

5765

2013-2014 Regular Sessions

I N S E N A T E

June 13, 2013

Introduced by Sen. FUSCHILLO -- (at request of the Department of Transportation) -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the railroad law, in relation to public hearings and to repeal certain provisions of such law, relating to the weight of rail, rates of fare, excess charges and penalties, mileage books, duties imposed, inspections, inspectors, care of steam locomotives, use of furnaces, equipment of engines, couplers and Canadian thistles

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 89 of the railroad law, as amended by chapter 267
2 of the laws of 1970, is amended to read as follows:
3 S 89. New railroads across streets. 1. All [steam] surface railroads
4 built after the first day of July, eighteen hundred [and] ninety-seven,
5 except additional switches and sidings, must be so constructed as to
6 avoid all public crossings at grade, whenever practicable [so to do].
7 Whenever AN application is made to the commissioner [of transportation]
8 under section nine of this chapter OR THIS SECTION, there shall be filed
9 with the commissioner [of transportation] a map showing the streets,
10 avenues, highways and roads proposed to be crossed by the new
11 construction, and the commissioner [of transportation] shall determine
12 whether such crossings shall be under or over the proposed railroad,
13 except where the commissioner [of transportation] shall determine such
14 method of crossing to be impracticable.
15 2. Whenever SUCH an application is made [under this section] to deter-
16 mine the manner of crossing, the commissioner [of transportation] shall
17 designate a time and place when and where a hearing will be given to
18 such railroad company, and shall notify the municipal corporation having
19 jurisdiction over the streets, avenues, highways or roads proposed to be
20 crossed by the new railroad, persons owning land in the vicinity of the
21 proposed crossing and such other parties deemed by the commissioner of
22 transportation to be interested in the proceeding. The commissioner of
23 transportation shall give public notice of such hearing. Upon such
24 notice and after a hearing, the commissioner of transportation] MAY

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD09118-02-3

1 CONDUCT A HEARING AND PROVIDE NOTICE OF SUCH A HEARING OF NOT LESS THAN
2 TEN DAYS TO PARTIES DEEMED TO HAVE AN INTEREST IN THE APPLICATION.
3 PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL CONDUCT A HEARING UPON
4 THE REQUEST OF THE RAILROAD COMPANY MAKING THE APPLICATION, THE MUNICI-
5 PAL CORPORATION HAVING JURISDICTION OVER THE STREETS, AVENUES, HIGHWAYS
6 OR ROADS PROPOSED TO BE CROSSED BY THE NEW RAILROAD OR THE CITY, TOWN OR
7 VILLAGE IN WHICH THE CROSSING IS LOCATED. IF SUCH A REQUEST IS NOT MADE
8 AND IF THE COMMISSIONER DETERMINES THAT A HEARING IS NOT REQUIRED, HE OR
9 SHE SHALL SOLICIT COMMENTS FROM PARTIES DEEMED TO HAVE AN INTEREST IN
10 THE APPLICATION WHO SHALL BE PROVIDED WITH NO LESS THAN TEN DAYS TO
11 COMMENT ON THE APPLICATION. PARTIES DEEMED TO HAVE AN INTEREST IN THE
12 APPLICATION SHALL INCLUDE THE RAILROAD COMPANY MAKING THE APPLICATION,
13 THE MUNICIPAL CORPORATION HAVING JURISDICTION OVER THE STREETS, AVENUES,
14 HIGHWAYS OR ROADS PROPOSED TO BE CROSSED BY THE NEW RAILROAD, THE CITY,
15 TOWN OR VILLAGE IN WHICH THE CROSSING IS LOCATED, PERSONS OWNING OR
16 OCCUPYING PROPERTY IN THE VICINITY OF THE PROPOSED CROSSING AND OTHER
17 PARTIES DEEMED BY THE COMMISSIONER TO BE AFFECTED BY THE APPLICATION.
18 AFTER A HEARING, IF ONE WAS HELD, OR THE EXPIRATION OF THE COMMENT PERI-
19 OD, THE COMMISSIONER [may] SHALL determine [that] WHETHER alterations or
20 changes may be made in any existing highway at or in the vicinity of a
21 proposed crossing for the purpose of avoiding a crossing at grade.

