

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1446 (Delegate Stein)
 Environment and Transportation

Railroads - Safety Requirements (Maryland Railway Safety Act of 2024)

This bill generally prohibits a train or light engine used in connection with the movement of railroad freight from operating in the State unless it has a crew of at least two individuals. The Commissioner of Labor and Industry must establish and maintain a database regarding the transportation of hazardous materials and waste by rail in the State. Specified railroad companies must install wayside detector systems on railroad tracks, among other related requirements. Additionally, a railroad company must allow up to two authorized railroad union representatives per represented union reasonable access to all property owned or leased by the railroad company for specified investigative purposes.

Fiscal Summary

State Effect: Special fund expenditures for the Maryland Department of Labor (MDL) increase by approximately \$500,000 annually in FY 2025 through 2029 to procure a database; special fund revenues increase correspondingly from assessments imposed on public service companies. Transportation Trust Fund (TTF) expenditures may increase by at least \$3.0 million in FY 2025 and by at least \$6.0 million annually thereafter for the Maryland Transmit Administration (MTA) to reimburse CSX for costs associated with the bill’s two-person crew requirement, and may further increase significantly due to other provisions of the bill.

(\$ in millions)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
SF Revenue	\$0.5	\$0.5	\$0.5	\$0.5	\$0.5
SF Expenditure	\$3.5	\$6.5	\$6.5	\$6.5	\$6.5
Net Effect	(\$3.0)	(\$6.0)	(\$6.0)	(\$6.0)	(\$6.0)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

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

Small Business Effect: None.

Analysis

Bill Summary:

Required Crew of at Least Two Individuals

This provision of the bill 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 this provision of the bill is guilty of a misdemeanor and subject to specified penalties. A railroad company is solely responsible for the actions of its agents or employees who violate this provision of the bill.

Hazardous Materials and Waste by Rail Database

Information in the database regarding the transportation of hazardous materials and waste by rail in the State may not be provided to the public and is not subject to the Public Information Act, but the Commissioner of Labor and Industry must share information with the Maryland Department of Emergency Management (MDEM) and the Federal Emergency Management Agency.

Wayside Detector Systems

A “wayside detector system” is an electronic device or a series of connected or networked devices that scan passing trains, rolling stock, and on-track equipment for defects and immediately transmits an alert of defect detections to the operator.

Each railroad company that owns or is otherwise responsible for a railroad track that the Federal Railroad Administration (FRA) has designated Class IV or greater must install, maintain, repair, and operate each wayside detector system in accordance with all applicable guidelines and regulations adopted by the federal U.S. Department of Transportation (USDOT). The bill specifies requirements for the installation, maintenance, operation, training, and monitoring of alerts for wayside detector systems. The Commissioner of Labor and Industry must establish a process for certifying compliance with these requirements, and the bill specifies enforcement of these requirements, which includes the commissioner assessing a civil fine.

The commissioner must also adopt regulations to carry out specified provisions of the bill.

Current Law:

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 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.

Maryland's Railroad Safety and Health Program

The Railroad Safety and Health Program in MDL 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 2025 budget as introduced includes \$470,850 in special funds for the program, which funds four positions.

Regulations Requiring Two-person Crews Reproposed

In March 2016, FRA proposed regulations establishing a minimum two-person crew requirement for all railroad operations with limited exceptions. However, FRA withdrew the regulations in 2019 and noted its view that consideration and rejection of a federal crew staffing requirement preempted all State laws attempting to regulate train crew staffing in any manner. A subsequent court case vacated FRA's withdrawal and preemption determination in February 2021.

In July 2022, FRA proposed similar [regulations](#) with a minimum requirement of two crewmembers for all railroad operations, with exceptions proposed for those

operations that do not pose significant safety risks to railroad employees, the public, or the environment.

Payment for Incremental Staffing Costs for CSX

MTA and CSX Transportation have an Access Agreement that provides MARC trains access to CSX-owned tracks and infrastructure on the MARC Camden and Brunswick Lines. According to MTA, when negotiating the most recent Access Agreement, which went into effect on July 1, 2021, CSX required the following language:

In the event that the State of Maryland modifies its laws or regulations to mandate an increase in crew size in the operation of freight trains than is currently required by law or regulation, the Administration shall reimburse CSX for labor costs actually incurred due to the adoption of the laws or regulations up to \$6.0M annually during the term of the Agreement; provided however the Administration shall not be required to make any such payments if:

- (i) the applicable Collective Bargaining Agreement(s) require operation of trains with two person crews, until CSX demonstrates that it has modified such agreements in accordance with federal law to permit operation of trains with fewer than a two-person crew, or
- (ii) applicable federal law or regulations are changed to mandate two person crews; provided however that if the labor cost actually incurred due to the enactment of state law exceeds the labor cost actually incurred due to the enactment of federal law, the Administration shall pay the difference.

