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ENGROSSED SUBSTITUTE HOUSE BILL 2832

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State of Washington

54th Legislature

1996 Regular Session

By House Committee on Transportation (originally sponsored by Representatives Chandler, K. Schmidt, Scheuerman and Blanton)

Read first time 02/05/96.

1 AN ACT Relating to authorizing the department of transportation to  
2 manage and control a rail transportation corridor and to enter into  
3 agreements for the purpose of reinstating rail service over state-  
4 owned former railroad rights of way; amending RCW 44.40.020, 43.51.405,  
5 43.51.407, 43.51.409, 43.51.411, 79.08.275, 79.08.277, 79.08.279,  
6 79.08.281, and 79.08.283; adding a new chapter to Title 81 RCW;  
7 providing a contingent expiration date; and declaring an emergency.

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

9 NEW SECTION. **Sec. 1.** The legislature intends to enact policies  
10 that:

11 (1) Maintain and enhance our state's prominence in international  
12 trade;

13 (2) Improve access to regional, national, and international markets  
14 for Washington's agricultural producers and manufacturers;

15 (3) Reduce congestion on the state's system of mainline railroads;

16 (4) Ensure the viability of both conventional and intermodal rail  
17 transportation as an alternative mode, thereby helping to reduce  
18 roadway damage and congestion, improve highway safety, and improve air  
19 quality; and

1 (5) Manage state resources to their greatest utility and in a  
2 manner most beneficial to the state's taxpayers.

3 In order to accomplish these objectives, it is necessary to  
4 consolidate ownership of certain properties currently owned by various  
5 state agencies into a single transportation corridor, to be managed by  
6 the department of transportation. The department shall negotiate  
7 franchises to reinstitute rail service in the corridor. It is the  
8 intent of the legislature that ownership of these properties not be  
9 consolidated unless a franchise agreement for the provision of rail  
10 service is entered into by the department of transportation.

11 NEW SECTION. **Sec. 2.** The definitions set forth in this section  
12 apply throughout this chapter, unless specifically defined otherwise or  
13 the context clearly indicates otherwise.

14 (1) "Milwaukee Road corridor" means lands running between the  
15 Woldale overcrossing at milepost 2064.8 near Ellensburg to Othello at  
16 milepost 1988.5; and lands running between West Warden at milepost  
17 1975.5 to Lind at milepost 1952.6.

18 (2) "Department" means the department of transportation, unless  
19 otherwise specified.

20 NEW SECTION. **Sec. 3.** (1) Ownership of properties defined under  
21 section 2 of this act as the Milwaukee Road corridor are transferred to  
22 the department of transportation. The department of transportation is  
23 responsible for the care, charge, management and control of the  
24 corridor, and the department shall manage the corridor for use in the  
25 transportation of persons and property.

26 (2) The department, after consulting with the legislative  
27 transportation committee to establish parameters for franchise  
28 negotiations (including but not limited to fees, liability,  
29 maintenance, and service levels) may negotiate a franchise agreement  
30 with qualified entities for the construction and maintenance of service  
31 to transport persons or property, or both, in the corridor. The  
32 department may grant a franchise agreement only after approval of the  
33 agreement by the legislative transportation committee.

34 NEW SECTION. **Sec. 4.** In addition to any other provisions deemed  
35 necessary by the department, a franchise agreement to provide rail  
36 service in the corridor must contain provisions:

1 (1) Establishing any combination of franchise fees, tariffs, rents,  
2 profits, rates, lease payments, charges, tolls, or other good and  
3 valuable consideration in exchange for granting the franchise;

4 (2) Indemnifying the state against liability for any incidents or  
5 occurrences resulting from use of the corridor;

6 (3) Requiring adherence to environmental laws, unless specifically  
7 exempted by other provisions of law, in constructing, maintaining, and  
8 operating transportation services in the corridor;

9 (4) Providing for fire and weed control, and general maintenance of  
10 the corridor;

11 (5) Requiring the franchisee to provide, or make provisions for,  
12 adequate local rail service to shippers along the line. The franchise  
13 agreement shall grant the state of Washington legal standing and the  
14 obligation to enforce the provisions for adequate local rail service;

15 (6) Requiring the franchisee, upon reasonable request of any other  
16 rail operator, to provide rail service and interchange freight over  
17 what is commonly known as the Stampede Pass rail line from Cle Elum to  
18 Auburn at commercially reasonable rates; and

19 (7) If any part of the franchise agreement is invalidated by  
20 actions or rulings of the federal surface transportation board or any  
21 court of competent jurisdiction, the remaining portions of the  
22 franchise agreement are not affected.

