



Brian W. Hammock  
Director State Affairs  
CSX Transportation

March 5, 2024

The Honorable Regina T. Boyce  
6 Bladen Street  
House Office Building Room 251  
Annapolis, MD 21401

**RE: LETTER IN OPPOSITION TO HB1446/SB1060**

Dear Vice Chair Boyce:

On behalf of CSX Transportation, I am writing to respectfully oppose HB1446/SB1060. Taken together, the bills impose six new requirements on freight railroads and greatly expand state regulatory oversight of an industry already heavily regulated at the federal level. As the Senate version of this bill may be sponsor-only testimony when it reaches the House, my testimony will address the four new mandates appearing in both versions of the bill, and the additional two mandates found only in the Senate version.

CSX welcomes the opportunity to work with the Maryland General Assembly to improve railroad safety. Unfortunately, this bill falls short of that goal. Our concerns are twofold: firstly, the proposed mandates risk compromising the efficiency and safety advancements that the rail industry has achieved over decades. Secondly, the repercussions of these mandates could extend beyond our industry, disrupting the national supply chain, inflating costs for businesses and consumers in Maryland, and increasing greenhouse gas emissions by pushing freight transport from rail to less sustainable modes.

**1. Two-person Crew Mandate**

CSX has remained open and transparent about two-person crew discussions at a national level but believe state government mandates on national networks such as ours puts Maryland and the railroad industry at a practical disadvantage. This bill would make permanent a single staffing model for all freight railroads in Maryland, regardless of whether they are mainline, yard or switching operations. Except for two types of operations – “Hostler Service” or “Utility Employees in Yard Service” – which are not defined in the bill. State laws of this nature have been preempted by federal law for over 40 years.

A national crew size rule is likely to be issued by the Federal Railroad Administration any day,<sup>1</sup> detailing when and under what conditions train crews should be staffed to ensure optimal safety of

---

<sup>1</sup> Train Crew Size Safety Requirements, 87 Fed. Reg. 144 (proposed July 28, 2022) ([link](#)); Report on DOT Significant Rulemaking, Federal Railroad Administration, p. 21, Stage: Final Rule, Publication Date: March 2024 ([link](#)).

our employees and the public. Locking Maryland into a rigid operating model, without any study or analysis of the impacts to the economy or supply chain, risks doing more harm than good.<sup>2</sup>

This is not the first time Maryland has considered regulated train crew sizes. In 1908, Maryland passed what was known as the “Full Crew Law,” requiring six employees on a freight train.<sup>3</sup> This was a time when over 90 different railroads had incorporated in Maryland. Many operating over a short distance within the state, servicing one or a few industries. Acknowledging the growth of interstate commerce and competition among neighboring ports, Maryland repealed the “Full Crew Law” in 1922, leaving it to the Public Service Commission (“PSC”) to regulate train crew sizes.<sup>4</sup> That same year, after extensive field investigation and lengthy hearings, the PSC declined to regulate crew size, ruling there was “no convincing evidence” that the operations of a freight train with a smaller crew is less safe.<sup>5</sup>

For the past 100 years, crew staffing, like wages, health care and work rules, has been collectively bargained under the federal Railway Labor Act. As technology has advanced and operations evolved, railroads and unions have collectively reduced crew sizes in a gradual, measured process to ensure public safety and improved service. During that timeframe accident rates decreased by over 80% despite freight rail volume doubling. Over the last 20-plus years of the two-person crew era, accident rates are down by over 40 percent.

#### *Federal Railroad Oversight and Preemption*

Federal oversight of the rail industry, along with consumer demand, have grown exponentially since Maryland last regulated train crew sizes. As our country became more dispersed, we also became more dependent on the few remaining national railroad networks. In the 1960s and 1970s, many of the smaller railroads and several national railroads went bankrupt, in part, from an inconsistent patchwork of state regulations that had developed during the first 100 years of railroading. For this reason, the federal government established an extensive regulatory framework to ensure safe railroad operations and to promote economic growth across state lines.

