

# HOUSE BILL REPORT

## ESHB 1105

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### As Passed House:

March 7, 2017

**Title:** An act relating to passenger-carrying vehicles for railroad employees.

**Brief Description:** Concerning passenger-carrying vehicles for railroad employees.

**Sponsors:** House Committee on Transportation (originally sponsored by Representatives Stanford, Orcutt, Clibborn, Stambaugh, Hayes, Stonier, Koster, Holy, Ryu, Ormsby, Fey, Wylie, Dolan, Sells, Muri, Haler, Goodman, Doglio, Hudgins, Gregerson, Barkis, Kilduff, Santos, Tarleton, Pollet, Farrell and Riccelli).

### Brief History:

#### Committee Activity:

Transportation: 1/25/17, 2/20/17 [DPS].

#### Floor Activity:

Passed House: 3/7/17, 97-0.

### Brief Summary of Engrossed Substitute Bill

- Expands the Washington Utilities and Transportation Commission's (UTC) regulatory authority to all vehicles used primarily to provide transportation to railroad employees.
- Mandates that the UTC adopt rules and require reports regarding the safety of equipment, driver qualifications, permitting, insurance, and the safety of operations of contract crew hauling vehicles.
- Requires drivers of contract crew hauling vehicles to complete a sixteen-hour safety course and obtain a certificate of course completion from the Department of Licensing.
- Sets minimum insurance and financial responsibility coverage amounts for contract crew hauling vehicles of \$5 million in liability coverage and \$1 million in uninsured and underinsured motorist coverage.
- Sets limitations on the number of on-duty and drive time hours a contract crew hauling vehicle driver may be permitted or required to work.

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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.*

- Requires drug testing of contract crew hauling vehicle driver applicants and drivers, and establishes a three-year period of disqualification for drivers whose driver's license privileges have been suspended or revoked.
- Grants the UTC the authority to inspect contract crew hauling vehicles and to apply rule violation penalties.
- Mandates that the UTC investigate safety complaints related to contract crew hauling vehicles.

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## HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Clibborn, Chair; Farrell, Vice Chair; Fey, Vice Chair; Wylie, Vice Chair; Orcutt, Ranking Minority Member; Chapman, Gregerson, Hayes, Kloba, Lovick, McBride, Morris, Ortiz-Self, Pellicciotti, Riccelli, Stambaugh and Tarleton.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Hargrove, Assistant Ranking Minority Member; Pike, Shea, Van Werven and Young.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Harmsworth, Assistant Ranking Minority Member; Irwin.

**Staff:** Jennifer Harris (786-7143).

### **Background:**

#### Utilities and Transportation Commission's Regulatory Authority.

The Washington Utilities and Transportation Commission (UTC) regulates certain aspects of railroad operations in the state, including the use of passenger-carrying vehicles for railroad employees. "Passenger-carrying vehicles" are limited to buses and trucks owned, operated, and maintained by a railroad company that transports railroad employees as passengers in the vehicle, other than in the cab of these vehicles, that are designed primarily for operation on roads that may or may not be equipped with retractable flanged wheels for operation on railroad tracks. The vehicles used by independent carriers with which railroads may contract to provide crew transportation are excluded from this definition.

In regulating passenger-carrying vehicles, the UTC has adopted rules regarding equipment requirements and operational standards. The equipment requirements include provisions relating to the exhaust and steering systems, rear-view mirrors, emergency equipment, fire extinguishers, and first aid kits. The operational standards include provisions regarding the minimum age of the driver, hours of service limits, safety practices in crossing rail lines, the loading of passengers, and limitations on carrying dangerous materials. The UTC is authorized to inspect any passenger-carrying vehicle to verify that it is complying with applicable requirements.

More broadly, federal regulations for commercial vehicles apply to vehicles with a seating capacity of eight or more passengers, which must comply with Federal Motor Carrier Safety Administration requirements for safety compliance reviews. Vehicles used by charter companies with which railroads contract that have seating capacity for passengers of fewer than eight are not currently included in compliance reviews conducted by the UTC.

