

SENATE BILL REPORT

SB 5098

As of February 15, 2017

Title: An act relating to high hazard flammable train speed limits in certain urban areas.

Brief Description: Concerning high hazard flammable train speed limits in certain urban areas.

Sponsors: Senators Billig, Carlyle, Rolfes, Frockt, Wellman, McCoy, Kuderer, Liias, Saldaña, Palumbo, Hobbs, Keiser, Hunt and Conway.

Brief History:

Committee Activity: Transportation: 2/15/17.

Brief Summary of Bill

- Clarifies the authority of the Utility and Transportation Commission (UTC) and first class cities in regard to setting train speeds.
- Authorizes the UTC and first class cities to seek a preemption waiver from the United States Department of Transportation for a speed limit reduction for HHFTs.
- Allows a first class city to request that the UTC exercise its authority in the regulation of rail speed limits on the city's behalf.

SENATE COMMITTEE ON TRANSPORTATION

Staff: Hayley Gamble (786-7452)

Background: Federal Law. Federal law generally requires rail related laws and regulations to be nationally uniform. A state may adopt laws relating to railroad safety covering the same subject matter as a United States Department of Transportation (USDOT) regulation only when: that law is necessary to eliminate or reduce an essentially local safety or security hazard; is not incompatible with a law, regulation, or order of the United States government; and does not unreasonably burden interstate commerce.

Train Speeds. The federal government has set maximum allowable operating speeds for freight and passenger trains by class of track. In 2015, a final rule was issued by the federal government that further restricts maximum operating speeds for HHFTs in high-threat urban

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areas. HHFTs may not operate at speeds greater than 50 miles per hour (mph) in these areas and, if they do not meet the enhanced tank car standards mandated under the 2015 rule, they may not operate at speeds greater than 40 mph in these areas. Seattle and Bellevue and a 10-mile buffer extending from their combined area is the only high-threat urban area identified in Washington.

High Hazard Flammable Trains (HHFTs). HHFT is defined as a single train transporting 20 or more loaded tank cars of a Class 3 flammable liquid in a continuous block, or a single train carrying 35 or more loaded tank cars of a Class 3 flammable liquid throughout all the train cars. Examples of Class 3 flammable liquids include gasoline, diesel fuel, gas oil, shale oil, alcohol, methanol, paints, and adhesives.

State Law. The UTC regulates the transportation of people and property in the state for compensation, including rail transportation to the extent its authority is not preempted by federal regulations. State law grants the UTC discretionary authority to fix and regulate the speed of railway trains within the limits of any city or town other than first class cities and at grade crossings outside the limits of cities and towns. Maximum speeds may be set by the UTC at different rates for different cities and towns, and must be commensurate with the hazard presented and the practical operation of trains.

There are ten first class cities in Washington: Aberdeen, Bellingham, Bremerton, Everett, Richland, Seattle, Spokane, Tacoma, Vancouver, and Yakima.

Summary of Bill: Legislative intent is stated to clarify state and local authority to adopt speed limits specific to high hazard flammable trains within the constraints of federal law.

The UTC's and first class cities' authority to regulate the speed of HHFTs under state law is clarified to explicitly align it with what is permitted under federal law. The UTC may set rail speed limits for HHFTs in all cities and towns other than first class cities, and first class cities may set rail speed limits for HHFTs within their boundaries, where the following conditions apply: it is determined that (1) a speed limit lower than that established by federal law is necessary to address a local safety hazard; (2) the lower speed limit is not incompatible with federal law; and (3) the lower speed limit does not unreasonably burden interstate commerce.

The UTC and first class cities are authorized to seek a preemption waiver from the USDOT for a speed limit reduction for HHFTs. First class cities are also authorized to request that the UTC exercise its authority in the regulation of rail speed limits on the city's behalf.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: Firefighters are concerned about the oil trains that travel through Spokane, even the reinforced trains. There are elevated train tracks that

travel through downtown Spokane that create a unique local situation, travelling close to a high school and hospital. There is a case in the 9th circuit (346 F3rd851) that ruled this delegation by Congress would allow local train speeds. This bill would allow cities like Spokane to slow trains down and set slower train speeds. Part of derailment mitigation is having trains go slower. This legislation will make our communities safer.

CON: Train speeds are regulated by the FRA. Crude oil trains are limited in urban areas to 40 mph. The elevated section of track mentioned in Spokane has a limit of 35mph. There is a very small chance that this bill would survive any legal challenges. A lower speed limit would have to pass all three conditions mentioned earlier to implement a lower speed limit. This bill could lead to more costly and extended litigation. If you slow a train in one area, it can impact the whole system. Customers rely on a dependable network.

OTHER: UTC is generally preempted by the Federal government in regard to train speeds. There are some places where it may be appropriate to reduce trains speeds and the UTC shares the sponsors concerns; however, the UTC is concerned about being asked to work in an area of law that is generally preempted by the Federal Government. The state role is limited due to federal requirements to have nationally uniform standards. Current court decisions to not speak specifically to what constitutes an essentially local hazard, and ultimately this will be decided by the courts. This bill does not give the UTC any tools that they do not already have.

Persons Testifying: PRO: Mike Peterson, Executive Director, The Lands Council; Breean Beggs, Spokane City Council; Matthew Randazzo, Quinault Indian Nation.

CON: Tom Parker, Union Pacific Railroad; Johan Hellman, BNSF Railway Co.

OTHER: Lauren McCloy, Utilities and Transportation Commission.

Persons Signed In To Testify But Not Testifying: No one.