

# HOUSE BILL REPORT

## ESHB 1105

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### As Passed Legislature

**Title:** An act relating to passenger-carrying vehicles for railroad employees.

**Brief Description:** Concerning railroad crew transportation.

**Sponsors:** House Committee on Transportation (originally sponsored by Representatives Stanford, Orcutt, Clibborn, Stambaugh, Hayes, Stonier, Koster, Holy, Ryu, Ormsby, Fey, Wylie, Dolan, Sells, Muri, Haler, Goodman, Doglio, Hudgins, Gregerson, Barkis, Kilduff, Santos, Tarleton, Pollet, Farrell and Riccelli).

**Brief History:**

**Committee Activity:**

Transportation: 1/25/17, 2/20/17 [DPS].

**Floor Activity:**

Passed House: 3/7/17, 97-0.

Senate Amended.

Passed Senate: 4/10/17, 46-2.

House Concurred.

Passed House: 4/13/17, 96-0.

Passed Legislature.

### Brief Summary of Engrossed Substitute Bill

- Expands the Washington Utilities and Transportation Commission's (UTC) regulatory authority to vehicles designed to transport 15 or fewer passengers that are used primarily to provide transportation to railroad employees and are operated by entities other than railroads.
- Mandates that the UTC regulate driver qualifications, equipment safety, safety of operations, hours of service by drivers, passenger safety, drug testing requirements, and record retention for contract crew transportation vehicles.
- Sets minimum insurance and financial responsibility coverage amounts for contract crew transportation vehicles of \$5 million in liability coverage and \$1 million in uninsured and underinsured motorist coverage.
- Establishes grounds for disqualification to serve as a driver of a contract crew transportation vehicle related to the suspension or revocation of a driver's license.

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- Grants the UTC the authority to inspect contract crew transportation vehicles and to apply rule violation penalties.
- Mandates that the UTC investigate safety complaints related to contract crew transportation vehicles and assess penalties as warranted.
- Requires the UTC to compile data related to reported safety complaints, accidents, regulatory violations and fines, and corrective actions taken by the UTC, to be made available on request.
- Exempts information included in safety complaints that identifies the employee who submitted the complaint from public inspects.

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## HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Clibborn, Chair; Farrell, Vice Chair; Fey, Vice Chair; Wylie, Vice Chair; Orcutt, Ranking Minority Member; Chapman, Gregerson, Hayes, Kloba, Lovick, McBride, Morris, Ortiz-Self, Pellicciotti, Riccelli, Stambaugh and Tarleton.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Hargrove, Assistant Ranking Minority Member; Pike, Shea, Van Werven and Young.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Harmsworth, Assistant Ranking Minority Member; Irwin.

**Staff:** Jennifer Harris (786-7143).

### **Background:**

#### General Regulatory Authority.

The Washington Utilities and Transportation Commission (UTC) regulates certain aspects of railroad operations in the state, including the use of passenger-carrying vehicles for railroad employees. "Passenger-carrying vehicles" are limited to buses and trucks owned, operated, and maintained by a railroad company that transports railroad employees as passengers in the vehicle, other than in the cab of these vehicles, that are designed primarily for operation on roads that may or may not be equipped with retractable flanged wheels for operation on railroad tracks. The vehicles used by independent carriers with which railroads may contract to provide crew transportation are excluded from this definition.

In regulating passenger-carrying vehicles, the UTC has adopted rules regarding equipment requirements and operational standards. The equipment requirements include provisions relating to the exhaust and steering systems, rear-view mirrors, emergency equipment, fire extinguishers, and first aid kits. The operational standards include provisions regarding the minimum age of the driver, hours of service limits, safety practices in crossing rail lines, the loading of passengers, and limitations on carrying dangerous materials. The UTC is

authorized to inspect any passenger-carrying vehicle to verify that it is complying with applicable requirements.

More broadly, federal regulations for commercial vehicles apply to vehicles with a seating capacity of eight or more passengers, which must comply with Federal Motor Carrier Safety Administration requirements for safety compliance reviews. Vehicles used by charter companies with which railroads contract that have seating capacity for passengers of fewer than eight are not included in compliance reviews conducted by the UTC.