22 3. If the commissioner [of transportation shall determine] DETERMINES
23 that any such railroad shall be carried across a street, avenue, highway
24 or road below the grade thereof, [said commissioner of transportation]
25 HE OR SHE shall determine the height, the length[,] and the material of
26 the bridge or structure by means of which such street, avenue, highway
27 or road shall be carried over such railroad, and the length, charac-
28 ter[,] and grades of the approaches thereto.

29 4. If the commissioner [of transportation shall determine] DETERMINES
30 that such railroad shall be constructed above the grade of such street,
31 avenue, highway or road, [said commissioner of transportation] HE OR SHE
32 shall determine the manner and method in which such railroad shall be
33 constructed over such street, avenue, highway or road, and the length,
34 character and grades of the undercrossing approaches.

35 5. If the commissioner [of transportation shall determine] DETERMINES
36 that it is impracticable to construct such railroad below or above the
37 grade of such street, avenue, highway or road, [said commissioner] HE OR
38 SHE shall determine the manner and method in which the same shall be
39 constructed across such street, avenue, highway or road at grade, and
40 what safeguards shall be maintained.

41 6. The decision of the commissioner [of transportation] rendered in
42 any proceedings under this section shall be [communicated, after final
43 hearing, to the railroad company, the municipal corporation and all
44 other parties who appeared at said hearing by counsel or in person]
45 FINAL, SUBJECT TO THE RIGHT OF APPEAL AS HEREINAFTER PROVIDED, AND SHALL
46 BE SENT AFTER A HEARING, IF ONE WAS HELD, OR THE EXPIRATION OF THE
47 COMMENT PERIOD, TO ALL PARTIES WHO PARTICIPATED IN THE PROCEEDING OR
48 REQUESTED TO BE ADVISED OF THE DECISION.

49 7. ANY PERSON AGGRIEVED BY SUCH A DECISION AND WHO WAS A PARTY TO SAID
50 PROCEEDING MAY, WITHIN SIXTY DAYS, APPEAL THEREFROM TO THE APPELLATE
51 DIVISION OF THE SUPREME COURT IN THE DEPARTMENT IN WHICH SUCH CROSSING
52 IS SITUATED, AND TO THE COURT OF APPEALS, IN THE SAME MANNER AND WITH
53 LIKE EFFECT AS IS PROVIDED IN THE CASE OF APPEALS FROM AN ORDER OF THE
54 SUPREME COURT.

55 S 2. Section 90 of the railroad law, as amended by chapter 267 of the
56 laws of 1970, is amended to read as follows:

1 S 90. New streets across railroads. 1. When a new street, avenue,
2 highway or road or new portion or additional lane of a street, avenue,
3 highway or road shall hereafter be constructed across a [steam] surface
4 railroad, other than pursuant to section ninety-one, such street,
5 avenue, highway, or road or new portion or additional lane of a street,
6 avenue, highway or road, shall pass over or under such railroad whenever
7 such construction is practicable. Notice of intention to lay out such
8 street, avenue, highway or road, or such new portion or additional lane
9 of a street, avenue, highway or road, across a steam surface railroad
10 shall be given to such railroad corporation by the municipal corporation
11 at least fifteen days prior to the making of the order laying out such
12 street, avenue, highway or road or such new portion or additional lane
13 of a street, avenue, highway or road by service personally on the presi-
14 dent or vice-president of the railroad corporation or any general offi-
15 cer thereof. Such notice shall designate the time when and place where a
16 hearing will be given to such railroad corporation, and such railroad
17 corporation shall have the right to be heard before the authorities of
18 such municipal corporation upon the question of the necessity of such
19 street, avenue, highways or road or such new portion or additional lane
20 of a street, avenue, highway or road on the question of the location of
21 such highway.

22 2. If the municipal corporation determines such street, avenue, high-
23 way or road or such new portion or additional lane of a street, avenue,
24 highway or road to be necessary, such municipal corporation shall then
25 apply to the commissioner [of transportation] before any further
26 proceedings are taken, to determine whether such street, avenue, highway
27 or road or such new portion or additional lane of a street, avenue,
28 highway or road shall pass over or under such railroad or at grade. The
29 commissioner [of transportation shall thereupon appoint a time and place
30 for hearing such application, and shall give such notice thereof as he
31 shall judge reasonable to the railroad corporation whose railroad is to
32 be crossed by such new street, avenue, highway or road, or such new
33 portion or additional lane of a street, avenue, highway or road, to the
34 municipal corporation, the owners of land adjoining the railroad and
35 that part of the street, avenue, highway or road to be opened, extended
36 or constructed and such other parties deemed by him to be interested in
37 the proceeding. The commissioner of transportation] MAY CONDUCT A HEAR-
38 ING AND PROVIDE NOTICE OF SUCH A HEARING OF NOT LESS THAN TEN DAYS TO
39 PARTIES DEEMED TO HAVE AN INTEREST IN THE APPLICATION. PROVIDED, HOWEV-
40 ER, THAT THE COMMISSIONER SHALL CONDUCT A HEARING UPON THE REQUEST OF
41 THE MUNICIPAL CORPORATION MAKING THE APPLICATION, THE RAILROAD CORPO-
42 RATION WHOSE RAILROAD IS TO BE CROSSED BY SUCH NEW STREET, AVENUE, HIGH-
43 WAY OR ROAD OR THE CITY, TOWN OR VILLAGE IN WHICH THE CROSSING IS
44 LOCATED. IF SUCH A REQUEST IS NOT MADE AND IF THE COMMISSIONER DETER-
45 MINES THAT A HEARING IS NOT REQUIRED, HE OR SHE SHALL SOLICIT COMMENTS
46 FROM PARTIES DEEMED TO HAVE AN INTEREST IN THE APPLICATION WHO SHALL BE
47 PROVIDED WITH NO LESS THAN TEN DAYS TO COMMENT ON THE APPLICATION.
48 PARTIES DEEMED TO HAVE AN INTEREST IN THE APPLICATION SHALL INCLUDE THE
49 MUNICIPAL CORPORATION MAKING THE APPLICATION, THE RAILROAD CORPORATION
50 WHOSE RAILROAD IS TO BE CROSSED BY SUCH NEW STREET, AVENUE, HIGHWAY OR
51 ROAD, PERSONS OWNING OR OCCUPYING PROPERTY IN THE VICINITY OF THE
52 PROPOSED CROSSING AND OTHER PARTIES DEEMED BY THE COMMISSIONER TO BE
53 AFFECTED BY THE APPLICATION. AFTER A HEARING, IF ONE WAS HELD, OR THE
54 EXPIRATION OF THE COMMENT PERIOD, THE COMMISSIONER shall determine
55 whether such street, avenue, highway or road or such new portion or

1 additional lane of a street, avenue, highway or road shall be
2 constructed over or under such railroad or at grade.

3 3. If the commissioner [of transportation shall determine] DETERMINES
4 that such street, avenue, highway or road or such new portion or addi-
5 tional lane of a street, avenue, highway or road shall be carried across
6 such railroad above the grade thereof, he OR SHE shall determine the
7 height, the length and the material of the bridge or structure by means
8 of which such street, avenue, highway or road or such new portion or
9 additional lane of a street, avenue, highway or road shall be carried
10 across such railroad, and the length, character and grades of the
11 approaches thereto.

12 4. If the commissioner [of transportation shall determine] DETERMINES
13 that such street, avenue, highway or road or such new portion or addi-
14 tional lane of a street, avenue, highway or road shall be constructed or
15 extended below the grade of such railroad, he OR SHE shall determine the
16 manner and method in which the same shall be so carried under, and the
17 length, character and grades of the approaches.

18 5. If the commissioner [of transportation shall determine] DETERMINES
19 that it is impracticable to construct or extend such street, avenue,
20 highway or road or such new portion or additional lane of a street,
21 avenue, highway or road across such railroad above or below the grade
22 thereof, he OR SHE shall determine the manner and method in which the
23 same shall be carried across such railroad at grade and what safeguards
24 shall be maintained.

25 6. The decision of the commissioner [of transportation] as to the
26 manner and method of carrying such new street, avenue, highway or road,
27 or such new portion or additional lane of a street, avenue, highway or
28 road across such railroad shall be final, subject however to the right
29 of appeal hereinafter given, [the decision of the commissioner of trans-
30 portation rendered in any proceeding under this section shall be commu-
31 nicated, after final hearing, to the railroad corporation, the municipal
32 corporation and all other parties who appeared at such hearing by coun-
33 sel or in person] AND SHALL BE SENT, AFTER A HEARING, IF ONE WAS HELD,
34 OR THE EXPIRATION OF THE COMMENT PERIOD, TO ALL PARTIES WHO HAVE PARTIC-
35 IPATED IN THE PROCEEDING OR REQUESTED TO BE ADVISED OF THE DECISION OF
36 THE COMMISSIONER.

37 7. ANY PERSON AGGRIEVED BY SUCH DECISION AND WHO WAS A PARTY TO SAID
38 PROCEEDING MAY, WITHIN SIXTY DAYS, APPEAL THEREFROM TO THE APPELLATE
39 DIVISION OF THE SUPREME COURT IN THE DEPARTMENT IN WHICH SUCH CROSSING
40 IS SITUATED, AND TO THE COURT OR APPEALS, IN THE SAME MANNER AND WITH
41 LIKE EFFECT AS IS PROVIDED IN THE CASE OF APPEALS FROM AN ORDER OF THE
42 SUPREME COURT.

43 8. This section shall not apply to any state highway or any other
44 street, avenue, highway or road or new portion or additional lane of a
45 street, avenue, highway or road which the commissioner [of transporta-
46 tion] proposes to construct across a railroad pursuant to the highway
47 law. Highway as used in this article shall include any highway, road,
48 street, alley, avenue, thoroughfare or public driveway which is open to
49 the public and publicly maintained.

50 S 3. Section 91 of the railroad law, as amended by chapter 539 of the
51 laws of 1978, is amended to read as follows:

52 S 91. Alteration or rehabilitation of existing crossing. 1. The mayor
53 or city manager and common council of any city, the president or mayor
54 and trustees of any village, the town board of any town, the board of
55 supervisors or county executive and the county legislature of any county
56 having jurisdiction over street, avenue, highway or road which crosses

1 or is crossed by a surface railroad at grade, below grade or above grade
2 by structures heretofore constructed, or any surface railroad corpo-
3 ration whose railroad crosses or is crossed by a street, avenue, highway
4 or road at grade, below or above grade, may bring their petition in
5 writing to the commissioner [of transportation], therein alleging that
6 public interest requires rehabilitation, an alteration in the manner of
7 such crossing, its approaches, the method of crossing, the location of
8 the crossing, a change in the existing structure by which such crossing
9 is made, the closing and discontinuance of a crossing and the diversion
10 of the travel thereon to another street, avenue, highway road or cross-
11 ing, or if not practicable to change such crossing from grade, below
12 grade or above grade or to close or discontinue the same, the opening of
13 an additional crossing for the partial diversion of travel from the
14 grade, below grade or above grade crossing and praying that the same may
15 be ordered.

