



## The Capitol Report: January 28<sup>th</sup>, 2002

Provided by The Georgia Railroad Association

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*The Georgia General Assembly re-convened today after a one-week recess for budget hearings. Today marks the sixth legislative day of the 40-day session.*

### **Railroad venue bill in committee.**

A bill to change venue provisions and lengthen the statute of limitations for civil actions against railroads and electric utilities did not go to the Senate Judiciary Committee as expected, but was instead referred to the Senate Finance and Public Utilities Committee. There will likely be greater opposition to SB 342 in this committee than in the Senate Judiciary Committee.

SB 342 would give plaintiffs a more favorable venue in lawsuits against railroads, and would even encourage out-of-state plaintiffs to file their suits in Georgia courts. The bill would also extend the statute of limitations from 12 to 24 months.

### **New grade crossing bill drafted.**

Rep. Mickey Channell, chairman of the Railroad Subcommittee of the House Transportation Committee, has given the Georgia Railroad Association a copy of his draft grade crossing bill for comment. Rep. Channell drafted the bill as an alternative to HB 162, a litigation-oriented measure introduced last year and vigorously opposed by the GRA.

Channell's bill would not create new "causes of action" against railroads in the courts, but would make railroads accountable to the Georgia Department of Transportation for the maintenance and closure of grade crossings. Code Section 32-6-190 currently provides that railroads must maintain grade crossings "in such condition as to permit the safe and convenient passage of public traffic." Section 1 of the draft would retain current language as subsection (a) and add the following.

#### Section 1

*"(b)(1) Whenever any grade crossing of a public road is not maintained as required by subsection (a) of this Code section, the department (DOT) in respect to the state highway system, a county in respect to its county road system, or a municipality in respect to its municipal street system may order the railroad to take such action as is necessary for purposes of compliance with subsection (a) of this Code section within 15 days of receipt of such order. Such order shall be in writing and shall be served upon the railroad by certified mail or statutory overnight delivery, return receipt requested.*

*"(2) If any railroad fails to comply with such an order of a county or municipality within the prescribed period, the county or municipality may file a written request for review of the matter as provided in this paragraph. Any such request for review shall be filed with the department and a copy shall be served on the railroad by the county or municipality by certified mail or statutory overnight delivery, return receipt requested. The department shall within 30 days after the filing of such request investigate the matter and issue an order either requiring the railroad to take such action as is necessary for purposes of compliance with subsection (a) of this Code section or nullifying the order of the local governing authority. Copies of any such order of the department shall be served upon the railroad and the local governing authority by certified mail or statutory overnight delivery, return receipt requested.*

*"(c) If any railroad fails to comply with any order of the department under paragraph (1) or (2) of subsection (b) of this Code section within 15 days of receipt of such order, then the railroad shall be subject to a civil penalty in the amount of \$1,000 per day from the date of receipt of the order of the*

department until the crossing is in compliance with the requirements of subsection (a) of this Code section. The provisions of this subsection are in addition to the provisions of Code Sections 32-1-10 and 32-6-1, if applicable.

*“(d) Each railroad whose track or tracks cross a public road at grade in this state shall identify in writing to the department, by name and job title and with contact information, the individual agent, employee, or officer responsible for the maintenance of such grade crossings and upon whom the orders provided for in this Codes section shall be served. Such identification shall be kept current by the railroad and shall be made publicly available and accessible by the department.”*

In addition to the changes above, Section 2 of the draft bill would amend Code Section 32-6-193 relating to the elimination of grade crossings. The underlined and italicized lines below are the proposed new language for this code section.

#### Section 2

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

Section 3 of the draft legislation is an entirely new Code Section 32-6-193.1, which reads as follows.

#### Section 3

*“(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 caused by rerouting 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 an alternate crossing;*
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 of the roadway and the railroad and the angle of the intersection of those alignments;*
7. *The amount of vehicular traffic and posted speed limits for the crossing;*
8. *Any use of the crossing by:*
  - (A) *Trucks carrying hazardous material;*
  - (B) *Vehicles carrying passengers for hire;*
  - (C) *School buses; or*
  - (D) *Emergency vehicles; and*
9. *Any other relevant factors as prescribed by the department.*

*“(b)(1) Any railroad may file a written petition requesting an order to eliminate 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. Any such petition shall be*

*filed with the department in respect to the state highway system, the county governing authority in respect to its county road system, or a municipality in respect to its municipal street system.*

*“(2) Any petition by a railroad under this subsection shall include without limitation information as to each of the factors set forth in paragraphs (1) through (7) of subsection (a) of this Code section.*

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

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

*“(2) ) If the department in respect to the state highway system, a county governing authority in respect to its county road system, or a municipality in respect to its municipal street system determines that elimination of a grade crossing in accordance with this Code section is not reasonably necessary in the interest of public safety, the department or the local governing authority may issue an order denying a petition to eliminate the crossing. If a local governing authority denies a petition, it shall make a written record of its findings and transmit a copy of the same along with the order and the petition to the department.*

*“(3)(A) Any railroad aggrieved by an order of a local governing authority under this subsection may make a written request to the department for review of such order. The department shall within 30 days after the filing of such request review the matter.*

*“(B) Upon review of the order and findings of the local governing authority, if the department determines that elimination of a grade crossing in accordance with this Code section is not reasonably necessary in the interest of public safety, the department shall order that the crossing shall remain open.*

*“(C) Upon review of the order and findings of the local governing authority, if the department determines that elimination of a grade crossing in accordance with this Code section is reasonably necessary in the interest of public 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.\*

*“(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 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 shall at its expense remove approaches to the crossing or barricade them, subject to department approval of plans and specifications under Code section 32-6-193.”*

Section 4 of the draft legislation would amend Code Section 32-6-195, relating to division of costs of grade crossing elimination projects. It would provide that “The costs of any grade crossing elimination project involving construction of an underpass or overpass in which the railroad or railroads shall be required to share shall include the costs of surveys, preparation of plans and specifications, the securing of estimates or bids, if any, and the total cost of construction of the grade separation structures involved, including the establishment of drainage and any excavation and other expenses involved in constructing public roadways or railroad lines under any grade separation structure.”

Section 5 of the draft bill amends Code Section 32-6-203, providing for judicial review under the Georgia Administrative Procedures Act.