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HIGHWAYS, BRIDGES, AND FERRIES

Regulation of Maintenance and Use of Public Roads Generally: Change Duty and Processes of Maintaining Railroad Grade Crossings

CODE SECTIONS:	O.C.G.A. §§ 32-6-190 (amended), -191 (amended), -193 (amended), -193.1 (new), -202 (amended), -203 (amended), 46-8-128 (repealed)
BILL NUMBER:	HB 1382
ACT NUMBER:	891
GEORGIA LAWS:	2002 Ga. Laws 1050
SUMMARY:	The Act allows local government authorities to eliminate grade crossings in the interest of public safety and to order railroad authorities to comply with maintenance requirements. It also provides penalties for railroads that do not comply. A railroad that does not comply with the order of the local authority after the Department of Transportation has reviewed and approved the order faces a fine of \$500 per day for each day it does not comply.
EFFECTIVE DATE:	July 1, 2002

History

Sixteen people died in collisions at Georgia's railroad crossings during 2001, an additional six lives over the number of losses in 2000.¹ Despite the dangers that railroad crossings present, many Georgia citizens do not want to see their local crossings closed, making it difficult for the Federal Railroad Administration to reach its goal of closing one of every four crossings across the nation.² For

1. Christopher Quinn, *Should Railroad Crossing Close? It Depends What Side of Tracks You're On*, ATLANTA J. CONST., Jan. 12, 2002, at 1H.

2. *Id.*

example, out of Georgia's approximately six thousand crossings, authorities were only able to close fourteen in 2001.³

Before Representative Mickey Channell introduced HB 1382, Georgia law was inadequate in addressing the maintenance and closing of railroad crossings.⁴ Specifically, if a local government thought that a maintenance problem existed, it had to take that issue to the railroads.⁵ If the railroads did not agree, the local authority had no remedy other than to perform the maintenance itself.⁶ Furthermore, railroads and local governments often disagree on whether to close crossings.⁷ "Railroads like to close as many crossings as they can and cities and counties often do not want one closed."⁸ The Act provides a "systematic procedure that is workable between [the] city, county, municipality, and railroad companies."⁹

HB 1382

Consideration by the House Transportation Committee

Representative Mickey Channell introduced the bill on the House floor on February 13, 2002.¹⁰ The House Committee on Transportation's substitute altered Section 4 of the bill by specifically including a consideration for emergency vehicle traffic in the factors that the Department of Transportation should consider when deciding whether to close any grade crossings.¹¹

Furthermore, it imposed upon the Department a duty to keep detailed records of the costs incurred for investigations and to make those records available to the public.¹² Finally, under Code section

3. *Id.*

4. Telephone Interview with Rep. Mickey Channell, House District No. 111 (Apr. 4, 2002) [hereinafter Channell Interview].

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. State of Georgia Final Composite Status Sheet, HB 1382, Apr. 12, 2002. Audio Recording of House Proceedings, Feb. 13, 2002, at <http://www.state.ga.us/services/leg/audio/2002archive.html>.

11. Compare HB 1382, as introduced, 2002 Ga. Gen. Assem., with HB 1382 (HCS), 2002 Ga. Gen. Assem.

12. *Id.*

32-6-202, the Committee removed the elimination of grade crossings section from consideration.¹³

The Committee substitute completely removed Section 5 from the bill, which dealt with Code section 32-6-195, leaving that Code section unchanged.¹⁴

The Committee eliminated Section 5 as introduced and altered Section 6 of the as-introduced version, which then became the new Section 5, so that the \$500 filing fee for requests for review would apply per grade, rather than per request.¹⁵ Furthermore, the Committee altered the new Section 5 by imposing a duty on the Department to keep thorough records of its investigatory costs under Code section 32-6-202.¹⁶ Finally, the Committee substitute gave the Department the power to grant extensions of time for compliance with orders.¹⁷

Consideration by the Senate Transportation Committee

The Senate Transportation Committee altered Section 1 of the bill by imposing the cost of any road surface material necessary for the maintenance of the grade crossings on local government authorities.¹⁸ It also extended the area of the crossing for which the railroad is responsible to four feet outside the traveled way or “flush with the edge of a paved shoulder, whichever is greater.”¹⁹

It amended Section 3 by removing the ability to dictate the type of protective devices to be installed at the crossings from the local governmental authorities.²⁰

The Committee changed Section 4 of the bill by adding additional factors that the Department of Transportation should consider when creating uniform criteria that local authorities use to determine whether to close a grade crossing.²¹ Furthermore, the Committee determined that, when requesting the elimination of a grade crossing,

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Compare* HB 1382 as introduced, 2002 Ga. Gen. Assem., *with* HB 1382 (HCS), 2002 Ga. Gen. Assem.

18. *Compare* HB 1382 (HCS), 2002 Ga. Gen. Assem., *with* HB 1382 (SCS), 2002 Ga. Gen. Assem.

19. *Id.*

20. *Id.*

21. *Id.*

a railroad file written request with the Department of Transportation via certified mail or overnight delivery.²² Finally, the Committee changed some language in the bill that did not have any substantive effect.²³ For example, it changed “public meeting” in Section (b)(3) to “public hearing” and “municipality” to “municipal governing authority.”²⁴

Consideration by the Senate

The final version omits the Senate committee’s substitute in Section 1 that would have imposed the cost of road material on local governments.²⁵ It also removed the word “not” from Section 3, thereby authorizing local governmental authorities to govern the installation of protective devices.²⁶

Consideration by the House

The House agreed to the Senate substitute and passed the Bill, as amended, by a vote of 159 to 0 on April 12, 2002.²⁷

The Act

Code Section 32-6-190

The Act amends Code section 32-6-190 to impose a duty upon railroads to maintain grade crossings to allow “reasonable” passage of traffic, rather than “convenient” passage.²⁸ Furthermore, it enlarges the area for which the railroad is responsible to four feet outside of the road or up the edge of a paved shoulder.²⁹

22. *Id.*

23. *Id.*

24. Compare HB 1382 (HCS), 2002 Ga. Gen. Assem., with HB 1382 (SCS), 2002 Ga. Gen. Assem.

25. Compare HB 1382 (SCS), 2002 Ga. Gen. Assem., with HB 1382 (SCSFA), 2002 Ga. Gen. Assem.

26. *Id.*

27. Georgia Senate Voting Record, HB 1382 (Apr. 10, 2002); State of Georgia Final Composite Status Sheet HB 1382, Apr. 12, 2002.

