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RAILROADS OF NEW YORK

BILL: S3953-B (Kennedy) and A1287-A (Magnarelli)

SUBJECT: TWO-PERSON CREW LEGISLATION

DATE: August 22, 2022

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Railroads of New York, Inc. (RONY) strongly opposes the above-referenced legislation that would require freight trains and locomotives to have a crew size of not less than two persons. This legislation would provide no additional safety benefits to the freight rail industry and would instead impede technological advances that help the freight rail industry remain competitive with the trucking sector.

RONY represents four Class I Railroads (CSX, Canadian National, Canadian Pacific and Norfolk Southern) and 36 Short Line and Regional Railroads that directly employ over 3,700 individuals in NYS. RONY's member railroads provide access to the nation's 140,000-mile freight rail network, enabling many of New York's industrial, manufacturing and agricultural businesses to reach markets across the country and throughout the world via all U.S. ports and to realize a substantial competitive advantage over other businesses that lack access to the rail network.

RONY opposes this legislation that would require freight rail companies to operate trains with at least two crew members aboard all freight trains in New York State. Numerous studies have shown that mandating at least two crew members would have no impact on the safety of railroad operations. Freight railroads remain the safest way to transport goods over land and railroad safety has significantly improved in recent years. According to the Association of American Railroads, since 2009, the mainline train accident rate is down 10%, the equipment-caused accident rate is down 11%, the track-caused accident rate is down 26%, the derailment rate is down 9% and the hazmat accident rate is down 48%.

In May 2019, following over five years of intensive study and stakeholder outreach, the Federal Railroad Administration (FRA) issued a decision to affirmatively not require trains to have at least two crew members aboard after coming to the conclusion that rail safety data does not support a train crew staffing rulemaking. The ruling stated, in part, "FRA's accident/incident safety data does not establish that one-person operations are less safe than multi-person train crews. Indeed, as FRA noted in the NPRM, existing one-person operations 'have not yet raised serious safety concerns' and, in fact, 'it is possible that one-person crews have contributed to the [railroads'] improving safety record.... FRA reviewed accident/incident data over a seventeen-year period ending in 2018 and could not determine that any of the accidents/incidents involving a one-person crew would have been prevented by having multiple crewmembers".

- Member Railroads*
- Adirondack Scenic RR
 - Arcade & Attica RR
 - B & H Rail Corp.
 - Batten Kill Railroad, Inc.
 - Brookhaven Rail LLC
 - Buffalo & Pittsburgh Railroad, Inc.
 - Buffalo Southern Railroad, Inc.
 - CSX Transportation, Inc.
 - Canadian National Railway Co.
 - Canadian Pacific
 - Central New York Railroad, Inc.
 - Clarendon & Pittsford Railroad Co.
 - Consolidated Rail Corporation
 - D & H Railway
 - Depew Lancaster & Western Railroad Company
 - Falls Road Railroad Co. Inc.
 - Finger Lakes Railway Corp.
 - Genesee & Mohawk Valley RR Co.
 - Genesee & Wyoming Railroad
 - Ithaca Central RR
 - Livonia, Avon & Lakeville Railroad
 - Lowville & Beaver River RR Co.
 - Massena Terminal RR
 - Middletown & New Jersey Railroad LLC
 - Mohawk, Adirondack & Northern RR
 - New York & Atlantic Railway Co.
 - New York & Lake Erie Railroad
 - New York New Jersey Rail, LLC
 - New York & Ogdensburg Railway Co.
 - NY Susquehanna & Western Railway
 - Norfolk Southern Railway Co.
 - Ontario Central Railroad Corp.
 - Ontario Midland Railroad Corp.
 - Owego & Harford Railway*
 - (*RJ Corman affiliate)
 - PanAm Southern
 - Providence & Worcester Railroad
 - Rochester & Southern Railroad
 - SMS Rail Lines of New York
 - South Buffalo Railway Co.
 - Syracuse, Binghamton & NY RR
 - Wellsboro & Corning Railroad
 - Western New York & Pennsylvania RR
 - Associate Members*
 - Bergmann Associates*
 - (*Colliers Engineering and Design affiliate)
 - Bowers & Company CPA's, PLLC
 - C & S Engineering, Inc.
 - Delta Railroad Construction Inc.
 - Erdman Anthony
 - Erie County IDA
 - Frontier Railroad Services LLC
 - HDR Engineering, Inc.
 - HNTB Corporation
 - JMT of New York, Inc.
 - McCarthy Rail Insurance Managers
 - Railroad Group, LLC
 - Railroad Constructors, Inc.
 - Southern Tier Extension Railroad Authority
 - Stella-Jones Corp.
 - Tartaglia Railroad Services, Inc.
 - Tectonic Engineering Consultants
 - Tracks Unlimited LLC
 - W.J. Riegel Rail Solutions
 - Wheeler Lumber
 - Contributing Members*
 - A & K Materials, Inc.
 - CT Male
 - Chenango County IDA
 - Cranemasters, Inc.
 - D.A. Collins Companies
 - Delaware & Ulster Railroad
 - Greenman-Pedersen, Inc.
 - Hardesty & Hanover, LLC
 - Lincoln Transportation Insurance Brokers
 - Nisus Corp.
 - Nordec Inc.
 - Rhinehart Railroad Construction, Inc.
 - Rusco Group Inc.
 - Saratoga Railroad Engineering
 - Star Headlight & Lantern Co. Inc.



