

109TH CONGRESS  
1ST SESSION

# S. 773

To ensure the safe and secure transportation by rail of extremely hazardous materials.

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IN THE SENATE OF THE UNITED STATES

APRIL 13, 2005

Mr. CORZINE introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To ensure the safe and secure transportation by rail of extremely hazardous materials.

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 “Extremely Hazardous  
5 Materials Rail Transportation Act of 2005”.

6 **SEC. 2. COORDINATION OF PRECAUTIONS AND RESPONSE**

7 **EFFORTS RELATED TO THE TRANSPOR-**

8 **TATION BY RAIL OF EXTREMELY HAZARDOUS**

9 **MATERIALS.**

10 (a) REGULATIONS.—

1           (1) REQUIREMENT FOR REGULATIONS.—Not  
2 later than 180 days after the date of the enactment  
3 of this Act, the Secretary of Homeland Security  
4 shall, in consultation with the Secretary of Trans-  
5 portation and the heads of other Federal, State, and  
6 local agencies, prescribe regulations for the coordina-  
7 tion of efforts of Federal, State, and local agencies  
8 aimed at preventing terrorist acts and responding to  
9 emergencies that may occur in connection with the  
10 transportation by rail of extremely hazardous mate-  
11 rials.

12           (2) CONTENT.—

13           (A) IN GENERAL.—The regulations re-  
14 quired under paragraph (1) shall—

15           (i) require, and establish standards  
16 for, the training of individuals described in  
17 subparagraph (B) on safety precautions  
18 and best practices for responding to emer-  
19 gencies occurring in connection with the  
20 transportation by rail of extremely haz-  
21 ardous materials, including incidents in-  
22 volving acts of terrorism; and

23           (ii) establish a coordinated system for  
24 notifying appropriate Federal, State, and  
25 local law enforcement authorities (includ-

1 ing, if applicable, transit, railroad, or port  
2 authority police agencies) and first re-  
3 sponders of the transportation by rail of  
4 extremely hazardous materials through  
5 communities designated as area of concern  
6 communities by the Secretary of Homeland  
7 Security under subsection (b)(1).

8 (B) INDIVIDUALS COVERED BY TRAIN-  
9 ING.—The individuals described in subpara-  
10 graph (A)(i) are first responders, law enforce-  
11 ment personnel, and individuals who transport,  
12 load, unload, or are otherwise involved in the  
13 transportation by rail of extremely hazardous  
14 materials or who are responsible for the repair  
15 of related equipment and facilities in the event  
16 of an emergency, including an incident involving  
17 terrorism.

18 (b) AREA OF CONCERN COMMUNITIES.—

19 (1) DESIGNATION OF AREA OF CONCERN COM-  
20 MUNITIES.—

21 (A) IN GENERAL.—In prescribing regula-  
22 tions under subsection (a), the Secretary of  
23 Homeland Security shall compile a list of area  
24 of concern communities.

1 (B) CRITERIA.—The Secretary of Home-  
2 land Security shall include on such list commu-  
3 nities through or near which the transportation  
4 by rail of extremely hazardous materials poses  
5 a serious risk to the public health and safety.  
6 In making such determination, the Secretary  
7 shall consider—

8 (i) the severity of harm that could be  
9 caused in a community by the release of  
10 the transported extremely hazardous mate-  
11 rials;

12 (ii) the proximity of a community to  
13 major population centers;

14 (iii) the threat posed by such trans-  
15 portation to national security, including  
16 the safety and security of Federal and  
17 State government offices;

18 (iv) the vulnerability of a community  
19 to acts of terrorism;

20 (v) the threat posed by such transpor-  
21 tation to critical infrastructure;

22 (vi) the threshold quantities of par-  
23 ticular extremely hazardous materials that  
24 pose a serious threat to the public health  
25 and safety; and

1 (vii) such other safety or security fac-  
2 tors that the Secretary determines appro-  
3 priate to consider.

4 (2) CONSIDERATION OF ALTERNATE ROUTES.—

5 The Secretary of Homeland Security shall conduct a  
6 study to consider the possibility of reducing, through  
7 the use of alternate routes involving lower security  
8 risks, the security risks posed by the transportation  
9 by rail of extremely hazardous materials through or  
10 near communities designated as area of concern  
11 communities under paragraph (1), except in the case  
12 of emergencies or where such alternatives do not  
13 exist or are prohibitively expensive.

14 **SEC. 3. PRESSURIZED RAILROAD CARS.**

15 (a) NEW SAFETY STANDARDS.—

16 (1) REQUIREMENT FOR STANDARDS.—Not later  
17 than 180 days after the date of the enactment of  
18 this Act, the Secretary of Homeland Security shall,  
19 in consultation with the Secretary of Transportation  
20 and the heads of other relevant Federal agencies,  
21 prescribe by regulations standards for ensuring the  
22 safety and physical integrity of pressurized tank cars  
23 that are used in the transportation by rail of ex-  
24 tremely hazardous materials.

