Brotherhood of Locomotive Engineers and Trainmen
Minnesota Legislative Board
A Division of the Rail Conference-International Brotherhood of Teamsters

HF 3499
Maximum Train Length

HF 3499/SF4161 Is common sense legislation that protects Communities and workers

Overview: States have broad authority to regulate railroad safety.

In 1970 Congress gave the states broad authority to regulate railroad safety, in areas where the Federal Government has not weighed in either through regulation or law. In the instance of train length, the Federal Railroad Administration has not adopted a regulation, giving the states authority to do so. Courts have recognized that states have an interest to protect their communities and may regulate railroad safety if a federal regulation does not specifically address the subject matter. Before finding a state law is preempted, courts have required parties to demonstrate a high degree of specificity of federal regulation on the same subject of state law. The two federal agencies that are currently devoted to regulating the railroad industry are the federal Railroad Administration (FRA) and the Surface Transportation Board (STB).

In 1995 Congress enacted the Interstate Commerce Committee Termination Act (ICCTA) to limit the economic regulation of various modes of transportation and created the Surface Transportation Board to administer that Act. The STB has exclusive jurisdiction over the "construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, therefor the ICCTA is limited to economic regulation. The STB may consider safety, along with other issues under its jurisdiction, it cannot adopt safety rules and standards. That responsibility belongs to the Secretary of Transportation, or the states if the DOT has not adopted a regulation covering the subject matter involved. Since its inception the STB has not issues any railroad safety regulations. By contrast both the states and the FRA continue to issue numerous railroad safety regulations covering a broad range of safety issues. One example is right here in Minnesota with the last years passage of a Minimum Crew Size law (219.752)

Congress allowed states to regulate railroad safety through the Federal Railroad Safety Act of 1970, and took into consideration that a safety law will have an economic impact on railroads. To adopt the railroads preemption argument would mean that a state could never regulate railroad safety. That is clearly contrary to congressional intent.

Rail carriers often rely on the Supreme Court's So. Pac. Co. vs. State of Arizona 1945 decision to support their preemption argument. This is no longer controlling. That case preceded the Federal Railroad Safety Act. As stated earlier, this law gives the states broad authority to regulate railroad safety. To accept the carrier's argument in regards to HF3499/SF4161 would not accomplish this goal. The So. Pac. case ruled against the State based upon an undue burden on interstate commerce. Pursuant to the Federal Railroad Safety Act, the issue of undue burden on interstate commerce is relevant only with regard to a state attempting to regulate a local safety hazard. This legislation (HF3499/HF4161) is state wide.

There is a need for regulation of train length within the state. Train lengths have grown from a maximum of 8,000 feet a decade ago to the point where trains will often exceed three miles long. Our members are reporting these long trains cause congestion within Minnesota's rail network due to the fact the infrastructure is not designed for train of this size. This congestion has led to supply chain issues. This has also led to safety concerns in Minnesota's communities. Due to their extreme length, these long trains have led to communities being cut in half when these trains pass through and will block crossing for hours at a time when it becomes necessary to stop.

After several derailment involving long trains, the Federal Railroad Administration issued two safety advisories(SA 2023-02 and SA 2023-03) highlighting the concerns with train length and train makeup. These documents advised railroads to amend their antiquated policies regarding train make up and improve training for new and experienced locomotive engineers. Training continues to be the bare minimum required under federal regulations. Train crews are instructed to ignore policies and procedures that take into consideration proper train make up. When employees raise concerns on this practice, they face harassment and intimidation from railroad management.

Conclusion

There is a need for a regulation on train length in the state of Minnesota and the legislature has the ability to do so. Rail carriers often use the preemption argument whenever railroad safety legislation is considered on the state level. These arguments often do not hold up to when challenged in court.

HF 3499 / SF 4161 Is Federally Preempt

It undermines longstanding legal precedent and federal authority over train length

MINNESOTA REGIONAL RAILROADS ASSOCIATION

Overview: States Have Very Limited Authority to Regulate Railroads

Congress established a preemptive federal regulatory scheme to ensure uniform rail operating and safety standards across the country, recognizing the national rail network's critical role in the economy. There has been a federal agency dedicated to regulating the railroad industry since 1887 when Congress created the Interstate Commerce Commission. Today there are two federal agencies primarily devoted to regulating the freight rail industry. The first is the Surface Transportation Board ("STB"), which Congress created in 1995 as a successor to the Interstate Commerce Commission. The second is the Federal Railroad Administration ("FRA"), which was created in 1966 as part of the U.S. Department of Transportation.

