

HOUSE BILL REPORT

HB 2439

As Reported by House Committee On:
Transportation

Title: An act relating to making rail investigation and inspection information available to certain state and local governmental entities.

Brief Description: Making rail investigation and inspection information available to certain state and local governmental entities.

Sponsors: Representatives Kilduff, Leavitt, Gregerson and Pollet.

Brief History:

Committee Activity:

Transportation: 1/27/20, 2/5/20 [DPS].

Brief Summary of Substitute Bill

- Requires the Utilities and Transportation Commission (UTC) to share information collected through rail inspection and investigation activities with the Washington State Department of Transportation and certain first-class cities as necessary to assist them in the performance of their agency functions under state law, subject to certain exceptions.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Fey, Chair; Wylie, 1st Vice Chair; Slatter, 2nd Vice Chair; Valdez, 2nd Vice Chair; Doglio, Duerr, Entenman, Gregerson, Kloba, Lovick, Mead, Ortiz-Self, Paul, Ramos, Riccelli and Shewmake.

Minority Report: Do not pass. Signed by 13 members: Representatives Barkis, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Young, Assistant Ranking Minority Member; Boehnke, Chambers, Dent, Dufault, Eslick, Goehner, McCaslin, Orcutt, Van Werven and Volz.

Minority Report: Without recommendation. Signed by 2 members: Representatives Chapman and Irwin.

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.

Staff: Jennifer Harris (786-7143).

Background:

National Rail Safety Program.

A national rail safety program is in place, the purpose of which under federal law is to promote safety in all areas of railroad operations to reduce deaths, injuries, and property damage resulting from railroad collisions. The national rail safety program is carried out, in part, through the issuance of federal safety requirements and through inspection efforts to monitor compliance with these requirements. The Federal Railroad Administration (FRA) and participating states conduct inspections and investigations as part of the national rail safety program.

The State Safety Participation Program's role is to provide enhanced investigative and surveillance capabilities through a partnership with state agencies that conduct planned routine compliance inspections. In Washington, the Utilities and Transportation Commission (UTC) is the agency responsible for working with the FRA to carry out the national rail safety program.

Under state law, for the purposes of participating in the enforcement of federal rail safety regulations in cooperation with the FRA, the UTC is granted regulatory jurisdiction over the safety practices for railroad equipment, facilities, rolling stock, and operations. In this role, the UTC collects and retains rail inspection information for internal use, as well as to share with the FRA.

It is the UTC's current policy to execute agreements with other state agencies, such as the Washington State Department of Transportation (WSDOT), and first-class cities with certain rail crossing safety responsibilities, in order to share the rail inspection information it collects that is not subject to confidentiality restrictions.

Utilities and Transportation Commission's Grade Crossing Safety Inspection Program.

The UTC inspects intersections where rail meets road, called grade crossings, to make sure they are designed and maintained in a way that promotes safe crossings. The UTC also investigates accidents and authorizes improvements of public crossings, installation of signals and gates, and closures of crossings. This program is state mandated and is separate from the UTC's participation in the national rail safety program.

The UTC does not have the authority to inspect grade crossings located in first-class cities unless the first-class city elects to participate in the UTC's grade crossing safety inspection program. There are 10 first-class cities in the state. Bellingham, Richland, Tacoma, and Vancouver are currently participating in this program. Aberdeen, Bremerton, Everett, Seattle, Spokane, and Yakima are the other first-class cities in the state.

A first-class city is a city with a population of 10,000 or more at the time of its organization or reorganization that has a charter adopted under the state Constitution.

Summary of Substitute Bill:

The UTC is required to share information collected through the UTC rail inspection and investigation activities with the WSDOT and first-class cities that participate in the UTC's grade crossing safety inspection program as necessary to assist them in the performance of their agency functions under state law. Information collected by the FRA inspectors must be shared by the UTC unless sharing this information is prohibited by federal law, federal regulation, or the FRA.

Mandatory disclosure of information collected through rail inspection and investigation activities does not apply when an active investigation is in progress and until all related court and administrative proceedings that require confidentiality have been completed. However, if the UTC determines that rail equipment is unsafe over the course of conducting rail investigation activities, information relevant to this finding must be shared (as long as the exceptions listed below do not apply).

Mandatory disclosure does not apply when federal law requires the UTC to treat this information as confidential. Mandatory disclosure also does not apply if disclosure of information could create a substantial risk of a threat to public safety.

The UTC is required to explore options for the development of an information technology application to facilitate compliance with these mandatory disclosure requirements, and must provide a report to the transportation committees of the Legislature summarizing these options and their associated costs by December 1, 2020.

Substitute Bill Compared to Original Bill:

The substitute bill narrows with whom the UTC is required to share rail inspection and investigation information to the WSDOT and first-class cities that participate in the UTC's crossing safety inspection program.

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) Two separate Amtrak derailments occurred in the 28th Legislative District in 2017. The Point Defiance Bypass derailment was devastating and resulted in three deaths and many injuries. The National Transportation Safety Board's findings make clear that rail safety involves many entities in the state—there are federal, state, regional, and local

participants. A number of entities were involved in the development of the bypass route where the derailment occurred.

This bill would ensure the mandatory disclosure of information to state agencies and certain first-class cities. The bill includes certain exceptions to mandatory disclosure, including when restricting access to information is mandated by federal law, when there is an ongoing investigation, or if there is a substantial threat to public safety.

The sharing of inspection and safety information with these safeguards will protect train travelers, communities through which trains pass, and railway workers. There is currently no memorandum of understanding in place between the WSDOT and the UTC. It is important that the right hand knows what the left hand is doing when it comes to protecting the public in Washington and preventing future tragedies.

The City of Lakewood has long been concerned with rail safety. The route where the derailment occurred runs through the city with seven at-grade crossings, only two of which are being grade separated. These grade crossings are in congested areas and the city still has safety concerns. The strength of this bill is that it would have the UTC proactively push information out to agencies, which can provide advance notice of what can cause an accident.

(Opposed) None.

(Other) This bill presents an opportunity to discuss the continued efforts of the UTC and the WSDOT to share this vital information, as well as continued efforts to make this information sharing more robust. The UTC's railroad safety program is focused on protecting the public and railroad employees by ensuring that railroad companies meet established state and federal standards and by educating the public. The FRA allows the UTC to share rail inspection information with the WSDOT on railroad lines that the WSDOT manages, but is reluctant for the information to be disseminated more broadly.

Common carriers have obligations related to safety, but it is important that certain sensitive information remains protected so that unintended consequences do not result from the sharing of this information.

Railroad workers support this legislation and find it outrageous that the WSDOT cannot get inspection reports for violations related to equipment for which they oversee contracts and are paying. However, the bill should also include an amendment to protect the confidentiality of transportation and utility workers when they file safety complaints to prevent retaliation.

Persons Testifying: (In support) Representative Kilduff, prime sponsor; and John Caulfield and Mike Brandstetter, City of Lakewood.

(Other) Jason Lewis, Utilities and Transportation Commission; Bill Stauffacher, BNSF Railway; and Herb Krohn, SMART Transportation Division and United Transportation Union.

Persons Signed In To Testify But Not Testifying: None.