

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1434 (Delegate Lam, *et al.*)
 Environment and Transportation

Rail Safety Act of 2016

This bill establishes the Rail Safety Fund (RSF) to (1) address environmental and safety issues related to railroads and (2) supplement the Maryland Oil Disaster Containment Clean-up and Contingency Fund (Oil Fund), an existing special fund in the Maryland Department of the Environment (MDE). RSF is administered by the Secretary of the Environment in consultation with the Secretary of Labor, Licensing, and Regulation and the Secretary of Transportation. As a revenue source for the new fund, the bill establishes a new fee on each barrel of oil transferred in the State; the fee is 2 cents per barrel before July 1, 2017, and 5 cents per barrel beginning July 1, 2017. The bill also establishes requirements for railroad operators and engineers related to safety and oil-spill cleanup.

Fiscal Summary

State Effect: Special fund revenues for RSF increase by about \$1.5 million in FY 2017, which reflects the bill’s October 1, 2016 effective date, and by about \$4.9 million annually thereafter from the new fee. Special fund expenditures increase correspondingly to address environmental and safety issues related to railroads and to supplement MDE’s Oil Fund.

(\$ in millions)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
SF Revenue	\$1.5	\$4.9	\$4.9	\$4.9	\$4.9
SF Expenditure	\$1.5	\$4.9	\$4.9	\$4.9	\$4.9
Net Effect	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0

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

Local Effect: Local government revenues and expenditures increase to the extent that RSF is used to provide grants to local governments to improve the preparedness for and response efforts of local first responder agencies to rail accidents.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Rail Safety Fund

In addition to the new fee established by the bill, RSF consists of money appropriated in the State budget, interest earnings, and any other money from any other source accepted for the benefit of the fund. RSF may only be used to provide funding to:

- MDE, the Office of Risk Management and Safety in the Maryland Department of Transportation (MDOT), and State and local first responder agencies to improve preparedness for and response efforts to rail accidents;
- the Department of Labor, Licensing, and Regulation (DLLR) to hire additional rail car inspectors;
- MDOT to administer a program to improve safety and reduce accidents at rail crossings;
- MDE to develop an advanced, real-time system for warning State and local entities of trains carrying hazardous materials; and
- supplement MDE's Oil Fund.

Expenditures in RSF may only be made in accordance with the State budget. The accounts and transactions of RSF are subject to audit by the Legislative Auditor. Any money expended from RSF is intended to be supplemental and not intended to take the place of funding that otherwise would be appropriated for the purposes specified in the bill.

Railroad Safety Requirements

“Railroad operator” means the entity that owns or operates a railroad in the State. Each railroad operator must develop and submit an oil spill response plan to MDE for review and approval; the plan must be updated every two years. Each railroad operator also must submit an annual certification of financial liability to MDE for review and approval, as specified.

Any train that is greater than 100 cars in length must have at least two engineers operating the train at all times. Any railroad operator that does not comply with the bill's requirements may not operate a railroad in the State.

MDE must adopt regulations to implement the requirements for railroad operators.

Current Law/Background:

Maryland Oil Disaster Containment Clean-up and Contingency Fund

The Oil Fund within MDE is used generally for efforts to respond to, contain, and clean up discharges of oil and petroleum products, to restore natural resources damaged by discharges, and for oil-related activities in MDE's water pollution control programs, among other things. The fund is used primarily to support MDE's Oil Control Program, which ensures the safe handling, transportation, and storage of petroleum products within Maryland and the remediation of releases when they occur.

The Oil Fund is financed by a fee that is assessed on each barrel of oil transferred into the State. Before July 1, 2017, the fee that is deposited into the Oil Fund is 7.75 cents per barrel; there is also another fee of 0.25 cents per barrel that is distributed to another special fund within MDE (the Oil Contaminated Site Environmental Cleanup Fund). The current fee generates approximately \$7.75 million annually for the Oil Fund.

Effective July 1, 2017, the oil transfer fee that is paid into the Oil Fund is reduced from 7.75 cents to 5 cents per barrel, and the fee that is paid into the Oil Contaminated Site Environmental Cleanup Fund is eliminated. Thus, beginning July 1, 2017, the fee assessed each barrel of oil transferred into the State is 5 cents, all of which is distributed to MDE's Oil Fund.

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.

