

SHB 1418 - H AMD 408

By Representative Leavitt

ADOPTED 03/07/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature recognizes that rail
4 safety is critical to the impacts of the state's transportation
5 network on public safety and the environment. On December 18, 2017, a
6 passenger train derailed from a bridge near DuPont, Washington. Three
7 passengers were killed and 57 passengers and crewmembers were
8 injured. While the 2017 derailment had particularly tragic
9 consequences, the risks to public safety and the environment are
10 underscored by other rail incidents that have occurred in the past
11 several years, including the freight train transporting oil
12 derailment and resulting fire on June 3, 2016, in the Columbia river
13 gorge, near Mosier, Oregon, while in route to Tacoma, Washington, and
14 the derailment of a freight train transporting oil through Custer,
15 Washington, in late 2020 that also resulted in a fire.

16 (2) The national transportation safety board issued an accident
17 report on the 2017 derailment in early 2019. The report included
18 recommendations for government agencies that participated in
19 developing the new route related to improvements in safety oversight,
20 coordination, and communication. In 2020, the joint transportation
21 committee oversaw a rail safety governance study that provided an
22 assessment and recommendations for how rail safety oversight,
23 organizational structures and processes, and coordination activities
24 could be modified to improve rail safety governance across the state.

25 (3) The legislature intends to build on the recommendations of
26 the national transportation safety board and joint transportation
27 committee reports to strengthen rail safety governance by expanding
28 the utility and transportation commission's role in rail safety to
29 include oversight of all rail transportation in the state to the
30 extent permitted under federal law, including over implementation of
31 new and materially changed railroad operations and over the safety
32 management practices of railroad operations. The legislature intends

1 for this role to include promotion of safety and security of the
2 public and rail employees, as well as protection of the environment,
3 to the extent these goals can be furthered by the commission's
4 expanded role.

5 (4) The legislature does not intend for the expanded role of the
6 utility and transportation commission in rail safety to be funded
7 through the assessment of fees on rail entities.

8 **Sec. 2.** RCW 81.04.540 and 2007 c 234 s 2 are each amended to
9 read as follows:

10 (1)(a) The commission is authorized to oversee rail safety in the
11 state to the extent permitted by federal law and is responsible for
12 inspection, surveillance, and investigation of the rights-of-way,
13 facilities, equipment, and operations of railroads, and for enforcing
14 state and federal laws and regulations relating to transportation of
15 persons or commodities, or both, of any nature or description by
16 rail. The oversight of rail fixed guideway systems is governed by RCW
17 81.104.115 and as specified in (b) of this subsection. Rail safety
18 oversight shall include, but is not limited to, the following:

19 (i) Oversight of the implementation of new and materially changed
20 railroad operations and infrastructure for rail service through
21 inspection, surveillance, and investigation, as permitted by federal
22 law.

23 (ii) Oversight of the safety management practices for passenger
24 railroad operations, as permitted by federal law. The department of
25 transportation shall coordinate with the commission and Amtrak to
26 facilitate the oversight of state passenger rail service to the
27 extent permitted under federal law. The commission shall facilitate
28 communication and collaboration between freight rail service
29 providers to promote industry safety management practices.

30 (b) (i) In coordination with the department of transportation, the
31 commission shall provide support and technical assistance in the
32 oversight of the safety of rail fixed guideway systems carried out by
33 the department under RCW 81.104.115, as permitted by federal law. The
34 commission and its employees shall have no liability for any actions
35 taken pursuant to this subsection performed to support and provide
36 technical assistance for any of the actions for which the department
37 has no liability under RCW 81.104.115.

38 (ii) As the state agencies that oversee rail safety in the state,
39 the commission and the department of transportation shall report

1 annually to the transportation committees of the legislature, and to
2 the governor's office, by December 1st of each year on the status of
3 the department of transportation's safety oversight of rail fixed
4 guideway systems. As part of this report, the agencies shall provide
5 a joint assessment of the activities carried out in each of the areas
6 specified in RCW 81.104.115 and as otherwise required by the federal
7 transit administration in these and related areas, including:
8 Investigations and enforcement; system safety program plan and system
9 security and emergency preparedness plan oversight; compliance
10 mechanisms in place for enforcement; auditing of system safety
11 program plans and system security and emergency preparedness plans;
12 investigations of reportable incidents, accidents, security breaches,
13 hazards, and security vulnerability; and any associated rule
14 adoption. The report shall include plans and recommendations for
15 enhancing current activities in these areas.

