

As Introduced

**130th General Assembly
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H. B. No. 570

Representative Rogers

Cosponsors: Representatives Gerberry, Barborak, Celebrezze

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A B I L L

To amend sections 4905.54, 4905.57, 4905.95, 4907.47, 1
4907.60, 4921.21, and 4973.11 and to enact 2
sections 4905.97, 4905.971, 4905.972, 4905.973, 3
4905.974, and 4905.975 of the Revised Code to 4
require that a portion of forfeitures assessed for 5
violations or compliance failures resulting in 6
property damage be paid to the political 7
subdivision in which the damage occurred or to a 8
political subdivision or state agency that 9
incurred costs in remediating the violation or 10
compliance failure. 11

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

Section 1. That sections 4905.54, 4905.57, 4905.95, 4907.47, 12
4907.60, 4921.21, and 4973.11 be amended and sections 4905.97, 13
4905.971, 4905.972, 4905.973, 4905.974, and 4905.975 of the 14
Revised Code be enacted to read as follows: 15

Sec. 4905.54. Every public utility or railroad and every 16
officer of a public utility or railroad shall comply with every 17
order, direction, and requirement of the public utilities 18
commission made under authority of this chapter and Chapters 19

4901., 4903., 4907., and 4909. of the Revised Code, so long as 20
they remain in force. Except as otherwise specifically provided in 21
section 4905.95 of the Revised Code, the public utilities 22
commission may assess a forfeiture of not more than ten thousand 23
dollars for each violation or failure against a public utility or 24
railroad that violates a provision of those chapters or that after 25
due notice fails to comply with an order, direction, or 26
requirement of the commission that was officially promulgated. 27
Each day's continuance of the violation or failure is a separate 28
offense. ~~All~~ Except as provided in sections 4905.97 to 4905.975 of 29
the Revised Code, all forfeitures collected under this section 30
shall be credited to the general revenue fund. 31

Sec. 4905.57. Except as otherwise specifically provided in 32
sections 4905.96 and 4923.99 of the Revised Code, actions to 33
recover forfeitures provided for in this chapter and Chapters 34
4901., 4903., 4907., 4909., and 4923. of the Revised Code shall be 35
prosecuted in the name of the state and may be brought in the 36
court of common pleas of any county in which the public utility, 37
railroad, or motor carrier is located. Such actions shall be 38
commenced and prosecuted by the attorney general when the attorney 39
general is directed to do so by the public utilities commission. 40
~~Moneys~~ Except as provided in sections 4905.97 to 4905.975 of the 41
Revised Code, moneys recovered by such actions shall be deposited 42
in the state treasury to the credit of the general revenue fund. 43

Sec. 4905.95. (A) Except as otherwise provided in division 44
(C) of this section: 45

(1) The public utilities commission, regarding any proceeding 46
under this section, shall provide reasonable notice and the 47
opportunity for a hearing in accordance with rules adopted under 48
section 4901.13 of the Revised Code. 49

(2) Sections 4903.02 to 4903.082, 4903.09 to 4903.16, and 4903.20 to 4903.23 of the Revised Code apply to all proceedings and orders of the commission under this section and to all operators subject to those proceedings and orders.

(B) If, pursuant to a proceeding it specially initiates or to any other proceeding and after the hearing provided for under division (A) of this section, the commission finds that:

(1) An operator has violated or failed to comply with, or is violating or failing to comply with, sections 4905.90 to 4905.96 of the Revised Code or the pipe-line safety code, the commission by order:

(a) Shall require the operator to comply and to undertake corrective action necessary to protect the public safety;

(b) May assess upon the operator forfeitures of not more than one hundred thousand dollars for each day of each violation or noncompliance, except that the aggregate of such forfeitures shall not exceed one million dollars for any related series of violations or noncompliances. In determining the amount of any such forfeiture, the commission shall consider all of the following:

(i) The gravity of the violation or noncompliance;

(ii) The operator's history of prior violations or noncompliances;

(iii) The operator's good faith efforts to comply and undertake corrective action;

(iv) The operator's ability to pay the forfeiture;

(v) The effect of the forfeiture on the operator's ability to continue as an operator;

(vi) Such other matters as justice may require.

