

SENATE BILL REPORT

HB 1841

As Reported by Senate Committee On:
Labor & Commerce, February 25, 2020

Title: An act relating to establishing minimum crew size on certain trains.

Brief Description: Establishing minimum crew size on certain trains.

Sponsors: Representatives Riccelli, Chandler, Blake, Boehnke, Macri, Eslick, Santos, Young, Ryu, Jenkin, Sells, Stokesbary, Senn, Griffey, Harris, Stonier, Morgan, Walsh, Gregerson, Lovick, Fey, Volz, Wylie, Hoff, Ramos, Chambers, Stanford, McCaslin, Fitzgibbon, Van Werven, Peterson, MacEwen, Dent, Graham, Hudgins, Valdez, Pollet, Ortiz-Self, Ybarra, Walen, Ormsby, Dolan, Frame, Cody, Jinkins, Tarleton, Appleton, Bergquist, Callan, Chapman, Pellicciotti, Shewmake, Kilduff, Lekanoff, Davis, Pettigrew, Doglio and Entenman.

Brief History: Passed House: 3/13/19, 72-24; 1/30/20, 65-30.

Committee Activity: Labor & Commerce: 3/26/19, 4/02/19 [DPA, DNP]; 2/20/20, 2/25/20 [DPA, DNP].

Brief Summary of Amended Bill

- Establishes minimum crew size requirements for freight and passenger trains and trains carrying hazardous materials.
- Creates exceptions to the requirements and provides discretionary monetary penalties for violations.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass as amended.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Stanford, Walsh and Wellman.

Minority Report: Do not pass.

Signed by Senators King, Ranking Member; Braun and Schoesler.

Staff: Susan Jones (786-7404)

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: State statutes addressing crew size on freight and passenger trains state that no law may prevent a railroad from staffing its trains in accordance with collective bargaining agreements or any national settlement regarding train crew size. For passenger trains, if there is no collective bargaining agreement or national settlement, a railroad operating with less than two crew members is subject to a safety review by the Utilities and Transportation Commission (UTC).

A violation of the crew size provision is a misdemeanor, and upon conviction the railroad carrier is subject to a fine of at least \$100, but not more than \$500, for each offense. Each train run in violation of the crew size provision is a separate offense. The penalty does not apply in the case of disability of a crew member while out on the road between division terminals, wrecking trains, or to any line, or part of line, where not more than two trains are run in each 24 hours.

Federal law provides that laws, regulations, and orders related to railroad safety must be nationally uniform to the extent practicable. A state may enact a law related to safety unless the United States Secretary of Transportation adopts a rule or issues an order covering the subject matter, in which case the state law is preempted. A state may adopt a more stringent law when it: (1) is necessary to eliminate or reduce an essentially local safety or security hazard; (2) is not incompatible with a federal law; and (3) does not unreasonably burden interstate commerce.

On March 15, 2016, the Federal Railroad Administration (FRA) issued a notice of proposed rulemaking (NPRM) concerning train crew staffing. On May 29, 2019, the FRA published a final rule withdrawing the March 15, 2016 NPRM. The FRA stated that "[i]n issuing this withdrawal, FRA has determined that no regulation of train crew staffing is necessary or appropriate at this time and intends for the withdrawal to preempt all state laws attempting to regulate train crew staffing in any manner." The FRA referred to the intention as negatively preempting any state law concerning the subject matter.

On July 29, 2019, the Washington State Attorney General, along with the California Public Utilities Commission, the Transportation Division of the International Association of Sheet Metal, Air, Rail, and Transportation Workers, and others, filed a petition in the U.S. Court of Appeals for the Ninth Circuit for review of the final rule, stating that it is procedurally and substantively defective, and asking the court to vacate and set aside the final rule. The case is still pending.

The Hazardous Materials Division of the Federal Railroad Administration oversees the transportation of hazardous materials, such as petroleum, chemicals, and nuclear products, across the country. Federal regulations define what materials are hazardous and specify such things as proper placards for trains carrying hazardous materials and train car configuration.

