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1501 K STREET, N.W.
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TELEPHONE 202 736 8000
FACSIMILE 202 736 8711
www.sidley.com
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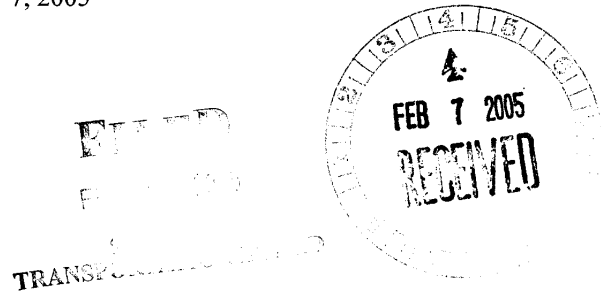
WRITER'S DIRECT NUMBER
(202) 736-8198

WRITER'S E-MAIL ADDRESS
thynes@sidley.com

2/3/90
February 7, 2005

By Hand Delivery

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423



Re: Petition of CSX Transportation, Inc. for Declaratory Order,
Finance Docket No. 34662

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten (10) copies of the Petition of CSX Transportation, Inc. for Declaratory Order, and our check for \$1,400.00 for the filing fee. A diskette containing an electronic version of the Petition is also enclosed. Expedited Handling is requested for this Petition.

Please acknowledge receipt of the Petition for filing by date-stamping the enclosed extra copies and returning them via our messenger. If you have any questions, please contact the undersigned counsel.

Sincerely,

Terence M. Hynes

FREE RECEIVED

TMH:aat
Enclosures

TRANSPORTATION BOARD

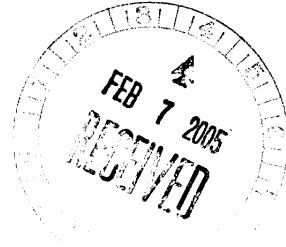
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EMERGENCY PETITION – EXPEDITED HANDLING REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO. 34662

PETITION OF CSX TRANSPORTATION, INC. FOR DECLARATORY ORDER

FILED

FEB - 7 2005

**SURFACE
TRANSPORTATION BOARD**

Irvin B. Nathan
Mary Gabrielle Sprague
Arnold & Porter LLP
555 Twelfth Street, N.W.
Washington, DC 20004-1205
(202)-942-5000
(202) 942-5999 (fax)

Ellen M. Fitzsimmons
Peter J. Shultz
Paul R. Hitchcock
CSX Transportation, Inc.
500 Water Street
Jacksonville, Florida 32202
(904) 359-3100

G. Paul Moates
Terence M. Hynes
Matthew J. Warren
Sidley Austin Brown & Wood LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
(202) 736-8711 (fax)

**ENTERED
Office of Proceedings**

FEB - 7 2005

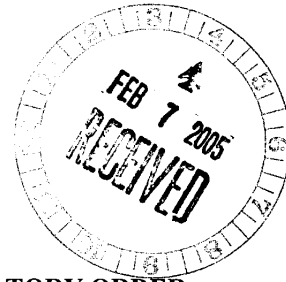
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Dated: February 7, 2005

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TRANSPORTATION BOARD**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34662



PETITION OF CSX TRANSPORTATION, INC. FOR DECLARATORY ORDER

INTRODUCTION

Pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 721, CSX Transportation, Inc. ("CSXT") hereby petitions the Board to issue an order declaring that an ordinance titled the "Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005" (the "DC Ordinance") promulgated by the City Council of the District of Columbia ("City Council") on February 1, 2005 is preempted by Section 10501 of the ICC Termination Act of 1995 ("ICCTA") and that, subject to compliance with applicable federal safety and hazardous materials transportation statutes and regulations, CSXT may continue to route cars to which the DC Ordinance applies via its lines through, and in the vicinity of, the District of Columbia.

In order to prevent the disruption of rail service in CSXT's service territory likely to result from enforcement of the DC Ordinance, CSXT respectfully requests that the Board act on this Petition as soon as possible. CSXT also requests that, to the extent that the District of Columbia wishes to respond to this Petition, the Board direct it to do so within four business days of the date hereof.¹

¹ Copies of this Petition have been served, by hand, on the Office of the Mayor, the General Counsel to the Mayor, and the Office of the Attorney General of the District of Columbia.

I. STATEMENT OF FACTS

This Petition asks the Board to declare that the recently enacted DC Ordinance, which has the specific purpose and effect of prohibiting the interstate shipment of certain commodities via rail lines in the District of Columbia, is preempted by ICCTA, and constitutes an impermissible attempt to regulate interstate rail transportation. The DC Ordinance unreasonably burdens interstate commerce, and conflicts with the comprehensive scheme of federal regulation of hazardous materials shipments by rail pursuant to ICCTA and federal railroad safety statutes. Enforcement of the DC Ordinance would invite other local jurisdictions to enact similar measures that could bring to a halt the interstate shipment of critically important materials throughout the United States.

