

MINUTES OF THE SENATE TRANSPORTATION COMMITTEE.

The meeting was called to order by Chairperson Les Donovan at 8:30 a.m. on March 1, 2001 in Room 245-N of the Capitol.

All members were present except: Senator Harrington

Committee staff present: Hank Avila, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Marian F. Holeman, Committee Secretary

Conferees appearing before the committee: Pat Hubbell, Kansas Railroads Industry
Dan Hardin, Riley County Public Works
Al Cathcart, Kansas Dept. of Transportation
Norbert Merrick, Manhattan, KS

Others attending: See attached list.

HB 2045: Re railroads; crossings on public highways and streets

Pat Hubbell, Kansas Railroads Industry advised this bill as amended by the House Transportation Committee has the support of the industry. The bill corrects flaws in the statutes regarding outdated requirements for railroad grade crossing on county and township roads (Attachment 1). Dan Harden, Riley County engineer urged support for the bill because it allows for currently recognized engineering design standards for railroad crossings of public highways (Attachment 2). Al Cathcart, Coordinating Engineer for Bureau of Design, Kansas Department of Transportation agreed with the change in design standards as set forth in HB 2045 (Attachment 3).

Norbert C. Marek, Jr. with Myers, Pottroff & Ball, Attorneys At Law, Manhattan, Kansas testified in favor of the bill as it was originally written and provided materials in support of his position. The current version deletes provisions related to sight distance and is limited to the vertical profile of the crossing. He proposed adoption of The American Association of State Highway and Transportation Officials (AASHTO) Geometric Design of Highways and Streets at Grade Intersections, Railroad Grade Crossings effective July 1, 2001 (Attachment 4). His testimony includes sight distance information from Burlington Northern Santa Fe and a report from the National Transportation Safety Board on safety at passive grade crossings.

In discussing HB 2045, members heard that sight distance at crossings is being addressed by the railroads in many very pro-active safety ways. Railroads have done much to make their equipment more visible. They work closely with counties and cities on the sight distance issue. This bill does not in any way change the cost structure for crossings; i.e. who pays for what. The bill is a step toward upgrading outmoded statutes.

Senator Goodwin moved the bill favorable for passage. Senator Schodorf seconded the motion. Motion carried.

Approval of minutes

Senator Salmans moved to approve minutes of the February 28, 2001 meeting. Senator Gooch seconded the motion. Motion carried.

The meeting adjourned at 9:20 a.m.

The next meeting is on call of the Chair for March 6, 2001.

SENATE TRANSPORTATION COMMITTEE

GUEST LIST

DATE: MARCH 1, 2001

NAME	REPRESENTING
Norbert Marek, Sr.	Myers, Proffitt and Ball
Tom Whitaker	KMCA
Andy Shaw	KMCA
Dale HARDEN	Riley County
Larry Kleiman	LKM
Randy Allen	Kansas Assoc. of Counties
Ron Mc MURRY	KDOT
AJ Cathcart	KDOT
Pat Hubble	Kansas Railroad

KANSAS RAILROADS

PATRICK R. HUBBELL

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Senate Transportation Committee

March 1, 2001

HB 2045

SenT Committee 1-1
3-1-01
Attachment 1

Mr. Chairman and members of the Committee, my name is Pat Hubbell. I appear here today on behalf of the Kansas Railroads Industry.

K.S.A. 66-227 concerns railroad grade crossings on county and township roads. House Bill 2045 amends this statute by eliminating two elements of the statute, which are ambiguous and nearly impossible to comply with. The first paragraph of the statute requires that public road crossings:

“... shall be on the same grade as the track for thirty feet on each side of the center of said track, unless the board of county commissioners shall find the same to be unnecessary, and the approaches thereto shall not exceed a six percent grade...”

This language may have been inserted in the 1919 amendment to the statute because of a then existing problem caused by a railroad’s failure to restore the roadway to the established grade so the surface of the highway would be level with the top of the outside rail.

Another inherent conflict caused by the language “same grade for 30 feet and the 6% approach grade” is that it sometimes extends the crossing approaches far beyond the railroad’s right-of-way. This occurs because the statute permits no greater than a 6% approach grade, but does not define the extent of the “approach”. The statute does not specify whether the “approach” includes the total sixty feet of “same grade”, or if it means 30 feet, 300 feet, or one mile. It is highly unlikely the Legislature intended to require the railroad to construct approaches on property it did not own, particularly since elsewhere in the statute the railroad’s responsibility for paving the road surface is limited to a distance of two feet on either side of the railroad track.

Compliance with the statute is even more difficult when the crossing is on a curved portion of the track which often requires one rail to be elevated as

1-2

much as six inches higher than the other rail.

Concerning rail crossings in cities of the first or second class, K.S.A. 12-1633 gives cities the power to pass ordinances applicable to the construction and maintenance of railroad grade crossings.

Crossings on the state highway system are constructed and maintained "in a manner to be approved by the Secretary of Transportation", pursuant to K.S.A. 68-414. This statute does not contain the ambiguous and impossible language we have asked you to delete from 66-227.

House Bill 2045 has corrected previously discussed flaws in the statute by removing the ambiguous requirement of "same grade as the track for 30 feet on each side of the center of said track and approaches that not exceed a six percent grade." The amended language is at the request of the Kansas Department of Transportation and their engineering staff. This language establishes safety standards, yet removes the requirements which are extremely ambiguous and nearly comprehensible from an engineering standpoint.

Thank you for hearing this bill and I hope you can vote for its passage.

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Testimony of Dan Harden
Before the Senate Transportation Committee
Regarding House Bill 2045 as amended
1 March 2001

Senator Les Donovan
Chair

Senator Donovan, and members of the Senate Transportation Committee; my name is Dan Harden. I am a professional engineer. I have been employed for the past 25 years as the Riley County engineer.

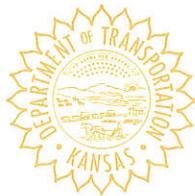
I am here today to urge you to support House Bill 2045. I urge you to support it because the bill eliminates an archaic design standard and replaces it with the currently recognized engineering design standard for a railroad crossing of a public highway.

I urge the committee to pass out of committee Senate Bill 522.

I stand for questions.

Sen Transp Comm
3-1-01
Attachment 2

2-1



**KANSAS DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY OF TRANSPORTATION**

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Secretary of Transportation

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Bill Graves
Governor

**TESTIMONY BEFORE THE
SENATE TRANSPORTATION COMMITTEE**

**REGARDING HOUSE BILL NO. 2045
RAILROAD CROSSINGS**

March 1, 2001

Mr. Chairman and Committee Members:

I am Al Cathcart, Coordinating Engineer for the Bureau of Design, Kansas Department of Transportation. I agree with the conceptual change to design standards as contained in House Bill 2045.

House Bill 2045 amends current law, which requires a specified level of maintenance of railroad crossings on all public highways. The bill will include the American Association of State Highway and Transportation Officials Geometric Design of Highways and Streets at Grade Intersections, Railroad Grade Crossings, in effect on July 1, 2001, for the statutory standards. Secondly, it would require maintenance upon complaint. The vertical profile requirements for the highway approach to highway/railroad crossings, as presently contained in KSA 66-227, cannot be reasonably attained on several crossings in Kansas.

Application of the proposed standards would make vertical profile approach requirements for roadways more easily attained. The American Association of State Highway and Transportation Officials Geometric Design of Highways and Streets at Grade Intersections, Railroad Grade Crossings, is currently used by the Kansas Department of Transportation in the design of state and federal aid highway improvements and would be the most appropriate design manual for the vertical profile or alignment requirements of highway/railroad crossings.

