

CHAPTER 481

AN ACT in relation to railroads, constituting chapter forty-nine of the consolidated laws.

Became a law June 14, 1910, with the approval of the Governor.

Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER 49 OF THE CONSOLIDATED LAWS

RAILROAD LAW

- Article 1. Short title (§§ 1, 2).
2. Organization, general powers and location (§§ 5-34).
 3. Construction, operation and management (§§ 50-108).
 4. Consolidation, lease, sale and reorganization (§§ 140-162).
 5. Street surface railroads (§§ 170-210).
 6. Rapid transit act of 1875 (§§ 220-244).
 7. Railroad redevelopment corporations (§§ 300-313).
 8. Laws repealed; when to take effect (§§ 450-451).

ARTICLE 1

SHORT TITLE

- Section 1. Short title.
2. Definitions.

§ 1. Short title. This chapter shall be known as the "Railroad Law."

§ 2. Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Commissioner of transportation", "Commissioner" or "commission" means the state commissioner of transportation.

(2) "Certificate of incorporation" and "bonds" have the meaning set forth in section one hundred two of the business corporation law.

ARTICLE 2

ORGANIZATION, GENERAL POWERS AND LOCATION

Section 5. Incorporation.

6. Applicability of business corporation law to railroad corporations.
8. Additional powers conferred.
9. Certificate of convenience and necessity.
16. Location of route.
17. Acquisition of title to real property; additions, betterments and facilities.
18. Railroads through public lands.
19. Railroads through Indian lands.
20. Railroads through Chautauqua assembly grounds.
21. Railroads along highways.
22. Proceedings to determine point at which a new railroad shall intersect one already established; compensation; duties of intersecting roads.
23. Highway exempted.
24. Change of route, grade or terminus; abandonment of line or portion thereof.
28. Tunnel railroads.
32. Individual, joint-stock association, or other corporation may lay down and maintain railroad tracks in certain cases.
34. Substituted lines in certain cases.

§ 5. Incorporation. A railroad corporation may be formed under this chapter for the purpose of owning or operating a railroad for public use, in accordance with the procedure for the formation of corporations set forth in article four of the business corporation law, by delivering to the department of state for filing a certificate of incorporation entitled "Certificate of incorporation of ... (name of corporation) pursuant to section five of the railroad law".

§ 6. Applicability of business corporation law to railroad corporations. (a) The business corporation law applies to a corporation

heretofore or hereafter formed under this chapter, or under any other statute or special act of this state, or under laws other than the statutes of this state, which has as its purpose or among its purposes a purpose for which a corporation may be formed under this chapter, except that in case of a conflict between the business corporation law and this chapter the provisions of this chapter shall govern. If there is in this chapter a provision relating to a matter embraced in the business corporation law and not in conflict therewith, both provisions shall apply. Any corporation to which the business corporation law is made applicable by this section shall be treated as a "corporation", "domestic corporation", or "foreign corporation", as such terms are used in the business corporation law, except that the purposes for which any such corporation may be formed under section five of this chapter shall not thereby be extended.

(b) For the purpose of this section and elsewhere in this chapter, the effective date of the business corporation law as to corporations to which the business corporation law is made applicable by this section shall be September first, nineteen hundred sixty-four.

§ 8. Additional powers conferred. Subject to the limitations and requirements of this chapter and of the public service law every railroad corporation, without limitation of the powers given by the business corporation law, shall have power:

1. Entry upon lands for purposes of survey. To cause the necessary examination and survey for its proposed railroad to be made for the selection of the most advantageous route; and for such purpose, by its officers, agents or servants, to enter upon any lands or waters subject to liability to the owner for all damages done.

2. Construction of road. To lay out its road not exceeding six rods in width, and to construct and the same; and, for the purpose of cuttings and embankments, to take such additional lands as may be necessary for the proper construction and security of the road; and to cut down any standing trees that may be in danger of falling on the road, upon making compensation therefor. No railroad corporation, whose proposed

railroad, or any addition thereto, or branch or extension thereof, shall include as a part of said proposed railroad, addition, branch or extension, a bridge across the Hudson river, or any approaches thereto, at any place or point between the federal dam at the city of Troy, and the most southerly point therefrom where both opposite banks are wholly within the state of New York, shall construct or commence or continue the construction of any part of its said proposed railroad, addition, branch or extension, or construct or use any connection between its existing or proposed railroad or any addition thereto, or branch or extension thereof, and any such bridge which may hereafter be constructed, unless and until the plans for such bridge shall have been submitted to and approved by the commissioner of transportation. The commissioner of transportation shall not approve any plan for any such bridge which shall provide for more than a single span across the Hudson river between the present dyke lines or for any pier or abutment between the present dyke lines of the river, or for a clearance of less than one hundred thirty-five feet between the lowest part or member of the bridge superstructure and the mean level of the river. Full and complete plans and specifications for such bridge and its approaches shall be submitted to the commissioner of transportation by the railroad corporation proposing to erect the bridge and action by such officer shall be taken thereon, or on a new or amended plan, within ninety days after the submission thereof and before approving or disapproving said plan said state official shall give a public hearing thereon, which hearing shall be held in the city of Albany and notice of such hearing, stating the time, place and briefly describing the purpose thereof, shall be given by publishing the same once at least ten days prior to the date fixed for the hearing, in two daily newspapers published in the city of Albany. If such plans, or new or amended plans be rejected such officer shall specify the reasons for the rejection in writing and shall within ten days mail a copy to the person, firm or corporation having submitted the same. Any railroad corporation which shall commence or continue the construction of any such railroad, addition, branch or extension or connection, except in accordance herewith, shall be restrained and enjoined from proceeding with the work of such construction in an action to be brought for that purpose by the attorney-general, and in addition thereto, shall forfeit its charter. It is hereby made the duty of the

attorney-general to institute and prosecute such action whenever it shall appear to his satisfaction that the grounds therefor exist.

3. Intersection of streams, highways, plank-roads, turnpikes and canals. To construct its road across, along or upon any stream, water-course, highway, plank-road, turnpike, or across any of the canals of the state, which the route of its road shall intersect or touch.

4. Intersection of other railroads. To cross, intersect, join, or unite its railroad with any other railroad before constructed, at any point on its route and upon the ground of such other railroad corporation, with the necessary turnouts, sidings, switches, and other conveniences in furtherance of the objects of its connections.

5. Buildings and stations. To erect and maintain all necessary and convenient buildings, stations, fixtures and machinery for the accommodation and use of its passengers, freight and business.

6. Transportation of persons and property. To take and convey persons and property on its railroad by the power or force of steam or of animals, or by any mechanical power, except where such power is specially prescribed in this chapter, and to receive compensation therefor.

7. Time and manner of transportation. To regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor.

8. In addition to the power conferred by subparagraph (a) (6) of section two hundred two of the business corporation law, to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, pledge, use and otherwise deal in and with, bonds and other obligations, shares, or other securities or interests issued by others, whether engaged in similar or different business, governmental, or other activities, if authorized in its certificate of incorporation.

§ 9. Certificate of convenience and necessity. No railroad corporation formed after May eighteenth, eighteen hundred and ninety-two, under the laws of this state shall exercise the powers conferred by law upon such corporations or begin the construction of its road until the directors shall cause a copy of the original certificate of incorporation to be published in one or more newspapers in each county in which the road is proposed to be located, at least once a week for three successive weeks, and shall file satisfactory proof thereof with the commissioner; nor until the commissioner shall certify that the foregoing conditions have been complied with, and also that public convenience and a necessity require the construction of said railroad as proposed in said certificate of incorporation. The foregoing certificate shall be applied for within six months after the completion of the three weeks' publication hereinbefore provided for. If a certificate is refused no further proceedings shall be had before said commissioner, but the application may be renewed after one year from the date of such refusal. Prior to granting or refusing said certificate the commissioner shall have a right to permit errors, omissions or defects to be supplied and corrected. After a refusal to grant such certificate the commissioner shall certify a copy of all maps and papers on file in its office and of the findings of the commissioner when so requested by the directors aforesaid. Such directors may thereupon present the same to the appellate division of the supreme court of the department within which said road is proposed in whole or in part to be constructed, and said appellate division shall have power, in its discretion, to order said commissioner, for reasons stated, to issue said certificate, and it shall be issued accordingly. Such certificate shall be filed in the office of the department of state, and a copy thereof, certified to be a copy by the secretary of state, or his deputy, shall be evidence of the fact therein stated. Nothing in this section shall prevent any such railroad corporation from causing such examinations and surveys for its proposed railroad to be made as may be necessary to the selection of the most advantageous route; and for such purpose by its officers or agents and servants, entering upon the lands or water of any person, but subject to the responsibility for all damages which shall be done thereto. The certificate provided for in this section shall not

dispense with the permission and approval provided for in section one hundred twenty-seven of the transportation law.

§ 16. Location of route. Every railroad corporation, except a street surface railroad corporation and an elevated railroad corporation, before constructing any part of its road in any county of this state, or instituting any proceedings for the condemnation of real property therein, shall make a map and profile of the route adopted by it in such county, certified by the president and engineer of the corporation, or a majority of the directors, and file them in the office of the clerk of the county in which the road is to be made. The corporation shall give written notice to all actual occupants of the lands over which the route of the road is so designated, and which has not been purchased by or given to it, of the time and place such map and profile were filed, and that such route passes over the lands of such occupants. Any such occupant or the owner of the land aggrieved by the proposed location, may, within fifteen days after receiving such notice, give ten days' written notice to such corporation and to the owners or occupants of lands to be affected by any proposed alteration, of the time and place of an application to a justice of the supreme court, in the judicial district where the lands are situated, by petition duly verified, for the appointment of commissioners to examine the route.

The petition shall state the objections to the route designated, shall designate the route to which it is proposed to alter the same, and shall be accompanied with a survey, map and profile of the route designated by the corporation, and of the proposed alteration thereof, and copies thereof shall be served upon the corporation and such owners or occupants with the notice of the application. The justice may, upon the hearing of the application, appoint three disinterested persons, one of whom must be a practical civil engineer, commissioners to examine the route proposed by the corporation, and the route to which it is proposed to alter the same, and after hearing the parties, to affirm the route originally designated, or adopt the proposed alteration thereof, as may be consistent with the just rights of all parties and the public, including the owners or occupants of lands upon the proposed

alterations; but no alteration of the route shall be made except by the concurrence of the commissioner who is a practical civil engineer, nor which will cause greater damage or injury to lands or materially greater length of road than the route designated by the corporation, nor which shall substantially change the general line adopted by the corporation.

The commissioners shall, within thirty days after their appointment make and certify their written determination, which with the petition, map, survey and profile, and any testimony taken before them shall be immediately filed in the office of the county clerk of the county. Within twenty days after such filing, any party may, by written notice to the other, appeal to the appellate division of the supreme court from the decision of the commissioners, which appeal shall be heard and decided at the next term held in the department in which the lands of the petitioners or any of them are situated, for which the same can be noticed, according to the rules and practice of the court. On the hearing of such appeal, the court may affirm the route proposed by the corporation or may adopt that proposed by the petitioner.

The commissioners shall each be entitled to six dollars per day for their services, and to their reasonable and necessary expenses, to be paid by the persons who applied for their appointment. If the route of the road, as designated by the corporation, is altered by the commissioners, or by the order of the court, the corporation shall refund to the petitioner the amount so paid, unless the decision of the commissioners is reversed upon appeal taken by the corporation. No such corporation shall institute any proceedings for the condemnation of real property in any county until after the expiration of fifteen days from the service by it of the notice required by this section. Every such corporation shall transmit to the commission the following maps, profiles and drawings exhibiting the characteristics of its road, to wit:

A map or maps showing the length and direction of each straight line; the length and radius of each curve; the point of crossing of each town and county line, and the length of the line in each town and county accurately determined by measurements to be taken after the completion

of the road.

Whenever any part of the road is completed and used, such maps and profiles of such completed part shall be filed with the commission within three months after the completion of any such portion and the commencement of its operation; and when any additional portion of the road shall be completed and used, other maps shall be filed within the same period of time, showing the additional parts so completed. If the route, as located upon the map and profile filed in the office of any county clerk, shall have been changed, it shall also cause a copy of the map and profile filed in the office of the commission, so far as it may relate to the location in such county, to be filed in the office of the county clerk.

§ 17. Acquisition of title to real property; additions, betterments and facilities. All real property required by any railroad corporation for the construction, maintenance and accommodation of its railroad shall be deemed to be required for a public use, and may be acquired by such corporation. If the corporation is unable to agree for the purchase of any such real property, or of any right, interest or easement therein, required for any such purpose, or if the owner thereof shall be incapable of selling the same, or if after diligent search and inquiry the name and residence of any such owner cannot be ascertained, it shall have the right to acquire title thereto by condemnation. Every railroad corporation shall have the power from time to time to make and use upon or in connection with any railroad either owned or operated by it, such additions, betterments and facilities as may be necessary or convenient for the better management, maintenance or operation of any such railroad, and shall have the right by purchase or by condemnation, to acquire any real property required therefor, and it shall also have the right of condemnation in the following additional cases:

1. Where title to real property has been acquired, or attempted to be acquired, and has been found to be invalid or defective.
2. Where its railroad shall be lawfully in possession of a lessee,

mortgagee, trustee or receiver, and additional real property shall be required for the purpose of running or operating such railroad.

3. Where it shall require for any railroad owned or operated by it any further rights to lands or the use of lands for additional main tracks or for branches, sidings, switches, or turn-outs or for connections or for cut-offs or for shortening or straightening or improving the line or grade of its road or any part thereof. Also where it shall require any further rights to lands or the use of lands for filling any structures of its road, or for constructing, widening or completing any of its embankments or roadbeds, by means of which greater safety or permanency may be secured, and such land shall be contiguous to such railroad and reasonably accessible.

