

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 915 (Senator Ellis)
 Finance

Railroad Company – Movement of Freight – Required Crew

This bill generally prohibits 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 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 specified penalties. A railroad company is solely responsible for the actions of its agents or employees in violation of the bill.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures may increase by at least \$3.0 million in FY 2025 and by at least \$6.0 million annually thereafter for the Maryland Transmit Administration (MTA) to reimburse CSX for costs associated with the bill’s two-person crew requirement. The amounts, if any, depend on a variety of factors, as discussed below. The effect on TTF expenditures for the Maryland Port Administration (MPA) is unknown but may also be significant. If the Federal Railroad Administration (FRA) adopts a two-person crew regulation, the bill likely has little or no effect on TTF expenditures. The bill does not otherwise materially affect State finances or operations.

(\$ in millions)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	0	3.0	6.0	6.0	6.0
Net Effect	\$0.0	(\$3.0)	(\$6.0)	(\$6.0)	(\$6.0)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: None.

Analysis

Current Law:

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 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.

Regulations Requiring Two-person Crews Reproposed

In March 2016, FRA proposed regulations establishing a minimum two-person crew requirement for all railroad operations with limited exceptions. However, FRA withdrew the regulations in 2019 and noted its view that consideration and rejection of a federal crew staffing requirement preempted all State laws attempting to regulate train crew staffing in any manner. A subsequent court case vacated FRA's withdrawal and preemption determination in February 2021.

In July 2022, FRA proposed similar [regulations](#) with a minimum requirement of two crewmembers for all railroad operations, with exceptions proposed for those operations that do not pose significant safety risks to railroad employees, the public, or the environment.

Payment for Incremental Staffing Costs for CSX

MTA and CSX Transportation have an Access Agreement that provides MARC trains access to CSX-owned tracks and infrastructure on the MARC Camden and Brunswick Lines. According to MTA, when negotiating the most recent Access Agreement, which went into effect on July 1, 2021, CSX required the following language:

In the event that the State of Maryland modifies its laws or regulations to mandate an increase in crew size in the operation of freight trains than is currently required by law or regulation, the Administration shall reimburse CSX for labor costs actually incurred due to the adoption of the laws or regulations up to \$6.0M annually during the term of the Agreement; provided however the Administration shall not be required to make any such payments if:

- (i) the applicable Collective Bargaining Agreement(s) require operation of trains with two person crews, until CSX demonstrates that it has modified such agreements in accordance with federal law to permit operation of trains with fewer than a two-person crew, or
- (ii) applicable federal law or regulations are changed to mandate two person crews; provided however that if the labor cost actually incurred due to the enactment of state law exceeds the labor cost actually incurred due to the enactment of federal law, the Administration shall pay the difference.

If the actual labor costs are projected to exceed \$6.0M annually, the Parties shall meet and negotiate promptly to determine what additional compensation, if any, shall be paid to CSX for any additional labor costs actually incurred.

The agreement is for five years and has a one-time renewable option for five years.

State Fiscal Effect: TTF expenditures may increase by at least \$3.0 million in fiscal 2025 and by at least \$6.0 million annually thereafter for MTA to reimburse CSX for costs associated with the bill's two-person crew requirement. The amounts, if any, depend on a variety of factors, as discussed below. The effect on TTF expenditures for MPA is unknown but may also be significant. Conversely, if FRA adopts a two-person crew regulation, the bill likely has little or no effect on TTF expenditures. This estimate is based on the following factors:

- The Access Agreement between MTA and CSX generally requires MTA to reimburse CSX for labor costs actually incurred as a result of a bill such as this. Reimbursement is capped at \$6.0 million annually, but could be potentially more, subject to negotiation. CSX advises such costs would currently be about \$5.5 million to \$6.0 million, but costs are expected to rise over time with wage increases. MTA did not provide an estimate;
- The Access Agreement also provides that collective bargaining agreements (CBAs) requiring two-person crews preclude MTA reimbursements to CSX. CSX advises

that the current CBA, effective through calendar 2024, requires two-person crews. After that expiration, absent any other mitigating factors, MTA would begin reimbursing CSX through the Access Agreement;

- It is unknown whether FRA's recent proposal requiring two-person crews will be adopted. If so, absent any other mitigating factors, reimbursements from MTA to CSX under the Access Agreement would be limited to incremental costs of the bill;
- The Access Agreement's five-year term expires June 6, 2026, but is subject to renewal. It is unknown whether it will be renewed and/or how the agreement will be altered as it relates to two-person crews at that time;
- MPA has advised in the past that a bill requiring two-person crews may result in higher shipping costs due to the additional crew expense, which could deter carriers from operating in the State. MPA was unable in the past to determine the extent of the possible impact and did not provide an update for this bill; and
- It is unknown whether the bill will be challenged and determined to be preempted by federal statute or regulation, as was the case for a similar [Illinois law](#) in 2021.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 492 of 2021.

Designated Cross File: HB 352 (Delegate Stein, *et al.*) - Environment and Transportation.

Information Source(s): Maryland Department of Labor; Maryland Department of Transportation; Federal Railroad Administration; CSX Transportation; Department of Legislative Services

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