

SUBSTITUTE OHIO HOUSE BILL 23

TESTIMONY

THE OHIO RAILROAD ASSOCIATION

March 16, 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 Substitute House Bill 23.

I am Art Arnold, the Executive Director of the Ohio Railroad Association (ORA). The ORA represents 28 freight railroads operating in Ohio. Of that number, 24 are classified as short line railroads. The Ohio State Rail Plan, produced by the Ohio Rail Development Commission (ORDC), provides this overview of short lines:

'In many cases, these railroads were created following bankruptcies or as spin offs of larger Class I railroads permitted by rail industry deregulation. Following the Staggers Act of 1980, railroads gained the legal right to shed unprofitable rail lines. Major railroads marketed unproductive branches to short line operators. These railroads were able to provide service on the formerly unprofitable rail lines because they have lower cost structures. Local railroads provide "first mile" and "last mile" connections to railroad customers. They are important for economic development within the state. It is frequently much less costly to locate industrial sites on short lines, rather than build the necessary track infrastructure required by Class I railroads to locate on busy mainlines. Some short lines also can

interchange with multiple Class I carriers, providing wider shipping options. Without long-haul freight, local railroads must focus on local service to survive and grow, so they often maintain a relatively strong focus on customers, large and small.'

Notably, an Ohio short line was recently recognized as the 2023 Short Line of the Year. The Napoleon Defiance and Western has rebuilt what was once regarded as the worst railroad in America. Senator McColley and Representative Hoops were great supporters of this turnaround. Here's a link to that story:

<https://www.railwayage.com/freight/short-lines-regionals/railway-ages-2023-short-line-and-regional-railroads-of-the-year-ndw-amic-railway/>

One of the attachments that accompany my testimony is a fact sheet on Ohio's freight railroad industry. Among other information, the fact sheet provides the mileage for each of the railroads operating here. Of the 43 railroads listed, 32 have less than 100 miles of track miles. 25 railroads have less than 50 miles, while 18 have less than 25. These railroads have limited opportunities to develop business, and therefore limited revenue opportunities. The measures they employ to provide safe, dependable freight rail services while meeting the federal regulatory requirements imposed on every railroad are local success stories, not just for the rail industry, but for the customers they serve and the communities where they act as critical transportation and economic development partners.

The proposals in HB 23 will impose significant costs on these small railroads, and even greater costs on the larger railroads operating in Ohio. There has been no discussion of these costs in either chamber as language to mandate crew size and force the application of detectors on railroads has been added.

Of concern to all railroads is the crew size mandate, but it has particular concern for some short lines. On short moves, some short lines operate with one person in the locomotive and another in a vehicle, connected with the locomotive by radio and throwing switches ahead of the train. A few short line railroads have added wayside detectors along their tracks, where they felt it was a good safety investment, but most do not. They move relatively short distances at relatively low speeds, and they do all of this safely. The language added in the Senate's substitute would require these railroads of even ten miles in length to install detectors. I offer these two examples to not only highlight the safe operations of Ohio railroads generally, but to also highlight the lack of legislative scrutiny of the proposals in HB 23.

The establishment of the Senate Select Committee on Rail Safety should be a platform to examine proposals such as those contained in HB 23, but as the transportation budget zooms through the legislative process, arguably the fastest-moving major bill in any General Assembly, the railroads have been caught up in a rush to act on two proposals that have nothing to do with the derailment in East Palestine or any of the other incidents that have recently occurred. These proposals should be removed from HB 23 and examined by the Select Committee, where many of the members of this committee also serve. If after a more complete consideration of these issues you still feel they merit support, then at least we will have had the review and a more deliberate process than HB 23 allows.

In its preliminary report on East Palestine, the National Transportation Safety Board indicates the detectors were working as expected, and it wasn't caused by a lack of train crew members. I have attached the NTSB preliminary report (see attached) for your review. While much remains to be investigated before the NTSB issues a final report, these facts will not change. So what problem are these proposals intended to solve?

I have also included a link to a national report on the Springfield, Ohio derailment. Norfolk Southern's investigation found 'unusual wheel movement' on several of the cars involved in that derailment and immediately notified the Association of American Railroads, who issued the attached advisory on cars with these wheelsets (see the attached advisory). The NTSB is also investigating.

<https://www.cnn.com/2023/03/10/us/springfield-derailment-norfolk-southern-safety-issue/index.html>

These are complicated issues, with real costs and effects, and they deserve legislative scrutiny. They are already receiving federal consideration, but not even Washington is racing ahead without scrutiny. In fact, railroads are taking independent actions as illustrated in the attached advisory and other steps recently announced.

I also want to reference the tool that I mentioned in my previous testimony, the AskRail application. During the first hours of the East Palestine response, the AskRail app was accessed 37 times as first responders used the resource to learn more about the derailed train's cargo. It's an important part of the tool kit available for the first hours of any hazardous material incident. Here's what I offered about the AskRail 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.

ORA members understand and appreciate the heightened public attention to rail safety. The public deserves to be told the facts. The members of the Ohio Railroad Association remain ready to work with this Committee and the Senate Select Committee on Rail Safety. The crew size and wayside detectors language should be addressed by the Select Committee, not in the transportation budget. Ohio's freight railroads have a positive, fact-based story to tell about the safe movement of freight throughout the state. The facts support this statement.

Joining me today is Mr. Brendan Keener, a past chair of the ORA and the general manager of two Ohio short lines, one in western Franklin County and another that operates in Mahoning and Columbiana. He also works with railroads in surrounding states. Mr. Keener has also worked with the Ohio Rail Development Commission on its safety programs. He is knowledgeable about the industry, has 'cracked a throttle', and is here today to tell you a little more about his railroads and answer any questions you may have.

Thank you for the opportunity to offer our testimony today.