



**Am. Sub. H.B. 247\***

125th General Assembly

(As Reported by S. Highways & Transportation)

**Reps. T. Patton, Perry, Price, S. Patton, Schlichter, McGregor, Key, Reinhard, Widowfield, Cirelli, Core, Daniels, DeBose, Domenick, Fessler, Flowers, Hoops, Hughes, Jolivette, Kearns, Kilbane, Latta, Martin, Miller, Raussen, Schmidt, Schneider, Setzer, Skindell, S. Smith, J. Stewart, Walcher, Webster, Wilson**

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**BILL SUMMARY**

- Authorizes the establishment of railroad quiet zones by municipal corporations and townships, following the effective date of certain proposed federal railroad rules. (See **COMMENT.**)
- Requires approval by the Public Utilities Commission of Ohio (PUCO) of all railroad quiet zones.
- Requires the PUCO to inspect each railroad quiet zone at least once every three years.
- Allows the PUCO to require the implementation of safety measures it considers necessary and appropriate at grade crossings in railroad quiet zones.
- Permits the establishment of "demonstration" railroad quiet zones along certain portions of railroad lines prior to the effective date of the federal rules.
- States that no state funds may be used to pay costs associated with establishment of quiet zones unless certain conditions are met.

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*\* This analysis was prepared before the report of the Senate Highways and Transportation Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

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## CONTENT AND OPERATION

### *Authority of municipal corporations and townships to establish railroad quiet zones*

(sec. 4955.42)

Current Ohio law requires the sounding of a locomotive whistle or bell within specified distances of railroad crossings.<sup>1</sup> The bill specifically permits municipal corporations and townships to establish railroad quiet zones after the effective date of initial federal rules governing quiet zones adopted pursuant to the federal "Swift Rail Development Act."<sup>2</sup> (See **COMMENT.**) A railroad quiet zone is an area around a railroad crossing within which a whistle or bell may not be sounded. Those quiet zones allowed by the bill may be established only if "supplementary safety measures" are implemented for every crossing within the zone. These supplementary safety measures may include: (1) the temporary closure of public highway-rail grade crossings, (2) a four-quadrant gate system, (3) gates with medians or channelization devices, and (4) a one-way street with gate.

### *PUCO approval required for all railroad quiet zones*

(sec. 4955.42)

All quiet zones established pursuant to the bill are subject to approval by the Public Utilities Commission of Ohio. Following the enactment of an ordinance or resolution establishing a quiet zone, the municipal corporation or township is required to send a detailed written notice to each railroad operating over a public grade crossing within the quiet zone. The notice must be sent by certified mail, return receipt requested, and must request the railroad to give a written reply that includes its comments about the quiet zone and details any concerns it has with any aspect of the quiet zone. It also must inform the railroad that if the municipal corporation or township does not receive the railroad's written reply within 60 days of the notice's delivery date, the municipal corporation or township is permitted to submit its quiet zone approval application to the PUCO without the railroad's written reply. The municipal corporation or township also may inform the PUCO that it provided the written notice but that the railroad did not reply in a timely manner.

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<sup>1</sup> R.C. 4955.32(B)(1) and (2) and R.C. 4999.04(A)(2), not in the bill.

<sup>2</sup> Pub. L. No. 103-440, 108 Stat. 4615, 49 U.S.C. 20153.

The municipal corporation or township then may apply to the PUCO for approval of the quiet zone. In addition, any combination of municipal corporations and townships may apply jointly to the PUCO for approval. The PUCO must specify the form and content of the application. All applications must contain the following:

(1) The written reply, if any, from each railroad operating over a public grade crossing located within the quiet zone. If there is a written reply and it contains concerns that the railroad has about any aspect of the quiet zone, the municipal corporation or township must include a written statement explaining how it will meet those concerns;

(2) A written statement from the Federal Railroad Administration, stating that the agency has no objection to the establishment of the quiet zone (see **COMMENT 1**);

(3) If a municipal corporation or township wishes to pay all or part of the cost of the installation or maintenance of supplemental safety measures at a highway grade crossing located within the quiet zone in an adjoining municipal corporation or township, a written statement from the adjoining municipal corporation or township agreeing to that arrangement;

(4) A list of the private grade crossings, if any, that are located within the quiet zone, and a description of how the municipal corporation or township will ensure the safety of those who utilize those private grade crossings if the commission approves the quiet zone.

