
PUBLIC UTILITIES COMMISSION

Wind farm setback

- Changes, from 750 feet to 1,125 feet, the minimum setback distance for wind turbines of an economically significant wind farm (5-50 megawatts) beginning on the effective date of the setback distance change.
- Applies the minimum setback requirements established in Power Siting Board (PSB) rules, including the 1,125-foot minimum setback distance, also to wind farms that are major utility facilities (50 megawatts or more).
- Maintains the current 750-foot distance for both types of wind farms (economically significant and major utility facilities) for any existing certificates and amendments thereto, and any existing certification applications found to be in compliance with PSB application requirements before the effective date of the change.

Railroad audible warnings

- Changes the railroad audible-warning requirement to a horn-sounding requirement rather than a requirement to sound a whistle and ring a bell.
- Applies the horn-sounding requirement only to public highways and grade crossings rather than to private crossings and crossings at a turnpike, highway, street, or other traveled place.
- Establishes that the sounding of a locomotive horn at a private crossing or the failure to sound a locomotive horn at a private crossing is not a basis for a civil action against the railroad, a board of county commissioners, or any local authority, or against any of their agents or employees.
- Establishes a criminal penalty of a fourth degree misdemeanor for a violation of the bill's horn-sounding requirement, and a third degree misdemeanor if a person is physically harmed, but provides an affirmative defense if an alternative audible warning system was activated.
- Repeals a provision that makes it a fourth degree misdemeanor for a person to fail to sound a locomotive whistle when approaching and passing through a grade crossing or a third degree misdemeanor if a person is physically harmed because of the failure.
- Removes a provision specifying that railroad audible-warning requirements do not interfere with local ordinances.



Telecommunications transition to Internet-protocol network

- Requires the Public Utilities Commission (PUCO) to use part of appropriation item 870622, Utility and Railroad Regulation, to plan for the transition to an Internet-protocol network.
- Requires the plan to (1) include a review of law that may prevent or delay the transition and (2) address consumer protection issues, including the availability and reliability of alternatives to basic local exchange service.
- Requires PUCO to report to the General Assembly by December 31, 2013, on any action to be taken by the General Assembly for the transition.

Recovery of environmental remediation costs

- Permits the PUCO to authorize a natural gas company or gas company to recover environmental remediation costs that are (1) prudently incurred before 2025, and (2) related to real property that, at the time recovery is authorized, is or was used for the provision of public utility service.
- Requires, if recovery is authorized, the company to, upon the sale of the real property, return to customers the difference between the sale price, minus reasonable sale expenses, and the property's fair market value prior to remediation.
- Declares that certain rate-making provisions do not preclude recovery of the environmental remediation costs.

Wind farm setback

(R.C. 4906.20 and 4906.201)

The bill increases the minimum setback distance for wind turbines of an economically significant wind farm from at least 750 feet to at least 1,125 feet beginning on the provision's effective date. Under continuing law, an economically significant wind farm is defined as wind turbines and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of at least 5 but less than 50 megawatts.²⁰¹ The bill also applies the minimum setback requirements established in Power Siting Board (PSB) rules, including the 1,125-foot distance, to an electric generating plant that consists of wind

²⁰¹ R.C. 4906.13, not in the bill.



turbines and associated facilities with a single interconnection to the electrical grid that is designed for, or capable of, operation at an aggregate capacity of *50 megawatts or more*. Under continuing law, an electric generating plant of this capacity is known as a major utility facility.²⁰² Neither a major utility facility²⁰³ nor an economically significant wind farm may be constructed without a certificate from the PSB.

The bill maintains the current setback distance of at least 750 feet for both types of wind farms for "existing" certification applications that have been found by the Chairperson of the PSB to be in compliance with PSB application requirements before the effective date of the setback distance change. The bill also states, for both types of wind farms, that the 750-foot distance applies for any existing certificates and "amendments thereto." This provision could retroactively apply a 750-foot minimum setback to wind farms that are major utility facilities (50 megawatts or more) that currently have no setback to comply with. This is because under current law, the 750-foot setback applies only to economically significant wind farms (5-50 megawatts). No setback requirement is imposed on a major utility facility wind farm in the Revised Code currently. The bill's provision is also unclear as to what is meant by "amendments thereto." Finally, the provision appears unnecessary as it applies to existing certificates for economically significant wind farms. Presumably, these wind farms should already have setbacks that are consistent with the 750-foot requirement under their certificates, since those certificates are issued under current law.

The standard for measuring the minimum footage setback distance, unchanged by the bill, is the horizontal distance measured from the tip of the turbine's nearest blade at 90 degrees to the exterior of the nearest, habitable, residential structure, if any, located on adjacent property at the time of the application for PSB certification.

Under continuing law governing economically significant wind farms, the setback does not apply to the following:

- Cases in which all owners of property adjacent to the wind farm property waive application of the setback to that property according to a procedure established by PSB rule; and
- Cases in which the PSB determines that a setback greater than the minimum is necessary.

