

Good morning,

Chairman Edwards, Vice Chair LaRe, Ranking Member Sweeney, and Members of the Finance Committee,

I appreciate the opportunity to speak before you on HB 23 which contains the proposed legislation of two-person crew staffing and wayside defect detectors.

My name is Clyde Whitaker, I'm State Director for the Sheet Metal, Air, Rail Transportation Union, Ohio State Legislative Board. We are the largest rail union nationwide, in Ohio we represent approximately 1500 members from the crafts of Conductors, Engineers, and Yardmasters.

Section 4999.09 Two Person Crew:

The railroads will and have argued there is no evidence to support one-man crew operations being more unsafe than two. I beg to differ on that. Lac-Magantic, Quebec, Canada on July 6, 2013 an entire town was removed from the face of the earth and 47 lives lost. This was attributed to a one-person crew and subsequently after the disaster, Canada created law requiring two people on all trains. They felt the need to require two people in the cab of a locomotive as an oversight and safety of the public.

The railroads will talk about Positive Train Control (PTC) and how it prevents accidents. Our organization has many instances where PTC has failed completely, it has failed to adhere to warn the engineer on many speed restrictions. This due to programming issues by a human. The system has failed to act properly while traversing through work zones. It is not the saving grace they make it out to be and will not replace the human element.

Currently a railroad crew consists of a conductor and engineer. The engineer is in charge of operating the locomotive to move the train under the conductor's instruction. Often times discussions of operating rules come into play due to unforeseen circumstances that are not an everyday occurrence. The conductor researches the rules and a discussion is made between the two for safe operation and movement of the train.

The conductor is the responsible party for ensuring hazardous material paperwork be in order to assist local emergency services in the event of an accidental release or derailment. This person is also the second set of eyes to ensure the engineer is operating in compliance with federal, state, railroads rules, and timetable instructions. In addition, making sure the train services the customers, does not bypass reduced speed restrictions or enter maintenance authorities without permission.

We have data of two person crews' savings lives during collisions with automobiles and preventing numerous other accidents. Two person crews have identified numerous defects on passing trains such as; hot wheel bearings, dragging equipment, shifted loads, derailed cars, etc. From kids on the tracks, homeless asleep in the rails, people taking photos in the tracks, tanker trucks on the tracks, the list is quite numerous of examples.

Even here in Ohio we had a runaway train carrying hazardous materials out of a yard in Toledo. Had we not had multiple two person crews working along the line who knows what the results would have been. However, these valiant crews saved the day, but it took several two person crews to stop the train.

Over recent years railroads have implemented Precision Scheduled Railroading or as I will call it PSR. This is a cut to bare bones operating plan designed to fatten the wallets of Wall Street. During this time, we the workers have seen deferred maintenance on equipment, track infrastructure, bridges, communication and technology issues increase, jobs cut of the workers that maintain equipment such as defect detectors. The carmen craft has been cut to the core or eliminated in some locations. These carmen are responsible for inspecting over 100 points on a railcar and now must inspect within 90 seconds compared to 4 minutes pre-PSR era.

This in turn also has affected transportation employees operating the trains. With 30% of the workforce trimmed back on the railroads. Employees have no time to have a life or receive adequate rest. This leads to fatigue which is the worst enemy of any transportation worker. Now more than ever the Rule of 2 in a locomotive cab is needed.

We should not leave a lone engineer at the helm of one of the largest and heaviest moving objects on land. A train carries thousands of tons of hazardous materials, various shipments, and goods that are crucial to our supply chain. This should not be the responsibility of one person it should be two.

By some of the brief examples one can understand that railroading is a situational type job that changes day to day. We as crews depend on each other's expertise and skills to make sound decisions to keep the public safe at all times.

Given the unfortunate recent events here in Ohio. Think about this. If, the railroads reduce the number of people in a locomotive cab, the situation we are faced with will be dangerous. The conductor would be traveling in a motor vehicle, spread many miles away. How long would it take this person to arrive to assist emergency crews or the engineer in a catastrophic event? Would it take an hour or longer? Traffic and weather would be a major factor. Would this person have the right hazardous material paperwork on that particular train? Does this person have the right position of hazardous cars in the train?

