

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34662

PRAECIPE OF THE DISTRICT OF COLUMBIA

The District of Columbia (“the District”) hereby notes the following facts in this matter:

(1) Petitioner CSXT has filed suit seeking declaratory and injunctive relief in U.S. District Court for the District of Columbia (see attached Order from the Honorable Ellen Segal Huvelle). After a conference call with the parties, that Court directed CSXT to file its motion for preliminary injunction on or before February 22, 2005, and the District to file its opposition on or before February 28, 2005. A hearing on the preliminary injunction has been scheduled for March 9, 2005, at 2 p.m. The Court noted that the District represented that enforcement of the disputed legislation will not occur before March 14, 2005, and, should the Court find in the District’s favor, enforcement will be delayed until March 19, 2005. *See Green Mountain Railroad Corporation—Petition for Declaratory Order*, STB Finance Docket No. 34052 (STB served May 28, 2002) at 4 (request for declaratory order denied where railroad also requested judicial relief from federal district court, which has enforcement authority).

(2) The U.S. Department of Transportation (“USDOT”), in its comments filed February 16, 2005, misstated District law. USDOT asserted that the disputed legislation will be “effective for ninety days” and may be renewed for successive, 90-day periods. USDOT Comments at 2. However, USDOT failed to note that legislation passed on an emergency basis may not ordinarily be renewed for successive “emergencies.” *See* D.C. Official Code § 1-204.12 (2001 ed.) (emergency legislation effective for a period not to exceed 90 days); *In re O.M.*, 565 A.2d

573 (D.C. 1989) (once emergency legislation expires, Council has no authority to pass substantially identical act in response to same emergency), *cert. denied*, 494 U.S. 1086 (1989). While the Council could pass a second emergency act to bridge the gap between the expiration of the first emergency act and final enactment and review by Congress of a subsequent temporary and/or permanent statute, there would have to be temporary and/or permanent legislation proposed to Congress to support the successive emergency act. *See U.S. v. Alston*, 580 A.2d 587 (D.C. 1990) (Council could pass second substantially similar emergency act to maintain *status quo* during Congressional review period). Consequently, the Council could not simply enact successive emergency acts and bypass the right of Congressional review of legislation on this issue.

(3) USDOT, Paducah & Louisville Railway, Inc., Norfolk Southern Railway Co., and CSXT all incorrectly refer to the disputed legislation as an “ordinance.” However, that term is properly applied only to the legislative output of municipalities, and does not accurately reflect the range of quasi-state functions performed by the District of Columbia. *See, e.g.*, BLACK’S LAW DICTIONARY 1125 (7th ed. 1999) (“ordinance” means, “esp[ecially], a municipal regulation.”). The product of the Council of the District of Columbia and the Mayor here is an “act,” which has the same force and effect as a state statute. *See* D.C. Official Code § 1-201.03(7) (2001 ed.) (the term “act” includes any legislation passed by the Council).

DATE: February 18, 2005

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing Praecipe of the District of Columbia were delivered by facsimile and by U.S. Mail, postage prepaid, this 18th day of February, 2005, to:

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