S T A T E O F N E W Y O R K

1071

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. DESTITO, DelMONTE -- read once and referred to the Committee on Transportation

AN ACT to amend the highway law and the vehicle and traffic law, in relation to the maintenance, improvement and repair of particular town roads

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

Section 1. Legislative purpose. The legislature hereby finds, determines and declares it necessary to assist local governments, particularly town governments, having collective jurisdiction over eighty-five percent of approximately one hundred thirteen thousand miles of roads in this state and half of such towns expending at least fifty-seven percent of their fiscal budget on maintaining such roads, by establishing a new special standard of road maintenance for particular town roads designated as "low-volume roads" which have not been previously abandoned. This new standard shall, in turn, conserve the fiscal budget of such local governments and shall preserve and promote the safety of motorists and the traditional character of the small rural towns of this state.

S 2. The highway law is amended by adding a new article 8-B to read as follows:

ARTICLE VIII-B

TOWN LOW-VOLUME ROADS

SECTION 229-L. DEFINITIONS.
229-M. LOCAL CLASSIFICATION.
229-N. LOCAL DESIGNATION OF MINIMUM MAINTENANCE ROADS; PUBLIC HEARINGS.
229-O. FINDINGS AND REVIEW.
229-P. EFFECT OF MINIMUM MAINTENANCE CLASSIFICATION.
229-Q. DISCONTINUANCE OF MINIMUM MAINTENANCE DESIGNATION.
229-R. FINANCING IMPROVEMENTS.

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

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S 229-L. DEFINITIONS. WHEN USED IN THIS ARTICLE, UNLESS OTHERWISE EXPRESSLY STATED, OR UNLESS THE CONTEXT OR SUBJECT MATTER OTHERWISE REQUIRES, THE TERM:

1. "LOW-VOLUME ROAD" SHALL MEAN A TOWN ROAD OR PORTION THEREOF LOCATED IN A TOWN WHICH HAS AN AVERAGE DAILY TRAFFIC COUNT OF LESS THAN FOUR HUNDRED MOTOR VEHICLES PER DAY. SUCH TERM SHALL NOT APPLY TO ANY HIGHWAY OR ROAD OR PORTION THEREOF WHICH HAS PREVIOUSLY BEEN ABANDONED PURSUANT TO SUBDIVISION ONE OF SECTION TWO HUNDRED FIVE OF THIS CHAPTER BECAUSE IT SHALL NOT HAVE BEEN USED OR TRAVELED AS A HIGHWAY FOR SIX YEARS.

2. "LOW-VOLUME COLLECTOR ROAD" SHALL MEAN A ROAD CLASSIFICATION THAT COLLECTS TRAFFIC FROM ANY OTHER CLASSIFICATION AND CHANNELS IT TO A HIGHER LEVEL ROAD, SUCH AS A STATE HIGHWAY, ARTERIAL OR INTERSTATE HIGHWAY.

3. "RESIDENTIAL ACCESS ROAD" SHALL MEAN A ROAD CLASSIFICATION THAT PROVIDES ACCESS TO RESIDENCES. THE TRAFFIC GENERATED DEPENDS ON THE NUMBER OF RESIDENCES. ALL YEAR ACCESS FOR EMERGENCY VEHICLES AND SCHOOL BUSES MUST BE PROVIDED.

4. "FARM ACCESS ROAD" SHALL MEAN A ROAD CLASSIFICATION THAT PROVIDES ACCESS TO A FARM'S CENTER OF OPERATIONS INCLUDING RESIDENCE. TRAFFIC VOLUME IS GENERALLY LOW, BUT MAY INCLUDE OCCASIONAL HEAVY VEHICLES AND FARM EQUIPMENT.

5. "RESOURCE/INDUSTRIAL ACCESS ROAD" SHALL MEAN A ROAD CLASSIFICATION THAT PROVIDES ACCESS TO FORESTS OR INDUSTRIAL OR MINING OPERATIONS. TRAFFIC VOLUME CAN VARY AND INCLUDE HEAVY TRUCKS, EXTRACTIVE MACHINERY AND SIGNIFICANT NUMBERS OF EMPLOYEES' CARS.

