

836

2011-2012 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 5, 2011

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Introduced by M. of A. DESTITO, LIFTON, BURLING -- 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 certain town highways

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

1     Section 1. The highway law is amended by adding a new section 205-c to  
2     read as follows:  
3     S 205-C. LOW VOLUME ROADS. 1. WHEN USED IN THIS SECTION, UNLESS OTHER-  
4     WISE EXPRESSLY STATED, OR UNLESS THE CONTEXT OR SUBJECT MATTER OTHERWISE  
5     REQUIRES, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:  
6     A. "LOW-VOLUME ROAD" SHALL MEAN A TOWN HIGHWAY OR PORTION THEREOF  
7     LOCATED IN A TOWN, WHEN SUCH HIGHWAY HAS AN AVERAGE DAILY TRAFFIC COUNT  
8     OF LESS THAN FOUR HUNDRED MOTOR VEHICLES PER DAY. SUCH TERM SHALL NOT  
9     APPLY TO ANY HIGHWAY OR ROAD OR PORTION THEREOF WHICH HAS PREVIOUSLY  
10    BEEN ABANDONED PURSUANT TO SUBDIVISION ONE OF SECTION TWO HUNDRED FIVE  
11    OF THIS ARTICLE BECAUSE IT SHALL NOT HAVE BEEN USED OR TRAVELED AS A  
12    HIGHWAY FOR SIX YEARS. LOW VOLUME ROADS MAY BE CLASSIFIED AS FOLLOWS:  
13    (I) "LOW-VOLUME COLLECTOR ROAD" SHALL MEAN A LOW-VOLUME ROAD THAT  
14    COLLECTS TRAFFIC FROM ANY OTHER CLASSIFICATION AND CHANNELS IT TO A  
15    HIGHER LEVEL ROAD, SUCH AS A STATE HIGHWAY, ARTERIAL OR INTERSTATE HIGH-  
16    WAY.  
17    (II) "RESIDENTIAL ACCESS ROAD" SHALL MEAN A LOW-VOLUME ROAD THAT  
18    PROVIDES ACCESS TO RESIDENCES. THE TRAFFIC GENERATED DEPENDS ON THE  
19    NUMBER OF RESIDENCES. ALL YEAR ACCESS FOR EMERGENCY VEHICLES AND SCHOOL  
20    BUSES MUST BE PROVIDED.  
21    (III) "RESOURCE/INDUSTRIAL ACCESS ROAD" SHALL MEAN A LOW-VOLUME ROAD  
22    THAT PROVIDES ACCESS TO FORESTS OR INDUSTRIAL OR MINING OPERATIONS.

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

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1 TRAFFIC VOLUME CAN VARY AND INCLUDE HEAVY TRUCKS, EXTRACTIVE MACHINERY  
2 AND SIGNIFICANT NUMBERS OF EMPLOYEES' CARS.

3 (IV) "AGRICULTURAL LAND ACCESS ROAD" SHALL MEAN A LOW-VOLUME ROAD THAT  
4 PROVIDES ACCESS TO FARM LAND. TRAFFIC VOLUMES ARE LOW AND VARY  
5 SEASONALLY. SUCH ROADS SHALL ACCOMMODATE FARM EQUIPMENT.

6 (V) "FARM ACCESS ROAD" SHALL MEAN A LOW-VOLUME ROAD THAT PROVIDES  
7 PRINCIPAL MOTOR VEHICLE ACCESS FOR THE TRANSPORT OF GOODS AND SERVICES  
8 NECESSARY FOR EFFECTIVE SUPPORT OF A FARM'S DAILY OPERATIONS TO AND FROM  
9 THE PRIMARY LOCATION OR CENTER OF SUCH OPERATIONS. TRAFFIC VOLUME IS  
10 GENERALLY LOW, SIGNIFICANTLY LESS THAN FOUR HUNDRED MOTOR VEHICLES PER  
11 DAY, AND MAY INCLUDE OCCASIONAL HEAVY VEHICLES AND FARM EQUIPMENT AS  
12 WELL AS OTHER MOTOR VEHICLES.

