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**ENGROSSED SUBSTITUTE HOUSE BILL 1418**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** House Transportation (originally sponsored by Representatives Leavitt, Bronoske, Lovick, Ryu, Ortiz-Self, Gregerson, Shewmake, Ramel, and Pollet)

AN ACT Relating to enhancing rail safety governance by expanding the role of the utilities and transportation commission; amending RCW 81.04.540 and 81.04.550; creating new sections; and providing an effective date.

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

NEW SECTION. **Sec.**  (1) The legislature recognizes that rail safety is critical to the impacts of the state's transportation network on public safety and the environment. On December 18, 2017, a passenger train derailed from a bridge near DuPont, Washington. Three passengers were killed and 57 passengers and crewmembers were injured. While the 2017 derailment had particularly tragic consequences, the risks to public safety and the environment are underscored by other rail incidents that have occurred in the past several years, including the freight train transporting oil derailment and resulting fire on June 3, 2016, in the Columbia river gorge, near Mosier, Oregon, while in route to Tacoma, Washington, and the derailment of a freight train transporting oil through Custer, Washington, in late 2020 that also resulted in a fire.

(2) The national transportation safety board issued an accident report on the 2017 derailment in early 2019. The report included recommendations for government agencies that participated in developing the new route related to improvements in safety oversight, coordination, and communication. In 2020, the joint transportation committee oversaw a rail safety governance study that provided an assessment and recommendations for how rail safety oversight, organizational structures and processes, and coordination activities could be modified to improve rail safety governance across the state.

(3) The legislature intends to build on the recommendations of the national transportation safety board and joint transportation committee reports to strengthen rail safety governance by expanding the utility and transportation commission's role in rail safety to include oversight of all rail transportation in the state to the extent permitted under federal law, including over implementation of new and materially changed railroad operations and over the safety management practices of railroad operations. The legislature intends for this role to include promotion of safety and security of the public and rail employees, as well as protection of the environment, to the extent these goals can be furthered by the commission's expanded role.

(4) The legislature does not intend for the expanded role of the utility and transportation commission in rail safety to be funded through the assessment of fees on rail entities.

**Sec.**  RCW 81.04.540 and 2007 c 234 s 2 are each amended to read as follows:

(1)(a) The commission is authorized to oversee rail safety in the state to the extent permitted by federal law and is responsible for inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and operations of railroads, and for enforcing state and federal laws and regulations relating to transportation of persons or commodities, or both, of any nature or description by rail. The oversight of rail fixed guideway systems is governed by RCW 81.104.115 and as specified in (b) of this subsection. Rail safety oversight shall include, but is not limited to, the following:

(i) Oversight of the implementation of new and materially changed railroad operations and infrastructure for rail service through inspection, surveillance, and investigation, as permitted by federal law.

(ii) Oversight of the safety management practices for passenger railroad operations, as permitted by federal law. The department of transportation shall coordinate with the commission and Amtrak to facilitate the oversight of state passenger rail service to the extent permitted under federal law. The commission shall facilitate communication and collaboration between freight rail service providers to promote industry safety management practices.

(b)(i) In coordination with the department of transportation, the commission shall provide support and technical assistance in the oversight of the safety of rail fixed guideway systems carried out by the department under RCW 81.104.115, as permitted by federal law. The commission and its employees shall have no liability for any actions taken pursuant to this subsection performed to support and provide technical assistance for any of the actions for which the department has no liability under RCW 81.104.115.

(ii) As the state agencies that oversee rail safety in the state, the commission and the department of transportation shall report annually to the transportation committees of the legislature, and to the governor's office, by December 1st of each year on the status of the department of transportation's safety oversight of rail fixed guideway systems. As part of this report, the agencies shall provide a joint assessment of the activities carried out in each of the areas specified in RCW 81.104.115 and as otherwise required by the federal transit administration in these and related areas, including: Investigations and enforcement; system safety program plan and system security and emergency preparedness plan oversight; compliance mechanisms in place for enforcement; auditing of system safety program plans and system security and emergency preparedness plans; investigations of reportable incidents, accidents, security breaches, hazards, and security vulnerability; and any associated rule adoption. The report shall include plans and recommendations for enhancing current activities in these areas.

(2) The commission shall cooperate with the federal government and the United States department of transportation, or its successor, or any other commission or agency delegated or authorized to regulate interstate or foreign commerce by common carriers, to the end that the transportation of property and passengers by common carriers in interstate or foreign commerce into and through the state of Washington may be regulated and that the laws of the United States and the state of Washington are enforced and administered cooperatively in the public interest.

((~~(2)~~)) (3) In addition to its authority concerning interstate commerce under this title, the commission may regulate common carriers in interstate commerce within the state under the authority of and in accordance with any act of congress that vests in or delegates to the commission such authority as an agency of the United States government or under an agreement with the United States department of transportation, or its successor, or any other commission or agency delegated or authorized to regulate interstate or foreign commerce by common carriers.

((~~(3) For the purpose of participating with the United States department of transportation in investigation and inspection activities necessary to enforce federal railroad safety regulations, the~~)) (4) The commission has regulatory jurisdiction over the safety practices for railroad equipment, facilities, rolling stock, and operations in the state, including authority to investigate and conduct inspections necessary to the enforcement of state railroad safety regulations, as permitted by federal law. This jurisdiction includes the authority to participate with the United States department of transportation in investigation and inspection activities necessary to enforce federal railroad safety regulations.

(5) The commission shall produce an annual report on rail safety in the state and provide it to the transportation committees of the legislature, including the joint transportation committee, and shall make this report available to the public. This report shall include information related to rail safety of rail fixed guideway systems.

(6) The commission shall promote rail safety through the facilitation of communication and collaboration among stakeholders with an interest in rail, including local jurisdictions, host and tenant railroads, and rail labor organizations. This communication and collaboration shall include communication and collaboration related to rail safety of rail fixed guideway systems.

(7) "Rail fixed guideway system," as used in this section, has the same meaning as defined in RCW 81.104.015.

**Sec.**  RCW 81.04.550 and 2007 c 234 s 3 are each amended to read as follows:

The commission shall administer the railroad safety provisions of this title to the fullest extent allowed under federal law, including 49 U.S.C. Sec. 20106, and state law.

NEW SECTION. **Sec.**  (1) To ensure this act is implemented upon its effective date and all systems, processes, and collaboration necessary to implement this act are in place, the utilities and transportation commission may, prior to July 1, 2022:

(a) Adopt rules, policies, and procedures on railroad safety;

(b) Initiate the recruitment, training, and certification of personnel dedicated to railroad safety; and

(c) Facilitate stakeholder communications and outreach on key railroad safety initiatives, developments, and strategies.

(2) All rules adopted prior to July 1, 2022, shall have an effective date that is consistent with those in this act.

NEW SECTION. **Sec.**  Sections 1 through 3 of this act take effect July 1, 2022.

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