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FISCAL IMPACT REPORT

ORIGINAL DATE 2/11/2009

SPONSOR Sanchez, M. LAST UPDATED _____ HB _____

SHORT TITLE Active Traffic Control at Rail Crossings SB 390

ANALYST Moser

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Recurring	State Road Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Transportation (NMDOT)
Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

Senate Bill 390 amends 63-3-35 NMSA 1978. The amendment:

- Requires that a railroad company must construct or reconstruct and maintain in good condition, at its own expense, a good and sufficient crossing where its railroad crosses public highways or city, town or village streets at grade, whether the highways or streets are publicly or privately owned.
- Establishes a definition for “good and sufficient crossing” as “includes an active traffic control system consisting of flashing light signals, gates or traffic control signals pursuant to the 2003 edition and subsequent revisions of the manual of uniform traffic control devices, approved and published by the federal highway administration of the United States department of transportation.”
- Requires a highway-railroad crossing at grade that may be constructed or reconstructed by the NMDOT shall be the same as a crossing described in Section A of this bill summary as approved by NMDOT and the affected railroad company, to

be installed by that company at NMDOT's expense. Further requires that the constructed or reconstructed crossing shall be maintained in good condition at the railroad company's expense.

- The adoption the Public Regulation Commission (PRC) of a schedule for compliance by railroads, as soon as practicable. These provisions will apply to grade crossing in existence on the effective date of this 2009 act.

Senate Bill 390 also contains an emergency provision.

FISCAL IMPLICATIONS

NMDOT indicates that the cost of an installation of an active traffic control system at a railroad crossing is approximately \$300 thousand per crossing and is dependent on the characteristics of each crossing. PRC estimates that "on average, outfitting a highway-railroad crossing for an "active traffic control system" costs between \$150,000 and \$250,000, depending on various factors peculiar to each highway-railroad grade crossing including the availability of electricity, width of the road (two or four lane), and the party doing the improvements, etc."

NMDOT estimates that the annual and total cost of implementing the provisions of this bill would be dependent on how many crossings would be equipped with active traffic controls in any given year. Furthermore, if local governments request that a quiet crossing be installed, the cost to install such crossing would increase substantially. NMDOT's FY10 budget request currently does not contain any funding for such activities.

SIGNIFICANT ISSUES

The PRC estimates that there are approximately 1,705 public and private highway railroad grade crossings in New Mexico. Of these 1,705 crossings, the PRC estimates that roughly 395 already have "active traffic control systems."

NMDOT estimates that there are over 1,500 at grade railroad crossings in the State of New Mexico. Of these, only 315 crossings are equipped with active traffic control systems, and the remaining crossings are equipped only with passive controls (signs). NMDOT estimates that there also may likely be many more private crossings in rural areas that are not documented. NMDOT indicates that of the total number of railroad crossings in the State, there are a total of 169 crossings on the railroad that NMDOT currently owns and 81 crossings that are located on the Lamy to Colorado border rail line that NMDOT will acquire from BNSF in April 2009. Of these 169 crossings, only 57 crossings are equipped with active traffic control systems. The remaining 112 crossings are equipped with passive controls (signs).

NMDOT points out the following:

- NMDOT indicates that because it is not a railroad company, rail crossings on NMDOT owned railroad would not be subject to SB390's requirements to install active controls on all crossings. NMDOT currently owns the railroad line between Belen and Lamy and from Lamy to Santa Fe. Additionally, in April 2009, NMDOT is scheduled to acquire the existing rail line between Lamy and the Colorado border from BNSF.

- While federal law and regulation generally preempts state actions to control railroad company operations and safety, the Federal Railroad Administration (FRA) has delegated some of this authority to the PRC. NMDOT recommends a legal review of this bill be undertaken with the FRA to assure that the state has the authority to impose these requirements. NMDOT cites that the Federal Railroad Safety Act (FRSA) and accompanying regulations have been held to preempt state tort law with respect to liability arising out of railroad crossings since the federal law specifically addresses the adequacy of warning devices at crossings and prescribes standards for the appropriateness of signing versus electronic automatic gates.
- Should a local government seek to have a quiet crossing, rather than an active crossing installed, it should be noted that pursuant to federal law, all liability arising from such crossing passes to the local government in question.
- Given the potential for significant cost associated with passage of this bill to railroad companies, it is likely the railroad companies will argue that the bill unduly burdens interstate commerce. For example, Section 20106 of title 49 of the United States Code provides in relevant part as follows:

Sec. 20106. Preemption

(a) National Uniformity of Regulation-

1. Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable.
2. A State may adopt or continue to enforce a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue to enforce an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order –
 - a. Is necessary to eliminate or reduce an essentially local safety or security hazard;
 - b. Is not incompatible with a law, regulation, or order of the United States Government; and
 - c. Does not unreasonably burden interstate commerce.

TECHNICAL ISSUES

NM DOT has previously argued that for any railroad line owned by the State of New Mexico or subdivision of the State that the PRC does not have authority under § 63-7-1.1A, NMSA 1978 (the section of law delineating, among other things, the PRC’s authority over at-grade crossings) since that section references “transportation companies” and “common carriers” and NM DOT has stated that it is neither.

Also, private highway or road owners are not mentioned in § 63-7-1.1A, NMSA 1978.

ALTERNATIVES

PRC indicates that costs to railroads and NMDOT would significantly decrease if “passive traffic control systems” for highway-rail grade crossings were included as a possible means of compliance with SB 390. “Passive traffic control systems” are defined as safety devices such as signs and pavement markings.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to NMDOT the improvement of at-grade highway railroad crossings will continue to be performed in compliance with federal law and regulations, the Federal Railroad Safety Act (49 U.S.C.A. Section 20106) and accompanying regulations and the Department will continue to upgrade crossings pursuant to 23 U.S.C.A. Section 130 which provides federal funding for warranted upgrades of railroad crossing.

GM/mt