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

10714

I N A S S E M B L Y

June 13, 2016

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Buchwald, Gantt, Brindisi, Abinanti) -- (at request of the Governor) -- read once and referred to the Committee on Transportation

AN ACT to amend the railroad law, the transportation law, the highway law, and the vehicle and traffic law, in relation to requiring joint inspection of traffic signals, increasing penalties for the failure to comply with regulations, aligning railroad bridge inspection requirements with federal regulations, establishing and increasing penalties for failure to obey certain signals and stops

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

Section 1. Short title. This act shall be known and may be cited as the "rail safety act of 2016."

S 2. The railroad law is amended by adding a new section 53-f to read as follows:

S 53-F. JOINT INSPECTION OF TRAFFIC-CONTROL SIGNALS INTERCONNECTED WITH HIGHWAY-RAIL AT-GRADE CROSSING WARNING SYSTEMS. 1. NOTWITHSTANDING THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, THE COMMISSIONER IS AUTHORIZED TO ESTABLISH, IMPLEMENT, AND EXERCISE OVERSIGHT OVER A PROGRAM TO COORDINATE THE INSPECTION OF TRAFFIC-CONTROL SIGNALS INTERCONNECTED WITH HIGHWAY-RAIL AT-GRADE CROSSING WARNING SYSTEMS.

2. PURSUANT TO THE PROGRAM ESTABLISHED UNDER SUBDIVISION ONE OF THIS SECTION, THE DEPARTMENT OF TRANSPORTATION SHALL ESTABLISH A PROCEDURE APPLICABLE TO EVERY RAILROAD CORPORATION AND EACH MUNICIPALITY HAVING JURISDICTION OF A HIGHWAY ON WHICH THERE IS AN AT-GRADE RAIL CROSSING WARNING SYSTEM INTERCONNECTED WITH A TRAFFIC-CONTROL SIGNAL FOR THE COORDINATED OPERATION AND BIENNIAL INSPECTION OF ANY TRAFFIC-CONTROL SIGNAL INTERCONNECTED WITH A HIGHWAY-RAIL AT-GRADE CROSSING WARNING SYSTEM. NOTHING IN THIS SECTION SHALL BE DEEMED TO ALTER OR IMPAIR SUCH RAILROAD CORPORATION'S EXISTING RESPONSIBILITY FOR MAINTENANCE OF, AND ACCESS TO, THE HIGHWAY-RAIL AT-GRADE CROSSING WARNING SYSTEM.

3. FOR THE PURPOSES OF THIS SECTION, THE TERM "TRAFFIC-CONTROL SIGNAL" SHALL HAVE THE SAME MEANING AS SUCH TERM IS DEFINED BY SECTION ONE HUNDRED FIFTY-FOUR OF THE VEHICLE AND TRAFFIC LAW.

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

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S 3. The transportation law is amended by adding a new section 131-a to read as follows:

S 131-A. PENALTIES FOR VIOLATIONS. 1. ANY RAILROAD COMPANY THAT OPERATES AS A COMMON CARRIER THAT VIOLATES ANY PROVISION OF ARTICLE FIVE OF THIS CHAPTER AND REGULATIONS PROMULGATED PURSUANT THERETO SHALL, UPON DIRECTION BY THE COMMISSIONER, BE LIABLE FOR A PENALTY PAYABLE TO THE PEOPLE OF THE STATE OF NEW YORK IN THE AMOUNT NOT TO EXCEED FIVE THOUSAND DOLLARS.

2. ANY RAILROAD COMPANY THAT OPERATES AS A COMMON CARRIER OF PROPERTY THAT VIOLATES ANY PROVISION OF ARTICLE FIVE OF THIS CHAPTER AND REGULATIONS PROMULGATED PURSUANT THERETO WITH RESPECT TO ONE OR MORE FREIGHT CARS REQUIRED TO BE PLACARDED BY FEDERAL HAZARDOUS MATERIALS REGULATIONS SHALL, UPON DIRECTION BY THE COMMISSIONER, BE LIABLE FOR A PENALTY PAYABLE TO THE PEOPLE OF THE STATE OF NEW YORK IN AN AMOUNT NOT TO EXCEED FIFTEEN THOUSAND DOLLARS.

