

SUBSTITUTE OHIO HOUSE BILL 23

TESTIMONY

THE OHIO RAILROAD ASSOCIATION

March 8, 2023

Chairman Kunze, Vice Chair Reineke, Ranking Member Antonio, and members of the Senate Transportation Committee, thank you for the opportunity to present testimony on Amended Substitute House Bill 23.

I am Art Arnold, the Executive Director of the Ohio Railroad Association (ORA). The ORA represents twenty-eight freight railroads operating in Ohio. Our members include the two largest railroads in the eastern United States, CSX and Norfolk Southern, as well as a couple of dozen smaller railroads of varying size. Combined, these individual businesses make up the majority of the privately owned and operated rail network in Ohio, totaling almost 5,200 miles of interconnected railroad tracks, serving customers across the state.

Please let me begin by acknowledging the derailment in East Palestine, Ohio, a terrible and tragic event in our state's long history with railroads. We have all watched the events surrounding the derailment and subsequent decision to relieve pressure on the tank cars that were at risk of exploding. It's been hard to watch and I cannot imagine the significant worry and hardships for people of that community. This has raised legitimate questions about the general safety record of U.S. railroading. There has been widespread reporting on that safety record, and most reports, based on facts and supporting data, clearly show freight rail remains the safest way to move goods on land. That record has been built over

many years, through industry research, the introduction of technology, the adherence to federal regulations, the training of rail company employees, and investment in track and equipment. Railroad companies have extensive operating rulebooks that are reviewed by the Federal Railroad Administration and enforced at the company level. It is the strict application of these operating rules, guided by the extensive uniform federal regulations, that precede the departure of any train from any location. And railroads are continuing to try to improve on that record. I will come back to this topic.

Specific to the bill under consideration, HB 23 includes language we support and language we oppose. We support the provisions that continue the funding of Ohio's effective highway-rail grade crossing safety programs and the Ohio Rail Development Commission's (ORDC) rail infrastructure loan program. These line items were not controversial in the House, and we urge the Senate's support. I have included the ORA testimony for your review. One point that I should raise for this Committee is the enduring problem with motorists' decision-making at grade crossings where an active warning signal is alerting the highway user of an approaching train. According to the ORDC, Ohio continues to see roughly 81% of crashes happen at crossings with active warning devices. This percentage of crashes (where there are active warning devices alerting the motorist of an approaching train) is about 20% higher than the national average. This situation is under review and the public-private partnership that works on grade crossing safety is continuing to search for ways to lower this number. Their past efforts offer hope. Since the late 1980s, the comprehensive improvements made at Ohio highway-rail grade crossings have reduced crashes from nearly 900 per year to 64 in 2021. According to the most recent data, approximately 69% of Ohio's public grade crossings provide an active warning to motorists and pedestrians of an approaching train. These achievements have been accomplished because of strong and continuing support from past Administrations and General Assemblies.

However, the House added two provisions to HB 23 that the Association does not support because federal law prevents their enactment. With me here today is Frank Strigari, who can answer any specific questions you may have about the federal preemption issue. But simply put, both provisions added by the House are invalid because of federal law.

The first provision is the requirement that state train crews consist of at least two individuals. That provision is clearly preempted by an existing federal law that is called the Regional Rail Reorganization Act (the "3R Act"). In the 3R Act, there is a specific provision that reads as follows.

**§797j. Preemption -- No State may adopt or continue in force any law, rule, regulation, order, or standard requiring the Corporation to employ any specified number of persons to perform any particular task, function, or operation, or requiring the Corporation to pay protective benefits to employees, and no State in the Region may adopt or continue in force any such law, rule, regulation, order, or standard with respect to any railroad in the Region.)**

<https://uscode.house.gov/view.xhtml?path=/prelim@title45/chapter16&edition=prelim>

The second issue of railroad regulation where we believe Ohio should continue to allow the federal government to lead is the subject of wayside detectors. Railroads have been voluntarily adding these devices along high-volume routes for decades. According to the preliminary report of the National Transportation Safety Board (NTSB), the derailment in East Palestine was caused by a burnt bearing that was identified by a detector near East Palestine. Here is a link to that report:

<https://www.nts.gov/investigations/Documents/RRD23MR005%20East%20Palestine%20OH%20Prelim.pdf>

The three -person train crew received an alert from that detector and began to brake the train, but the car was already derailed, and the train went into emergency braking (When a train goes into emergency,

it means the contiguous air line operating the train's brakes that runs the length of the train has been broken or has come apart. When the air line is broken, the stored air pressure in each car applies the brakes in their fullest position). The FRA subsequently issued a new guidance on the subject of detectors and here is what the FRA Administrator had to say:

"FRA encourages railroads to take actions consistent with the preceding recommendations, and any other complementary actions, to ensure the safety of rail transportation. FRA may modify this Safety Advisory, issue additional safety advisories, or take other actions necessary to ensure the highest level of safety on the Nation's railroads, including pursuing other corrective measures under its authority."

