Brian W. Hammock
Director State Affairs
CSX Transportation

February 27, 2025

The Honorable Brian J. Feldman
2 West Miller Senate Office Building
Annapolis, MD 21401

RE: LETTER IN OPPOSITION TO SB882 – Coal Transportation Fee and Fossil Fuel Mitigation Fund

Dear Chair Feldman:

On behalf of CSX Transportation, I am writing to respectfully oppose SB882. The legislation would have a significant negative impact on the Port of Baltimore and disrupt an important sector of Maryland's economy with far-reaching consequences from the Chesapeake Bay to Western Maryland.

Designated a national energy transfer port under the federal Water Resources Development Act, Maryland relies on the volume of coal moved through the port to help fund otherwise cost-prohibitive dredging of the Chesapeake Bay and Baltimore harbor with federal dollars. This investment also accommodates a robust, diverse waterborne commerce sector in Maryland dependent on regular dredging to maintain the channel.

Marylanders built the railroads nearly 200 years ago to keep the Port of Baltimore competitive against larger ports, closer to the Atlantic. Baltimore's inland advantage, coupled with a robust rail network, helped offset the increased shipping costs to navigate up the Bay. Railroads play that same important role today.

To protect the national significance of the railroad, Congress has long preempted state taxes and fees of this nature. With the passage of Interstate Commerce Commission Termination Act of 1995("ICCTA"),[1] Congress eliminated concurrent state regulation of rail transportation with the express purpose to eliminate **"direct economic regulation of railroads by the states."**[2] ICCTA displaced state regulation with a uniform system of federal regulations. "Subjecting rail carriers to regulatory requirements that vary among the States" would undermine the system of national railroads.[3]

To this end, ICCTA vests the Surface Transportation Board ("STB") with exclusive jurisdiction over rail transportation operations. This exclusive jurisdiction covers "transportation by rail carriers . . . with respect to rates, classifications, rules . . ., practices, routes, services, and facilities

[1] 49 U.S.C. §10101, *et. seq*,
[2] *PCS Phosphate Co. v. Norfolk S. Corp.*, 559 F.3d 212, 219 (4th Cir. 2009) (emphasis added); *see also* H.R. Rep. 104-311, at *96 (1995), *reprinted in* 1995 U.S.C.C.A.N. 793, 807 (noting that §10501(b) was enacted "to reflect the direct and complete pre-emption of State economic regulation of railroads").
[3] S. Rep. 104-176, at *6 (1995).

of such carriers" and expressly "preempt[s] the remedies provided under . . . State law."[4] As courts have recognized, "[i]t is difficult to imagine a broader statement of Congress' intent to preempt state regulatory authority over railroad operation."[5]

A state law is preempted by ICCTA if it falls into one of three categories. First, a state law is expressly preempted if it "may reasonably be said to have the effect of 'managing' or 'governing' rail transportation."[6] Second, state laws that "discriminate against rail carriers" are impliedly preempted.[7] Third, any state rule that "unreasonably burden[s] rail carriage" is impliedly preempted.[8] Under all three categories, ICCTA categorically preempts MD SB 882.

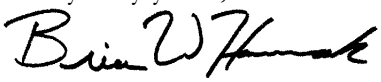
First, MD SB 882 plainly has "the effect of managing or governing rail transportation." The bill "governs" rail transportation because it assesses a "coal transportation fee" the moment a railroad transports coal in the State of Maryland. And the law's effect is neither remote nor incidental. The charge is directly imposed on railroads merely for transporting coal and the amounts are substantial—approximately $335 million based on total volume of coal at the Port of Baltimore in 2024. Second, MD SB 882 also "discriminates" against rail carriers because railroads predominantly move more coal than other modes of transportation (i.e. trucks, ships, barges). Finally, MD SB 882 unreasonably burdens rail transportation by imposing onerous fees that railroads do not face in other jurisdictions. As courts have long held, "economic regulation" is ICCTA preemption's "core."[9]

Absent ICCTA, every state, city, or municipality in which CSXT's approximately 20,000-mile rail network is located could seek to impose varying transportation "fees" based on any number of conflicting local rules or requirements. This type of legal balkanization would result in a burdensome and inconsistent patchwork of state and local economic regulations governing rail transportation—the precise outcome Congress enacted ICCTA to prevent.

State taxes and fees of this nature are also preempted by the Railroad Revitalization and Regulatory Reform Act of 1976 ("4-R Act") because they discriminate against rail transportation.[10] To remove the "temptation to excessively tax" railroads "to subsidize general welfare spending," the 4-R Act prohibits state and local tax schemes that discriminate against railroads.[11]

For these reasons, CSX respectfully requests the committee to issue an unfavorable report on SB 882. Thank you for your consideration.

Very truly yours,



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[4] 49 U.S.C. § 10501(b).
[5] *CSX Transp., Inc. v. City of Sebree*, 924 F.3d 276, 283 (6th Cir. 2019).
[6] *Norfolk Southern Rail. Co. v. City of Alexandria*, 608 F.3d 150, 158 (4th Cir. 2010).
[7] *Id.* at 160.
[8] *Id.*; *see also Edwards v. CSX Transp., Inc.*, 983 F.3d 112, 121 (4th Cir. 2020).
[9] *Fayus Enters. v. BNSF Ry. Co.*, 602 F.3d 444, 451 (D.C. Cir. 2010).
[10] Pub. L. No. 94-210, 90 Stat. 31.
[11] *W. Air Lines, Inc. v. Bd. of Equalization of S.D.*, 480 U.S. 123, 131 (1987).