



KAPLAN KIRSCH ROCKWELL

October 23, 2015

239419

**E-filed**

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

ENTERED  
Office of Proceedings  
October 23, 2015  
Part of  
Public Record

Re: *Norfolk Southern Railway Co. – Petition for Expedited Declaratory Order, STB  
Docket No. FD 35949*

Dear Ms. Brown:

Enclosed please find for filing in the above-captioned proceeding the State of Delaware's Reply to Norfolk Southern's Petition for Declaratory Order.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Allison I. Fultz  
Counsel for State of Delaware

cc: All Parties of Record

Enclosures

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB Docket No. FD 35949**

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**NORFOLK SOUTHERN RAILWAY CO. – PETITION FOR EXPEDITED  
DECLARATORY ORDER**

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**REPLY OF THE STATE OF DELAWARE**

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Counsel for State of Delaware

Dated: October 23, 2015

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB Docket No. FD 35949**

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**NORFOLK SOUTHERN RAILWAY CO. – PETITION FOR EXPEDITED  
DECLARATORY ORDER**

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**REPLY OF THE STATE OF DELAWARE**

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The State of Delaware (the “State”) hereby submits this Reply in response to the Petition for Expedited Declaratory Order filed on August 4, 2015, by Norfolk Southern Railway Co. (“Norfolk Southern”) in the above-referenced docket (the “Petition”). For the reasons below, the State respectfully requests that the Board deny Norfolk Southern’s Petition. In the event the Board opens a proceeding to consider the Petition, the State respectfully requests this Board to find that the State’s narrowly-tailored regulation of nonessential idling of Norfolk Southern’s locomotives at limited times and in limited locations is not preempted.

**Introduction**

In response to the concerns of residents throughout the State of Delaware, including in communities near an oil refinery in Delaware City, Delaware, about the harmful impact of the nighttime idling of locomotives on their health and well-being, the State Legislature enacted SB 135, which was signed into law by Governor Jack Markell on August 14, 2015 (“SB 135”). A copy of SB 135 is attached hereto as **Exhibit A**. As the legislative record reflects, the bill’s sponsor, Sen. David B. McBride, after several years of constituent complaints, reached out to Norfolk Southern to engage the railroad in the legislative process and Norfolk Southern testified before both houses of the State Legislature. S. 135, Delaware House Public Safety & Homeland

Security Committee Meeting Minutes at 2 (June 25, 2015) (attached hereto as **Exhibit B**); Floor debates: SB 135, Del. Sen., Floor Debate, 148th Del. Leg., Highways & Transp. Comm. (June 17, 2015 (Sen. recording)).

The State fully acknowledges that broad regulation of a railroad’s activities by state or local authorities is preempted by federal law. As a result, SB 135 is narrowly and precisely tailored to avoid such wholesale regulation. SB 135 is specifically intended to protect residents in their homes during nighttime hours from nonessential locomotive idling which “degrades the quality of their life, property, and environment.” SB 135 at § 8501. The legislation contains no prohibition on railroad activities and does not seek to limit any idling that is necessary for a wide variety of operational purposes, including, among others, “the operation of defrosting, heating or cooling equipment to ensure the health or safety of the driver or passenger” or “the operation of the primary propulsion engine for essential work-related mechanical or electrical operations other than propulsion.” SB 135 at § 8503(a)(3) and (4). Because SB 135 was crafted to avoid an unreasonable restraint on Norfolk Southern’s ability to conduct its common carrier operations, the State requests that this Board find such minimal requirements are not preempted by federal law.

## **Argument**

### **I. Standard for Preemption under the ICCTA**

Although preemption of state laws seeking to regulate railroads under the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (“ICCTA”), codified at 11 U.S.C. §1162, 45 U.S.C. §7971, 49 U.S.C. §§701-727, 10101-16106, is broad, it is not absolute. ICCTA grants the Surface Transportation Board (“STB”) “exclusive” jurisdiction over “transportation by rail carriers” (49 U.S.C. § 10501(b)), and defines “transportation” to include

“a locomotive, car, . . . facility, instrumentality or equipment of any kind related to the movement of . . . property . . . by rail” 49 U.S.C. § 10102(9).

