

CERTIFICATION OF ENROLLMENT

SENATE BILL 5655

Chapter 380, Laws of 1995

(partial veto)

54th Legislature
1995 Regular Session

RAIL FREIGHT SERVICE PROGRAM

EFFECTIVE DATE: 7/23/95

Passed by the Senate April 23, 1995
YEAS 44 NAYS 1

JOEL PRITCHARD

President of the Senate

Passed by the House April 22, 1995
YEAS 91 NAYS 0

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved May 16, 1995, with the
exception of section 9, which is
vetoed.

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the
Senate of the State of Washington, do
hereby certify that the attached is
SENATE BILL 5655 as passed by the
Senate and the House of
Representatives on the dates hereon
set forth.

MARTY BROWN

Secretary

FILED

May 16, 1995 - 11:30 a.m.

**Secretary of State
State of Washington**

SENATE BILL 5655

AS AMENDED BY THE HOUSE

Passed Legislature - 1995 Regular Session

State of Washington 54th Legislature 1995 Regular Session

By Senators Rasmussen and Sellar

Read first time 01/31/95. Referred to Committee on Transportation.

1 AN ACT Relating to rail freight service; amending RCW 47.76.200,
2 47.76.210, 47.76.220, 47.76.230, 47.76.240, 47.76.250, 47.76.270, and
3 47.76.280; adding a new section to chapter 47.76 RCW; and repealing RCW
4 47.76.260.

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

6 **Sec. 1.** RCW 47.76.200 and 1993 c 224 s 1 are each amended to read
7 as follows:

8 The legislature finds that a balanced multimodal transportation
9 system is required to maintain the state's commitment to the growing
10 mobility needs of its citizens and commerce. The state's freight rail
11 system(~~s~~are)), including branch lines, mainlines, rail corridors,
12 terminals, yards, and equipment, is an important element(~~s~~) of this
13 multimodal system. Washington's economy relies heavily upon the
14 freight rail system to ensure movement of the state's agricultural,
15 chemical, and natural resources and manufactured products to local,
16 national, and international markets and thereby contributes to the
17 economic vitality of the state.

18 Since 1970, Washington has lost (~~nearly~~) over one-third of its
19 (~~five thousand two hundred~~) rail miles to abandonment and

1 bankruptcies(~~(, leaving approximately three thousand four hundred rail~~
2 ~~miles.~~

3 ~~Abandonment of rail lines and rail freight service)).~~ The
4 combination of rail abandonments and rail system capacity constraints
5 may alter the delivery to market of many commodities. In addition, the
6 resultant motor vehicle freight traffic increases the burden on state
7 highways and county roads. In many cases, the cost of maintaining and
8 upgrading the state highways and county roads exceeds the cost of
9 maintaining rail freight service. Thus, the economy of the state will
10 be best served by a policy of maintaining and encouraging a healthy
11 rail freight system by creating ((a)) mechanisms ~~((which keeps))~~ that
12 keep rail freight lines operating if the benefits of the service
13 outweigh the cost.

14 Recognizing the implications of this trend for freight mobility and
15 the state's economic future, the legislature ~~((believes))~~ finds that
16 better freight rail planning, better cooperation to preserve rail
17 lines, and increased financial assistance from the state are necessary
18 to maintain and improve the freight rail system within the state.

19 **Sec. 2.** RCW 47.76.210 and 1990 c 43 s 2 are each amended to read
20 as follows:

21 The Washington state department of transportation shall implement
22 a state freight rail program ~~((for rail coordination, planning, and~~
23 ~~technical assistance))~~ that supports the freight rail service
24 objectives identified in the state's multimodal transportation plan
25 required under chapter 47.06 RCW. The support may be in the form of
26 projects and strategies that support branch lines and light-density
27 lines, provide access to ports, maintain adequate mainline capacity,
28 and preserve or restore rail corridors and infrastructure.

