

## **CHAPTER 1: CROSSING CONSOLIDATIONS AND CLOSURES**

### **CHAPTER OVERVIEW**

In the majority of states, the overall authority for highway-rail crossing safety, and the authority to order the elimination of at-grade crossings are conferred upon the state agency that regulates and oversees transportation.

In a small number of states, the responsibility for crossing elimination is vested in regulatory bodies. These entities are referred to by various names, including the Public Utility Commission and the State Corporation Commission. A couple of states provide for shared responsibility between a state agency and a unit of local government, while a few more provide for shared responsibility between the state Department of Transportation and another state agency such as the Highway Department.

The agency charged with the responsibility for elimination, or abolishment, as the process is often called, has not changed a great deal since the original publication of this book. In the few instances where the responsible agency is different, it was the result of the powers and functions of the agency being assumed by another agency. For example, in Missouri, the agency originally responsible for grade crossing regulation was the Public Service Commission (PSC). Today the powers, functions and duties of the PSC with respect to grade crossing safety now lie with the Division of Motor Carriers and Railroad Safety of the Department of Economic Development. Likewise, the Commonwealth of Massachusetts shifted the responsibility for grade crossing consolidations and closures to an agency called the Department of Telecommunications and Energy.

This chapter is intended to provide a brief overview of the procedures for grade crossing elimination on a state-by-state basis. The state or county agency with statutory authority to order the elimination or consolidation of a grade crossing is identified along with an indication of whether the authority is exclusive or shared and a statement concerning the responsibility for costs. Each state's entry concerning the subject is followed by the appropriate citation(s).

### **STATE LAWS AND REGULATIONS**

#### **ALABAMA**

The Alabama Department of Transportation has statutory authority to abandon and discontinue any portion of a state highway, or street on a state highway route with the approval of the city council or governing body of any municipality, crossing the tracks or right-of-way of any railroad or street railway within the state and to close the grade crossings, when, in its judgment, the grade crossing has ceased to be necessary for the public as part of any state highway, because of relocation of the highway, or because of the construction of an underpass or overpass, or other provision made for the elimination of the grade crossing. Thereafter, the

railroad or street railway shall not be required to maintain the grade crossing for use as a public highway or street.

Whenever the Department orders the closing of a grade crossing, it must enter its order in the Department minutes. Notice in writing is given by the Department by posting a notice on each side of the railroad or street railway at the grade crossing for a period of 30 days. Thereafter, the railroad or street railway shall not be required to maintain the grade crossing for use as a public highway or street. If the closing is of a crossing on a county or municipal road; prior to issuing the order to close the crossing, the Department must also give notice of its intention to close to the affected municipality or county. In addition, the Department must publish legal notice of intention to close the crossing in a newspaper of general circulation in the county once a week for three consecutive weeks prior to the closure. The notice must outline the required procedure for requesting a hearing. If there is such a request for hearing, the Department must give ten days notice to the requester and the municipality or county.

With respect to at-grade crossings on a municipal or county highway, street, or right-of-way of any railroad within the state whenever; if in the judgment of the Department of Transportation, the grade crossing is dangerous, redundant, or the enhancement of public safety resulting from the closing outweighs any inconvenience caused by rerouting the vehicular traffic. Any such action to be taken by the Department of Transportation concerning an at-grade crossing on a municipal or county highway must have the approval of the city or governing body. In the event any such closing is deemed by the Department to cause substantial inconvenience to vehicular traffic or materially impair the provision of police, fire, or ambulance service, the Department may also order a relocation of the crossing or the building of another crossing at another location.

Upon the issuance of the order by the Director of Transportation, it is the responsibility of the railroad or railroads involved to physically remove the crossing from the tracks and it is the responsibility of the municipality or county where the crossing is located to install any signs or barricades which might be appropriate. The costs of any signs or barricades shall be shared equally by the Department of Transportation and the city or county where the crossing is located.

Whenever a railroad crossing or any highway, street, or right-of-way crossing the tracks or right-of-way of any railroad is closed, abandoned, or discontinued pursuant to Section 37-2-84, that action shall not affect any right-of-way for the lines, structures, equipment, and facilities of any utility as defined in Title 37, which cross the tracks or right-of-way of the railroad at the crossing or along, over, or through the highway, street, or right-of-way abandoned.

Subsection (f) of Section 37 states that the provisions contained herein shall be the exclusive method of closing railroad grade crossings located on any public drive, street, road, or highway in the state. Ala. Code § 37-2-84 (a)- to (f) (1999).

## **ALASKA**

Alaska has no code section relating to this topic.

## **ARIZONA**

The Arizona Corporation Commission has the exclusive authority to alter or abolish highway-rail grade crossings within the state. This authority extends to those crossings where railroad tracks cross public roads or streets of a town or city. Ariz. Rev. Stat. Ann. § 40-337 (2001).

## **ARKANSAS**

The State Highway Commission has exclusive authority over grade crossings including the power to determine and prescribe the manner, location, and terms of installation, operation, maintenance, alteration and abolishment, separation of grades, and protection and apportionment of expenses. Ark. Code Ann. §§ 23-12-301-1001-1002 (2000).

## **CALIFORNIA**

The California Public Utilities Commission has exclusive authority to abolish any crossing of a public or publicly used road or highway by a railroad or street railroad and of a street by railroad. Cal. Pub. Util. Code §§ 1202 (a)-(b) 1201 (West 1999).

## **COLORADO**

The Colorado Public Utilities Commission has the power, upon its own motion or upon complaint of an interested party, to order the abolishment of a highway-rail grade crossing. The process requires a hearing before which all interested parties, including the owners of any adjacent property, must be given due notice. Colo. Rev. Stat. § 40-4-106(2)(3a) (1999).

## **CONNECTICUT**

The Commissioner of Transportation has the statutory authority to relocate or close highway-rail grade crossings.

The process may be initiated upon written petition to the Commissioner by the selectmen of any town, the mayor and common council of any city, or the warden and burgesses of any borough within which a highway crosses a railroad. The Commissioner appoints a time and place for hearing the petition and gives notice to the petitioners. Conn. Gen. Stat. § 13b-270 (West Supp. 2000 ).

A similar procedure applies to the directors of any railroad company whose track is crossed by a highway. Any railroad company may bring its petition in writing to the Commissioner, alleging that public safety necessitates the elimination of a crossing. The Commissioner shall appoint a time and place for the hearing of the petition after reasonable notice to all affected parties. Conn. Gen. Stat. § 13b-273 (West Supp. 2000).

The Commissioner may also, in the absence of any application, upon his own motion, when in his opinion public safety requires it, and after notice and proper hearing, order

alterations (including removal) of a highway crossed at grade by a railroad or railroads. In the process, he shall determine and direct by whom such alterations shall be made, at whose expense and within what time frame; but in any case, no more than one-fourth of the expenses is to be borne by the state, and the remainder is to be assessed upon the railroad. Conn. Gen. Stat. §13b.274 (West 1998).

The Commissioner of Transportation, on written application of the selectmen of any town, the mayor and common council of any city, or the warden and burgesses of any borough, or on his own motion, may make orders and direct the relocation of an existing grade crossing where it can be shown that the crossing at the alternative location is in the interest of public safety, providing the state, town, city or borough making the request shall bear the cost of the relocation and the maintenance thereafter shall be borne in the same manner as prior to the relocation. Conn. Gen. Stat. § 13b-272 (West 1998).

