

RAILROAD CODE OF 1993 (EXCERPT)
Act 354 of 1993

462.319 New construction, partial reconstruction, alteration, or removal of grade separation.

Sec. 319. (1) The construction of a new highway/railroad grade separation structure or the total reconstruction of an existing grade separation structure shall require a written agreement between all affected railroads, the road authority, and any other parties required by law to participate in the construction or funding of the grade separation. As a minimum, the written agreement shall include the following:

- (a) A detailed statement of the work to be performed by each party.
- (b) Methods of payment.
- (c) A description of any work to be performed by the affected parties at no cost to the project.
- (d) Each party's share of the project cost.
- (e) An itemized estimate of the cost of work to be performed by the railroad.
- (f) Methods to be used for performing the work, including contract and force account work.
- (g) Maintenance responsibilities.
- (h) Form, duration, and amounts of any needed insurance.
- (i) Appropriate reference to or identification of plans and specifications.
- (j) Statements defining the conditions under which the railroad will provide or require protective services during performance of the work, the type of protective services, and the method of reimbursement to the railroad.
- (k) Required minimum horizontal and vertical clearances for each track and roadway passing over or under the separation.
- (l) A clause providing transfer of responsibilities to successive parties in the event of the change of ownership or jurisdiction of the railroad or highway.
- (m) The parties responsible to expeditiously remove the grade separation structure and cost responsibility if the grade separation is no longer needed.

Each party signing the agreement shall receive an executed copy of the agreement and shall retain the agreement or a facsimile of the agreement for the life of the structure. If the roadway or railroad changes jurisdiction or ownership, the copy of the agreement shall be provided to the new affected party.

(2) The partial reconstruction of an existing highway/railroad grade separation, the alteration of an existing grade separation for increased railroad or highway facilities, or the removal of an existing grade separation shall be accomplished under the terms and conditions of the existing agreement or agreements covering the existing grade separation. If no agreement exists for the separation or if the existing agreement does not adequately address the proposed work, a new written agreement meeting the requirements of subsection (1) shall be executed before commencement of the work.

(3) For new construction, partial reconstruction, alteration, or removal of a grade separation, as provided for in subsections (1) and (2), where the affected parties cannot come to agreement, either the railroad or road authority may request, in writing, the department to order the construction, reconstruction, alteration, or removal of a grade separation. A request by a railroad or road authority shall include proposed profiles, plans, maps, and specifications showing the portions of the street or highway and the railroad or railroads, for which the grade is to be changed or modified and the details of construction necessary for the improvements.

(4) The department shall set a day for a hearing on the request and give written notice, together with a copy of the request, to all known interested parties in the proceeding at least 10 days before the day set for the hearing, and on the day set for hearing, or at any adjournment or continuance of the hearing, the parties in interest shall be entitled to be heard. The department may issue summonses or subpoenas to enforce the attendance of witnesses at the hearing and may make such examination of the location of the grade separation as it considers necessary.

(5) If after the hearing the department finds that the separation of grades, the reconstruction of existing grade separations, or the alteration of existing grade separations for increased highway or railroad facilities is necessary for the public convenience, welfare, and safety, it may by proper order approve the separation of grades, the reconstruction of existing grade separations, or the alteration of existing grade separations for increased highway or railroad facilities, together with the profiles, plans, maps, and specifications to govern the work. If it finds that there is no such necessity, it may by proper order deny the request. The department, if in its judgment finds it is necessary for the public convenience, welfare, and safety, may change or alter the location of a grade separation. When existing grade crossings of any streets or highways with the railroad are near an involved grade separation, plans for which are approved pursuant to this act, and are situated within a reasonable distance of the site approved for grade separation, and when it is considered practical and reasonable to abolish any of such crossings by connecting the streets or highways to the highway directly

served by the approved grade separation project, the department may order such crossings closed, may specify or approve the nature of connections to the highways interrupted by closing these crossings, and may require that the work be included as a part of the grade separation project. Profiles, plans, maps, and specifications for structures and railroad and highway approaches shall be prepared, unless otherwise agreed upon, by the party whose traffic is to be carried thereon, and likewise, unless otherwise agreed upon, the work of construction shall be performed by the party whose traffic is to be carried by such construction. However, if the profiles, plans, maps, and specifications of any party or parties have not been agreed to in writing by the other parties interested in the improvement before the day set for hearing on the application before the department, the department shall in its order prescribe the manner in which the separation of grades, the reconstruction of existing grade separations, or the alteration of existing grade separations shall be affected, fix and approve the profiles, plans, maps, and specifications, and in this behalf may approve in whole or in part, modify, or alter the plans submitted by the applicant.

(6) Unless otherwise agreed upon, the cost of constructing and making separation of grades, the reconstruction of existing grade separations, or the alteration of existing grade separations for increased highway or railroad facilities, computed as provided in this act, shall be borne according to the benefits received, except that projects requested by the road authority shall not exceed 15% by the affected railroad with the balance paid by the road authority, and projects requested by the railroad shall not exceed 15% by the affected road authority with the balance paid by the railroad. If there is more than 1 affected railroad, and the railroads do not agree on the division of the amount to be borne by each, then the division shall be made by the order of the department. If the amount to be borne by more than 1 road authority is not agreed upon, the division of the amount to be borne by them shall be made by the order of the department.

(7) Unless otherwise agreed upon, the department shall determine the parts or sections of a grade separation undertaking that shall be maintained by the railroad and the part or sections that shall be maintained by the road authority. Unless there are special conditions which complicate a direct allotment of the division of maintenance responsibilities, the maintenance of the structure and approaches and corresponding items of work shall be performed and the cost shall be borne entirely by the party whose traffic is carried thereon. The railroad shall repair or replace, at its own expense, any portions that may be damaged or destroyed by accident or otherwise arising from railroad traffic, and the road authority will repair or replace, at its own expense, any portions that may be damaged or destroyed by highway traffic.

(8) In computing the costs of an improvement, abuttal damages, property acquisition costs, engineering costs, all the other costs of construction, both temporary and permanent, including railroad and highway approaches to the structure incident to the separation of grades, reconstruction of existing grade separations, and the alteration of existing grade separations for increased highway or railroad facilities as set forth in the profiles, plans, maps, and specifications approved by the department may be considered. Additional property acquired or to be acquired for economizing the cost of the improvement and necessary to the grade separation structure and immediate approaches for preserving the existing railroad or highway may be considered a construction cost and included in the cost of the improvement.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994.