



Aida S. Montano

Bill Analysis
Legislative Service Commission

Sub. S.B. 282
123rd General Assembly
(As Passed by the Senate)

Sens. Nein, Kearns, Hagan, Brady, Johnson

BILL SUMMARY

- Provides limited immunity from civil and criminal liability to a railroad company and to an employee of a railroad company if the employee complies with a municipal ordinance by failing to sound a locomotive engine whistle or bell at a crossing.

CONTENT AND OPERATION

Operation of the bill

The bill provides that, notwithstanding R.C. 4955.32 (governing the use of locomotive engine bells and whistles or alternative audible warning system at crossings--see "Existing law, etc.," below) and 4955.34 (assigning civil liability for failure to use locomotive engine bells and whistles or alternative audible warning system at crossings--see "Existing law, etc.," below), no railroad company, no engineer of a railroad company, and no other employee of a railroad company is subject to prosecution in a criminal proceeding or is liable in damages in a civil action for injury, death, or loss to person or property allegedly arising from the failure of the engineer or other employee to sound a whistle or ring a bell at a highway or street crossing or private crossing if all of the following apply: (1) the incident giving rise to the proceeding or claim occurred within a municipal corporation that had adopted an ordinance regulating the use of a whistle or bell by a locomotive engine within the municipal corporation, (2) the engineer or other employee was operating the locomotive engine in compliance with that municipal ordinance, and (3) the failure of the engineer or other employee to sound a whistle or ring a bell allegedly was the proximate cause of the incident giving rise to the proceeding or claim. (R.C. 4955.321(A).)

The bill does not create a new cause of action or substantive legal right against a railroad company, an engineer, or other employee of a railroad company. Additionally, the bill does not affect any immunities from or defenses to a criminal

proceeding or civil action established by other R.C. sections or available at common law to which the railroad company, engineer, or other employee of a railroad company may be entitled. The bill does not prohibit the prosecution of a civil or criminal action against a railroad company, engineer, or other employee of a railroad company for any act or omission not involving the use of a whistle or bell. (R.C. 4955.321(B), (C), and (D).)

Existing law--requirement to sound whistle and bell or activate alternative audible warning system at crossing and penalty

R.C. 4955.32 requires every railroad company to attach a bell and a steam or compressed air whistle to each of its locomotive engines. When a locomotive engine approaches a public crossing, or a private crossing where the view of the crossing is obstructed, the engineer or person in charge of the engine must sound the whistle at a distance of between 80 and 100 rods from the crossing and ring the bell continuously until the engine passes the crossing.¹ R.C. 4955.32 was amended by Am. H.B. 607 of the 123rd General Assembly, effective October 27, 2000, to provide that in lieu of sounding a whistle and ringing a bell as required under continuing law, an alternative audible warning system must be activated when an engine approaches a public or obstructed private crossing, if one is approved by the Public Utilities Commission.² The establishment of an alternative audible warning system does not preclude the sounding of a whistle by a person in charge of an engine in an emergency situation, as determined by the sole judgment of that person. (R.C. 4955.32(B)(2) and (D).) These requirements are not to interfere with the proper observance of a municipal ordinance regulating the management of railroads, locomotives, and steam whistles on locomotives within the limits of a municipal corporation (R.C. 4955.32(C)).

R.C. 4955.321, as enacted by Am. H.B. 607, permits the Public Utilities Commission to evaluate alternative systems for providing an audible warning of an approaching locomotive engine. It may approve the use of an audible warning system as an alternative to the whistle and bell required under continuing law, but *only* if it determines that the alternative audible warning system complies with applicable federal requirements for an audible warning of an approaching train and only if train-activated warning devices (for example, gates and lights) also are present at any crossing at which the alternative audible warning system is installed. The

¹ A rod is 16.5 linear feet; therefore, 80 to 100 rods equals 1,320 to 1,650 feet, or 440 to 550 yards.

² An example of an alternative audible warning system is a system of warning horns that are installed at the grade crossing and sound automatically when the crossing gates and flashing lights are activated.

Commission must establish guidelines for the use and operation of any alternative audible warning system it approves.³

Any railroad engineer or other person in charge of a locomotive engine who fails to comply with the requirements to sound the engine's whistle and ring the bell or to activate an alternative audible warning system as described above is personally liable for a penalty of not less than \$50 nor more than \$100. The state can recover that penalty by bringing a civil action in the court of common pleas of the county in which the crossing is located. The engineer or person who fails to comply with those requirements and the company that employs that person are liable in damages to a person or company injured in person or property by the engineer's or person's neglect or act. (R.C. 4955.34.)

COMMENT

In light of the changes made by Am. H.B. 607, as described above, a question is raised whether the bill may need to be amended to provide limited immunity from civil and criminal liability to a railroad company and to an employee of a railroad company if the employee complies with a municipal ordinance by failing to activate an alternative audible warning system.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-30-00	p. 1543
Reported, S. Judiciary	05-24-00	p. 1813
Passed Senate (33-0)	05-25-00	p. 1864

S0282-PS.123/nlr

³ Since Am. H.B. 607 has enacted new R.C. 4955.321, that same section number in the bill (Sub. S.B. 282) will need to be changed.