

# VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

## CHAPTER 157

*An Act to amend and reenact §§ 56-102, 56-111, 56-117, 56-118, 56-129.1, 56-130, 56-131, 56-354, 56-362, 56-363, 56-366.1, 56-366.3, 56-368.1, 56-369, 56-405, 56-405.02, 56-405.1, 56-405.2, 56-406.1, 56-406.2, 56-411, 56-428, 56-446, and 56-451.1 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 33.1-145.1, 56-345.1, 56-355.2, 56-365.1, and 56-413.01, and to repeal §§ 56-44, 56-45, 56-46, 56-93 through 56-99.1, 56-100.1, 56-101, 56-102.1 through 56-110, 56-112 through 56-116, 56-129, 56-132, 56-139, 56-266 through 56-272, 56-345, 56-348, 56-359, 56-360, 56-361, 56-364, 56-365, 56-366.2, 56-371 through 56-382, 56-384 through 56-389, 56-405.01, 56-405.3, 56-413, 56-413.1, 56-413.2, 56-417, 56-418, 56-419.1, 56-427, 56-445, 56-447 through 56-451, 56-454, 56-455, and 56-456 of the Code of Virginia, relating to railroads.*

[S 273]

Approved March 8, 1996

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 56-102, 56-111, 56-117, 56-118, 56-129.1, 56-130, 56-131, 56-354, 56-362, 56-363, 56-366.1, 56-366.3, 56-368.1, 56-369, 56-405, 56-405.02, 56-405.1, 56-405.2, 56-406.1, 56-406.2, 56-411, 56-428, 56-446, and 56-451.1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 33.1-145.1, 56-345.1, 56-355.2, 56-365.1, and 56-413.01 as follows:**

*§ 33.1-145.1 Grade crossing closing and safety.*

*It is the public policy of the Commonwealth of Virginia to enhance public safety by establishing safe highway/rail grade crossings and to consolidate and close unsafe, unnecessary, or redundant crossings and to limit the establishment of new crossings. The Commonwealth Transportation Board has the authority to close public highway/rail grade crossings on the system of highways for which it has responsibility.*

*The Commissioner on his own motion or by request of any interested landowner, railroad corporation, county board of supervisors, or other governing body may petition the Commonwealth Transportation Board, to close the highway/rail grade crossing as a public road.*

*The Commissioner shall, prior to petitioning the Commonwealth Transportation Board, conduct a traffic engineering study to determine the validity of closing the crossing. The traffic engineering study shall consider all factors including but not be limited to: (i) the number of freight and passenger trains passing the crossing and their timetable speeds, (ii) the distance to an alternate crossing, (iii) the availability of alternate access, (iv) the crossing's accident history during the five year period immediately prior to the study, (v) the number of vehicles per day using the crossing, (vi) the posted speed limit at the crossing, (vii) the type of warning devices present at the crossing, (viii) the alignment of the roadway and railroad and their angle of intersection, (ix) the number of trucks per day carrying hazardous materials through the crossing, (x) the number of vehicles per day carrying passengers for hire through the crossing, (xi) the number of school buses per day using the crossing, and (xii) the use of the crossing by emergency vehicles.*

*The results of the traffic engineering study shall be made public in accordance with the procedures set forth in § 33.1-145. The Commissioner shall present his findings and recommendations to the Commonwealth Transportation Board and the Board shall decide what actions to be taken regarding the crossing(s) at issue.*

*§ 56-102. Unlawful to charge other than published tariff.*

*When the Commission shall have either authorized or specified and published any such rates, fares, and charges, excluding those covered by contracts have been published in a tariff, it shall be unlawful for any such company to charge, demand, collect, or receive from any person a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges, so authorized, or prescribed and published by the Commission, unless or until changed by the Commission; provided, however, when the Commission determines unless it is determined that a rate, fare or charge has been published recorded in error it shall order publication of an appropriate correction which shall be effective from the effective date of the erroneous rate, fare or charge.*

*§ 56-111. When railroads may operate by motor vehicle or aircraft.*

*Any railroad, electric railway or steamboat corporation operating a railroad, electric railway or steamboat line doing business in this Commonwealth may acquire, own and operate motor vehicles for the purpose of transporting persons or property over the public highways as a common carrier by motor vehicle as that term is defined by § 56-273 46.2-2000, subject to the laws of Virginia governing the operations and regulation of common carriers by motor vehicle and all lawful regulations of the*

~~Commission~~ *Commonwealth* made pursuant thereto and applying to other motor vehicles or other common carriers by motor vehicle, including the laws requiring the payment of registration and license fees and other taxes by common carriers by motor vehicle, when lawfully authorized ~~so to do by the Commission~~ in accordance with the provisions of such laws and regulations.

