

POLICY BRIEF

Citizens Guide to Spokane's Proposition 2 *To ban rail shipment of coal and oil through Spokane*

Todd Myers, Director, Center for the Environment
and Chris Cargill, Eastern Washington Director

October 2017

Key Findings

1. Proposition 2 would impose \$1.2 million in weekly fines on rail companies moving energy products through Spokane
2. Proponents point to oil train accidents in other parts of the country and say the measure is needed to protect public safety in Spokane
3. Opponents note the ballot measure is likely unconstitutional and would be nearly certain to face expensive, taxpayer-funded legal challenges, and may actually damage the environment
4. Energy is not stationary – it must be delivered to the consumer. How energy is delivered is the very question Proposition 2 seeks to change
5. To avoid fines, companies would likely shift oil and coal shipments from rail cars to more dangerous and less environmentally-friendly semi-trucks
6. Trucks emit 4.5 times as much nitrogen oxide per ton-mile traveled and 6.7 times as much particulate matter per ton-mile traveled than rail cars
7. Hazardous-substance rail accident rates have fallen 66 percent since the year 2000



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3	<i>Introduction</i>
3	<i>Background</i>
4	<i>Delivering and consuming power</i>
6	<i>Shipping oil by road</i>
6	<i>Railroads and the state economy</i>
7	<i>Legality questions about Proposition 2</i>
7	<i>The high cost to taxpayers</i>
8	<i>Ensuring safety</i>
9	<i>Conclusion</i>

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Introduction

Voters in the city of Spokane will decide this November whether to adopt a first-of-its-kind measure that seeks to prevent oil and coal shipments by rail through the core area of the state's second largest city.

City of Spokane Proposition 2 will appear on the ballot with the following language¹:

Ordinance No. C-35515, proposes that the Spokane Municipal Code be amended regarding the prohibition of oil and coal shipment by rail. Shall the Spokane Municipal Code be amended to make it a class 1 civil infraction for any person or entity to allow a rail car that it owns to ship uncontained coal and some types of oil by rail through the downtown Spokane core, or within 2,000 feet of a school, hospital, or the Spokane River?

_____ YES

_____ NO

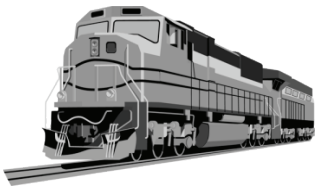
Proponents point to oil train accidents in other parts of the country and in Canada to argue the measure is needed to protect public safety in Spokane. They also say passage of Proposition 2 would reduce the availability of fossil-burning fuels throughout the world.

Opponents of Proposition 2 argue the measure is unconstitutional, and say it would have a devastating economic impact on the community and the state. Opponents also point to the potentially harmful impact the measure could have on the environment and local roadways.

Background

Supporters of Proposition 2 gathered 3,296 signatures to earn a place on the November 2017 ballot – or about five percent of the number of registered voters in the city of Spokane.

1 Spokane City Council Agenda, pages 318-328, Ordinance C-35515 review, available at <https://static.spokanecity.org/documents/citycouncil/current-agendas/2017/07/city-council-current-agenda-2017-07-24.pdf>.



Weekly Traffic Through Spokane

Trains Carrying Coal:
14-21

Trains Carrying Oil:
17-19

**Estimated Weekly Fine if
Prop 2 Passed:**
\$1,200,000+

The measure is sponsored by the group known as “Safer Spokane.” Some members of the group were involved in previous attempts to place environmental-type restrictions in Spokane’s city charter, including three previous failed efforts to adopt a Community Bill of Rights.²

The Spokane Community Bill of Rights provisions did not include restrictions on oil or coal trains, but did seek other legal rights on behalf of the Spokane River and restrictions on Spokane’s business landscape.

Proposition 2 seeks to make transporting coal and oil through the city by rail a “class 1 civil infraction.” In the city of Spokane, class 1 civil infractions are subject to a \$261 fine.³ This means that each rail car that makes its way through the city would incur that fine.

Burlington Northern Santa Fe (BNSF) moves, on average, 17 to 19 oil trains and another 14 to 21 coal trains every week, east-west through Washington state. Each train consists of roughly 110 to 120 rail cars.

