

Assembly Bill No. 3023

CHAPTER 867

An act to add Section 6254.23 to the Government Code, and to add Section 7662 to, and to add Article 7.3 (commencing with Section 7665) to Chapter 1 of Division 1 of, the Public Utilities Code, relating to railroads.

[Approved by Governor September 30, 2006. Filed with Secretary of State September 30, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3023, Nunez. Railroads: safety.

(1) The existing Federal Rail Safety Act (FRSA) authorizes the Secretary of Transportation to prescribe regulations and issue orders for railroad safety and requires the Secretary of Homeland Security, when prescribing a security regulation or issuing a security order that affects the safety of railroad operations, to consult with the Secretary of Transportation. The FRSA provides for state participation in the enforcement of the safety regulations and orders issued by the Secretary of Transportation or Secretary of Homeland Security, pursuant to an annual certification, and authorizes the respective secretaries to make an agreement with a state to provide investigative and surveillance activities. The FRSA provides that to the extent practicable, laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security are required to be nationally uniform, but authorizes a state to adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the state requirement. A state is additionally authorized to adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security, when necessary to eliminate or reduce an essentially local safety or security hazard, that is not incompatible with a federal law, regulation, or order, and that does not unreasonably burden interstate commerce.

Existing law establishes the safety division of the Public Utilities Commission. The safety division is responsible for inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and operations of railroads and public mass transit guideways, and for enforcing state and federal laws, regulations, orders, and directives relating to transportation of persons or commodities, or both, of any nature or description, by rail. Existing law requires the commission to require every railroad corporation operating in this state to develop a protocol for rapid

communications with certain entities in an endangered area if there is a runaway train or any other uncontrolled train movement that threatens public health and safety. Existing law requires a railroad corporation to promptly notify those entities if there is a runaway train or other uncontrolled train movement, in accordance with the communications protocol developed.

This bill would impose certain requirements on a railroad corporation regarding signage, markers, and flagging systems. The bill would require a railroad corporation to notify the commission and the collective bargaining representative of any affected employee of any new utilization of remote control locomotives in the state, on or after January 1, 2007. The bill would require a railroad corporation to provide immediate notification to the Office of Emergency Services (OES) of specified accidents, incidents, and other events that are required to be reported to the Federal Railroad Administration's National Response Center.

(2) Existing law requires the Governor to appoint an executive officer to be the Director of Homeland Security to be in charge of homeland security and to coordinate all homeland security activities, including homeland security strategy, information analysis related to terrorism, and protection of critical infrastructure from terrorism.

This bill would enact the Local Community Rail Security Act of 2006. The act would require every operator of rail facilities, by July 1, 2007, to provide, to the commission, the director, and the OES, a risk assessment of each rail facility in the state that includes specified information. The act would authorize the OES to provide the risk assessment to other law enforcement or emergency personnel. The act would require every rail operator, by January 1, 2008, to develop and implement an infrastructure protection program to protect rail infrastructure in the state from acts of sabotage, terrorism, or other crimes. The act would require each rail operator in the state to provide a copy of its infrastructure protection program to the commission, the director, and the OES and would require the commission, the director, and OES to keep this information confidential. The act would require the commission, in consultation with the OES, to review the infrastructure protection program and would authorize the commission to conduct inspections to facilitate the review and to order a rail operator to improve, modify, or change its program. The act would authorize the commission to fine a rail operator for failure to comply with these requirements or an order of the commission. The act would adopt specific requirements for facilities that handle hazardous cargo. The act would require that rail operators provide communications capability that can accomplish certain tasks. The act would prohibit a rail operator or other covered person from undertaking any act to punish an employee who reports a violation of the act and would provide that an employee subjected to punishment for reporting a violation may seek civil damages of up to \$1,000,000, in addition to any other remedies the court deems appropriate.

(3) Under the California Public Records Act, certain public records are required to be made available for public inspection.

This bill would exempt from public disclosure a risk assessment or railroad infrastructure protection program filed with the commission, the director, or the OES pursuant to the requirements of the act.

The people of the State of California do enact as follows:

SECTION 1. Section 6254.23 is added to the Government Code, to read:

6254.23. Nothing in this chapter or any other provision of law shall require the disclosure of a risk assessment or railroad infrastructure protection program filed with the Public Utilities Commission, the Director of Homeland Security, and the Office of Emergency Services pursuant to Article 7.3 (commencing with Section 7665) of Chapter 1 of Division 4 of the Public Utilities Code.