The UTC does not have the authority to regulate the use of vehicles with a seating capacity for fewer than seven passengers that are used by independent carriers with which railroads contract to provide rail crew transportation.

#### Insurance Coverage.

Any contract carrier vehicle with a seating capacity for seven or more passengers is regulated under UTC rules for passenger carrier charters. These vehicles are required by the UTC to have injury and property damage insurance or a surety bond with the minimum limit of \$1.5 million combined single coverage for vehicles with a passenger seating capacity of 15 or fewer, and of \$5 million combined single coverage for vehicles with a passenger seating capacity of 16 or greater. These minimum limit requirements correspond to federal requirements for commercial vehicles.

#### **Summary of Engrossed Substitute Bill:**

##### Regulatory Authority over Contract Crew Transportation Vehicles.

The UTC has regulatory authority over "contract crew transportation vehicles," which are defined as every motor vehicles designed to transport 15 or fewer passengers, including the driver, that are used primarily to provide railroad crew transportation for a railroad company and are owned, leased, operated, or maintained by a person contracting with a railroad company or its agents, contractors, subcontractors, vendors, subvendors, secondary vendors, or subcarriers. The UTC is directed to regulate persons providing contract railroad crew transportation and every contract crew transportation vehicle with respect to driver qualifications, equipment safety, drug testing requirements, and record retention. This regulation must be consistent with the manner in which the UTC regulates passenger charter and excursion carriers and auto transportation companies, as well as with Federal Motor Carrier Safety Administration regulations.

The definition of "passenger-carrying vehicle" is modified to include vans and cars used by a railroad company primarily to transport railroad employees.

The UTC must require entities providing contract railroad crew transportation to verify that all drivers of contract crew transportation vehicles successfully complete at least eight hours of UTC-approved safety training, which includes information on passenger safety awareness, railyard safety, grade crossing safety, load securement, and distracted and fatigued driving.

The UTC is required the mandate the form and posting of adequate notices in a conspicuous location in all contract crew transportation vehicles that advise railroad employee passengers of their rights, the opportunity to submit safety complaints, the complaint process, and contact information for the UTC.

#### Insurance Coverage.

The UTC must require contract crew transportation vehicles to maintain the following minimum insurance or financial responsibility coverage levels: bodily injury and property damage combined single-limit liability coverage of \$5 million, and uninsured and underinsured motorist coverage of \$1 million. Insurance requirements may be satisfied by a third party operating the contract crew transportation vehicle (so long as the person operating the vehicle names the third party as an additional insured or named insured), the party operating the contract crew transportation vehicle, or the railroad company. Irrespective of the party that obtains the required insurance, proof of insurance coverage must be provided to the UTC by the person contracting with the railroad company.

#### Enforcement.

The UTC must develop an inspection program for contract crew transportation vehicles that includes periodic inspections of each vehicle, as well as a review of operational practices. The UTC is permitted to inspect any passenger-carrying vehicle or contract crew transportation vehicle to enforce rules and orders. The UTC may obtain assistance in these inspections from the Washington State Patrol.

The UTC is required to investigate safety complaints related to contract crew transportation and to take enforcement action as necessary. The UTC may impose monetary penalties of up to \$1,000 for each violation. If a person is determined to have committed serious or repeat violations, the UTC must suspend, revoke, or cancel the UTC certificate required to operate vehicles.

The UTC may suspend or revoke a contract crew transportation permit based on a complaint made by an interested party, or on the UTC's own motion, after notice and opportunity for hearing, when the commission finds that any person owning, leasing, operating, or maintaining contract crew transportation vehicles has violated a state law or rule that applies to contract railroad crew transportation, or when the company or its agent has been found by a court or government agency to have violated a state or federal law.

