

HOUSE BILL REPORT

HB 2548

As Reported by House Committee On:
Transportation

Title: An act relating to railroad community notice requirements.

Brief Description: Providing for railroad community notice requirements.

Sponsors: Representatives Muri and Kilduff.

Brief History:

Committee Activity:

Transportation: 1/18/18, 1/24/18 [DPS].

Brief Summary of Substitute Bill

- Adopts as law a portion of a current Utilities and Transportation Commission (UTC) administrative rule that requires railroad companies to provide written notice to the UTC of any planned action that may have a significant impact on a community at least 10 days prior to the planned action.
- Requires the UTC to provide written notice to the governing authority of the community on which the planned action will have a significant impact, as well as any other entities the UTC finds it will be of substantial benefit to the community to notify, within one business day of receiving written notice from the railroad company.
- Authorizes the UTC to pursue administrative actions against a railroad company that fails to notify the UTC of a planned action, to the extent permitted by federal law.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Clibborn, Chair; Fey, Vice Chair; Wylie, Vice Chair; Chapman, Gregerson, Irwin, Kloba, Lovick, McBride, Ortiz-Self, Pellicciotti, Riccelli, Rodne, Stambaugh, Tarleton, Valdez and Young.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 6 members: Representatives Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Harmsworth, Assistant Ranking Minority Member; Pike, Shea and Van Werven.

Staff: Jennifer Harris (786-7143).

Background:

State Law and Regulation.

The Utilities and Transportation Commission (UTC) has limited authority to regulate rail carriers in the state. Within its regulatory authority, the UTC has put in place a rule requiring railroad community notice requirements under certain circumstances. Railroad companies are required to notify the governing authority of a community and the UTC in writing of any planned action that may have a significant impact on a community at least 10 days prior to that action. The notice must contain a heading that includes the phrase "important notice" in prominent type and that also includes the following information:

- date the notice is issued;
- clear explanation of the type of planned event;
- specific location of the event;
- estimation of the start and completion date of the event;
- any additional information that will assist the community to plan for the event;
- a railroad company contact person and phone number; and
- a statement that directs those with questions to the UTC and the Federal Railroad Administration, with contact information included.

Advance notice is not required in the case of immediate safety hazards or emergencies, or when maintenance practices are carried out due to an unexpected opportunity to do so.

Federal vs. State Jurisdiction over Rail Carriers.

The Surface Transportation Board, a federal agency charged with resolving railroad rate and service issues, reviewing proposed railroad mergers, and investigating rail service matters of regional and national significance, has jurisdiction over transportation by rail carriers with respect to rates, classifications, rules, practices, routes, services, and facilities. The Surface Transportation Board also has jurisdiction over remedies related to this oversight. These remedies are exclusive and preempt the remedies provided under other federal law and state law.

Under federal law, state and local regulation of rail carriers is permissible when it does not interfere with interstate rail operations, with localities retaining certain police powers to protect public health and safety. Laws of general applicability that incidentally regulate railroads may be permitted under federal law at times, but interference with interstate rail operations is not.

Summary of Substitute Bill:

Current community notice requirements mandated by rule by the UTC are adopted in law with the following requirements removed: (1) that a railroad company must provide notice to both the UTC and the governing authority of the community; and (2) that contact information for the UTC and the Federal Railroad Administration for those with questions be included in the written notice provided. Instead of (1) above, the railroad company is only required to provide notice to the UTC. The UTC is then required to provide written notice to the governing authority of the community on which the planned action will have a significant impact, as well as any other entities the UTC finds it will be of substantial benefit to the community to notify, within one business day of receiving written notice from the railroad company.

"Planned action" is defined to exclude activities undertaken to address immediate safety hazards and emergencies and activities undertaken due to an unexpected opportunity to undertake them. "Significant impacts" is defined to include impacts that may cause significant disruption to the use of a public roadway or that are likely to result in a high level of noise sustained for a significant period of time in populated areas that is likely to interfere with people's daily activities.

To the extent permitted under federal law, the UTC is authorized to pursue administrative actions against a railroad company that fails to notify the governing authority of a community and the UTC of a planned action. If permitted by federal law, such action is authorized to include issuing defect notices to railroad companies, reports and recommendations to the Federal Railroad Administration, warnings, sanctions, and penalty assessments.

Substitute Bill Compared to Original Bill:

The substitute bill defines "planned action" to exclude activities undertaken to address immediate safety hazards and emergencies and activities undertaken due to an unexpected opportunity to undertake them. It defines "significant impacts" to include impacts that may cause significant disruption to the use of a public roadway or that are likely to result in a high level of noise sustained for a significant period of time in populated areas that is likely to interfere with people's daily activities.

The substitute bill also replaces the requirement that a railroad company must provide notice to both the UTC and the governing authority of the community with a requirement that the railroad company only provide notice to the UTC, and requires that the UTC provide written notice to the governing authority of the community on which the planned action will have a significant impact, as well as any other entities the UTC finds it will be of substantial benefit to the community to notify, within one business day of receiving written notice from the railroad company.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill has been brought forward to prevent what occurred in the City of Steilacoom this past summer from happening again. It is a straight-forward bill. Very early in the morning, railroad work began using pile drivers. No advance notice was provided to the city that this work was going to occur. In order for local government entities to inform and prepare their residents about railroad work to be done near them, prior notification from the railroads is needed for projects that will have a significant impact on a community (not for normal maintenance activities). The Washington State Department of Transportation, Pierce County, and Joint Base Lewis-McChord all provide the City of Steilacoom with notice of activities to be conducted in Steilacoom that will impact the city. The aim is not to stop the railroads from doing this work, but to receive advance notice to prepare for it.

(Opposed) This bill is vague, ambiguous, hard to understand, and will be difficult to enforce. The jurisdictional divisions between the state and federal government is unclear. The UTC regulations only apply to railroad crossings, and it is unclear that the UTC has the authority to implement the bill. The Surface Transportation Board has exclusive jurisdiction over railroad rules and practices. There are many limitations placed on when railroads can do this work. In the case of the City of Steilacoom, early morning work only occurred on a few days when it could not otherwise be avoided. Under this bill, a railroad company would not have time to provide notice when it needs to address immediate safety issues.

Persons Testifying: (In support) Representative Muri, prime sponsor; and Ron Lucas, City of Steilacoom.

(Opposed) Bill Stauffacher, Burlington Northern Santa Fe Railroad.

Persons Signed In To Testify But Not Testifying: None.