In summary, the proposed legislation applies the appropriate standards to all public highways, roads, or streets, and KDOT is in support of House Bill 2045.

*Sen. Troup. Comm
3-01-01
Attachment 3*

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(1930-1996)
OF COUNSEL:
DONN J. EVERETT

February 28, 2001

Senate Transportation Committee
Kansas Senate

RE: HB 2045

Dear Committee Members:

I am writing to you as members of the Transportation Committee. Your committee has recently received HB 2045. I attended the House hearing on this matter and would like to express my opinions regarding the present bill. At the time of the January 24, 2001 hearing the bill was in the original form it had been proposed in by KDOT and the Kansas Railroad Association. I have attached a copy of that bill. (All attachments mentioned will be provided to the committee at the hearing on March 1, 2001) I testified in support of the bill as it was originally written. However, the bill has been amended to limit its effect. The amendment was proposed by KDOT and the Kansas Railroad Association and passed by the committee. I would urge your committee to return to the original language of the bill.

This bill could have an important effect on the safety of railroad crossings in Kansas, particularly for rural Kansans who encounter crossings protected by cross bucks. The original bill called for the adoption of AASHTO standards at these crossings. This would include the concept of sight distances at the approach to a crossing. The idea here is that the sooner the motorist can see a train the greater is his ability to stop and avoid an accident. AASHTO standards provide a method for determining appropriate sight distances at a crossing. This would require clearing vegetation and obstructions near a crossing or in cases where this could not be done additional signage could be erected. I have included a copy of sight distance information from a book published by the BNSF. As the book notes the following states use AASHTO: Arkansas, Florida, New Mexico, Oregon, Washington and Wisconsin. According to a recent NTSB study "The Safety Board's study cases show a strong association between inadequate sight distances and accident occurrence."

The current version of the bill deleted provisions related to sight distance and is limited to the vertical profile of the crossing. This would effect humped crossings but do nothing about sight distances. Jerry Fowler, Saline County Engineer, testified at the house hearing that the committee should either use all of AASHTO or none of it. I would note that KDOT uses

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Sen. Transp. Comm
3-1-01
Attachment 4

AASHTO standards on highway projects. I am particularly concerned that KDOT has chosen to back the amended bill even though neither form of the bill appeared to affect KDOT. KDOT has aligned itself with the Railroad lobby rather than maintaining a neutral position.

Adding back full use of AASHTO would also provide some additional guidance on vegetation control. At one time this issue was controlled by K.A.R. 82-5-8 (copy enclosed). However, the KCC has taken the position that this regulation is no longer in effect due to repeal of portions of KCC's authority. (copy enclosed) If KCC is correct there is no regulation in effect in Kansas regarding vegetation along the tracks. In fact there is no statute in Kansas regarding this issue. Eighteen states regulate vegetation issues by statute according to The Compilation of State Laws and Regulations on Matters Affecting Highway-Rail Crossings a publication of the Federal Railroad Administration a copy of which can be found at www.fra.dot.gov/o/safety/index.htm . According to BNSF's Engineering Instructions, 21 states have some form of regulation of vegetation. I would note that County's must still cut back vegetation from the right away of roads within 350 feet of a railroad crossing pursuant to K.S.A. 19-2612.

Federal regulations do not deal with the matter to vegetation except on a limited scale. The language of the current regulation 49 C.F.R. 213.37 (attached) "was not intended to cover or preempt state or local requirements for the clearing of vegetation on railroad rights-of-way at highway-rail grade crossings." 63 Federal Register 3392 at 34004

I do want to let you know the reason for my interest in this bill. My law firm represents people injured at railroad crossings. We therefore have an interest in and expertise regarding safety issues at railroad crossings. Based on our experience the bill as originally drafted would enhance safety at crossings and reduce the number of accidents at crossings in Kansas. I believe that railroads have a duty to maintain their property in a way that does not create dangers for motorists near crossings. HB 2045 if returned to its original form would provide clear reasonable standards for railroads to follow on their property. This need for uniformity was the same reason the Railroad Lobby asked for AASHTO standards to apply to the vertical profile at crossings.

In the event, representatives of KDOT or the Kansas Association of Railroads are present at the hearing. I would urge members of the committee to ask why they believed it was necessary to cut back the application of AASTHO in this bill. No explanation for the amendment that put this bill in its current form was given either by KDOT or KAR. I would further urge members of the committee to ask KDOT whether KDOT believes there are currently any regulations regarding vegetation along the railroad right-of-way under Kansas law.

I plan to attend your committee's hearing on this issue on March 1, 2001 and I look forward to any questions you may have.

Sincerely,



Norbert C. Marek, Jr.

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HOUSE BILL No. 2045

By Committee on Transportation

1-16

AN ACT relating to railroads; concerning railroad crossings; amending K.S.A. 66-227 and 66-229 and repealing the existing sections. Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 66-227 is hereby amended to read as follows: 66-

227. It is hereby made the duty of every person or corporation owning or operating any railroad crossed by a ~~public highway~~ county highway or township road to make, and keep in good repair, good and sufficient crossings for such highway or road over their tracks, including all the grading, bridges, ditches, and culverts within their right-of-way that may be necessary to make a safe crossing ~~as hereinafter provided. Said crossings shall not be less than twenty-four feet in width on county roads or twenty feet in width on township roads, and shall be on the same grade as the track for thirty feet on each side of the center of said track, unless the board of county commissioners shall find the same to be unnecessary, and the approaches thereto shall not exceed a six percent grade and shall~~

~~be solidly constructed of the same material throughout, except that next to the rail any suitable material may be used that will prevent the settling against the rails of any material used in said crossing, with no openings or filled spaces therein, except such as is necessary for the rails; and, for railroad crossings, such material shall be wood, gravel, crushed rock, concrete, burned clay or slag at the discretion of said company and of a permanent thickness equal to the height of the railroad rails. The design of such grade crossings shall comply with the American association of state highway and transportation officials geometric design of highways and streets at grade intersections, railroad grade crossings, in effect on July 1, 2001.~~

~~That~~ When the highway crossing the track is improved by the construction of a hard-surfaced road, the railroad company shall pave the space between the rails and for a distance of two feet on each side thereof with a pavement of the same or a better type for the full width of the pavement on the highway. On other crossings where the highway has not been improved, the planking or other material used between and for a distance of one foot outside of the rails shall be ~~of sufficient length to provide for a 16-foot~~ a length to equal the roadway width measured perpendicular to the axis of the highway: ~~Provided further, That.~~ Nothing in this act shall be construed to repeal any provision of law relating to railroad crossings

on streets in cities of the first and second class. Sec. 2. K.S.A. 66-229 is hereby amended to read as follows: 66-229. Upon complaint, it is hereby made the duty of every county engineer and road ~~overseer~~ supervisor in this state to see that this act is complied within his such person's jurisdiction, and to report to the county attorney of his such person's county every failure on the part of any person or corporation to comply with this act, and. It is hereby made the duty of the county attorney of each county in the state to enforce this act.

Sec. 3. K.S.A. 66-227 and 66-229 are hereby repealed. Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

ENGINEERING INSTRUCTIONS

BNSF



FIELD MANUAL

4-4

12.4.9 Water Loading Facilities

Where BNSF property includes adequate water loading facilities, the contractor is allowed to use the water free of charge to dilute herbicides. Contractor crews must:

1. Fill their own equipment with water on location. When doing this, they must provide adequate protection to avoid back-siphoning or contaminating the soil or water in other ways while mixing and handling herbicides.
2. Secure water in a timely manner and not charge BNSF for time lost or for transportation to the water sources.