So long as the gross transportation receipts from operations as a common carrier by motor vehicle are subject to road tax, such gross transportation receipts shall not be included in the gross transportation receipts of any such railroad or steamboat corporation upon which its annual state franchise tax is calculated.

Any such railroad, ~~electric railway or steamboat corporation~~ may also acquire, own and operate equipment for and engage in ~~aerial~~ *air* transportation, subject to the provisions of the law regulating ~~aerial~~ *air* transportation.

§ 56-117. Company to notify consignee of arrival of freight.

It shall be the duty of every ~~transportation~~ *railroad* company, or carrier, upon the arrival of freight shipped to any of its depots or stations, to notify the consignee by mail, *electronic data transfer*, or otherwise when such freight is ready for delivery, and to give a reasonable time for the removal of the same, making due allowance for its class and bad weather and holidays.

§ 56-118. Freight bill; what to contain.

Every ~~transportation~~ *railroad* company or line, doing business in this Commonwealth, shall, at the time when such company delivers any articles shipped or transported over its line, furnish to the owner or consignee thereof, or to his agent, a bill, plainly stating the class of freight to which the articles belong, the weight thereof, and the rate charged for transporting the same. *Bills may be furnished by mail or contemporaneous electronic transmission.*

§ 56-129.1. Participation in the Federal Railroad Administration Safety and Inspection Program.

The State Corporation Commission shall have the authority to participate in carrying out ~~track~~ *safety* inspection activities in connection with any rule, regulation, order, or standard prescribed by the Secretary of Transportation of the United States under the authority of the Federal Railroad Safety Act, ~~United States Code, Title 45, Chapter 13 (49 U.S.C. § 20101 et seq.) as delegated to the Commonwealth by the Federal Railroad Administration~~, provided that the Commission shall comply with all the requirements imposed by the United States Code, ~~Title 45, Section 435~~. The Commission shall employ such expert, professional or other assistance as is necessary to carry out the activities authorized by this section. Such ~~track~~ Safety inspectors shall attain Federal Railroad Administration qualifications necessary to qualify the Commonwealth for federal funds. Provided, however, that a maximum of ~~\$150,000~~ *\$200,000* paid to the State Corporation Commission under §§ 58.1-2660 through 58.1-2662 shall be allocated to this program.

The Commission shall have the authority to adopt such rules in conformance with the Federal Railroad Safety Act that are necessary for the promulgation of railroad ~~track~~ safety within the Commonwealth.

§ 56-130. Penalty for failure to make necessary repairs, etc.

If any railroad, or other ~~transportation~~ *railroad* company, when directed by a valid order of the Commission, refuses or fails to ~~make necessary repairs or additions to its rolling stock, or addition or improvement to its equipment, or any enlargement of or improvement in its stations, station houses, wharves, or landings, or any change in the mode of operating its road or transportation line, or in conducting its business, which the Commission deems reasonable and expedient in order to promote the security, convenience, and accommodation of the public, such company comply with any requirement imposed pursuant to § 56-129.1, such company shall, in the discretion of the Commission, be fined not less than \$100 nor more than \$1,000 in accordance with federal guidelines.~~

§ 56-131. Accident Investigation and Reporting.

The Commission ~~may~~ *shall* investigate the cause of any accident on any ~~transportation line~~ *railroad* which, in its judgment, ~~shall require~~ *requires* investigation. *The Commission shall require every common carrier by railroad doing business in this Commonwealth to file all reports required by the Federal Railroad Administration pursuant to the Federal Accidents Reports Act and regulations issued pursuant thereto to the Commission at its office in Richmond, Virginia, provided that neither such report nor any part thereof shall be admitted as evidence in any suit or action for damages growing out of any matter mentioned in such report.*

§ 56-345.1. Notice; consolidation, merger, abandonments, or discontinuances.

Any railroad company operating in the Commonwealth who submits an application to the federal government for consolidation, merger, abandonment, or discontinuance shall, contemporaneously with such application, notify the Commission and the Chief Executive Officer of the Commonwealth of such action.

§ 56-354. Conductors, etc., to be conservators of the peace.