SEC. 2. Section 7662 is added to the Public Utilities Code, to read:

7662. (a) (1) A railroad corporation shall place appropriate signage to notify an engineer of an approaching grade crossing, consistent with federal law.

(2) Whistle post signs shall be deemed to satisfy this requirement.

(b) (1) Whenever a railroad issues written or verbal instructions to employees that may restrict or stop train movements because of track conditions, structures, persons, or equipment working, appropriate flags that are readily visible and easily recognizable to the crews on both passenger and freight trains shall be displayed as quickly as practicable. Yellow flags shall be used for temporary speed restrictions, consistent with paragraphs (2) and (3). Yellow-red flags shall be used, consistent with paragraphs (4) and (5), when a train may be required to stop.

(2) Yellow flags shall be used to warn trains to restrict movement because of track conditions or structures. Except as provided in paragraph (3), a yellow flag shall be displayed two miles before the restricted area in order to ensure that train movement is restricted at the proper location.

(3) When the restricted area is close to a terminal, junction, or another area, the yellow flag may be displayed less than two miles before the restricted area. This information shall be included in the written instructions to employees issued pursuant to paragraph (1).

(4) Yellow-red flags shall be used to warn trains to be prepared to stop because of men or equipment working. A yellow-red flag shall be displayed two miles before the restricted area in order to ensure that the train is prepared to stop at the proper location.

(5) When the restricted area is close to a terminal, junction, or other area, the yellow-red flag may be displayed less than two miles before the restricted area. This information shall be included in the written instructions to employees issued pursuant to paragraph (1).

(6) Flags shall be displayed only on the track affected and shall be displayed to the right side of the track as viewed from the approaching train. The flags shall be displayed to protect all possible access to the restricted area.

(c) A railroad corporation shall provide milepost markers to train crews at accurate one-mile intervals. The markers shall be readily visible to the locomotive engineer within the locomotive cab, and shall be kept in good repair and replaced when necessary.

(d) A railroad corporation shall place whistle signs to the right of the main track in the direction of approach, exactly one-quarter mile from the entrance to any grade crossing as a point of reference for locomotive engineers who blow the whistle and ring the bell for these grade crossings as a warning to the public. The signs, which shall consist of an “X” or “W” or other identifiable mark or symbol on a square plate mounted on a post, shall be readily visible to a locomotive engineer within the locomotive cab, shall be kept in good repair, and shall be replaced when necessary.

(e) A railroad corporation shall place permanent speed signs to the right of the track in the direction of approach, two miles in advance of the point where the speed is either increased or decreased for both passenger and freight trains. The signs shall be readily visible to a locomotive engineer within the locomotive cab, shall be kept in good repair, and shall be replaced when necessary.

(f) A railroad corporation shall notify the commission and the collective bargaining representative of any affected employee of any new utilization of remote control locomotives in the state, on or after January 1, 2007.

(g) A railroad corporation shall provide immediate notification to the Office of Emergency Services of accidents, incidents, and other events, concurrent with those provided to the Federal Railroad Administration’s National Response Center, as required by Part 225.9 of Title 49 of the Code of Federal Regulations.

SEC. 3. Article 7.3 (commencing with Section 7665) is added to Chapter 1 of Division 4 of the Public Utilities Code, to read:

Article 7.3. Local Community Rail Security Act of 2006

7665. (a) This article shall be known, and may be cited, as the Local Community Rail Security Act of 2006.

(b) The Legislature declares that the purpose of this act is to provide for the security and safety of local communities and local community facilities, to protect local communities from transportation practices that fail to secure rail facilities and equipment from the threat of terrorism, and to ensure proper communication between the owners and operators of rail facilities and equipment with local and state first responders.