3. EACH VIOLATION SHALL BE A SEPARATE AND DISTINCT OFFENSE, AND, IN CASE OF A CONTINUING VIOLATION, EVERY DAY'S CONTINUANCE THEREOF SHALL BE A SEPARATE AND DISTINCT OFFENSE.

4. BEFORE IMPOSING A PENALTY SET FORTH IN THIS SECTION, THE COMMISSIONER SHALL AFFORD THE RAILROAD COMPANY NOTICE AND AN OPPORTUNITY TO BE HEARD. IN ASSESSING THE PENALTY, THE COMMISSIONER MAY CONSIDER THE FOLLOWING:

A. THE RAILROAD COMPANY'S HISTORY OF VIOLATING THE LAW OR THE REGULATIONS OF THE COMMISSIONER;

B. IF THE VIOLATION ARISES OUT OF AN ACCIDENT, WHETHER DEATH OR SERIOUS INJURY OCCURRED AS A RESULT OF THE ACCIDENT, WHETHER THE ACCIDENT RESULTED IN AN EVACUATION OF THE GENERAL PUBLIC FOR ONE HOUR OR MORE, AND WHETHER THE ACCIDENT RESULTED IN THE CLOSURE OF A MAJOR TRANSPORTATION ARTERY OR FACILITY FOR ONE HOUR OR MORE; AND

C. ANY OTHER FACTORS THE COMMISSIONER DEEMS RELEVANT.

5. IF SUCH PENALTY IS NOT PAID WITHIN FOUR MONTHS, THE AMOUNT THEREOF MAY BE ENTERED AS A JUDGMENT IN THE OFFICE OF THE CLERK OF THE COUNTY OF ALBANY AND IN ANY OTHER COUNTY IN WHICH THE RAILROAD COMPANY HAS A PLACE OF BUSINESS OR THROUGH WHICH IT OPERATES.

S 4. Section 236 of the highway law, as amended by chapter 455 of the the laws of 1998, is amended to read as follows:

S 236. Program of railroad bridge inspection. 1. Program establishment. Notwithstanding any other provision of law to the contrary, the commissioner is authorized and directed to establish, implement and exercise oversight over a program of railroad bridge inspection IN CONFORMITY WITH THE RAIL SAFETY IMPROVEMENT ACT OF 2008, SUBCHAPTER I OF CHAPTER 201 OF PART A OF SUBTITLE V OF TITLE 49 OF THE UNITED STATES CODE AS SUCH LAW MAY, FROM TIME TO TIME, BE AMENDED AND PART 237 OF TITLE 49 OF THE CODE OF FEDERAL REGULATIONS AS SUCH REGULATIONS MAY, FROM TIME TO TIME, BE AMENDED, by all railroads as defined herein which shall apply to all railroad bridges whether publicly or privately owned.

2. Bridge inventory. [(a)] Each railroad shall provide to the commissioner an inventory of every railroad bridge either owned or used by such railroad whether exclusively or with another railroad or railroads[. Each such inventory shall contain a statement as to the ownership of all railroad bridges listed thereon and, if not owned by the filing railroad, such railroad shall state the circumstances under which it is operating over such railroad bridges. With regard to bridges owned or maintained by the filing railroad, such inventory may be in the format currently maintained by each railroad provided the inventory identifies: (i) the owner of the railroad if different from the rail-

road submitting the inventory; (ii) a description of each bridge reflecting the condition of the bridge as determined by the latest inspection report; and (iii) the maximum load for each of its lines. Each inventory submitted shall contain the following administrative data with regard to each bridge owned or maintained by the filing railroad: the bridge identification number; the railroad bridge number; the railroad line code (if applicable); the railroad mile post; the county; the operating railroad or railroads; other features carried (if applicable); features intersected description; features intersected code; owner or owners; maintenance responsibilities; and inspection responsibilities. Each inventory submitted shall also contain the following general data with regard to each bridge owned or maintained by the filing railroad: the year built; the year rehabilitated; the number of tracks crossing the bridge; the type of rail service; the number of spans; and the bridge type] AS REQUIRED TO BE MAINTAINED BY PART 237 OF TITLE 49 OF THE CODE OF FEDERAL REGULATIONS AS SUCH REGULATIONS MAY, FROM TIME TO TIME, BE AMENDED.

