

MODEL STATE LAW TO ADDRESS SIGHT OBSTRUCTIONS AT PASSIVE HIGHWAY-RAIL GRADE CROSSINGS

BACKGROUND

Maintaining and improving safety at more than 220,000 highway-rail grade crossings in the United States are of the utmost concern to both the Federal Railroad Administration (FRA) and State governments. In recent years highway-rail grade crossing collisions have been the second leading cause of railroad-related fatalities.¹ In 2008, for example, 36.1% of all railroad-related fatalities were attributable to highway-rail grade crossing collisions. Further, between 2001 and 2005, accident reports submitted by railroads to FRA reflected that 689 collisions, resulting in 242 injuries and 87 fatalities, occurred at highway-rail grade crossings where sight distance obstructions were noted. In light of this significant accident data, Congress focused its attention on the issue of enhancing safety at highway-rail grade crossings. Furthermore, an audit report issued by the Office of Inspector General (OIG) at the U.S. Department of Transportation raised awareness of the safety implications associated with sight obstructions at highway-rail grade crossings.

On May 3, 2007, OIG issued an audit report entitled “The Federal Railroad Administration Can Improve Highway-Rail Grade Crossing Safety by Ensuring Compliance With Accident Reporting Requirements and Addressing Sight Obstructions.”² This report was itself a follow-up to an earlier audit report,³ which had also addressed highway-rail grade crossing safety issues. One of the recommendations made by OIG was that FRA should “[w]ork with FHWA [Federal Highway Administration] to develop model legislation for states to improve safety by addressing sight obstructions at grade crossings that are equipped solely with signs, pavement markings, and other passive warnings.” This recommendation is reflected in the language of Section 203 of the Rail Safety Improvement Act of 2008 (RSIA), which was signed into law on October 16, 2008.

Section 203 of the RSIA (49 U.S.C. § 20159) requires FRA, as the Secretary of Transportation’s delegate,⁴ to work in consultation with the Federal Highway Administration and States to

develop and make available to States model legislation providing for improving safety by addressing sight obstructions, including vegetation growth, topographic features, structures, and standing railroad equipment, at highway-rail grade crossings that are equipped solely with passive warnings, as recommended by the Inspector General of the Department of Transportation in Report No. MH-2007-044.

The following is a summary of the development and key elements of the model State law on adequate sight distance at passive highway-rail grade crossings.

¹ In recent years the primary cause of railroad-related fatalities has been trespassing on railroad property.

² OIG Report No. MH-2007-044.

³ OIG Report No. MH-2006-016, “Audit of Oversight of Highway-Rail Grade Crossing Accident Reporting, Investigations, and Safety Regulations,” November 28, 2005.

⁴See 49 CFR 1.49(m), (oo).

REVIEW OF EXISTING LAWS

FRA has contracted with an independent firm to periodically update a compilation of State laws and regulations that affect highway-rail grade crossings. The latest version of this compilation of State laws and regulations, issued in October 2009, and posted on FRA's public website, contains a chapter (Chapter 12) that specifically addresses laws and regulations related to vegetation clearance along the railroad right-of-way within close proximity to highway-rail grade crossings.

As reflected in the compilation, 29 States and the District of Columbia do not appear to have any codified law or regulation that applies specifically to vegetation clearance along the railroad right-of-way within close proximity to highway-rail grade crossings.⁵ While a number of States with laws pertaining to vegetation clearance also address other types of sight obstructions such as structures and buildings along the railroad right-of-way, only a small minority of States seem to have laws that address topographic features or standing railroad equipment located along the railroad right-of-way within close proximity to highway-rail grade crossings. Thus, FRA believes that new State laws should be adopted, and the scope of existing State laws should be expanded, to address sight obstructions, such as topographic features and standing railroad equipment, as reflected in section 203 of RSIA.

Most State laws establish a fixed distance in relation to the highway-rail grade crossing within which vegetation and other sight distance obstructions need to be addressed. However, this approach may ignore the unique characteristics associated with individual highway-rail grade crossings that would justify an adjustment to the general sight distance requirement. Through issuance of this model law, FRA is encouraging States to re-evaluate their approach and to adopt programs for the periodic evaluation of sight distances at passive highway-rail grade crossings. By establishing a more flexible approach for determining sight distance parameters for individual highway-rail grade crossings, FRA believes that this model law would allow States to focus their resources on the removal and/or mitigation of sight obstructions that have a demonstrable impact on highway-rail grade crossing safety.