7665.2. By July 1, 2007, every operator of rail facilities shall provide a risk assessment to the commission, the Director of Homeland Security, and the Office of Emergency Services for each rail facility in the

state that is under its ownership, operation, or control. The risk assessment shall, for each rail facility, describe all of the following:

- (a) The location and functions of the rail facility.
- (b) All types of cargo that are moved through, or stored at, the rail facility.
- (c) Any hazardous cargo that is moved through, or stored at, the rail facility.
- (d) The frequency that any hazardous cargo is moved through, or stored at, the rail facility.
- (e) A description of the practices of the rail operator to prevent acts of sabotage, terrorism or other crimes on the rail facility.
- (f) All training programs that the rail operator requires for its employees at the rail facility.
- (g) The emergency response procedures of the rail operator to deal with acts of sabotage, terrorism, or other crimes at the rail facility.
- (h) The procedures of the rail operator to communicate 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 at the rail facility.

7665.3. The Office of Emergency Services may provide the risk assessment provided pursuant to Section 7665.2 to other law enforcement or emergency personnel.

7665.4. (a) By January 1, 2008, every rail operator shall develop and implement an infrastructure protection program to protect rail infrastructure in the state from acts of sabotage, terrorism, or other crimes.

(b) (1) The infrastructure protection program shall address the security of all critical infrastructure.

(2) The infrastructure protection program shall provide training to all employees of the rail operator performing work at a rail facility on how to recognize, prevent, and respond to acts of sabotage, terrorism, or other crimes.

(c) (1) All employees of a contractor or subcontractor of a rail operator, and any other person performing work at a rail facility that is not the employee of the rail operator, shall receive training equivalent to that received by employees of the rail operator pursuant to paragraph (2) of subdivision (b), within a reasonable period of time. The commission, in consultation with the Director of Homeland Security, may adopt reasonable rules or orders to implement this requirement.

(2) All employees of a contractor or subcontractor of a rail operator, and any other person performing work at a rail facility that is not the employee of the rail operator, shall undergo an equivalent evaluation of their background, skills, and fitness as the rail operator implements for its employees pursuant to its infrastructure protection plan. The commission, in consultation with the Director of Homeland Security, may adopt reasonable rules or orders to implement this requirement.

(d) Each rail operator in the state shall provide to the commission, the Director of Homeland Security, and the Office of Emergency Services a

copy of its infrastructure protection program. Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the commission, the Director of Homeland Security, and the Office of Emergency Services shall keep this information confidential.

(e) The infrastructure protection program shall be updated by the rail operator at least once every year, and the updated plan shall be submitted to the commission, the Director of Homeland Security, and the Office of Emergency Services.

(f) The commission, in consultation with the Office of Emergency Services, shall review the infrastructure protection program submitted by a rail operator, may conduct inspections to facilitate the review, and may order a rail operator to improve, modify, or change its program to comply with the requirements of this article.

(g) The commission may fine a rail operator for failure to comply with the requirements of this section or an order of the commission pursuant to this section.

7665.6. Every rail operator shall, for all facilities that handle hazardous cargo, do all the following:

(a) Secure all facilities that handle or store hazardous materials by providing adequate security personnel.

(b) Store hazardous materials only in secure facilities designed for storage, which shall not include mainline, branch, industrial, or passing tracks not so designed or retrofitted.

(c) Shall not leave locomotive equipment running while unattended, or leave any unattended locomotive equipment unlocked.

(d) Shall ensure that the cabs of occupied locomotives are secured from hijacking, sabotage, or terrorism.

(e) Shall not use remote control locomotives to move hazardous materials over a public crossing unless the remote control operator is able to maintain line-of-sight visibility of the public crossing and visually ensure that all automatic highway-rail grade crossing warning devices are functioning as intended, and it is safe for the train movement to enter the public crossing.

(f) Shall secure remote control devices to prevent access to those devices by unauthorized personnel.

7665.8. Every rail operator shall provide communications capability that can accomplish all of the following:

(a) Timely alerting local and state law enforcement personnel, emergency personnel, transportation officials and other first responders in the event of sabotage, terrorism, or other crimes.

(b) Timely provide bridge tenders on moveable bridges the ability to alert local and state law enforcement personnel, emergency personnel, transportation officials and other first responders in the event of sabotage, terrorism, or other crimes.

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

7666. No rail operator or any other person covered by this article may act to punish an employee who reports a violation of this article. An employee against whom a punitive action is taken may seek civil damages of up to one million dollars (\$1,000,000) from any employer that acts to punish an employee who reports a violation of this article, in addition to any other remedies the court deems appropriate.

7667. The provisions of this article are severable. If any provision of this article or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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