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**HOUSE BILL 2649**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives Clibborn and Orcutt; by request of Department of Transportation

AN ACT Relating to rail fixed guideway system safety and security oversight; and amending RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, 81.104.115, and 81.112.180.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 35.21.228 and 2007 c 422 s 1 are each amended to read as follows:

(1) Each city or town that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety program plan and a system security and emergency preparedness plan for that guideway to the state department of transportation by September 1, 1999, or at least one hundred eighty calendar days before beginning operations or instituting revisions to its plans. These plans must describe the city's procedures for (a) reporting and investigating ((~~reportable accidents, unacceptable hazardous conditions, and security breaches~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee safety and security. The plans must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the city or town shall revise its plans to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plans for review.

(2) Each city or town shall implement and comply with its system safety program plan and system security and emergency preparedness plan. The city or town shall perform internal safety and security audits to evaluate its compliance with the plans, and submit its audit schedule to the department of transportation no later than December 15th each year. The city or town shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. ((~~This~~)) The department shall establish the requirements for the annual report. The contents of the annual report must include, at a minimum, the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plans.

(3) Each city or town shall notify the department of transportation within two hours of an occurrence of ((~~a reportable accident, unacceptable hazardous condition, or security breach~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability. The department may adopt rules further defining ((~~a reportable accident, unacceptable hazardous condition, or security breach~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability. The city or town shall investigate ((~~all reportable accidents, unacceptable hazardous conditions, or security breaches~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability and provide a written investigation report to the department within forty-five calendar days after the ((~~reportable accident, unacceptable hazardous condition, or security breach~~)) incident, accident, security breach, identified hazard, or identified security vulnerability.

(4) The system security and emergency preparedness plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the system safety program plan as described in this section is not subject to this exemption.

**Sec.**  RCW 35A.21.300 and 2007 c 422 s 2 are each amended to read as follows:

(1) Each code city that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety program plan and a system security and emergency preparedness plan for that guideway to the state department of transportation by September 1, 1999, or at least one hundred eighty calendar days before beginning operations or instituting revisions to its plans. These plans must describe the code city's procedures for (a) reporting and investigating ((~~reportable accidents, unacceptable hazardous conditions, and security breaches~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee safety and security. The plans must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the code city shall revise its plans to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plans for review.

(2) Each code city shall implement and comply with its system safety program plan and system security and emergency preparedness plan. The code city shall perform internal safety and security audits to evaluate its compliance with the plans, and submit its audit schedule to the department of transportation no later than December 15th each year. The code city shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. ((~~This~~)) The department shall establish the requirements for the annual report. The contents of the annual report must include, at a minimum, the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plans.

(3) Each code city shall notify the department of transportation within two hours of an occurrence of ((~~a reportable accident, unacceptable hazardous condition, or security breach~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability. The department may adopt rules further defining ((~~a reportable accident, unacceptable hazardous condition, or security breach~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability. The code city shall investigate ((~~all reportable accidents, unacceptable hazardous conditions, or security breaches~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability and provide a written investigation report to the department within forty-five calendar days after the ((~~reportable accident, unacceptable hazardous condition, or security breach~~)) incident, accident, security breach, identified hazard, or identified security vulnerability.

(4) The system security and emergency preparedness plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the system safety program plan as described in this section is not subject to this exemption.

**Sec.**  RCW 36.01.210 and 2007 c 422 s 3 are each amended to read as follows:

(1) Each county functioning under chapter 36.56 RCW that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety program plan and a system security and emergency preparedness plan for that guideway to the state department of transportation by September 1, 1999, or at least one hundred eighty calendar days before beginning operations or instituting revisions to its plans. These plans must describe the county's procedures for (a) reporting and investigating ((~~reportable accidents, unacceptable hazardous conditions, and security breaches~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee safety and security. The plans must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the county shall revise its plans to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plans for review.

(2) Each county functioning under chapter 36.56 RCW shall implement and comply with its system safety program plan and system security and emergency preparedness plan. The county shall perform internal safety and security audits to evaluate its compliance with the plans, and submit its audit schedule to the department of transportation no later than December 15th each year. The county shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. ((~~This~~)) The department shall establish the requirements for the annual report. The contents of the annual report must include, at a minimum, the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plans.

(3) Each county shall notify the department of transportation within two hours of an occurrence of ((~~a reportable accident, unacceptable hazardous condition, or security breach~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability. The department may adopt rules further defining ((~~a reportable accident, unacceptable hazardous condition, or security breach~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability. The county shall investigate ((~~all reportable accidents, unacceptable hazardous conditions, or security breaches~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability and provide a written investigation report to the department within forty-five calendar days after the ((~~reportable accident, unacceptable hazardous condition, or security breach~~)) incident, accident, security breach, identified hazard, or identified security vulnerability.

(4) The system security and emergency preparedness plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the system safety program plan as described in this section is not subject to this exemption.

