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Washington State Legislative Board

Representing Railroad Train & Bus Service Employees of Washington State

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Mr. Steven V. King,
Executive Director and Secretary,
Washington State Utilities and Transportation Commission,
1300 S. Evergreen Park Drive S.W., P.O. Box # 47250,
Olympia, WA. 98504-7250

August 27, 2017

Re: Docket # TR0170780 – Rulemaking to implement ESHB 1105, Chapter 333 Laws of Washington State - Comments of labor organization representing affected railroad employee passengers.

Dear Executive Director & Secretary King:

This organization represents approximately 2000 railroad workers in Washington State who are required by our employers as part of our workplace duties to ride as passengers in both contract crew transportation and railroad passenger carrying vehicles that are the subject of the legislation. This organization spearheaded legislative actions to seek remedies for the serious longstanding systemic failures involving the safe transportation of our members; many of these failures have resulted in serious career ending accidents as well as the loss of our member's lives. The regulatory enforcement of the revised statute will have a direct daily impact on our workplace safety, so we welcome the opportunity to participate in this rulemaking process as we seek to insure that longstanding safety risks and hazards are addressed and eliminated through the regulatory process.

Transportation of railroad crews is substantially different from other forms of passenger transportation services as it involves not only regular highway driving but also considerable off roadway driving on rural back roads, along unpaved dirt and gravel paths adjacent to railroad tracks at all hours in adverse weather conditions. There is considerable driving activity navigating most every area within busy railroad yards, freight loading facilities, docks, and along high-speed railroad lines. Train crew transportation activities often involve loading or unloading rail workers and equipment at dangerous locations alongside very busy highways and roadways. Railroads are physically among the most unforgiving of heavy industrial activities in existence; even one small misstep or lapse in judgement by an individual at the wrong moment in time does result in catastrophic accidents with horrific, gruesome and often fatal physical consequences to the human beings involved.

Over the past several decades since the railroads outsourced crew transportation operations via lowest bidding contracting, operational safety has diminished enormously resulting in the mayhem that has become a common occurrence within rail crew transportation operations. Unfortunately, even fatal accidents with their enormous liability costs to the contractor and the railroad companies, has not resulted in improving the safety of these passenger transport operations; this legislation was enacted as significant regulation is obviously necessary to impose improved safety standards. Our members have been reporting safety concerns regarding these operations for years; although the operators have clearly demonstrated an unwillingness to seriously address the systemic issues.

We submit that the Commission should examine and review every facet of these operational areas, and give consideration to adopting detailed and specific regulatory oversight provisions; such intensive regulatory oversight of this specialized industry is obviously necessary given these specific circumstances, to insure actual operational changes are actually implemented to improve safety for railroad employee passengers and the public.

Therefore, we respectfully request that the UTC carefully examine the following areas of concern and consider our suggestions for rulemaking within this framework:

DRIVER QUALIFICATION STANDARDS, TRAINING AND OVERSIGHT:

Insuring only qualified, capable, experienced, individuals with innate sound judgement skills who have ability and willingness to operate vehicles transporting railroad workers in a safe and professional manner - is the greatest failing and therefore the most critical aspect requiring regulatory intervention. We recommend that the Commission consider seeking the expertise of the Washington Department of Licensing (DOL) as well as experts in driver education to establishing requisite minimum qualification, training and familiarization regulatory requirements for rail crew transportation drivers.

We strongly urge the UTC to insure the new regulations address these aspects:

DRIVER APPLICATION REQUIREMENTS:

Prospective applicants should meet the following standards and be required to consent to, and successfully pass a background check.

