

# Appendix I

## Historical Background

In 1877, the U.S. Supreme Court discussed the duties, rights and obligations of railroad companies vis-a-vis those of the highway user at highway-rail crossings and found that they were "mutual and reciprocal." The Court went on to say that a train has preference and the right-of-way over crossings because of its "character," "momentum" and "the requirements of public travel by means thereof," but that the railroad is bound to give due, reasonable and timely warning of the train's approach. The Court stated that "those who are crossing a railroad track are bound to exercise ordinary care and diligence to ascertain whether a train is approaching." (Continental Improvement Company v. Stead, 95 U.S. 161(1877))

The Accident Reports Act of 1910 requires rail carriers to submit accident reports. Included in this requirement are those accidents which occur at grade crossings.

The Federal-Aid Road Act of 1916 made Federal funds available for "rural post roads." Crossing safety improvement projects were eligible on a 50-50 cost sharing basis.

In 1928, reported fatalities at grade crossings reached a peak of 2,568 individuals. An additional 6,666 were reportedly injured.

In 1934, Federal funds were authorized for crossing safety improvements from the National Industrial Recovery Act of 1933. No match was required, and all public crossings were eligible.

In 1935, the U.S. Supreme Court commented on changes in responsibilities regarding the funding of a grade separation (a bridge) at a crossing in order to eliminate the hazards and delay inherent at an at-grade (level) crossing: "The railroad has ceased to be the prime instrument of danger and the main cause of accidents. It is the railroad which now requires protection from dangers incident to motor transportation. Prior to the establishment of the Federal-aid [highway] system ... highways ... served in the main, local traffic. The long distance traffic was served almost wholly by the railroads and the water lines. Under those conditions the occasion for separation of grades was mainly the danger incident to rail operations; and the promotion of safety was then the main purpose of grade separations. Then, it was reasonable to impose upon the railroad a large part of the cost of eliminating grade crossings; and the imposition was rarely a hardship.... the separation of grade crossings was a normal incident of the growth of rail operations; and as the highways were then feeders of rail

traffic; ... every improvement of highway facilities benefitted the railroad. The effect upon the railroad of constructing Federal-aid highways ... is entirely different. They are not feeders of rail traffic. They deplete the existing rail traffic and the revenues of the railroads. Separations of grade serves to intensify the motor competition and to further deplete rail traffic. The avoidance thereby made possible of traffic interruptions incident to crossing at grade is now of far greater importance to the highway users than it is to the railroad crossed. (Nashville, C. & St. L. Ry. v. Walters, 294 U.S. 405, 422-423)

In 1964, a "finding" of the Interstate Commerce Commission (ICC) extended the Court's 1935 rationale to warning devices: "That highway users are the principal recipients of the benefits flowing from rail-highway grade separations and from special protection at rail-highway grade crossings. For this reason the cost of installing and maintaining such separations and protective devices is a public responsibility and should be financed with public funds the same as highway traffic devices." (ICC Report No. 33440, January 22, 1964)

In 1970, Congress, counting on the cooperation of industry, Federal and state officials, included in both the Highway and Rail Safety Acts of 1970 a provision that the Secretary study the problems of highway-rail crossings and report back to the Congress with recommended solutions. A two volume Report to Congress was prepared. The first recounted the extent of the problem. The second, submitted to Congress in 1972, included recommendations which called for the Federal funding of safety improvements at highway-rail crossings, improvements in accident reporting and the establishment of a national data base of crossing information.

Also in 1972, Idaho State and Union Pacific Railroad officials cooperated in the promotion of a public education and enforcement program to reduce the number of crossing accidents in Idaho. The program was called, "Operation Lifesaver" (OL). Others states and railroads quickly followed.

Finally, in 1972, Secretary of Transportation John A. Volpe declared a goal, the reduction of 500 fatalities a year and the elimination of 4,000 accidents a year within ten years. About 12,000 accidents and 1,500 fatalities per year were then occurring.

The Highway Safety Act of 1973 funded (from the Highway Trust Fund) a \$175 million dollar program over three years (\$25M/\$75M/\$75M) for safety improvements at highway-rail crossings on the Federal-aid highway system. The Federal money was distributed to states in a fashion similar to other Federal-aid highway funds and required a 10% match. At least half the funds had to be used for the installation of warning devices at crossings. The Act also required that each state establish and maintain a survey of crossings.

A joint industry/state/Federal effort, in response to the Congressional mandate that each state establish a survey of crossings, promoted a national Inventory pointing out that the state "surveys" should be uniform. The Inventory was begun.

The Highway Safety Act of 1976 continued the Federal funding begun in 1973 by providing \$250 million over 27 months for on-system crossings and \$168.75 million for crossings not on the Federal-aid system, a first.

In 1977, the National Transportation Safety Board (NTSB) recommended that the National Safety Council establish a national OL program.

The Highway Safety Acts of 1978 and 1982 established and continued four-year, \$190 million per year programs, dropped all distinction between crossings on and off the Federal-aid system and changed the distribution of funds to include a 50 percent consideration based on the number of crossings in each state.

In 1986, OL came out from under the auspices of the National Safety Council (NSC initiated the separation) and was incorporated as an independent entity.

The Surface Transportation and Uniform Relocation Assistance Act of 1987 continued the crossing safety improvement program at \$160 million per year for five years, through FY 1991. The Act also charged the Secretary with conducting a study of national highway-railroad crossing improvement and maintenance needs. The report was due in two years, a follow-up to the 1971-72 Reports to Congress. The Act also set aside \$250,000 per year for driver education (a euphemism for OL), a first.

In April 1989, the Secretary of Transportation forwarded a report to the Congress, titled: Rail-Highway Crossings Study. This study summarized crossing needs to the year 2005.

The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 continued the crossing safety program at the same funding level nationwide as the 1987 Act, but with the potential for increased funds at a state's discretion. Also, the 1991 Act significantly broadened the allowance for 100 percent financing of certain improvements under the Section 130 Program.