If the Commissioner of Transportation finds that a dangerous condition exists at such crossing, except a dangerous condition arising out of improper or inadequate maintenance, he or she shall issue such an order to such municipality or to any public service company directing the removal, change, or relocation of the crossing, highway, tracks, pipes, wires, poles or other fixtures or tree or building or other structure; and shall apportion the cost among the public service company or companies, the municipality and the state and shall determine the conditions and the time and manner of the payment, provided that the portion of the cost to be paid by the public service company shall not exceed 10 percent. Conn. Gen. Stat. 13b-276 (West 1998).

## **DELAWARE**

The Delaware Department of Transportation has exclusive authority to order the closing of highway-rail crossings. Del. Code Ann. tit. 2 § 1804(b) (2001).

## **DISTRICT OF COLUMBIA**

The Mayor of the District of Columbia has statutory authority to order the elimination of a highway-rail crossing. Pursuant to this authority, the Mayor may make payments to contractors and payment for other expenses in connection with the costs of surveys, design construction, and inspection pending reimbursement to the District of Columbia by the Federal Highway Administration, Department of Transportation or other participants. D.C. Official Code § 9-107.04 (West 2001). See also, D.C Official Code §§ 9-1201.14, 9-1201.15, 9-1205.03

## **FLORIDA**

The Florida Department of Transportation has regulatory authority over all public highway-rail grade crossings in the state.

A public highway-rail grade crossing is defined in the Florida statute as any location at which a railroad track is crossed at-grade by a public road.

The Department is mandated to work with the various railroad companies to develop and initiate a program for the expenditure of funds for the performance of projects aimed at reducing grade crossing hazards. Fla. Stat. Ann. § 335.141 (West Supp. 2002).

The Florida Department of Transportation, in conjunction with other governmental units and the private sector, is tasked with the responsibility of developing and implementing a statewide rail program designed to ensure the proper maintenance, safety, revitalization, and expansion of the rail system. Among the myriad duties under the statute, the Department is required to administer rail operations and construction, including the regulation of maximum train operating speeds, the opening and closing of public grade crossings, the construction and rehabilitation of public grade crossings, and the installation of traffic control devices at public grade crossings. The administration of the program by the Department includes participation in funding. Fla. Stat. Ann. § 341.302 (West Supp. 2002).

## **GEORGIA**

The Georgia Department of Transportation has authority for final approval of grade crossing eliminations. The statute indicates that when necessary, in the interest of public safety, the unit of local government with jurisdiction may authorize and direct the elimination of a grade crossing by construction of an overpass or underpass, provided that no grade crossing shall be eliminated without prior approval from the Department of Transportation.

Once a decision is made by either entity, prompt notice must be given to the affected railroads. All parties must meet within thirty days and must further agree on a method of closure and separation within 90 days. If there is no agreement within the specified time, the Department, county or municipality may proceed with construction, or may, by written order, direct the interested railroads to proceed with construction. Ga. Code Ann. §§ 32-6-193-194 (Lexis Publishing 2001). See also, Section 32-6-195, concerning division of costs.

Nothing in this part shall be construed to prevent the Department of Transportation, a county, or a municipality from reaching special agreements with a railroad company providing for grade crossing elimination by means of relocation of either the railroad or public road involved, or by other means not expressly provided for in this part and from arranging joint participation in the cost of such elimination in accordance with the procedures in Section 32-6-195. Ga. Code Ann. § 32-6-198 (Lexis Publishing 2001).

## **HAWAII**

Hawaii has no code section relating to this topic.

## **IDAHO**

The Idaho Transportation Department has statutory authority to negotiate and enter into an agreement with the railroad companies to provide for grade crossing elimination on state highways.

For crossings not on state highways, the local authorities and railroad companies have the same authority and duties with respect to the elimination or alteration of such crossings as are granted to and required of the Idaho Transportation Department and the various railroad companies. Idaho Code §§ 62-301-303 (Michie 2002).

## **ILLINOIS**

The Illinois Commerce Commission has statutory authority to order the elimination of a highway-rail grade crossing. After a hearing, the commission has the power to require major alterations of, or to abolish any crossing heretofore or hereafter established when, in its opinion, the public safety demands it. This authority does not extend to grade crossings in cities, villages, and incorporated towns of one million or more inhabitants.

The Commission, after a hearing of all the parties, can prescribe the terms upon which any separation is to be made and the proportion in which the expense of any alteration or abolition of such crossings or the separation of such grades is to be divided between the affected rail carrier(s) or between the carrier(s) and the state, county, municipality, or other public authority in interest.

The Commission also has the power to order the reconstruction, minor alteration, minor relocation, or improvement of any crossing, including all necessary highway approaches thereto, of any railroad across any highway or public road, regardless of whether the crossing is at grade or by overhead structure or by subway, whenever the Commission finds after a hearing or without a hearing as otherwise provided that any such reconstruction, alteration, relocation or improvement is necessary to preserve or promote the safety or convenience of the public or of the employees or passengers of such rail carrier or carriers.

The statute also provides that no highway-rail at grade crossing is to be permanently closed without first convening a public hearing with notice of such hearing being published in an area newspaper of local general circulation.

The following factors are to be considered by the Illinois Commerce Commission in developing the specific criteria for opening and abolishing grade crossings:

- (a) Timetable speed of passenger trains.
- (b) Distance to an alternate crossing.
- (c) Accident history for the last five years.
- (d) Amount of vehicular traffic and posted speed limits.
- (e) Number of freight trains and their timetable speeds.
- (f) The type of warning device present at the grade crossing.
- (g) Alignments of the roadway and railroad, and the angle of intersection of those alignments.
- (h) Use of the grade crossings by trucks carrying hazardous material, vehicles carrying passengers for hire, and school buses; and

- (i) Use of the grade crossing by emergency vehicles. 625 ILCS 5/18c- 7401 (West Supp. 2002)

## **INDIANA**

Indiana statute gives the Indiana Department of Transportation the authority to order closed and abolished as a public way within the limits of a railroad right-of-way, any grade crossing then in existence at the time the Department assumes jurisdiction of the matter. The Department's order must be based on a determination that the enhancement of public safety resulting from the closing will outweigh any inconvenience caused by rerouting traffic.

The authority of the Department to legally close and abolish grade crossings is in addition to any authority by law granted to other state agencies or units of local government. Units of local government have the authority to abolish a public railroad crossing, if the unit determines that the crossing meets the criteria adopted by the Department of Transportation. .

Upon the issuance of any such order by the Department, the railroad(s) involved is to physically remove the crossing from the tracks. The government unit responsible for maintaining the highway is to remove approaches to the crossing or barricade them. Ind. Code Ann. § 8-6- 7.7 -3 (Burns Supp.2001).

The Department is required to develop criteria for use in determining whether to open a new public highway-rail grade crossing, and to develop criteria which the Department and unit of local government can use in determining whether to abolish a public highway/rail grade crossing.

In the application of the criteria, the Department or unit of local government will consider the following:

- (1) Timetable speed of passenger trains operated through the crossing.
- (2) Distance to an alternate crossing.
- (3) Accident history of the crossing for the five years preceding the department's or the local government's consideration.
- (4) Amount of vehicular traffic and posted speed limits for the crossing.
- (5) Number of freight trains and their timetable speeds operated through the crossing.
- (6) Type of warning devices present at the crossing, if any.
- (7) Alignment of the roadway and the railroad, and the angle of the intersection of an alignment at the crossing.
- (8) Use of the crossing by:
  - (a) Trucks carrying hazardous materials;
  - (b) Vehicles carrying passengers for hire;
  - (c) School buses; and
  - (d) Emergency vehicles.

