

CHAPTER 134
[Substitute House Bill No. 24]
RAILROAD GRADE CROSSING--
GRADE CROSSING PROTECTIVE FUND

AN ACT Relating to railroad grade crossings; creating a grade crossing protective fund; repealing sections 81.53.260, 81.53.270, 81.53.280 and 81.53.290, chapter 14, Laws of 1961, section 36, chapter 170, Laws of 1965 ex. sess., and RCW 81.53.260, 81.53.270, 81.53.280 and 81.53.290; adding new sections to chapter 81.53 RCW; making an appropriation; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. There is added to chapter 14, Laws of 1961 and to chapter 81.53 RCW a new section to read as follows:

Whenever the director of highways or the governing body of any city, town or county, or any railroad company whose road is crossed by any highway, shall deem that the public safety require signals or other warning devices, other than sawbuck signs, at any crossing of a railroad at common grade by any state or county highway, road, street, alley, avenue, boulevard, parkway or other public place actually open and in use or to be opened and used for travel by the public, he or it shall file with the utilities and transportation commission a petition in writing, alleging that the public safety requires the installation of specified signals or other warning devices at such crossing or specified changes in the method and manner of existing crossing warning devices. Upon receiving such petition, the commission shall promptly set the matter for hearing, giving at least twenty days notice to the railroad company or companies and the county or municipality affected thereby, or the director of highways in the case of a state highway, of the time and place of such hearing. At the time and place fixed in the notice, all persons and parties interested shall be entitled to be heard and introduce evidence, which shall be reduced to writing and filed by the commission. If the commission shall determine from the evidence that public safety does not require the installation of the signal, other warning device or

change in the existing warning device specified in the petition, it shall make determinations to that effect and enter an order denying said petition in toto. If the commission shall determine from the evidence that public safety requires the installation of such signals or other warning devices at such crossing or such change in the existing warning devices at said crossing, it shall make determinations to that effect and enter an order directing the installation of such signals or other warning devices or directing that such changes shall be made in existing warning devices. The commission shall also at said hearing apportion the entire cost of installation and maintenance of such signals or other warning devices, other than sawbuck signs, as provided in section 2 of this 1969 amendatory act: PROVIDED, That upon agreement by all parties to waive hearing, the commission shall forthwith enter its order.

No railroad shall be required to install any such signal or other warning device until the public body involved has either paid or executed its promise to pay to the railroad its portion of the estimated cost thereof.

Nothing in this section shall be deemed to foreclose the right of the interested parties to enter into an agreement, franchise or permit arrangement providing for the installation of signals or other warning devices at any such crossing or for the apportionment of the cost of installation and maintenance thereof, or compliance with an existing agreement, franchise or permit arrangement providing for the same.

The hearing and determinations authorized by this section may be instituted by the commission on its own motion, and the proceedings, hearing and consequences thereof shall be the same as for the hearing and determination of any petition authorized by this section.

No part of the record, or a copy thereof, of the hearing and determination provided for in this section and no finding, conclusion or order made pursuant thereto shall be used as evidence in any trial, civil or criminal, arising out of an accident at or in the vicinity of any crossing prior to installation of signals or other warning devices pursuant to an order of the commission as a result

of any such investigation.

Any order entered by the utilities and transportation commission under this section shall be subject to review, supersedeas and appeal as provided in RCW 81.04.170 through 81.04.190, respectively.

Nothing in this section shall be deemed to relieve any railroad from liability on account of failure to provide adequate protective devices at any such crossing.

NEW SECTION. Sec. 2. There is added to chapter 14, Laws of 1961 and to chapter 81.53 RCW a new section to read as follows:

The petition shall set forth by description the location of the crossing or crossings, the type of signal or other warning device to be installed, the necessity from the standpoint of public safety for such installation, the approximate cost of installation, and the approximate annual cost of maintenance. If installation is directed by the commission, it shall apportion the cost of installation and maintenance as follows:

Installation: (1) Sixty percent from the grade crossing protective fund, created by section 3 of this 1969 amendatory act;

(2) Thirty percent to the city, town, county or state; and

(3) Ten percent to the railroad:

PROVIDED, That, if the proposed installation is located at a new crossing requested by a city, town, county or state, forty percent of the cost shall be apportioned to the city, town, county or state, and none to the railroad. If the proposed installation is located at a new crossing requested by a railroad, then the entire cost shall be apportioned to the railroad.

Maintenance: (1) Twenty-five percent from the grade crossing protective fund, created by section 3 of this 1969 amendatory act; and

(2) Seventy-five percent from the railroad:

PROVIDED, That if the proposed installation is located at a new crossing requested by a railroad, then the entire cost shall be apportioned to the railroad.

