

HOUSE BILL REPORT

3ESB 5517

As Passed House:
June 29, 2017

Title: An act relating to rail dependent uses for purposes of the growth management act and related development regulations.

Brief Description: Concerning rail dependent uses for purposes of the growth management act and related development regulations.

Sponsors: Senators Wilson, Rivers, Cleveland, Hobbs, King, Sheldon, Miloscia, Brown, Angel, Warnick, Keiser and Schoesler.

Brief History:

Committee Activity:

Environment: 3/21/17.

Third Special Session

Floor Activity:

Passed House: 6/29/17, 82-12.

Brief Summary of Third Engrossed Bill

- Adds definitions of "freight rail dependent uses" and "short line railroad" to the Growth Management Act.
- Authorizes certain counties and cities to adopt development regulations to assure that agricultural, forest, and mineral resource lands adjacent to short line railroads may be developed for freight rail dependent uses.
- Provides that the transportation element of the comprehensive plan in Clark County and its cities, and development regulations adopted in accordance with the comprehensive plan, may include development of freight dependent uses on land adjacent to a short line railroad.

HOUSE COMMITTEE ON ENVIRONMENT

Staff: Robert Hatfield (786-7117).

Background:

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.

Growth Management Act – Introduction.

The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities. The GMA also establishes a significantly wider array of planning duties for 29 counties, and the cities within those counties, that are obligated to satisfy all planning requirements of the GMA.

The GMA directs jurisdictions that fully plan under the GMA to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans are implemented through locally adopted development regulations, both of which are subject to review and revision requirements as prescribed in the GMA.

Planning Goals.

For the purpose of guiding the development of comprehensive plans and development regulations, counties and cities must consider various planning goals set forth in statute. These planning goals include:

- *Urban growth:* Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
- *Transportation:* Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.
- *Natural resource industries:* Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.
- *Environment:* Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

Comprehensive Plans – Mandatory Elements.

The comprehensive plan of a county or city must consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the plan. The plan must be internally consistent, and all elements must be consistent with a future land use map. Each comprehensive plan must also include a plan, scheme, or design for each of the following elements:

- land use element;
- housing element;
- capital facilities plan element;
- utilities element;
- rural element;
- transportation element;
- economic development element; and
- park and recreation element.

The transportation element of a comprehensive plan must implement, and be consistent with, the land use element, and must include sub-elements concerning:

- land use assumptions used in estimating travel;

- estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions;
- facilities and service needs;
- finances;
- intergovernmental coordination efforts;
- demand-management strategies; and
- pedestrian and bicycle components.

The transportation element may also include multimodal transportation improvements or strategies that are made concurrent with development.

Natural Resource Lands.

Counties and cities must designate agricultural lands, forest lands, and mineral resource lands in their comprehensive plans. "Agricultural land" means land: (1) primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products, or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to an excise tax, finfish in upland hatcheries, or livestock; and (2) that has long-term commercial significance for agricultural production. "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, and that has long-term commercial significance. "Minerals" include gravel, sand, and valuable metallic substances.

Each county and city planning under the GMA must adopt, review, and update as necessary development regulations to assure the conservation of designated agriculture, forest, and mineral resource lands. Regulations must ensure that the use of lands adjacent to agriculture, forest, or mineral resource lands will not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

Counties and cities must require that all plats, short plats, development permits, and building permits issued for development activities on or within 500 feet of lands designated as agriculture, forest, or mineral resource lands, contain a notice that the subject property is within or near natural resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration.

Railroad Classification.

The United States Surface Transportation Board (STB) classifies types of railroads by annual carrier operating revenue. As of 2014, those revenue cut-offs were:

- Class I—more than \$433.2 million;
- Class II—\$34.7 million to \$433.2 million; and
- Class III—less than \$34.7 million.

Railroads in Washington.

The Washington State Department of Transportation (WSDOT) is responsible for preparing, periodically updating, and implementing a State Freight Rail Plan for rail coordination, planning, and assistance in accordance with criteria provided in statute. The WSDOT follows the railroad classification system used by the STB. There are two Class I railroads in Washington, BNSF Railway Company and Union Pacific Railroad, and 25 Class III railroads,

for a total of approximately 3,000 miles of trackage in Washington. There is no separate Class II railroad trackage in Washington.

In 1990 the Legislature enacted the Freight Rail Preservation Program (chapter 43, section 4, Laws of 1990), which declared that the state, counties, local communities, railroads, labor, and shippers benefit from the continuation of rail service and should participate in its preservation. In addition to other directives, the WSDOT is required to monitor the status of the state's railroads and preserved rail corridors through the state rail plan, and to seek alternatives to abandonment of railroads where feasible. Additionally, local jurisdictions may implement rail service preservation projects in the absence of state participation.

Summary of Bill:

Rail Uses and Railroads.

Two definitions are added to the GMA:

1. "Freight rail dependent uses" means buildings and other infrastructure that are used in the fabrication, processing, storage, and transport of goods where the use is dependent on and makes use of an adjacent short line railroad. Such facilities are both urban and rural development for purposes of the GMA. Freight rail dependent uses excludes infrastructure used in coal, liquefied natural gas, and oil storage, transport, processing or fabrication.
2. "Short line railroads" means those railroad lines designated Class II or Class III by the STB.

Natural Resource Lands.

Clark County and its cities are authorized to adopt development regulations to assure that agriculture, forest, and mineral resource lands adjacent to short line railroads may be developed for freight rail dependent uses. Such development regulations may also be adopted by any county with a population of less than 50,000 that borders both the Cascade mountains and another country, and the cities within that county.

Comprehensive Plans.

In Clark County and its cities, the transportation element of a comprehensive plan may include development of freight rail dependent uses on land adjacent to short line railroads.

Development regulations may be modified to include development of freight rail dependent uses that do not require urban governmental services in rural lands.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) There is underutilized land along many of the 22 short line railroads in this state, including in Clark County. This land could be re-zoned and used for other purposes, potentially creating jobs in rural communities, reducing traffic congestion, and stimulating economic growth in rural areas. If the bill fails to address the way that "rural character" is defined under the Growth Management Act, the development of lands around rail lines will be hindered. Historically, our state and country have developed small rural towns in locations along freight rail lines, and this bill must recognize that development along rail lines is an essential component of rural character.

(Opposed) Moving this bill forward would destroy high-quality agricultural farmland. Incomes from farming in many parts of the state, including Clark County, have been increasing recently, and is a viable long-term component of local economies. While this bill talks about freight-rail dependent uses, there is no requirement that farmland converted to industrial uses be maintained as such over the long term. Once farmland is lost to development, it is not possible to revert to using that land as farmland.

Persons Testifying: (In support) Senator Wilson, prime sponsor; Amber Carter, Portland Vancouver Junction Railroad, Clark County, and Port of Vancouver; and Mike Ennis, Association of Washington Business

(Opposed) Bryce Yadon, Futurewise

Persons Signed In To Testify But Not Testifying: None