

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:

1 Section 1. Section 89 of the railroad law, as amended by chapter 267
2 of the laws of 1970, is amended to read as follows:
3 S 89. New railroads across streets. 1. All [steam] surface railroads
4 built after the first day of July, eighteen hundred [and] ninety-seven,
5 except additional switches and sidings, must be so constructed as to
6 avoid all public crossings at grade, whenever practicable [so to do].
7 Whenever AN application is made to the commissioner [of transportation]
8 under section nine of this chapter OR THIS SECTION, there shall be filed
9 with the commissioner [of transportation] a map showing the streets,
10 avenues, highways and roads proposed to be crossed by the new
11 construction, and the commissioner [of transportation] shall determine
12 whether such crossings shall be under or over the proposed railroad,
13 except where the commissioner [of transportation] shall determine such
14 method of crossing to be impracticable.
15 2. Whenever SUCH an application is made [under this section] to deter-
16 mine the manner of crossing, the commissioner [of transportation] shall
17 designate a time and place when and where a hearing will be given to
18 such railroad company, and shall notify the municipal corporation having
19 jurisdiction over the streets, avenues, highways or roads proposed to be
20 crossed by the new railroad, persons owning land in the vicinity of the
21 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.

LBD09118-02-3

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

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

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

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

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

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

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

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

5 S 90. New streets across railroads. 1. When a new street, avenue,
6 highway or road or new portion or additional lane of a street, avenue,
7 highway or road shall hereafter be constructed across a [steam] surface
8 railroad, other than pursuant to section ninety-one, such street,
9 avenue, highway, or road or new portion or additional lane of a street,
10 avenue, highway or road, shall pass over or under such railroad whenever
11 such construction is practicable. Notice of intention to lay out such
12 street, avenue, highway or road, or such new portion or additional lane
13 of a street, avenue, highway or road, across a steam surface railroad
14 shall be given to such railroad corporation by the municipal corporation
15 at least fifteen days prior to the making of the order laying out such
16 street, avenue, highway or road or such new portion or additional lane
17 of a street, avenue, highway or road by service personally on the presi-
18 dent or vice-president of the railroad corporation or any general offi-
19 cer thereof. Such notice shall designate the time when and place where a
20 hearing will be given to such railroad corporation, and such railroad
21 corporation shall have the right to be heard before the authorities of
22 such municipal corporation upon the question of the necessity of such
23 street, avenue, highways or road or such new portion or additional lane
24 of a street, avenue, highway or road on the question of the location of
25 such highway.

26 2. If the municipal corporation determines such street, avenue, high-
27 way or road or such new portion or additional lane of a street, avenue,
28 highway or road to be necessary, such municipal corporation shall then
29 apply to the commissioner [of transportation] before any further
30 proceedings are taken, to determine whether such street, avenue, highway
31 or road or such new portion or additional lane of a street, avenue,
32 highway or road shall pass over or under such railroad or at grade. The
33 commissioner [of transportation shall thereupon appoint a time and place
34 for hearing such application, and shall give such notice thereof as he
35 shall judge reasonable to the railroad corporation whose railroad is to
36 be crossed by such new street, avenue, highway or road, or such new
37 portion or additional lane of a street, avenue, highway or road, to the
38 municipal corporation, the owners of land adjoining the railroad and
39 that part of the street, avenue, highway or road to be opened, extended
40 or constructed and such other parties deemed by him to be interested in
41 the proceeding. The commissioner of transportation] MAY CONDUCT A HEAR-
42 ING AND PROVIDE NOTICE OF SUCH A HEARING OF NOT LESS THAN TEN DAYS TO
43 PARTIES DEEMED TO HAVE AN INTEREST IN THE APPLICATION. PROVIDED, HOWEV-
44 ER, THAT THE COMMISSIONER SHALL CONDUCT A HEARING UPON THE REQUEST OF
45 THE MUNICIPAL CORPORATION MAKING THE APPLICATION, THE RAILROAD CORPO-
46 RATION WHOSE RAILROAD IS TO BE CROSSED BY SUCH NEW STREET, AVENUE, HIGH-
47 WAY OR ROAD OR THE CITY, TOWN OR VILLAGE IN WHICH THE CROSSING IS
48 LOCATED. IF SUCH A REQUEST IS NOT MADE AND IF THE COMMISSIONER DETER-
49 MINES THAT A HEARING IS NOT REQUIRED, HE OR SHE SHALL SOLICIT COMMENTS
50 FROM PARTIES DEEMED TO HAVE AN INTEREST IN THE APPLICATION WHO SHALL BE
51 PROVIDED WITH NO LESS THAN TEN DAYS TO COMMENT ON THE APPLICATION.
52 PARTIES DEEMED TO HAVE AN INTEREST IN THE APPLICATION SHALL INCLUDE THE
53 MUNICIPAL CORPORATION MAKING THE APPLICATION, THE RAILROAD CORPORATION
54 WHOSE RAILROAD IS TO BE CROSSED BY SUCH NEW STREET, AVENUE, HIGHWAY OR
55 ROAD, PERSONS OWNING OR OCCUPYING PROPERTY IN THE VICINITY OF THE
56 PROPOSED CROSSING AND OTHER PARTIES DEEMED BY THE COMMISSIONER TO BE

