

House Bill 1382

By: Representatives Channell of the 111th, Parrish of the 144th, Bannister of the 77th, Manning of the 32nd and McCall of the 90th

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 2 of Article 6 of Chapter 6 of Title 32 of the Official Code of Georgia
2 Annotated, relating to railroads, so as to change certain provisions relating to the duty to
3 maintain grade crossings; to change certain provisions relating to authority of the Department
4 of Transportation, counties, and municipalities to eliminate grade crossings; to change certain
5 provisions relating to responsibility for construction of new grade crossings and relocation
6 of existing grade crossings; to provide procedures relative to certain elimination of grade
7 crossings; to change certain provisions relating to division of costs of grade crossing
8 elimination projects; to change certain provisions relating to procedure to obtain maintenance
9 of grade separation structures, protective devices, and grade crossings; to change certain
10 provisions relating to judicial review; to amend Article 5 of Chapter 8 of Title 46 of the
11 Official Code of Georgia Annotated, relating to construction, improvement, and repair of rail
12 lines, depots, and roads, so as to repeal certain provisions relating to obstructions located at
13 crossings, disrepair of crossings, and removal of obstructions or repair of crossings by
14 counties upon the failure of a company to remove obstructions or repair crossings; to repeal
15 conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 style="text-align:center">**SECTION 1.**

18 Part 2 of Article 6 of Chapter 6 of Title 32 of the Official Code of Georgia Annotated,
19 relating to railroads, is amended by striking Code Section 32-6-190, relating to the duty to
20 maintain grade crossings, and inserting in lieu thereof the following:

21 "32-6-190.

22 Any railroad whose track or tracks cross a public road at grade shall have a duty to
23 maintain such grade crossings in such condition as to permit the safe and ~~convenient~~
24 reasonable passage of public traffic. Such duty of maintenance shall include that portion
25 of the public road lying between the track or tracks and for two feet beyond the ends of the

1 crossties on each side and extending four feet beyond the traveled way or edge of the
 2 shoulder of such crossing."

3 **SECTION 2.**

4 Said part is further amended by striking Code Section 32-6-193, relating to authority of the
 5 Department of Transportation, counties, and municipalities to eliminate grade crossings, and
 6 inserting in lieu thereof the following:

7 "32-6-193.

8 When it is reasonably necessary in the interest of public safety, the department, in respect
 9 to the state highway system, a county, in respect to its county road system, or a
 10 municipality, in respect to its municipal street system, may authorize and direct the
 11 elimination of a grade crossing by construction of an underpass or overpass or by physical
 12 removal of the grade crossing and barricading or removing the approaches thereto without
 13 construction of an underpass or overpass, provided that any such grade crossing elimination
 14 shall be in accordance with this part and that no grade crossing on a county road system or
 15 municipal street system shall be eliminated by construction of an underpass or overpass
 16 upon order of the county or municipality until and unless the department shall approve the
 17 plans and specifications of the proposed construction. No grade crossing on a public road
 18 shall be permanently closed except by elimination in accordance with this part."

19 **SECTION 3.**

20 Said part is further amended by striking subsection (a) of Code Section 32-6-191, relating
 21 to responsibility for construction of new grade crossings and relocation of existing grade
 22 crossings, and inserting in lieu thereof the following:

23 "(a) Where a new grade crossing results from the construction of a new or relocated
 24 railroad line, the railroad shall be responsible for and bear all expenses of the construction
 25 of such grade crossing. The department, when such a grade crossing is on the state highway
 26 system, a county, when such a grade crossing is on its county road system, or a
 27 municipality, when such a grade crossing is on its municipal street system, may impose
 28 such terms and conditions on the nature and manner of construction of such a grade
 29 crossing, including the installation of protective devices, as may be ~~reasonably~~ necessary
 30 for the ~~safety and convenience of the traveling public~~ safe and reasonable passage of public
 31 traffic."

32 **SECTION 4.**

33 Said part is further amended by inserting a new Code section to read as follows:

34 "32-6-193.1.

