



## **NACo Legislative Analysis:**

### **Freight Rail Safety Legislation in the 118<sup>th</sup> Congress**

March 27, 2023

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Following the freight train derailment and ensuing disaster that occurred in East Palestine, Ohio in early February, federal policymakers are crossing the aisle to improve freight rail safety. NACo strongly supports efforts to improve the safety of our national rail freight network:

“Counties welcome the efforts of our congressional partners to pass bipartisan legislation to strengthen the safety of our nation’s freight rail network,” said National Association of Counties Executive Director Matthew Chase. “As home to nearly every rail-highway at-grade crossing, counties appreciate lawmakers’ attention to reducing rail delays that create blocked crossings resulting in safety risks and economic challenges. We urge Congress to pursue measures in partnership with state and local governments and other stakeholders. As counties prioritize the health and well-being of our residents and communities, we stand ready to enhance the safety and efficiency of our nation’s freight rail infrastructure.”

Currently, three bipartisan pieces of legislation that would address freight rail safety are moving through Congress:

- [S. 576, the \*Railway Safety Act\*](#) (original legislation), sponsored by U.S. Sens. J.D. Vance (Ohio-R) and Sherrod Brown (Ohio-D)
- [H.R. 1674, the \*DERAIL Act\*](#) (House companion), sponsored by U.S. Reps. Chris DeLuzio (Penn.-D) and Nick LaLota (R-N.Y.)
- [H.R. 1633, the \*RAIL Act\*](#), sponsored by U.S. Reps. Bill Johnson (Ohio-R) and Emelia Sykes (Ohio-D)

Each bill is nearly identical to the next with some key differences outlined in the table below. Most notably, the House bill sponsored by the Ohio delegation, *the RAIL Act*, does *not* contain the two-person crew requirement found in S. 576, *the Railway Safety Act*, and its House companion, H.R. 1674, *the DERAIL Act*.

Provisions across the versions of legislation important to counties include:

- Authorizing \$22 million to research, develop and implement wayside defect detectors under the U.S. Department of Transportation (USDOT) Federal Railroad Administration Consolidated Rail Infrastructure and Safety Improvement (CRISI) grants
- Requiring carriers to address delays that result in blocked crossings, which cost local communities time and money and create extreme safety hazards at at-grade rail crossings, where *nearly all* are located within county boundaries
- Requiring the strengthening and upgrade of tank cars transporting hazardous materials and establishing a deadline for the phase out of older, less safe cars
- Increasing resources for USDOT Pipeline and Hazardous Materials Safety Administration Assistance for Local Emergency Response Training (ALERT) grants that support hazardous materials (HAZMAT) response training for volunteer or remote emergency responders using new Class I registration fees

The safety of our local communities is paramount for county officials. With roughly 140,000 miles of track nationwide, there are few areas of the country where rail does not leave its footprint directly. Counties are also where the vast majority of dangerous at-grade rail-highway crossings exist with many in rural areas even lacking warning signs and signals.

As we continue to learn from the East Palestine derailment, we know there are other risks besides crashes, including serious environmental and climate concerns, than can occur when a train carrying HAZMAT derails. **Rail safety is a critical issue for counties, and we urge Congress to improve safety using thoughtful and intentional measures made in partnership with state and local governments that will best safeguard America's counties and our residents.**

Sections	H.R. 1633 – RAIL Act (Johnson & Sykes)	H.R. 1674 – DERAIL Act (Deluzio & LaLota) / S. 576 – Railway Safety Act (Vance & Brown)	NACo Policy
Creates new safety requirements for freight rail.	<ul style="list-style-type: none"> <li>Issue or modify regulations based on NTSB's report of the East Palestine derailment within one year of it being issued to require the following from trains carrying HAZMAT but not subject to high-hazard flammable train regs: <ul style="list-style-type: none"> <li>Provide <b>advanced notification</b> and info on the transport of HAZMAT to each state emergency response commission (SERC) or tribal response commission</li> <li>Include <b>written gas discharge plan</b> in the notification</li> <li><b>Reduce/eliminate delays that cause blocked crossings</b></li> </ul> </li> <li>Develop new <b>"additional requirements"</b> around train length, weight, rail cards, routes, speeds, track standards, maintenance, train control, response times</li> </ul>	<ul style="list-style-type: none"> <li>Issue or modify regulations based on NTSB's report of the East Palestine derailment within one year of it being issued to require the following from trains carrying HAZMAT but not subject to high-hazard flammable train regs: <ul style="list-style-type: none"> <li>Provide <b>advanced notification</b> and info on the transport of HAZMAT to each state emergency response commission (SERC) or tribal response commission</li> <li>Include <b>written gas discharge plan</b> in the notification</li> <li><b>Reduce/eliminate delays that cause blocked crossings</b></li> </ul> </li> <li>Develop new <b>"additional requirements"</b> around train length, weight, rail cards, routes, speeds, track standards, maintenance, train control, response times</li> <li>Adds "other items as deemed necessary by Sec'y" under covered activities for "additional requirements"</li> <li>Allows Sec'y to modify existing safety requirements for high hazard flammable trains</li> </ul>	<p><i>Counties urge Congress to provide additional funding to local governments, states and railroads to improve grade crossings and separations allowing for safer interactions between road and rail traffic.</i></p>