Even given this expansive mandate, however, “[s]tates and towns may exercise their traditional police powers . . . to the extent that the regulations ‘protect public health and safety, are settled and defined, can be obeyed with reasonable certainty, entail no extended or open-ended delays, and can be approved (or rejected) without the exercise of discretion on subjective questions.’” *Soo Line R.R. Co. – Petition for Declaratory Order*, STB docket No. 35850, slip op. at 4-5 (Service Date Dec. 23, 2014) (quoting *Green Mountain R.R. v. Vermont*, 404 F.3d 638, 643 (2d Cir. 2005)). See also *Maumee & Western Railroad Corporation and RMX Ventures, LLC*, STB Finance Docket No. 34354, slip op. at 2 (Service Date March 3, 2004); *Village of Ridgefield Park v. New York, Susquehanna & Western*, 163 N.J. 446, 457-58 (2000).

Here, SB 135 is narrowly tailored to provide protection to residents in a manner that does not interfere with the valid pursuit of rail operations, does not unreasonably restrict the railroad from conducting those operations, and does not unreasonably burden interstate commerce.

## **II. SB 135 is Narrowly Tailored and Does not Unreasonably Burden Interstate Commerce**

Where a state or local law can be applied without interfering with federal law, courts have allowed such state or local requirements to stand. *Cities of Auburn and Kent, WA*, 2 S.T.B. 330, STB Finance Docket No. 33200, slip op. at 9 (1997) (“*Auburn I*”), *aff’d by City of Auburn v. U.S.*, 154 F.3d 1025, 1030-31 (9th Cir. 1998) (“*Auburn II*”). “A key element in the preemption doctrine is the notion that only ‘unreasonable’ burdens, *i.e.*, those that ‘interfere with’ Federal authority, or ‘unreasonably burden’ interstate commerce, are superseded.” *Auburn I*, slip op. at 8.

For example, localities may enforce ordinances in the exercise of such traditional police powers as their building, fire, electrical and plumbing codes unless such codes are enforced in a discriminatory manner, unreasonably restrict the railroad from conducting its operations or unreasonably burden interstate commerce. *See New York Susquehanna and Western Ry. Corp. v. Jackson*, 500 F.3d 238, 254 (3d Cir. 2007) (“Because the Act’s subject matter is limited to deregulation of the railroad industry, courts and the Board have rightly held that it does not preempt *all* state regulation affecting transportation by rail carrier. . . . Rather, it preempts all ‘state laws that may reasonably be said to have the effect of managing or governing rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation.’” (Citations omitted)); *Petition for Declaratory Order – The New York City Economic Development Corporation*, STB Finance Docket No. 34429, slip op. at 9 n. 9 (Service Date July 15, 2004).

By restricting only nonessential idling, SB 135 has carefully and specifically avoided regulating idling in connection with:

- (1) Traffic conditions;
- (2) The direction of a law-enforcement officer;<sup>1</sup>
- (3) The operation of defrosting, heating or cooling equipment to ensure the health or safety of the driver or passenger;
- (4) The operation of primary propulsion engine for essential work-related mechanical or electrical operations other than propulsion; and
- (5) Required maintenance, servicing, repairing, diagnostics or inspections.

SB 135 at § 8503(b).

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<sup>1</sup> This refers to idling in connection, for instance, with a response to an incident or accident.

Accordingly, SB 135 has been precisely tailored not to interfere with essential railroad activities and therefore does not manage or govern rail transportation. In contrast to the requirements challenged by the Association of American Railroads in *Ass'n of Am. R.R. v. S. Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094 (9th Cir. 2010) (“*South Coast*”), which were local rules generally governing locomotive emissions and imposing reporting requirements on railroads, 622 F.3d at 1096, SB 135 is precisely aimed at activities that are not necessary to the railroad’s operations. In any event, the Ninth Circuit concluded that the District’s rules were preempted largely on the technical circumstance that they had not yet been formally adopted by EPA as part of California’s state implementation plan under the Clean Air Act. *Id.* at 1098. Similarly, in *U.S. EPA – Petition for Declaratory Order*, STB Docket No. FD 35803 (Service Date December 30, 2014), the Board evaluated the rules at issue in *South Coast* and rendered an advisory opinion based solely on the facts and record before it, and, like the Ninth Circuit, concluded that any final determination would be premature. FD 35803 at 6.

