

Board of Trustees
CINCINNATI SOUTHERN RAILWAY

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Potential Sale of the Cincinnati Southern Railway to Norfolk Southern

Frequently Asked Questions

Citizens of Cincinnati interested in learning about Cincinnati Southern Railway are encouraged to visit the organization's website at www.cincinnati-southern-railway.org. There, you will find information regarding its history, its Board of Trustees, public information regarding its meetings including financial statements, leases & legal documents, organization bylaws and more. You'll also find a media room providing media releases/statements, images and more, as well as information specific to the proposed sale of CSR to Norfolk Southern. You can also contact a representative of CSR via the website.

Q. Since when does the City of Cincinnati own a railroad?

A. The Cincinnati Southern Railway (CSR) was constructed by the City of Cincinnati in the late 19th century. It is a 337-mile rail line, including 9,500 acres, running from Cincinnati (OH) to Chattanooga (TN). The Ohio legislature adopted legislation on May 4, 1869, that was introduced by Senator Edward A. Ferguson. It enabled the City of Cincinnati to invest and build the railroad. That legislation is generally referred to as the "Ferguson Act." The Ferguson Act has been amended several times since its adoption. Construction began in the 1870's and was completed in 1880. The first rail car ran on the line on February 21, 1880.

Q. Why was state legislation required for Cincinnati to build a rail line?

A. The Ohio Constitution, at the time, prohibited Ohio cities from investing in a private enterprise such as a railroad. The Ferguson Act enabled Ohio cities with over 150,000 in population to build and own a railroad pending approval of its voters.

Q. Why haven't I heard more about the CSR?

A. It is likely that public awareness of the Cincinnati Southern Railway is low because no City employees are involved in the operation of the railway and the City of

Frequently Asked Questions (cont.)

Cincinnati neither owns nor operates it. The Cincinnati Southern Railway Board of Trustees owns the railroad in a trust and leases it to a private operator for the benefit of the City of Cincinnati. The City of Cincinnati bi-annual budget only reflects revenue received from payments generated by leasing the railway. Such revenue is used for infrastructure improvements.

Q. I am still confused. Who is CSR? Who is CNOTP? Who is Norfolk Southern?

A. *It can be confusing. The **Cincinnati Southern Railway (CSR)** is a 337-mile, 9,500-acre rail line located between Cincinnati (OH) and Chattanooga (TN) that became operational in 1880. It is owned by the Cincinnati Southern Railway Board of Trustees. In October 1881, the City of Cincinnati entered into a lease agreement with the **Cincinnati, New Orleans and Texas Pacific Company (CNOTP)** to operate and maintain the railroad. The CNOTP has continued to lease the railway to the present day. CNOTP is now a subsidiary of **Norfolk Southern Corporation (NS)**.*

Q. How much revenue is generated by CSR annually for the City of Cincinnati?

A. *According to the 2020 & 2021 CSR Board of Trustees Financial Statements, which can be found on the CSR website (www.cincinnati-southern-railway.org), the 2021 lease payments received by the City of Cincinnati were \$23,359,043. Additionally, the CSR currently receives about \$2 million annually in tax credit payments resulting from its ownership and CNOTP's improvements of the rail line. Since 1987, the beginning of the current lease period, cumulative rent payments received by the City of Cincinnati were \$609,255,342.*

Q. That's a lot of money. How is it used to benefit the citizens of Cincinnati?

A. *Based upon a resolution adopted by City Council in 1987, all CSR lease revenue transferred to the City of Cincinnati is limited in its use to the financing of infrastructure restoration per the recommendations of the all-volunteer City of Cincinnati Infrastructure Commission, also often referred to as the "Smale Commission." It was led by John Smale who was then CEO of Procter & Gamble. Co. Additionally, per a tax levy approved by Cincinnati voters in 1988, the City of Cincinnati must spend a certain amount of funds on infrastructure improvements, the definition of which is included in Cincinnati Municipal Code 311-3(b) to continue to levy 0.1% of the City's income tax each year.*