1 (a) The department shall by rule or regulation prescribe uniform criteria for its own use
 2 and that of local governing authorities in assessing whether elimination of a grade crossing
 3 on a public road by physical removal of the grade crossing and barricading or removing the
 4 approaches thereto without construction of an underpass or overpass is reasonably
 5 necessary in the interest of public safety. For purposes of this Code section, 'reasonably
 6 necessary in the interest of public safety' means that the enhancement of public safety
 7 resulting from such elimination of the grade crossing will outweigh any inconvenience to
 8 the reasonable passage of public traffic caused by such rerouting of traffic. Such criteria
 9 shall include consideration of each of the following factors:

- 10 (1) Number and timetable speeds of passenger trains operated through the crossing;
- 11 (2) Number and timetable speeds of freight trains operated through the crossing;
- 12 (3) Distance to alternate crossings;
- 13 (4) Accident history of the crossing for the immediately preceding five-year period;
- 14 (5) Type of warning device present at the crossing, if any;
- 15 (6) The alignments, horizontal and vertical, of the roadway and the railroad and the angle
 16 of the intersection of those alignments;
- 17 (7) The volume of highway traffic by average daily traffic and posted speed limit over
 18 the crossing;
- 19 (8) Any use of the crossing by:
 - 20 (A) Trucks carrying hazardous material;
 - 21 (B) Vehicles carrying passengers for hire;
 - 22 (C) School buses; or
 - 23 (D) Emergency vehicles; and
- 24 (9) Any other relevant factors as prescribed by the department.

25 (b)(1) Any railroad may file a written petition requesting an order to eliminate a grade
 26 crossing on a public road by physical removal of the grade crossing and barricading or
 27 removing the approaches thereto without construction of an underpass or overpass. Any
 28 such petition shall be filed with the department in respect to the state highway system, the
 29 county governing authority in respect to its county road system, or a municipality in
 30 respect to its municipal street system.

31 (2) Any petition by a railroad under this subsection shall include without limitation
 32 information as to each of the factors set forth in paragraphs (1) through (5) of subsection
 33 (a) of this Code section.

34 (3) The department or the local governing authority, whichever is applicable, shall
 35 conduct a public information meeting on the matter prior to deciding whether to grant or
 36 deny such a petition.

1 (c)(1) If the department in respect to the state highway system, a county governing
2 authority in respect to its county road system, or a municipality in respect to its municipal
3 street system determines that elimination of a grade crossing in accordance with this
4 Code section is reasonably necessary in the interest of public safety, the department or
5 the local governing authority may issue an order to eliminate the crossing. Such order
6 shall be in writing, and a copy shall be served upon the railroad. If a local governing
7 authority issues such an order, it shall make a record of its findings and transmit a copy
8 of the same along with the order to the department.

9 (2) If the department in respect to the state highway system, a county governing authority
10 in respect to its county road system, or a municipality in respect to its municipal street
11 system determines that elimination of a grade crossing in accordance with this Code
12 section is not reasonably necessary in the interest of public safety, the department or the
13 local governing authority may issue an order denying a petition to eliminate the crossing.
14 Such order shall be in writing, and a copy shall be served upon the railroad. If a local
15 governing authority denies a petition, it shall make a written record of its findings and
16 transmit a copy of the same along with the order and petition to the department.

17 (3)(A) Any railroad aggrieved by an order of a local governing authority under this
18 subsection may make a written request to the department for review of such order.
19 Such request shall be accompanied by a \$500.00 filing fee. The department shall
20 within 60 days after the filing of such request review the matter.

21 (B) Upon review of the order and findings of the local governing authority and any
22 filings by the railroad, if the department determines that elimination of a grade crossing
23 in accordance with this Code section is not reasonably necessary in the interest of
24 public safety, the department shall order that the crossing shall remain open.

25 (C) Upon review of the order and findings of the local governing authority and any
26 filings by the railroad, if the department determines that elimination of a grade crossing
27 in accordance with this Code section is reasonably necessary in the interest of public
28 safety, the department shall issue an order to eliminate the crossing.