Just imagine yourself being this conductor driving up to a derailment. You see a huge flame like we seen in recent weeks on the news. Would you jump in the middle of that mess or turn

around and get to a safe place? Removing the 2nd person puts the engineer at risk and the public is at risk, all because of corporate greed.

Currently the status quo protects the crew and they're able to get one another to safety. Especially in treacherous areas where vehicles cannot respond promptly. Currently the conductor assists emergency responders by immediately notifying the contents of the train and position of hazardous materials. This allows for responders to combat the fire properly or evacuate the area without delay.

Preserving the current status will not break the railroads. Even during a global pandemic and soft supply chain they continue to make record profits. You will hear the railroads cry preemption; this is not the case by any means. Our state has the right to keep the citizens safe and protect the environment.

This legislation maintains the status quo, preserves safety within the cab of a locomotive, it protects the community, and in the event of an emergency there is a backup. This is common sense legislation and I urge your support of it.

Wayside Defect Detectors

In the era of PSR, safety has been placed on the back burner by the railroads. They talk of safety first, but that is all smoke and mirrors. Since the summer of 2022 my office began receiving reports of railroad carriers ignoring defect detector warnings.

Upon receiving such information, I notified the Federal Railroad Administration seeking enforcement of a regulation that I could not find or even an infraction of that particular railroads rule book. But what I found was there would be no violation toward the rail carrier. As no regulations exists to hold them accountable for endangering the employees and public. Nor, would the railroad receive reprimand for not following their own rules, again because of no regulation.

These detectors are present for the railroad's convenience and essentially a voluntary program to protect their best interests. As an example of what I've witnessed since summer of 2022. A crew is nearing the end of their 12-hour limit of operating the train. A defect detector sounds an alarm, the railroad crew begins to slow the train to a stop. Now because the railroad doesn't have a crew in place for relief, this due to PSR cuts, they roll the dice. They take a chance on getting the train to destination in order to save a buck.

I still continue to receive reports on these types of situations. In December 2022, I even made a statement to a reporter at a labor rally it's just a matter of time before we have a catastrophic event in Ohio. All in part to these unsafe practices.

Pre-PSR when a defect detector sounded an alarm that train would be required to stop and inspect the alleged defect. No exceptions what-so-ever. This should be the standard now.

At the end of the day railroads need to be held responsible. When a defect detector alert is sent to a Wayside Desk, the crew should be notified of a car trending hot. There should be no more silent alarms for trending equipment over heating, an audible tone should be given to the crew.

The operating crew should be empowered to take the safest course of action for their safety and the general public. Currently that decision is up to upper management to decide, do we make a profit today, or do the right thing in the name of safety?

Should a crew challenge management, they are threatened with discipline action. Which is why very few people have come forward to testify. We need help in that arena to protect our safety and the community. I encourage you to take this first step toward for a better system of accountability. This will be a start to protect the public and railroad workers alike.

Closing

Before you today are several union officers and each of us holds a form of certification as a conductor or engineer. Remember we represent the men and women working the trains. We are the experts, we are not lawyers, we are all advocates for our members and the communities in which we travel through

Due to PSR, fatigue is more present than ever in the locomotive cab due to our railroad members being worked 24/7/365 days a year. Now more than ever we need the Rule of 2 people in a locomotive cab.

I encourage each and every one of you as well the remainder of the Representatives to support this bill.

Do any of you have questions for me at this time? I would like to thank Chairman Edwards for sponsorship of this bill. Vice Chair LaRe, Ranking Member Sweeney and the committee I thank you for your time.

Clyde A. Whitaker

SMART-TD
Ohio State Legislative Board
Chairman & Director

Good morning,

Chairman Edwards, Vice Chair LaRe, Ranking Member Sweeney, and Members of the Finance Committee,

I am testifying today in support of Ohio House Bill 23. My name is Daniel Banks, and I am the Government Affairs/Public Relations Representative of the Sheet Metal, Air, Rail, Transportation Union (SMART). In addition to my position with the SMART Union, I'm also a certified freight conductor and engineer with CSX Transportation and I have worked the rails of Ohio from Toledo to Youngstown, and from Cleveland to Columbus.