16 2. Upon any such petition being brought, the commissioner [of trans-
17 portation shall appoint a time and place for hearing the petition, and
18 shall give such notice thereof as he shall judge reasonable, of not less
19 than ten days, however, to such petitioner, the railroad corporation,
20 the municipality in which such crossing is situated, and if such cross-
21 ing is in whole or in part in an incorporated village having not to
22 exceed twelve hundred inhabitants, also to the supervisor or supervisors
23 of the town or towns in which such crossing is situated, and in all
24 cases to the owners of the lands adjoining such crossing and adjoining
25 that part of the street, avenue, highway or road to be changed in grade
26 or location or to be discontinued, or the land to be opened for a new
27 crossing and to such other parties deemed by him to be interested in the
28 proceeding. The commissioner of transportation shall give public notice
29 of said hearing; and upon such notice and after a hearing or hearings
30 the commissioner of transportation shall determine what alterations or
31 changes, if any, shall be made] MAY CONDUCT A HEARING AND PROVIDE NOTICE
32 OF SUCH A HEARING OF NOT LESS THAN TEN DAYS TO PARTIES DEEMED TO HAVE AN
33 INTEREST IN THE PETITION. PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL
34 CONDUCT A HEARING UPON THE REQUEST OF THE PARTY MAKING THE APPLICATION,
35 THE RAILROAD CORPORATION WHOSE RAILROAD IS TO BE AFFECTED BY THE ALTER-
36 ATIONS OR THE CITY, TOWN OR VILLAGE IN WHICH THE CROSSING IS LOCATED. IF
37 SUCH A REQUEST IS NOT MADE AND IF THE COMMISSIONER DETERMINES THAT A
38 HEARING IS NOT REQUIRED, HE OR SHE SHALL SOLICIT COMMENTS FROM PARTIES
39 DEEMED TO HAVE AN INTEREST IN THE PETITION WHO SHALL BE PROVIDED WITH NO
40 LESS THAN TEN DAYS TO COMMENT ON THE PETITION. PARTIES DEEMED TO HAVE AN
41 INTEREST IN THE PETITION SHALL INCLUDE THE PARTY FILING THE PETITION,
42 THE RAILROAD CORPORATION WHOSE RAILROAD IS AFFECTED BY THE ALTERATIONS,
43 PERSONS OWNING OR OCCUPYING PROPERTY IN THE VICINITY OF THE PROPOSED
44 ALTERATIONS AND SUCH OTHER PARTIES DEEMED BY THE COMMISSIONER TO BE
45 AFFECTED BY THE PETITION. AFTER A HEARING, IF ONE WAS HELD, OR THE EXPI-
46 RATION OF THE COMMENT PERIOD, THE COMMISSIONER SHALL THEN DETERMINE WHAT
47 ALTERATIONS OR CHANGES, IF ANY, SHALL BE MADE.

48 3. The decision of the commissioner [of transportation] rendered in
49 any proceeding under this section shall be [communicated, after final
50 hearing, to the petitioner, the railroad corporation, the municipal
51 corporation and all other parties who appeared at said hearing by coun-
52 sel or in person] FINAL, SUBJECT HOWEVER TO THE RIGHT OF APPEAL AS HERE-
53 INAFTER GIVEN, AND SHALL BE SENT, AFTER A HEARING, IF ONE WAS HELD, OR
54 THE EXPIRATION OF THE COMMENT PERIOD, TO ALL PARTIES WHO HAVE PARTIC-
55 IPATED IN THE PROCEEDING OR REQUESTED TO BE ADVISED OF THE DECISION OF
56 THE COMMISSIONER.

1 4. Any person aggrieved by such decision, [or by a decision made
2 pursuant to sections eighty-nine and ninety,] and who was a party to
3 said proceeding, may, within sixty days, appeal therefrom to the appel-
4 late division of the supreme court in the department in which such
5 crossing is situated, and to the court of appeals, in the same manner
6 and with like effect as is provided in the case of appeals from an order
7 of the supreme court.

8 5. This section shall not apply to a state highway or any other high-
9 way upon which the commissioner [of transportation] proposes to alter an
10 existing crossing of a railroad pursuant to any section of the highway
11 law.

12 S 4. Subdivisions 2 and 3 of section 97 of the railroad law, as added
13 by chapter 515 of the laws of 1994, are amended to read as follows:

14 2. No new private rail crossings shall be established in an intercity
15 rail passenger service corridor until an application has been made to
16 and approved by the commissioner. Whenever an application is made, the
17 commissioner [shall] MAY conduct a hearing AND PROVIDE NOTICE OF SUCH A
18 HEARING OF NOT LESS THAN TEN DAYS TO PARTIES DEEMED TO HAVE AN INTEREST
19 IN THE APPLICATION to determine if a private rail crossing is justified
20 or if an existing public or private crossing could be used to avoid the
21 creation of a new PRIVATE RAIL crossing. PROVIDED, HOWEVER, THAT THE
22 COMMISSIONER SHALL CONDUCT A HEARING UPON THE REQUEST OF THE PARTY
23 MAKING THE APPLICATION, THE RAILROAD CORPORATION WHOSE RAILROAD IS
24 AFFECTED BY THE CROSSING OR THE CITY, TOWN OR VILLAGE IN WHICH THE
25 CROSSING IS LOCATED. IF SUCH A REQUEST IS NOT MADE AND IF THE COMMIS-
26 SIONER DETERMINES THAT A HEARING IS NOT REQUIRED, HE OR SHE SHALL SOLIC-
27 IT COMMENTS FROM PARTIES DEEMED TO HAVE AN INTEREST IN THE APPLICATION
28 WHO SHALL BE PROVIDED WITH NO LESS THAN TEN DAYS TO COMMENT ON THE
29 APPLICATION TO DETERMINE IF A PRIVATE RAIL CROSSING IS JUSTIFIED OR IF
30 AN EXISTING PUBLIC OR PRIVATE CROSSING COULD BE USED TO AVOID THE
31 CREATION OF A NEW PRIVATE RAIL CROSSING. PARTIES DEEMED TO HAVE AN
32 INTEREST IN THE APPLICATION SHALL INCLUDE THE PARTY MAKING THE APPLICA-
33 TION, THE RAILROAD CORPORATION WHOSE RAILROAD IS AFFECTED BY THE CROSS-
34 ING, THE CITY, TOWN OR VILLAGE IN WHICH THE CROSSING IS LOCATED, PERSONS
35 OWNING OR OCCUPYING PROPERTY IN THE VICINITY OF THE PROPOSED CROSSING
36 AND SUCH OTHER PARTIES DEEMED BY THE COMMISSIONER TO BE AFFECTED BY THE
37 APPLICATION. If the commissioner determines that a crossing is justified
38 and is in the best interest of the people of the state of New York, the
39 commissioner shall determine the manner of the crossing, whether it is
40 to be at-grade or grade-separated, the location, the manner of
41 protection and the apportionment of responsibility for the maintenance
42 of any such crossing, including any warning devices.

43 3. A. In order to insure public safety, the commissioner may, if he or
44 she determines it appropriate, FILE A PETITION TO require alterations in
45 an existing private rail crossing, including a farm crossing, which is
46 located in an intercity rail passenger service corridor and is hereby
47 authorized to participate in the cost of such alterations. In the event
48 that an agreement on such alterations cannot be reached between the
49 railroad owning the crossing, property owners who are directly impacted
50 by the crossing and the department, the commissioner [shall] MAY conduct
51 a hearing AND PROVIDE NOTICE OF SUCH A HEARING OF NOT LESS THAN TEN DAYS
52 TO PARTIES DEEMED TO HAVE AN INTEREST IN THE PETITION on the need for
53 such alterations and whether any other alternatives are available,
54 including the use of an alternate route or the closure of the crossing
55 and shall, where applicable, determine the apportionment of responsibil-
56 ity for the alteration and maintenance of any such crossing, including