4. Where it shall require any further right to lands or to the use of lands for the flow of water occasioned by railroad embankments or structures now in use, or hereafter rendered necessary, or for any other purpose necessary for the operation of such railroad, or for any right to take and convey water from any spring, pond, creek or river to such railroad, for the uses and purposes thereof, together with the right to build or lay aqueducts or pipes for the purpose of conveying such water, and to take up, relay and repair the same, or for any right of way required for carrying away or diverting any water, stream or floods from such railroad for the purpose of protecting its road or for the purpose of preventing any embankment, excavation or structure of such railroad from injuring the property of any person who may be rendered liable to injury thereby.

Waters commonly used for domestic, agricultural or manufacturing purposes, shall not be taken by condemnation to such an extent as to injuriously interfere with such use in future. No railroad corporation shall have the right to acquire by condemnation any right or easement in or to any real property owned or occupied by any other railroad corporation, except the right to intersect or cross the tracks and lands owned or held for right of way by such other corporation, without appropriating or affecting any lands owned or held for depots or gravel-beds.

Whenever any real property is required by any steam surface railroad corporation, the lines of which within this state are situated wholly within a city of over one million inhabitants, for the purposes mentioned in this section, it shall be a condition precedent to the bringing, or, if heretofore brought, to the continuing of condemnation proceedings by any railroad corporation to acquire said real property that it procure the consent of the commissioner to acquire such real property, and unless such consent is given and procured the said property shall not be condemned. The last preceding requirement shall apply to all proceedings pending at the time this amendment takes effect.

§ 18. Railroads through public lands. The commissioner of general services may grant to any domestic or foreign railroad corporation land belonging to the people of the state, except the reservation at Niagara and the Concourse lands on Coney Island, which may be required for the purposes of its road on such terms as may be agreed upon by them; or a domestic railroad corporation may acquire title thereto by condemnation; and the county or town officers having charge of any land belonging to any county or town, required for a domestic railroad corporation for the purposes of its road, may grant such land to the corporation for such compensation as may be agreed upon. In case the land or any right, interest or easement therein, required by a domestic or foreign railroad corporation is used for prison purposes the commissioner of general services may grant such land, or any right, interest or easement therein, provided the plans of such railroad corporation for the use of such prison lands, or such right, interest or easement therein, have the approval of the commissioner of corrections and community supervision.

§ 19. Railroads through Indian lands. Any railroad corporation may contract with the chiefs of any nation of Indians, over whose lands it may be necessary to construct its railroad, for the right to make such road upon such lands, but such contract shall not vest in the corporation the fee to the land, nor the right to occupy the same for

any purposes other than may be necessary for the construction, occupancy and maintenance of such railroad, and such contract shall not be valid or effectual until it shall be ratified by the county court of the county where the land shall be situated.

§ 20. Railroads through Chautauqua assembly grounds. No railroad corporation shall build, construct or operate any railroad in, upon, over or through the grounds, lands or premises owned by the Chautauqua assembly corporation in the town and county of Chautauqua, without the written consent of a majority of the board of trustees of such assembly corporation.

§ 21. Railroads along highways. No railroad corporation shall erect any bridge or other obstruction across, in or over any stream or lake, navigated by steam or sail boats at the place where it may be proposed to be erected, except as hereinafter provided, nor shall it construct its road in, upon or across any street of any city without the assent of the corporation of such city, nor across, upon or along any highway in any town or street in any incorporated village, without the order of the supreme court of the district in which such highway or street is situated, made at a special term thereof, after at least ten days' written notice of the intention to make application for such order shall have been given to the superintendent of highways of such town, or board of trustees of the village in which such highway or street is situated, and also to the commissioner of transportation in case such highway or street is one maintained in whole or in part by the state; provided, however, that all bridges and other obstructions across, in or over any stream or lake and all railroad crossings of streets and highways which have existed continuously for twenty-five years shall be deemed conclusively to have been properly authorized in so far as this section is concerned. A railroad corporation may construct and maintain a bridge for the purposes of its railroad, over any stream or lake within this state, navigated as aforesaid, provided that the consent of the commissioner of transportation be granted; and provided further, that in case such waters are used as a part of the canal system, that the

consent of the commissioner of transportation be obtained. Every railroad corporation which shall build its road along, across or upon any stream, watercourse, street, highway, plank-road or turnpike, which the route of its road shall intersect or touch, shall restore the stream or watercourse, street, highway, plank-road and turnpike, thus intersected or touched, to its former state, or to such state as not to have unnecessarily impaired its usefulness, and any such highway, turnpike or plank-road may be carried by it, under or over its track, as may be found most expedient. In all cases where a railroad crosses a highway at grade, the corporation owning or operating such railroad shall construct and maintain a roadway at least sixteen feet wide. Such roadway shall be constructed by planking, or equally serviceable material for making a permanent road bed, which shall extend at least one foot outside of the outside rails through and across the entire space between the rails at such crossing. Where an embankment or cutting shall make a change in the line of such highway, turnpike or plank-road desirable, with a view to a more easy ascent or descent, it may construct such highway, turnpike or plank-road, on such new line as its directors may select, and may take additional lands therefor by condemnation if necessary. Such lands so taken shall become part of such intersecting highway, turnpike or plank-road, and shall be held in the same manner and by the same tenure as the adjacent parts of the highway, turnpike or plank-road are held for highway purposes. Every railroad corporation shall pay all damages sustained by any turnpike or plank-road corporation in consequence of its crossing or occupation of any turnpike or plank-road and in case of inability to agree upon the amount of such damages it may acquire the right to such crossing or occupation by condemnation.

§ 22. Proceedings to determine point at which a new railroad shall intersect one already established; compensation; duties of intersecting roads. Every railroad corporation, whose road is or shall be intersected by any new railroad, shall unite with the corporation owning such new railroad in forming the necessary intersections and connections, and grant the requisite facilities therefor. If the two corporations can not agree upon the amount of compensation to be made therefor or upon the

line or lines, grade or grades, points or manner of such intersections and connections, the same shall be ascertained and determined by the supreme court. The court may determine whether the crossing or crossings of any railroad before construction shall be beneath, at, or above the existing grade of such railroad, and upon the route designated upon the map of the corporation seeking the crossing or otherwise. All railroad corporations whose roads are or shall hereafter be so crossed, intersected or joined, shall receive from each other and forward to their destination all goods, merchandise and other property intended for points on their respective roads, with the same dispatch as, and at a rate of freight not exceeding the local tariff rate charged for similar goods, merchandise and other property, received at or forwarded from the same point for individuals and other corporations.

§ 23. Highway exempted. No railroad shall be constructed, maintained or operated and no railroad tracks shall be laid upon the state road known as the Buffalo and White's Corners plank-road in the county of Erie, where none now exists, excepting such as may be necessarily laid for the purpose only of crossing said highway. The provisions of this section shall not affect any consents granted prior to the eighteenth day of April, nineteen hundred and five, or any rights acquired for the construction of any such railroad.

§ 24. Change of route, grade or terminus; abandonment of line or portion thereof. Every railroad corporation, except elevated railroad corporations, may, by a vote of two-thirds of all its directors, alter or change the route or any part of the route of its road or its termini, or locate such route, or any part thereof, or its termini, in a county adjoining any county named in its certificate of incorporation, if it shall appear to them that the line can be improved thereby, upon making and filing in the clerk's office of the proper county a survey, map and certificate of such alteration or change. If the same is made after the corporation has commenced grading the original route, compensation shall be made to all persons for injury done by such grading to any lands donated to the corporation. But neither terminus can be changed, under

this section, to any other county than one adjoining that in which it was previously located; nor can the route or terminus of any railroad be so changed in any town, county or municipal corporation, which has issued bonds and taken any stock or bonds in aid of the construction of such railroad, without the written consent of a majority of taxpayers appearing upon the last assessment-roll of such town, county or municipal corporation, unless such terminus, after the change, will remain in the same village or city as theretofore. No alteration of the route of any railroad after its construction shall be made, or new line or route of road laid out or established, as provided in this section, in any city or village, unless approved by a vote of two-thirds of the common council of the city or trustees of the village. Any railroad corporation may, by a vote of its directors, change the grade of any part of its road, except that in the city of Buffalo such change must conform to the general plan heretofore adopted and filed by the grade crossing commissioners of said city, or any modification thereof, within the territory covered by said general plan, in such manner as it may deem necessary to avoid accidents and facilitate the use of such road; and it may by such vote alter the grade of its road, for such distance and in such manner as it may deem necessary, on each or either side of the place where the grade of its road has been changed by direction of the commissioner of transportation, at any point where its road crosses any canal or canal feeder, except that in the city of Buffalo such change must conform to the general plan heretofore adopted and filed by the grade crossing commissioners of said city, or any modification thereof, within the territory covered by said general plan. The commissioner of transportation shall have a general and supervisory power over that part of any railroad which passes over, or approaches within ten rods of any canal or canal feeder belonging to the state so far as may be necessary to preserve the free and perfect use of such canals or feeders, or to make any repairs, improvements or alterations in the same. Any railroad corporation whose tracks cross any of the canals of the state, and the grade of which may be raised by direction of the commissioner of transportation, with the assent of such commissioner, may lay out a new line of road to cross such canal at a more favorable grade, and may extend such new line and connect the same with any other line of road owned by such corporation upon making and

filing in the clerk's office of the proper county a survey, map and certificate of such new or altered line. Notwithstanding the foregoing provisions of this section or of any other provision of law, any railroad corporation may by a vote of two-thirds of all its directors, or by action of its receiver or trustee if in receivership, reorganization or bankruptcy, taken with the permission of the court having jurisdiction, abandon all or any portion of its line or lines, or the operation thereof, provided, however, that the commissioner of transportation has determined that such abandonment is in the public interest.

§ 28. Tunnel railroads. When, according to the route and plan for the building of its road, adopted by any railroad corporation, including corporations organized under chapter one hundred and forty of the laws of eighteen hundred and fifty, and the acts amendatory thereof, and supplementary thereto, it shall be necessary or proper to build it or any part of it underground, or to tunnel or bridge any river or waters, such corporation may enter upon, acquire title to and use such lands under water and uplands, except on or along any canals of the state, as shall be necessary for the purpose herein mentioned, and may construct, erect and secure the necessary foundations and other structures which may be required for operating and maintaining such road, or connecting the same with another, and to acquire, in the manner provided by law, such land or rights or easements in lands along its route, upon, over or beneath the surface thereof as may be necessary for the construction of its road and making such connections. Where such road runs underneath the ground, at such depth as to enable the corporation to tunnel the same, such tunnel shall be so built and at all times kept in such condition as to make the surface of the ground above the same and in the neighborhood thereof firm and safe for buildings and other erections thereon, and if surface excavations are made the surface shall be restored to its former condition as soon as can be done, except so far as may be actually required for ventilation of the tunnel beneath the same or access thereto. Such road or any part of it may be built within the limits of any city or incorporated village of this state, and run by means of a tunnel underneath any of the streets, roads or public places

thereof, provided such corporation shall, before constructing the same underneath any such street, road or public place, have obtained the consent of the owners of one-half in value of the property bounded on the line of such street, road or public place, and the consent of the board of trustees of the village, by a resolution adopted at a regular meeting and entered on the records of the board, or of the proper authorities of the city having control of such streets, roads or public places. If the consent of such property owners can not be obtained, the appellate division of the supreme court in the department in which said city or village or any part thereof is situated, may upon application appoint three commissioners, who shall determine, after a hearing of all parties interested, whether such railroad ought to be built underneath such streets, roads or public places, or any of them, and in what manner the same may be so built with the least damage to the surface and to the use of the surface by the public and the determination of the commissioners confirmed by the court may be taken in lieu of the consent of the property owners. All railroad corporations constructing their road under this section shall be subject to all the provisions of this chapter applicable thereto. Any other railroad corporation may connect its road therewith, at such points or places as it may elect, and where such connections shall be made by connecting roads, the railroad corporations owning such roads shall build, at their joint expense, and for their joint use, such passenger and freight depots, and other accommodations for handling passengers and freight, as may be required for the convenience of the public. All railroad corporations constructing any tunnel under the provisions of this section shall be liable to any person or corporation for all damages which may be sustained by reason of the construction of such tunnel. Whenever it shall be necessary in constructing any railroad authorized by this section through any city or incorporated village, to alter the position or course of any sewer, or water or gas pipes, it shall be done at the expense of the railroad corporation under the direction of the department or corporation having charge thereof, so as not to interfere with such work. In all cases the use of streets, docks and lands beneath which such railroad is constructed, and on the route thereof and the right of way beneath the same, for the purpose of such railroad, shall be considered, and is hereby declared, a public use, consistent with and

one of the uses for which streets and docks are publicly held. No public park or square in any city or village of this state shall be used or occupied by any corporation for any of the purposes of this section, and every road constructed hereunder in or through any such street or public place shall be wholly underground and constructed in a tunnel and not otherwise. But nothing in this section shall operate to revive any charter or franchise heretofore granted by or in the city of Brooklyn. This section does not authorize the construction of any bridge over or across the East or North rivers.

§ 32. Individual, joint-stock association, or other corporation may lay down and maintain railroad tracks in certain cases. Any individual, joint-stock association or corporation, engaged in any lawful business in this state, may, except in any city of the state, lay down and maintain such railroad tracks on or across any street or highway, not exceeding three miles in length, as shall be necessary for the transaction of its business, and to connect any place of business owned by them with the track of any railroad corporation, and render such place of business more accessible to the public, upon obtaining the written consent of the owners of all the lands bounded on and of the local authorities having control of that portion of the street or highway, upon which it is proposed to construct or operate such railroad. If the consent of such property owners can not be obtained, the appellate division of the supreme court of the department in which such railroad is to be constructed, may upon application appoint three commissioners, who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and the amount of damages, if any, to be paid to such property owners, and their determination confirmed by the court may be taken in lieu of the consent of the property owners. But no such railroad shall be so located, graded, built or operated as to interfere with or obstruct the traveled part of any highway, or its use as a highway, or the use of any street or highway intersecting the same.