[(b) In any instance in which more than one railroad operates over a bridge, the inventory shall identify which railroad has responsibility for the inspection and maintenance.]

3. Bridge inspection. [(a) The department shall develop and publish railroad bridge inspection standards. Such standards shall be developed in consultation with representatives of railroads operating within the state and insofar as practicable, shall not be inconsistent with current American railway engineering and maintenance of way association recommended practices.

(b)] (A) Each railroad shall develop A BRIDGE SAFETY MANAGEMENT PROGRAM and submit to the department written bridge management and inspection procedures[. Such procedures shall be developed under the supervision of a licensed professional engineer, and shall be consistent with generally accepted railway engineering standards and procedures for railroad bridge inspection and shall be in conformance with the standards developed by the department as set forth in paragraph (a) of this subdivision. The procedures shall contain a format for the reporting document to be submitted to the department. Such reports shall contain the qualifications of the individuals performing bridge inspection activities] AS REQUIRED TO BE MAINTAINED AND DEVELOPED BY PART 237 OF TITLE 49 OF THE CODE OF FEDERAL REGULATIONS AS SUCH REGULATIONS MAY, FROM TIME TO TIME, BE AMENDED.

[(c)] (B) Railroad bridge inspections shall be performed [by technicians whose training and experience enable them to detect and record indications of distress on a bridge. Inspectors must provide accurate measurements and other information about the condition of the bridge in sufficient detail to a licensed professional engineer who shall make an evaluation of the capacity and safety of the bridge] BY RAILROAD BRIDGE INSPECTORS IN CONFORMITY WITH PART 237 OF TITLE 49 OF THE CODE OF FEDERAL REGULATIONS AS SUCH REGULATIONS MAY, FROM TIME TO TIME, BE AMENDED. THE TERM "RAILROAD BRIDGE INSPECTORS" SHALL HAVE THE SAME MEANING AS SUCH TERM IS DEFINED BY SECTION 237.53 OF TITLE 49 OF THE CODE OF FEDERAL REGULATIONS AS SUCH REGULATIONS MAY, FROM TIME TO TIME, BE AMENDED.

[(d)] (C) Each railroad shall conduct an inspection of every railroad bridge located in the state for which it has inspection responsibility[, in accordance with the bridge inventory set forth in subdivision two of this section, at least once in each calendar year and following an occurrence which the railroad reasonably believes may have reduced the capacity of any bridge] CONSISTENT WITH PART 237 OF TITLE 49 OF THE CODE

OF FEDERAL REGULATIONS AS SUCH REGULATIONS MAY, FROM TIME TO TIME, BE AMENDED.

[(e)] (D) A copy of the inspection report for each railroad bridge shall, CONSISTENT WITH PART 237 OF TITLE 49 OF THE CODE OF FEDERAL REGULATIONS AS SUCH REGULATIONS MAY, FROM TIME TO TIME, BE AMENDED, be maintained by the appropriate railroad for a period [of not less than five years. The reports shall be comprehensible to a competent person without interpretation by the reporting inspector] OF NOT LESS THAN TWO YEARS, PROVIDED THAT EACH COPY OF AN UNDERWATER INSPECTION REPORT SHALL BE RETAINED UNTIL THE COMPLETION AND REVIEW OF THE NEXT UNDERWATER INSPECTION OF THE BRIDGE. IF REQUESTED BY THE DEPARTMENT, THE RAILROAD SHALL SUBMIT THE INSPECTION REPORT WITHIN THIRTY BUSINESS DAYS TO THE DEPARTMENT.

[(f)] (E) Not later than March fifteenth of each year, a licensed professional engineer or other responsible officer of each railroad shall file a certification that each bridge has been inspected in accordance with [the bridge management and inspection procedures and that every structure is safe for the loading imposed,] PART 237 OF TITLE 49 OF THE CODE OF FEDERAL REGULATIONS AS SUCH REGULATIONS MAY, FROM TIME TO TIME, BE AMENDED, and additionally, shall advise the commissioner of any change affecting bridge safety which has occurred since the last certification.

