

# HOUSE BILL REPORT

## HB 2478

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### As Reported By House Committee On:

Natural Resources

**Title:** An act relating to railroad corridors acquired by state agencies for trail use.

**Brief Description:** Establishing minimum management and operation requirements for railroad corridors acquired for trail use.

**Sponsors:** Representatives Schoesler, Honeyford, Sump and Sheahan.

### Brief History:

#### Committee Activity:

Natural Resources: 1/30/98, 2/5/98 [DPS].

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## HOUSE COMMITTEE ON NATURAL RESOURCES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Buck, Chairman; Sump, Vice Chairman; Thompson, Vice Chairman; Butler, Assistant Ranking Minority Member; Alexander; Anderson; Chandler; Hatfield and Pennington.

**Minority Report:** Do not pass. Signed by 1 member: Representative Regala, Ranking Minority Member.

**Staff:** Linda Byers (786-7129).

**Background:** A number of different trails in Washington result from conversions of railroad corridors no longer used by the railroads. Such trails are owned or managed by local governments, state or federal agencies, or private conservancy groups, and the trails vary in length from one mile to over 200 miles.

Railroads used their corridors under several different legal arrangements with regard to the land underlying the tracks. In some cases, the railroad owned the land in the rail corridor. In other cases, the railroad held an easement or a right-of-way over the property for the construction, operation, and maintenance of a railroad. In these latter cases, the abutting property owner anticipates that the corridor will revert to that property owner once the railroad use is abandoned. Trail ownership of converted rail corridors varies as well. In some cases, the trail manager simply owns the property. Another possibility for trail ownership results from a 1983 amendment to the Federal National

Trails System Act. Under that amended act, under certain conditions, interim trail use of the rail corridor is not considered an abandonment of the use of the rights-of-way for railroad purposes. To avoid a finding of abandonment, a state agency, a local government, or a qualified private organization must indicate that it is prepared to assume management responsibility and legal liability for the rights-of-way, and the interim trail use must be subject to restoration or reconstruction of the corridor for railroad purposes.

Prior to passage of the 1983 amendment to the federal law, the state purchased approximately 213 miles of the Milwaukee Road railroad corridor for use as a trail. The Legislature assigned management responsibility for the western part of the corridor to the State Parks and Recreation Commission (State Parks) and management responsibility for the eastern part of the corridor to the Department of Natural Resources (DNR). State Parks also owns three trails acquired under the provisions of the National Trails System Act: the 133-mile Pasco to Fish Lake Trail, the 56.2-mile Chehalis to South Bend Trail, and the 31-mile Klickitat Trail.

**Summary of Substitute Bill:** A new chapter is created to guide state agency management of railroad corridors acquired under the National Trails System Act. The purpose of the new chapter is to establish minimum requirements for the management and operation of such corridors in order to protect privately owned property. A state agency that has acquired a railroad corridor under the federal act must manage and operate the corridor in compliance with a set of minimum requirements, to the extent that funds are specifically appropriated for this purpose. The minimum management requirements are as follows: (1) control of noxious weeds, (2) maintenance, reconstruction, or replacement of livestock control fences or payment of the costs for the fencing, (3) closure during hunting season of trails that are not yet developed and, for those trails that have been developed, a prohibition on hunting on and from the trail and posting of signs to warn trail users not to trespass on private property, and (4) regular patrol of the trail and enforcement of state laws and rules that, at a minimum, prohibit littering, vandalism, disturbing livestock, lighting fires in nondesignated areas, illegal dumping, motorized vehicle use, fireworks, and camping and picnicking in nondesignated areas. The state agency must post informational signs at each trail entrance to warn trail users that the failure to obey state law and the agency's rules may result in a citation or expulsion from the trail.

State agencies must develop long-term implementation plans and budgets for each railroad corridor to meet these minimum management requirements. The state agency must develop each plan and budget in consultation with an advisory committee composed of interested adjacent property owners and representatives from trail user groups. Each agency's plans and long-term budgets must be submitted to the Legislature by January 1, 1999.

A person who owns property adjacent to the railroad corridor may register a formal complaint with the state agency managing the corridor regarding the agency's compliance with the minimum management requirements. The complaint must be in writing and may include a request that the violation be corrected. Within 15 days of receiving the complaint, the state agency must respond in writing to acknowledge receipt of the complaint and must do one of the following three things: (1) provide the complainant with the agency's plan for meeting the requirement, (2) documentation of its compliance with the requirement if the agency believes it is in compliance, or (3) if the agency believes that additional time is needed to investigate the complaint, the agency will provide to the complainant an estimate of the amount of time the agency will require in order to respond. In the latter case, the agency must respond within 45 days of receiving the complaint.

Beginning July 1, 2001, an adjacent property owner who has filed a formal complaint with a state agency may file an action in superior court requesting a declaration of whether the state agency managing the railroad corridor is meeting the minimum management requirements. If the court determines that the state agency is not meeting the minimum management requirements, the court must issue an order to the state agency to undertake expeditiously the action necessary to bring the agency into compliance. The agency must close the portion of the trail where the court had determined the agency is not meeting the minimum management requirements until the agency is meeting those requirements.

