

As Introduced

**127th General Assembly
Regular Session
2007-2008**

H. B. No. 33

Representative Wolpert

**Cosponsors: Representatives McGregor, R., McGregor, J., Flowers, Fende,
Raussen, Combs, Ujvagi**

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A BILL

To amend section 4907.99, to enact new sections 1
4907.44, 4907.45, 4955.20, and 4955.36, and to 2
repeal sections 4907.44, 4907.45, 4907.46, 3
4955.20, 4955.21, 4955.22, and 4955.36 of the 4
Revised Code to revise state and local authority 5
regarding the safety of railroad crossings and 6
railroad tracks, bridges, and other structures and 7
additionally to extend such state authority to 8
scenic railways. 9

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 4907.99 be amended and new sections 10
4907.44, 4907.45, 4955.20, and 4955.36 of the Revised Code be 11
enacted to read as follows: 12

Sec. 4907.44. As used in sections 4907.44 and 4907.45 of the 13
Revised Code: 14

(A) "Scenic railway" means any corporation, company, 15
individual, or association of individuals, or any lessee, trustee, 16
or receiver appointed by a court, that owns, operates, manages, or 17
controls a railroad on a not-for-profit basis and exclusively as a 18

tourist or historical attraction, other than a railroad as defined 19
in sections 4907.02 and 4907.03 of the Revised Code. 20

(B) "Track," "bridge," or "other structure" means a track, 21
bridge, or other structure, respectively, that is used for the 22
transportation of freight, passengers, or railroad or scenic 23
railway crews and for which the railroad or scenic railway is 24
responsible for structural maintenance work. 25

Sec. 4907.45. (A) A railroad or scenic railway, in accordance 26
with the American engineering and maintenance-of-way association 27
codes of rules for inspection, annually shall inspect the 28
condition of each of its bridges. Inspection shall be made or 29
supervised by a professional engineer. The railroad or scenic 30
railway shall file a report of the annual inspection with the 31
public utilities commission on forms furnished by the commission 32
or in a form acceptable to the commission. 33

(B) If at any time, including upon an annual inspection of a 34
bridge under division (A) of this section, a railroad or scenic 35
railway determines that a track, bridge, or other structure is in 36
an unsafe condition such that it is dangerous or unfit for the 37
transportation of passengers, freight, or railroad or scenic 38
railway crews, or for traveling beneath if the track, bridge, or 39
other structure passes over a public highway, street, lane, 40
avenue, alley, road, or pike, the railroad or scenic railway 41
immediately shall report the condition of the track, bridge, or 42
other structure to the following: 43

(1) The commission; and 44

(2) If applicable, the public authority having jurisdiction 45
over the public highway, street, lane, avenue, alley, road, or 46
pike over which the track, bridge, or other structure passes. 47

(C)(1) The public authority may file a written complaint with 48

the commission alleging that a railroad or scenic railway has 49
failed to comply with division (B)(2) of this section. 50

(2) The public authority, or any person, may file a written 51
complaint with the commission alleging that a track, bridge, or 52
other structure is in an unsafe condition such that it is 53
dangerous or unfit for the transportation of passengers, freight, 54
or railroad or scenic railway crews, or for traveling beneath if 55
the track, bridge, or other structure passes over a public 56
highway, street, lane, avenue, alley, road, or pike. 57

(D) The commission, through its inspectors, shall examine and 58
investigate as necessary each report submitted under divisions (A) 59
and (B)(1) of this section and investigate each complaint filed 60
under division (C)(1) or (2) of this section. 61

(E)(1) Except as otherwise provided in division (E)(2) of 62
this section, if, as a consequence of an investigation under 63
division (D) of this section or at any time, an inspector has 64
reason to believe that a track, bridge, or other structure is in 65
an unsafe condition such that it is dangerous or unfit for the 66
transportation of passengers, freight, or railroad or scenic 67
railway crews, or for traveling beneath if the track, bridge, or 68
other structure passes over a public highway, street, lane, 69
avenue, alley, road, or pike, the inspector immediately shall 70
request the commission to issue a show cause order to the railroad 71
or scenic railway. If granted, the order shall be served by 72
certified mail on the local agent of the railroad or scenic 73
railway. The order shall prescribe deadlines for the necessary 74
corrective action and shall specify that the railroad or scenic 75
railway has thirty days after the certified date of receipt of the 76
show cause order to request a hearing to contest the matter. The 77
order also may specify the rate of speed for trains using the 78
track, bridge, or other structure for the period, as determined by 79
the commission, that the track, bridge, or other structure is 80

unsafe. 81

(2) If, as a consequence of an investigation under division 82
(D) of this section or at any time, the commission finds, through 83
its inspectors, that a track, bridge, or other structure is in an 84
unsafe condition such that it poses a clear and imminent danger to 85
life or health or threatens a significant loss of property and 86
requires immediate corrective action to protect the public safety, 87
the commission, without notice or prior hearing, shall order the 88
railroad or scenic railway to take immediate corrective action 89
within the deadlines specified in the order and also discontinue 90
all use of the track, bridge, or other structure for the period, 91
as determined by the commission, of the danger. The order shall 92
provide for a hearing to occur within thirty days after the date 93
of its issuance. After the hearing, the commission shall continue, 94
revoke, or modify the order. 95

