TESTIMONY OF THE OHIO RAILROAD ASSOCIATION

MARCH 7, 2019

OHIO SENATE TRANSPORTATION COMMITTEE CONSIDERATION OF HOUSE BILL 62

Chairman McColley, Vice-Chairman Uecker, Ranking Member Antonio, and members of the Senate Transportation Committee, thank you for this opportunity to present the Ohio freight railroad industry's comments on House Bill 62. I am Art Arnold, the Executive Director of the Ohio Railroad Association.

My comments will address three subjects: grade crossing safety funding, the rail industry's support for the Department of Transportation's motor fuels tax increase, and an issue dealing with special permits issued by ODOT.

GRADE CROSSING SAFETY

The House bill provides a little over $14 million per year for grade crossing safety. (Grade crossings are the at-grade intersections between railroad tracks and roadways.) According to the Ohio Rail Development Commission (ORDC), this represents flat funding for this line item, and is primarily provided through federal funds. We ask the Committee's support for this line item.

Today, according to the recently released State of Ohio Rail Plan (http://www.dot.state.oh.us/Divisions/Rail/Documents/State%20of%20Ohio%20Rail%20Plan%20Final.pdf), Ohio has 5,787 public grade crossings, the fourth most in the nation, behind Texas, Illinois, and California. The combined long term efforts of the community of parties actively involved (law enforcement, railroads, state government, local government, federal agencies, Operation Lifesaver, and countless volunteers) in addressing grade crossing safety in Ohio have reduced the annual total grade crossing crashes from 326 in 1990 to 68 in 2017. This 79% reduction is more impressive when you consider that in 1990, there were approximately 6.7 million vehicles registered in Ohio to a population of roughly 10.9 million Buckeyes. By 2017, the number of registered vehicles had increased to about 10.6 million, while our population was estimated at 11.6 million. Rail business has also grown during this period while the number of grade crossings has been slightly reduced. So, more vehicles, more people, more rail traffic, almost 5,800 crossings, and a 79% reduction in crashes. That is a public safety success story. And the funding included in past transportation budgets is a big part of that.

I've attached documents prepared by the ORDC that cover the last several biennium to illustrate the statewide application of the funding provided through past budgets. These funds are dedicated to public safety and primarily cover the cost of constructing the grade crossing warning devices. (Improvements at crossings such as gates and lights average about $210,000 today.) Railroads are responsible for the costs of annual maintenance. A persistent and troubling aspect of grade crossing safety is the fact that roughly 80% or more of the remaining grade crossing crashes occur where the public authorities have installed active warning devices (usually lights and gates; for example, in 2017, 56 of the 68 crashes were at locations with gates and/or flashing lights). The ORDC, in consultation with others, is investigating this frustrating situation and searching for a solution to reduce the high percentage of crashes occurring at what should be the least hazardous crossings.

MOTOR FUELS TAX

Recently, the Association of American Railroads, the industry's national organization, spoke out in support of an increase in the federal gas tax. (I've included an article on that announcement for your review). The Ohio Railroad Association supports the DeWine Administration's request to increase the state's motor fuels tax as a short-term solution to the state's highway funding shortfall. Railroads have made a huge investment in Ohio in track, facilities, equipment, and people. We cannot relocate Ohio rail corridors to another state or country. Our success is tied to the success of Ohio's economy. We know that transportation infrastructure is critical to the economy. And we know it is expensive. Railroads invest almost $30 billion annually in the national freight rail network. Railroads appreciate that for reasons ranging from safe and dependable operations to dependably serving customers, transportation infrastructure must be adequately funded. Long term, we agree with the AAR that a vehicle miles traveled tax coupled with a weight-distance tax for commercial vehicles is where Ohio (and the nation) ought to be headed in the future. That two-tiered system is a user fee that addresses a vehicle's use of (and impacts on) the publicly-funded roads and bridges, not just fuel consumption. It eliminates questions about how we tax the different sources of motive power. The users of public infrastructure must be prepared to pay for the costs associated with that infrastructure, especially the commercial users.

In terms of the motor fuels tax increase before you, the Ohio Constitution prohibits the expenditure of motor fuels tax revenues on projects that are not directly related to highways, so there appears to be little direct benefit for other transportation modes in this proposal.

HOUSE AMENDMENT: SPECIAL PERMITS FOR OVERWEIGHT TRUCKING

The Ohio Railroad Association and its members support a fair and competitive multi-modal freight marketplace. And the competition for freight business between trucking and rail is real in Ohio.

Excerpt from the 2019 State of Ohio Rail Plan:

"Rail service in Ohio competes more closely with trucking than in other parts of the country. Less than 25 percent of the ton-miles originating or terminating in Ohio (compared to 55 percent nationwide) are in shipments of over 60 carloads. Because the average length of haul is shorter and the average number of carloads per shipment is fewer, railroads shipping to and from Ohio compete more closely with trucking than elsewhere, all else being equal."

