

Effective: October 16, 2008

United States Code Annotated [Currentness](#)
Title 23. Highways ([Refs & Annos](#))

[Chapter 1. Federal-Aid Highways \(Refs & Annos\)](#)

§ 130. Railway-highway crossings

(a) Subject to [section 120 and subsection \(b\)](#) of this section, the entire cost of construction of projects for the elimination of hazards of railway-highway crossings, including the separation or protection of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings, may be paid from sums apportioned in accordance with [section 104](#) of this title. In any case when the elimination of the hazards of a railway-highway crossing can be effected by the relocation of a portion of a railway at a cost estimated by the Secretary to be less than the cost of such elimination by one of the methods mentioned in the first sentence of this section, then the entire cost of such relocation project, subject to [section 120 and subsection \(b\)](#) of this section, may be paid from sums apportioned in accordance with [section 104](#) of this title.

(b) The Secretary may classify the various types of projects involved in the elimination of hazards of railway-highway crossings, and may set for each such classification a percentage of the costs of construction which shall be deemed to represent the net benefit to the railroad or railroads for the purpose of determining the railroad's share of the cost of construction. The percentage so determined shall in no case exceed 10 per centum. The Secretary shall determine the appropriate classification of each project.

(c) Any railroad involved in a project for the elimination of hazards of railway-highway crossings paid for in whole or in part from sums made available for expenditure under this title, or prior Acts, shall be liable to the United States for the net benefit to the railroad determined under the classification of such project made pursuant to subsection (b) of this section. Such liability to the United States may be discharged by direct payment to the State transportation department of the State in which the project is located, in which case such payment shall be credited to the cost of the project. Such payment may consist in whole or in part of materials and labor furnished by the railroad in connection with the construction of such project. If any such railroad fails to discharge such liability within a six-month period after completion of the project, it shall be liable to the United States for its share of the cost, and the Secretary shall request the Attorney General to institute proceedings against such railroad for the recovery of the amount for which it is liable under this subsection. The Attorney General is authorized to bring such proceedings on behalf of the United States, in the appropriate district court of the United States, and the United States shall be entitled in such proceedings to recover such sums as it is considered and adjudged by the court that such railroad is liable for in the premises. Any amounts recovered by the United States under this subsection shall be credited to miscellaneous receipts.

(d) Survey and schedule of projects.--Each State shall conduct and systematically maintain a

survey of all highways to identify those railroad crossings which may require separation, relocation, or protective devices, and establish and implement a schedule of projects for this purpose. At a minimum, such a schedule shall provide signs for all railway-highway crossings.

(e) Funds for protective devices.--

(1) In general.--Before making an apportionment under [section 104\(b\)\(5\)](#) for a fiscal year, the Secretary shall set aside, from amounts made available to carry out the highway safety improvement program under [section 148](#) for such fiscal year, at least \$220,000,000 for the elimination of hazards and the installation of protective devices at railway-highway crossings. At least 1/2 of the funds authorized for and expended under this section shall be available for the installation of protective devices at railway-highway crossings. Sums authorized to be appropriated to carry out this section shall be available for obligation in the same manner as funds apportioned under [section 104\(b\)\(1\)](#) of this title.

(2) Special rule.--If a State demonstrates to the satisfaction of the Secretary that the State has met all its needs for installation of protective devices at railway-highway crossings, the State may use funds made available by this section for other highway safety improvement program purposes.

(f) Apportionment.--

(1) Formula.--Fifty percent of the funds set aside to carry out this section pursuant to subsection (e)(1) shall be apportioned to the States in accordance with the formula set forth in [section 104\(b\)\(3\)\(A\)](#), and 50 percent of such funds shall be apportioned to the States in the ratio that total public railway-highway crossings in each State bears to the total of such crossings in all States.

(2) Minimum apportionment.--Notwithstanding paragraph (1), each State shall receive a minimum of one-half of 1 percent of the funds apportioned under paragraph (1).

(3) Federal share.--The Federal share payable on account of any project financed with funds set aside to carry out this section shall be 90 percent of the cost thereof.

(g) Annual report.--Each State shall report to the Secretary not later than December 30 of each year on the progress being made to implement the railway-highway crossings program authorized by this section and the effectiveness of such improvements. Each State report shall contain an assessment of the costs of the various treatments employed and subsequent accident experience at improved locations. The Secretary shall submit a report to the Committee on Environment and Public Works and the Committee on Commerce, Science, and Transportation, of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives, not later than April 1, 2006, and every 2 years thereafter,, [\[FN1\]](#) on the progress being made by the State in implementing projects to improve railway-highway crossings. The report shall include, but not be limited to, the number of projects undertaken, their distribution by cost range, road system, nature of treatment, and subsequent accident experience at improved locations. In addition, the Secretary's report shall analyze and evaluate each State program, identify any State found not to be in compliance with the schedule of improvements required by subsection (d) and include recommendations for future implementation of the railroad highway [\[FN2\]](#) crossings program.

(h) Use of funds for matching.--Funds authorized to be appropriated to carry out this section may be used to provide a local government with funds to be used on a matching basis when State funds are available which may only be spent when the local government produces matching funds for the improvement of railway-highway crossings.

(i) Incentive payments for at-grade crossing closures.--

(1) In general.--Notwithstanding any other provision of this section and subject to paragraphs (2) and (3), a State may, from sums available to the State under this section, make incentive payments to local governments in the State upon the permanent closure by such governments of public at-grade railway-highway crossings under the jurisdiction of such governments.

(2) Incentive payments by railroads.--A State may not make an incentive payment under paragraph (1) to a local government with respect to the closure of a crossing unless the railroad owning the tracks on which the crossing is located makes an incentive payment to the government with respect to the closure.

