

# SENATE BILL REPORT

## SB 5023

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As of January 22, 2009

**Title:** An act relating to fire suppression regulation.

**Brief Description:** Regulating fire suppression.

**Sponsors:** Senators Honeyford and Swecker.

**Brief History:**

**Committee Activity:** Transportation: 1/22/09.

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### SENATE COMMITTEE ON TRANSPORTATION

**Staff:** Dory Nicpon (786-7321)

**Background:** In August 2007 a locomotive sparked a series of fires along a rail line in Spokane County. The fires destroyed a home and personal property, and damaged soil and wildlife habitat. In September 2007 rail grinding activities along the Columbia River started a fire that destroyed several homes.

Federal law preempts state regulation of many aspects of railroad operations. Although the Federal Railroad Safety Act (FRSA) preempts state authority to adopt safety rules, states may adopt railroad regulations if federal law has not prescribed a regulation or issued an order covering the subject matter of the state requirement. While current federal law does not specifically preempt state laws governing wildfire prevention practices of railroads, any such state regulation may not interfere with the FRSA, or other federal laws such as the Locomotive Inspection Act or the Safety Appliance Act.

The Utilities and Transportation Commission (UTC) is statutorily granted limited regulatory authority over specified rail safety matters.

**Summary of Bill:** The UTC must establish regulations to minimize the risk of fire resulting from railroad operations or maintenance.

Each violation of the regulations established by the UTC is punishable by a fine equal to the greater of \$1,000 or the amount of damages cause by fire resulting from the violation. The commission determines the actual damages and may consult with federal, state, or local agencies to assess damages.

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*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.*

**Appropriation:** None.

**Fiscal Note:** Requested on January 14, 2009.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Fires caused by certain railroad activities frequently result in the destruction of homes, property, and habitat. The railroad company's liability for the damage caused does not cover the full cost of the inconvenience and loss incurred by property owners or state and local agencies affected by the fires. Within the parameters of federal regulations, the state should promulgate rules to provide additional incentives for railroads to act responsibly.

CON: The railroads are already guided by federal regulations pertaining to railroad safety, as well as regulations like those promulgated by the Department of Natural Resources (DNR) that address state owned land. The Burlington Northern Santa Fe Railway (BNSF) has procedures in place to govern its rail grinding activities, and pays claims when it is responsible for damage. In one case, BNSF is suing a subcontractor for its failure to adhere to BNSF procedures for rail grinding. BNSF is willing to discuss reasonable ways to address the concerns of stakeholders and the state.

**Persons Testifying:** PRO: Senator Honeyford, prime sponsor; Tad McGeer, Aerovel; Paul Pearce, Skamania County Commissioner; Bill Clarke, Washington Public Utility Districts Association; Joseph Shramek, DNR; Dave Danner, UTC.

CON: Terry Finn, BNSF.