

**SENATE BILL REPORT**

**ESB 5917**

**AS PASSED SENATE, MARCH 15, 1993**

**Brief Description:** Restructuring statutes on state participation in rail freight service.

**SPONSORS:** Senators Drew, Vognild, McAuliffe and M. Rasmussen

**SENATE COMMITTEE ON TRANSPORTATION**

**Majority Report:** Do pass.

Signed by Senators Vognild, Chairman; Loveland, Vice Chairman; Skratek, Vice Chairman; Drew, Haugen, Nelson, Oke, Prentice, Prince, M. Rasmussen, Sheldon, von Reichbauer, and Winsley.

**Staff:** Jeff Doyle (786-7322)

**Hearing Dates:** March 2, 1993

**HOUSE COMMITTEE ON TRANSPORTATION**

**BACKGROUND**

Since 1970, Washington has lost nearly one third of its 5,200 rail miles to bankruptcies and abandonment. The cost of reinstituting freight rail service once the corridor has been abandoned is prohibitive. Thus, once a corridor is lost, it is unlikely rail service will ever again be instituted.

The current rail freight service statute contains two programs: (1) an essential rail assistance program, which is aimed at providing state funds to keep rail service operating; and (2) an essential rail banking program, which is aimed at preserving the rail corridor.

The rail assistance program was created in 1983. It requires the Department of Transportation (DOT) to periodically prepare and update a state freight rail plan. The plan identifies the state's freight rail lines and analyzes those lines that are in jeopardy of losing rail service. The DOT is also directed to provide technical assistance to local governments in forming county rail or port districts, conducting abandonment cost-benefit analyses, and providing information on major freight shippers in the area.

An essential rail assistance account was established to carry out the rail assistance program. Moneys in the account may be used for: (a) acquiring, maintaining, or improving rail lines; (b) operating railroad equipment necessary to maintain essential rail service; (c) construction of transloading facilities; and (d) preservation, including operation, of viable light density lines.

The moneys may be distributed to cities, county rail districts, counties or port districts only in the form of a loan. The statute requires local participation equal to 20 percent of the cost of the project. Repayment must occur within 15 years. The DOT can determine the rate of interest charged.

The essential rail assistance program has been hindered by the restrictive nature of the funding provisions for local rail projects. Most local ports and rail districts seeking state assistance to preserve their freight rail lines lack sufficient resources to meet the required 20 percent local matching funds. Furthermore, these local ports and rail districts are unable to repay the loans. The statute does not give the DOT authority to forgive indebtedness, make outright grants, or waive the minimum 20 percent local participation.

The second program contained in the rail freight service statute is the essential rail banking program. This program was added to the RCW chapter program in 1990. The rail banking program's purpose is to allow the DOT to preserve rail corridors threatened by abandonment for the possible restoration of rail service in the future.

To carry out the rail banking program, an essential rail banking account was established. Much like the rail assistance account, the rail banking account is very restrictive in how funds can be used. Moneys in the account may be used by DOT to (a) purchase rail rights of way; or (b) provide loans to locals so that they may purchase rail rights of way.

The statute does not authorize the DOT to grant funds to local governments, nor does it expressly allow the DOT to purchase and then convey the rights of way to local governments. The provision concerning loans requires a 20 percent match by a local rail or port district, city or county. Repayment must occur within 15 years.

If the DOT wishes to purchase the line, a cost-benefit analysis must first be conducted. Upon purchasing the line, the DOT must attempt to sell the property to a local rail or port district within six years. If no buyer emerges within six years, the statute proscribes a process for the DOT to sell or convey the property.

The essential rail banking program has also been disadvantaged by the restrictive nature of the statutes. Local governments cannot afford to take on the loans to acquire the property themselves; in most cases, they cannot even supply the required 20 percent downpayment. Furthermore, the DOT does not wish to hold title in the rail corridor, since this increases their liability exposure.

**SUMMARY**

The rail freight service statute is modified and reorganized. The Department of Transportation (DOT) is directed to establish criteria to better prioritize rail preservation projects under the rail assistance program. The DOT must also develop guidelines for ranking projects under the rail banking program.

For both the rail assistance and rail banking programs, the DOT is authorized, but no longer required, to provide assistance solely in the form of loans. Grants are permissible, so long as the DOT retains a contingent interest in the rail lines to the extent of the funding they provide. If the DOT chooses to make a loan, the 20 percent downpayment requirement is lifted, but projects are still contingent upon "local participation."

Funds from the essential rail assistance account may be used by the DOT with the same limitations on use imposed upon local governments. The DOT is no longer authorized to use funds to operate rail lines, but may use funds to purchase and rehabilitate the lines. The owner of the rail lines (either the DOT or local governments) can grant trackage rights on the lines.

Funds from the essential rail banking account may be used for corridor maintenance, such as fire and weed control. The DOT is not required to conduct a formal cost-benefit analysis on rail corridors; they must, however, weigh the potential benefits of the rail banking project before committing funds. The DOT must report the expenditure of any funds from the rail banking account immediately to the Legislative Transportation Committee (LTC).

If the DOT purchases a rail corridor with rail banking account moneys, it is no longer required to sell the corridor within six years. The DOT may lease the rail corridor, or it may choose to sell it. Any proceeds of the sale of the property are deposited back into the essential rail banking account. The DOT may convey the corridor.

An evaluation of the rail freight service programs is required in 1996.

The remaining provisions of the statute have been reorganized within the same chapter for internal consistency.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** none requested

**TESTIMONY FOR:**

The changes to the freight rail statutes provide the DOT with more flexibility to structure transactions to better assist local rail and port districts and to implement legislative intent.

**TESTIMONY AGAINST:** None

**TESTIFIED:** Gil Mallery, Dennis Hemblet, Washington State Department of Transportation (pro); Dale Jeremiah, BLE (pro); Tom Retterath, United Transportation Union (pro)

**HOUSE AMENDMENT(S):**

For purposes of federal law 43 U.S.C. 912, bicycle, equestrian and pedestrian paths are included in the definition of "public highways." This qualifies the state and local governments to receive federally-granted railroad rights of way.

The amendment does not affect the rights of private landowners.