NEW SECTION. Sec. 3. There is added to chapter 14, Laws of 1961

and to chapter 81.53 RCW a new section to read as follows:

There is hereby created in the state treasury a "grade crossing protective fund," to which shall be transferred all moneys appropriated for the purpose of carrying out the provisions of sections 1 through 4 of this 1969 amendatory act. At the time the commission makes each allocation of cost to said grade crossing protective fund, it shall certify to the state auditor that such cost shall be payable out of said fund. Upon completion of the installation of any such signal or other protective device, the railroad shall present to the state auditor its claim for reimbursement for the cost of installation from said fund of the amount allocated thereto by the commission. The annual cost of maintenance shall be presented and paid in a like manner. The state auditor shall make such audit as he deems necessary before and after disbursement for the purpose of determining that the money allocated has been expended for the purpose and under the conditions authorized under sections 1 through 5 of this 1969 amendatory act.

NEW SECTION. Sec. 4. There is added to chapter 14, Laws of 1961 and to chapter 81.53 RCW a new section to read as follows:

This 1969 amendatory act shall be operative within the limits of all cities, towns and counties, except cities of the first class. Cities of the first class may elect as to each particular crossing whether this 1969 amendatory act shall apply. Such election shall be made by the filing by such city of a petition as provided for in section 1 hereof with the utilities and transportation commission, or by a statement filed with the commission accepting jurisdiction, when such petition is filed by others.

NEW SECTION. Sec. 5. There is added to chapter 14, Laws of 1961 and to chapter 81.53 RCW a new section to read as follows:

This 1969 amendatory act shall be operative within the limits of all cities, towns and counties, including cities of the first class.

NEW SECTION. Sec. 6. There is hereby appropriated the sum of three hundred thousand dollars or so much thereof as may be necessary for the biennium commencing July 1, 1969 and ending June 30, 1971 from the motor vehicle fund to the grade crossing protective fund, for the purpose

of carrying out the provisions of this act.

NEW SECTION. Sec. 7. There is added to chapter 14, Laws of 1961 and to chapter 81.53 RCW a new section to read as follows:

In the event funds are not available from the grade crossing protective fund, the commission shall apportion to the parties on the basis of the benefits to be derived by the public and the railroad, respectively, that part of the cost which would otherwise be assigned to the fund.

Sec. 8. Section 81.53.240, chapter 14, Laws of 1961 and RCW 81.53.240 are amended to read as follows:

Except to the extent necessary to permit participation by first class cities in the grade crossing protective fund, when such an election to participate is made, as provided in sections 1 through 5 of this 1969 amendatory act, ((this)) Chapter 81.53 RCW shall not be operative within the limits of first class cities, and shall not apply to street railway lines operating on or across any street, alley, or other public place within the limits of any city, except that no street car line outside of cities of the first class shall cross a railroad at grade without express authority from the commission. The commission may not change the location of a state highway without the approval of the director of highways, or the location of any crossing thereon adopted or approved by the highway commission, or grant a railroad authority to cross a state highway at grade unless the director of highways consents thereto.

NEW SECTION. Sec. 9. Sections 81.53.260, 81.53.270, 81.53.280, and 81.53.290, chapter 14, Laws of 1961, section 36, chapter 170, Laws of 1965 ex. sess., and RCW 81.53.260, 81.53.270, 81.53.280 and 81.53.290, are each hereby repealed.

NEW SECTION. Sec. 10. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1969.

Passed the House March 12, 1969.

Passed the Senate March 11, 1969.

Approved by the Governor March 25, 1969, with the exception of certain items in section 3 and all of section 5, which are vetoed.

Filed in office of Secretary of State March 25, 1969.

NOTE: Governor's explanation of partial veto is as follows:
"...This bill establishes a procedure for identifying needed railroad crossing warning devices and creates a grade crossing protective fund to provide for the state's share of the cost of this program. Since 1961 the Utilities and Transportation Commission has had the authority to allocate to cities and counties funds necessary to defray the costs of installing warning signals. However, no appropriations have been made for this purpose. As a result, there has been no significant increase in the number of warning signals installed at railroad crossings. The primary effect of this bill is to provide state funds for the installation and maintenance of adequate warning signals at railroad crossings. I am in agreement with this principle.

Section three of the act calls for the railroad, upon completion of the installation of a crossing signal, to submit its claim for reimbursement for the cost of installation to the state auditor and authorizes the auditor to make such audit as he deems necessary. These provisions are inconsistent with the Budget and Accounting Act.

I am certain that the legislature did not intend to alter established procedures under the Budget and Accounting Act. I have therefore vetoed these provisions.

Section 4 provides that the act shall be operative within the limits of all cities, towns and counties, except first-class cities. Section 5 states, 'This 1969 amendatory act shall be operative within the limits of all cities, towns and counties, including cities of the first class.' These two sections are obviously inconsistent. Reading the bill, it is clear that the legislature intended that it apply only to railroad crossings within the boundaries of first class cities that the city specifically designates. I have therefore vetoed section 5, which is totally inconsistent with this intent.

With the exception of those certain items in section 3 and all of section 5, which I have vetoed, the remainder of Substitute House Bill No. 24 is approved."

CHAPTER 135
[House Bill No. 52]
RULES OF THE ROAD--EXCEEDING
SPEED LIMIT TO PASS VEHICLE
TRAVELING AT LESS THAN LEGAL MAXIMUM

AN ACT Relating to motor vehicles; and amending section 6, chapter 16, Laws of 1963, as amended by section 2, chapter 25, Laws of 1967,