

## **Presentation for Transportation Infrastructure Revenue Subcommittee**

### **What these bills do**

The proposed legislation includes limiting a train's length to 8,500 feet, limiting a train's obstruction of a roadway to 10 minutes, mandates the use of wayside detector systems, prohibits retaliation for reporting non-compliance of these events, provides administrative penalties for non-compliance, and sets standards for how train crews are transported to and from trains at the behest of the railroad.

### **Why these bills are necessary**

New Mexico has the obligation to regulate railway companies as found in NM Stat § 63-7-1.1, which reads in part:

*“(4) require railway companies, transportation companies and common carriers to provide such reasonable safety appliances and use such reasonable safety practices as may be necessary and proper for the safety of employees and the public as required by federal or **state** laws and rules; (emphasis added to “state”)”*

One of the arguments heard during previous legislative efforts on two person crew in New Mexico revolved around the matter of federal preemption. The state has the right to adopt a law related to railroad safety as is required by state law. Currently, there are no laws or regulations in New Mexico concerning long trains, blocked crossings, the use of wayside detectors, or how train crews are transported.

### **The risk of long trains and the danger of blocked crossings**

In the interest of balance, we note the total number of derailments have trended down in the industry recently. However, this statistic ignores the severity of derailments that do happen. The risk of catastrophic derailments and their impact to railroad-adjacent communities has also received significant public awareness. A recent study published in *Risk Analysis* indicated the following:

*“Can a train be too long? There are almost no data on any possible dangers posed by multiple-mile freight trains. Now, however, a new study published in *Risk Analysis* shows that the odds of a train jumping the tracks increases as the vehicle gets longer. Replacing two 50-car trains with one 100-car train raises the aggregate odds of derailment by 11 percent, the study concluded –even accounting for an overall decrease in the number of trains running. A 200-car train would have a 24 percent increase compared with four 50-car trains, according to the study team’s calculations.”*

The study did not analyze specific risks that can stem from train length, including air brake issues, poor train handling, slack action, and broken knuckles as the FRA data measures train length by the number of cars, rather than linear feet.

In 2021, Congress directed the Secretary of Transportation to enter in an agreement with the Nation Academy of Sciences, Engineering, and Medicine to conduct a study on the operation of freight trains that are longer than 7,500 feet. They reported the following:

*“Trains frequently block pedestrian and motor vehicle traffic as they travel through, and sometimes stand idle in, highway-rail grade crossings. To the extent that the trend toward longer freight trains lead to fewer trains in aggregate, one would expect potentially fewer blocked crossings. However, a transiting longer train will block a single crossing for a longer period than a shorter train and is likely to block multiple crossings at the same time.”*

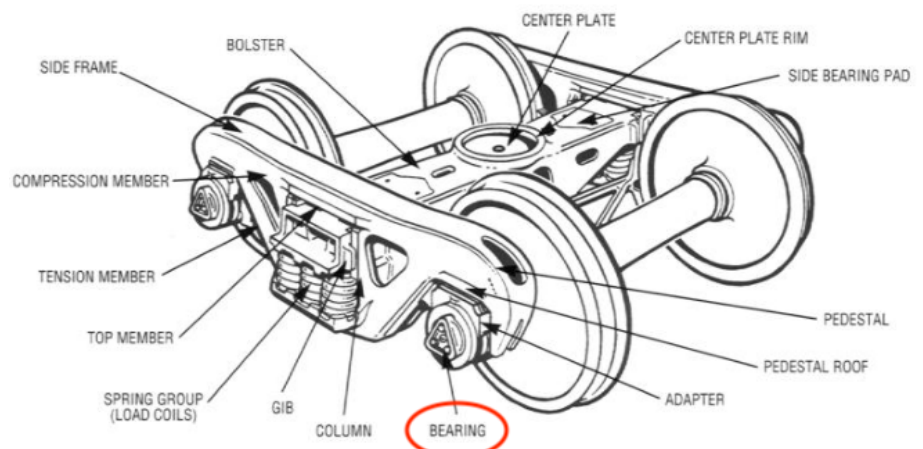
*“Train make up decisions and train length must be made with ample consideration of the capabilities and performance of the crews that operate the trains. To this end, railroads have introduced engineer-assist systems to control trains by calculating the best operating profile for both the lead and DP (distributed power) locomotives, while considering factors such as the route’s grade and curvature and the train’s length weight, and composition. The availability of these engineer-assist systems, however, does not reduce the importance of crew readiness and performance in managing the handling requirements of long manifest trains in the varied environments and territories in which they are being used.”*

Blocked crossings are more than a nuisance to motorists. A train blocking a highway or street crossing for an extended period of time can significantly hamper or prevent law enforcement or emergency services from responding to a call in a timely manner. This effect is exaggerated in small and rural communities where a single crossing may be the only reasonable option to traverse the railroad. In a 2019 study on freight train length and associated rail safety, the GAO called on the Federal Railroad Administration to work with railroads to engage state and local governments to reduce the impacts of long freight trains on rail crossings. This matter has been sufficiently studied to reach an informed conclusion; all that remains is for action to be taken.

