

HOUSE BILL REPORT

HB 1284

As Reported by House Committee On:

Labor

General Government & Information Technology

Title: An act relating to hours of service for certain railroad employees.

Brief Description: Concerning hours of service for certain railroad employees.

Sponsors: Representatives Haler, Sells, Zeiger, Takko, Harris, Tarleton, Rodne, Stanford, Muri, Santos, Stokesbary, Walkinshaw, Hayes, Riccelli, Vick, Fitzgibbon, McCaslin, Ryu, Kochmar, Sawyer, Blake, Dunshee, Holy, Moeller, Jinkins, Reykdal, S. Hunt, Farrell, Clibborn, Moscoso and Pollet.

Brief History:

Committee Activity:

Labor: 2/5/15, 2/9/15, 2/10/15 [DPS];

General Government & Information Technology: 2/20/15, 2/23/15 [DPS(LAB)].

Brief Summary of Substitute Bill

- Requires railroad carriers to observe rules limiting the hours of service for railroad yardmasters and individuals performing yardmaster duties.
- Prohibits railroad carriers from communicating with a yardmaster or individual who performs yardmaster duties in a way that disrupts the individual's rest during an off-duty period.

HOUSE COMMITTEE ON LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Moeller and Ormsby.

Minority Report: Do not pass. Signed by 3 members: Representatives Manweller, Ranking Minority Member; G. Hunt, Assistant Ranking Minority Member; McCabe.

Staff: Daniel Rusk (786-7290) and Trudes Tango (786-7384).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

The federal Hours of Service Act (Act) prescribes the maximum hours and minimum rest periods for train employees, signal employees, and dispatching service employees employed by railroad carriers. A train employee is an individual engaged in or connected with the movement of a train. A signal employee is an individual who is engaged in installing, repairing, or maintaining signal systems. A dispatching service employee is an operator, train dispatcher, or other train employee who dispatches orders affecting train movement. The Act prescribes certain emergency situations where the Act does not apply. The Secretary of Transportation may exempt railroad carriers with 15 or fewer employees.

In general, yardmasters are railroad employees that perform duties such as routing and directing trains, supervising switching crews, and monitoring switching orders and schedules. Yardmasters are not covered by the Act.

Federal law requires that laws, regulations, and orders that relate to railroad safety and security shall be uniform to the extent possible. Therefore, federal law may preempt a state law relating to railroad safety. However, a state may adopt a law related to railroad safety until the United States Secretary of Transportation issues a rule or order covering the same subject matter of the state law. A state may adopt or continue to enforce an additional or more stringent law if the law:

- is necessary to eliminate or reduce a local safety hazard;
- is not incompatible with a law, regulation, or order of the United States Government;
- and
- does not unreasonably burden interstate commerce.

Under federal law, there are three classes of railroad carriers: Class I, II, and III. The Classes are determined by railroad carrier's annual operating revenue. Class I railroad carriers have an annual operating revenue of over \$250 million. Class II railroad carriers have an annual operating revenue of less than \$250 million but more than \$20 million. Class III railroad carriers have an annual operating revenue of \$20 million or less.

Summary of Substitute Bill:

Railroad carriers must observe the following regulations regarding yardmasters or individuals performing yardmaster duties (Employee). An Employee:

- may not be on duty for the railroad carrier in excess of 276 hours per month;
- may not remain on duty for an excess of 12 hours;
- may not remain on, or go on duty unless that Employee has had 10 hours of off duty in the previous 24 hours;
- may not go on duty after he or she has worked for six-consecutive days unless the Employee has had at least 48 consecutive off-duty hours. If an Employee works seven-consecutive days, then the Employee must have 72-consecutive off-duty hours;
- may not go on duty when prohibited by the Act; and
- must remain unavailable for any railroad carrier for at least 10 hours following an on-duty period.

An Employee is on duty when he or she is performing the duties of a yardmaster, signal employee, dispatching service employee, or train employee. While an Employee is on his or her minimum required off-duty period, a railroad carrier may not communicate with the Employee in any manner that could reasonably be expected to disrupt the Employee's rest.

A railroad carrier is exempt from these requirements in emergency situations involving a casualty, an unavoidable accident, an act of God, or a delay caused by something unknown and unforeseeable to the railroad carrier.

If the Utilities and Transportation Commission (Commission) determines that a railroad carrier has violated any of these requirements, the Commission may impose:

- a civil penalty between \$10,000 and \$50,000 for a Class I carrier. However, if the Commission finds that the Class I carrier was grossly negligent or a pattern of violations caused an imminent hazard of death or injury, the Commission may impose a penalty of up to \$1 million; and
- a civil penalty between \$500 and \$25,000 for a Class II or Class III carrier. However, if the Commission finds that the Class II or Class III carrier was grossly negligent or a pattern of violations caused an imminent hazard of death or injury, the Commission may impose a penalty of up to \$100,000.