The same provisions described here that apply to railroad corridors acquired by a state agency under the National Trails System Act also apply to the Milwaukee Road corridor, both the segment managed by State Parks and the segment managed by the Department of Natural Resources.

For the portion of the Milwaukee Road corridor managed by the Department of Natural Resources, the department may not issue use permits for the trail during hunting season, except that the department will allow use of the trail as access to Department of Fish and Wildlife property that immediately borders the corridor. When a state agency has closed an undeveloped trail during hunting season, that agency shall also allow access to Department of Fish and Wildlife property that immediately borders the corridor. For those trails or parts of trails that are developed, people may use them for access to public hunting areas, but the agency will prohibit hunting on or from the trail, and the agency will provide signs to warn trail users not to trespass on private property.

**Substitute Bill Compared to Original Bill:** The substitute bill acknowledges that these railroad corridors are unique and valuable and that operations standards for them serve the citizens of the state. The substitute bill states that agencies will manage and operate these corridors in compliance with the minimum management requirements to the extent that funds are specifically appropriated for this purpose. The substitute bill allows the agency and the landowner to agree on adequate fencing. The original bill requires

closure of the trails during hunting season; the substitute bill closes the undeveloped portions of trails during hunting season, though access to Department of Fish and Wildlife lands bordering the corridor is allowed. The substitute bill requires that a formal complaint and agency response are to be in writing and allows an agency to provide an estimate of the time it needs to investigate a complaint, not to exceed 45 days, in situations where the agency needs more than 15 days to respond. The substitute bill requires that a person filing a court action must have first filed a formal complaint with the agency. In the original bill, if the county superior court determines that the agency is not meeting the minimum management requirements, the court is to issue an order directing the agency to dispose of the rail corridor in that county. In the substitute bill, if the court determines that the agency is not meeting the minimum management requirements, the court will issue an order directing the agency to take the action necessary to bring the agency into compliance. The agency must close the problem area on the trail until the agency is meeting the management requirements. The original bill applies to three railroad corridors owned by State Parks. The substitute bill also applies to the Milwaukee Road corridor managed by State Parks and the Department of Natural Resources.

**Appropriation:** None.

**Fiscal Note:** Available on original bill. Requested on substitute.

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

**Testimony For (original bill):** Rails-to-trails projects have been around for a long time. With them have come problems with management and funding. DNR has quietly opened one of the trails during hunting season. Weeds are a problem on the trails, and fencing has not been adequate. People who live adjacent to the trail have concerns that need to be addressed. This bill will provide a mechanism for dispute resolution and for budget and planning. The Legislature should have some say as to whether corridors are really coming back into rail use. On the Klickitat trail, there is trespassing onto private property, especially during hunting season. State law allowed these properties in the corridors to revert to the adjacent landowners; a federal court decision made this impossible. This bill will resolve important issues such as weeds and fencing. The railroads used to provide fencing or materials for fencing. It's a good solution. The bill doesn't ask for more than common courtesy. Adjacent landowners cannot control noxious weeds if the weeds aren't controlled on the corridor. These are people who gave their property to the government to improve the country's development; it is not too much to expect protection of their livestock with fencing.

**Testimony Against (original bill):** Neighboring property owners have legitimate concerns, but there is no funding in the bill to meeting the new management and planning requirements. Not all adjacent property owners have reversionary rights, and not all

railroads included fencing as part of the deeds to put in the corridor. The remedy provision is odd: if the state does not fill the unfunded responsibilities, the state will give up this land purchased with taxpayer dollars. The bill also conflicts with the provisions of the contracts State Parks signed to get the properties. Upping the requirements without providing the resources is setting the state agency up to fail. This calls for the loss not only of the corridor by the complaining property owner, but all the corridor in that county. These trails are destinations for tourists. Good neighbor concerns can be addressed in part by active volunteer groups. The bill is premature. People from all parts of the state with all types of physical abilities use these trails. The bill is drafted only for the benefit of a few landowners and not for the public of the state. This will be costly to the state and could hurt the trail system. If we lose these corridors, it will be very costly to acquire new ones. These trails offer affordable recreation to families; please don't destroy them. State Parks has done a good job of stewardship on the trails. The fencing on the trail we ride is adequate now. The bill shows that volunteer groups need to do their job better in improving the trails. Give these groups a chance to help with the trails a little longer. When trails are closed during hunting season, there still needs to be access to Department of Fish and Wildlife lands that border the corridor.

**Testified:** Representative Mark Schoesler, prime sponsor; Representative Jim Honeyford; William Harder; Karla Kay Fullerton, Washington Cattlemen's Association (all in favor); Matthew Cohen, Rails to Trails Conservancy; Larry Leveen, Capital Bicycling Club; Maxine Dunkelman; Fred Werf; Louise McGrody, Northwest Bicycle Federation; Eddie Armstrong, Washington State Horse Council; Carol O'Connor, John Wayne Wagons and Riders; Loren McGovern, Backcountry Horsemen of Washington (all opposed); Scott Merriman, Department of Natural Resources (concerns); Rex Derr, State Parks; and Ed Manary, Department of Fish and Wildlife.