(3) Amount of State payment.--The amount of the incentive payment payable to a local government by a State under paragraph (1) with respect to a crossing may not exceed the lesser of--

(A) the amount of the incentive payment paid to the government with respect to the crossing by the railroad concerned under paragraph (2); or

(B) \$7,500.

(4) Use of State payments.--A local government receiving an incentive payment from a State under paragraph (1) shall use the amount of the incentive payment for transportation safety improvements.

(j) Bicycle safety.--In carrying out projects under this section, a State shall take into account bicycle safety.

(k) Expenditure of funds.--Not more than 2 percent of funds apportioned to a State to carry out this section may be used by the State for compilation and analysis of data in support of activities carried out under subsection (g).

(l) National crossing inventory.--

(1) Initial reporting of crossing information.--Not later than 1 year after the date of enactment of the Rail Safety Improvement Act of 2008 or within 6 months of a new crossing becoming operational, whichever occurs later, each State shall report to the Secretary of Transportation current information, including information about warning devices and signage, as specified by the Secretary, concerning each previously unreported public crossing located within its borders.

(2) Periodic updating of crossing information.--On a periodic basis beginning not later than 2 years after the date of enactment of the Rail Safety Improvement Act of 2008 and on or before September 30 of every year thereafter, or as otherwise specified by the Secretary, each State shall report to the Secretary current information, including information about warning devices and signage, as specified by the Secretary, concerning each public crossing located within its borders.

(3) Rulemaking authority.--The Secretary shall prescribe the regulations necessary to implement this subsection. The Secretary may enforce each provision of the Department of

Transportation's statement of the national highway-rail crossing inventory policy, procedures, and instructions for States and railroads that is in effect on the date of enactment of the Rail Safety Improvement Act of 2008, until such provision is superseded by a regulation issued under this subsection.

(4) Definitions.--In this subsection--

(A) “public crossing” means a location within a State, other than a location where one or more railroad tracks cross one or more railroad tracks either at grade or grade-separated, where--

(i) a public highway, road, or street, including associated sidewalks and pathways, crosses one or more railroad tracks either at grade or grade-separated; or

(ii) a publicly owned pathway explicitly authorized by a public authority or a railroad carrier and dedicated for the use of non-vehicular traffic, including pedestrians, bicyclists, and others, that is not associated with a public highway, road, or street, or a private roadway, crosses one or more railroad tracks either at grade or grade-separated; and

(B) “State” means a State of the United States, the District of Columbia, or Puerto Rico.

CREDIT(S)

(Pub.L. 85-767, Aug. 27, 1958, 72 Stat. 903; [Pub.L. 100-17, Title I, § 121\(a\)](#), Apr. 2, 1987, 101 Stat. 159; [Pub.L. 104-59, Title III, § 325\(a\)](#), Nov. 28, 1995, 109 Stat. 591; [Pub.L. 104-205, Title III, § 353\(b\)](#), Sept. 30, 1996, 110 Stat. 2980; [Pub.L. 105-178, Title I, §§ 1111\(d\)](#), 1202(d), 1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 146, 170, 193; [Pub.L. 109-59, Title I, § 1401\(c\)](#), formerly § 1401(d), Aug. 10, 2005, 119 Stat. 1226; [Pub.L. 110-244, Title I, § 101\(l\), \(s\)\(1\)](#), June 6, 2008, 122 Stat. 1575, 1577; [Pub.L. 110-432](#), Div. A, Title II, § 204(c), Oct. 16, 2008, 122 Stat. 4871.)

[\[FN1\]](#) So in original.

[\[FN2\]](#) So in original. Probably should be “railroad-highway”.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1958 Acts. Senate Report No. 1928, see 1958 U.S. Code Cong. and Adm. News, p. 3942.

1987 Acts. Senate Report No. 100-4 and [House Conference Report No. 100-27](#), see 1987 U.S. Code Cong. and Adm. News, p. 66.

1995 Acts. House Report No. 104-246 and [House Conference Report No. 104-345](#), see 1995 U.S. Code Cong. and Adm. News, p. 522.

1998 Acts. House Conference Report No. 105-550 and Statement by President, see 1998 U.S. Code Cong. and Adm. News, p. 64.

2005 Acts. House Conference Report No. 109-203, see 2005 U.S. Code Cong. and Adm. News, p. 452.

Statement by President, see 2005 U.S. Code Cong. and Adm. News, p. S24.

2008 Acts. House Report No. 110-62, see 2008 U.S. Code Cong. and Adm. News, p. 522.

[House Report No. 110-336](#), see 2008 U.S. Code Cong. and Adm. News, p. 2142.

References in Text

The date of enactment of the Rail Safety Improvement Act of 2008, referred to in subsec. (l)(1) to (3), is Oct. 16, 2008, the approval date of Pub.L. 110-432, Div. A, 122 Stat. 4848.

Amendments

2008 Amendments. Pub.L. 110-244, § 101(s)(1), amended the directory language of Pub.L. 109-59, § 1401 by redesignating subsec. (d) as subsec. (c), which required no change in text. See 2005 Amendments notes set out under this section.

Subsec. (e)(2). Pub.L. 110-244, § 101(l), struck out “purposes under this subsection” and inserted “highway safety improvement program purposes”.

Subsec. (l). Pub.L. 110-432, Div. B, § 204(c), added subsec. (l).

2005 Amendments. Subsec. (e). Pub.L. 109-59, § 1401(c)(1), former § 1401(d)(1), as amended by Pub.L. 110-244, § 101(s)(1) (see 2008 Amendments note set out under this section), rewrote subsec. (e), which formerly read: