



Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 116*

128th General Assembly
(As Reported by H. Public Utilities)

Sens. Buehrer, Goodman, Patton, D. Miller, Sawyer, Cates, Faber, Gibbs, Harris, Hughes, R. Miller, Morano, Schiavoni, Seitz, Turner, Wagoner, Wilson, Fedor, Kearney, Smith

BILL SUMMARY

- Authorizes local governments to file a complaint with the Public Utilities Commission (PUCO) against a railroad for failure to maintain railroad highway crossings, remove obstructive vegetation at crossings, and maintain and improve railroad crossings at grade and authorizes the PUCO to order compliance.
- Requires the PUCO staff to contact the railroad and permits the PUCO staff to meet to review a complaint, if the complaint is filed alleging a railroad's failure to maintain railroad highway crossings and remove obstructive vegetation.
- Repeals the option giving local governments authority to maintain railroad highway crossings, remove obstructive vegetation at crossings, and maintain and improve railroad crossings at grade on behalf of railroads, to recover costs of doing so, and in the case of maintaining railroad highway crossings to seek damages for the railroad's failure to comply with the requirements.
- Authorizes the assessment of forfeitures by the PUCO, and their recovery, in the amount of \$2,500 for violating the requirements imposed on railroads for maintaining railroad highway crossings, removing obstructive vegetation at crossings, and maintaining and improving railroad crossings at grade and provides for the distribution of such moneys.

* This analysis was prepared before the report of the House Public Utilities Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Changes several references in Title 49 of the Revised Code to "station agent" and "section foremen" of the railroad to "division engineer, roadmaster, or track supervisor."

CONTENT AND OPERATION

General power of the PUCO over railroads

(R.C. 4905.04 and 4907.08 (not in the bill))

Current law generally authorizes the Public Utilities Commission (PUCO) to supervise and regulate railroads and to promulgate and enforce all orders relating to the protection, welfare, and safety of railroad employees and the traveling public, including the apportionment between railroads and the state and its political subdivisions of the costs of constructing protective devices at railroad grade crossings. It also requires the PUCO to inquire into any neglect or violation of Ohio laws by a railroad doing business in Ohio or by any person operating a railroad; to enforce all laws relating to railroads; to report violations of such laws to the Attorney General; and to examine into any matter dealing with a railroad or its officers, agents, or employees.

Railroad highway crossings

(R.C. 4955.21 and 4955.22; R.C. 4955.20 (not in the bill))

Requirements to maintain crossings, approaches, and sidewalks

Current law generally requires railroads in Ohio to maintain crossings over or approaches to their tracks, sidetracks, or switches at all points of intersection with streets, roads, and highways. Railroads must also maintain good and sufficient sidewalks on both sides of streets intersected by their tracks. Crossings, approaches, and sidewalks must be constructed, repaired, and maintained by the railroad as required by the appropriate township or municipal corporation.

Compliance with build and repair requirements

Current law

Under current law, an officer having charge of a public highway, street, or alley intersected by a railroad must serve a written notice upon the nearest railroad division engineer, roadmaster, or track supervisor in charge that the crossing, approach, or sidewalk must be built or repaired, setting forth its kind and extent and the time and manner of constructing it. The railroad must comply with the notice within 30 days or the appropriate township or municipal corporation may cause such crossing, approach,

or sidewalk to be constructed or repaired as ordered and may recover the cost--along with interest--in a civil action against the railroad.

Current law also provides that a railroad neglecting to comply with building and repair requirements is liable to pay damages to the municipal corporation or township in which the highway is situated. The amount of such damages is \$30 for the neglect and an additional \$10 per day the railroad fails to comply with the requirements, which must be recovered in an action prosecuted by the prosecuting attorney of the county.

The bill

The bill replaces the township or municipal corporation authority to cause construction or repair of a crossing, approach, or sidewalk and to recover those costs through a civil action with new authority to file a complaint with the PUCO. It repeals the provisions establishing liability for damages of a railroad to a municipal corporation or township. The bill provides that if the PUCO determines that the railroad has failed to comply with the build and repair requirements, the PUCO may order compliance. The bill requires the railroad to complete the necessary construction, repair, or maintenance not later than 45 calendar days after the date the railroad receives the PUCO's compliance order, unless the railroad can show good cause as to why it cannot comply within that time period.

Under the bill if a complaint is filed with the PUCO alleging a railroad's failure to meet the build and repair requirements, the PUCO staff must contact the railroad and may meet to review the complaint.

Obstructive vegetation at crossings

(R.C. 4955.22 and 4955.36)

Under current law, every railroad must destroy or remove plants, trees, brush, or other obstructive vegetation upon its right-of-way at each intersection with a public road or highway, for a distance of 600 feet or a reasonably safe distance determined by the PUCO. If a railroad fails to destroy or remove the vegetation after a ten-day written notice, the PUCO, or the county, township, or municipal corporation in which the intersection is located, is required to remove it and to recover removal costs from the railroad. The costs must be collected in the same manner as other taxes and assessments and must be credited to the general fund of the public body causing the work to be performed. The bill repeals the provision requiring the public body to remove the obstructive vegetation and recover removal costs. Instead, the bill allows the public body to file a complaint with the PUCO. If the PUCO determines the railroad company has failed to comply with the vegetation removal requirement, the PUCO may order compliance.

