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Bill Analysis

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SUMMARY

Public Utilities Commission changes

- Permits an electric distribution utility (EDU) to file an application for an alternative distribution rate plan and requires the Public Utilities Commission (PUCO) to authorize the plan if certain conditions are met.
- Permits a heating or cooling company, sewage disposal system company, and water-works company to file an application for an alternative rate plan, and requires the PUCO to authorize the application if certain conditions are met.
- Prohibits, beginning on the bill's effective date and unless the public utility filed an annual report for 2018, a public utility from providing service to Ohio consumers without PUCO authorization and requires the PUCO, in granting authorization, to determine if the public utility provides service in accordance with PUCO procedures and standards.
- Prohibits a public utility from transferring its provider authority to any person without prior PUCO approval and requires the PUCO to review applications to transfer that authority.
- Prohibits a person from acquiring control, directly or indirectly, of any public utility or railroad without prior PUCO approval.
- Makes various changes to the PUCO's assessment for expenses procedure, payment due dates, final assessment for a public utility ceasing operations, and minimum assessment.
- Makes changes to PUCO's assessment against pipeline operator's reporting, notification, and payment requirements.
- Increases the amount the PUCO may assess pipeline operator forfeitures to not more than $200,000 (from $100,000 under current law) for each day of each violation or

noncompliance with laws governing PUCO hearings, and the aggregate limit of forfeitures to not more than $2 million (from $1 million).

- Changes Ohio law governing railroad bridge inspections to be consistent with federal law governing railroad bridge inspection.
- Permits PUCO inspectors or authorized employees to enter in or upon cargo tank facility premises to examine records, documents, or property to assess compliance with federal law governing continuing qualification and maintenance of packagings.
- Permits the PUCO to require all parties and intervenors to a proceeding to consolidate when the parties and intervenors have sufficiently common interests and it will expedite the proceeding.
- Removes the PUCO from the "state agency" definition for the purposes of the law governing state agency rule review.
- Requires the PUCO to make available on their website specified information on the PUCO Nominating Council's operations.
- Removes the provision requiring the PUCO to be open at specified hours and days.
- Repeals obsolete provisions regarding (1) PUCO monitoring of retail electric service, and (2) a PUCO study on the effects of increased energy efficiency, demand response, generation, and transmission.

Power Siting Board changes

- Exempts from application to the Power Siting Board (PSB) of economically significant wind farm setback requirements cases in which all owners of nonparticipating property adjacent to the wind farm property waive application of the setback.
- Specifies that an electric generating plant with a single interconnection that is a major utility facility is subject to minimum setback requirements in the Revised Code for an economically significant wind farm (which includes the nonparticipating property owner waiver provisions added by the bill) and, under continuing law, the PSB rules for such setbacks.
- Exempts major solar projects from PSB-adopted rules, to be adopted no later than December 1, 2020, that have submitted to PSB an application for a certificate for construction or a change or amendment for an existing certificate prior to December 1, 2020.
- Changes a portion of the "major utility facility" definition to mean an electric transmission line and associated facilities designed for or capable of operating at 69 kilovolts or more (from having a design capacity of 100 kilovolts or more under current law).

- Permits the PSB chairperson to hire, temporarily, an expert or analyst to make studies, conduct hearings, investigate applications, or prepare a report required or authorized under the law governing power siting.
- Requires PSB to make its annual accounting of collection and use of PSB-imposed fees and to issue its annual accounting report at the end of the fiscal year, and the report to be filed no later than August 1.

Natural Gas Supply Access Investment Program

- Requires the Ohio Public Works Commission Director to establish a Natural Gas Supply Access Investment Program (program) to facilitate investment in physical facilities useful in meeting the natural gas supply needs in areas of Ohio with insufficient natural gas supply access.
- Permits the program's Director to make grants and loans to business, nonprofit organizations, and local government, in coordination with the PUCO.
- Creates the Natural Gas Infrastructure Supply Access Development Fund (Development Fund), funded by excess money remaining in the Oil and Gas Well Fund at the end of a fiscal year and appropriations, to be used by the program's Director to make grants and loans under the program.
- Requires the program's Director to adopt rules that (1) are necessary for the program's administration, (2) establish an application form and procedure, and (3) establish certain criteria for prioritizing the award of grants and loans.

Ohio Consumers' Counsel changes

- Exempts wireless service providers and resellers from the Ohio Consumers' Counsel's (OCC's) operating assessment.
- Makes changes regarding OCC representation of residential consumers and municipal corporations.
- States that, to the extent that a municipal corporation, OCC, and any other party or intervenor seek to participate in the same proceeding, and do so on behalf of residential consumers, their participation may be subject to reasonable conditions the PUCO deems necessary to avoid duplication, repetition, and delay.
- States that the OCC's mission is to represent residential consumers before the PUCO to ensure the availability of safe, adequate, and reliable utility services at rates and charges that are just and reasonable.
- Requires OCC Governing Board members to be appointed by the Attorney General, Speaker of the House, and President of the Senate (rather than only the Attorney General) in accordance with requirements under the bill.
- Makes various changes to OCC's enumerated rights and powers.

- Clarifies which calendar year's intrastate gross earnings or receipts from a public utility are to be the basis of the OCC's assessment against the public utility.

Solar collector systems

- Prohibits homeowners, neighborhood, civic, and other associations from imposing unreasonable restrictions on the installation of solar collector systems on roofs or exterior walls under the ownership or exclusive use of a property owner.
- Prohibits condominium properties from imposing unreasonable restrictions on the installation of solar collector systems on roofs or exterior walls so long as there are no competing uses in the space.
- Guarantees property owners subject to homeowners, neighborhood, civic, and other association regulations, and unit owners subject to condominium property regulations, the ability to negotiate for solar access easements.

Railroad right-of-way crossings

- Establishes two different regulatory regimes governing the crossing of railroad rights-of-way: one applying to public utilities (available only for crossings of one mile or less) and the other applying to telephone companies and video service providers (available only for crossings from public rights-of-way).
- Establishes the public utility crossing process to include a crossing notice, payment of a crossing fee ($1,250 per crossing), assertion of a permanent easement, and railroad appeal to the PUCO.
- Establishes the telephone company and video service provider crossing process to include a crossing notice, payment of a crossing fee ($750 per crossing) and certain related costs, crossing standards, provisions governing maintenance and repair and relocation of facilities, liability, and PUCO proceedings.
- Requires the PUCO to adopt rules necessary to effectuate the purposes and requirements for telephone company or video service provider use of a railroad right-of-way.

Gas company meter-proving

- Requires a meter-prover to be used, stamped, and tested by a qualified meter-proving company, contractor, or manufacturer (rather than by the PUCO as in current law) and requires all gas companies to maintain records of tests to be made available to PUCO staff on request.

TABLE OF CONTENTS

DETAILED ANALYSIS

Public Utilities Commission changes

Electric distribution utility alternative distribution rate plan

Under the bill, an electric distribution utility (EDU) may request approval of an alternative distribution rate plan by filing an application to establish or change a rate with the Public Utilities Commission (PUCO), regardless of whether the application is for an increase in distribution rates. After investigation, which may include a hearing at the PUCO's discretion, the PUCO must authorize the applicant to implement an alternative distribution rate plan if the EDU has made a showing and the PUCO finds that all of the following are met:

1. The EDU is in compliance with laws prohibiting undue or unreasonable discrimination and is in substantial compliance with state policy on competitive retail electric service.
2. The EDU is expected to continue to be in substantial compliance with the state policy on competitive retail electric service after implementation of the alternative distribution rate plan.
3. The alternative distribution rate plan is just and reasonable.