The UTC does not have the authority to regulate the use of vehicles with a seating capacity for fewer than seven passengers that are used by independent carriers with which railroads contract to provide rail crew transportation.

#### Insurance Coverage.

Any contract carrier vehicle with a seating capacity for seven or more passengers is regulated under UTC rules for passenger carrier charters. These vehicles are required by the UTC to have injury and property damage insurance or a surety bond with the minimum limit of \$1.5 million combined single coverage for vehicles with a passenger seating capacity of 15 or fewer, and of \$5 million combined single coverage for vehicles with a passenger seating capacity of 16 or greater. These minimum limit requirements correspond to federal requirements for commercial vehicles.

#### Federal Employers' Liability Act.

The Federal Employers' Liability Act (FELA) applies to railroad common carriers engaged in interstate or international commerce. The railroad is liable for damages to any railroad employee injured or, in the case of the death of a railroad employee, to the surviving family of that employee, if the injury or death occurred while the employee was employed by the carrier in such commerce and the injury or death resulted in whole or in part from the negligence of the officers, agents, or employees of the carrier.

#### Department of Licensing and Driver Training.

The Department of Licensing (DOL) issues Commercial Driver's Licenses (CDLs) for the operation of motor vehicles above a certain gross vehicle weight or gross vehicle weight rating, that are used to transport 16 or more people, or that are used in the transportation of hazardous materials. Individuals with a Class A CDL are limited to driving commercial motor vehicles used to transport 16 or more people or vehicles below a certain weight rating carrying hazardous materials. Individuals with a Class B CDL are authorized to drive single vehicles of any size, vehicles below a certain weight rating towing a trailer, and the vehicles that individuals with a Class C CDL are authorized to drive. Individuals with a Class A CDL are authorized to drive all commercial motor vehicles.

An applicant for a CDL must complete minimum training requirements, as set by the DOL (unless certified by an employer as having the skills and training necessary to operate a commercial vehicle safely). The training course must be provided by an accredited institute of higher learning, a licensed vocational school, or a DOL-approved out-of-state entity, with the minimum course length required varying by class of CDL: 160 hours is required for a Class A CDL, 48 hours is required for a Class B CDL, and 36 hours is required for a Class C CDL.

## **Summary of Engrossed Substitute Bill:**

### General Regulatory Authority.

The UTC has regulatory authority over "contract crew hauling vehicles," which are defined as buses, vans, trucks, and cars, regardless of seating capacity, that are used primarily to provide railroad crew transportation for a railroad company and are owned, leased, operated, or maintained by a person contracting with a railroad company or its agents, contractors, subcontractors, vendors, subvendors, secondary vendors, or subcarriers. The UTC is directed to regulate persons providing contract railroad crew transportation and every contract crew hauling vehicle with respect to the safety of equipment, driver qualifications, insurance, and the safety of operations.

The UTC must adopt rules and require reports, including establishing mandatory reporting on compliance with laws and regulations, to establish and regulate safety standards considering federal motor vehicle motor carrier safety standards for contract crew hauling vehicles when setting minimum safety standards, regardless of seating capacity of the vehicles, in the following areas: (1) driver qualifications, including minimum age and skill, medical condition, and verification of required Department of Licensing (DOL) driving credentials; (2) equipment safety, including the proper securement of railroad equipment; (3) safety of operations; (4) passenger safety; (5) insurance coverage for each contract crew hauling vehicle; (6) permitting; and (7) the form and posting of adequate notices in a conspicuous location in all contract crew hauling vehicles to advise railroad employee passengers of the opportunity to submit safety complaints to the UTC.

The definition of "passenger-carrying vehicle" is expanded to include vans and cars used by a railroad company to transport railroad employees.

### Safety Equipment and Driver Requirements.

The following specific safety equipment must be carried in each contract crew hauling vehicle: a fire extinguisher, first aid kit, seat belt cutter, window hammer, and other equipment the UTC determines is necessary.