If the actual labor costs are projected to exceed \$6.0M annually, the Parties shall meet and negotiate promptly to determine what additional compensation, if any, shall be paid to CSX for any additional labor costs actually incurred.

The agreement is for five years and has a one-time renewable option for five years.

Transportation of Hazardous Materials

Several State and federal transportation and environmental statutes, regulations, and agencies provide a framework of regulation for the transportation of hazardous materials by truck, rail, pipeline, and other methods, as well as emergency response and the mitigation of hazardous releases.

The USDOT Federal Railroad Administration manages the [High-Hazard Flammable Train \(HHFT\) Route Assessment](#) process, which includes a requirement for an annual HHFT report to be submitted to state emergency management entities annually.

State Fiscal Effect:

Maryland Department of Labor

MDL advises that it needs to procure a database regarding the transportation of hazardous materials and waste by rail in the State, which may exceed \$2.5 million over a five-year term. Thus, PSC special fund expenditures for MDL increase by approximately \$500,000 annually in fiscal 2025 through 2029 to procure the database. Special fund revenues increase correspondingly from assessments imposed on public service companies. While MDL is required to share information from the database with MDEM, the bill does not require MDEM to share the information with the Maryland Department of Transportation, the Maryland Department of the Environment, or local governments that may be responding to incidents.

MDL can inspect compliance with wayside detector requirements and ensure crew requirements are met when MDL does its regular inspections with existing budgeted resources. The bill's penalty provisions are not anticipated to materially affect general fund revenues.

Maryland Transit Administration

TTF expenditures may increase by at least \$3.0 million in fiscal 2025 and by at least \$6.0 million annually thereafter for MTA to reimburse CSX for costs associated with the bill's two-person crew requirement in accordance with the terms of the Access Agreement between MTA and CSX. Reimbursement is capped at \$6.0 million annually, but could be potentially more, subject to negotiation. The Access Agreement also provides that collective bargaining agreements requiring two-person crews preclude MTA reimbursements to CSX. CSX has previously advised that a collective bargaining agreement effective through calendar 2024 requires two-person crews. After that expiration, absent any other mitigating factors, MTA would begin reimbursing CSX through the Access Agreement. The Access Agreement's five-year term expires June 6, 2026, but is subject to renewal. It is unknown whether it will be renewed and/or how the agreement will be altered as it relates to two-person crews at that time. If FRA adopts a two-person crew regulation, that provision of the bill likely has little or no effect on TTF expenditures.

TTF expenditures may further increase significantly, potentially by at least \$6.4 million to \$11.2 million annually, for (1) MTA to reimburse CSX for other costs associated with the

bill's requirements; (2) operating costs of certain railroads that MDOT expects to be passed on to the State; and (3) contractual facilities managers to escort union representatives onto MTA property leased from CSX or Amtrak.

For example, MTA expects the State railroads (Canton Railroad) and contract operator railroads (Maryland and Delaware Railroad) to incur \$1.2 million of operating costs due to the two-person crew requirement and \$2.0 million for their infrastructure upgrades/enhancements and \$200,000 in annual operating expenses associated with the wayside detectors requirements that MTA anticipates being passed on to the State. MTA also anticipates CSX will request changes to the Access Agreement to require MTA to pay CSX's costs associated with wayside detectors, which may exceed \$10.0 million for infrastructure upgrades/enhancements and \$1.0 million in annual operating expenses. To the extent that CSX or these railroads incur costs for the hazardous materials and waste database, MTA likewise expects these costs to be passed on to the State. However, the actual impact will depend on negotiated agreements between the parties, any forthcoming federal rules or regulations, and any legal challenges, and cannot be reliably predicted at this time. Additionally, MTA anticipates needing two facilities managers to escort union representatives on property leased to MTA at a cost of \$375,000, however, the actual impact depends on how much access MTA must facilitate. The Department of Legislative Services assumes existing MTA employees can likely escort union representatives onto property leased by MTA as the bill specifies the access must be reasonable.

Additional Comments: Railroads in the United States are designated by the Surface Transportation Board as Class I, Class II, or Class III based upon the railroad's annual revenue, but there are no Class IV railroads. However, there are Class 4 railroads based on track speed.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 1060 (Senators Ellis and Augustine) - Finance.

Information Source(s): Maryland Department of Emergency Management; Maryland Department of the Environment; Maryland Department of Labor; Maryland Department of Transportation; Federal Railroad Administration; CSX Transportation; Department of Legislative Services

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