~~All~~ Except as provided in sections 4905.97 to 4905.975 of the

Revised Code, all forfeitures collected under this division or 80
section 4905.96 of the Revised Code shall be deposited in the 81
state treasury to the credit of the general revenue fund. 82

(c) May direct the attorney general to seek the remedies 83
provided in section 4905.96 of the Revised Code. 84

(2) An intrastate pipe-line transportation facility is 85
hazardous to life or property, the commission by order: 86

(a) Shall require the operator of the facility to take 87
corrective action to remove the hazard. Such corrective action may 88
include suspended or restricted use of the facility, physical 89
inspection, testing, repair, replacement, or other action. 90

(b) May direct the attorney general to seek the remedies 91
provided in section 4905.96 of the Revised Code. 92

(C) If, pursuant to a proceeding it specially initiates or to 93
any other proceeding, the commission finds that an emergency 94
exists due to a condition on an intrastate pipe-line 95
transportation facility posing a clear and immediate danger to 96
life or health or threatening a significant loss of property and 97
requiring immediate corrective action to protect the public 98
safety, the commission may issue, without notice or prior hearing, 99
an order reciting its finding and may direct the attorney general 100
to seek the remedies provided in section 4905.96 of the Revised 101
Code. The order shall remain in effect for not more than forty 102
days after the date of its issuance. The order shall provide for a 103
hearing as soon as possible, but not later than thirty days after 104
the date of its issuance. After the hearing the commission shall 105
continue, revoke, or modify the order and may make findings under 106
and seek appropriate remedies as provided in division (B) of this 107
section. 108

Sec. 4905.97. The public utilities commission, in assessing a 109

forfeiture pursuant to section 4905.54, 4905.95, 4907.47, 4907.60, 4923.99, or 4973.11 of the Revised Code, shall determine whether the violation or compliance failure for which the forfeiture is assessed resulted in one or both of the following:

(A) Damage in excess of one thousand dollars to property, other than the property of the person required to pay the forfeiture;

(B) Remediation costs in excess of one thousand dollars, incurred by either of the following:

(1) A political subdivision involved in the remediation effort;

(2) A state agency involved in the remediation effort.

If the commission determines that such damage occurred, or such remediation costs have been incurred, those forfeitures collected or recovered shall be placed in the local damage payment fund created in section 4905.971 of the Revised Code.

Sec. 4905.971. There is hereby created the local damage payment fund, which shall be in the custody of the state treasurer but shall not be a part of the state treasury. The fund shall consist of money deposited into the fund as required under section 4905.97 of the Revised Code. Money in the fund shall be used in accordance with section 4905.972 of the Revised Code. Investment earnings on money in the fund shall be retained by the fund.

Sec. 4905.972. (A) The public utilities commission shall disburse money from each forfeiture described in section 4905.97 of the Revised Code to the following entities, if the commission approves their application for disbursement:

(1) A political subdivision in which the property damage occurred;

(2) A political subdivision that incurred costs to remediate 139
the violation or compliance failure; 140

(3) An agency of this state that incurred costs to remediate 141
the violation or compliance failure. 142

(B) Before making the distribution, the commission may retain 143
from the forfeiture amount collected or recovered an amount 144
necessary to cover its administrative costs pursuant to this 145
section, but not to exceed thirty per cent of the forfeiture 146
collected or recovered. 147

(C) The amount disbursed shall be equal to the amount of the 148
forfeiture collected or recovered less the amount retained by the 149
commission as allowed by this section. 150

(D) To the extent that multiple entities apply for 151
disbursement of funds under this section for a specific violation 152
or compliance failure, the commission shall review the 153
applications and apportion the funds for disbursement based upon each 154
applicant's percentage of remediation costs incurred or damages 155
sustained to the total of remediation costs incurred and damages 156
sustained resulting from the violation or compliance failure. 157

