

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 5917

53rd Legislature
1993 Regular Session

Passed by the Senate April 19, 1993
YEAS 44 NAYS 0

President of the Senate

Passed by the House April 8, 1993
YEAS 98 NAYS 0

**Speaker of the
House of Representatives**

Approved

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 **ENGROSSED SENATE BILL 5917** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 5917

AS AMENDED BY THE HOUSE

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

By Senators Drew, Vognild, McAuliffe and M. Rasmussen

Read first time 02/25/93. Referred to Committee on Transportation.

1 AN ACT Relating to rail freight service; amending RCW 47.76.010,
2 47.76.020, 47.76.130, 47.76.030, 47.76.140, 47.76.160, 47.76.040,
3 47.76.050, 47.76.060, 47.76.070, 47.76.080, 47.76.090, and 47.76.170;
4 adding a new section to chapter 47.30 RCW; adding new sections to
5 chapter 47.76 RCW; recodifying RCW 47.76.010, 47.76.110, 47.76.020,
6 47.76.120, 47.76.130, 47.76.030, 47.76.140, 47.76.160, 47.76.040,
7 47.76.050, 47.76.060, 47.76.070, 47.76.080, 47.76.090, 47.76.170, and
8 47.76.190; and repealing RCW 47.76.100 and 47.76.150.

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

10 **Sec. 1.** RCW 47.76.010 and 1983 c 303 s 4 are each amended to read
11 as follows:

12 The legislature finds that ((the)) a balanced multimodal
13 transportation system is required to maintain the state's commitment to
14 the growing mobility needs of its citizens and commerce. Freight rail
15 systems are important elements of this multimodal system. Washington's
16 economy relies heavily upon the freight rail system to ensure movement
17 of the state's agricultural, chemical, and natural resource products to
18 local, national, and international markets. Since 1970, Washington has
19 lost nearly one-third of its five thousand two hundred rail miles to

1 abandonment and bankruptcies, leaving approximately three thousand four
2 hundred rail miles.

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

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

17 **Sec. 2.** RCW 47.76.020 and 1985 c 432 s 1 are each amended to read
18 as follows:

19 (1) The department of transportation shall prepare and periodically
20 update a state rail plan, the objective of which is to identify,
21 evaluate, and encourage essential rail service. The plan shall:

22 (a) Identify and evaluate those rail freight lines that may be
23 abandoned or have recently been abandoned;

24 (b) Quantify the costs and benefits of maintaining rail service on
25 those lines that are likely to be abandoned (~~and the acquisition of~~
26 ~~right of way for the eventual restoration of service on lines recently~~
27 ~~abandoned)); and~~

28 (c) Establish priorities for determining which rail lines should
29 receive state support. The priorities should include the anticipated
30 benefits to the state and local economy, the anticipated cost of road
31 and highway improvements necessitated by the abandonment of the rail
32 line, the likelihood the rail line receiving funding can meet operating
33 costs from freight charges, surcharges on rail traffic, and other funds
34 authorized to be raised by a county or port district, and the impact of
35 abandonment on changes in energy utilization and air pollution.

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

1 **Sec. 3.** RCW 47.76.130 and 1990 c 43 s 4 are each amended to read
2 as follows:

3 The state, counties, local communities, railroads, labor, and
4 shippers all benefit from continuation of rail service and should
5 participate in its preservation. Lines which provide benefits to the
6 state and local jurisdictions, such as avoided roadway costs, reduced
7 traffic congestion, economic development potential, environmental
8 protection, and safety, should be assisted through the joint efforts of
9 the state, local jurisdictions, and the private sector.

10 State funding for rail service or corridor preservation must
11 benefit the state's interests, which include reducing public roadway
12 maintenance and repair costs, increasing economic development
13 opportunities, preserving jobs, and enhancing safety, and is contingent
14 upon appropriate local participation. Before spending state moneys on
15 projects the department shall seek federal, local, and private funding
16 participation to the greatest extent possible.

17 (1) The department of transportation shall continue to monitor the
18 status of the state's light density line system through the state rail
19 plan and various analyses, and shall seek alternatives to abandonment
20 prior to interstate commerce commission proceedings, where feasible.

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

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

26 (a) Established regional and short-line carriers excluding private
27 operations which are not common carriers;

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

30 (c) Lines serving major agricultural and forest product areas or
31 terminals, with such terminals generally being within a fifty-mile
32 radius of producing areas, and sites associated with commodities
33 shipped by rail;

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

35 (e) Lines serving power plants or energy resources;

36 (f) Lines used for passenger service;

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

38 (h) Major intermodal service points or hubs; and

39 (i) The military's strategic rail network.