Norfolk Southern argues that SB 135 is preempted because it would contribute to “a patchwork” of local regulations, Petition at 10, 13 (citing FD 35803). However, in contrast to the “potentially 100 different localities . . . adopt[ing] their own idling rules,” (FD 35803 at 9), SB 135 is a state law, intended to apply uniformly in all communities for a narrowly-defined purpose. Contrary to the broad requirements at issue in *South Coast*, SB 135 was enacted for a narrowly-defined purpose to reduce harms to people in their homes, not to broadly regulate Norfolk Southern’s operations. Although Norfolk Southern makes much of the “harmonization” exercise required when state and local measures are enacted as part of a federal regulatory scheme (Petition at 12-14), no such effort is required here. SB 135 is a state law enacted for specific purposes that will not interfere with rail transportation.

The reasonableness of the State’s prohibition of nonessential idling is reflected in Norfolk Southern’s own testimony before the Delaware House Public Safety & Homeland Security Committee on June 25, 2015. At that meeting, Scott Muir, Norfolk Southern’s government relations liaison, offered that Norfolk Southern was actively developing a mechanism to apply air to locomotive brakes as an alternative to requiring the locomotive to idle in order for the diesel engine to perform that function. **Exhibit B**, Delaware House Public Safety & Homeland Security Committee Meeting Minutes, June 25, 2015, at 2. Use of this alternate mechanism would obviate the need for a locomotive to idle in order to maintain braking pressure, and would accordingly render idling for the purposes of maintaining locomotive braking capacity nonessential. Putting this technical improvement in place would allow the railroad to satisfy the objectives of SB 135 while maintaining safe operations – a shared goal of both the State and Norfolk Southern.

Even given the potential for a technological solution, Senators in debate explicitly recognized idling for purposes of maintaining braking power as essential, and Sen. McBride succinctly stated that “we’re not attempting to regulate [Norfolk Southern’s] operations whatsoever,” and that the point of SB 135 is to simply “shut the engines off when they don’t need to be running.” Floor debates: SB 135, Del. Sen., Floor Debate, 148th Del. Leg., Highways & Transp. Comm. (June 17, 2015 (Sen. recording)).

### **III. SB 135 is not an Impermissible “Preclearance” Requirement**

Contrary to Norfolk Southern’s characterizations, SB 135 does not impose “pre-clearance” or permitting requirements on the railroad, or “impose requirements, that, by their nature, could be used to deny a rail carrier’s ability [sic] to conduct rail operations.” Petition at 6. SB 135 confers no discretion on State officials to prevent any operations or movement of trains and does not seek to prohibit, limit or regulate railroad operations or to permit the exercise of discretion by a state or local official before the fact.

Because the criteria set forth in SB 135 are objective, if a railroad is approached by a law enforcement officer, the railroad can readily demonstrate whether it meets the statutory standards. Indeed, SB 135 does not seek to interfere with any ongoing operations, and would only apply as a response to unnecessary idling that violates conditions that have been determined to cause harmful effects experienced by impacted residents. SB 135 only applies between 8 pm and 7 am (SB 135 at § 8503(a)), when peace and quiet are essential conditions for residential areas.

In further contrast to the types of regulations that frequently run afoul of ICCTA's prohibition on advance permitting requirements, SB 135 is not a land use or zoning regulation. This Board and various Courts of Appeals have consistently held that a state or local regulation that "unduly interfere[s] with interstate commerce by giving the local body the ability to deny the carrier the right to construct facilities or conduct operations" will be preempted. *Boston and Maine Corp. and Town of Ayer, MA, Joint Petition for Declaratory Order*, STB Finance Docket No. 33971, slip op. at 8 (Service Date May 1, 2001); see also *Auburn II* at 1030-31 (holding local environmental permitting requirements preempted by ICCTA); *Soo Line R.R. Co. v. City of Minneapolis*, 38 F.Supp.2d 1096, 1101 (D. Minn. 1998) (finding preemption of demolition permitting requirement that prevented railroad from demolishing five buildings where their removal was necessary to allow the railroad's movement of property by rail). In contrast, SB 135 refers to local zoning only in order to provide broadly that the statute does *not* apply "within the boundaries of property zoned for industrial activity by the county or municipality having jurisdiction over the property." SB 135 at § 8503(c). Although Norfolk Southern alleges that SB 135 is targeted only at trains en route (Petition at 4), SB 135 on its face belies that allegation. The law is aimed at trains at rest, and does not concern itself with the regulation of any specific

variety of track or rail facility. If, for example, a train en route is held in place due to traffic conditions, the statute makes no attempt to regulate that train's idling. The statute is framed with reference to the impact the rail operations have on the surrounding residents, not the operations themselves. SB 135 at § 8503(c).

