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

7691

2013-2014 Regular Sessions

I N A S S E M B L Y

May 30, 2013

Introduced by M. of A. GANTT -- (at request of the Department of Transportation) -- read once and referred 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:

Section 1. Section 89 of the railroad law, as amended by chapter 267 of the laws of 1970, is amended to read as follows:

S 89. New railroads across streets. 1. All [steam] surface railroads built after the first day of July, eighteen hundred [and] ninety-seven, except additional switches and sidings, must be so constructed as to avoid all public crossings at grade, whenever practicable [so to do]. Whenever AN application is made to the commissioner [of transportation] under section nine of this chapter OR THIS SECTION, there shall be filed with the commissioner [of transportation] a map showing the streets, avenues, highways and roads proposed to be crossed by the new construction, and the commissioner [of transportation] shall determine whether such crossings shall be under or over the proposed railroad, except where the commissioner [of transportation] shall determine such method of crossing to be impracticable.

2. Whenever SUCH an application is made [under this section] to determine the manner of crossing, the commissioner [of transportation shall designate a time and place when and where a hearing will be given to such railroad company, and shall notify the municipal corporation having jurisdiction over the streets, avenues, highways or roads proposed to be crossed by the new railroad, persons owning land in the vicinity of the proposed crossing and such other parties deemed by the commissioner of

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

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transportation to be interested in the proceeding. The commissioner of transportation shall give public notice of such hearing. Upon such notice and after a hearing, the commissioner of transportation] MAY CONDUCT A HEARING AND PROVIDE NOTICE OF SUCH A HEARING OF NOT LESS THAN TEN DAYS TO PARTIES DEEMED TO HAVE AN INTEREST IN THE APPLICATION. PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL CONDUCT A HEARING UPON THE REQUEST OF THE RAILROAD COMPANY MAKING THE APPLICATION, THE MUNICIPAL CORPORATION HAVING JURISDICTION OVER THE STREETS, AVENUES, HIGHWAYS OR ROADS PROPOSED TO BE CROSSED BY THE NEW RAILROAD OR THE CITY, TOWN OR VILLAGE IN WHICH THE CROSSING IS LOCATED. IF SUCH A REQUEST IS NOT MADE AND IF THE COMMISSIONER DETERMINES THAT A HEARING IS NOT REQUIRED, HE OR SHE SHALL SOLICIT COMMENTS FROM PARTIES DEEMED TO HAVE AN INTEREST IN THE APPLICATION WHO SHALL BE PROVIDED WITH NO LESS THAN TEN DAYS TO COMMENT ON THE APPLICATION. PARTIES DEEMED TO HAVE AN INTEREST IN THE APPLICATION SHALL INCLUDE THE RAILROAD COMPANY MAKING THE APPLICATION, THE MUNICIPAL CORPORATION HAVING JURISDICTION OVER THE STREETS, AVENUES, HIGHWAYS OR ROADS PROPOSED TO BE CROSSED BY THE NEW RAILROAD, THE CITY, TOWN OR VILLAGE IN WHICH THE CROSSING IS LOCATED, PERSONS OWNING OR OCCUPYING PROPERTY IN THE VICINITY OF THE PROPOSED CROSSING AND OTHER PARTIES DEEMED BY THE COMMISSIONER TO BE AFFECTED BY THE APPLICATION. AFTER A HEARING, IF ONE WAS HELD, OR THE EXPIRATION OF THE COMMENT PERIOD, THE COMMISSIONER [may] SHALL determine [that] WHETHER alterations or changes may be made in any existing highway at or in the vicinity of a proposed crossing for the purpose of avoiding a crossing at grade.

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

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

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

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

7. ANY PERSON AGGRIEVED BY SUCH A DECISION AND WHO WAS A PARTY TO SAID PROCEEDING MAY, WITHIN SIXTY DAYS, APPEAL THEREFROM TO THE APPELLATE DIVISION OF THE SUPREME COURT IN THE DEPARTMENT IN WHICH SUCH CROSSING IS SITUATED, AND TO THE COURT OF APPEALS, IN THE SAME MANNER AND WITH

LIKE EFFECT AS IS PROVIDED IN THE CASE OF APPEALS FROM AN ORDER OF THE SUPREME COURT.