13 (VI) "RECREATION LAND ACCESS ROAD" SHALL MEAN A LOW-VOLUME ROAD THAT  
14 PROVIDES ACCESS TO RECREATIONAL LAND INCLUDING SEASONAL DWELLINGS, PARKS  
15 AND RECREATIONAL LANDS. VOLUMES CAN VARY WITH THE TYPE OF RECREATION  
16 FACILITY, ACTIVITY AND SEASON OF THE YEAR.

17 B. "MINIMUM MAINTENANCE ROAD" SHALL MEAN A LOW-VOLUME AGRICULTURAL OR  
18 RECREATIONAL ACCESS ROAD OR PORTION THEREOF WITH AN AVERAGE DAILY TRAF-  
19 FIC COUNT OF LESS THAN FIFTY MOTOR VEHICLES PER DAY DESIGNATED BY THE  
20 TOWN AS MINIMUM MAINTENANCE PURSUANT TO THIS SECTION, EXCEPT FOR A FARM  
21 ACCESS ROAD OR A ROAD WHICH PROVIDES ACCESS TO AN INDIVIDUAL YEAR-ROUND  
22 RESIDENCE AT THE TIME IT IS PROPOSED TO BE DESIGNATED MINIMUM MAINTEN-  
23 NANCE. IN NO WAY SHALL THE TERM "MINIMUM MAINTENANCE" BE CONSTRUED TO  
24 MEAN "NO MAINTENANCE" OR "ABANDONMENT", HOWEVER, SUCH ROADS MAY BE  
25 CLOSED DURING CERTAIN TIMES OF THE YEAR SUBJECT TO STANDARDS ADOPTED BY  
26 THE TOWN BOARD.

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

29 2. A. THE TOWN BOARD OF ANY TOWN MAY, BY RESOLUTION, DESIGNATE CERTAIN  
30 TOWN HIGHWAYS AS LOW-VOLUME ROADS OR PORTIONS THEREOF PURSUANT TO THE  
31 CLASSIFICATIONS DEFINED IN THIS SECTION. IN CLASSIFYING SUCH ROADS, THE  
32 TOWN BOARD SHALL BASE THE CLASSIFICATION ON TRAFFIC VOLUMES, TYPES OF  
33 VEHICLES USING THE ROAD OR PORTION THEREOF, AND THE CURRENT ADJACENT  
34 LAND USES. THE TOWN BOARD SHALL REFER PROPOSED CLASSIFICATIONS TO THE  
35 TOWN HIGHWAY SUPERINTENDENT AND THE TOWN PLANNING BOARD, IF PRESENT IN  
36 SUCH TOWN.

37 B. UPON RECEIPT OF THE PROPOSED RESOLUTION, THE TOWN HIGHWAY SUPER-  
38 INTENDENT AND, WHERE APPLICABLE, TOWN PLANNING BOARD, SHALL REPORT THEIR  
39 RECOMMENDATIONS TO THE TOWN BOARD, ACCOMPANIED BY A STATEMENT OF THE  
40 REASONS FOR SUCH RECOMMENDATIONS WITHIN FORTY-FIVE DAYS OF RECEIPT. UPON  
41 RECEIPT OF THE RECOMMENDATIONS FROM THE TOWN HIGHWAY SUPERINTENDENT AND,  
42 WHERE APPLICABLE, TOWN PLANNING BOARD, OR UPON THE EXPIRATION OF FORTY-  
43 FIVE DAYS FROM THE DATE THE PROPOSED RESOLUTION WAS REFERRED, THE TOWN  
44 BOARD MAY ADOPT BY MAJORITY VOTE, THE LOCAL CLASSIFICATION RESOLUTION.

45 3. A. THE TOWN BOARD OF ANY TOWN MAY, AFTER A PUBLIC HEARING, ADOPT A  
46 LOCAL LAW DESIGNATING ANY LOW-VOLUME ROAD OR PORTION THEREOF PROVIDING  
47 AGRICULTURAL OR RECREATIONAL LAND ACCESS, EXCEPT FOR FARM ACCESS ROADS  
48 OR ROADS THAT PROVIDE ACCESS TO AN INDIVIDUAL YEAR-ROUND RESIDENCE AT  
49 THE TIME OF DESIGNATION, AS A MINIMUM MAINTENANCE ROAD. NO SUCH LAW  
50 SHALL RESTRICT FARM OPERATIONS IN AN AGRICULTURAL DISTRICT. SUCH LOCAL  
51 LAW SHALL NOT PREVENT THE STATE FROM MAINTAINING SUCH ROAD IF THE ROAD  
52 PASSES OVER, OR PROVIDES ACCESS TO, STATE LAND. NO SUCH LAW DESIGNATING  
53 A MINIMUM MAINTENANCE ROAD SHALL BE EFFECTIVE UNTIL MINIMUM MAINTENANCE  
54 STANDARDS ARE ADOPTED AND SIGNS ARE POSTED ADVISING THE PUBLIC THAT SUCH  
55 ROAD IS A MINIMUM MAINTENANCE ROAD. NO ROAD, ONCE DESIGNATED A MINIMUM  
56 MAINTENANCE ROAD, SHALL BE DETERMINED TO HAVE BEEN ABANDONED PURSUANT TO

