



**House
Legislative
Analysis
Section**

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

**RAILROAD GRADE CROSSING
MAINTENANCE**

**House Bill 5475 (Substitute H-2)
First Analysis (4-18-02)**

**Sponsor: Rep. Judson Gilbert II
Committee: Transportation**

THE APPARENT PROBLEM:

Twenty-six freight railroads operate 3,687 miles of railroad track in Michigan, employing more than 5,700 Michigan residents. The rail companies move more than 2 million carloads of freight (weighing over 103 million tons) throughout the state each year. According to the House Fiscal Agency, the companies' tracks cross public streets or highways "at-grade" in 5,360 different locations. At each of these crossings the law specifies that the railroad companies are responsible for the condition of the road surfaces that extend a foot beyond both sides of their tracks, measured from the end of the tie.

Historically, the rail companies have protected that right-of-way near the rails and the rail-bed, shouldering the financial responsibility for the maintenance of and improvements to the roadways that cross near their rails. According to the Michigan Railroads Association, rail companies generally hire private contractors to improve the roadways near the crossings, or they assign their own personnel to make minor repairs on the one-foot sections of roadway.

In addition, and to ensure that railroad crossings are safely maintained, the Michigan Department of Transportation inspects rail crossings every two years, relying on the regulatory efforts of eleven inspectors employed in its rail grade crossing program. See *BACKGROUND INFORMATION* below. However, these inspections seldom attend only to pavement maintenance within the two one-foot corridors beyond the ties that extend on either side of the tracks.

Some have argued that the responsibility for repairs to the road surfaces on either side of the railroad track should rest with road agencies who have experience with road construction. They note that the road surfaces leading up to the railroad tracks often are uneven and improperly repaired. Others have counter-argued that rather than shifting responsibility for the construction and maintenance of the one-foot corridors, county road agencies and rail companies

should be able to enter cooperative arrangements when they complete road repair work near the grade crossings, if that shared responsibility works to their advantage. To permit these cooperative maintenance and improvement agreements, legislation has been introduced.

THE CONTENT OF THE BILL:

House Bill 5475 would amend the Railroad Code of 1993 to require written permission from both a railroad and a road authority in order to begin grade maintenance work, alter the responsibility for some of that work, and prohibit either from charging the other a fee for the work.

Currently under the law, a railroad that owns tracks across a public street or highway at grade bears the cost to construct and maintain all railroad roadbed, track, and railroad culverts within the confines of the street, as well as for all the streets or sidewalks lying between the rails and also outside the rails, extending one foot beyond the ties. The road authority bears the cost to construct, improve, and maintain the remainder of the street or highway.

House Bill 5475 would retain this provision, but specify that it would not prohibit a road authority, at its discretion and sole cost and expense, from performing any of the work described, provided the road authority received approval from and gave notice to the railroad. Further, the bill specifies that notwithstanding any other provision, neither the railroad nor the road authority could charge any type of access fee, inspection fee, or right of entry fee in connection with the performance of this work.

MCL 462.309

House Bill 5475 (4-18-02)

BACKGROUND INFORMATION:

MDOT Rail Grade Crossing Program. The Rail Safety Section works within the Freight Services and Safety Division of MDOT’s Bureau of Urban and Public Transportation (UPTRAN). The division has two functions: rail safety, and local grade crossings. The program is funded with a \$1.8 million appropriation from the Michigan Transportation Fund during fiscal year 2002. The investigators in the section collect data to establish priorities for grade crossing improvements, and undertake special investigations to prepare engineering reports after every reported accident, and to respond to every citizen complaint. When improvements at the crossing are warranted, the department issues a traffic safety order, based on a diagnostic team review (DTR), and railroads and road agencies can be required under those orders to share the cost of constructing a safety enhancement at the crossing, such as lights and gates. About 80 DTRs are performed each year. (Currently, 2,360 of the 5,360 at-grade crossings have active warning devices, and an additional 934 are equipped with gates.)

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that House Bill 5475 would permit a road authority, at its discretion and at its sole cost and expense, to perform work for which the railroad would normally be responsible. The language is permissive and would not establish new responsibilities for road authorities. As a result, the new subsection would have no fiscal impact on state or local units of government. The agency also notes that the bill would prohibit either the railroad or road authority from charging an access fee, an inspection fee, or right of entry fee in connection with the performance of rail grade crossing work. According to the fiscal agency, such fees are rarely if ever assessed, so prohibiting the fees would not have a material fiscal impact on state or local units of government. (4-17-02)

ARGUMENTS:

For:

The repair of road surfaces on either side of railroad tracks should be undertaken by agencies whose employees have road construction and road repair experience, and whose construction equipment enables them to make the improvements in a proper manner. This bill is permissive; it would allow county road agencies and railroad companies to enter into cooperative arrangements in order to make

repairs near the railroad tracks and adjacent to the rail ties, if the parties agreed.

Response:

The Department of Transportation cautions that this bill, while permissive, could raise expectations among railroad companies that more frequent and more extensive grade crossing improvements will be scheduled by road agencies than the number and kind of repair projects currently undertaken.

Reply:

A spokesman for the Michigan Railroad Association notes that the legislation will enable cooperation in areas of the state where railroad companies and county road associations already enjoy good work relations, in effect endorsing a county road association’s willingness to repair the roadway up to the tie, rather than stopping repairs one-foot from the tie, as is now required by law.

POSITIONS:

The Michigan Railroad Association supports the bill. (4-17-02)

The Michigan Municipal League supports the bill. (4-17-02)

The Department of Transportation is neutral on the bill. (4-17-02)

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.