

**1999 DRAFTING REQUEST**

**Assembly Amendment (AA-AB133)**

Received: **06/11/99**

Received By: **rmarchan**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Fiscal Bureau**

By/Representing: **Dyck**

This file may be shown to any legislator: **NO**

Drafter: **rmarchan**

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Alt. Drafters:

Subject: **Transportation - railroads**

Extra Copies: **PEN; TNF**

**Pre Topic:**

LFB:.....Dyck -

**Topic:**

Office of the commissioner of railroads

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	rmarchan 06/11/99	gilfokm 06/11/99	jfrantze 06/11/99	_____	lrb_docadmin 06/11/99		

FE Sent For:

**<END>**

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FE Sent For:

6/11

<END>



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

June 1, 1999

Joint Committee on Finance

Paper #816

### Railroad Grade Crossings Committee (PSC -- Office of the Commissioner of Railroads)

[LFB 1999-01 Budget Summary: Page 520, #3 and Page 585, #7]

99-2028

Bill sections 2309, 9150(5),  
9350(12)

#### CURRENT LAW

Upon the petition of the Department of Transportation, local governments, railroads or at least five persons, the Office of the Commissioner of Railroads (OCR) is required to investigate a public railroad crossing to determine whether the crossing protects and promotes public safety. If OCR determines that a crossing does not adequately protect public safety, it may order the railroad to install a railroad crossing signal or gates. The cost of the installation is paid from one of two DOT appropriations (\$450,000 SEG and \$3,549,300 FED in 1998-99). There are 4,457 public, at-grade railroad crossings in the state.

There are currently 28 crossings for which OCR has ordered a crossing device installed, but for which funding is not yet available.

#### GOVERNOR

Create a Railroad Grade Crossings Committee composed of two members appointed by the Secretary of the Department of Transportation and two members appointed by the Office of the Commissioner of Railroads (OCR). Require the Committee to review each at-grade railroad crossing in the state and permit the Committee to recommend to OCR that improvements be considered to any crossing if the Committee determines that existing warning or safety devices or other conditions at the crossing do not adequately protect and promote public safety. Specify that provisions requiring DOT to pay the cost of a crossing project that has been ordered by the OCR only apply if: (a) the Committee or the DOT Secretary has recommended that the OCR consider improvements at the crossing; or (b) the OCR determines that immediate improvements are needed at the crossing to protect public safety. This would not apply to OCR orders issued before the effective date of the bill.

Specify that recommendations of the Committee shall be made by a majority of the Committee members, but that if no majority agrees on whether or not to recommend a crossing for improvements, then the DOT Secretary shall make that recommendation. Specify that a majority of the members of the Committee may reverse a recommendation by providing notice of the reversal to the OCR and the DOT Secretary.

Require the Committee to: (a) maintain a railroad grade crossings database; (b) establish threshold requirements for recommendations made under this provision; and (c) recommend to the DOT Secretary desirable funding levels for the railroad crossing improvement program.

Require the OCR and the DOT Secretary to make appointments to the Committee within 45 days of the effective date of the bill. Eliminate the Committee after it has reviewed every railroad grade crossing in the state and made its final recommendations, or on July 1, 2002, whichever occurs sooner.

## **DISCUSSION POINTS**

1. DOA indicates that the intent of this provision was to: (a) establish a process by which a determination of which crossings should have safety devices installed would be made in the context of a comprehensive review of the needs at all crossings in the state and the amount of funding available, instead of on a case-by-case basis; and (b) improve communication between DOT and OCR on railroad crossing issues.

2. DOT and OCR are currently cooperating to prioritize the list of crossings that have been ordered by OCR for improvement. During this process, it may be determined that some ordered crossings, because of changes in railroad traffic, no longer need signal improvements and so OCR's order should be canceled.