**Sec.**  RCW 36.57.120 and 2007 c 422 s 4 are each amended to read as follows:

(1) Each county transportation authority that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety program plan and a system security and emergency preparedness plan for that guideway to the state department of transportation by September 1, 1999, or at least one hundred eighty calendar days before beginning operations or instituting revisions to its plans. These plans must describe the county transportation authority's procedures for (a) reporting and investigating ((~~reportable accidents, unacceptable hazardous conditions, and security breaches~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee safety and security. The plans must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the county transportation authority shall revise its plans to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plans for review.

(2) Each county transportation authority shall implement and comply with its system safety program plan and system security and emergency preparedness plan. The county transportation authority shall perform internal safety and security audits to evaluate its compliance with the plans, and submit its audit schedule to the department of transportation no later than December 15th each year. The county transportation authority shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. ((~~This~~)) The department shall establish the requirements for the annual report. The contents of the annual report must include, at a minimum, the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plans.

(3) Each county transportation authority shall notify the department of transportation within two hours of an occurrence of ((~~a reportable accident, unacceptable hazardous condition, or security breach~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability. The department may adopt rules further defining ((~~a reportable accident, unacceptable hazardous condition, or security breach~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability. The county transportation authority shall investigate ((~~all reportable accidents, unacceptable hazardous conditions, or security breaches~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability and provide a written investigation report to the department within forty-five calendar days after the ((~~reportable accident, unacceptable hazardous condition, or security breach~~)) incident, accident, security breach, identified hazard, or identified security vulnerability.

(4) The system security and emergency preparedness plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the system safety program plan as described in this section is not subject to this exemption.

**Sec.**  RCW 36.57A.170 and 2007 c 422 s 5 are each amended to read as follows:

(1) Each public transportation benefit area that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety program plan and a system security and emergency preparedness plan for that guideway to the state department of transportation by September 1, 1999, or at least one hundred eighty calendar days before beginning operations or instituting revisions to its plans. These plans must describe the public transportation benefit area's procedures for (a) reporting and investigating ((~~reportable accidents, unacceptable hazardous conditions, and security breaches~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee safety and security. The plans must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the public transportation benefit area shall revise its plans to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plans for review.

(2) Each public transportation benefit area shall implement and comply with its system safety program plan and system security and emergency preparedness plan. The public transportation benefit area shall perform internal safety and security audits to evaluate its compliance with the plans, and submit its audit schedule to the department of transportation no later than December 15th each year. The public transportation benefit area shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. ((~~This~~)) The department shall establish the requirements for the annual report. The contents of the annual report must include, at a minimum, the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plans.

(3) Each public transportation benefit area shall notify the department of transportation within two hours of an occurrence of ((~~a reportable accident, unacceptable hazardous condition, or security breach~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability. The department may adopt rules further defining ((~~a reportable accident, unacceptable hazardous condition, or security breach~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability. The public transportation benefit area shall investigate ((~~all reportable accidents, unacceptable hazardous conditions, or security breaches~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability and provide a written investigation report to the department within forty-five calendar days after the ((~~reportable accident, unacceptable hazardous condition, or security breach~~)) incident, accident, security breach, identified hazard, or identified security vulnerability.

(4) The system security and emergency preparedness plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the system safety program plan as described in this section is not subject to this exemption.

**Sec.**  RCW 81.104.115 and 2007 c 422 s 7 are each amended to read as follows:

(1) The department of transportation is established as the state safety oversight agency. As such, the state must ensure that:

(a) The department is financially and legally independent from any public transportation agency that the department is obliged to oversee;

(b) The department does not directly provide public transportation services in an area with a rail fixed guideway system that the department is obliged to oversee;

(c) The department does not employ any individual who is also responsible for administering a rail fixed guideway system that the department is obliged to oversee; and

(d) The department has investigative and enforcement authority with respect to the safety and security of all rail fixed guideway systems in Washington state.

(2) The department ((~~may~~)) shall collect ((~~and~~)), audit, review, approve, oversee, and enforce the system safety program plan and the system security and emergency preparedness plan prepared by each owner or operator of a rail fixed guideway system operating in Washington state. In carrying out this function, the department may adopt rules specifying the elements and standard to be contained in a system safety program plan and a system security and emergency preparedness plan, and the content of any investigation report, corrective action plan, and accompanying implementation schedule resulting from ((~~a reportable accident, unacceptable hazardous condition, or security breach~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability. These rules may include due dates for the department's timely receipt of and response to required documents.

((~~(2)~~)) (3) The department shall promote the safety and security of Washington state rail fixed guideway systems. The department, in carrying out the duties under subsection (2) of this section, may compel the rail fixed guideway system to address, in a timely manner, any identified critical safety or security deficiencies and concerns. The department may also impose financial penalties for noncompliance with state or federal regulations, or both, related to state safety oversight. Specific financial penalties must be determined by rule. When critical safety or security deficiencies are identified and not immediately addressed by rail fixed guideway system owners and operators, the department may require the suspension or modification of service or the suspended use or removal of equipment. The department may impose sanctions upon owners and operators of rail fixed guideway systems for failure to meet deadlines for submission of required reports and audits.

