

IC 8-6-3

Chapter 3. Division of Costs of Improvements to Railroad Grade Separations

IC 8-6-3-1

Percentage allocation; railroads and public entities

Sec. 1. (a) Whenever the separation of grades at the intersection of a railroad or railroads (as defined in IC 8-3-1-2) and a public street or highway is constructed, the railroad or railroads shall pay five (5) percent of the cost of the grade separation as provided in this chapter.

(b) This chapter shall apply to an existing crossing, a new crossing, or the reconstruction of an existing grade separation.

(c) If more than one (1) railroad (as defined in IC 8-3-1-2) is involved in a separation, the railroads involved shall divide the amount to be paid by the railroads by agreement between the railroads. If the railroads fail to agree, the circuit court of the county in which the crossing is located shall have jurisdiction, upon the application of a party, to determine the division of the amount to be paid by the railroads. The decision of the court is final, unless one (1) or more parties deeming themselves aggrieved by the decision of the court shall appeal therefrom to the court of appeals of Indiana within thirty (30) days, or within additional time not exceeding ninety (90) days, as may be granted by the circuit court. The appeal shall be taken in substantially the same manner as an appeal in a civil case from the circuit court.

(d) If a grade separation shall involve a state highway that is a part of the state highway system of Indiana, or a street or highway selected by the Indiana department of transportation as a route of a highway in the state highway system, the state, out of the funds of the Indiana department of transportation or funds appropriated for the use of the Indiana department of transportation, shall pay ninety-five percent (95%) of the cost of the grade separation.

(e) Before the Indiana department of transportation shall proceed with a grade separation within a city or town, the Indiana department of transportation shall first obtain the consent of the city, by a resolution adopted by the board or officials of the city having jurisdiction over improvement of the streets of the city, and any material modification of the plans upon which the consent was granted shall first be approved by the city by a similar resolution.

(f) If such grade separation is on a highway or street not a part of the highways under the jurisdiction of the Indiana department of transportation, or a part of a route selected by it, but is within any city or town of the state, the city or town shall pay one-half (1/2) of ninety-five percent (95%) of the total of such cost and the county in which the crossing is located shall be liable for and pay one-half (1/2) of the ninety-five percent (95%).

(g) If a grade separation that involves a state highway that is a part of the state highway system of Indiana, or a street or highway selected by the Indiana department of transportation as a route of a highway in the state highway system, necessitates the grade

separation on other highways or streets, not a part of the highways under the jurisdiction of the Indiana department of transportation but within any city of the state of Indiana, then of the total cost of the grade separation on a highway or street not under the jurisdiction of the Indiana department of transportation but necessitated by the grade separation involving a highway or street which is a part of the state highway system, the city shall pay one-fourth (1/4) of ninety-five percent (95%) and the county in which the crossing is located shall be liable for and pay one-fourth (1/4) of the ninety-five percent (95%) of the total of the costs and the state out of the funds of the Indiana department of transportation or funds appropriated for the use of the Indiana department of transportation, shall be liable for and pay one-half (1/2) of the remaining portion.

(h) If a crossing is not within any city or town and does not involve a highway under the jurisdiction of the Indiana department of transportation, then the county in which the crossing is located shall pay the ninety-five percent (95%) of the total cost which is not paid by the railroad or railroads.

(i) The division of the cost of grade separation applies when the grade separation replaces and eliminates an existing grade crossing at which active warning devices are in place or ordered to be installed by a state regulatory agency, but when the grade separation does not replace nor eliminate an existing grade crossing the state, county or municipality, as the case may be, shall bear and pay one hundred percent (100%) of the cost of the grade separation.

(j) In estimating and computing the cost of the grade separation, there shall be considered as a part of costs all expenses reasonably necessary for preliminary engineering, rights-of-way and all work required to comply with the plans and specifications for the work, including all changes in the highway and the grade thereof and the approaches to the grade separation, as well as all changes in the roadbed, grade, rails, ties, bridges, buildings, and other structural changes in a railroad as may be necessary to effect the grade separation and to restore the railroad facilities aforesaid to substantially the same condition as before the separation.

(k) The required railroad share of the cost shall be based on the costs for preliminary engineering, right-of-way, and construction within the limits described below:

(1) Where a grade crossing is eliminated by grade separation, the structure and approaches for the number of lanes on the existing highway and in accordance with the current design standards of the governmental entity having jurisdiction over the highway involved.

(2) Where another facility, such as a highway or waterway, requiring a bridge structure is located within the limits of a grade separation project, the estimated cost of a theoretical structure and approaches as described under subdivision (1) to eliminate the railroad-highway grade crossing without considering the presence of the waterway or other highway.

(3) Where a grade crossing is eliminated by railroad or highway

relocation, the actual cost of the relocation project, or the estimated cost of a structure and approaches as described under subdivision (1), whichever is less.

