**1841 AMS KUDE S7432.1 - NOT FOR FLOOR USE**

**HB 1841** - S AMD **1244**

By Senator Kuderer

**ADOPTED AS AMENDED 03/06/2020**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  The legislature finds that adequate personnel are critical to ensuring railroad operational safety, security, and in the event of a hazardous material incident, support of first responder activities, as well as in the interest of the safety of passengers and the general public. Therefore, the legislature declares that this act regulating minimum railroad employee staffing to reduce risk to localities constitutes an exercise of the state's police power to protect and promote the health, safety, security, and welfare of the residents of the state by reducing the risk exposure to local communities and protecting environmentally sensitive and/or pristine lands and waterways.

NEW SECTION. **Sec.**  A new section is added to chapter 81.40 RCW to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Class I" means a railroad carrier designated as a class I railroad by the United States surface transportation board and its subsidiaries or 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 I railroad carrier.

(2) "Commission" means the utilities and transportation commission created in chapter 80.01 RCW.

(3) "Crewmember" means a railroad operating craft employee who has been trained and meets the requirements and qualifications as determined by the federal railroad administration for a railroad operating service employee.

(4) "Other railroad carrier" means a railroad carrier that is not a class I carrier.

(5) "Railroad carrier" means a carrier of persons or property upon vehicles, other than streetcars, operated upon stationary rails, the route of which is principally outside incorporated cities and towns. "Railroad carrier" includes any officers and agents of the railroad carrier.

NEW SECTION. **Sec.**  A new section is added to chapter 81.40 RCW to read as follows:

Except as provided in section 4 of this act, any person, corporation, company, or officer of the court operating any railroad, railway, or any part of any railroad or railway, in the state of Washington, and engaged, as a common carrier, in the transportation of freight or passengers, shall operate and manage all trains and switching assignments over its road with crews consisting of no less than two crewmembers.

NEW SECTION. **Sec.**  A new section is added to chapter 81.40 RCW to read as follows:

(1) The commission may grant waivers to the minimum crew size requirements specified in section 3 of this act to:

(a) Other railroad carriers exclusively transporting agricultural commodities;

(b) Other railroad carriers having not more than nine employees that do not transport loaded railcars containing dangerous commodities on their road; or

(c) Other railroad carriers meeting conditions consistent with the intent of this section as ordered by the commission.

(2) Waivers must be issued for a specific period of time and subject to regular review by the commission.

(3) The commission must act to ensure that railroad carriers supplement trains entering Washington state with the requisite number of train crewmembers pursuant to this act, at the closest regular station stop or crew change point located in proximity to and adjacent with either side of the state border, having been established and in use by the carrier on January 1, 2020.

(4)(a) The commission may order railroad carriers to increase the number of railroad 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 it is determined that such 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 to address site specific safety or security hazards.

(b) In issuing such an order, the commission may consider relevant factors including, but not limited to, the volatility of the commodities being transported, train volume, risk mitigation measures, environmental and operating factors that impact vulnerabilities, risk exposure to passengers, the general public, railroad employees, communities, or the environment along the train route, security risks including sabotage or terrorism threat levels, a railroad carrier's prior history of accidents, compliance violations, operating practices, infrastructure investments including track and equipment maintenance issues or lack thereof, employee training and support programs, first responder access, and any other relevant factors in the interest of safety.

NEW SECTION. **Sec.**  A new section is added to chapter 81.40 RCW to read as follows:

(1) Pursuant to the enforcement of the provisions of this act, the highest priority and paramount obligation of the commission must be its duty to ensure the safety and protection of the public, passengers, railroad employees, communities, environment, and areas of cultural significance in the furtherance of the highest degree of safety in railroad transportation.

(2) Each train or engine run in violation of section 3 of this act constitutes a separate offense. However, section 3 of this act does not apply in the case of disability of one or more members of any train crew while out on the road between division terminals, or assigned to wrecking trains.

(3) Any person, corporation, company, or officer of the court operating any railroad, or part of any railroad or railway within the state of Washington, and engaged as a common carrier, in the transportation of freight or passengers, who violates any of the provisions of section 3 of this act may be subject to fines of not less than one thousand dollars and not more than one hundred thousand dollars for each offense, as determined by the commission through order.

(4) The commission may impose fines exceeding the provisions in subsection (3) of this section when a serious injury or fatality occurs involving a carrier's violation of this act. All relevant factors may be considered including, but not limited to, the class, assets, profitability, and operational safety record of the carrier, as well as deterrence in ascertaining an appropriate punitive penalty, as determined by the commission through order.

(5) It is the duty of the commission to enforce this section.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1)RCW 81.40.010 (Full train crews—Passenger—Safety review—Penalty—Enforcement) and 2003 c 53 s 386, 1992 c 102 s 1, & 1961 c 14 s 81.40.010; and

(2)RCW 81.40.035 (Freight train crews) and 1967 c 2 s 2.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person, entity, or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

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On page 1, line 2 of the title, after "trains;" strike the remainder of the title and insert "adding new sections to chapter 81.40 RCW; creating a new section; repealing RCW 81.40.010 and 81.40.035; prescribing penalties; and declaring an emergency."

EFFECT: Modifies the legislative intent. Removes specific requirements for hazardous materials trains and removes definitions for hazardous materials and hazardous materials trains. 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 other railroad carriers: (1) Exclusively transporting agricultural commodities; (2) with nine or less employees that do not transport dangerous commodities; or (3) meeting certain conditions. Requires the UTC to act to ensure that railroad carriers supplement trains entering Washington state with the requisite number of train crewmembers pursuant to this act, at the closest regular station stop or crew change point located in proximity to and adjacent with either side of the state border, having been established and in use by the carrier on January 1, 2020. Provides that pursuant to the enforcement of the provisions of this act, the highest priority and paramount obligation of the UTC must be its duty to ensure the safety and protection of the public, passengers, railroad employees, communities, environment, and areas of cultural significance in the furtherance of the highest degree of safety in railroad transportation. Modifies the reasons the UTC may order an increase in the number of railroad employees. Allows the UTC 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 I carriers and other railroad carriers.