The applicant has the burden of proof to show that all of the above conditions are met.[1]

Heating, cooling, sewage, and water-works alternative rate plan

Under the bill, a heating or cooling company, sewage disposal system company, and water-works company may request approval of an alternative rate plan by filing an application to establish or change a rate with the PUCO, regardless of whether the application is for an increase in rates. After investigation, which may include a hearing at the PUCO's discretion, the PUCO must authorize the applicant to implement an alternative rate plan if the utility has made a showing and the PUCO finds that both of the following conditions are met:

1. The utility is in compliance with laws prohibiting undue or unreasonable discrimination.
2. The alternative rate plan is just and reasonable.

[1] R.C. 4928.1410.

The applicant has the burden of proof to show that both of the conditions are met.[2]

The bill defines the following terms for the purposes of the alternative rate plan provisions:

"Heating or cooling company" means a company that is a public utility and that engages in the business of supplying water, steam, or air through pipes or tubing to its Ohio consumers for heating or cooling purposes.

"Sewage disposal system" means a company that is a public utility and that engages in the business of sewage disposal services through pipes or tubing, and treatment works, or in a similar manner, within Ohio.

"Water-works company" means a company that is a public utility and that is engaged in the business of supplying water through pipes or tubing, or in a similar manner, to its Ohio consumers.[3]

Authorization of public utility providers

The bill prohibits a public utility, beginning on the bill's effective date and unless it filed an annual report for calendar year 2018, from providing service to a consumer in Ohio without first being authorized by the PUCO to provide public utility service. In granting that authorization, the PUCO must determine that the public utility has managerial, technical, and financial capability to provide that service. Authorization must be granted pursuant to procedures and standards the PUCO prescribes in rule. Any public utility that violates the prohibition is subject to the supervision, powers, remedies, forfeitures, and penalties provided by law.[4]

The bill further prohibits a public utility from transferring its authority to provide public utility service to any person without prior PUCO approval. The PUCO must review applications to transfer that authority, to the extent it may approve the transfer without holding a hearing, to ensure the transaction is consistent with the public interest, convenience, and necessity, PUCO jurisdiction, and PUCO authority to authorize public utility providers to provide public utility service.[5]

The bill states that the provisions governing PUCO authorization of public utility providers (described above) are not intended to supersede certification and renewal requirements for provision of retail electric competitive service and of retail natural gas service by governmental aggregators and retail natural gas suppliers.[6]

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[2] R.C. 4933.30(B) and (C).

[3] R.C. 4933.30(A); R.C. 4905.02 and 4905.03, not in the bill.

[4] R.C. 4905.061.

[5] R.C. 4905.062.

[6] R.C. 4905.063.

Approval of public utility or railroad control

The bill prohibits a person from acquiring control, directly or indirectly, of any public utility or railroad, unless the person obtains the prior approval of the PUCO and even if the public utility or railroad property lies partly within and partly without Ohio.

The bill states that the provisions governing PUCO approval of public utility or railroad control is not intended to supersede certification and renewal requirements for provision of competitive retail electric service and of competitive retail natural gas service by governmental aggregators and retail natural gas suppliers.[7]

Assessment for maintaining and administering the PUCO

The bill makes changes to the calculation and payment method regarding the annual assessment for maintaining and administering the PUCO, beginning with calendar year 2021. The total annual assessment is equal to the appropriation from the Public Utilities Fund to the PUCO for railroad, public utilities, and competitive retail suppliers regulation for the fiscal year ending in the current calendar year and apportioned among each railroad, public utility, and competitive retail supplier in Ohio.[8]

A "competitive retail supplier" is defined under the bill as both of the following:

- An electric services company, an electric cooperative, or a governmental aggregator certified to provide competitive retail electric service, to the extent it engages in supplying or arranging to supply in Ohio a retail electric service for which it is certified;
- A retail natural gas supplier or governmental aggregator certified to provide competitive retail natural gas service, to the extent it engages in supplying or arranging for the supply in Ohio of a competitive retail natural gas service for which it is certified.

Under current law, a competitive retail supplier, as defined above, is included in the definition of a "public utility" for purposes of the PUCO assessment. The bill eliminates this public utility definition, and along with it, the inclusion of electric utilities and natural gas companies that are certified as competitive suppliers. It is not clear what the effect is regarding the elimination of the inclusion of electric utilities and natural gas companies.[9]

Assessment computation

Under the bill, for every calendar beginning in calendar year 2021, the PUCO must determine the individual assessment for each railroad, public utility, and competitive retail supplier using the following four-part computation:[10]

[7] R.C. 4905.402.

[8] R.C. 4905.10(A).

[9] R.C. 4905.10(I); R.C. 4928.08 and 4929.20.

[10] R.C. 4905.10(B) and (C).

First part: The PUCO computes the assessment for each railroad, public utility, and competitive retail supplier in proportion to its intrastate gross earnings and receipts for the calendar year immediately preceding the calendar year in which the assessment is made (earnings and receipts from sales to other public utilities for resale are excluded and the PUCO may make adjustments for under-reporting and over-reporting in a prior year, as provided in continuing law for such exclusions, under-reporting, and over-reporting);

Second part (minimum assessment): The computation must assess a minimum assessment of $100 for each railroad, public utility, and competitive retail supplier whose assessment under the first part (above) would have been $100 or less (for a competitive retail supplier, the minimum assessment must be paid as described below – see "**Assessment payment**" and "**PUCO assessment rules**");

Third part: The PUCO must reduce the PUCO appropriation in the current fiscal year by the total amount of minimum assessments under the second part (above) in accordance with PUCO rules (see "**PUCO assessment rules**," below);

Fourth part (fourth-part-assessment): The PUCO must apportion the remaining appropriation amount, after the third part (above) reduction among the railroads, public utilities, and competitive retail suppliers not subject to the $100 minimum assessment under the second part (above), in proportion to the gross earnings and receipts of the remaining railroads, public utilities, and competitive retail suppliers for the calendar year immediately preceding that in which the computations are made.

The individual assessment of a railroad, public utility, or competitive retail supplier will be either the amount determined under the minimum assessment or fourth-part-assessment (above), as applicable.

Assessment payment

Minimum assessment – public utility/railroad

The PUCO must notify, on or before October 15 every year, each railroad and public utility subject to the $100 minimum assessment that the minimum assessment must be paid to the PUCO and the date by which to pay it. The payment must be made to the PUCO by that date.[11]

Minimum assessment – competitive retail supplier

A competitive retail supplier, at the time of its application for certification as a competitive supplier or biennial certification renewal, must make a prepayment of $200 to the PUCO. Any such assessment prepayment must be credited toward the supplier's other obligations under the assessment requirements of the bill and the "**PUCO assessment rules**" (below).[12]

[11] R.C. 4905.10(B)(2) and (E)(2).

[12] R.C. 4905.10(B)(2) and(E)(2) and 4905.101.

Fourth-part assessment

In accordance with the "**PUCO assessment rules**" (below), the PUCO must do both of the following regarding a railroad, public utility, or competitive retail supplier subject to a fourth-part assessment (above):[13]

- On or before June 15 each year, notify each railroad, utility, and supplier of whether an initial payment of 50% of the assessment must be made and the date the initial assessment is due. The payment must be made to the PUCO by that date. If a supplier is required to make an assessment prepayment of $200 at the time of its application for certification as a competitive retail supplier or biennial certification renewal, the prepayment amount will be credited toward the initial payment.
- On or before October 15 each year, do both of the following: (1) make a final determination of the remaining assessment amount by deducting the initial assessment paid and applying any credit adopted under the "**PUCO assessment rules**" (below), and (2) notify the railroad, utility, or supplier of the remaining amount due and the date it is due. The payment must be made to the PUCO by that date.