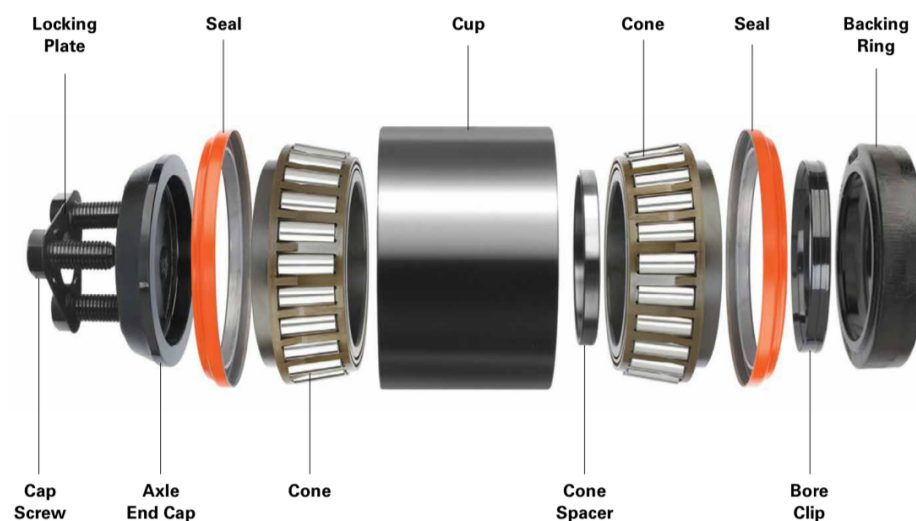
### **Mandating the use of wayside detectors**

A single wheel bearing, known as a journal or roller bearing, was the root cause of the derailment and subsequent toxic chemical release in East Palestine Ohio in February 2023. Estimates to clean this derailment up are now in excess of \$1 billion along with the disruption of the community.

Wayside detectors are a technology designed to read temperature of wheels, journal bearings, and brakes as a train passes. Because the railroads attempt to govern themselves, and given no national standard exists on the correct course of action when a wayside detector activates, we are proposing this legislation to establish how many detectors, the distance between them, and what course of action that a railroad should take in these matters. The location of a wheel bearing is show to the right.



A parts diagram of a journal bearing is shown below:



### **The Federal Regulation for defective journal bearings for ease of reference:**

#### **49 CFR § 215.115 Defective roller bearing**

- (a) A railroad may not place or continue in service a car, if the car has—
  - (1) A roller bearing that shows signs of having been overheated as evidenced by—
    - (i) Discoloration; or
    - (ii) Other telltale signs of overheating such as damage to the seal or distortion of any bearing component;
  - (2) A roller bearing with a—
    - (i) Loose or missing cap screw; or
    - (ii) Broken, missing, or improperly applied cap screw lock; or
  - (3) A roller bearing with a seal that is loose or damaged, or permits leakage of lubricant in clearly formed droplets.
- (b)(1) A railroad may not continue in service a car that has a roller bearing whose truck was involved in a derailment unless the bearing has been inspected and tested by:
  - (i) Visual examination to determine whether it shows any sign of damage; and
  - (ii) Spinning freely its wheel set or manually rotating the bearing to determine whether the bearing makes any unusual noise.
- (2) The roller bearing shall be disassembled from the axle and inspected internally if—
  - (i) It shows any external sign of damage;
  - (ii) It makes any unusual noise when its wheel set is spun freely or the bearing is manually rotated;
- (iii) Its truck was involved in a derailment at a speed of more than 10 miles per hour; or
- (iv) Its truck was dragged on the ground for more than 200 feet.
- (3) Each defective roller bearing shall be repaired or replaced before the car is put back in service.

The average railcar has eight journal bearings. The average freight locomotive has twelve journal bearings. Notably, for such a critical component, there are relatively few rules at the federal level. We highlight the lack of any provision requiring wayside detectors.

In 2018, Union Pacific closed the Downtown El Paso repair shop, laying off 191 people- the very people that did these inspections on locomotives and rail cars that operate into New Mexico. Union Pacific has only kept two mechanical employees since 2018. They work varying shifts. What happens when one of these two employees go on vacation?

BNSF laid off 16 mechanical inspectors in Belen, but has recalled them as of July of 2024.