- **Department of Transportation Act of 1966:** established DOT as the primary agency for federal oversight and administration in the field of transportation, including rail. Established the Federal Railroad Administration to “carry out all railroad safety laws of the United States.”<sup>6</sup>
- **Federal Railroad Safety Act of 1970:** enacted “to promote safety in all areas of railroad operations and to reduce railroad-related accidents, and to reduce deaths and

---

<sup>2</sup> Prior to adopting new railroad safety and health regulations, existing Maryland law requires an economic impact statement, including direct and indirect effects of the regulation on the railroad industry, the public, and railroad employees, and a review of alternative approach available to ensure the “least burdensome economic impact on the railroad industry, the public, and railroad employees. MD. Code Ann. Lab. & Empl. §5.5-108(2) ([link](#)).

<sup>3</sup> 1908 Md. Laws, Chap. 724.

<sup>4</sup> 1922 Md. Laws, Chap. 143.

<sup>5</sup> PSC Case No. 2006 (June 15, 1922).

<sup>6</sup> 49 U.S.C. §103(b) ([link](#)).

injuries to persons and to reduce damage to property caused by accidents involving any carrier of hazardous materials.”<sup>7</sup>

- **Regional Rail Reorganization Act of 1974 (“3R Act”)**: passed by Congress in 1974 in response to a railway bankruptcy crisis in the Northeast and Midwest. The Act was designed to reorganize the railroads to create an economically viable and cohesive railway system. The Act has an express state preemption clause that **prohibits states in the Region, including Maryland, from adopting laws or rules requiring a specified crew size** for any task, function, or operation on the railroad.<sup>8</sup>

Like Maryland, other states have considered or enacted crew mandates in recent years as the Federal Railroad Administration considered a federal rule. The United States District Court for the Northern District of Illinois recently struck down a similar state crew size law passed in Illinois. In that case, railroads in Illinois challenged a state-enacted two-person crew mandate similar in nature to HB1446/SB1060. Finding that the preemption language in the 3R Act is too specific to ignore, the court concluded: “Illinois wants to mandate a crew size of two to perform the task, function or operation of moving freight with a train or light engine; this is exactly what the 3R Act prohibits.”<sup>9</sup>

With comprehensive federal regulations establishing a national standard for train crew size expected any day, current collective bargaining agreements requiring a two-person crew, and federal law preempting state action, there is no urgency for Maryland to pick back up the mantel of state railroad regulations.

## 2. Hazardous Material Database

Existing federal law requires hazardous material information sharing between railroads and state emergency managers. Prior to operating high-hazard flammable (HHFT) trains in Maryland, the USDOT, Pipeline and Hazardous Materials Safety Administration, under the federal FAST Act of 2015, requires railroads to provide a detailed report for emergency response planning to the “appropriate local authorities.”<sup>10</sup> CSX provides this report annually, or more frequently, if necessary, to the Maryland Department of Emergency Management.

In addition, local authorities can – and many do, obtain a density study of hazardous materials moving through their communities upon request from the railroads. First responders also have access to real-time hazardous material information through the rail industry’s AskRail app so they can make an informed decision about how to respond to a rail emergency. CSX provides regular training for Maryland first responders on train accident response; including hands-on training aboard a variety of railcars.

---

<sup>7</sup> 49 U.S.C. §20106 (“Laws, regulations, and orders related to railroad safety and . . . security shall be nationally uniform to the extent practicable.”) ([link](#)).

<sup>8</sup> 45 U.S.C. §797j ([link](#)).

<sup>9</sup> Indiana Rail Road Co. v. Illinois Commerce Comm’n, No. 1:19-CV-06466 (N.D. Ill. 2021) ([link](#)).

<sup>10</sup> 49 CFR § 174.312(a) ([link](#)).



