

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Infrastructure and Security

BILL: SB 608

INTRODUCER: Senator Bean

SUBJECT: Railroad-highway Grade Crossings

DATE: April 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	IS	Pre-meeting
2.			JU	
3.			ATD	
4.			AP	

I. Summary:

SB 608 prohibits a railroad train from blocking a public highway, street, or road at a railroad-highway grade crossing for more than fifteen minutes unless the blocking is due to a safety-related emergency or a mechanical failure making movement of the train impossible. The bill sets out a schedule of increasing penalties based on the length of time a crossing is blocked and directs a law enforcement officer to issue a citation to the owner or operator of a railroad train for violations.

Additionally, the bill exempts a member of a railroad train crew, yard crew, or engine crew from personal liability for violation of any state, municipal, or county ordinance regulating the blocking of a railroad-highway grade crossing by a railroad train under specified conditions. However, the employer or railroad company is not relieved of any responsibility to such state law or municipal or county ordinance.

The fiscal impact of the bill on state and local government and on the private sector is indeterminate, as the number of violations that would occur is unknown. See the Fiscal Impact Statement heading for details.

The bill's provisions may be subject to preemption under federal law.

The bill takes effect July 1, 2019.

II. Present Situation:

Blocked Railroad-Highway Grade Crossings

According to the Federal Railroad Administration (FRA), the duration of a blocked railroad-highway grade crossing¹ can range from only a limited time, for example, for a short passenger train traveling at relatively high speed, to hours after a grade crossing accident or a mechanical problem with a train.² The FRA has identified a number of reasons for trains to block crossings, and the reasons affect the length of time that a crossing is blocked.³ The principal causes of blocked railroad-highway grade crossings according to the FRA are:

- Community growth around railroads;
- Growth in highway traffic, leading to increased traffic congestion and demand for more crossings;
- Growth in rail traffic, both freight and rail, leading to more trains using the crossings;
- Increased train length, leading to longer periods of delay for motor vehicles;
- Trains held in sidings on single-track rail lines, for example, to allow two trains proceeding in opposite directions to pass or to allow a faster train to overtake a slower train;
- Rail yards used to sort rail cars from arriving trains into departing trains and switching activities;⁴ and
- Operational issues, such as the train being stopped due to mechanical reasons, being involved in a grade crossing accident with a motor vehicle, or because the crew has reached the federal hours of service limitations.⁵

The FRA has concluded: “Given the growth in both rail and highway traffic, it is likely that the problem of blocked crossings will increase in the future.”⁶

Federal Regulation and Preemption

No federal regulations specifically address the duration for which a railroad train may block a railroad-highway grade crossing. However, as noted by the FRA, the railroads have on occasion asserted that federal law preempts these state statutes and local ordinances on grounds that they are preempted under federal law. “For example, to clear a crossing in compliance with a State provision, a railroad might have to adjust either the speed or the length of its train, both of which are governed by Federal regulations. Likewise, a railroad might not be able to complete required air-brake testing at certain locations where doing so would block a crossing in violation of a

¹ Section 335.141, F.S., defines “public railroad-highway grade crossing” as “a location at which a railroad track is crossed at grade by a public road.”

² See Federal Railroad Administration, *Impact of Blocked Highway/Rail Grade Crossings On Emergency Response Services*, August 2006, at p. 5, available at www.fra.dot.gov/Elib/Document/3572 (last viewed March 29, 2019). While the study is dated and focused on emergency response services, the information relating to the causes of blocked railroad crossings appears to remain valid.

³ *Id.*

⁴ A railway switch is generally the movement of a train or train car from one track to another. For a discussion of the different types of railway switches, see Agico Group, *What Is A Railway Switch?*, available at <http://www.railway-fasteners.com/news/what-is-the-railway-switch.html> (last viewed March 29, 2019).

⁵ *Supra* note 2 at pp. 6-14.

⁶ *Supra* note 2 at p. 3.

State provision. Where there is a conflict between the State law and Federal safety requirements, the courts will find the State law to be preempted and, thus, unenforceable.”⁷

In *The People v. Burlington Northern Santa Fe Railroad*,⁸ 209 Cal.App.4th 1513, (First DCA Cal. 2012), involving an order of the California Public Utilities Commission generally requiring that a crossing blocked by a stopped train be opened within ten minutes, the court noted “The People have not cited, and we have not discovered through our independent research, a single case in which a court considered [Interstate Commerce Commission Termination Act] preemption and concluded that an antiblocking regulation was *not* preempted.”⁹

Nonetheless, according to the FRA, “The great majority of states place restrictions on the amount of time a highway-rail grade crossing can be blocked...but generally does not exceed 20 minutes. A number of state laws contain an exception for emergencies or circumstances beyond the control of the railroad company. Individual cities and towns¹⁰ within states that do not have relevant statutes regarding blocked crossings may have ordinances restricting the blocking of highway-rail grade crossings within their jurisdictions.”¹¹

Florida Law

Section 351.03, F.S., provides requirements for railroad companies and local governments with respect to railroad-highway grade crossings. That statute requires in part that when a railroad train engages in a switching operation, or stops such that a public highway, street, or road is blocked at any time from one-half hour after sunset to one-half hour before sunrise, the crew of the railroad train must place a lighted fusee¹² or other visual warning device in both directions from the train, on or at the edge of the road, to warn approaching motorists that a railroad train is blocking the road.¹³ This provision does not apply to crossings at which there are automatic warning devices that are properly functioning, or at which there is adequate lighting. A violation of this provision is a second degree misdemeanor, punishable by a definite term of imprisonment not exceeding 60 days or by a fine of \$500.¹⁴

⁷ *Supra* note 2 at p. 16.

