

BRIAN E. FROSH
ATTORNEY GENERAL

ELIZABETH F. HARRIS
CHIEF DEPUTY ATTORNEY GENERAL

CAROLYN A. QUATTROCKI
DEPUTY ATTORNEY GENERAL



SANDRA BENSON BRANTLEY
COUNSEL TO THE GENERAL ASSEMBLY

KATHRYN M. ROWE
DEPUTY COUNSEL

JEREMY M. MCCOY
ASSISTANT ATTORNEY GENERAL

DAVID W. STAMPER
ASSISTANT ATTORNEY GENERAL

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

March 9, 2018

The Honorable Robert L. Flanagan
Maryland House of Delegates
430 House Office Building
Annapolis, Maryland 21401

Re: *House Bill 180 – “Railroad Company – Movement of Freight – Required Crew”*

Dear Delegate Flanagan:

You have inquired whether, based on the possible enactment of House Bill 180 “Railroad Company – Movement of Freight – Required Crew,” there is any law that would force CSX Transportation, Inc. (“CSX”) to enter into a contract with the Maryland Transit Administration (“Administration”), if the Administration refused to pay CSX’s extra operating costs that may be incurred in a two-person crew requirement.

Although there is no express requirement that CSX provide the Administration access to its property under *any* condition, CSX is a rail carrier that is nevertheless obligated under federal law to provide transportation or common carrier service upon reasonable request. If CSX refused to provide the Administration access to its rail property on the basis of the Administration’s refusal to pay CSX’s cost to implement HB 180, the Administration could file an action with the federal Surface Transportation Board (“Board”), which regulates interstate common carrier and rail carrier service, to obtain such access. CSX and the Administration are free to enter into a contract, as they have done in the past, setting out the terms of the Administration’s access to CSX rail property. Such a contract may include an agreement allocating certain costs, but if the parties failed to agree on a contract, the Administration may still make a reasonable request of access to CSX rail property, subject to the jurisdiction of the Board.

To the extent CSX’s compliance with HB 180 may raise CSX’s operating costs, under the conditions established by the Board for contracts for the provision of services under certain rates and conditions, such an operating cost may be factored into the contract for service between CSX and the Administration, and it may be possible that such a cost may be factored into the consideration paid by the Administration in its contract with CSX. Absent a contractual agreement between CSX and the Administration regarding the allocated costs, it appears to be within the discretion of the Board whether it would be reasonable to allow CSX to refuse the Administration’s

access to its rail property based on the Administration's refusal to pay the entirety of CSX's operating costs of a two-person crew requirement.

Under federal law, the Board has jurisdiction, in pertinent part, over transportation in the United States between a place in a State and: (1) a place in the same or another State as part of the interstate rail network; or (2) a place in a territory or possession of the United States. 49 U.S.C. § 10501(a). By CSX's and the Administration's operations of rail service as part of an interstate rail network and operations between Maryland and Washington, D.C., their rail operations are subject to the jurisdiction of the Board. The Board's jurisdiction is exclusive over "transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers" and over remedies for the regulation of rail transportation. 49 U.S.C. § 10501(b).

In terms of the obligation of a rail carrier like CSX to provide access to common carrier passenger rail service, federal law requires the following:

A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall provide the transportation or service on reasonable request. A rail carrier shall not be found to have violated this section because it fulfills its reasonable commitments under contracts authorized under section 10709 of this title before responding to reasonable requests for service. Commitments which deprive a carrier of its ability to respond to reasonable requests for common carrier service are not reasonable.

49 U.S.C. § 11101(a). A rail carrier is required to provide transportation or service in accordance with rates and service terms, and the Board shall establish regulations for the disclosure of rates and service terms, including classifications, rules, and practices of carriers. 49 U.S.C. § 11101(e) and (f).

Contracts for rail services are authorized under 49 U.S.C. § 10709, allowing rail carriers and purchasers of rail services to provide specified services under specified rates and conditions. An authorized contract (a summary of which must be filed with the Board) may not be challenged before the Board, and an exclusive remedy for an alleged breach of contract is a contract action before an appropriate State or federal court. 49 U.S.C. § 10709(c). Complaints with respect to contracts may be filed with the Board by a shipper on the grounds that the shipper will be harmed because the contract "unduly impairs the ability of the contracting rail carrier or carriers to meet their common carrier obligations to the complainant under section 11101[.]" 49 U.S.C. § 10709(g)(2).

Accordingly, it appears under federal law that the parties are free to enter into a contract for the Administration to have access and use of CSX rail property, as is currently the case. The parties appear to be free to negotiate and agree on the allocation of costs for providing such service,

The Honorable Robert L. Flanagan
March 9, 2018
Page 3

including whether or not the parties agree that CSX may pass along all or part of its operating costs to the Administration. If the parties do not agree to contract terms, it appears that if the Administration makes a reasonable request to CSX for common carrier services, the Board has the authority to grant such use. Whether or not a demand from CSX that the Administration pay for all or part of its operating costs for CSX operating two-person crew service is a reasonable condition of granting the Administration common carrier authority on its property, appears to be a determination within the discretion of the Board.

I hope this is responsive to your request. If you have any questions or need any additional information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremy M. McCoy". The signature is written in a cursive, slightly slanted style.

Jeremy M. McCoy
Assistant Attorney General