

As Reported by the House Public Utilities Committee

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Sub. S. B. No. 116

Senator Buehrer

**Cosponsors: Senators Goodman, Patton, Miller, D., Sawyer, Cates, Faber,
Gibbs, Harris, Hughes, Miller, R., Morano, Schiavoni, Seitz, Turner, Wagoner,
Wilson, Fedor, Kearney, Smith**

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A B I L L

To amend sections 4905.54, 4905.57, 4907.23, 1
4907.472, 4909.28, 4909.29, 4955.21, 4955.36, and 2
5561.16; to enact new section 4955.22 and section 3
4907.081; and to repeal section 4955.22 of the 4
Revised Code to authorize the Public Utilities 5
Commission to hear complaints regarding a 6
railroad's failure to properly sustain certain 7
areas near its tracks and to authorize forfeiture 8
for noncompliance and to update certain provisions 9
of law governing railroads. 10

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

Section 1. That sections 4905.54, 4905.57, 4907.23, 4907.472, 11
4909.28, 4909.29, 4955.21, 4955.36, and 5561.16 be amended and new 12
section 4955.22 and section 4907.081 of the Revised Code be 13
enacted to read as follows: 14

Sec. 4905.54. (A) Every public utility or railroad and every 15
officer of a public utility or railroad shall comply with every 16
order, direction, and requirement of the public utilities 17

commission made under authority of this chapter and Chapters 18
4901., 4903., 4907., 4909., 4921., and 4923. of the Revised Code, 19
so long as they remain in force. Except as otherwise specifically 20
provided in sections 4905.83, 4905.95, 4919.99, 4921.99, and 21
4923.99 of the Revised Code, the public utilities commission may 22
assess a the following: 23

(1) A forfeiture of not more than ten thousand dollars for 24
each violation or failure against a public utility or railroad 25
that violates a provision of those chapters or that after due 26
notice fails to comply with an order, direction, or requirement of 27
the commission that was officially promulgated; 28

(2) A forfeiture of not more than two thousand five hundred 29
dollars for each violation or failure against a public utility or 30
railroad that violates section 4955.20, 4955.21, 4955.36, or 31
5561.16 of the Revised Code or that after due notice fails to 32
comply with an order, direction, or requirement of the commission 33
that was officially promulgated. ~~Each~~ 34

(B) Each day's continuance of the violation or failure under 35
this section is a separate offense. ~~All~~ 36

(C) All forfeitures collected under this section shall be 37
credited to the general revenue fund, except as follows: 38

(1) Other than a forfeiture collected as provided in division 39
(C)(2) of this section, each forfeiture collected for violating 40
sections 4955.20, 4955.21, 4955.36, and 5561.16 of the Revised 41
Code shall be credited to the grade crossing protection fund 42
created by section 4907.472 of the Revised Code. 43

(2) In the case of a violation of section 5561.16 of the 44
Revised Code related to a state highway or extension thereof, the 45
forfeiture shall be credited to the general revenue fund. 46

Sec. 4905.57. Except as otherwise specifically provided in 47

sections 4905.83, 4905.96, 4919.99, 4921.99, and 4923.99 of the
Revised Code, actions to recover forfeitures provided for in this
chapter and Chapters 4901., 4903., 4907., 4909., 4921., and 4923.
of the Revised Code shall be prosecuted in the name of the state
and may be brought in the court of common pleas of any county in
which the public utility or railroad is located. Such actions
shall be commenced and prosecuted by the attorney general ~~when he
is directed to do so by~~ upon the request of the public utilities
commission. Moneys recovered by such actions shall be deposited in
the state treasury to the credit of the general revenue fund,
except as follows:

(A) Other than moneys recovered as provided in division (B)
of this section, the moneys recovered for violating sections
4955.20, 4955.21, 4955.36, and 5561.16 of the Revised Code shall
be credited to the grade crossing protection fund created by
section 4907.472 of the Revised Code.