[(g)] (F) If, as a result of an inspection, a bridge is determined to be unsafe, the railroad shall immediately notify the commissioner and shall take appropriate remedial action to ensure that such structure is safe. Upon completion of such remedial action, the railroad shall provide the commissioner with a certification by a licensed professional engineer OR OTHER RESPONSIBLE OFFICER that the bridge is now safe for the loadings imposed. If a railroad shall fail to take remedial action, the commissioner may direct the railroad to take appropriate action, including requiring the closing of the bridge. Any order of the commissioner shall be reviewable in accordance with article seventy-eight of the civil practice law and rules.

[(h)] (G) For purposes of this section, a "licensed professional engineer" shall mean a professional engineer who is authorized to practice engineering under title eight of the education law.

4. Powers of the commissioner. The commissioner shall have the power to adopt, promulgate, amend and rescind such rules and regulations, CONSISTENT WITH PART 237 OF TITLE 49 OF THE CODE OF FEDERAL REGULATIONS AS SUCH REGULATIONS MAY, FROM TIME TO TIME, BE AMENDED, as the commissioner deems appropriate to carry out the provisions and purposes of this article or to enforce any standards established hereunder. [All existing rules and regulations requiring inspection and certification of railroad bridges shall remain in effect until such time as new rules and regulations are promulgated.] Additionally the commissioner shall be authorized to review the inspection reports, inventories and other supporting documents, to compel the production of any books, papers, records and documents relevant to the railroad bridge inspection program, and to subpoena witnesses, administer oaths and take testimony, and to maintain a civil suit against any public or private entity to compel compliance with the provisions of this chapter.

[5. Phase in of program. In order to permit the orderly implementation of the railroad bridge inspection program, the inventory of railroad bridges as herein provided shall be submitted to the commissioner by January twenty-ninth, nineteen hundred ninety-seven. All railroad bridges over which passenger rail service is provided shall be inspected not

later than January first, nineteen hundred ninety-nine, and certification submitted to the department not later than March fifteenth, nineteen hundred ninety-nine. All other railroad bridges shall be inspected and certified not later than July first, nineteen hundred ninety-nine.]

S 5. The vehicle and traffic law is amended by adding a new section 135-a to read as follows:

S 135-A. RAILROAD GRADE CROSSING. A LOCATION WHERE A PUBLIC HIGHWAY OR PRIVATE ROAD, INCLUDING ASSOCIATED SIDEWALKS, CROSSES ONE OR MORE RAILROAD TRACKS AT GRADE.

S 6. Section 1170 of the vehicle and traffic law, as amended by chapter 300 of the laws of 1960, subdivision (b) as amended and subdivisions (c) and (d) as added by chapter 430 of the laws of 1996, is amended to read as follows:

S 1170. Obedience to signal indicating approach of train. (a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop not less than fifteen feet from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall apply when:

1. An audible or clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

2. A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;

3. A railroad train approaching within approximately one thousand five hundred feet of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard; or

4. An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

5. EVERY PERSON CONVICTED OF A VIOLATION OF THIS SUBDIVISION SHALL FOR A FIRST CONVICTION THEREOF BE PUNISHED BY A FINE OF NOT MORE THAN ONE HUNDRED FIFTY DOLLARS OR BY IMPRISONMENT FOR NOT MORE THAN FIFTEEN DAYS OR BY BOTH SUCH FINE AND IMPRISONMENT; FOR A CONVICTION OF A SECOND VIOLATION, BOTH OF WHICH WERE COMMITTED WITHIN A PERIOD OF EIGHTEEN MONTHS, SUCH PERSON SHALL BE PUNISHED BY A FINE OF NOT MORE THAN FIVE HUNDRED DOLLARS OR BY IMPRISONMENT FOR NOT MORE THAN FORTY-FIVE DAYS OR BY BOTH SUCH FINE AND IMPRISONMENT; UPON A CONVICTION OF A THIRD OR SUBSEQUENT VIOLATION, ALL OF WHICH WERE COMMITTED WITHIN A PERIOD OF EIGHTEEN MONTHS, SUCH PERSON SHALL BE PUNISHED BY A FINE OF NOT MORE THAN SEVEN HUNDRED FIFTY DOLLARS OR BY IMPRISONMENT FOR NOT MORE THAN NINETY DAYS OR BY BOTH SUCH FINE AND IMPRISONMENT.