²⁰² R.C. 4906.01(B)(1)(a), not in the bill.

²⁰³ R.C. 4906.04, not in the bill.



Railroad audible warnings

(R.C. 4955.32, 4955.322, 4955.34, and 4999.04; conforming changes in R.C. 4955.321, 4955.44, and 4955.47)

Horn-sounding requirement

The bill requires the engineer or person in charge of the locomotive in the lead of a train, a lite locomotive consist, or an individual locomotive to sound the locomotive horn in accordance with federal law when approaching a public highway or a grade crossing. This requirement does not apply if an alternative audible warning system, approved by the Public Utilities Commission (PUCO) as provided for in current law, is activated. The bill defines a "lite locomotive consist" as a consist of locomotives not attached to any piece of equipment or attached only to a caboose.

The current audible-warning requirement that is replaced by these provisions requires that when an engine is in motion and approaching a turnpike, highway, or street crossing or private crossing where the view of the crossing is obstructed by embankment, trees, curve, or other obstruction, upon the same line with the crossing, and in like manner where the railroad crosses any other traveled place, the engineer or person in charge of the engine must (1) sound the locomotive whistle at a distance of 80 to 100 rods from the crossing and (2) ring the engine's bell continuously until the engine passes the crossing. This current requirement also does not apply if an alternative audible warning system, approved by PUCO, is activated. The bill also removes a requirement that companies must attach to each locomotive engine on their railroads a bell and a steam or compressed-air whistle.

The bill removes a provision that states that the whistle-and-bell requirement does not interfere with the proper observance of an ordinance passed by the legislative authority of a municipal corporation regulating the management of railroads, locomotives, and steam whistles on locomotives within the municipal corporation.

The bill modifies a provision of current law to state that the establishment of an alternative audible warning system does not preclude the sounding of a locomotive horn in an emergency situation. Current law states that the establishment of an alternative audible warning system does not preclude the sounding of a *whistle* in an emergency.

Crimes for failure to comply with audible-warning requirements

The bill repeals a provision that makes it a fourth degree misdemeanor for a person to fail to sound a locomotive whistle at frequent intervals when approaching (at least 1,320 feet before) and passing through a grade crossing. The bill likewise repeals a



provision that makes it a third degree misdemeanor to fail to sound a whistle in this manner if a person is physically harmed because of the failure.

The bill makes it a fourth degree misdemeanor for a person to fail to comply with the bill's horn-sounding requirement, and a third degree misdemeanor if the failure causes physical harm to any person. But, the bill establishes an affirmative defense to these crimes if a PUCO-approved alternative audible warning system was activated.

Civil penalties for failure to comply with audible-warning requirements

The bill applies the current civil penalty of \$50 to \$100 for a failure to comply with current audible-warning requirements to an engineer or person who fails to comply with the bill's audible-warning requirements. Likewise, the company that employs the engineer or person remains liable in damages to a person or company injured in person or property by a failure to comply with the audible-warning requirements.

Civil actions for horn sounding at private crossings

The bill establishes that the sounding of a locomotive horn at a private crossing or the failure to sound a locomotive horn at a private crossing is not a basis for a civil action against the railroad company that operated the locomotive, a board of county commissioners, or any local authority, or against their employees or agents.

Telecommunications transition to Internet-protocol network

(Section 357.10)

The bill requires that PUCO use part of appropriation item 870622, Utility and Railroad Regulation, to plan for the transition, consistent with the directives and policies of the Federal Communications Commission, from the current public switched telephone network to an Internet-protocol network that will stimulate investment in the Internet-protocol network in Ohio and expand the availability of advanced telecommunications services to all Ohioans. The transition plan must include a review of statutes or rules that may prevent or delay an appropriate transition. It also must address consumer protection issues, including the availability and reliability of alternatives to basic local exchange service.

PUCO is required to report to the General Assembly by December 31, 2013, on any further action required to be taken by the General Assembly to ensure a successful and timely transition.



Recovery of environmental remediation costs

(R.C. 4909.157)

The bill permits the PUCO to authorize a natural gas company or gas company to recover environmental remediation costs that are (1) prudently incurred before January 1, 2025, and (2) related to real property that, at the time recovery is authorized, is or was used for the provision of public utility service. Such recovery may be provided for through the establishment of a mechanism by the PUCO. The mechanism must set forth the specific terms of the recovery and cause recovery to occur through a uniform percentage applied to base distribution revenue. The bill declares that the following required rate-making determinations do not preclude recovery of these environmental remediation costs:

(1) The valuation of the utility's property used and useful in rendering the public utility service;

(2) The cost to the utility of rendering the public utility service.

If the PUCO authorizes recovery, the bill requires the company, upon the sale of the real property, to return to the company's customers the difference between the sale price of the property (minus any reasonable expenses related to the sale) and the fair market value of the property prior to remediation.

