

CHAPTER 2: CROSSING TREATMENT PROCEDURES

CHAPTER OVERVIEW

Chapter Two provides a description of the processes and procedures required, along with the roles to be played by the respective parties (units of government and the railroads), when undertaking elimination, relocation, construction, repair, and/or improvement of grade crossings.

In most states the designated agency having authority to order improvements is also the one with statutory authority to order outright elimination. But, there exists a distinction in some states, in that an agency may have the authority to eliminate a highway-rail crossing, but only for the purposes of creating a grade separation. For purposes of clarity and ease of reference, the two processes are described in separate chapters. The applicable sections of the statutes are included with each state.

STATE LAWS AND REGULATIONS

ALABAMA

When the funds of the state are being expended for the construction, maintenance or repair of a public highway, the Alabama Highway Department has the authority to compel railways operating in the state to construct viaducts, tunnels, underpasses or bridges to the full extent of the width of the right-of-way and over the tracks when they are judged to be necessary for the safety of the general public. To cover the costs, the Highway Department can appropriate an amount not to exceed 50 percent out of the funds credited to them for the construction and maintenance of highways.

If, after due notice to the railroad that such action is necessary, in the judgment of the Highway Department and the railroad fails or refuses to comply with the Department's order, the Department is then authorized to undertake the necessary construction and charge the railroad. Ala. Code § 23-1-9 (1999)

ALASKA

The Alaska Statutes do not provide for a process of upgrading or improving highway-rail crossings in the state.

ARIZONA

The Arizona Corporation Commission has exclusive power to prescribe the manner, the particular point of crossing, and the terms of installation, operation, maintenance, use and equipping of each crossing in the state. The Commission has the exclusive power to prescribe the character of crossings to be constructed and maintained by railroads where their lines cross public roads or streets of a town or city.

On or before February 15 of each year, the Commission is required to submit to the affected railroad, city, county, and Department of Transportation, a list of crossings where installation of automatic warning signals or devices should be considered during the year, or in a reasonable time frame depending upon the availability of funds, materials, labor and other factors involved in the installation process.

The Commission prepares an annual budget request in which 10 percent, up to two hundred thousand dollars, of the total amount approved for the same year by the Federal Highway Administration for highway-rail projects within the state, is set aside from the general or any other fund for installation or improvement of automatic warning signals or devices at public railroad grade crossings.

After a public hearing, the Commission may determine that a particular railroad crossing at a public highway or street requires the installation of automatic warning signals. If the interested parties are unable to agree on the apportionment of cost, 50 percent will be covered by the railroad and the remaining 50 percent by the respective city, county or state. City, county, or state highway funds can be used to finance the cost of installation in greater amounts than those that are set forth in the statute, provided that federal funds are available for the reimbursement of the city, county or state highway fund. Ariz. Rev. Stat. Ann. §§ 40-337-337.01-337.02-337.03 (1999)

ARKANSAS

The State Highway Commission administers the railroad crossing safety program in Arkansas. The General Assembly designated the highway commission as the sole public body with exclusive jurisdiction concerning the location, construction, improvements, and protection of railroad crossings. Ark. Code Ann. §§ 23-12-301-1002-1003-1004 (1999).

CALIFORNIA

The California Public Utility Commission has exclusive power to determine and prescribe the manner, the particular point of crossing and the terms of installation, operation, maintenance, use and equipping of each crossing of one railroad by another railroad or street railroad, a public or publicly used road or highway by a railroad or street railroad or of a street by a railroad or street railroad.

The Commission may, where practicable, require a grade separation at any crossing; prescribe the terms upon which the separation is to be made, and the type of structure required. Cal. Pub. Util Code §§ 1201- 1202 (West 1999).

COLORADO

The Colorado Public Utilities Commission has the power to determine order and prescribe the terms and conditions of installation, operation, maintenance and equipping of highway-rail crossings which may be constructed. This includes the placement of watchmen at the crossing and the installation and regulation of lights, blocks, interlocking, other signaling

systems, safety appliance devices, or other such means as are reasonable and necessary to promote public safety.

The Commission may order that automatic or other safety appliance signals or devices be installed, reconstructed, improved and/or operated at any grade crossing of any public highway or road by any railroad. The Commission must also determine and order, after notice and hearing, how the cost of installing, reconstructing or improving such signals or devices shall be divided between the affected railroads, the highway operations and maintenance division, and the affected city, city and county, town, county or other political subdivision of the state. In determining how much of the cost is to be borne by the railroad, consideration will be given to the benefit, if any, which will accrue from those signals or devices to the railroad. In every case, the portion to be paid by the railroad is to be not less than 20 percent of the total cost of the signals or devices. In order to compensate for the use of such crossings by the public, the Commission will generally order that any part of the total not paid by the railroad will be divided between the state highway crossing fund and the city, town, city and county, county or other political subdivision in which the crossing is located; in which case, the Commission shall also fix the amount to be paid. Colo. Rev. Stat. §40-4-106 (2001).

The Commission shall not order the abolition of any crossing for which a grade separation is determined to be necessary until the separation is constructed. Colo. Rev Stat. § 40-4-106(d) (2001).

CONNECTICUT

Connecticut law prohibits the construction of a public railroad crossing at grade on or after October 1, 1989, unless authorized by special act of the General Assembly. The Commissioner of Transportation, either upon his own initiative or upon request of the joint standing committee on transportation is empowered to investigate and make recommendations concerning the creation of such a crossing. Conn. Gen. Stat. § 13b-268-267 (West 1998).

The Commissioner of Transportation has the authority to adopt regulations to ensure the safe maintenance inspection, and testing of signal systems and devices at railroad grade crossings. Conn. Gen. Stat. § 13b-345b (West 1998).

The Connecticut Commissioner of Transportation has the authority to investigate conditions surrounding all highway-rail crossings and determine at which crossing(s) public safety reasonably requires that any person traveling upon the highway shall come to a stop or proceed with caution before passing over the tracks. The Commissioner has the authority to require a railroad company at each of the crossings to erect and maintain, on the highway and within the limits of its right-of-way, a STOP, caution, or warning sign. Conn. Gen. Stat. § 13b-345 (West 1998).

Any town, city or borough may petition the Department of Transportation to provide a mandatory stop on any municipal or state highway approaching a crossing at grade. Conn. Gen. Stat. § 13b-345a (West 1998).

In the case where the tracks cross a state highway at-grade, the state Traffic Commissioner has authority to prescribe the nature of any traffic control devices or measures that are to be installed. The Commissioner of Transportation is to furnish and install such devices or measures.

The Commissioner may require each railroad company, at all of its at-grade crossings with gates or signals, to erect and maintain, within their right-of-way, a sign advising the public to call the 911 emergency telecommunication number upon the malfunctioning of any grade crossing gates or signals.

The Commissioner may also require each railroad company to maintain logs, subject to the inspection of the Transportation Department, that list all reports of malfunctioning grade crossing gates or signals. Each log must contain information concerning all investigations and actions taken by the company to repair the malfunctioning gates and signals. Each railroad must report to the municipality all actions taken to repair the gate or signals within the municipality. Conn. Gen. Stat. § 13b-345 (West 1998).

The Commissioner has authority to make all necessary orders concerning the establishment of a temporary grade crossing during the period of construction of a permanent grade separation, provided the state, town, city or borough bears the cost of any necessary signs, signals, gates, flagmen or other devices. Conn. Gen. Stat. § 13b-271 (West 1998).

Any public service company or companies whose tracks cross over, under, or upon a state highway or any other main highway leading from one town to another, the municipality within which such crossing is located may bring a petition in writing to the Commissioner of Transportation for authority to eliminate any dangerous condition which exists at the crossing. Upon receipt of the petition, the Commissioner shall appoint a time and place for hearings. Conn. Gen. Stat. § 13b-275 (West 1998).

If the Commissioner 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 an order to the 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). (See also, Connecticut's entry in Chapter 1 of this book).

DELAWARE

The Delaware Department of Transportation is vested with exclusive power to determine, order, and prescribe the points at and the manner in which any crossing may be constructed, altered, relocated or abolished, and the manner and conditions in or under which such crossing shall be maintained operated and equipped. The Department may order the work of construction, relocation, alteration, protection or abolition of any crossing to be performed in whole or in part

by any public carrier or municipal corporation or county, or, in the case of any crossing on private land, by the owner of the land. Del. Code Ann. tit. 2, § 1804 (1999).

DISTRICT OF COLUMBIA

Any existing or planned street or highway within the District of Columbia that crosses a railroad, other than a street railroad, is to be located, constructed and maintained either beneath the tracks by a suitable subway or above the tracks by a suitable viaduct bridge.

The cost of any such project, including the cost of constructing the portion of any viaduct bridge within the limits of the railroad company's right-of-way, is to be borne and paid as follows:

- (1) The District of Columbia must apply all Federal-aid highway-rail grade separation funds available for use by them.
- (2) If the Federal-aid funds are insufficient, the portion not covered shall be paid one half by the railroad company and one half by the District of Columbia, provided that in no case shall the obligation of the affected railroad company exceed 10 percent of the total cost and expense of the project.
- (3) After construction, the cost of maintenance shall be wholly borne by the District of Columbia in the case of a highway overpass and by the railroad company in the case of an underpass. D.C. Official Code § 9- 1201.14 (West 2001). See also, Sections 9-1205.03 and 9-1201.15

FLORIDA

The Florida Department of Transportation has regulatory authority over all public highway-rail grade crossings in the state. This includes the responsibility for administering rail operating and construction programs. The programs include 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.

Every railroad company maintaining a highway-rail crossing must, upon reasonable notice from the Department of Transportation, install, maintain and operate at the crossing, traffic control devices to warn motorists of the approach of trains.

Advance railroad warning signs and pavement markings must be installed and maintained at public highway-rail grade crossings by the government agency which has jurisdiction over or maintenance responsibility for the highway or street in accordance with the uniform system of traffic control devices.

Pavement markings and advance warning signals are the responsibility of the government entity having jurisdiction over the crossing location. Fla. stat. Ann. §§ 341.302-351.03 (1999).

GEORGIA

Where a new grade crossing results from the construction of a new or relocated railroad line, the railroad is responsible for, and bears all expenses associated with, the construction of the grade crossing. The Georgia Department of Transportation, when the grade crossing is on the state highway system, or the county, when the grade crossing is on a county road system, or a municipality, when such a grade crossing is on its municipal street system, may set the terms and conditions on the nature of the grade crossing including any safety devices that may be reasonably necessary for the safety and convenience of the traveling public. Ga. Code Ann. 32-6-191 (1998).

Whenever the Transportation Department, a county, or a municipality decides to eliminate any grade crossing on its respective public road system by means of an underpass or overpass, prompt notice must be given to the affected railroad or railroads involved; and within 30 days thereafter the representatives of the Transportation Department, the county, or the municipality and the railroads involved shall meet, and within a period of 90 days, agree to a plan and specification for the construction of a grade separation structure. Any such agreement shall be submitted to the Transportation Department for its approval, and no work may commence without the Department's approval. It is the duty of the railroad to begin work on any such grade separation structure within four months after receipt of an order to do so. If the affected railroad or railroads does begin work within four months after receipt, the Transportation Department, county, or municipality may proceed with the construction of the proposed grade separation structure. Ga. Code Ann. 32-6-194 (1998).

HAWAII

Hawaii has no laws concerning crossing maintenance or improvement procedures for warning or protective devices.

One section of the Hawaii code does provide that the Director of Transportation and the counties are authorized to identify and erect STOP signs at particularly dangerous highway-rail crossings. Haw. Rev. Stat. § 291C-92 (1999).

IDAHO

The Idaho Transportation Department has the authority to administer programs and promote public safety at highway-rail crossings.

The Department is charged with exclusive administration of the Railroad Grade Crossing Protection Account. The account was created as a dedicated fund in the state treasury in order to promote public safety at railroad grade crossings and public streets, roads or highways and to pay for all costs of installing, reconstructing, maintaining or improving safety appliances, signals or devices.

The Department must follow Federal guidelines on grade crossing improvement projects that are to be funded, in whole or in part, under any Federal act. Where the project is not entirely

funded by Federal funds, the Department may use monies in the railroad grade crossing account to pay all or a portion of the matching funds required.

On projects where Federal-aid funds are not being utilized in whole or in part, the Department shall apportion the entire cost of the engineering installation, reconstruction or improvement of any signal or device between the railroad and the Department or the local authority, in proportion to the respective benefits to be derived.

The railroad company(s) owning the track(s) upon which the improvements are to be made shall perform all construction and maintenance of the signals and devices and shall be reimbursed for that part of the cost not to be borne by it. In allocating and dividing the costs among the parties involved, the Department must limit the amount to be charged against the railroad to a maximum of 10 percent of the total cost of the construction unless the crossing is a new one proposed by the railroad, in which case, the railroad assumes the entire cost of construction. Idaho Code §§ 62-301- 304A-304C (1998).

For crossings not located 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 railroad companies. Idaho Code § 62-303 (1998).

ILLINOIS

The Illinois Commerce Commission has the power, either upon its own motion, or upon complaint, and after making proper investigation, to require the installation of adequate and appropriate luminous reflective warning signs, flashing signals, crossing gates or any other warning devices in order to promote and safeguard the health and safety of the public.