1 any warning devices. PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL
2 CONDUCT A HEARING UPON THE REQUEST OF THE PARTY MAKING THE APPLICATION,
3 THE RAILROAD CORPORATION WHOSE RAILROAD IS AFFECTED BY THE CROSSING OR
4 THE CITY, TOWN OR VILLAGE IN WHICH THE CROSSING IS LOCATED. IF SUCH A
5 REQUEST IS NOT MADE AND IF THE COMMISSIONER DETERMINES THAT A HEARING IS
6 NOT REQUIRED, HE OR SHE SHALL SOLICIT COMMENTS FROM PARTIES DEEMED TO
7 HAVE AN INTEREST IN THE PETITION AND PROVIDE THEM WITH NO LESS THAN TEN
8 DAYS TO COMMENT ON THE NEED FOR SUCH ALTERATIONS AND WHETHER ANY OTHER
9 ALTERNATIVES ARE AVAILABLE, INCLUDING THE USE OF AN ALTERNATE ROUTE OR
10 THE CLOSURE OF THE CROSSING AND SHALL, WHERE APPLICABLE, DETERMINE THE
11 APPORTIONMENT OF RESPONSIBILITY FOR THE ALTERATION AND MAINTENANCE OF
12 ANY SUCH CROSSING, INCLUDING ANY WARNING DEVICES. PARTIES DEEMED TO HAVE
13 AN INTEREST IN THE PETITION SHALL INCLUDE THE RAILROAD CORPORATION WHOSE
14 RAILROAD IS AFFECTED BY THE ALTERATIONS, THE CITY, TOWN OR VILLAGE IN
15 WHICH THE CROSSING IS LOCATED, PERSONS OWNING OR OCCUPYING LAND IN THE
16 VICINITY OF THE CROSSING AND SUCH OTHER PARTIES DEEMED BY THE COMMIS-
17 SIONER TO BE AFFECTED BY THE ALTERATIONS.

18 B. Public comment shall be sought on any proposed alteration or
19 closure which will impact public access to lands open to the public for
20 recreational use. Comments received from the public shall be considered
21 in any decision to alter or close such a crossing. No crossing which
22 provides direct access to public state recreational lands shall be
23 closed unless the commissioner, in consultation with the state agency
24 with jurisdiction over such lands, finds that there is a reasonable
25 alternate route to such lands that maintains public access to and the
26 public recreational value of such lands.

27 S 5. Subdivision 2 and paragraph a of subdivision 3 of section 97-a of
28 the railroad law, as added by chapter 230 of the laws of 2002, are
29 amended to read as follows:

30 2. No new private rail crossings shall be established in a commuter
31 rail service corridor until an application has been made to and approved
32 by the commissioner. Whenever an application is made, the commissioner
33 [shall] MAY conduct a hearing AND PROVIDE NOTICE OF SUCH A HEARING OF
34 NOT LESS THAN TEN DAYS TO PARTIES DEEMED TO HAVE AN INTEREST IN THE
35 APPLICATION to determine if a private rail crossing is justified or if
36 an existing public or private crossing could be used to avoid the
37 creation of a new private rail crossing. PROVIDED, HOWEVER, THAT THE
38 COMMISSIONER SHALL CONDUCT A HEARING UPON THE REQUEST OF THE PARTY
39 MAKING THE APPLICATION, THE RAILROAD CORPORATION WHOSE RAILROAD IS
40 AFFECTED BY THE CROSSING OR THE CITY, TOWN OR VILLAGE IN WHICH THE
41 CROSSING IS LOCATED. IF SUCH A REQUEST IS NOT MADE AND IF THE COMMIS-
42 SIONER DETERMINES THAT A HEARING IS NOT REQUIRED, HE OR SHE SHALL SOLIC-
43 IT COMMENTS FROM PARTIES DEEMED TO HAVE AN INTEREST IN THE APPLICATION
44 WHO SHALL BE PROVIDED WITH NOT LESS THAN TEN DAYS TO COMMENT ON THE
45 APPLICATION. PARTIES DEEMED TO HAVE AN INTEREST IN THE APPLICATION SHALL
46 INCLUDE THE RAILROAD CORPORATION WHOSE RAILROAD IS AFFECTED BY THE
47 CROSSING, THE CITY, TOWN OR VILLAGE IN WHICH THE CROSSING WILL BE
48 LOCATED, PERSONS OWNING LAND ADJACENT TO THE CROSSING AND SUCH OTHER
49 PARTIES DEEMED BY THE COMMISSIONER TO BE AFFECTED BY THE CROSSING. If
50 the commissioner determines that a new private rail crossing is justi-
51 fied and is in the best interest of the people of the state of New York,
52 the commissioner shall determine the manner of the crossing, whether it
53 is to be at-grade or grade-separated, the location, the manner of
54 protection and the apportionment of responsibilities and costs for the
55 construction, inspection and maintenance of any such private rail cross-
56 ing, including any warning devices.

