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Oversight Is Spotty on Rail-Crossing Safety Projects

By WALT BOGDANICH and JENNY NORDBERG

When Missouri state auditors set out to learn if railroads were prudently spending government money to install warning signals at grade crossings, they found more than a few problems.

According to audit reports from two years ago, one railroad, Kansas City Southern, had submitted overcharges of nearly 100 percent, or almost \$60,000, on one project. Another, BNSF Railway, also had an overcharge of nearly 100 percent.

And that was not all. BNSF, formerly known as Burlington Northern and Santa Fe, overcharged to a lesser degree on more than a dozen other signal projects, records show.

Missouri officials should not have been surprised. In 2000, Missouri asked BNSF to repay \$670,000 in overcharges on 43 earlier signal projects, all financed mostly by the Federal Highway Administration. Another railroad had similar overcharges, state officials said.

When it comes to catching sizable overcharges in the federally financed lights-and-gates program, Missouri stands out. Other states audit only a few signal projects - or none - even though these construction contracts are almost always awarded to railroads without competitive bids, according to public records and government officials.

The result, rail safety advocates say, is that signals often cost more than they should, which means that fewer of these life-saving warning devices are installed.

Safety experts say warning lights and gates are a major reason why crossing deaths have declined in recent years, though they did jump in 2004. Even so, most of the nation's 150,000 rail crossings on public roads have no lights or gates. In all, nearly 900 people have died at crossings that lack lights or gates since 2000.

Just this week, separate fatal accidents occurred at two crossings with no lights or gates in Tangipahoa Parish in Louisiana; the first, on Sunday, killed one man and three children, while the second crash killed two men yesterday. But while up to 700 crossings in Louisiana need warning lights and gates, said Mark Lambert, a state transportation official, there is not enough federal money to pay for them.

Louisiana has questioned railroad billings, and last year, auditors there found possible overcharges of more than 10 percent, about \$1.1 million, though the actual recovery might drop after settlement discussions.

"If you are spending the public's money, you would rather see a competitive situation," said Steven L. Schooner, co-director of the Government Procurement Law Program at George Washington University Law School.

The Federal Highway Administration agrees, but only up to a point. When building a road, the agency calls competitive bidding "a basic fundamental principle of federal procurement law." But that does not hold for the lights-and-gates program, where federal highway officials have spent \$1.7 billion since 1973 to make grade crossings safer.

"Bidding or no bidding, post-performance auditing, or at least some level of oversight, is necessary to ensure proper stewardship of taxpayer funds," Mr. Schooner said.

A spokesman for the highway administration, Brian Keeter, said that to make sure states "use federal funds appropriately," they are required to report on the progress of crossing projects and whether they have helped to reduce accidents.

But in written responses to questions, he did not specifically answer how the government could ensure that those funds are used properly if many projects are not audited. Mr. Keeter also did not provide the percentage of projects that are audited.

Federal rules do not require states, which administer the lights-and-gates program, to seek competitive bids as long as railroads manage the projects. While states can seek bids from private contractors if they run the projects themselves, they prefer to let railroads handle the work, since they own the crossings and are obligated to maintain them.

"On the highway, we can do what we want," said Lamar McDavid, an auditor with the Alabama Transportation Department. "But we're on private property, so we have to do what they want." Keith Golden of the Georgia Transportation Department added, "We don't have the power to negotiate with them."

States said they do negotiate prices with railroads. In Tennessee, after a 17-year-old girl was killed at a rail crossing in 1997, the state told CSX to install gates there. The railroad said it would cost \$122,000, nearly three times what the state thought was fair, according to state records. CSX eventually agreed to do the work for half its original proposal. The upgrade was finished in 1999.

Today, a full set of lights and gates costs \$80,000 to \$200,000 or more, depending on the crossing, state transportation officials said.

The federal government does not require states to audit every project. "States perform the day-to-day oversight of this program and thus determine when or if audits occur," said Doug Hecox, a Federal Highway Administration spokesman.

The Association of American Railroads, a trade group, said railroads did not make a profit on lights and gates. And, the association added, "Taxpayers can be assured that they are getting the best price possible because states conduct audits."

But Ohio, for example, does no audits of signal projects at grade crossings, state officials said.

Officials in other states said they feared that some audits were becoming less reliable. Because one major railroad - Norfolk Southern - is moving toward a paperless work environment, verifying bills is becoming "nearly impossible," according to a joint audit in 2003 involving 10 states, including New York. The rail association said its members are not violating federal reimbursement rules.

Railroads said overcharges were simply unintentional mistakes, a statement not disputed by state auditors. Kansas City Southern, for example, said its overbillings were generally small and due to the complexity of different state contracts.

BNSF said Missouri's audit findings were the result of misunderstandings. And while the railroad did not always agree with the state's findings, BNSF said it reimbursed the state anyhow.

It is also true that two separate joint audits, representing 8 Eastern states in one group and 10 in another, found only minimal overcharges by CSX and Norfolk Southern. But these joint audits covered only a tiny percentage of projects, fewer than 10 projects in all from the participating states. And those reviews are not done every year, records show. CSX, for example, has not undergone a joint audit by the group of Eastern states since 2000, in part because auditors said they did not expect to find significant problems.

An official with the federal Department of Transportation's inspector general said he was unaware of any comprehensive investigation by his office of the federal lights-and-gates program. But when the inspector general followed up on a whistle-blower complaint in the 1990's, investigators found that CSX had knowingly padded its expenses. CSX agreed in 1995 to pay \$5.9 million to settle civil fraud accusations.

In addition to federal funds, state money is also used in signal programs. California, for example, pays railroads for maintaining lights and gates at crossings after they are installed. But when state officials checked these billings, they found that railroads had submitted expenses for maintaining signals at crossings that were closed, crossings with no warning signals, crossings with no rail service, and crossings claimed by more than one railroad. As a result, California officials rejected \$346,492 in 2003.

Illinois officials also use state money to pay railroads for upgrading rail crossings. But in a highly critical report in November 2003, the Illinois auditor general found that even though state transportation officials had said railroad bills "seemed unreasonably high," they still did not verify charges for materials, labor or personnel expenses.

Railroads, for example, submitted bills for trench-digging equipment that was rented for weeks - even months - longer than necessary, the report found. State officials, the report added, do "not assure the prescribed work is done, work is done on schedule or that expenditures for the project are appropriate." The projects sampled by the auditor general took nearly four years to complete.

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