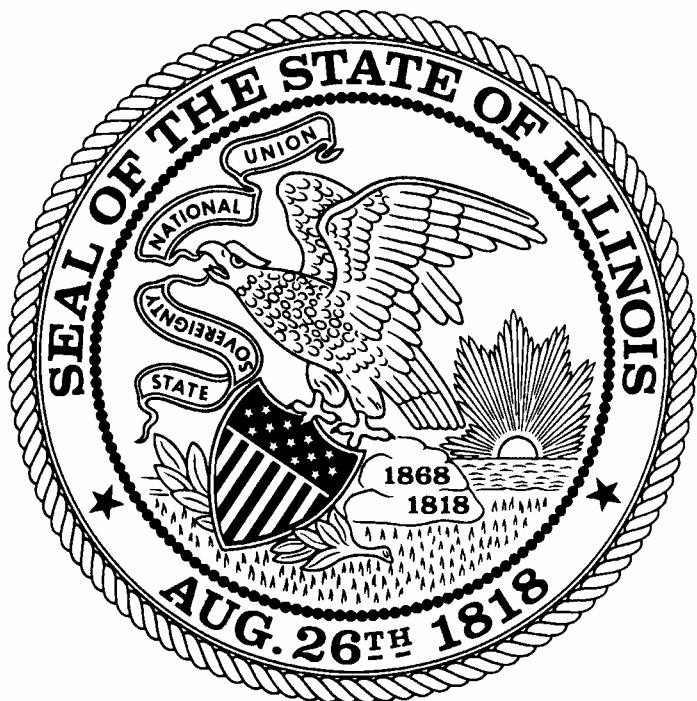


LEGISLATIVE AUDIT COMMISSION



Management Audit
Expenditures from the Grade Crossing Protection Fund

November 2003

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MANAGEMENT AUDIT
EXPENDITURES FROM THE
GRADE CROSSING PROTECTION FUND

NOVEMBER 2003

Recommendations - 7

Partially Accepted - 2
Accepted - 5

Background

The Illinois Commerce Commission has the statutory responsibility to assure safety at all public highway-rail crossings in the State. As of January 2003, there were 8,568 public grade level crossings in Illinois, of which 86% (7,390) were on local roads and streets. The Grade Crossing Protection Fund is used to help modify or upgrade crossings on local roads and streets. Upgrades on State roads are paid for with State Road Fund monies.

Money in the Grade Crossing Protection Fund is administered by the Illinois Commerce Commission (ICC) but appropriated to the Illinois Department of Transportation. In carrying out its mandated responsibility, the ICC orders improvements at public highway-rail grade crossings and bridges that it determines to be in the interest of public safety.

Money for the Grade Crossing Protection Fund (GCPF) comes from motor fuel tax receipts. This amount provides \$27 million annually to the Fund. Total expenditures for projects were \$25 million in FY01 and \$34 million in FY02. These expenditures were typically used for warning device upgrades; grade separations including construction, reconstruction or repair of bridges over or under railroad tracks; synchronization with traffic lights; associated road work; remote monitoring devices which immediately alert the railroad to any problems in warning device operations; or improvements at crossings not equipped with automatic warning devices.

The ICC is responsible for administering a rail safety program and expenditures for the program are paid for from the Transportation Regulatory Fund through the statutory transfer of Funds from the GCPF. ICC's administrative costs are paid from an annual transfer from the GCPF which has increased from \$750,000 in FY96 to \$1.5 million in FY 2000 to \$2.25 million in FY02. DOT's administrative costs (estimated at \$278,000 annually) related to GCPF are covered by DOT funds and not charged to the Fund. In FY02, there were a total of 183 collisions at public rail crossings in Illinois resulting in 24 fatalities.

In July 2002, the Legislative Audit Commission adopted Resolution #123 which directed the Auditor General to conduct a management audit of expenditures from the Grade

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Crossing Protection Fund. Resolution #123 also asked for a review of expenditures from the Fund and whether the expenditures and transfers from the Fund appeared to be in conformity with applicable laws.

