

CHAPTER 1: CROSSING CONSOLIDATIONS AND CLOSURES

CHAPTER OVERVIEW

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

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

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

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

STATE LAWS AND REGULATIONS

ALABAMA

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

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

ambulance service, the Department may also order a relocation of the crossing or the building of another crossing at another location.

Whenever the Department orders the closing of a grade crossing, it must enter its order in the Department minutes. Notice in writing is given by the Department by posting a notice on each side of the railroad or street railway at the grade crossing for a period of 30 days. If the closing is a crossing on a county or municipal road, prior to issuing the order to close the crossing, the Department must also give notice of its intention to close to the affected municipality or county. In addition, the Department must publish legal notice of intention to close the crossing in a newspaper of general circulation in the county once a week for three consecutive weeks prior to the closure. The notice must outline the procedure to request a hearing. If there is such a request for hearing, the Department must give ten days' notice to the requester and the municipality or county. Ala. Code § 37-2-84 (a)-(b)-(c) (1999).

ALASKA

Alaska has no code section relating to this topic.

ARIZONA

The Arizona Corporation Commission has the exclusive authority to alter or abolish highway-rail grade crossings within the state. This authority extends to those crossings where railroad tracks cross public roads or streets of a town or city. Ariz. Rev. Stat. Ann. § 40-337 (1999).

ARKANSAS

The State Highway Commission has exclusive authority over grade crossings including the power to determine and prescribe the manner, location, terms of installation, operation, maintenance, alteration and abolishment, separation of grades, and protection and apportionment of expenses. Ark. Code Ann. §§ 23-12-301-1001-1002 (1999).

CALIFORNIA

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

COLORADO

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

CONNECTICUT

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

The process may be initiated upon written petition to the Commissioner by the selectmen of any town, the mayor and common council of any city or the warden and burgesses of any borough within which a highway crosses a railroad. The Commissioner appoints a time and place for hearing the petition and gives notice to the petitioners. Conn. Gen. Stat. § 13B-270 (West 1998).

A similar procedure applies to the directors of any railroad company whose track is crossed by a highway. Any railroad company may bring its petition in writing to the Commissioner, alleging that public safety necessitates the elimination of a crossing. The Commissioner shall appoint a time and place for the hearing of the petition after reasonable notice to all affected parties. Conn. Gen. Stat. § 13B-273 (West 1998).

The Commissioner may also, in the absence of any application, upon his own motion, when in his opinion public safety requires it, and after notice and proper hearing, order alterations - including removal - of a highway crossed at grade by a railroad or railroads. In the process, he shall determine and direct by whom such alterations shall be made, at whose expense and within what time frame; but in any case, no more than one-fourth of the expenses is to be borne by the state, and the remainder is to be assessed upon the railroad. Conn. Gen. Stat. §13B.274 (West 1998).

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

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

DELAWARE

The Delaware Department of Transportation has the authority to order the closing of highway-rail crossings. Del. Code Ann. tit. 2 § 1804 (1999).

DISTRICT OF COLUMBIA

The Mayor of the District of Columbia has statutory authority to order a grade crossing elimination. D.C. Code Ann. § 7-137 (1999).

FLORIDA

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

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

The Department is mandated to work with the various railroad companies to develop and initiate a program for the expenditure of funds for the performance of projects aimed at reducing grade crossing hazards. Fla. Stat. Ann. § 335.141 (West 1999 Supplement).

The Florida Department of Transportation, in conjunction with other governmental units and the private sector, is tasked with the responsibility of developing and implementing a state-wide rail program designed to ensure the proper maintenance, safety, revitalization, and expansion of the rail system. Among the myriad duties under the statute, the Department is required to administer rail operating and construction, including the regulation of maximum train operating speeds, the opening and closing of public grade crossings, the construction and rehabilitation of public grade crossings, and the installation of traffic control devices at public grade crossings. The administration of the program by the Department includes participation in funding. Fla. Stat. Ann. § 341.302 (West 1999 Supplement).

GEORGIA

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

Once a decision is made by either entity, prompt notice must be given to the affected railroads. All parties must meet within thirty days and must further agree on a method of closure and separation within ninety days. If there is no agreement within the specified time, the department, county or municipality may proceed with construction or may, by written order, direct the interested railroads to proceed with construction. Ga. Code Ann. §§ 32-6-193-194 (1998).

HAWAII

Hawaii has no code section relating to this topic.

