

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING RAILROAD
RIGHTS-OF-WAY FIRE HAZARDS
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 43

**COMMONWEALTH OF VIRGINIA
Richmond
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Executive Summary

During 1979 the Joint Subcommittee determined that there was no clear delineation of authority for regulating and supervising the burning of combustible debris along railroad rights of way. The parties to this issue have acknowledged that the situation does call for increased cooperation and concentration on this problem, but acknowledged that legislation at this time might not be the proper solution. The Joint Subcommittee did make certain other recommendations, in lieu of legislation, and these are following. The Joint Subcommittee did feel that it would be wise, at the present time, to continue to monitor the situation and keep abreast of any further developments.

Recommendations

The Joint Subcommittee recommends to the General Assembly:

1. That no legislation be introduced at the present time with regard to Section 56-246 of the Code of Virginia which governs fire extinction and liability for fires along railroad rights-of-way. Re-evaluation of such problem and possible legislation, in the future, is felt to be dependent on the cooperation shown between the affected parties and the results of such cooperation;
2. That the Forestry Division be directed to closely monitor the process of clearing railroad rights-of-way of combustible debris;
3. That a procedure be developed whereby volunteer fire companies can be compensated for the extinction of such fires in such a way which would not endanger the maintenance of their volunteer status;
4. That a position be taken which would encourage the recycling of combustible debris left along these rights-of-way, such as tie butt chips;
5. That copies of this report be sent to all affected railroad personnel in the Commonwealth for their information; and
6. That the railroads and the Division of forestry also include independent contractors in the planning of such burning for the clearing of these rights-of-way.

Findings

1. The Division of forestry is of the opinion that the present law contained in Section 56-426 of the Code of Virginia has proven effective in achieving its purpose, relating to keeping railroad rights-of-way cleared, and should be continued. Representatives of various railroads did feel this law to be slightly outdated, but did not request its repeal. This law was shown to have been scrutinized in the past, but each time it has been concluded that the Act, in itself, is valuable.
2. Railroads, in some way, are responsible for an average of 11.3% of all the reported forestry-related fires in Virginia. Unfortunately, due to various requirements, or lack of them, for reporting forest fires in other states, there are no reliable comparative figures available. Also, statistics from other states might not be useful due to the varying conditions of terrain, rainfall, types of natural foliage, and other considerations.
3. The fire problem is comprised of two parts:
 - A. Risks, caused by sources of ignition, can be reduced by mechanical engineering, fire prevention education, inspection and maintenance, and rules and regulations; and
 - B. Hazards, which are the flammable material such as dry vegetation which may be ignited by the various risks. Hazards can be reduced by their removal a sufficient distance from the risks by mechanical or physical removal, burning, or chemical treatment.
4. Fire, used as a means of clearing railroad rights-of-way, has been the method most widely used because it has proved to be the most economical and effective. There are other methods used in

various instances, but they seem to have even greater inherent drawbacks: (A) chemical defoliants, which are expensive, cause soil erosion and can affect water quality; (B) fire retardants which have a short period of effectiveness before being washed away by rain; and (C) bulldozing.

5. The principle of strict liability for the various costs of these fires along the railroad rights-of-way was placed on the railroads early in their history. At the present time, railroads must pay for the cost of extinguishing these fires and are subject to a possible \$500 fine. Should such a fire escape onto private property, although there is no Code provision dealing specifically with the railroad, a private citizen could be compensated through civil procedures which provides for damage restitution by anyone who starts a fire.
6. Both the Division of Forestry and the railroads agreed that the relationship and cooperation between them had always been good, but agreed that closer cooperation in this area could be attained.
7. Several railroads contract their burning work because contract personnel are more readily available than railroad personnel for such work. Because many of the complaints received concerned contractors, it was suggested to and agreed to by the Division of Forestry and the railroads that these contractors be included in the plans for the coordination and control of such burning operations.
8. The Division of Forestry, due to other commitments, such as planting, during this time of year, stated that it could not personally supervise every such burning operation without additional staff. The Joint Subcommittee received an opinion from a staff attorney who reviewed the Code sections involved, and found that, although the Virginia Division of Forestry is given general authority to enforce those laws enacted for the protection of forest lands, there are no statutory provision which delegate responsibility to the Division of Forestry or to anyone else for regulating and supervising the burning of combustible debris along railroad rights-of-way.
9. The Division of Forestry does get a daily record of burning operations in progress and advises if weather conditions are adverse. The Division does feel that it is taking a more aggressive stand in advising when not to burn, and the railroads have been very cooperative.
10. One additional situation was brought out in the hearings which the Joint Subcommittee felt to be deserving of some attention, and this dealt with the problem of discarded tie butts. Tie butts in the past used to be left whole and as such were useful to farmers or other individuals who would remove them. At the present time, though, most railroads split and chip these tie butts into small pieces and, when left along the sides of the track, they cause a serious fire hazard. It is felt that some alternatives uses could be found for this material and aid the problem in question in the very process.
11. Railroads are responsible for the costs incurred for extinguishing these fires, but in order to be reimbursed a fire department must file a bill with the Division of Forestry. Volunteer fire departments are not felt to be filing for such reimbursement because of the consideration of the maintenance of their volunteer status. It was suggested by the Joint Subcommittee that the railroads and the Division of Forestry cooperate to investigate the possibility of and develop a system whereby volunteer departments are furnished with some type of "in-kind" payment or "contribution" to compensate for their costs. The relationship between these fire departments and the other agencies involved is felt to have been excellent in the past and hoped to continue in the future.