The full FRA guidance document is attached.

In addition, US senators from several states, including Ohio and Pennsylvania have introduced bipartisan legislation that includes requirements for detectors. Given the deserved attention to the incident in East Palestine, plus the reactions thus far by the Federal Railroad Administration and the US Senate, it seems certain that we will see federal regulation of detectors. We believe this is the appropriate venue for such action, because the movement of freight by rail is an interstate activity, requiring near constant movement of equipment. Allowing states or localities to impose operating rules on freight movements would soon create a regulatory patchwork that would be unworkable. We have already seen that situation. Prior to 1982, railroads were heavily regulated at the state level. The near collapse of the industry led to the federal regulatory oversight that exists today, and one of the features has been a much safer rail system in America.

Earlier in my testimony, I offered some comments on rail safety. The equipment and track inspections, the construction of track, the guidelines for employees and tank car owners, and the many other areas where safe operations require a set of rules and a process are the reason so many million miles of freight moves safely every year. Last year, US railroads moved over 500 million miles of freight. But

accidents do happen, though rarely as serious as East Palestine. Railroads plan to move every carload safely to its destination, sometimes with multiple railroads involved. But they also plan for serious events like we saw last month. Railroads follow comprehensive emergency response plans developed with regulators, state emergency management agencies, the National Response Center, safety experts and more. Through these federal laws, the Environmental Protection Agency (EPA) has the authority to require and oversee the cleanup of spills of hazardous substances. In coordination with state and local authorities, EPA approves cleanup plans, sets required remediation requirements and oversees remediation efforts from start to eventual finish. Railroads have internal response protocols and plans in place so the railroad employees know how to respond, who to notify, and what to do. Since 1986, the freight rail industry has joined with shippers of hazardous materials through a voluntary organization called TRANSCAER. <https://www.transcaer.com/about-transcaer/transcaer-team>

TRANSCAER is a voluntary national outreach effort that focuses on assisting communities to prepare for and to respond to a possible hazardous materials transportation incident. The acronym stands for Transportation Community Awareness and Emergency Response and have trained thousands of first responders to prepare for and respond to hazardous material incidents.

For example, last year, local safety personnel, emergency responders and all others in the Akron area were invited to a free ethanol safety training course, hosted by the Renewable Fuels Association and TRANSCAER. All attendees received in-depth information on proper training techniques that emergency responders and hazmat personnel need to effectively respond to an ethanol-related emergency. All fire departments, hazmat teams, safety personnel, safety managers from that area were invited. There are two in-person events scheduled for this month in Ohio: <https://www.transcaer.com/training/training-events/us-oh>

These training sessions include the following subjects: Hands-on workshops and classroom instruction; Safety around the Railroad; Understanding Rail Shipping Documents; Tank Car Identification; Tank Car Valves & Fittings; Locomotive Emergencies; Responding to Railroad Emergencies; and the AskRail Mobile App.

The AskRail app, launched in 2014, is a collaborative effort among the emergency response community and all North American Class I railroads. The app provides more than 35,000 first responders — from all 50 states and eight Canadian provinces — with immediate access to accurate, timely data about what type of hazardous materials a railcar is carrying so they can make an informed decision about how to respond to a rail emergency. Railroads work with first responders to update the app with new features and enhancements. AskRail is a phone-based application used by first responders that gives up-to-the-minute details on a train's location and contents. AskRail was created by the country's largest railroad companies and first responders and is not made available to the public over concerns of public safety and terrorism. All major railroad companies use this application and the Pipeline and Hazardous Materials Safety Agency (PHMSA) is developing a proposal to make the use of this app mandatory and expand its use to smaller railroad companies as well.

Finally, I'm including a link to a story out of Cincinnati that gives a professional's view on the subject of emergency preparedness and hazardous material incidents. I thought it provided a unique perspective and an independent view on this topic.

