

Interim Study Proposal 2021-112  
Representative Vivian Flowers  
Regulate Length of a Railroad Train  
October 6, 2022

## States Rights Concerning Rail Regulation

### Arkansas Constitution Art. 17, § 10



#### § 10. Regulation of carriers.

The General Assembly shall pass laws to correct abuses and prevent unjust discrimination and excessive charges by railroads, canals and turn-pike companies for transporting freight and passengers, and shall provide for enforcing such laws by adequate penalties and forfeitures, and shall provide for the creation of such offices and commissions and vest in them such authority as shall be necessary to carry into effect the powers hereby conferred.

Title 49 U.S. code § 20106 grants the states the right to “adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. **A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security “**



A favorite argument of railroads is that the Interstate Commerce Commission Termination Act preempts state regulation. **However, the ICCTA is limited to economic legislation.**

The Federal Railroad Safety Act of 1970 (FRSA), not the ICCTA, governs this issue. Congress allowed states to regulate safety, and took into consideration that a safety law will have some 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. In 1995 Congress enacted the 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” **49 U.S.C. 10501 (b) The ICCTA confers upon the STB “ regulatory power over the economic affairs and non safety operating practices of railroads”** There exist nothing in the ICCTA, nor its legislative history, to suggest that the STB could supplant the FRSA provisions.



In May 2019, the U.S. GAO (Government Accountability Office) released a study entitled "Freight Trains Are Getting Longer, and Additional Information Is Needed to Assess Their Impact". The study identified the problem, but as is too often the case with our Federal Government, they failed to take action. After the examination, Keith Washington, Deputy Assistant Secretary for the U.S. Department of Transportation, concluded, "**While FRA is concerned about blocked crossings as well as every rail-related accident and incident, a Federal one-size fits-all approach is not the best way to respond to every issue. Specifically, for blocked crossings, State and local governments are better positioned to address each community's unique road network and emergency service characteristics and needs**".





## Over 250 laws are currently on the books regulating railroad operations in the state code.

### **A.C.A. § 23-10-301**

The Arkansas Department of Transportation shall make rules to be observed by all persons or corporations operating any railroad or engaged in transporting property as express or freight in this state, in respect to the receiving, hauling, transporting, storing, and delivering of freight and express as, in its judgment, the public convenience may require.

A.C.A. § 23-4-601 - § 23-4-637  
A.C.A. § 23-4-701 - § 23-4-720  
A.C.A. § 23-4-801 - § 23-4-807  
A.C.A. § 23-10-101 - § 23-10-110  
A.C.A. § 23-10-209 - § 23-10-213  
A.C.A. § 23-10-301 - § 23-10-306  
A.C.A. § 23-10-401 - § 23-10-445  
A.C.A. § 23-11-101 - § 23-11-104  
A.C.A. § 23-11-201 - § 23-11-223  
A.C.A. § 23-11-301 - § 23-11-315  
A.C.A. § 23-11-401 - § 23-11-404  
A.C.A. § 23-11-501 - § 23-11-505  
A.C.A. § 23-12-101 - § 23-12-105  
A.C.A. § 23-12-201 - § 23-12-207  
A.C.A. § 23-12-402 - § 23-12-412  
A.C.A. § 23-12-501 - § 23-12-514  
A.C.A. § 23-12-601 - § 23-12-614  
A.C.A. § 23-12-701 - § 23-12-708  
A.C.A. § 23-12-802 - § 23-12-807  
A.C.A. § 23-12-901 - § 23-12-913  
A.C.A. § 23-12-1001 - § 23-12-1008

### **A.C.A. § 23-11-101**

It is made the duty of the Arkansas Department of Transportation, on complaint, to enforce by necessary order any or all laws of this state pertaining to railroads and express companies