(F) Within two days after the date of issuance of the order, 96
no superintendent or other executive officer of a railroad or 97
scenic railway shall fail to direct the proper subordinate 98
officers to run any passenger trains over the unsafe track, 99
bridge, or other structure at a speed not exceeding that 100
prescribed in an order under division (E)(1) of this section or to 101
discontinue running passenger trains over the unsafe track, 102
bridge, or other structure in accordance with an order under 103
division (E)(2) of this section. No engineer, conductor, or other 104
employee shall knowingly disobey the directive. 105

(G) A railroad or scenic railway shall comply with divisions 106
(A) and (B)(1) and (2) of this section and with any order or final 107
order issued under division (E)(1) or (2) of this section. 108

(H)(1) If, based upon an inspection or investigation by 109
commission staff, upon complaint by any person or by any public 110
authority described in division (B)(2) of this section, or at any 111
time, the commission has reason to believe that an individual has 112

violated division (F) of this section, or that a railroad or scenic railway has failed to comply with division (G) of this section, the commission may issue a show cause order. The order shall be served by certified mail and, in the case of a railroad or scenic railway, shall be served on its local agent. The order shall specify that the individual or, as the case may be, the railroad or scenic railway has thirty days after the certified date of receipt of the show cause order to request a hearing to contest the matter. After the thirty days or, if a hearing is held, after the hearing, the commission may assess on the individual, or the railroad or scenic railway, a forfeiture of not more than ten thousand dollars for each failure determined by the commission, with each day's continuance of the failure a separate offense. All forfeitures collected under this division shall be deposited into the state treasury to the credit of the general revenue fund. 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128

(2) The attorney general may bring an action in the court of common pleas of Franklin county or of any county having jurisdiction of the defendant, for the recovery of forfeitures under this section. 129 130 131 132

(I) The powers, remedies, and forfeitures provided by this section are in addition to any other powers, remedies, and forfeitures provided by law. However, section 4907.60 of the Revised Code shall not apply in the case of any failure to comply with division (F) of this section. 133 134 135 136 137

(J) Except as otherwise provided in division (F) of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by a railroad or scenic railway under this section, while acting within the scope of the officer's, agent's, or other person's employment, is the act, omission, or failure of the railroad or scenic railway. 138 139 140 141 142 143

Sec. 4907.99. (A) Whoever violates section 4907.21 of the Revised Code shall be fined not less than one hundred nor more than one thousand dollars.

(B) Whoever violates section 4907.22 of the Revised Code shall be fined not less than five hundred nor more than one thousand dollars.

(C) Whoever violates section 4907.32 of the Revised Code shall be fined not less than fifty nor more than five hundred dollars.

(D) Whoever violates section 4907.35 or 4907.38 of the Revised Code shall be fined not less than fifty nor more than one thousand dollars.

(E) Whoever violates division (F) of section 4907.45 of the Revised Code shall be fined not more than five hundred dollars, imprisoned not more than one year, or both.

(F) Whoever violates section 4907.473 of the Revised Code is guilty of a minor misdemeanor.

(G) Whoever violates section 4907.63 of the Revised Code is guilty of a felony of the fifth degree.

Sec. 4955.20. (A) As used in this section, "scenic railway" means any corporation, company, individual, or association of individuals, or any lessee, trustee, or receiver appointed by a court, that owns, operates, manages, or controls a railroad on a not-for-profit basis and exclusively as a tourist or historical attraction, other than a railroad as defined in sections 4907.02 and 4907.03 of the Revised Code.

(B) A railroad or scenic railway shall build and keep in repair good and sufficient crossings over or approaches to its tracks, sidetracks, and switches, at all points at which they

intersect any public highway, street, lane, avenue, alley, road, 173
or pike. Where sidewalks over the tracks are required to join 174
sidewalks already established and leading up to the tracks for 175
pedestrian safety, a railroad or scenic railway shall build and 176
keep in repair good and sufficient sidewalks on both sides of a 177
public highway, street, lane, avenue, alley, road, or pike so 178
intersected and for the full width of the right-of-way it owns, 179
claims, or occupies. 180

(C) Any person, or any public authority having jurisdiction 181
over the public highway, street, lane, avenue, alley, road, or 182
pike, may file a written complaint with the public utilities 183
commission alleging a railroad's or scenic railway's failure to 184
comply with division (B) of this section. Upon the filing of such 185
a complaint, the commission shall assign the matter to one of its 186
inspectors for investigation. 187