(B) In the case of a violation of section 5561.16 of the
Revised Code related to a state highway or extension thereof, all
moneys recovered by an action under this section shall be
deposited to the credit of the general revenue fund.

Sec. 4907.081. If a complaint is filed pursuant to sections
4905.04 and 4907.08 of the Revised Code with the public utilities
commission alleging a railroad's violation of section 4955.20 or
4955.36 of the Revised Code, the staff of the commission shall
contact the railroad and may meet to review the complaint.

Sec. 4907.23. Whenever an accident attended with loss of
human life occurs within this state upon the line of any railroad,
or on the depot grounds or yards of any railroad, such railroad
shall give immediate notice of such accident to the public
utilities commission.

In case of such accident, the commission, if it deems the public interest requires it, shall cause an investigation to be made forthwith, which shall be held in the locality of the accident, unless for greater convenience of those concerned, the commission orders such investigation held at some other place. Such investigation may be adjourned from place to place as is necessary and convenient. The commission shall give reasonable notice to an officer, division engineer, roadmaster, or ~~station agent~~ track supervisor of the company of the time and place of the investigation.

The cost of such investigation shall be certified by the ~~chairman~~ chairperson of the commission, and audited and paid by the state as other expenses. The commission shall keep a record or file of the proceedings and evidence.

Sec. 4907.472. (A) There is hereby created in the state treasury the grade crossing protection fund for the purpose of paying:

(1) The public share of the cost of reducing hazards at public highway-railway crossings at any location where a railway and a public highway intersect each other at a common grade, when such protection is ordered by the public utilities commission pursuant to section 4907.47, 4907.471, or 4907.49 of the Revised Code;

(2) The costs incurred by the commission in administering sections 4907.47 to 4907.476 of the Revised Code.

(B) Moneys for the fund shall be provided from forfeitures assessed pursuant to section 4905.54 of the Revised Code, the motor fuel tax levied under section 5735.05 of the Revised Code, and any federal funds apportioned and allocated to the state for the reduction of hazards at railroad grade crossings. One hundred thousand dollars shall be transferred to the fund each month as

provided for in section 5735.23 of the Revised Code, and may be 109
expended by the commission to pay the public share of the costs 110
for reducing hazards at railway crossings with highways, roads, or 111
streets on the state, county, township, or municipal highway and 112
street systems and the costs incurred by the commission in 113
administering sections 4907.47 to 4907.476 of the Revised Code, 114
provided that not more than ten per cent of the amounts thus 115
transferred each fiscal year may be used for paying such 116
administrative costs that fiscal year. 117

Sec. 4909.28. If, upon an investigation under Chapters 4901., 118
4903., 4905., 4907., 4909., 4921., and 4923., ~~and 4925.~~ of the 119
Revised Code, the public utilities commission finds that any 120
existing rate, fare, charge, or classification, any joint rate, or 121
any regulation or practice affecting the transportation of persons 122
or property, or service in connection therewith, is unreasonable 123
or unjustly discriminatory, or that any service is inadequate, it 124
shall determine and by order fix a reasonable rate, fare, charge, 125
classification, joint rate, regulation, practice, or service to be 126
imposed, observed, and followed in the future, in place of that so 127
found to be unreasonable, unjustly discriminatory, or inadequate. 128
A certified copy of each such order shall be delivered to an 129
officer, division engineer, roadmaster, or station agent track 130
supervisor of the railroad affected, and such order shall of its 131
own force take effect and become operative thirty days after 132
service. 133

All railroads to which such order applies shall make such 134
changes in their schedules on file as are necessary to conform to 135
such order, and no change shall thereafter be made by any railroad 136
in any such rate, fare, or charge, or in any joint rate, without 137
the approval of the commission. 138

Sec. 4909.29. Certified copies of all orders, other than 139

those referred to in section 4909.28 of the Revised Code, of the 140
public utilities commission shall be delivered to an officer, 141
division engineer, roadmaster, or ~~station agent~~ track supervisor 142
of each railroad affected thereby, and shall take effect within 143
such time thereafter as the commission prescribes. 144