Conductors *and engineers* of railroad *passenger* trains, ~~motormen~~, and station and depot agents, shall be conservators of the peace; ~~and they and each of them~~. Each shall have the same power to make arrests that other conservators of the peace have; except that the conductors *and engineers of passenger trains* shall only have such power on board their respective trains and on the property of their company

while on duty and the agents at their respective places of business; ~~and such conductors.~~ *Conductors, engineers, and agents may cause any person so arrested by them to be detained and delivered to the proper authorities for trial as soon as practicable.*

*§ 56-355.2. Definitions.*

*"Public road authority" as used in this chapter means any appropriate governing body which has responsibility for the construction and maintenance of public highways.*

*"Overpass" as used in this chapter means a grade separation structure in which the public highway passes above and across the railroad.*

*"Underpass" as used in this chapter means the railroad passes above and across the public highway.*

*"Highway" as used in this chapter means any public highway, road, or street maintained by the Virginia Department of Transportation or for which maintenance payments are made pursuant to §§ 33.1-23.5:1 and 33.1-41.1.*

*§ 56-362. Right of railroad to cross watercourse, intervening railroad, etc.*

*Any railroad corporation created or doing business under the laws of this Commonwealth, which shall have fully located the route of its railway, may, in the construction of such railway on such route, cross any canal, navigable stream, or watercourse between its termini, but in such manner as not unreasonably to impede the navigation and use thereof; and may also cross any railway or railroad intervening, in the manner and upon the terms prescribed by §§ 56-17 to 56-32, and ~~56-364~~ 56-363.*

*§ 56-363. Crossing of a railroad or public highway by another railroad; crossing of a railroad by a public highway.*

*It is hereby declared to be the policy of ~~this~~ the Commonwealth that all crossings of one railroad by another, or of a ~~county road or~~ public highway by a railroad, or of a railroad by a ~~county road or~~ public highway, shall, wherever reasonably practicable, pass above or below the existing ~~structure~~ facility. And every railroad hereafter constructed across another railroad or across a ~~county road or~~ public highway, and every ~~county road or~~ 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.*

*The provisions of this section shall not apply to crossings in cities or towns, nor to electric railways within or without cities and towns.*

*If constructing a crossing either 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 policy of the Commonwealth to limit the number of new public at grade crossings and to eliminate unnecessary crossings.*

*§ 56-365.1. Closing and or consolidation of grade crossings.*

*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 grade 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 may apply for, receive, and contribute any available federal or other funds for the elimination or consolidation of grade crossings.*

*§ 56-366.1. Proceedings to avoid or eliminate grade crossings by grade separation or to widen, strengthen, remodel, relocate or replace existing crossing structures on public highways.*

*Whenever a road in the State Highway System or ~~in the secondary system of state highways~~ a public highway maintained by a locality (1) crosses a railroad, (2) is projected across a railroad, (3) is to be so changed as to cross a railroad, or (4) an existing ~~overhead overpass~~ or underpass crossing of any such road and a railroad is in need of widening, strengthening, ~~remodelling~~ 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 ~~overhead overpass~~ or underpass structure or for widening, strengthening, ~~remodelling~~ 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 case of a separation of grade by structure at a new, or an existing, grade crossing, the project, except in special cases and under special circumstances to be mutually agreed upon by the Commonwealth Transportation Commissioner, the public road authority, and the railroad company or companies involved, shall be deemed to start at points on each side of the tracks of the railroad or railroads where the grade, under the proposed plans*

and specifications, leaves the ground line to go over or under, as the case may be, the tracks of the railroad or railroads.

In the event the Commonwealth Transportation Commissioner, *the public road authority*, and the railroad company or companies involved are unable to agree (1) on the necessity for the construction of such underpass or overpass structure or for the widening, strengthening, ~~remodelling~~ *remodeling*, relocating or replacing of any existing ~~overhead~~ *overpass* or underpass structure, or (2) the plans and specifications for and method or manner of construction thereof, or (3) 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 project and the facts which in his opinion justify the elimination of the crossing ~~and~~, the erection of a new separation of grade structure or the widening, strengthening, ~~remodelling~~ *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 by the State Corporation Commission on the railroad company or companies involved. Within twenty days after service on it of such petition and plans and specifications, 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 (1) 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 to require the widening, strengthening, ~~remodelling~~ *remodeling*, relocating or replacing proposed, (2) whether the plans and specifications or method and manner of construction are proper and appropriate, and (3) what portion of the work, if any, to be done and what share of the cost 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, ~~remodelling~~ *remodeling*, relocating or replacing any existing ~~overhead~~ *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.*

§ 56-366.3. Proceedings to alter, rebuild or replace existing grade separation structure destroyed or rendered unusable.