Summary of Amended Bill: The Legislature declares that regulating minimum employee staffing constitutes an exercise of the state's police power to protect and promote the health, safety, security, and welfare of Washington's residents by reducing the risk of exposure to local communities and protecting environmentally sensitive and pristine lands and waterways.

The crew size regulations and the misdemeanor and monetary fines related to violations are repealed and replaced. The following are the minimum employee size requirements:

- common carriers of freight or passengers must operate and manage with no less than two crew members; and
- railroad carriers operating hazardous material trains must operate with no less than two crew members or as ordered by the Commission.

The following exceptions apply:

- trains transporting hazardous material shipments a distance of five miles or less may operate with crew members positioned on the lead car;
- class III carriers transporting fewer than 20 loaded hazardous material cars and traveling at 25 miles per hour or less are not required to maintain additional crew; and
- the UTC may grant waivers to the minimum crew size to class III carriers: (1) exclusively transporting agricultural commodities; (2) with nine or less employees that do not transport dangerous commodities; or (3) meeting certain conditions.

The UTC may order railroad carriers to increase the number of employees in areas of increased risk to the public, passengers, railroad employees, or the environment, or on specific trains, routes, or to switch assignments on their road with additional numbers of crewmembers, and may direct the placement of additional crewmembers, if there is an increase in staffing or the placement of additional crewmembers is necessary to protect the safety, health, and welfare of the public, passengers, or railroad employees, to prevent harm to the environment or for site specific safety or security hazards. The UTC may consider a number of factors in issuing the order.

A violation of the crew size requirements may be subject to a fine between \$1,000 and \$100,000, for each offense, as determined by the UTC. Each run in violation of the requirement constitutes a separate offense, except in the cases of disability of a crew member or crew members assigned to wrecking trains. The UTC may impose larger fines when a serious injury or fatality occurs. The UTC may consider the class, assets, profitability, and operational safety record of the carrier, as well as deterrence in ascertaining an appropriate punitive penalty.

Definitions for hazardous material and hazardous material train and other terms are provided. Hazardous material train means:

- any train carrying a combination of 20 or more car loads of class 2 flammable gases and class 3 flammable liquids, as defined by the United States Department of Transportation;
- any train with one or more carloads of class 1 explosive materials with a mass explosion hazard, class 7 spent nuclear fuel, or high-level nuclear waste, as defined by the United States Department of Transportation; or
- any high-hazard flammable train, as defined by the United States Department of Transportation

Class III means a railroad carrier designated as a class III railroad by the United States surface transportation board and is owned and operated by entities whose combined total railroad operational ownership and controlling interest meets the United States surface transportation board designation as a class III railroad carrier.

EFFECT OF LABOR & COMMERCE COMMITTEE AMENDMENT(S): Changes the crew requirement for hazardous material trains to two crewmembers or as ordered by the Commission, from three qualified crewmembers with one at the rear of the train. Removes requirements for four qualified crewmembers on hazardous material trains with fifty or more carloads. Removes class II carriers from the exemption for transporting fewer than twenty cars of hazardous materials operating at a speed of twenty-five miles or less. Modifies the allowable waivers of crew requirements and allows them for class III carriers: (1) Exclusively transporting agricultural commodities; (2) with nine or less employees that do not transport dangerous commodities; or (3) meeting certain conditions. Modifies the reasons the Commission may order an increase in the number of railroad employees. Makes fines discretionary rather than mandatory. Allows the Commission to impose greater fines when a serious injury or fatality occurs and provides factors to be considered. Changes terminology from "qualified crewmember" to "crewmember." Defines Class III. Modifies the legislative findings.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on House Bill (Regular Session 2019): *The committee recommended a different version of the bill than what was heard.* PRO: This bill is critical for both public and railroad worker safety. With huge increases in rail shipments of oil and other dangerous flammable materials, all trains must be crewed by no less than two people. This bill will affect fewer than 5 percent of all trains system wide. Five states have passed this law and one sits on the Colorado Governor's desk. Adequately crewed freight trains are safer trains.

