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

836

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

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:

Section 1. The highway law is amended by adding a new section 205-c to read as follows:

S 205-C. LOW VOLUME ROADS. 1. WHEN USED IN THIS SECTION, UNLESS OTHERWISE EXPRESSLY STATED, OR UNLESS THE CONTEXT OR SUBJECT MATTER OTHERWISE REQUIRES, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

A. "LOW-VOLUME ROAD" SHALL MEAN A TOWN HIGHWAY OR PORTION THEREOF LOCATED IN A TOWN, WHEN SUCH HIGHWAY 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 ARTICLE BECAUSE IT SHALL NOT HAVE BEEN USED OR TRAVELED AS A HIGHWAY FOR SIX YEARS. LOW VOLUME ROADS MAY BE CLASSIFIED AS FOLLOWS:

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

(II) "RESIDENTIAL ACCESS ROAD" SHALL MEAN A LOW-VOLUME ROAD 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.

(III) "RESOURCE/INDUSTRIAL ACCESS ROAD" SHALL MEAN A LOW-VOLUME ROAD 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.

LBD01732-01-1

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

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

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

(VI) "RECREATION LAND ACCESS ROAD" SHALL MEAN A LOW-VOLUME ROAD 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.

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

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

2. A. THE TOWN BOARD OF ANY TOWN MAY, BY RESOLUTION, DESIGNATE CERTAIN TOWN HIGHWAYS AS LOW-VOLUME ROADS OR PORTIONS THEREOF PURSUANT TO THE CLASSIFICATIONS DEFINED IN THIS SECTION. 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. THE TOWN BOARD SHALL REFER PROPOSED CLASSIFICATIONS TO THE TOWN HIGHWAY SUPERINTENDENT AND THE TOWN PLANNING BOARD, IF PRESENT IN SUCH TOWN.

B. 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 WITHIN FORTY-FIVE DAYS OF RECEIPT. UPON RECEIPT OF THE RECOMMENDATIONS FROM THE TOWN HIGHWAY SUPERINTENDENT AND, WHERE APPLICABLE, 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.

3. A. THE TOWN BOARD OF ANY TOWN MAY, AFTER A PUBLIC HEARING, ADOPT A LOCAL LAW DESIGNATING ANY LOW-VOLUME ROAD OR PORTION THEREOF PROVIDING AGRICULTURAL OR RECREATIONAL LAND ACCESS, EXCEPT FOR FARM ACCESS ROADS OR ROADS THAT PROVIDE ACCESS TO AN INDIVIDUAL YEAR-ROUND RESIDENCE AT THE TIME OF DESIGNATION, AS A MINIMUM MAINTENANCE ROAD. NO SUCH LAW SHALL RESTRICT FARM OPERATIONS IN AN AGRICULTURAL DISTRICT. SUCH LOCAL LAW SHALL NOT PREVENT THE STATE FROM MAINTAINING SUCH ROAD IF THE ROAD PASSES OVER, OR PROVIDES ACCESS TO, STATE LAND. NO SUCH LAW DESIGNATING A MINIMUM MAINTENANCE ROAD SHALL BE EFFECTIVE UNTIL MINIMUM MAINTENANCE STANDARDS ARE ADOPTED AND SIGNS 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 ARTICLE SOLELY BECAUSE IT HAS BEEN DESIGNATED A MINIMUM MAINTENANCE ROAD.

B. AT LEAST FORTY-FIVE DAYS PRIOR TO THE PUBLIC HEARING ON SUCH LOCAL LAW 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:

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

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

(III) 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;

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

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

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

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

A COPY OF THE FINDINGS SHALL 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 MAY 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. 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.

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

C. AT LEAST THIRTY DAYS PRIOR TO THE PUBLIC HEARING ON SUCH LOCAL LAW, WRITTEN NOTICE OF SUCH HEARING, INCLUDING A SUMMARY OF THE FINDINGS, 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.

D. THE TOWN CLERK SHALL GIVE NOTICE OF SUCH HEARING BY THE PUBLICATION OF A NOTICE IN AT LEAST ONE NEWSPAPER OF GENERAL CIRCULATION IN THE TOWN, AND POST SUCH NOTICE ON THE TOWN WEBSITE IF AVAILABLE, 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 FIVE DAYS PRIOR TO THE DAY SPECIFIED FOR SUCH HEARING.

4. 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 IN ACCORDANCE WITH THE STANDARDS DEVELOPED IN CONSULTATION WITH THE TOWN HIGHWAY SUPERINTENDENT AND ADOPTED BY THE TOWN BOARD TO BE CONSISTENT WITH THE VOLUME AND TYPE OF TRAFFIC TRAVELING ON SUCH ROAD. SUCH STANDARDS SHALL NOT RESTRICT ACCESS TO FARMLAND BY A FARM OPERATION ELIGIBLE FOR AGRICULTURAL ASSESSMENT PURSUANT TO ARTICLE TWENTY-FIVE-AA OF THE AGRICULTURE AND MARKETS LAW. NORMAL ROAD MAINTENANCE PRACTICES INCLUDING, BUT NOT LIMITED TO, SNOW AND ICE REMOVAL, 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 OTHER SUPERSEDING STANDARDS OR GUIDELINES DEVELOPED PURSUANT TO STATE LAW. MINIMUM MAINTENANCE ROADS SHALL CONTINUE TO BE PART OF THE TOWN HIGHWAY SYSTEM.

5. A. 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 OR TO MODIFY THE STANDARDS OF MAINTENANCE FOR SUCH 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 OR MODIFICATION. 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 OF GENERAL CIRCULATION IN THE TOWN, AND POST SUCH NOTICE ON THE TOWN WEBSITE IF AVAILABLE, 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 FIVE DAYS PRIOR TO THE DAY SPECIFIED FOR SUCH HEARING.

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

C. 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.

6. WHERE THE MINIMUM MAINTENANCE ROAD DESIGNATION 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 2. 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 SECTION TWO HUNDRED FIVE-C OF THE HIGHWAY LAW.

S 3. 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 4. 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 is authorized to be made and completed on or before such date.