29 **Sec. 3.** RCW 47.76.220 and 1993 c 224 s 2 are each amended to read
30 as follows:

31 (1) The department of transportation shall prepare and periodically
32 update a state rail plan, the objective of which is to identify,
33 evaluate, and encourage essential rail services. The plan shall:

34 (a) Identify and evaluate mainline capacity issues;

35 (b) Identify and evaluate port-to-rail access and congestion
36 issues;

1 (c) Identify and evaluate those rail freight lines that may be
2 abandoned or have recently been abandoned;

3 (~~(b)~~) (d) Quantify the costs and benefits of maintaining rail
4 service on those lines that are likely to be abandoned; (~~and~~

5 ~~(e)~~) (e) Establish priorities for determining which rail lines
6 should receive state support. The priorities should include the
7 anticipated benefits to the state and local economy, the anticipated
8 cost of road and highway improvements necessitated by the abandonment
9 or capacity constraints of the rail line, the likelihood the rail line
10 receiving funding can meet operating costs from freight charges,
11 surcharges on rail traffic, and other funds authorized to be raised by
12 a county or port district, and the impact of abandonment or capacity
13 constraints on changes in energy utilization and air pollution;

14 (f) Identify and describe the state's rail system;

15 (g) Prepare a state freight rail system map;

16 (h) Identify and evaluate rail commodity flows and traffic types;

17 (i) Identify lines and corridors that have been rail banked or
18 preserved; and

19 (j) Identify and evaluate other issues affecting the state's rail
20 traffic.

21 (2) The state rail plan may be prepared in conjunction with the
22 rail plan prepared by the department pursuant to the federal Railroad
23 Revitalization and Regulatory Reform Act.

24 **Sec. 4.** RCW 47.76.230 and 1990 c 43 s 3 are each amended to read
25 as follows:

26 (1) The department of transportation shall continue its
27 responsibility for the development and implementation of the state rail
28 plan and programs, and the utilities and transportation commission
29 shall continue its responsibility for intrastate rates, service, and
30 safety issues.

31 (2) The department of transportation shall maintain an enhanced
32 data file on the rail system. Proprietary annual station traffic data
33 from each railroad and the modal use of major shippers shall be
34 obtained to the extent that such information is available.

35 (3) The department of transportation shall provide technical
36 assistance, upon request, to state agencies and local interests.
37 Technical assistance includes, but is not limited to, the following:

1 (a) (~~Abandonment~~) Rail project cost-benefit analyses(~~, to~~
2 ~~include the public and private costs and benefits of maintaining the~~
3 ~~service, providing alternative service including necessary road~~
4 ~~improvement costs, or of taking no action~~) conducted in accordance
5 with methodologies recommended by the Federal Railroad Administration;

6 (b) Assistance in the formation of county rail districts and port
7 districts; and

8 (c) Feasibility studies for rail service continuation and/or rail
9 service assistance.

10 (4) With funding authorized by the legislature, the department of
11 transportation, in collaboration with the department of community,
12 trade, and economic development, and local economic development
13 agencies, and other interested public and private organizations, shall
14 develop a cooperative process to conduct community and business
15 information programs and to regularly disseminate information on rail
16 matters. (~~The following agencies and jurisdictions shall be involved~~
17 ~~in the process:~~

18 (~~The state departments of community development and trade and~~
19 ~~economic development;~~

20 (~~Local jurisdictions and local economic development agencies;~~
21 ~~and~~

22 (~~Other interested public and private organizations.~~))

23 **Sec. 5.** RCW 47.76.240 and 1993 c 224 s 3 are each amended to read
24 as follows:

25 The state, counties, local communities, ports, railroads, labor,
26 and shippers all benefit from continuation of rail service and should
27 participate in its preservation. Lines (~~which~~) that provide benefits
28 to the state and local jurisdictions, such as avoided roadway costs,
29 reduced traffic congestion, economic development potential,
30 environmental protection, and safety, should be assisted through the
31 joint efforts of the state, local jurisdictions, and the private
32 sector.

33 State funding for rail service (~~or~~), rail preservation, and
34 corridor preservation projects must benefit the state's interests(~~, to~~
35 ~~which include~~). The state's interest is served by reducing public
36 roadway maintenance and repair costs, increasing economic development
37 opportunities, increasing domestic and international trade, preserving
38 jobs, and enhancing safety(~~, and~~). State funding for projects is

1 contingent upon appropriate local jurisdiction and private sector
2 participation and cooperation. Before spending state moneys on
3 projects the department shall seek federal, local, and private funding
4 and participation to the greatest extent possible.

5 (1) The department of transportation shall continue to monitor the
6 status of the state's (~~light density line system~~) mainline and
7 branchline common carrier railroads and preserved rail corridors
8 through the state rail plan and various analyses, and shall seek
9 alternatives to abandonment prior to interstate commerce commission
10 proceedings, where feasible.

11 (2) The utilities and transportation commission shall intervene in
12 interstate commerce commission proceedings on abandonments, when
13 necessary, to protect the state's interest.

14 (3) (~~As conditions warrant, the following criteria shall be used~~
15 ~~for identifying the state's essential rail system:~~

16 ~~(a) Established regional and short-line carriers excluding private~~
17 ~~operations which are not common carriers;~~

18 ~~(b) Former state project lines, which are lines that have been~~
19 ~~studied and have received funds from the state and federal governments;~~

20 ~~(c) Lines serving major agricultural and forest product areas or~~
21 ~~terminals, with such terminals generally being within a fifty mile~~
22 ~~radius of producing areas, and sites associated with commodities~~
23 ~~shipped by rail;~~

24 ~~(d) Lines serving ports, seaports, and navigable river ports;~~

25 ~~(e) Lines serving power plants or energy resources;~~

26 ~~(f) Lines used for passenger service;~~

27 ~~(g) Mainlines connecting to the national and Canadian rail systems;~~

28 ~~(h) Major intermodal service points or hubs; and~~

29 ~~(i) The military's strategic rail network))~~ The department of
30 transportation, in consultation with the Washington state freight rail
31 policy advisory committee, shall establish criteria for evaluating rail
32 projects and corridors of significance to the state.

33 (4) Local jurisdictions may implement rail service preservation
34 projects in the absence of state participation.

35 (5) The department of transportation shall continue to monitor
36 projects for which it provides assistance.

37 **Sec. 6.** RCW 47.76.250 and 1993 c 224 s 4 are each amended to read
38 as follows:

1 (1) The essential rail assistance account is created in the state
2 treasury. Moneys in the account may be appropriated only for the
3 purposes specified in this section.

4 (2) Moneys appropriated from the account to the department of
5 transportation may be used by the department or distributed by the
6 department to cities, county rail districts, counties, economic
7 development councils, and port districts for the purpose of:

8 (a) Acquiring, rebuilding, rehabilitating, or improving (~~(branch)~~)
9 rail lines;

10 (b) Purchasing or rehabilitating railroad equipment necessary to
11 maintain essential rail service;

12 (c) Constructing railroad improvements to mitigate port access or
13 mainline congestion;

14 (d) Construction of (~~(transloading)~~) loading facilities to increase
15 business on light density lines or to mitigate the impacts of
16 abandonment; (~~(or~~

17 ~~(d))~~) (e) Preservation, including operation, of (~~(viable)~~) light
18 density lines, as identified by the Washington state department of
19 transportation, in compliance with this chapter; or

20 (f) Preserving rail corridors for future rail purposes by purchase
21 of rights of way. The department shall first pursue transportation
22 enhancement program funds, available under the federal surface
23 transportation program, to the greatest extent practicable to preserve
24 rail corridors. Purchase of rights of way may include track, bridges,
25 and associated elements, and must meet the following criteria:

26 (i) The right of way has been identified and evaluated in the state
27 rail plan prepared under this chapter;

28 (ii) The right of way may be or has been abandoned; and

29 (iii) The right of way has potential for future rail service.

30 (3) The department or the participating local jurisdiction is
31 responsible for maintaining any right of way acquired under this
32 chapter, including provisions for drainage management, fire and weed
33 control, and liability associated with ownership.

34 (4) Nothing in this section impairs the reversionary rights of
35 abutting landowners, if any, without just compensation.

36 (~~(+3))~~) (5) The department, cities, county rail districts,
37 counties, and port districts may grant franchises to private railroads
38 for the right to operate on lines acquired under this chapter.