§ 34. Substituted lines in certain cases. Where a portion of a steam

surface railroad or branch thereof, shall be specifically authorized by statute to be taken for any other public use, and such portion lies wholly outside of any city, any corporation owning or operating such portion may locate, as provided in section sixteen of this article, and may construct and operate, in substitution for such portion, and with proper connections with the former line, a new line of steam surface railroad, wholly or partly in the same or any adjoining county, and wholly outside of any city, and not exceeding twenty-five miles in length, in the manner, with the powers and subject to the limitations and requirements provided in this chapter with respect to steam surface railroads.

ARTICLE 3

CONSTRUCTION, OPERATION AND MANAGEMENT

- Section 50. Liability of corporation to employees of contractor.
51. Weight of rail.
- 51-a. Clearances.
52. Fences, farm crossings and cattle-guards.
- 52-a. Fences along road operated by electric third rail.
- 52-b. Fences along right of way.
- 52-c. Fences in Queens county.
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§ 50. Liability of corporation to employees of contractor. An action may be maintained against any railroad corporation by any laborer for the amount due him from any contractor for the construction of any part of its road, for ninety or any less number of days' labor performed by him in constructing such road, if within twenty days thereafter a written notice shall have been served upon the corporation, and the action shall have been commenced after the expiration of ten days and within six months after the service of such notice, which shall contain a statement of the month and particular days upon which the labor was performed and for which it was unpaid, the price per day, the amount due, the name of the contractor from whom due, and the section upon which performed, and shall be signed by the laborer or his attorney and verified by him to the effect that of his own knowledge the statements contained in it are true. The notice shall be served by delivering the same to an engineer, agent or superintendent having charge of the section of the road, upon which the labor was performed, personally, or by leaving it at his office or usual place of business with some person of suitable age or discretion; and if the corporation has no such agent, engineer or superintendent, or in case he can not be found and has no place of business open, service may in like manner be made on any officer or director of the corporation.

§ 51. Weight of rail. The rail used in the construction or the relaying of the track of every railroad hereafter built or relaid in whole or in part shall be of iron or steel, weighing not less than twenty-five pounds to the lineal yard on narrow-gauge roads, and on all other roads not less than fifty-six pounds to the lineal yard on grades

of one hundred and ten feet to the mile or under, and not less than seventy pounds to the lineal yard on grades of over one hundred and ten feet to the mile, except for turnouts, sidings and switches.

§ 51-a. Clearances. Clearance distance between adjacent tracks and between tracks and adjacent structures or obstructions and between the top of the rail and any overhead wire, bridge, viaduct or obstruction. All tracks hereafter constructed or reconstructed by every railroad in this state shall be laid and maintained so as to provide the following minimum distance between adjacent tracks and between tracks and adjacent or overhead structures or obstructions:

1. Twenty-two feet between the top of the rail and any overhead wire, bridge, viaduct or other obstruction when operating conditions require men to ride or work on the top of cars, except as hereinafter provided. Structures constructed, or under construction, prior to the effective date hereof, including the extension of said structures by the erection of abutting buildings, may be maintained at existing clearances and additional tracks may be constructed and existing tracks reconstructed thereunder at the same clearance.

Overhead clearance above the top of the rail of such tracks located at the entrance and inside of buildings may be reduced to eighteen feet, provided that, when an overhead clearance of less than twenty-two feet exists on tracks inside such buildings, movements of railway equipment shall be brought to a stop before entering such building. In switching movements requiring a number of entries, stop shall be required only upon initial entry.

Clearances provided in this section shall not apply to electric wires and equipment required over present and future tracks for operation of trains by electric energy, provided the railroad concerned promulgates and enforces rules that prohibit any employee from being on top of cars while being operated under lower clearances than provided for in this section.

Clearances provided in this section shall not apply to engine houses, engine house facilities or tipples. These clearances shall not apply to facilities used for servicing cars, nor for loading or unloading of bulk commodities, where such compliance is not reasonably practicable.

2. Side clearances from the center line of tangent railroad tracks, used or proposed to be used for transporting freight cars, except as hereinafter provided, shall be as provided herein. However, structures, including platforms and tracks, constructed, or under construction, prior to the effective date hereof including the extension of said structures by the erection of abutting buildings, may be maintained and extended at existing clearances.

All structures and obstructions above the top of the rail except those hereinafter specifically mentioned are to have a side clearance of not less than eight feet six inches as measured from the center line of the track.

Platforms, except platforms adjacent to the main or passing tracks, four feet or less above the top of the rail may have lesser clearances than eight feet six inches from the center line of the track on one side of such tracks only and where a full clearance of eight feet six inches is maintained on the opposite side of the track or track centers to adjacent track are not less than fourteen feet.

Platforms four feet six inches or less above the top of the rail when used principally for loading or unloading refrigerator cars may be constructed eight feet from the center line of the track.

Platforms previously constructed at less than clearances herein prescribed may be extended at such lesser clearances unless such extension is in connection with the reconstruction of an original platform.

Low passenger platforms not over eight inches above the top of the rail may be five feet one inch from the center line of track. High passenger platforms four feet or less above the top of a rail may be

five feet seven inches from the center line of the track.

Side clearances, other than for platforms, on sides only, at entrances to and inside of buildings shall be not less than eight feet from the center line of the track.

Switchboxes, switch-operating mechanisms and accessories necessary for control and operating of signals and interlockers projecting four inches or less above the top of a rail shall be not less than three feet from the center line of the track.

The center spindle of signal and switch stands three feet or less above the top of a rail and located between tracks, where not practicable to provide clearances otherwise prescribed herein, shall be not less than six feet from the center line of the track.

Through bridges supporting the track affected, tunnels, water columns and oil columns shall be not less than eight feet from the center line of the track, except where special protection is required for unusual commodities.

Clearances for through bridges supporting the track affected, water barrel platforms and refuge platforms on bridges and trestles not provided with walkways, handrails, water barrels, water columns, oil columns, block signals, cattle guards, and stock chutes, when all portions thereof are four feet or less above the top of the rail, may be decreased to an extent defined by a line extending diagonally upward from a point level with the top of the rail and five feet distant laterally from the center line of the track to a point four feet above the top of the rail and eight feet distant laterally from the center line of the track, provided, however, that the minimum clearance for handrails and water barrels on bridges with walkways shall be seven feet nine inches, and, provided further that the minimum clearance for fences of cattle guards shall be six feet nine inches.

Lesser clearances authorized herein for handrails and water barrels shall not be applicable to through bridges where work of trainmen or

yardmen requires them to be upon the decks of such bridges for the purpose of coupling and uncoupling cars in the performance of switching service on a switching lead.

Side clearances specified herein shall not apply to mail cranes during such time as the arms of such mail cranes are supporting a mail sack for delivery, provided the top arm is not then higher than ten feet eight inches above the top of the rail and neither arm extends within six feet five inches from the center line of the track.

Icing platforms and supports shall have side clearance of not less than eight feet.

Operations over portions of track adjacent to icing platforms heretofore constructed with side clearance of less than eight feet shall be restricted, except in emergencies, to movement or switching of trains containing refrigerator cars to be iced, and necessary use of such track for unloading of supplies required for operation of icing dock.

Side clearances specified herein shall not apply to intertrack fences located on the center line between tracks.

Clearances provided in this section shall not apply to an engine house, engine house facilities or tipples, facilities used for servicing cars, or for loading or unloading of bulk commodities, where such compliance is not reasonably practicable.

Side clearances specified herein shall not apply to car retarders, derails, switch point protectors, guard rails and similar appurtenances projecting three inches or less above the top of the rail.

All minimum side clearances prescribed in this section are for tangent tracks. Structures adjacent to curve tracks shall have additional minimum side clearance compensating for curvature.

3. Overhead and side clearance prescribed herein may be decreased to the extent of a line extending diagonally downward from a point four

feet from the center line of the track twenty-two feet above the top of the rail to a point eight feet from the center line of the track at sixteen feet above the top of the rail.

For tracks located at the entrance to and inside buildings with eighteen feet overhead and eight feet side clearances as prescribed herein, the overhead and side clearances may be decreased to the extent of a line extending diagonally downward from a point four feet from the center line of the track eighteen feet above the top of the rail to a point eight feet from the center line of the track at fourteen feet above the top of the rail.

Canopies at one side of a track at freight platforms may be constructed at not less than four feet from the center line of the track provided the height of such canopies is at least seventeen feet six inches above the top of the rail and further provided full clearance of eight feet six inches is maintained on the opposite side of the track from the canopy or track centers to adjacent track are not less than fourteen feet.

Shelters over platforms used for passenger car operation may be constructed at not less than four feet six inches from the center line of the tracks, provided the height is not less than fifteen feet above the top of the rail and provided the railroads promulgate and enforce rules prohibiting employees from riding on the side of equipment when standing above car floor height.

4. The minimum distance between the center lines of parallel tracks shall be not less than thirteen feet six inches for main tracks and not less than thirteen feet six inches for yard and side tracks except as hereinafter provided.

The center line of any track, except a main track or a passing track, parallel and adjacent to a main track or a passing track, shall be at least fifteen feet from the center line of such main track or passing track; provided, however, that, where a passing track is adjacent to and at least fifteen feet distant from a main track, the other track may be

constructed adjacent to such passing track with clearance of not less than thirteen feet six inches.

The center line of any ladder track, constructed parallel to any other adjacent track, shall have a clearance of not less than eighteen feet from the center line of such other track except parallel ladder tracks shall have a clearance of not less than nineteen feet center line to center line.

The minimum distance between the center lines of parallel team and house tracks shall be not less than thirteen feet six inches.

Tracks constructed, or under construction, prior to the effective date hereof may be extended without increasing distances between tracks.

5. No merchandise, material or other articles shall knowingly be permitted to remain for an unreasonable time piled or assembled on the ground or on a platform adjacent to any track at a distance of less than eight feet six inches from the center line of the track.

Space between tracks ordinarily used by train and yardmen and other employees as a walkway in discharge of their duties and space beside such tracks within eight feet six inches of the center line thereof shall be kept in reasonably suitable condition for such purpose.

6. Except as otherwise provided herein, where the overhead or side clearances between a track and any building, structure or facility are less than the minimum prescribed herein, but were created prior to the effective date hereof, minimum clearances prescribed herein shall be provided whenever a building, structure or facility is relocated or reconstructed; however, upon petition, the commissioner of transportation may grant specific requests for future continuance of such prior clearances at such reconstructed building, structure or facility when application therefor has been made as provided herein.

7. Nothing herein shall be construed as restricting the temporary distribution of materials or the performance of work on, over or

adjacent to tracks, when such distribution or performance is necessary in the construction or maintenance of facilities or equipment, provided such distribution and performance shall be carried out within a reasonable time under conditions reasonably necessary to provide for the safety of all concerned, including proper notice by train order, message or bulletin.

If, in any particular case, exemption from any of the requirements herein is deemed necessary by the railroad concerned, the commissioner of transportation may grant the application of such railroad for such exemption when accompanied by a petition setting forth the conditions existing and the reason why such exemption is asked. Any exemption so granted will be limited to the particular case covered by the petition. In connection with any construction under his jurisdiction, the commissioner of transportation need not comply with this section if in his judgment such compliance is not feasible and he obtains a written statement from the railroad concerned that it has no objection to such noncompliance.

8. Wherever the words "railroads", "railroad tracks", "tracks", "buildings", "entrances to and inside of buildings", "structures", "facilities", "platforms", and other similar terms are used herein, they shall apply not only to property owned by or leased to common carrier railroads but also to include all privately owned property serviced by the railroads.

The provisions herein shall not apply to repairs, renewals, maintenance, extensions, additions, or rearrangements, in substantially the same location and within the general plan of existing installations, provided that existing clearances shall not be reduced.

§ 52. Fences, farm crossings and cattle-guards. Every railroad corporation, and any lessee or other person in possession of its road, shall, before the lines of its road are opened for use, and so soon as it has acquired the right of way for its roadway, erect and thereafter maintain fences on the sides of its road of height and strength

sufficient to prevent cattle, horses, sheep and hogs from going upon its road from the adjacent lands, with farm crossings and openings with gates therein at such farm crossings whenever and wherever reasonably necessary for the use of the owners and occupants of the adjoining lands, and shall construct where not already done, and hereafter maintain, cattle-guards at all road crossings, suitable and sufficient to prevent cattle, horses, sheep and hogs from going upon its railroad. So long as such fences and cattle-guards are not made, or are not in good repair, the corporation, its lessee or other person in possession of its road, shall be liable for all damages done by their agents or engines or cars to any domestic animals thereon. When made and in good repair, they shall not be liable for any such damages, unless negligently or wilfully done. A sufficient post and wire fence of requisite height shall be deemed a lawful fence within the provisions of this section, but barbed wire shall not be used in its construction.

No railroad need be fenced, when not necessary to prevent horses, cattle, sheep and hogs from going upon its track from the adjoining lands. Every adjoining land owner, who, or whose grantor, has received compensation for fencing the line of land taken for a railroad, and has agreed to build and maintain a lawful fence along such line, shall build and maintain such fence. If such owner, his heir or assign shall not build such fence, or if built, shall neglect to maintain the same during the period of thirty days after he has been notified so to do by the railroad corporation, such corporation shall thereafter build and maintain such fence, and may recover of the person neglecting to build and maintain it the expense thereof. And when such railroad shall cross timbered or forest lands, the company shall construct and maintain suitable and sufficient crossings, whenever and wherever reasonably necessary to enable the respective owners of said lands to transport logs, timber and lumber for manufacture or sale, or for banking on any stream, to be floated or driven down the same. In case of any neglect or dispute the supreme court may by mandamus or other appropriate proceedings, compel the same, and also fix the point or location of any such crossing.