The minimum requirements should include:

- Drivers must be at least 25 years old with at least five years of driving experience; the five years immediately preceding hiring should be free of any disqualifying driving offenses whatsoever. A five year DOL history should be obtained and reviewed.
- Documented proof of applicants' lawful permanent residency, or US Citizenship.
- Contracting employers should be required to perform a reference check of the prospective driver going back 10 years, documenting the results in the employee's personnel file.
- Successful passage of a pre-employment drug and alcohol test conducted by an independent entity who is neither employed by the transportation contractor, railroad company nor any of either organizations related companies. The collector must be a qualified breath technician and specimen collector, and obtained at a suitable site following acceptable protocol to prevent any tampering or alteration by the subject; analysis should be conducted only by an independent certified laboratory. Positive test result thresholds should be no less stringent than those required of railroad employees on that railroad carrier's property.
- Undergoing a Criminal History background check performed through the utilization of fingerprint cards submitted to the Washington State Patrol; both a WASIS and NCIC III criminal history report should be obtained and reviewed. Railroad transportation contractors should record criminal offenses, and relevant serious traffic violations by that may have a bearing on a prospective drivers' fitness for occupations working in security sensitive transportation facilities as well as fitness to operate vehicles transporting passengers; this information should be reported to the railroad company for their review prior to hiring.
 - Capital Offenses
 - Fraud
 - Theft
 - Robbery
 - Burglary

- Assault
 - Sex Crimes
 - Alcohol or drug offenses or use
 - Prostitution and Human Trafficking related crimes
 - Predatory Sex Offenses
- Prospective drivers should be required to successfully pass a physical examination in accordance with DOT standards and practices as well as any additional standards determined by the Commission. Exams should be performed only by physicians who are listed as being in active good standing with USDOT FMCSA National Registry of Certified Medical Examiners. Driver medical reports and records should be retained permanently in the drivers personnel file.
 - Contract crew transportation operators should be required to document all requisite background investigation information and retain this material permanently in the drivers personnel file. Personnel records of all employed drivers should be maintained in a safe and secure location, it should be made available in its entirety to the railroad company, and the Commission upon request.

NEW DRIVER TRAINING:

- Drivers should be required to undergo a course of instruction of at least 16 hours or perhaps longer duration administered by a Washington State DOL Approved Commercial Driver's License Training School. Instruction should be conducted only by Washington State DOL Licensed Driver Training School Instructors. Drivers currently employed prior to the effective date of this regulation should be grandfathered in for six months to allow them to successfully complete the training.

The Commission should establish, approve, maintain and review the curriculum which should include:

- Defensive driving techniques & distracted driving awareness.
- Use of Emergency equipment and procedures in such situations.
- Best practices for safely transporting passengers.
- Hours of service requirements as well as obligation to be adequately rested (i.e. other jobs worked).
- Driver Fatigue.
- Drugs and Alcohol use including proper procedures for reporting use of prescription medications.
- Loading and unloading of passengers and materials in adverse conditions along roadways.
- Stowage of railroad equipment, passenger equipment and baggage.
- Safe backing procedures.
- Proper daily vehicle safety inspection procedures.
- Cell phone use.
- Reporting requirements of changes in license status and convictions.

The curriculum should include education regarding State laws as well as best practices pertaining to railroad related driving environment including:

- At least four hours of classroom instruction should be dedicated to specific hazards unique to driving in and around railroad yards, railroad loading facilities, in close proximity with stationary and moving locomotives, railroad equipment, cargo container operations and equipment, traversing off road areas adjacent to railroad right of ways.
- Railroad Crossing laws, requirements and best practices to safely traverse railroad crossings.
- Driving in off road terrain including ballast, dirt roads, mud as well as in snow and ice conditions.
- Adverse weather conditions including heavy rain, wind, snow, ice, fog, extreme heat, etc.
- Driving in mountain conditions, steep grades, in all weather conditions.

QUALIFYING EXAMINATIONS:

- At the conclusion of classroom training, prospective drivers should be required to pass a qualification examination established by the Commission, and developed in conjunction with the DOL. The examination should be administered by examiners who are licensed, qualified and approved by the Washington DOL to perform driver license testing.