3. Both DOT and OCR indicate that reviewing all crossings in the state would require their staffs to devote a significant amount of time to the effort. DOT indicates that, since up-to-date data on railroad and motor vehicle traffic at crossings is not always available, staff in transportation district offices would be required to collect current data. In addition, DOT staff may be required to visit the site of crossings under consideration to collect information on the physical layout of the crossings, including the presence of trees, buildings or other objects that might impair visibility. Since the size of the highway program has increased in recent years due to an increase in federal and state funding, the workload for DOT district employees has increased as well, and, therefore, it may be difficult for them to devote additional time to the review of railroad crossings.

4. The Railroad Grade Crossings Committee would be dissolved when it has completed the review of all railroad crossings in the state, or on July 1, 2002, whichever occurs sooner. Since railroad and motor vehicle traffic are subject to rapid change, the recommendations made by the Committee may no longer be current shortly after the Committee completes its work.

5. The DOT Secretary would appoint two out of the four members of the Committee, and would make the recommendation on a particular crossing if no majority of the Committee agrees on whether or not to recommend the crossing for improvements. This could create a conflict of interest since the funding for installation of crossing devices comes from sources that could otherwise be used for other DOT programs. DOT may have an interest, therefore, in limiting the number of crossings that are recommended by the Committee.

6. One alternative to increase the cooperation between the two agencies on railroad crossing issues, without requiring a review of all crossings would be to require OCR and DOT to jointly develop a railroad crossing improvement plan that would: (a) identify standards for reviewing railroad crossings to determine the need for crossing safety devices; and (b) recommend funding levels that are necessary to improve dangerous crossings, while considering the safety benefits of alternative uses of federal and state transportation funds. The agencies could be required to periodically update the plan.

## ALTERNATIVES

1. Approve the Governor's recommendation to create a Railroad Grade Crossings Committee to review all at-grade crossings in the state and make recommendations to OCR on which crossings should be ordered for improvement.

2. Delete the Governor's recommendation and, instead, require DOT and OCR, within twelve months of the passage of the bill, to jointly develop a railroad crossing improvement plan that would: (a) identify standards for reviewing railroad crossings to determine the need for crossing safety devices; and (b) recommend funding levels that are necessary to improve dangerous crossings, while considering the safety benefits of alternative uses of federal and state transportation funds. Specify that OCR may not order improvements at a crossing, unless it is determined that immediate improvements are needed to protect public safety, after the first day of the twelfth month following the passage of the bill, if the railroad crossing improvement plan has not been completed. Require OCR and DOT to update the plan every four years.

3. Maintain current law.

Prepared by: Jon Dyck



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

June 1, 1999

Joint Committee on Finance

Paper #815

### Budget Requests (PSC -- Office of the Commissioner of Railroads)

[LFB 1999-01 Budget Summary: Page 520, #2]

*Bill section 13*

*99-2028*

#### CURRENT LAW

The Office of the Commissioner of Railroads (OCR) is attached, for administrative purposes, to the Public Service Commission (PSC). The PSC is required to process and forward all of OCR's personnel and biennial budget requests without change, except as requested and concurred in by OCR. Base funding and staffing levels for OCR are \$457,800 PR and 7.0 PR positions. Funding for OCR operations derives from direct and remainder assessments of railroad companies based on their gross revenues from intrastate railroad operations.

#### GOVERNOR

Delete the provision that requires that all personnel and budget requests of the Office be forwarded by the PSC without change. Instead, require that personnel and budget requests be processed by the Department of Transportation.

#### DISCUSSION POINTS

1. OCR was created by 1993 Act 123 to administer railroad regulatory functions. These functions had earlier been transferred to the PSC by 1993 Act 16 as part of the elimination of the Office of the Commissioner of Transportation (OCT). OCT had been an independent regulatory body, attached administratively to DOT, and had the responsibility, among other duties, for railroad regulatory matters in the state.

2. The Governor's 1995-97 budget recommended that OCR be eliminated and its regulatory functions be transferred to DOT and DOA. The Legislature, however, retained OCR as an independent agency. The bill would retain OCR as an independent agency, but its budget and personnel requests would be processed by DOT and could be modified without OCR's consent.