28. Compare 1973 Ga. Laws 95A, § 1006, at 1111 (formerly found at O.C.G.A. § 32-6-190 (1973)), with O.C.G.A. § 32-6-190 (Supp. 2002).

29. *Id.*

Code Section 32-6-193

The Act amends Code section 32-6-193 by authorizing local authorities, such as counties and municipalities, to eliminate grade crossings by physically removing them and blocking approaches to them with or without constructing an underpass or overpass, but also provides that those officials may not permanently close any grade crossings on public roads.³⁰

Code Section 32-6-191

The Act amends Code section 32-6-191 by imposing upon the railroads the duty to pay for the construction of grade crossings across new railroad lines that they build and by allowing local governments to dictate the manner in which the railroads must construct those new grade crossings so that they provide for the “safe and reasonable passage of public traffic.”³¹

Code Section 32-6-193.1

The Act creates a new Code section, 32-6-193.1, which imposes upon the Department of Transportation the duty to create regulations to determine when it is proper to remove or block existing grade crossings without creating alternate passageways.³² The section also lists various factors that the department may consider when creating these regulations.³³ Furthermore, the section provides for a system in which railroads may petition relevant local authorities to eliminate or block grade crossings without providing alternate passageways.³⁴ It also gives the relevant local authorities the power to order the elimination of a grade crossing if it is in the interest of public safety.³⁵ Finally, the section imposes upon the railroads the cost of removing grade crossings from their tracks to two feet beyond the

30. Compare 1973 Ga. Laws 95A, § 1008, at 1113 (formerly found at O.C.G.A. § 32-6-193 (1973)), with O.C.G.A. § 32-6-193 (Supp. 2002).

31. Compare 1973 Ga. Laws 95A, § 1007, at 1111 (formerly found at O.C.G.A. § 32-6-191 (1973)), with O.C.G.A. § 32-6-191 (Supp. 2002).

32. O.C.G.A. § 32-6-193.1 (Supp. 2002).

33. See *id.*

34. *Id.*

35. *Id.*

ends of the cross-ties, four feet outside of the traveled way, and the duty to put up barricades.³⁶ The section imposes upon local authorities the cost of removing approaches to the cross-ties, if it chooses to remove them.³⁷

Code Section 32-6-202

The Act amends Code section 32-6-202 by authorizing relevant local authorities to order railroads to comply with maintenance requirements and provides that those orders be in writing, including the relevant milepost number, the highway name and number.³⁸ The Act also requires local authorities to issue the order by certified mail or overnight delivery.³⁹ Furthermore, the new section dictates what will happen if the railroad fails to comply: First, the local authority will file a written request, which costs \$500, for the Department of Transportation to review the case.⁴⁰ The railroad then has ten days from that filing date to file a position statement.⁴¹ The Department must respond within thirty days by either ordering the railroad to comply with the order or by denying the order.⁴² If the Department orders the railroad to comply, the railroad will also have to pay any investigatory costs that the Department incurred in reviewing the matter.⁴³ If the Department cancels the order, the local authority must pay the costs.⁴⁴ If the Department issues an order to the railroad but the railroad does not comply within thirty days, the Department will give the railroad notice of opportunity for a hearing and the railroad will be subject to a \$500-per-day penalty (measured from thirty days after the Department issued the order).⁴⁵ Under the new section, the Department may give the railroad an extension.⁴⁶ In the event that the cost of the improvement is the responsibility of a local

36. *Id.*

37. *Id.*

38. Compare 1973 Ga. Laws 95A, § 1017, at 1121 (formerly found at O.C.G.A. § 32-6-202 (1973)), with O.C.G.A. § 32-6-202 (Supp. 2002).

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. Compare 1973 Ga. Laws 95A, § 1017, at 1121 (formerly found at O.C.G.A. § 32-6-202 (1973)), with O.C.G.A. § 32-6-202 (Supp. 2002).

45. *Id.*

46. *Id.*

government authority, the new section provides for similar penalties for the local authority's failure to comply.⁴⁷

Finally, under the new section, any railroad whose tracks cross a public road in Georgia must provide relevant contact information to the Department of Transportation.⁴⁸

Code Section 32-6-203

The Act amends Code section 32-6-203 by providing for judicial review under the Georgia Administrative Procedure Act of any decision by the Department of Transportation that involves the elimination of any grade crossing, the installation of protective devices, the improvement of grade crossing structures, or any other issue in regards to public roads that the new section influence.⁴⁹

Code Section 46-8-128

The Act repeals and reserves Code section 46-8-128.⁵⁰

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47. *Id.*

48. *Id.*

49. *Compare* 1973 Ga. Laws 95A, § 1018, at 1122 (formerly found at O.C.G.A. § 32-6-203 (1973)), with O.C.G.A. § 32-6-203 (Supp. 2002).

50. *Compare* 1973 Ga. Laws 95A, § 1018, at 1122 (formerly found at O.C.G.A. § 32-6-203 (1973)), with O.C.G.A. § 32-6-203 (Supp. 2002).