

Date of Hearing: July 5, 2023

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Tasha Boerner, Chair

SB 757 (Archuleta) – As Amended April 18, 2023

**SENATE VOTE:** 29-8

**SUBJECT:** Railroads: contract crew transportation vehicles

**SUMMARY:** This bill would establish licensing requirements, insurance requirements, and relevant definitions for vehicles used primarily to provide railroad crew transportation. This bill would also establish specified exemptions to the bill's applicability for carpools and railroad employees. Specifically, **this bill:**

- 1) Defines a "Contract crew transportation vehicle" as a motor vehicle designed to transport 15 or fewer people, including the driver, that is owned, leased, operated, or maintained by a person contracting with a railroad corporation or its agents, contractors, subcontractors, vendors, subvendors, secondary vendors, or subcarriers, and used primarily to provide railroad crew transportation.
- 2) Defines a "Crew transportation operator" as the person or entity that operates a contract crew transportation vehicle pursuant to a contract with a railroad corporation or its agents, contractors, subcontractors, vendors, subvendors, secondary vendors, or subcarriers.
- 3) Requires rail crew transportation operators to obtain a "Z" permit prior to operating a contract crew transportation vehicle.
- 4) Prohibits a rail crew transportation operator from subcontracting with a crew transportation operator that does not possess a valid "Z" permit.
- 5) Establishes minimum insurance requirements for rail crew transportation operators by requiring these transportation providers to provide the California Public Utilities Commission (CPUC) with proof that their insurance includes the following:
  - a) At least \$5,000,000 in combined single limit coverage for bodily injury and property damage liability coverage.
  - b) At least \$1,000,000 in uninsured and underinsured motorist coverage.
  - c) Names the crew transportation operator as a named insured or an additional insured.
- 6) Exempts the following from this bill's requirements:
  - a) Carpools, regardless if all persons work for a railroad corporation or not.
  - b) Motor vehicles operated by an employee of a railroad corporation.

**EXISTING LAW:**

- 1) Establishes the “Passenger Charter-Party Carriers’ Act” to, in part, promote carrier and public safety through safety enforcement regulations. (Public Utilities Code §5351 et. seq.)
- 2) Provides various specified exemptions to the applicability of the Passenger Charter-Party Carriers’ Act such as for public transit, transportation of pupils pursuant to the Education Code, common carriers, noncommercial vehicles, taxis, hotel vehicles, etc. (Public Utilities Code §5353)
- 3) Defines a charter-party carrier of passengers as every person engaged in the transportation of persons by motor vehicle for compensation over any public highway in this state. A charter-party carrier of passengers includes any person, corporation, or other entity engaged in the provision of a hired driver service when a rented motor vehicle is being operated by a hired driver. (Public Utilities Code §5360)
- 4) Authorizes the California Public Utilities Commission (CPUC) to supervise and regulate every charter-party carrier of passengers. (Public Utilities Code §5381)
- 5) Requires each charter party carrier of passengers to demonstrate its ability and financial capacity to provide transportation services before the CPUC can issue or renew a license to operate. Existing law prohibits the CPUC from issuing a license to any entity that fails to demonstrate that it meets licensure requirements. Existing law also specifies various criteria companies must meet prior to licensure, including, but not limited to, providing proof of insurance as required by the CPUC. (Public Utilities Code §5372)
- 6) Establishes minimum accident liability insurance requirements for charter-party-carriers and specifies that this insurance must provide adequate protection against liability for property damage, bodily injury, and death resulting from an accident. Existing law authorizes differing insurance requirements for differing seating capacities and it specifies that the insurance requirements for charter-party-carriers may not be less than those set for passenger stage corporations. Existing law specifies that charter-party-carriers holding a “C” certificate for providing transportation incidental to commercial balloon operations, commercial river rafting, or skiing must carry at least \$750,000 per accident in liability insurance. (Public Utilities Code § 5391 et. seq.)
- 7) Requires the CPUC to create the following permit categories for charter-party carriers:
  - a) “A” Certificate: from any point or points within the state to other points in or out of this state, including, but not limited to, the conduction of round-trip sightseeing tour service.
  - b) “B” Certificate: from any point within the territory of origin specified in the certificate to any points in the state, or territory of origin.
  - c) “C” Certificate: services provided incidental to commercial balloon operations, commercial river rafting, or skiing where no additional compensation is provided for the transportation.
  - d) “P” Permit: Carriers using only vehicles under 15-passenger seating capacity.

- e) “S” Permit: Carriers conducting round-trip sightseeing tour service.
- f) “Z” Permit: Specialized carriers, who do not hold themselves out to serve the general public, but only provide service under contract with industrial and business firms, governmental agencies, and private schools or who only transport agricultural workers to and from farms for compensation or who only conduct transportation services, which are incidental to another business. (Public Utilities Code §5383-5384)

**FISCAL EFFECT:** According to the Senate Appropriations Committee, the CPUC estimates one-time costs of \$200,000 and ongoing costs \$100,000 annually (PUC Transportation Reimbursement Account) in order to undertake a new rulemaking for development of regulations specific to railroad crew transportation operations as well as to make modifications to its Transportation Carrier Portal in order to track and monitor the new requirements.