As used in this section, the term "farm crossings" shall mean at-grade

rail crossings that are utilized primarily as access to and from adjoining property which is actively used for farming or agricultural purposes by the owner or by the tenant of such property.

§ 52-a. Fences along road operated by electric third rail.

Notwithstanding the provisions of section fifty-two or of any other law, general or special, within a city containing a population of over one million inhabitants according to the last preceding federal census or state enumeration, every railroad corporation operating a railroad deriving its motive power in whole or in part from an electrified third rail shall erect and thereafter maintain a fence or fences along the boundary line of its right of way contiguous and adjacent to a public highway running generally parallel to or terminating at such boundary line whenever the commissioner of transportation after a hearing on notice to such railroad corporation shall determine it to be necessary for the public welfare and shall by order so direct. The order of the commissioner of transportation may prescribe the height, length, materials and design of such fence or fences.

§ 52-b. Fences along right of way. Notwithstanding the provisions of sections fifty-two, fifty-two-a, or fifty-two-c or of any other law, general or special, every railroad corporation shall erect and thereafter maintain a fence or fences along the boundary line of its right of way whenever the commissioner of transportation after a hearing on notice to such railroad corporation shall determine it to be necessary for the public welfare and shall by order so direct. The order of the commissioner of transportation may prescribe the height, length, materials and design of such fence or fences.

§ 52-c. Fences in Queens county. Notwithstanding the provisions of section fifty-two or of any other law, general or special, within Queens county every railroad corporation operating a railroad shall erect and thereafter maintain a fence or fences along the boundary line of its right of way contiguous and adjacent to a public highway running

generally parallel to or terminating at such boundary line whenever the commissioner of transportation after a hearing on notice to such railroad corporation shall determine it to be necessary for the public welfare and shall by order so direct. The order of the commissioner of transportation may prescribe the height, length, materials and design of such fence or fences.

§ 52-d. Debris to be cleared. Every railroad shall maintain and keep clear of debris the margins alongside their yard tracks used for switching operations where railroad employees are required to walk in the course of their duties. Such margins constitute the area between the ends of the ties and a distance of nine feet on either side of the center line of any track in any yard. In addition, each railroad shall keep the area around any switch in any such yard, clear of debris for a distance of nine feet on either side of the center line of any tracks wherein any such switch is located. Such debris shall include but not be limited to used or discarded brake shoes, air hoses, railroad ties, or portions thereof, parts of railroad cars or locomotives, lumber and oil, grease or waste of any type. Debris does not include track materials being placed on or removed from tracks under maintenance or replacement programs concerning which the railroad has notified its employees of the presence and location of such materials.

Upon the filing by a recognized railroad labor representative, as defined by the railway labor act, of a written, verified complaint with the railroad superintendent of the division involved and with the department of transportation, designating the nature of the debris and the particular area or location where any of the above described debris has existed for a period of at least seventy-two hours. Upon receipt of such verified complaint the superintendent of the division shall advise the complainant as well as the department of transportation within ten days as to the specific remedies or actions said superintendent intends to take to resolve the complaint. If the superintendent takes issue or disagrees with the verified complaint filed by the designated railroad labor representative he shall within ten days so notify said representative and the department of transportation. The department of

transportation shall be allowed a period of fifteen days to determine the veracity of said complaint. If the complaint proves to be correct as verified by the department of transportation inspector the department of transportation shall then issue appropriate orders to the railroad specifying that the conditions be rectified within ten days. At the end of the tenth day if the conditions still persist the department of transportation shall be empowered to fine the railroad the sum of fifty dollars per day until such time as the complaint has been rectified.

§ 52-e. Penalties for littering. 1. No person shall throw, dump, or cause to be thrown, dumped, deposited or placed upon any railroad or subway tracks, or within the limits of the right of way of any railroad or subway, any refuse, trash, garbage, rubbish, litter or any nauseous or offensive matter. For purposes of this section, the term "subway" shall mean all rail rapid transit systems operated by the New York city transit authority including but not limited to track and track beds, passenger stations, tunnels, elevated structures, yards, depots and shops.

2. Where a highway or road lies in whole or part within a railroad right of way, nothing in this section shall be construed as prohibiting the use in a reasonable manner of ashes, sand, salt or other material for the purpose of reducing the hazard of, or providing traction on snow, ice or sleet situated on such highway or road.

3. A violation of the provisions of subdivision one of this section shall be punishable by a fine not to exceed two hundred fifty dollars and/or a requirement to perform services for a public or not-for-profit corporation, association, institution or agency not to exceed eight hours and for any second or subsequent violation by a fine not to exceed five hundred dollars and/or a requirement to perform services for a public or not-for-profit corporation, association, institution or agency not to exceed eight hours.

4. Fines collected pursuant to subdivision three of this section on subway tracks or subway rights-of-way shall be deposited to the credit

of the New York subway littering prevention fund established pursuant to section ninety-seven-uuu of the state finance law, and shall be used by the New York city transit authority to post signs notifying the public of the maximum fine for a violation of subdivision one of this section.

§ 53. Sign boards, flagmen and gates at crossings. 1. Every railroad corporation shall cause a sign board to be placed, well supported and constantly maintained, at every crossing where its road is crossed by a public highway at grade. Such sign board shall be of a shape and design to be approved by the commissioner of transportation, and shall have suitable words painted thereon to warn travelers of the existence of such grade crossing. The commissioner of transportation shall have power to prescribe the location and elevation of such sign and the words of warning thereon. The commissioner of transportation may dispense with the use of such sign boards at such crossings as he may designate in cities and villages. At any point where a steam or electric railroad operating upon private right of way crosses a street, highway, turnpike, plankroad, or traveled way at grade, the corporation owning or operating such steam or electric railroad must upon order of the commissioner of transportation station a flagman, erect gates to be opened and closed when an engine or train passes, or provide other means of protection, and where a steam railroad crosses a street railroad at grade, and the corporation owning or operating such railroad refuses to station a flagman, erect gates, to be opened and closed when an engine or train passes, the commissioner of transportation may, upon application, order that a flagman be stationed at such point, or that gates shall be erected thereat, and that a person be stationed to open and close them when an engine or train passes, or may make such other order respecting the same as he deems proper.

2. Whenever the crossing by a railroad at grade of the streets, highways, turnpikes, plank-roads or traveled ways of any village or city, having a population by the last state or federal enumeration of less than fifty thousand, shall be protected by gates with persons to open and close the same or by any type of automatic protection, when an engine or train passes, the local authorities of the city or village

shall not impose any limitation, less than forty miles an hour, on the rate of speed at which such engine or train shall be run, or enforce any existing limitation upon such rate of speed, less than forty miles an hour.

§ 53-a. Warning signs. Every municipality or political subdivision, or in case of state highways the department of transportation, which is charged with the duty of maintaining a highway at places where such highway crosses a railroad at grade, shall install and maintain an approach warning sign in each such highway on each side of each railroad grade crossing. In case of the failure or refusal of any such municipality or political subdivision or railroad company to install or furnish such signs as herein provided the commissioner of transportation shall take proceedings to compel obedience to the provisions of this section by the municipality or political subdivision or by the railroad company. The supreme court at a special term upon a special proceeding brought by the commissioner of transportation shall have the power in all cases to compel compliance with the provisions of this section subject to appeal to the appellate division of the supreme court and the court of appeals in the same manner and with like effect as is provided in case of appeals from a judgment of the supreme court.

Where physical conditions at any grade crossing are such that the commissioner of transportation deems it impracticable to place such approach warning signs, such commissioner of transportation may by order release the municipality or other political subdivision or the department of transportation from the obligation of installing and maintaining such signs and may by order direct other suitable warning signs to be furnished by the railroad company and installed and maintained by the municipality. The erection and maintenance of any sign or signs other than said approach warning signs may be prohibited by any such municipality, political subdivision or department of transportation in any highway between any such approach warning sign and any such crossing, or in any location where the warning sign may be obscured from view by the presence of such other sign or signs.

The design, location, and manner of installation of such signs shall conform to the manual and specifications for a uniform system of traffic-control devices adopted by the department of transportation.

It shall be the duty of the driver of any vehicle using such street or highway and crossing to reduce speed to a safe limit upon passing such sign and to proceed cautiously and carefully with the vehicle under complete control.

The commissioner of transportation may require the railroad company or municipality or political subdivision which is charged with the duty of maintaining the highway wherever practicable to maintain its property at or near such grade crossing free of obstruction to vision.

Provided, however, any approach warning sign, maintained pursuant to this section, installed prior to the time this act takes effect may continue as and shall be deemed a lawful approach warning sign for the purposes of applying the provisions of this section.

§ 53-b. Ringing bells and blowing whistles at crossings. A person acting as engineer, driving a locomotive on any railway in this state, who fails to ring the bell, or sound the whistle, upon such locomotive, or cause the same to be rung or sounded, at least eighty rods from any place where such railway crosses a traveled road or street on the same level, except in cities, or to continue the ringing of such bell or sounding such whistle at intervals, until such locomotive and the train to which the locomotive is attached shall have completely crossed such road or street is guilty of a misdemeanor.

§ 53-c. Obstructing farm and highway crossings. Any officer or employee of a railroad corporation who shall intentionally obstruct, and any owner, officer or employee of a railroad corporation who shall intentionally cause to be obstructed any farm or highway crossing with any locomotive, train or car for a longer period than five consecutive minutes is guilty of a violation which shall be punishable by a fine of

not more than one hundred dollars or imprisonment for not more than fifteen days or by both such fine and imprisonment. Notwithstanding the foregoing provisions of this section or any local ordinance to the contrary, no owner, officer or employee of a railroad corporation who obstructs, or causes to be obstructed, any farm or highway crossing shall be subject to any civil, criminal or other penalty where such person has no control over the situation causing the obstruction or where the locomotive, train or car cannot be moved without endangering the safety of the passengers, the public or freight.

53-d. Unlawful propulsion of a missile at railroad trains. A person is guilty of unlawful propulsion of a missile at a railroad train where he willfully with intent to cause personal injury or property damage throws, shoots or propels a rock, stone, brick, or piece of iron, steel or other metal or any deadly or dangerous missile or fire bomb at any locomotive or car of a train which is occupied by any person or persons. Unlawful propulsion of a missile at a railroad train is a violation; provided, however, that such classification shall not apply in any case where an offense having a higher classification for the purpose of sentence, is charged under any other provision of law.

§ 53-e. Unlawful interference with a railroad train. A person is guilty of unlawful interference with a railroad train when he wilfully with intent to disrupt, delay, or disturb service, places, causes to be placed, drops, or positions an object or objects of any kind, on, under, or upon the tracks which does or could cause physical damage to railroad equipment or property or physical injury to passengers or both.

Unlawful interference with a railroad train is a class D felony; provided, however, that such classification shall not apply in any case in which an offense having a higher classification for the purpose of sentence is charged under any other provision of law.

§ 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.

§ 54. Notice of starting trains; no preferences. Every railroad corporation shall start and run its cars for the transportation of passengers and property at regular times, to be fixed by public notice, and shall furnish sufficient accommodations for the transportation of all passengers and property which shall be offered for transportation at the place of starting, within a reasonable time previously thereto, and at the junctions of other railroads, and at the usual stopping places established for receiving and discharging way passengers and freight for that train; and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of the fare or freight legally authorized therefor. No station established by any railroad corporation for the reception or delivery of passengers or property, or both, shall be discontinued without the consent of the commissioner of transportation first had and obtained. No preference for the transaction of the business of a common carrier upon its cars, or in

its depots or buildings, or upon its grounds, shall be granted by any railroad corporation to any one of two or more persons, associations or corporations competing in the same business, or in the business of transporting property for themselves or others. Any such station in an incorporated village shall have the same name as the village; if any road shall have more than one such station in any such village the station nearest the geographical center thereof shall have such name. Names of stations may be changed on the petition of any person interested with the consent of the commissioner of transportation. If the name of any station has been heretofore changed by the railroad company, the commissioner of transportation may restore the name changed or make such change therein as the circumstances require.

§ 54-a. Communication. 1. No class 1 or class 2 railroad common carrier or rail passenger carrier shall perform or cause to be performed any transportation service without ensuring that there is operable communication among all members of the train crew, between the train crew and crews of other trains, and between the train crew and wayside personnel.

2. Nothing in this section shall be construed to prohibit a train from continuing to its destination in the event of a failure of the communication equipment after departure from its point of origin.

3. The commissioner of transportation shall review the state of the art of railroad transportation communication from time to time and shall conduct periodic inspections of the rail carriers subject to this section to ensure compliance with the provisions of this section.

§ 55. Accommodation of connecting roads. Every railroad corporation whose road, at or near the same place, connects with or is intersected by two or more railroads competing for its business, shall fairly and impartially afford to each of such connecting or intersecting roads equal terms of accommodation, privileges and facilities in the transportation of cars, passengers, baggage and freight over and upon

its roads and over and upon their roads, and equal facilities in the interchange and use of passenger, baggage, freight and other cars required to accommodate the business of each road, and in furnishing passage tickets to passengers who may desire to make a continuous trip over any part of its roads and either of such connecting roads. The commissioner of transportation may, upon application of the corporation owning or operating either of the connecting or intersecting roads, and upon fourteen days' notice to the corporation owning or operating the other road, prescribe such regulations as will secure, in its judgment, the enjoyment of equal privileges, accommodations and facilities to such connecting or intersecting roads as may be required to accommodate the business of each road, and the terms and conditions upon which the same shall be afforded to each road. The decision of the commissioner of transportation shall be binding on the parties for two years, and the supreme court shall have power to compel the performance thereof in an action or special proceeding, by injunction or otherwise.

