

LEGISLATIVE BILL 42

Approved by the Governor May 23, 1979

Introduced by Cullan, 49

AN ACT relating to railroad crossing safety; to provide duties of the Department of Roads; to provide for payment of improvements as prescribed; to provide additional duties for the Department of Roads and railroads; to levy an excise tax; to provide duties; to authorize additional uses for a fund; to provide a penalty; to amend sections 39-6,194 and 39-6,195, Revised Statutes Supplement, 1978; to provide for severability; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. As used in this act, unless the context otherwise requires, department shall mean the Department of Roads.

Sec. 2. The department shall have authority to determine that (1) a railroad crossing shall be eliminated, (2) automatic railroad grade crossing protection devices shall be installed, modified, or improved, (3) an overpass or underpass is needed at a railroad crossing, or (4) other measures are necessary to improve public safety at railroad crossings.

Sec. 3. The department shall establish and update, as needed, a priority list for improving the safety of railroad crossings in Nebraska. The list shall identify all crossings in need of safety improvements and the relative order of need.

Sec. 4. In establishing the priority list under section 3 of this act, the department shall consult with governmental subdivisions to determine where railroad crossing safety measures are needed. The department shall consider the accident history of the crossing, the amount of traffic at the crossing, traffic speed limits, population density, visibility of the crossing, any information provided by notices filed with the commission under section 7 of this act, the results of any investigations conducted by the Public Service Commission under section 75-426, Reissue Revised Statutes of Nebraska, 1943, and similar factors.

Sec. 5. When any political subdivision of this state determines that public safety will be improved by eliminating a crossing, by the installation, substantial

modification, or improvement of automatic railroad grade crossing protection, or by construction of an overpass or underpass where a street, road, or highway intersects with a line of the railroad company within its jurisdiction, and demand is made upon the railroad company concerned, the political subdivision shall inform the Department of Roads of such fact.

Upon receiving such notice, or upon its own determination, the Department of Roads shall forthwith examine the crossing concerned, in conjunction with representatives of the political subdivision, to determine whether the position of such crossing on the priority list established under section 3 of this act should be adjusted.

Sec. 6. The department shall utilize any federal funds available in the construction of railroad grade crossing protection devices or other safety improvements. If funds are needed to match any federal funds the political subdivision in which the crossing is located shall contribute half of the matching funds needed but shall not be required to provide more than five per cent of the total cost. If it is determined by the department that a railroad crossing safety project involving federal funds will result in ascertainable benefits to the railroad such railroad may be required to provide up to five per cent of the total cost of the project. The balance of any matching funds needed shall be paid by the department from the Grade Crossing Protection Fund.

Sec. 7. When an accident occurs at any railroad crossing within the State of Nebraska which results in serious personal injury or loss of human life, the corporation operating the railroad which was involved in the accident shall within one day thereafter notify the department that an accident has occurred and shall promptly furnish to the department a copy of the same notice that it is required to furnish to the Nebraska Public Service Commission and the Federal Railroad Administration.

Sec. 8. That section 39-6,194, Revised Statutes Supplement, 1978, be amended to read as follows:

39-6,194. In order to promote public safety at the intersection of railroad lines and all classes of highways, there is hereby created a special fund known as the Grade Crossing Protection Fund which shall be established in the state treasury to be used in furnishing financial assistance in the improvement of the safety of railroad grade crossings in this state

including both the elimination of such crossings, and the construction, substantial modification, or improvement, and the maintenance of automatic crossing protection at such grade crossings, and the construction and maintenance of overpasses and underpasses at railroad crossings. Any money in the Grade Crossing Protection Fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to 72-1259.

Sec. 9. That section 39-6, 195, Revised Statutes Supplement, 1978, be amended to read as follows:

39-6, 195. The Department of Roads is hereby empowered to administer the funds deposited in the Grade Crossing Protection Fund as follows:

~~(1) When any political subdivision of this state determines that public safety will be improved by eliminating a crossing or by the installation, substantial modification, or improvement of automatic railroad grade crossing protection where a street, road, or highway intersects with a line of the railroad company within its jurisdiction, and demand is made upon the railroad company concerned, either the railroad company or the political subdivision shall inform the Department of Roads of such fact;~~

~~(2) Upon receiving such notice, or upon its own determination, the Department of Roads shall forthwith examine the crossing concerned, in conjunction with representatives of the political subdivision and the particular railroad company involved, to arrive at an estimate of the cost and the type of automatic railroad grade crossing protection that should be required, and the justification of the expenditure for such protection; and, if it is agreed by the Department of Roads, the railroad, and the political subdivision involved that such~~