The changes to the Ferguson Act imposed by CSR for the sale of the railroad in the November 21, 2022 sale agreement executed with Norfolk Southern include some key differences. Several of those differences include: (i) prohibiting the City of Cincinnati from using any CSR trust fund earnings received to pay down debt, thereby ensuring funds are available each year and not pledged to a certain project for a period of time; (ii) clarifying the definition of what CSR trust fund earnings may

Frequently Asked Questions (cont.)

be used for to ensure that the City of Cincinnati's existing infrastructure improvements provide maximum long-term value to the citizens of Cincinnati; and (iii) prohibiting the City of Cincinnati from using CSR trust fund earnings for the construction of new infrastructure improvements.

Q. Who is on the CSR Board of Trustees and who appoints them?

A. According to the legislation adopted in 1977 (replacing the initial provisions of the Ferguson Act), the CSR Board of Trustees are appointed by the Mayor of Cincinnati and approved by the Cincinnati City Council. This legislation mandated that the political affiliations of the Board must be disclosed and that no more than three members of the same political party are permitted to serve on the Board. Trustees serve five-year terms. There are no term limits. Trustees do not receive compensation. You can learn more about the CSR Board of Trustees at <http://cincinnati-southern-railway.org/about/board-of-trustees.php>.

Current CSR Board of Trustee members were appointed by former Cincinnati Mayor John Cranley. They are as follows:

- *Paul Muething, President (Republican)*
- *Paul Sylvester, Treasurer (Democrat)*
- *Charles Luken, Vice President (Democrat)*
- *Mark Mallory (Democrat)*
- *Amy Murray (Republican)*

Q. Are members of the Board of Trustees of the Cincinnati Southern Railway compensated for their service on the Board?

A. No. The members of the Board of Trustees are volunteers and do not receive any compensation for their service.

Q. When does the CSR Board meet and are their meetings public?

A. The CSR Board meets in public sessions announced publicly as prescribed in Ohio law and on the CSR website (www.cincinnati-southern-railway.org).

Q. Why have I seen comments in the media that the CSR Board met in “secret” to discuss the sale of the railroad?

A. Ohio's open meetings law enables government bodies, including the CSR Board of Trustees, to meet privately (this is often referred to as meeting in “Executive Session”) when discussing matters as outlined in Ohio Revised Code Section 121.22. Such matters include considering the purchase or sale of public property, certain personnel-related situations, issues of pending or imminent court action, and more. Discussing these matters in private allows the CSR Board of Trustees to avoid

Frequently Asked Questions (cont.)

disclosing sensitive information that could be used against it to its detriment – and, by extension, the public’s detriment – in negotiations and legal proceedings.

Q. When did you start negotiations with NS?

A. *In 2020, we initiated negotiations with Norfolk Southern (NS) on a new lease. The current lease, which began in 1987, expires in 2026. Later in 2021, NS expressed interest in buying the railway. At that time, they made it clear they would pay substantially more to own the railroad than to lease it.*

Q. Why did discussions move from a lease negotiation to a sale negotiation?

A. *Norfolk Southern introduced the idea of purchasing the railway rather than continuing with discussions on a new lease. That occurred in mid-2021. As to why this happened, all we know is that NS indicated that it would pay substantially more to own the railroad than to lease it.*

Q. Who made the first offer? When was it made? How many times did CSR and NS go back and forth in their negotiations?

A. *It’s not an uncomplicated answer. What began as a negotiation for a new lease ended in a signed purchase agreement. NS indicated through the lease negotiation process that it was willing to pay more for a purchase of the railway rather than an extended lease. Through strenuous negotiations, that were supported by valuation data from the Board’s experts, the Board accepted NS’s offer to purchase the railway.*