<https://www.wlwt.com/article/cincinnati-officials-city-safety-east-palestine/42818092>

The Association understands the heightened attention to rail safety, given the unfortunate derailment in East Palestine. We stand ready to work with this Committee, and the Senate Select Committee on Rail Safety, on ways to improve current law. Although crew size and wayside detectors should be addressed at the federal level, we look forward to continuing the discussion on rail safety in Ohio, as the freight

railroad operators here have a positive, fact-based story to tell on the safe movement of freight throughout the state.

Thank you for the opportunity to offer our testimony today.

## APPENDIX

### FEDERAL RAILROAD ASSOCIATION – Office of Safety Analysis

I have included for your review incident data provided by the Federal Railroad Administration’s Office of Safety Analysis. You can use this link to access the general data for the US or any state or county.

<https://safetydata.fra.dot.gov/officeofsafety/publicsite/query/AccidentByStateRailroad>

According to this source, in 2022 there were 53 derailments reported by Ohio rail operations. Of that number, 37 occurred in rail yards or industrial sidings where trains were traveling less than 10 MPH.

You can use the following link to look at Ohio derailments in 2022 that involved trains with cars carrying hazardous materials.

[https://safetydata.fra.dot.gov/officeofsafety/publicsite/query/AccidentByStateRailroad\\_output.aspx?key=htueeaiwtp1bdqydlw4cfbkmmqzgsh480668&sFormData= PROGRAM%3d%2fBI+Manager%2fFRASTP%2fPublicSite%2fAccidentByStateRegion\\_Combined.sas%26\\_service%3dsafety%26\\_debug%3d0%26%26rr1%3d%26rr%3d%26grouptype%3dALL%26region%3d%26st%3d39%26cnty%3d%26atype%3d01%26track%3d%26trkclas%3d%26pcause%3d%26cassub%3dAll+Accidents%26hazmat%3d1%26passtrn%3d%26](https://safetydata.fra.dot.gov/officeofsafety/publicsite/query/AccidentByStateRailroad_output.aspx?key=htueeaiwtp1bdqydlw4cfbkmmqzgsh480668&sFormData= PROGRAM%3d%2fBI+Manager%2fFRASTP%2fPublicSite%2fAccidentByStateRegion_Combined.sas%26_service%3dsafety%26_debug%3d0%26%26rr1%3d%26rr%3d%26grouptype%3dALL%26region%3d%26st%3d39%26cnty%3d%26atype%3d01%26track%3d%26trkclas%3d%26pcause%3d%26cassub%3dAll+Accidents%26hazmat%3d1%26passtrn%3d%26)

[major%3d%26psrt%3d1%26cy\\_fy\\_opt%3d1%26smnth%3d01%26emonth%3d12%26eyear%3d2022%26grouptype%3dALL&ctrlValue=-PA-3.18AccidentByStateRailroad.aspxAll0039001000All%20Accidents12%201100All0039001000All%20Accidents12%201100101122022](https://safetydata.fra.dot.gov/officeofsafety/publicsite/query/AccidentByStateRailroad_output.aspx?key=htueeaiwtp1bdqydlw4cfbkmbytgiu577313&sFormData= PROGRAM%3d%2fBI+Manager%2fFRASTP%2fPublicSite%2fAccidentByStateRegion_Combined.sas%26_service%3dsafety%26_debug%3d0%26%26rr%3d%26rr%3d%26grouptype%3dALL%26region%3d%26st%3d39%26cnty%3d%26atype%3d01%26track%3d%26trkclas%3d%26pcause%3d%26cassub%3dAll+Accidents%26hazmat%3d3%26passtrn%3d2%26major%3d%26psrt%3d1%26cy_fy_opt%3d1%26smnth%3d01%26emonth%3d12%26eyear%3d2022%26grouptype%3dALL&ctrlValue=-PA-3.18AccidentByStateRailroad.aspxAll0039001000All%20Accidents12%201100All0039001000All%20Accidents12%201100101122022)

And this link will take you to the page that shows all of the Ohio derailments in 2022 that involved a release of hazardous materials.