Sec. 4905.973. Funds disbursed to an agency under division 158
(A)(3) of section 4905.972 of the Revised Code are not subject to 159
section 113.08 of the Revised Code. The agency shall deposit the 160
funds received into the remediation cost reimbursement fund, which 161
is hereby created in the custody of the treasurer of state but not 162
as a part of the state treasury. The money in the fund shall be 163
used to reimburse contributing agencies for their remediation 164
costs to the extent of their contributions to the fund plus any 165
investment earnings on those contributions. All investment 166
earnings of the fund shall be credited to the fund. 167

Sec. 4905.974. Annually, between the thirtieth day of June 168

and the thirty-first day of July, the public utilities commission 169
shall certify to the office of budget and management the balance 170
in the local damage payment fund that exceeds the amount pledged 171
for disbursements under section 4905.972 of the Revised Code. On 172
the thirty-first day of July, or as soon as possible thereafter, 173
the director of budget and management shall transfer the excess 174
amount to the general revenue fund. 175

Sec. 4905.975. The public utilities commission shall adopt 176
rules as necessary to implement the requirements of sections 177
4905.97 to 4905.974 of the Revised Code, including rules that 178
establish and govern an application process for the disbursement 179
of money from forfeitures under section 4905.972 of the Revised 180
Code. 181

Sec. 4907.47. (A) If, after public hearing as to the 182
necessity for installing protective devices at a public railroad 183
highway grade crossing, written notice of which is published once 184
a week for three consecutive weeks in a newspaper of general 185
circulation in the county in which the crossing is located and is 186
given the railroad and public authority involved at least thirty 187
days in advance of such hearing, it is the opinion of the public 188
utilities commission that the public safety requires a gate, 189
automatic alarm bell, or other mechanical device to be erected and 190
maintained at any place where a public road or street is crossed 191
at the same level by a railroad, and the crossing has been 192
declared by the commission to be so dangerous and hazardous as to 193
require additional protective devices, or the public safety 194
requires that a ~~flagman~~ flagger be stationed and maintained at 195
such crossing, the commission shall give the superintendent, 196
manager, or other officer in charge of such railroad a written 197
order of what is required, and shall assign the cost of installing 198

any such device between the railroad and the public in any 199
proportion it determines proper that is consistent with any 200
applicable federal requirements, after giving due consideration to 201
the factors listed in division (B) of this section. 202

(B) In assigning the cost of any such device the commission 203
shall consider factors of volume of vehicular traffic, volume of 204
train traffic, train type and speed, limitations of view and the 205
causes thereof, savings, if any, which will inure to the railroad 206
as the result of the installation, benefits to the public 207
resulting from the reduction of hazard at the crossing, the 208
probable cost of the installation, the future cost to the railroad 209
of maintaining any such device, and any other special factors and 210
conditions that the commission considers relevant. The commission 211
may accept a railroad's agreement to maintain the installation as 212
being its share of the cost for the protection. If any part of the 213
cost is assigned to the public, it shall be apportioned to the 214
state agency or political subdivision having jurisdiction over 215
such crossing, and may be paid from any funds levied and made 216
available for highway or street purposes; provided, that funds 217
from the grade crossing protection fund created by section 218
4907.472 of the Revised Code may be used to pay the public's share 219
of the cost. After the commission has issued an appropriate order 220
requiring that additional protective devices be installed by a 221
specific date, which shall be a reasonable time from the date of 222
the order, the railroad concerned shall erect or install the 223
additional protective devices or station the ~~flagman~~ flagger 224
within the time prescribed by the order. If the additional 225
protective devices are not erected or installed within that time, 226
the commission may reduce or eliminate the amount of any funds in 227
the grade crossing protection fund obligated to pay the public's 228
share of the costs relating to the erection, installation, and 229
maintenance of the additional protective devices and, consistent 230
with any applicable federal requirements, may assign to the 231

railroad concerned any amount, up to one hundred per cent, of the 232
total amount of the costs of erecting, installing, and maintaining 233
the additional protective devices. 234