⁸ 209 Cal.App.4th 1513 (1 DCA Cal. 2012). The opinion cites to a number of other cases involving blocked-crossing duration limits.

⁹ *Id.* at 1529. A concurring opinion concluded that the Federal Railroad Safety Act (FRSA) of 1970 likewise “covers,” or preempts, the subject of time limits on trains stopped at crossings, and that the time limit at issue in the Utilities Commission order was not saved under the FRSA “savings clause.” *Id.* at 1539. The clause “saves” state statutes that are necessary to eliminate or reduce an essentially local safety or security hazard; not incompatible with federal law, and not unreasonably burdensome on interstate commerce. *Id.* at 1517-1518.

¹⁰ As an example of a town in Florida with such an ordinance, see the Town of Baldwin Code of Ordinances, Chapter 15. Offenses, section 15-11, available at http://baldwin-fl.elaws.us/code/coor_ptii_ch15_sec15-11 (last viewed March 29, 2019). The ordinance allows obstruction of a crossing for no more than five minutes in a 15-minute period, with exceptions for an emergency, limited to a railroad accident or collision; a locomotive or rail-car mechanical failure; a track-switching or signal-system failure; or a blocking of the tracks themselves that is not due to or caused by control.

¹¹ See FRA, *Compilation of State Laws & Regulations Affecting Highway-Rail Grade Crossings*, “Blocked Crossings” heading, available at <https://www.fra.dot.gov/StateLaws> (last viewed March 29, 2019).

¹² A fusee in the context of railroad operations is “a red flare light used on a railroad as a warning signal to approaching trains.” See Dictionary.com, *fusee*, available at <https://www.dictionary.com/browse/fusee> (last viewed March 29, 2019).

¹³ Section 351.03(5)(a), F.S.

¹⁴ Section 775.082(4)(b), and s. 775.083(1)(e), F.S.

Section 351.034, F.S., provides requirements for clearing railroad-highway grade crossings for emergency vehicles. Except for trains or equipment stopped due to mechanical failure where separation or movement is not possible, any train or equipment that has come to a complete stop and is blocking a crossing must be cut, separated, or moved to clear the crossing upon the approach of any emergency vehicle, as follows:

- An ambulance operated by public authority or by private persons;
- A fire engine, or an emergency vehicle operated by power or electric companies;
- Any other vehicle when operated as an emergency vehicle, defined as one which is engaged in the saving of life, property, or responding to any other public peril; or
- An emergency vehicle used as such by the United States government when, upon approach, the vehicle gives warning by sounding sirens, flashing lights, flag waving, or any other warning sufficient to attract attention to the emergency vehicle, upon which the train or equipment must be cut and the crossing cleared “with all possible dispatch” to permit the emergency vehicle to pass.

Florida law does not otherwise address the length of time for which a train may block a railroad-highway grade crossing.

III. Effect of Proposed Changes:

The bill amends s. 351.03, F.S., relating to railroad-highway grade-crossing warning signs and signals, revising the title to remove reference to blocking highways, roads, and streets *during darkness*. The bill also adds a new subsection (6) to that section of law, prohibiting a train that has come to a complete stop from remaining stopped so as to block a public highway, street, or road at a railroad-highway grade crossing for more than 15 minutes, unless the stoppage is due to a safety-related emergency or a mechanical failure that renders movement of the train impossible.

The bill also directs a law enforcement officer, as defined in s. 943.10, F.S.,¹⁵ to issue a citation to the owner or operator who violates the above provision and imposes graduating fines, payable to the clerk of court, based on the length of time a crossing is blocked. If the crossing is blocked for:

- More than 15 minutes but less than 20 minutes, the fine is \$200.
- Twenty minutes or more but less than 30 minutes, \$300.
- Thirty minutes or more but less than 1 hour, \$600.
- For one hour, \$1,200 plus \$1,000 for each additional 15 minutes after the first hour.

The bill also prohibits a person who is a member of a railroad train crew, yard crew, or engine crew from being held personally liable for the violation of any state law or municipal or county ordinance that regulates or intends to regulate the occupying or blocking of a public highway,

¹⁵ That section defines “law enforcement officer” to mean “any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.”

street, or road at a railroad-highway grade crossing by a railroad train upon reasonable proof that the person's action was necessary due to circumstances beyond his or her control or in order to comply with written or verbal orders or instructions from his or her employer or employer's agent. Additionally, the bill provides that this provision does not relieve the employer or railroad company of any responsibility of the employer or railroad company pursuant to such state law or municipal or county ordinance.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The provisions contained in the bill appear to be subject to challenge on the basis of federal preemption.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate, as the frequency and duration of blocked crossings is unknown. However, to the extent that the bill results in a reduction of delays at railroad-highway grade crossings, the traveling public and affected businesses may benefit.

To the extent that an owner or operator of a railroad commits and is cited for a violation under the bill's provisions, the owner or operator would incur expenses associated with payment of the applicable fine, or with pursuing a legal challenge to the state statute in an indeterminate amount.

A member of a railroad train crew, yard crew, or engine crew may incur expenses associated with providing "reasonable proof that the person's action was necessary due to

circumstances beyond his or her control or in order to comply with written or verbal orders or instructions from his or her employer or employer's agent," in order to avoid liability. Alternatively, a crew member may choose to challenge the statute and would in that event incur indeterminate litigation expenses.

C. Government Sector Impact:

To the extent that fines are collected, clerks of court within the applicable law enforcement jurisdiction would receive fine revenues in indeterminate amounts.

To the extent that a local ordinance is inconsistent with the bill's provisions, the state law would preempt the local ordinance. Local governments would incur administrative expenses associated with revising the local regulations, which likely would be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 351.03.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.