

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 92 (Delegate McCray, *et al.*)
 Environment and Transportation

Railroad Company - Movement of Freight - Required Crew

This bill 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 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.

Fiscal Summary

State Effect: Special fund expenditures from the Public Utility Regulation Fund increase by \$49,600 in FY 2017 for Public Service Commission (PSC) staff necessary to enforce the bill’s prohibition. Future year expenditures reflect annualization and the elimination of one-time costs. Special fund revenues increase correspondingly from assessments imposed on public service companies. The bill’s penalty provisions are not anticipated to materially affect general fund revenues.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
SF Revenue	\$49,600	\$60,300	\$62,700	\$65,200	\$67,800
SF Expenditure	\$49,600	\$60,300	\$62,700	\$65,200	\$67,800
Net Effect	\$0	\$0	\$0	\$0	\$0

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

Local Effect: None.

Small Business Effect: None.

Analysis

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

The 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 (DOT) 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

As of February 3, 2016, no federal regulations have been promulgated addressing the requirement for two-man crews for the general movement of railroad freight. DOT's

January 2016 Significant Rulemaking Report indicated that draft regulations would be proposed on January 29, 2016. Once the draft regulations are proposed, there will be a two-month public comment period. The report describes the contents of the proposed regulations:

This rulemaking would add minimum requirements for the size of different train crew staffs depending on the type of operation. The minimum crew staffing requirements would reflect the safety risks posed to railroad employees, the general public, and the environment. This rulemaking would also *establish minimum requirements for the roles and responsibilities of the second train crew member on a moving train*, (emphasis added) and promote safe and effective teamwork. Additionally, this rulemaking would permit a railroad to submit information to FRA and seek approval if it wants to continue an existing operation with a one-person train crew or start up an operation with less than two crew members.

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 the Department of Labor, Licensing, and Regulation 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 PSC pay the costs of the program from money PSC receives through its annual assessment of public service companies. The Governor's proposed fiscal 2017 budget for the program is \$431,153, which funds four positions.

Public Service Commission

PSC advises that, in recent decades, with one substantial exception, it has taken no actions regarding rail service in the State. Historically, when there were rail services in Maryland that could reasonably be viewed as intrastate, PSC did actively regulate their operation and determined when and how they could abandon service. In addition to addressing service abandonments, the Public Utilities Article (PUA) retains a number of provisions pertaining

to railroads, which would apply to any intrastate railroads that exist or are formed in the future. Railroads are defined as common carriers in PUA, which makes them subject to tariff requirements and rate regulation. However, even within PUA, most of the provisions pertaining to railroads are explicitly exempted from PSC enforcement authority.

State Fiscal Effect: PSC special fund expenditures increase by \$49,613 in fiscal 2017, which accounts for the bill's October 1, 2016 effective date. This estimate reflects the cost of hiring one administrative specialist to enforce the bill's prohibition. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$42,598
Other Operating Expenses	<u>7,015</u>
Total FY 2017 PSC Expenditures	\$49,613

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses. Special fund revenues increase correspondingly from assessments imposed on public service companies. The bill's penalty provisions are not anticipated to materially affect general fund revenues.

Additional Information

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

Cross File: SB 275 (Senator Feldman, *et al.*) – Finance.

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

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