§ 56. Locomotives must stop at grade crossings. All trains and locomotives on railroads crossing each other at grade shall come to a full stop before crossing, not less than two hundred nor more than eight hundred feet from the crossing, and shall then cross only when the way is clear and upon a signal from a watchman stationed at the crossing. If the corporations cannot agree as to the expense of the watchman, it shall be determined by the commissioner of transportation upon application thereto by either of them. If the corporations disagree as to the precedence of trains the commissioner of transportation may, after hearing, upon the application of either corporation, prescribe rules in relation thereto. The full stop and crossing on signal may be discontinued if the commissioner of transportation shall decide it to be impracticable, or if, with the approval of the commissioner of transportation, an interlocking switch and signal apparatus is adopted and put in operation at such a crossing. The full stop and crossing on signal shall not be required in depot yards, or the approaches thereto, if the crossing roads are under lease or subject to the same management or control in the use of tracks. An engineer, violating the foregoing provisions of this section, or any such rule of the commissioner of

transportation, shall be liable to a penalty of one hundred dollars; and any corporation or person operating the railroad, violating any of such provisions or rules, shall be liable to a penalty of five hundred dollars. The commissioner of transportation may, whenever in his judgment the public safety requires the erection of interlocking switch and signal devices at points where steam and street surface railroads intersect at grade, direct the erection of such devices and apportion the expense of construction, operating and maintenance thereof between the companies affected thereby. No railroad corporation, nor any officer, agent or employee thereof, shall stop its cars, horses, or locomotives upon a grade crossing of a railroad of another corporation, for the purpose of receiving or delivering passengers or freight, or other purpose, and any person or corporation violating this provision, shall be liable to a penalty of two hundred and fifty dollars.

§ 57. Rates of fare. Subject to the provisions of the transportation law, every railroad corporation may fix and collect the following rates of fare as compensation to be paid for transporting any passenger and his baggage, not exceeding one hundred and fifty pounds in weight, for each mile or fraction of a mile:

1. Where the motive power is rope or cable, propelled by stationary power, five cents, with right to a minimum fare of ten cents; but if the railroad is less than two miles in length, and overcomes an elevation of five hundred feet or more to the mile, five cents for each one hundred feet of elevation so overcome, and the same rates of fare if the motive power is locomotives, furnished with cogs working into cogs on the railroad, and the length of road does not exceed four miles.

2. If a road not incorporated prior to May fifteenth, eighteen hundred and seventy-nine, and not located in the counties of New York and Kings, or within the limits of any incorporated city, and not more than twenty-five miles in length, five cents; if over twenty-five and not more than forty miles, four cents; and if over forty miles, three cents. Where by the laying down of a third rail upon a railroad of the ordinary gauge, a narrow-gauge track is created and used for the transportation

of passengers, and the length of road does not exceed six miles, including any connecting road of the same gauge, such railroad, for the purpose of fare, shall be deemed a narrow-gauge road.

3. If its railroad overcomes an elevation of two hundred feet to the mile, for at least two consecutive miles, and does not exceed twenty miles in length, ten cents; if it overcomes an elevation exceeding three hundred feet to the mile, within a distance of two miles, five cents for each one hundred feet of elevation; and where it overcomes an elevation of more than one thousand feet, within a distance of two miles, seven cents for each one hundred feet of elevation in a mile.

4. If the line of its road does not exceed fifteen miles in length, and does not enter or traverse the limits of any incorporated city, and the distance traveled thereon by the passenger does not exceed one mile, five cents.

5. In all other cases, three cents for every such mile or fraction thereof, with a right to a minimum single fare of not less than five cents.

This chapter shall not be construed to allow any rate of fare for way passengers greater than two cents per mile to be charged or taken over the track or tracks of the railroad known as the New York Central Railroad Company, and the rate of fare for way passengers over the track or tracks of such company shall continue to be two cents per mile and no more, wherever it is restricted to that rate of fare, nor shall any consolidated railroad corporation charge a higher rate of fare per passenger per mile upon any part or portion of the consolidated line than was allowed by law to be charged by each existing corporation thereon previous to such consolidation.

§ 57-a. A steam or electric railroad corporation having a franchise from this state, operating to and from stations within a city of over a million inhabitants, and owned, controlled or operated by a railroad corporation having a franchise from another state, shall not charge a

rate per mile within such city in excess of the rates charged for similar service from such city to stations in an adjacent state, by such railroad corporation having a franchise from another state, whether over its own tracks or under an agreement with another railroad corporation. The penalty and remedy provided by section fifty-nine of this chapter shall be applicable to a failure to comply with the provisions of this section, and such remedy may be pursued and such penalty may be recovered by a person who shall have paid any such excess rate of fare.

§ 58. Excess charge when fare paid on cars. It shall be lawful for any company owning or operating a steam railroad in this state, to demand and collect an excess charge of ten cents over the regular or established rate of fare, from any passenger who pays fare in the car in which he may have taken passage, except where such passage is wholly within the limits of any incorporated city in this state, provided, however, that it shall be the duty of such company to give to any passenger paying such excess a receipt or other evidence of such payment, which shall legibly state that it entitles the holder thereof to have such excess charge refunded, upon the delivery of the same at any ticket office of said company, upon the line of their railroad, and said company shall refund the same upon demand; provided, however, that it shall be unlawful for any company owning or operating a railroad whether operated by steam, electricity or other motor power to demand or collect any excess charge from any passenger taking passage from a station or stopping place where tickets can not be purchased during half an hour previous to the schedule time for the departure of said train, or car on which such passengers take passage.

§ 59. Penalty for excessive fare. Any railroad corporation, which shall ask or receive more than the lawful rate of fare, unless such overcharge was made through inadvertence or mistake, not amounting to gross negligence, shall forfeit fifty dollars, to be recovered with the excess so received by the party paying the same; but no action can be maintained therefor, unless commenced within one year after the cause of action accrued.

§ 60. Issue and use of mileage books. Every railroad corporation operating a railroad in this state, the line or lines of which are more than one hundred miles in length, and which is authorized by law to charge a maximum fare of more than two cents per mile, and not more than three cents per mile, and which does charge a maximum fare of more than two cents per mile, shall issue mileage books having either five hundred or one thousand coupons attached thereto, entitling the holder thereof, upon complying with the conditions hereof, to travel either five hundred or one thousand miles on the line or lines of such railroad, for which the corporation may charge a sum not to exceed two cents per mile. Such mileage books shall be kept for sale by such corporation at every ticket office of such corporation in an incorporated village or city, and any of such books shall be issued immediately upon application therefor. Upon presentation of such mileage book to a conductor on any train, on any line of railroad owned or operated by said railroad corporation, the holder thereof, or any member of his family or firm, or any salesman of his firm, shall be entitled to travel for a number of miles equal to the number of coupons detached by such conductor. Such mileage book shall entitle the holder thereof to the same rights and privileges in respect to the transportation of person and property to which the highest class ticket issued by such corporation would entitle him. Such mileage books shall be good until all coupons attached thereto have been used. Any railroad corporation which shall refuse to issue a mileage book, as provided by this section, or in violation hereof, to accept such mileage book for transportation, shall forfeit fifty dollars, to be recovered by the party to whom such refusal is made; but no action can be maintained therefor unless commenced within one year after the cause of action accrues.

§ 61. Passenger refusing to pay fare may be ejected. If any passenger shall refuse to pay his fare the conductor of the train, and the servants of the corporation, may put him and his baggage out of the cars, using no unnecessary force, on stopping the train, at any usual stopping place, or near any dwelling house, as the conductor may elect.

§ 61-a. Sounding of certain signals on railroad cars by unauthorized persons. A person who shall ring or sound a signal bell or device for starting or stopping a passenger car, of a street or other surface railroad, or subway or elevated railroad, while such car is in use for the transportation of passengers, unless such person be the conductor of the car or a person employed to operate the car, or unless the bell or device so rung or sounded be one expressly provided for direct use by passengers in stopping the car, is guilty of a misdemeanor and punishable by a fine of not exceeding twenty-five dollars.

§ 62. Sleeping and parlor cars. Any railroad corporation may contract with any person, association or corporation for the hauling by the special or regular trains of said railroad corporation, the parlor, drawing-room or sleeping car or cars of such person, association or corporation, in which extra accommodations shall be furnished, for which said person, association or corporation furnishing such parlor, drawing-room or sleeping car or cars, may charge for the carriage and transportation of persons and property therein, a reasonable compensation for such extra accommodation, in addition to the fare and charges now allowed by law for the carriage and transportation of passengers and property in the ordinary cars of said railroad corporation. But said railroad corporation so contracting shall be liable in the same way and to the same extent as if the said car or cars were owned by it, and shall furnish sufficient ordinary cars for the reasonable accommodation of the traveling public.

§ 63. Persons employed as drivers, conductors, motormen or gripmen. Any railroad corporation may employ any inhabitant of the state, of the age of twenty-one years, not addicted to the use of intoxicating liquors, as a car driver, conductor, motorman or gripman, or in any other capacity, if fit and competent therefor. All applicants for positions as motormen or gripmen on any street surface railroad in this state shall be subjected to a thorough examination by the officers of

the corporation as to their habits, physical ability and intelligence. If this examination is satisfactory, the applicant shall be placed in the shop or power house where he can be made familiar with the power and machinery he is about to control. He shall then be placed on a car with an instructor, and when the latter is satisfied as to the applicant's capability for the position of motorman or gripman, he shall so certify to the officers of the company, and, if appointed, the applicant shall first serve on the lines of least travel. Any violation of the provisions of this section shall be a misdemeanor.

*** § 63-a. Minimum crew size.** 1. Except as otherwise provided in subdivision two of this section, no person operating or controlling any Class I or Class II railroad shall allow the operation of any railroad train or locomotive for the movement of hazardous material in this state unless such railroad train or locomotive has a crew of not less than two individuals.

2. The provisions of subdivision one of this section shall not apply to a railroad train or locomotive engaged in switching service.

3. As used in this section, the following terms shall have the following meanings:

(a) "Class I railroad" means a railroad that has been classified as a Class I railroad by the federal surface transportation board in accordance with 49 C.F.R. part 1201 section 1-1.

(b) "Class II railroad" means a railroad that has been classified as a Class II railroad by the federal surface transportation board in accordance with 49 C.F.R. part 1201 section 1-1.

(c) "Locomotive" means a self-propelled piece of on-track equipment designed for moving or propelling cars that are designed to carry freight, passengers, or other equipment, but which itself is not designed or intended to carry freight, passengers (other than those operating the locomotive) or other equipment.

(d) "Railroad" means a commercial entity that operates locomotives to transport passengers or freight.

(e) "Switching service" means the classification of rail cars

according to commodity or destination; assembly of rail cars for train movements; changing the position of rail cars for purposes of loading, unloading or weighing; placing of locomotives and rail cars for repair or storage; or moving of rail equipment in connection with work service that does not constitute train movement.

(f) "Train" means one or more locomotives, coupled with or without cars.

(g) "Hazardous material" means material designated as hazardous by the United States secretary of transportation pursuant to subsection (a) of section fifty-one hundred three of title forty-nine of the United States code.

4. A violation of the provisions of subdivision one of this section shall be punishable by a civil penalty in an amount of not less than two hundred fifty dollars nor more than one thousand dollars for a first violation; for a second violation both of which were committed within a period of three years by a civil penalty of not less than one thousand dollars nor more than five thousand dollars; and for a third or subsequent violation all of which were committed within a period of three years, by a civil penalty of not less than five thousand dollars nor more than ten thousand dollars.

* NB Repealed upon certain provisions (see chapter 707 of 2023 § 3)

§ 64. Injuries to employees. In all actions against a railroad corporation, foreign or domestic, doing business in this state, or against a receiver thereof, for personal injury to, or death resulting from personal injury of any person, while in the employment of such corporation, or receiver, arising from the negligence of such corporation or receiver or of any of its or his officers or employees, every employee, or his legal representatives, shall have the same rights and remedies for an injury, or for death, suffered by him, from the act or omission of such corporation or receiver or of its or his officers or employees, as are now allowed by law, and, in addition to the liability now existing by law, it shall be held in such actions that persons engaged in the service of any railroad corporation, foreign or domestic, doing business in this state, or in the service of a receiver thereof,

who are intrusted by such corporation or receiver, with the authority of superintendence, control or command of other persons in the employment of such corporation or receiver, or with the authority to direct or control any other employee in the performance of the duty of such employee, or who have, as a part of their duty, for the time being, physical control or direction of the movement of a signal, switch, locomotive engine, car, train or telegraph office, are vice-principals of such corporation or receiver, and are not fellow-servants of such injured or deceased employee. If an employee, engaged in the service of any such railroad corporation, or of a receiver thereof, shall receive any injury by reason of any defect in the condition of the ways, works, machinery, plant, tools or implements, or of any car, train, locomotive or attachment thereto belonging, owned or operated, or being run and operated by such corporation or receiver, when such defect could have been discovered by such corporation or receiver, by reasonable and proper care, tests or inspection, such corporation or receiver shall be deemed to have had knowledge of such defect before and at the time such injury is sustained; and when the fact of such defect shall be proved upon the trial of any action in the courts of this state, brought by such employee or his legal representatives, against any such railroad corporation or receiver, on account of such injuries so received, the same shall be prima facie evidence of negligence on the part of such corporation or receiver. This section shall not affect actions or causes of action existing on May twenty-ninth, nineteen hundred and six; and no contract, receipt, rule or regulation, between an employee and a railroad corporation or receiver, shall exempt or limit the liability of such corporation or receiver from the provisions of this section.