Assessment deposit

The bill requires the PUCO to deposit all assessments collected from competitive retail suppliers into the State Treasury to the credit of the Public Utilities Fund and subjects those assessments to the same crediting and assessment reduction provisions of existing law governing deposits to the fund.[14]

PUCO assessment rules

The bill requires the PUCO to adopt rules as internal management rules under R.C. 11.15 governing the administration of the assessment for maintaining and administering the PUCO. The rules may include provision for establishing the initial 50% payments for fourth-part assessments, transitional provisions relating to implementation of the bill and any other provisions regarding the PUCO assessment. The bill must include provisions governing the crediting of assessment prepayments made by competitive retail suppliers.[15]

Annual report when ceasing operations

The bill requires that, within 30 days of a railroad, public utility, or competitive retail supplier ceasing operations, it must file its annual report for the year in which it ceased operations with the PUCO and the OCC. The report's contents are governed by the law addressing public utility reports and accounts that are not inconsistent with the requirements for an annual report when ceasing operations. Thereafter, the PUCO must issue a final assessment within 30 days of receiving the annual report. The amount of the final assessment

[13] R.C. 4905.10(D) and (E)(1) and 4905.101.

[14] R.C. 4905.10(G).

[15] R.C. 4905.102.

must be based on the intrastate gross earnings or receipts reported for the year in which the railroad, public utility, or competitive retail supplier ceased operations and any PUCO assessment rules (see above, "**PUCO assessment rules**").[16]

Failure to pay minimum assessment

Under continuing law, certification or certification renewal to provide competitive retail electric service and competitive retail natural gas service must be deemed approved 30 days after the filing of an application, unless the PUCO suspends that approval for good cause shown. Under the bill, failure to pay the minimum assessment due at the time the application for certification or certification renewal is filed constitutes good cause to suspend the deemed approval 30 days after filing or to deny the application.[17]

Repeal of obsolete provisions

The bill repeals a provision requiring that, through calendar year 2005, on or before October 1 in each year, the PUCO must notify each railroad and public utility of the sum assessed against it, whereupon payment must be made to the PUCO.[18]

The bill also repeals a provision that requires, within five days after the beginning of each fiscal year through fiscal year 2006, the Director of Budget and Management to transfer from the General Revenue Fund (GRF) to the Public Utilities Fund (fund) an amount sufficient for maintaining and administering the PUCO and exercising its supervision and jurisdiction of the railroads and public utilities of Ohio during the first four months of the fiscal year. The Director must transfer the same amount back to the GRF from the fund when the Director determines that the balance of the fund is sufficient to support appropriations from the fund for the fiscal year. The Director may transfer less than that amount if the Director determines that the fund revenues during the fiscal year will be insufficient to support appropriations from the Fund for the fiscal year, in which case the amount not paid back to the GRF must be payable to the GRF in future fiscal years.[19]

Assessment against pipeline operators

The bill makes changes to the law governing pipeline safety. Under continuing law, an "operator" means (1) a gas or natural gas company subject to intrastate natural gas pipeline safety standards, (2) a pipeline company engaged in the gas transport by pipeline business, (3) municipal utilities and cooperatives engaged in the supply or transportation of gas by pipeline in Ohio, and (4) any person that owns, operates, manages, controls, or leases intrastate

[16] R.C. 4905.10(H).

[17] R.C. 4905.10(F), 4928.08(B), and 4929.20.

[18] R.C. 4905.10(B).

[19] R.C. 4905.10(D).

pipeline transportation facilities in Ohio, gas gathering lines in Ohio that are not exempted by the Natural Gas Pipeline Safety Act, and a master-meter system in Ohio.[20]

Under continuing law, the PUCO must make an assessment against all operators that is based on the total MCFs of gas it supplied or delivered in Ohio during the calendar year, under the bill, *immediately* preceding, rather than, under current law, the calendar year *next* preceding, the assessment.

The bill requires each operator, for the purpose of computing the assessment, to file a report with the PUCO, in a form and by a date designated by the PUCO, including, at a minimum, the total MCFs of gas it supplied or delivered in Ohio during the calendar year that immediately preceded the assessment. Current law requires each operator to notify the PUCO, no later than 90 days after the end of the calendar year next preceding the assessment, of the total MCFs of gas it supplied or delivered in Ohio during that calendar year.

Under the bill, on or before October 15 in each year (rather than October 1, as in current law), the PUCO must notify each operator of the amount assessed against it. No later than November 15 (rather than 30 days after the date the notice is given, as in current law), the operator must pay the assessment to the PUCO.[21]

Pipeline operator forfeitures

The bill increases the amount of operator forfeitures the PUCO may assess to not more than $200,000 (from $100,000 under current law) for each day of each violation or noncompliance with laws governing pipeline safety, and increases the limit on the aggregate of the forfeitures to not more than $2 million (from $1 million under current law) for any related series of violations or noncompliance.[22]

Railroad bridge inspections

Under the bill

The bill requires, in accordance with federal law on bridge safety standards, a railroad subject to PUCO regulation to inspect every bridge for which it has inspection responsibility. The inspection must be made by a railroad bridge inspector. A railroad bridge inspector, as defined in the bill, is a person determined by the track owner to be technically competent to view, measure, report, and record the railroad bridge's condition and its individual components, which that person is designated to inspect. An inspector is designated to authorize or restrict the operation of railroad traffic over a bridge according to its immediate condition or state of repair.

A copy of the inspection report for each bridge must be maintained by the railroad in accordance with federal law on bridge safety standards. The PUCO may request a public version

[20] R.C. 4905.90(J).

[21] R.C. 4905.92.

[22] R.C. 4905.95.

of an inspection report from the Federal Railroad Administration. The railroad must immediately notify the PUCO if, as a result of an inspection, a bridge is found to have a deficient condition that requires it to be taken out of service. Further, the railroad must take appropriate remedial action to ensure that the structure is safe. When a bridge passes over a public highway, the railroad must also notify the public authority having jurisdiction over the highway. On completion of remedial action, the railroad must notify the PUCO and, if applicable, the public authority that receives the bridge deficiency notice, of the remedial action taken.[23]

Current law

Under current law, a railroad subject to PUCO regulation must, in accordance with American Railway Engineers Association Codes of Rules for Inspection or other standards approved by the PUCO, inspect annually every bridge used for transportation of freight, passengers, or railroad crews on which the railroad performs all or part of the structural maintenance work. The inspection must be made or supervised by a professional engineer. If at any time a bridge is found to be dangerous or unfit for transportation of passengers, freight, or railroad crews, the railroad must immediately report the bridge's condition to the PUCO and, if applicable, make such report to the public authority having jurisdiction over a highway the bridge passes over. The railroad must file the annual inspection report with the PUCO, on forms furnished by, or in a form acceptable to, the PUCO.