The Board and NS negotiated the transaction for well over a year. In December 2020, the Board proposed that NS pay CSR an annual lease of \$65 million per year starting 2027. We repropose the same in July 2021. In August 2021, NS countered with a suggested annual lease starting at \$28.9 million. The CSR remained steadfast in October 2021 at the \$65 million figure. NS proposed \$28.9 again in November 2021. As contemplated by (provided in) the existing lease, NS exercised its right to extend it an additional 25 years in December 2021. In response to such extension, and in accordance with the existing lease, the CSR again proposed \$65 million. In April 2022, NS finally increased their lease offer to \$37.3 million, which remained well below the CSR’s expectations for rent for the extended lease term. If NS and the Board could not come to terms on a lease price, which seemed likely in April 2022, either party could elect to proceed with arbitration starting June 30, 2022.

Importantly, in July 2021, NS also offered \$865 million to purchase the railway. In August 2021, that offer was increased to \$915 million. In October 2021, CSR countered with an offer of \$2 billion. NS again increased their offer to \$1.015 billion in November 2021. In January 2022, the CSR changed our offer to \$1.8 billion. NS countered in April 2022 with an offer of \$1.55 billion. CSR and NS executed a

Frequently Asked Questions (cont.)

purchase agreement on November 21, 2022 for \$1.6 billion plus transaction fees of \$24.5 million.

Q. Who advised the CSR Board during these negotiations?

A. CSR engaged BMO Capital Markets Corp. ("BMO") in January 2019 to assist the CSR with renegotiating the lease. As part of that process, BMO prepared several valuations of the Cincinnati Southern Railway. Additionally, the CSR, through its outside legal counsel, Stinson LLP, retained The Brattle Group Inc. to provide valuation services. Both experts provided a range of values for the line, ultimately demonstrating that the \$1.6 billion sale offer accepted by the CSR is a fair purchase price.

Q. What kind of advice did they provide?

A. Generally speaking, their advice focused on issues that influenced the value of railway operating companies and, therefore, informed CSR negotiations with NS. The Board's outside legal counsel provided legal advice throughout the negotiations.

Q. At what amounts was the railroad valued?

A. Multiple consultants using different processes valued the railroad in ranges from \$616 million to \$2.46 billion. Some valuations were based on what NS might have to spend to use an alternative route. Other valuations were based on what a 3rd party buyer might pay for CSR. Still other valuations were based on the current value of an NS offer to purchase CSR in 2009 for \$500 million. In addition, consultants sought to determine the opportunity cost to NS if CSR was longer available to it. All of this, and more, informed CSR negotiations with NS.

Q. Is the CSR Board of Trustees authorized to sell the rail line?

A. One role of the CSR Board of Trustees is to periodically consider the sale or lease of the rail line. To sell the railroad: (i) the CSR Board of Trustees must announce the sale; and, (ii) the voters of the City of Cincinnati must vote to approve its sale. Recent negotiations with Norfolk Southern (NS), focused primarily on lease renewal, were started in 2020. NS expressed interest in purchasing all of the assets of the rail line in 2021. NS made it clear they would pay substantially more to own the railroad than to lease it. In 2022, the CSR Board concluded, after expert review, arduous negotiations, and thoughtful consideration, that selling the railway for \$1.6 billion plus transaction fees of \$24.5 million provides more value to the citizens of Cincinnati than continuing to lease it on the terms offered by NS and more value than CSR could obtain through the arbitration process set forth in the current lease. On November 21, 2022, a sale/purchase agreement was executed between CSR and NS. The agreement is subject to certain conditions, including approval of a

Frequently Asked Questions (cont.)

referendum by the voters in the City of Cincinnati and revisions to state law acceptable to the CSR Board of Trustees.