The Commission may adopt rules to administer these requirements. Additionally, after a hearing, the Commission may also exempt Class II and Class III railroad carriers from these requirements, provided that the exempted carriers are not allowed to work their Employees more than 16 hours in a 24-hour period.

Substitute Bill Compared to Original Bill:

The substitute bill allows the Commission to exempt Class II and Class III railroad carriers from the requirements without having a hearing prior to the exemption. Additionally, the Commission is not required to review these exemptions annually.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) While federal law regulates railroad safety, these are only minimum requirements. Yardmasters' long hours cause these employees to fall asleep, or make mistakes because they are tired. This is dangerous because yardmasters perform tasks similar to air traffic controllers; they organize the movements of trains in the yards. Additionally, the long hours required by railroad carriers also put the public at risk. The yardmasters drive

home tired and can get in accidents. There are plenty of people to fill the yardmaster position to meet this bill's requirements.

The bill will be amended to address the fiscal impact on the Commission.

(Opposed) This bill is confusing and potentially conflicts with federal law. Additionally, the railroad carriers and employees engage in collective bargaining agreements that address safety issues, and these agreements apply in all the states where the railroad carriers operate. This bill begins to create a state-by-state scheme, which will make operating safely in each state more difficult.

Persons Testifying: (In support) Representative Haler, prime sponsor; Jason Lewis, Utilities and Transportation Commission; Herb Krohn, United Transportation Union; Mike Elliot, Washington State Legislative Board-Brotherhood of Locomotive Engineers and Trainmen; Laura Ackerman; Brian Cours, Desiree Bell, and Jeff Sellman, SMART Transportation Division Union #1977.

(Opposed) Bill Stauffacher, Burlington Northern Santa Fe Railroad; and Tom Parker, Union Pacific Railroad.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

Majority Report: The substitute bill by Committee on Labor be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Hudgins, Chair; Senn, Vice Chair; MacEwen, Ranking Minority Member; Morris and Takko.

Minority Report: Do not pass. Signed by 2 members: Representatives Caldier, Assistant Ranking Minority Member; McCabe.

Staff: Meghan Bunch (786-7119).

Summary of Recommendation of Committee On General Government & Information Technology Compared to Recommendation of Committee On Labor:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Three things are emphasized in the nuclear industry: (1) the two-person rule; (2) you can work 16 hours, but you have to take a minimum eight-hour break afterwards; and (3) you cannot work back-to-back shifts. Even though there is a profit incentive in the nuclear industry, these standards exist to protect employees. The railroads have a strong profit incentive as well, but it does not include the safety of their employees. Railroad employees are miles away looking at TVs, switching the tracks and coordinating movements. The positions are similar to air traffic controllers. It is an important job and employees need to be alert to coordinate the yards properly. There are discussions that this is a collective bargaining issue, but this is about safety. The railroads are dangerous and the trains haul dangerous materials.

If employees work a 16-hour shift, they are going to be tired. Right now, railroads do not allow much rest time. An employee may work 16 hours and be called back four hours later, without adequate rest. Some employees work three 16-hour shifts in a row with only eight-hour breaks in between. No person can work that much without rest. On average, people make about five mistakes per hour. This bill is an issue of accidents. If you are extremely tired and in a controlled atmosphere, there is nothing that can keep you awake except to get up and walk around. Yardmasters do not have that luxury. It is important to pay attention to the hours of work and rest. Railroad operations are as safe as they can be now, but this bill will help them be safer.

The long shifts and on-call hours make it hard for families to plan parenting needs. Pregnant employees get tired quicker and some mothers find that the long hours are extremely difficult away from their families. In addition, the long hours have caused employees to fall asleep while driving home.

There are about 375 yardmasters in the nation, 101 of which are in Washington. If Washington passes this bill, it will be the first in the nation.

(Opposed) The fiscal note does not reflect the full policy implications. This bill is likely preempted by federal law. If the State enters into this area of law, there may be legal challenges, which could include legal costs. There is a 28-state system that negotiates a collective bargaining agreement, including hours of service.

Persons Testifying: (In support) Representative Haler, prime sponsor; Mike Elliot, Locomotive Engineers; Chaitra Haddan, Christine Miranda and Jeff Sellman United Transportation Union.

(Opposed) Bill Stauffacher, BNSF Railway.

Persons Signed In To Testify But Not Testifying: None.