If, as a result of examination of the inspection reports, on complaint, or otherwise, the PUCO has reasonable grounds to believe that any of the tracks, bridges, or other structures are in a dangerous or unfit condition, it must inspect and examine them. If the PUCO is of the opinion that a structure is unfit, it must immediately give the railroad company's superintendent or other executive officer notice of the condition, and of the repairs or reconstruction necessary to place them in safe condition. The PUCO must prescribe a time within which such repairs or reconstruction must be made, and the rate of speed for trains passing over the dangerous or defective structure, until the repairs or reconstruction are complete. If the PUCO decides it is needful and proper, it must forbid the running of all trains over the defective structure.[24]

Cargo tank facilities

The bill permits the PUCO, through its inspectors or other authorized employees, to enter in or upon the premises of any cargo tank facility to examine any records, documents, or property for the purpose of assessing compliance with the requirements under federal law governing continuing qualification and maintenance of packagings.[25]

"Cargo tank" means bulk packaging that: (1) is a tank intended primarily for the carriage of liquids or gases and includes appurtenances, reinforcements, fittings, and closures, (2) is

[23] R.C. 4907.44; 49 Code of Federal Regulations (C.F.R.) 237.53, not in the bill.

[24] R.C. 4907.44.

[25] R.C. 4923.07; 49 C.F.R. 180, not in the bill.

permanently attached to or forms a part of a motor vehicle, or is not permanently attached to a motor vehicle but which, by reason of its size, construction or attachment to a motor vehicle is loaded or unloaded without being removed from the motor vehicle, and (3) is not fabricated under a specification for cylinders, intermediate bulk containers, multi-unit tank car tanks, portable tanks, or tank cars.

"Cargo tank facility" means a person that performs qualification and maintenance of cargo tanks to ensure compliance with federal law governing continuing qualification and maintenance of packagings.[26]

Proceedings consolidation

Under the bill, the PUCO may require all parties and intervenors to a proceeding to be consolidated when the parties and intervenors have sufficiently common interests and it will expedite the proceeding.[27]

Exclusion from state agency rule review

The bill removes the PUCO from the "state agency" definition for the purposes of the law governing state agency rule review. This has the effect of excluding the PUCO from (1) the requirement that a state agency must review its rules and create a base inventory of regulatory restrictions to be reviewed by the Joint Committee on Agency Rule Review, and (2) the prohibition on a state agency adopting a new regulatory restriction without removing two or more other existing restrictions.[28]

PUCO Nominating Council public information

Under the bill, the PUCO must make available to the public on its website information about the PUCO Nominating Council's operations, including the following:[29]

1. Meeting notices;
2. Meeting minutes;
3. Biographical information for each Council member, which shall be provided by the appointing authority or the member if there is no appointing authority;
4. Biographical information and submitted applications for each commissioner applicant, with the applicants' personal telephone numbers, email addresses, and residential addresses redacted.

[26] R.C. 4923.01; 49 C.F.R. 171.8 and 180, not in the bill.

[27] R.C. 4903.26.

[28] R.C. 121.95.

[29] R.C. 4901.022.

PUCO hours change

The bill removes the requirement that the PUCO be open between 8:30 a.m. and 5:30 p.m. throughout the year, except for Saturdays, Sundays, and legal holidays.[30]

Repeal of obsolete provisions

Under continuing law, the PUCO, on an ongoing basis, must monitor and evaluate the provision of retail electric service in Ohio for the purpose of discerning any noncompetitive retail electric service that should be available on a competitive basis on or after the starting date of competitive retail electric service. The bill repeals the following related provisions:

- Requiring that, upon such evaluation, the PUCO periodically report its findings and any recommendations for legislation to the standing committees of both houses of the General Assembly that have primary jurisdiction regarding public utility legislation.
- Requiring that, until 2008, the PUCO and OCC provide biennial reports to those standing committees, regarding the effectiveness of competition in the supply of competitive retail electric services in Ohio.
- Requiring those standing committees to meet at least biennially, until the end of all market development periods as determined by the PUCO, to consider the effect on Ohio of electric restructuring and to receive reports from the PUCO, OCC, and the Director of Development.[31]

The bill also repeals a provision requiring the PUCO to study, and make available a report on the study, whether increased energy efficiency, demand response, generation, and transmission provide increased opportunities for customers.[32]

Power Siting Board changes

Application of wind farm setback

The minimum setback for a wind turbine of an economically significant wind farm under continuing law and the Power Siting Board's (PSB's) rules apply in all cases except, under the bill, those in which all owners of nonparticipating property adjacent to the wind farm property waive application of the setback to that property. This includes, in a particular case, when the PSB determines that a setback greater than the minimum is necessary.[33]

The bill defines, for purposes of the provisions governing economically significant wind farm setbacks, the following:[34]

[30] R.C. 4901.10.

[31] R.C. 4928.06(C).

[32] R.C. 4928.71, repealed.

[33] R.C. 4906.20(B)(2)(c).

[34] R.C. 4906.20(C).

"Nonparticipating property" means a property that (1) is not under lease or agreement with the person seeking to construct the economically significant wind farm, and (2) the setback overlaps to any extent.

"Wind farm property" means all land within a continuous geographic boundary that contains the economically significant wind farm, associated setbacks, and properties under lease or agreement that contain any components of the economically significant wind farm.

"Economically significant wind farm" means a wind farm with an aggregate capacity of more than 5 but less than 50 megawatts, but excludes any such wind farm (1) in operation on June 24, 2008, or (2) with aggregate capacity of less than 20 megawatts that provides electricity to one customer at one location.[35]

The bill specifies that an electric generating plant that consists of wind turbines and associated facilities with a single interconnection to the electrical grid that is designed for, or capable of, operation at an aggregate capacity of 50 megawatts or more (for purposes of this analysis, a "major utility wind farm") is subject to the minimum setback requirements for a wind turbine of an economically significant wind farm as provided in statute and, under continuing law, the rules adopted by PSB for those setback requirements.[36] This change applies the nonparticipating property owner provisions described above for economically significant wind farms to major utility wind farms.

The bill also provides that any *changes* made to an existing certificate after September 15, 2014, for either an economically significant or major utility wind farm will be subject to the 1,125 foot setback measurement point from the nearest adjacent property.[37]

Major solar projects' minimum setback

The bill requires the PSB, not later than December 1, 2020, to adopt rules for notifying neighboring landowners of a major solar project site and prescribing a minimum setback for major solar projects. A major solar project that has submitted an application for a certificate for construction of a major utility facility or a change or amendment of a certificate for an existing certificate from the PSB prior to December 1, 2020, is exempt from the PSB-adopted rules.[38]

The bill defines a "major solar project" as a solar electric generating plant that is a major utility facility. Continuing law defines an electric generating plant that is a major utility facility as a plant and associated facilities designed for, or capable of, operation at a capacity of 50 megawatts or more.[39]

[35] R.C. 4906.13, not in the bill.

[36] R.C. 4906.201(A).

[37] R.C. 4906.20(B)(2)(b)(ii) and 4906.201(B)(2).

[38] R.C. 4906.15.

[39] R.C. 4906.01(K) and 4906.01(B)(1)(a).