1 ~~((4))~~ (6) The department, cities, county rail districts,
2 counties, and port districts may grant trackage rights over rail lines
3 acquired under this chapter.

4 ~~((5))~~ (7) If rail lines or rail rights of way are used by county
5 rail districts, port districts, state agencies, or other public
6 agencies for the purposes of rail operations and are later abandoned,
7 the rail lines or rail rights of way cannot be used for any other
8 purposes without the consent of the underlying fee title holder or
9 reversionary rights holder, or until compensation has been made to the
10 underlying fee title holder or reversionary rights holder.

11 ~~((6) Projects should be prioritized on the basis))~~ (8) The
12 department of transportation shall develop criteria for prioritizing
13 freight rail projects that meet the minimum eligibility requirements
14 for state assistance under RCW 47.76.240. The department shall develop
15 criteria in consultation with the Washington state freight rail policy
16 advisory committee. Project criteria should consider the level of
17 local financial commitment to the project as well as cost/benefit
18 ratio. Counties, local communities, railroads, shippers, and others
19 who benefit from the project should participate financially to the
20 greatest extent practicable.

21 ~~((7))~~ (9) Moneys received by the department from franchise fees,
22 trackage rights fees, and loan payments shall be redeposited in the
23 essential rail assistance account. Repayment of loans made under this
24 section shall occur within a period not longer than fifteen years, as
25 set by the department. The repayment schedule and rate of interest, if
26 any, shall be determined before the distribution of the moneys.

27 ~~((8))~~ (10) The state shall maintain a contingent interest in ~~((a~~
28 ~~line))~~ any equipment, property, rail line, or facility that has
29 outstanding grants or loans. The owner may not use the line as
30 collateral, remove track, bridges, or associated elements for salvage,
31 or use it in any other manner subordinating the state's interest
32 without permission from the department.

33 (11) Moneys distributed under this chapter should be provided as
34 loans wherever practicable. For improvements on or to privately owned
35 railroads, railroad property, or other private property, moneys
36 distributed shall be provided solely as loans.

37 **Sec. 7.** RCW 47.76.270 and 1993 c 224 s 6 are each amended to read
38 as follows:

1 (1) The essential rail banking account is ~~((created in the state~~
2 ~~treasury. Moneys in the account may be spent only after appropriation.~~
3 ~~Expenditures from the account may be used only for the purposes~~
4 ~~specified in this section.~~

5 (2) Moneys in the account may be used by the department to:

6 (a) Acquire rail rights of way;

7 (b) Provide funding to cities, port districts, counties, and county
8 rail districts to acquire rail rights of way; or

9 (c) Provide for essential corridor maintenance including drainage
10 management and fire and weed control when necessary.

11 (3) Use of the moneys pursuant to subsection (2) of this section
12 shall be for rights of way that meet the following criteria:

13 (a) The right of way has been identified and evaluated in the state
14 rail plan prepared pursuant to this chapter;

15 (b) The right of way may be or has been abandoned; and

16 (c) The right of way has potential for future rail service. The
17 department of transportation shall immediately report any expenditure
18 of essential rail banking account funds on rail banking projects to the
19 legislative transportation committee. The report shall include a
20 description of the project, the project's rank in relation to other
21 potential projects, the amount of funds expended, the terms and parties
22 to the transaction, and any other information that the legislative
23 transportation committee may require.

24 (4) The department may also expend funds from the receipt of a
25 donation of funds sufficient to cover the property acquisition and
26 management costs. The department may receive donations of funds for
27 this purpose, which shall be conditioned upon, and made in
28 consideration for the repurchase rights contained in RCW 47.76.280.

29 (5) The department or the participating local jurisdiction shall be
30 responsible for maintaining the right of way, including provisions for
31 drainage management, for fire and weed control, and for liability
32 associated with ownership.

33 (6) Nothing in this section and in RCW 47.76.260 and 47.76.250
34 shall be interpreted or applied so as to impair the reversionary rights
35 of abutting landowners, if any, without just compensation.

36 (7) The department shall develop guidelines for expenditure of
37 essential rail banking funds in the best interest of the state.