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

S 90. New streets across railroads. 1. When a new street, avenue, highway or road or new portion or additional lane of a street, avenue, highway or road shall hereafter be constructed across a [steam] surface railroad, other than pursuant to section ninety-one, such street, avenue, highway, or road or new portion or additional lane of a street, avenue, highway or road, shall pass over or under such railroad whenever such construction is practicable. Notice of intention to lay out such street, avenue, highway or road, or such new portion or additional lane of a street, avenue, highway or road, across a steam surface railroad shall be given to such railroad corporation by the municipal corporation at least fifteen days prior to the making of the order laying out such street, avenue, highway or road or such new portion or additional lane of a street, avenue, highway or road by service personally on the president or vice-president of the railroad corporation or any general officer thereof. Such notice shall designate the time when and place where a hearing will be given to such railroad corporation, and such railroad corporation shall have the right to be heard before the authorities of such municipal corporation upon the question of the necessity of such street, avenue, highways or road or such new portion or additional lane of a street, avenue, highway or road on the question of the location of such highway.

2. If the municipal corporation determines such street, avenue, highway or road or such new portion or additional lane of a street, avenue, highway or road to be necessary, such municipal corporation shall then apply to the commissioner [of transportation] before any further proceedings are taken, to determine whether such street, avenue, highway or road or such new portion or additional lane of a street, avenue, highway or road shall pass over or under such railroad or at grade. The commissioner [of transportation shall thereupon appoint a time and place for hearing such application, and shall give such notice thereof as he shall judge reasonable to the railroad corporation whose railroad is to be crossed by such new street, avenue, highway or road, or such new portion or additional lane of a street, avenue, highway or road, to the municipal corporation, the owners of land adjoining the railroad and that part of the street, avenue, highway or road to be opened, extended or constructed and such other parties deemed by him to be interested in the proceeding. The commissioner of transportation] MAY CONDUCT A HEARING AND PROVIDE NOTICE OF SUCH A HEARING OF NOT LESS THAN TEN DAYS TO PARTIES DEEMED TO HAVE AN INTEREST IN THE APPLICATION. PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL CONDUCT A HEARING UPON THE REQUEST OF THE MUNICIPAL CORPORATION MAKING THE APPLICATION, THE RAILROAD CORPORATION WHOSE RAILROAD IS TO BE CROSSED BY SUCH NEW STREET, AVENUE, HIGHWAY OR ROAD OR THE CITY, TOWN OR VILLAGE IN WHICH THE CROSSING IS LOCATED. IF SUCH A REQUEST IS NOT MADE AND IF THE COMMISSIONER DETERMINES THAT A HEARING IS NOT REQUIRED, HE OR SHE SHALL SOLICIT COMMENTS FROM PARTIES DEEMED TO HAVE AN INTEREST IN THE APPLICATION WHO SHALL BE PROVIDED WITH NO LESS THAN TEN DAYS TO COMMENT ON THE APPLICATION. PARTIES DEEMED TO HAVE AN INTEREST IN THE APPLICATION SHALL INCLUDE THE MUNICIPAL CORPORATION MAKING THE APPLICATION, THE RAILROAD CORPORATION WHOSE RAILROAD IS TO BE CROSSED BY SUCH NEW STREET, AVENUE, HIGHWAY OR ROAD, PERSONS OWNING OR OCCUPYING PROPERTY IN THE VICINITY OF THE PROPOSED CROSSING AND OTHER PARTIES DEEMED BY THE COMMISSIONER TO BE

AFFECTED BY THE APPLICATION. AFTER A HEARING, IF ONE WAS HELD, OR THE EXPIRATION OF THE COMMENT PERIOD, THE COMMISSIONER shall determine whether such street, avenue, highway or road or such new portion or additional lane of a street, avenue, highway or road shall be constructed over or under such railroad or at grade.

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

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

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

6. The decision of the commissioner [of transportation] as to the manner and method of carrying such new street, avenue, highway or road, or such new portion or additional lane of a street, avenue, highway or road across such railroad shall be final, subject however to the right of appeal hereinafter given, [the decision of the commissioner of transportation rendered in any proceeding under this section shall be communicated, after final hearing, to the railroad corporation, the municipal corporation and all other parties who appeared at such hearing by counsel or in person] AND SHALL BE SENT, AFTER A HEARING, IF ONE WAS HELD, OR THE EXPIRATION OF THE COMMENT PERIOD, TO ALL PARTIES WHO HAVE PARTICIPATED IN THE PROCEEDING OR REQUESTED TO BE ADVISED OF THE DECISION OF THE COMMISSIONER.

