

Calendar No. 155

114TH CONGRESS }
1st Session }

SENATE

{ REPORT
114-85

RESPONSE ACT OF 2015

—
R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 546

TO ESTABLISH THE RAILROAD EMERGENCY SERVICES
PREPAREDNESS, OPERATIONAL NEEDS, AND SAFETY EVALUATION
(RESPONSE) SUBCOMMITTEE UNDER THE FEDERAL EMERGENCY
MANAGEMENT AGENCY'S NATIONAL ADVISORY COUNCIL TO PRO-
VIDE RECOMMENDATIONS ON EMERGENCY RESPONDER TRAIN-
ING AND RESOURCES RELATING TO HAZARDOUS MATERIALS IN-
CIDENTS INVOLVING RAILROADS, AND FOR OTHER PURPOSES



JULY 21, 2015.—Ordered to be printed

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Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 546]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 546) to establish the Railroad Emergency Services Preparedness, Operational Needs, and Safety Evaluation (RESPONSE) Subcommittee under the Federal Emergency Management Agency's National Advisory Council to provide recommendations on emergency responder training and resources relating to hazardous materials incidents involving railroads, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

The Railroad Emergency Services Preparedness, Operational Needs, and Safety Evaluation (RESPONSE) Act of 2015 would establish a subcommittee ("the RESPONSE Subcommittee") to the Federal Emergency Management Agency's (FEMA) National Advisory Council (NAC) to address training and resources for first responders to hazardous materials incidents on U.S. railroads. The bill would require the RESPONSE Subcommittee to issue rec-

ommendations to specified committees of Congress and Federal agencies on emergency responder training and resource allocation.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Each year, U.S. railroads transport approximately 2 million carloads of hazardous materials, including chemicals like crude oil and ethanol.¹ The number of railcars carrying crude oil alone, on major freight railroads in the U.S., grew by more than 4,100 percent between 2008 and 2013.² These increases in transportation of hazardous materials over rail also increase the chance of a derailment involving those hazardous materials. In 2014, for example, 13 derailments resulted in the release of hazardous materials.³ These accidents continued in 2015 with derailments of trains transporting hazardous materials in Mount Carbon, West Virginia; Galena, Illinois; and Heimdahl, North Dakota, which all took place outside of major population centers.⁴

After a derailment, local first responders have to quickly respond in order to protect their communities. Due to the potential risks of a derailment involving hazardous materials, there is a need to ensure training, coordination, and capabilities of our Nation's first responders are adequate to address hazardous materials incidents on the national rail system. The value of training state and local first responders for hazardous material derailments was exemplified in December 2013 by the Casselton Fire Department's successful response to the derailment of a train carrying crude oil near Casselton, North Dakota. Within minutes of the derailment—in large part because of their training, preparation, and exercises—the town's 28 volunteer firefighters responded to the incident, established a perimeter, and initiated the correct response protocol, including the evacuation of approximately 1,400 people from Casselton, all without any injuries or fatalities.⁵

The Committee also recognizes the value of the railroad industry's efforts to enhance rail safety, especially as it relates to transportation of hazardous materials and training of first responders. Railroads have testified at previous hearings about their significant capital investments into accident prevention, mitigation, and emergency response.⁶ For example, railroads provide regular training to emergency responders, including through direct training of local

¹*Transparency and Training: Preparing our First Responders for Emerging Threats and Hazards: Hearing Before the Subcomm. on Emergency Management, Intergovernmental Relations, and the District of Columbia of the S. Comm. on Homeland Security & Governmental Affairs*, 113th Cong. 31 (2014) (statement of Lisa A. Stabler, President, Transportation Technology Center, Inc.) [hereinafter *Transparency and Training*].

²See, e.g., ASS'N OF AMER. R.R.S., MOVING CRUDE OIL BY RAIL 3 (2014).

³See U.S. DEP'T OF TRANSP., HAZMAT INTELLIGENCE PORTAL, INCIDENT DETAIL REPORT (2014), available at <http://www.phmsa.dot.gov/hazmat/library/data-stats/incidents>.

⁴NAT'L TRANSP. SAFETY BD., SAFETY RECOMMENDATION TO THE PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION (2015), available at <http://www.nts.gov/safety/safety-recs/reclletters/R-15-014-017.pdf>; see also the Env'tl. Prot. Agency, Galena Train Derailment, <http://www2.epa.gov/il/galena-train-derailment> (last visited June 29, 2015); Press Release, Nat'l Transp. Safety Bd., NTSB Investigates Freight Train Accident in North Dakota (May 6, 2015), available at <http://www.nts.gov/news/press-releases/Pages/PR20150506.aspx>.