Background

The 1979 Session of the General Assembly commissioned the present study by its passage of House Joint Resolution 220 (see Appendix I). A joint subcommittee composed of members of the House of Delegates Committee on Roads and Internal Navigation and members of the Senate Committee on Transportation was formed to carry out the Assembly's charge (see Appendix II for a list of Joint Subcommittee members.)

This resolution and subsequent study was brought about by the number of fires which volunteer

fire departments were being requested to extinguish and the private property damage being incurred by the escape of such fires which originate on railroad rights-of-way. These fires were found to have numerous causes, the most prevalent being actual train operation or the clearing of rights-of-way debris by burning. The Joint Subcommittee stressed that it was not their purpose or intent to punish, but rather to endeavor to find a workable solution to protect Virginia's valuable timberland, especially at a time when energy and environmental concerns are crucial.

The joint subcommittee met on three occasions, June 18, September 10, and November 28, 1979, to hear various testimony on this problem. Through the course of these hearings much cooperative effort was noted with potential solutions to the situation.

Because of the findings by this body based on the testimony at the public hearings, it was the feeling by the Joint Subcommittee that this problem is one that should primarily be resolved by the parties involved rather than by General Assembly direction. Therefore, no specific legislation was recommended at this time.

Respectfully submitted,

Claude V. Swanson (Chairman)
Earl E. Bell (Vice-Chairman)
Herbert H. Bateman
Orby L. Cantrell
Raymond R. Guest, Jr.
Joan S. Jones
Madison E. Marye
Charles L. Waddell

Appendix I

HOUSE JOINT RESOLUTION NO. 220

Requesting a [joint] subcommittee of the House Committee on Roads and Internal Navigation [and the Senate Committee on Transportation] to conduct a study of fire hazards proposed by debris along railways.

Patrons—Swanson, Terry, Thomas, and Philpott

Referred to the Committee on Roads and Internal Navigation

WHEREAS, the fire hazard proposed by combustible debris along railways has long been recognized by the Virginia General Assembly; and

WHEREAS, State law (§ 56-426) presently requires that railroad rights-of-way be kept clear of combustible debris which could communicate fire from passing trains to property abutting the railroad right-of-way; and

WHEREAS, it would appear that in some instances this combustible debris is being removed by burning; and

WHEREAS, it may be that the incineration of this debris poses a greater hazard of communicating fire to abutting property than does the presence of combustible debris along railways; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the House Committee on Roads and Internal Navigation [~~and the Senate Committee on Transportation are~~ is] requested to form a [joint] subcommittee composed of five members of the House Committee on Roads and Internal Navigation, appointed by its chairman, [~~and three members of the Senate Committee on Transportation, appointed by its chairman,~~] to conduct a study of the fire hazard posed by debris along railways. The [joint] subcommittee shall consider, but not be limited to, the effectiveness of Virginia Code § 56-426 in regulating the removal of such debris. At the completion of its study, the [joint] subcommittee shall report its [~~findigs~~ findings] and recommendations to the Governor

Appendix II

MEMBERS OF SUBCOMMITTEE

Claude V. Swanson, Chairman
Earl E. Bell, Vice Chairman
Herbert H. Bateman
Orby L. Cantrell
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