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

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

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

S 91. Alteration or rehabilitation of existing crossing. 1. The mayor or city manager and common council of any city, the president or mayor

and trustees of any village, the town board of any town, the board of supervisors or county executive and the county legislature of any county having jurisdiction over street, avenue, highway or road which crosses or is crossed by a surface railroad at grade, below grade or above grade by structures heretofore constructed, or any surface railroad corporation whose railroad crosses or is crossed by a street, avenue, highway or road at grade, below or above grade, may bring their petition in writing to the commissioner [of transportation], therein alleging that public interest requires rehabilitation, an alteration in the manner of such crossing, its approaches, the method of crossing, the location of the crossing, a change in the existing structure by which such crossing is made, the closing and discontinuance of a crossing and the diversion of the travel thereon to another street, avenue, highway road or crossing, or if not practicable to change such crossing from grade, below grade or above grade or to close or discontinue the same, the opening of an additional crossing for the partial diversion of travel from the grade, below grade or above grade crossing and praying that the same may be ordered.

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

3. The decision of the commissioner [of transportation] rendered in any proceeding under this section shall be [communicated, after final hearing, to the petitioner, the railroad corporation, the municipal corporation and all other parties who appeared at said hearing by counsel or in person] FINAL, SUBJECT HOWEVER TO THE RIGHT OF APPEAL AS HEREINAFTER GIVEN, AND SHALL BE SENT, AFTER A HEARING, IF ONE WAS HELD, OR

THE EXPIRATION OF THE COMMENT PERIOD, TO ALL PARTIES WHO HAVE PARTICIPATED IN THE PROCEEDING OR REQUESTED TO BE ADVISED OF THE DECISION OF THE COMMISSIONER.

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

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

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

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

3. A. In order to insure public safety, the commissioner may, if he or she determines it appropriate, FILE A PETITION TO require alterations in an existing private rail crossing, including a farm crossing, which is located in an intercity rail passenger service corridor and is hereby authorized to participate in the cost of such alterations. In the event that an agreement on such alterations cannot be reached between the railroad owning the crossing, property owners who are directly impacted by the crossing and the department, the commissioner [shall] MAY conduct a hearing AND PROVIDE NOTICE OF SUCH A HEARING OF NOT LESS THAN TEN DAYS TO PARTIES DEEMED TO HAVE AN INTEREST IN THE PETITION on the need for such alterations and whether any other alternatives are available,

including the use of an alternate route or the closure of the crossing and shall, where applicable, determine the apportionment of responsibility for the alteration and maintenance of any such crossing, including any warning devices. PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL CONDUCT A HEARING UPON THE REQUEST OF THE PARTY MAKING THE APPLICATION, THE RAILROAD CORPORATION WHOSE RAILROAD IS AFFECTED BY THE CROSSING OR THE CITY, TOWN OR VILLAGE IN WHICH THE CROSSING IS LOCATED. IF SUCH A REQUEST IS NOT MADE AND IF THE COMMISSIONER DETERMINES THAT A HEARING IS NOT REQUIRED, HE OR SHE SHALL SOLICIT COMMENTS FROM PARTIES DEEMED TO HAVE AN INTEREST IN THE PETITION AND PROVIDE THEM WITH NO LESS THAN TEN DAYS TO COMMENT ON THE NEED FOR SUCH ALTERATIONS AND WHETHER ANY OTHER ALTERNATIVES ARE AVAILABLE, INCLUDING THE USE OF AN ALTERNATE ROUTE OR THE CLOSURE OF THE CROSSING AND SHALL, WHERE APPLICABLE, DETERMINE THE APPORTIONMENT OF RESPONSIBILITY FOR THE ALTERATION AND MAINTENANCE OF ANY SUCH CROSSING, INCLUDING ANY WARNING DEVICES. PARTIES DEEMED TO HAVE AN INTEREST IN THE PETITION SHALL INCLUDE THE RAILROAD CORPORATION WHOSE RAILROAD IS AFFECTED BY THE ALTERATIONS, THE CITY, TOWN OR VILLAGE IN WHICH THE CROSSING IS LOCATED, PERSONS OWNING OR OCCUPYING LAND IN THE VICINITY OF THE CROSSING AND SUCH OTHER PARTIES DEEMED BY THE COMMISSIONER TO BE AFFECTED BY THE ALTERATIONS.

