

LEGISLATIVE BILL 255

Approved by the Governor May 27, 1997

Introduced by Matzke, 47; Coordsen, 32; Elmer, 44

AN ACT relating to rail carriers; to amend sections 75-410 to 75-418 and 75-427, Reissue Revised Statutes of Nebraska; to adopt the Nebraska Highway-Rail Grade Crossing Safety and Consolidation Act; to transfer provisions; to provide a duty for the Revisor of Statutes; and to repeal the original sections.
Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 15 of this act shall be known and may be cited as the Nebraska Highway-Rail Grade Crossing Safety and Consolidation Act.

Sec. 2. The Legislature hereby recognizes that the State of Nebraska leads the nation in the average number of highway-rail grade crossings per mile and that the State of Nebraska is traversed by a rail corridor that leads the nation in density of train traffic, in addition to other rail corridors in the state that also experience high levels of traffic. The Legislature further recognizes that these factors combine to create a serious and growing threat to public safety which must be addressed in a comprehensive manner that reflects the input and interests of local communities, the general motoring public, commercial highway users, and shippers of agricultural and other types of commodities who rely on rail transportation for efficient, timely transport of their goods.

It is the intent of the Legislature that any state role regarding highway-rail grade crossings, including public safety, Operation Lifesaver, maintenance, design, consolidation, separation, signalization, improvement, or relocation, be consolidated under one agency.

Sec. 3. Section 75-427, Reissue Revised Statutes of Nebraska, is amended to read:

~~75-427.~~ Any person who operates a railroad in the State of Nebraska shall construct all bridges on its railway so that each bridge over a running stream in this state has an opening below high water line the area of which is sufficient to allow the free and unobstructed passage of the water of such running stream at extreme high water state. If in the case of any given bridge satisfactory proof is made to the ~~commission~~ Department of Roads that the dimensions prescribed in this section are greater than are necessary to permit the unimpeded passage of the water under such bridge at high water, the ~~commission~~ department may authorize construction of the bridge with dimensions less than those prescribed in this section. Each railroad shall maintain and keep in good repair all bridges and abutments which the railroad constructs to enable its tracks to pass over or under any turnpike, road, canal, watercourse, or other way. Any operator of a railroad in this state who violates any of the provisions of this section or who permits any such violation on the part of any employee shall be guilty of a Class III Misdemeanor. ~~person who fails to comply with the provisions of this section shall be fined in the sum of ten dollars for each day that any bridge is maintained in violation of this section.~~

Sec. 4. Section 75-410, Reissue Revised Statutes of Nebraska, is amended to read:

~~75-410.~~ The commission Department of Roads shall have jurisdiction over all crossings outside of incorporated villages, towns, and cities, both public and private, across, over, or under all railroads in the state, except as provided in sections 75-416 to 75-418 10 to 12 of this act, and shall make adopt and promulgate such rules and regulations for the construction, repair, and maintenance thereof as the commission shall deem of the crossings as the department deems adequate and sufficient for the protection and necessity of the public, except as to automatic grade crossing protection devices. The provisions of sections 75-410 to 75-418 should not be construed as a limitation on the powers of the commission which have been heretofore granted, but as supplemental and additional thereto. The powers herein granted shall not be construed as extending to the projection of a new public highway crossing or to the abandonment of any existing public crossing.

Sec. 5. Section 75-411, Reissue Revised Statutes of Nebraska, is amended to read:

~~75-411.~~ The owner of any railroad tracks which are crossed by a public road shall make and keep in good repair good and sufficient crossings for such road over its tracks, including all the grading, bridges, ditches,

and culverts that may be necessary within its right-of-way. Such crossings shall be not less than twenty feet wide and shall be solidly constructed with no openings or filled spaces except such as are necessary for the track. The railroad crossings shall be made of durable material equal to the height of the railroad track. The commission Department of Roads may, upon proper investigation and hearing, impose additional reasonable requirements as the circumstances may warrant.

Sec. 6. Section 75-412, Reissue Revised Statutes of Nebraska, is amended to read:

~~75-412-~~ Whenever any railroad track crosses any public road in a cut, on a curve or side hill, in timber lands, near buildings, or near any obstruction of view from the road, the commission Department of Roads shall direct such precautions to be taken as it deems necessary for the safety of the traveling public, ~~and the facts having been developed either on the motion of the commission or upon complaint of interested parties.~~ Each railroad carrier shall also provide and maintain such gates, crossings, signs, alarm bells, and warning personnel as the commission department directs. The commission may adopt a uniform crossing sign design, which shall be used at any crossing and at such other places as the commission may direct. The commission department may direct the placement of special signs where the physical conditions of any crossing warrant such action, ~~and except as to automatic grade crossing protection devices.~~

Sec. 7. Section 75-413, Reissue Revised Statutes of Nebraska, is amended to read:

~~75-413-~~ Whenever any person owns land on both sides of the right-of-way of any railroad, such railroad shall provide and keep in repair at least one adequate means for such landowner to cross the right-of-way. Any interested landowner with land on both sides of the right-of-way of any railroad may file written complaint with the commission Department of Roads against any such railroad that the crossing is not adequate or is unsafe and dangerous to the life and property of those who use it, and the commission department thereupon shall make such investigation, hold such hearing, and issue such orders as it deems necessary, proper, and adequate. If circumstances warrant, the commission department may require overhead, underground, or grade crossings and wing fences at underground crossings or may require existing crossings to be relocated so as to be safe to those who use them, but when a special crossing involves an expenditure of more than one thousand five hundred dollars, the landowner shall bear one-half the expenses in excess of one thousand five hundred dollars.