Report Conclusions

The audit makes the following conclusions:

- ICC and DOT do not have an interagency agreement that clarifies each agency's management responsibilities;
- The ICC does not assure that prescribed project work is done, work is done on schedule, or that expenditures for the project are appropriate;
- ICC's computer system does not capture certain date information that would allow for more effective analysis and management of the GCPF;
- DOT and the ICC do not have clear standards for what expenditure documentation is required for projects; and
- ICC does not get copies of signal failure reports to help them to assure that adequate warning devices are in place, and which project or types of projects should be funded.

Additionally, while both the ICC and DOT have some responsibilities for GCPF project expenditure review, neither is conducting adequate expenditure reviews. Given the lack of adequate review, the State may be overpaying for improvements to railroad crossings. There is little written guidance available on which agency has responsibility for the various required functions related to managing Grade Crossing Protection Fund projects.

The ICC exercises some control over the costs through the Order process. Before the Order is entered, the ICC technical staff review preliminary plans and make a determination whether proposed costs are appropriate. That cost is used to establish the maximum amount which can be paid under an Order. If there are cost overruns, a supplemental Order would be required to pay any additional expenses. DOT initially sets up an obligation for a project when the ICC provides an Order to them. When bills are submitted for an Order, a DOT employee verifies that an obligation has been set up and only allows expenditures up to that obligation amount. DOT does not review expenditures before payment; however, DOT may conduct an audit after the project is closed.

Concerning statutory compliance, the audit did not identify any instances where the ICC did not comply with statutes guiding the GCPF process; however, ICC staff could do more to assure investigations are done.

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Recommendations

1. The Illinois Commerce Commission and the Illinois Department of Transportation should develop written policies and procedures and adopt an Interagency Agreement that clarifies each agency's management responsibilities relating to Grade Crossing Protection Fund projects.

Findings: There is little written guidance available on which agency has responsibility for various required functions related to managing Grade Crossing Protection Fund (GCPF) projects. There is no interagency agreement, nor are there administrative rules or statutes in place to describe which agency is responsible for managing what aspect of the process. Neither agency has written policies or procedures in place to direct and assist its employees with duties associated with the GCPF.

Based on a review by the auditors, DOT appears to be responsible for reviewing general site plans and for paying the bills. ICC appears to be responsible for the selection and planning of the projects, which includes the creation of an annual five-year Project Plan. Neither agency provides on-site construction management for railroad crossing projects on local roads and streets. Instead, projects are run by a railroad, or in some cases by a local government, but are paid for by the State through the Fund.

While there was some coordination between DOT and ICC, adoption of an Interagency Agreement would document which agency was responsible for areas such as review of cost estimates and plans, review of expenditures, project management and close-out inspections. Such an agreement would eliminate the possibility of duplication of efforts and oversight, as well as ensure that essential elements of project management were being achieved.

ICC Response: Accepted. The ICC is preparing a policy and procedures document for, among other things, management of Grade Crossing Protection Fund projects. The document is currently in the review process, which will include comments from DOT, the rail industry, local communities, and other interested parties. The ICC also plans to pursue an interagency agreement with DOT to document each agency's management responsibilities relating to Grade Crossing Protection Fund projects.

DOT Response: Accepted. The Illinois Department of Transportation agrees with the above recommendation.

2. The Illinois Commerce Commission should assure that Grade Crossing Protection Fund projects are adequately managed. To do this, the expertise of ICC Railroad Safety Specialists should be utilized through on-site construction management to assure that the needed safety work is performed, that Order requirements are met, and the project expenditures are proper.

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Findings: Before an Order is issued, ICC staff are significantly involved in developing stipulated agreements and assuring that the work to be done will assure safety at the specified crossing. ICC responsibility ends after an Order issued and the detailed engineering plans have been approved.

ICC staff indicated that their oversight role is limited during the construction phase of a project. They do not assure that prescribed work is done, work is done on schedule, or that expenditures for the project are appropriate. ICC employees generally do not review the work when it is completed.