Additionally, the Department of Health and Mental Hygiene advises that its Office of Preparedness and Response within the Prevention and Health Promotion Administration is responsible for the Emergency Support Function (ESF) 8: Health and Medical response. Such "ESF-8" responses are initiated when an emergency exceeds local capacities to manage or mitigate, and are coordinated with several local and State agencies under the direction of the Maryland Emergency Management Agency. These existing emergency response procedures are followed in the event of an oil spill during rail transport.

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 March 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 to do so would be proposed on January 29, 2016. Once the draft regulations are proposed, there will be a two-month public comment period. The January 2016 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 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 to do so – 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 Governor's proposed fiscal 2017 budget for the program is \$431,153, which funds four positions.

State Revenues: Special fund revenues for RSF increase by an estimated \$1.5 million in fiscal 2017 and an estimated \$4.9 million annually thereafter from the oil transfer fee established by the bill. This estimate reflects the applicable fee (2 cents per barrel in fiscal 2017 and 5 cents per barrel annually thereafter) and is based on the average number of barrels of oil transferred in the State from fiscal 2011 through 2015 (approximately 98.6 million barrels). In fiscal 2017, the estimate reflects the bill's October 1, 2016 effective date.

MDE advises that from fiscal 2011 through 2015, the number of barrels of oil transferred in the State was as follows: 106.0 million barrels in fiscal 2011; 98.5 million barrels in fiscal 2012; 101.4 million barrels in fiscal 2013; 96.8 million barrels in fiscal 2014; and 90.4 million barrels in fiscal 2015.

State Expenditures: This analysis assumes that money in RSF that is not spent in any given fiscal year by MDE, MDOT, and DLLR for the specific programs outlined in the bill relating to preparedness and response, rail car inspectors, safety at rail crossings, and the warning system are used to supplement MDE’s Oil Fund, as authorized by the bill. Thus, it is assumed, for purposes of this fiscal and policy note, that total special fund expenditures are equivalent to special fund revenues in each year. Accordingly, special fund expenditures increase by approximately \$1.5 million in fiscal 2017 and \$4.9 million annually thereafter.

The administrative costs for MDE, MDOT, and DLLR associated with the other authorized uses of RSF are described below.

Maryland Department of the Environment

MDE requires additional staff to assist MDOT with the safety programs required by the bill and to assist in administering the fund. Therefore, special fund administrative expenditures for MDE increase by at least \$109,956 in fiscal 2017, which accounts for the bill’s October 1, 2016 effective date, to hire one hazardous materials response officer supervisor to work with MDOT and one agency grants specialist to track funding. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$100,327
Other Operating Expenses	<u>9,629</u>
Total FY 2017 MDE Admin. Expenditures	\$109,956

Future year expenditures reflect salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. The Department of Legislative Services notes that, once the scope of the tasks outlined in the bill have begun, it is possible that MDE may need additional staff.

The cost for MDE to develop an advanced, real-time system for warning State and local entities of trains carrying hazardous materials cannot be estimated at this time and is not included in the above estimate. However, based on the anticipated revenue stream to RSF and the anticipated administrative expenses for the various agencies involved in the programs funded by RSF, special fund revenues are assumed to be sufficient to cover the cost of the development, operation, and maintenance of such a system.

Department of Labor, Licensing, and Regulation

One of the allowable uses of RSF is for DLLR to hire additional rail car inspectors. DLLR advises that, as a result, it anticipates hiring two such inspectors. Therefore, special fund administrative expenditures for DLLR increase by \$117,080 in fiscal 2017, which accounts for the bill's October 1, 2016 effective date. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$107,451
Other Operating Expenses	<u>9,629</u>
Total FY 2017 DLLR Expenditures	\$117,080

Future year expenditures reflect salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Maryland Department of Transportation

The bill authorizes MDOT to use RSF to administer a program to improve safety and reduce accidents at rail crossings. The bill also authorizes MDOT's Office of Risk Management and Safety, along with MDE and State and local first responder agencies, to improve preparedness for and response efforts to rail accidents. However, MDOT advises that these activities are outside the scope of its current authority and expertise. Thus, it needs to hire contractual assistance in order to conduct these activities. For the purposes of this analysis, it is assumed that MDOT spends approximately \$450,000 in fiscal 2017 and approximately \$600,000 annually thereafter in special funds for contractual services to develop and administer the safety programs; however, special fund expenditures may increase further to the extent that additional contractual services are needed.

Office of Legislative Audits

The Office of Legislative Audits can handle the bill's requirements with existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of the Environment; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; Department of Health and Mental Hygiene; Department of Legislative Services

Fiscal Note History: First Reader - March 9, 2016
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