6. "AGRICULTURAL LAND ACCESS ROAD" SHALL MEAN A ROAD CLASSIFICATION THAT PROVIDES ACCESS TO FARM LAND. TRAFFIC VOLUMES ARE LOW AND VARY SEASONALLY. THESE ROADS SHOULD ACCOMMODATE FARM EQUIPMENT THAT CAN BE UP TO TWENTY FEET WIDE.

7. "RECREATION LAND ACCESS ROAD" SHALL MEAN A ROAD CLASSIFICATION THAT PROVIDES ACCESS TO RECREATIONAL LAND INCLUDING SEASONAL DWELLINGS, PARKS AND RECREATIONAL LANDS. VOLUMES CAN VARY WITH THE TYPE OF RECREATION FACILITY, ACTIVITY AND SEASON OF THE YEAR.

8. "MINIMUM MAINTENANCE ROAD" SHALL MEAN A LOW-VOLUME ROAD OR PORTION THEREOF IN A TOWN HAVING AN AVERAGE DAILY TRAFFIC VOLUME OF ZERO TO FIFTY VEHICLES PER DAY WHICH PRINCIPALLY OR EXCLUSIVELY PROVIDES AGRICULTURAL OR RECREATIONAL LAND ACCESS. IN NO WAY SHALL THE TERM "MINIMUM MAINTENANCE" BE CONSTRUED TO MEAN "NO MAINTENANCE" OR "ABANDONMENT". FURTHER, SUCH TERM SHALL NOT APPLY TO THOSE ROADS, OR PORTIONS THEREOF WHICH PROVIDE FARM ACCESS AS DEFINED IN THIS SECTION OR ACCESS TO AN INDIVIDUAL YEAR-ROUND RESIDENCE.

9. "MOTOR VEHICLE" SHALL MEAN A MOTOR VEHICLE AS DEFINED BY SECTION ONE HUNDRED TWENTY-FIVE OF THE VEHICLE AND TRAFFIC LAW.

S 229-M. LOCAL CLASSIFICATION. 1. THE TOWN BOARD OF ANY TOWN MAY, BY RESOLUTION, DESIGNATE CERTAIN TOWN ROADS AS LOW-VOLUME ROADS OR PORTIONS THEREOF PURSUANT TO THE CLASSIFICATION AS DEFINED IN SECTION TWO HUNDRED TWENTY-NINE-L OF THIS ARTICLE. IN CLASSIFYING SUCH ROADS, THE TOWN BOARD SHALL BASE THE CLASSIFICATION ON TRAFFIC VOLUMES, TYPES OF VEHICLES USING THE ROAD OR PORTION THEREOF, AND THE CURRENT ADJACENT LAND USES. AT LEAST FORTY-FIVE DAYS PRIOR TO THE ADOPTION OF SUCH RESOLUTION CLASSIFYING LOW-VOLUME ROADS THE TOWN BOARD SHALL REFER PROPOSED CLASSIFICATIONS TO THE TOWN HIGHWAY SUPERINTENDENT AND THE TOWN PLANNING BOARD, IF PRESENT IN SUCH TOWN.

2. UPON RECEIPT OF THE PROPOSED RESOLUTION, THE TOWN HIGHWAY SUPERINTENDENT AND, WHERE APPLICABLE, TOWN PLANNING BOARD, SHALL REPORT THEIR RECOMMENDATIONS TO THE TOWN BOARD, ACCOMPANIED BY A STATEMENT OF THE

REASONS FOR SUCH RECOMMENDATIONS. THIS REFERRAL IS DIRECTORY AND FAILURE TO REFER SHALL NOT BE DEEMED A JURISDICTIONAL DEFECT. UPON RECEIPT OF THE RECOMMENDATIONS FROM THE TOWN HIGHWAY SUPERINTENDENT AND TOWN PLANNING BOARD, OR UPON THE EXPIRATION OF FORTY-FIVE DAYS FROM THE DATE THE PROPOSED RESOLUTION WAS REFERRED, THE TOWN BOARD MAY ADOPT BY MAJORITY VOTE, THE LOCAL CLASSIFICATION RESOLUTION.