During the two-year period ending in FY02, 117 GCPF projects were completed. According to the audit, ICC Railroad Safety Specialists are the most qualified to review project expenditures and to inspect crossings to assure the improvements are complete and working properly.

ICC officials indicated that they believe that the State may sometimes be overcharged for projects by railroads. However, neither ICC nor DOT does any on-site construction monitoring or any additional expenditure reviews to address this issue.

The ICC did not have adequate controls in place to track and monitor compliance with requirements placed in Orders such as completion dates that the railroads and local governments are to adhere to. The detailed plans were missing from one of 10 projects sampled, and were submitted late for six of the other nine projects samples. For nine projects sampled where progress reports were required, all were either missing the reports or the reports were not timely.

ICC officials indicated that they have recently implemented a system that notifies them when estimates, plans, progress reports, and completion dates are approaching for railroads and local governments that are spelled out in the Order. The ICC has authority to impose penalties of at least \$1,000 for not complying with an ICC Order. However, no penalties have been imposed.

ICC Response: Partially Accepted. ICC agrees in principle with the recommendation however the ICC has inadequate funding to perform on-site construction management. ICC staff certainly has the expertise to conduct on-site management of highway-rail grade crossing improvement projects, but funding and headcount restrictions generally limit our project management to off-site management.

3. The Commission should assure that appropriate data is captured within computer systems to allow adequate management and timely completion of Grade Crossing Protection Fund Projects.

Findings: The ICC's automated system does not capture certain date information that would allow for more effective analysis and management of the GCPF projects. The

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Accepted - continued

system does not capture project initiation date or the date when all work required by the Order is completed. For all 84 completed projects that had expenditures in FY01 or FY02, the average completion time was 2.6 years from the year of the Order.

ICC Response: Accepted. ICC agrees with the recommendation. The ICC had been working on the development of an enhanced computer system, called "Railroad Information and Location System (RAILS)", that would have allowed for more comprehensive data input and project management, however funding shortfalls have stalled the project.

- 4. The Commission should continue to work to manage the fund balance in the Transportation Regulatory Fund to assure that it is maintained at a level that is in compliance with the statute (625 ILCS 5/18c-1503).**

Findings: Both the GCPF and the Transportation Regulatory Fund have experienced high fund balances. The GCPF has had an average year-end balance of over \$40 million, and the Transportation Regulatory Fund average over \$5 million, with a \$6.465 balance in FY02. By law the Fund balance for the Transportation Regulatory Fund should not exceed \$2.898 million.

ICC Response: Accepted. The Transportation Regulatory Fund (TRF) balance is currently in compliance with the statute. The ICC believes the appropriate processes are in place to prevent the accumulation of any excessive fund balance in the future.

- 5. The Illinois Commerce Commission and the Illinois Department of Transportation should work to appropriately manage fund balances in the Grade Crossing Protection Fund.**

Findings: The GCPF had a Fund balance that averaged more than \$40 million for 10 successive years.

ICC Response: Accepted. The ICC will help the Illinois Department of Transportation (DOT) develop new procedures that will improve DOT's ability to more quickly authorize disbursements from the Fund.

DOT Response: DOT agrees to continue to provide assistance to the Illinois Commerce Commission (ICC) with information beneficial in the management of fund balances in the Grade Crossing Protection Fund. Under the existing arrangement, the management of fund balances is primarily a function of the Illinois Commerce Commission, since the Illinois Department of Transportation does not have control over the number of ICC orders that are issued. By statute, the ICC has the sole authority for the function.

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6. The ICC should assure that all expenditures for Grade Crossing Protection Fund projects are reviewed in a timely manner to assure that they are appropriate and adequately supported. The Illinois Commerce Commission and the Illinois Department of Transportation should work together to develop standards on what documentation is required for Grade Crossing Protection Fund project.

Findings: While both the ICC and DOT have some responsibilities for GCPF project expenditure review, neither is conducting adequate expenditure reviews. Given the lack of adequate review, the State may be overpaying for improvements to railroad crossings. The ICC exercises some control over the costs through the Order process. Before the Order is entered, the ICC technical staff review preliminary plans and make a determination whether proposed costs are appropriate. That cost is used to establish the maximum amount which can be paid under an Order. If there are cost overruns, a supplemental Order would be required to pay any additional expenses.