1           (2) CONSIDERATION OF SPECIFIC RISKS.—In  
2       prescribing regulations under paragraph (1), the  
3       Secretary of Homeland Security shall consider the  
4       risks posed to such pressurized tank cars by acts of  
5       terrorism, accidents, severe impacts, and other ac-  
6       tions potentially threatening to the structural integ-  
7       rity of the cars or to the safe containment of the  
8       materials carried by such cars.

9       (b) REPORT ON IMPACT RESISTANCE.—

10           (1) IN GENERAL.—Not later than 180 days  
11       after the date of the enactment of this Act, the Sec-  
12       retary of Homeland Security shall, in consultation  
13       with the Secretary of Transportation and the heads  
14       of other relevant Federal agencies, submit to the ap-  
15       propriate congressional committees a report on the  
16       safety and physical integrity of pressurized tank cars  
17       that are used in the transportation by rail of ex-  
18       tremely hazardous materials, including with respect  
19       to the risks considered under subsection (a)(2).

20           (2) CONTENT.—The report required under  
21       paragraph (1) shall include—

22           (A) the results of a study on the impact  
23       resistance of such pressurized tank cars, includ-  
24       ing a comparison of the relative impact resist-  
25       ance of tank cars manufactured before and

1 after the implementation by the Administrator  
2 of the Federal Railroad Administration in 1989  
3 of Federal standards on the impact resistance  
4 of such tank cars; and

5 (B) an assessment of whether tank cars  
6 manufactured before the implementation of the  
7 1989 impact resistance standards and tank cars  
8 manufactured after the implementation of such  
9 standards conform with the standards pre-  
10 scribed under subsection (a).

11 **SEC. 4. REPORT ON EXTREMELY HAZARDOUS MATERIALS**  
12 **TRANSPORT SAFETY.**

13 (a) REQUIREMENT FOR REPORT.—Not later than  
14 180 days after the date of the enactment of this Act, the  
15 Secretary of Homeland Security shall, in consultation with  
16 the Secretary of Transportation, submit to the appropriate  
17 congressional committees a report on the safety and secu-  
18 rity of the transportation by rail of extremely hazardous  
19 materials, including the threat posed to the security of  
20 such transportation by acts of terrorism.

21 (b) CONTENT.—The report required under subsection  
22 (a) shall include, in a form that does not compromise na-  
23 tional security—

24 (1) information specifying—

1 (A) the Federal and State agencies that  
2 are responsible for the oversight of the trans-  
3 portation by rail of extremely hazardous mate-  
4 rials; and

5 (B) the particular authorities and respon-  
6 sibilities of the heads of each such agency;

7 (2) an assessment of the operational risks asso-  
8 ciated with the transportation by rail of extremely  
9 hazardous materials, with consideration given to the  
10 safety and security of the railroad infrastructure in  
11 the United States, including railroad bridges and  
12 rail switching areas;

13 (3) an assessment of the vulnerability of rail-  
14 road cars to acts of terrorism while being used to  
15 transport extremely hazardous materials;

16 (4) an assessment of the ability of individuals  
17 who transport, load, unload, or are otherwise in-  
18 volved in the transportation by rail of extremely haz-  
19 ardous materials or who are responsible for the re-  
20 pair of related equipment and facilities in the event  
21 of an emergency, including an incident involving ter-  
22 rorism, to respond to an incident involving ter-  
23 rorism, including an assessment of whether such in-  
24 dividuals are adequately trained or prepared to re-  
25 spond to such incidents;

1           (5) a description of the study conducted under  
2           section 2(b)(2), including the conclusions reached by  
3           the Secretary of Homeland Security as a result of  
4           such study and any recommendations of the Sec-  
5           retary for reducing, through the use of alternate  
6           routes involving lower security risks, the security  
7           risks posed by the transportation by rail of ex-  
8           tremely hazardous materials through or near area of  
9           concern communities;

10           (6) other recommendations for improving the  
11           safety and security of the transportation by rail of  
12           extremely hazardous materials; and

13           (7) an analysis of the anticipated economic im-  
14           pact and effect on interstate commerce of the regu-  
15           lations prescribed under this Act.

16           (c) FORM.—The report required under subsection (a)  
17           shall be in unclassified form, but may contain a classified  
18           annex.

