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S.B. 316
136th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Brenner

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SUMMARY

- Allows a utility provider, in lieu of obtaining a railroad's permission, to apply to the appropriate local governmental entity to conduct certain work that will result in an encroachment on a railroad's right-of-way or near the railroad's right-of-way.
- Allows the appropriate local governmental entity to grant such permission to the utility provider after reasonable notice is given to any affected railroad.

DETAILED ANALYSIS

Utility encroachment on a railroad right-of-way

The bill allows a utility provider (e.g., an electricity or natural gas company) to apply to the appropriate local governmental entity to conduct work that will result in an encroachment on or near a railroad's right-of-way. However, such work must be in the interest of health, safety, or public benefit. Currently, for a utility provider to conduct work that encroaches on or near a railroad's right-of-way, the provider must receive permission from the railroad company by executing a formal agreement, as required under federal law.[1] Often times, these types of agreements are wireline/pipeline license agreements when the utility lines cross over, under, or along the right-of-way.[2] The bill, however, allows a utility provider to receive permission from a local governmental entity in lieu of receiving permission from the railroad company. To do so, the utility provider must apply to the applicable local governmental entity as follows:

1. If the encroachment is proposed inside the territory of a municipal corporation, the provider must apply to the legislative authority of the municipal corporation; or

[1] See 23 Code of Federal Regulations (C.F.R.) Part 635.307 - 309; see also 23 C.F.R. Part 645.201-215.

[2] See e.g., Pipe, Wire & Fiber Optics.

2. If the encroachment is proposed outside of a municipal corporation, the provider must apply to the board of county commissioners.[3]

The local governmental entity may grant permission to the utility provider after giving reasonable notice to any affected railroad. However, the constitutionality of the bill may be challenged. If challenged, a court may examine whether the bill is enforceable under the U.S. Constitution's Supremacy Clause (due to federal requirements concerning railways),[4] Commerce Clause (depending on the bill's impact on interstate commerce),[5] or Taking's Clause (if there is an encroachment on or near the railroad's right-of-way without consent or just compensation).[6]

HISTORY

Action	Date
Introduced	11-04-25

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[3] R.C. 4963.50.

[4] U.S. Constitution, Article VI, Clause 2 and *CSX Transportation, Inc. v. City of Plymouth*, 283 F.3d 812 (6th Cir. 2002).

[5] U.S. Const., art. 1, sec. 8, cl. 3.

[6] Fifth Amendment to the U.S. Constitution.