Q. What conditions must be met to enable a purchase of CSR by NS?

A. Importantly, the railway cannot be sold without the approval of the citizens of Cincinnati. In addition, conditions which are fundamental to the CSR's recommendation to sell the railroad, and are included in the sale agreement with NS, require amending the Ferguson Act to:

- Enable CSR to create the "trust fund" in which the CSR must place the railway sale proceeds. Currently, sale proceeds can only be used to retire City bonded debt.*
- Ensure that trust fund earnings could only be used to "rehabilitate, modernize, or replace existing infrastructure" and could never be used for the construction of new infrastructure improvements.*
- Require CSR to establish investment policies and engage financial experts to advise us on the growth and management of the trust fund.*
- Require CSR to invest and reinvest the trust fund responsibly in accordance with another Ohio law (ORC Section 5809.02), referred to as the "prudent investor standard of care" law.*
- Establish that CSR can, only in extreme circumstances (if there are "not sufficient earnings" defined as "not less than the amount approved" by the voters), use trust fund principal to make a minimal annual distribution to the City in order to avoid disruption of City spending on existing infrastructure improvements.*

Q. Why is the CSR Board recommending to Cincinnati voters to sell the railroad to Norfolk Southern?

A. In 2022, the CSR Board concluded, after expert review, arduous negotiations, and thoughtful consideration, that selling the railway for \$1.6 billion plus transaction fees of \$24.5 million provides more value to the citizens of Cincinnati than continuing to lease it on the terms offered by NS or could be obtained through the arbitration process.

The CSR Board of Trustees has been advised and has concluded that earnings transferred to the City from a \$1.6 billion trust fund will likely more than double what the City might have received from future lease payments. Consider:

- In 2024, based on the current lease which runs through 2026, the annual lease payment will be \$25.5 million.*
- In 2024, earnings from a \$1.6 billion trust fund are projected to be \$57.1 million after reserving approximately \$30 million to grow the trust fund as a hedge against inflation.*

Frequently Asked Questions (cont.)

- *In 2066, if the CSR had agreed to a new lease with NS starting in 2026 at the rent then in effect, and that rent grew 2% annually, it would be \$58.6 million.*
- *In 2066, projected earnings from a trust fund started in 2024 with \$1.6 billion would be \$131.2 million. That's 123.8% more than that year's hypothetical lease payment.*

Q. How did you make your decision? Why are you so certain it is a good idea?

A. The CSR Board of Trustees sought the expert input of two independent firms as to the current value of the railway. In addition, the CSR consulted with Marquette Associates to understand how much money can be generated by investing and reinvesting a portion of the sale proceeds. Marquette estimates that a trust fund with a principal balance of \$1.6 billion which is conservatively invested will return 5.5% over time and that if 3.5% of this investment income (fund earnings) is distributed to the city and the balance is added to the principal of the trust as a hedge against future inflation and increased construction costs for existing infrastructure improvements, the distribution will be \$57.1 million, or 123.8% higher than projected lease payments. A potential lease under consideration at the time could have extended to 2066. If the lease payments began at \$25.5 million, lease revenue at the end of the lease would be \$58.6 million and, considering the 123.8% difference, projected earnings from the trust fund are \$131.2 million.

Of course, members of the CSR Board of Trustees understood that trust fund earnings will differ from projections. However, the CSR Board of Trustees and our advisors believe the above scenario to be reasonable, prudent and responsible.

To provide even more detail for why the CSR Board has recommended the sale of the railroad, pursuant to the existing lease, CNOTP has the right to extend it for an additional 25 years. They exercised that right in December 2021. If CSR and CNOTP cannot come to an agreement on the lease rate for the extension period, then the matter would proceed to non-binding arbitration. In essence, this would leave the establishment of future lease payments for a yet-to-be-determined period up to independent third parties. This arbitration would yield a non-binding result. After such a process, the CSR Board would have the right to approach other potential operators for the sale or lease of the rail line. Importantly, the CSR Board and CNOTP could not come to an agreement with respect to the lease rate after years of negotiation.

For all of these reasons, the CSR Board has concluded that proposing to sell the rail line to NS, as opposed to continuing the lease, is of greater value to the citizens of Cincinnati.

Q. If the railroad were sold without changing the Ferguson Act, what can the sale proceeds be used for?

Frequently Asked Questions (cont.)