Under the bill, if a complaint is filed with the PUCO alleging a railroad's failure to meet the vegetation removal requirement, the PUCO staff must contact the railroad and may meet to review the complaint.

Railroad crossings at grade

(R.C. 4955.22 and 5561.16)

Constructing and maintaining a railroad crossing at grade

Current law requires any person, firm, or corporation operating a railroad for the transportation of passengers, freight, or express, crossing at grade any street or road, to construct, reconstruct, improve, maintain, and repair--and to bear such costs and expenses--that portion of the highway at such crossing and lying between the outside ends of the ties and, in the case of two or more tracks, that portion lying between the tracks. It also requires the individual, firm, or corporation to submit detailed plans and specifications to the Director of Transportation or the county engineer, depending on who has jurisdiction over the road or highway, for approval before making such an improvement and to make proper improvements within a reasonable time.

Current law provides that upon failure to prepare and submit detailed plans and specifications or failure to make proper improvements within a reasonable time, the Director or county engineer, as appropriate, may make and pay for such improvements and upon completion certify the costs, including engineering and inspection costs, to the Attorney General or prosecuting attorney for collection in a civil action. The certification may set out the amounts of the payments and the times of making the various payments as the Director or engineer deems reasonable. The Attorney General or prosecuting attorney must then collect such costs and expenses in accordance with the certificate. The bill repeals these requirements regarding the failure to construct or maintain a railroad crossing at grade for any street or road. Instead, it authorizes that the Director, engineer, or other proper authority to file a complaint with the PUCO for any such failure and authorizes the PUCO to order compliance.

Changing railroad or railway grade when road or street is improved

Current law provides that whenever a road or street is improved where a street, interurban, or other railroad or railway lies within the improved portion of the roadway, such railroad or railway grade, in all respects, must be changed to meet the approval of the county engineer, unless otherwise provided for in the railroad or railway grant or franchise. Costs of such change must be paid by the company under the law or by the terms of the franchise or grant. Current law also requires that the improvement costs be a lien upon the property of the company and provides that the proper authorities may require payment of the amount chargeable against the company

in installments as in the case of other property owners. The installments must bear interest as in other cases and the proper authorities may issue bonds in anticipation of collecting such installments. The bill repeals the lien, collection, and bond anticipation provisions. In their place, the bill authorizes the Director, engineer, or other proper authority to file a complaint with the PUCO for any failure to comply with the requirements to change the grade to meet the approval of the engineer and authorizes the PUCO to order compliance.

Forfeitures and money recovered

(R.C. 4905.54, 4905.57, and 4907.472)

Authority to assess and recover forfeitures

Current law requires every railroad to comply with every PUCO order, direction, and requirement and provides that except in certain cases, the PUCO may assess a forfeiture of not more than \$10,000 against a railroad for each violation of certain provisions of Title 49 of the Revised Code and each failure after due notice to comply with an official PUCO order, direction or requirement. Each day's continuance of a violation or failure constitutes a separate offense. The bill allows additional forfeiture assessments of not more than \$2,500 for each violation of the requirements discussed above pertaining to railroad highway crossings, obstructive vegetation at crossings, and railroad crossings at grade.

Under current law, actions to recover forfeitures must be prosecuted in the name of the state in the court of common pleas of any county in which the railroad is located and must be commenced and prosecuted by the Attorney General when directed by the PUCO. The bill provides that the Attorney General must instead commence and prosecute such an action upon the request of the PUCO.

Distribution of forfeitures and moneys recovered

Under current law, all forfeitures collected and moneys recovered in actions to recover forfeitures must be credited to the General Revenue Fund (GRF) in the state treasury. The bill provides that each forfeiture collected or recovered due to violations pertaining to railroad highway crossings, obstructive vegetation at crossings, and railroad crossings at grade must be credited to the Grade Crossing Protection Fund in the state treasury. If the forfeiture is collected or recovered for a violation of the requirements pertaining to a railroad crossing at grade at a state highway or extension thereof, the forfeiture must be credited to the GRF.

Persons associated with railroads

(R.C. 4907.23, 4909.28, 4909.29, and 4955.21)

The bill changes, only in Title 49 of the Revised Code, references to "station agent" and "section foremen" of a railroad to "division engineer, roadmaster, or track supervisor" to reflect changes in the organization of railroads.

HISTORY

ACTION	DATE
Introduced	04-29-09
Reported, S. Energy & Public Utilities	03-04-10
Passed Senate (33-0)	03-09-10
Reported, H. Public Utilities	---

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