IDAHO

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

For crossings not on state highways, the local authorities and railroad companies have the same authority and duties with respect to the elimination or alteration of such crossings as are granted to and required of the Idaho Transportation Department and the various railroad companies. Idaho Code §§ 62-301-303 (1999).

ILLINOIS

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

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

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

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

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

- (a) timetable speed of passenger trains;
- (b) distance to an alternate crossing;
- (c) accident history for the last five years;
- (d) number of vehicular traffic and posted speed limits;
- (e) number of freight trains and their timetable speeds;
- (f) the type of warning device present at the grade crossing;
- (g) alignments of the roadway and railroad, and the angle of intersection of those alignments;
- (h) use of the grade crossings by trucks carrying hazardous material, vehicles carrying passengers for hire, and school buses; and
- (i) use of the grade crossing by emergency vehicles. 625 ILCS 5/18c-7401 (1999).

INDIANA

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

The authority of the Department to legally close and abolish grade crossings is in addition to any authority by law granted to other state agencies or units of local government. Units of local government have the authority to abolish a public railroad crossing, but not the authority to open one.

Upon the issuance of any such order by the Department, the railroad(s) involved is to physically remove the crossing from the tracks. The government unit responsible for maintaining the highway is to remove approaches to the crossing or barricade them. Ind. Code Ann. § 8-6-7.7-3 (Burns 1998 Supplement).

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

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

- (1) Timetable speed of passenger trains operated through the crossing.
- (2) Distance to an alternate crossing.
- (3) Accident history of the crossing for the five years preceding the department's or the unit's consideration.
- (4) Amount of vehicular traffic and posted speed limits for the crossing.
- (5) Amount of freight trains and their timetable speeds operated through the crossing;
- (6) Type of warning device present at the crossing, if any.
- (7) Alignment of the roadway and the railroad, and the angle of the intersection of an alignment at the crossing.
- (8) Use of the crossing by:
 - (A) Trucks carrying hazardous materials;
 - (B) Vehicles carrying passengers for hire;
 - (C) School buses; and
 - (D) Emergency vehicles.
- (9) Other appropriate criteria as determined by the Department.
Ind. Code Ann. §8-6-7.7-3.1(Burns 1998 Supplement).

A person may petition a unit (local government) under whose jurisdiction a public railroad crossing lies for closure of the crossing. The unit is then required to conduct a public hearing. The unit has three options: (1) If it determines that the crossing in question meets the criteria adopted by the Indiana Department of Transportation under the previous section (3.1) for closure of the crossing, the unit may approve the petition and issue an order to close the crossing. The unit's findings must be made available to the Indiana Department of Transportation; (2) If the unit determines that the crossing meets the criteria, but a compelling reason has been shown to exist for the crossing to remain open, it may then deny the petition to close with a copy of findings to the Indiana Department of Transportation; and (3) The unit may

determine that the crossing in question does not meet the criteria established by the Department of Transportation and deny the petition for closure.

Nothing in this chapter, however, is intended to preclude a unit and a railroad from agreeing on their own to close a crossing within the jurisdiction of the unit. Ind. Code Ann. § 8-6-7.7-3.2 (Burns 1998 Supplement).

A decision to deny a petition to close a crossing may be reviewed by the Indiana Department of Transportation and a determination made whether to schedule an appeal. The decision to schedule or not schedule an appeal is: (1) In the sole discretion of the Department; (2) Final and conclusive; and (3) Not subject to review. Upon review of the findings of the unit, the Department may determine that the crossing meets the criteria for closure, opening, or denial of a closure and that a compelling reason has been shown for the crossing to remain open, in which case the Department shall issue written findings that the crossing may remain open. If, on the other hand, the Department determines that the crossing meets the criteria for closure and that a compelling reason has not been shown for the crossing to remain open, the Department may issue an order abolishing the crossing. Ind. Code Ann. § 8-6-7.7-3.3 (Burns 1998 Supplement).

The Indiana Department of Transportation also has the authority to approve a petition to open a crossing. If it finds that the proposed crossing meets the criteria required to open a new grade crossing and that a compelling reason has been shown for the crossing to exist, it may issue an order approving the petition. Ind. Code Ann. § 8-6-7.7-4 (Burns 1998 Supplement).

IOWA

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

If any of the parties cannot agree upon the location, manner, vacation, physical structure, characteristics and maintenance of the crossing, either party may make written application to the Iowa Department of Transportation requesting a solution. The Department of Transportation is required to request the Department of Inspections and Appeals to set a date for hearing and give ten days' written notice of the date. Iowa Code § 327G.16 (1998).