A person is disqualified to serve as a driver of a contract crew transportation vehicle for three years if (1) the person is convicted of, or found to have committed, two or more traffic violations that result in suspension or revocation of the person's driver's license within a three year period, for a reason other than the non-payment of fines; or (2) the person is found guilty of, or is found to have committed any drug or alcohol-related traffic offense, using a vehicle to commit a felony, leaving the scene of an accident, prohibited passing of another vehicle, a railroad-highway grade crossing offense, or driving with a suspended, revoked, or canceled license. A driver who has been convicted of or found to have committed a traffic violation that is grounds for disqualification to serve as a driver of a contract crew

transportation vehicle must report this conviction or violation to the contract crew transportation vehicle carrier within 10 days

Information Collection and Reporting.

The UTC must compile data regarding safety complaints, accidents, regulatory violations and fines, and corrective actions taken relating to contract crew transportation vehicles and passenger-carrying vehicles. At the request of the UTC, railroad companies and any person that owns or leases, operates, or maintains contract crew transportation vehicles must provide data regarding complaints and accidents, including location, time of day, visibility, a description of the event, whether any property damage or personal injuries occurred, and any corrective action taken by the railroad company, person operating the contract crew transportation vehicle, or the UTC. The UTC must make this data available on request.

Information included in contract crew transportation vehicle safety complaints that identifies the employee who submitted the complaint is exempted from public inspection and copying pursuant to the Public Records Act.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on January 1, 2018.

**Staff Summary of Public Testimony:**

(In support) This bill is about safe equipment, safe drivers, and adequate insurance. Railroad employees are not covered by workers' compensation and have no insurance coverage if an accident is caused by a third party. They are covered at work, but not when being transported. Underinsured motorist coverage is what is needed to address this gap in coverage.

Many of these accidents keep occurring, have serious consequences, and are preventable. Railroad employees are being killed and seriously injured, and the railroads have delayed addressing this for five years. Families are losing loved ones. Individual railroad workers cannot buy insurance coverage that will apply when they are working in these vehicles—policies have exceptions for vehicles at work. The FELA only applies to accidents that occur when a railroad is at fault.

There did not used to be outside companies transporting railroad crew employees. To make money, railroads negotiate the lowest possible contract, and vendors hire people who only earn wages for time spent driving—drivers stay up late and become extremely fatigued. Drivers get paid minimum wage and are on call all the time. Their turnover rate is extremely high, and this leads to many drivers working a lot of overtime.

There have been incidents of drivers falling asleep and veering across lanes and off of roadways. In Canada, railroad employee drivers are required to have a Class 4 license, which is similar to a Commercial Driver's License in the United States. The most risky part of

working for a railroad is the transportation in vans to and from the work sites. This is the case despite the fact that the job itself is very dangerous—hazardous material is often hauled and mistakes on the job can result in the loss of limb or life.

Vehicle defects go unreported, with some seatbelts not working properly. Railroads do not enforce their vehicle standards when they contract with other companies to provide transportation. There are no driver logs that can be examined to see how long a driver has been working without time off.

Railroads are shielding themselves from liability. Injuries are often life- or career-ending and families are not made whole. The loopholes in this area need to be closed.

(Opposed) The insurance provisions in the bill are outside the mainstream of what is required and are too high—\$10 million in uninsured or underinsured motorist coverage is 10 times higher than the highest amount required by any other state. The insurance requirements need to be looked at more closely to ensure they directly address the circumstances that proponents of the bill have concerns about.

The safety regulations in the bill related to oversight and the role of the UTC should apply appropriately to third party vendors rather than to railroads. Railroads place a high priority on safety. Crew hauling is an important part of efficiently running a railroad. The bill's provisions need to be fair.

**Persons Testifying:** (In support) Representative Stanford, prime sponsor; Anthony Petru, Paul McGill, Todd Kester, Korey McDaniel, Kurt Sides, Herb Krohn, and Maxine Chan, Sheet Metal, Air, Rail and Transportation Workers; George Thornton, Sheet Metal, Air, Rail and Transportation Workers and Thornton Mostul Herschon, PLLC; Dwight Hauck; Susan Hauck; and David Backsen, Chris Hulden, Bruce Smith, Mark McGaffey, Shahraim Allen, and Mike Elliott, Brotherhood of Locomotive Engineers and Trainmen.

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

**Persons Signed In To Testify But Not Testifying:** None.