

- SUBJECT:** Requiring minimum two-man freight train crews
- COMMITTEE:** Transportation — committee substitute recommended
- VOTE:** 5 ayes — Alexander, Hawley, Noriega, Pickett, Swinford  
0 nays  
4 absent — Y. Davis, Edwards, Hamric, Hill
- WITNESSES:** For — Carl H. Bludau; Terry Briggs and Raymond Holmes, Brotherhood of Locomotive Engineers; C.M. English, Jr., and Lawrence M. Mann, United Transportation Union; *Registered but did not testify:* D.M. Arterburn; Russell R. Elley; Walter Hinojosa, Texas AFL-CIO; R.C. Myers; Kamron Saunders; Becky Schneider; Edward L. Schneider; Herb Yambia
- Against — Bill Barton, Texas Railroad Association; David C. Finklea, Greater Houston Partnership; Shawn Glacken, TXU; Scott Hinckley, Union Pacific Railroad; Dennis Kearns, Burlington Northern and Santa Fe Railway; Karen Rae, Capital Metropolitan Transportation Authority; *Registered but did not testify:* Joseph J. Adams and Ron W. Olson, Union Pacific Railroad; Frank W. Calhoun, Burlington Northern and Santa Fe Railway; Phil Cates, Railway Progress Institute; Spencer Chambers, Texas Association of Business and Chambers of Commerce; Linda Sickels, Trinity Industries; Michael Stewart, Texas Aggregates and Concrete Association; Elaine Timbes, Capital Metropolitan Transportation Authority; Joe Bill Watkins, Kansas City Southern Railway; Jack Wilhelm, Exxon Mobil Corp.; James V. Woodrick, Texas Chemical Council
- BACKGROUND:** State law mandates minimum crew sizes for various types of trains operating in Texas. However, federal court cases have been deemed to have preempted these requirements. Consequently, for about 20 years, many freight trains and light engines in Texas have been operating with two-man crews instead of crews of five and three, respectively.

**DIGEST:** CSHB 2606 would mandate crews of not fewer than two (engineer and conductor) on freight, gravel, mixed (various types of cars or commodities), work (rail maintenance), and construction trains and light engines (non-main track). Railroad companies or their receivers could use larger crews. The bill would exempt companies or receivers operating lines less than 40 miles long, rather than less than 20 miles long, as in current law.

Engineers would have to operate control locomotives of freight, gravel, mixed, work, or construction trains any time they were moving. Conductors on such trains could not dismount to perform rail switching and other job duties.

CSHB 2606 would apply to all trains operating in Texas insofar as it did not conflict with federal law. However, it would not apply to trains operating on designated service or repair tracks that were not main tracks and were protected by switch locks, blue flags, or derails.

The bill would take effect September 1, 2001.

**SUPPORTERS SAY:** If the 20-year trend toward smaller train crews is allowed to continue, rail and crew safety, and perhaps even public health, would be compromised.

Texas has about 18,000 railroad grade crossings, the most of any state. According to a 2000 Federal Railroad Administration report, Texas also has one of the nation's worst rail safety records:

- ! most fatalities in the past seven years (second most in 1999);
- ! an average of one public or private crossing incident a day during the past seven years;
- ! highest number of damaged rail cars in five of the past six years;
- ! highest rate of hazardous materials releases in four of the past six years.

Wisconsin has seen the wisdom of mandating two-man crews after one-man crews contributed to serious accidents and derailments on the Wisconsin Central Railroad. That law remains essentially intact.

Freight trains and work days are getting longer. Many trains are more than a mile and a half long. A lone engineer cannot be expected to drive a train and

tend to problems or emergencies that may arise, such as decoupling cars if necessary. Trains also are heavier and trips are lengthening to 200 and 300 miles each. Crews are on call 24 hours a day, seven days a week, and often work 12- to 18-hour shifts. Chronic fatigue from extended hours is a growing problem for crews that size reduction would only exacerbate. Having a conductor on board provides a backup to notify engineers of possible hazards and to help keep them alert and awake.

Trains transport hazardous materials over all of the 12,000 miles of mainline rail in Texas. Most of this rail traffic is along the Gulf Coast, and much of it passes through populous areas. Unlike trucks, trains hauling dangerous cargo have no alternate routes. A decline in safety caused by one-man crews could prove disastrous if it led to a “haz-mat” release in a city or urban area.

Federal preemption does not preclude state regulation of safety issues under the Federal Railroad Safety Act of 1970. In *CSX Transportation Inc. v. Easterwood*, 507 U.S. 658 (1993), the U.S. Supreme Court ruled that states may regulate industries in matters that the federal government has not, and the federal government has not regulated crew size.

The railroad companies admit that one-man crews are a possibility given technological advances. They are not as quick to acknowledge that crew size reduction would be a likely cost-cutting measure to make companies more profitable. If crew size reductions were not being contemplated, the railroad companies would have no reason to oppose this bill. CSHB 2606 would not give unions a new or added benefit. Doubling the mileage exemption for small operators would help ease any burden on several short lines.

OPPONENTS  
SAY:

CSHB 2606 is unnecessary. Even the railroad unions admit that the average crew size has not decreased to one, nor are there any plans to do so. This bill would be a preemptive strike based on the unions’ belief that companies might reduce crew sizes at some future point. On that basis alone, legislative action would be premature at best and ill-advised at worst.

The Legislature should not interfere with ongoing labor-management disputes. Unions are trying to use the state legislative process nationwide to remove a major issue from upcoming contract talks. State legislators should

stay out of the matter and let the parties decide it at the bargaining table or in the federal courts.

At least seven other states have defeated similar bills. Only Wisconsin approved two-man crew limits, but federal courts have restricted the law significantly.

The state has no compelling interest to regulate crew size. Safety regulations should be enforced uniformly by the Federal Railroad Administration. The unions' safety arguments are misleading, because one-man crews are not inherently unsafe. Amtrak, the federally-run passenger train service, operates with single-member crews. Locomotives have automatic alerting devices that can stop trains if engineers fall asleep or become incapacitated. Texas has more grade-crossing accidents simply because it has the most grade crossings (and track) in America. Many hazardous materials incidents are attributable to broken valves and leaking tankcar fixtures, not operational mistakes. Crew size is unrelated to these issues.

Doubling the current 20-mile exemption would help only a few short-line railroads, along with some spur operations by utilities and other companies. Many short lines would be penalized by not being able to operate with one-man crews. Large lines would be hampered in taking advantage of new rail operation technology. All of this would only worsen the state's burgeoning transportation crisis by discouraging rail expansion, especially in underserved areas.

OTHER  
OPPONENTS  
SAY:

If safety is paramount, CSHB 2606 should apply the crew minimum to scenic and excursion trains as well. Human cargo is more valuable than freight.

NOTES:

HB 2606 as filed would have repealed the 20-mile rail line operator exemption as well as exemptions for en-route crew disability, switching crews, and pushing trains out of yards. The committee substitute restored the exemptions and would increase the rail line operator exemption to 40 miles.

The companion bill, SB 855 by Madla, has been referred to the Senate State Affairs Committee. A similar bill in the 76th Legislature, HB 2423 by Alexander, died in the House Calendars Committee.