CSXT appreciates that there are many public policy issues involving the production, use and transportation of the commodities covered by the DC Ordinance. CSXT takes no position with respect to those issues here. Rather, this Petition is intended to enable CSXT to comply with its common carrier obligation to transport goods tendered to it in a safe and efficient manner over its established routes.

A. The DC Ordinance

The City Council passed the DC Ordinance on February 1, 2005. Mayor Anthony A. Williams has indicated publicly that he intends to sign the DC Ordinance into law in the immediate future. A copy of the DC Ordinance is attached hereto as Exhibit 1.

The DC Ordinance provides that, except in certain “emergency” situations, it shall be illegal to transport certain classes of commodities, including “explosives,” “flammable gasses,” “poisonous gasses,” or “poisonous materials” in or through the so-called “Capitol Exclusion Zone” without obtaining a permit from the DC Department of Transportation (“DCDOT”). DC

Ordinance § 4(a).² The “Capitol Exclusion Zone” is defined as the area “within 2.2 miles of the U.S. Capitol Building.” DC Ordinance, § 3(2). The DC Ordinance likewise purports to make it unlawful to “operate a vehicle or rail car which is capable of containing” a prohibited commodity within the Capitol Exclusion Zone. DCDOT is authorized to issue a permit for the movement of such commodities only if a carrier can demonstrate “that there is no practical alternative route” for the subject traffic. DC Ordinance, § 5(a). The clear purpose and intent of the DC Ordinance is to prohibit the movement of interstate rail shipments of hazardous materials through the District of Columbia. In sponsoring the DC Ordinance, Council members Kathy Patterson and Phil Mendelson specifically wrote in a memorandum to their colleagues that it will “effectively prevent the through shipment of [hazardous materials] by rail or truck, thereby removing the risk and threat to our residents.” Memorandum from Council Members Patterson and Mendelson to Council Members, dated January 26, 2005 at 1.

B. CSXT Rail Operations

CSXT is a Class I freight railroad that operates a rail network consisting of more than 23,000 route miles in 23 states, the District of Columbia and two Canadian provinces. CSXT’s north-south main line (the “I-95 Route”) runs along the eastern seaboard from Jacksonville, FL via Atlanta to Baltimore, Philadelphia, New York and Boston. The segment of the I-95 Route that passes through the District of Columbia is part of the former Richmond, Fredericksburg and Potomac Railroad (“RF&P”) and the Alexandria Extension of the former Baltimore and Ohio Railroad’s Capital Subdivision. CSXT also operates an east-west main line (the “East-West

² The DC Ordinance defines such an “emergency” as an “unanticipated, temporary situation that threatens the immediate safety of individuals or property.” DC Ordinance, § 3(1) (emphasis added). The Ordinance does not articulate any standards for determining when such an emergency exists. However, the highlighted language makes clear that the DC Ordinance does not contemplate that such movements would, under any circumstances, be permitted on an ongoing basis.

Route”) from Washington, D.C. via Maryland and West Virginia to Chicago and St. Louis. The segments of the East-West Route that pass through the District of Columbia are known as the Metropolitan Subdivision (the western portion) and the Capital Subdivision (the eastern portion). Both the I-95 Route and the East-West Route traverse the “Capitol Exclusion Zone.” Indeed, the 2.2-mile reach of the Capitol Exclusion Zone appears to have been designed for the express purpose of including the East-West Route.

CSXT transported approximately 500,000 carloads of hazardous commodities during 2003. Rail cars containing hazardous materials are transported in trains that also carry non-hazardous commodities. Indeed, 40-50 percent of all CSXT trains include some cars carrying hazardous commodities. CSXT has for decades transported hazardous materials, including commodities covered by the DC Ordinance, via its I-95 Route and East-West Route through the District of Columbia. CSXT does not originate or terminate any shipments of the covered commodities at points within the District of Columbia. Rather, all such cars are interstate shipments moving overhead via CSXT lines that pass through the District of Columbia.

Hazardous commodities are transported in specially designed and constructed cars that meet USDOT and industry standards and specifications. Pursuant to federal regulations, the cars are placarded to indicate that they contain a hazardous material. Tank cars – used to transport most hazardous materials – are typically owned or leased by the shipper or consignee, not by the railroad. After such a car is unloaded at destination, the car is typically returned to the point of origin via the most direct route for reloading by the shipper. In some instances, federal law requires that cars containing certain quantities of residue be placarded as well.

Like all Class I rail carriers, CSXT operates its rail network pursuant to a comprehensive Operating Plan, which is designed to meet the requirements of its customers in a safe and

efficient manner. An efficient Operating Plan results in better service to shippers and lower operating costs. Efficient rail operations minimize crew, locomotive, car and track capacity requirements, consume less fuel, generate fewer air pollutants, and are generally safer than inefficient rail operations. The Board is well aware of the public interest in avoiding significant disruptions to efficient carrier operations. Pursuant to its Operating Plan, CSXT routinely routes both loaded cars containing commodities that are covered by DC Ordinance, and empty return movements of such cars, on trains operating on its lines traversing the District of Columbia.