The Commission has the authority to determine the number, type, and location of such signs, signals, gates or other warning devices, which shall conform as near as possible to generally recognized national standards. The Commission has the authority to prescribe the division of the cost of installation and subsequent maintenance of the signs, signals, gates or other warning devices between the rail carriers, the public highway authority in interest and, in instances involving the use of the Grade Crossing Protection Fund, the Illinois Department of Transportation, which administers the fund. 625 ILCS 5/18c-7401(3) (1999).

No railroad may change or modify the warning device system at a railroad-highway grade crossing, including warning systems interconnected with highway traffic control signals, without having first received the approval of the Commission. The Commission has the power, either upon application, upon its own motion, or upon complaint, to make proper investigation and to require the interconnection of grade crossing warning devices with traffic control signals at highway intersection located at or near railroad crossings within the distances described by the State's *Manual On Uniform Traffic Control Devices* adopted pursuant to Section 11-301 of the Code.

In addition, state and local authorities may not install, remove, modernize, or otherwise modify, traffic control signals at a highway intersection that is interconnected or proposed to be interconnected with grade crossing warning devices when the change affects the number, type, or location of traffic control devices on the track approach leg or legs of the intersection or the timing of the railroad preemption sequence of operation until the Commission has approved the installation, removal, modernization, or modification. The approval of the Commission shall be limited to consideration of issues directly affecting the public safety at the railroad-highway grade crossing. In order to carry out this authority, the Commission shall have the authority to determine the number, type, and location of traffic control devices on the track approach leg or legs of the intersection and the timing of the railroad preemption sequence of operation. The Commission shall prescribe the division of costs for installation and maintenance of all devices required by this paragraph between the railroad or railroads and highway authority in interest, and in instances involving the use of the Grade Crossing Protection Fund on a state highway, the Illinois Department of Transportation. 625 ILCS 5/18c-7401(3) (1999).

In the aftermath of the fatal collision between a school bus and a commuter train at a railroad crossing in the Village of Fox River Grove in October of 1995, the State of Illinois instituted a number of legislative initiatives. One of those was a mandated study by the Illinois Commerce Commission and the State Department of Transportation of the relationship between train speeds and highway-rail grade crossing safety. The Commission is required to report the findings of the study to the General Assembly no later than January 5, 1997.

An additional legislative initiative is a Special Speed Limit Pilot Project to be conducted by the Commerce Commission and the Commuter Rail Division of the Regional Transportation Authority within the Village of Fox River Grove.

For this special project the Commission is required to set the maximum train speed limit for Regional Transportation Authority trains at 50 miles per hour at intersections on the portion of the intrastate rail line located in the Village of Fox River Grove. If the Regional Transportation Authority deliberately fails to comply with this maximum speed limit, then any entity, governmental or otherwise, that provides capital or operational funds to the Regional Transportation Authority, shall appropriately reduce or eliminate that funding. The Commission is required to report to the Governor and the General Assembly on the results of this pilot project in January 1999, January 2000, and January 2001. The Commission is also required to submit a final report on the pilot project to the Governor and the General Assembly in January 2001.

As a part of the project, every rail carrier is required to report to the Commission by the speediest means possible, whether telephone, telegraph, or otherwise, every accident involving its equipment, track, or other property which resulted in loss of life to any person. The notification is to be accompanied by a written report.

The Commission may investigate all railroad accidents reported to it, or of which it acquires knowledge independent of reports made by rail carriers, and shall have the power, consistent with standards and procedures established under the Federal Railroad Safety Act (45 U.S.C.A § 421 et seq.), to enter such temporary orders as will minimize the risk of future

accidents pending notice, hearing, and final action by the Commission. 625 ILCS 5/18c-7402(2)(c)(3)(a)(b) (1998). See also, ILCS 5/18c-7502.5.

Except with regard to grade crossing obstructions under Section 18c-7402, and trespass on railroad rights of way and yards under Section 18c-7503, jurisdiction to initiate actions to enforce provisions of Chapter 18c is vested exclusively in the Commerce Commission. Where a valid Federal statute, regulation, or order sets forth procedures or sanctions for violation of safety standards, and such procedures or sanctions are preemptive of state law, the Commission shall exercise its enforcement jurisdiction under the article in accordance therewith. Otherwise, the provisions of this chapter regarding enforcement procedures and sanctions shall apply.

The Commission may waive any of the safety requirements under the article if continued adherence to the requirement or requirements is not required for the safety of railroad employees or the public. 625 ILCS 5/18c-7403 (1)(2) (1998).

INDIANA

Whenever the Indiana Department of Transportation reaches the conclusion, whether on account of the topography of the ground at the crossings, or on account of the great number of travelers using any crossing of a highway and railroad, or for any reason deemed by the Department to be sufficient, that the grades of such crossing should be separated, and it shall be found practicable to do so, the Department shall serve with notice the railroad company or companies, and also serve with notice the board of commissioners of the county or counties in which such highway crossing is located. If, after conducting a hearing, the Department is satisfied that the crossing is dangerous to life and that safety and accommodation of the public requires that the grades be separated and that it is practicable to separate the grades, then the Department may issue an order. The costs of the separation shall be borne one-fourth by the county and counties in which such grade is separated and three-fourths by the railroad(s). The provisions of this section do not apply to cities of over twenty thousand, and to incorporated towns. Ind. Code Ann. §§ 8-6-1-4, 8-6-1-7(1999).

The Board of Public Works or Board of Public Works and Safety of a city may, by resolution, require the separation or alteration of the grade levels of any public highway in the city and of any railroad crossing the public highway, either by carrying the public highway under or over the railroad, or by carrying the railroad under or over the public highway. The Indiana State Highway Commission shall participate in the proceedings and in the cost of any improvements if any improvements involve a highway which is part of the state highway system or a street or highway selected by the Commission as a route of a highway in the state highway system. Ind. Code Ann. §§ 8-6-2.1-1, 8-6-2.1-2, 8-6-2.1-3 (1999).

Upon petition by five or more citizens of the state, or a board of county commissioners, the Indiana Department of Transportation has the authority to conduct a hearing to declare as dangerous or extra hazardous, grade crossings in the state, that the Department finds require the installation of automatic train-activated warning signals or other crossing safety devices in order to improve the safety of the users.

When the Department orders installation, replacement, relocation or improvements of automatic train activated warning signals, it shall divide the costs of equipment, installation, operation, and maintenance between the railroad and the public. Whenever a grade crossing not protected by automatic warning signals is ordered so protected, the Department shall prescribe the division of the cost of the equipment, its installation, its operation and maintenance, and its construction between the railroad involved and the public, giving due regard to the net benefits received by the parties, and the causes creating the need for signals at the crossing. Ind. Code Ann. § 8-6-7.7-4 (1999).

IOWA

Wherever a railroad track crosses or will cross a highway, street or alley, the railroad company owning the track, and the Iowa Transportation Department in the case of primary highways, the Board of Supervisors of the county in which the crossing 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, flasher lights or gate arm signals at the crossing and the allocation of costs. The Department shall be party to the agreement if grade crossing safety funds are to be used. Up to 75 percent of the maintenance cost of flashing lights or gate arm signals at the crossing may be paid from the grade crossing safety fund. Iowa Code § 327G.15 (1999).

KANSAS

Upon a request by the governing body of any city, county or township, and after a proper investigation is made in cooperation with the Secretary of Transportation of Kansas, the State Corporation Commission has authority to designate railroad grade crossings which are dangerous. The State Corporation Commission may, at a crossing so designated, order that appropriate safety devices be installed and maintained by the railroad(s), and set a completion date. The Commission has the authority to determine the number, type and location of such safety devices, which must conform with generally recognized national standards, and to require a portion of the installation cost of the safety devices be paid by the railroad(s) involved provided that the cost to the railroad(s) shall not be less than 20 percent or more than 50 percent of the total installation costs. Kan. Stat. Ann. § 66-231a (1999).

The Kansas Secretary of Transportation, in the construction, improvement, reconstruction, or maintenance of the state highway system, has the power and authority to compel all railroad companies operating steam or electric railroads in the state to construct, improve, reconstruct or maintain viaducts, tunnels, underpasses, bridges or grade crossings, when in the judgment of the Secretary they 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 any 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. The Secretary's portion, however, shall not exceed 50 percent of the costs, except that the 50-percent limit does not apply to express highways or freeways. Otherwise, grade crossings shall be constructed and maintained at the expense of the railroad.

When the Secretary deems it advisable, he or she may order the affected railroad 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 (1999).

The governing bodies of cities of the first and second class have the power to regulate the crossing of railway and street-railway tracks and to provide precautions and adopt ordinances. This includes the power to require railroad companies to erect, construct, reconstruct, complete and keep in repair any viaduct(s) upon or over tunnels under such street(s) and over or under any such track(s). Kan. Stat. Ann. § 12-1633 (1999).

KENTUCKY

The Kentucky 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 each of the next four years; and as necessary thereafter, the Department is required to compile 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. Either of the affected parties may request a public hearing and, should one be 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 30 days notice of the opportunity, the Department shall order the crossing closed. Ky. Rev. Stat. Ann. § 177.120 (1)(2)(3) (1999 Supplement).

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 (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) (Baldwin 1998). Editor's 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. See Ky. Rev. Stat. Ann. §§ 67.080-67.040 (Baldwin 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 employees 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) (Baldwin 1998).

The Transportation Cabinet has the authority to investigate any public grade crossing not equipped with gates and with an average daily traffic of four thousand or more, at which two or more accidents involving a train and a vehicle traversing a highway-rail crossing have occurred in a consecutive five-year period beginning January 1, 1986. The Cabinet shall request written comments from the affected local government prior to reaching a decision on a particular crossing. After the Cabinet receives a report from the affected local government supporting the installation of gates, the Cabinet, utilizing matching funds available from the Federal Highway Administration's highway-rail grade crossing safety program, shall program the installation of gates at the crossing.

The cost of installing gates shall be the responsibility of the Cabinet and the affected railroad, and shall not be charged to any unit of local government. Ky. Rev. Stat. Ann. § 189.561 (Baldwin 1998).

LOUISIANA

Whenever a highway crosses a railroad track at-grade and the crossing is deemed in need of repair by the chief engineer of the Department of Transportation and Development or an authorized representative, the chief engineer or the authorized representative shall give the affected railroad company fifteen days notice in writing. If the railroad company fails to make the repairs, the Department of Transportation and Development may make the repairs and bill the railroad.

Whenever a warning device located at a railroad crossing needs repair or is not being maintained in compliance with Federal guidelines and should, in the judgment of the chief

engineer or his duly authorized representative; be repaired or receive maintenance, written notice of the necessity of such repair or maintenance shall be given to the railroad company owning the track at which the device is located. If the railroad does not proceed with the repair or maintenance within thirty days after receipt of the notice, the department may initiate the performance of the repair or maintenance of the warning device and charge the expenses thereof to the railroad company. La. Rev. Stat. Ann. §§ 386(A)(B) (West 1999).

MAINE

Town ways and highways may be laid out across, over, or under a railroad track, or through, or across any land or right-of-way of any railroad corporation if the Maine Department of Transportation, after notice and hearing, so determines. The Department may refuse its permission or grant it on terms and conditions as it may prescribe, and the need, if any, for installation, maintenance and operation of signals, gates or other protective measures, and may determine whether the expense of building and maintaining so much of the way as is within the limits of the railroad corporation shall be borne by the corporation or by the municipality in which the way is located, or by the state, or the Department of Transportation, may apportion the expense between the railroad corporation and the municipality or state. The expense of operating and maintaining any protective device shall be borne by the railroad corporation. The expense of installing protective devices at crossings on state and state aid highways shall be apportioned between the railroad corporation and the state as the Department of Transportation may determine. The expense of installing protective devices at crossings on town ways shall be apportioned between the railroad corporation and the municipality as the Department shall determine. Determinations, orders, or decisions by the Department are final and binding on all parties unless appealed to the Superior Court in the county in which the crossing is located. Me. Rev. Stat. Ann. tit. 23 § 7202 (1999).

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 that the situation be remedied. After proper notice and hearing, the Department of Transportation shall make its determination to ensure safety or public convenience and by whom the abolishment, reconstruction, alteration, change or removal shall be made. The jurisdiction of the Department of Transportation exists whether the change or alterations in the crossing is within or without the limits of a public way.

The County Commissioners have the same right of petition under this section, with respect to roads in unorganized places laid out by them, as have municipal officers of a municipality under the provisions of this section. Me. Rev. Stat. Ann. tit. 23 § 7231(1999).

The Department of Transportation may require each railroad operating within the state to install, operate, and maintain an automatic signal, gates or other protective device, or to require a flagger to be stationed at any highway crossing within the state where, after reasonable notice

and hearing, the Department decides that public safety requires a signal, gates or other protective device or flagger as a proper measure of protection. Notice and hearing are not required for automatic grade crossing protection funded and installed under the federal program. The expense of installing, operating and maintaining any signal, gates or other protective device or providing the flagger shall be borne by the railroad, except that at crossings located on state and state aid highways, the expense of installing the signal, gates or other protective device must be apportioned between the railroad and the state in proportions as the Department determines. Me. Rev. Stat. Ann. tit. 23 § 7221(1999).

MARYLAND

The Secretary of Transportation has sole authority to approve the construction or modification of a railroad grade crossing or its crossing equipment and to impose the conditions necessary to ensure public safety at the crossing. The powers of the Secretary over all aspects of railroad grade crossing can be found in the Transportation Article of the Annotated Code of Maryland at Section 8-639.

