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FISCAL IMPACT REPORT

SPONSOR Vaughn DATE TYPED 2/17/2005 HB 327/aHTC/aHJC
 SHORT TITLE Railroad Grade Crossing Warning Systems SB _____
 ANALYST Moser

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI	NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
NFI	Minimal Increase	Minimal Increase	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Transportation (DOT)
 Public Regulation Commission (PRC)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to HB 327 strikes HTC amendment 2 that makes a railroad liable for damages only to the extent damages are caused by noncompliance with subsection A and eliminates all of the liability language in that section. The HJC amendment to HB 327 also strikes HTC amendment 4 that added the state, and its political subdivisions to the list of entities that are immune from liability for failure to give an audible warning where a non-audible warning agreement is in place and eliminates all liability language from subsection B.

Significant Issue Amendment

The issue of liability brings up a second issue with respect to this bill that concerns the DOT. While the amendments to the bill removed the protection from liability given to railroad companies, which was in the original, there is no protection for the DOT or the state. This is of concern as it could give rise to additional liability to the state from increased grade crossing accidents. The state may have immunity from liability for negligent highway design, but the issue of negligent maintenance is another issue. It is probable that a potential plaintiff in a lawsuit could argue that allowing a non-audible crossing to be placed upon an existing state highway would constitute a case of negligent maintenance of that highway, thereby subjecting the DOT to liability for a grade crossing accident.

Giving immunity to the parties, as the DOT would expect, the railroad companies would demand before they cooperated in the effort, is probably not a practical solution either. If the railroad companies were off the hook, it would only increase the potential liability that would fall on the governmental entities involved. DOT feels that if all the parties were given immunity, it is unlikely that the immunity would hold up in court. It is likely that most courts would look very unfavorably upon a situation where all of the responsible parties to a negligently designed and maintained grade crossing had legislated away any liability for their negligence, leaving a badly-injured plaintiff without any sort of legal recourse. In that situation, one would expect that the court would find a way to bypass that immunity.

The DOT argues that the concerns about liability and willing participation of the railroads could be dispensed with if it were truly possible to create a safer non-audible grade crossing. Being as safe would not be sufficient as the continuing problem of grade crossing accidents would still be a liability concern, exacerbated by the new argument that we no longer required audible warnings. However, if a safer non-audible crossing is a reasonable expectation, then it should be considered who would bear the expense of installing the crossings. It is entirely conceivable that the expense of buying and installing the crossings could be considerable. (This cost range is \$150K - \$180K per installation)

Synopsis of HJC Amendment

Specific requirements for the size of locomotives bells and the distance from a crossing that the bell must be rung are removed. Railroad corporations shall require the locomotive to sound the whistle and the bell when the train approaches a grade crossing. The public regulations commission is given the responsibility to ensure that warning devices and the manner of warning comply with federal standards.

Municipalities and counties are given the authority to enter into agreements with federal agencies to design and implement safety measures that do not use audible warnings from locomotives crossing roadways at-grade. It removes the liability from the railroad corporation when damages or injuries occur at these locations where audible warnings are not employed.

The Department of Transportation met with the sponsor to discuss concerns as previously mentioned in the analysis where there was no stipulation in the bill for involvement by the State when municipalities and counties enter into agreements that could cause conflicts with our state highways.

The other concern was that of liability where a railroad corporation and its agents or employees shall not be liable for damages or injuries alleged to have been caused in whole or part by failure to give an audible warning. The Department should not have liability in the event of failure to give an audible warning. The Railroad corporation has one hundred feet of (100') of right-of-way from centerline of the railroad track and is responsible for the maintenance of all warning and gated systems that occur within that area.

Synopsis of Original Bill

HB 327, Relating to Railroads; Changing Requirements for Audible Safety Warnings at Grade Crossings; Providing an Alternate Warning System at Grade Crossings; Providing a Penalty, appropriates no money from the State of New Mexico. HB 327 also updates the language of current state law relating to the requirement that railroads cause a whistle to be sounded and a bell to be rung by trains approaching a grade crossing. Specific requirements for the size of locomotives bells and the distance from a crossing that the bell must be rung are removed. Railroad corporations shall require the locomotive to sound the whistle and the bell when the train approaches a grade crossing. The public regulations commission is given the responsibility to ensure that warning devices and the manner of warning comply with federal standards.

HB 327 also adds a new subsection that allows counties and municipalities to enter into agreements with federal agencies to design and implement safety measures at grade crossings that, if implemented, would not require audible warnings from locomotives. In the parlance of the federal government and the railroad industry, this is known as the establishment of a "quiet zone." The new subsection of HB 327 also states that if such an agreement is in place, the railroad and its agents and employees shall not be liable for injuries and damages alleged to have been caused in whole or in part by failure to give an audible warning.

Significant Issues

Whether HB 327 is consistent with the United States Department of Transportation, Federal Railroad Administration's ("DOT FRA") interim final rule on the establishment of "quiet zones"?

Yes. The DOT FRA on December 18, 2003, issued an "interim final rule" pertaining to the use of locomotive horns at grade crossings that allows for the establishment of "quiet zones" at such crossings. The interim final rule establishes a requirement that locomotive horns must be sounded while approaching and entering each public highway-rail grade crossing. The interim final rule also prescribes the manner of warning. The interim final rule allows for the establishment of a quiet zone in two ways:

- 1) By designation of the public authority which is the public entity responsible for safety and maintenance of the roadway crossing the railroad tracks; or,
- 2) By application to the FRA.

HB 327 explicitly allows for the establishment of a quiet zone by application to the FRA but does not explicitly state that a public authority may establish a quiet zone by designation.

Once a quiet zone is established, the public entity (as contemplated in HB 327) is then liable for any damages and injuries occurring as a result of the lack of an audible warning by a train.

The department of transportation is concerned that there is no stipulation in this bill for involvement by the State when municipalities and counties enter into agreements with federal agencies to design and implement safety measures on state highways. The authority granted to municipalities and counties to enter into these agreements could cause conflicts with state highways. There should be some provision in the language that only gives the municipalities and counties the authority to enter into the agreements on crossings of roadways under their jurisdiction.

FISCAL IMPLICATIONS

The PRC states that there is minimal and almost non-existent impact to the State General Fund. The DOT feels that there are possible fiscal implications if municipalities and counties enter into agreements with federal agencies for required safety improvements on state highways.

TECHNICAL ISSUES

The PRC offers the following:

The current statute provides a penalty of \$100 to be recovered by action in the name of the state in any court of competent jurisdiction. HB 327 omits this jurisdictional language and therefore adds an ambiguity as to whether the Public Regulation Commission or a court of competent jurisdiction is responsible for issuing a citation and enforcing the \$100 penalty. If the legislature intends to allow the Public Regulation Commission to assess an administrative fine, then an amendment accomplishing that should be considered.

The proposed language of HB 327 does not use the same language when assessing liability to the railroad for failure to sound a **whistle** and ring a bell as it does when absolving the railroad, its agents, and employees from liability after a quiet zone has been established. To make the language consistent the legislature could consider the amendment below:

1. Insert "and injuries" to the last sentence of subsection A after the word "damages".
2. Delete the second "for" in the last sentence of subsection B and substitute in its place the word "and".

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Locomotives will continue to be required to give an audible warning at specific distances from at-grade crossings. There will be no provisions in State Law for counties and municipalities to enter into agreements with federal agencies to implement safety measures and not require audible warnings.

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