CSXT has a statutory duty to provide common carrier service upon request by a shipper. 49 U.S.C. § 11101. Under the current state of the law, CSXT's common carrier obligation includes the duty to accept shipments of hazardous materials for movement over its network. CSXT's handling of hazardous commodities is governed by a comprehensive scheme of federal regulation. The FRA administers a wide variety of rail safety regulations that address track and roadbed conditions; signal systems; locomotive and freight car specifications; emergency preparedness; hours of service of railroad employees; operating practices and procedures; qualification standards for certain employees; and alcohol and drug testing of railroad employees, among other things. 49 C.F.R. Parts 200-268. Pursuant to 49 U.S.C. § 20104, the FRA has authority to issue temporary orders prohibiting operations on a line in response to emergency situations. Neither the FRA – nor any other federal agency – has issued any order prohibiting CSXT from transporting hazardous commodities on its lines through the District of Columbia.

The Hazardous Materials Transportation Act (“HMTA”) prescribes regulations for the safe transportation of hazardous materials in intrastate, interstate and foreign commerce. 49 U.S.C. § 5013). Pursuant to HMTA, the Research and Special Programs Administration of the

Department of Transportation (“RSPA”), issues regulations governing the transportation of hazardous materials via all modes of transportation, including rail. Those regulations address issues such as packaging, identification, handling and security requirements. 49 C.F.R. Parts 171-180.

Following the September 11, 2001 attacks on New York and Washington, the Federal Government further bolstered its role in railroad security and the transportation of hazardous materials. Immediately after September 11, the rail industry, working in cooperation with the Government, developed a plan to upgrade the security of the national rail network. Each Class I railroad (including CSXT) then developed its own specific security plan. RSPA published a final rule (HM-232) on March 25, 2003 requiring persons who transport, or offer for transportation, certain highly hazardous materials to develop and implement security plans. 68 Fed. Reg. 14,510. Both the FRA and the Transportation Security Administration (“TSA”) have reviewed CSXT’s security plan, including those aspects required by HM-232, and have concluded that it complies with the requirements of this regulation.

During 2004, TSA undertook the D.C. Rail Corridor Project, a comprehensive vulnerability assessment of CSXT’s rail routes through the District of Columbia. TSA and CSXT are in the process of implementing certain enhanced security measures recommended by TSA as a result of that effort.³ However, neither TSA, nor any other Federal agency, has directed CSXT to reroute cars of hazardous commodities away from its lines through the District of Columbia. CSXT consults on an ongoing basis with various federal agencies regarding intelligence information relating to potential threats to its network.

³ In the Spring of 2004, CSXT instituted a voluntary reroute of loaded cars carrying PIHs, compressed flammable gasses and certain other hazardous materials that would have traversed its I-95 line through the District of Columbia. CSXT continues to confer with the Department of

In short, the Federal Government has determined that hazardous materials, including those prohibited by the DC Ordinance, may be transported by rail in interstate commerce (including through the District of Columbia) so long as they are handled in accordance with federal safety and security regulations. The Federal Government has recognized the importance of such shipments to the U.S. economy. For example, the Department of Transportation recently stated:

Hazardous materials are essential to the economy of the United States and the well being of its people. Hazardous materials fuel cars and trucks, and heat and cool homes and offices. Hazardous materials are used for farming and medical applications and in manufacturing, mining, and other industrial processes.

Notice, "Hazardous Materials: Transportation of Explosives by Rail," 68 Fed. Reg. 34,470, 34,472 (June 9, 2003).

Nevertheless, apparently unsatisfied with the Federal Government's approach to hazardous shipments regulation – and despite TSA's specific attention to the D.C. Rail Corridor – the City Council took the unprecedented step of imposing an outright ban on the transportation of certain hazardous commodities through the District of Columbia. In passing the DC Ordinance, the City Council (incorrectly) stated that "[t]he Federal Government has not acted to prevent the terrorist threat resulting from the transportation of dangerous quantities of ultra-hazardous materials near the Capitol." DC Ordinance, § 2 (3). In addition, the DC Ordinance makes no attempt to balance the interest of the District of Columbia in protecting the National Capitol area from acts of terrorism with the regional and national interest in the efficient and safe transportation of these important commodities; nor did the City Council

Homeland Security and other federal agencies concerning the routing of those cars, as well as other movements and security improvements, for the I-95 line through the District.

consider the potential impact of its action on the safety and security of other jurisdictions through which hazardous shipments rerouted pursuant to the DC Ordinance might pass.

C. The Effect of the DC Ordinance

The DC Ordinance effectively prevents CSXT from using either its I-95 Route or its East-West Route for the transportation of the covered commodities. With respect to north-south movements via the I-95 Route, the closest alternative routing available to CSXT would be its line running west of the Appalachian Mountains through Tennessee, Kentucky and Ohio. The closest alternative east-west route to the north is a line that runs from Albany, NY to Buffalo, NY and thence along Lake Erie through Cleveland, Ohio. The closest alternative east-west route to the south is CSXT's line from Richmond, VA to Charleston, WV and points west. Diversion of hazardous commodities to these routings would severely impair the efficiency of CSXT's rail service to hazardous commodities shippers.