(4) The system security and emergency preparedness plan as described in ((~~subsection (1)(d) of~~)) RCW 35.21.228(1)(d), 35A.21.300(1)(d), 36.01.210(1)(d), 36.57.120(1)(d), 36.57A.170(1)(d), and 81.112.180(1)(d) is exempt from public disclosure under chapter 42.56 RCW by the department when collected from the owners and operators of fixed railway systems. However, the system safety program plan as described in RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180 is not exempt from public disclosure.

((~~(3)~~)) (5) The department shall audit each system safety program plan and each system security and emergency preparedness plan at least once every three years. The department may contract with other persons or entities for the performance of duties required by this subsection. The department shall provide at least thirty days' advance notice to the owner or operator of a rail fixed guideway system before commencing the audit. ((~~The owner or operator of each rail fixed guideway system shall reimburse the reasonable expenses of the department in carrying out its responsibilities of this subsection within ninety days after receipt of an invoice. The department shall notify the owner or operator of the estimated expenses at least six months in advance of when the department audits the system.~~

~~(4)~~)) (6) In the event of ((~~a reportable accident, unacceptable hazardous condition, or security breach~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability, the department shall review the investigation report, corrective action plan, and accompanying implementation schedule, submitted by the owner or operator of the rail fixed guideway system to ensure that it meets the goal of preventing and mitigating a recurrence of the ((~~reportable accident, unacceptable hazardous condition, or security breach~~)) incident, accident, security breach, identified hazard, or identified security vulnerability.

(a) The department may, at its option, perform a separate, independent investigation of ((~~a reportable accident, unacceptable hazardous condition, or security breach~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability. The department may contract with other persons or entities for the performance of duties required by this subsection.

(b) If the department does not concur with the investigation report, corrective action plan, and accompanying implementation schedule, submitted by the owner or operator, the department shall notify that owner or operator in writing within forty-five days of its receipt of the complete investigation report, corrective action plan, and accompanying implementation schedule.

((~~(5)~~)) (7) The secretary may adopt rules to implement this section and RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180, including rules establishing procedures and timelines for owners and operators of rail fixed guideway systems to comply with RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180 and the rules adopted under this section. If noncompliance by an owner or operator of a rail fixed guideway system results in the loss of federal funds to the state of Washington or a political subdivision of the state, the owner or operator is liable to the affected entity or entities for the amount of the lost funds.

((~~(6) The department may impose sanctions upon owners and operators of rail fixed guideway systems, but only for failure to meet reasonable deadlines for submission of required reports and audits. The department is expressly prohibited from imposing sanctions for any other purposes, including, but not limited to, differences in format or content of required reports and audits.~~

~~(7)~~)) (8) The department and its employees have no liability arising from: The adoption of rules; the review of or concurrence in a system safety program plan and a system security and emergency preparedness plan; the separate, independent investigation of ((~~a reportable accident, unacceptable hazardous condition, or security breach~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability; and the review of or concurrence in a corrective action plan for ((~~a reportable accident, unacceptable hazardous condition, or security breach.~~

~~(8) The department shall set by rule an annual fee for owners and operators of rail fixed guideway systems to defray the department's direct costs associated only with the system safety program plans, system security and emergency preparedness plans, and incident investigations, as described in this section, and the fee shall not be a flat fee but shall be imposed on each owner and operator in proportion to the effort expended by the department in relation to individual plans. The department shall establish by rule the manner and timing of the collection of the fee~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability.

(9) At least once every year, the department shall report the status of the safety and security of each rail fixed guideway system to the governor, the federal transit administration, the board of directors or equivalent entity of the rail fixed guideway system, and the transportation committees of the legislature.

**Sec.**  RCW 81.112.180 and 2007 c 422 s 6 are each amended to read as follows:

(1) Each regional transit authority that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety program plan and a system security and emergency preparedness plan for that guideway to the state department of transportation by September 1, 1999, or at least one hundred eighty calendar days before beginning operations or instituting revisions to its plans. These plans must describe the authority's procedures for (a) reporting and investigating ((~~reportable accidents, unacceptable hazardous conditions, and security breaches~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee safety and security. The plans must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the regional transit authority shall revise its plans to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plans for review.

(2) Each regional transit authority shall implement and comply with its system safety program plan and system security and emergency preparedness plan. The regional transit authority shall perform internal safety and security audits to evaluate its compliance with the plans, and submit its audit schedule to the department of transportation no later than December 15th each year. The regional transit authority shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. ((~~This~~)) The department shall establish the requirements for the annual report. The contents of the annual report must include, at a minimum, the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plans.

(3) Each regional transit authority shall notify the department of transportation within two hours of an occurrence of ((~~a reportable accident, unacceptable hazardous condition, or security breach~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability. The department may adopt rules further defining ((~~a reportable accident, unacceptable hazardous condition, or security breach~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability. The regional transit authority shall investigate ((~~all reportable accidents, unacceptable hazardous conditions, or security breaches~~)) any incident, accident, security breach, identified hazard, or identified security vulnerability and provide a written investigation report to the department within forty-five calendar days after the ((~~reportable accident, unacceptable hazardous condition, or security breach~~)) incident, accident, security breach, identified hazard, or identified security vulnerability.

(4) The system security and emergency preparedness plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the system safety program plan as described in this section is not subject to this exemption.

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