Sec. 4955.21. The officers having charge of a public highway, 145
street, or alley intersected by a railroad shall serve a written 146
notice upon the nearest ~~station agent or section foreman~~ division 147
engineer, roadmaster, or track supervisor having charge of that 148
portion of the railroad where such intersection occurs that the 149
crossing, approach, or sidewalk described in section 4955.20 of 150
the Revised Code must be built or repaired, setting forth its kind 151
and extent and the time and manner of constructing it, as ordered 152
by the legislative authority of the municipal corporation or board 153
of township trustees. 154

A railroad company so notified must comply with such notice 155
within a period of thirty days after receiving it. On failure to 156
do so, the board or legislative authority may ~~cause such crossing,~~ 157
~~approach, or sidewalk to be constructed or repaired as ordered,~~ 158
~~and recover the cost of so doing with interest in a civil action~~ 159
~~against the railroad company in the name of the board or municipal~~ 160
~~corporation~~ file a complaint with the public utilities commission 161
pursuant to sections 4905.04 and 4907.08 of the Revised Code. 162

Sec. 4955.22. If, pursuant to section 4907.08 of the Revised 163
Code, the public utilities commission determines that the company 164
or person having control or management of a railroad is in 165
violation of section 4955.20, 4955.21, 4955.36, or 5561.16 of the 166
Revised Code, the commission may order compliance. With respect to 167
a railroad's violation of section 4955.20 of the Revised Code, the 168
commission's order shall require the railroad to complete the 169
necessary construction, repair, or maintenance not later than 170

forty-five calendar days after the date the railroad receives the 171
commission's order, unless the railroad can show good cause as to 172
why it cannot comply with that time period. 173

Sec. 4955.36. Every railroad company shall destroy or remove 174
plants, trees, brush, or other obstructive vegetation upon its 175
right-of-way at each intersection with a public road or highway, 176
for a distance of six hundred feet or a reasonably safe distance 177
from the roadway of such public road or highway as shall be 178
determined by the public utilities commission. 179

When any railroad company fails to destroy or remove such 180
vegetation after ten-day written notice served on its local agent, 181
the ~~commission~~, board of county commissioners, board of township 182
trustees, or legislative authority of a municipal corporation, in 183
which the intersection is located, having the care of such road or 184
highway, ~~shall remove such plants, trees, brush, or other~~ 185
~~obstructive vegetation and shall recover the cost of removal from~~ 186
~~the responsible railroad company. If the company fails to pay the~~ 187
~~amount demanded within thirty days, after such company has been~~ 188
~~notified by certified mail at the address to which tax bills are~~ 189
~~sent, the commission, board of county commissioners, board of~~ 190
~~township trustees, or legislative authority of a municipal~~ 191
~~corporation shall certify the amount demanded to the county~~ 192
~~auditor of the county in which the work was performed to be~~ 193
~~collected as other taxes and assessments and upon collection shall~~ 194
~~be credited to the general fund of the public body causing said~~ 195
~~work to be performed~~ may file a complaint with the commission 196
pursuant to sections 4905.04 and 4907.08 of the Revised Code. 197

Sec. 5561.16. Any person, firm, or corporation operating a 198
railroad for the transportation of passengers, freight, or 199
express, crossing at grade any street or road, shall construct, 200
reconstruct, improve, maintain, and repair that portion of the 201

highway at such crossing and lying between the outside ends of the 202
ties, and also that portion lying between the tracks, in the case 203
of two or more tracks, and the cost and expense of this 204
construction, reconstruction, improvement, maintenance, or repair 205
shall be borne by said individual, firm, or corporation. Such 206
construction, reconstruction, improvement, maintenance, or repair 207
shall be done in accordance with plans, profiles, and 208
specifications first approved by the director of transportation, 209
in case of state highways or extensions thereof, or by the county 210
engineer, in case of county and township roads or extensions 211
thereof. 212