For example, CSXT currently handles certain shipments originating in Mount Holly, NC that are destined to Claymont, DE. Under CSXT's current efficient Operating Plan, this traffic moves up the I-95 corridor via Rocky Mount, NC – Richmond, VA – Washington, D.C. – Philadelphia, PA – Stoney Creek, PA to Claymont, DE. The current route is 754 miles long. In order to avoid the District, this traffic would have to move via Erwin, TN – Cincinnati, OH – Cleveland, OH – Buffalo, NY – Syracuse, NY – Albany, NY – Oak Island, NJ – Philadelphia, PA – Stoney Creek, PA to Claymont, DE. This alternate route is 1,655 miles long, or more than double the current efficient routing. In addition, the current routing requires four intermediate car handlings while routing the shipments to avoid the District of Columbia would increase intermediate handlings to six.

Likewise, traffic originating in Galmish, WV destined for Bayonne, NJ normally travels via Cumberland, MD – D.C. – Philadelphia, PA – Oak Island, NJ to Bayonne. This route is 581

miles long. In order to detour around the District of Columbia, these shipments would have to turn north at Cumberland, MD and travel via Pittsburgh, PA – Erie, PA – Buffalo, NY – Syracuse, NY – Albany, NY – Oak Island, NJ to Bayonne, NJ. This alternate route would be 1,076 miles, almost double the efficient routing.

These (and other) reroutes made necessary by the DC Ordinance would add hundreds of miles of circuitry – and days of transit time – to CSXT’s hazardous materials traffic. The number of cars affected would be approximately 10,500 loaded and empty shipments per year. Diversion of these shipments to markedly inefficient routings, for the sole purpose of avoiding the District of Columbia, would generate an additional 1,900,000 car miles, and an additional 6,500 car handlings, per year. This translates to 10,000-12,000 additional car days per year above the requirements of CSXT’s current Operating Plan. The greater number of car handlings required to transport hazardous shipments in this manner would significantly increase the amount of “dwell time” spent in yards en route. The resulting increase in car cycle times would impose substantial additional costs on shippers and users of the subject commodities, and could adversely affect their supply chains.

Moreover, rerouting hazardous shipments to comply with the DC Ordinance would not produce any system-wide improvement in transportation safety or security. To the contrary, shifting such cars to alternative routes would merely transfer the burden from the District of Columbia to other communities. In fact, longer transit times and distances, and increased car handlings and dwell time, are factors that tend to increase the inherent risk associated with transporting hazardous materials both to the general public and to train and yard crews (who would be required to handle the cars more times during their journey).

Complying with the DC Ordinance would not only impair the efficiency of CSXT's handling of hazardous commodities shipments, it would have an immediate and seriously detrimental impact on the entire CSXT network. As stated above, hazardous materials shipments are handled in trains that also contain other merchandise traffic. On average, thirteen such CSXT merchandise trains travel through the District of Columbia each day. If CSXT were required to comply with the DC Ordinance, CSXT would need to consider instituting an orderly and responsible embargo of the covered commodities. CSXT would immediately have to identify all merchandise trains in transit on its system that contained any of the covered commodities, and which were scheduled to move via the District of Columbia. Each such train would have to be detained at a rail yard outside the District of Columbia (most likely Philadelphia, PA, Baltimore, MD, Cumberland, MD or Richmond, VA), so that covered cars could be removed from the trains prior to entering the District. Each of those yards is already operating at or near its capacity. The additional switching operations occasioned by the DC Ordinance would almost certainly create additional congestion in the yards, and could back up traffic on CSXT main lines, potentially affecting system fluidity throughout the entire CSXT network. Such congestion would of course also affect Amtrak, as well as the MARC and VRE commuter services operating over CSXT's lines in the Washington metropolitan area. Because compliance in the first days after the effective date of the DC Ordinance would necessarily be largely a manual effort, human error could place CSXT in (inadvertent) violation of the DC Ordinance – something CSXT most certainly does not wish to do – until such time as the DC Ordinance was declared invalid.

Once the covered cars were removed from CSXT trains moving through Washington, they would have to be held in a yard until they could be assigned to (and switched into) a

suitable alternate train. In all likelihood, this would result in bunching of such cars in the yards at Philadelphia, Baltimore, Cumberland and Richmond, while CSXT operations managers made plans for rerouting them to another yard (and to yards beyond, until each car reached its destination). Such an aggregation of standing tank cars may very well present a greater security risk than individual cars moving in numerous trains. Indeed, it is common operating practice in the railroad industry to disperse cars of hazardous materials, rather than to handle them in large groups. It typically takes a moving car only about four minutes to traverse the portion of the East-West Route that lies within the Capitol Exclusion Zone, and about twenty minutes to traverse the portion of the I-95 Route that runs through the Capitol Exclusion Zone. The District of Columbia concluded that such transitory exposure to these cars is too dangerous to permit them to pass through Washington on moving trains, yet the DC Ordinance would cause those cars to sit, possibly for days, in yards in neighboring cities.

