



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 361
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Hall and Miranda

Amanda George Goodman, Attorney

SUMMARY

- Requires a railroad company to submit to the Public Utilities Commission of Ohio (PUCO) an incident report each time the company blocks a crossing for more than five minutes to the hindrance of those trying to cross.
- Imposes a first degree misdemeanor and the following fines for a railroad company that does not submit an incident report in accordance with the bill:
 - For a first violation within a 30-day period, \$5,000;
 - For any subsequent violation within a 30-day period, \$10,000.
- Requires the PUCO to adopt rules to administer the incident reporting process for railroad companies.
- Requires the PUCO to submit an annual report to the General Assembly that contains aggregated incident report information each year by July 1.
- Increases the fines for a railroad company that blocks a crossing for more than five minutes to the hindrance of those trying to cross.

DETAILED ANALYSIS

Train blocking a road: incident report

The bill requires a railroad company to submit to the Public Utilities Commission of Ohio (PUCO) an incident report each time the railroad company unlawfully obstructs a public road.¹ The railroad company must submit the incident report even if the company is not charged or cited with a violation. However, if a railroad company submits an incident report for which no

¹ R.C. 5589.25(A)(1), also see R.C. 5589.21(A), not in the bill.

charges, citations, or complaints have been made or filed, the company is not subject to a penalty solely as a result of the submission of the report.² Under current law, a railroad company unlawfully obstructs a public road if it allows a railroad car, locomotive, or other obstruction to remain on or across it for longer than five minutes, to the hindrance or inconvenience of travelers or a person.³

Penalty for not submitting an incident report

A railroad company that does not submit an incident report in accordance with PUCO's rules is guilty of a first degree misdemeanor and is fined as follows:

1. For a first violation within a 30-day period, \$5,000;
2. For any subsequent violation within a 30-day period, \$10,000.

Incident report rules

The PUCO must adopt rules in accordance with the Administrative Procedure Act that specify all of the following:

1. The time period after an incident by which a railroad company must submit an incident report;
2. The manner in which the railroad company must submit the incident report; and
3. The information that a railroad company must include in each incident report, including all of the following:
 - a. The date on which the incident occurred;
 - b. The railroad crossing that was blocked by the railroad company during the incident; and
 - c. The duration of the blocked railroad crossing and the time the blocking began and the time the blocking concluded.⁴

The PUCO may adopt these new rules without simultaneously removing two or more other existing regulatory restrictions, which would otherwise be required under Ohio law. These new rules also are not counted towards PUCO's inventory of regulatory restrictions.⁵

Annual report of incident reports

The bill requires the PUCO, by July 1 each year, to compile all incident reports submitted during the prior calendar year. It then must submit an annual report to the President and Minority Leader of the Senate and the Speaker and Minority Leader of the House of

² R.C. 5589.25(C).

³ R.C. 5589.21(A), not in the bill.

⁴ R.C. 5589.25(B).

⁵ R.C. 5589.25(F) and 121.95(E)(7).

Representatives. The PUCO must ensure that the annual report consists of aggregated incident information and is presented in a manner that depicts:

1. The number of incident reports attributable to each railroad company; and
2. The aggregate amount of time that each railroad company blocked railroad crossings during the year in violation of Ohio law.⁶

Violations for blocking a crossing for more than five minutes

As discussed above, current law prohibits a railroad company from unlawfully obstructing a public road.⁷ Whoever violates this prohibition is guilty of a first degree misdemeanor and is fined \$1,000. Under the bill, the penalty is still a first degree misdemeanor, but the fine is increased as follows:

1. For a first violation within a 30-day period, \$5,000;
2. For any subsequent violation within a 30-day period, \$10,000.⁸

However, this penalty may not be enforceable (see **COMMENT**).

COMMENT

The bill increases the fine assessed against a railroad company that blocks a crossing for longer than five minutes to the hindrance or inconvenience of those trying to cross. However, a court may rule that any penalty imposed for a violation of this prohibition is not enforceable.

In *CSX Transportation, Inc. v. City of Plymouth*, 283 F.3d 812 (6th Cir. 2002), the Sixth Circuit Court of Appeals (which has jurisdiction over Ohio), struck down a similar Michigan statute that prohibited a railroad company from blocking a crossing for longer than five minutes. The court reasoned that this statute was not enforceable because it was preempted by the Federal Railroad Safety Act (FRSA).

The court stated that the statute was preempted by the FRSA because the amount of time a moving train spends at a grade crossing is mathematically a function of the length of the train and the speed at which the train is traveling. The Michigan statute would require the railroad company to modify either the speed at which its trains travel or their length, and would also restrict the company's performance of federally mandated air brake tests.⁹ The FRSA covers the subject matter of train safety, including speeds and air brake tests, and thus a state cannot regulate these matters.

Since Ohio's law is very similar to Michigan's law, a court may rule that enforcement of the law is in violation of the FRSA and thus not enforceable.

⁶ R.C. 5589.25(A)(2).

⁷ R.C. 5589.21(A), not in the bill.

⁸ R.C. 5589.99(D).

⁹ *Plymouth* at 817.

HISTORY

Action	Date
Introduced	06-28-21