The code section also outlines the process required when making application to the Secretary for approval of the construction or modification of a railroad grade crossing or its crossing equipment. The Secretary, after notice to all parties, including adjacent property owners, will hold a hearing if he or she considers it necessary. A hearing can also be requested by an individual party in interest, if the proposed change might eliminate or diminish any existing crossing device. After conducting any such hearing, the Secretary can either approve or disapprove the application, or impose on the person initiating the crossing projects, under uniform standards and regulations, the conditions necessary to ensure public safety at the crossing, including installing and maintaining equipment and allocating costs.

When any railroad grade crossing outside the corporate limits of a city is believed to be dangerous, it is the duty of the County Commissioner to notify the railroad company that further safety measures at a crossing are necessary. The railroad must either place a flagger at the crossing or erect a system of electric alarm bells or safety gates within thirty days. The County Commissioner has the option of changing the crossing to an over grade or under grade crossing.

Every railroad company in the State of Maryland has the right, when it considers that the crossing of its tracks by a highway is dangerous, to provide at its own cost, a grade separation. For constructing the approaches to the grade separation, the railroad may, at its own expense, change the grade of the public highway. Md. Code Ann. Transp. §§8-639-640-642(1999).

MASSACHUSETTS

A railroad corporation is authorized to raise or lower a public way in order to pass over or under a highway-rail crossing. However, before doing so, the railroad must obtain from the County Commissioners a decree prescribing what alterations may be made in the way, what structures are to be erected, and the manner and time of erection. Before either entering upon, excavating or altering the way, the railroad must give to the city or town where the crossing is to be situated some form of security, satisfactory to the Commissioners, that it will follow the

dictates of the decree and that it will indemnify the city or the town against all damages by reason of failure to comply.

If the railroad proceeds with work without having first obtained the decree and given proper security, or neglects to give security for fifteen days, the Supreme Judicial Court may enjoin the railroad from entering upon, altering, excavating, or crossing the way until the decree has been obtained or security given. Mass. Ann. Laws ch. 160, § 100 (1999).

In every case in which consent or approval of the Department of Telecommunications and Energy has been obtained, the Department may, after proper notice to all interested parties, hold a hearing and impose conditions, limitations, restrictions and regulations concerning the construction and use of the crossing. The Department may also change and modify them.

A public road shall not be permitted to cross a railroad at-grade unless it is determined that public necessity requires it. Determination may be made by the Department of Highways if it is a state highway, or the county commissioners in the case of any public way. However, the Department of Telecommunications and Energy must give written consent in every case. Mass. Gen. Laws Ann. ch. 160, § 104 (1999).

Any railroad laid out across a public way will be so constructed so as not to obstruct that public way; and unless the county commissioners and the Department of Highways authorize a crossing at the same level, it shall be constructed so as to pass either over or under the way. Mass. Gen. Laws Ann. ch. 160, § 97 (West 1999).

A railroad company may be permitted to alter the course of a public way to facilitate the crossing thereof by its railroad or to permit its railroad to pass at the side thereof without crossing, if, after notice to the city or town where the way is situated, and a hearing, the County Commissioners decide that such alteration will not essentially injure the way, and make a decree prescribing the time and manner of any alteration. Mass. Gen. Laws Ann. ch. 160, § 101 (1999).

MICHIGAN

If the location of a proposed highway-rail crossing is found by the Michigan Department of Transportation to be necessary, feasible, and reasonably safe, the Department is authorized to grant permission for the crossing. The Department may then require installation of any traffic control devices it judges appropriate.

The full cost of constructing a new street or highway across an existing railroad track or of a new railroad track across an existing street or highway, is to be borne by the party(s) requesting the crossing. The plans for any such grade crossing must be approved by both the railroad and the road authority. If they are unable to agree, the Department will settle the points of the disagreement through its order.

Temporary grade crossings may be constructed, maintained and removed at the sole expense of the affected parties.

If any new grade crossing project is requested by a road authority and approved by the Department of Transportation, the road authority must notify the affected railroad in writing requesting that the railroad supply a competent inspector and other necessary persons to inspect the construction. The road authority must pay the railroad for the actual costs incurred by the railroad for inspection. Likewise, if a new grade crossing project is requested by the railroad, the railroad must notify the road authority in writing requesting an inspector and other necessary personnel to inspect the construction. The railroad is then responsible for payment of actual costs for time spent by the road authority inspector and other personnel.

Any railroad owning tracks across a public street or highway at-grade is solely responsible for the cost of constructing and thereafter maintaining, removing, and repairing the railroad roadbed, tracks and culverts within the confines of that street or highway and the streets or sidewalks lying between the rails, and for a distance outside the rail of one foot beyond the end of the ties. The road authority, on the other hand, is responsible for the construction, improvement, maintenance, renewal and repair of the remainder of the road surface.

The Transportation Department, on its own, or upon request by any interested party, may initiate a Diagnostic Study Team review of the physical condition and safety needs of grade crossings of railroad tracks with public streets and highways, or with a non-motorized trail. The Department must give all parties fifteen days notice of the review and each affected party will provide a representative to participate in the review who is empowered to make decisions on behalf of the party. The Diagnostic Study Team makes its decision concerning the safety needs of a grade crossing based upon current roadway and railroad traffic levels, speeds and other parameters. Funding arrangements, division of responsibility, and scheduling will be mutually decided to accommodate adjustments or improvements, relocations, closures, grade separations or other changes reasonably required in the interest of public welfare and safety.

When the diagnostic review is completed, the Department issues an order in writing to all parties confirming any agreements reached. If a consensus is not reached during the Diagnostic Study Team review, the Department can order any adjustments or improvements, relocations, closures, or other changes in the interest of the public welfare and safety. The road authority having jurisdiction has the right to a hearing on the Department's order.

Funding for any of the improvements, relocations, closures, or grade separations determined necessary by the Department may come from the following sources, if available and the work deemed eligible:

- (1) From Federal funds obtained through the Federal-aid highway-rail grade crossing improvement program.
- (2) From state funds obtained through the railroad grade crossing account of the state trunk line fund. Mich. Comp. Laws §462.301(1999).

The Department is responsible for the administration of funds for high-speed rail corridor grade crossing improvements. The Department administers the funds from a separate account and in an efficient and equitable process by establishing an annual prioritization of grade

crossing safety improvements. Items of work that are considered routine maintenance would not be eligible for funding.

The Department can, after routine inspections, periodically serve notice to affected parties that existing devices and conditions at public grade crossings need corrective action. Mich. Comp. Laws § 462.307 (1999).

In the State of Michigan, the construction of a new highway-railroad grade separation structure, or the total reconstruction of an existing grade separation structure, requires a written agreement between all affected railroads, the road authority, and any other parties required by law to participate in the construction or funding of the grade separation. Mich. Comp. Laws § 462.319 (1999).

MINNESOTA

Chapter 161 of the Minnesota Statutes outlines the general power of the Commissioner of Transportation with respect to trunk highway-rail grade crossing within the state.

The Commissioner is authorized to contract, on an equitable basis, with railroad companies for the installation and reinstallation of safety devices at trunk highway-rail grade crossings; and for the construction, reconstruction and maintenance of existing or necessary bridges and approaches for the separation of grade at railroad and trunk highway intersections. Minn. Stat. § 161.20 (1999).

The Commissioner of Transportation can, upon his own motion, investigate and make a determination as to whether a railroad crossing, over a street or public highway that is or will be opened to public travel, is or will be dangerous to life or property. The Commissioner may order the crossing protected in any manner he or she finds reasonable and proper, including requiring the company to separate the grades. The Commissioner must give to the interested railroad and road authority notice of the investigation as he or she deems reasonable, and an opportunity to be heard before an order is made. Minn. Stat. § 219.14 (1999).

Upon written complaint, authorized by the governing body of a city or county, by the board of supervisors of a town, or by authorized officers of an affected railroad, alleging that a railroad crossing a street, road, or highway in the city, town, or county, is dangerous to life and property, and giving the reasons for the allegations, the Commissioner shall investigate the matters contained in the complaint, and, when necessary, initiate a hearing. Minn. Stat. § 219.39 (1999).

The statute provides that public officials having the necessary authority and a railroad company may agree to the vacation, relocation, consolidation, or separation of grades at grade crossings. If an agreement cannot be reached, either party may file a petition with the Commissioner who then may order the crossing vacated, relocated, consolidated, or separated. Minn. Stat. § 219.074 (1999).

MISSISSIPPI

Title 65, Chapter 1, Section 8 of the Mississippi Code grants the Department of Transportation the authority to regulate and abandon grade crossings on any road fixed as a part of the state highway system. Whenever the Department, in order to avoid a grade crossing with the railroad, builds a road on one side of the railroad, it has the power to abandon and close the grade crossing whenever an underpass or an overhead bridge is substituted for a grade crossing. The Department is also granted the authority to require the railroad to install signal posts with lights or other warning devices at the expense of the railroad, and to regulate and abandon an underpass or overhead bridge. Where the underpass or bridge was abandoned because of the building of a new underpass or bridge, the Department can close the old underpass, or bridge or, in its discretion, return jurisdiction for the underpass or bridge back to the county board of supervisors. Miss. Code Ann. § 65-1-8 (1999).

The State Highway Commission also has the authority to order the closing of a highway-rail grade crossing and replace it with a separation. Whenever any railroad and state highway or part thereof shall cross each other at the same level and, in the opinion of the State Highway Commission, such crossing is dangerous to public safety or traffic is unreasonably impeded and such crossing should be removed, the State Highway Commission may order such crossing eliminated either by having the State Highway Department carry such state highway under or over the tracks of such railroad.

The plans covering the proposed changes may be made either by the Director of the State Highway Department, subject to the approval of the Highway Commission, or the affected railroad company, but shall in either event be approved by both the Highway Commission and the railroad company before the contract is awarded.

Joint supervision of construction may be had by both the State Highway Department and the railroad company. The State Highway Department and the railroad company shall pay equal parts of the cost of any underpass or overpass.

Appeals from decisions or determinations of the State Highway Commission can be made by any affected party, and the procedure for such appeal shall be the same as is provided by law for appeals from decisions and determinations of the boards of supervisors. Miss. Code Ann. § 65-1-69 (LexisNexis 2001).

Municipal government authorities in Mississippi also have the authority to regulate highway-rail crossings and to provide precautions and prescribe rules regulating them. This authority includes the power to require railroad companies to erect viaducts over, or gates across their tracks at the crossing of streets. Miss Code Ann. § 21-37-9 (1999).

Mississippi law requires a developer, corporation, individual, or other private entity desiring a new public railroad grade crossing to bear the cost of installing appropriate warning devices at such a crossing, and for installing appropriate crossing surfaces and approaches, for establishing appropriate crossing profiles, and for obtaining easements to maintain sight distance as deemed necessary for such crossing by a diagnostic survey team comprised of the Mississippi

Department of Transportation Rails Engineer, a representative from the Federal Highway Administration, a representative of the affected railroad company, and a representative of the affected local governmental jurisdiction.

The law also provides that when an existing private railroad grade crossing is proposed to come under the jurisdiction of a public entity, the party requesting the public crossing shall be responsible for the cost of installing appropriate warning devices and certain other expenses before opening the crossing to the public. Another part of the law requires a private entity requesting or applying for a new public railroad grade crossing or conversion of an existing private grade crossing to a public one to give notice of such request or application to the local roadway authority and the Mississippi Department of Transportation. Miss. Code Ann. § 77-9-252 (LexisNexis 2002).

The State of Mississippi in 2001 established within the Railroad Revitalization Fund a new account to be entitled the Mississippi Highway-Railroad Grade Crossing Safety account. The account is administered by the Mississippi Department of Transportation and consists of (a) funds transferred from the Mississippi Grade Crossing Closure Account on July 1, 2001; and (b) thirty-five percent of the collection from the locomotive fuel tax for the previous year.

The Department of Transportation, in cooperation with the railroads operating in the state, shall promulgate rules to ensure equitable allocation of the funds described to projects throughout the state, and shall consider the proportionate number of main line track miles of each railroad and the number of public highway-rail grade crossings on each railroad's main line. Expenditure of funds from the account is limited to the following purposes:

- (a) Financial aid for closure of highway-rail grade crossings;
- (b) Realignment of construction costs of roadways being rerouted to facilitate a closure of a public highway-rail grade crossing;
- (c) Monies to match federal or other funds for a grade separation eliminating an at-grade crossing of a public roadway and railroad; and
- (d) Installation or upgrade of highway-railroad grade crossing signals, at the discretion of the Mississippi Transportation Commission, based upon the Federal Railroad Administration's ranking of all Mississippi highway-rail grade crossings. Not less than 10 percent of the monies necessary to defray the costs must be federal funds.

The Department of Transportation shall consider all requests from the state's diagnostic review of public highway-rail grade crossings and from individual railroads for expenditure of funds for the purposes described, and shall establish uniform criteria and guidelines relating to such crossings and the expenditure of funds. Miss. Code Ann. § 57-43-15 (LexisNexis 2002).

MISSOURI

The Division of Motor Carriers and Railroad Safety of the Department of Economic Development maintains exclusive power to regulate and provide standards for railroad crossing construction and maintenance.