Considering the federal reporting requirement and extensive engagement between the railroad and Maryland emergency managers, a state mandate is unnecessary. The committee may want to consider designating the “appropriate local authority” to receive future HHFT reports under the FAST Act. In a similar situation, the General Assembly in 2002 designed the Maryland Department of Environment as the “information repository” for reports required under the federal Emergency Planning and Community Right-to-Know Act of 1986.<sup>11</sup>

### 3. Wayside Detectors

Wayside detectors refer to an array of advancing technologies designed to reduce risk in railroad operations by identifying poorly performing equipment before accidents occur. As drafted, the bill grants new regulatory authority to the Maryland Department of Labor in a highly technical matter not in keeping with the department’s current role with railroad safety.<sup>12</sup>

The Federal Railroad Administration, in partnership with America’s railroads, are driving innovation in this technology. Through a national data sharing effort among the six largest railroads in the country, real-time trending information provides early defect detection, making an already safe railroad safer. In March 2023, the Federal Railroad Administration issued Safety Advisory 2023-01, calling on railroads to use the data to establish thresholds for inspections of suspected faulty equipment, use real-time trend analysis as a criterion for inspection, ensure proper training and qualification of personnel responsible for the calibration, inspection, and maintenance of wayside detectors, and ensure proper inspection of rolling stock with alerts.<sup>13</sup>

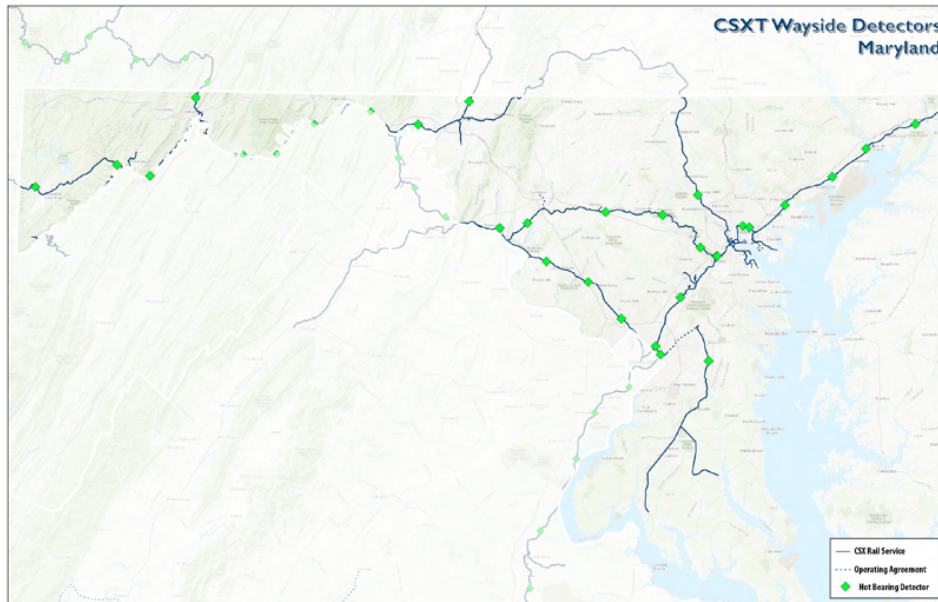
---

<sup>11</sup> MD. Code Ann. Envir. §7-602 ([link](#)).

<sup>12</sup> For the past 24 years, the Maryland Department of Labor has had minimal regulatory oversight of the railroads, primarily focused on: sanitary conditions at rail facilities, basic health and safety standards for drinking water and placement of hand towel facilities, and enclosures of toilet facilities. *See* Md. Code Ann. Lab & Empl. Art. §5.5-110 (2023) ([link](#)).

<sup>13</sup> Federal Railroad Administration, Safety Advisory 2023–01, Evaluation of Policies and Procedures Related to the Use and Maintenance of Hot Bearing Wayside Detectors (March 3, 2023) ([link](#)).

While the larger railroads can invest in these new technologies, the equipment can be cost-prohibitive for smaller, shortline railroads, of which Maryland has eight, including the state-owned Canton Railroad. To encourage investment in safety improvements by smaller railroads, other states have established grant programs. Ohio appropriated \$10 million this fiscal year for a new shortline railroad wayside detector grant program. New state regulations in this area are not necessary and would be duplicative of efforts on the national level.



#### 4. Railroad Union Inspectors

While appreciating the bill's safety focus, granting private individuals broad law enforcement authority is entirely unnecessary and duplicative of existing federal and state law. The provision would allow up to ten<sup>14</sup> authorized union representatives unrestricted access to railroad property to investigate "violations of federal or state laws and regulations," and "safety hazards that may result in injury or death to a railroad employee." Such a grant of authority is unprecedented in Maryland law and is in keeping with powers granted to federal, state, and local law enforcement.