Any person owning or operating a railroad and neglecting or 235
refusing to erect or maintain such gate, automatic alarm bell, or 236
other mechanical device, or to maintain such ~~flagman~~ flagger, when 237
required by the commission pursuant to this section or section 238
4907.471 of the Revised Code, and after the commission has issued 239
an appropriate order finding that the public funds will be made 240
available with respect to any protective device it has ordered 241
installed, shall forfeit to the state, for every such neglect or 242
refusal, one thousand dollars, and in addition, shall forfeit one 243
thousand dollars for each day such neglect or refusal continues. 244
Except as provided in sections 4905.97 to 4905.975 of the Revised 245
Code, moneys collected from forfeitures under this section shall 246
be deposited to the state treasury to the credit of the general 247
revenue fund. 248

Sec. 4907.60. If a railroad fails to perform a duty enjoined 249
upon it by Chapter 4901., 4903., 4905., 4907., 4909., or 4959. of 250
the Revised Code, or does any act prohibited by any of those 251
chapters, for which failure or act no penalty or forfeiture has 252
been provided by law, or fails to obey a lawful requirement or 253
order made by the public utilities commission or order of any 254
court upon application of the commission, the railroad, except as 255
otherwise specifically provided in ~~section~~ sections 4905.95 and 256
4905.97 to 4905.975 of the Revised Code, shall forfeit into the 257
state treasury not less than one hundred nor more than ten 258
thousand dollars for each violation or failure. In construing and 259
enforcing this section, the act, omission, or failure of any 260
officer, agent, or other person acting for or employed by a 261
railroad, while acting within the scope of the officer's, agent's, 262
or other person's employment, is the act, omission, or failure of 263

the railroad. 264

Sec. 4921.21. (A) As used in this section, "adjusted credit 265
amount" means the aggregate amount credited to the public 266
utilities transportation safety fund, less the sum of all of the 267
following: 268

(1) The fees collected by the public utilities commission, in 269
accordance with the unified carrier registration plan under 270
section 4921.11 of the Revised Code, that exceed the federal 271
certification of revenue for each year of the plan; 272

(2) The fees collected by the commission on behalf of other 273
states under division (C) of section 4921.15 of the Revised Code; 274

(3) The forfeitures collected by the commission under section 275
4923.99 of the Revised Code for violations of rules adopted under 276
division (A)(2) of section 4923.04 of the Revised Code. 277

(B)(1) There is hereby created in the state treasury the 278
public utilities transportation safety fund. The fees collected in 279
accordance with the unified carrier registration plan under 280
section 4921.11 of the Revised Code, the fees collected under 281
section 4921.15 of the Revised Code, the taxes and fees remitted 282
under section 4921.19 of the Revised Code, the forfeitures imposed 283
under section 4923.99 of the Revised Code, except as provided in 284
division (B)(2) of this section, and the fines collected under 285
section 4163.07 of the Revised Code shall be deposited into the 286
state treasury to the credit of the public utilities 287
transportation safety fund, until the adjusted credit amount in a 288
fiscal year is equal to the total amount appropriated from the 289
fund for the fiscal year. Once this point of parity is reached, 290
any additional fees, taxes, forfeitures, or fines received during 291
the fiscal year shall be credited to the general revenue fund, 292
except as provided in division (B)(2) of this section, and except 293
for both of the following: 294

(a) The fees collected in accordance with the unified carrier registration plan under section 4921.11 of the Revised Code, that exceed the federal certification of revenue for each year of the plan;

(b) The fees collected on behalf of other states under division (C) of section 4921.15 of the Revised Code.