23 NEW SECTION. **Sec. 5.** A franchise agreement entered into by the  
24 department of transportation is void unless approved by a majority vote  
25 of the legislative transportation committee. The legislative  
26 transportation committee, at a minimum, shall ensure that the agreement  
27 is capable of providing eight million dollars in revenue to be  
28 deposited into the cross-state trail account, established under section  
29 7 of this act, as compensation for the loss of use of the recreational  
30 trail running from Ellensburg to Royal City Junction, and from west  
31 Warden to Lind; and that the agreement contains payment provisions for  
32 use of federally granted trust lands in the transportation corridor.

33 NEW SECTION. **Sec. 6.** Franchise fees or other revenues generated  
34 from the franchise shall be distributed in the following manner:

35 (1) Amounts necessary to compensate for the use of federally  
36 granted trust lands shall be forwarded to the department of natural

1 resources, in trust, to be managed subject to the same restrictions and  
2 limitations applicable to the federally granted trust land property;

3 (2) An amount equal to the department of transportation's actual  
4 cost to administer the corridor and franchise agreement shall be  
5 deposited to the transportation fund for use by subprogram Y-2, the  
6 freight rail office;

7 (3) An amount necessary to amortize the compensation provided in  
8 section 5 of this act over the franchise agreement's first six years  
9 shall be deposited in the cross-state trail account. If no amount is  
10 provided by section 5 of this act, then no revenues shall be  
11 distributed to compensate for loss of use of the recreational trail;

12 (4) Remaining funds shall be deposited into the essential rail  
13 assistance account, created under RCW 47.76.250.

14 NEW SECTION. **Sec. 7.** (1) The parks and recreation commission  
15 shall develop and maintain a cross-state trail facility with  
16 appropriate appurtenances.

17 (2) The cross-state trail account is created in the custody of the  
18 state treasurer. The department of transportation shall deposit  
19 revenues in the amount prescribed under section 6(3) of this act into  
20 the account. Expenditures from the account may be used only for the  
21 acquisition, development, operation, and maintenance of the cross-state  
22 trail. Only the director of the state parks and recreation commission  
23 or the director's designee may authorize expenditures from the account.  
24 The account is subject to the allotment procedures under chapter 43.88  
25 RCW, but no appropriation is required for expenditures.

26 (3) The commission may acquire land from willing sellers for the  
27 cross-state trail, but not by eminent domain.

28 (4) The commission shall adopt rules describing the cross-state  
29 trail.

30 NEW SECTION. **Sec. 8.** The department of natural resources and the  
31 parks and recreation commission may by mutual agreement transfer the  
32 management authority over portions of state-owned land between Lind and  
33 the Idaho border, and other portions of land currently managed by the  
34 department of natural resources, to the parks and recreation commission  
35 without legislative approval.

1       **Sec. 9.** RCW 44.40.020 and 1977 ex.s. c 235 s 5 are each amended to  
2 read as follows:

3       (1) The committee is authorized and directed to continue its  
4 studies and for that purpose shall have the powers set forth in chapter  
5 111, Laws of 1947. The committee is further authorized to make studies  
6 related to bills assigned to the house and senate transportation  
7 committees and such other studies as provided by law. The executive  
8 committee of the committee may assign responsibility for all or part of  
9 the conduct of studies to the house and/or senate transportation  
10 committees.

11       (2) The committee may review and approve franchise agreements  
12 entered into by the department of transportation under section 3(5) of  
13 this act.