1 a. In order to insure public safety, the commissioner may, if he or
2 she determines it appropriate, FILE A PETITION TO require alterations in
3 an existing private rail crossing, including a farm crossing, which is
4 located in a commuter rail service. In the event that an agreement on
5 such alterations cannot be reached between the railroad owning the
6 crossing, property owners who are directly impacted by the existing
7 private rail crossing and the department, the commissioner [shall] MAY
8 conduct a hearing AND PROVIDE NOTICE OF SUCH A HEARING OF NOT LESS THAN
9 TEN DAYS TO PARTIES DEEMED TO HAVE AN INTEREST IN THE PETITION on the
10 need for such alterations and whether any other alternatives are avail-
11 able, including the use of an alternate route or the closure of the
12 private rail crossing and shall, where applicable, determine the appor-
13 tionment of responsibilities and costs for the alteration, construction,
14 inspection and maintenance of any such private rail crossing, including
15 any warning devices. PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL
16 CONDUCT A HEARING UPON THE REQUEST OF THE RAILROAD CORPORATION WHOSE
17 RAILROAD IS AFFECTED BY THE CROSSING OR THE CITY, TOWN OR VILLAGE IN
18 WHICH THE CROSSING IS LOCATED. IF SUCH A REQUEST IS NOT MADE AND IF THE
19 COMMISSIONER DETERMINES THAT A HEARING IS NOT REQUIRED, HE OR SHE SHALL
20 SOLICIT COMMENTS FROM PARTIES DEEMED TO HAVE AN INTEREST IN THE PETITION
21 WHO SHALL BE PROVIDED WITH NOT LESS THAN TEN DAYS TO COMMENT ON THE
22 PROPOSED ALTERATIONS. PARTIES DEEMED TO HAVE AN INTEREST IN THE PETITION
23 SHALL INCLUDE THE RAILROAD CORPORATION WHOSE RAILROAD IS AFFECTED BY THE
24 CROSSING, THE CITY, TOWN OR VILLAGE IN WHICH THE CROSSING IS LOCATED,
25 PERSONS OWNING LAND IN THE VICINITY OF THE CROSSING AND SUCH OTHER PARTI-
26 TIES DEEMED BY THE COMMISSIONER TO BE AFFECTED BY THE PROPOSED ALTER-
27 ATIONS.

28 S 6. Section 51 of the railroad law is REPEALED.

29 S 7. Section 57 of the railroad law is REPEALED.

30 S 8. Section 57-a of the railroad law is REPEALED.

31 S 9. Section 58 of the railroad law is REPEALED.

32 S 10. Section 59 of the railroad law is REPEALED.

33 S 11. Section 60 of the railroad law is REPEALED.

34 S 12. Section 71 of the railroad law is REPEALED.

35 S 13. Section 72 of the railroad law is REPEALED.

36 S 14. Section 73 of the railroad law is REPEALED.

37 S 15. Section 74 of the railroad law is REPEALED.

38 S 16. Section 76 of the railroad law is REPEALED.

39 S 17. Section 77 of the railroad law is REPEALED.

40 S 18. Section 80 of the railroad law is REPEALED.

41 S 19. Section 82 of the railroad law is REPEALED.

42 S 20. Section 81 of the railroad law, as amended by chapter 787 of
43 the laws of 1986, is amended to read as follows:

44 S 81. Violation of sections [seventy-seven,] seventy-seven-c, seven-
45 ty-eight[,], AND seventy-nine[, and eighty]. Any railroad or other compa-
46 ny hauling or permitting to be hauled on its line or lines any train in
47 violation of any of the provisions of sections [seventy-seven,] seven-
48 ty-seven-c, seventy-eight[,], AND seventy-nine[, and eighty] shall be
49 liable to a fine of one hundred dollars for each and every violation.
50 Such fine shall be imposed by the commissioner [of transportation] and
51 deposited in the general fund of the state of New York. Imposition of
52 any such fine shall be subject to judicial review under the provisions
53 of article seventy-eight of the civil practice law and rules.

54 S 21. This act shall take effect immediately.