Major utility facility definition

The bill amends a portion of the definition of "major utility facility" to include an electric transmission line and associated facilities designed for or capable of operating at 69 kilovolts or more. Under current law, "major utility facility" includes an electric transmission line and associated facilities of a design capacity of 100 kilovolts or more.[40]

Temporary hire of expert or analyst

Under the bill, the PSB chairperson may hire, temporarily, any other expert or analyst for the purpose of making studies, conducting hearings, investigating applications, or preparing any report required or authorized under laws governing power siting. Any such expert or analyst is to be compensated at the chairperson's direction from a supplemental application fee prescribed by PSB rule. All contracts for services of the temporary expert or analyst are subject to the chairperson's approval.[41]

Annual accounting of PSB fees

The bill requires the PSB, at the end of the fiscal year, to make, as required under continuing law, an annual accounting of collection and use of PSB-imposed fees and to issue an annual accounting report. The report must be filed in a manner consistent with the law governing official reports of transactions and proceedings of state offices and departments. The bill further requires the report to be filed no later than August 1. Current law requires the report to be filed no later than the last day of June of the year following the calendar year to which the report applies.[42]

Natural Gas Supply Access Investment Program

Program establishment

The bill requires the Ohio Public Works Commission (OPWC) Director to establish a Natural Gas Supply Access Investment Program (program) for the purpose of facilitating investment in planning, developing, designing, acquiring, constructing, operating, and maintaining physical facilities useful in meeting the natural gas supply needs, both as of the bill's effective date and reasonably expected for the future, of areas of Ohio in which there is, as of the bill's effective date, insufficient natural gas supply access to meet those needs. Under the program, the Director may make grants and loans to businesses, nonprofit organizations, and units of local government, in coordination with the PUCO.[43]

[40] R.C. 4906.01(B)(1).

[41] R.C. 4906.02(D)(2).

[42] R.C. 4906.03(C).

[43] R.C. 164.30(B).

Natural Gas Infrastructure Supply Access Development Fund

The bill creates the Natural Gas Infrastructure Supply Access Development Fund (Development Fund). The Development Fund is in the Treasurer's custody, but is not part of the State Treasury. The Development Fund will consist of (1) the excess money remaining in the Oil and Gas Well Fund at the end of the fiscal year, which must be transferred to the Development Fund, and (2) money that is appropriated to it by the General Assembly. The Development Fund money must be used to make grants and loans under the Natural Gas Infrastructure Development Program and by the Director in administering that program.[44] The interest generated by the Development Fund must be retained by the Development Fund.[45]

Rules

The Director must adopt rules under the Ohio Administrative Procedure Act (R.C. Chapter 119) that are necessary for the Program's administration. In no event can the Director or rules authorize any grants or loans in an amount or amounts that are not fully funded from the Natural Gas Supply Access Development Fund.[46] The rules must establish at least all of the following:

1. An application form and procedures governing the application process for receiving grants and loans under the program;
2. Criteria for prioritizing the award of grants and loans under the program. The criteria shall include all of the following:
    a. The projected number of customers that will be provided access or increased access to natural gas service by the proposed project;
    b. The projected natural gas demand or growth in demand to be generated by the proposed investment;
    c. Any economic impacts of the proposed investment, including customer fuel cost savings;
    d. Any impacts the proposed investment may have on the reliability of natural gas service in Ohio;

[44] This reference in this section of the bill creating the fund to the "Natural Gas Infrastructure Development Program" appears to be an error. It should be changed to refer to the "Natural Gas *Supply Access* Development Program," which is its name as created under the bill. In addition, it is not clear who is the Director referred to in this section. It is probably the OPWC Director. This should be clarified by adding language specifically identifying the Director. R.C. 164.30 compared with R.C. 164.31.

[45] R.C. 164.31 and 1509.02.

[46] The name of the fund in the section that creates it is: "Natural Gas *Infrastructure* Supply Access Development Fund." The reference to the fund in the section regarding the rules for the program should be corrected. R.C. 164.30(C) compared to R.C. 164.31.

e. Any other issue related to the development of natural gas infrastructure to enhance economic development and retention that the director deems relevant.[47]

Application of program provisions

The bill specifies that the program provisions do not do any of the following:

1. Prohibit a natural gas company from filing an application to change, modify, or alter rates and charges, or to enter into a reasonable arrangement or schedule.
2. Inhibit the PUCO's authority to approve rate adjustment mechanisms for natural gas infrastructure expansion or replacement programs.
3. Prohibit the PUCO from approving an infrastructure investment plan and an infrastructure expansion recovery mechanism as part of a general rate application.

For the purposes of the program provisions, "natural gas company" means a public utility that supplies natural gas to its Ohio consumers for lighting, power, or heating purposes and excludes a retail natural gas supplier.[48]

Ohio Consumers' Counsel changes

Operating assessment exemption

The bill exempts a wireless service provider and a reseller from being subject to the Ohio Consumers' Counsel's (OCC's) operating assessment. That assessment, under continuing law, is equal to the OCC appropriation in each fiscal year apportioned among and assessed against public utilities in Ohio. The bill creates the exemption by removing wireless service providers and resellers from the definition of public utility for purposes of the assessment.[49]

A "wireless service provider" means a facilities-based provider of wireless service to one or more end users in Ohio. "Reseller" means a nonfacilities-based provider of wireless service that provides wireless service under its own name to one or more end users in Ohio using the network of a wireless service provider. "Wireless service" is defined as federally licensed commercial mobile service as defined by federal law and further defined as commercial mobile radio service by the federal rules, and includes service provided by any wireless, two-way communications device, including a radio-telephone communications line used in cellular telephone service or personal communications service, a network radio access line, or any functional or competitive equivalent of such a radio-telephone communications or network radio access line.[50]

[47] R.C. 164.30(C).

[48] R.C. 164.30(A) and (D); R.C. 4929.01, not in the bill.

[49] R.C. 4911.18(D)(2) and 4927.03.

[50] R.C. 128.01, not in the bill.

Clarification on assessment computation

Under continuing law, the assessment apportioned among and assessed against each public utility in Ohio for the purpose of maintaining and administering the OCC is made by computing the assessments based on the intrastate gross earnings or receipts of the public utilities for the calendar year that is, under the bill, *immediately* preceding, rather than, under current law, the calendar year *next* preceding that in which the assessment is made.[51]

Residential consumer or municipal corporation representation

Under current law, OCC, at the request of one or more residential consumers residing in, or municipal corporations located in, an area served by a public utility or whenever in OCC's opinion the public interest is served, may represent those consumers or corporations whenever an application is made to the PUCO by any public utility desiring to establish, modify, amend, change, increase, or reduce any rate, joint rate, toll, fare, classification, charge, or rental. The bill removes "or whenever in [OCC's] opinion the public interest is served," from the provision, and specifies that the OCC may represent those consumers or corporation whenever an application described above "affecting residential consumers" is made to the PUCO.

The bill also makes a change regarding the continuing authority for the OCC to appear before the PUCO as a residential consumer representative regarding any commodity or service complaint. The OCC may make such an appearance if the complaint is about a rate or similar charge, classification, or rental rendered, charged, or otherwise collected, or proposed to be rendered, charged, or otherwise collected, "in a manner that affects residential consumers" in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of the law.

Additionally, the bill states that, to the extent that a municipal corporation, the OCC, and any other party or intervenor seek to participate in the same proceeding, and do so on behalf of residential consumers, their participation may be subject to any reasonable conditions that the PUCO deems necessary to avoid duplication, repetition, and delay.[52]

Governing Board member appointment

The bill repeals the provision that the OCC Governing Board members be appointed by the Attorney General with the advice and consent of the Senate.

After the bill's effective date, three members are to be appointed by the Attorney General, three members are to be appointed by the Speaker of the House of Representatives, and three members are to be appointed by the President of the Senate. The Attorney General, Speaker, and President must appoint one person from each of the organized groups representing labor, residential consumers, and family farmers as follows:

[51] R.C. 4911.18(A).

[52] R.C. 4911.15.

	Appointment by Attorney General	Appointment by Speaker	Appointment by President
First three terms ending after bill's effective date	Member from organized group representing family farmers.	Member from organized group representing labor.	Member from organized group representing residential consumers.
Second three terms ending after bill's effective date	Member from organized group representing residential consumers.	Member from organized group representing family farmers.	Member from organized group representing labor.
Last three terms ending after bill's effective date	Member from organized group representing labor.	Member from organized group representing residential consumers.	Member from organized group representing family farmers.

