

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 381

(Delegate McCray, *et al.*)

Environment and Transportation

Finance

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 FRA regulations are finalized by October 1, 2017, the bill terminates and there is no effect on State finances or operations. If regulations are not finalized by that date, the Department of Labor, Licensing, and Regulation (DLLR) can handle the bill's requirements with existing resources. 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 committed 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 one of several 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 Withdrawn

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 was proposed for all railroad operations, with exceptions for those operations that FRA believed did not pose significant safety risks to railroad employees, the general public, and the environment by using smaller crews than two individuals.

A January 20, 2017 Presidential Memorandum generally requires federal departments and agencies to delay the effective date of regulations published in the *Federal Register* by 60 days, withdraw all regulations that have been sent to the Office of the Federal Register but have not yet been published, and withdraw all regulations currently under review by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget. Accordingly, FRA's proposed regulations were withdrawn from OIRA on January 26, 2017. This is the most recent publicly available status, according to FRA.

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. West Virginia's requirement was later found to be preempted by federal law.

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 2018 budget for the program is \$393,000, which funds four positions.

State Fiscal Effect: As discussed above, FRA regulations establishing a two-person crew requirement were withdrawn from OIRA on January 26, 2017. Whether or not this is a temporary delay is unknown.

Absent finalized federal regulations by October 1, 2017, DLLR must implement the bill, which DLLR is able to do with existing resources. The bill's penalty provisions – which also terminate if FRA regulations are finalized – are not anticipated to materially affect general fund revenues.

Additional Comments: DLLR advises that many trains in operation throughout Maryland originate, or end, in other states. The bill may result in a more stringent crew size requirement than adjoining states. Currently, there are freight trains operating within the State that have only one crew member.

Additional Information

Prior Introductions: HB 92 of 2016, a similar bill, received a hearing from the House Environment and Transportation Committee, but no further action was taken. Its cross file, SB 275, as amended, passed the Senate and received a hearing from House Environment and Transportation Committee, but no further action was taken. HB 1138 of 2015, a similar bill, was referred to the House Rules and Executive Nominations Committee, but no further action was taken.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Public Service Commission; Baltimore, Dorchester, Garrett, and Montgomery counties; U.S. Department of Transportation; Office of Information and Regulatory Affairs, Department of Legislative Services

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Analysis by: Stephen M. Ross

Direct Inquiries to:
(410) 946-5510
(301) 970-5510