⁵*Transparency and Training*, *supra* note 1 at 27–28 (statement of Tim McLean, Chief, Casselton Fire Department); NAT'L TRANSP. SAFETY BD., DCA14MR004, PRELIMINARY REPORT 1 (2014).

⁶See, e.g., *Transparency and Training*, *supra* note 1 at 31 (statement of Lisa A. Stabler, President, Transportation Technology Center, Inc.); *Staying on Track: Next Steps in Improving Passenger and Freight Rail Safety: Hearing Before the S. Comm. on Commerce, Science, and Transportation*, 113th Cong. 54 (2014) (statement of Edward R. Hamberger, President and Chief Executive Officer, Ass'n of Amer. R.R.) [hereinafter *Staying on Track*].

emergency responders, providing access to training centers and resources like hazmat safety trains, conducting drills, visiting local firehouses, and establishing the Security and Emergency Response Training Center in Pueblo, Colorado.⁷ Railroads have also voluntarily adopted more stringent standards for new tank cars used to carry ethanol and crude oil.⁸ In part as a result of infrastructure improvements and those investments, railroads have never been safer and are one of the safest transportation modes and employers in the country.⁹ Data from the Department of Transportation shows that over the past five years, vehicles on highways have suffered eighteen times as many hazardous material releases as railroads, despite the significant volume of hazardous materials that railroads transport.¹⁰

Recognizing the importance of continued emergency responder training for derailments involving hazardous materials, the RESPONSE Act would establish a subcommittee under the NAC to evaluate existing training, resources, and information for emergency responders who respond to those types of incidents. Specifically, the RESPONSE Subcommittee would be tasked with bringing together all the relevant Federal agencies, industry representatives, emergency responders, and technical experts to review training, resources, strategies, and information emergency responders have and need to respond to hazardous materials incidents on U.S. railroads. Within one year of enactment, the RESPONSE Subcommittee would provide the NAC a report with its findings and recommendations for transmittal to specified committees of Congress and Executive agencies. The RESPONSE Subcommittee would terminate four years after enactment unless the FEMA Administrator (“the Administrator”) extends its duration.

III. LEGISLATIVE HISTORY

In the 113th Congress, on March 25, 2014, the Committee’s Subcommittee on Emergency Management, Intergovernmental Relations, and the District of Columbia held a hearing titled, “Transparency and Training: Preparing our First Responders for Emerging Threats and Hazards.”¹¹ The purpose of the hearing was to examine the challenges posed to first responders by transportation of hazardous materials, including over the railroad, and to discuss existing opportunities to train emergency response officials for incidents involving hazard materials.

On June 26, 2014, Senator Heitkamp introduced S. 2547, the RESPONSE Act of 2014. The bill was referred to the Committee but the Committee did not consider the bill during the 113th Congress.

In the 114th Congress, on February 24, 2015, Senator Heitkamp, along with Senators Baldwin, King, and Schumer, introduced S.

⁷ *Transparency and Training*, *supra* note 1 at 32–37 (statement of Lisa A. Stabler, President, Transportation Technology Center, Inc.); *see also* Security and Emergency Response Training Center, Crude by Rail Emergency Response, <http://sertc.org/courses/crude-by-rail-emergency-response-cbr/> (last visited June 17, 2015).

⁸ ASS’N OF AMER. R.R.S., *supra* note 2 at 8.

⁹ *Staying on Track*, *supra* note 5 at 56–58, 63 (statement of Edward R. Hamberger, President and Chief Executive Officer, Ass’n of Amer. R.R.); U.S. DEP’T OF TRANSP., FED. R.R. ADMIN., SAFETY FACT SHEET (Feb. 2014), available at <http://www.fra.dot.gov/Elib/Details/L04936>.

¹⁰ *See* U.S. DEP’T OF TRANSP., *supra* note 3 (identifying 65,956 incidents on highways and 3,640 incidents on rail between July 1, 2010, and July 1, 2015).

¹¹ *Transparency and Training*, *supra* note 1; *see also Staying on Track*, *supra* note 5 (providing information on general rail safety and related improvements).

546, the RESPONSE Act of 2015, which was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 546 at a business meeting on March 4, 2015. The Committee ordered the bill, without amendment, reported favorably by voice vote. Senators present for the vote were: Johnson, Portman, Lankford, Ayotte, Ernst, Carper, McCaskill, Baldwin, Heitkamp, and Peters.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section provides the bill's short title, the "RESPONSE Act of 2015."