Under Proposition 2, weekly fines could approach \$1.2 million, making it almost certain companies would halt any coal and oil shipments and choose different transportation methods.

In attempting to block coal and oil train shipments, the text of the actual ordinance (which won’t appear before voters) uses hyperbolic rhetoric, calling Spokane a potential “blast zone,” and labeling coal and oil trains as “inherently dangerous” and a “nuisance.”⁴ The measure claims trains pose a “grave danger... which must be mitigated.”

Proponents of the ballot measure say they were reasonable in their approach, with one city councilmember who helped craft the language calling it “legally defensible.”⁵ Some supporters have even gone so far as to suggest they are not trying to “ban” trains and fossil fuels from the city.

The language of the ordinance, however, makes it clear the action would be illegal as a “class 1 civil infraction,” and would impose a fine that would be financially prohibitive to rail companies.

Delivering and consuming power

Access to oil and coal energy is critical to the economy of Washington state, the United States and the world. In Washington, our power portfolio is supplemented by a reliance on clean, renewable hydropower.

2 Citizens Guide to Spokane’s Proposition 1 – The Community Bill of Rights, by Chris Cargill, Washington Policy Center, September 2011, available at <https://www.washingtonpolicy.org/library/docLib/citizens-guide-to-spokane-prop-1.pdf>.

3 Spokane Municipal Code, Section 01.02.950.

4 Ibid.

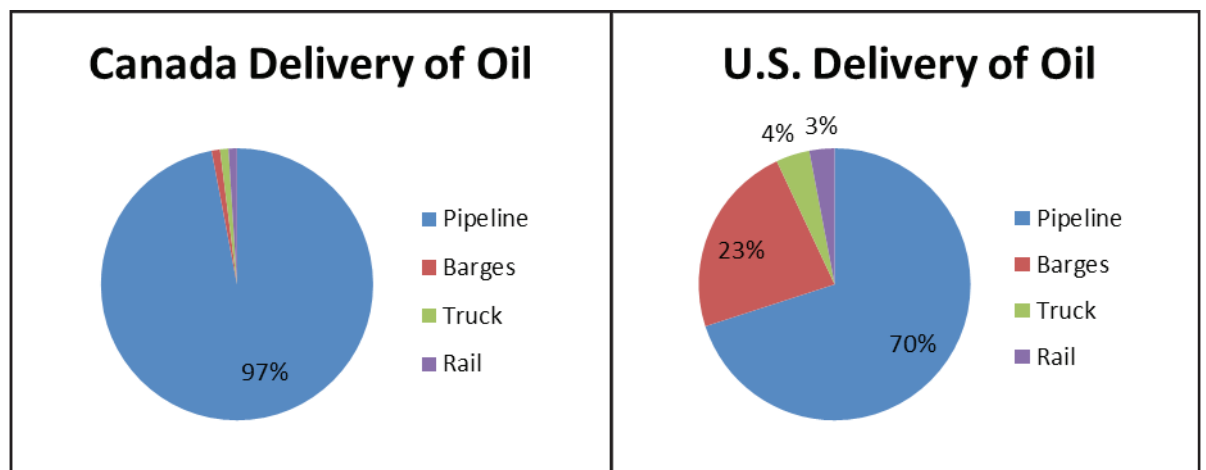
5 “Fines for downtown Spokane coal, oil trains heading to ballot with promise of fight,” by Kip Hill, *Spokesman-Review*, July 25, 2017, available at <http://www.spokesman.com/stories/2017/jul/24/fines-for-downtown-spokane-coal-oil-train-traffic-/>.

Ironically, however, some of the same environmental groups who support measures like Spokane's Proposition 2 have sought to remove hydroelectric dams up and down the Snake and Columbia Rivers, which would increase our reliance on coal or natural gas for our electricity.

While Washington state does not produce crude oil, it does rank in the top five in crude oil refinement.⁶ Furthermore, our state ranks 26th in coal production.

Power, however, is not stationary. It must be delivered to the consumer. How power is delivered is the very question this ballot measure seeks to change.

In the case of oil, 70 percent of the U.S. supply is shipped by pipeline, another 23 percent is sent in barges, while trucking and rail make up 4 percent and 3 percent of oil shipped respectively.⁷ Interestingly, in Canada, almost all oil is delivered by pipeline.⁸



When crude oil comes into Washington state either to be delivered to the state's five refineries, or sent overseas, it first comes through Spokane on rail.