14       **Sec. 10.** RCW 43.51.405 and 1989 c 129 s 1 are each amended to read  
15 as follows:

16       Except as provided in sections 1 through 4 of this act, management  
17 control of the portion of the Milwaukee Road corridor, beginning at the  
18 western terminus near Easton and concluding at the west end of the  
19 bridge structure over the Columbia river, which point is located in  
20 section 34, township 16 north, range 23 east, W.M., inclusive of the  
21 northerly spur line therefrom, shall be transferred by the department  
22 of natural resources to the state parks and recreation commission at no  
23 cost to the commission.

24       **Sec. 11.** RCW 43.51.407 and 1987 c 438 s 39 are each amended to  
25 read as follows:

26       Except as provided in sections 1 through 4 of this act, the state  
27 parks and recreation commission shall do the following with respect to  
28 the portion of the Milwaukee Road corridor under its control:

29       (1) Manage the corridor as a recreational trail except when closed  
30 under RCW 43.51.409;

31       (2) Close the corridor to hunting;

32       (3) Close the corridor to all motorized vehicles except: (a)  
33 Emergency or law enforcement vehicles; (b) vehicles necessary for  
34 access to utility lines; and (c) vehicles necessary for maintenance of  
35 the corridor, or construction of the trail;

36       (4) Comply with legally enforceable conditions contained in the  
37 deeds for the corridor;

1 (5) Control weeds under the applicable provisions of chapters  
2 17.04, 17.06, and 17.10 RCW; and

3 (6) Clean and maintain culverts.

4 **Sec. 12.** RCW 43.51.409 and 1989 c 129 s 3 are each amended to read  
5 as follows:

6 Except as provided in sections 1 through 4 of this act, the state  
7 parks and recreation commission may do the following with respect to  
8 the portion of the Milwaukee Road corridor under its control:

9 (1) Enter into agreements to allow the realignment or modification  
10 of public roads, farm crossings, water conveyance facilities, and other  
11 utility crossings;

12 (2) Regulate activities and restrict uses, including, but not  
13 limited to, closing portions of the corridor to reduce fire danger or  
14 protect public safety;

15 (3) Place hazard warning signs and close hazardous structures;

16 (4) Renegotiate deed restrictions upon agreement with affected  
17 parties; and

18 (5) Approve and process the sale or exchange of lands or easements  
19 if such a sale or exchange will not adversely affect the recreational  
20 potential of the corridor; and

21 (6) Manage the portion of the Milwaukee Road corridor lying between  
22 the eastern corporate limits of the city of Kittitas and the eastern  
23 end of the corridor under commission control for recreational access  
24 limited to holders of permits issued by the commission. The commission  
25 shall, for the purpose of issuing permits for corridor use, adopt rules  
26 necessary for the orderly and safe use of the corridor and the  
27 protection of adjoining landowners, which may include restrictions on  
28 the total numbers of permits issued, numbers in a permitted group, and  
29 periods during which the corridor is available for permitted users.  
30 The commission may increase recreational management of this portion of  
31 the corridor and eliminate the permit system as it determines in its  
32 discretion based upon available funding and other resources.

33 **Sec. 13.** RCW 43.51.411 and 1984 c 174 s 5 are each amended to read  
34 as follows:

35 Except as provided in sections 1 through 4 of this act, the state  
36 parks and recreation commission shall identify opportunities and  
37 encourage volunteer work, private contributions, and support from tax-

1 exempt foundations to develop, operate, and maintain the recreation  
2 trail on the portion of the Milwaukee Road under its control.

3 **Sec. 14.** RCW 79.08.275 and 1989 c 129 s 2 are each amended to read  
4 as follows:

5 Except as provided in sections 1 through 4 of this act, the portion  
6 of the Milwaukee Road corridor from the west end of the bridge  
7 structure over the Columbia river, which point is located in section  
8 34, township 16 north, range 23 east, W.M., to the Idaho border  
9 purchased by the state shall be under the management and control of the  
10 department of natural resources.

11 **Sec. 15.** RCW 79.08.277 and 1984 c 174 s 7 are each amended to read  
12 as follows:

13 Except as provided in sections 1 through 4 of this act, the portion  
14 of the Milwaukee Road corridor under management and control of the  
15 department of natural resources shall be open to individuals or  
16 organized groups which obtain permits from the department of natural  
17 resources to travel the corridor for recreational purposes. The  
18 department of natural resources shall, for the purpose of issuing  
19 permits for corridor use, promulgate rules necessary for the orderly  
20 and safe use of the corridor and protection of adjoining landowners.  
21 Permit fees shall be established at a level that will cover costs of  
22 issuance. Upon request of abutting landowners, the department shall  
23 notify the landowners of permits issued for use of the corridor  
24 adjacent to their property.