The freight railroads of Ohio spend tens of millions of dollars every year to maintain and improve their own properties and assets, properties and assets used to ensure safe and efficient rail freight transportation is available to Ohio industry, agriculture, and mining. The continued expansion of truck weight limits is viewed as an existential threat by some of the smaller railroads in Ohio, and as a threat to future business opportunities by all of the state's freight rail industry. (Overweight trucking has been steadily expanded in Ohio over the past twenty years.)

For commercial trucks seeking the special privilege to operate at weights in excess of the federal and state 80,000 lb. gross vehicle weight limit, Ohio has established a special permits office to oversee and manage such privileges, privileges that in some cases have been created by legislative action. (The number of special overweight and/or oversize permits issued annually by ODOT is approximately 350,000. These permits can be obtained as single trip permits, or, for some commodities or permit types, continuing permits good for as many trips as necessary over a 90 day period.) One such legislatively-driven special permit deals with regional heavy haul trucks operating within a limited region of 150 miles between points of origin and destination (ORC 4513.34).

Under this law, a 110,000 lb. commercial truck, 30,000 lbs. over the statutory federal and state weight limit of 80,000 lbs., can legally obtain from ODOT a special permit from a point of origin to a destination less than 150 miles away. That's how the law reads. But the rail industry was surprised to learn recently that, under the Kasich Administration, ODOT had interpreted the law to mean that after reaching that destination, but not unloading goods, the truck could, by having obtained a second 'piggyback' permit, continue on with the original load to a final destination that was beyond the original 150 mile limit. So with two permits, an overweight truck can today operate between any two points in Ohio carrying any commodity.

The issue this committee confronts is the House amendment (sought by the heavy trucking industry) to eliminate the 150 mile limit in the law enacted in 2013. That change eliminates the necessity for, and, therefore, the cost of, the second permit (what we refer to as a 'piggyback' permit) for trips in excess of 150 miles. Since ODOT began issuing 'piggyback' permits under the regional heavy haul law, the number of permits issued in this category has grown from roughly 1,500 a year to nearly 5,000. As these special permits allow trucks to haul any commodity anywhere in the state under the current interpretation, the rail industry feels this practice puts business opportunities at risk, and that the reduction in truck operating costs that results from the House amendment provides an advantage to trucking companies. These outcomes disadvantage the freight railroads in Ohio. For the public, it means 'piggyback' trucks will be paying half of what they currently pay for permits, and pocketing this savings while ODOT is telling you they are short of funds for needed safety improvements.

Commercial users of public infrastructure must pay the full costs they impose on the public infrastructure, or someone else will. And ODOT's own study says these heavy permitted loads don't come close.

ODOT's study (Executive Summary attached) estimates the trucking industry paid $25-30 million in overweight permit fees in 2008, resulting in a shortfall at that time of approximately $45 million between the fees collected and the costs imposed by trucks with special permits. In recent hearings on transportation infrastructure needs, ODOT Director Marchbanks stated these permitted vehicles paid approximately $39 million annually. In 2019 dollars, that leaves a significant gap between the permit fees collected and the costs imposed by these heavy trucks.

We encourage ODOT to review the interpretation of ORC 4513.34 that has allowed 'piggyback' permitting to occur. We believe ODOT's interpretation is clearly beyond the legislative intent of the statute. We also encourage ODOT to undertake an examination of the costs imposed on the state's roads and bridges by these heavy permitted trucks and establish the current underpayment. Based on the 2009 study's finding, we think it could today be in the range of $60 - $80 million annually.

We ask this committee to restore the language in 4513.34 that was removed by the House. We further ask that you consider providing ODOT and local road authorities with discretionary powers by simply changing the word "shall" to "may" wherever it appears in this code section.

This statement from the 2009 study sums up our concerns: "When the trucking industry does not pay their full share of highway costs and societal costs, we give them a competitive advantage over other modes of transportation that leads to business decisions that are not in society's best interest."

Railroads of all sizes have made and continue to make significant long-term investments in Ohio. Those investments were made and continue to be made after considering the business opportunities available, the return on the investment, and the costs of running the railroad. Stability in public policies are critical to the success of any business making long-term infrastructure investments. Railroads, like most businesses, are prepared to face challenges presented by the marketplace and the economy. And we are always prepared to discuss public policy changes that enhance Ohio's economy. But policy changes that enhance one private freight mode over another, in effect, picking winners, devalues existing investments, threatens future investments, and diminishes investors' confidence in public policy statements.

Thank you for the opportunity to share this information. I've attached background documents on safety statistics, the AAR's statement on federal taxes, and other relevant documents supporting or referenced in my testimony.