II. ARGUMENT

The stated purpose of the DC Ordinance is “[t]o prohibit . . . large shipments of certain extremely hazardous materials near the United States Capitol.” DC Ordinance (Preamble). Such a prohibition by a local municipality is preempted by Section 10501(b) of ICCTA (49 U.S.C. § 10501(b)). Section 10501(b) states unequivocally that “transportation by rail carriers” is subject to the exclusive jurisdiction of the Board. Such “transportation” is defined broadly to include any “locomotive, car, vehicle . . . property, facility, instrumentality or equipment of any kind related to the movement of passengers or property” as well as all “services related to that movement”. 49 U.S.C. § 10102(9). Moreover, Section 10501(b) makes clear that “the remedies provided in this part with respect to the regulation of rail transportation [including remedies with respect to “routes”] are exclusive and preempt the remedies provided under Federal or State law.” 49 U.S.C. § 10501(b).

ICCTA's preemption provision is "clear and broad," and precludes "all state efforts to regulate rail transportation." *Wisconsin Cent. Ltd. v. City of Marshfield*, 160 F. Supp. 2d 1009, 1013 (W.D. Wis. 2000); see *CSX Transp., Inc. v. Georgia Pub. Serv. Comm'n*, 944 F. Supp. 1573, 1581 (N.D. Ga. 1996) ("It is difficult to imagine a broader statement of Congress' intent to preempt state regulatory authority over railroad operations.") "[I]t is well-settled law that state and local regulation cannot be used to veto or unreasonably interfere with railroad operations," *Vermont Ry., Inc. – Petition for Declaratory Order*, STB Fin. Docket No. 34364 (Jan. 3, 2005), and any state or local regulation that would materially affect rail transportation is preempted. See *Marshfield*, 160 F. Supp. 2d at 1013; *King County, WA—Petition for Declaratory Order – Burlington Northern R.R. Co. – Stampede Pass Line*, STB Fin. Docket No. 32974 (September 25, 1996). In *King County*, the Board found that a county's attempt to require a railroad to obtain permits for a proposed line upgrade was preempted because the regulation had the potential to "greatly inhibit[]" Burlington Northern's ability to carry rail traffic over the line in question. See also *City of Auburn v. United States*, 154 F.3d 1025, 1028, 1031 (9th Cir. 1998) (approving of STB's decision in *King County* and holding that ICCTA preempted locality's attempt to require permits for railroad's track improvements). Similarly, in *Marshfield* the court concluded that preemption precluded a city from condemning a railroad's passing track, reasoning that the city was attempting to exercise control over rail transportation. See *Marshfield*, 160 F. Supp. 2d at 1013-14. Even regulation of such ancillary activities as the maintenance of railroad business offices or the construction and demolition of buildings or facilities at a rail yard have been found to be preempted by ICCTA. See *Burlington Northern Santa Fe Corp. v. Anderson*, 959 F. Supp. 1288, 1295 (D. Mon. 1997) (holding that state regulation of railroad agency closures was preempted by ICCTA); *CSX Transp., Inc. v. Ga. Pub.*

Serv. Comm'n, 944 F. Supp. 1573, 1581-82 (N.D. Ga. 1996) (same); *Soo Line R.R. Co. v. Minneapolis*, 92 F. Supp. 2d 643, 658 (E.D. Mich. 2000) (holding that ICCTA preempted city's authority to require permits for demolition of buildings in a rail yard); *Joint Petition for a Declaratory Order – Boston & Maine Corp. & Town of Ayer, MA*, STB Fin. Docket No. 33971 (Apr. 30, 2001) (holding that locality's attempts to regulate construction of car unloading facility were preempted); *Borough of Riverdale – Petition for Declaratory Order – The New York Susquehanna & Western Ry. Corp.*, STB Fin. Docket No. 33466 (Sept. 9, 1999) (noting that state and local permitting provisions that give the state or locality the ability to delay or deny the carrier's right to conduct operations are preempted by ICCTA).

There can be no question that the DC Ordinance constitutes an impermissible attempt to regulate "rail transportation." The DC Ordinance places a direct restriction on train operations on CSXT's lines through the City of Washington, by purporting to dictate what commodities CSXT may, and may not, carry over those lines. Such an attempt to subject train movements to municipal regulation is clearly preempted by federal law. 49 U.S.C. § 10501(b). *Cf. CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 674-75 (1993) (federal regulation prescribing maximum train speed preempted state regulations); *CSX Transp. v. City of Plymouth*, 86 F.3d 626, 629-30 (6th Cir. 1996) (local ordinance prescribing length of time that trains could block grade crossing was preempted under FRSA because it effectively regulated train length and speed).

