

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 275

(Senator Feldman, *et al.*)

Finance

Environment and Transportation

Railroad Company - Movement of Freight - Required Crew

This bill prohibits, with specified exceptions, a train or light engine used in connection with the movement of railroad freight that shares the same rail corridor as a high-speed passenger or commuter train from operating in the State unless it has a crew of at least two individuals. The bill establishes criminal penalties for willful violations of that prohibition. A county or municipality may not enact and enforce more stringent measures regarding crew requirements than those in the bill.

If the Federal Railroad Administration (FRA) issues a rule requiring two-person train crews on crude oil trains and establishing minimum crew size standards for most main line freight and passenger rail operations, within five days after the issuance of the rule, the Commissioner of Labor and Industry must notify the Department of Legislative Services (DLS). On the date DLS receives the notification, the bill terminates.

Fiscal Summary

State Effect: If the proposed FRA regulations are finalized by October 1, 2016, the bill terminates and there is no effect on State finances or operations. If the proposed regulations are not finalized by that date, the Department of Labor, Licensing, and Regulation (DLLR) may be able to handle the bill's requirements with existing resources. This analysis assumes that one of these two conditions is met and that there is no fiscal impact. Otherwise, however, potential costs for DLLR are \$72,000 in FY 2017 and about \$91,000 to \$101,000 annually thereafter. The bill's penalty provisions are not anticipated to materially affect general fund revenues.

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: The prohibition does not apply to a train or light engine used in connection with the movement of railroad freight involving hostler service or utility employees in yard service.

A person who willfully violates the bill's prohibition is guilty of a misdemeanor and subject to a fine of \$500 for a first offense and a fine of \$1,000, per offense, for a second offense or a subsequent offense within three years of the second offense.

Current Law/Background:

Federal and State Regulation of Railroad Laws

In general, state regulatory authority over railroads is preempted by federal regulatory authority, because most remaining railroads in the United States are inherently a form of interstate transportation. Federal law requires that laws, regulations, and orders related to railroad safety or security must be nationally uniform to the extent practicable. However, a state may adopt or continue in force a law, regulation, or order related to railroad safety or security until the U.S. Secretary of Transportation (with respect to railroad safety matters), or the U.S. Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the state requirement.

A state may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order (1) is necessary to eliminate or reduce an essentially local safety or security hazard; (2) is not incompatible with a law, regulation, or order of the federal government; and (3) does not unreasonably burden interstate commerce.

The U.S. Secretary of Transportation may prescribe investigative and surveillance activities necessary to enforce the safety regulations prescribed and orders issued by the Secretary that apply to railroad equipment, facilities, rolling stock, and operations in a state. The state may participate in those activities when the safety practices for railroad equipment, facilities, rolling stock, and operations in the state are regulated by a state authority and the authority submits an annual certification to the Secretary.

Federal Railroad Administration

FRA was created by the Department of Transportation Act of 1966. It is 1 of 10 agencies within the U.S. Department of Transportation concerned with intermodal transportation. FRA's Operating Practices Division within the Office of Railroad Safety examines railroad carrier operating rules, employee qualification guidelines, and carrier training and testing programs to determine compliance with federal law.

Regulations Requiring Two-man Crews

On March 15, 2016, FRA proposed regulations establishing minimum requirements for the size of train crew staffs, depending on the type of operation. A minimum requirement of two crew members is proposed for all railroad operations, with exceptions proposed for those operations that FRA believes do not pose significant safety risks to railroad employees, the general public, and the environment by using smaller crews than two persons. The proposed regulations can be found on the federal register's [website](#).

Other State Actions to Require Two-man Crews

California passed legislation in 2015 with a similar two-man crew requirement for the movement of railroad freight. West Virginia established a two-man crew requirement in 1993, and Wisconsin required the same in 1997. Several states also have pending legislation – at least Nebraska, Ohio, and Washington.

Maryland's Railroad Safety and Health Program

The Railroad Safety and Health Program in DLLR monitors the safety practices of each railroad company in the State by conducting inspections of areas of railroad track, operating practices, and locomotive and railcar equipment. The program supplements the national program established by FRA.

The program also enforces Maryland-specific requirements for track clearances and health and safety standards. Statute requires that the Public Service Commission (PSC) pay the costs of the program from money PSC receives through its annual assessment of public service companies. The fiscal 2017 budget for the program is \$431,153, which funds four positions.

State Fiscal Effect: If the proposed FRA regulations are finalized by October 1, 2016, the bill terminates and there is no effect on State finances or operations. Even so, if the proposed regulations are not finalized by that date, DLLR may be able to handle the bill's requirements with existing resources. DLLR advises that it is currently seeking reclassification of one position to an inspector position. If the department is successful, it

can handle the additional requirements without the need for additional staff. This analysis assumes that one of these two conditions is met and that, therefore, there is no fiscal impact.

However, if the proposed regulations are not finalized by October 1, 2016, *and* DLLR does not have the position reclassified, then DLLR needs an additional inspector to meet the bill's requirements. Based on the salaries of existing inspectors, the total cost (salary, fringe benefits, and one-time costs) for an inspector is about \$72,000 in fiscal 2017, which accounts for the bill's October 1, 2016 effective date and approximately \$91,000 to \$101,000 annually thereafter.

The bill's penalty provisions – which also terminate if the proposed FRA regulations are finalized – are not anticipated to materially affect general fund revenues.

Additional Information

Prior Introductions: HB 1138 of 2015, a bill with similar provisions, was referred to the House Rules and Executive Nominations Committee, but no further action was taken.

Cross File: HB 92 (Delegate McCray, *et al.*) - Environment and Transportation.

Information Source(s): Department of Labor, Licensing, and Regulation; Public Service Commission; U.S. Department of Transportation; National Archives and Records Administration; Department of Legislative Services

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