

3136

2009-2010 Regular Sessions

I N S E N A T E

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Introduced by Sens. GRIFFO, LARKIN, SEWARD, VOLKER -- read twice and ordered printed, and when printed to be committed 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:

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

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

14 ARTICLE VIII-B

15 TOWN LOW-VOLUME ROADS

16 SECTION 229-L. DEFINITIONS.

17 229-M. LOCAL CLASSIFICATION.

18 229-N. LOCAL DESIGNATION OF MINIMUM MAINTENANCE ROADS; PUBLIC
19 HEARINGS.

20 229-O. FINDINGS AND REVIEW.

21 229-P. EFFECT OF MINIMUM MAINTENANCE CLASSIFICATION.

22 229-Q. DISCONTINUANCE OF MINIMUM MAINTENANCE DESIGNATION.

23 229-R. FINANCING IMPROVEMENTS.

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

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

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

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

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

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

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

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

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

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

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

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

54 2. UPON RECEIPT OF THE PROPOSED RESOLUTION, THE TOWN HIGHWAY SUPER-
55 INTENDENT AND, WHERE APPLICABLE, TOWN PLANNING BOARD, SHALL REPORT THEIR
56 RECOMMENDATIONS TO THE TOWN BOARD, ACCOMPANIED BY A STATEMENT OF THE

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

7 S 229-N. LOCAL DESIGNATION OF MINIMUM MAINTENANCE ROADS; PUBLIC HEAR-
8 INGS. 1. THE TOWN BOARD OF ANY TOWN MAY, BY LOCAL LAW, DESIGNATE ANY
9 LOW-VOLUME ROAD OR PORTION THEREOF PROVIDING AGRICULTURAL OR RECREATION-
10 AL LAND ACCESS AT THE TIME OF DESIGNATION AS MINIMUM MAINTENANCE ROADS.

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

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

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

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

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

35 (C) A DETERMINATION THAT THE USERS OF THE ROAD TRAVELING AT A REASON-
36 ABLE AND PRUDENT SPEED, UNDER THE CIRCUMSTANCES, SHALL NOT BE PLACED IN
37 A HAZARDOUS SITUATION; AND

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

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

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

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

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

6 S 229-P. EFFECT OF MINIMUM MAINTENANCE CLASSIFICATION. A ROAD OR ROAD
7 SEGMENT, WHICH HAS BEEN DESIGNATED MINIMUM MAINTENANCE SHALL BE MAIN-
8 TAINED AT A LEVEL WHICH ALLOWS THE ROAD TO BE MADE PASSABLE AND FUNC-
9 TIONAL IN A MANNER DETERMINED BY THE TOWN HIGHWAY SUPERINTENDENT TO BE
10 CONSISTENT WITH THE VOLUME AND TYPE OF TRAFFIC TRAVELING ON SUCH ROAD.
11 NORMAL ROAD MAINTENANCE PRACTICES INCLUDING, BUT NOT LIMITED TO, SNOW
12 AND ICE REMOVAL AND PAVING, PATCHING, BLADING, DRAGGING OR MOWING MAY BE
13 DONE LESS FREQUENTLY DEPENDING UPON THE EXISTING CONDITIONS AND USE OF
14 THE ROAD BUT SHALL, AT A MINIMUM, BE CONSISTENT WITH THE STANDARDS AND
15 GUIDELINES DEVELOPED BY THE LOCAL ROADS RESEARCH AND COORDINATION COUN-
16 CIL PURSUANT TO CHAPTERS FIVE HUNDRED SIXTY-FIVE AND SIX HUNDRED FIFTY-
17 TWO OF THE LAWS OF NINETEEN HUNDRED NINETY. IF THE ROAD PASSES OVER, OR
18 PROVIDES ACCESS TO, STATE LAND, THE DEPARTMENT OF ENVIRONMENTAL CONSER-
19 VATION SHALL HAVE THE RIGHT TO MAINTAIN SUCH ROAD IF IT SO DESIRES.
20 SUCH ROADS MAY BE CLOSED DURING CERTAIN TIMES OF THE YEAR BY THE TOWN
21 BOARD IN WHICH CASE NO SNOW OR ICE REMOVAL SHALL BE REQUIRED. MINIMUM
22 MAINTENANCE ROADS SHALL CONTINUE TO BE CONSIDERED PART OF THE TOWN HIGH-
23 WAY SYSTEM AND SUCH DESIGNATION SHALL NOT AFFECT FEDERAL OR STATE AID
24 FORMULA CALCULATIONS OF PARTICIPATING MUNICIPALITIES.

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

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

45 3. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION,
46 THE TOWN BOARD HAVING JURISDICTION OVER A MINIMUM MAINTENANCE ROAD MAY
47 ADOPT A LOCAL LAW DISCONTINUING SUCH MINIMUM MAINTENANCE ROAD DESIG-
48 NATION IN THE EVENT IT DETERMINES SUCH DISCONTINUANCE TO BE IN THE
49 PUBLIC INTEREST.

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

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

1 CHANGED, ROAD IMPROVEMENTS MAY, IN ADDITION TO OTHER FINANCING MECH-
2 ANISMS AVAILABLE FOR ROAD CONSTRUCTION PROJECTS, BE UNDERTAKEN IN
3 ACCORDANCE WITH SECTION TWO HUNDRED OF THE TOWN LAW.

4 S 3. The vehicle and traffic law is amended by adding a new section
5 124 to read as follows:

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

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

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

12 S 5. This act shall take effect on the one hundred twentieth day after
13 it shall have become a law, provided, however, that effective immediate-
14 ly, the addition, amendment and/or repeal of any rule or regulation
15 necessary for the implementation of this act on its effective date,
16 including the guidelines as developed by the local roads research and
17 coordination council pursuant to chapters 565 and 652 of the laws of
18 1990, is authorized to be made and completed on or before such date.