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## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Sheehy and Lepore-Hagan

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### SUMMARY

#### Railroad illumination requirements

- Requires a railroad company to illuminate each rail yard in accordance with the Illuminating Engineering Society of North America's illumination standards.
- Permits a railroad company employee to file a complaint with the Public Utilities Commission of Ohio (PUCO) alleging a violation of the illumination requirement.
- Imposes up to a \$100 fine for each day of each reckless violation.

#### Railroad walkway requirements

- Requires a railroad company to, under certain circumstances, construct a walkway – that complies with specified standards – adjacent to the track in areas where company employees frequently perform switching activities.
- If PUCO, upon a hearing, finds that railroad company employees who frequently perform such switching activities are exposed to safety hazards due to the absence or condition of a walkway, permits PUCO to order a company to:
  - Construct a walkway adjacent to that portion of track; or
  - Modify an existing walkway constructed before the bill's effective date.
- Permits a railroad company employee to file a complaint with the PUCO alleging a violation of the walkway requirements.
- Imposes up to a \$100 fine for each day of each reckless violation.

#### No obstruction for emergency vehicle

- Prohibits a railroad company from obstructing a public road with a railroad car for *any* amount of time if the obstruction delays an emergency vehicle that is assisting or attempting to assist a person or property in danger.

- Imposes a \$5,000 civil penalty on violators.

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## DETAILED ANALYSIS

### Required lighting standards

The bill requires a railroad company to illuminate each rail yard in accordance with the standards established by the Illuminating Engineering Society of North America.<sup>1</sup> Those standards specify the lighting for different areas and types of yards.<sup>2</sup>

### Complaints and penalty

The bill permits a railroad company employee to file a complaint with the Public Utilities Commission of Ohio (PUCO) alleging a violation of the lighting standards. The bill requires, along with the complaint, written evidence that, prior to filing the complaint, the employee or representative requested the railroad company to address the alleged violation. The bill requires PUCO to establish the specific procedures for filing a complaint.<sup>3</sup>

Whoever recklessly violates the illumination standards is fined not more than \$100, and each day a violation exists constitutes a separate offense.<sup>4</sup>

### Walkway requirement along rail yard tracks

#### New track walkways

The bill generally requires a railroad company to construct a walkway adjacent to any track the company constructs in its rail yard in areas where company employees frequently perform switching activities (at least one shift per day, five or more days a week).<sup>5</sup> Under the bill, “walkway” means any walkway in a rail yard, but does not include tracks constructed in industry yards owned by an entity other than a railroad company.<sup>6</sup> Although “switching activities” is not defined in the bill, “switching” means the movement of freight cars between two close locations, typically within a rail yard or to or from a rail yard and another industry location.<sup>7</sup>

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<sup>1</sup> R.C. 4907.71.

<sup>2</sup> Illuminating Engineering Society, *The Lighting Handbook*, 30.50 – 50.53 (10<sup>th</sup> Ed.).

<sup>3</sup> R.C. 4907.72.

<sup>4</sup> R.C. 4907.99(H).

<sup>5</sup> R.C. 4907.70(B).

<sup>6</sup> R.C. 4907.70(A)(1) and (2) and (B).

<sup>7</sup> BNSF Railway Company, “Glossary of Railroad Terms,” available under Quick Links at <http://www.bnsf.com/customers/>, accessed March 22, 2017.

## **PUCO authority**

The bill grants PUCO authority to order a railroad company to construct such a walkway or require a company to modify an existing walkway due to safety concerns.

PUCO can make such an order if it finds (after a hearing) that railroad company employees who frequently perform switching activities adjacent to that portion of track are exposed to safety hazards due to the absence or condition of a walkway constructed before the bill's effective date. If PUCO orders a company to construct or modify a walkway, the company must build the walkway in accordance with the bill's standards within "a reasonable period of time."<sup>8</sup>

## **Standards for walkways**

The bill requires a railroad company that constructs or modifies a walkway to ensure that each of the following standards is met:

- Walkways must have a reasonably uniform surface, be at least two feet wide, and be surfaced with asphalt, concrete, planking, grating, native material, crushed material (meeting the specifications established by the bill), or other similar material;<sup>9</sup>
- Walkway cross slopes may not exceed one inch of elevation for each eight inches of horizontal length in any direction.<sup>10</sup>

Additionally, a railroad company that constructs or modifies a walkway under the bill must keep the walkway in a safe condition and free of debris and other obstructions, including spilled oil, sand, posts, vegetation, and nonballast rocks. This requirement does not apply during maintenance activities or any period of, or a reasonable period after, certain weather conditions and natural disasters, including heavy rain or snow, derailments, rock and earth slides, and washouts and similar weather or seismic conditions.<sup>11</sup> A railroad company may petition PUCO for a waiver from any these requirements for good cause, which includes a showing that compliance with the walkway requirements will impose an undue hardship on the company.<sup>12</sup>

## **Exceptions to walkway requirement**

A railroad company is not required to construct or modify such a walkway if both of the following apply:

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<sup>8</sup> R.C. 4907.70(C).