In the event an existing ~~bridge~~ *overpass* or crossing over a railroad is destroyed or rendered unusable or otherwise becomes necessary to alter, rebuild, or replace, which ~~bridge~~ *overpass* or crossing is maintained by a railroad company, such company shall immediately notify the Commonwealth Transportation Commissioner, *or the public road authority* of its intent to formulate plans for such alteration, rebuilding, or replacement. The Commissioner *or the public road authority* shall, as soon as practicable after receipt of such notice, determine if, in consideration of the needs of the state systems of highways, the work to be done on such ~~bridge or crossing~~ *existing separation structure* should encompass any upgrading of such ~~structure~~ *overpass*. Upon reaching such decision, the Commissioner *or the public road authority* shall forthwith notify the company thereof.

If the Commissioner *or representative of the public road authority* determines that upgrading is not necessary, the company, within six months of notice thereof, shall, in consultation with the Commissioner *or representative of the public road authority*, formulate and submit plans to the Commissioner *or representative of the public road authority* for the necessary work. As soon as the plans are submitted the Commissioner *or representative of the public road authority* shall review the same and after determining the plans are satisfactory, shall notify the railroad to begin construction by a specified date and to complete such construction within a specified time limit after considering public safety, convenience and necessity and the amount, nature and extent of the planned construction. All costs of necessary work, including formulation of plans, where upgrading is not necessary, shall be borne by the company. In the event, there is a disagreement as to the design, method of construction and date of completion such dispute shall be resolved under the procedural provisions of § 56-366.1.

If the Commissioner *or public road authority* determines that upgrading is necessary or desirable, the same procedure for coordination with the company shall apply except that the parties may agree that the Commissioner *or representative of the public road authority* formulate, and execute plans for such work, in consultation with such company. Disputes as to matters in this regard, including allocation of cost, shall also be resolved ~~under the procedural provisions of § 56-366.1~~ *by petition to the State Corporation Commission and any new overpass shall be maintained in accordance with § 56-368.1.*

When it is necessary only to repair any ~~such bridge or crossing over a railroad~~ *overpass*, maintained

by such railroad, the railroad shall perform all work and bear all costs in connection therewith.

All duties under this section shall be performed as expeditiously as possible. Nothing herein shall be construed in any way to limit the authority of the Commissioner ~~over the roads on such bridges or crossovers~~ *or representative of the public road authority over public highways and overpasses.*

§ 56-368.1. Subsequent maintenance of underpasses and overpasses.

After the work specified in §§ 56-366.1 and 56-366.3 *regarding underpasses and overpasses* has been done, the maintenance, including drainage, of any underpass hereafter so constructed, except the pavement thereof, shall be the sole responsibility of the railroad company and the maintenance of any ~~overhead structure~~ *overpass* hereafter so constructed shall be the sole responsibility of the Department of Transportation *or the public road authority*; provided, that the railroad company shall not be responsible for any damage to an underpass caused by operations on the highway, and the Department of Transportation *or the public road authority* shall not be responsible for any damage to an overpass caused by the operations of the railroad company; and further provided, that the provisions herein as to maintenance of ~~overhead~~ *overpasses* and underpasses shall also be construed as applicable in the case of those structures previously built on the primary system under agreement between the railroad company and the Department of Transportation *or the public road authority*; and further provided that the provisions herein as to maintenance by a railroad company shall not be applicable in the case of any underpass hereafter constructed without eliminating a crossing of a railroad and a highway grade, but the maintenance of such structures, including highway drainage and pavement therefor, shall be the sole responsibility of the Department of Transportation *or the public road authority*.

§ 56-369. Elimination of public grade crossings by change of alignment of public highways or construction of replacement public highways.