The Division may make and enforce reasonable rules and regulations pertaining to all public grade crossings. The Division may establish minimum standards for: the materials to be used in the crossing surface, the length and width of the crossing, the approach grades, and the individual parties responsible for maintenance of the approaches and the crossing surfaces.

The Division also has exclusive power to determine and prescribe the particular point of crossing, the terms of the installation, operation, maintenance, apportionment of expenses, use and any warning devices for each crossing of a public road, street or highway by a railroad, of one railroad by another and of one street railroad by another railroad or street railroad. The Division is aided in its determination by adopting pertinent provisions of the *Manual on Uniform Traffic Control Devices for Streets and Highways*.

The Division may, after application or complaint by a city, town, or village, or upon its own motion, regulate within a municipality the crossing of a highway, street or roadway with a railroad track. The Division's regulatory authority includes requiring precautions, regulating the running, handling and operation of railway engines and cars, governing the speed of railway engines, cars and trains, and making and enforcing orders and restrictions to promote public safety.

Missouri makes funds available for the construction of grade crossing signals or other safety devices by charging a grade crossing safety fee of fifteen cents when the owner of a motor vehicle registers or renews his registration. Mo. Rev. Stat. §§ 389.610-612 (1998).

MONTANA

(1) No railroad crossing, other than a grade crossing, can be ordered by any Board of County Commissioners.

(2) The Montana Public Service Commission may, upon petition or request in writing of any Board of County Commissioners, order an overhead or an underground crossing, provided, in its judgment, the safety, necessity, and convenience of the traveling public require the crossing. The Commission is required to give at least 10 days notice to the board and the owner or operator of the affected railroad of the time fixed for a hearing. In the event an overhead or underground crossing is ordered, the Commission may apportion the expense between the railroad company and the county. Mont. Code Ann. § 69-14-607 (1998).

The Montana Annotated Statutes provide for the construction and maintenance of railroad crossings in unincorporated towns or villages. The Board of County Commissioners can order the construction and maintenance of a highway-rail crossing. In any unincorporated community ordinarily known as a village or town where the public necessity and convenience require a railroad crossing at the intersection of the railroad with any street or highway, whether lawfully established or otherwise, which is commonly used by the public, the Board of County Commissioners may order such crossing. The Public Service Commission has authority to enforce the orders of any Board of County Commissioners for the construction of railroad crossings and is empowered to pass upon the reasonableness of any order and modify, change, or annul the order. Mont. Code Ann. §§ 69-14-603,606 (1998).

At all highway-rail crossings of public highways outside incorporated cities and towns, it is the duty of the railroad company owning or operating such railroad to construct and maintain the crossing. Mont. Code Ann. § 69-14-602 (1998).

NEBRASKA

Sections 74-1329 to 74-1343 of the Nebraska Revised statutes is referred to as the Nebraska Highway-Rail Grade Crossing Safety and Consolidation Act. Neb. Rev. Stat. § 74-1329 (1998).

The Nebraska Department of Roads has jurisdiction over all crossings outside of incorporated villages, towns, and cities, both public and private, across, over, or under all railroads in the state. Neb. Rev. Stat. § 74-1332(1998).

In 1997, the Nebraska Legislature declared that the Department of Roads, having the requisite engineering expertise, highway and rail planning function, and highway safety mission, and is the repository for state and federal funding for both rail and highway projects shall be the agency responsible for grade crossing safety. Neb. Rev. Stat. § 74-1341 (1998).

The Department of Roads is empowered to adopt and promulgate rules and regulations establishing a comprehensive public safety program to deal with problems associated with public and private highway-rail grade crossings. In the design of the public safety program, the Department must establish a process for assessing the risk to the public from particular grade crossings and for reducing or eliminating such risk in a cost-effective and timely manner. The grade crossing safety assessment process may include the following factors:

- (a) Volume of trains.
- (b) Volume of motor vehicles, including character, function, and type of vehicular traffic through the crossing.
- (c) Number of tracks at the crossing.
- (d) Geometry of the crossing, including acute angles.
- (e) Sight-distance restrictions, if any.
- (f) Train and motor vehicle speed.
- (g) Accident history.
- (h) Character of proximate road network, including distance and travel time to adjacent crossings.
- (i) Frequency and duration of roadway blockage by trains, including citation history.
- (j) Emergency response routes, including alternatives.
- (k) Economic impact of crossing;
- (l) Current and foreseeable development in the vicinity of the crossing; and
- (m) Location of schools and hospitals. Neb. Rev. Stat § 74-1342 (1998).

The Department of Roads is required to establish the grade crossing safety assessment process no later than twelve months after September 13, 1997, and shall recommend to the

Legislature no later than eighteen months after September 13, 1997, an equitable formula for funding grade crossing risk abatement. Neb. Rev. Stat. § 74-1343 (1998).

When railroad tracks cross a public highway at-grade outside an incorporated city or village, the owner of the railroad tracks and the county board may agree to any change, alteration or construction that is in the interest of public convenience or safety. They may agree on relocating the highway so as to eliminate the crossing entirely or to construct a grade separation. They may also agree as to the apportionment of costs. If there is a dispute between the parties and they cannot agree, either party can make application to the Department of Roads for resolution. The Department of Roads may order the process done and apportion costs. Neb. Rev. Stat. §§ 74-1337- 1338 (1998).

When any railroad track crosses a public road in a cut, on a curve or side of a hill, in timberlands, near buildings, or near any object restricting the view from the road, the Department of Roads, either on its own motion or upon complaint of interested parties, may order that certain precautions be taken to promote public safety. Each railroad carrier must provide and maintain whatever the Department may direct, including gates, crossings, signs, alarm bells and warning personnel. The Department has the authority to adopt a uniform crossing sign design and direct that it be used at any crossing or other place. It may also direct the placement of special signs where the physical conditions of the crossing warrant, except with regard to automatic grade crossing warning devices. Neb. Rev. Stat. § 75-1334 (1998).

Whenever a complaint is filed in writing with the Department of Roads by duly authorized officers of any incorporated village or city, relative to any crossing within the village or city, praying for relief from the matters complained of, the Department must hold a hearing and is required to 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. § 74-1336 (1998).

NEVADA

Chapter 704 of Title 58 of Nevada Revised Statutes describes the powers of the Public Service Commission, including exclusive power over railroad crossings.

The Public Service Commission, after an investigation and hearing, may make a determination and order any of the options below for the safety of the traveling public. The investigation and hearing ensue out of the filing of a formal complaint by the Department of Transportation, the Board of County Commissioners, the town board or council, or any railroad company.

After a formal hearing the Commission may order:

- (1) The elimination, alteration, addition or change of a highway crossing(s) over any railroad at-grade or grade separated, including its approaches and surface.
- (2) Changes in the method of crossing at above, or below grade.
- (3) The closing of a crossing and the substitution of another therefore.
- (4) The removal of obstacles to the public view upon approach.

(5) Any other changes and improvements for the safety of the public.

The Commission is also empowered to order the costs for any such work to be divided and paid by the railroad and the state, county, town or municipality. Nev. Rev. Stat. § 704.300 (1997).

The entire cost of a new grade crossing or separation, including any automatic warning devices, shall be the responsibility of the government unit affected, if they initiated the proceeding, or the railroad, if it initiated the proceeding; provided that the crossing is not at or near the location of a previous grade crossing elimination project.

Where a new grade separation results in the elimination or reconstruction of an existing grade crossing, the railroad will be responsible for 13 percent of the costs, the remainder is to be the responsibility of the affected governmental unit.

Where automatic warning devices are added or materially altered at an existing grade crossing, 87 percent of the costs shall be the responsibility of the railroad.

The affected railroads will pay 50 percent of the maintenance costs for any new or altered automatic crossing warning device, with the remaining 50 percent being paid by the affected governmental units. Nev. Rev. Stat. § 704-305 (1997).

NEW HAMPSHIRE

New Hampshire law declares that The Department of Transportation, after receipt of a petition from a railroad, the selectmen of a town, or the mayor and council of a city, and after proper notice and a hearing, has authority in the interest of safety to the railroad and the public to require a railroad to separate grades, change the location of a highway or a railroad in order to avoid or improve a grade crossing, reconstruct or otherwise alter any existing bridge or underpass, and improve the approaches to any grade crossing so they will be as level as possible. N.H. Rev. Stat. Ann. § 373:2 (1999).

No railroad may be constructed across another railroad, highway or other way at-grade, without first obtaining written consent from the New Hampshire Department of Transportation (see Section 373:4). Likewise, no highway may be constructed at-grade across a railroad without consent of the Department of Transportation. N.H. Rev. Stat. Ann. §§ 373:4-6 (1999).

All railroads in New Hampshire have a statutory duty to provide suitable crossings, stations and other facilities for public accommodation and suitable gates, crossings, cattle passes and other facilities for the accommodation of persons whose lands are divided or are separated from a highway by a railroad. N.H. Rev. Stat. Ann. § 373:1 (1999).

Another provision in the statute provides that the state shall have the same duties to provide suitable crossings and other facilities for the accommodation of the public and to provide suitable gates, crossings and other facilities for the accommodation of persons whose lands are divided, or are separated from a highway, by the state-owned railway.

Any party or landowner seeking crossing or other facilities pursuant to paragraph I shall make application for such crossing or other facility to the New Hampshire Department of Transportation.

The commissioner shall adopt rules establishing procedures and criteria for review of such applications and issuance of agreements for crossings or other facilities on state-owned rail property including establishment of reasonable application and annual renewal fees.

Such agreements shall include provision for apportionment of cost for construction and protection including insurance requirements and installation of appropriate safety devices.

The state shall provide such warning signs as are required for governmental authorities maintaining public crossings over state-owned railroad lines. N.H. Rev. Stat. Ann § 373:1-a (Supp. 2001)

NEW JERSEY

When a public highway crosses railroad tracks at the same level and it appears to the Commissioner and the Department of Transportation that the crossing(s) are dangerous to public safety, the Department may order the railroad(s) to alter the crossing, within a set time limit, according to plans approved by the Department.

The types of alterations that may be made are:

- (1) Grade separations.
- (2) Vacations, relocations or changes in the line, width, direction or location of the highway and the opening of anew crossing in place of the vacated one.
- (3) Relocation of the railroad tracks where, in the judgement of the owner of the property will be unduly injured by the elimination of the crossing.

N.J. Rev. Stat. § 48:12-61(1999).

Any railroad company(s) whose tracks are crossed at-grade by a public highway, or a body having charge of the finances of any municipality or county having jurisdiction over any such highway, may present a petition in writing to the Department setting forth the facts upon which relief is sought concerning alterations to or connected with the crossing(s). The Department shall schedule a hearing, determine what alterations should be made, and make an order. N.J. Rev. Stat. § 48:12-64 (1999).

The New Jersey Highway Department, before January 1 of each year, is required to formulate a program covering the work to be started or completed during the ensuing year, for the elimination of railroad crossings at-grade on state highways, the improvement, relocation, alteration and reconstruction of crossings of railroads and state highways not at-grade, and the location and construction of new crossings of railroads and state highways not at-grade, where the construction of the new crossings of railroads and state highways not at-grade result or will

result in the closing, abandonment or combination of an existing grade crossing at or in the vicinity of the new state highway crossing.

The aggregate estimated cost of the work in such annual program, in which the railroad companies will share, shall not exceed two million dollars. N.J. Rev. Stat. Ann. § 48:12-68 (1999).

The cost of the work is to be shared by railroad companies and the New Jersey Highway Department, except for the costs of the surface paving on roadways and the curbing, sidewalk paving and guardrails on approaches, which shall be borne and paid 5 percent by the railroad company or companies involved and 95 percent by the state. N.J. Rev. Stat. Ann. § 48:12-70 (1999).

The New Jersey Highway Department and any railroad company or companies may enter into an agreement on the basis of the division of the costs covering the work in the annual program, or the eliminations of any crossing at grade, or the improvement, relocation, alteration, or reconstruction of any crossing not at grade on any state highway, in addition to the work provided for in such program. N.J. Rev. Stat. Ann. § 48:12-71 (1999).

The municipal authorities of any city, except any city of the first class, may permit any railroad company to lay and construct its tracks along and upon any street or highway, or above the street or highway by means of an elevated structure, and may contract with the railroad company, fixing the terms and conditions as to maintenance of crossings, speed of trains and payment of consideration for such use, and may do all things necessary to carry out such contract. N.J. Rev. Stat. Ann. § 48:12-53 (1999).

Every railroad operating in New Jersey on a fixed track or tracks, freight or passenger trains or cars, is required to provide protection to pedestrians and the traveling public at every crossing of its tracks by a public road. Such protection may be in the form of safety gates, flagmen, electric bell, electric signs or other recognized system of alarm or protection approved by the Department of Transportation. When several crossings lie so close together that an audible signal at one crossing may be sufficiently heard at others near it, such crossings may be protected by any device or signals that will sufficiently protect all crossings in the group. N.J. Rev. Stat. Ann. § 48:12-54 (1999).

The Department of Transportation, either upon its own initiative or upon the application of any municipality or citizen dissatisfied with the protection provided or the failure to provide any or sufficient protection on any crossing with such municipality or used by such citizen may by order compel proper compliance with Section 48:12-54. N.J. Rev. Stat. Ann. § 48:12-55 (1999).

