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I N S E N A T E

June 13, 2016

Introduced by Sens. ROBACH, MURPHY, SERINO, CARLUCCI -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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:

- 1 Section 1. Short title. This act shall be known and may be cited as  
2 the "rail safety act of 2016."  
3 S 2. The railroad law is amended by adding a new section 53-f to read  
4 as follows:  
5 S 53-F. JOINT INSPECTION OF TRAFFIC-CONTROL SIGNALS INTERCONNECTED  
6 WITH HIGHWAY-RAIL AT-GRADE CROSSING WARNING SYSTEMS. 1. NOTWITHSTANDING  
7 THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY, THE COMMISSIONER IS  
8 AUTHORIZED TO ESTABLISH, IMPLEMENT, AND EXERCISE OVERSIGHT OVER A  
9 PROGRAM TO COORDINATE THE INSPECTION OF TRAFFIC-CONTROL SIGNALS INTER-  
10 CONNECTED WITH HIGHWAY-RAIL AT-GRADE CROSSING WARNING SYSTEMS.  
11 2. PURSUANT TO THE PROGRAM ESTABLISHED UNDER SUBDIVISION ONE OF THIS  
12 SECTION, THE DEPARTMENT OF TRANSPORTATION SHALL ESTABLISH A PROCEDURE  
13 APPLICABLE TO EVERY RAILROAD CORPORATION AND EACH MUNICIPALITY HAVING  
14 JURISDICTION OF A HIGHWAY ON WHICH THERE IS AN AT-GRADE RAIL CROSSING  
15 WARNING SYSTEM INTERCONNECTED WITH A TRAFFIC-CONTROL SIGNAL FOR THE  
16 COORDINATED OPERATION AND BIENNIAL INSPECTION OF ANY TRAFFIC-CONTROL  
17 SIGNAL INTERCONNECTED WITH A HIGHWAY-RAIL AT-GRADE CROSSING WARNING  
18 SYSTEM. NOTHING IN THIS SECTION SHALL BE DEEMED TO ALTER OR IMPAIR SUCH  
19 RAILROAD CORPORATION'S EXISTING RESPONSIBILITY FOR MAINTENANCE OF, AND  
20 ACCESS TO, THE HIGHWAY-RAIL AT-GRADE CROSSING WARNING SYSTEM.  
21 3. FOR THE PURPOSES OF THIS SECTION, THE TERM "TRAFFIC-CONTROL SIGNAL"  
22 SHALL HAVE THE SAME MEANING AS SUCH TERM IS DEFINED BY SECTION ONE  
23 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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1 S 3. The transportation law is amended by adding a new section 131-a  
2 to read as follows:

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

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

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

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

23 A. THE RAILROAD COMPANY'S HISTORY OF VIOLATING THE LAW OR THE REGU-  
24 LATIONS OF THE COMMISSIONER;

25 B. IF THE VIOLATION ARISES OUT OF AN ACCIDENT, WHETHER DEATH OR SERI-  
26 OUS INJURY OCCURRED AS A RESULT OF THE ACCIDENT, WHETHER THE ACCIDENT  
27 RESULTED IN AN EVACUATION OF THE GENERAL PUBLIC FOR ONE HOUR OR MORE,  
28 AND WHETHER THE ACCIDENT RESULTED IN THE CLOSURE OF A MAJOR TRANSPORTA-  
29 TION ARTERY OR FACILITY FOR ONE HOUR OR MORE; AND

30 C. ANY OTHER FACTORS THE COMMISSIONER DEEMS RELEVANT.

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

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

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

47 2. Bridge inventory. [(a)] Each railroad shall provide to the commis-  
48 sioner an inventory of every railroad bridge either owned or used by  
49 such railroad whether exclusively or with another railroad or rail-  
50 roads[. Each such inventory shall contain a statement as to the owner-  
51 ship of all railroad bridges listed thereon and, if not owned by the  
52 filing railroad, such railroad shall state the circumstances under which  
53 it is operating over such railroad bridges. With regard to bridges owned  
54 or maintained by the filing railroad, such inventory may be in the  
55 format currently maintained by each railroad provided the inventory  
56 identifies: (i) the owner of the railroad if different from the rail-

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

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

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

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

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

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

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

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

14 [(f)] (E) Not later than March fifteenth of each year, a licensed  
15 professional engineer or other responsible officer of each railroad  
16 shall file a certification that each bridge has been inspected in  
17 accordance with [the bridge management and inspection procedures and  
18 that every structure is safe for the loading imposed,] PART 237 OF TITLE  
19 49 OF THE CODE OF FEDERAL REGULATIONS AS SUCH REGULATIONS MAY, FROM TIME  
20 TO TIME, BE AMENDED, and additionally, shall advise the commissioner of  
21 any change affecting bridge safety which has occurred since the last  
22 certification.

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

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

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

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

1 later than January first, nineteen hundred ninety-nine, and certifi-  
2 cation submitted to the department not later than March fifteenth,  
3 nineteen hundred ninety-nine. All other railroad bridges shall be  
4 inspected and certified not later than July first, nineteen hundred  
5 ninety-nine.]

6 S 5. The vehicle and traffic law is amended by adding a new section  
7 135-a to read as follows:

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

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

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

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

23 2. A crossing gate is lowered or when a human flagman gives or contin-  
24 ues to give a signal of the approach or passage of a railroad train;

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

29 4. An approaching railroad train is plainly visible and is in hazard-  
30 ous proximity to such crossing.

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

43 (b) No person shall drive any vehicle through, around, or under any  
44 crossing gate or barrier at a railroad crossing while such gate or  
45 barrier is closed or is being opened or closed. Every person convicted  
46 of a violation of this subdivision shall for a first conviction thereof  
47 be punished by a fine of not less than two hundred fifty dollars nor  
48 more than four hundred dollars or by imprisonment for not more than  
49 thirty days or by both such fine and imprisonment; for a conviction of a  
50 second violation, both of which were committed within a period of [eigh-  
51 teen] THIRTY months, such person shall be punished by a fine of not less  
52 than three hundred fifty dollars nor more than [five] SEVEN hundred  
53 FIFTY dollars or by imprisonment for not more than ninety days or by  
54 both such fine and imprisonment; upon a conviction of a third or subse-  
55 quent violation, all of which were committed within a period of [eigh-  
56 teen] THIRTY months, such person shall be punished by a fine of not less

1 than six hundred dollars nor more than [seven hundred fifty] ONE THOU-  
2 SAND dollars or by imprisonment for not more than one hundred eighty  
3 days or by both such fine and imprisonment.

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

11 2. Any person convicted of a violation of this section resulting in an  
12 accident which causes physical injury, as that term is defined pursuant  
13 to subdivision nine of section 10.00 of the penal law, serious physical  
14 injury, as that term is defined pursuant to subdivision ten of section  
15 10.00 of the penal law, or death to another person, shall be guilty of a  
16 class E felony.

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

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

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

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