(2) The first eight hundred thousand dollars of forfeitures collected under section 4923.99 of the Revised Code, for violations of rules adopted under division (A)(2) of section 4923.04 of the Revised Code, during each fiscal year shall be credited to the public utilities transportation safety fund. Any forfeitures in excess of that amount shall be deposited into the general revenue fund, except for those excess forfeitures deposited as required by sections 4905.97 to 4905.975 of the Revised Code. In each fiscal year, the commission shall distribute moneys from these forfeitures credited to the public utilities transportation safety fund for the purposes of emergency response planning and the training of safety, enforcement, and emergency services personnel in proper techniques for the management of hazardous materials releases that occur during transportation or otherwise. For these purposes, fifty per cent of all such moneys credited to the public utilities transportation safety fund shall be distributed to Cleveland state university, forty-five per cent shall be distributed to other educational institutions, state agencies, regional planning commissions, and political subdivisions, and five per cent shall be retained by the commission for the administration of this section and for training employees. However, if, in any such period, moneys from these forfeitures credited to the public utilities transportation safety fund equal an amount less than four hundred thousand dollars, the commission shall distribute, to the extent of the aggregate amount of those moneys, two hundred thousand dollars to Cleveland state

university and the remainder to other educational institutions, 327
state agencies, regional planning commissions, and political 328
subdivisions. 329

(C) The purpose of the public utilities transportation safety 330
fund shall be for defraying all expenses incident to maintaining 331
the nonrailroad transportation activities of the commission. 332

(D) There is hereby created in the state treasury the federal 333
commercial vehicle transportation systems fund. The fund shall 334
consist of money received from the United States department of 335
transportation's commercial vehicle intelligent transportation 336
systems infrastructure deployment program. The public utilities 337
commission shall use the fund to deploy the Ohio commercial 338
vehicle information systems networks project and to improve safety 339
of motor carrier operations through electronic exchange of data. 340

(E) There is hereby created in the state treasury the motor 341
carrier safety fund. The fund shall consist of money received from 342
the United States department of transportation for motor carrier 343
safety. The commission shall use the fund to administer the 344
state's motor carrier safety assistance program and associated 345
grants, including the motor carrier safety assistance program 346
basic grant, the incentive grant, the high priority grants, the 347
new entrant safety assurance grant, the safety data improvement 348
grant, or their equivalents. 349

(F) If the director of budget and management determines there 350
is not sufficient money in the public utilities transportation 351
safety fund, the director shall transfer money from the general 352
revenue fund to the public utilities transportation safety fund in 353
an amount up to the difference between the balance of the public 354
utilities transportation safety fund and the appropriations from 355
that fund. If the director subsequently determines during the 356
fiscal year that the balance of the public utilities 357
transportation safety fund exceeds the amount needed to support 358

the appropriations from the fund, the director shall transfer the 359
excess money, up to the amount of the original transfer, to the 360
general revenue fund. 361

Sec. 4973.11. No company operating a railroad over thirty 362
miles in length or an interurban railroad or street railway over 363
four miles in length shall permit a conductor, engineer, ~~fireman~~ 364
fire tender, ~~brakeman~~ brakeperson, or ~~trainman~~ trainperson on a 365
train, a telegraph operator, or a conductor or ~~motorman~~ car 366
operator on a street railway, who has worked as such for fifteen 367
consecutive hours, again to go on duty or perform work until ~~he~~ 368
the person has had at least eight hours' rest, except in cases of 369
detention of trains or cars caused by accident, unavoidable or 370
otherwise. Such companies shall so regulate the hours of 371
employment of their employees that each employee shall have at 372
least eight consecutive hours of rest in each period of 373
twenty-four hours. 374

A railroad company ~~which~~ that knowingly violates this section 375
shall forfeit not less than five hundred nor more than one 376
thousand dollars for the first offense, and for any subsequent 377
offense, not less than one thousand nor more than fifteen hundred 378
dollars, to be recovered by civil action in the name of the state. 379
Except as provided in sections 4905.97 to 4905.975 of the Revised 380
Code, forfeiture under this section shall be deposited in the 381
state treasury to the credit of the general revenue fund. 382

Section 2. That existing sections 4905.54, 4905.57, 4905.95, 383
4907.47, 4907.60, 4921.21, and 4973.11 of the Revised Code are 384
hereby repealed. 385