The Federal Rail Safety Act does acknowledge a role for state oversight in this arena, setting forth the procedures for states to establish limited investigative programs under the authorization of the USDOT.<sup>15</sup> The Federal Railroad Administration has enacted comprehensive regulations detailing when, how, and where a state may engage in rail safety inspections, investigation, or surveillance. We encourage Maryland to access this program, with the appropriate federal oversight prescribed.<sup>16</sup>

---

<sup>14</sup> The bill authorized "up to **two** authorized railroad union representatives **for each** union representing the railroad company's employees." CSX has five unions representing our employees.

<sup>15</sup> See 49 USC § 20105(a) ([link](#)).

<sup>16</sup> See 49 CFR Part 212 ("It is the policy of the FRA to monitor State investigative and surveillance practices at the program level.") ([link](#)).

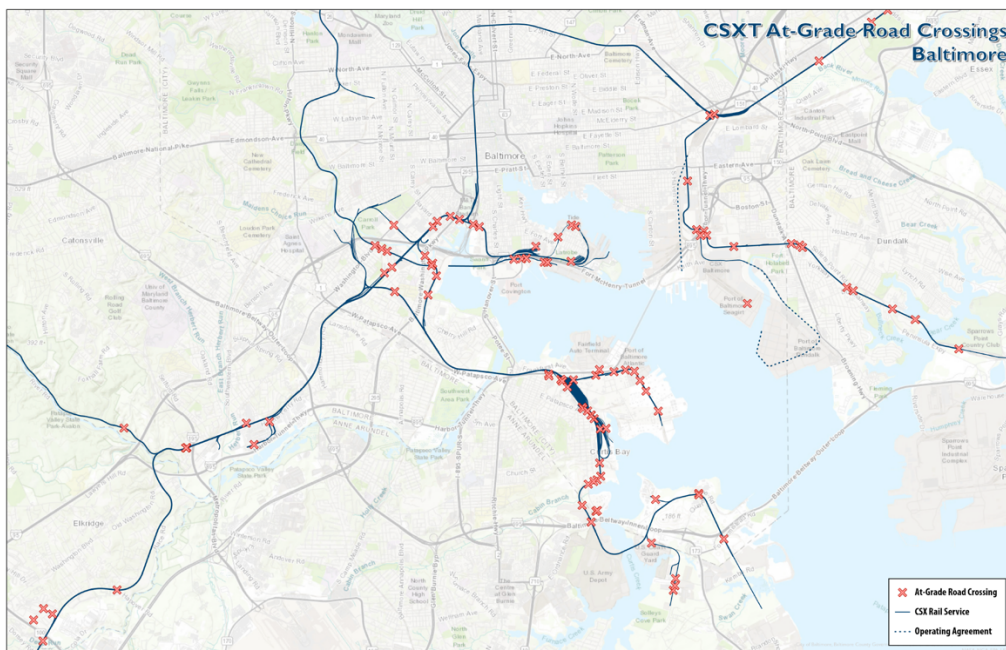


States are preempted from establishing regulations outside of the framework established by Congress.<sup>17</sup>

### **ADDITIONAL RAILROAD MANDATES IN SB1060**

#### **5. Blocked Crossings – 5-minute limit**

As the first state to build a rail network, many state and local roads cross the railroad tracks at-grade, some within active rail yards. It is nearly impossible to build a train of any length in the state without occupy at least one railroad crossing for more than 5-minutes. In the Baltimore metro area, each of our major rail yards have one or more at-grade crossings. Many of these crossings are seldom, if ever, used by the traveling public and confined to heavy industrial areas. The railroad cannot operate without occupying these crossings for more than 5-minutes.



As drafted, the bill is vague and over prescriptive. As one example, “Highway grade crossing” is not defined. Under the Transportation Article, “highway” includes all roadway surfaces, subgrades, drainage facilities and structures, entrance plazas, approaches, including bicycle and walking paths in the State of Maryland.<sup>18</sup> This bill would restrict normal railroad operations whether a crossing is a private farm road, foot path, or interstate expressway.