1 THE PROVISIONS OF SUBDIVISION ONE OF SECTION TWO HUNDRED FIVE OF THIS  
2 ARTICLE SOLELY BECAUSE IT HAS BEEN DESIGNATED A MINIMUM MAINTENANCE  
3 ROAD.

4 B. AT LEAST FORTY-FIVE DAYS PRIOR TO THE PUBLIC HEARING ON SUCH LOCAL  
5 LAW THE TOWN BOARD HAVING JURISDICTION OVER SUCH ROAD SHALL ISSUE FIND-  
6 INGS THAT SUCH ROAD OR PORTION THEREOF SHOULD BE DESIGNATED A MINIMUM  
7 MAINTENANCE ROAD. SUCH FINDINGS SHALL INCLUDE, BUT NOT BE LIMITED TO:

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

9 (II) A DETERMINATION THAT THE PROPERTY OWNERS OF LAND ABUTTING THE  
10 ROAD SHALL CONTINUE TO HAVE ACCESS TO THEIR PROPERTY;

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

14 (IV) A DETERMINATION THAT SUCH ROAD, OR PORTION THEREOF, DOES NOT  
15 CONSTITUTE A FARM ACCESS ROAD AS DEFINED IN THIS SECTION;

16 (V) THE EFFECT OF SUCH DESIGNATION ON ANY FARM OPERATIONS DEPENDENT  
17 UPON THE ROAD, AND THAT SUCH DESIGNATION DOES NOT RESTRICT FARM OPER-  
18 ATIONS IN AGRICULTURAL DISTRICTS; AND

19 (VI) THE STANDARDS OF MAINTENANCE DEVELOPED IN CONSULTATION WITH THE  
20 TOWN HIGHWAY SUPERINTENDENT TO BE PROVIDED FOR SUCH ROAD INCLUDING, BUT  
21 NOT LIMITED TO, THE INTENTION TO CLOSE SUCH ROAD DURING CERTAIN TIMES OF  
22 THE YEAR.

23 A COPY OF THE TOWN BOARD'S FINDINGS SHALL BE MADE AVAILABLE FOR PUBLIC  
24 INSPECTION IN THE TOWN CLERK'S OFFICE AND POSTED TO THE TOWN WEBSITE IF  
25 AVAILABLE.

26 A COPY OF THE FINDINGS SHALL BE SENT TO THE SCHOOL BOARD OF THE SCHOOL  
27 DISTRICT IN WHICH EACH ROAD IS LOCATED AND TO THE TOWN PLANNING BOARD.  
28 SUCH SCHOOL BOARD AND PLANNING BOARD MAY REVIEW THE FINDINGS OF THE TOWN  
29 BOARD AND WITHIN FORTY-FIVE DAYS FILE WITH THE TOWN CLERK THEIR RECOM-  
30 MENDATION AND FINDINGS. IN THE EVENT THE SCHOOL OR PLANNING BOARD TAKES  
31 NO ACTION WITHIN THE FORTY-FIVE DAY REVIEW PERIOD THE TOWN BOARD MAY  
32 PROCEED WITHOUT SAID BOARD'S RECOMMENDATION AND FINDINGS. SCHOOL OR  
33 PLANNING BOARD REVIEW MAY BE WAIVED, SHORTENED OR EXTENDED UPON MUTUAL  
34 CONSENT OF SAID BOARD AND THE TOWN BOARD. THE TOWN BOARD OF THE TOWN  
35 MAY, BY RESOLUTION, ACCEPT, ACCEPT IN PART, OR REJECT THE RECOMMENDA-  
36 TIONS OF EITHER THE SCHOOL OR PLANNING BOARD PRIOR TO ANY VOTE UPON THE  
37 PROPOSED LOCAL LAW.

38 A COPY OF THE FINDINGS SHALL ALSO BE SENT TO THE DEPARTMENT OF ENVI-  
39 RONMENTAL CONSERVATION OR ANY OTHER RELEVANT STATE AGENCY THAT HAS  
40 JURISDICTION OVER THE LAND THAT THE ROAD PROPOSED TO BE DESIGNATED AS  
41 MINIMUM MAINTENANCE PASSES OVER OR PROVIDES ACCESS TO.

42 C. AT LEAST THIRTY DAYS PRIOR TO THE PUBLIC HEARING ON SUCH LOCAL LAW,  
43 WRITTEN NOTICE OF SUCH HEARING, INCLUDING A SUMMARY OF THE FINDINGS,  
44 SHALL BE SERVED BY CERTIFIED MAIL UPON EVERY OWNER OF REAL PROPERTY, AS  
45 DETERMINED BY THE LATEST COMPLETED ASSESSMENT ROLL, ABUTTING SUCH ROAD  
46 OR PORTION THEREOF.

47 D. THE TOWN CLERK SHALL GIVE NOTICE OF SUCH HEARING BY THE PUBLICATION  
48 OF A NOTICE IN AT LEAST ONE NEWSPAPER OF GENERAL CIRCULATION IN THE  
49 TOWN, AND POST SUCH NOTICE ON THE TOWN WEBSITE IF AVAILABLE, SPECIFYING  
50 THE TIME WHEN AND THE PLACE WHERE SUCH HEARING WILL BE HELD, AND IN  
51 GENERAL TERMS DESCRIBING THE PROPOSED RESOLUTION. SUCH NOTICE SHALL BE  
52 PUBLISHED ONCE AT LEAST FIVE DAYS PRIOR TO THE DAY SPECIFIED FOR SUCH  
53 HEARING.

54 4. A ROAD OR ROAD SEGMENT, WHICH HAS BEEN DESIGNATED MINIMUM MAINTE-  
55 NANCE, SHALL BE MAINTAINED AT A LEVEL WHICH ALLOWS THE ROAD TO BE MADE  
56 PASSABLE AND FUNCTIONAL IN A MANNER DETERMINED BY THE TOWN HIGHWAY

1 SUPERINTENDENT IN ACCORDANCE WITH THE STANDARDS DEVELOPED IN CONSULTA-  
2 TION WITH THE TOWN HIGHWAY SUPERINTENDENT AND ADOPTED BY THE TOWN BOARD  
3 TO BE CONSISTENT WITH THE VOLUME AND TYPE OF TRAFFIC TRAVELING ON SUCH  
4 ROAD. SUCH STANDARDS SHALL NOT RESTRICT ACCESS TO FARMLAND BY A FARM  
5 OPERATION ELIGIBLE FOR AGRICULTURAL ASSESSMENT PURSUANT TO ARTICLE TWEN-  
6 TY-FIVE-AA OF THE AGRICULTURE AND MARKETS LAW. NORMAL ROAD MAINTENANCE  
7 PRACTICES INCLUDING, BUT NOT LIMITED TO, SNOW AND ICE REMOVAL, PAVING,  
8 PATCHING, BLADING, DRAGGING OR MOWING MAY BE DONE LESS FREQUENTLY  
9 DEPENDING UPON THE EXISTING CONDITIONS AND USE OF THE ROAD BUT SHALL, AT  
10 A MINIMUM, BE CONSISTENT WITH OTHER SUPERSEDING STANDARDS OR GUIDELINES  
11 DEVELOPED PURSUANT TO STATE LAW. MINIMUM MAINTENANCE ROADS SHALL CONTIN-  
12 UE TO BE PART OF THE TOWN HIGHWAY SYSTEM.

13 5. A. ANY PERSON OR PERSONS OWNING OR OCCUPYING REAL PROPERTY ABUTTING  
14 A ROAD OR PORTION THEREOF WHICH HAS BEEN DESIGNATED A MINIMUM MAINTENANCE  
15 ROAD MAY PETITION THE TOWN HAVING JURISDICTION OVER SUCH ROAD OR  
16 PORTION THEREOF TO DISCONTINUE THE DESIGNATION OF SUCH ROAD AS A MINIMUM  
17 MAINTENANCE ROAD OR TO MODIFY THE STANDARDS OF MAINTENANCE FOR SUCH  
18 ROAD. SUCH PETITION SHALL BE FILED WITH THE CLERK OF THE TOWN HAVING  
19 JURISDICTION OVER SUCH ROAD. SUCH PETITION SHALL IDENTIFY THE ROAD OR  
20 PORTION THEREOF TO BE DISCONTINUED AS A MINIMUM MAINTENANCE ROAD AND SET  
21 FORTH THE REASONS FOR SUCH DISCONTINUANCE OR MODIFICATION. THE TOWN  
22 BOARD HAVING JURISDICTION OVER SUCH ROAD SHALL HOLD A PUBLIC HEARING  
23 UPON SUCH PETITION WITHIN THIRTY DAYS AFTER ITS RECEIPT. THE TOWN CLERK  
24 SHALL GIVE NOTICE OF SUCH HEARING BY THE PUBLICATION OF A NOTICE IN AT  
25 LEAST ONE NEWSPAPER OF GENERAL CIRCULATION IN THE TOWN, AND POST SUCH  
26 NOTICE ON THE TOWN WEBSITE IF AVAILABLE, SPECIFYING THE TIME WHEN AND  
27 THE PLACE WHERE SUCH HEARING WILL BE HELD, AND IN GENERAL TERMS DESCRIB-  
28 ING THE PROPOSED RESOLUTION. SUCH NOTICE SHALL BE PUBLISHED ONCE AT  
29 LEAST FIVE DAYS PRIOR TO THE DAY SPECIFIED FOR SUCH HEARING.

30 B. IN THE EVENT THE TOWN BOARD, AFTER SUCH PUBLIC HEARING, DETERMINES  
31 THAT SUCH DESIGNATION OR STANDARDS SHALL CONTINUE UNCHANGED, NO ADDI-  
32 TIONAL PETITION MAY BE SUBMITTED BY A PERSON OR PERSONS PURSUANT TO THIS  
33 SECTION UNTIL THE LAPSE OF AT LEAST TWENTY-FOUR MONTHS FROM THE DATE OF  
34 THE FILING OF THE PREVIOUS PETITION FILED BY SUCH PERSON OR PERSONS.

35 C. THE TOWN BOARD HAVING JURISDICTION OVER A MINIMUM MAINTENANCE ROAD  
36 MAY ADOPT A LOCAL LAW DISCONTINUING SUCH MINIMUM MAINTENANCE ROAD DESIG-  
37 NATION IN THE EVENT IT DETERMINES SUCH DISCONTINUANCE TO BE IN THE  
38 PUBLIC INTEREST.

39 6. WHERE THE MINIMUM MAINTENANCE ROAD DESIGNATION IS DISCONTINUED, OR  
40 A LOW-VOLUME ROAD CLASSIFICATION IS CHANGED, ROAD IMPROVEMENTS MAY, IN  
41 ADDITION TO OTHER FINANCING MECHANISMS AVAILABLE FOR ROAD CONSTRUCTION  
42 PROJECTS, BE UNDERTAKEN IN ACCORDANCE WITH SECTION TWO HUNDRED OF THE  
43 TOWN LAW.

44 S 2. The vehicle and traffic law is amended by adding a new section  
45 124 to read as follows:

46 S 124. MINIMUM MAINTENANCE ROAD. A LOW-VOLUME ROAD OR PORTION THEREOF  
47 WHICH IS DESIGNATED BY THE TOWN HAVING JURISDICTION OVER SUCH ROAD  
48 PURSUANT TO SECTION TWO HUNDRED FIVE-C OF THE HIGHWAY LAW.

49 S 3. Subdivision (a) of section 1683 of the vehicle and traffic law is  
50 amended by adding a new paragraph 18 to read as follows:

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

52 S 4. This act shall take effect on the one hundred twentieth day after  
53 it shall have become a law, provided, however, that effective immediate-  
54 ly, the addition, amendment and/or repeal of any rule or regulation  
55 necessary for the implementation of this act on its effective date is  
56 authorized to be made and completed on or before such date.