- (9) Other appropriate criteria as determined by the Department.  
Ind. Code Ann. §8-6-7.7-3.1 (Burns Supp.2001).

A person may petition a unit of local government under whose jurisdiction a public railroad crossing lies for closure of the crossing. The unit is then required to conduct a public hearing. The unit has three options: (1) If it determines that the crossing in question meets the criteria adopted by the Indiana Department of Transportation under the previous Section 3.1 for closure of the crossing, the unit may approve the petition and issue an order to close the crossing. The unit's findings must be made available to the Indiana Department of Transportation; (2) If the unit determines that the crossing meets the criteria, but a compelling reason has been shown to exist for the crossing to remain open, it may then deny the petition to close with a copy of findings to the Indiana Department of Transportation; and (3) The unit may determine that the crossing in question does not meet the criteria established by the Department of Transportation and deny the petition for closure.

Nothing in this chapter, however, is intended to preclude a unit and a railroad from agreeing on their own to close a crossing within the jurisdiction of the unit. Ind. Code Ann. § 8-6-7.7-3.2 (Burns Supp. 2001).

A decision to deny a petition to close a crossing may be reviewed by the Indiana Department of Transportation and a determination made whether to schedule an appeal. The decision to schedule or not schedule an appeal is: (1) In the sole discretion of the Department; (2) Final and conclusive; and (3) Not subject to review. Upon review of the findings of the unit, the Department may determine that the crossing meets the criteria for closure, opening, or denial of a closure and that a compelling reason has been shown for the crossing to remain open, in which case the Department shall issue written findings that the crossing may remain open. If, on the other hand, the Department determines that the crossing meets the criteria for closure and that a compelling reason has not been shown for the crossing to remain open, the Department may issue an order abolishing the crossing. Ind. Code Ann. § 8-6- 7.7-3.3 (Burns Supp.2001).

The Indiana Department of Transportation also has the authority to approve a petition to open a crossing. If it finds that the proposed crossing meets the criteria required to open a new grade crossing and that a compelling reason has been shown for the crossing to exist, it may issue an order approving the petition. Ind. Code Ann. § 8-6-7.7-4 (Burns Supp.2001).

## **IOWA**

Whenever a railway track crosses or is planned to cross a highway, street or alley, the affected railroad and the Iowa Transportation Department, in the case of a primary highway, the board of supervisors of the county in which the crossing at issue is located, in the case of secondary roads, or the city council, in the case of streets and alleys located within a city, may agree upon the location, manner, vacation, physical structure, characteristics and maintenance of the crossing. Iowa Code § 327G.15 (1998).

If any of the parties cannot agree upon the location, manner, vacation, physical structure, characteristics and maintenance of the crossing, either party may make written application to the



Iowa Department of Transportation requesting a solution. The Department of Transportation is required to request the Department of Inspections and Appeals to set a date for hearing and give ten days written notice of the date. Iowa Code § 327G.16 (1998).

## **KANSAS**

The statutes of Kansas provide for a shared responsibility for both closures and consolidations, depending on which type of highway the railroad crosses at grade. The Secretary of Transportation's authority covers state roads; the State Corporation Commission's authority extends to crossings on city, county, or township roads. Likewise, the governing bodies of first and second class cities have similar authority to require railroad companies owning or operating any railroad or street-railway to erect, construct, reconstruct, complete and keep in repair any viaduct or viaducts upon or over or tunnels under such street or streets and over or under any such track or tracks, including the approaches of such viaduct, viaducts or tunnels as may be deemed and declared by the governing body to be necessary for the convenience, safety or protection of the public.

Still another section of the statute confers the same authority on the governing bodies of first- and second-class cities in counties of 90,000 populations or more.

The Secretary of Transportation, in the construction, improvement, reconstruction or maintenance of the state highway system, shall have the power and authority to compel all railroad companies operating steam or electric railroad in the state to construct, improve, reconstruct or maintain in a manner to be approved by the Secretary, viaducts, tunnels, underpasses, bridges, or grade crossings where the lines of said railroad companies intersect state highways, in the judgment of the secretary such viaducts, tunnels, underpasses, bridges or grade crossings are necessary for the proper construction of the state highway system, for the safety of the general public, or for the elimination of a dangerous grade crossing. The expense of such construction, improvement, reconstruction or maintenance may be divided between the railroad company and the Secretary of Transportation in a fair and equitable proportion to be determined by the Secretary. However, the Secretary shall not pay more than 50 percent of the cost, but any 50-percent limitation shall not apply to express highway or freeways. Otherwise, grade crossings shall be constructed and maintained at the expense of the railroad company.

If, after due notice to the railroad company that in the judgment of the Secretary, the construction, improvement, reconstruction or maintenance of a viaduct, tunnel, underpass, bridge or grade crossing is necessary, and the affected railroad company fails to comply with the Secretary's order, the Secretary is then empowered and authorized to immediately begin to construct, improve, reconstruct or maintain such viaduct, tunnel, underpass, bridge or grade crossing and submit a bill for the work to the railroad company. If the railroad company refuses to submit payment, the Secretary shall forward the information to the Attorney General of the state, who may immediately institute a suit in the name of the Secretary for recovery.

Under this same section, the Secretary, when he or she deems it advisable, may require the railroad company to install and maintain suitable safety devices or warning signals at

dangerous or obscure crossings to indicate the approach of trains. Kan. Stat. Ann. § 68 414 (1998).

The governing body of all cities of the first and second class also have the power to regulate the crossings of railway and street-railway tracks and provide precautions and adopt ordinances regulating the same. This includes the power to require all railway companies to erect viaducts over or tunnels under their tracks at the crossing of streets. The governing body shall have power to require any railroad company or companies owning or operating any railroad or street-railway tracks or tracks upon or across any public street or streets of the city to erect, construct, reconstruct, complete and keep in repair any viaduct or viaducts upon or over or tunnels under such street or streets and over or under any such track or tracks, including the approaches of such viaduct, viaducts or tunnels as may be deemed and declared by the governing body to be necessary for the convenience, safety or protection of the public. Kan. Stat. Ann. § 12-633 (1998).

At the request of the governing body of any city, county or township, and after proper investigations made in cooperation with the Secretary of Transportation, the Kansas State Corporation Commission may designate those railroad grade crossings on city, county or township roads which are dangerous. At all crossings so designated, the Corporation Commission may order the installation of appropriate safety devices to be installed and maintained by the railroad. The State Corporation Commission is empowered to determine the number, type and location of such safety devices which must conform to generally recognized standards. The Corporation Commission has additional authority to close and abolish grade crossings on city, county or township roads that are in proximity to crossings on which safety devices have been ordered, subject to the approval of the governing body of such city, county or township, and to require the payment of a portion of the cost of the installation of the safety devices by the affected railroad or railroads: provided, that the cost to the railroad shall be not less than 20 percent nor more than 50 percent of the total installation costs. Kan. Stat. Ann. § 66-321a (1998).

The governing body of all cities of the first and second class in a county having a population of over ninety thousand has the power to require any railroad company or companies owning or operating any railroad or street-railway track or tracks upon or across any public streets of the city to erect, construct, reconstruct, complete and keep in repair any viaduct or viaducts upon or over or tunnels under such street or streets and over or under such tracks, including the approaches of such viaducts, viaducts or tunnels as may be deemed and declared by ordinance to be necessary for the convenience, safety or protection of the public. Kan. Stat. Ann. §§ 12-1634-68-509 (1998).