We have seen crews reduced. It is important to have extra eyes and ears on these trains. Ten days ago in Eastern Washington, a derailed train spilled a hazardous chemical, caught fire, and burned for approximately 24 hours. We have seen trains get longer and longer. Recently, a 12,000-foot train ran through the Columbia Gorge. It can take a conductor 45 minutes or more to get from the head into the rear of a train to find out the problem. No technology monitors the freight on the train. The opponents will argue that the train crew size is not a matter for legislative action or government oversight and that it should be collectively bargained, but look at the 737 Max. These are public safety matters first and foremost. They cannot be left to for-profit corporations and labor organizations to bargain away the safety of our communities and our residents.

Railroad companies are not your run of the mill private business or corporations. They are government-sanctioned monopolies and are among the most powerful of the for-profit corporations. They need to be well regulated to ensure business operations are conducted for the benefit of the public.

About 1992, we had four people on the train and now we are down to two. The rear end of the train is run through remote control. Someone needs to be there to see if it catches on fire or if the brakes are burning off through the bearings. If a train catches on fire going through the Seattle mile-long tunnel, a passenger station, who is going to cut that train in half and keep it from exploding. There are different locations where this could be really, really dangerous.

We know that fertilizer products are critical to our agricultural community and we do not want to adversely affect them. The railroads that handle high hazard flammable materials should have minimum crew standards. Class I railroads are making large profits. The bill will protect railroad workers, the public, and the environment by ensuring the most dangerous trains are sufficiently staffed. Monitoring equipment and lading while in transit is a crucial crew function. While technology is helpful, it cannot take the place of a professional train crew, especially in emergency scenarios.

CON: Regarding preemption, the federal government has clearly asserted that it occupies the regulatory space on issues of railroad safety. There are emergency response rules now. The bill will contradict accepted operating practices and put more people in danger. Because this bill takes crew size mandates far beyond what any other state has even proposed, much less enacted, it would almost certainly draw expensive and time-consuming litigation. That could do irreparable harm to the state's trade sector, affecting transportation of everything from grain, timber, and airplane fuselages. The bill would begin to dismantle a framework of collective bargaining that was established by the federal government and is overseen by Congress and the executive branch over the past century.

This collective bargaining process helped establish railroad jobs as the safest in the industrial, manufacturing, and transportation sectors. These jobs can be obtained with a high school diploma. They can be six-figure a year salary with excellent benefits and retirement. As technology evolves and safety improves, these are some of the safest, most well-compensated, long standing jobs in the transportation sector.

We appreciate that some of the agricultural products are exempt. However, agricultural products frequently travel by rail car. If the rail cars are attached to an existing train that is already subject to this bill, the agricultural products will be affected. These products are time sensitive. They must be delivered to farms at peak application times. There is insufficient storage in the state to keep these products readily available. We are concerned the logistical impacts of this bill will cause delays.

One of our labor partners has raised concerns about medical emergencies inside the cab. The train will stop. Each locomotive is equipped with an alert button. If the button is not pushed, it sets off an alarm inside the cab of the locomotive. If the button is not pressed once the alarm sounds for a few moments, the train is automatically stopped. If an engineer begins to speed, does not respond to signals, or enters a track where work is being done, positive train control will bring it to an automatic safe stop. We are constantly looking for innovative ways to enhance the safety of our employees, the communities where we operate, and the customers we serve. Historically, safety and technology improvements have been a primary catalyst for crew size related negotiations. As a result of these improvements, labor and management have agreed to reductions. Rail employee injury and train accidents in grade

crossing collision rates have declined by 79 percent or more since the 1980s. Hazardous material accident rates are down 91 percent. There will be significant negative consequences for Washington shippers trying to get their products to markets around the country and beyond. Costs will ultimately be passed on to consumers.

This bill would circumvent the collective bargaining agreements. It would also create a unique set of regulations on a national system that would impact traffic management of railroad operations across state lines, causing higher costs, and delay Washington's trade driven sectors. This would be another setback for the trade sector as well as Washington ports.