In addition, as part of this decision, the FRA noted that this decision represents an affirmative decision not to regulate crew size with the intention to preempt state laws. The decision states, "FRA has determined that no regulation of train crew staffing is necessary or appropriate at this time and intends for the withdrawal to preempt all state laws attempting to regulate train crew staffing in any manner".

Subsequently, in August 2019, the state of Illinois passed and signed into law a similar bill that would require at least two person crews on freight trains and locomotives. In September 2019, the Indiana Railroad Company, Association of American Railroads and the American Short Line Railroad Association filed a complaint with the U.S. District Court for the Northern District of the Illinois Eastern Division alleging that the law was preempted by several federal laws, including the Federal Railroad Safety Act. In September 2020, the court granted the railroads motion for summary judgment and held that the Illinois crew size law was preempted under the Federal Railroad Safety Act. Illinois appealed this decision and in December 2021, the District Court once again held that the Illinois law was preempted by federal law, this time deeming the federal Railroad Revitalization and Regulatory Reform Act (3R) relevant. The 3R Act applies to 17 states, including New York, and the District of Columbia. As a result of these decisions, the Illinois Attorney General decided to not pursue the matter further and the law remains struck down based on federal preemption.

Most recently, in July 2022, the Federal Railroad Administration announced a proposed rulemaking that would require a minimum of two train crewmembers which is currently in the public comment period. As part of this rulemaking, the FRA makes clear that any final rule that is adopted on this topic is intended to preempt any similar state laws. More specifically, the FRA states the following in the proposed rulemaking:

"Of particular concern to FRA is the patchwork of State laws regulating crew size in some manner and the impact of those various State requirements on safe rail operations...The Federal Railroad Safety Act provides that a State law is preempted where FRA, under authority delegated from the Secretary of Transportation, "prescribes a regulation or issues an order covering the subject matter of the State requirement." For these reasons, if FRA issues a final rule establishing minimum safety requirements for size of train crews, it would cover the same subject matter as the State laws regulating crew size, and therefore FRA expects a final rule will have preemptive effect on those State laws that are Statewide in character and do not address narrow, local safety hazards."

The freight rail industry invests significant capital in technological advances that help make freight movements safer and allow the freight rail industry to remain competitive with trucks, with the recent implementation of Positive Train Control a prime example of such a technology. Imposing increased crew size mandates would impede these technological advances as freight rail companies would be less inclined to invest in new technologies that could not be maximized in the presence of such increased regulation.

In addition, this would also hurt the competitive position of freight rail versus the trucking industry, which itself is seeing a recent worldwide movement towards increased automation, including driverless trucks. New York State is currently in the middle of a multi-year process designed to test and collect data for driverless vehicles. Such tests like this are currently taking place all over the United States and if approved, this technology will undoubtedly be used by the trucking industry to eventually eliminate the need for drivers in truck cabs and significantly reduce operating costs. This will in turn harm New York State's attempts to shift freight movements from trucks to trains in furtherance of the state's recently-enacted climate change and emissions reductions goals as outlined in the Climate Leadership and Community Protection Act of 2019.

For these reasons, RONY respectfully opposes this legislation.