§ 65. Conductors and employees must wear badges. Every conductor and employee of a railroad corporation employed on a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge, which shall indicate his office or employment, and the initial letters of the corporation employing him. No conductor or collector without such badge shall demand or receive from any passenger any fare or ticket or exercise any of the powers of his employment. No officer or employee without such badge shall meddle or interfere with any passenger, his

baggage or property.

§ 66. Checks for baggage. A check, made of some proper substance of convenient size and form, plainly stamped with numbers, and furnished with a convenient strap or other appendage for attaching to baggage, shall be affixed to every piece or parcel of baggage when taken for transportation for a passenger by the agent or employee of such corporation, if there is a handle, loop or fixture therefor upon the piece or parcel of baggage, and a duplicate thereof given to the passenger or person delivering the same to him. If such check be refused on demand the corporation shall pay to the passenger the sum of ten dollars, and no fare shall be collected or received from him; and if he shall have paid his fare it shall be refunded to him by the conductor in charge of the train. Such baggage shall be delivered, without unnecessary delay, to the passenger or any person acting in his behalf, at the place to which it was to be transported, where the cars usually stop, or at any other regular intermediate stopping place upon notice to the baggage-master in charge of baggage on the train of not less than thirty minutes, upon presentation of such duplicate check to the officer or agent of the railroad corporation, or of any corporation, over any portion of whose road it was transported. Bicycles are hereby declared to be and be deemed baggage for the purposes of this article and shall be transported as baggage for passengers by railroad corporations and subject to the same liabilities, and no such passenger shall be required to crate, cover or otherwise protect any such bicycle; provided, however, that a railroad corporation shall not be required to transport, under the provisions of this section, more than one bicycle for a single person.

§ 67. Penalties for injuries to baggage. Any person whose duty it is for or on behalf of the common carrier to handle, remove, or care for the baggage of passengers, who shall recklessly or wilfully injure or destroy any trunk, valise, box, bag, package or parcel, while loading, unloading, transporting, delivering or storing the same, or any railroad corporation, which shall knowingly keep in its employment any such

wilful or reckless person, or which shall permit any injury or destruction of such property, through failure to provide sufficient help and facilities for the handling thereof, shall pay to the party injured thereby the sum of fifty dollars, in addition to such damages.

§ 68. Unclaimed freight and baggage. Every railroad or other transportation corporation, doing business in this state, which shall have unclaimed freight or baggage, not live stock or perishable, in its possession for the period of sixty days, may deliver the same to any warehouse company, or person or persons engaged in the warehouse business, within this state, and take a warehouse receipt for the storage thereof. Upon such delivery and upon taking such warehouse receipt, every such railroad or other transportation corporation shall be discharged of all liability in respect to any such unclaimed freight or baggage from and after such delivery. At any time within two years after such delivery, such railroad or other transportation corporation shall surrender and transfer such warehouse receipt to the owner of any such unclaimed freight or baggage upon demand, and upon payment of all charges and expenses for transportation and storage then due, if any, to any such railroad or other transportation corporation. In case any such railroad or other transportation company shall have had unclaimed freight or baggage, not live stock or perishable, in its possession for a period of one year and shall not have delivered the same to a warehouse company or person or persons engaged in the warehouse business as above provided, then such railroad or other transportation company may proceed to sell the same at public auction, and out of the proceeds may retain the charges of transportation, handling and storage of such unclaimed freight or baggage, and the expenses of advertising and sale thereof; but no such sale shall be made until the expiration of four weeks from the first publication of notice of such sale, to be published weekly in a newspaper published in or nearest the town or city to which such unclaimed freight or baggage was consigned, or at which it was directed to be left, and also at the town or city where such sale is to take place; and said notice shall contain a general description of such unclaimed freight or baggage, the name of the shipper thereof, if known, and a statement of the consignment thereof, whether to a designated

consignee or to order, if known, or the place at which the same was to be left, as near as may be; and the expenses incurred for advertising shall be a lien upon such unclaimed freight or baggage in a ratable proportion, according to the value of each article, package or parcel, if more than one. Such railroad or other transportation company shall make an entry of the balance of the proceeds of the sale, if any, of the unclaimed freight or baggage consigned to the same consignee or covered by each consignment, as near as can be ascertained, and at any time within five years thereafter, shall refund any surplus so retained to the owner of such unclaimed freight or baggage, his personal representatives or assigns, on satisfactory proof of such ownership. In case such balance shall not be claimed by the rightful owner within five years after the sale as above specified, then it shall be paid to the county treasurer, for the use of the county poor of the county where the sale is made.

Unclaimed live stock and perishable freight or baggage may be sold by any such railroad or other transportation corporation without notice, as soon as it can be, upon the best terms that can be obtained. All moneys arising from the sale of any such unclaimed live stock, perishable freight or baggage, after deducting therefrom all charges and expenses for transportation, storage, keeping, commissions for selling the property, and any amount previously paid for its loss or non-delivery, shall be deposited by the corporation making such sale with a report thereof, and proof that the property was live stock or perishable freight, with the comptroller for the benefit of the general fund of the state, and shall be held by him in trust for reclamation by the person or persons entitled to receive the same.

§ 69. Minimum standards for track inspection and maintenance. In the case of all tracks over which there are regularly scheduled passenger movements, and all tracks currently being used for the movement of freight trains where the maximum authorized speed is in excess of thirty-five miles per hour, the following regulations requiring track inspection shall apply to all common carriers by a class one railroad operating within the state of New York:

1. Track inspection shall be made by a track foreman or equally qualified employee of the railroad company involved, provided such employee shall not be required to inspect more than one hundred miles of track per day.

2. Each railroad shall assign a supervisory employee above the rank of track foreman to be in charge of the inspection required by these regulations of all track within the area of his responsibility, which area shall be clearly designated.

3. Tracks subject to this section shall be inspected not less than twice each week.

4. All switches shall be inspected on foot at least once each month.

5. If track cars or other vehicles, including off-track vehicles, are used for twice-weekly inspections, they shall be operated at such speed as will insure adequate inspection but not in excess of five miles per hour at all railroad crossings, highway crossings and switches.

6. Inspection of track shall include particular attention to the detection of unsafe conditions resulting from bad alignment, improper cross level, faulty gauge, loose ties, broken or missing bolts, and broken rails and angle bars.

7. In all inspections of highway crossings, particular attention shall be given to the detection of unsafe conditions resulting from loose planking or obstructed flangeways.

8. In the monthly on-foot inspection of switches, particular attention shall be given to the detection of unsafe conditions resulting from open or defective switch points, loose or missing bolts in heel fillers on blocking, defective guard rails or frogs. Switches not in "Automatic Signal" or "Centralized Traffic Control" territory shall be operated at least once each month to insure that they are in proper working order.

9. Where twice-weekly inspections are required, such inspections shall not be made on consecutive days.

10. Except in case of emergency, when passenger trains are to be operated over tracks not subject to this regulation, such tracks shall be inspected within forty-eight hours prior to the operation of such trains.

11. When the track inspection reveals improper alignment, improper cross level, faulty gauge, loose ties, defective switch points, or any condition which, in the judgment of the individual inspecting the track, creates an unsafe track condition, he shall take immediate appropriate action for the safety of operations and report, in writing, to his superior officer the condition observed and the action taken.

§ 70. Rights and liabilities as common carriers. Every railroad corporation doing business in this state shall be a common carrier. Any one of two or more corporations owning or operating connecting roads, within this state, or partly within and partly without the state, shall be liable as a common carrier, for the transportation of passengers or delivery of freight received by it to be transported by it to any place on the line of a connecting road; and if it shall become liable to pay any sum by reason of neglect or misconduct of any other corporation it may collect the same of the corporation by reason of whose neglect or misconduct it became liable.

§ 71. Duties imposed. It shall be the duty of every railroad corporation operating its road by steam:

1. To lay, in the construction of new and in the renewal of existing switches, upon freight or passenger main line tracks, switches on the principle of either the so-called Tyler, Wharton, Lorenz, or split-point switch, or some other kind of safety switch, which shall prevent the derailment of a train, when such switch is misplaced or a switch interlocked with distant signals.

2. To erect and thereafter maintain such suitable warning signals at every road, bridge, or structure which crosses the railroad above the tracks, where such warning signals may be necessary, for the protection of employees on top of cars from injury.

3. To use upon every new freight car, built or purchased for use, couplers which can be coupled and uncoupled automatically, without the necessity of having a person guide the link, lift the pin by hand, or go between the ends of the cars.

4. To attach to every car used for passenger transportation an automatic air-brake or other form of safety-power brake, applied from the locomotive, excepting cars attached to freight trains, the schedule rate of speed of which does not exceed twenty miles an hour.

5. To provide each closed car in use in every passenger train owned or regularly used upon a railroad, with such tools as the commissioner of transportation may require, to be placed where directed by the commissioner.

6. To provide, in each passenger car, where the line of road shall exceed forty continuous miles in length, a suitable receptacle for water, with a cup or drinking utensil attached upon or near such receptacle, and to keep such receptacle, while the car is in use, constantly supplied with cool water.

Every corporation, person or persons, operating such railroad, and violating any of the provisions of this section, except subdivision six, shall be liable to a penalty of one hundred dollars for each offense, and the further penalty of ten dollars for each day that it shall omit or neglect to comply with any of such provisions. For every violation of the provisions of the sixth subdivision of this section every such corporation shall be liable to a penalty of twenty-five dollars for each offense.

§ 71-a. Reflective whistle signs. 1. It shall be the duty of every class one railroad operating in the state of New York to install a retro-reflective whistle sign at the approach to each rail highway grade crossing. Such whistle sign shall be sheeted with a retro-reflective material as specified by the commissioner of transportation.

2. Defacing, damaging or unauthorized removal of a reflective whistle sign is prohibited and each separate violation of the provisions of this section shall be punishable by a fine of not less than one hundred dollars nor more than five hundred dollars.

§ 72. Inspection of locomotives. It shall be the duty of every railroad corporation which operates a railroad not exceeding fifty miles in length by steam power or any other form of energy, within this state, and of any other corporation (except a railroad corporation), partnership or person owning or operating a locomotive or locomotives propelled by steam, or any other form of energy, which may at any time pass over or on the tracks of any railroad corporation within the state or over or on any track parallel to and immediately adjacent to any track of any railroad corporation within the state, and of the directors, managers or superintendents of such corporations, to cause thorough inspections to be made of the safety appliances, machinery, and all appurtenances thereto of all the locomotives which may be owned or operated by such corporations, partnerships or persons within this state. Such inspections shall be made at least every thirty days under the direction and superintendence of said corporations, partnerships or persons, by persons of suitable qualifications and attainments to perform the services required of inspectors of boilers and other locomotive equipment, and who from their knowledge of the construction and use of boilers and other locomotive equipment, and the appurtenances therewith connected, are able to form a reliable opinion of the strength, form, workmanship and suitableness of boilers and other locomotive equipment, to be employed without hazard of life, from imperfections in material, workmanship or arrangement of any part of such locomotive and appurtenances. All boilers used on such locomotives shall comply with the following requirements: The boilers must be made

of good and suitable materials; the openings for the passage of water and steam respectively, and all pipes and tubes exposed to heat shall be of proper dimensions; the safety valves, fusible plugs, water glasses, gauge cocks and steam gauges, shall be of such construction, condition and arrangement that the same may be safely employed in the active service of said corporations, partnerships or persons without peril to life; and each inspector shall satisfy himself by thorough examination that said requirements have been fully complied with. No boiler, nor any connection therewith, shall be approved which is unsafe in its form, or dangerous from defects, workmanship or other cause. The person or persons who shall make the said inspections if he or they approve of the boiler and other locomotive equipment and the appurtenances thereto throughout, shall make and subscribe his or their name to a certificate which may be a duplicate of the certificate required by the federal railroad administration and which shall contain the number of each locomotive and boiler inspected, the date of inspection, the condition of the boiler and other locomotive equipment inspected, and such other details as may be prescribed by the commissioner of transportation. Every certificate shall be verified by the oath of the inspector, and he shall cause such certificate to be filed in the office of the commissioner of transportation, every January and July, and also a copy thereof with the chief operating officer or employee of such corporation, partnership or person having charge of the operation of such locomotive; a copy shall also be placed by such officer or employee in a conspicuous place in the cab connected with such locomotive, and there displayed under a transparent cover. The commissioner of transportation shall have the power, from time to time, to formulate rules and regulations for the inspection and testing of locomotives as aforesaid, and may require the removal of incompetent inspectors of locomotives under the provisions of this section. If it shall be ascertained by such inspection and test or otherwise, that any locomotive is unsafe for use, the same shall not again be used until it shall be repaired, and made safe, so as to comply with the requirements of this section. Every such corporation, director, manager or superintendent, partnership or person violating any of the provisions of this section shall be liable to a penalty, to be paid to the people of the state of New York, of one hundred dollars for each offense, and the

further penalty of one hundred dollars for each day it or he shall omit or neglect to comply with said provisions, and the making or filing of a false certificate shall be a misdemeanor, and every inspector who wilfully certifies falsely with respect to any locomotive, or any appurtenance thereto belonging, or any matter or thing contained or required to be contained in any certificate, signed and sworn to by him, shall be guilty of a misdemeanor. The commissioner of transportation shall enforce the provisions of this section as to penalties.