Drivers of contract crew hauling vehicles must complete a 16-hour safety course that includes instruction on passenger safety awareness, railyard safety, grade crossing safety, load securement, and distracted and fatigued driving. The DOL is required to issue a certificate of course completion to an individual who completes the safety course, and may adopt rules necessary to oversee course requirements and issuance of certificates of course completion. Persons providing contract railroad crew transportation must verify that contract crew hauling vehicle drivers possess a certificate of course completion and must maintain a record of the certificate. The DOL may charge a fee for the issuance of a certificate of course completion that may not exceed \$25.

Drug testing of drivers of any contract crew hauling vehicle is required and must conform to requirements for drug testing of commercial motor vehicles drivers, as governed by federal law.

The contract carrier may not allow or require a driver of a contract crew hauling vehicle to drive for more than 10 hours after eight consecutive hours off duty, to drive or remain on duty for more than 15 hours after eight consecutive hours off duty, or to drive or remain on duty for more than a total of 70 hours in a period of eight consecutive days. "On-duty" is defined as the term is defined under federal law governing motor carrier drivers and includes all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work. Records maintained by a person contracting with the railroad company must include driver hours of service, and the UTC may specify the form of documentation for these records.

#### Insurance Coverage.

The UTC must require contract crew hauling vehicles to maintain the following minimum insurance or financial responsibility coverage levels: bodily injury and property damage combined single-limit liability coverage of \$5 million, and uninsured and underinsured motorist coverage of \$1 million. The UTC may increase these minimum coverage amounts by rule. If a third party contracts with the person operating the vehicle on behalf of the railroad company to transport railroad employees, the insurance requirements may be satisfied by either the third party or the person operating the vehicle, so long as the person operating the vehicle names the third party as an additional insured or named insured.

Insurance requirements may be satisfied by a third party operating the contract crew hauling vehicle, the party operating the contract crew hauling vehicle, or the railroad company. Irrespective of the party that obtains the required insurance, proof of insurance coverage must be provided to the UTC by the person contracting with the railroad company.

#### Enforcement.

By December 31, 2017, the UTC is required to develop an inspection program for contract crew hauling vehicles. The inspection program must require periodic inspections of vehicles, including a review of operational practices. The UTC is required to conduct a minimum of one unannounced inspection of contract crew hauling vehicles in use by a person contracting with the railroad company every two years by inspecting at least a sampling of vehicles as part of each inspection conducted.

The UTC may inspect any contract crew hauling vehicle, and it must investigate any safety complaints. At the request of the UTC, the Chief of the Washington State Patrol or his or her designee may assist the UTC in these inspections. The UTC must investigate safety complaints related to contract crew hauling transportation and take appropriate enforcement action. The UTC may impose monetary penalties of up to \$1,000 for each violation. If a person is determined to have committed serious or repeat violations, the UTC must suspend, revoke, or cancel the UTC certificate required to operate vehicles.

The UTC may suspend or revoke a contract crew hauling permit based on a complaint made by an interested party, or on the UTC's own motion, after notice and opportunity for hearing, when the commission finds that any person owning, leasing, operating, or maintaining contract crew hauling vehicles has violated a state law or rule that applies to contract railroad

crew transportation, or when the company or its agent has been found by a court or government agency to have violated a state or federal law.

Carriers that own, lease, operate, or maintain contract crew hauling vehicles must retain operational records for at least three years. These records must include accident reports, maintenance and service records, drivers' records, records of passenger complaints, records of employment actions, driver logs, and records of passengers transported. Any records maintained must include driver hours of service and documentation of required DOL-issued driver credentials.

A person is disqualified to serve as a driver of a contract crew hauling vehicle for three years if his or her driver's license is suspended or revoked. Driver's license suspensions or revocations are exempt as grounds for disqualification to work as a driver of a contract crew hauling vehicle when the reason for the suspension or revocation is the nonpayment of fines.

