

The House Committee on Transportation offered the following substitute to HB 1382:

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 procedure to obtain maintenance of grade
8 separation structures, protective devices, and grade crossings; to change certain provisions
9 relating to judicial review; to amend Article 5 of Chapter 8 of Title 46 of the Official Code
10 of Georgia Annotated, relating to construction, improvement, and repair of rail lines, depots,
11 and roads, so as to repeal certain provisions relating to obstructions located at crossings,
12 disrepair of crossings, and removal of obstructions or repair of crossings by counties upon
13 the failure of a company to remove obstructions or repair crossings; to repeal conflicting
14 laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

19 "32-6-190.

20 Any railroad whose track or tracks cross a public road at grade shall have a duty to
21 maintain such grade crossings in such condition as to permit the safe and ~~convenient~~
22 reasonable passage of public traffic. Such duty of maintenance shall include that portion
23 of the public road lying between the track or tracks and for two feet beyond the ends of the
24 crossties on each side and extending four feet beyond the traveled way or edge of the
25 shoulder of such crossing."
26

1 approaches thereto without construction of an underpass or overpass is reasonably
2 necessary in the interest of public safety. For purposes of this Code section, 'reasonably
3 necessary in the interest of public safety' means that the enhancement of public safety
4 resulting from such elimination of the grade crossing will outweigh any inconvenience to
5 the reasonable passage of public traffic, specifically including without limitation
6 emergency vehicle traffic, caused by such rerouting of traffic. Such criteria shall include
7 consideration of each of the following factors:

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

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

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

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

35 (c)(1) If the department in respect to the state highway system, a county governing
36 authority in respect to its county road system, or a municipality in respect to its municipal
37 street system determines that elimination of a grade crossing in accordance with this

1 Code section is reasonably necessary in the interest of public safety, the department or
2 the local governing authority may issue an order to eliminate the crossing. Such order
3 shall be in writing, and a copy shall be served upon the railroad. If a local governing
4 authority issues such an order, it shall make a record of its findings and transmit a copy
5 of the same along with the order to the department.

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

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

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

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

26 (D) Any such order of the department shall be in writing, and a copy of the order shall
27 be served upon the railroad and the local governing authority. As part of such order,
28 the department shall assess all its costs of investigating and reviewing the matter against
29 the railroad if an order for the crossing to remain open is issued or against the county
30 or municipality if an order to eliminate the crossing is issued, and the party so assessed
31 shall be liable therefor to the department; provided, however, that any filing fee paid
32 to the department by a railroad shall be applied to any such amount assessed against the
33 railroad, and the balance of such filing fee, if any, shall be refunded to the railroad. The
34 department shall keep detailed records of its costs of investigation and review for
35 purposes of this subparagraph, and such records shall be subject to public inspection as
36 provided by Article 4 of Chapter 18 of Title 50.

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. The provisions of Code Section 32-6-195 for division of costs
 8 of elimination of a grade crossing by construction of an underpass or overpass shall not
 9 apply to elimination of any grade crossing under this Code section."

10 SECTION 5.

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

14 "32-6-202.

15 (a)(1) Whenever any maintenance of a grade separation structure, protective devices, or
 16 a grade crossing is ~~reasonably~~ necessary for the ~~safety and convenience of the traveling~~
 17 ~~public~~ safe and reasonable passage of public traffic and such maintenance is the
 18 responsibility of a railroad under this part, the department in respect to the state highway
 19 system, the governing authority of the county in respect to its county road system, or the
 20 governing authority of the municipality concerned in respect to its municipal street
 21 system may give written notice to the railroad of the necessity of such maintenance and
 22 order the railroad to comply with the maintenance requirements of this part. Such order
 23 shall be in writing and, as applicable, shall include the United States Department of
 24 Transportation inventory number and railroad milepost number, as well as the highway,
 25 street, or roadway name and number as identified on a general highway map prepared by
 26 the department. Such order shall be served upon the railroad by certified mail or statutory
 27 overnight delivery, return receipt requested. ~~If the railroad does not proceed with the~~
 28 ~~performance of such maintenance within 30 days after receipt of such notice, the~~
 29 ~~department, the county, or the municipality may perform such maintenance and thereafter~~
 30 ~~collect from the railroad the cost of such maintenance, following the collection~~
 31 ~~procedures of subsection (c) of Code Section 32-6-194.~~

32 (2)(A) If any railroad fails to comply with such an order of a county or municipality
 33 within 30 days after receipt of such notice and order, the county or municipal governing
 34 authority may file with the department a written request for review of the matter. Any
 35 such request for review shall be accompanied by a filing fee of \$500.00 per grade
 36 crossing and shall include a copy of the order of the county or municipality. A copy of

1 such request for review shall be served on the railroad by the county or municipality by
2 certified mail or statutory overnight delivery, return receipt requested. The department
3 shall within 30 days after the filing of such request investigate the matter, including
4 undertaking consideration of any statement of position filed by the railroad within ten
5 days after the filing of the request for review, and issue an order either requiring the
6 railroad to take such action as is necessary for purposes of compliance with the
7 maintenance requirements of this part or nullifying the order of the local governing
8 authority. As part of such order, the department shall assess all its costs of investigating
9 and reviewing the matter against the railroad if a compliance order is issued or against
10 the county or municipality if the order of the local governing authority is nullified, and
11 the party so assessed shall be liable therefor to the department; provided, however, that
12 any filing fee paid to the department by a county or municipality shall be applied to any
13 such amount assessed against the county or municipality, and the balance of such filing
14 fee, if any, shall be refunded to the county or municipality. Copies of any such order
15 of the department shall be served upon the railroad and the local governing authority
16 by certified mail or statutory overnight delivery, return receipt requested. The
17 department shall keep detailed records of its costs of investigation and review for
18 purposes of this subparagraph, and such records shall be subject to public inspection as
19 provided by Article 4 of Chapter 18 of Title 50.

20 (B) If any railroad fails to comply with any order of the department under paragraph
21 (1) of this subsection or subparagraph (A) of this paragraph within 30 days after receipt
22 of such order, then after notice and opportunity for a hearing, the railroad shall be
23 subject to a civil penalty in the amount of \$500.00 per day from 30 days after the date
24 of receipt of the order of the department until the railroad has complied with the order
25 of the department; provided, however, that the department may grant an extension of
26 time for compliance without penalty upon a showing that the railroad's failure to timely
27 comply was due to force majeure. The provisions of this subparagraph are in addition
28 to the provisions of Code Sections 32-1-10 and 32-6-1, if applicable. Any fine under
29 this subparagraph shall be tolled for the period from the filing of a petition for a judicial
30 review under Code Section 32-6-203 until the rendering of a final decision.

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

1 disrepair of crossings, and removal of obstructions or repair of crossings by counties upon
2 the failure of a company to remove obstructions or repair crossings.

3 **SECTION 8.**

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