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Expands requirements for rail car inspections.	<ul style="list-style-type: none"> <li>• Within one year of the bill's enactment, Sec'y must update regs to create minimum time requirements inspectors must spend inspecting a train and to ensure HAZMAT cars are inspected by qualified persons at different intervals</li> <li>• Within 60 days of the bill's enactment, Sec'y must audit federal rail inspections programs to determine compliance</li> <li>• Must audit Class I RRs at least every five years (<i>currently every 2 years</i>) and adds requirement to annually audit selected Class II (regional RRs) and III (short line RRs) RRs as determined by the Sec'y (<i>GAO determined FRA was not sufficiently inspecting IIs and IIIs</i>) <ul style="list-style-type: none"> <li>○ If programs are determined insufficient, RR must update</li> <li>○ Auditees, including the RRs, their employees and any labor org must participate during the audit or USDOT must notify House T&amp;I / Senate Commerce</li> </ul> </li> <li>• 3x a year, Sec'y must determine if an update to RR freight car safety standards is warranted</li> <li>• USDOT must publish an annual report containing audit findings and any related reg updates</li> </ul>	<ul style="list-style-type: none"> <li>• Within one year of the bill's enactment, Sec'y must update regs to create minimum time requirements inspectors must spend inspecting a train and to ensure HAZMAT cars are inspected by qualified persons at different intervals</li> <li>• Within 60 days of the bill's enactment, Sec'y must audit federal rail inspections programs to determine compliance</li> <li>• Must audit Class I RRs at least every five years (<i>currently every 2 years</i>) and adds requirement to annually audit selected Class II (regional RRs) and III (short line RRs) RRs as determined by the Sec'y (<i>GAO determined FRA was not sufficiently inspecting IIs and IIIs</i>) <ul style="list-style-type: none"> <li>○ If programs are determined insufficient, RR must update</li> <li>○ Auditees, including the RRs, their employees and any labor org must participate during the audit or USDOT must notify House T&amp;I / Senate Commerce</li> </ul> </li> <li>• 3x a year, Sec'y must determine if an update to RR freight car safety standards is warranted</li> <li>• USDOT must publish an annual report containing audit findings and any related reg updates</li> </ul>	<p><i>Counties support the Rail Routing Risk Assessment required and audited annually by the FRA. Counties urge Congress to further require local and state review of, and input into, the risk model.</i></p>

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Upgrades wayside defect detectors.	<ul style="list-style-type: none"> <li>USDOT must, within one year after the bill's enactment, set regs for the installation, repair, testing, maintenance and operation of wayside detectors for rail carriers operating HAZMAT trains</li> <li>Creates new regs, including: <ul style="list-style-type: none"> <li>Class I RRs must install a <b>wayside detector every 10 miles</b> on tracks where HAZMAT is carried</li> <li>Est. a temperature at which the detector would indicate a <b>failure from overheating</b> (<i>preliminarily is likely what went wrong in East Palestine</i>)</li> <li><b>Next steps that an operator must take</b> when a detector is triggered</li> </ul> </li> <li>Requires the <b>heat threshold of placards be 180 degrees</b> and allows threshold to be increased as necessary</li> </ul>	<ul style="list-style-type: none"> <li>USDOT must, within one year after the bill's enactment, set regs for the installation, repair, testing, maintenance and operation of wayside detectors for rail carriers operating HAZMAT trains</li> <li>Creates new regs, including: <ul style="list-style-type: none"> <li>Class I RRs must install a <b>wayside detector every 10 miles</b> on tracks where HAZMAT is carried</li> <li>Est. a temperature at which the detector would indicate a <b>failure from overheating</b> (<i>preliminarily is likely what went wrong in East Palestine</i>)</li> <li><b>Next steps that an operator must take</b> when a detector is triggered</li> </ul> </li> </ul>	N/A
Mandates two-person train crews.	N/A	<ul style="list-style-type: none"> <li><b>Mandates two-person train crews for all freight trains</b> consisting of at least one conductor and one engineer</li> <li><b>Creates exemptions</b>, including for carriers: <ul style="list-style-type: none"> <li>Operating off a main line track</li> <li>With 40K less employees and \$40M or less in annual operating revenue (<i>this exempts many Class II and III RRs</i>) where the train is traveling at or less than 25 MPH on a track with a grade of &lt; 2% for any two continuous miles</li> <li>Assisting another train or unattached to any equipment or only a caboose and do not travel &gt; 30 miles</li> <li>Without a two-person crew before the date of enactment of the mandate by this bill (1 yr.) as determined by the Sec'y</li> </ul> </li> </ul>	N/A