12.4.10 Work Area

The contractor must keep the work area and public and private access areas clear of waste materials and rubbish from the work. When the work is complete, the contractor must:

1. Remove from the property all tools, equipment, and rubbish.
2. Leave the work area neat and orderly.
3. Dispose of waste in a legally approved area.

Note: The contractor is responsible for costs involved in keeping the work area free of waste materials and rubbish and properly disposing of the waste when the work is complete.

12.4.11 Contract and Insurance

Contractors must meet the contractual and insurance requirements of the BNSF Service Contracts Team.

12.5 Grade Crossings—State Clearance Requirements

12.5.1 General

The information in section 12.5 includes the state clearance requirements for railroad grade crossings. Because state laws could change, these requirements are subject to change. Obtain further information from the appropriate state agency.

Note: These requirements are informational only and may not include all clearance requirements for railroad grade crossings.



12.5.2 Alabama

The state of Alabama does not have a statute concerning vegetation at grade crossings. However, it does specify a clearance distance of 200 feet on each side of the crossing.

12.5.3 Arizona

The Arizona Department of Transportation and Arizona Corporation Commission advise the same guidelines as New Mexico (see section 12.5.18).

12.5.4 Arkansas

The state of Arkansas does not have a state statute or law. However, it uses the AASHTO Geometric Design of Highway and Streets (see section 12.5.27).

12.5.5 California

The California Department of Transportation and Public Utilities Commission advises the same guidelines as New Mexico (see section 12.5.18).

12.5.6 Colorado

(Rule 3—Installation and Maintenance of Safety Devices at Railway and Highway Crossings)

Installation of signal lights or other safety or protective devices is covered by the Commission's rule of practice and procedure.

All safety devices, whether electrically operated or otherwise, and of whatsoever nature, which have heretofore been installed at railway and highway crossings in the state of Colorado, shall be efficiently maintained and kept in good operating condition by the railroad or railroads having heretofore installed said safety devices at said railway and highway crossings.

All steam and electric railroads shall at all times keep their rights-of-way free and clear from all obstructions which substantially interfere with the motorist's view of approaching trains at railroad and highway crossings in this state; provided, however, that this rule shall not apply to:

- Existing buildings, permanent structures, and natural obstructions other than trees and vegetation:



- Rolling stock or materials temporarily on the right-of-way in connection with switching movements or with the loading or unloading of shipments;
- Crossings protected by a watchman or automatic signals.

12.5.7 Florida

The state of Florida does not have a state statute. However, it uses the AASHTO Geometric Design of Highway and Streets (see section 12.5.27).

12.5.8 Idaho

The state of Idaho does not have a state statute. However, there is a state law concerning intersections, and railroad grade crossings are included in that law. The requirements are no obstructions higher than 3 feet for a distance of 40 feet each way from the crossing, excluding trees and buildings.

12.5.9 Illinois

(Rule 205)

Every railroad shall keep its right-of-way adjacent to its tracks reasonably clear of brush, shrubbery, trees, weeds, crops and all unnecessary permanent obstructions such as unauthorized signs and billboards for a distance of at least 500 feet each way from every grade crossing where such things would materially obscure the view of approaching trains to travelers on the highway.

12.5.10 Iowa

The state of Iowa has no regulations specifying distances for removing obstructions. It does require that the right-of-way be substantially clear for the view of motorists.

12.5.11 Louisiana

The state of Louisiana does not have a statute concerning the distance to clear vegetation at grade crossings. However, the state expects the railroads to keep vegetation under control.



12.5.12 Kansas

(Trackage and grade crossings)

- (a) "Track Safety Standards." 49 CFR Part 213, as in effect on September 15, 1983, is hereby adopted by reference.
- (b) Grade crossing surfaces shall be adequately maintained for rail movement.
- (c) The railroad shall keep its right-of-way clear, for a reasonable distance, of weeds and vegetation and other unnecessary obstructions, including railroad cars, when the vegetation and obstructions may interfere with the visibility of approaching motor vehicles.

12.5.13 Minnesota

The state of Minnesota does not have a state statute regarding obstructions at grade crossings.

12.5.14 Mississippi

Each land owner shall keep the right-of-way clear of obstructions for a distance of not less than 200 feet each side of the crossing.

12.5.15 Missouri

(4 CSR 256-8.030 Visual Obstructions at Public Grade Crossings)

Purpose: This rule prescribes the standards for clearing visual obstructions at public grade crossings.

- (1) It shall be the duty of every corporation, company or person owning or operating any railroad or branch thereof in this state to maintain the railroad right-of-way at public grade crossings so that it will be reasonably clear of vegetation, undergrowth or other debris for a distance of 250 feet each way from the crossings where those things would materially obscure approaching trains from the view of travelers on the highway.

12.5.16 Montana

The state of Montana does not have a state statute regarding obstructions at grade crossings.

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12.5.17 Nebraska

The state of Nebraska has no regulations specifying distances for removing obstructions. It does require that the right-of-way be substantially clear for the view of motorists.

12.5.18 New Mexico

The New Mexico State Highway Department and Corporation Commission do not have state statutes or rules. However, they use the American Association of State Highway Transportation Officials (AASHTO) Geometric Design of Highway and Streets, which provides a required line of site based on train and vehicular speed (see section 12.5.27).

12.5.19 North Dakota

The state of North Dakota does not have a statute specific to vegetation at grade crossings. However, it requires every railroad to keep its right-of-way clear of obstructions for a distance of not less than 200 feet.

12.5.20 Oklahoma

(165:32-1-17. Weed and trash abatement)

- (a) Railroads or other persons, firms or corporations operating a railroad company are responsible for the reasonable abatement of all rank weeds, noxious plants, thickets and trash, as defined in the Subchapter, along their rights-of-way and at crossings for not less than 250 feet in either direction from at-grade railroad/roadway intersections within the boundaries of any City or Town or unincorporated community in Oklahoma.
- (b) This responsibility exists as long as the railroad or other person, firm, or corporation operating as a railroad company is the legal owner of the right-of-way, even if operations have ceased and/or the tracks and facilities have been removed. Abatement must begin upon notification received from the Commission.

12.5.21 Oregon

The state of Oregon advises the same guidelines as the state of Washington (see section 12.5.25).



12.5.22 South Dakota

The state of South Dakota does not have a statute concerning vegetation at grade crossings. However, it specifies a clearance distance of 200 feet on each side of the crossing.

12.5.23 Tennessee

The state of Tennessee does not have a state statute. However, it does require that the right-of-way be clear of obstructions for a distance of 200 feet.

12.5.24 Texas

(5.620. Visual Obstruction at Public Grade Crossings)

- (a) The following words or terms, when used in this subsection, shall have the following meanings, unless the context indicates otherwise.
- (1) Unprotected public grade crossing—A crossing or intersection of railroad track by a publicly maintained road or highway at which there are no electronic devices (such as flashers or gates) to provide an active warning to motorists of the approach of a train to the crossing.
 - (2) Vegetation—Grass, bushes, shrubbery, and trees having a trunk diameter of 6 inches or less.
- (b) No railroad corporation shall cause or allow trains, railway cars or equipment to stand less than 250 feet from the centerline of any unprotected public grade crossing unless a closer distance cannot be avoided.
- (c) At unprotected public grade crossings, each railroad corporation shall control vegetation on its right-of-way (except for the roadbed and areas immediately adjacent thereto) for a distance of 250 feet each way from the centerline of said crossings so that vegetation does not block the vehicular highway traffic's view of approaching trains. The 250 feet shall be measured from the point where the centerline of the railroad crosses the centerline of the public road. Where the subject right-of-way is fenced, this section shall be deemed complied with if vegetation is controlled up to 2 feet from said fence.

