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March 23, 2021

The Honorable Delores Kelley, Chairman
Senate Finance Committee

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RE: HB-492

Dear Chairman Kelley and Committee Members:

I want to respond to the House Bill 492 opposition letter dated February 2, 2021 from the Maryland Department of Transportation, which I've attached.

In their opening paragraph they state that HB-492 will "detrimentally impact the MDOT Maryland Port Administration (MDOT MPA) and the Port of Baltimore, and the MDOT Maryland Transit Administration (MDOT MTA) MARC Train Service" and base their opposition on this assumption in addition to the federal preemption argument.

First and foremost, HB-492 will not require any changes in operations of the freight rail carriers covered in this legislation. Today all their freight trains operate with a 2-person crew and when the bill becomes law, they will still operate with a 2-person crew. Therefore, there are no added costs or regulatory requirements to any freight train operations and therefore no "detrimental impacts."

The reason there is no detrimental impact is because these freight railroads have collective bargaining agreements in place that require 2-person crew operations that will remain in effect for several more years. So, the detrimental impact arguments contained in their oppositional letter are moot.

This legislation regulating minimum freight train crew staffing is a **proactive** effort to protect and promote worker health and safety, and the security and welfare of the residents of the state. It will reduce the risk exposure to local communities and protecting environmentally sensitive lands and waterways from future sought after profit over safety operational changes.

Even though their opposition is based on a false premise, I will address their arguments.

Even if this legislation increased costs minimally for the railroads, and let me be clear it does not, it is very speculative that it would deter shippers from using the Port of Baltimore.

There is actually evidence contrary to their claim. When the legislature in the state of California heard this legislation none of the 17 ports that operate in the state and compete with ports in Canada, Washington State, Oregon State and Mexico proffered this theory nor testified in opposition to this legislation. As you know, California passed 2- person crew legislation.

This legislation will not put the Port of Baltimore at a competitive disadvantage with neighboring ports. All the other ports referenced in their opposition have the ability to run double stack freight trains. Maryland does not. However, the Port of Baltimore is not lacking shippers and is growing. Each port has their positives and negatives, such as the Howard Street Tunnel is a major negative for the Port of Baltimore. This limitation is offset by the location of the port, which is a major positive as trains departing Baltimore for points west save substantial time as a result of its preferred inland location. CSX expects their trailer hauling business to double or triple after completion of the renovation of the Howard Street Tunnel when it will be able to accommodate double stack freight.

Their opposition also states that costs will be increased to the state as a result of CSX intending to require 2-persons in the operating cab of MARC trains, which is not a requirement of this legislation. This is also indicated in the fiscal note on the bill wherein it estimates increase costs for such a requirement by CSX at \$2.4 million. I would refer you to the testimony of CSX at the hearing on this legislation. CSX was specifically asked if they intended to require 2-persons in the operating cab of MARC trains. They directly answered they would not impose this requirement, which effectively eliminates the \$2.4 million estimate contained in the fiscal note. There will not be any increased costs to the state for the operation of MARC trains.

They also refer to technology being a significant benefit to increasing safety in the railroad industry. We agree! However, safety apparatuses such as positive train control, hot box detectors, dragging equipment detectors, dead-man pedals, attention alerters and the countless other safety devices and voluminous operating rules will not prevent all accidents in the railroad industry. Each individual safety apparatus and operating rules merely compliment the other in an effort to provide for safe railroad operations. But none more so than two sets of eyes, two minds and the ability to quickly react to emergency situations while working in collaboration.

They also enter into the fray of whether such a law is preempted by federal law. First off, I would say that this is not a question for interpretation by the legislature. This decision lays with the U.S. court system. In the case of *Burlington Northern and Santa Fe Railway Co. v. Doyle* which examined the Wisconsin law that required a minimum of two persons on freight trains, the court ruled that Wisconsin was “free to require two-person crews on over-the-road operations.” This finding by the 7th U.S. District Court rendered in 1999 was never challenged by the railroads.

The court case they refer to rendered by the U.S. District Court for the Northern District of Illinois was under appeal and the parties were awaiting a decision by the 9th U.S. District Court. At issue is whether the Trump administration’s FRA could issue an opinion that states are preempted from regulating railroad crew size without actually regulating the subject matter at federal level. The court has spoken and rendered a decision in favor of the plaintiffs.

Every one of these arguments puts profits and potential costs ahead of the safety of workers, the public and the environment. This legislation is strictly proactive rail safety legislation and should be looked at through that lens! Not whether it may at some point in the future cost a billion-dollar industry a few hundred dollars per train for safe operations in Maryland.

We therefore urge a favorable report on HB-492.

