

# SENATE BILL REPORT

## SB 5697

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As of February 10, 2015

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

**Brief Description:** Establishing minimum crew size on certain trains.

**Sponsors:** Senators Parlette, Rivers, Liias, Conway, Pearson, Angel, Hatfield, Billig, Roach, Hasegawa, Pedersen, Hobbs, Warnick, Miloscia, McCoy, Bailey, Cleveland, Chase, Rolfes, Benton, Keiser, O'Ban, Jayapal and Frockt.

**Brief History:**

**Committee Activity:** Commerce & Labor: 2/09/15.

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### SENATE COMMITTEE ON COMMERCE & LABOR

**Staff:** Susan Jones (786-7404)

**Background:** Washington Law. Under Washington law, no law or agency rule may prevent a railroad from staffing its freight or passenger 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 fewer than two crew members is subject to a safety review by the Utilities and Transportation Commission (Commission).

Each train run in violation of the crew size provision is a separate offense. A violation of the crew size provision is a misdemeanor, and the railroad carrier is subject to a fine of a minimum of \$100 and up to \$500 maximum for each offense. The violation 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 and Preemption. 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. 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.

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*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.*

In 1999 a 7th Circuit Court of Appeals case addressed whether a Wisconsin crew size statute was preempted. The court held that the state law was preempted with regard to certain types of train operations because there was a federal order on the subject matter. However, the court held that the state statute was not preempted with regard to crew size when it came to other operations, specifically over-the-road operations.

The Hazardous Materials Division of the U.S. Department of Transportation's Federal Railroad Administration (FRA) 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.

On April 9, 2014, FRA announced its intention to issue a proposed rule requiring two-person train crews on crude oil trains and establishing minimum crew size standards for most main line freight and passenger rail operations. FRA also announced its intention to advance a rulemaking on train securement and recommends a rulemaking on the movement of hazardous materials.

**Summary of Bill:** The following minimum crew size requirements apply:

- Common carriers transporting freight or passengers must operate all trains and switching assignments over its roads with no fewer than two qualified crew members;
- Railroad carriers operating hazardous material trains must have no fewer than three qualified crew members. One member must be assigned to the rear of the train, within rolling equipment, situated to safely observe and monitor the train's content and movement; and
- Railroad carriers operating hazardous material trains consisting of 51 or more car loads of any combination of hazardous materials, must have no fewer than four qualified crew members. Two members must be assigned to the rear of the train, within rolling equipment, situated to safely observe and monitor the train's contents and movements.

The following exceptions apply:

- Trains transporting hazardous materials a distance of five miles or less may operate with the required number of crew positions on the lead locomotive;
- Class III carriers not transporting hazardous materials may be exempted by the Commission from the minimum crew size requirements; and
- The Commission may order Class I or II carriers to exceed the minimum crew size requirements and comply with other requirements if it determines that an increase in crew size is necessary to protect the public, employees, the environment, and to address local safety and security hazards. Factors are provided for the Commission to consider in issuing an order.

Each train or engine run not meeting the minimum crew requirements is a separate offense. The person, corporation, company, or officer of the court operating the railroad is guilty of a misdemeanor and must be fined a minimum of \$1,000 and up to \$100,000 maximum for each offense. The exceptions related to disability of a crew member while out on the road or assigned to wrecking trains apply.

Definitions for hazardous material and other terms are provided.

**Appropriation:** None.

**Fiscal Note:** Requested on February 8, 2015.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill takes effect on July 1, 2015.

**Staff Summary of Public Testimony:** PRO: Trains carry dangerous cargo and hazardous materials. The need and ability for train personnel to uncouple train cars is essential to protect first responders and the public. The first responders are not trained to uncouple train cars in an emergency. It would be helpful to have someone at the end in the event of an oil leak. The performance of these functions in the event of an emergency is critical. There have been a number of incidents related to trains, including medical emergencies, accidents and a catastrophic explosion. Over the last 30 to 40 years, the crews have decreased. Safety is not negotiable. We don't compromise safety in other areas and industries and should not do so with the railroads. There is no reason to allow this extremely dangerous practice to continue. The law is not preempted by federal law in this area of crew size in the absence of federal regulation. The federal government has looked at the issue but is years away from enacting regulations.

CON: The railroads work diligently to prevent derailment. They have technology to evaluate equipment and look for issues. The railroads offer comprehensive training for emergency responders. The federal regulators are looking at these issues. The rails have to operate in many states. The railroads work out crew sizes with collective bargaining agreements. Anhydrous ammonia is used by farmers and has been moved safely. The bill would increase the cost to farmers of transportation of anhydrous ammonia.

**Persons Testifying:** PRO: Senator Parlette, prime sponsor; J. Havner, Seattle Fire Dept.; George Thornton, Thornton Mostul, PLLC; Darren Colland, BNSF Railway; Mike Elliot, BLET; Herb Kroh, SMART-TD; John Christiansen, Juan Aguilar, Nathan MacDonald, Bruce Smith, SMART Transportation Division; Jimmy Hayes, BNSF Railway, conductor; Chris Rose, Utilities and Transportation Commission; Shawneen Flack, citizen.

CON: Scott Dilley, WA Farm Bureau; Tom Parker, Union Pacific Railroad; Bill Stauffacher, BNSF Rail.