S 229-N. LOCAL DESIGNATION OF MINIMUM MAINTENANCE ROADS; PUBLIC HEARINGS. 1. THE TOWN BOARD OF ANY TOWN MAY, BY LOCAL LAW, DESIGNATE ANY LOW-VOLUME ROAD OR PORTION THEREOF PROVIDING AGRICULTURAL OR RECREATIONAL LAND ACCESS AT THE TIME OF DESIGNATION AS MINIMUM MAINTENANCE ROADS.

2. AGRICULTURAL AND RECREATIONAL LAND ACCESS ROADS SO DESIGNATED SHALL NOT INCLUDE ROADS OR PORTIONS THEREOF, WHICH PROVIDE FARM CENTERS OF OPERATION, INCLUDING THE RESIDENCE, WITH PRINCIPAL MOTOR VEHICLE ACCESS TO GOODS AND SERVICES NECESSARY FOR EFFECTIVE SUPPORT OF SUCH FARM.

3. AT LEAST THIRTY DAYS BEFORE THE PUBLIC HEARING ON SUCH LOCAL LAW, WRITTEN NOTICE OF SUCH HEARING SHALL BE SERVED BY CERTIFIED MAIL UPON EVERY OWNER OF REAL PROPERTY, AS DETERMINED BY THE LATEST COMPLETED ASSESSMENT ROLL, ABUTTING SUCH ROAD OR PORTION THEREOF. NO LOCAL LAW DESIGNATING A MINIMUM MAINTENANCE ROAD, SHALL BE EFFECTIVE UNTIL MINIMUM MAINTENANCE STANDARDS ARE ADOPTED AND SIGNS FIRST ARE POSTED ADVISING THE PUBLIC THAT SUCH ROAD IS A MINIMUM MAINTENANCE ROAD. NO ROAD, ONCE DESIGNATED A MINIMUM MAINTENANCE ROAD, SHALL BE DETERMINED TO HAVE BEEN ABANDONED PURSUANT TO THE PROVISIONS OF SUBDIVISION ONE OF SECTION TWO HUNDRED FIVE OF THIS CHAPTER SOLELY BECAUSE IT HAS BEEN DESIGNATED A MINIMUM MAINTENANCE ROAD.

S 229-O. FINDINGS AND REVIEW. 1. PRIOR TO ANY PUBLIC HEARING RELATING TO THE ADOPTION OF A LOCAL LAW DESIGNATING A LOW-VOLUME ROAD OR PORTION THEREOF AS A MINIMUM MAINTENANCE ROAD, THE TOWN BOARD HAVING JURISDICTION OVER SUCH ROAD SHALL ISSUE FINDINGS THAT SUCH ROAD OR PORTION THEREOF SHOULD BE DESIGNATED A MINIMUM MAINTENANCE ROAD. SUCH FINDINGS SHALL INCLUDE, BUT NOT BE LIMITED TO:

(A) THE VOLUME AND TYPE OF MOTOR VEHICLE TRAFFIC ON SUCH ROAD;

(B) A DETERMINATION THAT THE PROPERTY OWNERS OF LAND ABUTTING THE ROAD SHALL CONTINUE TO HAVE REASONABLE ACCESS TO THEIR PROPERTY;

(C) A DETERMINATION THAT THE USERS OF THE ROAD TRAVELING AT A REASONABLE AND PRUDENT SPEED, UNDER THE CIRCUMSTANCES, SHALL NOT BE PLACED IN A HAZARDOUS SITUATION; AND

(D) A DETERMINATION THAT SUCH ROAD, OR PORTION THEREOF, DOES NOT CONSTITUTE A FARM ACCESS ROAD AS DEFINED PURSUANT TO SECTION TWO HUNDRED TWENTY-NINE-L OF THIS ARTICLE.

2. (A) AT LEAST FORTY-FIVE DAYS PRIOR TO THE HEARING ON THE PROPOSED LOCAL LAW DESIGNATING A ROAD, OR PORTION THEREOF, AS A MINIMUM MAINTENANCE ROAD, A COPY OF THE TOWN BOARD'S FINDING SHALL BE MADE AVAILABLE FOR PUBLIC INSPECTION IN THE TOWN CLERK'S OFFICE.