Whenever the Commonwealth Transportation Commissioner *or the appropriate public road authority* in improving a ~~state road~~ *the alignment of public highways* proposes to change the alignment of the highway *or construct a replacement public highway* and thereby permanently eliminate as a public crossing one or more crossings of a railroad at grade, he may agree with the railroad company involved, on such terms and conditions as he *or the representative of the public road authority* shall deem in the best interest of the Commonwealth *or locality* regarding the plans and specifications, the method and manner of construction and the division of costs of so changing the alignment of the highway. *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 public highway to familiarize the public with the new route.*

In the event the Commonwealth Transportation Commissioner *or the public road authority* and the railroad company are unable to agree (1) on the necessity for such change in the alignment of the highway, or (2) the plans and specifications for the method and manner of construction thereof, or (3) 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 the railroad company involved, the Commonwealth Transportation Commissioner *or the public road authority* shall petition the State Corporation Commission setting forth the plans and specifications for the method and manner of changing the alignment of the *public* highway and the facts which, in his opinion, justify the proposed elimination as a public crossing of one or more crossings of the railroad at grade. Copies of the petition and the plans and specifications shall forthwith be served by the State Corporation Commission on the railroad company involved. Within twenty days after service on it of such petition and plans and specifications, the railroad company involved 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 (1) whether public necessity and convenience justifies or requires the proposed change in the alignment of the highway which shall not, in respect to any particular project within the meaning of this section, exceed five miles in length, (2) whether the plans and specifications or method and manner of construction are proper and appropriate, and (3) what portion of the work, if any, to be done and what share of the cost of such project, if any, to be borne by the railroad company involved is fair and reasonable, having regard to the benefits, if any, accruing to such railroad from the elimination of such grade crossing or crossings, and either dismiss the proceeding as against the railroad company involved or enter an order deciding and disposing of all of the matters hereinbefore submitted to its jurisdiction, provided, however, that the share of the cost of such project which the Commission may find proper to be borne by the railroad under the provisions of this section, shall not exceed what the Commission might otherwise decide would be the proportion of the cost of constructing an ~~overhead or undergrade~~ *overpass or underpass* structure or structures at the point or points where such *public* grade crossing or crossings are to be eliminated.

§ 56-405. Railroad companies to maintain grade crossings of public highways and approaches; repair by Commonwealth Transportation Commissioner or public road authority; recovery of cost from railroad company.

At every crossing, now existing or hereafter established, of a public road by a railroad or of a

railroad by a public ~~road~~ highway at grade, it shall be the duty of the railroad company to keep such crossing in good repair to the full width of the public ~~road~~ highway, and to maintain such crossing in a smooth condition so as to admit of reasonable and safe travel over the same, and it shall also be the duty of the railroad company to maintain and keep in good repair that portion of the highway located between points two feet on either side of the extreme rails. *A railroad may request that a public highway be closed for grade crossing maintenance activities and the representative of the Commonwealth Transportation Commissioner or the representative of the appropriate public road authority may approve such closing where a reasonable detour is available.* Any railroad company violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not less than \$10 nor more than \$500.

The Commonwealth Transportation Commissioner or ~~the local governing body of a county, city or town, where such county, city or town maintains its streets and roads~~ *the representative of the public road authority*, whenever he or it shall ascertain that any such crossing is not being properly maintained shall notify the railroad company involved in writing to repair the crossing forthwith; the railroad company upon receipt of notice may request a conference on the condition of the crossing and the need, if any, for the repair of such crossing and such conference shall be held within thirty days after receipt of the Commissioner's or ~~such governing body's~~ *the public road authority's* notice. After the conference if the Commissioner or ~~such governing body~~ *the public road authority* is of the opinion that such repairs are required and the railroad is not willing to proceed promptly with such repairs, he or ~~such governing body~~ *the public road authority* may repair the same or cause it to be repaired and recover from the railroad company the actual cost of such work including any administration and engineering cost.

If no conference is requested by the railroad company within the thirty-day period, the Commissioner or ~~such governing body~~ *the public road authority with advance notice* may repair the crossing or cause it to be repaired and recover from the railroad company the actual cost of such work including any administration and engineering cost.

In any action under this section to recover the cost of the repair of any such crossing, the need for, and reasonableness of, the repairs may be put in issue.

Nothing herein shall be construed as placing a duty on the railroad company to construct or reconstruct any such crossing in the event any such crossing is relocated or the highway approaches thereto are widened or reconstructed.

#### § 56-405.02. Railroads to adjust certain public highways at grade crossings.

When adjustments are made to railway trackage grade which crosses public rights-of-way in use as a *public highway or street or thoroughfare* in any locality, the railway company making such adjustments to their trackage shall also make initial adjustments to those *public highways or streets or thoroughfares* so affected thereby to maintain a safe vertical relationship between trackage and street surfaces and to insure positive storm drainage such as existed prior to such repairs. After making such initial adjustments the responsibility for the continuing maintenance of the areas within such *public highways and streets and thoroughfares* so adjusted shall be controlled by § 56-405.

