§ 489-v. Capital improvements to railroad property. 1. As used in this section:

(a) "Completed capital project" shall mean a capital project which has been certified by the commissioner to be completed in accordance with a capital project proposal approved by the commissioner.

(b) "Capital project proposal" shall mean a proposal, prepared by a railroad company and submitted to the commissioner, which sets forth a proposed capital project. Such proposal shall include a description of the proposed capital project and conditions relating to railroad tracks, roadbeds, bridge and structural improvements, improvements to railroad yards, switches, sidings, or other facilities, signal system improvements, or other railroad projects that improve the efficiency, capacity, or safety of railroad facilities. The proposal shall be reviewed by the commissioner and shall be approved if the commissioner determines that the proposed project is consistent with the provisions of paragraph (e) of this subdivision and rules and regulations prescribed by the department pursuant to this section. Capital project proposals that have been approved by the commissioner may be amended with the approval of the commissioner.

(c) "Commissioner" shall mean the commissioner of the New York state department of transportation.

(d) "Department" shall mean the New York state department of transportation.

(e) "Capital project" shall mean a construction project which shall modify railroad facilities to substantially improve the efficiency, capacity, or safety of railroad freight or passenger transportation, as determined by the commissioner, in one or more of the following manners:

(i) a substantial enhancement in rail freight or passenger transportation performance, such as upgrading the class of the railroad track as track classes are defined in the track safety standards of the United States department of transportation;

(ii) the construction of significant new facilities for rail freight or passenger transportation, such as the construction of new railroad lines, additional tracks along existing lines, sidings, structures, yards, stations, signal systems or switching facilities, and intermodal facilities, including, but not limited to, automotive, bulk transfer, trailer on flatcar, container on flatcar, and reload facilities; and

(iii) major renovations to or expansions of components of railroad infrastructure, such as the reconstruction of bridges or the increase in bridge capacity, the expansion of railroad yards, or the substantial improvement of the technology or safety of signal systems.

2. (a) A railroad company shall propose a capital project to the commissioner for approval under this section on forms prescribed by the department. The commissioner shall approve capital project proposals that are consistent with the terms of this section and rules and regulations prescribed by the department. The commissioner shall notify the submitting railroad company within thirty days of receipt of a proposal whether or not the commissioner considers the proposal to be consistent with the definition of a capital project as set forth in paragraph (e) of subdivision one of this section.

(b) Upon a railroad company's completion of the construction of a capital project, such railroad company may make application to the commissioner for certification under this section on forms prescribed by the department. If the commissioner finds that such capital project was completed in accordance with, and is in compliance with, an approved capital project proposal, the commissioner is authorized to forward a certificate of approval to the property owner thereof, with the approved capital project proposal for the completed capital project.

(c) The department is hereby authorized to adopt and promulgate rules and regulations necessary for the implementation of this section. Such regulations may relate to the nature and content of eligible capital projects, approved capital project proposals, certifications and notices issued by the commissioner, and completed capital projects. Rules and regulations relating to capital projects and approved capital project proposals or amendments thereto may provide for alternative or contingent terms based on the scope and nature of the capital project.

(d) This section shall apply to any certified completed capital project. The obligations and benefits of this section shall devolve upon the property owner and the heirs, successors, and assigns thereof, as the case may be.

3. (a) Whenever any alteration of a completed capital project is proposed during the period of exemption pursuant to section four hundred

eighty-nine-d or four hundred eighty-nine-dd of this article in a manner that would reduce the utility of the completed capital project, the property owner shall give not less than sixty days notice to the commissioner in a manner and upon such form as shall be prescribed by the department. Such notice shall include information as to the location and nature of such proposed alteration.

(b) The commissioner shall, in response to a notice from a property owner or on the commissioner's own initiative, after notice and hearing, issue a notice of revocation of the certificate of approval issued pursuant to this section for any completed capital project whenever the commissioner finds that:

(i) any completed capital project or portion thereof is not maintained or is converted to a use which precludes the use of the improvement for common carrier railroad use; or

(ii) the property owner fails to give notice of a proposed alteration of such completed capital project pursuant to paragraph (a) of this subdivision; or

(iii) the property owner fails to comply with the terms of the approved capital project proposal for such improved property.

4. Any determination made pursuant to this section shall be binding upon the commissioner in any calculation pursuant to this title or title two-B of this article.