(B) A COPY OF THE FINDINGS SHALL ALSO BE SENT TO THE SCHOOL BOARD OF THE SCHOOL DISTRICT IN WHICH EACH ROAD IS LOCATED AND TO THE TOWN PLANNING BOARD. SUCH SCHOOL BOARD AND PLANNING BOARD SHALL REVIEW THE FINDINGS OF THE TOWN BOARD AND WITHIN FORTY-FIVE DAYS FILE WITH THE TOWN CLERK THEIR RECOMMENDATION AND FINDINGS. IN THE EVENT THE SCHOOL OR PLANNING BOARD TAKES NO ACTION WITHIN THE FORTY-FIVE DAY REVIEW PERIOD THE TOWN BOARD MAY PROCEED WITHOUT SAID BOARD'S RECOMMENDATION AND FINDINGS. SCHOOL OR PLANNING BOARD REVIEW MAY BE WAIVED, SHORTENED OR EXTENDED UPON MUTUAL CONSENT OF SAID BOARD AND THE TOWN BOARD.

(C) THE TOWN BOARD OF THE TOWN MAY, BY RESOLUTION, ACCEPT, ACCEPT IN PART, OR REJECT THE RECOMMENDATIONS OF EITHER THE SCHOOL OR PLANNING BOARD PRIOR TO ANY VOTE UPON THE PROPOSED LOCAL LAW.

(D) A COPY OF THE FINDINGS SHALL ALSO BE SENT TO THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION IF THE HIGHWAY OR ROAD PASSES OVER, OR PROVIDES ACCESS TO, STATE LAND UNDER THE JURISDICTION OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION. THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL HAVE THE RIGHT TO MAINTAIN SUCH ROAD IF IT SO DESIRES.

S 229-P. EFFECT OF MINIMUM MAINTENANCE CLASSIFICATION. A ROAD OR ROAD SEGMENT, WHICH HAS BEEN DESIGNATED MINIMUM MAINTENANCE SHALL BE MAINTAINED AT A LEVEL WHICH ALLOWS THE ROAD TO BE MADE PASSABLE AND FUNCTIONAL IN A MANNER DETERMINED BY THE TOWN HIGHWAY SUPERINTENDENT TO BE CONSISTENT WITH THE VOLUME AND TYPE OF TRAFFIC TRAVELING ON SUCH ROAD. NORMAL ROAD MAINTENANCE PRACTICES INCLUDING, BUT NOT LIMITED TO, SNOW AND ICE REMOVAL AND PAVING, PATCHING, BLADING, DRAGGING OR MOWING MAY BE DONE LESS FREQUENTLY DEPENDING UPON THE EXISTING CONDITIONS AND USE OF THE ROAD BUT SHALL, AT A MINIMUM, BE CONSISTENT WITH THE STANDARDS AND GUIDELINES DEVELOPED BY THE LOCAL ROADS RESEARCH AND COORDINATION COUNCIL PURSUANT TO CHAPTERS FIVE HUNDRED SIXTY-FIVE AND SIX HUNDRED FIFTY-TWO OF THE LAWS OF NINETEEN HUNDRED NINETY. IF THE ROAD PASSES OVER, OR PROVIDES ACCESS TO, STATE LAND, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL HAVE THE RIGHT TO MAINTAIN SUCH ROAD IF IT SO DESIRES. SUCH ROADS MAY BE CLOSED DURING CERTAIN TIMES OF THE YEAR BY THE TOWN BOARD IN WHICH CASE NO SNOW OR ICE REMOVAL SHALL BE REQUIRED. MINIMUM MAINTENANCE ROADS SHALL CONTINUE TO BE CONSIDERED PART OF THE TOWN HIGHWAY SYSTEM AND SUCH DESIGNATION SHALL NOT AFFECT FEDERAL OR STATE AID FORMULA CALCULATIONS OF PARTICIPATING MUNICIPALITIES.