My hope is that I can illustrate for the committee the amount of good that will be done for this state by passing HB 23. I would like to thank the committee and Chairman Edwards for this opportunity.

As HB 23 is a three-pronged legislation, I would like to address each of the items in an orderly fashion. I will also speak to application of the Commerce Clause in the United States constitution as well as the idea of Federal Exemption as it applies to railroad operations as these items weigh heavily in the rebuttals of railroad corporations when these types of bills have been heard in other states.

On the topic of defect detectors, it is my view as a railroad conductor that a well laid out and maintained series of defect detectors is by far the best implementation of technology available to us to safeguard our communities from the potential threats posed by freight railroads. As an industry, we quantify how much hazardous material we have in our train consists using the measurement of "thousand tons". As one tank car can carry 30,000 gallons of material, and trains tend to have up to 250 cars in them these days, it is easy to see how quickly the gross amount of tonnage and material can add up to staggering numbers.

When our crews are hauling these amazing quantities of materials through the downtowns of cities and villages alike throughout every corner of Ohio, it is very reasonable to think that the condition of our locomotives and freight cars is of the utmost importance. These defect detectors do just that. Detectors can currently tell us if a wheel or a wheel bearing are overheating, they can tell us if a train wheel has a defect or a flat spot that may cause it to fail or negatively affect the integrity of the track causing other cars to derail. They are even advanced enough to give readings that suggest that even though one particular wheel bearing is currently at a temperature that is deemed to be safe, that it has increased in temperature enough from the previous detector that it indicates there may be a problem developing with that wheel or bearing.

These detectors are effective at preventing large-scale disasters from occurring by creating actionable information in real time and keeping the crew of the train informed about the health of its train consist. The problem that HB 23 seeks to eliminate is that in Ohio, the use of defect detectors is not mandatory. In my experience, though CSX has a series of detectors on the rails that I am qualified to speak to, the adherence to their warnings is not consistent. In an ideal scenario, when a defect detector informs a crew of a potential problem, the crew brings the train to a safe stop, and the conductor of train immediately walks to the car in question and tests it for heat and gives it a visual inspection.

Unfortunately, this information that is produced by the detectors is only valuable if it is made available to the crew of the train and is acted upon. The reality in Ohio today is that the detectors are not mandated or regulated on any level. It is left to the discretion of each rail company to use the data provided by the defect detectors to make case by case decisions on how to proceed once a detector

provides a warning. Some of the detectors even announce on the radio the crew hears in the cab of the locomotive that there are "No Defects" and in reality, tells the dispatchers in corporate command centers that a wheel is trending hot, or may have a flat spot that could be a problem.

In either case, whether the crew is privy to the warning or not, it is at the railroad's discretion as to whether or not that train stops, and the problem identified by the detector is evaluated. In my decade on the rail, I have had dispatchers disregard defects on trains I have been on for a variety of reasons. They might tell me to keep the train moving because we are behind schedule, and they will have a carmen look at it when we get to our destination. Or if it proves convenient, they sometimes have a train passing in the other direction give it a look for us while both trains are moving opposite directions. Another option they employ is to order us to slow our train to 30 mph until you get across the next detector and get a second opinion. None of the above options are rare, they happen often, and they are all preludes to the next rail disaster in our state.

It is my professional opinion and responsibility to tell this committee that it is in the interest of all Ohioans to regulate the implementation of and the adherence to defect detectors in regular increments along the state's rails. As our nation's railroads turn their attention toward the profit at all cost doctrine of Precision Scheduled Railroading (PSR) that I'm sure the members of this committee have been made aware of, the state's rail infrastructure and the standard inspections of its rolling stock are not being given the attention they once were. If we can put in place the defect detector regulations for distance between them, no longer keeping their results hidden from the conductor and engineers, and strict adherence to the warnings that are offered we can arm our state's rail crews with the ability to prevent disasters. HB 23 does all these things.

On the matter of regulating that no less than a 2-person crew be in the controlling locomotive of freight trains in Ohio, the stakes are just as dire as they are in regards to the defect detectors. As a certified conductor, I cannot say that I'm unbiased in this argument; however, what I lack in objectivity I more than make up for in first-hand experience.