CONSULTATION IN THE DEVELOPMENT OF THE MODEL STATE LAW

FRA's efforts to respond to the recommendations in the OIG audit report were initiated before RSIA was signed into law. A draft model law was presented to the Railroad Safety Advisory Committee (RSAC) in October 2007. The RSAC is a committee established by FRA, pursuant to the Federal Advisory Committee Act (5 U.S.C. App. II), to develop recommendations for new safety regulatory standards and other safety matters through a collaborative process with various members of the railroad community. During this presentation, RSAC attendees were encouraged

⁵ These States are Alabama, Alaska, Arizona, California, Delaware, Georgia, Hawaii, Kentucky, Maryland, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia, and Wyoming.

to join in the development of the draft model law. Of those attendees, the Association of American Railroads, together with a small group of railroad representatives, responded to FRA's invitation and provided comments on the draft model law during the development process.

Pursuant to the statutory mandate in section 203 of RSIA, FRA also engaged in consultations with the Federal Highway Administration (FHWA) during the development of the draft model law. As part of the consultation process, FHWA provided comments on the draft model law during various phases of its development.

The American Association of State Highway and Transportation Officials (AASHTO) Standing Committee on Rail Transportation was also invited to join the development effort behind the draft model law. In addition, FRA hosted an exhibit at the 2009 annual meeting of the National Conference of State Legislatures, where the draft model law was presented for comment.

SCOPE OF THE MODEL STATE LAW

Pursuant to the statutory mandate contained in section 203 of RSIA, this model law addresses sight obstructions at public, as well as private, highway-rail grade crossings.⁶ However, FRA acknowledges that private highway-rail grade crossings present a unique set of safety challenges and issues because of their private, or nonpublic, character.

A number of States have laws that address vegetation and sight distance obstructions, which are specifically tailored to address public highway-rail grade crossings. This conservative approach to the removal and/or mitigation of sight obstructions may be based upon the perception that the exercise of State jurisdiction over safety at highway-rail grade crossings is more clearly defined at public crossings. However, it should be noted that many of the safety concerns associated with public highway-rail grade crossings are shared with industrial and commercial private crossings, as well as private crossings that have a public use. In addition, by focusing exclusively on sight distance obstructions at public highway-rail grade crossings, State resources will only be targeted at a subset of the passive highway-rail grade crossings that may pose potential safety hazards. According to the U.S. Department of Transportation's National Highway-Rail Grade Crossing Inventory, the majority of private highway-rail grade crossings are either equipped with passive warning devices, such as stop signs, or no warning devices at all. Therefore, FRA encourages States to include private highway-rail grade crossings in their efforts to remove and/or mitigate sight obstructions at passive highway-rail grade crossings.

OVERVIEW

This model law on sight distances at passive highway-rail grade crossings is presented in a generally accepted format that should lend itself to being readily adapted to any individual State's statutory framework.

⁶ Public highway-rail grade crossings are locations where public highways, roads, or streets cross one or more railroad tracks at grade. Private highway-rail grade crossings are locations where roadways that are either not open to public travel or are not maintained by a public authority cross one or more railroad tracks at grade.

There are three types of sight distance measurements that are generally used to evaluate safety at passive highway-rail grade crossings: clearing sight distance; corner sight distance; and stopping sight distance.⁷ This model law contains several provisions that are directly relevant to the preservation of these sight distances at passive highway-rail grade crossings.

This model law would:

- Require the establishment of a statewide program for the periodic inspection and evaluation of sight distances at passive highway-rail grade crossings.
- Enumerate specific actions to address sight distance obstructions within close proximity to passive highway-rail grade crossings.
- Authorize the issuance of civil penalty citations against railroad companies and other private property owners, and the recoupment of costs from responsible public entities, who fail to comply with an order to remove or otherwise mitigate the sight distance obstruction.
- Establish a minimum and maximum stopping distance requirement for road users of passive highway-rail grade crossings.

⁷ “Clearing sight distance” means the distance required along each direction of track for the road user stopped 15 feet short of the near rail at a highway-rail grade crossing to be able to see far enough down the track, in both directions, to determine if sufficient time exists for moving safely across the tracks to a point 15 feet past the far rail, prior to the arrival of a train.

“Corner sight distance” means the length of highway on the approach to a highway-rail grade crossing that would be required by a road user to detect an approaching train from either direction of track in sufficient time to safely stop a vehicle traveling at the posted speed limit at least 15 feet before the near rail.

“Stopping sight distance” means the length of highway on the approach to a highway-rail grade crossing required to safely stop a vehicle traveling at the posted speed limit at least 15 feet before the near rail.