The exam should insure that drivers transporting railroad passengers successfully demonstrate the following:

- Ability to speak and read English well enough to fulfill the duties of a driver.
- Knowledge of requirements and laws for operating passenger carrying vehicles.
- Knowledge of specific safety requirements and dangers involving motor vehicles and railroads.
- Knowledge of vehicle safety requirements.
- Knowledge of basic geography of the region.
- Knowledge of risk factors involving railroad operations, emergency procedures and personal safety equipment.
- Knowledge of the laws regarding traversing railroad crossings.
- Knowledge of hours of service limitations and driver fatigue.
- Knowledge of requirements to report use of prescription medication,
- Knowledge of driver reporting requirement of changes in license status and criminal convictions.

DRIVER FAMILIARIZATION:

Territorial knowledge is critical for persons who work in railroad operations; familiarization is required by Federal Law for train crews. Similarly, territorial qualification is essential for persons who transport railroad crews to insure the safety of railroad employee passengers. Frequently, contract rail crew drivers are assigned to work with and transport a train crew designated as a multiple dogcatch assignment throughout the crew's tour of duty as they advance multiple trains, so they need to have appropriate familiarization requirements prior to being sent out to drive on their own.

- Contract crew transportation providers should be required to establish and implement new driver familiarization programs to ensure that each qualified driver is able to safely transport railroad passengers to their various outlying destinations and terminals. The Commission should establish minimum standards for the actual familiarization requirements of drivers.
- Driver familiarization programs should be established and standardized in writing and filed with and subject to Commission review, approval and enforcement.
- Contract crew transportation providers should be required to equip each vehicle or provide all drivers with detailed briefing books containing explicit and easy to follow geographic traveling instructions to reach remote and obscure locations where train crews regularly require transportation services, these materials should provide drivers with information regarding any specific hazards involved in reaching or traversing such locations.

ONGOING TRAINING AND RENEWALS:

- Prior to the expiration or renewal of their driver's license, drivers of railroad passengers should be required to undergo a refresher course of instruction of at least 8 hours through a Washington State DOL Approved Commercial Driver's License Training School, with Instruction provided by Wash. State DOL Licensed Driver Training School Instructors. The Commission in conjunction with DOL should establish, approve, maintain and review the curriculum.
- Upon completion of renewal classes, drivers should be required to take and pass the specific qualification exam, this should be administered by examiners who are licensed, qualified and approved by the Washington DOL to perform driver license testing.
- Drivers returning to duty after the expiration of a period of disqualification should be required to undergo the complete full training program as though they are a newly employed driver.

- Additional continuing education during intervening time periods between license renewals should be required as determined by the commission.

INSURANCE:

- Require the filing of proof of insurance coverage annually, as well as naming of any and all designated registered agents of contract crew transportation companies including secondary or third parties.

COMMON PICK-UP/DROP-OFF LOCATIONS:

Train crews may be picked-up and/or dropped-off at almost any point along railroad rights of way. When trains are parked (tied-down) or train crews need to be changed out, this often takes place at specific locations that are commonly and regularly used for this activity, as they are accessible by transportation vehicles. Some of these locations are situated on narrow shoulders of busy roadways, they may have steep unsafe footpaths that must be traversed by crews to board or disembark from the train, they may lack adequate lighting during darkness, or there may be other factors creating significant risks to railroad employees when loading, boarding or disembarking from transport vehicles and nearby trains

- Provisions should be adopted for the Commission to investigate dangerous transportation staging locations and areas, as well as requiring railroad companies to take appropriate corrective measures to reduce such risks where it is deemed necessary for the safety of railroad crewmembers or drivers.