(b) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed. Every person convicted of a violation of this subdivision shall for a first conviction thereof be punished by a fine of not less than two hundred fifty dollars nor more than four hundred dollars or by imprisonment for not more than thirty days or by both such fine and imprisonment; for a conviction of a second violation, both of which were committed within a period of [eighteen] THIRTY months, such person shall be punished by a fine of not less than three hundred fifty dollars nor more than [five] SEVEN hundred FIFTY dollars or by imprisonment for not more than ninety days or by both such fine and imprisonment; upon a conviction of a third or subsequent violation, all of which were committed within a period of [eighteen] THIRTY months, such person shall be punished by a fine of not less

than six hundred dollars nor more than [seven hundred fifty] ONE THOUSAND dollars or by imprisonment for not more than one hundred eighty days or by both such fine and imprisonment.

(c) 1. Any person convicted of a violation of this section while driving any vehicle carrying passengers under eighteen years of age, any bus carrying passengers, any school bus or any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, shall, upon conviction of a first offense, be guilty of a class A misdemeanor, and shall, upon conviction of a second or subsequent offense committed within five years of the prior offense, be guilty of a class E felony.

2. Any person convicted of a violation of this section resulting in an accident which causes physical injury, as that term is defined pursuant to subdivision nine of section 10.00 of the penal law, serious physical injury, as that term is defined pursuant to subdivision ten of section 10.00 of the penal law, or death to another person, shall be guilty of a class E felony.

(d) Nothing contained in this section shall be construed to prohibit or limit the prosecution of any violation, crime or other offense otherwise required or permitted by law.

S 7. Section 1171 of the vehicle and traffic law is amended by adding a new subdivision (f) to read as follows:

(F) EVERY PERSON CONVICTED OF A VIOLATION OF THIS SECTION SHALL FOR A FIRST CONVICTION THEREOF BE PUNISHED BY A FINE OF NOT MORE THAN ONE HUNDRED FIFTY DOLLARS OR BY IMPRISONMENT FOR NOT MORE THAN FIFTEEN DAYS OR BY BOTH SUCH FINE AND IMPRISONMENT; FOR A CONVICTION OF A SECOND VIOLATION, BOTH OF WHICH WERE COMMITTED WITHIN A PERIOD OF THIRTY MONTHS, SUCH PERSON SHALL BE PUNISHED BY A FINE OF NOT MORE THAN FIVE HUNDRED DOLLARS OR BY IMPRISONMENT FOR NOT MORE THAN FORTY-FIVE DAYS OR BY BOTH SUCH FINE AND IMPRISONMENT; UPON A CONVICTION OF A THIRD OR SUBSEQUENT VIOLATION, ALL OF WHICH WERE COMMITTED WITHIN A PERIOD OF THIRTY MONTHS, SUCH PERSON SHALL BE PUNISHED BY A FINE OF NOT MORE THAN SEVEN HUNDRED FIFTY DOLLARS OR BY IMPRISONMENT FOR NOT MORE THAN NINETY DAYS OR BY BOTH SUCH FINE AND IMPRISONMENT.

S 8. This act shall take effect immediately; provided, that sections three, six and seven of this act shall take effect on December 1, 2016; provided further, that effective immediately, the commissioner of transportation is authorized to promulgate any rules or regulations necessary for the implementation of this act; and provided further, that effective immediately, the commissioner of transportation shall coordinate with every railroad corporation, relevant state authority, and municipality having jurisdiction of a highway on which there is an at-grade rail crossing warning system interconnected with a traffic-control signal, to establish a public awareness and education campaign related to the provisions of sections three, six and seven of this act.