29 (D) Any such order of the department shall be in writing, and a copy of the order shall
30 be served upon the railroad and the local governing authority. As part of such order,
31 the department shall assess all its costs of investigating and reviewing the matter against
32 the railroad if an order for the crossing to remain open is issued or against the county
33 or municipality if an order to eliminate the crossing is issued, and the party so assessed
34 shall be liable therefor to the department; provided, however, that any filing fee paid
35 to the department by a railroad shall be applied to any such amount assessed against the
36 railroad, and the balance of such filing fee, if any, shall be refunded to the railroad.

1 (d) If an order to close a grade crossing is issued, the railroad shall at its expense
 2 physically remove the crossing from the tracks and for two feet beyond the ends of the
 3 crossties on each side and extending four feet beyond the traveled way or edge of the
 4 shoulder of such crossing and erect a department approved barricade; and the department
 5 in respect to the state highway system, the county in respect to its county road system, or
 6 the municipality in respect to its municipal street system may at its expense remove
 7 approaches to the crossing."

8 SECTION 5.

9 Said part is further amended by striking subsection (a) of Code Section 32-6-195, relating
 10 to division of costs of grade crossing elimination projects, and inserting in lieu thereof the
 11 following:

12 "(a) The costs of ~~the~~ any grade crossing elimination project involving construction of an
 13 underpass or overpass in which the railroad or railroads shall be required to share shall
 14 include the costs of surveys, preparation of plans and specifications, the securing of
 15 estimates or bids, if any, and the total cost of construction of the grade separation structures
 16 involved, including the establishment of drainage and any excavation and other expenses
 17 involved in constructing public roadways or railroad lines under any grade separation
 18 structure. However, the railroad or railroads shall not be required to participate in the cost
 19 of any construction outside the limits of grade or alignment change required for the public
 20 road to go over or under the track or tracks of the railroad or railroads nor in any costs
 21 apportionable to purposes other than the elimination of the grade crossing. Where
 22 additional lanes are added to the public road, the railroad's share of the cost, if any, shall
 23 be based on the cost of a grade elimination project having the same number of lanes as the
 24 public road prior to the construction of said grade elimination project."

25 SECTION 6.

26 Said part is further amended by striking subsection Code Section 32-6-202, relating to
 27 procedure to obtain maintenance of grade separation structures, protective devices, and grade
 28 crossings, and inserting in lieu thereof the following:

29 "32-6-202.

30 (a)(1) Whenever any maintenance of a grade separation structure, protective devices, or
 31 a grade crossing is ~~reasonably~~ necessary for the ~~safety and convenience of the traveling~~
 32 ~~public~~ safe and reasonable passage of public traffic and such maintenance is the
 33 responsibility of a railroad under this part, the department in respect to the state highway
 34 system, the governing authority of the county in respect to its county road system, or the
 35 governing authority of the municipality ~~concerned~~ in respect to its municipal street

1 system may give written notice to the railroad of the necessity of such maintenance and
2 order the railroad to comply with the maintenance requirements of this part. Such order
3 shall be in writing and, as applicable, shall include the United States Department of
4 Transportation inventory number and railroad milepost number, as well as the highway,
5 street, or roadway name and number as identified on a general highway map prepared by
6 the department. Such order shall be served upon the railroad by certified mail or statutory
7 overnight delivery, return receipt requested. If the railroad does not proceed with the
8 performance of such maintenance within 30 days after receipt of such notice, the
9 department, the county, or the municipality may perform such maintenance and thereafter
10 collect from the railroad the cost of such maintenance, following the collection
11 procedures of subsection (c) of Code Section 32-6-194.

12 (2)(A) If any railroad fails to comply with such an order of a county or municipality
13 within 30 days after receipt of such notice and order, the county or municipal governing
14 authority may file with the department a written request for review of the matter. Any
15 such request for review shall be accompanied by a filing fee of \$500.00 and shall
16 include a copy of the order of the county or municipality. A copy of such request for
17 review shall be served on the railroad by the county or municipality by certified mail
18 or statutory overnight delivery, return receipt requested. The department shall within
19 30 days after the filing of such request investigate the matter, including undertaking
20 consideration of any statement of position filed by the railroad within ten days after the
21 filing of the request for review, and issue an order either requiring the railroad to take
22 such action as is necessary for purposes of compliance with the maintenance
23 requirements of this part or nullifying the order of the local governing authority. As
24 part of such order, the department shall assess all its costs of investigating and
25 reviewing the matter against the railroad if a compliance order is issued or against the
26 county or municipality if the order of the local governing authority is nullified, and the
27 party so assessed shall be liable therefor to the department; provided, however, that any
28 filing fee paid to the department by a county or municipality shall be applied to any
29 such amount assessed against the county or municipality, and the balance of such filing
30 fee, if any, shall be refunded to the county or municipality. Copies of any such order
31 of the department shall be served upon the railroad and the local governing authority
32 by certified mail or statutory overnight delivery, return receipt requested.

