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INSIGHT

Should Railroads Help Pay for Grade Crossing Improvements?

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Background

An uptick in fatal accidents at grade crossings following a prolonged decline, along with recent court decisions barring states from enforcing limits on trains that block crossings, have drawn congressional attention to grade crossing safety. A key point of debate has been what responsibility, if any, a private railroad company should have to provide for the safety and convenience of motorists and pedestrians at grade crossings beyond compliance with federally mandated operating practices. This question has come to the fore as Congress considers legislation reauthorizing federal surface transportation programs.

Congress provides federal funds to improve grade-crossing safety in the Railway-Highway Crossings program (23 U.S.C. §130), more commonly known as the Section 130 program. Section 130, a component of the federal-aid highway program, distributes funding from the Highway Trust Fund to states according to a formula that slightly favors states with a greater share of the nation's road-rail crossings. These funds can be used for railroad-crossing safety projects at the discretion of state departments of transportation. Projects may range from installing warning lights to blocking off a minor road that crosses tracks to building a bridge that separates road traffic from train traffic.

Dividing the Cost

Railroads already contribute to certain Section 130 projects at a level commensurate with the net benefits that theoretically accrue to the railroad from a more secure grade crossing, such as reduced maintenance and inspection costs, fewer accidents, and less disruption to rail traffic. Under current law, the Secretary of Transportation *may* require a railroad to pay up to 10% of project costs depending on the type of project. However, a contribution that large is not currently required for any project type, and no railroad contribution whatsoever is required for many project types.

The surface transportation bill pending in the House of Representatives (H.R. 2, the INVEST in America Act), would fund Section 130 at its FY2020 level of $245 million for each of fiscal years 2021 through

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2025, but would require railroads to share more of the cost of grade-crossing improvement projects. It would

- direct the Secretary of Transportation to set the railroad's share of total costs for each type of grade-crossing safety project;
- allow the Secretary to permit railroads to meet a portion of their obligations with noncash contributions (materials and labor) under conditions defined elsewhere in federal regulations;
- specify that the "total project costs" which railroads would have to share include costs incurred during the planning, engineering, and design phases; and
- eliminate the 10% maximum project share allocable to the railroad under current law.

Section 130 currently requires at least 10% of the cost of grade-crossing projects receiving federal funding to come from non-federal sources such as a state or local government or a railroad. Depending on the cost shares specified by the Secretary of Transportation, the changes in H.R. 2 could shift some of the burden of funding the non-federal project costs from state and local governments to the private railroad companies that own the tracks.

Shared Assumptions

During the markup of H.R. 2 in the House Committee on Transportation and Infrastructure, Representative Greg Pence proposed an amendment (Pence amendment) that would have increased the incentive for railroads to subsidize the elimination of crossings, rather than requiring them to pay a larger share of all project costs. Local and state governments may be reluctant to close off streets that cross train tracks due to the inconvenience to travelers and the potential for longer response times by emergency vehicles. Section 130 permits railroads to make "incentive payments" to local governments to close crossings, and a state may use Section 130 funds to match those incentive payments up to a maximum of $7,500 per crossing. The Pence amendment would have raised the maximum Section 130 payment for closing a crossing to $100,000, potentially leading to the closure of more crossings.

Although the Pence amendment was not adopted by the committee, the amendment and the adopted language in H.R. 2 share the assumptions that railroad operations benefit from fewer grade crossings and that making a crossing safer or closing it altogether offers calculable benefits to the railroad. Both approaches would seek to have railroads defray part of the cost of grade-crossing improvements in view of the financial benefits they receive from such improvements.

In the Senate, a bill to reauthorize highway programs (S. 2302, the America's Transportation Infrastructure Act) was reported by the Committee on Environment and Public Works in August 2019. Unlike H.R. 2, the Senate bill would not seek to increase railroads' share of the cost of grade-crossing safety projects. Rather, it would raise the maximum federal share of a project from 90% to 100% and eliminate a provision in current law setting aside a portion of Section 130 funds for installation of protective devices, such as crossing gates. A rail title that might be incorporated into a broader surface transportation reauthorization bill has not been offered in the Senate. The current authorization of federal surface transportation programs, including Section 130, expires September 30, 2020.

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