38 (8) Moneys loaned under this section must be repaid to the state by
39 the city, port district, county, or county rail district. The

1 repayment must occur within a period not longer than fifteen years, as
2 set by the department, of the distribution of the moneys and deposited
3 in the essential rail banking account. The repayment schedule and rate
4 of interest, if any, must be set at the time of the distribution of the
5 moneys.

6 (9) The state shall maintain a contingent interest in any property
7 that has outstanding grants or loans. The owner may not use the line
8 as collateral, remove track, bridges, and associated elements for
9 salvage, or use the line in any other manner subordinating the state's
10 interest without permission from the department)) merged into the
11 essential rail assistance account created under RCW 47.76.250. Any
12 appropriations made to the essential rail banking account are
13 transferred to the essential rail assistance account, and are subject
14 to the restrictions of that account.

15 **Sec. 8.** RCW 47.76.280 and 1993 c 224 s 7 are each amended to read
16 as follows:

17 The department may sell or lease property acquired under this
18 chapter to a county rail district established under chapter 36.60 RCW,
19 a county, a port district, or any other public or private entity
20 authorized to operate rail service. Any public or private entity
21 ((which)) that originally donated funds to the department under this
22 chapter shall receive credit against the purchase price for the amount
23 donated to the department, less management costs, in the event such
24 public or private entity purchases the property from the department.

25 If no county rail district, county, port district, or other public
26 or private entity authorized to operate rail service purchases or
27 leases the property within six years after its acquisition by the
28 department, the department may sell or lease such property in the
29 manner provided in RCW 47.76.290. Failing this, the department may
30 sell or convey all such property in the manner provided in RCW
31 47.76.300 or 47.76.320.

32 ****NEW SECTION. Sec. 9. A new section is added to chapter 47.76 RCW***
33 ***to read as follows:***

34 ***The department of transportation shall convene a Washington state***
35 ***freight rail policy advisory committee from time to time as necessary***
36 ***to accomplish the purposes of this chapter. The committee shall***
37 ***consist of representatives from large and small railroads, agriculture,***

1 rural regional transportation planning organizations, urban
2 metropolitan planning organizations, select department of
3 transportation regions, the transportation commission, port districts,
4 cities, counties, organized rail labor, and other parties with an
5 interest in the vitality of freight rail. The purpose of this
6 committee will be to provide policy direction and program oversight.
7 *Sec. 9 was vetoed. See message at end of chapter.

8 NEW SECTION. **Sec. 10.** RCW 47.76.260 and 1993 c 224 s 5 & 1990 c
9 43 s 5 are each repealed.

Passed the Senate April 23, 1995.

Passed the House April 22, 1995.

Approved by the Governor May 16, 1995, with the exception of
exception of certain items which were vetoed.

Filed in Office of Secretary of State May 16, 1995.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 9,
3 Senate Bill No. 5655 entitled:

4 "AN ACT Relating to rail freight service;"

5 Senate Bill No. 5655 makes several substantive changes in existing
6 statutes improving the laws that govern the role the state will play in
7 the preservation and development of the freight rail system. This
8 issue is important to a state like Washington which has an increasing
9 economic reliance on rail systems.

10 However, section 9 of Senate Bill No. 5655 creates a new advisory
11 group to be known as the Freight Rail Policy Advisory Committee.
12 Avoiding the unnecessary creation of such committees has been and
13 remains a goal of this administration. Indeed, according to the law
14 passed just a year ago, it is also legislative policy to curtail the
15 proliferation of these groups. Under the law, we must ask, "Could the
16 work of the board or commission be done by an ad hoc committee?" Since
17 the work of the Freight Rail Policy Advisory Committee could be done by
18 a group appointed by and operated under existing authorities of the
19 Department of Transportation, there is no reason to unnecessarily
20 mandate this committee in statute.

21 Since it is important that the Department of Transportation seek
22 guidance from interested parties as it exercises the authorities
23 granted in this bill, I have sought and have received assurances from
24 the department that they will create and will work with an ad hoc
25 committee of this nature.

26 For this reason, I have vetoed section 9 of Senate Bill No. 5655.

27 With the exception of section 9, Senate Bill No. 5655 is approved."