3. There could potentially be a conflict of interest if OCR's budget requests were subject to DOT's review. OCR orders the installation of railroad crossing signals or gates based on an assessment of the safety of the crossing. Since the funding for the installation of crossing devices comes from sources that could otherwise be used for other DOT programs, DOT may have an interest in limiting the amounts that are spent for that purpose.

4. DOT is sometimes a petitioner in cases decided by OCR. For instance, DOT may petition to have crossings closed or modified because of a highway project, which may require the railroad to pay a portion of the costs. If there is a dispute on these issues between the Department and the affected railroad, OCR may conduct a hearing to resolve the dispute. If OCR's budget requests were subject to DOT's review, OCR's independence in these hearings may be questioned by the railroads.

5. Allowing DOT to have some review of OCR's budget requests, however, may be appropriate, since the installation of railroad crossing signals that have been ordered by OCR are funded with state transportation funds and federal highway aid. The decision to provide additional funds for crossing devices should be weighed against the relative priority of other possible transportation uses of those funds.

6. Ultimately, however, the Legislature, not DOT, is responsible for the approval of budget requests. Consequently, it may be appropriate to continue to allow OCR to determine funding needs and make the requests independent of DOT's review.

7. OCR made a request in September, 1998, to the Joint Committee on Finance under s. 13.10 for \$500,000 FED to make improvements at several railroad crossings. DOT indicates that the Department had little or no knowledge of this request before it was made, which limited the Department's input on the issue. One alternative that may improve the communication between the two agencies on railroad crossing issues, without subjecting OCR's budget requests to DOT's control, would be to retain current law with respect to the processing of OCR's budget requests, but to require OCR to notify DOT at least 14 days prior to making any budget or personnel requests that would affect DOT's appropriations. This would ensure that DOT has time to respond to the request.

## ALTERNATIVES

1. Approve the Governor's recommendation to require that personnel and budget requests be processed by DOT, instead of by the PSC.

2. Delete the Governor's recommendation and, instead, require OCR to notify DOT at least 14 days prior to making any budget or personnel request that affects DOT's appropriations.

3. Maintain current law.

Prepared by: Jon Dyck

DOA:.....Holden - Administrative changes to office of commissioner of  
railroads

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget and granting rule-making authority.

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*Analysis by the Legislative Reference Bureau*

**TRANSPORTATION**

**RAIL AND AIR TRANSPORTATION**

Under current law, the department of transportation (DOT), local governmental bodies, local residents or railroad companies may petition the office of the commissioner of railroads (OCR) for a determination of whether a public highway and railroad crossing (rail crossing) protects and promotes public safety. OCR may investigate and determine the adequacy of the rail crossing and may order the railroad to keep flagmen at the rail crossing or to install or relocate automatic warning signals or other suitable safety device at the rail crossing. The costs of installing the warning signals or safety devices are paid by DOT from the transportation fund.

This bill creates a railroad grade crossings committee, consisting of two members appointed by the secretary of transportation and two members appointed by OCR. The bill requires the committee to review every railroad grade crossing in this state to recommend crossings for improvements. The bill prohibits DOT from paying for improvements to railroad grade crossings ordered by OCR unless the committee first recommended improvements to the crossing or OCR determines that immediate improvements are necessary to project public health.



For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 15.03 of the statutes is amended to read:

2           **15.03 Attachment for limited purposes.** Any division, office, commission,  
3 council or board attached under this section to a department or independent agency  
4 or a specified division thereof shall be a distinct unit of that department, independent  
5 agency or specified division. Any division, office, commission, council or board so  
6 attached shall exercise its powers, duties and functions prescribed by law, including  
7 rule making, licensing and regulation, and operational planning within the area of  
8 program responsibility of the division, office, commission, council or board,  
9 independently of the head of the department or independent agency, but budgeting,  
10 program coordination and related management functions shall be performed under  
11 the direction and supervision of the head of the department or independent agency,  
12 except that with respect to the office of the commissioner of railroads, all personnel  
13 and biennial budget requests by the office of the commissioner of railroads shall be  
14 processed and properly forwarded by the public service commission without change  
15 except as requested and concurred in by the office of the commissioner of railroads  
16 by the department of transportation.