[https://safetydata.fra.dot.gov/officeofsafety/publicsite/query/AccidentByStateRailroad\\_output.aspx?key=htueeaiwtp1bdqydlw4cfbkmbytgiu577313&sFormData= PROGRAM%3d%2fBI+Manager%2fFRASTP%2fPublicSite%2fAccidentByStateRegion\\_Combined.sas%26\\_service%3dsafety%26\\_debug%3d0%26%26rr%3d%26rr%3d%26grouptype%3dALL%26region%3d%26st%3d39%26cnty%3d%26atype%3d01%26track%3d%26trkclas%3d%26pcause%3d%26cassub%3dAll+Accidents%26hazmat%3d3%26passtrn%3d2%26major%3d%26psrt%3d1%26cy\\_fy\\_opt%3d1%26smnth%3d01%26emonth%3d12%26eyear%3d2022%26grouptype%3dALL&ctrlValue=-PA-3.18AccidentByStateRailroad.aspxAll0039001000All%20Accidents32%201100All0039001000All%20Accidents32%201100101122022](https://safetydata.fra.dot.gov/officeofsafety/publicsite/query/AccidentByStateRailroad_output.aspx?key=htueeaiwtp1bdqydlw4cfbkmbytgiu577313&sFormData= PROGRAM%3d%2fBI+Manager%2fFRASTP%2fPublicSite%2fAccidentByStateRegion_Combined.sas%26_service%3dsafety%26_debug%3d0%26%26rr%3d%26rr%3d%26grouptype%3dALL%26region%3d%26st%3d39%26cnty%3d%26atype%3d01%26track%3d%26trkclas%3d%26pcause%3d%26cassub%3dAll+Accidents%26hazmat%3d3%26passtrn%3d2%26major%3d%26psrt%3d1%26cy_fy_opt%3d1%26smnth%3d01%26emonth%3d12%26eyear%3d2022%26grouptype%3dALL&ctrlValue=-PA-3.18AccidentByStateRailroad.aspxAll0039001000All%20Accidents32%201100All0039001000All%20Accidents32%201100101122022)

## ORA TESTIMONY ON HB 23

### HOUSE FINANCE SUBCOMMITTEE ON TRANSPORTATION

The Ohio Railroad Association is pleased to submit this testimony in support of HB 23's language supporting Ohio's continuing investments in grade crossing safety. Since the late 1980s, the

comprehensive efforts to reduce crashes at highway-rail grade crossings have reduced crashes from nearly 900 per year to 64 in 2021. According to the most recent data, approximately 69% of Ohio's public grade crossings provide an active warning to motorists and pedestrians of an approaching train. These achievements have been accomplished because of strong and continuing support from past Administrations and General Assemblies.

### **Railroad-Highway Grade Crossing Safety**

Ohio's extensive roadway and railroad networks intersect at more than 5,600 at-grade public crossings. That is more than one crossing for every mile of track (Ohio has less than 5,200 miles of active railroad tracks.) Many crossings are less than one mile apart.

Given the density of crossings and the freight rail network, Ohio's crossing inventory is the fourth largest in the country (behind Texas, Illinois, and California). The number of incidents at railroad-highway crossings in Ohio has fallen significantly over time, a public safety success story. These results can be traced to decades of diligent work to improve warning devices, eliminate at-grade crossings through closure or grade separation, and driver education for the traveling public. While crashes have been dramatically reduced, Ohio continues to see roughly 81% of crashes happen at crossings with active warning devices. This percentage of crashes (where there are active warning devices alerting the motorist of an approaching train) is about 20% higher than the national average. Nonetheless, crash reduction is continuing to happen here, and that is due to the comprehensive and persistent approach taken by the involved parties.

House Bill 23 maintains funding for the Rail Commission's grade crossing safety improvement program at prior years' levels. This program will continue to primarily focus on upgrade of passive warning devices (crossbucks) to active warning devices (lights and gates and/or from flashing lights to lights and gates). As mentioned in the ORDC'S testimony last week, the state is continuing to use data to address

the problem, and by continuing to implement other warning device improvements, install queue management features, reconstruct roadway surfaces, educate motorists, and eliminate crossings, we all believe we will see further reduction in the numbers of these preventable crashes.

Funding for the Rail Commission’s Grade Crossing Safety Programs is as follows:

Funding Source	(Fund, ALI)	FY 2024	FY 2025
Highway Construction – State	(7002, 772421)	\$1,100,000	\$1,100,000
Grade Crossings –	Federal (7002, 776462)	\$14,068,961	\$14,068,961

HB 23 also contains language supporting the operations of the ORDC, its loan program, and oversight of federal funds the ORDC has been awarded via competitive rail infrastructure programs. The ORDC has proven to be an effective public agency in both delivering results via public safety projects as well as leveraging private investment in rail infrastructure.

The Ohio Railroad Association urges the Committee’s support for the bill.