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

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

5 **Sec. 4.** RCW 47.76.030 and 1991 sp.s. c 13 s 22 are each amended to
6 read as follows:

7 (1) The essential rail assistance account is (~~hereby~~) created in
8 the state treasury. Moneys in the account may be appropriated only for
9 the purposes specified in this section.

10 (2) Moneys appropriated from the account to the department of
11 transportation may be used by the department or distributed by the
12 department to (~~first-class~~) cities, county rail districts, counties,
13 and port districts for the purpose of:

14 (a) Acquiring, (~~maintaining~~) rebuilding, rehabilitating, or
15 improving branch rail lines;

16 (b) (~~Operating~~) Purchasing or rehabilitating railroad equipment
17 necessary to maintain essential rail service;

18 (c) Construction of transloading facilities to increase business on
19 light density lines or to mitigate the impacts of abandonment; or

20 (d) Preservation, including operation, of viable light density
21 lines, as identified by the Washington state department of
22 transportation, in compliance with this chapter.

23 (3) (~~First-class~~) The department, cities, county rail districts,
24 counties, and port districts may grant franchises to private railroads
25 for the right to operate on lines acquired(~~, repaired, or improved~~)
26 under this chapter.

27 (4) The department, cities, county rail districts, counties, and
28 port districts may grant trackage rights over rail lines acquired under
29 this chapter.

30 (5) If rail lines or rail rights of way are used by county rail
31 districts, port districts, state agencies, or other public agencies for
32 the purposes of rail operations and are later abandoned, the rail lines
33 or rail rights of way cannot be used for any other purposes without the
34 consent of the underlying fee title holder or reversionary rights
35 holder, or compensation has been made to the underlying fee title
36 holder or reversionary rights holder.

37 (~~(5) Moneys distributed under subsection (2) of this section shall~~
38 ~~not exceed eighty percent of the cost of the service or project~~

1 undertaken. At least twenty percent of the cost shall be provided by
2 the first class city, county, port district, or other local sources.

3 ~~(6) The amount distributed under this section shall be repaid to~~
4 ~~the state by the first class city, county rail district, county, or~~
5 ~~port district. The)) (6) Projects should be prioritized on the basis~~
6 of local financial commitment to the project as well as cost/benefit
7 ratio. Counties, local communities, railroads, shippers, and others
8 who benefit from the project should participate financially.

9 (7) Moneys received by the department from franchise fees, trackage
10 rights fees, and loan payments shall be redeposited in the essential
11 rail assistance account. Repayment of loans made under this section
12 shall occur within a period not longer than fifteen years, as set by
13 the department~~((, of the distribution of the moneys and shall be~~
14 ~~deposited in the essential rail assistance account)).~~ The repayment
15 schedule and rate of interest, if any, shall be ~~((set at the time of))~~
16 determined before the distribution of the moneys.

17 (8) The state shall maintain a contingent interest in a line that
18 has outstanding grants or loans. The owner may not use the line as
19 collateral, remove track, bridges, or associated elements for salvage,
20 or use it in any other manner subordinating the state's interest
21 without permission from the department.

22 **Sec. 5.** RCW 47.76.140 and 1990 c 43 s 5 are each amended to read
23 as follows:

24 In rail banking situations where it is not practicable to implement
25 or continue freight rail service operations until some future date and
26 the line's right of way is available for ~~((purchase and/or))~~
27 acquisition or meets the criteria of this chapter ((47.76 RCW)):

28 (1) The department of transportation shall ~~((preserve))~~ identify
29 and evaluate rail corridors ((for future rail service by purchasing the
30 rights of way with funds specifically appropriated from the essential
31 rail banking account created in RCW 47.76.160)) of state-wide
32 significance in the state rail plan.

33 (2) The department shall preserve corridors of state-wide
34 significance by acquiring the rights of way with funds specifically
35 appropriated from the essential rail banking account created in RCW
36 47.76.160 (as recodified by this act).

37 (3) Acquisition of rights of way may also include track, bridges,
38 and associated elements.

1 (~~(3) All corridors purchased under the rail bank program shall be~~
2 ~~identified by the department of transportation.~~)

3 (4) All corridors acquired by governmental entities (~~by donation~~
4 ~~or reversion~~) for future rail use shall be identified in the rail bank
5 program.

6 (5) Any rail rights of way acquired with state money will be for
7 present or future rail purposes and can only be used for other purposes
8 with the consent of the Washington state department of transportation
9 and the consent of the underlying fee title holder or reversionary
10 rights holder, or if compensation has been made to the underlying fee
11 title holder or reversionary rights holder.

12 **Sec. 6.** RCW 47.76.160 and 1991 sp.s. c 13 s 120 are each amended
13 to read as follows:

14 (1) The essential rail banking account is created in the state
15 treasury. Moneys in the account may be spent only after appropriation.
16 Expenditures from the account may be used only for the purposes
17 specified in this section.