12.5.25 Washington

The state of Washington does not have a state statute. However, it uses the AASHTO Geometric Design of Highway and Streets (see section 12.5.27).



12.5.26 Wisconsin

The state of Wisconsin does not have a state statute. However, it uses the AASHTO Geometric Design of Highway and Streets (see section 12.5.27).

12.5.27 AASHTO—Geometric Design of Highway and Streets

Figure 12-6 includes the geometric design of highways and streets as specified by AASHTO. Figure 12-7 includes the sight distance for combination of highway and train vehicle speeds.

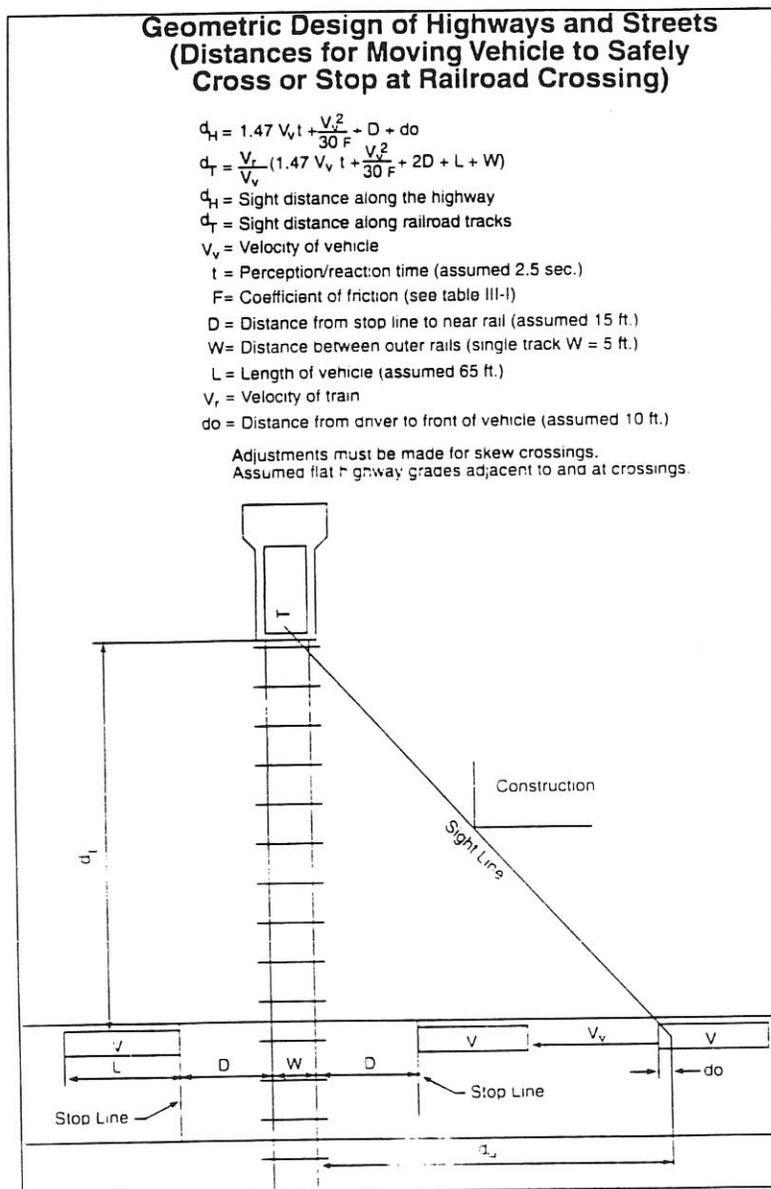


Figure 12-6. Geometric Design of Highways and Streets

4.11



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Sight Distance for Combination of Highway and Train Vehicle Speeds; 65-f (Truck Crossing a Single Set of Tracks at 90°)

Train Speed (MPH)	Case III	Case I								
	Departure From Stop	Moving Vehicle								
		Vehicle Speed (MPH)								
	0	10	20	30	40	50	60	70		
		Distance Along Railroad From Crossing d_T (ft.)								
10	240	145	103	99	103	112	122	134		
20	480	290	207	197	207	224	245	269		
30	719	435	310	296	310	337	367	403		
40	959	580	413	394	413	449	489	537		
50	1200	725	517	493	517	561	611	671		
60	1439	870	620	591	620	673	734	806		
70	1679	1015	723	690	723	786	856	940		
80	1918	1160	827	789	827	898	978	1074		
90	2153	1305	930	887	930	1010	1101	1209		
		Distance Along Highway From Crossing d_H (ft.)								
		69	132	221	338	486	659	865		

Figure 12-7. Sight Distance for Combination of Highway and Train Vehicle Speeds

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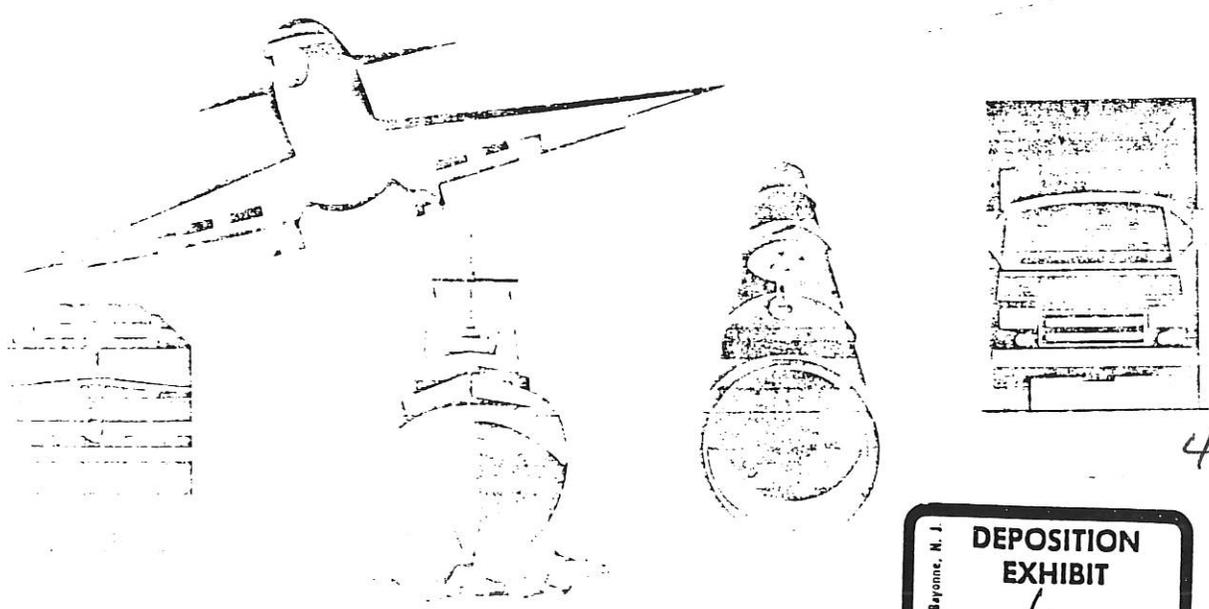
12

NATIONAL TRANSPORTATION SAFETY BOARD

WASHINGTON, D.C. 20594

SAFETY STUDY

Safety at Passive Grade Crossings
Volume I: Analysis



(13)

4-13

PERCADO-Bayonne, N. J.
**DEPOSITION
EXHIBIT**
6
Dr. Huettner

The generally adequate sight distance for vehicles stopped at the crossings, however, did not hold true for motorists approaching the crossings (such as V2 in figure 4-5). In 33 cases, the grade crossing area afforded an approaching motorist less sight distance than was recommended by AASHTO guidelines.⁹⁹ At the majority of the crossings with limited sight distance (n = 24), the obstructions were trees, shrubs, or other types of plants: in one case, the trees were described as a forest (case 27); and in another case, the trees were fruit trees in an orchard (case 60). Six of the 33 cases had visual obstructions that included buildings, and in one of these cases the motorist's sight distance was obstructed by a hill. The following accident illustrates the potential consequences of inadequate sight distances for drivers of highway vehicles in motion.

