

# SENATE BILL REPORT

## HB 1841

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As Passed Senate - Amended, March 6, 2020

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

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

**Sponsors:** Representatives Riccelli, Chandler, Blake, Boehnke, Macri, Eslick, Santos, Young, Ryu, Jenkin, Sells, Stokesbary, Senn, Griffey, Harris, Stonier, Morgan, Walsh, Gregerson, Lovick, Fey, Volz, Wylie, Hoff, Ramos, Chambers, Stanford, McCaslin, Fitzgibbon, Van Werven, Peterson, MacEwen, Dent, Graham, Hudgins, Valdez, Pollet, Ortiz-Self, Ybarra, Walen, Ormsby, Dolan, Frame, Cody, Jinkins, Tarleton, Appleton, Bergquist, Callan, Chapman, Pellicciotti, Shewmake, Kilduff, Lekanoff, Davis, Pettigrew, Doglio and Entenman.

**Brief History:** Passed House: 3/13/19, 72-24; 1/30/20, 65-30.

**Committee Activity:** Labor & Commerce: 3/26/19, 4/02/19 [DPA, DNP]; 2/20/20, 2/25/20 [DPA, DNP].

**Floor Activity:**

Passed Senate - Amended: 3/06/20, 34-15.

### Brief Summary of Amended Bill

- Establishes minimum 2 crew size requirements for certain railroad carriers.
- Provides an exception for class III carriers operating at 25 miles or less and mandatory waivers for other railroad carriers.
- Allows the Utilities and Transportation Commission (UTC) to require additional employees after considering certain factors.
- Creates a highest priority and paramount obligation and duty of the UTC regarding safety and protection.
- Allows the UTC to issue monetary penalties for violations.

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### SENATE COMMITTEE ON LABOR & COMMERCE

**Majority Report:** Do pass as amended.

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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.*

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Stanford, Walsh and Wellman.

**Minority Report:** Do not pass.

Signed by Senators King, Ranking Member; Braun and Schoesler.

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

**Background:** State statutes addressing crew size on freight and passenger trains state that no law may prevent a railroad from staffing its 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 less than two crew members is subject to a safety review by the UTC.

A violation of the crew size provision is a misdemeanor, and upon conviction the railroad carrier is subject to a fine of at least \$100, but not more than \$500, for each offense. Each train run in violation of the crew size provision is a separate offense. The penalty 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 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, in which case the state law is preempted. 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.

On March 15, 2016, the Federal Railroad Administration (FRA) issued a notice of proposed rulemaking (NPRM) concerning train crew staffing. On May 29, 2019, the FRA published a final rule withdrawing the March 15, 2016 NPRM. The FRA stated that "[i]n issuing this withdrawal, FRA has determined that no regulation of train crew staffing is necessary or appropriate at this time and intends for the withdrawal to preempt all state laws attempting to regulate train crew staffing in any manner." The FRA referred to the intention as negatively preempting any state law concerning the subject matter.

On July 29, 2019, the Washington State Attorney General, along with the California Public Utilities Commission, the Transportation Division of the International Association of Sheet Metal, Air, Rail, and Transportation Workers, and others, filed a petition in the U.S. Court of Appeals for the Ninth Circuit for review of the final rule, stating that it is procedurally and substantively defective, and asking the court to vacate and set aside the final rule. The case is still pending.

The Hazardous Materials Division of the Federal Railroad Administration 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.

**Summary of Amended Bill:** Two Crewmember Requirement. 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. Class III railroad carriers operating on their roads while at a speed of 25 miles per hour or less are exempt from the two crewmember requirement. Automatic waivers to the train crew size requirement must be granted to other railroad carriers and remain in effect until ordered by the UTC.

The UTC must act to ensure that railroad carriers supplement trains entering Washington State with the requisite number of crewmembers, 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.

UTC Order for Additional Employees. The UTC 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, as 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. The UTC may consider specified relevant factors.

UTC Highest Priority & Paramount Obligation and Duty. Pursuant to the enforcement of the act's provisions, 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.

Violations and Penalties. Any person, corporation, company, or officer of the court operating any railroad within the state of Washington, and engaged as a common carrier, who violates the crewmember requirements may be subject to fines of between \$1,000 and \$100,000 for each offense, as determined by the UTC. The UTC may impose higher fines when a serious injury or fatality occurs involving a carrier's violation of this act. The UTC may consider all relevant factors including the class, assets, profitability, and operational safety record of the carrier, providing a punitive penalty as a deterrence. Each train or engine run in violation of the crewmember requirements constitutes a separate offense, except in the case of disability of one or more crewmembers while out on the road between division terminals, or assigned to wrecking trains.

