

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 140

Introduced by Stinner, 48.

Read first time January 08, 2021

Committee: Appropriations

1 A BILL FOR AN ACT relating to railroad safety; to amend sections 74-1317,
2 74-1318, 75-401, 75-402, and 75-405, Reissue Revised Statutes of
3 Nebraska, and section 75-109.01, Revised Statutes Cumulative
4 Supplement, 2020; to change provisions relating to the purpose of
5 the Grade Crossing Protection Fund; to provide for fund transfers as
6 prescribed; to provide duties; to create a fund; to harmonize
7 provisions; to repeal the original sections; and to declare an
8 emergency.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 74-1317, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 74-1317 In order to promote public safety at the intersection of
4 railroad lines and all classes of highways, there is hereby created a
5 special fund known as the Grade Crossing Protection Fund which shall be
6 established in the state treasury to be used in furnishing financial
7 assistance (1) in the improvement of the safety of railroad grade
8 crossings in this state, including the elimination of such crossings, (2)
9 in the construction, substantial modification, or improvement of and the
10 maintenance of automatic crossing protection at ~~railroad~~ such grade
11 crossings in this state, (3) in ~~and~~ the construction and maintenance of
12 overpasses and underpasses at railroad crossings in this state, and (4)
13 to the Public Service Commission to enforce railroad safety standards
14 pursuant to section 75-401. Transfers may be made from the fund as
15 provided under section 74-1318. Any money in the fund available for
16 investment shall be invested by the state investment officer pursuant to
17 the Nebraska Capital Expansion Act and the Nebraska State Funds
18 Investment Act.

19 Sec. 2. Section 74-1318, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 74-1318 The department is hereby empowered to administer the funds
22 deposited in the Grade Crossing Protection Fund as follows:

23 (1) If the department and the political subdivision with
24 jurisdiction over the crossing agree that a grade crossing should be
25 eliminated by closing the street, road, or highway, the political
26 subdivision making such closing shall receive five thousand dollars from
27 the fund and five thousand dollars from the railroad involved and the
28 actual cost of closure not to exceed twelve thousand dollars from the
29 fund. If pursuant to section 74-1305 it is agreed by the department and
30 the political subdivision that such crossing should be eliminated by the
31 removal of such rail line, the political subdivision paying for such

1 removal, if any, shall receive two thousand dollars or the actual cost
2 thereof not to exceed twelve thousand dollars from the fund;

3 (2) Except as otherwise provided in section 74-1315, in order to
4 facilitate and protect the interest of the public as a whole and to
5 compensate for the statewide use of such crossings by the public, the
6 department shall pay ninety-five percent of the cost of overpasses,
7 underpasses, and automatic railroad grade crossing protection measures or
8 devices from the fund for all such projects in which an agreement among
9 the department, the railroad, and the political subdivision is executed
10 on or after May 24, 1979, and the balance of the cost shall be borne by
11 the political subdivision, except that in any county in which a railroad
12 transportation safety district has been formed, such balance shall be
13 borne entirely by the political subdivision. For all such projects in
14 which an agreement among the department, the railroad, and the political
15 subdivision was executed prior to May 24, 1979, the costs shall continue
16 to be borne in the same manner as they were prior to such date;

17 (3) It shall be the sole responsibility of the railroad company
18 involved to maintain all automatic railroad grade crossing protection
19 devices existing in this state;

20 (4) The department shall allocate the amount to be borne by the fund
21 for the cost of construction, installation, or substantial modification
22 or improvement of the automatic devices for the protection of the
23 railroad grade crossing concerned under this section and subdivisions
24 (1), (2), and (3) of section 74-1317;~~and~~

25 (5) The department shall enter into and enforce agreements involving
26 the fund and the supervision of the construction, installation,
27 substantial modification or improvement, and maintenance of such
28 overpasses, underpasses, and automatic safety devices for which any part
29 of the cost is borne from the fund and the auditing and collection of the
30 bills covering the cost thereof. The department is further authorized to
31 enter into such contracts with any railroad companies and political

1 subdivisions affected which are necessary to carry out this section and
2 subdivisions (1), (2), and (3) of section 74-1317; and -

3 (6) On or before July 1, 2021, and on or before each July 1
4 thereafter, the State Treasurer shall annually transfer one hundred
5 twenty-five thousand dollars from the Grade Crossing Protection Fund to
6 the Railroad Safety Cash Fund.