Both Union Pacific and BNSF count on wayside detector technology to monitor journal bearings. However, because there are no standards that the railroads are accountable for, they can instruct a train crew to continue moving, the railroad may even elect to not inform the crew of a potential problem at all. Additionally, BNSF has filed for and obtained waivers for extended haul trains, trains that can travel up to 1,500 miles between inspections simply based on the use of wayside detectors.

### **Administrative penalties for non-compliance**

The purpose of having administrative penalties for non-compliance is designed to deter future matters of non-compliance by the railroads.

### **Prohibition against reporting non-compliance**

The railroads have tried to bully, badger, and otherwise cajole their employees into not reporting injuries and other safety defects encountered in the course of their working day. Sadly, this is business as usual for railroaders. In order to foster accountability amongst the railroads, the prohibition of retaliating for reporting a matter of non-compliance is necessary.

### **How train crews are transported**

The railroads typically contract the transportation of crews to and from trains to specialized companies such as Hallcon, PTI, and others. Generally, this is a routine and uneventful part of a train crew's day. However, train crews are too often subjected to vehicles with several hundred thousand miles on them, drivers that may or may not meet CDL standards, or drivers who exhibit a lack of professionalism. Additionally, while BNSF previously contracted crew transportation to Hallcon, BNSF's contract indicated that they waived uninsured/underinsured motorist coverage in New Mexico, Texas, Colorado, and Arizona, all places that our membership are transported to in order to work.

POLICY NUMBER: ISA H10757964

**CHUBB**

**UNINSURED MOTORISTS/UNDERINSURED  
MOTORIST COVERAGE SUMMARY**

The following Limit of Insurance for Uninsured Motorists and Underinsured Motorists (when not included in Uninsured Motorists Coverage) apply to Item 2 of the Declarations:

1. No Coverage is offered or provided for vehicles principally garaged or registered in the following states:  
**MI,OH,PR**
2. You have rejected coverage in the following states and no Limit of Insurance is provided for vehicles principally garaged or registered in these states:  
**AL,AK,AZ,AR,CA,CO,DE,FL,GA,HI,ID,IN,IA,KY,MS,MT,NV,NM,OK,PA,TN,TX,UT,WY**
3. Limit of Insurance for vehicles principally garaged or registered in the following states will be the limit of insurance you selected on the signed Uninsured and/or Underinsured Motorist selection/rejection form on file with us:  
**All states not listed in items 1,2 or 4 of this form.**
4. The policy limit for liability shall apply for vehicles principally garaged or registered in the state of NH.

### **Examples of preventable accidents or incidents:**

East Palestine 2/3/2023 Norfolk Southern cause: failed journal bearing

Anniston, Alabama 3/9/2023 Norfolk Southern cause: mechanical issues and train make up of a long train

Manuelito, New Mexico BNSF 4/26/2024 cause: TBD

Socorro, New Mexico 3/25/2024 cause: broken wheel

Mississauga, Canada Canadian Pacific 11/10/1979 cause: failed journal bearing

Neswabin, Ontario Canada Canadian National 2/6/1999 cause: failed journal bearing

Livingston, Kentucky CSX 11/28/2023 cause: failed journal bearing

Washington DC CSX 5/1/2016 cause: failed journal bearing

Bedford County PA Norfolk Southern 8/3/2017 cause: train make up of a long train

### **Similar legislation proposed or enacted in other states**

In addition to the federal efforts, some of which have been led by New Mexico's very own Congresswoman Melanie Stansbury (HR 1674), at least 19 states—Arizona, Georgia, Iowa, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Utah and Washington—introduced legislation regarding rail safety in 2023, and five of those Michigan, Minnesota, Missouri, Ohio and Utah—have enacted legislation. States are considering such measures as requiring increased crew members on trains, limiting train length, requiring wayside detectors, creating grade separations and developing comprehensive emergency response plans.

The Attorneys General of 18 states and the district have called on the U.S. Supreme Court to uphold state authority to regulate blocked railroad crossings and prevent stripping states of their “unquestioned police power to regulate grade crossings in the interest of public safety.”

Given the substantial bipartisan action across the nation, the message to the rail industry is clear: Address the outlined safety concerns and work proactively with state and local governments to protect the safety of their residents and communities. JD Vance (yes the Vice Presidential candidate), and Sherrod Brown introduced a bill known as the Rail Safety Act of 2023 and is a prime example of bipartisan support that can take place after a rail disaster strikes...

The legislation presented today is not meant to reinvent the wheel, but rather to take what other states are working on and incorporate similar in New Mexico to protect the communities and the people of New Mexico that do this work.

**Let's not wait until we have a rail disaster in New Mexico  
to pass sensible rail safety legislation**