The UTC has a duty to enforce the priority and paramount obligation and penalties provisions.

Definitions. Class I means a railroad carrier designated as a class I railroad by the United States surface transportation (USTSB) board and its subsidiaries or is owned and operated by entities whose combined total railroad operational ownership and controlling interest meets the USTSB designation as a class I railroad carrier. Class III means a railroad carrier designated as a class III railroad by the USTSB. Other railroad carrier means a railroad carrier that is not a class I carrier.

Crewmember means a railroad operating craft employee who has been trained and meets the requirements and qualifications as determined by the FRA for a railroad operating service employee. 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, and includes any officers and agents of the carrier.

Legislative findings and declarations are made.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony on House Bill (Regular Session 2019):** *The committee recommended a different version of the bill than what was heard.* PRO: This bill is critical for both public and railroad worker safety. With huge increases in rail shipments of oil and other dangerous flammable materials, all trains must be crewed by no less than two people. This bill will affect fewer than 5 percent of all trains system wide. Five states have passed this law and one sits on the Colorado Governor's desk. Adequately crewed freight trains are safer trains.

We have seen crews reduced. It is important to have extra eyes and ears on these trains. Ten days ago in Eastern Washington, a derailed train spilled a hazardous chemical, caught fire, and burned for approximately 24 hours. We have seen trains get longer and longer. Recently, a 12,000-foot train ran through the Columbia Gorge. It can take a conductor 45 minutes or more to get from the head into the rear of a train to find out the problem. No technology monitors the freight on the train. The opponents will argue that the train crew size is not a matter for legislative action or government oversight and that it should be collectively bargained, but look at the 737 Max. These are public safety matters first and foremost. They cannot be left to for-profit corporations and labor organizations to bargain away the safety of our communities and our residents.

Railroad companies are not your run of the mill private business or corporations. They are government-sanctioned monopolies and are among the most powerful of the for-profit corporations. They need to be well regulated to ensure business operations are conducted for the benefit of the public.

About 1992, we had four people on the train and now we are down to two. The rear end of the train is run through remote control. Someone needs to be there to see if it catches on fire or if the brakes are burning off through the bearings. If a train catches on fire going through the Seattle mile-long tunnel, a passenger station, who is going to cut that train in half and keep it from exploding. There are different locations where this could be really, really dangerous.

We know that fertilizer products are critical to our agricultural community and we do not want to adversely affect them. The railroads that handle high hazard flammable materials should have minimum crew standards. Class I railroads are making large profits. The bill will protect railroad workers, the public, and the environment by ensuring the most dangerous trains are sufficiently staffed. Monitoring equipment and lading while in transit is a crucial crew function. While technology is helpful, it cannot take the place of a professional train crew, especially in emergency scenarios.

CON: Regarding preemption, the federal government has clearly asserted that it occupies the regulatory space on issues of railroad safety. There are emergency response rules now. The bill will contradict accepted operating practices and put more people in danger. Because this bill takes crew size mandates far beyond what any other state has even proposed, much less enacted, it would almost certainly draw expensive and time-consuming litigation. That could do irreparable harm to the state's trade sector, affecting transportation of everything from grain, timber, and airplane fuselages. The bill would begin to dismantle a framework of collective bargaining that was established by the federal government and is overseen by Congress and the executive branch over the past century.

This collective bargaining process helped establish railroad jobs as the safest in the industrial, manufacturing, and transportation sectors. These jobs can be obtained with a high school diploma. They can be six-figure a year salary with excellent benefits and retirement. As technology evolves and safety improves, these are some of the safest, most well-compensated, long standing jobs in the transportation sector.

We appreciate that some of the agricultural products are exempt. However, agricultural products frequently travel by rail car. If the rail cars are attached to an existing train that is already subject to this bill, the agricultural products will be affected. These products are time sensitive. They must be delivered to farms at peak application times. There is insufficient storage in the state to keep these products readily available. We are concerned the logistical impacts of this bill will cause delays.

One of our labor partners has raised concerns about medical emergencies inside the cab. The train will stop. Each locomotive is equipped with an alert button. If the button is not pushed, it sets off an alarm inside the cab of the locomotive. If the button is not pressed once the alarm sounds for a few moments, the train is automatically stopped. If an engineer begins to speed, does not respond to signals, or enters a track where work is being done, positive train control will bring it to an automatic safe stop. We are constantly looking for innovative ways to enhance the safety of our employees, the communities where we operate, and the customers we serve. Historically, safety and technology improvements have been a primary catalyst for crew size related negotiations. As a result of these improvements, labor and management have agreed to reductions. Rail employee injury and train accidents in grade crossing collision rates have declined by 79 percent or more since the 1980s. Hazardous material accident rates are down 91 percent. There will be significant negative consequences for Washington shippers trying to get their products to markets around the country and beyond. Costs will ultimately be passed on to consumers.