Moreover, the DC Ordinance squarely conflicts with the well-established principle that decisions regarding the routing of overhead shipments are generally left to the discretion of the rail carrier. *See, e.g.*, Docket No. AB-290 *Wabash R.R. Co. & Norfolk & Western Ry. Co. – Abandonment & Discontinuance – In Will, Kankakee, Livingston, Ford & Champaign Counties*,

IL, (August 7, 1989); Docket No. AB-167 *Consolidated Rail Corp. – Exemption – Abandonment of the Weirton Secondary Track in Harrison & Tuscaraws Counties, OH*, (June 7, 1989) (“*Weirton Abandonment*”) (“Carriers have considerable managerial discretion to route overhead traffic”). “[A] railroad has the managerial discretion to move traffic via any internal routing that it decides will produce the most cost efficient, or otherwise beneficial, operation.” Finance Docket No. 31936, *Brotherhood of Locomotive Eng’rs v. Consolidated Rail Corp.* (June 29, 1992). This policy is rooted in the recognition that rail carriers have an interest in routing traffic efficiently, and that “[r]outing inefficiency harms carriers as well as shippers and harms the public interest generally.” *Weirton Abandonment*.

Like other federal agencies discussed above, the STB has the authority, pursuant to 49 U.S.C. § 11123, to issue temporary orders directing the routing of rail traffic in response to emergency situations. The District of Columbia has not sought, and the Board has not issued, any order finding that such an emergency requires CSXT to divert hazardous commodities shipments to lines outside the District of Columbia, or that CSXT’s routing prerogative must be restricted for the greater public good. The DC Ordinance impermissibly attempts to substitute the judgment of the City Council for that of the federal agencies charged with regulating the transportation of hazardous commodities. The unambiguous intent (and effect) of the DC Ordinance is to transfer the inherent risks associated with the transportation of certain hazardous materials by rail from the District of Columbia to other jurisdictions. ICCTA prohibits the City Council from imposing its will with respect to the movement of freight in interstate commerce without regard for the broader national interest in safe and efficient traffic movement.

If the DC Ordinance is permitted to stand, other local jurisdictions may likewise promulgate laws restricting the transportation of hazardous commodities through their

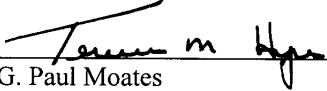
communities. In fact, City Council Member Kathy Patterson has affirmatively urged other communities to follow the District of Columbia's lead. *See* John Gallagher, *Rail's Pandora's Box*, *Traffic World* (Nov. 1, 2004) at 11. A patchwork of inconsistent (and parochially-based) regulations would severely impair the efficiency of the national rail network, and impose substantial costs on shippers and consumers. Such regulations would also heighten, rather than mitigate, the inherent risks associated with the transportation of hazardous commodities that are vital to the Nation's economy. If other communities followed the District of Columbia's lead, the transportation of hazardous materials by rail could be brought to a halt.

Congress wisely placed authority over rail transportation exclusively with the STB and other federal agencies, in order to ensure that decisions relating to rail regulation are based upon the best interest of the nation as a whole. Allowing the District of Columbia, or any state or local government, to prohibit or impair the movement of goods in interstate commerce – regardless of what local interests might be at stake – is flatly inconsistent with Congress' unequivocal intent in promulgating ICCTA and other federal statutes.

CONCLUSION

For all of the foregoing reasons, CSXT respectfully requests that the Board issue an order declaring that the DC Ordinance is preempted by Section 10501 of ICCTA and that, subject to compliance with applicable federal safety and hazardous materials transportation statutes and regulations, CSXT may continue to route cars covered by to the DC Ordinance via its lines through, and in the vicinity of, the District of Columbia.

Respectfully submitted,



G. Paul Moates
Terence M. Hynes
Matthew J. Warren
Sidley Austin Brown & Wood LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
(202) 736-8711 (fax)

Irvin B. Nathan
Mary Gabrielle Sprague
Arnold & Porter LLP
555 Twelfth Street, N.W.
Washington, DC 20004-1205
(202)-942-5000
(202) 942-5999 (fax)

Ellen M. Fitzsimmons
Peter J. Shudtz
Paul R. Hitchcock
CSX Transportation, Inc.
500 Water Street
Jacksonville, Florida 32202
(904) 359-3100

Dated: February 7, 2005

CERTIFICATE OF SERVICE

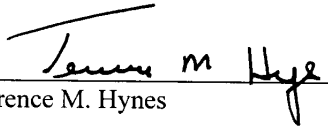
I hereby certify that copies of the foregoing Petition of CSX Transportation, Inc., for Declaratory Order were delivered by hand, this 7th day of February 2005, to:

Mayor Anthony A. Williams
District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 600
Washington, D.C. 20004

Leonard Becker
Office of General Counsel to the Mayor
1350 Pennsylvania Avenue, N.W., Suite 327
Washington, D.C. 20004

George Valentine, Esq.
Deputy, Civil Litigation Division
Office of the Attorney General
District of Columbia Government
441 Fourth Street, N.W., Sixth Floor South
Washington, D.C. 20001

Robert Utiger, Esq.
Senior Counsel to Deputy for Civil Litigation Division
Office of the Attorney General
District of Columbia Government
441 Fourth Street, N.W., Sixth Floor South
Washington, D.C. 20001



Terence M. Hynes

VERIFICATION

My name is John M. Gibson, Jr. I am Vice President Operations Research and Planning for CSX Transportation, Inc. ("CSXT").

