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Top 3 Legislative Actions Following the East Palestine Derailment

Client Bulletins

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In Ohio, the nation's capital, and across the country, legislators have taken action in response to the Norfolk Southern train derailment that occurred in East Palestine, Ohio, on February 3. Here are the top three things to know:

- 1. Federal Legislation Introduced.** Bipartisan federal legislation has been introduced by U.S. Senators for Ohio Sherrod Brown and J.D. Vance. The Railway Safety Act of 2023 would require the U.S. Department of Transportation to adopt rules within one year of enactment that place new restrictions on shippers and on rail carriers operating a train transporting hazardous materials that are not already subject to high-hazard flammable train requirements. The rules would require shippers and rail carriers to provide advance notice to each state emergency response commissioner of the contents they are transporting, as well as place additional restrictions regarding train length and weight; route analysis and selection; speed; track standards; track, bridge, and railcar maintenance; signaling and train control; and response plans. Of note, the bill gives broad authority to the USDOT to impose any other restrictions necessary. The Act also proposes to expand rail inspections, including an audit system for monitoring. A mandate that all Class I railroads install a hotbox detector along every 10-mile segment of rail track over which trains carrying hazardous materials operate is also in the bill, as well as a two-person minimum crew requirement and heightened civil penalties for safety violations by raising minimum fines. Some \$22 million will be appropriated for grants targeting the improvement and research of wayside defect detectors and the prevention of derailments. Senate Bill 576 awaits formal hearings in the Senate Commerce, Science, and Transportation Committee. The measure has been lauded by President Biden, but faces opposition by key members of the Senate, industry, and a broad range of business groups.
- 2. State Legislation Advancing.** Legislators in states including Pennsylvania, Washington, Ohio, Michigan, Indiana, California, and South Carolina have introduced or advanced railroad safety legislation. While most regulatory authority over the railroads is held by the federal government, a public debate has already begun on the topic of whether certain state laws being proposed are preempted by federal regulations. For example, there has been an uptick in the introduction and passage of resolutions urging Congress to enact stricter safety measures, and both chambers of the Ohio Legislature recently amended the state's Transportation Budget Bill, House Bill 23, to include the two-man crew requirement, require wayside detectors to generally be installed between 10 to 15 miles apart and mandate state agency oversight to ensure proper installation, mandated agency examination and reporting of best practices for hot boxes, hot bearing detectors, acoustic bearing detectors, and cameras installed on or near railroad tracks, and reporting requirements for railroads when a train blocks a highway-grade crossing. Under Ohio law, the transportation budget must pass by March 31, leaving only a short time to debate these important issues, and as part of much broader policy discussions. Legislators across the country are facing public pressure from their constituents to respond, and in some instances, are doing so expeditiously despite serious concern and opposition from the railroad industry.

3. Investigatory Hearings Underway. The U.S. Senate recently held hearings in the Senate Environment and Public Works Committee on the derailment in an attempt to uncover the causes and to explore public policy solutions to prevent such occurrences in the future. Sen. Brown, is expected to continue utilizing his chairmanship on the Senate Committee on Banking, Housing and Urban Affairs to steer the conversation, and the U.S. House Subcommittee on Environment, Manufacturing, and Critical Materials will hold a hearing later this month. At the state level, the Ohio Senate has created a new Select Committee on Rail Safety with the stated objectives of gaining a clearer understanding of the cause of the catastrophic train derailment and the status of recovery efforts and to determine the most appropriate course of action to help local residents. These hearings demonstrate that in addition to policymaking, legislators are utilizing their authority to investigate and convene public meetings as a means to respond to public concern.

In addition to the above, executive action has been proposed. While bipartisan support for advancing additional safety measures exists, the current debate signals a lack of full alignment on the path forward. Indeed, the various stakeholders partaking in these discussions have varying opinions on the desired legislative solutions, both at the state and federal levels. For assistance elevating your voice with legislators and tracking, analyzing, and navigating the abundance of legislative activity in this space and how it might impact your operations, your Benesch Government Relations team is here to help.

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