Sincerely,



Lawrence E. Kasecamp
MD State Legislative Director
SMART Transportation Division

February 2, 2021

The Honorable Kumar P. Barve
Chairman, House Environment and Transportation Committee
251 House Office Building
Annapolis MD 21401

Re: Letter of Opposition – House Bill 492 – Railroad Company - Movement of Freight - Required Crew

Dear Chairman Barve and Committee Members:

The Maryland Department of Transportation (MDOT) respectfully opposes House Bill 492, as it would detrimentally impact the MDOT Maryland Port Administration (MDOT MPA) and the Port of Baltimore, and the MDOT Maryland Transit Administration (MDOT MTA) MARC Train Service.

House Bill 492 requires freight railroad companies to have a two-person crew when operating in the State in the same rail corridor as high-speed passenger or commuter trains. With both Amtrak (high-speed passenger) and MARC Train Service (commuter trains) operations in the State of Maryland, a large majority of freight rail operators in the State would be subject to the requirements of this bill. This legislation puts the Port of Baltimore at a competitive disadvantage with neighboring ports, as no other state on the U.S. East Coast has such a requirement. Mandating that carriers in the State of Maryland use a larger crew size than would be required on the same railroads operating out of Norfolk, Philadelphia, or New York will result in an increase in shipping costs and deter carriers from operating in the State, resulting in a loss of jobs and investment directly related to the Port.

It is also anticipated that this will increase the operating costs of MARC Train Service. Two of MARC's three service lines run on tracks owned by freight rail operators, which will likely require MARC to pay for any costs they incur from this bill and/or require MARC to operate its trains with additional crew. Furthermore, increased costs for MARC Train Service may result in service reductions due to budgetary constraints, and if service is reduced then train slots given back to the host railroads may be lost forever.

With the intention of safety in mind, technology has significantly contributed to a reduction in accident rates as crew sizes have decreased over the years. Over the last several years, freight rail operators and passenger train operators have spent billions of dollars nationwide implementing Positive Train Control (PTC), a risk reduction technology that makes rail travel even safer. With the implementation of PTC, this trend will continue.

Additionally, House Bill 492 is preempted by federal law. In May 2019, the Federal Railroad Administration (FRA) withdrew its Notice of Proposed Rulemaking that would have regulated crew size nationwide had it become law. Furthermore, the FRA stated that, a two-person crew mandate would "impede the future of rail innovation." In states where a two-person crew mandate has passed, it has been challenged through the legal system. Most recently in September 2020, the U.S. District

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Court for the Northern District of Illinois ruled in favor of the railroad companies that the FRA's decision to withdraw a proposed crew-size mandate is federal regulation and therefore preempts state law.

At the Port of Baltimore, the MDOT MPA strives to accomplish its mission to increase waterborne commerce through the State of Maryland in a way that benefits the citizens of the State. In doing so, the Port has consistently proven its value as a good neighbor and strong partner throughout the State, generating 15,330 direct family-supporting jobs for Marylanders, where the average wage of these jobs exceeds the statewide average annual wage by 9.5%. The Port handles more automobiles, light trucks, and roll-on/roll-off farm and construction machinery than any other port in the U.S. During this challenging time amid the COVID-19 pandemic, Maryland's Port continues to play an integral role in maintaining our nation's supply chain, moving vital goods to the healthcare industry and consumers. The Port of Baltimore remains a beacon of optimism for the State's economic resiliency, where cargo numbers continue to climb.

For the Port of Baltimore to continue to operate successfully as an economic engine for the State, and retain its competitive edge over neighboring ports, Maryland cannot afford to be at a competitive disadvantage with our neighboring ports. The Port of Baltimore must remain open for business and investment, as the success of our Port directly benefits the State and the hardworking people who depend on it.

MDOT MTA's MARC Train Service works to provide safe, efficient, and reliable transit across Maryland with world-class customer service. MARC provides commuter rail service between Perryville, MD and Washington, DC through Baltimore, MD (Penn Line), Martinsburg, WV and Washington, DC through Brunswick, MD and Frederick, MD (Brunswick Line), and Baltimore, MD and Washington, DC (Camden Line). It serves 42 stations and carried over 9,000,000 trips annually prior to the pandemic, enabling Marylanders to commute to jobs across the state and in Washington, DC while enjoying the many benefits of living in the State of Maryland. For MARC Train Service to continue to provide vital commuter rail service to Marylanders, it cannot afford increased operating costs and the potential permanent loss of train slots for commuter rail service.

For these reasons, the Maryland Department of Transportation respectfully requests the Committee grant House Bill 492 an unfavorable report.

Respectfully Submitted,

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