KANSAS

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

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

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

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

Under this same section, the Secretary, when he or she deems it advisable, may require the railroad company to install and maintain suitable safety devices or warning signals at dangerous or obscure crossings to indicate the approach of trains. Kan. Stat. Ann. § 68-414 (1998).

The governing body of all cities of the first and second class also have the power to regulate the crossings of railway and street-railway tracks and provide precautions and adopt ordinances regulating the same. This includes the power to require all railway companies to erect viaducts over or tunnels under their tracks at the crossing of streets. The governing body shall have power to require any railroad company or companies owning or operating any railroad or street-railway tracks or tracks upon or across any public street or streets of the city to erect, construct, reconstruct, complete and keep in repair any viaduct or viaducts upon or over or tunnels under such street or streets and over or under any such track or tracks, including the approaches of such viaduct, viaducts or tunnels as may be deemed and declared by the governing body to be necessary for the convenience, safety or protection of the public. Kan. Stat. Ann. § 12-1633 (1998).

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

The governing body of all cities of the first and second class in a county having a population of over 90,000 has the power to require any railroad company or companies owning or operating any railroad or street-railway track or tracks upon or across any public streets of the city to erect, construct, reconstruct, complete and keep in repair any viaduct or viaducts upon or over or tunnels under such street or streets and over or under such tracks, including the approaches of such viaducts, viaducts or tunnels as may be deemed and declared by ordinance to be necessary for the convenience, safety or protection of the public. Kan. Stat. Ann. §§ 12-1634-68-509 (1998).

KENTUCKY

The Department of Highways has the authority to order any railroad company owning or operating a railroad in the state to eliminate any grade crossing or change any existing overhead or underpass structure where any public road crosses the railroad tracks of the railroad company when it considers it necessary for public safety. In the process, the Department may determine whether a substitute crossing should be established and if so, the location, and whether it shall pass over or under the railroad tracks or intersect them at grade.

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

On or before July 1, 1993, on or before July 1 of each of the next four years and as necessary thereafter, the Department is required to compose a list of grade crossings to be closed. The Department must notify the public officials having the necessary authority and the railway companies operating the railroads of the proposed closures. Either affected party may request a public hearing and if it is requested, the Department is required to hold the hearing and apply in its determination the information gained at the public hearing. If after the hearing the Department determines that closure is warranted, it may order the crossing closed. If a request for a hearing is not received by the Department within 30 days of 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 (1999 Supplement).

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).

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

The Fiscal Court is required to give at least ten (10) day's notice by certified mail of a hearing. At any such hearing it shall consider whether or not the proposed grade separation or change is reasonably

necessary and the most advantageous method of effecting the grade separation or change. In determining whether the proposed grade separation or change is reasonably necessary, the Fiscal Court shall receive evidence of, and consider all relevant facts, including the present and prospective density of highway traffic and the present and prospective frequency and speed of train movements over the crossing, the adequacy of existing or proposed signals or warning devices for the protection of highway traffic at the grade crossing, the possibility and probability of personal injury to the public using the highway and to employee and passengers of the railroad company and damage to property, and the cost of the grade separation or change in relation to benefits resulting from the proposed construction. Ky. Rev. Stat. Ann § 178.355 (2) (Baldwin 1998).

LOUISIANA

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

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

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

“(1) Within not less than one hundred eighty days prior to the closure of any public crossing, the Department shall notify the municipal governing authority of the area in which the crossing is located, the governing authority of the parish in which the crossings located, the railroad company whose railroad tracks are crossed at grade by the highway, emergency services providers providing services within the affected area, and any other party deemed by the Secretary to be interested in the closing procedure. Such notification of closures shall offer opportunity for rebuttals and alternative actions to such closures.

(2) Not less than ninety days prior to the possible closure of any public grade crossing, the Department shall hold a public hearing in the parish or municipality of the affected grade crossing.

(3) After the hearing, the Department shall attempt to address any concerns raised at the hearings relative to the proposed closing. However, if the Secretary determines that the closure is consistent with the standards established by the Department and in the public interest, the Department shall issue an order to close the existing grade crossing. Any such closure order shall also determine the manner in which such closure shall be made including a determination as to any alteration to be made to the crossing and the method of diversion of traffic to an alternate road or crossing. No provisions of this act shall impose any liabilities of any nature upon the State of Louisiana or any agency of the state.