Section 2. Railroad Emergency Services Preparedness, Operational Needs, and Safety Evaluation Subcommittee

This section amends section 508 of the Homeland Security Act of 2002 (6 U.S.C. 318) to establish the Railroad Emergency Services Preparedness, Operational Needs, and Safety Evaluation Subcommittee under the NAC.

This section requires the Administrator to establish the RESPONSE Subcommittee within 30 days of enactment of this bill, and requires the RESPONSE Subcommittee to meet no later than 90 days after the bill's enactment, and twice a year thereafter. At least one of the meetings held during the first year of the Subcommittee's existence must be conducted in person. This section also provides membership requirements, including that the RESPONSE Subcommittee shall include representatives of specified federal agencies and experts, industry representatives, emergency response providers, and other appointees by the Administrator, and shall be chaired by FEMA's Deputy Administrator for Protection and National Preparedness. The Committee intends that the Administrator appoint a wide range of stakeholders to the RESPONSE Subcommittee—including industry representatives and emergency response providers.

Section 2 also establishes the reporting requirements for the RESPONSE Subcommittee, mandating a report from the RESPONSE Subcommittee on its findings and recommendations to the NAC within one year of the bill's enactment, and providing for the possibility of additional reports requested by the Administrator or the Congressional committees enumerated in Section 508(d)(7)(C) of the Homeland Security Act of 2002, as amended by this bill. The initial report must include recommendations, as appropriate, for improving emergency responder training and resource allocation for hazardous material incidents involving railroads, including on: quality and application of training for local emergency responders; effectiveness of funding levels related to training; strategy for integration of commodity flow studies, mapping, and access platforms; the need for emergency response plans; the need for a rail hazardous material incident database; increasing access to timely and actionable information; and implementation of the recommendations.

Within 30 days of receipt of a report from the RESPONSE Subcommittee, the NAC must review and determine whether to approve the RESPONSE Subcommittee's recommendations, and sub-

mit the report to specified Federal agencies and committees of Congress. The NAC may seek additional clarification, changes, or other information from the RESPONSE Subcommittee prior to approval of the recommendations. The Committee intends that such requests toll the NAC's 30 day determination requirement until the RESPONSE Subcommittee provides the requested clarification, changes, or recommendations. Following the formal approval and submission to Congress of the recommendations, the Administrator would be responsible for coordinating the implementation of the recommendations and providing the relevant Congressional committees with quarterly updates on implementation of those recommendations.

The RESPONSE Subcommittee will terminate four years after enactment, unless renewed by the Administrator, who can extend the Subcommittee's duration for one year increments if the Administrator determines additional reports and recommendations are needed.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments because this bill.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

MARCH 18, 2015.

Hon. RON JOHNSON, *Chairman,*
Committee on Homeland Security and Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 546, the RESPONSE Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Martin von Gnechten.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 546—RESPONSE Act of 2015

S. 546 would establish the Railroad Emergency Services subcommittee under the Federal Emergency Management Agency's (FEMA's) National Advisory Council (NAC). The bill would direct the subcommittee to evaluate several aspects of the ability of emergency personnel to respond to hazardous materials incidents involving trains. S. 546 would require the subcommittee to provide recommendations to the NAC within one year of organizing the subcommittee and quarterly reports on the implementation of those recommendations. Under the legislation, the subcommittee would terminate after four years unless FEMA extends it.

Based on information provided by FEMA, CBO estimates that implementing S. 546 would cost \$1 million, subject to the availability of appropriated funds, over the next five years—primarily for new staff to serve the subcommittee. Enacting S. 546 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 546 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Martin von Gnechten. The estimate was approved by Theresa Gullo, Deputy Assistant for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 546 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

* * * * *

TITLE V—NATIONAL EMERGENCY MANAGEMENT

* * * * *

SEC. 508. NATIONAL ADVISORY COUNCIL.

