Sean S. Fouts *Legislative Service Commission*

H.B. 247

125th General Assembly
(As Introduced)

Rep. T. Patton

BILL SUMMARY

- Defines and authorizes the establishment of three types of demonstration railroad quiet zones in five specified municipal corporations.
- Requires approval by the Public Utilities Commission of Ohio (PUCO) before one of the five specified municipal corporations could establish a demonstration railroad quiet zone implementing and using an alternative safety measure.
- Requires the PUCO to inspect each demonstration railroad quiet zone implementing and using an "alternative safety measure" at least once every three years.
- Allows the PUCO to require the implementation of safety measures it considers necessary and appropriate at public grade crossings in demonstration railroad quiet zones implementing and using an alternative safety measure.

CONTENT AND OPERATION

Municipal corporations with authority to establish demonstration railroad quiet zones

(secs. 4955.42, 4955.43, and 4955.44)

Current Ohio law requires the sounding of a locomotive whistle or bell within specified distances of railroad crossings.[1] The bill specifically allows only the municipal corporations of Berea, Brooklyn, Brook Park, Olmsted Falls, and

[1] *R.C. 4955.32(B)(1) and (2) and R.C. 4999.04(A)(2).*

Strongsville to establish demonstration railroad quiet zones. A railroad quiet zone is an area around a railroad crossing within which a whistle or bell may not be sounded. Under the bill, the specified cities may establish one of three types of quiet zones, all of which are defined by proposed federal rules. (See **COMMENT** 1.)

The *first type* of quiet zone is one that qualifies under Appendix C of the proposed federal rules.[2] This appendix specifies a number of conditions, such as a specific, slow train speed. If these conditions are met in an area adjacent to one or more consecutive public grade crossings, a city may declare a "demonstration railroad quiet zone" encompassing those crossings.

The *second type* of quiet zone is one for which "supplementary safety measures" specified in the federal regulations (Appendix A) are implemented for every crossing within the zone. The federal supplementary safety measures listed in the regulations include: (1) the temporary closure of public highway-rail grade crossing, (2) a four-quadrant gate system, (3) gates with medians or channelization devices, (4) a one-way street with gate, and (5) photo enforcement (presumably of motorists not stopping at the gates).

The *third type* of quiet zone is one for which "alternative safety measures" are implemented for the crossings within the zone. Seven alternative safety measures are listed in the federal regulations (Appendix B). The first five are identical to the five supplementary safety measures (Appendix A) listed above. However, unlike the supplementary safety measures applied under Appendix A, the specific requirements associated with a particular supplementary safety measure may be adjusted or revised under Appendix B. The purpose as set forth in the federal rules is to tailor the use and application of various supplementary safety measures to a specific set of circumstances. In addition, Appendix B includes two additional safety measures that may be adopted to implement a demonstration quiet zone: (6) programmed enforcement and (7) public education and awareness. The proposed federal rules indicate that federal approval may be necessary for this third type of quiet zone. (See **COMMENT** 2.)

If one of the five cities listed in the bill desires to establish a railroad quiet zone, it must do so by enacting a local ordinance prior to the effective date of the initial regulations adopted pursuant to the federal "Swift Rail Development Act."[3] (See **COMMENT** 3.)

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[2] *49 C.F.R. 222.41(c) and (e) and Appendices (A), (B), and (C) as set forth in 65 F.R. 2230 to 2270.*

[3] *Pub. L. No. 103-440, 108 Stat. 4615, 49 U.S.C. 20153.*

PUCO approval required for the third type demonstration railroad quiet zones implementing and using alternative safety measures

(sec. 4955.45)

Under the bill, type three quiet zones are subject to approval by the Public Utilities Commission of Ohio. Municipal corporations may individually or jointly apply to the PUCO for approval of these quiet zones, following the enactment of an ordinance or ordinances. The PUCO shall specify in what form the application shall take and what information the application shall contain. Upon the filing of the application, the PUCO shall authorize a limited period for the filing of comments by any party regarding the application.

After the consideration of such comments, the PUCO shall approve the application, or approve it with conditions, if the PUCO finds that the alternative safety measures proposed for each public crossing comply with the guidelines as set forth in the Federal Register, and are appropriate and adequate for the crossing. If the PUCO disapproves all or part of an application, the PUCO shall state the findings and reasons for disapproval.

Report and inspection of demonstration railroad quiet zones

(sec. 4955.48)

Municipal corporations that establish any type of demonstration railroad quiet zones must submit a report to the PUCO every three years. The PUCO shall specify the form of the report and what information it shall contain, including at least (1) information on the number of traffic citations issued at the crossing, (2) roadway traffic counts at the crossing, and (3) changes to the crossing and roadway due to construction or improvements.

Once every three years the PUCO must inspect each public grade crossing in type three demonstration railroad quiet zones and issue a report documenting the compliance of the zone with the PUCO order authorizing the zone. The PUCO may inspect such a crossing at any time. Also at any time, the PUCO, after notice and opportunity for the filing of comments, may require the implementation and use of safety measures as it considers necessary and appropriate.