**COMMENTS:**

- 1) ***Author’s statement.*** “Rail workers are often transported from one train to another using third parties contractors, which have a lack of oversight and are often uninsured or underinsured. [Railroad] employees are not covered by workers compensation and have no insurance coverage if an accident is caused by third party transportation. They are covered at work, but not when being transported. There have been many recent incidents where workers weren’t properly covered. Legislation is needed to cover this gap. SB 757 does this by establishing reasonable minimum insurance standards and requiring these drivers operate under a “Z” permit. This is necessary to ensure safety when moving rail workers between sites.”
- 2) ***Existing law covers the issue raised by this bill, but there is not adequate enforcement.*** With limited exemptions, the Passenger Charter-Party Carriers Act applies broadly to every person engaged in the transportation of persons by motor vehicle for compensation over any public highway in this state. While there are limited exemptions to the applicability of existing law for certain forms of transportation, the situation described by this bill – the transportation of railroad crews - does not appear to meet any of those exemptions and the author has not challenged this reading of the existing law. Nonetheless, supporters of this bill raise legitimate concerns about the safety and wellbeing of railroad workers traveling in third-party, unlicensed, or underinsured vehicles between job sites while on the clock. In fact, the transportation of rail employees between jobs sites is a regular occurrence in normal railroad operations so it is of the utmost importance for worker safety to ensure those companies carrying the workers are properly licensed and insured.

Typically, railroads contract with third-party carriers that provide 24-hour, year-round transportation services that pick up rail workers and deliver them to worksites and also transport rail workers home. While some carriers primarily specialize in providing rail crew transportation, other companies may subcontract with these carriers to transport rail crew workers. Railroad employees that are injured on the job while being transported by a third-party carrier have limited recourse against their employer because of existing federal law shielding railroads from liability unless they are directly at-fault. Additionally, railroad employees are not covered by workers' compensation and have limited insurance coverage if an accident is caused by third party transportation. Although the Charter-Party Carrier’s Act clearly is intended to cover passengers being transported, including railroad employees, there

seemingly is not adequate enforcement of existing law if railroad workers are being transported in unlicensed and underinsured vehicles between job sites.

- 3) ***This bill specifically addresses the transportation of rail crews by establishing distinct licensing and insurance requirements.*** Existing law establishes a specific permit, known as a “Z” permit, for specialized transportation providers that do not serve the general public and contract with industrial firms and businesses. To address the specific issues faced by railroad employees being transported between work sites, this bill establishes a definition of a contract crew transportation vehicle and crew transportation operator. Under the provisions of this bill, a crew transportation operator shall not operate a crew transportation vehicle without a valid “Z” permit nor shall they subcontract with another operator that does possess a valid “Z” permit. To the extent that such a vehicle or operator would already be covered by the Charter-Party Carriers Act, this licensing requirement is duplicative of existing law. Unfortunately, if lax enforcement of existing law is indeed the underlying issue, then creating a new licensing requirement may not serve to fully address the legitimate issues raised by the supporters. Nonetheless, additional clarification of existing law may serve as a necessary reminder to the railroads and their third-party contractors about the specific licensing requirements for carrying railroad employee crews. In that regard, this bill could tip the scales towards adequate registration of contract crew transportation vehicles.

In addition to the requirement to obtain a “Z” permit, this bill also establishes specific insurance requirements for crew transportation operators. The insurance requirements proposed by this bill exceed the existing insurance requirements for other “Z” permit holders. Under this bill, crew transportation operators would be required to carry at least \$5 million in liability coverage and at least \$1 million in underinsured and uninsured motorist coverage. The CPUC’s General Order (GO) 115 sets out the minimum insurance requirements for other charter-party carriers, such as “Z” permit holders. The existing insurance minimums are shown in the chart below, compared to the proposed insurance minimums under this bill:

<b>INSURANCE REQUIREMENTS</b>			
<b><i>Vehicle Capacity</i></b>	<b><i>General Order 115</i></b>	<b><i>SB 757 Proposed</i></b>	
16 passengers or more	\$5 million	Not covered by this bill.	
8-15 passengers	\$1.5 million total liability for damages	\$5 million total liability for damager	\$1 million uninsured motorist
7 passengers or fewer	\$750,000 total liability for damages	\$5 million total liability for damages	\$1 million uninsured motorist

The liability and uninsured motorist coverage required by this bill would be the highest coverage minimums for any charter-party carrier vehicles that carry less than 16 passengers. In addition, this bill would require operators to obtain uninsured motorist insurance at \$1 million dollars. Due to the fact that the insurance requirements proposed to be established by this bill are different than existing requirements for “Z” permit holders generally, this bill would likely require the CPUC to update General Order 115 to reflect the bill’s specific insurance requirements for crew transportation operators. While additional insurance potentially serves to better protect railroad employees against uncompensated harm, it’s unclear whether the existing insurance requirements for properly registered vehicles are not

sufficient. Certainly, the basic insurance requirements on an unlicensed vehicle would not be sufficient to cover an accident harming various employees. In addition, protection against uninsured motorists might not be necessary if the operator carries sufficient total liability insurance. Nonetheless, the underlying issue would seem to rest on whether a carrier transporting railroad employees are properly licensed and uninsured; if they are not, the insurance requirements will continue to be disregarded. In conclusion, the likelihood the additional requirements imposed by this bill solve the issue at hand will depend on whether the provisions of this bill are better enforced than existing law.

- 4) *Arguments in support.* Labor organizations in support of this bill argue that the current situation with third-party transportation crews, which may occur in poorly maintained and underinsured vehicles, puts the highly skilled railroad employees at risk. They view SB 757 as a step towards achieving the goal of requiring uniform permitting and licensing.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Labor Federation, Afl-cio  
California State Legislative Board, Sheet Metal, Air, Rail and Transportation Workers -  
Transportation Division (SMART-TD)  
California Teamsters Public Affairs Council  
Cslb-blet-ibt

##### **Opposition**

None on file.

**Analysis Prepared by:** Emilio Perez / C. & C. / (916) 319-2637