Upon the filing of the application, the PUCO must authorize a limited period for the filing of comments by any party regarding the application. After the consideration of such comments, the PUCO may approve the application, approve it with conditions, or reject it. If the application is complete and otherwise meets the bill's requirements, the PUCO must approve the quiet zone if it finds that the supplemental safety measures proposed for each public crossing comply with the guidelines as set forth in the federal rules, and are appropriate and adequate for the crossing. If the PUCO disapproves all or part of an application, the PUCO must state the findings and reasons for disapproval. A municipal corporation or township subsequently may submit a substantially modified application to the PUCO for approval.

The commission must reject an application that does not include the required documents as specified in the bill. If the application includes a written reply from a railroad (containing its comments about the quiet zone and detailing any concerns it has with any aspect of the quiet zone) and a written statement from the municipal corporation or township explaining how it will meet those concerns,

the PUCO must reject the application if it finds that the statement from the municipal corporation or township does not adequately address the concerns of the railroad contained in the railroad's written reply. If the application includes a statement describing how the municipal corporation or township will ensure the safety of those persons who utilize any private grade crossings located within the quiet zone, the PUCO must reject the application if it finds that the application does not adequately address the issue of the safety of those persons (see COMMENT 2).

### **Report and inspection of railroad quiet zones**

(sec. 4955.45)

Municipal corporations and townships that establish railroad quiet zones must submit a report to the PUCO every three years. The PUCO must specify the form of the report and what information it must 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 located in a railroad quiet zone 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. 4955.43(A))

At least 90 days before a railroad quiet zone is first in effect, the municipal corporation or township 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. 4955.43(B) and 4955.44)

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 a railroad quiet zone, within the distance of each public crossing, as the distance is designated in the PUCO order approving the 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 quiet zones from the current state law requiring the sounding of locomotive whistles at railroad grade crossings or crossings where the view is obstructed.

### **PUCO suspension of the operation of a quiet zone**

(sec. 4955.44(C))

The bill empowers the PUCO to suspend summarily the operation of a quiet zone if it obtains sufficient, credible evidence showing that a condition at a public grade crossing located within a quiet zone has changed to such an extent that, even with the continuing existence of the supplemental safety measures at the crossing, the quiet zone no longer qualifies as such under federal law or PUCO determines that public safety is otherwise compromised at the crossing. Within 15 days following the quiet zone suspension date, the PUCO must hold a hearing in the general vicinity of the quiet zone to determine whether the suspension should be lifted or continued, or whether PUCO approval of the quiet zone should be rescinded and the quiet zone eliminated.

### **Governmental function and civil immunity**

(sec. 4955.46(A) and (B))

The bill defines all activities surrounding 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 railroad quiet zones.<sup>3</sup>

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<sup>3</sup> Sections 9.85 through 9.87 of the Revised Code indicate that no officer or employee of this state (such as a PUCO commissioner) 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.

### **Quiet zone funding issues**

(sec. 4955.46(C) and (D))

The bill contains several provisions relating to quiet zone funding issues. First, it provides that nothing in the proposed law requires or obligates the payment by a railroad of any part of the costs of establishing railroad quiet zones. Next, it provides that if, prior to the creation of a railroad quiet zone, a railroad is paying any part of the maintenance costs of a railroad grade crossing protective device then in existence within the quiet zone, the railroad must continue to pay those maintenance costs after the PUCO approves the quiet zone, but the railroad is not required to pay any of the additional costs associated with the installation or maintenance of any protective device installed thereafter due to the creation of the quiet zone.