25 **Sec. 16.** RCW 79.08.279 and 1984 c 174 s 8 are each amended to read  
26 as follows:

27 Except as provided in sections 1 through 4 of this act, the  
28 department of natural resources may do the following with respect to  
29 the portion of the Milwaukee Road corridor under its control:

30 (1) Enter into agreements to allow the realignment or modification  
31 of public roads, farm crossings, water conveyance facilities, and other  
32 utility crossings;

33 (2) Regulate activities and restrict uses, including, but not  
34 limited to, closing portions of the corridor to reduce fire danger or  
35 protect public safety in consultation with local legislative  
36 authorities or fire districts;

- 1 (3) Place hazard warning signs and close hazardous structures;  
2 (4) Renegotiate deed restrictions upon agreement with affected  
3 parties; and  
4 (5) Approve and process the sale or exchange of lands or easements  
5 if (a) such a sale or exchange will not adversely affect the  
6 recreational, transportation or utility potential of the corridor and  
7 (b) the department has not entered into a lease of the property in  
8 accordance with RCW 79.08.281.

9 **Sec. 17.** RCW 79.08.281 and 1984 c 174 s 9 are each amended to read  
10 as follows:

11 Except as provided in sections 1 through 4 of this act:

12 (1) The department of natural resources shall offer to lease, and  
13 shall subsequently lease if a reasonable offer is made, portions of the  
14 Milwaukee Road corridor under its control to the person who owns or  
15 controls the adjoining land for periods of up to ten years commencing  
16 with June 7, 1984. The lessee shall assume the responsibility for fire  
17 protection, weed control, and maintenance of water conveyance  
18 facilities and culverts. The leases shall follow standard department  
19 of natural resources leasing procedures, with the following exceptions:

20 (a) The lessee may restrict public access pursuant to RCW 79.08.277  
21 and 79.08.281(3).

22 (b) The right of renewal shall be to the current lessee if the  
23 lessee still owns or controls the adjoining lands.

24 (c) If two persons own or control opposite sides of the corridor,  
25 each person shall be eligible for equal portions of the available  
26 property.

27 (2) The department of natural resources has the authority to renew  
28 leases in existence on June 7, 1984.

29 (3) The leases shall contain a provision allowing the department of  
30 natural resources to issue permits to travel the corridor for  
31 recreational purposes.

32 (4) Unleased portions of the Milwaukee Road property under this  
33 section shall be managed by the department of natural resources. On  
34 these unleased portions, the department solely shall be responsible for  
35 weed control, culvert, bridge, and other necessary maintenance and fire  
36 protection services. The department shall place hazard warning signs  
37 and close hazardous structures on unleased portions and shall regulate

1 activities and restrict uses, including closing the corridor during  
2 seasons of high fire danger.

3 **Sec. 18.** RCW 79.08.283 and 1984 c 174 s 10 are each amended to  
4 read as follows:

5 Except as provided in sections 1 through 4 of this act, the state,  
6 through the department of natural resources, shall reserve the right to  
7 terminate a lease entered into pursuant to RCW 79.08.281 or modify  
8 authorized uses of the corridor for future recreation, transportation,  
9 or utility uses. If the state elects to terminate the lease, the state  
10 shall provide the lessee with a minimum of six months' notice.

11 NEW SECTION. **Sec. 19.** If the department of transportation does  
12 not enter into a franchise agreement authorized by section 3 of this  
13 act, sections 1 through 21 of this act are null and void.

14 NEW SECTION. **Sec. 20.** Sections 1 through 8 of this act constitute  
15 a new chapter in Title 81 RCW.

16 NEW SECTION. **Sec. 21.** This act is necessary for the immediate  
17 preservation of the public peace, health, or safety, or support of the  
18 state government and its existing public institutions, and shall take  
19 effect immediately.

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