<sup>9</sup> R.C. 4907.07(D)(1), (3) and (4). When a railroad company uses crushed material for a walkway, the company must ensure that 100% of the material is capable of passing through a one and one-half inch square sieve opening. R.C. 4907.70(D).

<sup>10</sup> R.C. 4907.70(D)(2).

<sup>11</sup> R.C. 4907.70(E).

<sup>12</sup> R.C. 4907.70(A)(3) and (F).

- If federal law requires the walkway area to instead be used for track stability or track support.
- Constructing or modifying the walkway, in accordance with the bill's standards, would prevent the company from complying with federal law.<sup>13</sup>

### **Complaints and penalty**

The bill permits a railroad company employee to file a complaint with PUCO alleging a violation of the walkway requirements. The employee must submit written evidence that, prior to the filing, the employee requested the company to address the circumstances for the complaint. Under the bill, PUCO must establish procedures for the filing of a complaint.<sup>14</sup>

Whoever recklessly violates the requirements is subject to a fine of up to \$100, and each day that the violation exists constitutes a separate offense.<sup>15</sup>

### **No obstruction for emergency vehicle**

Under current law, a railroad company may not obstruct a public street with a railroad car or locomotive for more than five minutes.

The bill expands this prohibition: it prohibits a railroad company from so obstructing a public street for *any* amount of time if the obstruction delays an emergency vehicle that is assisting or attempting to assist a person or property in danger. Whoever violates the prohibition must pay a \$5,000 civil penalty; all collected fines are credited to the existing railroad grade crossing improvement fund of the appropriate county or municipal corporation.<sup>16</sup>

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## **COMMENT**

### **Federal law**

Federal law requires railroad safety and security laws, regulations, and orders to be nationally uniform to the extent practicable. The Federal Railroad Safety Act (FRSA) contains an express preemption provision that allows states to adopt or continue railroad safety and security requirements until the Secretary of Transportation or the Secretary of Homeland Security prescribes a regulation or issues an order on that subject matter.<sup>17</sup>

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<sup>13</sup> R.C. 4907.70(B)(1) and (2).

<sup>14</sup> R.C. 4907.72.

<sup>15</sup> R.C. 4907.99(H).

<sup>16</sup> R.C. 5589.21(B) and (C).

<sup>17</sup> 49 United States Code 20106.

## Walkways

Since there is no federal regulation that directly requires walkways or specifications for walkway design or construction, courts have split on whether state walkway regulations are preempted.<sup>18</sup> The outcomes of these cases varied depending on factual circumstances and the types of claims presented – thus, it is unclear whether federal law would preempt the bill’s walkway provisions.

## Obstruction of emergency vehicles

Ohio law generally prohibits a railroad company from obstructing a public street, road, or highway for longer than five minutes.<sup>19</sup> The bill specifies that a railroad company cannot obstruct a public street, road, or highway for *any amount of time* if the obstruction causes the delay of an emergency vehicle that is assisting or attempting to assist a person or property in danger.

In *CSX Transp., Inc. v. City of Plymouth*, the Sixth Circuit ruled that the FRSA preempted a Michigan statute (which was similar to Ohio’s current statute). If the current Ohio statute or the proposed prohibition were challenged in federal court, a court may similarly rule.<sup>20</sup> And, courts have disagreed regarding federal preemption of state antiblocking regulations.<sup>21</sup> As such, it is uncertain how a court will treat the current statute or the proposed prohibition.<sup>22</sup>

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## HISTORY

Action	Date
Introduced	03-09-21

H0195-I-134/ks

<sup>18</sup> Compare *Missouri Pacific R. Co. v. Railroad Com’n of Texas*, 948 F.2d 179 (5<sup>th</sup> Cir. 1991) (found that federal law preempted a similar, but stricter, state walkway provision) with *Norfolk Southern Ry. Co. v. Box*, 556 F.3d 571 (7<sup>th</sup> Cir. 2009) (found that federal law did not preempt a similar state walkway provision); *Nickels v. Grand Trunk W.R.R.*, 560 F.3d 426 (6<sup>th</sup> Cir. 2009).

<sup>19</sup> R.C. 5589.21.

<sup>20</sup> *CSX Transp., Inc. v. City of Plymouth*, 283 F.3d 812 (6<sup>th</sup> Cir. 2002).

<sup>21</sup> *State v. Wheeling & Lake Erie Ry.*, 139 Ohio App.3d 271 (2000); *People v. Burlington N. Santa Fe R.R.*, 209 Cal. App. 4<sup>th</sup> 1513 (2012).

<sup>22</sup> R.C. 5589.21 and 5589.99.