(D)(1) If, as a consequence of that investigation or any 188
inspection, there is reason to believe that a railroad or scenic 189
railway has failed to comply with division (B) of this section, 190
the inspector immediately shall request the commission to issue a 191
show cause order. If granted, the order shall be served by 192
certified mail on the local agent of the railroad or scenic 193
railway. The order shall specify that the railroad or scenic 194
railway has thirty days after the certified date of receipt of the 195
show cause order to request a hearing to contest the matter. 196

(2) The railroad or scenic railway shall comply with the show 197
cause order or, as applicable, shall comply with a final order 198
issued pursuant to a hearing under division (D)(1) of this 199
section, in accordance with the timelines the commission shall 200
prescribe in the order and to the extent necessary to comply with 201
division (B) of this section as determined by the commission. 202

(E)(1) After notice and opportunity for hearing, the 203
commission may impose on a railroad or scenic railway a forfeiture 204

of not more than ten thousand dollars for each failure to comply 205
with division (D)(2) of this section as determined by the 206
commission, with each day's continuance a separate offense. 207
Chapter 4903. of the Revised Code applies to a proceeding under 208
division (E)(1) of this section. All forfeitures collected under 209
this section shall be deposited into the state treasury to the 210
credit of the general revenue fund. 211

(2) The attorney general may bring an action in the court of 212
common pleas of Franklin county or of any county having 213
jurisdiction of the defendant, for the recovery of forfeitures 214
under this section. 215

(3) The commission's authority under section 4905.60 of the 216
Revised Code shall extend to enforcement against a railroad or 217
scenic railway under this section. 218

(F) The act, omission, or failure of any officer, agent, or 219
other person acting for or employed by a railroad or scenic 220
railway under this section, while acting within the scope of the 221
officer's, agent's, or other person's employment, is the act, 222
omission, or failure of the railroad or scenic railway. 223

(G) The powers, remedies, and forfeitures provided by this 224
section are in addition to any other power, remedy, forfeiture, or 225
penalty provided by law. 226

Sec. 4955.36. (A) As used in this section, "scenic railway" 227
means any corporation, company, individual, or association of 228
individuals, or any lessee, trustee, or receiver appointed by a 229
court, that owns, operates, manages, or controls a railroad on a 230
not-for-profit basis and exclusively as a tourist or historical 231
attraction, other than a railroad as defined in sections 4907.02 232
and 4907.03 of the Revised Code. 233

(B) For a distance of six hundred feet upon its right-of-way 234

at each intersection with a public road or highway, a railroad or scenic railway shall destroy or remove plants, trees, brush, or other vegetation materially obstructive to the view of approaching trains by travelers on the road or highway. 235
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(C) Any person, or any public authority having jurisdiction over the public road or highway, may file a written complaint with the commission alleging a railroad's or scenic railway's failure to comply with division (B) of this section. Upon the filing of such a complaint, the commission shall assign the matter to one of its inspectors for investigation. 239
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(D)(1) If, as a consequence of that investigation or any inspection, there is reason to believe that a railroad or scenic railway has failed to comply with division (B) of this section, the inspector immediately shall request the commission to issue a show cause order. If granted, the order shall be served by certified mail on the local agent of the railroad or scenic railway. The order shall specify that the railroad or scenic railway has thirty days after the certified date of receipt of the show cause order to request a hearing to contest the matter. 245
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(2) The railroad or scenic railway shall comply with the show cause order or, as applicable, shall comply with a final order issued pursuant to a hearing under division (D)(1) of this section, in accordance with the timelines the commission shall prescribe in the order and to the extent necessary to comply with division (B) of this section as determined by the commission. 254
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(E)(1) After notice and opportunity for hearing, the commission may impose on a railroad or scenic railway a forfeiture of not more than ten thousand dollars for each failure to comply with division (D)(2) of this section as determined by the commission, with each day's continuance a separate offense. Chapter 4903. of the Revised Code applies to a proceeding under division (E)(1) of this section. All forfeitures collected under 260
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this section shall be deposited into the state treasury to the 267
credit of the general revenue fund. 268

(2) The attorney general may bring an action in the court of 269
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jurisdiction of the defendant, for the recovery of forfeitures 271
under this section. 272

(3) The commission's authority under section 4905.60 of the 273
Revised Code shall extend to enforcement against a railroad or 274
scenic railway under this section. 275

(F) The act, omission, or failure of any officer, agent, or 276
other person acting for or employed by a railroad or scenic 277
railway under this section, while acting within the scope of the 278
officer's, agent's, or other person's employment, is the act, 279
omission, or failure of the railroad or scenic railway. 280

(G) The powers, remedies, and forfeitures provided by this 281
section are in addition to any other power, remedy, forfeiture, or 282
penalty provided by law. 283

Section 2. That existing section 4907.99 and sections 284
4907.44, 4907.45, 4907.46, 4955.20, 4955.21, 4955.22, and 4955.36 285
of the Revised Code are hereby repealed. 286