A rail system is important for competitive ports. Class III railroads, short lines, are critical to regional economies. They are not exempt from this bill. Half of them are publicly owned. They operate at slow speeds, often less than daily. They often operate with one crew member in the cab of the locomotive and an additional crew member in a truck or a high rail vehicle before or after the train. This is an approved and safe form of operation. It is in accordance with the general code of operating rules. We would like a short line exemption.

OTHER: The UTC supports adequate safety.

Persons Testifying: PRO: Representative Marcus Riccelli, Prime Sponsor; Mike Elliott, Rail Safety; Herb Krohn, SMART-Transportation Division; Dave Beech, Brotherhood of Locomotive Engineers and Trainmen.

CON: Tom McBride, Far West Agribusiness Association; Patrick Boss, Columbia Basin Railroad, Central Washington Railroad; Johan Hellman, BNSF Railway; Aaron Hunt, Union Pacific Railroad; Mike Ennis, Association of Washington Business; Chris Herman, Washington Public Ports Association.

OTHER: Jason Lewis, Washington Utilities and Transportation Commission.

Persons Signed In To Testify But Not Testifying: No one.

Staff Summary of Public Testimony on House Bill (Regular Session 2020): *The committee recommended a different version of the bill than what was heard.* PRO: If we do not do this we will be putting the environment at risk. This is a common sense measure. There should be some exceptions. The decision by the FRA is contrived. It speaks more of the administrator's ties to the railroads. There is a lot of political influence going on in Washington. Statute requires that rulemaking needs to be concluded within one year. It was not. The decision has no merit. The decision withdrawing was not completed. Under that Administrative Procedures Act, the states could not have anticipated the negative preemption. It was never discussed in the proposed rule. The Supreme Court has ruled on implied preemption. *CSX v. Easterwood* states that implied preemption/negative preemption is not valid. This was implied preemption. This is a matter pending in the 9th circuit. The point is what should you do, if anything. It will take approximately two years for the case to be resolved. There is no downside to the state legislating this. There is no major cost to the railroads. Most are already operating with these crews.

Senator Conway is preparing amendment with an exemption for short lines that we support.

One person in the cab is not safe. Some of the cars are dangerous. One person may take a long time to walk to the back of the train. Planes have a co-pilot, why not trains. The train crew size has decreased over the years. Positive train control is not enough.

CON: We oppose the bill for three reasons. This is not about safety. FRA Found after studying the matter for more than two years, that no regulation for train crew staffing for safety. In some circumstances, having additional crew staffing can negatively affect safety. Crew size is best negotiated by collective bargaining. Recently, a federal judge required a union to return to the table and bargain on train crew size.

Railways vary greatly in the need for additional crew. Agriculture relies primarily on class II rail lines. These trains move at about 10 to 25 miles per hour. Class Is move at about 45 to 65 miles per hour. Farm products accounted for 683 rail cars equivalent to about 2000 truck loads. We do not want those additional trucks on the roads. Agriculture is a price taker not a price maker. Farm bureau would support exemption of Class II.

There was an assumption that increased crew made rails safer. The assumption ignores improvements in infrastructures and technology and changes in rail jobs.

Increasing crew size for railroads that operate across state lines would increase the cost of operating in Washington.

OTHER: We would like an exemption for short line railroads.

Persons Testifying: PRO: Representative Marcus Riccelli, Prime Sponsor; Shahrain C. Allen, Brotherhood of Locomotive Engineers & Trainmen, Washington State Legislative Board; Ken Richards, Smart TD; Todd Kester, SMART-TD Local 324; Herb Krohn, SMART Transportation Division/United Transportation Union, Washington State Legislative Director; Larry Mann, SMART-TD and BLET; Joseph Diaz, BLET-WSLB Division 402; Eddie Barron, BLET-WSLB Division 402; Johnnie Jones, BLET-WSLB Division 758; Christopher Willyerd, Smart TD Local 324.

CON: Bre Elsey, Washington Farm Bureau; Johan Hellman, BNSF Railway Co.; Aaron Hunt, Union Pacific Railroad; Mike Ennis, Association of Washington Business.

OTHER: Chris Herman, Washington Public Ports Association.

Persons Signed In To Testify But Not Testifying: No one.