I declare under the penalty of perjury that the facts set forth in the foregoing Petition for Declaratory Order are true and correct. Further, I certify that I am qualified and authorized to file this testimony.

Executed on this 4th day of February 2005.

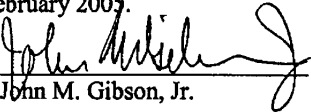

John M. Gibson, Jr.

EXHIBIT 1

COUNCIL OF THE DISTRICT OF COLUMBIA
OFFICE OF THE GENERAL COUNSEL
WASHINGTON, D.C. 20004

I. TRANSMITTAL OF ENROLLED LEGISLATION

Short Title: Terrorism Prevention in Hazardous Materials Transportation Emergency Act
of 2005

Bill #16-77

Act #

Date Transmitted to LSD:

cc: Councilmembers Patterson & Mendelson
cc: Codification Counsel

(with attachment)
(with attachment)

Please notify me of any error/comment within 24 hours.

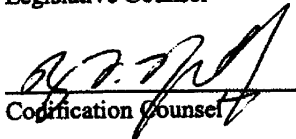
II. CLEARANCE OF ENROLLED LEGISLATION



Legislative Counsel

2-2-05

Date



Codification Counsel

2-2-05

Date

Office of the Secretary

Date

III. CLEARANCE OF CORRESPONDENCE BY LSD

Letter(s) to the Mayor

Date

Letter(s) to Congress

Date

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AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

2001 Edition

2005 Spring
Supp.

West Group
Publisher

To prohibit, on an emergency basis, large shipments of certain extremely hazardous materials through or near the United States Capitol in order to reduce the risk of attacks by terrorists, to allow for the issuance of permits authorizing such shipment in special cases, and to require the Mayor to issue regulations to implement the provisions of this act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005".

Sec. 2. Findings.

The Council of the District of Columbia finds that:

(1) A terrorist attack on a large-quantity hazardous material shipment near the United States Capitol ("Capitol") would be expected to cause tens of thousands of deaths and a catastrophic economic impact of \$5 billion or more.

(2) The threat of terrorism facing District of Columbia residents and workers in the vicinity of the Capitol requires an urgent response that recognizes and addresses the unique status of this area in American politics and history, and the risk of terrorism that results from this status.

(3) The federal government has not acted to prevent the terrorist threat resulting from the transportation of dangerous quantities of ultra-hazardous materials near the Capitol.

(4) Shippers of ultra-hazardous materials do not need to route large quantities of ultra-hazardous chemicals near the Capitol in order to ship these chemicals to their destinations, and alternative routes would substantially decrease the aggregate risk posed by terrorist attacks.

(5) Requiring permits for ultra-hazardous shipments from a Capitol Exclusion Zone that encompasses all points within 2.2 miles of the Capitol would impose no significant burden on interstate commerce.

Sec. 3. Definitions.

For the purposes of this act, the term:

(1) "Capitol Exclusion Zone" means all points within 2.2 miles of the United States Capitol building; provided, that the Capitol Exclusion Zone shall not extend beyond the geographic boundaries of the District of Columbia.

(2) "Emergency" means an unanticipated, temporary situation that threatens the immediate safety of individuals or property, as determined by the District of Columbia Department of Transportation.

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(3) "Person" means an individual or a commercial entity.

(4) "Practical alternative route" means a route:

(A) Which lies entirely outside the Capitol Exclusion Zone; and

(B) Whose use would not make shipment of the materials in question

cost-prohibitive.

Sec. 4. Prohibition on shipments of hazardous materials.

Except in cases of emergency, it shall be illegal in the Capitol Exclusion Zone, without a permit, to:

(1) Transport any of the following:

(A) Explosives of Class 1, Division 1.1, or Class 1, Division 1.2, as designated in 49 C.F.R. § 173.2, in a quantity greater than 500 kilograms;

(B) Flammable gasses of Class 2, Division 2.1, as designated in 49 C.F.R. § 173.2, in a quantity greater than 10,000 liters;

(C) Poisonous gasses of Class 2, Division 2.3, as designated in 49 C.F.R. § 173.2, in a quantity greater than 500 liters, and belonging to Hazard Zones A or B, as defined in 49 C.F.R. § 173.116; and

(D) Poisonous materials, other than gasses, of Class 6, Division 6.1, in a quantity greater than 1,000 kilograms, and belonging to Hazard Zones A or B, as defined in 49 C.F.R. § 173.133; or

(2) Operate a vehicle or move a rail car which:

(A) Is capable of containing explosives of Class 1, Division 1.1, or Class 1, Division 1.2, as designated in 49 C.F.R. § 173.2, in a quantity greater than 500 kilograms, and has exterior placarding or other markings indicating that it contains such materials;

(B) Is capable of containing flammable gasses of Class 2, Division 2.1, as designated in 49 C.F.R. § 173.2, in a quantity greater than 10,000 liters, and has exterior placarding or other markings indicating that it contains such materials;

(C) Is capable of containing poisonous gasses of Class 2, Division 2.3, as designated in 49 C.F.R. § 173.2, in a quantity greater than 500 liters, and belonging to Hazard Zones A or B, as defined in 49 C.F.R. § 173.116, and has exterior placarding or other markings indicating that it contains such materials; or

(D) Is capable of containing poisonous materials, other than gasses, of Class 6, Division 6.1, in a quantity greater than 1,000 kilograms, and belonging to Hazard Zones A or B, as defined in 49 C.F.R. § 173.133, and has exterior placarding or other markings indicating that it contains such materials.