The cost of all such initial street improvements necessitated by railway trackage adjustments shall be the responsibility of the railway company making such initial adjustments irrespective of whether or not the street improvements extended beyond railway right-of-way.

#### § 56-405.1. Agreements with Commonwealth Transportation Commissioner or public road authority representative for maintenance and repair of public grade crossings.

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 their grade crossing maintenance and repair activities*, he is authorized to enter into an agreement with any railroad company for the repair or maintenance of any crossing of a railroad and a public ~~road~~ 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.

#### § 56-405.2. Construction and maintenance of crossbucks.

Every railroad company shall cause signal boards, hereinafter referred to as crossbucks, well supported by posts or otherwise and approved by the Department of Transportation at such heights as to be easily seen by travelers from both directions of the *public* highway, and not obstructing travel, containing in capital letters, at least five inches high, the inscription "railroad crossing," to be placed, and constantly maintained, at each public highway at or near and, on both sides of, each place where it is crossed by the railroad at the same level; provided that the requirements of this section in ~~cities and towns~~ *localities that maintain their own streets* may be waived at specific crossings on the petition of any such company to both the Commonwealth Transportation Commissioner and the ~~governing body of such city or town~~ *public road authority* if both the Commissioner and ~~such governing body~~ *the public road authority* determine that any such crossing has or will have other adequate warning devices or that the placement of new crossbucks will not enhance the safety of the traveling public. Neither official

action nor failure to act as hereinabove provided shall impair the power of ~~either the Commissioner or any governing body~~ *the public road authority* to require crossbucks at specific *public* crossings ~~in cities and towns~~ should a subsequent determination of their need be made.

The cost of erecting crossbucks placed at a public highway for the first time ~~or whenever the Commissioner or the public road authority determines an upgrade of the standards is required~~ may be paid or supplemented from federal funds when available to the Department of Transportation for such purpose at the sole discretion of the Commonwealth Transportation Commissioner. But the election of the Commissioner not to participate in such cost shall not relieve any company from the obligation of this section.

This section shall apply as to cities and towns in the case of new crossbucks beginning July 1, 1977.

§ 56-406.1. Proceedings for installation and maintenance of automatically operated gates, signals and other automatic crossing warning devices.

~~Whenever, in the opinion of the Commonwealth Transportation Commissioner, or of the governing body of any county that has withdrawn its roads from the secondary system of state highways as to roads maintained by such county, the public interest requires that automatically operated gates, wigwag signals or other electrical or automatic protection devices be installed at any highway, road or street crossing of one or more railroads at grade outside the corporate limits of any city or incorporated town, and whenever in the opinion of the council of any city or incorporated town the public interest requires that automatically operated gates, wigwag signals or other electric or automatic protection devices or manually operated gates be installed or a flagman stationed and kept at any highway or street crossing of one or more railroads at grade within the corporate limits of such city or incorporated town, the Commonwealth Transportation Commissioner, or the governing body of such county, or the council of such city or incorporated town, as the case may be, may agree with the railroad company or companies involved, on such terms and conditions as such Commissioner, governing body or council shall deem in the best interest of the public, regarding the plans and specifications, the method and manner of construction and operation, and the division of the cost of installing such crossing protection devices~~ *Railroads shall cooperate with the Virginia Department of Transportation and the Department of Rail and Public Transportation in furnishing information and technical assistance to enable the Commonwealth to develop plans and project priorities for the elimination of hazardous conditions at any crossing of a public highway which crosses at grade including, but not limited to grade crossing elimination, reconstruction of existing grade crossings, and grade crossing improvements. The Commonwealth shall provide each locality a listing of their grade crossing safety needs for their consideration. Information collected and analyses undertaken by the designated state agencies are subject to 23 U.S.C. § 409. A railroad shall not unilaterally select or determine the type of grade crossing warning system to be installed at any crossing of a public highway and railroad at grade. The railroad shall only install or upgrade a grade crossing warning system at any crossing of a public highway and railroad at grade pursuant to an agreement with the Virginia Department of Transportation or representative of the appropriate public road authority authorized to enter into such agreements. A railroad is not required but is permitted to upgrade, at its own expense, components of any public highway at grade warning system when such upgrade is incidental to a railroad improvement project relating to track, structures or train control systems.*