(1) If the department and the political subdivision with jurisdiction over the crossing agree that a grade crossing should be eliminated by closing the street, road, or highway, such the political subdivision making as shall make such closing shall receive two thousand dollars or the actual cost thereof but not to exceed twelve thousand dollars from the Grade Crossing Protection Fund or, if pursuant to section 74-1305, it is agreed by the Department of Roads, the railroad, and the political subdivision involved that such crossing should be eliminated by the removal of such rail line, the political subdivision paying for such removal, if any, shall receive two thousand dollars or the actual cost

thereof but not to exceed twelve thousand dollars from the Grade Crossing Protection Fund;

(3) (2) In Except as otherwise provided in section 6 of this act in order to facilitate and protect the interest of the public as a whole, and to compensate for the statewide use of such crossings by the public, the Department of Roads shall pay eighty ninety-five per cent of the cost of such overpasses, underpasses, and automatic railroad grade crossing protection measures or devices from the Grade Crossing Protection Fund for all such projects in which an agreement among the department, the railroad, and the political subdivision is executed on or after the effective date of this act, and the balance of the cost shall be borne ten-per-cent--by--the railroad-company--and--ten--per--cent by the political subdivision involved, except that in any county in which a Railroad Transportation Safety District has been formed, such balance shall be borne entirely by the political subdivision involved. For all such projects in which an agreement among the department, the railroad, and the political subdivision was executed prior to the effective date of this act the costs shall continue to be borne in the same manner as they were prior to such date:

(4) (3) It shall be the sole responsibility of the railroad company involved to maintain all automatic railroad grade crossing protection devices existing in this state: as of August-24,--1975:--For--any--automatic railroad-grade-crossing-protection--device--installed--or substantially-modified--or--improved--in--this--state--on--or after--August-24,--1975--with--the--approval--of--the--Department of--Roads,--the--Department--of--Roads--may--pay--from--the--Grade Crossing--Protection--Fund--fifty--per--cent--of--the--annual costs--for--maintenance--thereof--and--the--balance--of--such annual--costs--for--maintenance--shall--be--borne--by--the railroad--companies--at--whose--railroad--crossings--such devices--are--constructed;

(5) (4) The Department of Roads shall allocate the amount to be borne by the Grade Crossing Protection Fund for the cost of construction, installation, or substantial modification or improvement,---and---for maintenance of the automatic devices for the protection of the railroad grade crossing concerned under sections 39-6,194 and 39-6,195; and

(6) (5) The Department of Roads shall enter into and enforce agreements involving such Grade Crossing Protection Fund as well as the supervision of the construction, installation, substantial modification or improvement, and the maintenance of such overpasses, underpasses, and automatic safety devices for which any

part of the cost is borne from the Grade Crossing Protection Fund, and the auditing and collection of the bills covering the cost thereof. The Department of Roads is further authorized to enter into such contracts with any railroad companies and political subdivisions affected which are necessary to carry out the provisions of sections 39-6,194 and 39-6,195.

Sec. 10. Whenever a railroad line is abandoned, the Department of Roads may remove grade crossing protection devices therefrom to protect the state's investment therein.

Sec. 11. Each railroad company shall be responsible for the removal of all litter, as defined in section 28-523, Revised Statutes Supplement, 1978, on property owned or leased by the railroad which is under a bridge, trestle, or similar structure.

Sec. 12. Commencing on July 1, 1980, there is hereby levied an excise tax on all freight transported by railroad in the State of Nebraska. Such tax shall be levied at the rate of three thousandths of one cent for each mile each ton of freight is transported within the state. The Department of Revenue shall, on a quarterly basis, collect the tax due pursuant to this section from each railroad transporting freight within the state. The Public Service Commission shall provide the Department of Revenue with all information requested in order to carry out this section. Each railroad shall, on a quarterly basis, submit a report of its total tonnage per mile shipments within the state for the quarter ending three months previous and shall, with such report, pay the tax due.

Sec. 13. All revenue derived from the tax levied pursuant to section 12 of this act shall be placed in the Grade Crossing Protection Fund and may be expended in the same manner as other money in such fund.

Sec. 14. Failure to file a report required by section 12 of this act, filing such report late, failure to pay taxes due, or underpayment of such taxes shall result in a penalty of five per cent of the amount due being imposed for each month the report is overdue or the payment is delinquent.

Sec. 15. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

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Sec. 16. That original sections 39-6,194 and 39-6,195, Revised Statutes Supplement, 1978, are repealed.

Sec. 17. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.