NEW MEXICO

When a state, county, municipal, or other street or highway, including a highway which has been or may be designated as apart of the Federal-aid highway system, which may hereafter be constructed or reconstructed in such a manner that it crosses over or intersects any railroad,

the New Mexico State Highway Commission, or other governing body, may, if in its opinion it is practicable and reasonably necessary for the safety of the traveling public, separate the grades at such crossings. The separation process involves an application by the Commission to the district court of the county requesting that the court order separations of the grades. If the district court determines that grade separation is practicable and necessary for the safety of the traveling public, it can order separation and the permanent closure of the existing grade crossing. When any such separation is made, the railroad company is responsible for an amount up to 10 percent of the cost. N.M. Stat. Ann. § 63-3- 37 (Michie 1998).

After any such grade separation is constructed, the State Highway Commission shall be responsible for maintaining the roadbed and structures and the railroad is responsible for its roadway, the track and its structures. N.M. Stat. Ann. § 63-3-38 (Michie 1998).

NEW YORK

The Commissioner of Transportation of New York is responsible for reporting to the Governor and appropriate members of the legislature by the first of December each year on grade crossing projects that have been completed, those under construction, those ordered to be completed but not yet started, and the amount of money expended or expected to be expended on the projects.

The governing body of any municipality where a highway-rail grade crossing is located or any railroad that has tracks crossed at-grade by a highway is entitled to petition the Commissioner of Transportation to begin grade crossing elimination procedures. After issuing notice, the Commissioner is required to promulgate rules and regulations concerning the procedure to be followed at the hearing. After the conclusion of the hearing, the Commissioner can order elimination. The Commissioner's order can include any alterations, the location and method of crossing, the character of the structures and approaches, the type and extent of payment, the closing and discontinuance of the crossing and the divergence of traffic from an existing crossing to an existing or new highway, road or street crossing. The Commissioner may also order a change in the location of a railroad.

The Mayor, or City Manager and Common Council of any city, the President or Mayor and trustees of any village, the town board of any town, or the board of supervisors and county executive of any county, who have jurisdiction over a street, avenue, highway or road which crosses a railroad track, may bring a petition in writing to the Commissioner of Transportation alleging that the public interest requires rehabilitation, an alteration in the manner or location of the crossing, a change in the existing structure, or the closure and discontinuance of a crossing. After proper notice to the affected parties, the Commissioner may order that the changes be made. N.Y. Transp. Law § 222 (McKinney 1999). See also, Section 223, concerning expenses for elimination and railroad improvements.

Whenever a highway crosses a railroad track at-grade and such grade crossing is out of repair, if it is the judgment of the Commissioner of Transportation, the Board of Supervisors of a county, the Board of Aldermen of a city, the Board of Trustees of a village or the town Superintendent of Highways of a town, that the crossing should be repaired, the Commissioner

of Transportation, the Board of Supervisors of the county, the Board of Aldermen of a city, the Board of Trustees of a village, or the Superintendent of a town, may repair and maintain the crossing and charge the expense to the railroad company, if after fifteen days notice in writing to the railroad, the railroad neglects or refuses to make the repairs. N. Y. Highway Law § 51 (McKinney 1999).

NORTH CAROLINA

The General Statutes of North Carolina, Chapter 136, Section 20, provides guidance on the elimination or safeguarding of at-grade crossings and inadequate underpasses or overpasses.

In addition to the power to order elimination, the Secretary of Transportation is also authorized to order grade separation and the installation and maintenance of gates, alarm signals, and other approved safety devices. Any such orders shall specify that the cost of construction of any underpass or overpass or the installation of safety devices is to be allocated between the railroad company and the Department of Transportation in the same ratio as the net benefits received by the railroad and the net benefits occurring to the public using the highway; but in no case shall the railroad be responsible for more than 10 percent. After any such order is issued by the Secretary, it will be the responsibility of the railroad to construct the grade separation and to install and maintain all safety devices.

Beginning January 1, 1995, if any railroad refuses to comply with any order of the Secretary, they shall be guilty of a Class 3 misdemeanor and may be fined not less than fifty dollars or more than one hundred dollars for each day in which they fail to comply.

From any order made by the Secretary, the railroad company has the right to appeal to the Superior Court of the county wherein the crossing is located. N.C. Gen. Stat. § 136-20 (e)-(g) (1999). See also, Section 136-18, for general powers of the Department of Transportation including the power to regulate, abandon and close grade crossings on any road designated as part of the state highway system.

Railroad crossings in the cities of North Carolina are regulated by the individual cities. A city has the authority to direct, control and prohibit the laying of railroad tracks and switches in public streets and alleys and to require that all railroad tracks, crossings and bridges be constructed so as not to interfere with ordinary travel or drainage patterns. The costs relating to construction, reconstruction and improvement of such streets and alleys are to be borne equally by the city and the railroad, but the costs of maintenance and repair after construction is the responsibility of the railroad.

A city has the authority to order the installation, construction, erection, reconstruction, and improvements of warning signs, gates, lights and other safety devices at grade crossings. The city is responsible for 90 percent of the cost, with the railroad responsible for the remaining 10 percent.

A city has the authority to order the elimination and separation of a grade crossing if the city 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

Statutory authority for changing or eliminating railroad crossings lies with the Public Service Commission. When it is desired, either by the public officials having the necessary authority, or by the railroad, to establish, vacate, or relocate any crossing of a public highway and a railroad or to separate grades, the parties may agree to do so. If they are unable to reach an agreement, either as to the necessity for establishing, vacating, or relocating a crossing, or for grade separation, regarding place, manner of construction or reasonable division of the expenses, either party may file a petition with the Public Service Commission. The Commission, after giving proper notice, shall conduct a hearing and issue its order. N.D. Cent. Code § 24-09-10 (1998).

The Commission, either by its own motion, or upon written application made to it by the Director of Transportation, the board of county commissioners, the board of supervisors, or the railroad company, is empowered to investigate and determine whether any railroad grade crossing over any state, county, township, or municipal highway in the state is dangerous to life and property and needs protection. If the Commission finds that such is the case, it may order the railroad grade crossing equipped in any manner it may find reasonable and proper, including grade separation. If the railroad company does not agree with the Commission's order, it may appeal, within thirty days of being served a copy of the order, to the district court of the county within which the crossing is located. N.D. Cent. Code § 24-09-08 (1998).

In order to promote public safety at intersections of railroad lines and all classes of highways, the North Dakota Department of Transportation has the authority to apportion costs of automatic grade crossing warning devices. One exception to the process occurs when, if under Section 24-09-08, the Public Service Commission orders that any grade crossing be equipped with automatic grade crossing warning devices, the Commission shall, in its order, apportion the cost thereof between the affected railroad, the political subdivision having jurisdiction of the highway involved, and the state of North Dakota. Costs are to be apportioned to any one or more of the parties on the basis of the respective benefit derived by highway users and the railroad from the installation of any crossing device. N.D. Cent. Code § 24-09-08 (1998).

OHIO

Statutory authority to order alterations and grade separations in Ohio lies with the various units of local government.

Ohio law provides that, if the legislative authority of a municipal corporation, or the board of county commissioners, and the board of directors of the railroad company are of the opinion that the security and convenience of the public require alterations to any such crossing, its approaches, or the location of the railroad, crossing or grades so as to avoid a crossing at-grade, that crossing should be discontinued with or without building a new one. The board of

county commissioners has the same powers with respect to that part of a state, county or township road which lies within the limits of a municipal corporation as are conferred upon municipal corporations to alter or require to be altered, any railroad crossing and to apportion the cost between the county and the railroad.

The land required for an alteration in a street or highway necessitated by a proposed crossing improvement will be purchased by the municipal corporation or county. The land required to make the alteration in the railroad necessitated by the proposed improvement will be purchased by the railroad company. Ohio Rev. Code Ann. § 4957.04 (Anderson 1998).

Railroad companies are required to build and keep in good repair crossings over or approaches to their tracks, sidetracks and switches at all points where any public highway, street, land, avenue, alley, road, or pike is intersected by the tracks. The board of township trustees has the power to determine the kind, time and manner of constructing crossings and approaches outside municipal corporations. The legislative authority of a municipal corporation has the same powers with respect to crossings, approaches, and sidewalks within the municipality. Such crossings, approaches, and sidewalks are to be constructed, repaired and maintained by the railroad companies. Every municipal corporation or other authority building a highway across an existing railroad will construct it above or below the grade of the railroad, unless allowed to build at-grade as provided by Sections 4957.30 to 4957.32. Unless otherwise agreed upon, 85 percent of the costs will be paid by the municipal corporation and 15 percent by the railroad company. In the case of rebuilding bridges or other structures, at or in line with a public street or highway and across a street, the cost of making the streets or highways conform to a new grade, with all damages to property abutting on them, is to be paid by the railroad company when the raising or building of its bridges or structures in the line of a street or highway results in it being at a greater height than was previously required. Ohio Rev. Code Ann. §§ 4955.20-4957.29 (Anderson 1998).

A municipal corporation may raise or lower the grade of any street it owns, either within or outside of its municipal limits, above or below railroad tracks and may require any railroad company operating across its streets to raise or lower the grade of its tracks. Municipal corporations may construct crossings above the tracks of a railroad and require the railroad company to construct crossings to be passed under its tracks. A municipal corporation may require the railroad to erect permanent piers, abutments or other appropriate supports in the crossings, streets, roads or alleys when, in the opinion of the legislative authority, raising or lowering is necessary. Ohio Rev. Code Ann. § 4957.10 (Anderson 1998).

After the completion of crossing alteration within a municipality, crossings and approaches will be maintained as follows:

- (1) When the public road crosses a railroad by an overhead bridge, the cost of maintenance must be borne by the municipal corporation.
- (2) When the road passes under the railroad, the bridge and its abutments will be maintained by the railroad company. The public road and its approaches will be maintained by the municipal corporation. Ohio Rev. Code Ann. § 4957.24 (Anderson 1998).

The cost of constructing a highway-rail crossing improvement, including the building of roads, crossings or viaducts above or below the tracks and the raising or lowering of the grades of the tracks and sidetracks, as required by the municipality, together with the cost of land purchased or appropriated and damages, will be borne 85 percent by the municipal corporation, and 15 percent by the railroad company. The railroad is entitled to deduct from its share of the expense the cost incurred in changing its grade as required by the municipal corporation or made necessary by its specifications; but only if the amount of expense or method for calculating it has been agreed upon in writing by the municipality and the railroad. Ohio Rev. Code Ann. § 4957.18 (Anderson 1998).

The legislative authority of a municipal corporation may, by ordinance, prescribe the manner and time of payment that proportion of the cost of crossing improvement which the railroad company is required to pay. Ohio Rev. Code Ann. § 4956.19 (Anderson 1998).

After the completion of a crossing alteration within a county, the crossings and approaches will be maintained as follows:

- (1) When the public road crosses a railroad by overhead bridge, the cost of maintenance must be borne by the county or the state as provided by law.
- (2) When the public road passes under a railroad, the bridge and its abutments will be maintained by the railroad company, in proportions fixed by agreement or the court of common pleas of the county in which the improvement is located. The public road and its approaches will be maintained by the county or the state, as provided by law. Ohio Rev. Code Ann. § 4957.06 (Anderson 1998).

OKLAHOMA

The Oklahoma Corporation Commission has exclusive jurisdiction to determine and prescribe the particular location of highway-rail crossings, the amount and kind of warning devices required, the removal of all obstructions in view of such crossings, the altering or abolishment of any such crossings; and to require, where practicable, a separation of grade at any such crossing, either current or projected for the future. Okl. Stat. tit.17, § 84 (1998).

The cost of construction and maintenance of public highway-rail crossings is borne by the affected railroad company. For above-grade or under-grade public highway crossings, the apportionment of cost and maintenance is left to the discretion of the Corporation Commission; but under no circumstances is the city, town, or municipality assessed with more than 50 percent of the actual cost of above grade or under grade crossings.

The Corporation Commission has the authority to designate certain crossings “extra hazardous” and to order the installation of appropriate warning devices. The installations are performed by the railroad. The Commission prescribes the division of the cost of the installation of signs, signals, gates or other warning devices between the railroad and the state or its political subdivision. In any case, the cost to the railroad will not be less than 10 percent nor more than 25

percent of the total costs. The railroads are responsible for all subsequent maintenance costs. Okl. Stat. tit. 17, § § 82-86 (1998).

All costs that become an obligation of the state will be paid from the state highway construction and maintenance fund. All costs that are made the obligation of a municipality or other subdivision will be paid from funds accruing to the various counties of the state under Title 68, Section 5-504(d). See also, Okl. Stat. tit. 17, § 87 (1998).

Any railroad company may raise or lower any turnpike, plank road or other way in order to pass over or under the way, but they must put the roadway back in good repair as soon as possible. While raising, lowering or making any other alterations to such road which may obstruct it, the railroad must provide temporary ways to enable travelers to pass through the obstructions. Okl. Stat. tit. 66, §§ 121-122 (1998).

Every railroad corporation must maintain all bridges and abutments, which the railroad constructs, in order to pass over or under any turnpike, road, or other way. Okl. Stat. tit. 66, § 123 (1998).

OREGON

Oregon Law declares that it is the policy of the State of Oregon to achieve uniform and coordinated regulation of railroad-highway crossings and to eliminate crossings at grade whenever possible. To these ends, the authority to control and regulate the construction, alteration, and protection of railroad-highway crossings is vested exclusively in the state, and in the Department of Transportation. Or. Rev. Stat. § 824.202(1999).

The Department of Transportation may, upon its own motion, or upon application by a railroad, the public authority in interest, subsequent to a hearing, unless a hearing is not required under Section 824.214, and after finding that such action is required by the public safety, necessity, convenience and general welfare:

- (1) Eliminate a grade crossing by relocation of the highway.
- (2) Alter or abolish any grade crossing, change the location thereof or require a separation of grades at any such crossing.
- (3) Alter or change any existing grade separation.
- (4) Require installation or alteration of protective or warning devices.

The Department has authority to prescribe the time and manner of any such alteration, change, or installation, and the terms and conditions thereof. Or. Rev. Stat § 824.206 (1999).

The permission of the Department of Transportation must first be secured before any highway is constructed across the tracks of any railroad at-grade, or any track or tracks constructed across a highway at-grade, except for the repair of lawfully existing roads and highways and the replacement of tracks. In either case, if the railroad company desires to cross any established and existing highway at grade, or any public authority desires to layout and extend any highway over and across any established and existing railroad at-grade, it must first

file with the Department of Transportation its application setting forth the objections and difficulties of making such crossing, either above or below the grade of the existing highway or railroad.

After receiving the application, the Department may schedule a hearing, unless one is not required. At a hearing the Department shall determine whether the public safety, public convenience and general welfare require a grade separation, and in the event the grade crossing is not required, determine whether the application should be refused or granted and any terms and conditions. If the grade crossing is approved, the Department shall determine and prescribe the manner of its construction, maintenance and use, the kind and location of protective devices to be installed, the allocation of the costs, and the place of the crossing. Or. Rev. Stat. §§ 824.204-210 (1999).

Installation costs of protective devices, unless the parties agree otherwise are to be apportioned as follows:

- (1) At an existing crossing, a crossing relocated, or a crossing previously closed by order of the Department of Transportation and reopened:
 - (a) For devices to be installed at or in advance of the crossing and which are activated immediately in advance of, and during, each train movement over the crossing: 75 percent to the Grade Crossing Protection Account; 5 percent to the public authority in interest; and 20 percent to the railroad.
 - (b) For devices which are primarily designed for the purpose of illuminating the crossing or its approaches during the hours of darkness: Not less than 90 percent to the Grade Crossing Protection Account; not more than 5 percent to the public authority in interest; and not more than 5 percent to the railroad company.
 - (c) For all other protective devices: 75 percent to the Grade Crossing Protection Account; 25 percent to the public authority in interest for such devices to be installed by it at or in advance of the crossing; and 25 percent to the railroad company for such devices to be installed at the crossing. Or. Rev. Stat. § 824.242 (1999).

The statute requires that one hundred percent of the maintenance costs shall be borne by the railroad if the devices were actually installed and maintained by the railroad company. One hundred percent shall be paid by the public authority in interest for devices at or in advance of the crossing actually installed and maintained by the authority. The costs shall be divided evenly between the railroad company and the public authority in interest in the case of devices installed and maintained by the public authority which are primarily designed for the purpose of illuminating the crossing during the hours of darkness and which are not activated immediately in advance of, or during, each train movement. Or. Rev. Stat. § 824.244 (1999). See also, Section 824.250 concerning apportionment where federal funds are available.

PENNSYLVANIA

The Public Service Commission of Pennsylvania is vested with exclusive power to appropriate property for, and regulate crossings. The Commission can determine and prescribe, by regulation or order, the points and manner in which crossings are to be constructed, altered, relocated, suspended, or abolished, and the manner and conditions in or under which such crossings shall be maintained, operated, and equipped, to effectuate the prevention of accidents and the promotion of public safety.

In determining the plans and specifications for any such crossing, the Commission may layout, establish, and open such new highways as, in its opinion, may be necessary to connect such crossing with any existing highway or make such crossing more available to public use. It may abandon or vacate such highways or portions of highways as, in the opinion of the Commission, may be rendered unnecessary for public use by the construction, relocation, or abandonment of any such crossing. The Commission may order the work of construction, relocation, alteration, quipping, suspension, or abolition of any crossing to be performed in whole or in part by any public utility (railroad) or municipal corporation concerned or by the Commonwealth. 66 Pa. Cons. Stat. Ann. § 2702(b)-(c) (1998). See also, 52 Pa Code § 33.31 (1998).

When any railroad is, or will be crossed at-grade by a public road, street or highway, and the railroad company shall have constructed, or shall have been, or shall be constructed by others, with such company's consent, an under grade subway or an above grade bridge or crossing sufficiently near the public crossing to reasonably accommodate the traveling public, the Court of Quarter Sessions of the county in which the crossing is located, upon petition of the affected railroad company or other persons, may, if satisfied that the under grade subway or above grade bridge or crossing reasonably accommodates the traveling public, after notice to any corporation using or occupying the street proposed to be vacated, with tracks, wires, pipes or conduits, and by rule show cause to the supervisors if the crossing is in a township, or to the burgesses if the crossing is in a borough or city and after testimony, taken either in open court or by deposition, as the court may direct, order that the road, street or highway where it crosses the affected railroad at-grade and its approaches on both sides, shall be vacated and that the under grade crossing or subway or the above grade bridge or crossing and its approaches on both sides, substituted therefore, shall be a public highway and be maintained by the proper authorities. 36 Pa. Cons. Stat. § 2111 (1998).

RHODE ISLAND

The General Assembly of Rhode Island vests authority in the Public Utility Commission to determine the point at, and the manner in which, any grade crossing of a railroad and street is constructed and the jurisdiction to determine whether any crossing should be altered, relocated, abolished, or eliminated, and the manner and conditions under which the crossings shall be maintained; even if the order of the Commission has the effect of depriving a municipality of control of its streets. R.I. Gen. Laws § 39-8-1.1 (1999).

All railroads crossing any other railroad at-grade shall be operated at the crossing subject to and in accordance with, rules and regulations as prescribed by the Division of Public Utilities and Carriers of the Public Utility Commission. R.I. Gen. Laws § 39-8-6 (1999).

If a town council is of the opinion that it is necessary for the security of the public, in any town wherein a turnpike or highway is crossed by a railroad at-grade, to raise or lower the turnpike or highway so as to separate the grade with the railroad, they may request the corporation owning the railroad to do so. If the railroad corporation neglects or refuses to do so, the town council may apply to the Public Utility Commission. If the Commission, after due notice and a hearing with the parties, decides that grade separation is necessary for the safety of the public, the railroad corporation shall comply with the decision. Either party, however, may petition the Rhode Island Supreme Court for relief. The Rhode Island Supreme Court has full authority to decide these issues.

The costs and expense of making the grade change shall be borne by the railroad corporation and the town requesting the change in proportions as may be decided by the court. If the railroad neglects or refuses to make the changes after order of the court, the town council may proceed to make the separation and may, in action against the railroad, recover all charges and expenses. R.I. Gen. Laws § 39-8-2 (1999).

The Director of Transportation also has statutory authority to improve an existing highway-rail at-grade crossing by adding automatic warning devices, relocating it or rebuilding it if the improvements will increase the safety of the crossing and the highway. The Director may eliminate the crossing by adjusting track and highway levels and constructing separation structures and connecting roadways which are suitably located to serve all affected properties. The Director may also close the highways at existing crossings so served, subject to approval of the railroad authorities and the Public Utilities and Carriers Division. For highway-rail crossings not on the state highway system, the improvements, construction, reconstruction, or closure shall also be subject to the approval of the town or city in which the work is to be performed. R.I. Gen. Laws § 24-8-10 (1999).

SOUTH CAROLINA

The Public Service Commission is empowered to regulate and control by special order in each case, the manner in which any street, street railway, or other railroad track may cross any railroad track, and the manner of constructing culverts under any railroad, so as to affect proper drainage of adjacent territory. S.C. Code Ann. § 58-17-1310 (Law. Co-op 1998).

The governing body of a county may authorize the construction of a highway or town way across a railroad previously constructed when it decides that the public convenience and necessity require such a crossing. After due notice to the railroad corporation, and a hearing with all interested parties, the governing body may construct the highway or town way, or may authorize a city or town, on the petition of the mayor and aldermen thereof, to construct a way across a railroad in such manner as not to injure or obstruct the railroad. S.C. Code Ann. § 58-17-1360 (Law. Co-op. 1998).

With the exception of a street in any incorporated city or town, a railroad corporation may alter the course of a highway or other way for the purpose of facilitating crossing by a railroad or permit the railroad to pass at the side without crossing. A decree of the governing body of the county must first be obtained prescribing the manner and time of any such alteration. The railroad shall pay all damages occasioned to private property by the alteration, as in the case of land taken for its road. S.C. Code Ann. § 58-17-1340 (Law. Co-op. 1998).

The South Carolina Department of Transportation is responsible for inspecting railroad crossings on state maintained highways. The governing body of each county is responsible for inspecting railroad crossings on county maintained roads. The governing body of each municipality is responsible for inspecting railroad crossings on road and street rights-of-way maintained by municipalities.

If any authorized person from any of these jurisdictions inspecting a railroad crossing finds that the required signs are not in place or maintained, or finds that a motorist's view of approaching trains is unsafely obstructed by vegetation, growth or objects which are within the right-of-way of the railroad, the inspector must immediately notify the Deputy Director of Engineering with the South Carolina Department of Transportation. The inspector must also inform the state highway engineer if there is a STOP sign at the crossing and, if not, whether, in his opinion, one should be added. After receiving notice from the inspector on his findings, the Department must give written notice of the hazard immediately by certified mail to any officer or registered agent of the railroad within the state. The Department may order the railroad to erect, maintain or properly situate crossbucks, or to cut, or remove the vegetation, growth and objects not permanently affixed to realty that are obstructing a motorist's view. The Department must also notify the governing body of any county or municipality of the inspector's opinion that a STOP sign be erected.

Removal or elimination of the obstructions must be made by the responsible railroad within sixty days of receipt of notice. Measures to assure that crossbucks are properly in place and maintained must be taken by the responsible railroad within thirty days of receipt of notice. However, if the crossbucks are not present or have been removed, then the railroad has ten days from the time of the notice to erect crossbucks.

By January 1 of each year, counties and municipalities must report to the Department, all railroad crossings that have been inspected during the preceding year, and at which no obstructions were found. The Department must make an annual report of inspections conducted during the preceding year and provide that report to the Transportation Committee of the South Carolina Senate, and the Education and Public Works Committee of the South Carolina House of Representatives. S.C. Code Ann. § 58-17-1450 (Law. Co-op. 1998).

All railroad companies must construct and maintain crossings meeting the requirements of the authorities responsible for such highways. This applies to both crossings at new highways, and to crossings replacing those rendered obsolete or unnecessary by the relocation or improvement of existing highways or roads. S.C. Code Ann. § 58-15-2110 (Law. Co-op. 1998).

In the case of highway-rail crossings involving state highways, the South Carolina Highway Department, after due notice to the railroad corporation, and a hearing with the affected railroad, shall have the power to specify the character of the crossing. The railroad company shall, at its own cost, construct and maintain the crossing to meet those specifications. S.C. Code Ann. § 58-15- 2120 (Law. Co-op. 1998).

SOUTH DAKOTA

The Department of Transportation may determine, order, and prescribe the reasonable manner in which the tracks or other facilities of any railroad company(s) may be constructed at, above, or below grade across the track, or facilities of any other railroad company, public highway or street. The Department also may determine, order, and prescribe the terms and conditions of installation, operation, maintenance, and equipping of all such crossings which may be constructed, including any watchman thereat, or the installation and regulation of lights, blocks, interlocking or other signaling systems, safety appliance devices, and such other means as determined by the Department. S.D. Codified Laws Ann. § 31-27-2 (1999).

If a new right-of-way is necessary for the construction of a grade separation on a state or county highway, the governing body having jurisdiction over the highway is empowered to determine when it is necessary to eliminate the dangerous crossing. S.D. Codified Laws Ann. § 31-27-12(1999).

If no right-of-way is needed for the building of a subway or overhead crossing on a state or county highway, the governing body having jurisdiction over the highway is empowered to determine when it is necessary to eliminate the crossing. S.D. Codified Laws Ann. § 31-27-7 (1999).

No crossings at above, or below grade, may be established except under plans and specifications filed with the Department of Transportation. Plans and specifications for crossings do not require the approval of the Department unless a controversy exists between the applicant and the railroad. S.D. Codified Laws Ann. § 31-27-3 (1999).

A railroad can raise or lower a public highway for a railroad crossing, except a highway within the limits of a municipality, for a railroad crossing. The railroad company must petition the board of county commissioners if the crossing is not a part of the state highway system, or the Department of Transportation, if it is a part of the state system. There must be a guarantee, on the part of the railroad that the crossing is to be kept in as good repair and condition as before the alteration was made, and the railroad is to do this at its own expense. The grade approaching the crossing shall not exceed 10 percent at any point.

A railroad, while in the process of a grade separation, or while making any other alterations which obstruct a public highway, shall provide and keep suitable such temporary ways as necessary to enable traffic to avoid or pass the obstruction. S.D. Codified Laws Ann. §§ 49-16A-84-85 (1999).

Except within the limits of a municipality, the Department of Transportation and county commissioners may designate any hazardous railroad crossing as a “stop” crossing. The crossing shall be designated by placing a STOP sign at the point of stop, and such sign is to be preceded by a warning sign. S.D. Codified Laws Ann. § 31-28-17 (1999). See also, Section 32-29-7.

The expense of repairing, replacing and maintaining all railroad and highway crossings, and all warning and safety devices, is to be determined by the Department of Transportation on the basis of the proportion of any benefits derived by railroad companies and the public authority in interest. S.D. Codified Laws Ann. § 31-27-19.1 (1999).

Every first- or second-class municipality has the power to require railroad companies to keep flagmen and maintain lights at railroad crossings of streets, and provide for the safety of persons and property; to compel them to construct, maintain, and operate gates at railroad crossings of streets when the keeping of a flagman is not sufficient protection; to compel them to raise or lower their tracks to conform to any grade which may be established by the municipality, and to keep such tracks on the level with the street or highway surface, so that such tracks may be crossed at any place on such street or highway; to require them to fence their railroads and construct and repair cattle guards, viaducts, or overhead crossings, and to provide for and change the location, grade, and crossing of any railroad; all subject to the powers vested in the Public Utilities Commission. S.D. Codified Laws Ann. § 9-35-9 (1999).

Every municipality has the authority to require the railroad to make, keep open, and repair its crossings of streets and public roads. The municipalities may also require the railroads to make, keep open, and repair ditches, drains, sewers, and culverts along, and under their tracks. S.D. Codified Laws Ann. § 9-35-8 (1999).

TENNESSEE

When any grade crossing is ordered to be eliminated by the Commissioner of Transportation, it is the duty of the affected railroad company to comply with the order within the specified time, by first submitting to the Commissioner or the Commissioner's designee detailed plans and specifications along with estimates of the cost for the construction of a grade separation, including its approaches.

The affected railroad company has the right to appeal the order of the Commissioner to the Public Service Commission for an extension of time given to begin and complete the actual construction of the grade separation. If it finds that the financial condition of the affected railroad would be adversely affected, the Public Service Commission is empowered to stay the order for any length of time not to exceed two years.

If the affected railroad fails to comply with the Commissioner's order for grade separation or fails to avail itself of the opportunity to appeal the order within 60 days from the date of the service of the order, the Commissioner is empowered to proceed immediately with the construction of the separation and, upon completion, to assess one half of the cost of preparation of plans and estimates and one half of the cost of the work of construction against the affected

railroad company. All costs assessed in this manner will constitute a lien upon the physical properties of the railroad recoverable by suit. Tenn. Code Ann. § 65-11-109 (1999).

The Commissioner of Transportation may, by agreement or contract with a railroad company, apportion the work to be done in constructing a grade separation between the railroad company and contractors acting under the control and supervision of the Commissioner, provided that, when any of the Commissioner's contractors or employees are on the railroad's right-of-way, they are subject to railroad company rules and regulations for safety purposes. Tenn. Code Ann. § 65-11-110 (1999).

When an overpass, or underpass, is constructed on any state highway, the railroad company will maintain it, the approaches on its right-of-way, and any part of a structure not supported by fill; but not the surface of the highway. The flooring of the overpass supporting the surface of the highway, or constituting the surface of the highway, will be considered as a part of the structure to be maintained by and at the expense of the railroad company. The Commissioner of Transportation will maintain, out of public funds, any fill, approach to any crossing not on the railroad company's right-of-way, and the entire surface of the highway at all points. Tenn. Code Ann. § 65-11-112 (1999).

TEXAS

All railroad corporations in the State of Texas, which have or may fence their right of way, may be required to make openings or crossings through their fence and over their roadbed along their right of way every one and one-half miles. Tex. Rev. Civ. Stat. Ann. art. 6321 (West 1999).

A railroad must construct a grade crossing at such times and places as may be demanded by any two or more citizens of Texas who either live on or own land within five miles of the place where the crossing is being demanded. The demand must be made in writing to the railroad and must state when and where such crossing is desired. Tex. Rev. Civ. Stat. Ann. art. 6322 (West 1999).

Every railroad company must place and keep that portion of its roadbed and right-of-way over or across any public county road in proper condition for the use of the traveling public. If it fails to do so for thirty days after written notice, it shall be liable to a penalty of ten dollars for each week the railroad company fails or neglects to comply. Tex. Rev. Civ. Stat. Ann. art. 6327 (West 1999).

A county or municipality must use standards developed by the Texas Department of Transportation to apply pavement markings or a stop bar at a grade crossing if the cost of the markings or stop bar is paid either entirely or partly from state or federal funds. The Department is to develop its standards by following those in the *Manual on Uniform Traffic Control Devices* issued by the U.S. Department of Transportation, Federal Highway Administration. The Department may also require the use of retro-reflectorized materials where it deems such materials appropriate. A "stop bar" is defined in this article as the marking that is applied or attached to the surface of a roadway, on either side of a grade crossing, indicating that a vehicle

must stop at the grade crossing. Pavement markings are defined as markings applied or attached to the surface of a roadway for the purpose of regulating, warning, or guiding traffic. Tex. Rev. Civ. Stat. Ann. art. 6370c (West 1999).

Every incorporated city or town, having a population of more than one hundred thousand inhabitants, is empowered and authorized to, acquire, construct, improve, enlarge, extend, maintain, repair, and replace any and all properties, improvements and facilities which the governing body deems to be necessary for the elimination of at-grade crossings of the streets in such city by railroad lines and for the relocation of railroad lines within the city so that the hazards to life and property will be decreased, public safety and convenience will be promoted, traffic conditions will be improved, and the orderly development of the city will be encouraged. Tex. Transp. Code Ann. 317.003 (West Supp.2002). See complete text of this section in Chapter 1, under “Texas” in this book.

(a) A railway company must maintain the part of its roadbed and right-of-way that is crossed by a public street of a Type B general-law municipality in proper condition for use by travelers.

(b) A railway company that does not make needed repairs before the thirty-first day after the date the municipal marshal gives written notice to the section boss of the section where repairs are needed is liable to the municipality for a penalty of twenty-five dollars for each week the railway company does not make needed repairs. The municipality may sue to recover the penalty. Tex. Transp. Code Ann. § 471.001(West 1999).

UTAH

The Department of Transportation has exclusive authority over highway-rail grade crossings in the state. This authority includes the power to determine and prescribe the manner, including the location, of the crossing, and the terms of installation, operation, maintenance, use and equipping of each crossing of one railroad by another railroad or street railroad, and of each crossing of a street, public road or highway by a railroad. In addition to the authority to abolish crossings, the Department may order a separation of grades, the manner and terms upon which such separation shall be made and the division of expenses, whether it is between the affected railroads or between the railroads and the state, county, municipality, or other public authority in interest. Utah Code Ann. § 54-4-15 (1999).

Whenever the Department finds that public convenience and necessity demand the establishment, creation or construction of a crossing of a street or highway, over, under, or upon the tracks of lines of any public utility, the Department may, by order, decision, rule, or decree require the establishment, construction, or creation of such crossing; and such crossing shall thereupon become a public highway and crossing.

The Public Utility Commission, however, retains exclusive jurisdiction for the resolution of any dispute upon petition by any person aggrieved by any action of the Department under this section. Utah Code Ann. § 54-4-15 (1999).

The Department of Transportation, so as to promote the public safety, shall as prescribed, provide for the installing, maintaining, reconstructing, and improving of automatic and other safety appliances, signals or devices at grade crossings on public highways or roads over the tracks of any railroad or street railroad corporation in the state. Utah Code Ann. § 54-4-15.1 (1999).

VERMONT

The Select Board of a town within which a public highway crosses or is crossed by a railroad, or the general manager, or attorney of a railroad corporation whose road crosses or is crossed by a public highway, may bring their petition in writing to the Transportation Board, alleging that public safety requires an alteration in a crossing, its approaches, the method of crossing, the location of the public highway, the elimination of such crossing, the closing of such public highway crossing, and the substitution of another there for, not at grade, or the removal of obstructions to the sight at such crossing, and praying that the same may be ordered, or such proceedings may be instituted by the agency of transportation or the board of its own motion and without petition. The Board is then required to appoint a time and place for hearing the petition on notice of not less than 10 days to the petitioners, the railroad, the municipality in which the crossing is located, the owners of the land adjoining the crossing, and adjoining that part of the highway to be changed in grade, and to the attorney general, who shall, by himself or herself, or through the state's attorney of the county wherein the crossing is located, represent the interests of the state at such hearing. After such notice and hearing, the board shall determine what alterations, changes or removals, if any, shall be made and by whom. Vt. Stat. Ann. tit. 5 §3783 (1999).

When the Transportation Board, in the absence of any application, is of the opinion that the public safety requires an alteration in any highway crossed at grade by a railroad, or by railroads belonging to or operated by more than one corporation, or an alteration in lands or buildings adjoining or near such highway at or near such crossing in order to afford proper view from the approaches to such crossing, in each direction, or the track or tracks of such railroad or railroads, after hearing had on notice of not less than 10 days to the corporation or corporations owning or operating such railroad or railroads, to the select board of the town within which such highway is situated, to the owners of the land adjoining such crossing, and the owners of such land or buildings thereon adjoining, or near such highway as may be required for, or materially affected by a proposed alteration, and to the attorney general, who, by himself or herself or through the state's attorney of the county in which such crossing is located shall represent the interests of the state, it may order such alteration in such highway, and the removal of such obstructions to the view in each direction of the tracks of such railroads, as it deems best, and shall determine and direct by whom, at whose expense, and within what time such alterations and removals shall be made. Vt. Stat. Ann. tit. 5 § 3785 (1999).

A railroad may be laid out to cross a turnpike or other way if the Transportation Board judges it necessary. The railroad may raise or lower the turnpike or way but must restore the turnpike or way as much as practicable so that it remains useful.

When a railroad corporation has constructed a railroad upon, over, or under the path of a town or state highway, the railroad will maintain and rebuild bridges, culverts, crossings and other constructions, except bridges made for the accommodation, safety and convenience of public travel. Installations of new at-grade crossings, extensions of existing crossings, or the rebuilding of existing crossings required as a result of the building of any such extensions, when required for the accommodation, safety and convenience of the public travel, or for any reason except the accommodation of the railroad, will be done by the railroad corporation at the expense of the state. Vt. Stat. Ann. tit. 5, § 3571 (1999).

When it becomes necessary to rebuild any existing bridge on a state highway that carries the public over railroad tracks, the state will rebuild the bridge and pay one-half the cost. The railroad whose track lies under the bridge will pay the other half. The state is responsible for maintaining, rebuilding, and repairing the bridge at its expense. If the rebuilding or reconstruction is made at the request of, and for the benefit of the railroad, the railroad is responsible for the entire cost.

Construction of new bridges carrying public highways over railroad tracks, and the rebuilding of existing bridges made necessary by highway improvement, increased usage or speed of motor traffic, shall be made by the state at its own expense, except when the additions and improvements are made at the request of and for the benefit of the railroads, in which case the added cost shall be borne by the railroad. Vt. Stat. Ann. tit. 5, § 3572 (1999).

When a railroad has constructed its track across a public highway at-grade, the railroad is responsible for keeping the bridge and abutments in good repair and rebuilding them when necessary. If however, the improvement or rebuilding is necessitated by reason of highway improvement incident to increased load, usage or speed of motor vehicle traffic, the improvement or rebuilding shall be made by the railroad at state expense. Vt. Stat. Ann. tit. 5, § 3573 (1999).

VIRGINIA

The Code of Virginia declares that it is the policy of the Commonwealth at all crossings of one railroad by another, or a public highway by a railroad, or a railroad by a public highway, shall, whenever reasonably practicable; pass above or below the existing facility. And every railroad hereafter constructed across another railroad or across a public highway, and every public highway hereafter constructed across a railroad, shall, wherever it is reasonably practicable, and does not involve an unreasonable expense, all the circumstances of the case considered, pass above or beneath the existing structure at a sufficient elevation or depression, as the case may be, with easy grades, so as to admit of safe speedy travel over each.

If constructing a crossing wither above or below the existing structure is not practical and involves an unreasonable expense, the responsible governing body constructing a new public crossing at grade, in accordance with the laws of the Commonwealth of Virginia, shall take precautions to provide for the safe movement of traffic. It is the declared policy of the Commonwealth to limit the number of new public at grade crossings and to eliminate unnecessary crossings. Va. Code Ann. § 56-363 (Michie 1999).

Whenever the public safety requires that an existing crossing of a railroad by a public highway at grade be eliminated, or that multiple grade crossings be consolidated, either the public road authority or the affected railroad may petition the Commonwealth Transportation Board to provide funding for, and to require the elimination of the existing crossing, as a condition of participating in the funding. Upon a finding that the public safety requires elimination of the existing grade crossing, and the Commonwealth Transportation Board funds are available for the improvement, the Commonwealth Transportation Board may order the elimination of the crossing or the consolidation of multiple grade crossings. The affected railroad may contribute to the cost of eliminating or consolidating grade crossings. The Commonwealth Transportation Board may apply for, receive, and contribute, any available Federal, or other funds for the elimination or consolidation of grade crossings. Va. Code Ann. § 56-365.1 (Michie 1999).

