the development of emergency
2 operations and response plans designed to protect
3 public health and community safety in the event of
4 a railroad accident or incident involving the haz-
5 ardous material.

6 (b) CONSIDERATIONS.—In prescribing regulations
7 under subsection (a), the Secretary may consider which
8 hazardous materials or classes of hazardous materials are
9 most relevant to be included within commodity flow infor-
10 mation based on factors such as—

11 (1) the volume of the hazardous material trans-
12 ported; and

13 (2) the threat to public health and community
14 safety posed by each hazardous material.

15 **SEC. 4. MOVEABLE BRIDGE INSPECTION BEFORE TRAIN**
16 **MOVEMENT.**

17 (a) PROCEDURE REQUIRED.—Not later than 18
18 months after the date of the enactment of this Act, the
19 Secretary of Transportation shall prescribe regulations es-
20 tablishing a procedure for a railroad carrier to permit a
21 train to pass a red signal aspect protecting a moveable
22 bridge.

23 (b) TRAINING AND QUALIFICATIONS.—

24 (1) TRAINING PROGRAM.—The procedure estab-
25 lished pursuant to subsection (a) shall require a rail-

1 road carrier that operates across a moveable bridge
2 to have an active program to train and qualify its
3 employees to determine whether a train can safely
4 travel across a moveable bridge when a signal pro-
5 tecting the bridge is displaying a red signal aspect.

6 (2) REQUIRED QUALIFICATIONS.—A railroad
7 carrier described in paragraph (1) shall ensure that
8 only an individual qualified under the railroad car-
9 rier's training program is given responsibility for de-
10 termining whether a train can safely travel across a
11 moveable bridge when a signal protecting the bridge
12 is displaying a red signal aspect.

13 (c) ENFORCEMENT.—Any railroad carrier violating
14 this section, or a regulation prescribed pursuant to this
15 section, shall be liable to the Federal Government for a
16 civil penalty for each violation or for each day the violation
17 continues, as follows:

18 (1) A railroad carrier that has annual carrier
19 operating revenues that meet the threshold amount
20 for Class I carriers, as determined by the Surface
21 Transportation Board under section 1201.1–1 of
22 title 49, Code of Federal Regulations, shall be liable
23 for a civil penalty of not less than \$100,000 and not
24 more than \$1,000,000.

1 (2) A railroad carrier that has annual carrier
2 operating revenues that meet the threshold amount
3 for Class II carriers, as determined by the Surface
4 Transportation Board under section 1201.1–1 of
5 title 49, Code of Federal Regulations, shall be liable
6 for a civil penalty of not less than \$25,000 and not
7 more than \$250,000.

8 (3) A railroad carrier that has annual carrier
9 operating revenues that meet the threshold amount
10 for Class III carriers, as determined by the Surface
11 Transportation Board under section 1201.1–1 of
12 title 49, Code of Federal Regulations, shall be liable
13 for a civil penalty of not less than \$10,000 and not
14 more than \$100,000.

15 **SEC. 5. ROUTE RISK ASSESSMENT.**

16 (a) ROUTE RISK ASSESSMENT TOOLS.—The Sec-
17 retary of Transportation, in collaboration with the Sec-
18 retary of Homeland Security and the American Short Line
19 and Regional Railroad Association, shall develop a route
20 risk assessment tool for the use of short line and regional
21 railroad carriers that—

22 (1) addresses any known limitations of the Rail
23 Corridor Risk Management Safety software tool for
24 short line and regional railroad carriers; and

1 (2) allows for safety and security risk assess-
2 ments to be performed by short line and regional
3 railroad carriers when alternative routes are not
4 available.

5 (b) ROUTE RISK ASSESSMENT AUDITS.—The Sec-
6 retary of Transportation, in collaboration with the Sec-
7 retary of Homeland Security and the American Short Line
8 and Regional Railroad Association, shall conduct audits
9 of short line and regional railroads to ensure that proper
10 route risk assessments that identify safety and security
11 vulnerabilities are being performed and are incorporated
12 into a safety management system program.

13 **SEC. 6. RAILROAD SAFETY RISK REDUCTION PROGRAM**
14 **AMENDMENTS.**

15 (a) SAFETY MANAGEMENT SYSTEMS.—Section
16 20156(d)(1) of title 49, United States Code, is amended—

17 (1) in subparagraph (A), by striking “and” at
18 the end;

19 (2) in subparagraph (B), by striking the period
20 at the end and inserting “; and”; and

21 (3) by adding at the end the following:

22 “(C) the use of safety management sys-
23 tems and their associated key principles, includ-
24 ing top-down ownership and policies, analysis of

1 operational incidents and accidents, and contin-
2 uous evaluation and improvement programs.”.