I could tell the committee stories that occurred in many of their districts that highlight the value of having a conductor on a freight train, but it all boils down to a few basic tenants. Redundancy is paramount to safety, and when the stakes are as high as they are in the rail industry, that safety is not something any of us should take for granted or allow the federal government or corporate interests to dictate to us. As Ohioan's, we must take the opportunity to state firmly in our codes and statutes that we insist all freight trains in Ohio have 2 sets of eyes and hands safeguarding our communities.

This feels like a basic premise, and due to the fact that the current industry standard has two employees on a crew some committee members may be hesitant to legislate on this. I can very simply explain why this is important to solidify by state law. There is a current movement among railroad companies such as the Union Pacific Railroad, and Norfolk Southern (who operates hundreds of miles of track in Ohio) to reduce rail crews to one employee and use advances in technology to compensate for the lack of conductors. Whereas technology has created many productive changes in our industry, to say it has gotten to the place where it can supplant a conductor is reckless.

Technology has created several systems that are operated by the engineer of a freight train. Among the many gauges and counters that clutter their workstations they also have a multitude of screens. For example, one screen displays the interface with their Positive Train Control (PTC) software, while a second is showing the interface with their Trip Optimizer or Leader software, while still another screen is

displaying the workings of their Distributed Power (DP) locomotive that they are running remotely from the rear of the train.

As the amount of time and effort expended on reading and responding to the input provided by these screens and gauges grows, the engineer's availability to look at the road ahead is lessened. This is among the duties of the conductor. When the crossing gates aren't coming down properly, or a kid is chasing a ball into the tracks, the engineer's attention is often preoccupied menu diving into one of his/her many screens. The conductor is pivotal to the safe travel of these trains through our communities. A conductor reaching for the horn or the emergency brake on the locomotive seconds or minutes before an engineer would have the ability to react is no small thing, and there has yet to be an advancement in technology that can replicate it.

In addition to these facts, the conductor's second opinion and the viewpoint of a second certified railroad professional who is qualified on the territory being traversed plays a significant role in the day-to-day success of rail crews. When anything out of the ordinary pops up, it is pivotal to have a second person in the cab qualified to handle the adversity. One supporting item for HB 23 that people who have not worked in the industry would have no reason to know is the amazingly voluminous sets of rule books that railroad employees carry with them on their locomotives. These rule books have prescribed rules and regulations that have all come about due to litany of different scenarios a train crew is prone to encounter in its duties. As the engineer of a train, I am not permitted to open my rule books and search for the rule or industry standard that applies to a scenario as it occurs in real time; however, conductors regularly are charged with that duty. When any circumstance arises that falls into a gray area or is uncommon, it is the conductor who is trained and responsible to quickly navigate the thousands of rules, their exceptions, and sub parts to keep the train safe and compliant with state and federal laws. Again, this hits on the overarching theme that there is no technology that can fill this role.

I will round out my testimony on the 2-person minimum crew section of HB 23 by pointing out the role conductors play in the case of derailments or accidents at grade crossings.

When there is an emergency involving a train, it is incumbent on the conductor to be the first responder. In these circumstances, the engineer is responsible for staying on the train and using the radio to correspond with the dispatchers while the conductor is assessing and assisting on the scene. If there were only one person on the locomotive at the time of an emergency, it would slow the response of the crew to the point of being of little use.

In order to leave the cab of the locomotive unattended, an engineer needs to tie enough handbrakes on the train cars that they can pass a brake test, then go to the locomotive to administer the test, then he/she would have to tie the hand brakes on all the engines and do additional brake testing. Upon the successful completion of these mandatory brake tests, the engineer would then have to configure the engines circuit breakers in the correct positions, apply the air brakes to the train, remove the locomotive reverser, and in the case of a train with a significant amount of hazmat, lock both the back and front doors to the locomotive prior to being available to respond to an emergency.

To say this is impractical is a vast understatement. It would be a quarter of an hour before a single-employee crew would be capable of responding. And at that point, that employee would be less useful to handle the situation without having a coworker in the locomotive with use of the more powerful radio to communicate with dispatchers and other trains to convey the location and specifics of the emergency.

In summary, freight conductors and engineers are cohesive teams that each have unique duties but are symbiotic. Both roles can be supplemented and made more efficient by the introduction of technology; however, neither can be replaced by it without a significant and unnecessary reduction in public safety. I will keep my testimony brief on the topic of blocked road crossings. When I began my railroading career in 2012, most of the trains I was on were roughly a mile long. Upon getting a signal that indicated that we might be stopping soon, it was a given that the conductor and engineer would begin to use their knowledge of the territory and the length of that day's train to calculate where they should stop the train so they could avoid blocking crossings.

This was done because we knew the inconvenience having a road cut off caused to the community and the ramifications of blockading fire/police/emergency response off from the people they serve. It was something we took pride in and did well. As the trains grew to two, then three miles long, this became a fool's errand. As it turns out, there are very few places you can hide 15,000 feet of freight where it isn't in the way of someone. When it became impossible to accomplish this goal, it became less and less of a factor in the decision making for the crews. Rather than looking for the best place to park, we would just take the train up to the stop signal and move it when the light turned green.

When the trains were smaller, if we found ourselves in a position where we could not avoid blocking a road, conductors would walk back to the road, tie a couple of handbrakes, and cut the train in two pieces to open the crossing. With trains 3 miles long, this too became far less than practical and became the exception rather than the norm. It was easier for a dispatcher to justify allowing a conductor to walk a couple thousand feet to open a crossing than to allow one to walk a couple miles to do so. These dispatchers are far less inclined to allow a conductor to perform this public service if it will come at the cost of a much longer delay once it is time for that train to start moving again. PSR does not place value in cutting a crossing, at the expense of a three mile walk back to the engine after the train gets a favorable signal. In this business model the safety of the community has no role. It cannot be bothered to make arrangements for the ambulance or fire truck to have access to the whole community rather than just the folks who live on the same side of the track as the fire station.

As a conductor who lives in this state along with all my family and friends, I ask this committee to think about the people in desperate need of emergency services who have been denied them and left to wither on the vine because it was inconvenient to cut that road crossing. HB 23 aims to curb this behavior. Please keep this in mind when considering your support for this legislation.

In my role with SMART's government affairs and legislative department, I have seen the railroads attempt to combat 2-person crew legislation and blocked crossing legislation in front of more than one state legislature. I can anticipate what they will argue.

First, they will claim that they know their industry better than anyone else and that they are uniquely qualified to handle the specifics. They will inform you of all the improvements to safety brought by their innovations and say that regulating 2-person crews or anything else will stifle their progress in moving the transportation industry forward via technology. They will tell you that they are beyond the reach of any state or local government who might seek to regulate them. And finally, they will hold themselves up as the guardians of the Commerce Clause in the United States' Constitution saying that we cannot in any way stand between them and their pursuit of moving our nation's economy ahead.

I'm here to tell you that all that amounts to is a high-priced smoke and mirror show that is nothing more than a demonstration of what kind of pretty words you can weave together when you combine

corporate lobbying budgets, and the knowledge that they do not hold the high ground on the merits of the issues at hand.

You are legislators. Most of you have a copy of the constitution either on your person, or in your desk at the Rife Center. You know the federal regulations they hide behind and claim Ohio will be in violation of are not in any way applicable to states. You also know that the Commerce Clause is in the constitution to defend actions that **benefit** the country's economy.

Their long train's, blocked crossings, ignoring of the warnings of detectors, and all the job killing technology they have manufactured have done the opposite. Their newly configured industry models have slowed down the velocity of freight, endangering our export markets and delaying goods and materials from getting to our shelves.

They do not own the commerce clause, but they do owe it to all Ohioans to start living up to it. HB 23 is a big step towards doing just that. It will result in smaller trains that do not hold our communities captive, a safer place for my railroad brothers and sisters to work, and a better, cleaner Ohio with fewer avoidable derailments and environmental catastrophes.

I thank the members of the committee for having me here today, and I thank Chairman Edwards for not only holding this hearing, but for sponsoring HB 23 to begin with.

I would be happy to answer any questions the committee might have for me.