## **KENTUCKY**

The Department of Highways has the authority to order any railroad company owning or operating a railroad in the state to eliminate any grade crossing or change any existing overhead or underpass structure where any public road crosses the railroad tracks of the railroad company when it considers it necessary for public safety. In the process, the Department may determine

whether a substitute crossing should be established and if so, the location, and whether it shall pass over or under the railroad tracks or intersect them at grade.

The Department is responsible for the promulgation of administrative regulations containing standards that govern the closure of public grade crossings. The standards reflect the intent of the legislation, i.e. that public safety will be enhanced by reducing the number of redundant and inherently dangerous grade crossings.

On or before July 1, 1993, and on or before July 1 of each of the next four years, and as necessary thereafter, the Department is required to compose a list of grade crossings to be closed. The Department must notify the public officials having the necessary authority and the railway companies operating the railroads of the proposed closures. The affected parties may request a public hearing and, if it is requested, the Department is required to hold the hearing and apply in its determination the information gained at the public hearing. If after the hearing the Department determines that closure is warranted, it may order the crossing closed. If a request for a hearing is not received by the Department within thirty days of notice of the opportunity, the Department shall order the crossing closed. Ky. Rev. Stat. Ann. § 177.120 (1)(2)(3) (Lexis Nexis Supp.2001).

Any railroad company dissatisfied with a final order of the Department directing the elimination of any grade crossing or change of existing overhead or underpass structure, or any order modifying or amending the final order, may appeal by filing in circuit court. The court has the authority to affirm or to overrule the order of the Department. Ky. Rev. Stat. Ann. § 177.190 (Michie Supp.1999).

There is a different procedure for ordering elimination of grade crossing or modifications to grade crossings when the crossing is on a county road in counties containing a city of the first class.

The Fiscal Court, when it considers it reasonably necessary for the public safety, may order any railroad company, either steam or electric, owning or operating a railroad in its county, to eliminate any existing grade crossing or change any existing overhead or underpass structure where any county road crossed the railroad tracks of such company. Ky. Rev. Stat. Ann. § 178.355(1) (1998).

Note: The Fiscal Court is a county government agency in Kentucky. It is empowered to exercise all the corporate powers of the county unless otherwise provided by law. Ky. Rev. Stat. Ann. §§ 67.080-67.040 (1998).

The Fiscal Court is required to give at least ten days notice by certified mail of a hearing. At any such hearing it shall consider whether or not the proposed grade separation or change is reasonably necessary and the most advantageous method of effecting the grade separation or change. In determining whether the proposed grade separation or change is reasonably necessary, the Fiscal Court shall receive evidence of, and consider all relevant facts, including the present and prospective density of highway traffic and the present and prospective frequency and speed of train movements over the crossing, the adequacy of existing or proposed signals or

warning devices for the protection of highway traffic at the grade crossing, the possibility and probability of personal injury to the public using the highway and to employee and passengers of the railroad company and damage to property, and the cost of the grade separation or change in relation to benefits resulting from the proposed construction. Ky. Rev. Stat. Ann § 178.355(2) (Michie 1989).

## **LOUISIANA**

In 1998, the Louisiana Legislature enacted legislation that authorized the Department of Transportation and Development to require closure of state-maintained railroad grade crossings. The legislation requires a prioritization of proposed crossing closures, along with notification of affected parties prior to closure. It provides for public hearings alternative actions to closing by a local government authority; it spells out the responsibility for funding by the local governing authority, directs promulgation of rules and regulations by the department, and requires certain factors for consideration in development of criteria for crossing closure, and other related matters.

The Secretary of the Department of Transportation and Development can require the closure of crossings. The statute provides for the Department of Transportation and Development to complete a study no later than March 1, 1999 to establish priorities for railroad grade crossing closures and to develop a prioritized plan for implementing railroad grade crossing closures.

The Department may change the location of or abolish any existing public grade crossing on any state-maintained highway in the state when it determines that it is necessary for the safety of the public. The process must comply with the following procedures:

- (1) Within not less than one hundred eighty days prior to the closure of any public crossing, the Department shall notify the municipal governing authority of the area in which the crossing is located, the governing authority of the parish in which the crossings located, the railroad company whose railroad tracks are crossed at grade by the highway, emergency services providers providing services within the affected area, and any other party deemed by the Secretary to be interested in the closing procedure. Such notification of closures shall offer opportunity for rebuttals and alternative actions to such closures.
- (2) Not less than ninety days prior to the possible closure of any public grade crossing, the Department shall hold a public hearing in the parish or municipality of the affected grade crossing.
- (3) After the hearing process, the Department shall attempt to address any concerns raised at the hearings relative to the proposed closing. However, if the Secretary determines that the closure is consistent with the standards established by the Department, and in the public interest, the Department shall issue an order to close the existing grade crossing. Any such closure order shall also prescribe the manner in which such closure shall be made including a determination as to any alteration to be made to the crossing and the

method of diversion of traffic to an alternate road or crossing. No provisions of this act shall impose any liabilities of any nature upon the State of Louisiana or any agency of the state.

Any local governing authority which opposes the closure of a grade crossing within its territorial jurisdiction may agree to undertake the upgrading of warning devices and additional safety alternatives in compliance with requirements determined by the Department as an alternative to the proposed closing. The expense of the alternative upgrade of the crossing must be borne by the local government.

At the written request of any local governing authority, the Department shall investigate the need to change the location of or abolish a railroad grade crossing within the jurisdiction of such governing authority and which is not on a state-maintained roadway. After compliance with the provisions of this section, the Department may, upon determination of the need for closure of the crossing, proceed with the relocation or abolishment of the crossing. The application by the local governing authority shall constitute the consent of the authority for such closing.

The Department, subject to the provisions of the Administrative Procedure Act, shall promulgate rules and regulations to implement the provisions of this section. The rules and regulations shall include specific criteria for the closure of grade crossings. The following factors are to be considered in developing criteria for closure:

- (1) Total number of daily vehicular use at crossing.
- (2) Total number of trains passing the crossing daily.
- (3) Alternative routes and distance to such routes.
- (4) Timetable speeds of trains passing the crossing.
- (5) Collision history of the crossing.
- (6) Type of warning device presently at the crossing.
- (7) Degree of difficulty involved in improvement of roadway approach to the crossing or in providing adequate warning devices.
- (8) Use of the crossing by vehicles carrying hazardous materials, vehicles carrying passengers for hire, and school buses.
- (9) Use of grade crossing by emergency vehicles.
- (10) Sight distance and reduced visibility at the crossings.
- (11) Angle of intersection of alignments of the roadway and the railroad.
- (12) Redundancy of crossings in the area.
- (13) Proximity to a new crossing or a recently upgraded crossing.
- (14) Availability and responsibility of user of private crossing.
- (15) Other factors the Department determines to be necessary in the development of these criteria.

La. Rev. Stat. Ann. § 48:390 (A)-(B)(1)(2)(3)-(C)-(D)-(E) (West 2002)

## **MAINE**

The Maine Department of Transportation has the authority to close or discontinue a crossing. The municipal officers, in instances of town ways crossing or crossed by a railroad, whether the crossing be at-grade or otherwise, or any railroad corporation may petition the Department of Transportation alleging that public safety or public convenience either to the traveling public or in the operation of railroad services requires abolishment of or reconstruction of or alteration of crossings or its approaches; or change in the method of crossing a public way; or the closing of a crossing and the substitution of another; or the removal of obstructions to the sight at the crossing and requesting the situation be remedied. After proper notice and hearing, the Department of Transportation shall make its determination to insure safety or public convenience and by whom the abolishment, reconstruction, alteration, change or removal shall be made. The Department can issue an order after notice of not less than ten days to the railroad and municipality or after a hearing if requested within the 10 days either by the railroad or the municipality. Me. Rev. Stat. Ann. tit. 23 § 7207(West 1999).

## **MARYLAND**

The Maryland Highway Administration has general authority to abandon, relocate, construct, or reconstruct any railroad grade crossing or railroad grade separation that is dangerous or inconvenient for public travel. If the railroad grade crossing is dangerous or inconvenient for public travel, the Administration may construct a railroad grade separation. Md. Code Ann., Transp. I § 640(b)(2) (2001).

The Maryland Secretary of Transportation has general authority to approve the construction or modification of a railroad grade crossing or a change of crossing protection equipment and to impose conditions necessary to insure public safety at the crossing. No other approval, safety condition, or protective measure may be required by any public authority.

Except for an industrial track spur or siding, a railroad may not construct, reconstruct, improve, widen, relocate, or otherwise alter a railroad grade crossing over a state, county, or municipal highway, except in Baltimore City or over a private road, or change the crossing protection at such a crossing unless approved by the Secretary.

This same section provides that a person may not construct, reconstruct, improve, widen, relocate, or otherwise alter either a railroad grade crossing over a public highway or a private road over a railroad or, change the crossing protection at such a crossing unless approved by the Secretary. Md. Code Ann., Transp. I § 639 (2001).

## **MASSACHUSETTS**

The Department of Telecommunications and Energy has the authority to order grade crossing closure.

The Department of Highways plays a supporting role by investigating crossings where a public or private way and a railroad cross each other at-grade. The Department of Highways

receives petitions for the abolition of grade crossings from the aldermen of a city, the selectmen of a town, the commissioners of the county where such a crossing exists, or the board of directors of the railroad corporation operating the railroad crossed. After a hearing, due notice of which is given to the railroad corporation, city or town and county, the Department may, in its discretion, place a crossing on a list of crossings, the abolition of which be given early consideration. The Department is required to file the list annually on or before October 1 with the Department of Telecommunications and Energy.

After giving due notice to the Department of Highways, the counties and municipalities in which the identified crossings are located and the affected railroad corporations, the Department of Telecommunications and Energy proceeds to hold public hearings on the list. When the hearings are completed; the Department of Telecommunications and Energy may order a program of grade crossings. The program can be amended or revised from time to time by the Department of Telecommunications and Energy on requests from the Department of Highways. Mass. Gen. Laws Ann ch. 159, §§ 65- 70 (West Supp. 2002).

The Department of Highways shall proceed to consider the abolition of grade crossings in the order established by the program orders as adopted and amended or revised under the code section and shall hold public hearings on each such grade crossing abolition. Due notice of any such hearing shall be given to such railroad corporations, counties, cities and towns as may be required by law to bear part of the cost of abolition. Upon completion of the hearing, the Department, shall by order, determine the manner and limits of the grade crossing abolition, what part, if any, of an existing public or private way shall be discontinued, and whether or not a new way shall be substituted. The Department shall also determine the grade for the railroad and the way, the changes to be made in the location and grades of a street railway having a location in the part of such public way where the crossing exists or in ways connecting therewith, the general method of construction, and what land or other property it considers necessary to be taken including, in its discretion, an easement in land adjoining the location of the public or private way, or of a railroad, consisting of a right to have the land of the location protected by having the surface of such adjoining land slope from the boundary of the location in a manner specified by it; provided, that so much of any such order that relates to the forgoing shall not be effective unless the consent of the Department of Telecommunications and Energy is first obtained. In no case shall consent be given by the Department to an order requiring a change in the grade of a railroad or street railway until the carrier interested, if it so requests, has been given an opportunity to be heard before the Department on the sole question of such change. Mass. Gen. Laws Ann. ch. 159 § 70 (West Supp.2002).

## **MICHIGAN**

The Michigan Department of Transportation has exclusive authority to order the elimination of highway-rail crossings. The Department, when it determines that it is necessary for public safety, may change the location of or abolish any existing public at-grade crossing after not less than thirty days notice in the affected areas. If an affected party requests a hearing, the Department must hold one, and within thirty days after the date of the hearing, can issue an order to close the existing grade crossing. Mich. Comp. Laws § 462.307 (LexisNexis 2001).

## **MINNESOTA**

The authority to order closure, vacation, relocation, consolidation, or separation lies with the Commissioner of Transportation. The Commissioner has the further responsibility for the adoption of rules containing standards governing the vacation and separation of public at-grade crossings. In the adoption of those standards, the Commissioner must consider that the number of grade crossings in this state should be reduced, and that public safety will be enhanced by reducing the number of grade crossings. Minn. Stat. Ann. § 219.073 (West 1998).

Public officials with the necessary authority and a railway company may come to an agreement to the vacation, relocation, consolidation, or separation of grades at grade crossings. If the parties are unable to reach agreement, either party may file a petition with the Commissioner who then schedules a hearing. If the Commissioner determines that the vacation, relocation, consolidation, or separation is consistent with the standards adopted under Section 210.073, he or she may order the crossing vacated, relocated, consolidated, or separated. Minn. Stat. Ann. § 219.074 (West 2002).

## **MISSISSIPPI**

The jurisdiction of the Mississippi Department of Transportation is exclusive with respect to public highway-rail grade crossings either at grade or otherwise except to the extent that its jurisdiction is preempted by valid federal statute, regulation or order.

The Department of Transportation has the power, upon its own motion or upon complaint filed, after having made proper investigation, and after notice and hearing, if requested, to abolish any public highway-rail grade crossing heretofore or hereafter established, to vacate and close that part of the roadway on such crossing abolished, and to erect barricades across the roadway in such a manner as to prevent the use of such crossing as a roadway, when, in the opinion of the Department, the public convenience served by the crossing in question is the subject of closure proceedings, both the local governmental entity and the rail carrier shall be given formal written notice by the Department before any hearing is conducted by the Department. Miss. Code Ann § 65-1-175 (LexisNexis 2002).

The Mississippi Transportation Commission also has statutory authority to regulate and abandon grade crossings on any fixed route as part of the state highway system. The authority to abandon is only to allow for a subsequent crossing separation, and not to abandon outright. Miss. Code Ann. § 65-1-8(f) (West 2001).

Whenever any railroad and state highway or part of a state highway shall cross each other at grade, and in the opinion of the State Transportation Commission, the such crossing is dangerous to public safety or traffic is unreasonably impeded thereby, and that the crossing should be removed, the State Transportation Commission may order the crossing in question eliminated by having the State Highway Department carry the highway either under or over the tracks of the railroad.



The plans covering the proposed changes may can be made either by the Director of the State Highway Department, subject to the approval of the Transportation Commission or the affected railroad; but must in either event be approved by both the Transportation Commission and the railroad company before the contract is awarded. The State Transportation Commission and the railroad are required to pay equal parts of the cost of any underpass or overpass across the right-of-way of the railroad company. Miss. Code Ann. § 65-1-69 (LexisNexis 2001).

## **MISSOURI**

The Division of Motor Carrier and Railroad Safety of the Department of Economic Development has exclusive power to alter or abolish a crossing, at-grade or otherwise, of a railroad by a public road whenever the Division finds that public convenience and necessity will not be adversely affected and public safety will be promoted by altering or eliminating the crossing, or to require, where, in its judgment it would be practicable, as separation of grades at any crossing heretofore or hereafter established. The Division has the right to refuse its permission or to grant it upon such terms and conditions as it may prescribe.

This authority extends to private crossings in specific instances in which it is determined that the private crossing is being used by the public to the extent that it is necessary to protect and promote public safety. Mo. Rev. Stat. § 389.610 (West 2002). See also, “Missouri” Chapter 3: Crossing Treatment Procedures, and in Chapter 11: Private Crossings, of this book.

## **MONTANA**

Montana law does not specifically mention closure of highway-rail grade crossings within the code. But general authority over highway-rail crossings is vested in the Montana Public Service Commission. Local authority in unincorporated villages or towns to construct new highway-rail crossings is provided for in the code. “Local authority” means the Board of County Commissioners. No railroad crossing, other than a grade crossing, shall be ordered by any board of county commissioners. The Public Service Commission may, however, upon petition or request in writing of any board of county commissioners, order an overhead or underground crossing at any place where a railroad crossing has not been constructed and is required, provided, in its judgment, the safety, necessity, and convenience of the traveling public require such a crossing. Mont. Code Ann. §§ 69-14-606- 69-14-607(2)(a)(b) (2001).

## **NEBRASKA**

In 1997, the Nebraska legislature passed the Nebraska Highway-Rail Grade Crossing Safety and Consolidation Act. The legislation placed exclusive jurisdiction over all crossings outside of incorporated villages, towns, and cities, both public and private, across, over, or under all railroads in the state with the Department of Roads. It was the intent of the Legislature that any state role regarding highway-rail grade crossings, including public safety, Operation Lifesaver, maintenance, design, consolidation, separation, signalization, improvement, or relocation, be consolidated under one agency. Neb. Rev. Stat. §§ 74-1329-1330-1332 (Lexis Nexis 2001).

The Department of Roads becomes the final arbitrator whenever a complaint is filed in writing with the Department of Roads by the duly authorized officers of any incorporated village or city, concerning any crossing within such village or city, praying for relief from the matters complained of. The Department is required to hold a hearing and shall make such order as the facts warrant. The findings of the Department, subject to the right of appeal, are binding on the parties to the suit. Neb. Rev. Stat. §1335 (LexisNexis 2001).

The same is true whenever railroad tracks cross a public highway at grade, outside of incorporated cities and villages. The owner of the railroad tracks and the county board of the county in which the subject crossing is located may agree upon any change, alteration, or construction of any crossing as will promote the public convenience or safety, and they may agree upon relocation of any highway so as to eliminate such crossings entirely or so as to carry them over or under such railroad and upon the apportionment of the expenses incident to any such change, alteration, relocation, or construction between the owner of the railroad tracks and the county or other public authority in interest. Neb. Rev. Stat. §74-1337 (LexisNexis 2001).

If the owner of the railroad track and the county board or other public authority in interest fail to agree, either the owner or the county board or other public authority in interest, in the name of the county or other public authority in interest, may file an application with the Department of Roads, setting forth such fact together with a statement of the change, alteration, relocation, or construction it wants, the estimated cost, and such other facts as may be relevant and asking the Department to enter an order directing the change, alteration, relocation, or construction be made. The Department shall proceed to hear the application in the manner provided by law, and if it finds that the application should be granted, it shall enter an order accordingly, designating in the order what portion of the expense of complying with the order shall be paid by the railroad carrier and what portion shall be paid by the county or other public authority in interest, if any. Neb. Rev. Stat. §74-1338 (LexisNexis 2001).

When the owner of railroad tracks fails, neglects, or refuses promptly to comply with any order of the Department of Roads issued under Sections 74-1332 to 74-1339 or fails or refuses, or neglects to comply with such after the Department has issued an order, the owner shall be guilty of a Class V misdemeanor and shall be fined in any sum not more than one hundred dollars for each such offense. Each week of such neglect, refusal, or failure, shall constitute a separate offense. Neb. Rev. Stat. §74-1340 (LexisNexis 2001).

## **NEVADA**

The Nevada Public Utilities Commission has statutory authority for closure of existing highway-rail crossings.

After an investigation and hearing, which may initiated either upon the Commission's own motion, or as the result of the filing of a formal application or complaint by the Department of Transportation, the Board of County Commissioners of any county, the town board or council of any town or municipality, or any railroad company, the Commission may order the elimination, alteration, addition or change of a highway crossing or crossings over any railroad at

grade, or above or below grade, including its approaches and surface. Nev. Rev. Stat. § 704.300(2) (Michie1998).

## **NEW HAMPSHIRE**

The Department of Transportation has statutory authority to order closure in New Hampshire. Whenever, after hearing upon petition or upon its own motion, the Department concludes that public safety requires the closing of any public or private crossing, at-grade or above or below the railroad, it may order closure. N.H. Rev. Stat. Ann. § 373:22 (1999).

Railroads in New Hampshire are prohibited from constructing a crossing over another railroad, a highway or other way, at-grade, unless they first obtain the consent in writing of the Department of Transportation. N.H. Rev. Stat. Ann. § 373:4(1999).

## **NEW JERSEY**

The Commissioner and the Department of Transportation have statutory authority to order the construction of new crossings and alterations to existing ones. The statute does not specifically mention authority for closure of existing crossings.

When in the judgment of the Commissioner and the Department, crossings are dangerous to public safety or impede public travel, the Department may order the railroad(s) to alter such crossings within such time as the Department specifies by grade separating the crossing. If in the judgment of the Department, the owners of the public or private property will be unduly injured by the elimination of the crossing. The Department can order the railroad(s) to relocate the tracks. N.J. Stat. Ann. § 27:1A-62 (West 1998). (See also, Sections 48:2-28 and 48:2-29).

## **NEW MEXICO**

State statutes do not specifically mention any authority for closure. However, there is a provision for a grade separation procedure.

Whenever a state, county, municipal or other street or highway, including a highway which is or may be designated as a part of the Federal-Aid Highway System is constructed or reconstructed so as to cross or intersect a railroad, the State Highway Commission or other governing body may separate the grades at the highway-rail crossing if, in its opinion, it is practicable and reasonably necessary for the protection of the traveling public.

Whenever the public authority is unable to agree with the railroad as to the grade separation and the methodology for carrying it out, the public authority may petition the district court of the county in which the intended separation is located. N.M. Stat. Ann. § 63-3-37 (Michie 1998).

## **NEW YORK**

The authority to order elimination of a highway-rail crossings lies with the Commissioner of Transportation.

Any railroad company or governing body of a municipality which contains a highway-rail crossing can petition the Commissioner to institute grade crossing elimination procedures.

The Commissioner may hold public hearings on any elimination requested by petition after giving due notice to the parties in interest. At the conclusion of the hearing, the Commissioner shall by order, determine whether it is in the public interest to require the elimination of the highway-rail grade crossing. In any elimination order, the procedures for elimination are to be specified. N.Y. Transp. Law § 222 (McKinney 1999).

## **NORTH CAROLINA**

The North Carolina Department of Transportation has statutory authority to regulate, abandon and close to use, grade crossings on any road designated as part of the state highway system, and whenever a public highway has been designated as part of the state highway system and the Department of Transportation, in order to avoid a grade crossing or crossings with a railroad or railroads, continues or constructs the said road on one side of the railroad or railroads, the Department of Transportation shall have power to abandon and close to use such grade crossings; and whenever an underpass or overhead bridge is substituted for a grade crossing, the Department of Transportation shall have power to close to use and abandon any such grade crossing and any other crossing adjacent to it. N.C. Gen. Stat. § 136-18(11) (2001).

The Department has statutory authority to order crossing closure on roads or streets forming a link in part of the state highway system. If, in the opinion of the Secretary the crossing is dangerous to the traveling public or unreasonably interferes with or impedes traffic on the state highway, the Department of Transportation is required to issue notice requiring the person or company operating the affected railroad to appear before the Secretary at an appointed time not less than ten days or more than twenty days from the date of the notice and show cause if any why the railroad should not be required to make adjustment to the crossing or close it. After hearing the matter, the Secretary will determine whether a crossing is dangerous to public safety or unreasonably interferes with traffic. If a conclusion is reached that a crossing is dangerous, the Secretary can order either closure or separation. N.C. Gen. Stat. § 136-20 (2001).

A city has the authority to order the elimination and separation of a grade crossing if the council finds that the crossing constitutes an unreasonable hazard to vehicular or pedestrian traffic. N.C. Gen. Stat. § 160A-298 (a)-(c)-(d) (1999).

## **NORTH DAKOTA**

Declaring that it is in the interest of public safety to eliminate unnecessary railroad grade crossings whenever reasonable access can be safely provided at another crossing, the North Dakota Code places authority with the Public Service Commission to vacate, establish, or

relocate crossings, or to separate the grades, if no agreement can be reached by the public officials having the necessary authority and the railroad. Either party to the dispute can file a petition with the Commission, thereby submitting the matter for determination.

The Commission, after receiving the petition, is required to give reasonable notice, conduct a hearing, and then, issue its order. N.D. Cent. Code § 24-09-10 (LexisNexis 2001).

## **OHIO**

Statutory authority for the alteration or elimination of highway-rail crossings lies with local government units.

Both the legislative authorities of municipal corporations and the Boards of County Commissioners are vested with the authority to institute proceedings necessary for the abolition of grade crossings.

Both entities are given authority to meet with the affected railroad corporation to devise a plan for altering, abolishing and changing the approaches to or the location of the railroad, public way or the grades so as to avoid an at-grade crossing.

The Board of County Commissioners is granted the same powers as are conferred upon municipal corporations to alter or require to be altered, any railroad crossing for that part of a state, county or township road which lies within the limits of a municipal corporation.

When a grade crossing exists on a county line road, the respective Boards of County Commissioners are allowed to join in all the proceedings necessary for grade crossing elimination.

When it does become necessary, on the part of a municipal corporation or county, to join with a railroad company, the legislative authority of the municipal corporation by a two-thirds vote of all the members, or the Board of County Commissioners by a unanimous vote, can declare a necessity and intent to abolish a grade crossing. The resolutions of both entities may contain the manner in which the eliminations are to be made, the method of constructing any new crossings, which party is responsible for the construction, and how the costs are to be apportioned.

Any time a resolution is passed by either entity, it must be published. Notice of its passage must be given to the affected parties and the owners of the property adjacent to the proposed improvement. Ohio Rev. Code Ann. §§ 4957.01-4957.02-4957.09 (Anderson 2000).

## **OKLAHOMA**

The Oklahoma Corporation Commission has statutory authority over all public highway-rail crossings. This authority is inclusive of the right to order elimination and, where practicable, a separation of grade. Okla. Stat. tit. 17, § 84 (West 1994).

## **OREGON**

The Oregon Department of Transportation has statutory authority to eliminate highway-rail grade crossings.

The Department, either upon its own motion or upon an application by a railroad, or the public authority in interest, may find, subsequent to a hearing, that elimination is required in the interest of public safety, necessity, convenience and general welfare. Or. Rev. Stat. § 824.206 (1999).

## **PENNSYLVANIA**

The Pennsylvania Public Utility Commission has exclusive authority to eliminate highway-rail grade crossings. After due notice and proper hearing to all parties in interest, the Commission may order any crossing relocated, altered, suspended, protected or abolished.

Upon a finding of immediate danger to the safety and welfare of the public, the Commission may order an immediate alteration, improvement or suspension. Any order for suspension must include the following for protection of the motoring public:

- (1) Removal or covering of crossing warning devices.
- (2) (a) Paving over the tracks.  
(b) Removing the tracks and paving over the area formerly occupied by the tracks.  
(c) Barricading the crossing.

Within a township, borough or city, the Court of Quarter Sessions of the county may close a crossing upon petition of the railroad company and declare as a public highway any over grade or under grade substitution that is to then be maintained by the proper authorities. 66 Pa. Cons. Stat. Ann. § 2702 (West 1999).

A unique feature of the Pennsylvania law provides that the Commission may order the work of crossing abolition of any crossing in whole or in part, including any future obligations, to be performed by a municipal authority created to advance recreation or conservation purposes or a nonprofit organization with a recreation or conservation if the following criteria are met:

- (1) The municipal authority or nonprofit organization provides adequate security for the work or demonstrates financial responsibility to the satisfaction of the Commission.
- (2) The Commission does not order any Commonwealth agency to bear ancillary responsibility for the work of abolition of any crossing, or the cost associated with the work, without the prior written consent of the head of the Commonwealth agency.

In accordance with the provisions of Section 2704 (relating to compensation for damages occasioned by construction, relocation or abolition of crossings), the Commission may order the municipal authority or nonprofit organization assuming responsibility for the abolition of the crossing to bear all or a portion of the costs associated with the work. This section shall not

apply to any proceeding wherein the Commission has issues a final order prior to the effective date of its enactment. 66 Pa. Con. Stat. Ann. § 2702 (West Supp. 2002)

## **RHODE ISLAND**

In the exercise of the police power of the state for the safety of its inhabitants, the state legislature vests in the Public Utilities Commission the authority to eliminate highway-rail grade crossings. The statute further states that the Commission shall have this authority even if, by its order, it effectively deprives a municipality of control of its streets. R.I. Gen. Laws §§ 39-8-1.1 - 8-3 (1997).

## **SOUTH CAROLINA**

It would appear that the legal authority to order grade crossing closure rests with a number of agencies within the State of South Carolina.

The Public Service Commission of South Carolina may provide rules and regulations with reference to crossing of railroad tracks by public highways as in its judgment will be conducive to the public safety. In exercising this authority, the Commission, upon complaint shall investigate and may require that any necessary crossing be made either above or below grade, so as to avoid, as far as possible, any grade crossings. S.C. Code Ann. §58-15-1510- 1520 (2002).

If the Commission shall decide that such a crossing should be eliminated or relocated, it shall apportion, assess, and require the payment by the affected railroad company of its proper pro rata share of the expense incident to the construction and grading any highway or road appurtenant to such elimination or relocation, but the cost to be assessed against the railroad company shall not exceed its proper pro rata share for more than one-fourth of one mile and, in the case of railroads independently operated having less than eight miles of road within the state, shall not exceed its proper pro rata share for more than one-eighth of a mile. S.C. Code Ann. § 58-15-1530 (2002)

All crossings eliminated by virtue of the forgoing code sections shall be closed as public highways or travel places. S.C. Code Ann. § 58-15-1540 (2002).

One article in the state code seems to indicate that a number of entities have the authority to order the elimination of grade crossings:

The provisions of this article (reference is to Article 17) shall apply throughout the state to the elimination of grade crossings, whether such elimination be made upon the order or request of the State Highway Commission, counties, cities, drainage districts or other subdivisions or departments of state government. S.C. Code Ann. § 58-15-1610- 1620 (2002)

Another provision of the code gives the Department of Transportation the authority to order legally closed and abolished as a public way, within the limits of a railroad right-of-way, a grade crossing then in existence at the time the department assumes jurisdiction of the matter,

upon a finding that the enhancement of public safety resulting from such closing outweighs any inconvenience caused by increased circuitry of highway routes. This order may be issued either in connection with, or independent of, an order relating to automatic train-activated warning signals. The authority of the Department legally to close and abolish grade crossings is in addition to authority granted by law to other state agencies or to local units of government to close and abolish grade crossings. Upon the issuance of the order by the Department, the railroad or railroads involved shall physically remove the crossing from the tracks, and the governmental unit maintaining the highway shall remove or barricade the approaches to the crossing. S.C. Code Ann. § 58-15-1625 (2002).

Whenever any such subdivision or department of the state government as is mentioned in Section 58-15-1620, having jurisdiction, may determine upon the elimination of any grade crossing by means of grade separation structure, prompt notice shall be given to the railroad company owning or operating the railroad involved. Within ten days thereafter the representatives of the department and of the railroad involved shall meet and adopt a layout, with the grades and alignments mutually satisfactory. S.C. Code Ann. § 58-15-1630- 1690 (2002).

Failing to agree, the department or subdivision may order the railroad involved to proceed with the construction of such a structure as it may require as indicated in plans and specifications accompanying its order. The railroad shall begin work within sixty days after receipt of such order and shall complete the structure within a reasonable time. S.C. Code Ann. § 1640 (2002).

## **SOUTH DAKOTA**

The South Dakota Department of Transportation has the statutory authority for determining the necessity of eliminating grade crossings.

The Department can order that any existing or planned crossing be relocated, altered or abolished upon its own motion or upon complaint, and after a hearing and notice to all interested parties, including the owners of adjacent property and the affected railroad company. S.D. Codified Laws Ann. §§ 31-27-1-2 (1984).

Where a new right-of-way is necessary for the building of a subway or overhead crossing on a state or county highway, the Department of Transportation may determine when it is necessary to eliminate the dangerous crossing. S.D. Codified Laws Ann. §§ 31-27-12 (LexisNexis 2002 Supp.).

## **TENNESSEE**

The Department of Transportation, through the discretion of the Commissioner or the Commissioner's designee, has the authority to eliminate grade crossings whenever the crossing elimination is necessary for the protection of persons traveling on the highway or railroad.

When any such grade crossing is ordered to be eliminated, the Commissioner or the Commissioner's designee shall determine the location of the crossing to be substituted and the



grade thereof, and whether it shall pass over or under the railroad tracks; provided, that on appeal from any such order by the affected railroad company to the chancery court in the judicial district in which the new grade crossing would be located, such chancery court shall have the power to make any change in the order appealed from with regard to the location and grade of the crossing to be constructed which may appear to the court to be necessary to adequately protect the safety of passenger and freight traffic on the railroad; and provided, further, that the appeal must be made within thirty days of the date of the order appealed from is certified to the affected railroad company. Tenn. Code Ann. §§ 65-11-107-108-109- 11 (LexisNexis 2001).

## **TEXAS**

The statutes in Texas are unclear as to which governmental entity has the authority and responsibility to order the closure of existing highway-rail grade crossings. Title 112, Article 6445, of the Revised Civil Statutes confers upon the Railroad Commission of Texas power and authority over all railroads; suburban, belt, and terminal railroads, as well as public wharves, docks, piers, elevators, warehouses, sheds, tracks and other property used in connection with railroads. The statute goes on to say that the power of the Railroad Commission extends over all persons, associations, and corporations, private or municipal, owning or operating railroads in the state. Tex. Rev. Civ. Stat. Ann. art. 6445 (West 1999).

There also exists within the Texas Revised Civil Statutes, a provision for grade crossing elimination within every incorporated city or town having a population of more than one hundred thousand inhabitants. Tex. Transp. Code Ann..317.003 (West Supp.2002).

The statute says: (a) To decrease hazards to life or property, promote public safety or convenience, improve traffic conditions, or encourage the orderly development of the municipality, a municipality may acquire, construct, improve, enlarge, extend, maintain, repair, or replace a facility. The statute defines “facility” as property that the governing body of a municipality considers necessary for the elimination of a grade-level crossing by a railroad line from a street of the municipality, or for the relocation of a railroad line within the municipality including:

- (1) land;
- (2) a right-of-way;
- (3) an elevated structure;
- (4) a grade separation;
- (5) an underpass or over pass;
- (6) a passenger station, depot, or other building;
- (7) an interchange yard;
- (8) a railroad track; and
- (9) any other improvement.

Texas Transp. Code Ann § 317.002 (West Supp. 2002)

The activities authorized by the statute include:

- (1) removing and relocating railroad tracks, a utility line or pipe, or another improvement:
  - (2) removing or demolishing a building or another improvement;
  - (3) paying for damage to other property in connection with an activity described by that subsection; or
  - (4) improving a street in connection with an activity described by that subsection.
- Tex. Transp. Code Ann. § 317.003 (West Supp. 2002)

## **UTAH**

The Utah Department of Transportation has exclusive authority to order the closure of highway-rail grade crossings. Utah Code Ann. § 54-4-15 (1999).

## **VERMONT**

The Vermont Transportation Board has statutory authority to determine what alterations, changes or removals, if any, shall be made and by whom. Vt. Stat. Ann. tit.5 §§ 3783-84-85-88 (1999).

## **VIRGINIA**

The Commonwealth Transportation Board has statutory authority to order the elimination of a grade crossing or the consolidation of multiple grade crossings. Va. Code Ann. § 56-365.1 (Michie 1999)

## **WASHINGTON**

The Washington State Utilities and Transportation Commission has authority to order closure of existing crossings. Wash. Rev. Code §§ 81.53.030-060 (1999).

## **WEST VIRGINIA**

The Road Commissioner may require any railroad company, owning, controlling or operating a railroad in the state to eliminate at-grade highway-rail crossings on existing highways, relocated highways and extensions of existing highways by separating the grades or by relocating an existing highway. The Commissioner may determine the location, design and grade for any project or structure for the elimination or avoidance of at-grade highway-rail crossings and may determine whether a new, relocated or extended highway shall pass over or under the railroad right-of-way or tracks. W.Va. Code § 17-4 10 (1998).

## **WISCONSIN**

The Office of the Commissioner of Railroads within the Wisconsin Department of Highways has the authority to abolish highway-rail crossings. Wis. Stat. §195.29(1)(4)(5) (1999).

## WYOMING

The Transportation Commission of Wyoming has the authority to close or establish at-grade crossings on public highways as specified and those over the track(s) of any railroad corporation or street railway corporation in the state.

Upon application to the Commission from the authorized agents of the city, counties or other government entities or the affected railroads, or upon its own motion when public interest indicates action should be taken, the Commission must consider the need for closure based on evidence presented, availed or adduced. The Commission must establish a priority rating from the applications or evidence, assigning priority first to the most hazardous railroad crossing location, giving proper weight to increased rail traffic and to the volume of traffic over the crossing with due consideration being given for school buses and dangerous commodities. If the Commission determines a need for grade crossing warning devices, they will determine the type of crossing warning devices required, including whether the crossing is to be made at-grade or with a grade separation structure. Wyo. Stat. § 37-10-102 (a)-(b) (1999).