3 (b) SENSE OF CONGRESS.—It is the sense of Con-
4 gress that, under the Railroad Safety Risk Reduction Pro-
5 gram under section 20156 of title 49, United States Code,
6 the Secretary of Transportation should include within the
7 definition of “a railroad carrier that has an inadequate
8 safety performance” any railroad carrier that is at fault
9 for an incident, accident, or emergency involving haz-
10 ardous materials that has led to a fatality or personal in-
11 jury, an evacuation, or environmental damage within the
12 last 5 years.

13 **SEC. 7. FIRST RESPONDER RIGHT-TO-KNOW.**

14 (a) REAL-TIME EMERGENCY RESPONSE NOTIFICA-
15 TION.—Not later than 1 year after the date of the enact-
16 ment of this Act, the Secretary of Transportation shall
17 prescribe regulations that—

18 (1) require a railroad carrier transporting a
19 hazardous material—

20 (A) to have the capability to generate,
21 maintain, retrieve, and promptly deliver accu-
22 rate and real-time consists that include the
23 identity and location of the hazardous material
24 on the train; and

1 (B) to provide such information promptly
2 to first responders, emergency response offi-
3 cials, and law enforcement personnel in the
4 event of an incident, accident, or emergency, or
5 as required by such entities to protect public
6 health and community safety; and

7 (2) prohibit a railroad carrier, employee, or
8 agent from withholding, or a railroad carrier from
9 instructing its employees or agents to withhold, a
10 train consist or a real-time train consist from first
11 responders, emergency response officials, and law
12 enforcement personnel in the event of an incident,
13 accident, or emergency involving the transportation
14 of hazardous materials by railroad that threatens
15 public health or safety.

16 (b) EMERGENCY RESPONSE STANDARDIZATION.—
17 The Secretary of Transportation, in consultation with rail-
18 road carriers, shall ensure that emergency response infor-
19 mation carried by train crews transporting hazardous ma-
20 terials is consistent with, and is at least as protective as,
21 the emergency response guidance provided in the Emer-
22 gency Response Guidebook issued by the Department of
23 Transportation.

24 (c) ENFORCEMENT.—Any railroad carrier violating
25 subsection (a)(2) or a regulation prescribed pursuant to

1 subsection (a)(2) shall be liable to the Federal Govern-
2 ment for a civil penalty for each violation or each day the
3 violation continues, as follows:

4 (1) A railroad carrier that has annual carrier
5 operating revenues that meet the threshold amount
6 for Class I carriers, as determined by the Surface
7 Transportation Board under section 1201.1-1 of
8 title 49, Code of Federal Regulations, shall be liable
9 for a civil penalty of not less than \$100,000 and not
10 more than \$1,000,000.

11 (2) A railroad carrier that has annual carrier
12 operating revenues that meet the threshold amount
13 for Class II carriers as determined by the Surface
14 Transportation Board under section 1201.1-1 of
15 title 49, Code of Federal Regulations, shall be liable
16 for a civil penalty of not less than \$25,000 and not
17 more than \$250,000.

18 (3) A railroad carrier that has annual carrier
19 operating revenues that meet the threshold amount
20 for Class III carriers as determined by the Surface
21 Transportation Board under section 1201.1-1 of
22 title 49, Code of Federal Regulations, shall be liable
23 for a civil penalty of not less than \$10,000 and not
24 more than \$100,000.

1 **SEC. 8. PUBLIC EDUCATION.**

2 Not later than 1 year after the date of the enactment
3 of this Act, the Secretary of Transportation shall prescribe
4 regulations requiring railroad carriers transporting haz-
5 ardous materials to develop, implement, and periodically
6 evaluate a public education program for the communities
7 along railroad hazardous materials routes, which may in-
8 clude—

9 (1) procedures for reporting the release of a
10 hazardous material;

11 (2) physical indications of a release of a haz-
12 ardous material, including a focus on hazardous ma-
13 terials that are most commonly transported in or
14 near a given community;

15 (3) methods of communication that will be used
16 to alert the community in the event of a railroad in-
17 cident, accident, or emergency involving a hazardous
18 material;

19 (4) steps that should be taken by community
20 residents to ensure public health and safety in the
21 event of a hazardous material release; and

22 (5) a discussion of possible public health and
23 safety concerns associated with an unintended re-
24 lease of a hazardous material, including a focus on
25 hazardous materials that are most commonly trans-
26 ported in or near a given community.

1 **SEC. 9. INFLATION ADJUSTMENTS.**

2 The Secretary of Transportation shall issue a state-
3 ment of agency policy adjusting the penalty schedules for
4 violations outlined in this Act as necessary to account for
5 inflation, each time the Secretary is required by law to
6 review the minimum and maximum civil monetary penalty
7 for inflation under the Federal Civil Penalties Inflation
8 Adjustment Act of 1990 (Public Law 101–410; 28 U.S.C.
9 2461 note). The Secretary may subject the statement of
10 agency policy to notice and comment, as the Secretary
11 considers appropriate.