This bill would circumvent the collective bargaining agreements. It would also create a unique set of regulations on a national system that would impact traffic management of

railroad operations across state lines, causing higher costs, and delay Washington's trade driven sectors. This would be another setback for the trade sector as well as Washington ports.

A rail system is important for competitive ports. Class III railroads, short lines, are critical to regional economies. They are not exempt from this bill. Half of them are publicly owned. They operate at slow speeds, often less than daily. They often operate with one crew member in the cab of the locomotive and an additional crew member in a truck or a high rail vehicle before or after the train. This is an approved and safe form of operation. It is in accordance with the general code of operating rules. We would like a short line exemption.

OTHER: The UTC supports adequate safety.

**Persons Testifying:** PRO: Representative Marcus Riccelli, Prime Sponsor; Mike Elliott, Rail Safety; Herb Krohn, SMART-Transportation Division; Dave Beech, Brotherhood of Locomotive Engineers and Trainmen.

CON: Tom McBride, Far West Agribusiness Association; Patrick Boss, Columbia Basin Railroad, Central Washington Railroad; Johan Hellman, BNSF Railway; Aaron Hunt, Union Pacific Railroad; Mike Ennis, Association of Washington Business; Chris Herman, Washington Public Ports Association.

OTHER: Jason Lewis, Washington Utilities and Transportation Commission.

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

**Staff Summary of Public Testimony on House Bill (Regular Session 2020):** *The committee recommended a different version of the bill than what was heard.* PRO: If we do not do this we will be putting the environment at risk. This is a common sense measure. There should be some exceptions. The decision by the FRA is contrived. It speaks more of the administrator's ties to the railroads. There is a lot of political influence going on in Washington. Statute requires that rulemaking needs to be concluded within one year. It was not. The decision has no merit. The decision withdrawing was not completed. Under that Administrative Procedures Act, the states could not have anticipated the negative preemption. It was never discussed in the proposed rule. The Supreme Court has ruled on implied preemption. *CSX v. Easterwood* states that implied preemption/negative preemption is not valid. This was implied preemption. This is a matter pending in the 9th circuit. The point is what should you do, if anything. It will take approximately two years for the case to be resolved. There is no downside to the state legislating this. There is no major cost to the railroads. Most are already operating with these crews.

Senator Conway is preparing amendment with an exemption for short lines that we support.

One person in the cab is not safe. Some of the cars are dangerous. One person may take a long time to walk to the back of the train. Planes have a co-pilot, why not trains. The train crew size has decreased over the years. Positive train control is not enough.

CON: We oppose the bill for three reasons. This is not about safety. FRA Found after studying the matter for more than two years, that no regulation for train crew staffing for safety. In some circumstances, having additional crew staffing can negatively affect safety. Crew size is best negotiated by collective bargaining. Recently, a federal judge required a union to return to the table and bargain on train crew size.

Railways vary greatly in the need for additional crew. Agriculture relies primarily on class II rail lines. These trains move at about 10 to 25 miles per hour. Class Is move at about 45 to 65 miles per hour. Farm products accounted for 683 rail cars equivalent to about 2000 truck loads. We do not want those additional trucks on the roads. Agriculture is a price taker not a price maker. Farm bureau would support exemption of Class II.

There was an assumption that increased crew made rails safer. The assumption ignores improvements in infrastructures and technology and changes in rail jobs.

Increasing crew size for railroads that operate across state lines would increase the cost of operating in Washington.

OTHER: We would like an exemption for short line railroads.

**Persons Testifying:** PRO: Representative Marcus Riccelli, Prime Sponsor; Shahrain C. Allen, Brotherhood of Locomotive Engineers & Trainmen, Washington State Legislative Board; Ken Richards, Smart TD; Todd Kester, SMART-TD Local 324; Herb Krohn, SMART Transportation Division/United Transportation Union, Washington State Legislative Director; Larry Mann, SMART-TD and BLET; Joseph Diaz, BLET-WSLB Division 402; Eddie Barron, BLET-WSLB Division 402; Johnnie Jones, BLET-WSLB Division 758; Christopher Willyerd, Smart TD Local 324.

CON: Bre Elsey, Washington Farm Bureau; Johan Hellman, BNSF Railway Co.; Aaron Hunt, Union Pacific Railroad; Mike Ennis, Association of Washington Business.

OTHER: Chris Herman, Washington Public Ports Association.

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