~~When required by the Commonwealth Transportation Commissioner or representative of the appropriate public road authority, every railroad company shall cause a grade crossing warning device including flashing lights approved by the Department of Transportation at such heights as to be easily seen by travelers, and not obstructing travel, to be placed, and maintained at each public highway at or near each place where it is crossed by the railroad at the same level. Such warning device shall be automatically activated by the approaching train so as to be clearly discernible to travelers approaching the railroad crossing from each direction at a distance of two-hundred feet. Such warning devices shall be erected at the initiative of the appropriate public road authority only when required by ordinance or resolution adopted by the Commissioner or the appropriate public road authority thereof stating that such political subdivision will pay the full initial installation cost of such warning devices and that maintenance costs will be fixed as provided in § 56-406.2. A certified copy of such ordinance or resolution shall be delivered to such railroad company, and such railroad company shall forthwith install such warning devices at the full initial cost of such public road authority. The cost of such installation and maintenance of such warning devices may be shared by agreement between such railroad company and the Commonwealth Transportation Commissioner or the appropriate public road authority, when initiating such installation. The railroad shall be responsible for the continuing maintenance of the warning devices.~~

~~In the event that such Commissioner, governing body or council or representative of the appropriate public road authority and the railroad company or companies involved are unable to agree (1) on the necessity for such grade crossing protection warning device, or (2) the plans and specifications for and the method and manner of construction or operation thereof, or (3) the share of the cost of construction, if any, to be borne by the railroad company or companies involved, then the Commonwealth Transportation Commissioner, governing body or council or representative of the appropriate public~~

*road authority*, as the case may be, shall petition the State Corporation Commission setting forth the *grade crossing protection warning devices* desired and the plans and specifications for and the method and manner of construction and operation of the devices desired and the facts which, in the opinion of the petitioner, justify the requiring of the same. Copies of the petition and plans and specifications shall be forthwith served by the State Corporation Commission on the railroad company or companies involved. Within twenty days after service on it of such petition and plans and specifications, each such railroad company 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 (1) whether public necessity justifies or requires the proposed ~~protection~~, *warning devices*, (2) whether the plans and specifications or the method and manner of construction and operation be proper and appropriate, and (3) what share of the cost of the project, if any, to be borne by any railroad company involved is fair and reasonable, having regard to the benefits, if any, accruing to such railroad company from providing such *grade crossing protection warning devices*, and either dismiss the proceeding as against such railroad company or enter an order deciding and disposing of all of the matters hereinbefore submitted to its jurisdiction.

§ 56-406.2. Proceeding for fixing cost of maintaining such warning devices at public grade crossings.

Whenever any automatically operated gate, wigwag signal or other ~~electrical or automatic crossing protection~~ *warning device* has been or may hereafter be installed at any highway, road or street grade crossing by any railroad company ~~outside the corporate limits of any city or incorporated town, or at any such crossing inside the corporate limits of any incorporated town having a population of thirty-five hundred or less where the street involved is maintained by the Commonwealth Transportation Board, pursuant to any agreement between such railroad company and the Commonwealth Transportation Commissioner or the governing body of any county that has withdrawn its roads from the secondary system of state highways as to roads maintained by such county and/or pursuant to an order of the State Corporation Commission as provided in § 56-406.1,~~ the Commonwealth Transportation Commissioner or the ~~governing body~~ *public road authority* may agree with the railroad company involved as to the division of the cost of the future maintenance of any such device or devices. *The basis for the division of costs will be determined by the Department of Rail and Public Transportation utilizing the calculated average maintenance cost of all previous warning device maintenance performed and documented by all railroads operating in Virginia.* In the event that the Commissioner or the ~~governing body~~ *public road authority* and the railroad company involved are unable to agree upon the share of the cost of maintenance of any such device or devices to be borne by the railroad company, if any, then such railroad company may file a petition with the State Corporation Commission setting forth the crossing protection provided at such crossing, the terms of the contract and/or the conditions of the order of said Commission ~~or the public road authority~~ under which it was constructed and installed and the estimated future annual cost of maintaining the same. Copies of such petition shall forthwith be served by the State Corporation Commission upon the Commonwealth Transportation Commissioner or the ~~governing body~~ *public road authority* who shall, within twenty days after service of such petition, file an answer thereto setting out reasons for declining to participate in the future cost of maintaining such ~~protective~~ *warning device* or devices as requested by the railroad company and the Commission shall thereupon 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 what share of the cost of the future maintenance of such ~~protective~~ *warning device* or devices, if any, shall be borne by the railroad company and/or the Commonwealth Transportation Board or the ~~county~~ *public road authority*, having regard to the benefits, if any, accruing to such railroad company from the continued maintenance of such protection of said *public* highway, road or street grade crossing, and either dismiss the proceeding or enter an order deciding and disposing of the matters therein submitted to its jurisdiction.

