



Letter for the Record

February 13, 2019

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Dear Chair Kelley and distinguished members of the Senate Finance Committee:

Thank you for the opportunity to supplement the record of your hearing on Senate Bill 252 with our views on railroad industry automation and prescriptive crew-size requirements. S.B. 252 is deeply flawed in a manner similar to an abandoned federal proposal from 2016. Like the federal proposal, S.B. 252 ignores technological advances in railroad operations, incentives facing railroads in investing in and deploying such technologies, and the negative safety and efficiency impacts that are likely to follow.

In 2016, the Federal Railroad Administration (FRA) published a notice of proposed rulemaking (NPRM) to mandate two-person minimum train crew sizes nationwide.¹ FRA, in its own admission, could not “provide reliable or conclusive statistical data to suggest whether one-person crew operations are generally safer or less safe than multiple-person crew operations.”² Rather, FRA’s NPRM is an example of regulation by anecdote, purportedly in response to a deadly 2013 train derailment in Lac-Mégantic, Quebec, Canada, involving a one-person train crew.

It is also worth noting that FRA’s aforementioned admission that it is unable to “provide reliable or conclusive statistical data” demonstrating a safety differential between one- and two-person crews was added to the NPRM after the White House Office of Management and Budget, Office of Information and Regulatory Affairs (“OIRA”) made edits to the initial FRA draft NPRM. Astonishingly, FRA’s draft NPRM included this false statement prior to its removal by OIRA: “Studies show that one-person train operations pose increased risks by potentially overloading the sole crew member with tasks.”³

FRA’s defective underlying basis for issuing the NPRM led to the agency withdrawing its draft final rule from Executive Order 12866 review by OIRA and relegating the rulemaking project to a long-term action status in 2017.

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1. Train Crew Staffing, *Notice of Proposed Rulemaking*, FRA-2014-0033, 81 Fed. Reg. 13,917 (Mar. 15, 2016).
 2. *Id.* at 13,919.
 3. See NPRM Crew Staffing OIRA Edits, FRA-2014-0033 (Mar. 15, 2016), at 7, available at <https://www.regulations.gov/document?D=FRA-2014-0033-0003>.

During the past decade, railroads have spent billions of dollars of their own funds to comply with a federal positive train control (PTC) mandate. PTC, among other things, allows automatic and centralized control of train movements. Indeed, the automation and communications suite of PTC technologies is designed to reduce the risks associated with train crew human error or misbehavior.

The railroad industry is looking to further reduce these human factors risks by developing highly automated trainsets in the future. S.B. 252's arbitrary selection of a two-person minimum would reduce the business case for additional automation and deter railroad investments in these lifesaving, efficiency-enhancing technologies. Ultimately, consumers will suffer higher goods prices than would otherwise be achievable by the safer, lower-cost, highly automated trains of the future.

Finally, members of the Finance Committee should recognize that acting inconsistently with federal railroad safety regulatory policy will likely invite federal preemption by FRA under 49 U.S.C. § 20106(a). In fact, S.B. 252's arbitrary crew-size minimum may itself violate 49 U.S.C. § 20106(a)(2)(C) as an unreasonable burden on interstate commerce.

Again, thank you for this opportunity to supplement the record on this important topic. I am happy to discuss this further with committee members and their staff.

Sincerely,

Marc Scribner