Written notice

(sec. 4955.46(A))

At least 90 days before any type of demonstration railroad quiet zone is first in effect, the municipal corporation is required to provide detailed, written notice of the established zone by certified mail, return receipt requested, to each of

the following: (1) each railroad operating over a public grade crossing included in the zone, (2) the authority responsible for control of vehicular traffic at the crossings, (3) the PUCO, (4) the Director of Public Safety, and (5) the Associate Administrator for Safety for the Federal Railroad Administration.

Locomotive whistles

(secs. 4955.46(B) and 4955.47)

The bill requires the PUCO to issue an order prohibiting a person in charge of a locomotive from sounding any locomotive whistle, horn, bell, or other audible warning device in any demonstration railroad quiet zone, within the distance of each public crossing, as the distance is designated in the ordinance (or in the PUCO order approving the zone, in the case of a type three zone). Neither such an order nor the bill precludes the sounding of a locomotive whistle, horn, bell, or other audible warning device if the person in charge of the locomotive is addressing a perceived potential for injury, death, or loss to person or property, as determined by the sole judgment of the person in charge of the locomotive.

The bill exempts demonstration railroad quiet zones from the current law, requiring the sounding of locomotive whistles at railroad grade crossings or crossings where the view is obstructed.

Governmental function and civil immunity

(sec. 4955.49(A))

The bill defines all activities surrounding demonstration railroad quiet zones as a governmental function under the political subdivision tort liability law. The bill also specifies that civil immunity law and indemnity law found in Revised Code sections 9.85 through 9.87 and Chapter 2743. apply to these demonstration railroad quiet zones.[4]

[4] *Sections 9.85 through 9.87 of the Revised Code indicate that no officer or employee of this state shall be liable in civil actions concerning the performance of his or her duties, unless the actions were manifestly outside the scope of his or her employment, or he or she acted with malicious purpose, in bad faith, or in wanton or reckless manner.*

Payment by railroads not required

(sec. 4955.49(B))

The bill states that nothing in the proposed law requires, authorizes, or obligates the payment by a railroad or the state of any part of the costs of establishing demonstration railroad quiet zones.

COMMENT

1. Article II, Section 26 of the Ohio Constitution reads in part, "All laws, of a general nature, shall have a uniform operation throughout the state; . . ." It is uncertain how a court would rule if addressed with the question of whether limiting the power to create demonstration railroad quiet zones to five specific municipal corporations violates this provision of the Ohio Constitution. Ohio law (and possibly the home rule authority under Article XVIII, Section 7 of the Ohio Constitution) currently allows any municipal corporation to prohibit a railroad company from blowing or sounding any locomotive stream whistle or other sounding within corporate limits.[5] However, the bill does provide the benefit of specified civil immunity to the five municipal corporations authorized by the bill to create these demonstration railroad quiet zones.

2. According to the discussion accompanying the proposed regulations, "the [Federal Railroad Administration] would consider a quiet zone under the [Appendix B] approach as long as implementation of the proposed . . . alternative safety measures on the quiet zone as a whole will cause a reduction in risk to compensate for the lack of a locomotive horn (at 65 F.R. 2245)."

3. Article VI of the U.S. Constitution declares that all laws made in conformance with the Constitution at the federal level are the supreme law of the land, notwithstanding any state laws to the contrary. The U.S. Congress has authorized the U.S. Secretary of Transportation to adopt regulations regarding the sounding of a locomotive horn. The regulations must require that a locomotive horn be sounded when a train is approaching each public highway-rail grade crossing.[6] The law allows the Secretary to grant exceptions, taking into account the interest of communities that already have in effect restrictions on the sounding of locomotive horns at highway-rail grade crossings or that have not been subject

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[5] *Howard v. Pennsylvania R. Co. (1946), 79 Ohio App. 184.*

[6] *49 U.S.C.A. Sec. 20153.*

to the routine sounding of a locomotive horn at these crossings.[7] To date, the Secretary has not adopted regulations under this law.

A federal district court has ruled that local ordinances that prohibit audible train warnings are not in conflict with the federal law *allowing* the Secretary to adopt regulations.[8] Presumably, this ruling might no longer be effective if the Secretary were to issue regulations that do not allow conflicting local ordinances. The bill only allows municipal corporations to enact these demonstration railroad quiet zones before the effective date of initial federal regulations. Presumably, whether a federal preemption issue arises will depend partially on the final language of any federal regulations. The LSC can never state with certainty how a court is likely to rule on any Constitutional issue.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	07-11-03	p. 1012

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[7] *49 U.S.C.A. Sec. 20153(i).*

[8] *Civil City of South Bend, Ind. v. Consolidated Rail Corp. (N.D. Ind. 1995), 880 F. Supp. 595.*