About 8:15 a.m. on April 5, 1996, an eastbound Kansas City Southern freight train traveling about 40 mph struck a northbound Mazda at Golson Road near Calhoun, Louisiana (case 16).¹⁰⁰ The Mazda, traveling about 25 mph, which was about 10 mph below the posted speed limit, skidded onto the railroad tracks when the driver tried too late to stop her vehicle. The driver and her 8-year-old daughter in the right front seat of the car were both killed.

According to the AASHTO guidelines and based on the speeds of the highway vehicle and train in this case, the highway driver needed a clear sight triangle defined by a distance of 271 feet along the highway and 422 feet along the railroad tracks to see the train with enough time to safely stop the vehicle. However, because of the presence of a forested area on private property adjacent to the crossing, this sight triangle was not clear. As figure 4-6 illustrates, the driver in this case actually had a clear sight triangle with only 72 of the 271 feet needed along the highway and 112 of the 422 feet needed along the railroad tracks. By the time the driver saw the train and applied the brakes, she did not have enough time to stop the vehicle prior to the crossing.

In addition to calculating the sight distance for each of the 60 accident crossings, the Safety Board also examined each crossing in terms of the time an approaching motorist needs to safely stop the vehicle prior to the crossing compared with the actual time available, given the sight distance along the highway (appendix E, figure E-1). The differences in time needed compared with actual time available ranged from no shortage of time for some crossings to a shortage of 7½ seconds. For 18 (58 percent) of the crossings with limited sight distance, an approaching driver has only half or less of the time needed to safely negotiate the crossing. With such differences between the time needed and the time available, the driver's task to safely negotiate the crossing becomes more difficult. The Safety Board's study cases show a strong association between inadequate sight distance and accident occurrence.

⁹⁹ Three of the 33 crossings with limited sight distance for approaching motorists were on private roads.

¹⁰⁰ According to the traincrew, the headlight and auxiliary alerting lights were illuminated, and the train horn was sounded prior to the accident.

mission and with reasonable requests of the commission or its duly authorized agents for inspection of the carrier's right-of-way. (Authorized by K.S.A. 66-231b; and implementing K.S.A. 66-156; effective, E-71-15, March 5, 1971; amended, E-71-22, May 28, 1971; effective Jan. 1, 1972; amended May 1, 1984.)

82-5-4. Regulations relating to inspection of bridges and other structures. Every railroad operating in the state of Kansas shall inspect its bridges, trestles and culverts at least once a year and certify to the commission that the bridges, trestles and culverts are safe for the loads imposed upon them. (Authorized by and implementing K.S.A. 66-231b; effective, E-71-15, March 5, 1971; amended, E-71-22, May 28, 1971; effective Jan. 1, 1972; amended May 1, 1984.)

82-5-5. (Authorized by K.S.A. 66-141, 66-156; effective, E-71-15, March 5, 1971; amended, E-71-22, May 28, 1971; effective Jan. 1, 1972; revoked May 1, 1984.)

82-5-6. Regulation relating to inspection, maintenance and repair of trackage, road bed, right-of-way, bridges and other structures. If, on the inspector's report, the commission has reasonable ground to believe that any track, bridge or other structure of the railroad is in a condition which renders it dangerous, unfit or unsafe, the commission shall immediately give the superintendent or other executive officer of the company operating that railroad notice of the condition thereof and of the repairs or reconstruction necessary to place it in a safe condition. The commission may prescribe the time in which the repairs or reconstruction necessary to place it in a safe condition must be made and the maximum speed that trains may be operated over the dangerous or defective track, bridge or other structure until the repairs or reconstruction required are made. The commission may forbid the running of trains over the defective track, bridge or other structure, if it is of the opinion that such action is necessary and proper. However, the railroad affected by such a prohibition may request a hearing to determine whether or not such action is necessary and proper. Any company operating a railroad in Kansas may designate a representative to confer with the commission or any member thereof, at the time and place designated by the commission, in order to discuss the condition of the railroad property affected by this section. (Au-

thorized by and implementing K.S.A. 66-231b; effective, E-71-15, March 5, 1971; effective Jan. 1, 1972; amended May 1, 1984.)

82-5-7. (Authorized by K.S.A. 66-141, 66-156; effective, E-71-15, March 5, 1971; amended, E-71-22, May 28, 1971; effective Jan. 1, 1972; revoked May 1, 1984.)

82-5-8. Trackage and grade crossings. (a) "Track Safety Standards," 49 CFR Part 213, as in effect on September 15, 1983 is hereby adopted by reference.

(b) Grade crossing surfaces shall be adequately maintained for rail movement.

(c) The railroad shall keep its right-of-way clear, for a reasonable distance, of weeds and vegetation and other unnecessary obstructions, including railroad cars when the vegetation and obstructions may interfere with the visibility of approaching motor vehicles. (Authorized by and implementing K.S.A. 66-231b; effective, E-71-15, March 5, 1971; amended, E-71-22, May 28, 1971; effective Jan. 1, 1972; amended May 1, 1984.)

82-5-9. Regulations relating to construction, reconstruction and maintenance of walkways adjacent to the railroad trackage; control of vegetation and removal of debris and trash. (a) In all switching areas within and outside of the yard limits, each railroad shall provide reasonably safe and adequate walkways adjacent to its tracks. All such walkways shall be maintained and kept as reasonably free of vegetation, trash and debris as may be appropriate to prevailing conditions. Each railroad shall provide for the abatement of weeds and brush adjacent to and upon walkways that is necessary to prevent the objectionable vegetation from encroaching upon such walkways.

(b) The commission may order the railroad corporation to eliminate any unsafe walkway condition and may specify a reasonable time for completion of the improvement as may be appropriate under the circumstances.

(c) If any railroad shows good cause and submits an application for a deviation from the provisions of this regulation. The requested deviation may be authorized by the commission. The application shall include a full statement of the conditions which prevail at the time and place involved and the reasons why deviation is deemed necessary. (Authorized by and implementing K.S.A. 66-

With regard to railroad activities, KCC has been preempted by the federal government from much state regulation, with the notable exception of some remaining safety-related issues. 49 U.S.C. 10501; 49 U.S.C. 20106. These safety issues, however, are strictly in regard to the activities of the railroad themselves, and do not involve the disbursement of funds related to general highway projects. See, e.g., K.S.A. 66-201 et seq.

While KCC retains some jurisdiction over general rail safety, it has no authority over the administration of federal highway funds. KCC does not currently, and have never had, access to federal-aid funds related to highway-rail grade crossings. KCC does not currently, and has never had, an enabling statute granting access to any of these funds.

2. State Law

KCC did, at one time, have access to \$300,000 per year from the state highway fund for use at rail grade crossings. This authority could formerly be found at K.S.A. 66-231a, 66-231b, and K.A.R. Article 82-7. However, these statutes were repealed by the Kansas legislature in 1999, at the same time disabling the administrative regulations.