With the exceptions discussed below, the bill prohibits any money appropriated by the General Assembly, including money in the existing Grade Crossing Protection Fund, to pay the costs of measures taken to "increase the safety of the traveling public at a public railroad grade crossing" from being diverted from such use to pay any costs associated with the establishment of a railroad quiet zone. The bill specifically allows the use of state grade crossing safety funds to pay part of the costs of additional safety improvements required to establish a railroad quiet zone when the municipal corporation or township establishing the quiet zone complies with the provisions of the bill if (1) the municipal corporation or township closes a public grade crossing in the same railroad corridor as the railroad quiet zone, or (2) the Department of Transportation has selected the municipal corporation or township as a participant in the grade separation program along the same railroad corridor as the railroad quiet zone.

Finally, the bill expressly prohibits any political subdivision of the state from using state funds of any kind to assist in the planning, construction, development, operation, or maintenance of a railroad quiet zone unless the political subdivision acts in accordance with the bill.

### **Railroad immunity**

(sec. 4955.47)

The bill provides that no railroad company and no company employee or agent may be charged, or is liable in damages to person or property, for any failure to sound an audible warning by whistle, horn, bell, or other audible warning device at a public or private grade crossing that is:

- (1) Equipped with a PUCO-approved alternative audible warning system;
- (2) Located in a PUCO-approved quiet zone; or
- (3) Located in a jurisdiction in which such sounding is restricted or prohibited by law.

### **Demonstration quiet zones**

The bill provides that notwithstanding the provision in the bill that permits quiet zones to be established *only after* the effective date of initial federal rules governing quiet zones, *demonstration* quiet zones may be established after the bill becomes law but prior to the effective date of the initial federal rules (see **COMMENT**). Only the following portions of railroad lines are eligible to have demonstration quiet zones established on them:

(1) The Chicago Line of the Norfolk Southern Corporation, from the point where that line enters the municipal corporation of Brook Park in the north and ending where the line exits the municipal corporation of North Ridgeville in the west.

(2) The Short Line of the CSX Railroad, from the point where that line enters the municipal corporation of Brooklyn in the east and ending where the line exits the municipal corporation of Olmsted Falls in the south.

(3) The Old B&O Line of the CSX Railroad, from the point where that line enters the municipal corporation of Brooklyn in the east and ending where the line exits the municipal corporation of Strongsville in the west.

All other provisions of the bill apply to demonstration quiet zones created on these three railroad lines.

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## **COMMENT**

1. On December 18, 2003, the Federal Railroad Administration of the United States Department of Transportation issued interim final rules on the use of locomotive horns at highway-rail grade crossings and the establishment of quiet zones. (68 Fed. Reg. No. 243, 70,664, to be codified at 49 C.F.R. Parts 222 and 229, effective December 18, 2004.)

Under these rules, a "public authority" may establish quiet zones "irrespective of State laws covering the subject matter of sounding or silencing locomotive horns at public highway-rail grade crossings." 49 CFR 222.37(a) and (b). The rules recognize that a "State agency may provide administrative and

technical services to public authorities by advising them, acting on their behalf, or acting as a central contact point in dealing with FRA. . . ." 49 CFR 222.37(c). Eligible public authorities that comply with required information and notification provisions may designate a quiet zone "without the need for formal application to, and approval by FRA." 49 CFR 222.39.

In accordance with 49 U.S.C. 20106, issuance of the federal rules "preempts any State law, rule, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is *necessary to eliminate or reduce an essentially local safety hazard* (emphasis ours); is not incompatible with a law, regulation, or order of the United States government; and does not unreasonably burden interstate commerce." 49 CFR 222.7.

2. If the PUCO rejects the quiet zone application prescribed by the bill, the municipal corporation or township *may* still be able to establish a quiet zone in accordance with the federal law procedures, but no state funds could be used in connection with the establishment of the quiet zone.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	07-11-03	p. 1012
Reported, H. Transportation & Public Safety	11-13-03	p. 1161
Passed House (87-4)	11-13-03	pp. 1178-1180
Reported, S. Highways & Transportation	---	---

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