17           **SECTION 2.** 195.28 (2) of the statutes is amended to read:

18           **195.28 (2) INSTALLATION COSTS.** The cost of any signal or other crossing  
19 protection device which is ordered installed under sub. (1) and the cost of installing  
20 any such device shall be paid by the department from the appropriations under s.  
21 20.395 (2) (gj), (gr) and (gx). This subsection applies only if, prior to the order under

1 sub. (1), the secretary of transportation or the railroad grade crossings committee  
2 has recommended that the office consider improvements to the railroad grade  
3 crossing as provided in 1999 Wisconsin Act ... (this act), section 9150 (1), or if,  
4 regardless of the recommendation concerning the crossing, the office determines  
5 that immediate improvements to the crossing are necessary to protect public safety.

6 **SECTION 9150. Nonstatutory provisions; transportation.**

7 (1) RAILROAD GRADE CROSSINGS COMMITTEE. There is created a railroad grade  
8 crossings committee consisting of 2 members appointed by the secretary of  
9 transportation and 2 members appointed by the office of commissioner of railroads.  
10 Members shall be appointed within 45 days after the effective date of this subsection.  
11 The committee shall review each railroad grade crossing in this state and, if the  
12 committee determines that existing warning or safety devices or other conditions at  
13 the railroad grade crossing do not adequately protect and promote public safety, may  
14 recommend that the office of commissioner of railroads consider improvements to the  
15 railroad grade crossing. Committee recommendations shall be made by a majority  
16 of the committee members. If no majority of committee members agree on whether  
17 to recommend a railroad grade crossing for improvements, the secretary of  
18 transportation shall make that recommendation. A majority of committee members  
19 may reverse a recommendation made under this subsection by providing notice of the  
20 reversal to the office of commissioner of railroads and the secretary of transportation.  
21 The committee shall maintain a railroad grade crossings database, shall establish  
22 threshold requirements for recommendations under this subsection and shall  
23 recommend to the secretary of transportation desirable funding levels for the  
24 railroad crossing improvement program. The committee shall cease to exist when

1 the committee has reviewed every railroad grade crossing in this state and made its  
2 final recommendations, or on July 1, 2002, whichever occurs sooner.

3 **SECTION 9350. Initial applicability; transportation.**

4 (1) RAILROAD GRADE CROSSINGS COMMITTEE. The treatment of section 195.28 (2)  
5 of the statutes first applies to orders under section 195.28 (1) of the statutes on the  
6 effective date of this subsection.

7 (END)

1999

Date (time) needed SOON

LRB b 0679, 1

**LFB BUDGET AMENDMENT  
[ONLY FOR LFB]**

RJM:cmv : \_\_\_\_\_

See form **AMENDMENTS — COMPONENTS & ITEMS.**

**LFB AMENDMENT  
TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45**

>>FOR JT. FIN. SUB. — NOT FOR INTRODUCTION<<

At the locations indicated, amend the bill as follows:

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

*RMR*

*DWITE*

*See attached*



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRBb0679/1

RJM:.....

cmf

LFB:.....Dyck - Office of the commissioner of railroads

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

**LFB AMENDMENT**

**TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45**

1 At the locations indicated, amend the bill as follows:

2 1. Page 125, line 2: delete lines 2 to 17.

3 2. Page 1067, line 7: delete lines 7 to 16.

4 3. Page 1422, line 14: delete the material beginning with that line and ending  
5 with page 1423, line 8.

6 4. Page 1464, line 5: delete lines 5 to 7.

7 (END)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBb0679/1dn  
RJM:.....

*cmj*

Jon Dyck:

Attached is the budget amendment you requested, removing changes in the budget regarding the office of the commissioner of railroads. Please let me know if any changes to this draft are necessary.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: Robert.Marchant@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBb0679/1dn  
RJM:cmh:jf

June 11, 1999

Jon Dyck:

Attached is the budget amendment you requested, removing changes in the budget regarding the office of the commissioner of railroads. Please let me know if any changes to this draft are necessary.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: Robert.Marchant@legis.state.wi.us