While still in effect, K.S.A. 66-231a and K.A.R. 82-7-3 granted KCC the authority to investigate the condition of a rail crossing only upon a resolution passed by the local governing body concerned with the crossing. It was only after such notice that the KCC could have made the determination that a rail grade crossing was "dangerous," and merited disbursement of state funds for upgrade. Plaintiff made no assertion in the Petition that KCC ever received such notice from the appropriate local governing body.

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CASE ANNOTATIONS

1. Failure of county clerk to perform duties forfeits office. *The State, ex rel., v. Allen*, 5 K. 213.
2. Judgment of court required to oust county treasurer. *Graham v. Cowgill*, 13 K. 114, 115.
3. Quo warranto will lie to oust county treasurer. *The State v. Graham*, 13 K. 136, 143.
4. Refusal of county attorney to enforce prohibitory law forfeits office. *The State, ex rel., v. Foster*, 32 K. 14, 38, 3 P. 534. Affirmed: *Foster v. Kansas*, 112 U.S. 201, 205, 5 S.Ct. 8, 97, 28 L.Ed. 629, 696; *The State v. Trinkle*, 70 K. 396, 400, 78 P. 854.
5. Allowance unlawful claims by commissioners, honestly made, no ground for forfeiture. *The State, ex rel., v. Scates*, 43 K. 330, 333, 23 P. 479.
6. Section cited in case involving office of police commissioner. *The State, ex rel., v. Shearman*, 51 K. 686, 687, 35 P. 455.
7. Clerk forfeits office paying bounty on scalps twice. *McPherson v. The State*, 59 K. 57, 51 P. 910.
8. County commissioners may be removed by civil proceedings. *Kerby v. Clay County*, 71 K. 683, 687, 81 P. 503.
9. There must be willful intention to violate trust. *The State v. Kennedy*, 82 K. 373, 374, 376, 385, 108 P. 837.
10. Methods of removal of magistrate judge, both statutory and constitutional, cumulative; censure ordered. *In re Rome*, 218 K. 198, 201, 542 P.2d 276.
11. Cited; absence of tort action by county employee against commissioners for violation of cash-basis or budget laws examined. *Greenlee v. Board of Clay County Comm'rs*, 241 K. 802, 807, 740 P.2d 606 (1987).
12. Authority of county commission to increase quorum requirements under home rule powers (19-101 et seq.) determined. *State ex rel. Stephan v. Board of Sedgwick County Comm'rs*, 244 K. 536, 538, 770 P.2d 455 (1989).

19-2610.

History: L. 1911, ch. 140, § 1; R.S. 1923, 19-2610; Repealed, L. 1947, ch. 195, § 1; June 30.

19-2611.

History: L. 1913, ch. 150, § 1; R.S. 1923, 19-2611; L. 1933, ch. 60, § 1 (Special Session); L. 1935, ch. 138, § 1; Repealed, L. 1937, ch. 188, § 11; Feb. 9.

Revisor's Note:

Later act, see ch. 2, art. 20.

CASE ANNOTATIONS

1. Act held constitutional. *State, ex rel., v. Hardwick*, 144 K. 3, 57 P.2d 1231.

19-2612. Removal or cutting of hedge fences, trees and shrubs; cutting weeds; removing signboards and board fences; expenses. The board of county commissioners of each county in the state are authorized to cut all hedge fences, trees and shrubs growing upon the highway right of way or on right of way boundary, within three hundred fifty (350) feet of a railroad grade crossing or abrupt corner in the highway, and thereafter keep the same trimmed to provide

clear vision, and to cut all weeds in the highways and thereafter keep the same cut so that the same shall not at any time be allowed to grow to a height obstructing clear vision; to remove all signboards, billboards, and board fences obstructing clear vision within three hundred fifty (350) feet of any such railroad crossing or abrupt corner in the highway: *Provided*, That nothing in this act shall apply to signs placed by any county or state association for the purpose of imparting historical information or traveling directions: *Provided, however*, That the board of county commissioners of any county in this state are hereby authorized to cause the removal of any hedge along any road in their respective counties, when in their judgment they, having first made suitable investigation of conditions, such hedge should be removed. The county may pay all expenses incident to removing such hedge out of the state and county road fund when applied to state and county roads and out of the county and township road fund when applied to county and township roads.

History: L. 1915, ch. 288, § 1; L. 1921, ch. 221, § 1; R.S. 1923, 19-2612; L. 1927, ch. 159, § 1; L. 1957, ch. 179, § 1; June 29.

Cross References to Related Sections:

State highway signs and markers, see 68-422.

Research and Practice Aids:

Railroads ⇐ 94(2).

C.J.S. Railroads § 142.

CASE ANNOTATIONS

1. Landowner not liable in damages to owner of frightened horse. *Goodaile v. Cowley County*; 111 K. 542, 544, 207 P. 785.

19-2613.

History: L. 1917, ch. 133, § 1; L. 1923, ch. 115, § 1; R.S. 1923, 19-2613; L. 1925, ch. 137, § 1; L. 1933, ch. 57, § 1 (Special Session); L. 1937, ch. 190, § 1; Repealed, L. 1976, ch. 130, § 1; July 1.

CASE ANNOTATIONS

1. Misunderstanding of statute does not excuse nonperformance. *The State, ex rel., v. Fishback*, 102 K. 178, 180, 171 P. 348.
2. Section cited in ouster against clerk for retaining extra compensation. *State, ex rel., v. Anderson*, 117 K. 540, 232 P. 238.

19-2614, 19-2615.

History: L. 1917, ch. 133, §§ 2,3; L. 1923, ch. 115, §§ 2,3; R.S. 1923, 19-2614, 19-2615; Repealed, L. 1976, ch. 130, § 1; July 1.

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**CODE OF FEDERAL REGULATIONS
TITLE 49--TRANSPORTATION
SUBTITLE B--OTHER REGULATIONS
RELATING TO TRANSPORTATION
CHAPTER II--FEDERAL RAILROAD
ADMINISTRATION, DEPARTMENT OF
TRANSPORTATION
PART 213--TRACK SAFETY STANDARDS
SUBPART B--ROADBED
Current through January 1, 2001; 65 FR 83289**

§ 213.37 Vegetation.

Vegetation on railroad property which is on or immediately adjacent to roadbed shall be controlled so that it does not--

- (a) Become a fire hazard to track-carrying structures;
- (b) Obstruct visibility of railroad signs and signals:
 - (1) Along the right-of-way, and

(2) At highway-rail crossings; (This paragraph (b)(2) is applicable September 21, 1999.)

(c) Interfere with railroad employees performing normal trackside duties;

(d) Prevent proper functioning of signal and communication lines; or

(e) Prevent railroad employees from visually inspecting moving equipment from their normal duty stations.

