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February 3, 2021

The Honorable Kumar Barve, Chairman  
House Environment & Transportation Committee

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**RE: HB-492**

Dear Chairman Barve and Committee Members:

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

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 they’re 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 is under appeal and the parties are currently awaiting a decision by the 9<sup>th</sup> U.S. District Court. At issue is whether the Trump administration’s FRA can issue an opinion that states are preempted from regulating railroad crew size without actually regulating the subject matter at federal level.

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