(a) * * *

* * * * *

(d) *RESPONSE SUBCOMMITTEE.*—

(1) *ESTABLISHMENT.*—*Not later than 30 days after the date of the enactment of the ‘RESPONSE Act of 2015, the Administrator shall establish, as a subcommittee of the National Advisory Council, the Railroad Emergency Services Preparedness, Operational Needs, and Safety Evaluation Subcommittee (referred to in this subsection as the ‘RESPONSE Subcommittee’).*

(2) *MEMBERSHIP.*—*Notwithstanding subsection (c), the RESPONSE Subcommittee shall be composed of the following:*

(A) *The Deputy Administrator for Protection and National Preparedness of the Federal Emergency Management Agency, or designee.*

(B) *The Director of the Office of Emergency Communications of the Department of Homeland Security, or designee.*

(C) *The Director for the Office of Railroad, Pipeline and Hazardous Materials Investigations of the National Transportation Safety Board, or designee, only in an advisory capacity.*

(D) *The Associate Administrator for Railroad Safety of the Federal Railroad Administration, or designee.*

(E) *The Assistant Administrator for Security Policy and Industry Engagement of the Transportation Security Administration, or designee.*

(F) *The Assistant Commandant for Response Policy of the Coast Guard, or designee.*

(G) *The Assistant Administrator for the Office of Solid Waste and Emergency Response of the Environmental Protection Agency, or designee.*

(H) *The Associate Administrator for Hazardous Materials Safety of the Pipeline and Hazardous Materials Safety Administration, or designee.*

(I) *The Chief Safety Officer and Assistant Administrator of the Federal Motor Carrier Safety Administration, or designee.*

(J) *Such other qualified individuals as the Administrator shall appoint as soon as practicable after the date of the enactment of the RESPONSE Act of 2015 from among the following:*

(i) *Members of the National Advisory Council that have the requisite technical knowledge and expertise to address rail emergency response issues, including members from the following disciplines:*

(I) *Emergency management and emergency response providers, including fire service, law enforcement, hazardous materials response, and emergency medical services.*

(II) *State, local, and tribal government officials with expertise in preparedness, protection, response, recovery, and mitigation, including Adjutants General.*

(III) *Elected State, local, and tribal government executives.*

(IV) *Such other individuals as the Administrator determines to be appropriate.*

(ii) *Individuals who have the requisite technical knowledge and expertise to serve on the RESPONSE Subcommittee, including representatives of—*

(I) *the rail industry;*

(II) *the oil industry;*

(III) *the communications industry;*

(IV) *emergency response providers, including individuals nominated by national organizations representing local governments and personnel;*

(V) *representatives from national Indian organizations;*

(VI) *technical experts; and (VII) vendors, developers, and manufacturers of systems, facilities, equipment, and capabilities for emergency responder services.*

(iii) *Representatives of such other stakeholders and interested and affected parties as the Administrator considers appropriate.*

(3) **CHAIRPERSON.**—*The Deputy Administrator for Protection and National Preparedness shall serve as the Chairperson of the RESPONSE Subcommittee, or designee.*

(4) **MEETINGS.**—

(A) **INITIAL MEETING.**—*The initial meeting of the RESPONSE Subcommittee shall take place not later than 90 days after the date of the enactment of the RESPONSE Act of 2015.*

(B) *OTHER MEETINGS.*—After the initial meeting, the *RESPONSE* Subcommittee shall meet at least twice annually, with at least 1 meeting conducted in person during the first year, at the call of the Chairperson.

(5) *CONSULTATION WITH NONMEMBERS.*—The *RESPONSE* Subcommittee and the program offices for emergency responder training and resources shall consult with other relevant agencies and groups, including entities engaged in federally funded research and academic institutions engaged in relevant work and research, which are not represented on the *RESPONSE* Subcommittee to consider new and developing technologies and methods that may be beneficial to preparedness and response to rail incidents.

(6) *RECOMMENDATIONS.*—The *RESPONSE* Subcommittee shall evaluate the following topics and develop recommendations, as appropriate, for improving emergency responder training and resource allocation for hazardous materials incidents involving railroads:

(A) *Quality and application of training for local emergency first responders related to rail hazardous materials incidents, with a particular focus on local emergency responders and small communities near railroads, including the following:*

(i) *Ease of access to relevant training for local emergency first responders, including an analysis of—*

- (I) *the number of individuals being trained;*
- (II) *the number of individuals who are applying;*
- (III) *whether current demand is being met;*
- (IV) *current challenges; and (V) projected needs.*

(ii) *Modernization of course content related to rail hazardous materials incidents, with a particular focus on response to the exponential rise in oil shipments by rail.*

(iii) *Training content across agencies and the private sector to provide complementary opportunities for rail hazardous materials incidents courses and materials to avoid overlap, including the following:*

- (I) *Overlap of course content among agencies.*
- (II) *Integrated course content through public-private partnerships.*
- (III) *Regular and ongoing evaluation of course opportunities, adaptation to emerging trends, agency and private sector outreach, effectiveness and ease of access for local emergency responders.*