< General Materials (GM) - References,
Annotations, or Tables >

49 C. F. R. § 213.37

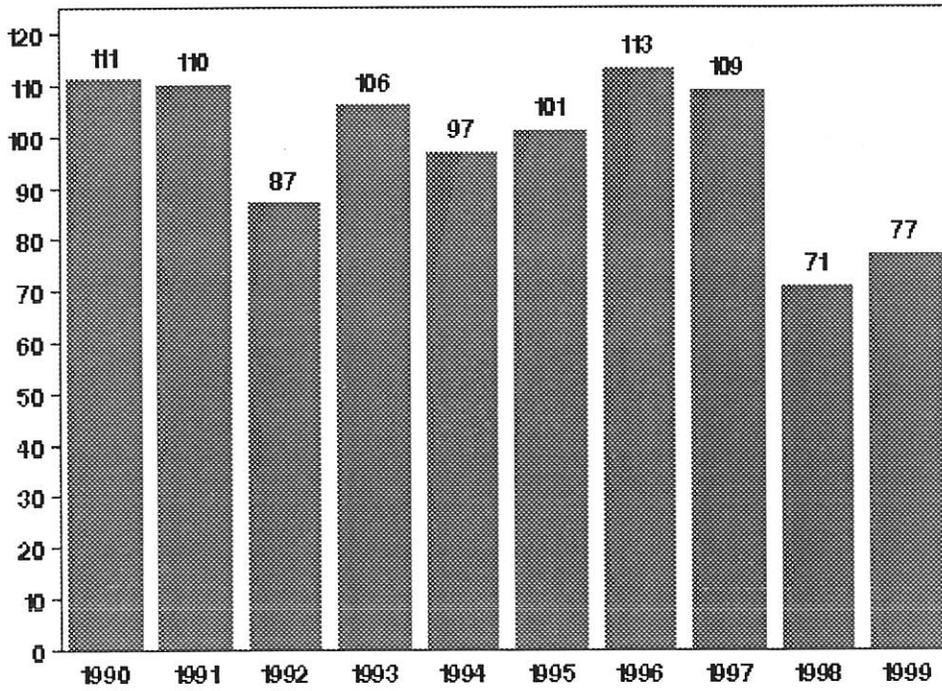
49 CFR § 213.37

END OF DOCUMENT

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18

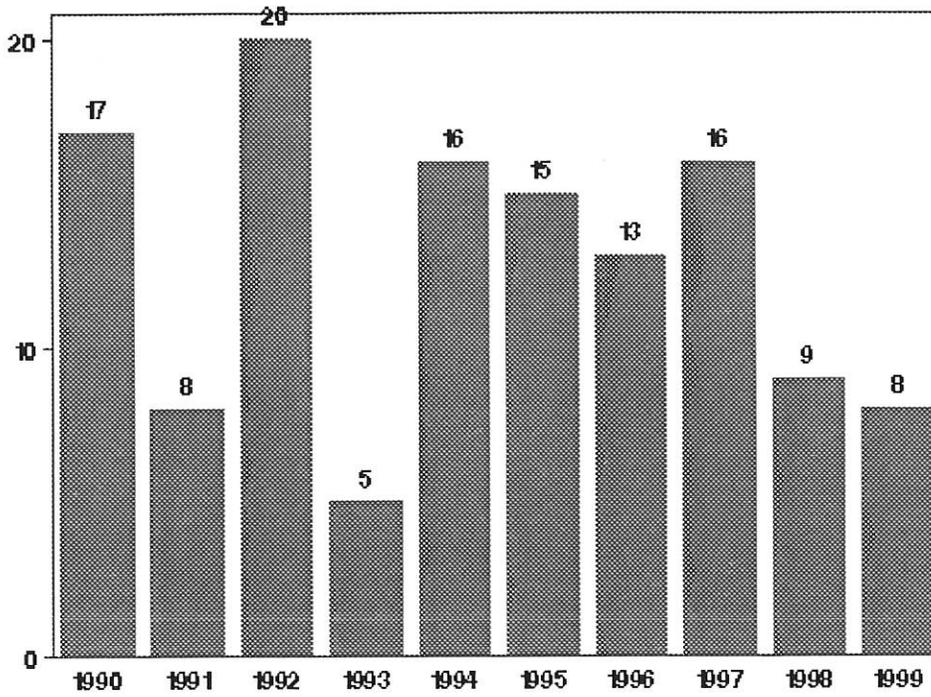
TOTAL HIGHWAY-RAIL INCIDENTS FOR KANSAS, January - December (ALL YEARS)



4-19

19

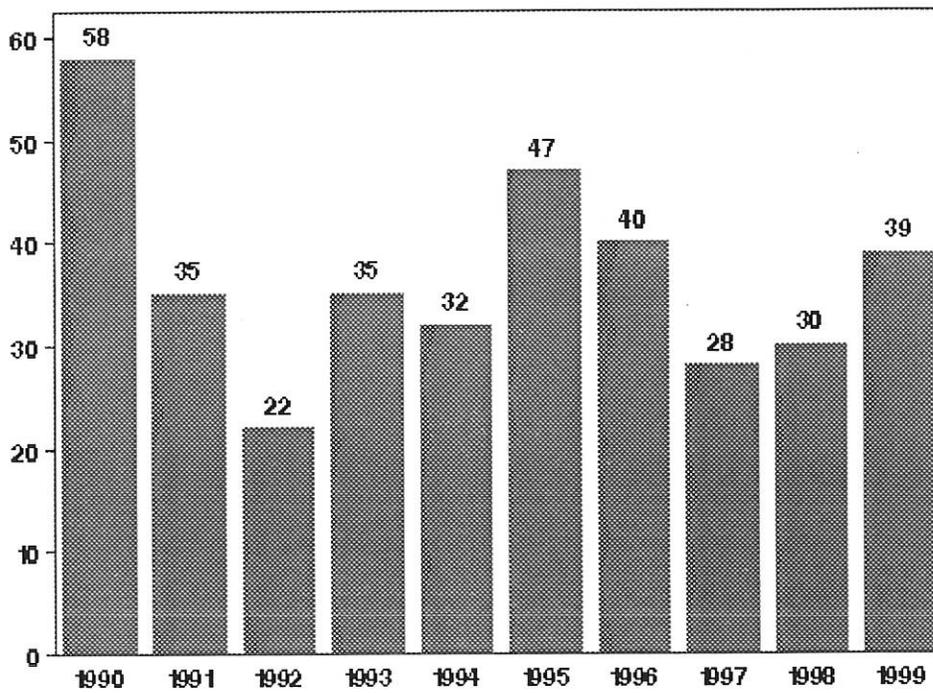
TOTAL DEATHS IN HIGHWAY—RAIL INCIDENTS FOR KANSAS, January — December (ALL YEARS)



4-20

20

TOTAL INJURIES IN HIGHWAY—RAIL INCIDENTS FOR KANSAS, January — December (ALL YEARS)



4-21

(21)

HIGHWAY-RAIL INCIDENTS BY TYPE HIGHWAY USER FROM FORM FR

Selections: Railroad - ALL
 State - KANSAS, County - ALL
 Time Frame - JAN 1990 To NOV 2000

2000

Type & Highway User		At Public Crossing									At Private Crossing		
		Totals			Motor Vehicle			Other			Motor Vehicle		
		Accs	Kld	Inj	Accs	Kld	Inj	Accs	Kld	Inj	Accs	Kld	Inj
Rail Equip Struck Highway User	Car	14	3	6	12	3	6	-	-	-	2	-	-
	Truck	6	1	1	4	-	1	-	-	-	2	1	-
	Trk & Trail	3	-	-	3	-	-	-	-	-	-	-	-
	Pickup Trk	14	2	4	11	2	4	-	-	-	3	-	-
	Van	3	2	-	3	2	-	-	-	-	-	-	-
	Motorcycle	1	-	1	1	-	1	-	-	-	-	-	-
	Oth Mtr Veh	1	-	-	1	-	-	-	-	-	-	-	-
	Pedestrian	1	1	-	-	-	-	1	1	-	-	-	-
	---- Total	43	9	12	35	7	12	1	1	-	7	1	-
Highway User Struck Rail Equip	Car	9	1	2	8	-	2	-	-	-	1	1	-
	Truck	2	-	1	2	-	1	-	-	-	-	-	-
	Trk & Trail	1	-	-	-	-	-	-	-	-	1	-	-
	Pickup Trk	5	-	1	5	-	1	-	-	-	-	-	-
	Van	1	-	-	1	-	-	-	-	-	-	-	-
	---- Total	18	1	4	16	-	4	-	-	-	2	1	-
---- Total		61	10	16	51	7	16	1	1	-	9	2	-