Thereafter, appointment of a successor member for a new term, or a member to fill a vacancy, shall be made by the appointing authority that made the appointment for that vacant or expired term, in the manner described above. Any vacancy occurring after the bill's effective date, but prior to the expiration of that term, must be filled by the appointing authority that would have appointed a member to fill the term when the term expired.[53]

Mission statement

The bill states that the OCC's mission is to represent residential consumers before the PUCO to ensure the availability of safe, adequate, and reliable utility services at rates and charges that are just and reasonable.[54]

Powers and duties changes

Under current law, the OCC has all the rights and powers of any party in interest appearing before the PUCO regarding examination and cross-examination of witnesses, presentation of evidence, and other matters. The bill specifies that those rights and powers apply in any proceeding that may affect the services or service rates and charges available to residential consumers.

The bill removes the provision permitting the OCC to take appropriate action with respect to residential consumer complaints concerning the operation of the PUCO. Continuing law permits the OCC to take appropriate action with respect to residential consumer complaints concerning quality of service or service charges.

[53] R.C. 4911.17.

[54] R.C. 4911.02(A).

Current law permits OCC to institute, intervene in, or otherwise participate in proceedings in both state and federal courts and administrative agencies on behalf of residential consumers concerning review of decisions rendered by, or failure to act by, the PUCO. The bill specifies that the OCC may *only* institute, intervene in, or otherwise participate in the specified proceedings. It is unclear what effect this change has, as the list of OCC rights and duties is introduced with a clause that reads: "Without limitation because of enumeration, the counsel . . . may."

The bill requires the OCC to make available to the public in a timely manner the long range studies concerning various topics relevant to the rates charged to residential consumers they conduct under continuing law.

The bill permits the OCC to apply for and accept federal grants, which may be used to pay or reimburse the counsel for expenses incurred in the performance of the counsel's official duties.

Under current law, the OCC must "follow" the state's policies set forth under Natural Gas Companies Law that involve supporting retail natural gas competition. The bill amends this provision to read: "With regard to any and all authority vested in the [OCC]," the OCC must "adhere to" the state's policies as set forth under Telecommunications Law, Competitive Retail Electric Service Law, and Natural Gas Companies Law.[55]

Solar collector systems

The bill prohibits homeowners, neighborhood, civic, and other associations ("associations"), as well as condominium properties, from imposing unreasonable limitations on the installation of solar collector systems in certain locations. Specifically, with regard to associations, the bill prohibits unreasonable restrictions on the installation of solar collectors on the roof or exterior walls of any improvement that the property owner owns or has the exclusive right to use. With regard to condominium properties, the bill prohibits unreasonable restrictions on the installation of solar collectors on the roof or exterior walls of improvements, so long as there is no competing use of the roof or exterior walls.[56]

The bill also addresses solar easements in areas subject to association or condominium regulations. Continuing law, unaffected by the bill, allows any person to grant a solar access easement to ensure adequate access to sunlight for solar energy collection devices. Once granted, the owner of property benefited by the solar access easement can prevent any obstruction of the solar access the easement guarantees.

The bill establishes that property owners subject to association or condominium regulations, who install or intend to install solar collector systems, may negotiate to obtain solar access easements as they are described in continuing law.[57]

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[55] R.C. 4911.02(C) and (D).

[56] R.C. 5301.076 and 5311.196.

[57] R.C. 5301.077 and 5311.197; R.C. 5301.63, not in the bill.

The bill defines the following terms regarding solar collection system placements:

1. "Solar collection system" means a solar collector or other solar energy device, the primary purpose of which is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating, space cooling, or water heating.
2. "Unreasonable limitation" includes a limitation that significantly increases the cost, or significantly decreases the efficiency, of the solar collector system.[58] The bill does not define what constitutes a significant cost increase or efficiency decrease.

Railroad right-of-way crossings

The bill establishes two different regulatory regimes governing the crossing of railroad rights-of-way: one applying to public utilities and the other applying to telephone companies and video service providers.

Public utility use of railroad right-of-way

Crossing allowance and notice of crossing

The bill permits a public utility to cross a railroad right-of-way, unless the crossing exceeds one mile in length. The bill defines "cross" (or "crossing") to mean the placement and use of public utility facilities over, under, across, or parallel to a right-of-way. "Public utility" means any person or entity that is any of the following:

- An electric light company that engages in the business of supplying electricity for light, heat, or power to Ohio consumers;
- A gas company that engages in the business of supplying artificial gas for lighting, power, or heating purpose to Ohio consumers;
- A natural gas company that engages in the business of supplying natural gas for lighting, power, or heating purposes to Ohio consumers;
- A pipeline company that engages in the business of transporting natural gas, oil, or coal or its derivatives through pipes or tubing, either wholly or partly within Ohio;
- A water-works company that engages in the business of supplying water through pipes or tubing, or in a similar manner, to Ohio consumers;
- A sewage disposal system company that engages in the business of sewage disposal services through pipes or tubing, and treatment works, or in a similar manner, within Ohio.[59]

[58] R.C. 5301.075, 5301.076, 5311.195, and 5311.196.

[59] R.C. 4933.35 and 4933.351.

Notice of crossing

A public utility that intends to cross a railroad right-of-way must send notice, by certified mail, return receipt requested, to the railroad that owns the right-of-way of the utility's intent to cross. The notice must include an engineering design showing the location of the proposed crossing and the railroad's property, tracks, and wires that the public utility will cross.[60]

Crossing fee

Under the bill, the notice must be accompanied by a one-time crossing fee to the railroad in the amount of $1,250. The fee compensates the railroad for the acquisition of crossing rights, construction of the crossing, and all other expenses incurred by the railroad as a result of the crossing, unless the crossing is on a public right-of-way. A public utility is not required to pay any crossing fee if crossing a public right-of-way. A public utility cannot be subjected to any other railroad-imposed fee or charge regarding a crossing or construction of a crossing.[61]

Construction and recording of easement

The bill permits a public utility to commence construction of a crossing in the railroad right-of-way 60 days after the date the notice is received by the railroad, unless the railroad files an appeal with the PUCO before the 60-day period expires. On completion of construction of a crossing, the public utility may record a perpetual easement consistent with the crossing.[62]

Appeal

The bill requires the PUCO, if a timely appeal is filed, to determine whether the proposed crossing or its construction would be a serious threat to the safe operation of the railroad or the current use of the right-of-way. The PUCO must consider no other issues in making its determination. The PUCO must issue an order no later than 120 days after the date the appeal is filed. The determination is final, and no appeal can be taken from it. The PUCO has exclusive jurisdiction over an appeal.[63]

Miscellaneous provisions

The bill specifies the following regarding its provisions governing a public utility's use of a railroad right-of-way:[64]

1. Nothing prohibits a railroad and public utility from continuing under an existing agreement, negotiating the terms and conditions applicable to a crossing, or privately resolving any disputes related to a crossing.

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[60] R.C. 4933.354 and 4933.355.

[61] R.C. 4933.355, 4933.356, and 4933.357.

[62] R.C. 4933.3510 and 4933.3511.

[63] R.C. 4933.3514.

[64] R.C. 4933.3515.

