

# The Capitol Report: February 14<sup>th</sup>, 2002

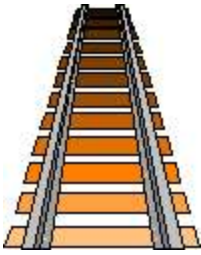
Provided by The Georgia Railroad Association

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*The Georgia General Assembly is in recess today, leaving 21 legislative days in the 40-day session. Additional recess days are probable, as the leadership will try to save enough days to make any changes in legislative reapportionment that may be required by the federal court.*

## **Transportation security bill on general calendar.**

The House Transportation Committee Wednesday approved legislation that would significantly improve a railroad's ability to secure its properties against vandalism and sabotage. HB 1060 provides that "it shall be unlawful to intentionally disable or inhibit the operation or effectiveness of any safety device of any description or to render any item or substance less safe when said item or substance is in cargo of a transportation company...or in a terminal."

HB 1060 sets criminal penalties for tampering with freight or cargo. The bill further provides that "it shall be unlawful to avoid or interfere with a security measure, and sets stiff criminal penalties, including imprisonment for up to 25 years and fines of up to \$100,000.

Originally intended as an airport security bill, HB 1060 was amended to add freight rail rights-of-way, properties, and facilities in several key sections.

Introduced by Rep. Mike Barnes of Jonesboro, the bill must clear the House Rules Committee before it can be eligible for consideration by the full House of Representatives.

## **Subcommittee approves grade crossing bill.**

The House Rail Subcommittee, chaired by Rep. Mickey Channell, yesterday approved legislation to set standards for closing and maintaining grade crossings. HB 1382, sponsored by Rep. Channell, has been greatly modified from the original draft version previously reported in this newsletter.

Most of the changes from the original draft were in the maintenance sections of the bill. As originally drafted, the bill would have allowed local governments to demand that railroads *complete* maintenance at a crossing within 15 days or face fines of \$1,000 per day. A railroad could have been inundated with literally hundreds of demands for crossing maintenance, all in the same 15-day period. The Department of Transportation would have been the final arbiter as to whether maintenance was actually necessary.

As approved by the Subcommittee, HB 1382 would require local governments to pay a \$500 filing fee per crossing to DOT when submitting a crossing maintenance "order." This provision should prevent cities and counties from dumping multiple or frivolous crossing maintenance demands on railroads. Perhaps most importantly, the standard for whether maintenance is necessary would be "safe and reasonable passage" instead of the "safe and convenient" standard in current law. This should make it clear that the "smoothness" of a crossing is not a consideration in determining the need for maintenance. DOT would still be the final arbiter as to whether maintenance is required.

In addition to the above changes, HB 1382 provides for a 30-day compliance period instead of 15-days, and a \$500 per day fine for non-compliance instead of \$1000 per day. The 30-day compliance period effectively gives railroads a total of 90 days to comply when a maintenance demand is appealed.

HB 1382 also repeals Code Section 32-6-202 which currently provides that whenever crossing maintenance is "reasonably necessary for the safety and convenience of the traveling public" the local

governing body may give written notice to the railroad of the need for such maintenance. If the railroad does not proceed with the maintenance within 30 days, the local government may perform the maintenance and collect the cost of the maintenance from the railroad.

The most positive aspects of HB 1382 are its provisions for closing redundant or unsafe grade crossings. DOT would be required to prescribe uniform criteria for assessing whether elimination of a grade crossing is “in the interest of public safety.” The bill specifies 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...” Railroads would be able to petition cities, counties or the DOT for the closure of grade crossings on their streets and roads. When such petitions are denied, the railroad could appeal to the DOT, and the agency would apply its uniform criteria to determine the efficacy of the appeal. The uniform criteria must include 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 volume of highway traffic by average daily traffic and posted speed limit over 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.

After considering these criteria, the DOT could issue an order to close a grade crossing on a county road or city street if it finds that such closure is “reasonably necessary in the interest of public safety.”

Next stop for HB 1382 is the full House Transportation Committee, perhaps as early as Thursday. However, Rep. Channell said he may bring the matter back before the Rail Subcommittee to consider additional amendments proposed by the Georgia Railroad Association.

