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SURFACE TRANSPORTATION BOARD
COMMITTEE ON
STANDARDS OF OFFICIAL
CONDUCT

Steven C. LaTourette

Congress of the United States 2005 MAR -7 P 2:27
14th District, Ohio

February 23, 2005

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The Honorable Roger Nober
Chairman
Surface Transportation Board
1925 K Street, NW
Suite 840
Washington, DC 20423

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MAR 14 2005

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Dear Chairman Nober:

As Chairman of the U.S. House of Representatives, Subcommittee on Railroads, I am writing to express my deep concern regarding the Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005 (the "Act"), passed by the D.C. City Council on February 1, 2005. The Act would ban transportation through a "Capitol Exclusion Zone" of certain quantities of hazardous materials defined in the Act, as well as empty freight cars carrying only residues of those materials, except in cases of emergency. It is my strong belief that the D.C. City Council's legislation is preempted by federal law and places an unreasonable burden on interstate commerce. I urge the Surface Transportation Board to issue an order to that effect.

The D.C. City Council has no authority to act in the hazardous materials transportation arena. The Federal Railroad Administration has jurisdiction over rail safety. The Research and Special Projects Administration (RSPA), now to be called the Pipeline and Hazardous Materials Safety Administration (PHMSA), as prescribed in the Hazardous Materials Transportation Act, regulates the transportation of hazardous materials. The Department of Homeland Security has jurisdiction over the security of the nation's transportation modes, and has worked closely with CSXT in further hardening the D.C. rail corridor. And, as Courts and your agency have recognized, the ICCTA's preemption provision is "clear and broad," and precludes "all state efforts to regulate rail transportation." Further, the District of Columbia is violating the Home Rule Act by enacting legislation that affects conduct outside the city limits.

CSXT faces serious and practical difficulties in implementing the Act, both in the short term and the long term. Although the District of Columbia has indicated it will not immediately enforce this legislation, CSXT will have to spend considerable time and expense devising alternative route plans for merchandise trains carrying hazardous materials as well the empty tanker cars. It is entirely possible that CSXT will have to

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stop all merchandise trains while it attempts to sort out which cars need to avoid the District of Columbia, and which ones are allowed to go through. If the freight trains have to stop, Amtrak, MARC and VRE services will be seriously affected as well. These passenger services operate over CSXT lines.

Shippers and their customers will also be immediately injured when these critical materials stop in transit. The need to switch these cars, hold them in yards, and reroute them via other trains will disrupt their supply-chain logistics. It is impossible to predict how many customers will run out of inventory as a consequence.

On a long-term basis, there is no question that the Act would greatly increase the transportation burden associated with moving the materials, and shift that burden to other jurisdictions, including my own hometown of Cleveland, OH. If CSXT is forced to reroute around the District of Columbia, trains carrying hazardous materials, going both North *and* South will go through Cleveland and other cities in Ohio, essentially doubling the hazardous materials traffic that goes through my district, and shifting the risk that the District of Columbia claims to its citizens, to the citizens of Ohio. Rerouting trains away from the District of Columbia adds hundreds of miles and days of transit time to the transportation of the materials. Alternative routings increase the number of times a car must be handled and the time a car sits in a yard. Longer distance and transit times and increased handlings and "dwell" times are factors that tend to decrease safety and security.

For all the forgoing reasons, I ask your agency to declare the Act preempted by federal law.

Please place a copy of this letter in the public docket of this proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "S. C. LaTourette", with a stylized flourish at the end.

Steven C. LaTourette
Chairman
Subcommittee on Railroads