#### **IV. SB 135 does not Prohibit any Rail Operations**

Norfolk protests that SB 135 is “worse than [a] preclearance or permitting requirement[ ]” because the statute would “prohibit” transportation through “absolute” restrictions. Petition at 7. To the contrary, on its face, the plain language of SB 135 clearly demonstrates that it does no such thing. As set forth in Section II above, SB 135 explicitly recognizes the range of valid purposes for locomotive idling, and restricts only nonessential idling in locations and at hours where the impacts of idling pose a threat to the well-being of residents. SB 135 at § 8503(b). Such reasonable and limited restrictions are far from “absolute,” as Norfolk Southern claims, and are narrowly tailored to address the health, safety and welfare of the citizens of Delaware who are exposed to near-constant industrial activity, noise, vibration and emissions.

**Conclusion**

WHEREFORE, and in view of the foregoing, the State respectfully requests that the Board deny Norfolk Southern's Petition to initiate a proceeding for declaratory relief, or in the alternative, find that the State's regulation of Norfolk Southern's nonessential locomotive idling in limited circumstances is not preempted.

Respectfully submitted,



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Counsel for State of Delaware

Dated: October 23, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused to be served a copy of the foregoing STATE OF DELAWARE REPLY, upon the following parties of record in this proceeding by first-class mail with postage prepaid and properly addressed:

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*Counsel for Norfolk Southern Railway Company*

  
Allison I. Fultz

Dated: October 23, 2015

**Exhibit A**

**SB 135**

**[Attached hereto]**

SPONSOR: Sen. McBride & Rep. Longhurst & Rep. M. Smith  
Sens. Hall-Long, Poore, Townsend; Reps. Viola,  
Baumbach, Jaques, J. Johnson, Mulrooney, Osienski

DELAWARE STATE SENATE  
148th GENERAL ASSEMBLY

SENATE BILL NO. 135

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO LOCOMOTIVE IDLING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Part IV, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 85. Locomotive Idling.

§ 8501. Purpose.

The General Assembly finds and determines that the people of this State are entitled to and should be ensured an environment free from the effects of non-essential idling of locomotives between 8 p.m. and 7 a.m., as such non-essential idling degrades the quality of their life, property, and environment.

§ 8502. Definitions.

(1) "Idling" means the operation of the locomotive while it is stationary.

(2) "Law-enforcement officer" means a sworn member of a police force or other law-enforcement agency of this State, or of any county or municipality within this State, who is responsible for the prevention and detection of crime and the enforcement of the laws of this State, or the laws of any county or municipality within this State.

(3) "Person" means a company, corporation, association, firm, partnership, joint venture, or other legal entity. "Person" does not include individuals.

§ 8503. Non-essential idling prohibited; defined.

(a) No person may permit the non-essential idling of a locomotive under its control or on its property between 8 p.m. and 7 a.m.

(b) Idling is non-essential if it is not a result of one or more of the following circumstances:

(1) Traffic conditions.

(2) The direction of a law-enforcement officer.

(3) The operation of defrosting, heating, or cooling equipment to ensure the health or safety of the driver or passenger.

(4) The operation of the primary propulsion engine for essential work-related mechanical or electrical operations other than propulsion.

(5) Required maintenance, servicing, repairing, diagnostics, or inspections.

(c) This section does not apply within the boundaries of property zoned for industrial activity by the county or municipality having jurisdiction over the property.

§ 8504. Enforcement.

(a) Any law-enforcement officer in whose jurisdiction the locomotive, or any car attached to a locomotive, is located may enforce this chapter.

(b) The Superior Court shall have exclusive jurisdiction over offenses under this chapter.

§ 8505. Penalties.

Any person who violates this chapter shall be punished by a fine of not less than \$5,000 nor more than \$10,000 for the first offense and not less than \$10,000 nor more than \$20,000 for each subsequent offense.

#### SYNOPSIS

This Act prohibits non-essential idling of locomotives between 8 p.m. and 7 a.m.