In 2011 alone, the state's five refineries accounted for nearly 2,000 full-time, high-paying jobs and another 3,000 contract jobs.⁹ Indirectly, refineries in Washington contribute more than 26,000 jobs to the economy and more than \$1.7 billion in personal income.¹⁰

6 United States Energy Information Administration, Washington state power portfolio, available at <https://www.eia.gov/state/?sid=WA>.

7 Pick your poison: Pipeline, rail, truck or crude, by James Conca, *Forbes*, April 26, 2014, available at <https://www.forbes.com/sites/jamesconca/2014/04/26/pick-your-poison-for-crude-pipeline-rail-truck-or-boat/#6c23bd1c17ac>.

8 Canadian Energy Pipeline Association, available at <https://cepa.com/en/>.

9 Economic Contributions of Washington State's Petroleum Refining Industry in 2011, Washington Research Council, August 2012, available at <https://researchcouncil.files.wordpress.com/2013/08/2012refineryreportfinal040913.pdf>.

10 Ibid.

Shipping oil by road

If Proposition 2 passes and rail companies stop shipping coal and oil through Spokane, manufacturers of those products could decide to ship to refineries and ports in other states, potentially reducing the number of jobs in Washington state.

Another option would be shipping oil in tanker semi-trucks, putting more traffic on the state's roads.

The average tanker truck only holds about 8,000 to 9,000 gallons or about 200 barrels of oil. That's one third of what a rail car holds, meaning three tanker trucks would be needed to ship the oil contained in one rail car. The environmental impact of all of these new semi-trucks would create a significant increase in carbon emissions.

The U.S. Government Accountability Office (GAO) compared the impacts to the environment of trucks and rail cars.¹¹ It found a significant increase in air pollution in shifting commodities from rail to trucks. Both particulate matter and nitrogen oxide, which contribute to local air pollution like smog, would increase. Trucks emit 4.5 times as much nitrogen oxide per ton-mile traveled and 6.7 times as much particulate matter per ton-mile traveled than rail cars.

The GAO study used data from 2002, so the numbers have certainly changed, but trucks would have had to become five times as fuel-efficient while trains made no improvement for the numbers to even out. Clearly, moving oil shipments from rail cars to truck traffic would cause an increase in local air pollution.

Shifting from rail to trucks is also less efficient, because it would use more fuel and emit more carbon dioxide. Per million-ton miles, shipping freight with trucks emits about eight times as much carbon dioxide as shipping by rail. Ironically, a ballot measure intended to reduce greenhouse gas emissions could actually end up increasing them.

Finally, GAO estimated the "cost in delay to road users," due to increased traffic congestion. Here, trucks caused 18.6 times as much congestion-related cost compared to rail. This could also have the additional effect of increasing local air pollution and CO2 emissions.

For the environment and traffic congestion, moving freight from rail onto the roads significantly increases environmental harm as well as traffic congestion.

Railroads and the state economy

The railroads have an important historical place in Spokane and in Washington state, and provide millions of dollars in economic security for families.

Spokane is a railroad town and its most well-known landmark, the Riverfront Park Clock Tower, started as the Great Northern Railroad depot.

11 U.S. Government Accountability Office, "A Comparison of the Costs of Road, Rail and Waterways Freight Shipments That Are Not Passed on to Consumers," January 2011, GAO-11-134, available at <http://www.gao.gov/new.items/d11134.pdf>.

“Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable.”

-49 U.S. Code § 20106

Rail supports more than 342,000 jobs in the state – at least 10 percent of the state’s workforce.¹²

Burlington Northern Santa Fe employs 3,719 people in Washington state and has an annual payroll of nearly \$300 million.¹³ It is the state’s primary freight transporter. If it is unable to ship coal and oil through the state’s second largest city, the company may need to re-evaluate how much of its business and workforce to keep in Washington state, as The Boeing Company has done under similar circumstances.

Legality questions about Proposition 2

Serious questions remain about whether this type of local measure is legal.