2. Nothing impairs a public utility's authority to secure crossing rights by exercising its power of eminent domain.

Telecommunication provider use of railroad right-of-way

Crossing authorized and notice of crossing

Crossing notice required

The bill permits a telephone company or video service provider (provider) to construct a crossing. A provider seeking to construct a crossing must submit a written notice to the railroad whose railroad right-of-way is to be subject to the crossing that includes the following:

- The name, address, telephone number, and email address of the provider and the provider's agent or representative authorized to act on behalf of the provider;
- A completed engineering drawing showing the crossing location and the proposed location of the provider facilities;
- The railroad right-of-way, property, tracks, and wires the provider proposes to cross.

The notice may be submitted by (1) certified mail, return receipt requested, (2) an internet-based interface, or (3) email. A notice submitted in compliance with the bill is considered complete. If a railroad fails to timely object regarding a notice's completeness, the notice is deemed complete.

A provider is not required to submit a crossing notice for conducting facility maintenance, repair, or replacement activity in its crossing if the activity does not involve excavation or continuous work within 25 feet of railroad track located in the right-of-way containing the crossing.[65]

Other authorization requirements prohibited

Under the bill, a railroad whose railroad right-of-way is subject to a crossing cannot require any license, permit, or authorization for the construction of the crossing other than a crossing notice, new crossing notice, or maintenance or repair notice under the bill.[66]

Definitions

The bill defines the following terms regarding provider use of railroad right-of-way:[67]

1. "Cross" or "crossing" means the placement and use of any provider facility over, under, or across a railroad right-of-way from a public right-of-way.
2. "Facility" means any cable, conduit, wire, supporting poles and guys, manhole, or other material or equipment, used by a provider to furnish service it is authorized to provide.

[65] R.C. 4963.601 to 4963.604, 4963.607, 4963.6011, 4963.6012, and 4963.6015.

[66] R.C. 4963.608.

[67] R.C. 4963.60; R.C. 9.23, 1332.21, 4905.03, and 4907.02, not in the bill.

3. "Political subdivision" means a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.
4. "Provider" means either:
    a. A telephone company that is engaged in the business of transmitting telephonic messages to, from, through, or in Ohio;
    b. A video service provider that has been granted a video service authorization under Ohio law.
5. "Public right-of-way" means the surface of, and the space within, through, on, across, above, or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, and any other land dedicated or otherwise designated or assumed in any formal or prescriptive manner for a compatible purpose use, which is owned or controlled by the state or any political subdivision of the state, or that is land otherwise dedicated to public use as described in the valuation records created under Interstate Commerce Commission Valuation Order Number 7.
6. "Railroad" includes any corporation, company, individual, or association of individuals, or its lessees, trustees, or receivers appointed by a court, which owns, operates, manages, or controls a railroad or part of a railroad as a common carrier in Ohio, or which owns, operates, manages, or controls any cars or other equipment used on such a railroad, or which owns, operates, manages, or controls any bridges, terminals, union depots, sidetracks, docks, wharves, or storage elevators used in connection with such a railroad, whether owned by such railroad or otherwise, and means and includes express companies, water transportation companies, freight-line companies, sleeping car companies, and interurban railroad companies, and all persons and associations of persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property within Ohio.
7. "Railroad right-of-way" means land granted or reserved for track for rail transportation by a railroad that is either of the following:
    a. In active use;
    b. Out of service, but the railroad retains the right to reactivate it.

Construction of crossing

Generally

The bill permits a provider to begin construction of a crossing under a crossing notice after 60 days have expired since the date the crossing notice was submitted, unless the crossing notice is subject to a situation that would delay or prevent construction as described below under "**Construction delay or prevention**." A provider, however, must begin construction of the crossing no later than 180 days after submitting the crossing notice, except

the provider may have additional time as reasonably necessary if the provider is or was subject to any of the following:

- Tolling or a PUCO petition regarding crossing notice completion ("**Notice completeness**," below);
- A PUCO petition regarding railroad objections based on the railroad's established crossing standards ("**Crossing standards objection**" below);
- A proceeding regarding crossing construction under a bond ("**Construction-under-bond process/proceeding**" below);
- Force majeure or third-party actions.[68]

The bill provides that a crossing notice will expire and the crossing fee may be retained by the railroad if the provider fails to begin construction of the crossing within 180 days (plus any reasonably necessary additional time) after submitting the crossing notice. A provider that fails to begin construction of a crossing as required above may seek to construct the crossing by submitting a new crossing notice.[69]

Construction delay or prevention

A provider is not permitted to begin construction of a crossing if the underlying crossing notice is the subject of any of the following:

- Tolling or a PUCO petition regarding crossing notice completion ("**Notice completeness**," below);
- A PUCO petition regarding railroad objections based on the railroad's established crossing standards ("**Crossing standards objection**" below);
- A pending proceeding regarding crossing construction under a bond ("**Construction-under-bond process/proceeding**" below);
- A permanent injunction enjoining crossing construction ("**PUCO final orders**" below).[70]

Notice completeness

If a railroad that receives a crossing notice determines that the crossing notice does not comply with the bill's requirements, the railroad must notify the provider in writing that the crossing notice is incomplete and specify the reasons the notice is incomplete and what action must be taken to make the crossing notice complete. The railroad must notify the provider by

[68] R.C. 4963.6030(A) and 4963.6031.

[69] R.C. 4963.6032.

[70] R.C. 4963.6030(B).

certified mail, return receipt requested, that the notice is incomplete no later than 15 days after the date the crossing notice was submitted.[71]

Tolling. Under the bill, if a railroad makes a timely notification that a crossing notice is incomplete, the 60-day period must be tolled regarding construction of the crossing under the crossing notice until the railroad determines the notice is complete.[72]

PUCO completeness petition. The bill permits a provider whose crossing notice has been determined incomplete to petition the PUCO for a determination of whether the crossing notice is complete after the provider has taken action to complete the crossing notice and the railroad still determines the crossing notice is incomplete.[73]

Crossing standards objection

Railroad objection. Under the bill, if a railroad has an objection to the construction of a crossing described in a crossing notice, which objection is based on failure of the provider to comply with a written railroad crossing standard, the railroad must notify the provider in writing, by certified mail, return receipt requested, of the objection and specify the reason for the objection and what action must be taken to address the objection. The railroad must notify the provider of the objection no later than 15 days after the date the crossing notice was submitted.[74]

PUCO petition to resolve objection. Under the bill, if a railroad notifies a provider of an objection, the railroad and provider must make a good faith effort to resolve the objection to the satisfaction of the railroad and provider. If a railroad and provider are unable to resolve an objection within 15 days of the date the objection notification is sent, the railroad or provider may petition the PUCO for resolution of the objection.[75]

Construction-under-bond process/proceedings

Under the bill, prior to the PUCO resolution of a petition to determine crossing notice completeness or the resolution of a crossing standards objection petition (discussed above), prior to the expiration of the period regarding a crossing notice that is not subject to either type of petition, or while a crossing notice is subject to tolling, the provider may proceed with the construction of the crossing under the following conditions:

- The provider notifies the railroad of the intent to do both of the following:
  - Proceed with crossing construction prior to the resolution of the petition or expiration of the time period;

[71] R.C. 4963.6012.

[72] R.C. 4963.6013.

[73] R.C. 4963.6014.

[74] R.C. 4963.6018.

[75] R.C. 4963.6019 and 4963.6020.

- Obtain a bond or letter of credit in the sum of $25,000 payable to the railroad for any damages resulting from the construction of the crossing;

- The provider obtains the $25,000 bond or letter of credit.