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

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

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

- (1) Total number of daily vehicular use at crossing.
 - (2) Total number of trains passing the crossing daily.
 - (3) Alternative routes and distance to such routes.
 - (4) Timetable speeds of trains passing the crossing.
 - (5) Collision history of the crossing.
 - (6) Type of warning device presently at the crossing.
 - (7) Degree of difficulty involved in improvement of roadway approach to the crossing or in providing adequate warning devices.
 - (8) Use of the crossing by vehicles carrying hazardous materials, vehicles carrying passengers for hire, and school buses.
 - (9) Use of grade crossing by emergency vehicles.
 - (10) Sight distance and reduced visibility at the crossings.
 - (11) Angle of intersection of alignments of the roadway and the railroad.
 - (12) Redundancy of crossings in the area.
 - (13) Proximity to a new crossing or a recently upgraded crossing.
 - (14) Availability and responsibility of user of private crossing.
 - (15) Other factors the Department determines to be necessary in the development of this criteria.
- La. Rev. Stat. Ann. § 48:390 (West 1999)

MAINE

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

MARYLAND

The Maryland Highway Administration has general authority to abandon, relocate, construct, or reconstruct any railroad grade crossing or railroad grade separation that is dangerous or inconvenient for public travel. If the railroad grade crossing is dangerous or inconvenient for public travel, the Administration may construct a railroad grade separation. Md. Ann. Code art. 8§ 640(b)(2) (Michie 1998).

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

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

This same section provides that a person may not construct, reconstruct, improve, widen, relocate, or otherwise alter either a railroad grade crossing over a public highway or a private road over a railroad or, change the crossing protection at such a crossing unless approved by the Secretary. Md. Ann. Code art. 8 § 639 (Michie 1998).

MASSACHUSETTS

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

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

After giving due notice to the Department of Highways, the counties and municipalities in which the identified crossings are located and the affected railroad corporations, the Department of Telecommunications and Energy proceeds to hold public hearings on the list. When the hearings are completed, the Department of Telecommunications and Energy may order a program of grade crossings. The program can be amended or revised from time to time by the Department of Telecommunications and Energy on requests from the Department of Highways. Mass. Ann. Laws ch. 159, §§ 65-70 (1998).

MICHIGAN

The Michigan Department of Transportation has exclusive authority to order the elimination of highway-rail crossings. The Department, when it determines that it is necessary for public safety, may

change the location of or abolish any existing public at-grade crossing after not less than thirty days' notice in the affected areas. If an affected party requests a hearing, the Department must hold one, and within thirty days after the date of the hearing, can issue an order to close the existing grade crossing. Mich. Comp. Laws Ann. § 462.307 (1999). Also see Mich. Stat. Ann. § 22.1263(307)(2) (1999).

MINNESOTA

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

Public officials with the necessary authority and a railway company may come to an agreement to the vacation, relocation, consolidation, or separation of grades at grade crossings. If they are unable to reach agreement either party may file a petition with the Commissioner who then schedules a hearing. If the Commissioner determines that the vacation, relocation, consolidation, or separation is consistent with the standards adopted under Section 210.073, he or she may order the crossing vacated, relocated, consolidated, or separated. Minn. Stat. § 219.074 (1998).

MISSISSIPPI

The Mississippi Transportation Commission has statutory authority to regulate and abandon grade crossings on any fixed route as part of the state highway system. Miss. Code Ann. § 65-1-8 (1999).

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

The plans covering the proposed changes may can be made either by the Director of the State Highway Department, subject to the approval of the Transportation Commission or the affected railroad; but must in either event be approved by both the Transportation Commission and the railroad company before the contract is awarded. The State Transportation Commission and the railroad are required to pay equal parts of the cost of any underpass or overpass across the right-of-way of the railroad company. Miss. Code Ann. § 65-1-69 (1999).

MISSOURI

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

This authority extends to private crossings in specific instances in which it is determined that the private crossing is being used by the public to the extent that it is necessary to protect and promote public safety. Mo. Rev. Stat. § 389.610 (1998). See also under Missouri in Chapter 11, Private Crossings and Chapter 3, Crossing Treatment Procedures.