First, the Interstate Commerce Commission Termination Act (ICCTA) of 1995 would likely preempt the measure. Both the City of Spokane’s city council policy advisor and the city’s hearing examiner have questioned whether such a measure would stand up under legal review by the courts. They wrote:

“Because the proposed measure would attempt to regulate rail practices, routes, and operations, it is highly likely that a city ordinance which prohibits the shipment by rail of certain cargo would be preempted by the ICCTA.”¹⁴

City lawyers also point to the Federal Railroad Safety Act of 1970 which entrusts safety regulations of the nation’s railroads with the U.S. Congress, not to local jurisdictions like Spokane.

The high cost to taxpayers

If the measure does pass, Washington state law requires city lawyers, and therefore city taxpayers, to defend it in court.

Such a defense could cost hundreds of thousands of dollars. In the city of Seattle, a measure to impose an illegal city income tax already has city officials setting aside at least \$250,000 in public money for legal expenses.¹⁵

Spokane City Councilman Mike Fagan estimates the legal cost of Proposition 2 could be even higher – up to \$1 million if it makes it to the state Supreme Court,

12 An Engine of Prosperity, by Phillip J. Romero, Professor of Finance, University of Oregon, September 2014, available at http://www.pnwr.org/uploads/2/3/2/9/23295822/romero_engineofprosperity_presentation_01.pdf.

13 Burlington Northern Santa Fe, State Fact Sheet.

14 Oil train analysis, by Brian McClatchey, Policy Advisor to Spokane City Council, July 21, 2016.

15 Seattle to pay up to \$250,000 for legal help in defending new city income tax, by Daniel Beekman, *The Seattle Times*, August 24, 2017, available at <http://www.seattletimes.com/seattle-news/politics/seattle-to-pay-up-to-250000-for-legal-help-in-defending-new-city-income-tax/>.



Legal Defense Costs By The Numbers

\$250,000

What Seattle has set
aside to defend illegal
income tax

\$1,000,000

How much it could
cost to defend illegal
oil and coal train
measure at state
Supreme Court

\$3,000,000

How much it could
cost to defend illegal
oil and coal train
measure at Appeals
Court

and \$3 million if it were taken to the U.S. Court of Appeals, or even the U.S. Supreme Court.¹⁶

A taxpayer legal bill costing just a quarter million dollars for Spokane citizens would be money that couldn't be spent on much-needed public safety or other core city services. Spokane added four new police officers to its budget in 2017, something it likely wouldn't have been able to do if it was spending \$250,000 defending this proposition in court.¹⁷

It's also recommended the city hire an additional 44 police officers for public safety, but revenue constraints have made it challenging and higher city legal bills could make it even more difficult.¹⁸ A loss of tax revenue from railroad activity would also make it harder for the city to improve public safety with an increased police presence.

Ensuring Safety

Other than transporting oil by pipeline, shipping oil by rail is one of the safest and most environmentally-friendly modes of transportation. Less than one percent of all derailments involve crude oil, and 99.99% of all tank cars containing crude oil make it to their destination safely.¹⁹

Since there is still demand for energy from oil in Spokane and elsewhere, shippers are likely to move from rail to an alternative mode of transport if Proposition 2 passes. Data from the U.S. Department of Transportation (USDOT) show moving from rail to road transport increases the number of incidents by nearly ten-fold.

A study produced by the Manhattan Institute, using USDOT data, show that for the period 2005-09 (the most recent year for which data is available), rail transportation has an incident rate of 2.08 incidents per billion ton-miles traveled.²⁰ By way of comparison, oil transported by road had an incident rate of 19.95 per billion ton-miles traveled, an eight times higher risk rate.

Additionally, fatalities for road traffic were nearly triple the rate of rail and injuries nearly quadruple. Finally, the total amount of oil released – potentially reaching waterways and impacting the environment – for road traffic is nearly four times the amount for rail shipment.

16 Spokane rail proposition likely to place taxpayers on the legal hook, by Mike Richards, *The Lens*, August 25, 2017, available at <http://thelens.news/2017/08/25/spokane-rail-proposition-likely-to-place-taxpayers-on-hook-for-legal-defense/>.

17 Consultant: Spokane needs 44 more police officers on patrol, by Kip Hill, *The Spokesman-Review*, June 26, 2017, available at <http://www.spokesman.com/stories/2017/jun/26/consultant-spokane-needs-44-more-police-officers-o/>.