(l) If the Indiana department of transportation or any city, town, or county is unable to reach an agreement with a railroad company after determining that construction or reconstruction of a grade separation, which replaces or eliminates the need for a grade crossing, is necessary to protect travelers on the roads and streets of the state, the appropriate unit or combination of units of government shall give a written notice of its intention to proceed with the construction or reconstruction of a grade separation to the superintendent or regional engineer of the railroad company. The notice of intention shall be made by the adoption of a resolution stating the need for the grade separation. If, after thirty (30) days, the railroad has not agreed to a division of inspections, plans and specifications, the number and type of jobs to be completed by each agency, a division of costs, and other necessary conditions, the Indiana department of transportation, city, town, or county may proceed with the grade separation exercising any and all of its powers to construct or reconstruct a bridge and, notwithstanding other provisions of this chapter, may pay for up to one hundred percent (100%) of the cost of the project. If the railroad is unable, for good cause, to pay the share of the cost required by this section, the city, town, or county may certify the amount owed by the railroad to the county auditor who shall prepare a special tax duplicate to be collected and settled for by the county treasurer in the same manner and at the same time as property taxes are collected. However, before the Indiana department of transportation, city, town, or county undertakes to do the work themselves they shall notify an agent of the railroad as to the time and place of the work.

(Formerly: Acts 1939, c.41, s.1; Acts 1975, P.L.82, SEC.1.) As amended by Acts 1976, P.L.27, SEC.1; Acts 1980, P.L.74, SEC.63; P.L.18-1990, SEC.71; P.L.146-2008, SEC.361.

IC 8-6-3-2

Application of other laws; maintenance after construction

Sec. 2. (a) This chapter shall not authorize the separation of grade crossings of railroads and highways where not authorized by other laws, but shall be considered as supplemental to other laws, and all division of costs as provided for in this chapter, and all provisions for the payment and collection of such costs and expenses and other provisions of other laws relating to the subject matter shall continue in effect, except as inconsistent with this chapter.

(b) Provided, however, that any such railroad or railroads shall be authorized to make all changes in the roadbed, grade, rails, ties, bridges, buildings, and other structural changes as may be necessary to effect such grade separation, and to restore such railroad facilities aforesaid to substantially the same condition as before said separation and the costs and expenses incurred by said railroad or railroads, and in excess of the amount, if any, to be borne by the

railroad or railroads, as in this chapter provided, shall be paid by the state, county, or municipality, as the case may be, to such railroad or railroads making such changes.

(c) After the construction of any such grade separation, the public authority or municipality having jurisdiction over such street or highway shall maintain the street or highway, and structures supporting it, and the drainage thereof, where the street or highway is carried over the railroad or railroads, and the railroad or railroad companies shall maintain its or their railway tracks, and where the street or highway is carried under any such railroad or railroads, then the public authority or municipality having jurisdiction over such street or highway, shall maintain the street or highway, and the drainage thereof, and the railroad or railroads shall maintain its or their roadbed and tracks and structures supporting the same.

(Formerly: Acts 1939, c.41, s.2.) As amended by P.L.62-1984, SEC.99.

IC 8-6-3-3

Order or consent by department

Sec. 3. Notwithstanding any other provisions of this chapter or existing laws in regard to which this chapter is supplemental, the Indiana department of transportation shall not be chargeable with any costs or expenses contemplated by this chapter unless the Indiana department of transportation shall either order or consent to a proposed grade separation or elevation contemplated by this chapter. *(Formerly: Acts 1939, c.41, s.3.) As amended by Acts 1980, P.L.74, SEC.64; P.L.18-1990, SEC.72.*

IC 8-6-3-4

Railroad relocation projects; allocation of cost; local government powers

Sec. 4. (a) Where a grade separation results from a railroad relocation project funded in substantial part by the federal government, the shares of the cost of the grade separation shall be allocated among all the participating governmental units and affected railroads as they may agree.

(b) A county, city, or town, in connection with any railroad relocation project funded in substantial part by the federal government, may:

- (1) purchase, lease, or sell real or personal property;
- (2) design and construct any pedestrian, motor vehicle, or railroad transportation facilities;
- (3) enter into any contracts with federal, state, or local governmental agencies or the owner or operator of any railroad transportation system;
- (4) convey by deed or lease, pursuant to written agreement, any pedestrian, motor vehicle, or railroad transportation facilities for any federal, state, or local governmental agency or the owner or operator of any railroad transportation system;
- (5) issue any bonds, notes, or warrants for financing its share of

the cost of the project; and

(6) perform all incidental and necessary acts in connection with the railroad relocation project.

(c) A city or town may exercise powers granted by this section within four (4) miles outside its corporate boundaries.

As added by P.L.65-1984, SEC.1.