A. *Currently, without amending legislative language from 1869 in the Ferguson Act, proceeds from the sale of CSR could only be used to reduce the bonded debt of the city. The signed purchase agreement between CSR and NS on November 21, 2022, is contingent upon the proposed amendment of the Ferguson Act.*

Q. What would the proposed amendment of the Ferguson Act do?

A. *The proposed amendment to the Ferguson Act would enable the CSR Board of Trustees to establish, manage and administer a “railway proceeds trust fund” for the purpose of receiving the net proceeds of the sale. Other proposed changes define acceptable uses of “railway trust fund proceeds.”*

Q. What is a “railway proceeds trust fund?”

A. *A “trust fund” is designed to hold and manage assets on someone else’s behalf. It is similar to a university endowment or a pension fund. In this case, the sale of CSR, subject to the approval of the citizens of Cincinnati, would generate “railway proceeds” to be placed into a “trust fund” that would be managed and administered by the CSR Board of Trustees for the benefit of the citizens of Cincinnati.*

Q. Does the CSR Board of Trustees know how to manage a trust fund?

A. *The new proposed Ohio legislation would require the CSR Board of Trustees to invest and reinvest the trust fund under what is referred to as the “prudent investor standard of care” Act (ORC Section 5809.02). It also requires the Board to retain at least one independent financial advisor to assist them in investing and reinvesting the trust fund and further enables the CSR Board to retain other experts as needed to manage trust fund assets.*

Q. What is the “prudent investor standard of care”?

A. *The prudent investor standard of care is described in Ohio law ([ORC Section 5809.02](#)). Generally speaking, it requires the CSR Board of Trustees to invest the trust assets as if they were their own, with reasonable care, skill, and caution and in consideration of the trust fund’s beneficiaries, in this case, the City of Cincinnati.*

Q. How are the proposed changes to state law different than what currently happens?

A. *Currently, if the railway was sold, state law requires the CSR sale proceeds to be used on debt service. Under the proposed changes, payment of debt service is prohibited so that earnings distributed from the trust fund to the City are available each year and not pledged to a specific infrastructure improvement over extended periods of time.*

Frequently Asked Questions (cont.)

Additionally, the proposed state law provides more detail on what constitutes infrastructure restoration by allowing funds to only be used on the following: the rehabilitation, modernization or replacement of existing infrastructure improvements. It defines “existing infrastructure improvements” as, “streets, bridges, municipal buildings, parks and green space, site improvements, recreation facilities, improvements for parking purposes, and any other public facilities that are owned by the City of Cincinnati with a useful life of five or more years. Such definition does not include the construction of new infrastructure improvements.”

Q. How much will NS pay for the Cincinnati Southern Railway?

A. The CSR Board of Trustees, with the support of independent experts and after arduous negotiations and thoughtful consideration, agreed to sell the railway to NS at the price \$1.6 billion plus an additional \$24.5 million in transaction fees. The sale is pending certain conditions, including the approval of a referendum by the voters of the City of Cincinnati.

Q. Will the sale of the railway generate more revenue annually than continuing to lease the railway?

A. Yes. The CSR Board of Trustees has been advised and has concluded that earnings transferred to the City from a \$1.6 billion trust fund will likely more than double what the City might have received from future lease payments. In 2024 alone, lease proceeds are projected at \$25.5 million while potential trust fund earnings are projected at \$57.1 million.

Here’s a little more information about how the CSR Board of Trustees concluded that selling the railroad was a much better deal for the City of Cincinnati.

The CSR Board of Trustees sought the expert input of two independent firms as to the current value of the railway. In addition, it consulted with Marquette Associates as to how much money can be generated by investing and reinvesting the sale proceeds. Marquette estimates that a trust fund with a principal balance of \$1.6 billion, which is conservatively invested, will return at least 5.5% and that if 3.5% of this investment income is distributed to the city and the balance (2.0%) is added to the principal of the trust as a hedge against future inflation and increased construction costs for existing infrastructure improvements, the distribution will be \$57.1 million, or 123.8% higher than projected lease payments. A potential lease under consideration at the time could have extended to 2066. If the lease payments begin at \$25.5 million, lease revenue at the end of the lease would be \$58.6 million and, considering the 123.8% difference, projected earnings from the trust fund are \$131.2 million.

