

The Senate Transportation Committee 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; provided, however, that road surface material for such  
23 maintenance shall be provided by the county in respect to county roads, by the municipality  
24 in respect to municipal streets, or the department in respect to state roads. Such duty of  
25 maintenance shall include that portion of the public road lying between the track or tracks  
26

1 and for two feet beyond the ends of the crossties on each side and extending four feet  
 2 beyond the traveled way or flush with the edge of a paved shoulder, whichever is greater,  
 3 of such crossing."

#### 4 SECTION 2.

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

8 "32-6-193.

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

#### 20 SECTION 3.

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

24 "(a) Where a new grade crossing results from the construction of a new or relocated  
 25 railroad line, the railroad shall be responsible for and bear all expenses of the construction  
 26 of such grade crossing. The department, when such a grade crossing is on the state highway  
 27 system, a county, when such a grade crossing is on its county road system, or a  
 28 municipality, when such a grade crossing is on its municipal street system, may impose  
 29 such terms and conditions on the nature and manner of construction of such a grade  
 30 crossing, not including the installation of protective devices, as may be ~~reasonably~~  
 31 necessary for the ~~safety and convenience of the traveling public~~ safe and reasonable  
 32 passage of public traffic."

**SECTION 4.**

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

"32-6-193.1.

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

- (1) Number and timetable speeds of passenger trains operated through the crossing;
- (2) Number and timetable speeds of freight trains operated through the crossing;
- (3) Distance to alternate crossings;
- (4) Accident history of the crossing for the immediately preceding five-year period;
- (5) Type of warning device present at the crossing, if any;
- (6) The alignments, horizontal and vertical, of the roadway and the railroad and the angle of the intersection of those alignments;
- (7) The average daily traffic volume in proportion to the population of the municipality if the crossing is located within a municipality or the population of the county if the crossing is located within an unincorporated area of a county;
- (8) The posted speed limit over the crossing;
- (9) The effect of closing the crossing upon access by persons utilizing:
  - (A) Hospital or medical facilities and public health departments, specifically including without limitation utilization by medical personnel;
  - (B) Facilities of federal, state, or local government, specifically including without limitation court, postal, library, sanitation, and park facilities; and
  - (C) Commercial, industrial, and other areas of public commerce;
- (10) Any use of the crossing by:
  - (A) Trucks carrying hazardous material;
  - (B) Vehicles carrying passengers for hire;
  - (C) School buses;
  - (D) Emergency vehicles; or

1 (E) Public or private utility vehicles, specifically including without limitation water,  
2 sewer, natural gas, and electric utility maintenance and repair vehicles; and

3 (11) Any other relevant factors as prescribed by the department.

4 (b)(1) Any railroad may file a written petition requesting an order to eliminate a grade  
5 crossing on a public road by physical removal of the grade crossing and barricading or  
6 removing the approaches thereto without construction of an underpass or overpass. Any  
7 such petition shall be filed by certified mail or statutory overnight delivery, return receipt  
8 requested, with the department in respect to the state highway system, a county governing  
9 authority in respect to its county road system, or a municipal governing authority in  
10 respect to its municipal street system.

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

14 (3) The department or the local governing authority, whichever is applicable, shall  
15 conduct a public hearing on the matter prior to deciding whether to grant or deny such a  
16 petition.

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

25 (2) If the department in respect to the state highway system, a county governing authority  
26 in respect to its county road system, or a municipal governing authority in respect to its  
27 municipal street system determines that elimination of a grade crossing in accordance  
28 with this Code section is not reasonably necessary in the interest of public safety, the  
29 department or the local governing authority may issue an order denying a petition to  
30 eliminate the crossing. Such order shall be in writing, and a copy shall be served upon  
31 the railroad. If a local governing authority denies a petition, it shall make a written record  
32 of its findings and transmit a copy of the same along with the order and petition to the  
33 department.

34 (3)(A) Any railroad aggrieved by an order of a local governing authority under this  
35 subsection may make a written request to the department for review of such order.

1 Such request shall be accompanied by a \$500.00 filing fee. The department shall  
2 within 60 days after the filing of such request review the matter.

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

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

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

22 (d) If an order to close a grade crossing is issued, the railroad shall at its expense  
23 physically remove the crossing from the tracks and for two feet beyond the ends of the  
24 crossties on each side and extending four feet beyond the traveled way or flush with the  
25 edge of a paved shoulder, whichever is greater, of such crossing and erect a department  
26 approved barricade; and the department in respect to the state highway system, the county  
27 in respect to its county road system, or the municipality in respect to its municipal street  
28 system may at its expense remove approaches to the crossing. The provisions of Code  
29 Section 32-6-195 for division of costs of elimination of a grade crossing by construction  
30 of an underpass or overpass shall not apply to elimination of any grade crossing under this  
31 Code section."

### 32 SECTION 5.

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

1 "32-6-202.

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

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

1 fee, if any, shall be refunded to the county or municipality. Copies of any such order  
 2 of the department shall be served upon the railroad and the local governing authority  
 3 by certified mail or statutory overnight delivery, return receipt requested. The  
 4 department shall keep detailed records of its costs of investigation and review for  
 5 purposes of this subparagraph, and such records shall be subject to public inspection as  
 6 provided by Article 4 of Chapter 18 of Title 50.

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

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

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

29 (b) Whenever any maintenance of a grade separation structure, protective devices, or a  
 30 grade crossing is reasonably necessary for the safe passage of railroad traffic and such  
 31 maintenance is the responsibility of the department, a county, or a municipality, the  
 32 railroad concerned may give written notice to the department, county, or municipality of  
 33 the necessity of such maintenance. If the department, county, or municipality does not  
 34 proceed with the performance of such maintenance within 30 days after receipt of such  
 35 notice, the railroad may proceed to enforce performance of such maintenance as provided  
 36 in Code Section 32-6-175. Nothing in this ~~Code section~~ subsection shall be construed so

1 as to prevent a railroad from performing any emergency maintenance which is necessary  
 2 for the safe passage of railroad traffic, provided reasonable notice is given to the  
 3 department, county, or municipality involved, and from collecting the expenses of such  
 4 maintenance."

#### 5 **SECTION 6.**

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

8 "32-6-203.

9 Any judgment, decision, or order of the department upon any question involving the  
 10 advisability or necessity of eliminating any grade crossing, of installing any protective  
 11 device, of improving any grade crossing structure, or involving any other question  
 12 concerning the ~~state highway system~~ public roads arising under this part shall be subject  
 13 to judicial review in such manner as is ~~now or hereafter~~ provided by law: for judicial  
 14 review of contested cases under Chapter 13 of Title 50, the 'Georgia Administrative  
 15 Procedure Act.' Pending the final determination of any judicial proceedings so instituted,  
 16 the department, without prejudice to it or the railroad involved and at its own risk, may  
 17 proceed with the work involved in such litigation, subject to final judgment of the court as  
 18 to all questions involved in such litigation."

#### 19 **SECTION 7.**

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

#### 25 **SECTION 8.**

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