Whenever a road in the State Highway System or a public highway maintained by a locality (i) crosses a railroad, (ii) is projected across a railroad, or (iii) is to be so changed as to cross a railroad, or an existing overpass or underpass crossing of any such road and a railroad is in need of widening, strengthening, remodeling, relocating, or replacing, and funds are (or are to be) allocated by the Commonwealth Transportation Board or public road authority for payment of the locality's or state's portion of the cost of constructing such an overpass or underpass structure or for widening, strengthening, remodeling, relocating or replacing such an existing structure, the Commonwealth Transportation Commissioner or representative of the public road authority may agree with the railroad company or companies involved, on such terms and conditions as he shall deem in the best interests of the Commonwealth or locality regarding the plans and specifications, the method and manner of construction and the division of costs and maintenance responsibility of any such separation of grade structure.

In the event the Commonwealth Transportation Commissioner, the public road authority, and the railroad company or companies involved are unable to agree on (i) the necessity for the construction of such underpass or overpass structure or for the widening, strengthening, remodeling, relocating or replacing of any existing overpass or underpass structure, (ii) the plans and specifications for and method or manner of construction thereof, or (iii) the portion of the work, if any, to be done and the share of the cost of such project, if any, to be borne by each of the railroad company or companies involved, the Commonwealth Transportation Commissioner or the public road authority shall petition the State Corporation Commission setting forth the plans and specifications for and the method and manner of construction of such projects and the facts which in his opinion justify the elimination of the crossing, the erection of a new separation of grade structure or the widening, strengthening, remodeling, relocating or replacing of an existing structure and the maintenance responsibility. Copies of the petition and the plans and specifications shall forthwith be served on the railroad company/s by the State Corporation Commission. Within 20 days after service on it, the railroad company or companies shall file an answer with the State Corporation Commission setting out its objections to the proposed project and the Commission shall hear and determine the matter as other matters are heard and determined by that body. The Commission shall consider all the facts and circumstances surrounding the case and shall determine (a) whether public necessity and convenience justifies or requires the construction of such new separation of grade structure or whether an existing

structure is so dangerous to or insufficient to take care of traffic on the highway as require the widening, strengthening, remodeling, relocating or replacing proposed, (b) whether he plans and specifications or method and manner of construction are proper and appropriate, and (c) what portion of the work, if any, to be done and what share of the costs of such project, if any, to be borne by each of the railroad company or companies involved (excluding the cost of right-of-way) is fair and reasonable, having regard to the benefits, if any, accruing to such railroad or railroads from the elimination of such grade crossing or the widening, strengthening, remodeling, relocation or replacing any existing overpass or underpass structure, and either dismiss the proceeding as against the railroad company or companies involved or enter an order deciding and disposing of all of the matters hereinbefore submitted to its jurisdiction.

Grade crossings shall be closed when replaced by a new public highway. However, the Commonwealth Transportation Board, or the public road authority, may authorize the continued use of the crossing for a period of two years following the construction of the new highway to familiarize the public with the new route. Va. Code Ann. § 56-366.1 (Michie 1999).

At every highway-rail grade crossing, it is the duty of the railroad company to maintain the crossing to the full width of the public road. The railroad must also maintain that portion of the highway located within two feet on either side of the extreme rail. Va. Code Ann. § 56-405 (Michie 1999).

Whenever the Commonwealth Transportation Commissioner, or representative of the appropriate public road authority determines that it is in the best interest of the public to assist a railroad in its grade crossing maintenance and repair activities, he or she is authorized to enter into an agreement with the railroad company for the repair or maintenance of any crossing of a railroad and a public highway or for the sale of materials to the railroad company for the repair and maintenance of any such crossing. Any such agreement shall provide for the railroad company to bear the cost of the repair or maintenance or material furnished and such other conditions as the Commonwealth Transportation Commissioner or representative of the appropriate public road authority deems necessary or advisable to protect the interest of the public. Va. Code Ann. § 56-405.1(1999).

WASHINGTON

Washington law provides, that when practicable all railroads and extensions of railroads hereafter constructed shall cross existing railroads and highways by passing either over or under the same, and shall in no instance cross any railroad or highway at grade without authority first being obtained from the Washington State Utilities and Transportation Commission. In determining whether a separation of grades is practicable, the Commission shall take into consideration the amount and character of travel on the railroad and on the highway; the grade and alignment of the railroad and highway; the costs of separating grades; the topography of the country, and all other circumstances and conditions naturally involved in such inquiry. Wash. Rev. Code § 81.53.020 (1999).

The Washington State Utilities and Transportation Commission shall conduct an investigation of a proposed at-grade crossing upon receipt of a written petition from a railroad

company, county or municipal authority, describing why the particular crossing cannot be grade separated upon at least ten days' notice to the railroad and the county or city affected of the time and place of the investigation. If the highway involved is a state road or parkway, the Secretary of Transportation or the State Parks and Recreation Commission shall be notified of the time and place of the hearing. If the Commission finds that it is not practicable to cross the railroad or highway, either above or below grade, it shall enter a written order granting the right to construct a grade crossing at the point in question.

In its order authorizing a grade crossing or at any subsequent time, the Commission may also provide that the railroad company install and maintain proper signals, warnings, flagmen, interlocking devices or other means to secure public safety. Wash. Rev. Code § 81.53.030 (1999).

When the Secretary of Transportation, the governing body of any city, town or county, or any railroad company whose track is crossed by any highway determines that public safety requires signals or warning devices other than crossbucks at any at-grade crossing of a railroad by any highway, road, street, alley, avenue, boulevard, parkway, or other public place currently open and in use or to be opened, they may file a petition in writing with the Utilities and Transportation Commission alleging that public safety requires the installation of specified signals, other warning devices, or specified changes in the method and manner of existing crossing warning devices. After receiving any petition, the Commission will set the matter for hearing, giving at least twenty days' notice to the parties in interest. As a result of the hearing, the Commission may decide for or against the requested changes. If the Commission determines that public safety requires the installation of such signals or other warning devices, or some form of modification in the existing warning device is needed, it may enter an order to that effect. The Commission may also apportion the entire cost of installation and maintenance of any signals or other warning devices. Wash. Rev. Code §§ 81.53.261-271 (1999).

The petition shall set forth by description the location of the crossing or crossings, the type of signal or other warning device to be installed, the necessity from the standpoint of public safety for such installation, the approximate cost of installation and related work, and the approximate annual cost of maintenance. If the Commission directs the installation of a grade crossing protective device and a Federal-aid funding program is available to participate in the costs of such installation, both installation and maintenance costs of the device shall be apportioned in accordance with the provisions of Section 81.53.295 of the code.

No railroad shall be required to install any such signal or other warning device until the affected public body has either paid or executed its promise to pay to the railroad its portion of the estimated cost. Wash. Rev. Code § 81.53.261 (1999).

Section 81.53.281 of the Revised Code of Washington provides for the establishment, within the state treasury, of a "Grade Crossing Protective Fund," for installation and maintenance of crossing signals or other warning devices. Wash. Rev. Code § 81.53.281 (1999).

Whenever Federal-aid highway funds are available and are used to pay a portion of the cost of installing a grade crossing protective device, and related work, at a railroad crossing of

any state highway, city or town street, or county road at the then prevailing federal-aid matching rate, the grade crossing protective fund shall pay 10 percent of the remaining cost of such installation and related work. The state or local authority having jurisdiction of such highway, street, or road shall pay the balance of the remaining cost of such installation and related work. The railroad whose road is crossed by the highway, street, or road shall thereafter pay the entire cost of maintaining the device. Wash. Rev. Code § 81.53.295 (1999).

WEST VIRGINIA

When a railroad crosses any state road, the railroad corporation is required to keep its own roadbed and the bed of the road or highway at such crossing in proper repair or else to construct and maintain an overhead or under grade crossing subject to the approval of the State Road Commissioner. The tracks at such crossings are to be constructed so as to give a safe approach to the crossing. When the construction of such approaches is made necessary by a change in the railroad grade at the crossing, the cost will be borne by the railroad company. W. Va. Code § 17-4-8 (1999).

After the construction of a grade separation where a state highway is carried over a railroad, the state will maintain the highway and structures supporting it and the railroad will maintain its tracks. Where a state highway passes under a railroad, the state will maintain the highway and the railroad company will maintain its roadbed, the tracks and the structures supporting the same. The state will pay for repair or replacement of any part of the supporting structure which is damaged or destroyed by highway traffic and the railroad company will bear the cost of repairing or replacing any part of the supporting structure which is damaged or destroyed by railroad traffic. W. Va. Code § 17-4-17 (1999).

The State Road Commissioner has the same authority and may follow the same procedure in the relocation and reconstruction of existing grade separation structures. The cost and maintenance provisions shall be the same. W. Va. Code § 17-4-17a (1999).

Every railroad company which has changed or will change the grade or location of any county-district road is responsible for putting the road in as good condition and repair and on as practical a grade as the road was before its change. If the road, after construction, becomes damaged or is caused to be damaged by reason of the construction of any railroad, the railroad company responsible shall be liable for all damages occasioned thereby and for all costs incurred in repairing and keeping in repair the road so damaged. W. Va. Code § 17-16-8 (1999).

WISCONSIN

The Wisconsin Department of Transportation, upon petition by the city council, village board, town board, superintendent of highways, five or more electors in any town, village or city or any railroad corporation or railroad historical society, has the authority to determine whether a public highway-railroad grade crossing provides for and promotes public safety. The Office of the Commissioner of Railroads may investigate and issue an appropriate order without a public hearing. If any of the parties in interest object to the order, they may request a hearing within twenty days from the order. During the hearing, the office shall determine whether the existing

warning devices at such crossing are adequate to protect and provide for public safety. If the office determines, either without or after a hearing, that the existing devices are not adequate, it may order the railroad company or railroad historical society to keep a flagman at the crossing or to install automatic signals or other suitable safety devices at specific locations at such crossing. The office may also order the relocation of existing signals and devices to improve safety at a crossing.

The cost of purchasing and installing any signal or other crossing warning device is to be borne by the Department of Highways. The cost of maintaining ordered crossing warning devices is the responsibility of the railroad or railroad historical society. However, any railroad or railroad historical society that incurs expenses for maintenance of signals or other safety devices may file a claim for reimbursement with the Department of Highways regardless of the date of installation of the signals or devices. The Department shall, at the close of each fiscal year, reimburse claimants for 50 percent of the costs as determined by the office, incurred for maintenance of railroad crossing warning devices. Wis. Stat. §195.28 (1999).

If the Department of Highways determines that the construction or reconstruction of a grade separation or the rearrangement or elimination of a crossing is necessary in the interest of public safety or convenience, it will make a plan for the proposed construction, make an estimate of the costs and try to reach an agreement with all interested parties as to a division of costs. If the Department is unable to agree with the parties as to payment of cost, work or maintenance of the same, it will present the matter to the Office of the Commissioner of Railroads. The Commissioner, after proper notice and hearing, shall specify the portion of the cost for construction and maintenance which is to be paid by the persons or corporations concerned and the portion of the cost, if any, to be paid by the public from the transportation fund. The Office of the Commissioner of Railroads shall determine the benefits, if any, to other highways and apportion and charge to the units of government responsible for the construction of such other highways a fair portion of the cost. Wis. Stat §84.05 (1999).

WYOMING

The Wyoming Transportation Commission, after receiving application from duly authorized agents of the cities, counties, other government entities, the affected railroad, or upon its own motion, when public interest clearly indicates that action must be taken, will hear evidence and, based upon a priority rating from the applications, will assign priority to the most dangerous crossings and order grade crossing safety improvements. The order shall include the type of crossing warning devices required, and whether the crossing is to be at-grade or grade separated. If the crossing is at-grade, the Commission will determine the kind and type of grade crossing warning signals and devices required. If the crossing is to be grade separated, the Commission will determine the type of grade separation structure. Wyo. Stat. § 37-10-102 (1999).

The Commission has a duty to apportion the costs and expenses of installing or reconstructing such crossings and safety devices between the railroads and the state highway department or the county, city or other entity affected in proportion to the respective benefits to be derived. The Commission will limit the amount charged against the railroad to a maximum of

33 1/3 percent of the costs of the total project for installing or reconstructing such crossings and safety devices. With respect to the initial installation of grade separation structures at existing railroad public highway crossings, the commission first determines if all federal sources of funding have been exhausted. The Commission apportions the remaining costs between the railroad and the State Highway Department or the county, city or other entity involved, based upon the causes resulting in the need for such grade separation structures. Wyo. Stat. § 37-10-103 (1999).

A railroad company has the authority to raise or lower any county road or other public highway for the purpose creating a grade separation. Repair or reconstruction of roads or highways is to be expeditiously completed. While so engaged in grade separation, or in making any other alteration which may obstruct the public way, the railroad company is responsible for providing and maintaining suitable temporary ways to enable travelers to avoid or pass obstructions. Wyo. Stat. § 1-26-811 (1999).

The Transportation Commission is charged with the administration of the highway crossing protection program. In order to compensate for the use of crossings by the public generally, the Commission shall also order that the part of the cost of installing, reconstructing or improving signals or devices as will not be paid by the railroad corporation, be divided between the state highway crossing protection account and the Department of Transportation or the city, town, county, or other political entity in which the crossing is located. The Commission shall fix in each case the amount to be paid from the crossing protection account and the amount to be paid by the Department or by the city, town, county, or other political entity. The railroads are responsible for all costs of maintaining in good operating condition all such safety devices. The governmental agency or city, town or other political entity with jurisdiction over the grade-separated crossing has the responsibility for all maintenance costs for grade separation structures. Wyo. Stat. § 37-10-104 (1999).