



The Capitol Report: March 4th, 2003

Provided by The Georgia Railroad Association

P.O. Box 2363

Woodstock, GA 30188

770-516-4636

www.georgiarailroad.org

Today is the 24th day of Georgia's 40-day legislative session. The General Assembly is expected to recess after Thursday's session, perhaps for as long as two or three weeks. The lawmakers are struggling with how to pass a balanced budget during this period of revenue shortfall. Many Democrats are calling for use of the state's emergency fund, while many Republicans prefer to increase the tax on tobacco products.

GRA comments on proposed grade crossing regulations.

The Georgia Department of Transportation held a "comment period" yesterday on draft regulations and "guidelines" developed pursuant to the passage of last year's grade crossing bill. HB 1382 provided for closing unsafe or redundant grade crossings, and set procedures for maintenance of crossings.

DOT will not issue official regulations on the maintenance provisions of the act, but will issue "guidelines" which will be posted on the DOT web site. This will help railroads avoid strict liability over crossing maintenance issues. The closure provisions of the law will be implemented by rules and regulations, which must be approved by the DOT Board.

GRA was the only group submitting substantive comments on the proposed guidelines and regulations, which were circulated to GRA members last month. Key points from the GRA comments are summarized below.

Maintenance Guidelines

- ▶ Paragraph I "...on future railroad maintenance, rehabilitation, or construction work, it reasonable to expect the railroad's duty to extend beyond the limits as stated in O.C.G.A. § 32-6-190 with respect to the two feet beyond the crossies in order to provide a safe and reasonable passage for the traveling public." The railroads object to this language, generally, as well as the fact that it would impose a duty upon the railroad that is outside the statutory language. The railroads contend that there is no circumstance in which DOT can impose duties upon the railroad that are beyond the limits set by statute.
- ▶ "Guidelines for Evaluating the Maintenance of Grade Crossings" The railroads request that the initial paragraph in this section contain the following language to further clarify the role of these guidelines. "The following provision are guidelines only to assist the parties in resolving disputes of railroad compliance with O.C.G.A. § 32-6-190 and do not carry the force and effect of a rule or regulation of the Georgia Department of Transportation."
- ▶ Further in this paragraph, the railroads believe that the deviation for material should be plus or minus one inch of rail elevation.

- ▶ The railroads would prefer the term “reasonable” be substituted for the word “smooth” in this paragraph.
- ▶ The railroads request two additional paragraphs to provide (1) that all repairs shall comply with acceptable engineering practices, and (2) that the governing authority be responsible for necessary road closures during maintenance or repair work, and for notifying emergency agencies.
- ▶ Paragraph II, AASHTO Standards. The railroads object to use of the AASHTO Standards because they apply by definition only to new construction, not maintenance, repair, or rehabilitation of existing grade crossings. Furthermore, the AASHTO Standards encompass an area thirty feet beyond the edge of the rear rail. This area is outside the responsibility of the railroad as defined in the statute and the railroads contend that this provision is not authorized by the statute and is in fact contrary to its provisions.
- ▶ Procedures for Filing Formal Written Maintenance Requests. The draft guidelines simply “recommend” that the governing authority provide a detailed description of the suspected problems with the grade crossing. The railroads request that this provision be made mandatory and that the governing authority not be permitted to proceed with its complaint without being required to submit this very necessary information. (The Georgia Municipal Association objects to requiring the local government to provide information as to what the problem is at the crossing.)
- ▶ Employment of Outside Contractors. The railroads are concerned about the employment of outside contractors who may then offer their services to testify against railroads in grade crossing litigation.

Grade Crossing Closures

- ▶ Criteria for closing crossings. The values assigned to the various criteria for determining whether a crossing should be closed make it difficult, if not impossible, for any crossing to be closed. Furthermore, the criteria appear to exist only as a guideline that would serve as a “justification to eliminate a crossing.” The railroads understand that the process contemplated by the statute would require the elimination of a grade crossing if the criteria were met.
- ▶ Emergency vehicle use of crossings. The proposed regulations would make emergency vehicle use of a crossing a positive factor in keeping any crossing open. The statute provides that use of a crossing by emergency vehicles is a positive factor for closing an unsafe crossing.

The GRA comments go on to detail several other concerns regarding the criteria for closing grade crossings. GRA also contends that if a local government refuses a railroad’s offer to close a crossing in exchange for enhancing a nearby crossing, then that offer is off the table and cannot be unilaterally implemented if DOT later finds the crossing meets the criteria for closure.

GRA’s comments were prepared by attorney Matt Williams, using input from GRA members. The actual comments will be made available to GRA members.

Substitute tort reform bill likely in Senate

The Senate Judiciary Committee is expected to consider a substitute version of SB 133, the tort reform bill introduced by Senate Majority Leader Tom Price. At this point it is not clear what changes will be made in the original language, but a proposed \$250,000 cap on non-economic damages was a primary target of opponents during recent hearings.

While the cap is a key element of the medical malpractice provisions in the bill, other provisions would be equally important for business. For instance, elimination of joint & several liability and judicial offset of awards by the amount of any collateral source would bring greater equity to the tort system. In addition, railroads would benefit from the forum non-conveniens provision, which would allow judges to send cases from out of state back to the state where the cause of action originated.

Bill Status Report

HB 131: Holmes of the 48th – would amend Title 41 relating to nuisances so as to enact “The Georgia Neighborhood Protection Act.” Would create a cause of action by a property owner adversely affected by pollution, impairment or destruction of natural resources. Defines “natural resources” as including but not limited to all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational, and historic resources. Still in House Judiciary Committee.

HB 497: Porter of the 119th – would amend Title 46 to create the East Central Georgia Railroad Excursion Authority. The Authority would be established for the purposes of construction, financing, operation, and development of rail passenger excursion projects utilizing any state owned railway in Bibb, Twiggs, Wilkinson, Laurens, Treutlen, Montgomery, and Toombs counties and any nearby county which may be included within the service area. The Authority would have power to “acquire by purchase, lease, condemnation, or otherwise and to hold, lease, and dispose of real and personal property of every kind and character or any interest therein in furtherance of the public purpose of the authority.” Referred to House Economic Development & Tourism Committee.

2003 Associate Members

Adams-Warnock Inc.
Bankhead Railway Services, Inc.
Crouch Engineering
GE Capital Rail Services
Georgia Ports Authority
Hulcher Services
Koppers Industries
LB Foster Company
Palmer & Cay Insurance
Pointer Smith Contracting
Ralph Whitehead Associates
Tifton Terminal Railway Museum
Volunteer Trackworks LLC

Atlas Railroad Construction
Century Group Inc.
Dixie Precast, Inc.
Georgia Operation Lifesaver, Inc.
Georgia Rail Consultants
Joseph Transportation
Lanier Steel Products
Neel-Schaffer, Inc.
Performance Railway Services
Railcar Management
Sumter Bank & Trust
Trinity Rail Group
Zurich North America

Membership dues for the Georgia Railroad Association are due on March 31, 2003. Don't forget to check out the GRA website – www.georgiarailroad.org – the best source of information on Georgia railroads and railroad suppliers.