MONTANA

Montana law does not specifically mention closure of highway-rail grade crossings within the code. But general authority over highway-rail crossings is vested in the Montana Public Service Commission. Local authority in unincorporated villages or towns to construct new highway-rail crossings is provided for in the Code. Local authority means the Board of County Commissioners. No railroad crossing, other than a grade crossing, shall be ordered by any board of county commissioners. The Public Service Commission may, however, upon petition or request in writing of any board of county commissioners, order an overhead or underground crossing at any place where a railroad crossing has not been constructed and is required, provided, in its judgment, the safety, necessity, and convenience of the traveling public require such a crossing. Mont. Code Ann. §§ 69-14-606- 69-14-607(2)(a)(b) (1998).

NEBRASKA

In 1997, the Nebraska legislature passed the Nebraska Highway-Rail Grade Crossing Safety and Consolidation Act. The legislation placed ultimate jurisdiction over all crossings outside of incorporated villages, towns, and cities, both public and private, across, over, or under all railroads in the state with the Department of Roads. It was the intent of the Legislature that any state role regarding highway-rail grade crossings, including public safety, Operation Lifesaver, maintenance, design, consolidation, separation, signalization, improvement, or relocation, be consolidated under one agency. Neb. Rev. Stat. §§ 74-1329-1330-1332 (Michie 1998).

The Department of Roads becomes the final arbitrator whenever a complaint is filed in writing with the Department of Roads by the duly authorized officers of any incorporated village or city, concerning any crossing within such village or city, praying for relief from the matters complained of. The Department is required to hold a hearing and shall make such order as the facts warrant. The findings of the Department, subject to the right of appeal, is binding on the parties to the suit. Neb. Rev. Stat. §1335 (Michie 1998).

The same is true whenever railroad tracks cross a public highway at grade, outside of incorporated cities and villages. The owner of the railroad tracks and the county board of the county in which the subject crossing is located may agree upon any change, alteration, or construction of any crossing as will promote the public convenience or safety, and they may agree upon relocation of any highway so as to eliminate such crossings entirely or so as to carry them over or under such railroad and upon the apportionment of the expenses incident to any such change, alteration, relocation, or construction between the owner of the railroad tracks and the county or other public authority in interest. Neb. Rev. Stat. §74-1337 (Michie 1998).

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

be paid by the railroad carrier and what portion shall be paid by the county or other public authority in interest, if any. Neb. Rev. Stat. §74-1338 (Michie 1998).

When the owner of railroad tracks fails, neglects, or refuses promptly to comply with any order of the Department of Roads issued under Sections 74-1332 to 74-1339 or fails or refuses, or neglects to comply with such after the department has issued an order, the owner shall be guilty of a Class V misdemeanor and shall be fined in any sum not more than one hundred dollars for each such offense. Each week of such neglect, refusal, or failure shall constitute a separate offense. Neb. Rev. Stat. §74-1340 (Michie 1998).

NEVADA

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

After an investigation and hearing, which may initiated either upon the Commission's own motion, or as the result of the filing of a formal application or complaint by the Department of Transportation, the Board of County Commissioners of any county, the town board or council of any town or municipality, or any railroad company, the Commission may order the elimination, alteration, addition or change of a highway crossing or crossings over any railroad at grade, or above or below grade, including its approaches and surface. Nev. Rev. Stat. § 704.300(2) (Michie 1998).

NEW HAMPSHIRE

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

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

NEW JERSEY

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

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

NEW MEXICO

State statutes do not specifically mention any authority for closure. There is codified, however, a grade separation procedure.

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

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

NEW YORK

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

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

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

NORTH CAROLINA

The North Carolina Department of Transportation has statutory authority to regulate, abandon and close to use, grade crossings on any road designated as part of the state highway system, and whenever a public highway has been designated as part of the state highway system and the Department of Transportation, in order to avoid a grade crossing or crossings with a railroad or railroads, continues or constructs the said road on one side of the railroad or railroads, the Department of Transportation shall have power to abandon and close to use such grade crossings; and whenever an underpass or overhead bridge is substituted for a grade crossing, the Department of Transportation shall have power to close to use and abandon any such grade crossing and any other crossing adjacent to it. N.C. Gen. Stat. § 136-18(11) (1998).

The Department of Transportation also has authority to abolish grade crossings in a road or street not forming a link in part of the state highway system. The statute allows the Department to designate who pays in what proportion for the elimination and separation of the crossing. The amounts are based on the same formula provided for grade crossing elimination on the state highway system. N.C. Gen. Stat. §136.19 (1998).