7 Sec. 3. Section 75-109.01, Revised Statutes Cumulative Supplement,
8 2020, is amended to read:

9 75-109.01 Except as otherwise specifically provided by law, the
10 Public Service Commission shall have jurisdiction, as prescribed, over
11 the following subjects:

12 (1) Common carriers, generally, pursuant to sections 75-101 to
13 75-158;

14 (2) Grain pursuant to the Grain Dealer Act and the Grain Warehouse
15 Act and sections 89-1,104 to 89-1,108;

16 (3) Manufactured homes and recreational vehicles pursuant to the
17 Uniform Standard Code for Manufactured Homes and Recreational Vehicles;

18 (4) Modular housing units pursuant to the Nebraska Uniform Standards
19 for Modular Housing Units Act;

20 (5) Motor carrier registration, licensure, and safety pursuant to
21 sections 75-301 to 75-343, 75-369.03, 75-370, and 75-371;

22 (6) Pipeline carriers and rights-of-way pursuant to the Major Oil
23 Pipeline Siting Act, the State Natural Gas Regulation Act, and sections
24 75-501 to 75-503. If the provisions of Chapter 75 are inconsistent with
25 the provisions of the Major Oil Pipeline Siting Act, the provisions of
26 the Major Oil Pipeline Siting Act control;

27 (7) Railroad carrier safety pursuant to sections 74-918, 74-919,
28 74-1323, and 75-401 to 75-430 and section 7 of this act;

29 (8) Telecommunications carriers pursuant to the Automatic Dialing-
30 Announcing Devices Act, the Emergency Telephone Communications Systems
31 Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-Per-Call

1 Regulation Act, the Nebraska Telecommunications Regulation Act, the
2 Nebraska Telecommunications Universal Service Fund Act, the
3 Telecommunications Relay System Act, the Telephone Consumer Slamming
4 Prevention Act, and sections 86-574 to 86-579;

5 (9) Transmission lines and rights-of-way pursuant to sections 70-301
6 and 75-702 to 75-724;

7 (10) Water service pursuant to the Water Service Regulation Act; and

8 (11) Jurisdictional utilities governed by the State Natural Gas
9 Regulation Act. If the provisions of Chapter 75 are inconsistent with the
10 provisions of the State Natural Gas Regulation Act, the provisions of the
11 State Natural Gas Regulation Act control.

12 Sec. 4. Section 75-401, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 75-401 (1) The commission shall exercise jurisdiction over the
15 service, facilities, and equipment of all railroad carriers in this
16 state. This jurisdiction shall extend and apply to the general public, as
17 well as those having business relations with the railroad carrier.
18 Sections 75-401 to 75-430 and section 7 of this act shall not be
19 construed as giving the commission jurisdiction or control over the
20 relations between any railroad carrier and its employees, or its
21 employees' order, union, or other bargaining agent, either contractual or
22 otherwise, except as provided in sections 75-419 to 75-426.

23 (2) The commission shall enforce the standards of railroad safety
24 set forth in 49 C.F.R. parts 213, 215, 223, 229, 231, and 232. Such
25 enforcement shall be carried out with financial assistance from the Grade
26 Crossing Protection Fund as provided by section 74-1318.

27 Sec. 5. Section 75-402, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 75-402 As used in sections 75-401 to 75-430 and section 7 of this
30 act, and in all rules and regulations prescribed by the commission,
31 unless the context otherwise requires:

1 (1) Commission means the Public Service Commission;

2 (2) Railroad means any line of railroad track, or part thereof,
3 located within the State of Nebraska; and

4 (3) (1) Railroad carrier means shall mean any common carrier engaged
5 in the carrying of freight or passengers over any line of railroad, or
6 part thereof, within the State of Nebraska. ; and

7 ~~(2) Railroad shall mean any line of railroad track, or part thereof,~~
8 ~~located within the State of Nebraska.~~

9 Sec. 6. Section 75-405, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 75-405 Every railroad carrier which operates lines within this state
12 shall make an annual agreement with each shipper that receives or sends
13 ten or more cars annually which provides the terms under which reciprocal
14 demurrage charges shall be made on the part of the railroad carrier or
15 shipper. Such terms shall be equal for all shippers. Any agreement made
16 under this section shall control the relation between the parties
17 thereto, the provisions of sections 75-401 to 75-430 and section 7 of
18 this act to the contrary notwithstanding. Monthly settlements may be
19 entered into, but all credits due a shipper for the current month shall
20 be carried to the shipper's credit for the succeeding month, except that
21 at the termination of the agreement, any credits due the shipper shall be
22 eliminated.

23 Sec. 7. The Railroad Safety Cash Fund is created. The fund shall be
24 used to support the commission in enforcing railroad safety standards
25 pursuant to section 75-401. The fund shall consist of transfers to the
26 fund from the Grade Crossing Protection Fund as directed by the
27 Legislature. Any money in the fund available for investment shall be
28 invested by the state investment officer pursuant to the Nebraska Capital
29 Expansion Act and the Nebraska State Funds Investment Act.

30 Sec. 8. Original sections 74-1317, 74-1318, 75-401, 75-402, and
31 75-405, Reissue Revised Statutes of Nebraska, and section 75-109.01,

1 Revised Statutes Cumulative Supplement, 2020, are repealed.

2 Sec. 9. Since an emergency exists, this act takes effect when
3 passed and approved according to law.