

SENATE BILL REPORT

ESHB 1418

As of March 15, 2021

Title: An act relating to enhancing rail safety governance by expanding the role of the utilities and transportation commission.

Brief Description: Enhancing rail safety governance by expanding the role of the utilities and transportation commission.

Sponsors: House Committee on Transportation (originally sponsored by Representatives Leavitt, Bronoske, Lovick, Ryu, Ortiz-Self, Gregerson, Shewmake, Ramel and Pollet).

Brief History: Passed House: 3/7/21, 89-6.

Committee Activity: Transportation: 3/15/21.

Brief Summary of Bill

- Expands the Utilities and Transportation Commission's (UTC) oversight of rail safety to the extent permitted by federal law, including through inspection, surveillance, investigation and enforcement of state and federal laws and regulations.
- Grants UTC the authority to oversee implementation of new and materially changed railroad operations and infrastructure, as permitted by federal law.
- Grants UTC the authority to oversee safety management practices of passenger railroad operations, as permitted by federal law.
- Requires UTC to provide support and technical assistance to the Washington State Department of Transportation in the oversight of the safety of rail transit systems, as permitted by federal law, and requires both agencies to jointly report annually to the Transportation Committees of the Legislature and the Governor's Office on the status of this oversight work.
- Requires UTC to submit an annual report on rail safety and promote rail

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

safety through facilitating communication and collaboration among parties with an interest in rail.

SENATE COMMITTEE ON TRANSPORTATION

Staff: Daniel Masterson (786-7454)

Background: Roles of the Federal Railroad Administration and Utilities and Transportation Commission in Railroad Safety Oversight. Federal law mandates a national rail safety program that is carried out, in part, through 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 of railroads as part of the national rail safety program. Transit operations in an urban area not connected to the general railroad system are excluded from FRA's oversight.

Under state law, for participating in enforcement of federal rail safety regulations in cooperation with FRA, the Utilities and Transportation Commission (UTC) is granted regulatory jurisdiction over the safety practices for railroad equipment, facilities, rolling stock, and operations.

Role of the Washington State Department of Transportation in Rail Transit Safety Oversight. Under federal law, states are required to have a State Safety Oversight (SSO) program for all rail transit systems. "Rail transit systems" are defined as rail transit systems operating on a fixed guideway that is not regulated by the Federal Railroad Administration, and are known as rail fixed guideway public transportation systems or rail fixed guideway systems (RFGSSs). In Washington, this includes Sound Transit's light rail in the Puget Sound area, Seattle's streetcars, and the Seattle Monorail.

Washington's SSO program is housed within the Washington State Department of Transportation (WSDOT), which is the designated Washington SSO agency in state law. WSDOT's responsibilities as SSO include investigations and enforcement; oversight of system safety program plans and system security and emergency preparedness plans; use of compliance mechanisms for enforcement; auditing of system safety program plans and system security and emergency preparedness plans; investigations of reportable incidents, accidents, security breaches, hazards, and security vulnerability; and any associated rule adoption. WSDOT and its employees have limited liability for any actions arising from its role as SSO.

Point Defiance Bypass Derailment. In 2019 the National Transportation Safety Board (NTSB) issued an accident report on the 2017 Point Defiance Bypass derailment that occurred on the first revenue service run along a new Amtrak Cascades route. The

derailment resulted in three passenger deaths, 57 passengers and crew members injured, and property damage estimated at more than \$25.8 million. The NTSB report included recommendations to, among others, FRA, WSDOT, Amtrak, and Sound Transit, and found there was an absence of clearly defined roles and responsibilities among these agencies during preparation for the start of service on this route.

Study on Rail Safety Governance. The 2020 Transportation budget directed the Joint Transportation Committee (JTC) to oversee a study on rail safety governance best practices. The study assessed rail safety governance for passenger and freight rail, including rail transit services, and considered recommendations made by the NTSB accident report on the bypass derailment relevant to rail safety governance. The report included recommendations related to strengthening UTC's role as the regulator of railroad safety and increasing rail safety coordination in the state.

Summary of Bill: General Rail Safety Oversight. UTC is authorized to oversee rail safety to the extent permitted by federal law, and is responsible for inspection, surveillance, and investigation of rights-of-way, facilities, equipment, and operations of railroads, and for enforcement of state and federal laws and regulations relating to the transportation of persons or commodities, or both, of any nature or description, by rail. UTC's investigative and inspection authority over rail safety practices is expanded to the extent permitted by federal law. UTC's authority over rail safety applies to RFGSs only as specified below.

Oversight of New Operations and Infrastructure and Safety Management Practices. UTC's oversight of rail safety includes, but is not limited to, oversight of the implementation of new and materially changed railroad operations and infrastructure for rail service through inspection, surveillance, and investigation, as permitted by federal law. It also includes oversight of the safety management practices for passenger rail operations, as permitted by federal law. WSDOT is directed to coordinate with UTC and Amtrak to facilitate this oversight. UTC is also required to facilitate communication and collaboration between freight rail service providers to promote industry safety management practices.

Rail Transit Oversight. In coordination with WSDOT, UTC is required to provide support and technical assistance in the oversight of RFGSs, as permitted by federal law. UTC and its employees have no liability for actions taken to support WSDOT in its oversight of RFGSs to the extent WSDOT is not liable for actions taken in its oversight of RFGSs. UTC and WSDOT must report to the transportation committees of the Legislature and to the Governor's Office by December 1st of each year on the status of WSDOT's RFGS safety oversight program, providing a joint assessment of the activities required under state and federal law. The report must include plans and recommendations for enhancing current activities.

Facilitation of Rail Safety Communication and Annual Rail Safety Report. UTC is required to promote rail safety through facilitating communication and collaboration among stakeholders with an interest in rail, including local jurisdictions, host and tenant railroads,

and rail labor organizations. This communication and collaboration must include rail safety of RFGSs. UTC must produce an annual report on rail safety and provide it to the transportation committees of the Legislature, including JTC, and make it available to the public. This report must include information related to the rail safety of RFGSs.

To ensure the act is implemented on its effective date, UTC may, before July 1, 2022:

- adopt rules, policies, and procedures on railroad safety;
- initiate recruitment, training, and certification of personnel dedicated to railroad safety; and
- facilitate stakeholder communications and outreach on key railroad safety initiatives, developments, and strategies.

All rules adopted by UTC prior to July 1, 2022, that relate to implementation of this act, must have an effective date consistent with the act's effective date.

In making these changes, the stated legislative intent is to build on the recommendations of NTSB and of JTC report to strengthen rail safety governance. The Legislature does not intend for expansion of the UTC's role in rail safety to be funded through assessment of fees on rail entities.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: The Amtrak derailment in DuPont, the Columbia River Gorge derailment in 2016, and the freight train derailment near Custer last year all highlight the need for improved rail safety governance in Washington. A thoughtful, measured approach is needed to make sure that we prevent future tragedies. The rail transportation world is complex, and involves federal, state and local partners. Coordination between these agencies is essential when it comes to safety and regulatory oversight. I believe that the Washington Utilities and Transportation Commission is uniquely suited to fit that role. The recommendations from the study, executed from the bill last year, support that move. It is evident that Washington needs clarity of roles and responsibility over rail safety. This bill will help us avoid the kinds of tragedies that have occurred on our railways and build a stronger, safer railway network. You may hear that this effort will take additional dollars in order to ensure this critical oversight measure, and that is likely true. We simply can not afford to not be prudent with our rail safety. The intent is not to raise the fees on our railroad partners. The time for action is now.

Lakewood strongly supports HB 1418. We have been concerned with rail safety since well

before the Amtrak derailment in DuPont. Last year the Legislature directed the JTC to oversee a study on rail safety governance in Washington. The legislation before you today is implementing the outcomes and recommendations from that study. The bottom line on this is that the status quo on rail safety and the complex matter of rail traffic in Washington is that we trust a whole mix of agencies to do the right thing and carry out their responsibilities related to safety. But, we do not have an oversight entity that does the verification of that. This bill would move the UTC into an oversight position so that we would move from a solely trust status, to a trust but verify status. I think that that serves communities and the state well.

The impacts of the tragic 2017 Amtrak Cascade derailment on the Point Defiance bypass are still being felt in the rail advocacy community. That accident took the lives of three passengers. Two of them were valued colleagues and friends of mine. HB 1418 will improve cooperation and coordination among the large number of responsible agencies and entities. All Aboard acknowledges that the lack of coordination between federal, state and local agencies and private entities was a contributing factor to the disaster. We applaud the proposed improvements and the additional framework for rail safety that HB 1418 will provide and look forward to working with the UTC as provided for in the legislation.

CON: I am here to respectfully express Union Pacific's opposition to HB 1418. HB 1418 is unclear as it does not clearly define a number of important terms. The bill states that both UTC and DOT oversee rail safety in the state. This is inefficient and confusing. Even the report prepared for the JTC states that there is not universal understanding of the roles of entities involved in rail safety in the state. The wide ranging and unfettered authority to the UTC could lead to federal preemption issues. The FRA issues rules and orders for every aspect of rail safety. State laws that unreasonably burden and restrict the flow of commerce from state to state are laws that cut at the very core of national uniformity, violating the constitution's commerce clause.

Union Pacific's foremost focus is the safe operation of our trains. It is a mutual interest we share with the state of Washington. Union Pacific implements employee engagement, innovation, and the latest technologies to enhance the safe operation of our trains. We invest heavily. From 2015 to 2019, Union Pacific invested more than \$825 million in enhancing and strengthening our Pacific Northwest transportation infrastructure. We make these kinds of investments with the expectation that we will continuously enhance and modernize our infrastructure. In that context, the bill for us raises serious questions about the role the UTC will play in our future investment plan. Specifically section 2's language is overly broad and ambiguous. Requiring UTC inspection and approval on each rail project is infeasible and we believe will negatively impact improvements in support of both freight and passenger operations.

OTHER: We have testified with concerns mostly due to the lack of clarity and ambiguity in the bill. It does not appear to have yet been fixed. As an example, over the last five or so years we have a number of port districts that have made investments in rail. Section 2,

subsection 1 looks like it would impact those port districts and require some additional oversight. These are complex projects. We think adding an additional entity in the process will not add additional clarity.

The fiscal note is matched to the scope of the bill. The primary driver is the staff and resources necessary to conduct the activities outlined in the bill such as oversight of new and materially changed infrastructure and operations, oversight of safety management practices, technical assistance to WSDOT, and to a lesser extent the reporting, coordination and outreach. We do expect our fund to be depleted in terms of resources by the end of the next biennium, so it would not be able to pay for these new activities.

Persons Testifying: PRO: Representative Mari Leavitt, Prime Sponsor; Mike Brandstetter, City of Lakewood, Councilmember; Luis Moscoso, All Aboard Washington.

CON: Aaron Hunt, Union Pacific Railroad; Josephine Jordan, Union Pacific Railroad.

OTHER: Allison Camden, Washington State Department of Transportation; Molly Hughes, Washington State Department of Transportation; Chris Herman, Washington Public Ports Association; Jay Balasbas, Utilities and Transportation Commission; Jason Lewis, Utilities and Transportation Commission.

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