18 Ibid.

19 Quick facts, Association of American Railroads.

20 Diana Furchtgott-Roth, "Pipelines are safest for transportation of oil and gas," Manhattan Institute, June 2013, https://www.manhattan-institute.org/pdf/ib_23.pdf.

By any metric, moving oil by roads dramatically increases the number of fatalities, injuries and incidents and poses a far greater spill risk than shipping oil by train.



Additionally, the already-high safety record of trains is likely to improve. The Association of American Railroads supports a rule announced by the U.S. Department of Transportation to replace older tank cars with new, thicker shell cars that can prevent damage in the case of any derailment or accident.²¹

Additionally, environmental standards for coal trains are increasing. In Washington state, Burlington Northern Santa Fe spent \$26 million to build a spray facility in Pasco which applies a glue-like substance to the load of every open coal car.²² This spray is applied to the top of each coal mound, while the train moves slowly through the rail yard. The top is covered with a hardened substance, so little to no coal dust is lost as the train moves along the tracks.

BNSF has said its spray process, coupled with loading procedures, has reduced coal dust loss by 85 percent.²³

As a result of all these efforts, hazardous-substance rail accident rates have fallen 66 percent since the year 2000.²⁴

Conclusion

Some ballot measures are constructive and seek to improve the community. Proposition 2, however, likely increases both environmental and health and safety risks for Spokane and Washington state.

21 DOT Announces Final Rule to Strengthen Safe Transportation of Flammable Liquids by Rail, Friday, May 1, 2015, U.S. Department of Transportation, available at <https://www.transportation.gov/briefing-room/final-rule-on-safe-rail-transport-of-flammable-liquids>.

22 BNSF Coal Respray Facility Video, available at <https://www.youtube.com/watch?v=EYpYOfMFBAL>.

23 BNSF invests \$26 million in Pasco train facility, by Wendy Culverwell, *Tri-City Herald*, May 28, 2016, available at <http://www.tri-cityherald.com/news/local/article80608512.html>.

24 Quick facts, Association of American Railroads.

Nothing in the language of the Proposition would improve the safety of railroads in Spokane, which have been a critical component of the city's economy since its founding.

A legal challenge is almost certain, which would cost taxpayers hundreds of thousands of dollars that would not be available for public safety. As city lawyers have pointed out, the Interstate Commerce Clause Termination Act and the Federal Railroad Safety Act make it likely the proposed measure would be struck down by the courts.

If the measure were to survive legal challenges, damage to the environment would likely increase as oil and coal shipments move from rail cars to thousands of semi-trucks. This shift would increase carbon-dioxide emissions, as well as air pollution that contributes to smog.

The cost of getting coal and oil energy products to their destination would also increase, with the resulting higher cost of energy being passed on to consumers.

To avoid breaking city law and incurring a potential \$1.2 million weekly fine, rail companies and the energy industry may decide to bypass Washington state altogether, putting thousands of high-paying jobs at risk.

Shipping by rail is one of the safest transportation modes available, and railroad companies are working to make them safer. Analysis shows that passage of Proposition 2 would likely make the transport of coal and oil less safe, would contribute to increased air pollution and would threaten the jobs of thousands of working families across the state.

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Chris Cargill is the Eastern Washington Director at Washington Policy Center. A sixth-generation Eastern Washingtonian, Chris grew up in Spokane and graduated from Gonzaga University with a bachelor's degree in broadcast communication studies and political science. Before joining WPC in 2009, he worked in TV news for 10 years. Chris has authored many of WPC's studies specific to Eastern Washington. He is an ex-officio for the Spokane Valley Chamber of Commerce and the Tri-City Regional Chamber of Commerce, and formerly served on the Spokane Regional Transportation Commission Advisory Committee and other mass transit sounding boards. He was also selected to serve on the budget and finance transition team for Spokane Mayor David Condon and currently serves on the Mayor's Advisory Council on Small Business. In 2011, Chris was named by *Inland Business Catalyst* magazine as one of the 20 top professional and civic leaders under the age of 40 in the Inland Northwest. When not working for WPC, you can often find him with family or at hockey games.