

SENATE BILL 2388

By Watson

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 7; Title 20; Title 29; Title 39; Title 54; Title 64;
Title 65 and Title 67, relative to railroads.

WHEREAS, in 2017, the United States freight rail system moved over 1.5 billion tons of goods, and the largest freight railroads—Class I—dominated the industry and accounted for more than ninety percent of its annual revenue; and

WHEREAS, according to the United States Government Accountability Office's Report on Rail Safety, dated May 2019 (GAO-19-443), officials from all seven Class I freight railroads and representatives from the Association of American Railroads, the Federal Railroad Administration, the Surface Transportation Board, and other stakeholders indicated that freight train length has increased in recent years; and

WHEREAS, pursuant to the same report, two Class I railroads provided that their average train length increased over the ten-year period of 2008 through 2017 by about 1,500 feet for one railroad (from about 6,000 to 7,500 feet, or up to about 1.4 miles) and about 1,200 feet for the other railroad (from about 4,900 to 6,100 feet, or up to about 1.2 miles), evidencing an increase in the average length of a train of about twenty-five percent for both railroads; and

WHEREAS, in recent years, railroad workers and local communities have expressed safety concerns related to longer freight trains; and

WHEREAS, as admitted by the United States Department of Transportation's Federal Railroad Administration's Administrator Ronald L. Batory on the administration's website, "[r]ailroads, states and local jurisdictions are best positioned to address blocked highway-rail grade crossings"; and

WHEREAS, the Federal Railroad Administration further admits on its website that blocked crossings pose potential safety risks, specifically in locations where trains routinely hinder roadway and pedestrian movement for extended periods, and blocked crossings make people late for work, school, and appointments, and contribute to roadway congestion; and

WHEREAS, the United States Government Accountability Office's Report on Rail Safety specifically recommended that the Administrator of the Federal Railroad Administration should work with railroads to engage state and local governments to identify community-specific impacts of train operations, including longer trains, where streets and highways cross railroad rights-of-way and develop potential solutions to reduce those impacts; and

WHEREAS, it is generally held that a railroad company may be required, without violation of its constitutional rights, to reconstruct or relocate a highway crossing, or to bear or contribute to the expense thereof; and

WHEREAS, the elimination of grade crossings that are a menace to public safety are within the exercise of the police power of the state; now, therefore,

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

SECTION 1. Tennessee Code Annotated, Section 65-3-124, is amended by designating the existing language as subsection (a) and adding the following as new subsections:

(b) The legislative body of a municipality receiving a report from the department of transportation pursuant to subsection (a) may request the department of transportation to provide assistance to the municipality in applying for federal funds pursuant to Section 11301 of the Fixing America's Surface Transportation (FAST) Act (49 U.S.C. § 22907), or other federal law, for the purpose of funding projects to address the impacts of blocked crossings within the municipality's jurisdiction, including public safety risks and concerns, as detailed in the report.

(c) Upon receipt of a request pursuant to subsection (b), the department of transportation shall provide, at a minimum, the following assistance, at no cost to the municipality, in preparation of a grant or award proposal:

- (1) Drafting the grant or award proposal;
- (2) Gathering the necessary supporting documentation for a proposal;
- (3) Providing legal and accounting services relative to the proposal; and
- (4) Submitting the proposal on behalf of the municipality.

SECTION 2. Tennessee Code Annotated, Title 65, Chapter 11, is amended by adding the following as a new section:

65-11-114.

(a) A municipality receiving a report from the department of transportation pursuant to § 65-3-124 may enact an ordinance that requests the commissioner of transportation to designate the portion of any municipal road blocked, as evidenced in the report, as part of the general highway plan of this state.

(b) Within one (1) month of receipt of a copy of the ordinance passed pursuant to subsection (a), the commissioner shall investigate the portions of municipal roads described in the ordinance and notify those railroad companies operating on tracks at the designated crossings on those roads.

(c)

(1) If, three (3) years following receipt of a copy of the ordinance passed pursuant to subsection (a), the requesting municipality does not receive a subsequent report pursuant to § 65-3-124, then the commissioner shall reject the municipality's request.

(2) If, three (3) years following receipt of a copy of the ordinance passed pursuant to subsection (a), the requesting municipality receives a subsequent report pursuant to § 65-3-124, then the commissioner shall:

(A) Accept the municipality's request by finding that those portions of municipal roads described in the ordinance are of sufficient importance to be included in the general highway plan of the state;

(B) Designate portions of those roads as part of the general highway plan of this state; and

(C) Order the elimination of grade crossings on those roads.

(d)

(1)

(A) Each railroad company owning or operating the track or tracks at a grade crossing ordered under this section bears eighty percent (80%) of the total cost of the elimination of the grade crossing, the total cost to include the cost of:

(i) The construction of an underpass or overpass substituted for the grade crossing and the approaches thereto;

(ii) The surveys and preparations of the plans and estimates of cost for the underpass or overpass crossing ordered by the commissioner or the commissioner's designee; and

(iii) Any revision of the grade and layout of the railroad tracks directly made necessary by the grade separation.

(B) The cost of metal surfacing or road pavement required in accomplishing the elimination of a grade crossing is not included in the calculation of total cost.

(C) A disagreement between the commissioner or the commissioner's designee and the railroad company affected with regard to the extent or cost of a revision of the grade and layout of the railroad tracks directly made necessary by a grade separation is resolved by the commissioner, and the commissioner's decision is final.

(2) The remaining twenty percent (20%) of the total cost is borne out of the public funds as a part of the cost of the highway of which the crossing is a part; provided, a detailed statement of the expense of all that part of the construction of the underpass or overpass crossing, including the preparation of the detailed plans and specifications, and related expenses, which is conducted by the railroad company, is submitted to the commissioner or the commissioner's designee, duly sworn to by some official of the railroad company having knowledge of the facts.

(e) This section is to be interpreted in a manner consistent with federal law.

SECTION 3. Tennessee Code Annotated, Section 65-11-111, is amended by deleting "Each railroad company" and substituting "Except as provided in § 65-11-114, each railroad company".

SECTION 4. Tennessee Code Annotated, Title 29, Chapter 34, Part 2, is amended by adding the following as a new section:

(a) As used in this section:

(1) "Emergency medical services" means services used in responding to the perceived individual need for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury; and

(2) "Operator" means an individual who controls, or has operational responsibility for, a train.

(b)

(1) Notwithstanding another law to the contrary, there is a rebuttable presumption in an action brought against an operator for wrongful death or injuries resulting from a stationary train blocking a crossing that the operator acted negligently with regard to the blocked crossing if the operator:

(A) Was notified by law enforcement of the urgent need for an emergency vehicle to use the crossing to provide emergency medical services; and

(B) The operator refused to move the train.

(2) Notwithstanding another law to the contrary, there is a rebuttable presumption in an action brought against a railroad for wrongful death or injuries resulting from a stationary train blocking a crossing that the railroad acted negligently with regard to the blocked crossing if the railroad's operator:

(A) Was notified by law enforcement of the urgent need for an emergency vehicle to use the crossing to provide emergency medical services; and

(B) The operator refused to move the train pursuant to the railroad's policies or procedures.

SECTION 5. Tennessee Code Annotated, Section 39-13-212, is amended by adding the following as a new subsection:

(c)

(1) As used in this subsection (c):

(A) "Emergency medical services" means services used in responding to the perceived individual need for immediate medical care in

order to prevent loss of life or aggravation of physiological or psychological illness or injury; and

(B) "Operator" means an individual who controls, or has operational responsibility for, a train.

(2)

(A) An operator of a stationary train blocking a crossing commits criminally negligent conduct if the operator:

(i) Was notified by law enforcement of the urgent need for an emergency vehicle to use the crossing to provide emergency medical services; and

(ii) The operator refused to move the train.

(B) It is an affirmative defense to prosecution of an operator pursuant to this subsection (c), which must be proven by a preponderance of the evidence, that:

(i) The train tracks were blocked such that the train could not be safely moved in either direction;

(ii) The operator could not move the train without causing harm to another individual; or

(iii) There existed mechanical issues with the train preventing the operator from being able to move the train.

SECTION 6. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 7. For purposes of Sections 4 and 5, this act takes effect July 1, 2022, the public welfare requiring it, and applies to causes of action or offenses occurring on or after that date. For all other purposes, this act takes effect upon becoming a law, the public welfare requiring it.