Such individual, firm, or corporation, upon being notified by 213
the director, in case of state highways or extensions thereof, or 214
the engineer, in case of county or township roads or extensions 215
thereof, that ~~he~~ the director or engineer has determined that it 216
is necessary that such individual, firm, or corporation make such 217
improvement, and being informed of the character thereof in a 218
general way, shall, within thirty days from receiving such notice, 219
which shall be served by the sheriff in the same manner as summons 220
in civil action, prepare and submit to the director or engineer 221
for ~~his~~ approval, detailed plans and specifications covering such 222
improvement. The director or engineer may approve such plans and 223
specifications as submitted, or ~~he~~ the director or engineer may 224
change such plans and specifications and approve them as changed. 225
Within thirty days after the approval of such plans by the 226
director or engineer, such individual, firm, or corporation shall 227
proceed to make such improvement, in accordance with the plans and 228
specifications approved, and complete it in a reasonable time. 229

~~If such individual, firm, or corporation does not, within the 230
time limited, prepare and submit for approval such plans and 231
specifications, or proceed to make such improvement, or, having 232
proceeded to make such improvement within the time limited, fail 233~~

~~to complete the same within a reasonable time, or proceed to make~~ 234
~~such improvement not in accordance with the plans and~~ 235
~~specifications so approved, the director or engineer may enter~~ 236
~~upon and make such improvement in accordance with the plans and~~ 237
~~specifications so approved, or if plans and specifications have~~ 238
~~not been submitted and approved, then in accordance with plans and~~ 239
~~specifications prepared by the director or engineer.~~ 240

~~The costs of making such improvement, including engineering~~ 241
~~and inspection, by the director or engineer, shall, in the first~~ 242
~~instance, be paid by the director or county out of any~~ 243
~~appropriation of the department of transportation or county~~ 244
~~available for the construction, reconstruction, improvement,~~ 245
~~maintenance, or repair of highways.~~ 246

~~Upon the completion of such improvement, the director or~~ 247
~~engineer shall certify the amount of the costs, including~~ 248
~~engineering and inspection of such improvement, to the attorney~~ 249
~~general or prosecuting attorney, for collection by civil action.~~ 250
~~The director or engineer, in such certificate to the attorney~~ 251
~~general or prosecuting attorney, may set out the amount of the~~ 252
~~payments and the time of making the various payments as set out,~~ 253
~~as deemed reasonable by the director or engineer.~~ 254

~~The prosecuting attorney or attorney general shall proceed to~~ 255
~~collect such costs and expenses, in accordance with the~~ 256
~~certificate of the director or engineer. Whenever a road or street~~ 257
~~is improved where a street, interurban, or other railroad or~~ 258
~~railway lies within the improved portion of the roadway, such the~~ 259
~~individual, firm, or corporation operating the railroad shall~~ 260
~~change the railroad or railway grade ~~shall~~, in all respects, ~~be~~~~ 261
~~changed to meet the approval of the engineer, unless otherwise~~ 262
~~provided for in the grant or franchise by virtue of which such~~ 263
~~railroad or railway operates on or occupies said highway. Costs of~~ 264
~~such change shall be paid by the ~~company,~~ individual, firm, or~~ 265

~~corporation under the law or by the terms of its franchise or 266
grant, shall be a lien upon the property of such company, and the 267
proper authorities may provide for the payment of the amount 268
chargeable against said company, under the law or by the terms of 269
its franchise or grant, in installments as in the case of other 270
property owners. Such installments shall bear interest as in other 271
cases, and the board of county commissioners or other authorities 272
may issue bonds in anticipation of the collection of such 273
installments. 274~~

The director, engineer, or other proper authority may file a 275
complaint with the public utilities commission pursuant to 276
sections 4905.04 and 4907.08 of the Revised Code for any failure 277
to comply with this section. 278

Section 2. That existing sections 4905.54, 4905.57, 4907.23, 279
4907.472, 4909.28, 4909.29, 4955.21, 4955.36, and 5561.16 and 280
section 4955.22 of the Revised Code are hereby repealed. 281