§ 73. Inspectors of locomotives. Inspectors shall be appointed by the commissioner of transportation, who shall be familiar with the construction and operation of steam locomotives and their appurtenances, whose salaries shall be fixed by the commissioner of transportation. They shall, under the direction of the commissioner of transportation, inspect locomotives used by corporations operating steam railroads within the state, or locomotives owned or operated by corporations, partnerships or persons on or over any track adjacent to or parallel with any track of any railroad corporation within the state, and may cause the same to be tested by hydrostatic tests and shall perform such other duties in connection with the inspection and test of locomotives as the commissioner of transportation shall direct. But this section shall not relieve any corporation, partnership or person from the duties imposed by the preceding section.

§ 74. Care of steam locomotives; steam and water cocks; penalty. It shall be the duty of every corporation operating a steam railroad, within this state, and of its directors, managers or superintendents, to cause the boiler of every locomotive used on such railroad to be washed out as often as once every thirty days, and to equip each boiler with and maintain thereon at all times, a water glass, showing the height of water in the boiler, having two valves or shut-off cocks, one at each end of such glass, which valves or shut-off cocks shall be so constructed that they can be easily opened and closed by hand; also to cause such valves or shut-off cocks and all gauge cocks or try-cocks attached to the boiler to be removed and cleaned whenever the boiler is

washed out pursuant to the foregoing requirements of this section, also to keep all steam valves, cocks and joints, studs, bolts and seams in such repair that they will not at any time emit steam in front of the engineer, so as to obscure his vision. No locomotive shall hereafter be driven in this state unless the same is equipped and cared for in conformity with the provisions of this section; but nothing herein contained shall be construed to excuse the observance of any other requirement imposed by this chapter upon railroad corporations, their directors, officers, managers and superintendents. Every corporation, person or persons operating a steam railroad and violating any of the provisions of this section, shall be liable to a penalty of one hundred dollars for each offense, and the further penalty of ten dollars for each day that such violation shall continue. The commissioner of transportation shall enforce the provisions of this section.

§ 75. commissioner of transportation may approve other safeguards.

The commissioner of transportation may, on the application of any railroad corporation, authorize it to use any other safeguard or device approved by the commissioner of transportation, in place of any safeguard or device hereinbefore required by this article, which shall thereafter be used in lieu thereof, and the same penalties for neglect or refusal to use the same shall be incurred and imposed as for a failure to use the safeguard or device hereinbefore required, in lieu of which the same is to be used.

§ 76. Use of stoves or furnaces prohibited; exceptions. It shall not be lawful for any railroad corporation operating a steam railroad in this state of the length of fifty miles or more, excepting foreign railroad corporations incorporated without the jurisdiction of the United States running cars upon tracks in this state for a distance of less than thirty miles, to heat its passenger cars on other than mixed trains, excepting dining cars, by any stove or furnace kept inside the car or suspended therefrom, unless in case of accident or other emergency, when it may temporarily use such stove or furnace with necessary fuel; and in cars which have been equipped with apparatus to

heat by steam, hot water or hot air from the locomotive or from a special car, the present stove may be retained to be used only when the car is standing still; and no stove or furnace shall be used in a dining car except for cooking purposes, and of pattern and kind to be approved by the commissioner of transportation; provided that passenger cars propelled by means of gasoline or oil engines may be heated in a manner to be approved by the commissioner of transportation. This section shall not be held to affect or interfere with the use by public authorities of this or other states, or of the United States, of stoves for heating or cooking or boilers for hatching operations in their fish car or cars. Any person or corporation violating any of the provisions of this section shall be liable to a penalty of one thousand dollars, and to the further penalty of one hundred dollars for each and every day during which such violation shall continue.

§ 76-a. Motor cars and equipment. 1. It shall be unlawful for any owner or operator of railroad running through or within the boundaries of the state of New York, and engaged in the business of common carrier to operate for or transport its employees in a motor car which is not equipped with a reasonably substantial top for the protection of said employees from rain, snow, sleet, and hail and also equipped with a transparent windshield sufficient in width and height to reasonably protect said employees, and it shall be constructed of safety glass and such car shall also be equipped with an attached electric headlamp of sufficient candlepower as to render it visible at a distance of three hundred feet in advance of such car under ordinary atmospheric conditions, any obstruction, landmark, warning sign or grade crossing along such railroad right of way and said car shall also be equipped with two electric lights on the rear thereof of sufficient candlepower as to be visible at a distance of three hundred feet under ordinary atmospheric conditions, and the car shall also be equipped with an automatic operated windshield wiper so devised that the driver of said car can start or stop said windshield wiper while he is driving the car.

2. Any violation of the provisions of this act shall be punishable by a fine of not less than twenty-five dollars, nor more than one hundred

dollars for each offense, and each day or part of a day a car is operated or furnished not so equipped as provided in subdivision one hereof, shall constitute a separate offense; provided, however, that any common carrier that has not been able to equip its rail track motor cars as required by the provisions of subdivision one, on or before the effective date of this act can, by applying to the commissioner of transportation which is hereby authorized to, and upon good cause shown, grant by order, additional time to any owner or operator of a common carrier by railroad, in which to equip such cars, not to exceed one year from the effective date of this section and, when such an order has been granted by said commissioner of transportation to such carrier, the provisions of this act penalizing rail carriers who do not so equip their cars shall not be applicable to those carriers securing such an order for such additional time in which to so equip their cars during the period granted to them only by order of the commissioner of transportation.

§ 76-b. Equipment required on motor vehicles transporting railroad employees; penalty. 1. Every motor vehicle provided by the owner or operator railroad and used to transport employees shall be equipped with adequate seating facilities, heating facilities and facilities for communication between occupants of the front seat of the vehicle and the occupants in the rear compartment of the vehicle. This requirement shall not apply to motor vehicles used to transport employees at distances of less than five miles from their regular assembly point nor in cases of extreme emergency.

2. If any dispute arises as to the adequacy of the facilities provided for in this section, it shall be submitted to the commissioner of transportation for a fair hearing. Notice of the hearing may be given by mailing the notice of hearing to the owner or operator railroad. Attendance of witnesses may be compelled by subpoena. If the commissioner finds that a violation of this section has occurred, he may forward his findings and recommendations to the commissioner of motor vehicles.

§ 77. Equipment of engines. It shall be unlawful for any railroad company to use within the state on its line or lines any locomotive engine not equipped with a power driving wheel brake and appliances for operating the train brake system, or to use any locomotive engine operated by steam not equipped with a mechanically operated door to the fire box of such locomotive engine, or to use any locomotive engine not equipped with a vestibuled cab. Such mechanically operated door shall be so constructed and operated by steam, compressed air, electricity or other means, and such vestibuled cab shall be so constructed as deemed best and most efficient by the officers of such railroad. The device for operating such door shall be so constructed that it may be operated by the fireman on said engine by means of a push button or other appliance located in or near the floor of the deck or floor of the tender at a suitable distance from such door to enable the fireman while firing such engine, by pressure with his foot to open such door for the firing of such engine, and such vestibuled cabs shall be so constructed as to attach to the sides of, and enclose all openings between the engine cab and the water tank or coal tender attached to such engine; provided, however, that nothing in this section shall be construed to inhibit the passage of a locomotive engine not so equipped with such mechanically operated door or vestibuled cab, moving under its own steam either with or without a train, when such movement is from a point without this state through and to a point beyond its borders, or from a point without this state to a point within it, or from a point within this state to a point without it if such passage is for the purpose of moving it to or from a repair shop or shops for the purpose of repairing such locomotive engine, and when it is not intended for service within this state.

§ 77-a. First-aid equipment on locomotives. It shall be unlawful to operate a locomotive outside the designated yard limits of any railroad in the state of New York unless said locomotive shall be equipped with a first-aid kit containing necessary emergency medical equipment and supplies.

Said kit shall include as minimum supplies:

1 roll of 1-inch wide gauze bandage -- minimum of 10 yards.

1 roll of 1-inch wide adhesive tape -- minimum of 5 yards.

1 package of absorbent gauze compresses, at least 3 inches by 3 inches -- minimum of 6 in number.

At least 12 -- 1-inch individual sanitary band aids.

Bottle of iodine or mercurochrome or tincture of methyolate, or an equivalent antiseptic, minimum of 1 ounce bottle.

Minimum of 2 ounce bottle of smelling salts or six ampoules of spirits of ammonia.

Minimum of 3 ounce bottle of a standard eye wash preparation, with necessary eye wash glass.

Jar or tube of white petroleum jelly or unguentine for burns.

All above material shall be packed in a suitable metal box or container and be sealed.

Items, as used, should be replaced within twenty-four hours by properly designated railroad personnel and such kit resealed for future use. It shall be unlawful to remove or use any such first-aid kit, or any supplies contained in any such kit, for other than first-aid purposes. Violation of said provisions shall be punishable by a fine of not more than twenty-five dollars.

§ 77-b. Speedometers on certain locomotives. (a) No railroad locomotive may be operated in excess of thirty miles per hour within the state without a speedometer functioning correctly within four miles per hour.

(b) A railroad shall be deemed to be in compliance with the above

provisions if within one year after the first day of October next succeeding the date on which this statute shall have become a law, it shall have at least one-third of its locomotives equipped with a speedometer as hereinabove provided; and if within the following year an additional one-third of said locomotives shall be so equipped and the remainder of said locomotives so operated by a railroad shall be in compliance with the provisions of this statute within one year thereafter.

(c) Locomotives operated or used exclusively in switching or transfer service and multiple unit cars shall be exempted from the above provisions.

(d) Each such railroad shall notify the department of transportation of the state of New York the date that each such locomotive shall be in compliance with the provisions of this statute, stating the serial number or other identification of each such locomotive.

(e) Each railroad affected or covered by the provisions of this statute shall maintain at a designated location in this state a list or schedule of the locomotives hereinabove referred to, setting forth, among other information, the date that the speedometer hereinbefore referred to shall have been calibrated and functioning in accordance with the provisions of this statute.

(f) The commissioner of transportation of the state of New York shall enforce the provisions of this statute and may issue such order or orders as may be proper to require compliance with the provisions of this statute.

§ 77-c. Sanitary conditions. 1. It shall be the duty of every railroad corporation which operates a railroad within the state and whose annual revenue derived exclusively from freight operations is ten million dollars or more after applying the railroad revenue deflator formula set forth in title 49 CFR, part 1201, subpart A, section 1-1, to: (a) provide each locomotive used on such railroad for transportation or occupancy by railroad crew with potable drinking water; (b) maintain the toilet facilities provided on locomotives, so equipped, or cabooses, in those instances in which cabooses are used, in a working and sanitary condition; and (c) ensure that such toilet facility provides privacy to

the person using such facility.

2. For purposes of this section, the phrase "sanitary conditions" shall mean a condition of good order and cleanliness.

3. The commissioner of transportation shall enforce the provisions of this section and may issue such order or orders as may be necessary to ensure compliance with such provisions.

4. Notice of violation of the provisions of this section shall be made in verified written complaint by a recognized railroad labor representative to the railroad superintendent of the division involved, and a copy filed with the department of transportation. Upon receipt of the complaint, the superintendent of the division shall advise the complainant and the department of transportation within five days as to the specific remedies taken or intended to be taken to resolve the complaint. If the superintendent disputes the allegations contained in the complaint, he, within five days of receipt, shall so notify the complainant and the department of transportation. The department of transportation shall be allowed a period of fifteen days to determine the validity of the complaint.

5. If the department finds that the complaint is meritorious, the department shall issue an appropriate order to the railroad specifying the conditions to be rectified and the time period in which such action shall be taken. If the railroad does not comply with the department's order, the commissioner of transportation shall be empowered to fine the railroad the sum of one hundred dollars for each day the violation exists.

§ 78. Coal jimmies and caboose cars. The use of cars known and designated as "coal jimmies" in any form and the use of any car as a caboose unless it shall have a suitable and safe platform at each end thereof, and the usual railing for the protection of persons using such platform, shall be unlawful within the state, except upon any railroad whose main line is less than fifteen miles in length and whose average

grade exceeds two hundred feet to the mile. This section shall not be construed to authorize the interchange of such "coal jimmies" with, and the use thereof upon, railroads of more than fifteen miles in length or whose average grade is less than two hundred feet to the mile.

From and after the first day of July, nineteen hundred and twenty-four it shall be unlawful for any corporation or individual to man, equip, or to use within the state on any railroad a caboose car, or car to serve the purpose of a caboose car, which shall be less than twenty-four feet in length exclusive of the platform, or which shall have a center constructive strength less than that of the fifty-ton freight cars built according to master car builders' standards. Such caboose or other equivalent car shall be constructed with steel center sills with two four-wheeled trucks; with each platform not less than twenty-four inches wide, with proper guard rails, grab irons and steps, which shall be equipped with a suitable rod, board or other guard designed to prevent slipping from the car step. Each such car shall have a door at each end and shall be equipped with four separate sleeping berths not less than six feet and two inches in length. Each such car shall contain a properly furnished toilet room, sink, icebox, water cooler, clothing lockers, fire extinguishers, and with either a cupola of sufficient size to accommodate at least two men or bay windows. Each such car on every freight train shall be equipped with electric markers of sufficient candle power to be visible for a distance of three thousand feet under normal weather conditions. Flashing type or constant burning markers shall be deemed a sufficient compliance with the foregoing requirement. The glass in all windows and doors of each such car shall be shatterproof. Whenever any caboose or other car used for like purpose now in use by any such railroad company shall, after this act goes into effect, be brought into any shop for general repairs it shall be unlawful to again put the same into use within this state, as a caboose or other car used for like purpose unless it be equipped as provided in this act. All cabooses built after January first, nineteen hundred sixty-five must be of steel construction and equipped with electric lights.

This section shall not apply to cabooses or other equivalent cars used

in the switching service or on trains operated wholly within twenty-five miles of yard limits.

Any violation of the provisions of this section shall be a misdemeanor, punishable by a fine of not less than one hundred dollars nor more than five hundred dollars for each separate offense. This penalty is in addition to that provided for in section eighty-one of this chapter.