Author: Senator McBride

**Exhibit B**

**Delaware House Public Safety & Homeland Security Committee Meeting Minutes  
June 25, 2015**

**[Attached hereto]**

**J. LARRY MITCHELL**  
STATE REPRESENTATIVE  
13<sup>th</sup> District



**HOUSE OF REPRESENTATIVES**  
**STATE OF DELAWARE**  
411 LEGISLATIVE AVENUE  
DOVER, DELAWARE 19901

COMMITTEES  
Judiciary, Chair  
Public Safety &  
Homeland Security, Chair  
Corrections, Vice Chair  
Capital Infrastructure  
Gaming & Pari-Mutuel

**House Public Safety & Homeland Security Committee Meeting Minutes**  
6.25.15

Acting-Chair J. Johnson called the meeting to order at 1:00 p.m. on behalf of Chair Mitchell and Vice-Chair Mulrooney, who were unable to attend the first portion of the committee meeting due to a conflict. Members present included Reps. Brady, Osienski, Briggs King, Outten, and Smyk. Jennifer Cohan, Secretary of the Delaware Department of Transportation, and Scott Vien, Director of the Delaware Division of Motor Vehicles, also attended the meeting, along with Senator McBride and Reps. Longhurst, Keeley, and Miro. For a list of guests present, please see the attendance list below.

Rep. Longhurst introduced **SB 135, AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO LOCOMOTIVE IDLING**. This bill would prohibit non-essential locomotive idling between the hours of 8:00 p.m. and 7:00 a.m. Rep. Longhurst explained that the bill was drafted in response to constituent complaints and implicated public safety concerns due to accident potential during hours when most nearby residences are occupied.

Sen. McBride added his support for the legislation and acknowledged lengthy discussions with rail companies and constituents preceding the bill's drafting.

Rep. Osienski spoke in favor of the bill, also recognizing the time and effort spent to resolve the locomotive idling issue.

Rep. Brady asked whether locomotives need to idle for mechanical reasons.

Rep. Longhurst responded that idling occurs due to train volume and loading delays.

Acting-Chair J. Johnson acknowledged that changes in manufacturing practice often require a legislative catalyst and voiced his support for the legislation.

Bobby Byrd, representing Norfolk Southern, shared the rail company's opposition to the bill. He recognized legislators' previous efforts to discuss a mutually beneficial solution to idling concerns.

Scott Muir, government relations liaison for Norfolk Southern, voiced the company's opposition to the bill on safety and environmental grounds. He testified that idling allows the locomotive's engine to keep all of the brakes applied while workers load and unload cargo. He stated that shutting locomotive engines down would delay departure by at least two hours due to brake testing requirements. He contended that railways are federally regulated as interstate commerce, and distributed copies of judicial precedent addressing state authority to regulate rail companies.

**J. LARRY MITCHELL**  
STATE REPRESENTATIVE  
13<sup>th</sup> District



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Corrections, Vice Chair  
Capital Infrastructure  
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Sen. McBride reminded the committee of the company's construction of a locomotive parking structure that increases disruption to local residents.

Rep. Briggs King requested explanation of an alternative solution to the idling problem that had been discussed during previous meetings but not yet implemented.

Muir responded that Norfolk Southern was developing a mechanism to apply air to locomotive brakes from a source other than the diesel engine; this mechanism would retain safety precautions without locomotive idling.

A motion was made by Rep. Osienski and seconded by Rep. J. Johnson to release SB 135 from committee. SB 135 was reported out of committee with an F=0, M=6, U=0 vote.

Rep. Miro and Sen. Townsend then introduced **SB 59 w/SA 1, SA 2, AN ACT TO AMEND TITLES 11 AND 21 OF THE DELAWARE CODE RELATING TO TEMPORARY INSTRUCTION PERMITS AND DRIVERS LICENSES.**

Rep. Miro explained that this bill would create a mechanism for undocumented immigrants to obtain legal driving privileges. He explained the process through which eligible individuals would be able to obtain a driver privilege card. He added that this allowance would help make Delaware's roads safer by creating a legal mechanism to certify drivers who currently operate vehicles illegally.

Sen. Townsend voiced his gratitude for bipartisan support in bringing this legislation forward.

Acting-Chair J. Johnson stated that he had supported similar legislation in previous years. He recognized changes to the Delaware Code made since that time, and asked how this bill would affect Delaware compliance with real identification requirements.

Sen. Townsend attested that this bill would not affect Delaware's real identification compliance.