DOT initially sets up an obligation for a project when the ICC provides an Order to them. When bills are submitted for an Order, an DOT employee verifies that an obligation has been set up and only allows expenditures up to that obligation amount. DOT does not review expenditures before payment; however, DOT may conduct an audit after the project is closed. During FY01 and FY02, DOT performed 65 audits. Those audits included 11 with recoveries to the Fund that totaled \$65,551. Expenditures during that same time period were \$59.5 million.

ICC and DOT have no clear standards on what documentation is to be included with billing for Fund projects. Expenditure documentation submitted for payment varied from projects where significant documentation was submitted, including items which were unrelated to the projects, to projects where bills were submitted with little or no supporting documentation. The auditors reviewed available billing information and found documentation for expenses related to rail projects in Illinois and other states. Supporting documentation was submitted that included hotels, meals and entertainment expenses in Arkansas, Oklahoma, Missouri and Illinois. The sample also included projects with bills but little or no supporting documentation.

ICC Response: Accepted. ICC currently reviews estimates of cost submitted by railroads and local governmental agencies for proposed projects. ICC also reviews project expenditures by railroads and local government agencies whenever parties submit requests for additional assistance from the Grade Crossing Protection Fund (GCPF) for an ongoing project. Currently, DOT reviews bills submitted by railroads and local government agencies requesting payment from the GCPF. The ICC plans to work with IDOT to develop standards on what billing documentation is required for Grade Crossing

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Accepted - concluded

Protection Fund projects and will provide technical support to DOT personnel responsible for reviewing bills submitted for payment.

DOT Response: Railroad bills are paid and audited by the Illinois Department of Transportation in accordance with Federal-Aid Policy Guide (FAPG) rules. The Illinois Department of Transportation agrees to work with the Illinois Commerce Commission to develop written standards on what documentation is required for Grade Crossing Protection Fund projects.

Auditor Comments: Many Grade Crossing Protection Fund projects do not involve any federal funds. The Illinois Department of Transportation did not provide documentation in policy that these federal rules apply to State GCPF funds and ICC Orders do not incorporate the rules by reference.

- 7. The Illinois Commerce Commission staff should assure that they receive reports on failures, accidents, and complaints and then investigate them appropriately. This should help them to fulfill their statutory responsibility of assuring that adequate warning devices are in place at grade crossings.**

Findings: The Vehicle Code gives the ICC authority for several types of investigations. Also, the ICC has the general authority to require installation of adequate equipment to safeguard the health and safety of the public based on its own information or a complaint, after proper investigation.

The Illinois Vehicle Code requires rail carriers to report promptly to the ICC any accident involving their equipment, track, or other property which resulted in loss of life to any person. Such carriers must file a written report with the ICC too. The reports are strictly confidential, shall be specifically prohibited from disclosure, and shall not be admissible in any administrative or judicial proceeding. Statutes allow but do not require the ICC to investigate all railroad accidents involving fatalities or any other (rail) accident. The ICC staff generally investigate accidents involving fatalities, but do not routinely investigate other accidents. Finally, ICC staff are not notified when signal failures occur. These failures are reported to the Federal Railway Administration.

Proper investigations of accidents, failures, and complaints are an important way that the ICC Rail Safety Section staff can assure that they meet their responsibility for assuring that adequate warning devices are in place, and which projects or types of projects should be funded.

ICC Response: Accepted. ICC now receives this information from the Federal Railroad Administration concerning grade crossing signal failure incidents that occur in Illinois. The ICC investigates all grade crossing complaints received and all train/vehicle grade crossing collisions that result in loss of life. ICC investigations of fatal grade

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crossing collisions include a thorough review of the adequacy of the existing warning devices, and whether existing conditions at the crossing are in compliance with State and federal rail safety rules and regulations. Inadequate funding prevents the ICC from investigating all grade-crossing collisions.