

HOUSE BILL REPORT

ESHB 1418

As Passed House:

March 7, 2021

Title: An act relating to enhancing rail safety governance by expanding the role of the utilities and transportation commission.

Brief Description: Enhancing rail safety governance by expanding the role of the utilities and transportation commission.

Sponsors: House Committee on Transportation (originally sponsored by Representatives Leavitt, Bronoske, Lovick, Ryu, Ortiz-Self, Gregerson, Shewmake, Ramel and Pollet).

Brief History:

Committee Activity:

Transportation: 2/8/21, 2/22/21 [DPS].

Floor Activity:

Passed House: 3/7/21, 91-7.

Brief Summary of Engrossed Substitute Bill

- Authorizes the Utilities and Transportation Commission (UTC) to oversee rail safety to the extent permitted by federal law, including through inspection, surveillance, and investigation and the enforcement of state and federal laws and regulations.
- Grants the UTC the authority to oversee the implementation of new and materially changed railroad operations and infrastructure through inspection, surveillance, and investigation, as permitted by federal law.
- Grants the UTC the authority to oversee the safety management practices of passenger railroad operations, as permitted by federal law, and requires the UTC to facilitate communication and collaboration between freight rail service providers to promote industry safety management practices.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- Requires the UTC to provide support and technical assistance to the Washington State Department of Transportation in the oversight of the safety of rail fixed guideway systems, as permitted by federal law, and requires both agencies to jointly report annually to the Transportation Committees of the Legislature and the Governor's Office on the status of this oversight work.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 21 members: Representatives Fey, Chair; Wylie, 1st Vice Chair; Bronoske, 2nd Vice Chair; Ramos, 2nd Vice Chair; Eslick, Assistant Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Volz, Assistant Ranking Minority Member; Berry, Duerr, Entenman, Griffey, Hackney, Lovick, Paul, Ramel, Riccelli, Slatter, Taylor, Valdez, Walsh and Wicks.

Minority Report: Without recommendation. Signed by 8 members: Representatives Barkis, Ranking Minority Member; Chapman, Dent, Goehner, Klicker, McCaslin, Orcutt and Sutherland.

Staff: Jennifer Harris (786-7143).

Background:

Roles of the Federal Railroad Administration and Utilities and Transportation Commission in Rail Safety Oversight.

Federal law mandates a national rail safety program that is carried out, in part, through the issuance of federal safety requirements and through inspection efforts to monitor compliance with these requirements. The Federal Railroad Administration (FRA) and participating states conduct inspections and investigations as part of the national rail safety program.

Under state law, for the purposes of participating in the enforcement of federal rail safety regulations in cooperation with the FRA, the Utilities and Transportation Commission (UTC) is granted regulatory jurisdiction over the safety practices for railroad equipment, facilities, rolling stock, and operations. In this role, the UTC collects rail inspection information.

Role of the Washington State Department of Transportation in Rail Safety Oversight.

Under federal law, states are required to have a State Safety Oversight (SSO) program for

all rail transit systems. Rail transit systems are defined as "rail transit systems operating on a fixed guideway that is not regulated by the Federal Railroad Administration." In Washington, this includes Sound Transit's light rail in the Puget Sound area, Seattle's streetcars, and the Seattle Monorail.

Washington's SSO program is housed within the Washington State Department of Transportation (WSDOT), which is the designated Washington SSO agency in state law. Agencies operating rail transit systems are required to submit a safety plan and a security and emergency preparedness plan to the WSDOT. These plans describe various procedures, including how accidents and security breaches will be investigated and reported, corrective action plans, and internal audits.

Under state and federal requirements, the WSDOT has safety and security-related investigative and enforcement authority over all rail fixed guideway public transportation systems (RFGPTSs), must be independent from any agency that it is obliged to oversee, must not employ anyone who is also responsible for administering an RFGPTS, and must not provide direct public transportation in an area with RFGPTSs.

Agencies with RFGPTS must notify the WSDOT within two hours of an accident, hazard, or security breach, and provide a written report within 45 days. The WSDOT may impose financial penalties, determined by rule, for noncompliance with state or federal RFGPTS regulations, and it may suspend service and require equipment removal if safety or security deficiencies are not addressed in a timely manner. The WSDOT is required to report the status of the safety and security of each RFGPTS annually to the Governor, the Federal Transit Administration (FTA), the transportation committees of the Legislature, and each RFGPTS.

Point Defiance Bypass Derailment.

In 2019 the National Transportation Safety Board (NTSB) issued an accident report on the 2017 Point Defiance Bypass derailment that occurred on the first revenue service run along a new Amtrak Cascades route. The derailment resulted in three passenger deaths, 57 passengers and crew members injured, and property damage estimated at more than \$25.8 million. The NTSB report included recommendations to, among others, the FRA, the WSDOT, Amtrak, and Sound Transit, and found that there was an absence of clearly defined roles and responsibilities among these agencies during preparation for the start of service on this route.

Study on Rail Safety Governance.

The 2020 Transportation Budget directed the Joint Transportation Committee (JTC) to oversee a study on rail safety governance best practices. The study assessed rail safety governance for passenger and freight rail, including rail transit services, and considered recommendations made by the NTSB accident report on the bypass derailment relevant to

rail safety governance. The report included recommendations related to strengthening the UTC's role as the regulator of railroad safety and increasing rail safety coordination in the state.

Summary of Engrossed Substitute Bill:

The UTC is authorized to oversee rail safety to the extent permitted by federal law, and is responsible for inspection, surveillance, and investigation of rights-of-way, facilities, equipment, and operations of railroads, and for enforcement of state and federal laws and regulations relating to the transportation of persons or commodities, or both, of any nature or description, by rail. The UTC's investigative and inspection authority over rail safety practices is expanded to the extent permitted by federal law. The UTC's authority over rail safety applies to RFGPTSs only as specified below.

The UTC's oversight of rail safety includes, but is not limited to, 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. It also includes the oversight of the safety management practices for passenger rail operations, as permitted by federal law. The WSDOT is directed to coordinate with the UTC and Amtrak to facilitate this oversight. The UTC is also required to facilitate communication and collaboration between freight rail service providers to promote industry safety management practices.

In coordination with the WSDOT, the UTC is required to provide support and technical assistance in the oversight of RFGPTSs, as permitted by federal law. The UTC and its employees have no liability for actions taken to support the WSDOT in its oversight of RFGPTSs to the extent that the WSDOT is not liable for actions taken in its oversight of RFGPTSs. The UTC and WSDOT must report to the Transportation Committees of the Legislature and to the Governor's Office by December 1 of each year on the status of the WSDOT's RFGPTS safety oversight program, providing a joint assessment of the activities required under state and federal law. The report must include plans and recommendations for enhancing current activities.

The UTC is required to 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 must include communication and collaboration related to the rail safety of RFGPTSs. The UTC must produce an annual report on rail safety and provide it to the transportation committees of the Legislature, including the JTC, and make it available to the public. This report must include information related to the rail safety of RFGPTSs.

To ensure the act is implemented on its effective date, the UTC may, before July 1, 2022:

- adopt rules, policies, and procedures on railroad safety;
- initiate the recruitment, training, and certification of personnel dedicated to railroad

- safety; and
- facilitate stakeholder communications and outreach on key railroad safety initiatives, developments, and strategies.

All rules adopted by the UTC prior to July 1, 2022, that relate to implementation of this act, must have an effective date consistent with the act's effective date.

In making these changes, the stated legislative intent is to build on the recommendations of the NTSB and of the JTC report to strengthen rail safety governance. The Legislature does not intend for the expansion of the UTC's role in rail safety to be funded through the assessment of fees on rail entities.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect July 1, 2022, except for section 4, relating to the UTC's ability to prepare for the bill's implementation, which takes effect 90 days after the adjournment of session.

Staff Summary of Public Testimony:

(In support) The Point Defiance Bypass derailment took three lives. More recently, there was a freight train derailment near Custer. In 2016 an oil train derailment also occurred near Mosier, Oregon. Rail is complex and involves federal, state, and local agencies. Coordination is essential. The UTC is uniquely suited to perform this role with its focus on making sure that transportation is safe and reliable in the state. Washington needs roles related to rail safety to be clearly defined. Pointing fingers is not an option. This bill will ensure that Washington residents are safe, including those that live along or near rail lines.

The JTC study was completed in 2020 and its recommendations inform this bill. Fragmented oversight and no referee to make sure everyone was doing what they were supposed to be doing contributed to the Point Defiance Bypass derailment. There have been significant investments made in rail lines throughout the state. Establishing the UTC as the agency with safety oversight authority over rail is a critical and necessary step to improving rail safety.

(Opposed) The Union Pacific Railroad (Union Pacific) invests heavily to advance the safe operations of the railroad and is dedicated to ensuring that it operates safely and reliably. The UTC's oversight authority over new and materially changed railroad operations could impact Union Pacific's efforts to modernize its network. There is disagreement about how railroads in the state can be made safer.

This bill is well-intentioned, but the authority given to the UTC may be preempted by

federal law. The bill ventures into ambiguous areas of possible federal preemption. Under federal law, state and local laws must be nationally uniform to the extent practicable for nontransit rail. This bill could create new administrative and regulatory burdens that are not uniform and will increase costs to agencies like the UTC.

The BNSF Railway (BNSF) pays the majority of costs of the UTC's rail safety program. It is unknown to the BNSF what the increased costs of this program to it will be.

(Other) This bill will help increase rail safety oversight, especially in light of elimination of regional rail safety program management at the federal level. The UTC can fill this gap. The UTC partners with the FRA on rail track inspections and also inspects rail crossings and works on investigations. Utilities and Transportation Commission staff is analyzing how the proposal would work in conjunction with FRA and FTA regulations. The UTC will require significant funding beyond the transfer of some resources from the WSDOT.

Since the derailment, much has been improved related to rail safety. Positive train control was activated. This bill further supports improvements in rail safety, but the transfer of a successful WSDOT safety program unrelated to the Point Defiance Bypass derailment should be eliminated. Heavy rail is regulated differently than light rail. Light rail is overseen by the FTA, which has certified the WSDOT as the safety oversight agency of the state. The WSDOT is in the best position to follow FTA rules. The WSDOT Secretary Roger Millar's role on Sound Transit's board is helpful to this oversight, and this transfer of responsibility would come at a vulnerable time when Sound Transit is doubling track miles between now and 2024.

Washington ports own and operate more than 200 miles of rail in the state and short-line railroads are essential to port operations. Ports support the bill, but believe it can benefit from a definitions section. They would also like to see sufficient funding provided for this expansion of the UTC's role in rail safety.

The bill can be strengthened by clarifying confidentiality protections from the disclosure of information and adding better coordination of occupational rail safety between the UTC and the Washington State Department of Labor and Industries. Also, the state has not revised rail safety penalties since 1911. The use of enhanced technology should be monitored, especially when it is put to uses beyond its intended capabilities.

Persons Testifying: (In support) Representative Mari Leavitt, prime sponsor; and Mike Brandstetter, City of Lakewood.

(Opposed) Aaron Hunt, Union Pacific Railroad; and Bill Stauffacher, BNSF Railway.

(Other) Jay Balasbas and Jason Lewis, Utilities and Transportation Commission; Herb Krohn, SMART Transportation Division, United Transportation Union; Shahrain C. Allen, Brotherhood of Locomotive Engineers and Trainmen Washington State Legislative Board;

Don Chartock and Ron Pate, Washington State Department of Transportation; and Chris Herman, Washington Public Ports Association.

Persons Signed In To Testify But Not Testifying: None.