Rep. Briggs King asked for confirmation that all eligible applicants under this law would be required to submit to fingerprinting.

Sen. Townsend affirmed that all eligible applicants would be required to submit to fingerprinting. He added that this requirement helps ensure that each applicant can only obtain one card.

Rep. Briggs King asked whether the State Bureau of Investigation (SBI) had expressed concerns over handling applicant volume.

**J. LARRY MITCHELL**  
STATE REPRESENTATIVE  
13<sup>th</sup> District



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Sen. Townsend replied that the SBI had not expressed any trepidation over applicant volume. He shared that law enforcement and community organizations had indicated willingness to jointly address coordination and efficiency.

Rep. Briggs King questioned whether the quoted fee was lower than regular DMV license fees.

Sen. Townsend responded that because renewal times differ, the annual cost of each license would be the same.

Rep. Keeley added that the application fee would be raised along with other DMV fee increases.

Rep. Briggs King voiced concern that applicants might not be aware that driving privileges would only be authorized in Delaware and not extend to surrounding states.

Sen. Townsend acknowledged the need to inform applicants of limited validity.

Rep. Smyk voiced his support for the legislative intent, but requested assurance that the bill would not conflict with federal law.

Rep. Miro reiterated that this bill would not grant legal status to undocumented immigrants.

Sen. Townsend affirmed that the bill would not conflict with federal law or with Delaware's real identification compliance. He testified that this bill concerns a narrow issue and does not address broader questions about immigrant status or eligibility for benefits.

Jennifer Cohan, Secretary of the Delaware Department of Transportation (DelDOT), confirmed that she had coordinated with federal counterparts to ensure legislative compliance. She clarified that the driver privilege cards would only be valid in Delaware, but that statutory language was drafted to mirror Maryland law to allow for future reciprocity. She noted the possibility of a reciprocity agreement with Maryland, but not other states. Secretary Cohan presented a mock-up of the driver privilege card to demonstrate that it cannot be used for identification purposes.

Rep. Smyk asked about insurance industry response.

Sen. Townsend responded that the insurance industry had not taken a position on the bill but would be capable of marketing services to applicants.

Rep. Briggs King requested confirmation that the cards could not be used to open financial accounts.

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Sen. Townsend affirmed that the cards could only be use to grant driving privileges and would not be valid for any purpose requiring certified identification.

Rep. Keeley spoke in favor of the bill, contending that states must act to improve road safety pending federal implementation of broader immigration reforms.

Frank Raskauskas, President of Seaford Management LLC, spoke in favor of the legislation. He described the verification process for obtaining a tax identification card and indicated his additional familiarity with Maryland's process.

Drew Serres, representing the Delaware Chapter of Americans for Democratic Action, shared the organization's support for the bill.

Darlene Battle, Executive Director of the Delaware Alliance for Community Engagement, also voiced support for the bill.

Javier Torrijos, Chair of the Delaware Hispanic Commission, echoed previous comments supporting the legislation.

A motion was made Rep. Osienski and seconded by Rep. Brady to release SB 59 from committee. Motion carried. Yes-5(J. Johnson, Osienski, Brady, Briggs King, Smyk); No-0; Not voting-1(Outten); Absent-5(Mitchell, Mulrooney, Carson, Smith, Wilson). SB 59 was reported out of committee with an F=3, M=5, U=0 vote.

Rep. Viola then introduced **HB 200, AN ACT TO AMEND TITLES 9, 21, AND 22 OF THE DELAWARE CODE RELATING TO ACCESSIBLE PARKING SPACES**. He stated that the purpose of this legislation is to provide better parking standardization and accessibility for persons with disabilities. He noted current problems with varying standards used for handicapped parking spaces and compliance with the Americans with Disabilities Act (ADA) standards.

Bob Maxwell, owner of Maxwell & Associates, expressed local government interest in this legislation. He credited the bill sponsor for his work on the issue and indicated willingness to continue discussions on mutually acceptable compromises to the legislation.

Kyle Hodges, representing the State Council for Persons with Disabilities, lamented the current state of accessible parking in Delaware and voiced his support for the legislation.

Jersey Jeanne Goldy-Sanitate also spoke in favor of the bill. She shared examples of current problems with accessible parking.