### **For the crossing bill, it’s what is NOT there that matters most.**

GRA President Brad Lafevers testified before the Rail Subcommittee today on HB 1382. He noted that while railroads still have a few concerns about the content of the bill, GRA’s primary concern is that the bill does not address the issue of cost-sharing. Both Lafevers and CSX Resident Vice-President Craig Camuso pointed out that the streets and roads that cross railroad rights-of-way do not belong to the railroad, and that most of the damage to those streets and roads comes from cars and trucks, not trains. Why then, should railroads have to pay 100 percent of the maintenance costs for roads at grade crossings? It is particularly troublesome, they added, for a railroad to be fined \$500 per day for failure to repair a road that it does not own and did not damage.

Lafevers also urged the Subcommittee to consider changing current Georgia law related to those instances where a railroad is placed across an existing road. For these “permitted crossings” the railroad can be required to pay the entire costs of any protective devices that the State or local government might choose to put in place. He noted that the high cost of some signals and protective devices could have a negative effect on economic development in rural areas where short line rail service is essential.

GRA is also pushing for amendments to the bill that would: (1) require some accountability from DOT for any assessments they levy for investigating a crossing maintenance request; and (2) provide exemptions from the 30-day compliance rule when weather or other unavoidable conditions preclude maintenance operations

***Other bills of interest...***

HB 318: Holmes of the 53<sup>rd</sup>, to enact the “Neighborhood Protection Act” creating a cause of action for property owners against adjacent property owners for adversely affecting the “quietude” recreational or historic value, minerals, animals, plants, air, water, land, timber, and soil. A carryover from 2001, still in House Natural Resources Committee.

HB 433: Hammontree of the 4<sup>th</sup>, to amend Title 40 to further regulate the use of off-road vehicles on state and county rights-of-way. Off-road vehicles have caused damage to railroad rights-of-way. See also HB 526. Carryover bills still in House Motor Vehicles Committee.

HB 928: Royal of the 164<sup>th</sup>, to provide that railroad company shall be allowed a credit against the tax imposed on all fuel purchased and delivered within the state and fuel purchased outside this state and stored in this state regardless of the place of its subsequent use in an amount equal to 100 per cent of the amount invested in the improvement of rights of way. Expected to remain in House Ways & Means Committee.

HB 1273: Massey of the 86<sup>th</sup>, would amend Chapter 3 of Title 22 relating to eminent domain, so as to require railroads and public utilities to gain permission of the affected county or municipality before commencing condemnation proceedings. Referred to House Judiciary Committee.

SB 342: Harp of the 16<sup>th</sup> would amend Title 46 regarding public utilities and transportation so as to increase the statute of limitations for actions against railroads and electric utilities; to provide venue for such actions where the principal office or place of business is located, in addition to county of residence of a registered agent. Still in Senate Finance and Public Utilities Committee.

SB 386: Dean of the 31<sup>st</sup>, would amend Code Section 32-6-26 relating to weights of vehicles and loads so to provide an exemption for ready-mix concrete trucks. Passed Senate Feb. 13.

***Thanks to GRA associate members...***

... for renewing or joining the Georgia Railroad Association for 2002. As of today, the associate members on board for this year are:

Adams – Warnock, Inc.	Kim Warnock, Sr.
A & K Railroad Materials, Inc.	John Boisdore
Birmingham Rail & Locomotive	Jo Ann Cary
Bombadier Capital Rail	Gary Turner
Carter Burgess	Larry Goodman
Georgia Rail Consultants	Yvette Mack
GE Transportation Systems	Greg Taylor
Kerr-McGee	Don Hoffman
Lanier Steel Products, Inc.	Angela McCurry
L. B. Foster	Patrick Jansen
Neel-Schaffer, Inc.	Mark Jones
Palmer & Cay of Georgia, Inc.	Ed Bendin
R. J. Corman Derailment Services	Matt Cooper
Volunteer Trackworks	Tom Deaton

Membership dues for 2002 are due on March 1.

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