The STB derives much of its statutory authority to regulate the rail industry from the Interstate Commerce Commission Termination Act ("ICCTA").[1] While the preemptive power of the ICC's federal regulation of the rail industry had already long been recognized by the courts,[2] Congress enacted the ICCTA in 1995 with language explicitly stating that the STB's jurisdiction over transportation by rail carriers and the operation of their networks is *exclusive*.[3] Congress defined the broad scope of the STB's exclusive authority to include, among other things, the movement of locomotives, railcars, and equipment, and the construction and operation of a railroad facilities.[4]

In addition to the STB's broad preemptive mandate, Congress also reserved for the U.S. DOT the power to regulate "every area of railroad safety" via the Federal Railroad Safety Act of 1970 ("FRSA").[5] In the FRSA, Congress mandated that the regulation of railroad safety "shall be nationally uniform to the extent practicable" and explicitly preempted state laws attempting to address any issue that is covered by regulations from the U.S. DOT (including the FRA and PHMSA) or the U.S. Department of Homeland Security.[6]

Congress purposefully created this preemptive federal regulatory scheme in recognition of the critical role that the national rail network plays in our economy, and with the intent to implement uniform rail operating and safety standards across the country. Congress wanted to avoid a patchwork of regulations adopted by individual states with potentially parochial interests that would impede the flow of interstate commerce. As one example of how extensive this federal scheme is, the book containing just those regulations that are enforced by the FRA is over 1,300 pages long and covers virtually every conceivable aspect of how trains are required to operate in the State of Minnesota.

---

[1] 49 USC § 10101, *et seq*.
[2] *See, e.g., S. Pac. Co. v. Arizona*, 325 U.S. 761 (1945).
[3] 49 USC § 10501(b).
[4] 49 USC §§ 10501(b)(1), 10102(9).
[5] 49 USC § 20103(a).
[6] 49 USC § 20106(a).

U.S. Supreme Court Precedent on Train Length

The importance of federal preemption specific to train length and the mandate in [HF 3499 / SF 4161] is further highlighted by a crucial Supreme Court case **Southern Pacific Co. v. Arizona (1945)**.

In this case, Arizona attempted to limit the length of trains traveling through the state. The Supreme Court saw the bigger picture and struck down this state law. They recognized that state-by-state limitations would create an unreasonable burden to interstate commerce. The court highlighted the dangers of a fragmented regulatory system for a national infrastructure like railroads. The Supreme Court observed that limiting the length of trains passing through the state appeared to actually make rail operations less safe; by limiting the length of each train, a greater number of shorter trains had to pass through the state and the number of accidents increased.

The Arizona case serves as a powerful precedent for federal preemption on train length. It highlights the dangers of a fragmented regulatory system for a national infrastructure like railroads.

In the nearly 80 years since the Supreme Court decided this case, no subsequent case or congressional enactment has modified or limited the holding in this case.

Further Congressional Action on Preemption

As mentioned above, the passage of the Interstate Commerce Commission Termination Act of 1995 placed exclusive jurisdiction over rail transportation, including rates, scheduling, routing, and rules with the Surface Transportation Board. Congress enacted the ICCTA in 1995 with language explicitly stating that the STB's jurisdiction over transportation by rail carriers and the operation of their networks is *exclusive*.[7] Congress defined the broad scope of the STB's exclusive authority to include, among other things, the movement of locomotives, railcars, and equipment, and the construction and operation of a railroad facilities.[8]

Further Court Action on Preemption

The courts have affirmed their recognition of this important preemptive federal regulatory scheme, most recently just months ago. In 2022, a consortium of 19 states and the District of Columbia asked the U.S. Supreme Court to allow states to regulate blocked crossings. That consortium's effort was opposed by the U.S. Solicitor General in November 2023, and the U.S. Supreme Court declined to consider changing the well settled law on this topic. President Biden's U.S. Solicitor General advised the Court that state laws regarding blocked grade crossings were preempted by federal regulation of railroads. She warned "the cumulative effect of disparate state laws regulating blocked grade crossings could require interstate railroads to substantially modify their operations to comply with a patchwork of varying state and local requirements, thereby impeding the flow of interstate commerce."

[7] 49 USC § 10501(b).
[8] 49 USC §§ 10501(b)(1), 10102(9).

Just like state regulations on blocked crossings would be disruptive to commerce, mandating train length limits would force interstate railroads to significantly adjust their operations to comply with a patchwork of different state rules, potentially hindering the smooth flow of interstate commerce.

Conclusion

So, while there is not a federal statute that provides a federal standard for how long a train can be, there is a U.S. Supreme Court case directly on point and there is federal law establishing that only one agency has the jurisdiction to issue such a standard. This bill is federally preempt and would likely not withstand litigation.

MINNESOTA REGIONAL RAILROADS ASSOCIATION

Freight Train Length

KEY TAKEAWAY: Railroads carefully consider several factors when determining train length. Thanks to improved infrastructure, advanced modeling tools, training programs and technological advancements, railroads have safely increased train length while improving overall safety record, enhancing fuel efficiency, and reducing GHG emissions.

BACKGROUND

Railroads have operated millions of trains exceeding 8,500 feet without incident in the past 80 years. The industry's safety record has improved even though trains have increased in length. Since 2000, based on FRA data, there has been a:

- 30% drop in derailment rates for all railroads since 2000.
- 75% decrease in the hazardous materials (hazmat) accident rate since 2000 based on preliminary data and per carload, is at its lowest rate ever.
- 42% reduction in Class I railroads' mainline accident since 2000.
- 63% drop in the rate of injuries and fatalities for Class I railroad employees since 2000, reaching an all-time low in 2023.