- The PUCO has not (1) made a determination that there is a reasonable likelihood that the crossing involves a significant and imminent likelihood of danger to the public health or safety or is a serious threat to the safe operation of the railroad or the current use of the railroad right-of-way or public right-of-way, or (2) issued an order enjoining construction of the crossing permanently.[76]

Request for PUCO determination. The bill permits a railroad that receives notice of a provider proceeding with construction of a crossing to request the PUCO to issue an order prohibiting the provider from proceeding with the construction because there is a reasonable likelihood that one of the following situations applies:

- The crossing involves a significant and imminent likelihood of danger to the public health or safety.

- The crossing is a serious threat to the safe operation of the railroad or the current use of the railroad right-of-way or public right-of-way.

PUCO temporary injunction. If the PUCO determines that there is a reasonable likelihood that either or both aforementioned situations apply, it must do both of the following:

- Issue an order temporarily enjoining the crossing construction;

- Conduct further proceedings to determine if either or both aforementioned situations apply.

PUCO final orders. If the PUCO determines that one or both of the aforementioned situations apply, it must do one of the following:

- Issue an order that does the following:
  - Requires the provider, railroad, or both to take such action the PUCO determines necessary to remedy the situation;
  - Resend the order enjoining the crossing construction.

- Issue an order enjoining the crossing construction permanently, if no action is possible to remedy the situation.[77]

Crossing standards

The bill requires each railroad to establish and maintain standards for crossings in Ohio, which must include technical requirements for crossings that do not exceed the requirements

[76] R.C. 4963.6023.

[77] R.C. 4963.6024 to 4963.6026.

of the National Electrical Safety Code established by the Institute of Electrical and Electronics Engineers. Each railroad must establish and maintain these railroad crossing standards, and also provide those standards on a provider's request, no later than 90 days after the bill's effective date.

A railroad cannot establish or impose crossing standards in addition to the abovementioned standards, except a railroad may establish or impose additional crossing standards for a particular railroad right-of-way for which a crossing notice is submitted that has unique characteristics and the additional standards are reasonably necessary to protect the public health and safety or the safe operation and current use of the railroad right-of-way. The additional standards cannot exceed the requirements of the National Electrical Safety Code established by the Institute of Electrical and Electronics Engineers.[78]

Safety personnel

Under the bill, a railroad may require safety personnel to be present during the time construction activity for a crossing is occurring. If a railroad requires the presence of safety personnel, the railroad must do one of the following:

- Provide the personnel and make sure they are present during the construction activity;
- Permit the provider to hire third-party contractors to serve as safety personnel and to be present during the construction activity.

If a railroad permits a provider to hire safety personnel, the railroad must provide a list of third-party contractors approved by the railroad to serve as such safety personnel. If a provider hires safety personnel, the provider must be solely responsible for the cost of employing that personnel.

Safety personnel cannot be required to be present in either of the following situations:

- For construction activity for a crossing if the construction activity is not in the railroad right-of-way;
- For facility maintenance, repair, or replacement activity in a crossing if the activity does not involve excavation or continuous work within 25 feet of railroad track located in the railroad right-of-way containing the crossing.[79]

Fees and costs

Crossing fee

Under the bill, a provider must pay a one-time fee of $750 for each crossing notice to the railroad whose railroad right-of-way is to be subject to the crossing. The provider must pay

[78] R.C. 4963.6034(A), (C), and (D) and 4963.6035.

[79] R.C. 4963.6041 to 4963.6045.

the fee at the same time it submits the crossing notice. The fee completely compensates the railroad for the crossing described in a crossing notice.[80]

Flagging costs

The bill requires a provider, if a railroad provides flagging for the crossing construction, to reimburse the railroad for the actual, reasonable, and documented costs associated with the flagging. The reimbursement is only required for flagging provided during the actual time construction activity for the crossing is occurring.[81]

No other fees or costs permitted

The bill prohibits any cost, charge, or fee, other than the crossing fee and flagging costs, to be imposed on a provider for a crossing.[82]

Dispute resolution

The bill permits a railroad or provider subject to a crossing for which construction has been completed to file a petition with the PUCO requesting it to resolve any dispute between the railroad and provider regarding the crossing. The PUCO must hold a hearing and make any determination necessary to resolve the dispute.[83]

Maintenance and repair

Under the bill, each railroad and provider is responsible for the maintenance and repair of their own property located in the railroad right-of-way containing the crossing.

The bill requires a railroad to give immediate notice to a provider, and a provider to give immediate notice to a railroad, if the railroad or provider needs to perform either of the following regarding a crossing to which they are both subject, and that performance may affect the other's operations:

- Emergency maintenance or repair within the railroad right-of-way containing the crossing;
- Maintenance or repair involving excavation or continuous work within 25 feet of railroad track located in the railroad right-of-way containing the crossing.[84]

Relocation of provider facilities

Under the bill, a railroad may require a provider to relocate provider facilities in a crossing, at the railroad's expense, if the relocation is necessary to accommodate railroad operations. The railroad must provide a statement or other supporting documentation to a

[80] R.C. 4963.605 and 4963.606.

[81] R.C. 4963.6038.

[82] R.C. 4963.606.

[83] R.C. 4962.6065.

[84] R.C. 4963.6048 and 4963.6049.

provider specifying the operational reasons for a relocation requirement no later than 15 days after the provider requests the statement or documentation. The provider cannot be subject to any fee or charge for relocating provider facilities under a relocation requirement.[85]

Transfer or assignment of crossing rights

The bill prohibits a provider from transferring or assigning any of its rights in a crossing without the prior written permission of the railroad whose railroad right-of-way is subject to the crossing, which permission that railroad must not unreasonably withhold, unless the provider assigns or otherwise transfers its rights to any entity controlled by, controlling, or under the common control of, the provider, or to any entity into, or with which, the provider is merged or consolidated or which acquires ownership or control of all or substantially all of the provider's facilities. A provider must give notice of an assignment or transfer of a crossing to the railroad no later than 60 days after the date the transfer or assignment is executed.[86]

Liability

Under the bill, each railroad and provider subject to a crossing are liable for any damage or injury to any person or property caused by their own acts or omissions. However, notwithstanding any law or regulation, a railroad and provider subject to a crossing are not liable to each other for consequential, incidental, punitive, exemplary, indirect, or business interruption damages suffered by either, including lost profits, whether established in statutes, tort, or contract, regardless of the theory of liability on which the liability claim rests.[87]

Contact information

The bill requires each railroad to provide, on request of a provider, and no later than 90 days after the bill's effective date, the following:[88]

- A mailing address, internet-based interface access information, and electronic mail address for submission of crossing notices;
- A telephone number for maintenance and repair notices.

Rules

The bill requires the PUCO to adopt rules necessary to effectuate the purposes and requirements for telephone company or video service provider use of railroad rights-of-way, including rules governing crossing notices, notifications, petitions, and proceedings.[89]

[85] R.C. 4963.6052 to 4963.6054.

[86] R.C. 4963.6057 to 4963.6059.

[87] R.C. 4963.6062 and 4963.6063.

[88] R.C. 4963.6034(B), (C), and (D).

[89] R.C. 4963.6067.

Gas company meter-proving

The bill requires a meter-prover, required under continuing law to be provided by all gas companies supplying the public with artificial or natural gas, to be tested in the place where it is to be used, stamped, and sealed by a qualified meter-proving company, contractor, or manufacturer in accordance with manufacturer recommendations, rather than by the PUCO as under current law. The bill further requires gas companies to maintain records of tests and make those records available to PUCO staff on request.[90]

H0246 (L-2873)-133/ks

[90] R.C. 4933.11.