33 (B) If any railroad fails to comply with any order of the department under paragraph
34 (1) of this subsection or subparagraph (A) of this paragraph within 30 days after receipt
35 of such order, then after notice and opportunity for a hearing, the railroad shall be
36 subject to a civil penalty in the amount of \$500.00 per day from 30 days after the date
37 of receipt of the order of the department until the railroad has complied with the order

1 of the department. The provisions of this subparagraph are in addition to the provisions
 2 of Code Sections 32-1-10 and 32-6-1, if applicable. Any fine under this subparagraph
 3 shall be tolled for the period from the filing of a petition for a judicial review under
 4 Code Section 32-6-203 until the rendering of a final decision.

5 (3) Each railroad whose track or tracks cross a public road in this state shall identify in
 6 writing to the department, by job title and with contact information, the appropriate office
 7 responsible for the maintenance of grade separation structures, protective devices, and
 8 grade crossings and upon which the notices and orders provided for in this subsection
 9 shall be served. Such information shall be kept current by the railroad and shall be made
 10 publicly available and accessible by the department.

11 (4) Nothing in this Code section subsection shall be construed so as to prevent the
 12 department, a county, or a municipality from performing any emergency maintenance
 13 which is necessary for the safe and reasonable passage of public traffic, provided
 14 reasonable notice is given to the railroad involved, and from collecting the expenses of
 15 such maintenance.

16 (b) Whenever any maintenance of a grade separation structure, protective devices, or a
 17 grade crossing is reasonably necessary for the safe passage of railroad traffic and such
 18 maintenance is the responsibility of the department, a county, or a municipality, the
 19 railroad concerned may give written notice to the department, county, or municipality of
 20 the necessity of such maintenance. If the department, county, or municipality does not
 21 proceed with the performance of such maintenance within 30 days after receipt of such
 22 notice, the railroad may proceed to enforce performance of such maintenance as provided
 23 in Code Section 32-6-175. Nothing in this ~~Code section~~ subsection shall be construed so
 24 as to prevent a railroad from performing any emergency maintenance which is necessary
 25 for the safe passage of railroad traffic, provided reasonable notice is given to the
 26 department, county, or municipality involved, and from collecting the expenses of such
 27 maintenance."

28 SECTION 7.

29 Said part is further amended by striking Code Section 32-6-203, relating to judicial review,
 30 and inserting in lieu thereof the following:

31 "32-6-203.

32 Any judgment, decision, or order of the department upon any question involving the
 33 advisability or necessity of eliminating any grade crossing, of installing any protective
 34 device, of improving any grade crossing structure, or involving any other question
 35 concerning the ~~state highway system~~ public roads arising under this part shall be subject
 36 to judicial review in such manner as is ~~now or hereafter~~ provided by law: for judicial

1 review of contested cases under Chapter 13 of Title 50, the 'Georgia Administrative
2 Procedure Act.' Pending the final determination of any judicial proceedings so instituted,
3 the department, without prejudice to it or the railroad involved and at its own risk, may
4 proceed with the work involved in such litigation, subject to final judgment of the court as
5 to all questions involved in such litigation."

6 **SECTION 8.**

7 Article 5 of Chapter 8 of Title 46 of the Official Code of Georgia Annotated, relating to
8 construction, improvement, and repair of rail lines, depots, and roads, is amended by
9 repealing and reserving Code Section 46-8-128, relating to obstructions located at crossings,
10 disrepair of crossings, and removal of obstructions or repair of crossings by counties upon
11 the failure of a company to remove obstructions or repair crossings.

12 **SECTION 9.**

13 All laws and parts of laws in conflict with this Act are repealed.