Further, the Department has statutory authority to order crossing closure on roads or streets forming a link in part of the state highway system. If, in the opinion of the Secretary the crossing is

dangerous to the traveling public or unreasonably interferes with or impedes traffic on the state highway, the Department of Transportation is required to issue notice requiring the person or company operating the affected railroad to appear before the Secretary at an appointed time not less than ten days or more than twenty days from the date of the notice and show cause if any why the railroad should not be required to make adjustment to the crossing or close it. After hearing the matter, the Secretary will determine whether a crossing is dangerous to public safety or unreasonably interferes with traffic. If a conclusion is reached that a crossing is dangerous, the Secretary can order either closure or separation. N.C. Gen. Stat. §136-20 (1998).

NORTH DAKOTA

Declaring that it is in the interest of public safety to eliminate unnecessary railroad grade crossings whenever reasonable access can be safely provided at another crossing, the North Dakota Code places authority with the Public Service Commission to vacate, establish, or relocate crossings, or to separate the grades, if no agreement can be reached by the public officials having the necessary authority and the railroad. Either party to the dispute can file a petition with the Commission, thereby submitting the matter for determination.

The Commission, after receiving the petition, is required to give reasonable notice, conduct a hearing, and then issue its order. N.D. Cent. Code § 24-09-10 (Michie1998).

OHIO

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

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

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

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

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

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

Any time a resolution is passed by either entity, it must be published. Notice of its passage must be given to the affected parties and the owners of the property adjacent to the proposed improvement. Ohio Rev. Code Ann. §§ 4957.01-4957.02-4957.09 (Baldwin 1999).

OKLAHOMA

The Oklahoma Corporation Commission has statutory authority over all public highway-rail crossings. This authority is inclusive of the right to order elimination and, where practicable, a separation of grade. Okla. Stat. tit. 17, § 84 (1998).

OREGON

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

The Department, either upon its own motion or upon an application by a railroad, or the public authority in interest, may find, subsequent to a hearing, that elimination is required in the interest of public safety, necessity, convenience and general welfare. Or. Rev. Stat. § 824.206 (1998).

PENNSYLVANIA

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

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

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

Within a township, borough or city, the Court of Quarter Sessions of the county may close a crossing upon petition of the railroad company and declare as a public highway any over grade or under grade substitution that is to then be maintained by the proper authorities. Pa. CONS. STAT. § 2702 (1999). Also see 32 Pa. Code § 33.31.

RHODE ISLAND

In the exercise of the police power of the state for the safety of its inhabitants, the state legislature vests in the Public Utilities Commission the authority to eliminate highway-rail grade crossings. The statute further states that the Commission shall have this authority even if, by its order, it effectively deprives a municipality of control of its streets. R.I. Gen. Laws §§ 39-8-1.1 -8-3 (1999).

SOUTH CAROLINA

The Public Service Commission of South Carolina has general authority over highway-rail crossings. The statute provides that the Public Service Commission shall 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 effect proper drainage of adjacent territory. S.C. Code Ann. § 58-17-1450 (1998).

SOUTH DAKOTA

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

The Department can order that any existing or planned crossing be relocated, altered or abolished upon its own motion or upon complaint, and after a hearing and notice to all interested parties, including the owners of adjacent property and the affected railroad company. S.D. Codified Laws Ann. §§ 31-27-1,27-2 (1999).

Where a new right-of-way is necessary for the building of a subway or overhead crossing on a state or county highway, the governing body having jurisdiction over the highway may determine when it is necessary to eliminate the dangerous crossing. S.D. Codified Laws Ann. §§ 31-27-12-17 (1999).

TENNESSEE

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

The affected railroad company has the right to appeal to the Public Service Commission but only with regard to the period of time required to comply. The Public Service Commission has the authority to stay the order of the Commissioner for the actual construction for any length of time not exceeding two years. Tenn. Code Ann. §§ 65-11-107-108-109(1999).

TEXAS

The Railroad Commission of Texas has statutory authority for closure of existing grade crossings. Tex. Rev. Civ. Stat. Ann. art. 6502 (West 1999).

There also exists within the Texas Revised Civil Statutes, a provision for grade crossing elimination within every incorporated city or town (including home rule cities) having a population of more than one hundred thousand inhabitants. Tex. Rev. Civ. Stat. Ann. art. 1105c (West 1999).

UTAH

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

VERMONT

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

VIRGINIA

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

WASHINGTON

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

WEST VIRGINIA

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

WISCONSIN

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

WYOMING

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

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