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

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

2. No new private rail crossings shall be established in a commuter rail service corridor until an application has been made to and approved by the commissioner. Whenever an application is made, the commissioner [shall] MAY conduct a hearing AND PROVIDE NOTICE OF SUCH A HEARING OF NOT LESS THAN TEN DAYS TO PARTIES DEEMED TO HAVE AN INTEREST IN THE APPLICATION to determine if a private rail crossing is justified or if an existing public or private crossing could be used to avoid the creation of a new private rail crossing. PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL CONDUCT A HEARING UPON THE REQUEST OF THE PARTY MAKING THE APPLICATION, THE RAILROAD CORPORATION WHOSE RAILROAD IS AFFECTED BY THE CROSSING OR THE CITY, TOWN OR VILLAGE IN WHICH THE CROSSING IS LOCATED. IF SUCH A REQUEST IS NOT MADE AND IF THE COMMISSIONER DETERMINES THAT A HEARING IS NOT REQUIRED, HE OR SHE SHALL SOLICIT COMMENTS FROM PARTIES DEEMED TO HAVE AN INTEREST IN THE APPLICATION WHO SHALL BE PROVIDED WITH NOT LESS THAN TEN DAYS TO COMMENT ON THE APPLICATION. PARTIES DEEMED TO HAVE AN INTEREST IN THE APPLICATION SHALL INCLUDE THE RAILROAD CORPORATION WHOSE RAILROAD IS AFFECTED BY THE CROSSING, THE CITY, TOWN OR VILLAGE IN WHICH THE CROSSING WILL BE LOCATED, PERSONS OWNING LAND ADJACENT TO THE CROSSING AND SUCH OTHER PARTIES DEEMED BY THE COMMISSIONER TO BE AFFECTED BY THE CROSSING. If the commissioner determines that a new private rail crossing is justified and is in the best interest of the people of the state of New York, the commissioner shall determine the manner of the crossing, whether it is to be at-grade or grade-separated, the location, the manner of

protection and the apportionment of responsibilities and costs for the construction, inspection and maintenance of any such private rail crossing, including any warning devices.

a. In order to insure public safety, the commissioner may, if he or she determines it appropriate, FILE A PETITION TO require alterations in an existing private rail crossing, including a farm crossing, which is located in a commuter rail service. In the event that an agreement on such alterations cannot be reached between the railroad owning the crossing, property owners who are directly impacted by the existing private rail crossing and the department, the commissioner [shall] MAY conduct a hearing AND PROVIDE NOTICE OF SUCH A HEARING OF NOT LESS THAN TEN DAYS TO PARTIES DEEMED TO HAVE AN INTEREST IN THE PETITION on the need for such alterations and whether any other alternatives are available, including the use of an alternate route or the closure of the private rail crossing and shall, where applicable, determine the apportionment of responsibilities and costs for the alteration, construction, inspection and maintenance of any such private rail crossing, including any warning devices. PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL CONDUCT A HEARING UPON THE REQUEST OF THE RAILROAD CORPORATION WHOSE RAILROAD IS AFFECTED BY THE CROSSING OR THE CITY, TOWN OR VILLAGE IN WHICH THE CROSSING IS LOCATED. IF SUCH A REQUEST IS NOT MADE AND IF THE COMMISSIONER DETERMINES THAT A HEARING IS NOT REQUIRED, HE OR SHE SHALL SOLICIT COMMENTS FROM PARTIES DEEMED TO HAVE AN INTEREST IN THE PETITION WHO SHALL BE PROVIDED WITH NOT LESS THAN TEN DAYS TO COMMENT ON THE PROPOSED ALTERATIONS. PARTIES DEEMED TO HAVE AN INTEREST IN THE PETITION SHALL INCLUDE THE RAILROAD CORPORATION WHOSE RAILROAD IS AFFECTED BY THE CROSSING, THE CITY, TOWN OR VILLAGE IN WHICH THE CROSSING IS LOCATED, PERSONS OWNING LAND IN THE VICINITY OF THE CROSSING AND SUCH OTHER PARITIES DEEMED BY THE COMMISSIONER TO BE AFFECTED BY THE PROPOSED ALTERATIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S 21. This act shall take effect immediately.