19           **SEC. 5. WHISTLEBLOWER PROTECTION.**

20           (a) IN GENERAL.—No person involved in the trans-  
21           portation by rail of extremely hazardous materials may be  
22           discharged, demoted, suspended, threatened, harassed, or  
23           in any other manner discriminated against because of any  
24           lawful act done by the person—

1           (1) to provide information, cause information to  
2           be provided, or otherwise assist in an investigation  
3           regarding any conduct which the person reasonably  
4           believes constitutes a violation of any law, rule, or  
5           regulation related to the security of shipments of ex-  
6           tremely hazardous materials, or any other threat to  
7           the security of shipments of extremely hazardous  
8           materials, when the information or assistance is pro-  
9           vided to or the investigation is conducted by—

10                   (A) a Federal regulatory or law enforce-  
11                   ment agency;

12                   (B) any Member of Congress or any com-  
13                   mittee of Congress; or

14                   (C) a person with supervisory authority  
15                   over the person (or such other person who has  
16                   the authority to investigate, discover, or termi-  
17                   nate misconduct);

18           (2) to file, cause to be filed, testify, participate  
19           in, or otherwise assist in a proceeding or action filed  
20           or about to be filed relating to a violation of any  
21           law, rule, or regulation related to the security of  
22           shipments of extremely hazardous materials or any  
23           other threat to the security of shipments of ex-  
24           tremely hazardous materials; or

1           (3) to refuse to violate or assist in the violation  
2 of any law, rule, or regulation related to the security  
3 of shipments of extremely hazardous materials.

4 (b) ENFORCEMENT ACTION.—

5           (1) IN GENERAL.—A person who alleges dis-  
6 charge or other discrimination by any person in vio-  
7 lation of subsection (a) may seek relief under sub-  
8 section (c)—

9           (A) by filing a complaint with the Sec-  
10 retary of Labor; and

11           (B) if the Secretary has not issued a final  
12 decision within 180 days after the filing of the  
13 complaint and there is no showing that such  
14 delay is due to the bad faith of the claimant,  
15 by commencing a civil action in the appropriate  
16 district court of the United States, which shall  
17 have jurisdiction over such an action without  
18 regard to the amount in controversy.

19 (2) PROCEDURE.—

20           (A) COMPLAINT TO DEPARTMENT OF  
21 LABOR.—An action under paragraph (1)(A)  
22 shall be governed under the rules and proce-  
23 dures set forth in subsection (b) of section  
24 42121 of title 49, United States Code, except  
25 that notification made under such subsection

1 shall be made to the person named in the com-  
2 plaint and to the person's employer.

3 (B) COURT ACTION.—An action com-  
4 menced under paragraph (1)(B) shall be gov-  
5 erned by the legal burdens of proof set forth in  
6 section 42121(b)(2)(B) of title 49, United  
7 States Code.

8 (C) STATUTE OF LIMITATIONS.—An action  
9 under paragraph (1) shall be commenced not  
10 later than 180 days after the date on which the  
11 violation occurs.

12 (c) REMEDIES.—

13 (1) IN GENERAL.—A person prevailing in any  
14 action under subsection (b)(1) shall be entitled to all  
15 relief necessary to make the person whole.

16 (2) COMPENSATORY DAMAGES.—Relief for any  
17 action under paragraph (1) shall include—

18 (A) in the case of a termination of, or  
19 other discriminatory act regarding the person's  
20 employment—

21 (i) reinstatement with the same se-  
22 niority status that the person would have  
23 had, but for the discrimination; and

24 (ii) payment of the amount of any  
25 back pay, with interest, computed retro-

1           actively to the date of the discriminatory  
2           act; and

3           (B) compensation for any special damages  
4           sustained as a result of the discrimination, in-  
5           cluding litigation costs, expert witness fees, and  
6           reasonable attorney fees.

7           (d) RIGHTS RETAINED BY PERSON.—Nothing in this  
8           section shall be deemed to diminish the rights, privileges,  
9           or remedies of any person under any Federal or State law,  
10          or under any collective bargaining agreement.

11 **SEC. 6. CIVIL PENALTIES.**

12          Not later than 180 days after the date of the enact-  
13          ment of this Act, the Secretary of Homeland Security shall  
14          prescribe regulations providing for the imposition of civil  
15          penalties for violations of—

16               (1) regulations prescribed under this Act; and

17               (2) the prohibition against discriminatory treat-  
18          ment under section 5(a).

19 **SEC. 7. NO FEDERAL PREEMPTION.**

20          Nothing in this Act shall be construed as preempting  
21          any State law, except that no such law may relieve any  
22          person of a requirement otherwise applicable under this  
23          Act.

24 **SEC. 8. DEFINITIONS.**

25          In this Act:

1           (1) EXTREMELY HAZARDOUS MATERIAL.—The  
2 term “extremely hazardous material” means—

3           (A) a material that is toxic by inhalation;

4           (B) a material that is extremely flam-  
5 mable;

6           (C) a material that is highly explosive;

7           (D) high-level radioactive waste; and

8           (E) any other material designated by the  
9 Secretary of Homeland Security as being ex-  
10 tremely hazardous.

11          (2) APPROPRIATE CONGRESSIONAL COMMIT-  
12 TEES.—The term “appropriate congressional com-  
13 mittees” means—

14           (A) the Committee on Homeland Security  
15 and Governmental Affairs and the Committee  
16 on Commerce, Science, and Transportation of  
17 the Senate; and

18           (B) the Committee on Homeland Security  
19 and the Committee on Transportation and In-  
20 frastructure of the House of Representatives.

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