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

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

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

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

28 6. The decision of the commissioner [of transportation] as to the
29 manner and method of carrying such new street, avenue, highway or road,
30 or such new portion or additional lane of a street, avenue, highway or
31 road across such railroad shall be final, subject however to the right
32 of appeal hereinafter given, [the decision of the commissioner of trans-
33 portation rendered in any proceeding under this section shall be commu-
34 nicated, after final hearing, to the railroad corporation, the municipal
35 corporation and all other parties who appeared at such hearing by coun-
36 sel or in person] AND SHALL BE SENT, AFTER A HEARING, IF ONE WAS HELD,
37 OR THE EXPIRATION OF THE COMMENT PERIOD, TO ALL PARTIES WHO HAVE PARTIC-
38 IPATED IN THE PROCEEDING OR REQUESTED TO BE ADVISED OF THE DECISION OF
39 THE COMMISSIONER.

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

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

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

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

1 and trustees of any village, the town board of any town, the board of
2 supervisors or county executive and the county legislature of any county
3 having jurisdiction over street, avenue, highway or road which crosses
4 or is crossed by a surface railroad at grade, below grade or above grade
5 by structures heretofore constructed, or any surface railroad corpo-
6 ration whose railroad crosses or is crossed by a street, avenue, highway
7 or road at grade, below or above grade, may bring their petition in
8 writing to the commissioner [of transportation], therein alleging that
9 public interest requires rehabilitation, an alteration in the manner of
10 such crossing, its approaches, the method of crossing, the location of
11 the crossing, a change in the existing structure by which such crossing
12 is made, the closing and discontinuance of a crossing and the diversion
13 of the travel thereon to another street, avenue, highway road or cross-
14 ing, or if not practicable to change such crossing from grade, below
15 grade or above grade or to close or discontinue the same, the opening of
16 an additional crossing for the partial diversion of travel from the
17 grade, below grade or above grade crossing and praying that the same may
18 be ordered.

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

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

1 THE EXPIRATION OF THE COMMENT PERIOD, TO ALL PARTIES WHO HAVE PARTIC-
2 IPATED IN THE PROCEEDING OR REQUESTED TO BE ADVISED OF THE DECISION OF
3 THE COMMISSIONER.

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

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

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

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

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

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

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

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

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

1 protection and the apportionment of responsibilities and costs for the
2 construction, inspection and maintenance of any such private rail cross-
3 ing, including any warning devices.

4 a. In order to insure public safety, the commissioner may, if he or
5 she determines it appropriate, FILE A PETITION TO require alterations in
6 an existing private rail crossing, including a farm crossing, which is
7 located in a commuter rail service. In the event that an agreement on
8 such alterations cannot be reached between the railroad owning the
9 crossing, property owners who are directly impacted by the existing
10 private rail crossing and the department, the commissioner [shall] MAY
11 conduct a hearing AND PROVIDE NOTICE OF SUCH A HEARING OF NOT LESS THAN
12 TEN DAYS TO PARTIES DEEMED TO HAVE AN INTEREST IN THE PETITION on the
13 need for such alterations and whether any other alternatives are avail-
14 able, including the use of an alternate route or the closure of the
15 private rail crossing and shall, where applicable, determine the appor-
16 tionment of responsibilities and costs for the alteration, construction,
17 inspection and maintenance of any such private rail crossing, including
18 any warning devices. PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL
19 CONDUCT A HEARING UPON THE REQUEST OF THE RAILROAD CORPORATION WHOSE
20 RAILROAD IS AFFECTED BY THE CROSSING OR THE CITY, TOWN OR VILLAGE IN
21 WHICH THE CROSSING IS LOCATED. IF SUCH A REQUEST IS NOT MADE AND IF THE
22 COMMISSIONER DETERMINES THAT A HEARING IS NOT REQUIRED, HE OR SHE SHALL
23 SOLICIT COMMENTS FROM PARTIES DEEMED TO HAVE AN INTEREST IN THE PETITION
24 WHO SHALL BE PROVIDED WITH NOT LESS THAN TEN DAYS TO COMMENT ON THE
25 PROPOSED ALTERATIONS. PARTIES DEEMED TO HAVE AN INTEREST IN THE PETITION
26 SHALL INCLUDE THE RAILROAD CORPORATION WHOSE RAILROAD IS AFFECTED BY THE
27 CROSSING, THE CITY, TOWN OR VILLAGE IN WHICH THE CROSSING IS LOCATED,
28 PERSONS OWNING LAND IN THE VICINITY OF THE CROSSING AND SUCH OTHER PARI-
29 TIES DEEMED BY THE COMMISSIONER TO BE AFFECTED BY THE PROPOSED ALTER-
30 ATIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 S 21. This act shall take effect immediately.