CREW TRANSPORTATION VEHICLES & EQUIPMENT:

- Minimum standards for vehicle safety equipment should be established, including the requirement that such vehicles be equipped with safety headrests for the driver and all passengers to reduce the risk of serious neck and back injuries.
- Contract Crew Transportation vehicles that are regularly assigned or utilized in Washington State should be licensed within the state of Washington.
- Initially a regular annual vehicle safety inspection program and vehicle safety standards should be implemented by the Commission. At a later date in time after the inspection program has been in place for several years if compliance rates are satisfactory, the commission should then consider whether allowing biennial inspections of each vehicle would insure an adequate level of passenger safety.
- Commission inspections of contract crew transport vehicles should be unannounced, unless a specific vehicle is the subject of an investigation requiring the commission to determine its current location to conduct an inspection.
- All Contract Crew Transportation vehicles operated in Washington State should be required to undergo an initial physical vehicle inspection and receive approval for such use by the commission.
- Regular vehicle maintenance programs including a requirement for operators to document all complaints and repair activity should be established.
- Crew transportation vehicles are used in all weather conditions, regulations addressing appropriate traction tires, as well as requiring studded tires as mandatory equipment for passenger vehicles when operating in snow and icy conditions should be adopted.

OTHER ISSUES:

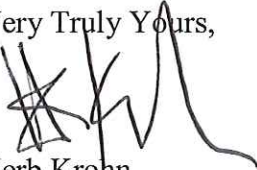
- Specific regulatory requirements should be established for probable cause, random, as well as specific thresholds and standards involving post-accident drug and alcohol testing requirements for drivers.
- Hours of Service regulations should also take into consideration the impact of secondary or other employment of drivers as it pertains to insuring drivers are obtaining adequate rest before reporting for duty. Limitations regarding secondary employment related to consecutive waking hours of drivers, as well as anchor sleep issues should be included.
- Sleep apnea and other medical conditions that could impact driver alertness should be addressed within the regulations.

- It should be unlawful for either a railroad carrier or contract crew transportation company to withhold positive internal/company post-accident or incident drug and alcohol testing results. The commission should mandate that railroads and contract crew transportation carriers are required to report drivers post accident drug and alcohol testing results regardless of the outcome, to the investigating law enforcement officer, their agency, as well as to the Commission.
- Contract Crew Transportation Operators should be required to maintain a standardized record keeping system subject to Commission inspection and review, requiring documentation of ALL incidents and accidents involving drivers and vehicles regardless of a lack of or level of damage, or the lack of personal injuries. Required recordkeeping should include documentation of any and all scenarios or incidents where contract crew transportation operated vehicles improperly come into contact with railroad infrastructure or equipment, including becoming inoperable or trapped in between the rails, any contact or striking of railroad equipment, appliances, track switches or other incidents.
- Decals of passing inspected passing vehicles should be placed in a conspicuous place in the vehicle to allow passengers to view it; the decal should include a vehicles fleet identification number, an individualized traceable identification number unique to each decal, the date and location of the passing inspection. The decal should be designed and affixed in a way that it cannot be removed or transferred without displaying obvious signs of tampering.
- Posting of Notices in contract crew transportation vehicles should include a requirement that the driver's name, and the vehicle identification number be conspicuous and clearly posted and visible to passengers. The required Notice to passengers should be required to be clearly and obviously visible to all passengers, including requiring additional postings to insure passengers in the front seat, as well as seated in multiple vehicle rows can easily see and read the information. The posting notice information should also be required to include information conveying that the confidentiality of a complainant's identity is protected by Washington State Law.
- Regulatory standards for third party operators needs to be established, including reporting and operating requirements for the contracted use of other transportation firms including taxicabs, limousine operators, fleet operators, charter carriers, etc. Regulations mandating the conveyance of the requisite insurance coverage provisions to extend to any and all agents, contractors, subcontractors, subvendors, secondary vendors, or subcarriers who are utilized to provide railroad crew transportation services should be established.

While this letter includes a substantive list of long unresolved safety issues that should be addressed, as this process advances forward we will most certainly identify additional areas of concern for consideration and review for appropriate regulatory action.

Thank you very much for this opportunity to provide our initial input regarding the Notice of Rulemaking, we look forward to working closely and cooperatively with your agency and other stakeholders as this process moves forward.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Herb Krohn', with a stylized, somewhat abstract flourish extending to the right.

Herb Krohn
Washington State Legislative Director