S 229-Q. DISCONTINUANCE OF MINIMUM MAINTENANCE DESIGNATION. 1. ANY PERSON OR PERSONS OWNING OR OCCUPYING REAL PROPERTY ABUTTING A ROAD OR PORTION THEREOF WHICH HAS BEEN DESIGNATED A MINIMUM MAINTENANCE ROAD MAY PETITION THE TOWN HAVING JURISDICTION OVER SUCH ROAD OR PORTION THEREOF TO DISCONTINUE THE DESIGNATION OF SUCH ROAD AS A MINIMUM MAINTENANCE ROAD. SUCH PETITION SHALL BE FILED WITH THE CLERK OF THE TOWN HAVING JURISDICTION OVER SUCH ROAD. SUCH PETITION SHALL IDENTIFY THE ROAD OR PORTION THEREOF TO BE DISCONTINUED AS A MINIMUM MAINTENANCE ROAD AND SET FORTH THE REASONS FOR SUCH DISCONTINUANCE. THE TOWN BOARD HAVING JURISDICTION OVER SUCH ROAD SHALL HOLD A PUBLIC HEARING UPON SUCH PETITION WITHIN THIRTY DAYS AFTER ITS RECEIPT. THE TOWN CLERK SHALL GIVE NOTICE OF SUCH HEARING BY THE PUBLICATION OF A NOTICE IN AT LEAST ONE NEWSPAPER CIRCULATING IN THE TOWN, SPECIFYING THE TIME WHEN AND THE PLACE WHERE SUCH HEARING WILL BE HELD, AND IN GENERAL TERMS DESCRIBING THE PROPOSED RESOLUTION. SUCH NOTICE SHALL BE PUBLISHED ONCE AT LEAST TEN DAYS PRIOR TO THE DAY SPECIFIED FOR SUCH HEARING.

2. IN THE EVENT THE TOWN BOARD, AFTER SUCH PUBLIC HEARING, DETERMINES THAT SUCH ROAD SHALL CONTINUE AS A MINIMUM MAINTENANCE ROAD, NO PETITION MAY BE SUBMITTED PURSUANT TO THIS SECTION UNTIL THE LAPSE OF AT LEAST TWENTY-FOUR MONTHS FROM THE DATE OF THE FILING OF THE PETITION.

3. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION, THE TOWN BOARD HAVING JURISDICTION OVER A MINIMUM MAINTENANCE ROAD MAY ADOPT A LOCAL LAW DISCONTINUING SUCH MINIMUM MAINTENANCE ROAD DESIGNATION IN THE EVENT IT DETERMINES SUCH DISCONTINUANCE TO BE IN THE PUBLIC INTEREST.

4. IN THE EVENT IT IS DETERMINED THAT SUCH ROAD SHALL BE DISCONTINUED AS A MINIMUM MAINTENANCE ROAD, SUCH DISCONTINUANCE SHALL TAKE EFFECT SIX MONTHS AFTER THE COMMENCEMENT OF THE NEXT FISCAL YEAR OR WHENEVER THE ROAD HAS BEEN SUFFICIENTLY IMPROVED TO MEET TOWN STANDARDS, BUT IN NO EVENT LATER THAN THIRTY-SIX MONTHS.

S 229-R. FINANCING IMPROVEMENTS. WHERE THE MINIMUM MAINTENANCE ROAD STANDARD IS DISCONTINUED, OR A LOW-VOLUME ROAD CLASSIFICATION IS

CHANGED, ROAD IMPROVEMENTS MAY, IN ADDITION TO OTHER FINANCING MECHANISMS AVAILABLE FOR ROAD CONSTRUCTION PROJECTS, BE UNDERTAKEN IN ACCORDANCE WITH SECTION TWO HUNDRED OF THE TOWN LAW.

S 3. The vehicle and traffic law is amended by adding a new section 124 to read as follows:

S 124. MINIMUM MAINTENANCE ROAD. A LOW-VOLUME ROAD OR PORTION THEREOF WHICH IS DESIGNATED BY THE TOWN HAVING JURISDICTION OVER SUCH ROAD PURSUANT TO ARTICLE EIGHT-B OF THE HIGHWAY LAW.

S 4. Subdivision (a) of section 1683 of the vehicle and traffic law is amended by adding a new paragraph 18 to read as follows:

18. DESIGNATE A ROAD OR PORTION THEREOF AS A MINIMUM MAINTENANCE ROAD.

S 5. This act shall take effect on the one hundred twentieth day after it shall have become a law, provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date, including the guidelines as developed by the local roads research and coordination council pursuant to chapters 565 and 652 of the laws of 1990, is authorized to be made and completed on or before such date.