(iv) *Online training platforms, train-the-trainer and mobile training options.*

(B) *Effectiveness of funding levels related to training local emergency responders for rail hazardous materials incidents, with a particular focus on local emergency responders and small communities, including the following:*

- (i) *Minimizing overlap in resource allocation among agencies.*
- (ii) *Minimizing overlap in resource allocation among agencies and private sector.*

(iii) *Maximizing public-private partnerships where funding gaps exists for specific training or cost-saving measures can be implemented to increase training opportunities.*

(iv) *Adaptation of priority settings for agency funding allocations in response to emerging trends.*

(v) *Historic levels of funding across agencies and private sector for rail hazardous materials incidents.*

(vi) *Current funding resources across agencies.*

(C) *Strategy for integration of commodity flow studies, mapping, and access platforms for local emergency responders and how to increase the rate of access to the individual responder in existing or emerging communications technology.*

(D) *The need for emergency response plans for rail, similar to existing law related to maritime and stationary facility emergency response plans for hazardous materials, including the following:*

(i) *The requirements of such emergency plans on each train and the format and availability of such emergency plans to emergency responders in communities through which the materials travel.*

(ii) *How the industry would implement such plans.*

(iii) *The thresholds that require emergency plans for each train related to hazardous materials in its cargo.*

(iv) *Gaps in existing regulations across agencies.*

(E) *The need for a rail hazardous materials incident database, including the following:*

(i) *An assessment of the appropriate entity to host the database.*

(ii) *A definition of 'rail hazardous materials incident' that would constitute the level of reporting from the industry.*

(iii) *The projected cost of such a database and how that database would be maintained and enforced.*

(F) *Increasing access to relevant, useful, and timely information for the local emergency responder for training purposes and in the event of a rail hazardous materials incident, including the following:*

(i) *Existing information that the emergency responder can access, what the current rate of access and usefulness is for the emergency responder, and what current information should remain and what should be reassessed.*

(ii) *Utilization of existing technology in the hands of the first responder to maximize delivery of useful and timely information for training purposes or in the event of an incident.*

(iii) *Assessment of emerging communications technology that could assist the emergency responder in the event of an incident.*

(G) *Determination of the most appropriate agencies and offices for the implementation of the recommendations, including—*

(i) recommendations that can be implemented without congressional action and appropriate timeframes for such actions; and

(ii) recommendations that would require congressional action.

(7) **REPORT.**—

(A) **IN GENERAL.**—Not later than 1 year after the date of the enactment of the *RESPONSE Act of 2015*, the *RESPONSE Subcommittee* shall submit a report containing the recommendations developed under paragraph (6) to the National Advisory Council.

(B) **REVIEW.**—The National Advisory Council shall take up the *RESPONSE Subcommittee's* report within 30 days for review and deliberation. The National Advisory Council may ask for additional clarification, changes, or other information from the *RESPONSE Subcommittee* to assist in the approval of the recommendations.

(C) **RECOMMENDATION.**—Once the National Advisory Council approves the recommendations from the *RESPONSE Subcommittee*, the National Advisory Council shall submit the report to—

(i) the Administrator;

(ii) the head of each agency represented on the *RESPONSE Subcommittee*;

(iii) the Committee on Homeland Security and Governmental Affairs of the Senate;

(iv) the Committee on Homeland Security of the House of Representatives; and

(v) the Committee on Transportation and Infrastructure of the House of Representatives.

(8) **INTERIM ACTIVITY.**—

(A) **UPDATES AND OVERSIGHT.**—After the submission of the report by the National Advisory Council under paragraph (7), the Administrator shall—

(i) provide quarterly updates to the congressional committees referred to in paragraph (7) regarding the status of the implementation of the recommendations developed under paragraph (6); and

(ii) coordinate the implementation of the recommendations described in paragraph (6)(G)(i).

(B) **ADDITIONAL REPORTS.**—After submitting the report required under paragraph (7), the *RESPONSE Subcommittee* shall submit additional reports and recommendations in the same manner and to the same entities identified in paragraph (7) if needed or requested from Congress or from the Administrator.

(9) **TERMINATION.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the *RESPONSE Subcommittee* shall terminate not later than 4 years after the date of the enactment of the *RESPONSE Act of 2015*.

(B) EXTENSION.—The Administrator may extend the duration of the RESPONSE Subcommittee, in 1-year increments, if the Administrator determines that additional reports and recommendations are needed from the RESPONSE Subcommittee after the termination date set forth in subparagraph (A).

[(d)](e) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—
(1) * * *

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