In addition, nearly all federal and state courts that have considered similar blocked crossing laws have concluded that they are categorically—or completely—preempted because they specifically

<sup>17</sup> See, e.g., *CSX Transp. v. Public Utility Comm.*, 701 F. Supp. 608, 616-17 (S.D. Ohio 1988) (state’s hazardous material inspection regime is preempted by federal law).

<sup>18</sup> Md. Code Ann., Transp. §8-101(i) (2022)([link](#)).

target railroad operations.<sup>19</sup> Moreover, the United States Supreme Court recently denied review in a federal case striking down an Oklahoma ten-minute blocked crossing statute.<sup>20</sup> The Supreme Court did so again when Ohio sought review of a decision finding its blocked-crossing law preempted.<sup>21</sup>

## 6. Train Length – 8,500’ Limit

Arbitrarily restricting train lengths within the state will significantly impact the economic viability of several commodities at the Port of Baltimore, runs counter to environmental best practices, and will have a **direct negative impact on the Transportation Trust Fund** (“TTF”). A blanket restriction on train length will also increase congestion on the railroad, adding over 80 new train sets to the network, which may impact our partnership with MDOT-MTA to increase passenger rail traffic on the CSX Camden and Brunswick lines.

State and private entities are investing over \$2 billion into growing container business at the port. The Howard Street Tunnel project helped induce a major new container facility underway at Trade Point Atlantic, along with record volume at the state-owned Seagirt Marine Terminal. The tunnel project will allow the railroad to move discretionary container traffic from Baltimore to the Midwest on double-stack container trains, which can be 11,000 feet or more. This business is not economically viable with 8,500-foot trains and the volume will likely move to the nearby port of Virginia.

Maryland collects revenue from each container moved across the public docks at Seagirt Marine Terminal. With container volume projected to grow significantly due to the tunnel project, restricting train length restricts Maryland’s growth potential and further reduces the TTF revenue.

The Port of Baltimore is the number one port in America for the import and export of automobiles. The State of Maryland and CSX partnered in the recent past to expand our automotive facility in Jessup, Maryland to accommodate longer auto trains, some that can be 12,000 feet or more to accommodate the growth in volume at Baltimore. This business would not be economically viable with 8,500-foot trains and the volume would likely move to Virginia, Wilmington, and Philadelphia ports.

From an environmental perspective, many businesses rely on rail service, as opposed to less sustainable modes, to meet their individual greenhouse gas emission goals. Rail is the most environmentally friendly mode of freight transportation. The Federal Railroad Administration has determined that “both passengers and freight, produces lower GHG emissions than roadway and air transportation, which means that shifting trips from road and air to rail in markets where it makes sense can reduce overall transportation emissions.”<sup>22</sup>

---

<sup>19</sup> See e.g., Friberg v. Kansas City Southern Rail-way Co., 267 F.3d 439, 443 (5th Cir. 2001); Ohio v. CSX Trans., Inc., 200 N.E.3d 215, 223 (Ohio 2022), cert. denied, 2024 WL 71898 (January 8, 2024); State v. BNSF Ry. Co., 432 P.3d 77, 84 (Ka. App. 2018).


<sup>20</sup> BNSF Railway Co. v. Hiatt, 22 F.4th 1190, 1194 (10th Cir.), cert. denied, 142 S. Ct. 2835 (2022).

<sup>21</sup> Ohio v. CSX Trans., Inc., 200 N.E.3d 215, 223 (Ohio 2022), cert. denied, 2024 WL 71898 (January 8, 2024).

<sup>22</sup> Federal Railroad Administration, Rail Climate Considerations (January 17, 2024) (retrieved March 3, 2024) ([link](#)).

Additionally, as with other items in this bill, federal courts, including the Supreme Court, have rule these types of mandates are preempted at the state level.<sup>23</sup>

In conclusion, CSX respectfully requests the committee to issue an unfavorable report on HB1446/SB1060. Thank you for your consideration.

Very truly yours,  
  
Brian W. Hammock

---

<sup>23</sup> See, Elam v. Kansas City S. Ry. Co., 635 F.3d 796, 806 (5th Cir. 2011) ([link](#)); S. Pac. Co. v. Arizona, 325 U.S. 761, 775 (1945) ([link](#)).