Mandates two-person train crews, cont'd.	N/A	<ul style="list-style-type: none"> <li>Codifies <b>certain trains <i>never</i> eligible for exemptions</b>, including those: <ul style="list-style-type: none"> <li>Carrying inhalant HAZMAT as defined in the CFR</li> <li>With 20 contiguous cars carrying flammable HAZMAT or a train with 35 non-contiguous HAZMAT cars (<i>this is the current req.</i>)</li> </ul> </li> <li><b>Adds requirement for trains of 7,500 ft.+ in length</b></li> <li>RR can seek waiver</li> </ul>	N/A
Increases civil penalties for rail safety violations.	<ul style="list-style-type: none"> <li>Increases <b>penalties related to transporting HAZMAT</b>, including caps on fines for safety violations for rail carriers from \$75K to the greater of .5% of the person's annual income or the RR's annual operating income or \$750K and, where death or serious injury results, from \$175K to \$1.75M</li> <li>Increases <b>penalties for general violations</b> from \$500 to \$25K to the greater of .5% of the person's annual income or the RR's annual operating income or \$250K and, where death or serious injury results, from \$100K to the greater of 1% of the person's annual income, RR's operating income or \$1M</li> <li>Increases <b>penalties for accidental and/or incidental violations</b> of rail safety standards from \$25K to the greater of .5% of the person's income or the RR's annual operating income or \$250K</li> <li>Increases cap on <b>penalties for persons acting grossly negligent or in a pattern of violating rail safety</b> regs from \$25K to the greater of .5% of the person's annual income or the RR's annual operating income or \$250K and, where death or serious injury results, from \$100K to \$1M</li> </ul>	<ul style="list-style-type: none"> <li>Increases <b>penalties related to transporting HAZMAT</b>, including caps on fines for safety violations for rail carriers from \$75K to the greater of .5% of the person's annual income or the RR's annual operating income or \$750K and, where death or serious injury results, from \$175K to \$1.75M</li> <li>Increases <b>penalties for general violations</b> from \$500 to \$25K to the greater of .5% of the person's annual income or the RR's annual operating income or \$250K and, where death or serious injury results, from \$100K to the greater of 1% of the person's annual income, RR's operating income or \$1M</li> <li>Increases <b>penalties for accidental and/or incidental violations</b> of rail safety standards from \$25K to the greater of .5% of the person's income or the RR's annual operating income or \$250K</li> <li>Increases cap on <b>penalties for persons acting grossly negligent or in a pattern of violating rail safety</b> regs from \$25K to the greater of .5% of the person's annual income or the RR's annual operating income or \$250K and, where death or serious injury results, from \$100K to \$1M</li> </ul>	N/A

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<b>Builds safer tank cars.</b>	<ul style="list-style-type: none"> <li>Phases out old rail cars by <b>May 1, 2028</b></li> <li>Sec’y must update other regs and any related deadlines to conform with this section</li> </ul>	<ul style="list-style-type: none"> <li>Phases out old rail cars by <b>May 1, 2025*</b></li> <li>Sec’y must update other regs and any related deadlines to conform with this section</li> </ul> <p><i>*The House bill includes additional language “notwithstanding Section 7304 of the FAST Act” (est. different phase out schedules for some HAZMATs)</i></p>	<i>Counties support rigorous tank car standards, including enhanced thermal protection for tank cars and eliminating the usage of older tank cars that are considered unsafe for moving hazardous materials.</i>
<b>Increases HAZMAT training for first responders.</b>	<ul style="list-style-type: none"> <li>Est. a new, \$1M annual fee for Class I carriers</li> <li>Amends <b>ALERT Grants</b> to broaden training materials covered and adds new annual fee as second funding source for ALERT Grants</li> <li>Increases authorization level from \$2M annually to \$4M for <b>supplemental training grants to national nonprofit fire service orgs</b> to train the instructors responsible for training first responders and others required to respond to HAZMAT incidents</li> </ul>	<ul style="list-style-type: none"> <li>Est. a new, \$1M annual fee for Class I carriers</li> <li>Amends <b>ALERT Grants</b> to broaden training materials covered and adds new annual fee as second funding source for ALERT Grants</li> <li>Increases authorization level from \$2M annually to \$4M for <b>supplemental training grants to national nonprofit fire service orgs</b> to train the instructors responsible for training first responders and others required to respond to HAZMAT incidents</li> </ul>	<i>NACo passed a 2020 – 2021 resolution calling on additional appropriations for ALERT grants to make up for funding levels that depend on how efficiently states use Hazard Mitigation Emergency Preparedness grants. As states utilize this funding more effectively, less resources are left for ALERT grants.</i>
<b>Adds wayside detectors as CRISI eligibility and authorizes appropriations.</b>	N/A	<ul style="list-style-type: none"> <li>Adds <b>R&amp;D</b> for wayside detectors as an eligible use under CRISI*</li> <li><b>Authorizes \$22M to carry out new eligibilities under CRISI</b> (<i>counties directly eligible for CRISI grants</i>)</li> <li>Authorizes <b>\$5 million</b> for grants to PHMSA for the R&amp;D of safer tank cars</li> </ul> <p><i>*The House bill adds “implementation” as an additional eligibility for wayside detectors under CRISI grants</i></p>	<i>Counties believe Congress should provide assistance to local governments, states, and railroads for the rehabilitation, preservation, and improvement of rail lines with the goal of maintaining and improving needed freight service.</i>