Good morning,

Chairman Edwards, Vice Chair LaRe, Ranking Member Sweeney, and Members of the Finance Committee,

I appreciate the opportunity to speak before you on HB 23 which contains the proposed legislation of two-person crew staffing.

My name is Timothy Merren, I'm a Legislative Representative for the Sheet Metal, Air, Rail Transportation Union, Local 2 of Toledo, OH. I'm also an active engineer for a class 1 railroad.

As a Class 1 employee I hold both conductor and engineer certifications. I absolutely believe two people in the cab are essential to the consistent safe movement of freight trains across this state.

The past several years has brought major changes to the industry, not only to crew responsibilities in the cab, but how railroads run overall. I'll begin with train length. It's no secret that railroads are running longer trains, which are frequently linked to delays as well blocked road crossings.

Longer trains take an extensive amount of time to build and take apart in terminals. Often, they don't fit in sidings in order to pass other trains, when left on the main line they can block crossings for hours or even days, and when they break down the repair time is increased considerably. Now let's consider how long it will take to cut multiple crossings to clear up a town or make repairs when someone must drive to that location to perform service. I have personally cut multiple crossings in multiple events and made repairs without assistance in the last 12 months.

Moving on to in cab responsibilities. Recently we've seen a tremendous amount of technology come into the cab. PTC, Trip Optimizer and Energy Management, and distributed power are a few. PTC is a great safety tool for us to assist in our job, but it is not the be-all-end-all to safe train movement the railroads may have you believe. I have had PTC fail completely 3 times in the last 2 months and was instructed to cut it out and run without it operating to my final destination. It is not uncommon.

The amount of information the engineer must take into account on these trains is considerable. The engineer and conductor frequently discuss speed restrictions, crossing malfunctions, stop boards, and planned stopping locations. The latter is a frequent topic due to the fact it takes longer to slow down and stop these huge trains and there are very few locations they fit off crossings. Perhaps contrary to popular belief, we really do try to find places to park that block

the least number of crossings or the least traversed. These items are discussed on every one of my trains.

Finally, I would like to point out something that I do not believe has gotten enough discussion as part of the crew size topic; mental health. I work in what is considered a long pool, operating 235 miles each way. Most trips are in the 10-12-hour range. Most of my trips occur at night. Most of my call times are unexpected due to the railroads inability to provide even a somewhat accurate train lineup. Working while tired seems to have become just part of the job. Many nights, engineers and conductors rely on each other to get the train over the road safely. Now, consider doing all this alone for 12 hours a night, then going to your hotel room alone, before waking up and taking your 12-hour return train home, alone. Then do that again after only being home for 12-24 hours. Then repeat this cycle for the next 30 plus years. What would that do to a person's mind? Would you even be able to function in social situations after several years? Human beings, by nature, do not do well in solitude. I believe most employees would not be able to handle this type of isolation well, if at all. I believe it would lead to severe mental health issues and employees quitting the railroads. As stated earlier, this topic has not gotten enough discussion. It is a real concern for all, especially employees with decades left to work.

In closing, I'd like to say that the railroad lifestyle has always been difficult. In recent years the railroads have taken a difficult lifestyle and made it nearly impossible. And now they want to throw single employee crews on top? My prediction is that train and employee accidents will increase, overall train performance will decline, and we will see a steady stream of attrition from senior employees who cannot cope with all that is required of them. The benefits of two people in the cab may be difficult to see from the outside, however they would be quickly realized once that person is gone. This is a rule that is absolutely needed.

As far as wayside detectors go, the only real concern I have with them is if a detector reports itself as "DETECTOR NOT WORKING" or "TRAIN TOO SLOW", the Wayside Helpdesk will ask if you are a key train and if you are not, you are instructed to take the train 30 MPH to the next detector. If you are a key train you must stop and inspect. The difference can literally be one hazardous material car. The rule seems a little confusing.

I encourage each and every one of you as well the remainder of the Representatives to support this bill.

Are there any questions of me at this time?

Thank you, Chairman Edwards, for sponsorship of this bill. Vice Chair LaRe, Ranking Member Sweeney and the committee I thank you for your time.

Timothy Merren
Legislative Representative
SMART-TD Local 2