

SUBSTITUTE OHIO HOUSE BILL 23

TESTIMONY

THE OHIO RAILROAD ASSOCIATION

February 22, 2023

Chairman Edwards, Vice Chair LaRe, Ranking Member Sweeney, and members of the House Finance Committee, thank you for the opportunity to present testimony on Substitute House Bill 23.

I am Art Arnold, the Executive Director of the Ohio Railroad Association. The ORA represents 28 freight railroads operating in Ohio. Our members include the two largest railroads in the eastern United States, CSX and Norfolk Southern, as well as smaller railroads of varying size. These railroads make up the privately owned and operated network of almost 5,200 miles of interconnected railroad track in Ohio.

Please let me begin by acknowledging the derailment in East Palestine, Ohio, a terrible and tragic event in our state, both unfortunate and regrettable. The freight rail industry – one of the most heavily regulated sectors in the economy – understands a rare accident such as this causes significant worry and hardships for people of that community and raises legitimate questions about the general safety record of U.S. railroading. To ask for your perspective in a moment like this is a difficult request. Yet it is critical for all of us to understand the facts and data, which clearly shows freight rail remains the safest way to move goods on land. As part of the comprehensive rail safety program, railroads constantly collaborate with communities and first responders to prepare in advance for what are rare accidents.

Indeed, this focus on safety has been a cornerstone of the freight rail industry for generations. Since 2000, with billions of dollars of investment in infrastructure and technologies, widespread and specialized training, and dedicated leadership, train accident and hazmat accident rates are down 31 percent and 64 percent, respectively, while the rail employee injury rate in 2020 was an all-time low. In recent years, America's freight railroads have invested back into their infrastructure and equipment at

record levels, improving safety. The American Society of Civil Engineers (ASCE) awarded America's freight rail network the highest grade among all modes in its most recent Infrastructure Report Card (a B). According to the Federal Railroad Administration (FRA), freight railroads combined accumulated approximately 585 million miles of freight transport in 2022. Last year, there were slightly more than 1,000 derailments, but hazardous material spills are rare. The US Department of Transportation's Pipeline and Hazardous Materials Safety Administration reports that in 2022, incidents involving all modes involved in the transport of hazardous materials, including pipelines, trucking and rail, totaled 80, down from 360 in 2012. Railroads were the second largest share of these incidents (highway incidents were first with 58). The railroad industry continues to invest in measures to drive the number of these events lower.

When incidents do occur, the National Transportation Safety Board (NTSB) is responsible for investigating the circumstances and issuing the report on their findings. In East Palestine, they have been collecting evidence (including the wheelset from the suspected railcar) and will continue until they have the answers that everyone wants. The NTSB chair understands the concern in East Palestine and around the country. I think it is important to note that the NTSB will issue urgent safety recommendations if they find anything that signals an immediate danger to the public or railroad employees. "Nothing is more important than accuracy at a moment like this, which is why the NTSB is deliberate in our approach to investigations," said Chair Jennifer Homendy. Engineers from the NTSB's Materials Laboratory will examine the equipment.

The substitute bill contains three proposals that the industry opposes: (1) a locomotive crew size requirement (proposed 4955.50); (2) a new responsibility for the Public Utilities Commission of Ohio to inspect and approve the use and maintenance of trackside monitoring devices (4999.09); and (3) a reporting requirement for railroads when a train blocks a highway-rail grade crossing in violation of O.R.C 5589.21, with heavy fines included (5589.25). All three of these proposals are unconstitutional and preempted by federal law.

Starting with the blocked crossing reporting, the statute that is used as the basis for the proposal was

recently found by the Ohio Supreme Court to be pre-empted by federal law. The best solution to blocked crossing problems is, in fact, proposed in Ohio House Bill 33. Governor DeWine has proposed setting aside \$125 million to leverage as much as \$500 million in federal infrastructure funds over the next five years to build grade separations and reduce the number of grade crossings in the state. This is a model that has been successfully deployed in Indiana and is currently under consideration in other states as well. Ohio has more than 5,600 grade crossings and a dense freight rail network, averaging more than one grade crossing for every mile of track. The solution is building grade separations that allow both highway users to keep moving and freight trains to serve their customers.

The proactive utilization of trackside (or wayside) detectors has been a part of the widespread application of technology that lies hidden behind the familiar appearance of a freight train. These smart sensors use various technologies, such as infrared and lasers, to assess the car's condition. Some pick up a sound, some check for heat, some check for movement, such as dragging equipment. Each works while the train is moving at track speeds. These monitors are in place on many rail corridors across the state. The cost for installation, inspection, and maintenance of these units is covered by the operating railroad, as are nearly all costs associated with operations and service provided by freight railroads in Ohio. Their use has contributed to a 59% decrease in train accidents caused by axle- and bearing-related factors since 1990.

In 2017, a federal court in Tennessee found the Federal Rail Safety Act (FRSA) already requires inspections of railcar wheel roller bearings and railcars, therefore state or local attempts to impose new duties would be incompatible with such provisions, and thereby preempted. The regulation of this equipment appropriately resides with the federal regulatory agencies.

Finally, the language in House Bill 23 proposes to establish a crew size minimum in Ohio. This proposal is also clearly preempted, having been reviewed multiple times by federal courts across the country, all reaching this same conclusion. It is important to note that this, and all other regulatory actions on the operations of freight railroads, belong at the federal level. To that end, there is another federal rulemaking proposal now underway to determine whether a two-person crew should be the

standard under federal law. This is the proper and only constitutional way to achieve this policy goal, as it would be uniform nationally. Crew size legislation has come before the Ohio House Transportation Committee several times over past General Assemblies, and each time, the question on the constitutionality of such state laws has been discussed, reviewed, and ultimately agreed upon by all parties. This proposal has failed in past General Assemblies, and it is an issue which should and must be decided at the federal level. Stopping a train at the Ohio state line to add or subtract crewmembers would be unworkable and an infringement on the interstate commerce clause. Having said that, I will repeat what you have already been told - freight trains operating in Ohio have at least two people in the cab of the locomotive.

In summary, we encourage the removal of the identified proposals in the substitute bill and offer support for the other rail-related language in the bill, as we have previously testified.

I have included several links to fact sheets on rail safety, hazardous material transportation, how railroads employ technology, crew size regulation, and an overview of Ohio's rail system. I hope you have an opportunity to give them a look.

Chairman Edwards and members of the committee, thank you for your attention and interest.

<https://www.aar.org/data-center/railroads-states/>

<https://www.aar.org/issue/freight-rail-safety-record/>

<https://www.aar.org/issue/freight-rail-hazmat-safety/>

<https://www.aar.org/wp-content/uploads/2022/06/AAR-Technology-Fact-Sheet.pdf>

<https://www.aar.org/article/freight-rail-crew-size-regulations/>

<https://www.aar.org/data/infographic-a-trains-safety-journey-never-ends/>