Sec. 8. Section 75-414, Reissue Revised Statutes of Nebraska, is amended to read:

~~75-414-~~ Whenever a complaint is filed in writing with the commission Department of Roads by the duly authorized officers of any incorporated village or city, relative to any crossing within such village or city praying for relief from the matters complained of, the commission department shall hold a hearing in the manner provided by section 75-132 and shall make such order as the facts warrant. The findings of the commission department, subject to the right of appeal, shall be binding on the parties to the suit.

Sec. 9. Section 75-415, Reissue Revised Statutes of Nebraska, is amended to read:

~~75-415-~~ Whenever railroad tracks cross a public highway at grade, outside of incorporated cities and villages, the owner of the railroad tracks and the county board of the county in which such crossing is located may agree upon any change, alteration, or construction of any crossing as will promote the public convenience or safety, and they may also agree upon the relocation of any highway so as to eliminate such crossings entirely or so as to carry them over or under such railroad and upon the apportionment of the expenses incident to any such change, alteration, relocation, or construction between the owner of the railroad tracks and the county or other public authority in interest.

Sec. 10. Section 75-416, Reissue Revised Statutes of Nebraska, is amended to read:

~~75-416-~~ If the owner of the railroad track and the county board or other public authority in interest fail to agree upon any of the matters or things mentioned in section 75-415 9 of this act, either the owner or the county board or other public authority in interest, in the name of the county or other public authority in interest, may file an application with the commission Department of Roads, setting forth such fact together with a statement of the change, alteration, relocation, or construction it wants, the estimated cost thereof, and such other facts as may be relevant and asking the commission department to enter an order directing that the change, alteration,

relocation, or construction be made. The commission department shall proceed to hear the application in the manner provided by law, and if it finds that the application should be granted, it shall enter an order accordingly, designating in the order what portion of the expense of complying with the order shall be paid by the railroad carrier and what portion shall be paid by the county or other public authority in interest, if any.

Sec. 11. Section 75-417, Reissue Revised Statutes of Nebraska, is amended to read:

~~75-417. The county board, or other public authority in interest, shall have authority and power to may carry out any such agreement or order of the commission and may establish, vacate, or relocate any public road so as to comply with any such agreement, or order of the commission. The procedure shall be that provided by sections 39-1701 to 39-1731, insofar as the same is applicable, but no petition shall be necessary or required.~~

Sec. 12. Section 75-418, Reissue Revised Statutes of Nebraska, is amended to read:

~~75-418. When the owner of railroad tracks fails, neglects, or refuses promptly to comply with any order of the commission Department of Roads issued under sections 75-418 to 75-417 4 to 11 of this act or fails, refuses, or neglects to comply with the provisions of such sections after the commission department has issued an order, the owner shall be guilty of a Class V misdemeanor and shall be fined in any sum not more than one hundred dollars for each such offense. Each 7 and each week of such neglect, refusal, or failure shall constitute a separate offense.~~

Sec. 13. The Department of Roads, which possesses the requisite engineering expertise, highway and rail planning function, and highway safety mission and is the repository for state and federal funding for both rail and highway projects, shall be the agency responsible for grade crossing safety.

Sec. 14. (1) The Department of Roads shall adopt and promulgate rules and regulations establishing a comprehensive public safety program to deal with problems associated with public and private highway-rail grade crossings. In designing such a program, the department shall establish a process for assessing the risk to the public from particular grade crossings and for reducing or eliminating such risk in a cost-effective and timely manner. The department shall actively solicit input from the public and from representatives of county and municipal governments, the Federal Highway Administration, the Federal Railroad Administration, and any other individuals or entities with an interest in grade crossing safety.

(2) The grade crossing safety assessment process may include the following factors:

- (a) Volume of trains;
- (b) Volume of motor vehicles, including character, function, and type of vehicular traffic through the crossing;
- (c) Number of tracks at the crossing;
- (d) Geometry of the crossing, including acute angles;
- (e) Sight-distance restrictions, if any;
- (f) Train and motor vehicle speed;
- (g) Accident history;
- (h) Character of proximate road network, including distance and travel time to adjacent crossings;
- (i) Frequency and duration of roadway blockage by trains, including citation history;
- (j) Emergency response routes, including alternatives;
- (k) Economic impact of crossing;
- (l) Current and foreseeable development in the vicinity of the crossing; and
- (m) Location of schools and hospitals.

Sec. 15. The Department of Roads shall establish the grade crossing safety assessment process no later than twelve months after the effective date of this act and shall recommend to the Legislature no later than eighteen months after the effective date of this act an equitable formula for funding grade crossing risk abatement.

Sec. 16. The Revisor of Statutes shall assign sections 1 to 15 of this act to Chapter 74, article 13.

Sec. 17. Original sections 75-410 to 75-418 and 75-427, Reissue Revised Statutes of Nebraska, are repealed.