Sec. 5. Permits.

(a) The District of Columbia Department of Transportation may issue permits authorizing the transportation of materials listed in section 4 upon a demonstration that there is no practical alternative route. A permit may require adoption of safety measures, including time-of-day restrictions.

(b) The District of Columbia Department of Transportation may collect fees for the permits in accordance with the rules issued under section 7.

(c) Permit fees collected pursuant to this section shall not exceed the cost of implementing and enforcing this act.

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Sec. 6. Penalties.

(a) Any person who violates section 4 or rules issued under section 7 shall be subject to a civil penalty not to exceed:

- (1) \$10,000 for a first offense; or
- (2) \$25,000 for any subsequent offense.

(b) The fines assessed and collected under subsection (a) of this section shall be deposited into the General Fund of the District of Columbia.

Sec. 7. Rules.

(a) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), and in consultation with the District of Columbia Department of Transportation, the Emergency Management Agency, the Fire and Emergency Medical Services Department, and the Metropolitan Police Department, shall issue rules to implement the provisions of this act, including a schedule of permit fees to support analysis, communications to shippers and carriers, and the enforcement program.

Sec. 8. Fiscal impact statement.

The Council adopts the attached fiscal impact statement as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 9. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia

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COUNCIL OF THE DISTRICT OF COLUMBIA
OFFICE OF THE BUDGET DIRECTOR **FISCAL IMPACT STATEMENT**

Bill Number: Not Assigned Yet	Type: Emergency (X) Temporary () Permanent ()	Date Reported: February 1, 2005
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Subject/Short Title: the "Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005"

Part I. Summary of the Fiscal Estimates of the Bill		
	YES	NO
1. It will impact spending.	(X)	()
a) It will affect local expenditures.	()	(X)
b) It will affect federal expenditures.	()	(X)
c) It will affect private/other expenditures.	(X)	()
d) It will affect intra-District expenditures.	()	(X)
2. It will impact revenue.	(X)	()
a) It will impact local revenue.	()	(X)
b) It will impact federal revenue.	()	(X)
c) It will impact private/other revenue.	(X)	(X)
d) It will impact intra-District revenue.	()	(X)
3. The bill will have NO or minimal fiscal impact. (If "Yes," explain below).	(X)	()
<u>Explanation:</u> The primary impact of the legislation is to regulate the transport of hazardous materials by private organizations. The District government would have to review permit applications for the transport of such material in or through the District of Columbia, which would be funded by permitting fees authorized by the legislation. In fact, the Act states that, "Permit fees collected pursuant to this Act shall not exceed the cost of implementing and enforcing this Act." In addition, this legislation has the potential to prevent considerable expenditures of an unknown amount by protecting the District of Columbia from a terrorist attack or an accident. A terrorist attack on a 90-ton rail car containing chlorine or ammonia could cause the loss of life as well as damage and associated costs to health, safety, and property. The economic disruptions of an attack, and the associated impact on revenue collection, could be severe, and the costs to our health care and emergency response systems would also be significant.		

Part II. Other Impact of the Bill		
	YES	NO
If you check "Yes" for each question, please explain on separate sheet, if necessary.		
1. It will affect an agency and/or agencies in the District.	(X)	()
The legislation will affect the District's Department of Transportation, which would issue permits to administer the Act. The Emergency Management Agency, Department of Fire and Emergency Medical Services, and the Metropolitan Police Department would also have input on the regulations, which would be issued by the Mayor.		
2. Are there performance measures/output for this bill?	()	(X)

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3. Will it have results/outcome, i.e., what would happen if this bill is not enacted? If the bill were not enacted, District residents, businesses, and visitors would be at greater risk of loss of life, injury, property damage, and economic disruption.	(X)	()
4. Are funds appropriated for this bill in the Budget and Financial Plan for the current year? As stated earlier, any costs from implementing the bill would be defrayed by the permit fees authorized in the legislation.	(X)	()

<u>Sources of information:</u> Committee on Public Works and the Environment's January 23, 2004, public hearing on Bill 15-525, the "Terrorism Prevention and Safety in Hazardous Materials... Transportation Act of 2003," as well as staff research.	Councilmember: Patterson
	Staff Person & Tel: Jason Jufras, 724-8195
	Council Budget Director's Signature: <i>[Signature]</i>

1/29/05