**J. LARRY MITCHELL**  
STATE REPRESENTATIVE  
13<sup>th</sup> District



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Corrections, Vice Chair  
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A motion was made by Rep. Osienski and seconded by Rep. Brady to release HB 200 from committee. Motion carried. Yes-7(Mitchell, Mulrooney, Johnson, Osienski, Briggs King, Brady, Smyk); No-0; Not voting-1(Outten); Absent-3(Smith, Carson, Wilson). HB 200 was reported out of committee with an F=0, M=7, U=0 vote.

Rep. Brady introduced **HB 209 AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO PARKING**. He explained that this bill would expand county zoning authority to expressly allow regulation of parking and parking areas.

Rep. Osienski asked whether counties already determine requirements governing parking areas.

Rep. Brady responded that this bill would not affect existing requirements.

A motion was made by Rep. Osienski and seconded by Rep. Smyk to release HB 209 from committee. Motion carried. Yes-6(Osienski, Smyk, Mitchell, Mulrooney, J. Johnson, Brady); No-0; Not voting-2(Briggs King, Outten); Absent-3(Smith, Carson, Wilson). HB 209 was reported out of committee with an F=0, M=8, U=0 vote.

Rep. Keeley introduced **SB 102, AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO PARTICIPATION IN A DRIVING UNDER THE INFLUENCE TREATMENT PROGRAM BY DUI OFFENDERS**. She explained that this bill would bring Delaware into compliance with 23 U.S.C § 164 pertaining to repeat DUI offenders. If Delaware failed to comply with § 164, the Federal Highway Administration would reserve 2.5% of the State's federal highway funds as penalty funds earmarked for specific projects.

A motion was made by Rep. Briggs King and seconded by Rep. Osienski to release SB 102 from committee. Motion carried. Yes-8(Mitchell, Mulrooney, J. Johnson, Brady, Osienski, Briggs King, Outten, Smyk); No-0; Absent-3(Smith, Carson, Wilson). SB 102 was reported out of committee with an F=0, M=8, U=0 vote.

Chair Mitchell then introduced **SB 129, AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES**. He explained that this bill would facilitate staffing of large events with additional security and screening requirements. He testified that this bill would ensure prioritization of public safety at major Delaware venues that host events with more than 5000 spectators, such as Dover International Speedway.

A motion was made by Rep. Briggs King and seconded by Rep. Brady to release SB 129 from committee. Motion carried. Yes-8(Mitchell, Mulrooney, J. Johnson, Brady, Osienski, Briggs King, Outten, Smyk); No-0; Absent-3(Smith, Carson, Wilson). SB 129 was reported out of committee with an F=0, M=8, U=0 vote.

**J. LARRY MITCHELL**  
STATE REPRESENTATIVE  
13<sup>th</sup> District



**HOUSE OF REPRESENTATIVES**  
**STATE OF DELAWARE**  
411 LEGISLATIVE AVENUE  
DOVER, DELAWARE 19901

COMMITTEES  
Judiciary, Chair  
Public Safety &  
Homeland Security, Chair  
Corrections, Vice Chair  
Capital Infrastructure  
Gaming & Pari-Mutuel

Chair Mitchell noted the conclusion of House Public Safety and Homeland Security Committee meetings until the General Assembly reconvenes in January. He thanked the committee for their dedication during the first half of the legislative session.

Chair Mitchell concluded the meeting at 2:12 p.m.

Respectfully submitted by:

SS

**In Attendance:**

Robert Overmiller—Executive Director, Delaware Governor’s Advisory Council for Exceptional Citizens  
Jennifer Cohan—Secretary, Delaware Department of Transportation (DelDOT)  
Frank Raskauskas—President, Seaford Management LLC  
Scott Vien—Director, Delaware Division of Motor Vehicles  
James DeChene—Director of Government Relations, Delaware State Chamber of Commerce  
Bobby Byrd—Byrd Group, on behalf of Norfolk Southern  
Scott Muir—government relations liaison, Norfolk Southern  
Drew Serres—organizer, Delaware Chapter of Americans for Democratic Action  
Javier Torrijos—Chair, Delaware Hispanic Commission  
Darlene Battle—Executive Director, Delaware Alliance for Community Advancement  
Jersey Jeanne Goldy-Sanitate—self  
Pat Maichle—Director, Delaware Developmental Disabilities Council  
Charito Calvachi-Mateyko—Executive Director, Latino Initiative on Restorative Justice