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

19 (a) (~~Purchase unused~~) Acquire rail rights of way; (~~or~~)

20 (b) Provide (~~up to eighty percent of the~~) funding (~~through~~
21 ~~loans~~) to (~~first class~~) cities, port districts, counties, and county
22 rail districts to (~~purchase unused~~) acquire rail rights of way; or

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

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

27 (a) The right of way has been identified(~~(-)~~) and evaluated(~~(- and~~
28 ~~analyzed)~~) in the state rail plan prepared pursuant to this chapter;

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

30 (c) The right of way has potential for future rail service(~~(- and~~

31 ~~(d) Reestablishment of rail service would benefit the state of~~
32 ~~Washington; and this benefit shall be based on the public and private~~
33 ~~costs and benefits of reestablishing the service compared with~~
34 ~~alternative service including necessary road improvement costs, or of~~
35 ~~taking no action.~~

36 Funds in the account may be expended for this purpose only with
37 legislative appropriation. Funds for acquisition of any line shall be
38 expended only after obtaining the approval of the legislative

1 ~~transportation committee~~). The department of transportation shall
2 immediately report any expenditure of essential rail banking account
3 funds on rail banking projects to the legislative transportation
4 committee. The report shall include a description of the project, the
5 project's rank in relation to other potential projects, the amount of
6 funds expended, the terms and parties to the transaction, and any other
7 information that the legislative transportation committee may require.

8 (4) The department may also expend funds from the receipt of a
9 donation of funds sufficient to cover the property acquisition and
10 management costs. The department may receive donations of funds for
11 this purpose, which shall be conditioned upon, and made in
12 consideration for the repurchase rights contained in RCW 47.76.040 (as
13 recodified by this act).

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

18 (6) Nothing in this section and in RCW 47.76.140 and 47.76.030 (as
19 recodified by this act) shall be interpreted or applied so as to impair
20 the reversionary rights of abutting landowners, if any, without just
21 compensation.

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

24 (8) Moneys loaned under this section must be repaid to the state by
25 the city, port district, county, or county rail district. The
26 repayment must occur within a period not longer than fifteen years, as
27 set by the department, of the distribution of the moneys and deposited
28 in the essential rail banking account. The repayment schedule and rate
29 of interest, if any, must be set at the time of the distribution of the
30 moneys.

31 (9) The state shall maintain a contingent interest in any property
32 that has outstanding grants or loans. The owner may not use the line
33 as collateral, remove track, bridges, and associated elements for
34 salvage, or use the line in any other manner subordinating the state's
35 interest without permission from the department.

36 **Sec. 7.** RCW 47.76.040 and 1991 sp.s. c 15 s 61 are each amended to
37 read as follows:

1 The department (~~shall~~) may sell or lease property acquired under
2 (~~RCW 47.76.140~~) this chapter to a county rail district established
3 under chapter 36.60 RCW, a county, a port district, or any other public
4 or private entity authorized to operate rail service. Any public or
5 private entity which originally donated funds to the department
6 (~~pursuant to RCW 47.76.140~~) under this chapter shall receive credit
7 against the purchase price for the amount donated to the department,
8 less management costs, in the event such public or private entity
9 purchases the property from the department.

10 If no county rail district, county, port district, or other public
11 or private entity authorized to operate rail service (~~offers to~~
12 ~~purchase such~~) purchases or leases the property within six years after
13 its acquisition by the department, the department may sell or lease
14 such property in the manner provided in RCW 47.76.050 (as recodified by
15 this act). Failing this, the department may sell or convey all such
16 property in the manner provided in RCW 47.76.060 or 47.76.080 (as
17 recodified by this act).

18 **Sec. 8.** RCW 47.76.050 and 1991 sp.s. c 15 s 62 are each amended to
19 read as follows:

20 (1) If real property acquired by the department under (~~RCW~~
21 ~~47.76.140~~) this chapter is not sold to a public or private entity
22 authorized to operate rail service within six years of its acquisition
23 by the department, the department may sell or lease the property at
24 fair market value to any of the following governmental entities or
25 persons:

- 26 (a) Any other state agency;
- 27 (b) The city or county in which the property is situated;
- 28 (c) Any other municipal corporation;
- 29 (d) The former owner, heir, or successor of the property from whom
30 the property was acquired;
- 31 (e) Any abutting private owner or owners.

32 (2) Notice of intention to sell under this section shall be given
33 by publication in one or more newspapers of general circulation in the
34 area in which the property is situated not less than thirty days prior
35 to the intended date of sale.

36 (3) Sales to purchasers may, at the department's option, be for
37 cash or by real estate contract.

1 (4) Conveyances made under this section shall be by deed executed
2 by the secretary of transportation and shall be duly acknowledged.