HIGHWAY-RAIL INCIDENTS BY WARNING DEVICE FROM FORM FRA F

Selections: Railroad - ALL
 State - KANSAS, County - ALL
 Time Frame - JAN 1990 To NOV 2000

4-22

22

1998

Type & Highway User		At Public Crossing									At Private Crossing		
		Totals			Motor Vehicle			Other			Motor Vehicle		
		Accs	Kld	Inj	Accs	Kld	Inj	Accs	Kld	Inj	Accs	Kld	Inj
Rail Equip Struck Highway User	Car	25	4	5	20	3	5	-	-	-	5	1	-
	Truck	5	-	5	3	-	4	-	-	-	2	-	1
	Trk & Trail	4	-	-	4	-	-	-	-	-	-	-	-
	Pickup Trk	9	1	4	9	1	4	-	-	-	-	-	-
	Van	5	3	1	5	3	1	-	-	-	-	-	-
	Oth Mtr Veh	2	-	-	1	-	-	-	-	-	1	-	-
	Pedestrian	1	-	-	-	-	-	1	-	-	-	-	-
---- Total	51	8	15	42	7	14	1	-	-	8	1	1	
Highway User Struck Rail Equip	Car	12	1	7	12	1	7	-	-	-	-	-	-
	Trk & Trail	2	-	1	1	-	1	-	-	-	1	-	-
	Pickup Trk	6	-	7	6	-	7	-	-	-	-	-	-
	---- Total	20	1	15	19	1	15	-	-	-	1	-	-
---- Total	71	9	30	61	8	29	1	-	-	9	1	1	

1999

Type & Highway User		At Public Crossing						At Private Crossing		
		Totals			Motor Vehicle			Motor Vehicle		
		Accs	Kld	Inj	Accs	Kld	Inj	Accs	Kld	Inj
Rail Equip Struck Highway User	Car	26	4	19	26	4	19	-	-	-
	Truck	6	2	2	6	2	2	-	-	-
	Trk & Trail	7	-	1	6	-	1	1	-	-
	Pickup Trk	18	2	7	18	2	7	-	-	-
	Van	3	-	1	3	-	1	-	-	-
	Oth Mtr Veh	1	-	-	1	-	-	-	-	-
---- Total	61	8	30	60	8	30	1	-	-	
Highway User Struck Rail Equip	Car	8	-	3	8	-	3	-	-	-
	Trk & Trail	1	-	1	-	-	-	1	-	1
	Pickup Trk	6	-	6	6	-	6	-	-	-
	Van	1	-	-	-	-	-	1	-	-
---- Total	16	-	10	14	-	9	2	-	1	
---- Total	77	8	40	74	8	39	3	-	1	

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HIGHWAY-RAIL INCIDENTS BY WARNING DEVICE FROM FORM FRA r

Selections: Railroad - ALL
 State - KANSAS, County - ALL
 Time Frame - JAN 1990 To NOV 2000

1999

Warning		Totals			At Public Crossing			At Private Crossing		
					Motor Vehicle			Motor Vehicle		
		Accs	Kld	Inj	Accs	Kld	Inj	Accs	Kld	Inj
Rail Equip Struck Highway User	Gates	11	-	7	11	-	7	-	-	-
	Flashing lites	6	1	3	6	1	3	-	-	-
	Stop signs	7	-	2	7	-	2	-	-	-
	Cross bucks	36	7	18	36	7	18	-	-	-
	None	1	-	-	-	-	-	1	-	-
	---- Total	61	8	30	60	8	30	1	-	-
Highway User Struck Rail Equip	Gates	1	-	-	1	-	-	-	-	-
	Flashing lites	4	-	1	4	-	1	-	-	-
	Cross bucks	11	-	9	9	-	8	2	-	1
	---- Total	16	-	10	14	-	9	2	-	1
---- Total		77	8	40	74	8	39	3	-	1

2000

Warning		Totals			At Public Crossing			At Private Crossing				
					Motor Vehicle			Other			Motor Vehicle	
		Accs	Kld	Inj	Accs	Kld	Inj	Accs	Kld	Inj	Accs	Kld
Rail Equip Struck Highway User	Gates	10	4	3	9	3	3	1	1	-	-	-
	Flashing lites	2	-	-	2	-	-	-	-	-	-	-
	Stop signs	3	1	-	1	-	-	-	-	2	1	-
	Cross bucks	26	4	9	23	4	9	-	-	3	-	-
	None	2	-	-	-	-	-	-	-	2	-	-
	---- Total	43	9	12	35	7	12	1	1	7	1	-
Highway User Struck Rail Equip	Gates	2	-	1	2	-	1	-	-	-	-	-
	Flashing lites	1	-	1	1	-	1	-	-	-	-	-
	Stop signs	2	-	-	1	-	-	-	-	1	-	-
	Cross bucks	13	1	2	12	-	2	-	-	1	1	-
	---- Total	18	1	4	16	-	4	-	-	2	1	-
---- Total		61	10	16	51	7	16	1	1	9	2	-

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1997

Warning		Totals			At Public Crossing						At Private Crossing		
					Motor Vehicle			Other			Motor Vehicle		
		Accs	Kld	Inj	Accs	Kld	Inj	Accs	Kld	Inj	Accs	Kld	Inj
Rail Equip Struck Highway User	Gates	11	1	2	9	1	1	2	-	1	-	-	-
	Flashing lites	10	-	-	10	-	-	-	-	-	-	-	-
	Stop signs	11	2	2	8	1	2	-	-	-	3	1	-
	Cross bucks	51	10	16	44	10	14	2	-	-	5	-	2
	None	3	1	-	2	1	-	-	-	-	1	-	-
	---- Total	86	14	20	73	13	17	4	-	1	9	1	2
Highway User Struck Rail Equip	Flashing lites	2	-	1	2	-	1	-	-	-	-	-	-
	HWTS,WW,Bells	1	-	-	1	-	-	-	-	-	-	-	-
	Stop signs	2	1	1	2	1	1	-	-	-	-	-	-
	Cross bucks	18	1	6	17	1	6	-	-	-	1	-	-
	---- Total	23	2	8	22	2	8	-	-	-	1	-	-
---- Total		109	16	28	95	15	25	4	-	1	10	1	2

1998

Warning		Totals			At Public Crossing						At Private Crossing		
					Motor Vehicle			Other			Motor Vehicle		
		Accs	Kld	Inj	Accs	Kld	Inj	Accs	Kld	Inj	Accs	Kld	Inj
Rail Equip Struck Highway User	Gates	14	1	2	13	1	2	1	-	-	-	-	-
	Flashing lites	3	-	3	3	-	3	-	-	-	-	-	-
	Watchman	1	-	-	1	-	-	-	-	-	-	-	-
	Stop signs	6	2	1	4	1	1	-	-	-	2	1	-
	Cross bucks	21	5	7	20	5	6	-	-	-	1	-	1
	None	6	-	2	1	-	2	-	-	-	5	-	-
	---- Total	51	8	15	42	7	14	1	-	-	8	1	1
Highway User Struck Rail Equip	Gates	1	-	-	1	-	-	-	-	-	-	-	-
	Flashing lites	7	1	7	7	1	7	-	-	-	-	-	-
	Cross bucks	12	-	8	11	-	8	-	-	-	1	-	-
	---- Total	20	1	15	19	1	15	-	-	-	1	-	-
---- Total		71	9	30	61	8	29	1	-	-	9	1	1

HWTS = Highway Traffic Signals WW = Wigwags

4-25

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