Of course, trust fund earnings will differ from projections. However, the CSR Board

Frequently Asked Questions (cont.)

of Trustees and its advisors believe the above scenario to be reasonable, prudent and responsible.

CSR investment policies still need to be developed. CSR investment advisors still need to be engaged. Each is required in the proposed state legislation. Importantly, and also required in the proposed state legislation, CSR investment policies must ensure that the trust fund is administered efficiently, is self-sustaining, and that the trust fund principal is not diminished while providing the City of Cincinnati annual payments to be used only for existing infrastructure improvements.

Q. Can Cincinnati City Council decide how CSR trust fund proceeds are spent?

A. No. Neither Cincinnati Mayors, City Councils, the City administration, nor any other individual or organization, has the authority to administer or manage the trust fund. This is the sole responsibility of the CSR Board of Trustees. To the extent that the CSR trust fund proceeds will be received as revenue on an annual basis by the City of Cincinnati, such use is restricted to “existing infrastructure improvements” as defined in the proposed state legislation. The Mayor, Cincinnati City Council and the City Administration can direct their expenditure for such purposes.

Q. Some have said that a future City Council can simply spend all the CSR sale proceeds on whatever projects they want. Is that true?

A. No. At least the answer is no unless the Ferguson Act is further revised by the Ohio Legislature to specifically enable that to occur. Again, neither current or future Mayors, City Councils, the City administrators, nor any other individual or organization, has the authority to administer or manage the trust fund. This is the sole responsibility of the CSR Board of Trustees. To the extent that the CSR trust fund proceeds will be received as revenue on an annual basis by the City of Cincinnati, such use is restricted to “existing infrastructure improvements” as defined in the proposed state legislation. The Mayor, Cincinnati City Council and the City Administration can direct their expenditure for such purposes.

Q. Can the CSR Board of Trustees or the City of Cincinnati spend the principal of the trust rather than restricting expenditures to the trust’s earnings?

A. Neither Cincinnati Mayors, City Councils, the City administration, nor any other individual or organization, has the authority to spend the principal of the trust fund. Management of the trust fund is the sole responsibility of the CSR Board of Trustees. The proposed changes to the “Ferguson Act,” in addition to enabling the establishment of a trust fund, stipulates that moneys transferred from the trust “shall be paid from investment earnings of the trust fund.” It also provides that if there are “not sufficient earnings,” defined as “not less than the amount approved” in the referendum, CSR Board of Trustees “shall remit the remainder” of the “amount approved” from the trust fund principal. It is anticipated that the minimal annual

Frequently Asked Questions (cont.)

distribution amount will be approximately the amount of the current lease payment (\$25.5 million).

Q. Assuming approval of the referendum by the citizens of Cincinnati permitting the sale of the railroad, which is contingent upon the proposed amendment to the “Ferguson Act,” what can money transferred from CSR be used for?

A. Revenue to the City of Cincinnati from CSR can only be used for existing infrastructure improvements. This is defined as, “streets, bridges, municipal buildings, parks and green space, site improvements, recreation facilities, improvements for parking purposes, and any other public facilities that are owned by the City of Cincinnati with a useful life of five or more years. Such definition does not include the construction of new infrastructure improvements.”

Q. What is the timeframe of the proposed sale of the Cincinnati Southern Railway?

A. Currently, the CSR Board of Trustees is hopeful that the desired changes to the “Ferguson Act” can be approved early enough in 2023 to enable the City Council to submit a referendum to the citizens of Cincinnati for the 2023 General Election which is on November 7, 2023. If approved by the citizens of Cincinnati, the closing of the sale is expected as early as that same month.