3 (5) All moneys received under this section shall be deposited in
4 the essential rail ((assistance)) banking account of the general fund.

5 **Sec. 9.** RCW 47.76.060 and 1991 sp.s. c 15 s 63 are each amended to
6 read as follows:

7 If real property acquired by the department under ((RCW 47.76.140))
8 this chapter is not sold to a public or private entity authorized to
9 operate rail service within six years of its acquisition by the
10 department, the department may transfer and convey the property to the
11 United States, its agencies or instrumentalities, to any other state
12 agency, or to any county or city or port district of this state when,
13 in the judgment of the secretary, the transfer and conveyance is
14 consistent with the public interest. Whenever the secretary makes an
15 agreement for any such transfer or conveyance, the secretary shall
16 execute and deliver to the grantee a deed of conveyance, easement, or
17 other instrument, duly acknowledged, as necessary to fulfill the terms
18 of the agreement. All moneys paid to the state of Washington under
19 this section shall be deposited in the essential rail ((assistance))
20 banking account of the general fund.

21 **Sec. 10.** RCW 47.76.070 and 1991 sp.s. c 15 s 64 are each amended
22 to read as follows:

23 The department is authorized subject to the provisions and
24 requirements of zoning ordinances of political subdivisions of
25 government, to rent or lease any lands acquired under ((RCW 47.76.140))
26 this chapter, upon such terms and conditions as the department
27 determines.

28 **Sec. 11.** RCW 47.76.080 and 1991 sp.s. c 15 s 65 are each amended
29 to read as follows:

30 (1) If real property acquired by the department under ((RCW
31 47.76.140)) this chapter is not sold, conveyed, or leased to a public
32 or private entity ((authorized to operate rail service)) within six
33 years of its acquisition by the department, the department may, in its
34 discretion, sell the property at public auction in accordance with
35 subsections (2) through (5) of this section.

1 (2) The department shall first give notice of the sale by
2 publication on the same day of the week for two consecutive weeks, with
3 the first publication at least two weeks before the date of the
4 auction, in a legal newspaper of general circulation in the area where
5 the property to be sold is located. The notice shall be placed in both
6 the legal notices section and the real estate classified section of the
7 newspaper. The notice shall contain a description of the property, the
8 time and place of the auction, and the terms of the sale. The sale may
9 be for cash or by real estate contract.

10 (3) In accordance with the terms set forth in the notice, the
11 department shall sell the property at the public auction to the highest
12 and best bidder if the bid is equal to or higher than the appraised
13 fair market value of the property.

14 (4) If no bids are received at the auction or if all bids are
15 rejected, the department may, in its discretion, enter into
16 negotiations for the sale of the property or may list the property with
17 a licensed real estate broker. No property may be sold by negotiations
18 or through a broker for less than the property's appraised fair market
19 value. Any offer to purchase real property under this subsection shall
20 be in writing and may be rejected at any time before written acceptance
21 by the department.

22 (5) Conveyances made under this section shall be by deed executed
23 by the secretary of transportation and shall be duly acknowledged.

24 (6) All moneys received under this section shall be deposited in
25 the essential rail ((assistance)) banking account of the general fund.

26 **Sec. 12.** RCW 47.76.090 and 1991 sp.s. c 15 s 66 are each amended
27 to read as follows:

28 Transfers of ownership of property acquired under ((RCW 47.76.140))
29 this chapter are exempt from chapters 8.25 and 8.26 RCW.

30 **Sec. 13.** RCW 47.76.170 and 1990 c 43 s 8 are each amended to read
31 as follows:

32 The department shall evaluate the state freight rail program
33 performance at the end of six years (in 1996) with respect to past and
34 current conditions and future needs. The results of this evaluation
35 shall be presented to the legislative transportation committee.

1 NEW SECTION. **Sec. 14.** A new section is added to chapter 47.30 RCW
2 to read as follows:

3 For purposes of 43 U.S.C. 912 and related provisions of federal law
4 involving federally granted railroad rights of way, a bicycle,
5 equestrian or pedestrian path shall be deemed to be a public highway
6 under the laws of the state of Washington.

7 NEW SECTION. **Sec. 15.** RCW 47.76.010, 47.76.110, 47.76.020,
8 47.76.120, 47.76.130, 47.76.030, 47.76.140, 47.76.160, 47.76.040,
9 47.76.050, 47.76.060, 47.76.070, 47.76.080, 47.76.090, 47.76.170, and
10 47.76.190, whether or not amended by this act, shall be recodified
11 within chapter 47.76 RCW in that order.

12 NEW SECTION. **Sec. 16.** The following acts or parts of acts are
13 each repealed:

14 (1) RCW 47.76.100 and 1990 c 43 s 1; and

15 (2) RCW 47.76.150 and 1990 c 43 s 6.

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