16 (2) The commission shall cooperate with the federal government
17 and the United States department of transportation, or its successor,
18 or any other commission or agency delegated or authorized to regulate
19 interstate or foreign commerce by common carriers, to the end that
20 the transportation of property and passengers by common carriers in
21 interstate or foreign commerce into and through the state of
22 Washington may be regulated and that the laws of the United States
23 and the state of Washington are enforced and administered
24 cooperatively in the public interest.

25 ~~((+2))~~ (3) In addition to its authority concerning interstate
26 commerce under this title, the commission may regulate common
27 carriers in interstate commerce within the state under the authority
28 of and in accordance with any act of congress that vests in or
29 delegates to the commission such authority as an agency of the United
30 States government or under an agreement with the United States
31 department of transportation, or its successor, or any other
32 commission or agency delegated or authorized to regulate interstate
33 or foreign commerce by common carriers.

34 ~~((+3) For the purpose of participating with the United States~~
35 ~~department of transportation in investigation and inspection~~
36 ~~activities necessary to enforce federal railroad safety regulations,~~
37 ~~the))~~ (4) The commission has regulatory jurisdiction over the safety
38 practices for railroad equipment, facilities, rolling stock, and
39 operations in the state, including authority to investigate and
40 conduct inspections necessary to the enforcement of state railroad

1 safety regulations, as permitted by federal law. This jurisdiction
2 includes the authority to participate with the United States
3 department of transportation in investigation and inspection
4 activities necessary to enforce federal railroad safety regulations.

5 (5) The commission shall produce an annual report on rail safety
6 in the state and provide it to the transportation committees of the
7 legislature, including the joint transportation committee, and shall
8 make this report available to the public. This report shall include
9 information related to rail safety of rail fixed guideway systems.

10 (6) The commission shall promote rail safety through the
11 facilitation of communication and collaboration among stakeholders
12 with an interest in rail, including local jurisdictions, host and
13 tenant railroads, and rail labor organizations. This communication
14 and collaboration shall include communication and collaboration
15 related to rail safety of rail fixed guideway systems.

16 (7) "Rail fixed guideway system," as used in this section, has
17 the same meaning as defined in RCW 81.104.015.

18 **Sec. 3.** RCW 81.04.550 and 2007 c 234 s 3 are each amended to
19 read as follows:

20 The commission shall administer the railroad safety provisions of
21 this title to the fullest extent allowed under federal law, including
22 49 U.S.C. Sec. 20106, and state law.

23 NEW SECTION. **Sec. 4.** (1) To ensure this act is implemented upon
24 its effective date and all systems, processes, and collaboration
25 necessary to implement this act are in place, the utilities and
26 transportation commission may, prior to July 1, 2022:

27 (a) Adopt rules, policies, and procedures on railroad safety;

28 (b) Initiate the recruitment, training, and certification of
29 personnel dedicated to railroad safety; and

30 (c) Facilitate stakeholder communications and outreach on key
31 railroad safety initiatives, developments, and strategies.

32 (2) All rules adopted prior to July 1, 2022, shall have an
33 effective date that is consistent with those in this act.

34 NEW SECTION. **Sec. 5.** Sections 1 through 3 of this act take
35 effect July 1, 2022."

36 Correct the title.

EFFECT: Makes the following changes to the UTC's role in rail safety governance oversight:

(1) Clarifies that the UTC's oversight includes responsibility for the inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and operations of railroads, and for enforcing laws and regulations relating to the transportation of persons and commodities by rail.

(2) Clarifies that oversight of the implementation of new and materially changed railroad operations and infrastructure for rail service is to be performed through inspection, surveillance, and investigation.

(3) Narrows the oversight of the safety management practices for railroad operations to oversight of the safety management practices for passenger railroad operations only, and requires the UTC to promote communication and collaboration between freight rail stakeholders to help inform the freight rail safety management practices of freight rail service providers.

(4) Modifies the UTC's role in the oversight of rail fixed guideway systems by limiting it to providing support and technical assistance to WSDOT; and reporting jointly with WSDOT on an annual basis to the Transportation Committees of the Legislature and to the Governor's Office on the status of WSDOT's rail safety oversight work, including making recommendations for enhancements.

(5) Extends the liability protections in state law that apply to WSDOT's safety oversight work to the UTC for the purposes of the support and technical assistance it provides to WSDOT.

(6) Clarifies that the annual report on rail safety produced by the UTC and the communication and collaboration facilitation conducted by the UTC must include rail fixed guideway systems.

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