CLASS I RAILROAD TRAIN LENGTHS

What HF3499/SF4161 bill would dub as "long trains" have operated safely for decades in Minnesota, and the industry's safety record has dramatically improved during that period. In 2021, median train length on Class I railroads — meaning half were longer, half were shorter — was 5,400 feet. Just 10% of trains were longer than 9,800 feet and fewer than 1% of trains were longer than 14,000 feet.

RAILROADS ARE COMMITTED TO SAFE OPERATIONS, NO MATTER THE TRAIN LENGTH.

While processes differ slightly by company, railroads consider several factors when determining how rail cars and locomotives are arranged and train length. These factors include but are not limited to commodity mix, terrain, track conditions, layout, congestion, crew training and more.

- **Investments**: Railroads have added new sidings and lengthened existing sidings on routes used for longer trains, which allow trains of various lengths to make way for other trains safely. The locomotive, car fleets, and track have been upgraded by freight rail's capital expenditure programs, averaging well over $23 billion a year over the last five years.

- **Operations**: Railroads review the characteristics of a route, incorporate lessons learned for the most effective operation of trains on that route, and confirm the safe operation by such measures as supervised pilot runs and modeling simulations that predict the performance of changes to a train's makeup.

- **Training**: Railroads offer training, both simulator-based and on-the-job, for in-cab technologies like energy management systems, PTC, and distributed power. This includes adapting to changes in train composition or a crew's introduction to new territories. The FRA mandates that locomotive engineers demonstrate proficiency on assigned routes, with annual railroad evaluations.

TECHNOLOGY ENABLES LONGER TRAINS. LIMITING THEM WOULD HURT THE ENVIRONMENT.

Technologies like distributed power (DP) allow safe operation of longer trains. DP places locomotives throughout the train, improving control and handling, especially on challenging terrain. "Train builder" algorithms further optimize train composition for efficiency and safety.

Moving a given amount of freight in fewer trains requires less fuel. Because GHG emissions are directly related to fuel consumption, longer trains mean reduced GHG emissions. That's why capping train length is not environmentally sound. AAR analysis of federal data finds: If 25% of the truck traffic moving at least 750 miles went by rail instead, annual greenhouse gas emissions would fall by approximately 13.6 million tons. Emissions would rise further if a cap on train length and the subsequent reduction in rail efficiency caused freight to divert to trucks, which are significantly less fuel efficient than rail.

THE FEDERAL GOVERNMENT OCCUPIES THE SPACE FOR TRAIN LENGTH POLICY.

HF3499/SF4161 would limit the length of a train in the State of Minnesota to 8,500 feet, but the United States Supreme Court held long ago that a similar effort by the State of Arizona was unenforceable.[1] The Supreme Court ruled in S. Pac. Co. v. Arizona (1945) citing two key reasons. First, the Commerce Clause of the U.S. Constitution limits state laws that burden interstate commerce. Second, the Court found the Arizona law decreased safety by requiring more, shorter trains, increasing overall traffic.

Congress has further created a preemptive federal regulatory scheme in recognition of the critical role that the national rail network plays in our economy, and with the intent to implement uniform rail operating and safety standards across the country. Congress enacted the ICCTA in 1995 with language explicitly stating that the STB's jurisdiction over transportation by rail carriers and the operation of their networks is *exclusive*.[2] Congress defined the broad scope of the STB's exclusive authority to include the movement of locomotives, railcars, and equipment, and the operation of a railroad facilities.[3]

Congress wanted to avoid a patchwork of regulations adopted by individual states with potentially parochial interests that would impede the flow of interstate commerce.

---

[1] *S. Pac. Co. v. Arizona, 325 U.S. 761 (1945).*

[2] *49 USC § 10501(b).*

[3] *49 USC §§ 10501(b)(1), 10102(9).*

LEAGUE of MINNESOTA CITIES

April 2, 2024

Senator Robert Kupec
Representative Jeff Brand

RE: SF 4161/HF 3499—Maximum train length established, and penalties provided.

Dear Senator Kupec and Representative Brand,

The League of Minnesota Cities (LMC) is an association serving 838 of Minnesota's 855 cities through advocacy, education and training, policy development, risk management and other services.

Thank you for authoring SF 4161/HF 3499, a bill that limits the length of trains. Railroads impose far-reaching and long-term impacts on communities. The impact of railroads on communities has become more pronounce in Minnesota as the number and length of trains have increased. At-grade crossings are blocked by both long moving trains and by trains that stop and remain stopped, sometimes for hours at a time. Blocked crossings delay motorists and sometimes prevent passage of emergency vehicles.

The League supports this legislation. Additionally, the League supports requiring railroads to provide timely notice to an impacted municipality when a crossing or crossings will be blocked by a stopped train. Finally, the League supports requiring railroad companies to provide a direct emergency response telephone number for city first responders to call when an at-grade crossing is blocked, and the emergency services need this crossing immediately unblocked to continue their response.

We look forward to working with you to advance this important legislation.

Sincerely,

Anne Finn
Intergovernmental Relations Director

145 University Avenue West
St. Paul, Minnesota 55103

PH: (651) 281-1200
TF: (800) 925-1122
FX: (651) 281-1299
www.lmc.org