

House Bill 1382 (AS PASSED HOUSE AND SENATE)

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 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:

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

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

20 "32-6-190.

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

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 average daily traffic volume in proportion to the population of the municipality
 16 if the crossing is located within a municipality or the population of the county if the
 17 crossing is located within an unincorporated area of a county;
- 18 (8) The posted speed limit over the crossing;
- 19 (9) The effect of closing the crossing upon access by persons utilizing:
 - 20 (A) Hospital or medical facilities and public health departments, specifically including
 21 without limitation utilization by medical personnel;
 - 22 (B) Facilities of federal, state, or local government, specifically including without
 23 limitation court, postal, library, sanitation, and park facilities; and
 - 24 (C) Commercial, industrial, and other areas of public commerce;
- 25 (10) Any use of the crossing by:
 - 26 (A) Trucks carrying hazardous material;
 - 27 (B) Vehicles carrying passengers for hire;
 - 28 (C) School buses;
 - 29 (D) Emergency vehicles; or
 - 30 (E) Public or private utility vehicles, specifically including without limitation water,
 31 sewer, natural gas, and electric utility maintenance and repair vehicles; and
- 32 (11) Any other relevant factors as prescribed by the department.

33 (b)(1) Any railroad may file a written petition requesting an order to eliminate a grade
 34 crossing on a public road by physical removal of the grade crossing and barricading or
 35 removing the approaches thereto without construction of an underpass or overpass. Any
 36 such petition shall be filed by certified mail or statutory overnight delivery, return receipt
 37 requested, with the department in respect to the state highway system, a county governing

1 authority in respect to its county road system, or a municipal governing authority in
2 respect to its municipal street system.

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

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

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

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

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

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

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

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

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

SECTION 5.

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

"32-6-202.

(a)(1) Whenever any maintenance of a grade separation structure, protective devices, or a grade crossing is ~~reasonably~~ necessary for the ~~safety and convenience of the traveling public~~ safe and reasonable passage of public traffic and such maintenance is the responsibility of a railroad under this part, the department in respect to the state highway system, the governing authority of the county in respect to its county road system, or the governing authority of the municipality concerned in respect to its municipal street system may give written notice to the railroad of the necessity of such maintenance and order the railroad to comply with the maintenance requirements of this part. Such order shall be in writing and, as applicable, shall include the United States Department of Transportation inventory number and railroad milepost number, as well as the highway,

1 street, or roadway name and number as identified on a general highway map prepared by
2 the department. Such order shall be served upon the railroad by certified mail or statutory
3 overnight delivery, return receipt requested. If the railroad does not proceed with the
4 performance of such maintenance within 30 days after receipt of such notice, the
5 department, the county, or the municipality may perform such maintenance and thereafter
6 collect from the railroad the cost of such maintenance, following the collection
7 procedures of subsection (c) of Code Section 32-6-194.

8 (2)(A) If any railroad fails to comply with such an order of a county or municipality
9 within 30 days after receipt of such notice and order, the county or municipal governing
10 authority may file with the department a written request for review of the matter. Any
11 such request for review shall be accompanied by a filing fee of \$500.00 per grade
12 crossing and shall include a copy of the order of the county or municipality. A copy of
13 such request for review shall be served on the railroad by the county or municipality by
14 certified mail or statutory overnight delivery, return receipt requested. The department
15 shall within 30 days after the filing of such request investigate the matter, including
16 undertaking consideration of any statement of position filed by the railroad within ten
17 days after the filing of the request for review, and issue an order either requiring the
18 railroad to take such action as is necessary for purposes of compliance with the
19 maintenance requirements of this part or nullifying the order of the local governing
20 authority. As part of such order, the department shall assess all its costs of investigating
21 and reviewing the matter against the railroad if a compliance order is issued or against
22 the county or municipality if the order of the local governing authority is nullified, and
23 the party so assessed shall be liable therefor to the department; provided, however, that
24 any filing fee paid to the department by a county or municipality shall be applied to any
25 such amount assessed against the county or municipality, and the balance of such filing
26 fee, if any, shall be refunded to the county or municipality. Copies of any such order
27 of the department shall be served upon the railroad and the local governing authority
28 by certified mail or statutory overnight delivery, return receipt requested. The
29 department shall keep detailed records of its costs of investigation and review for
30 purposes of this subparagraph, and such records shall be subject to public inspection as
31 provided by Article 4 of Chapter 18 of Title 50.

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

1 time for compliance without penalty upon a showing that the railroad's failure to timely
 2 comply was due to force majeure. The provisions of this subparagraph are in addition
 3 to the provisions of Code Sections 32-1-10 and 32-6-1, if applicable. Any fine under
 4 this subparagraph shall be tolled for the period from the filing of a petition for a judicial
 5 review under Code Section 32-6-203 until the rendering of a final decision.

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

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

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

29 SECTION 6.

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

32 "32-6-203.

33 Any judgment, decision, or order of the department upon any question involving the
 34 advisability or necessity of eliminating any grade crossing, of installing any protective
 35 device, of improving any grade crossing structure, or involving any other question
 36 concerning the ~~state highway system~~ public roads arising under this part shall be subject

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

7 **SECTION 7.**

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

13 **SECTION 8.**

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