The provisions of this section shall not apply to any automatically operated gate, wigwag signal or other electrical or automatic crossing protection device installed prior to January 1, 1962, at any grade crossing on any county road in any county that has withdrawn its roads from the secondary system of state highways unless and until such time as such county shall bring itself back within such secondary system of state highways under the provisions of § 33-1-85.

§ 56-411. Removal of brush and trees from right-of-way.

Every railway company operating ~~either by electric power or steam~~ in this Commonwealth shall be required to clear from its right-of-way trees and brush for 100' on each side of public road crossings at grade when such trees or brush would otherwise obstruct the view of approaching trains.

Every railway company violating the provisions of this section shall be fined not more than \$100 \$500 for each offense, to be imposed by the State Corporation Commission after due notice and hearing upon the company or the employee so offending.

§ 56-413.01. Locomotive and rail car standards.

*All locomotives and rail cars operating over the tracks of a railroad company are subject to Federal Railroad Administration jurisdiction and shall be maintained in accordance with federal standards.*

*Locomotives designed with spark arrestors shall be cleaned and maintained on a regularly scheduled basis.*

§ 56-428. Railroads liable for damage from fires set out by their engines or trains.

Whenever any person shall sustain damage from fire occasioned by sparks or coals dropped or thrown from the engine or train of any railroad company, such company shall be liable for the damage so sustained, whether such fire shall have originated on the company's right-of-way or not; ~~and whether or not such engine is equipped with proper spark-arresting appliances, and regardless of the condition in which such appliances may be.~~

§ 56-446. Information to State Corporation Commission; penalty.

Every railroad company ~~or person operating a railroad~~ in this Commonwealth shall, at all times, on request, furnish to the State Corporation Commission any information required by it concerning the ~~physical condition, management, track and ancillary facilities~~ or operation of the road, ~~or any other report lawfully required by the Commission~~ and particularly copies of all of its timetables upon such road and other roads with which its business is connected. *Copies of information provided to federal agencies are acceptable.* Any railroad willfully refusing or failing to furnish any such information ~~to the Commission in compliance with a Commission order or who willfully or unlawfully hinders, delays, or obstructs the Commission in the discharge of the duties imposed upon it by the Constitution, or by law,~~ shall, in the discretion of the Commission, be fined not less than \$10 nor more than \$1,000. *Each day of such refusal, hindrance, delay, or obstruction shall be considered a separate offense. Fine amounts are to be specified in the order.*

§ 56-451.1. Keeping unused tracks in place.

If a railroad company shall ~~cease to operate~~ *discontinue operations* on all or any portion of its line of railroad (other than yard tracks, passing sidings, or tracks unneeded because of the diversion of traffic over parallel or other substitute tracks), it shall notify the governing body of any city, town or county directly served by the portion of line so discontinued at least thirty days prior to the removal of the track from the roadbed. ~~Upon giving such notice the railroad company may by agreement with such local governing body, or with a chamber of commerce or other nonprofit organization, leave such track in place or sell the same to such local governing body, chamber of commerce or other nonprofit organization, to be held in place pending reestablishment of rail service thereon and during the period of time when such track shall so remain in place and unused, the State Corporation Commission shall treat the roadbed on which the same is located as unimproved property and assess it accordingly.~~ *Retention of such track in place shall be in accordance with federal rules and regulations.*

2. That §§ 56-44, 56-45, 56-46, 56-93 through 56-99.1, 56-100.1, 56-101, 56-102.1 through 56-110, 56-112 through 56-116, 56-129, 56-132, 56-139, 56-266 through 56-272, 56-345, 56-348, 56-359, 56-360, 56-361, 56-364, 56-365, 56-366.2, 56-371 through 56-382, 56-384 through 56-389, 56-405.01, 56-405.3, 56-413, 56-413.1, 56-413.2, 56-417, 56-418, 56-419.1, 56-427, 56-445, 56-447 through 56-451, 56-454, 56-455, and 56-456 of the Code of Virginia are repealed.