#### All Rail Crew Transport Vehicles.

The UTC must compile data regarding safety complaints, accidents, regulatory violations and fines, and corrective actions taken relating to contract crew hauling vehicles and passenger-carrying vehicles. At the request of the UTC, railroad companies and any person that owns or leases, operates, or maintains contract crew hauling vehicles must provide data regarding complaints and accidents, including location, time of day, visibility, a description of the event, whether any property damage or personal injuries occurred, and any corrective action taken by the railroad company, person operating the contract crew hauling vehicle, or the UTC. The UTC must make this data available on its website and on request.

Information included in contract crew hauling vehicle safety complaints that identifies the employee who submitted the complaint is exempted from public inspection and copying pursuant to the Public Records Act.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 3, relating to DOL-issued driving credentials of contract crew hauling vehicle drivers, which takes effect January 1, 2018 .

#### **Staff Summary of Public Testimony:**

(In support) This bill is about safe equipment, safe drivers, and adequate insurance. Railroad employees are not covered by workers' compensation and have no insurance coverage if an accident is caused by a third party. They are covered at work, but not when being transported. Underinsured motorist coverage is what is needed to address this gap in coverage.

Many of these accidents keep occurring, have serious consequences, and are preventable. Railroad employees are being killed and seriously injured, and the railroads have delayed

addressing this for five years. Families are losing loved ones. Individual railroad workers cannot buy insurance coverage that will apply when they are working in these vehicles—policies have exceptions for vehicles at work. The FELA only applies to accidents that occur when a railroad is at fault.

There did not used to be outside companies transporting railroad crew employees. To make money, railroads negotiate the lowest possible contract, and vendors hire people who only earn wages for time spent driving—drivers stay up late and become extremely fatigued. Drivers get paid minimum wage and are on call all the time. Their turnover rate is extremely high, and this leads to many drivers working a lot of overtime.

There have been incidents of drivers falling asleep and veering across lanes and off of roadways. In Canada, railroad employee drivers are required to have a Class 4 license, which is similar to a Commercial Driver's License in the United States. The most risky part of working for a railroad is the transportation in vans to and from the work sites. This is the case despite the fact that the job itself is very dangerous—hazardous material is often hauled and mistakes on the job can result in the loss of limb or life.

Vehicle defects go unreported, with some seatbelts not working properly. Railroads do not enforce their vehicle standards when they contract with other companies to provide transportation. There are no driver logs that can be examined to see how long a driver has been working without time off.

Railroads are shielding themselves from liability. Injuries are often life- or career-ending and families are not made whole. The loopholes in this area need to be closed.

(Opposed) The insurance provisions in the bill are outside the mainstream of what is required and are too high—\$10 million in uninsured or underinsured motorist coverage is 10 times higher than the highest amount required by any other state. The insurance requirements need to be looked at more closely to ensure they directly address the circumstances that proponents of the bill have concerns about.

The safety regulations in the bill related to oversight and the role of the UTC should apply appropriately to third party vendors rather than to railroads. Railroads place a high priority on safety. Crew hauling is an important part of efficiently running a railroad. The bill's provisions need to be fair.

**Persons Testifying:** (In support) Representative Stanford, prime sponsor; Anthony Petru, Paul McGill, Todd Kester, Korey McDaniel, Kurt Sides, Herb Krohn, and Maxine Chan, Sheet Metal, Air, Rail and Transportation Workers; George Thornton, Sheet Metal, Air, Rail and Transportation Workers and Thornton Mostul Herschon, PLLC; Dwight Hauck; Susan Hauck; and David Backsen, Chris Hulden, Bruce Smith, Mark McGaffey, Shahraim Allen, and Mike Elliott, Brotherhood of Locomotive Engineers and Trainmen.

(Opposed) Bill Stauffacher, Burlington Northern Santa Fe Railway; and Tom Parker, Union Pacific Railroad.

**Persons Signed In To Testify But Not Testifying:** None.