§ 78-a. Electric or battery-powered markers. 1. Any railroad using a passenger, mail, work, or wreck train shall equip the last car of each such train with electric markers of sufficient candle power to be visible for a distance of three thousand feet under normal weather conditions. Battery-powered, flashing-type, or constant burning markers shall be deemed sufficient compliance with the foregoing requirement.

2. If, in any particular case, exemption from any of the requirements herein is deemed necessary by the railroad concerned, the commissioner of transportation may grant the application of such railroad, for such exemption when accompanied by a petition setting forth the conditions existing and the reason why such exemption is asked. Any exemption so granted shall be limited to the particular case covered by the petition.

§ 79. Air-brakes. It shall be unlawful for any railroad or other company to haul or permit to be hauled or used on its line or lines within this state any freight train that has not a sufficient number of cars in it so equipped with continuous power or air-brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose.

§ 80. Couplers. It shall be unlawful for any railroad or other company to haul, or permit to be hauled or used, on its line or lines within the state, any freight car not equipped with couplers of the master car

builders' type, and coupling automatically by impact, and which can be uncoupled, except in cases of accident, without the necessity of men going between the ends of the cars.

§ 81. Violation of sections seventy-seven, seventy-seven-c, seventy-eight, 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, 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.

§ 82. Canada thistles to be cut. Every railroad corporation doing business within this state, shall cause all Canada thistles, white and yellow daisies and other noxious weeds growing on any lands owned or occupied by it, to be cut down twice in each and every year, once between the fifteenth day of June and the twenty-fifth day of June and once between the fifteenth day of August and the twenty-fifth day of August. If any such corporation shall neglect to cause the same to be so cut down, any person may cut the same, between the twenty-fifth day of June and the fifth day of July inclusive, and between the twenty-fifth day of August and the fifth day of September inclusive in each year, at the expense of the corporation on whose lands the same shall be so cut, at the rate of five dollars per day for the time occupied in cutting.

§ 83. Riding on platform; walking along track. No railroad corporation shall be liable for any injury to any passenger while on the platform of a car, or in any baggage, wood or freight car, in violation of the printed regulations of the corporation, posted up at the time in a conspicuous place inside of the passenger cars, then in the train, if there shall be at the time sufficient room for the proper accommodation

of the passenger inside such passenger cars. No person other than those connected with or employed upon the railroad shall walk upon or along its track or tracks, except where the same shall be laid across or along streets or highways, in which case he shall not walk upon the track unless necessary to cross the same. Any person riding, leading or driving any horse or other animal upon any railroad, or within the fences and guards thereof, other than at a farm or street or forest crossing, without the consent of the corporation, shall forfeit to the people of the state the sum of ten dollars, and pay all damages sustained thereby to the party aggrieved.

§ 83-a. Operation of motor vehicles, snowmobiles, recreational vehicles, and riding of animals on railroad property. Except in the case of a railroad employee, contractor of the railroad corporation or public official acting in the performance of his or her duties, no person shall knowingly operate a motor vehicle, snowmobile, or other recreational vehicle, including all terrain vehicles and motorcycles, or ride, lead or drive any horse or other animal upon abandoned railroad property which is posted to prohibit the operation of any such vehicles or animals thereupon, or upon or along the track or tracks of an operating railroad or within the fences or guards thereof, except across or along streets or highways or at farm or forest crossings where necessary to cross such tracks or property. A violation of the provisions of this section shall constitute a violation punishable by a fine of not less than one hundred dollars nor more than two hundred fifty dollars. Conviction for a second or subsequent violation of the provisions of this section shall be punishable by a fine of not less than two hundred fifty nor more than five hundred dollars.

§ 83-b. Trespass upon railroad premises. 1. Any city with a population of one million or more and the counties of Monroe, Nassau, and Suffolk are authorized and empowered to adopt or amend a local law or ordinance designating any portion or portions of property consisting of a right-of-way or yard of a railroad or rapid transit railroad as a no-trespass railroad zone and providing for the conspicuous posting

thereof for purposes of establishing criminal liability for trespass upon such property pursuant to subdivision (g) of section 140.10 of the penal law.

2. The provisions of sections eighty-three and eighty-three-a of this article shall not be construed to prohibit or limit the prosecution of any person for a violation of the provisions of subdivision (g) of section 140.10 of the penal law.

§ 84. Corporations may establish ferries. Any steam railroad corporation, incorporated under the laws of this state, with a terminus in the harbor of New York, may purchase or lease boats propelled by steam or otherwise, and operate the same as a ferry or otherwise, over the waters of the harbor of New York, but this section shall not be construed to affect the rights of the city of New York.

§ 85. Certain railroads may cease operation in winter. The directors of any railroad corporation operating a railroad, constructed and used principally for transporting lumber or ores, during the summer months, or for summer travel, may, by a resolution duly passed at a meeting thereof, apply to the commissioner of transportation for permission to cease the operation of their road during the winter season, for a period not exceeding seven months in any one year, specifying the date of such suspension, and the date of the reopening thereof, and such commissioner of transportation may, in his discretion, make an order granting the application wholly or in part, and thereupon such railroad corporation shall be relieved of the duty of operating its road during the period specified in the order. A copy of such order shall be posted in all depots and at the termini of such railroad, and published in every newspaper in each town in any part of which such road shall be constructed at least four weeks prior to the date of such suspension.

§ 86. Certain railroads need not be operated beyond June, July, August and September. Subject to the permission and approval of the

commissioner of transportation, any corporation, whose railroad is or shall be not longer than sixteen miles and is or shall be in large part intended for or used in summer travel for the convenience of summer sojourners need not operate its road beyond the months of June, July, August and September, inclusive. The motive power may be electricity. If the road be not longer than ten miles, such corporation may fix and collect fare for transporting each passenger, together with ordinary baggage, if any, not to exceed fifteen cents for each mile and fraction thereof.

§ 87. Mails. Any railroad corporation shall, when applied to by the postmaster-general, convey the mails of the United States on its road, and in case such corporation and the postmaster-general shall not agree as to the rate of transportation therefor, and as to the time, rate of speed, manner and condition of carrying the same, the commissioner of transportation shall fix the prices, terms and conditions therefor, after giving the corporation reasonable opportunity to be heard. Such price shall not be less for carrying such mails in the regular passenger trains than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains, and a fair compensation for the post-office car. If the postmaster-general shall require the mail to be carried at other hours, or at higher speed than the passenger trains are run, the corporation shall furnish an extra train for the mail, and be allowed an extra compensation for the expenses and wear and tear thereof, and for the service to be fixed as herein provided.

Every railroad corporation refusing or neglecting to comply with any provision of this section shall forfeit to the people of the state one hundred dollars for every day such neglect or refusal continues.

§ 88. When railroads may designate police officers. 1. Upon the application of any corporation owning or operating a railroad, express company operating over a railroad, or of any steamboat company, the superintendent of state police may appoint any person as a police

officer, with all the powers of a police officer in cities and villages, for the preservation of order and of the public peace, and the arrest of all persons committing offenses upon the land of or upon property in the custody of or under the control of such corporation, express company or steamboat company.

2. Such application shall be in writing, specifying the name, age, and address of each person for whom an appointment is sought.

3. The corporation, express company or steamboat company making any such application shall cause the fingerprints of each proposed appointee to be taken in the form and manner prescribed by the division of criminal justice services and one set of such fingerprints shall be forwarded to the division of criminal justice services, and one set to the federal bureau of investigation. Such fingerprints shall be searched by each agency against the fingerprint records in its files and be retained in the files of such agencies.

4. Reports of the results of such searches shall be reviewed by the superintendent of state police prior to granting an appointment to determine whether a proposed appointee is thereby shown to have been convicted of a crime in the state of New York or of any offense in any other place which if committed in the state of New York would have been a crime and no person who is determined by such review to have been so convicted shall receive an appointment under this section.

5. The corporation, express company or steamboat company making application shall also cause an investigation to be conducted in a manner satisfactory to the superintendent of state police of the character, qualifications and fitness of each proposed appointee and shall transmit to the superintendent of state police a report of the results of such investigation which shall be reviewed by the superintendent of state police and no person whom such investigation shows to be other than of good moral character shall receive an appointment under this section.

6. No person shall be granted an appointment as a police officer under

this section unless and until the corporation, express company or steamboat company making application shall certify to the superintendent of state police that the proposed appointee has had the minimum police training required for local police officers by the municipal police training council of the office of local government, executive department, state of New York, or such equivalent training as may be specifically approved by the executive director of the municipal police training council or if the proposed appointee has not had such minimum training that he will receive the same within twelve months from the date of any appointment granted under this section.

7. No person shall be granted an appointment as a police officer under this section unless and until the corporation, express company or steamboat company making application shall certify to the superintendent of state police that the proposed appointee has had adequate firearms training or that before he is issued and/or is permitted to carry firearms and within six months from the date of any appointment made under this section, he will receive such training.

8. If any person who has not received the minimum police and/or firearms training described in subdivisions six and seven of this section shall be appointed a police officer under this section, the corporation, express company or steamboat company which made application for his or her employment shall furnish the superintendent of state police, within six months of the date of appointment, a certificate issued by an approved municipal police council training school or its equivalent as previously described in this section, certifying the successful completion by the appointee of the minimum training required and/or shall certify to the superintendent of state police within six months of the date of appointment that the appointee has received adequate training in the use of firearms and in the event such certificate and/or such certification are not furnished the superintendent of state police within the time prescribed herein, he or she shall revoke the appointment.

9. The superintendent of state police shall file the certificate of appointment of any such person in the office of the department of state,

and shall forthwith notify the person appointed, by mail, at the address specified in the application that the certificate has been so filed. Each such person shall, within fifteen days after such certificate shall have been filed, and before entering upon the duties of his office, take and subscribe the constitutional oath of office, and file it in the office of the department of state. The home address of the person appointed shall appear in the certificate of appointment, and whenever such address is changed the corporation, express company or steamboat company employing the person appointed shall file with the superintendent of state police a statement of the new address.

10. No person shall be appointed who is not an American citizen, and who has not, prior to the time of the filing of the application, filed in the office of the department of state his or her written consent to his or her appointment as such police officer.

11. No conductor, brakeman, fireman, engineer or other person actively engaged in the operation and movement of any train or car or set of cars shall be eligible for appointment as a police officer.

12. Each person designated to act as such police officer shall receive a license from the secretary of state and shall not be permitted to enter upon his or her duties as such police officer until he or she has actually received such license.

13. Every such police officer shall when on duty wear a metallic shield with the words "railroad police" or "steamboat police" or "express police" as the case may be and the name of the corporation, express company or steamboat company for which appointed inscribed thereon, which shall always be worn in plain view, except when employed as a detective.

14. A person appointed police officer under this section shall not, while the appointment is in force, be employed by or perform any service for the corporation, express company, or steamboat company, in any other capacity than that of police officer and he or she shall not be permitted to exercise the duties or functions of a police officer except

upon the property or in connection with the property connected with or under the control of the corporation, express company, or steamboat company, for which he or she has been appointed.

15. The compensation of every such police officer shall be such as may be agreed upon between him or her and the corporation, express company, or steamboat company, for which he or she is appointed and shall be paid by the corporation, express company, or steamboat company.

16. When any such corporation, express company, or steamboat company, shall no longer require the services of any police officer appointed under this section it shall file notice to that effect in the office of the department of state, and thereupon such appointment shall cease and be at an end.

17. The superintendent of state police may also at pleasure revoke or suspend the appointment of any such police officer by filing a notice of suspension or revocation thereof in the office of the department of state and mailing a notice of such filing to the corporation, express company or steamboat company for which he or she was appointed, and also to the person whose appointment is suspended or revoked, at his or her last home address as the same appears in the certificate of appointment or the latest statement thereof on file. An appointment suspended by the superintendent may be restored by him or her upon the filing of a restoration notice to the department of state, the person suspended, and his or her employer.

18. If such person thereafter, knowing of such revocation or having in any manner received notice thereof, exercises or attempts to exercise any of the powers of a police officer, under this section, he or she shall be guilty of a misdemeanor; and the filing and mailing of such notice, as above provided, shall be presumptive evidence that such person knew of the revocation.

§ 89. New railroads across streets. 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 application is made to the commissioner of transportation under section nine of this chapter 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. Whenever 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 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 determine that 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.

If the commissioner of transportation shall determine that any such railroad shall be carried across a street, avenue, highway or road below the grade thereof, said commissioner of transportation 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. If the commissioner of transportation shall determine that such railroad shall be constructed above the grade of such street, avenue, highway or road, said commissioner of transportation 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. If the commissioner of transportation shall determine that it is impracticable to construct such railroad below or above the grade of

such street, avenue, highway or road, said commissioner 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.

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.

§ 90. New streets across railroads. 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. 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 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. If the commissioner of transportation shall determine 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 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. If the commissioner of transportation shall determine 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 shall determine the manner and method in which the same shall be so carried under, and the length, character and grades of the approaches. If the commissioner of transportation shall determine 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 shall determine the manner and method in which the same shall be carried across such railroad at grade and what safeguards shall be maintained. 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. 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.

§ 91. Alteration or rehabilitation of existing crossing. 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. 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. 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. 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. 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.

§ 92. Acquisition of land, right or easement in crossing. The commissioner of transportation may acquire in the same manner that property and rights therein are acquired for state highway purposes pursuant to the highway law, or may direct the municipal corporation having jurisdiction over the street, avenue, highway or road and in which the crossing is located, to acquire any lands, rights or easements necessary or required for the purpose of carrying out the provisions of sections ninety and ninety-one. In the event that such municipal corporation is directed to acquire such lands, rights or easements, it shall do so by purchase, with the approval of the railroad corporation

and the commissioner of transportation, but if unable to do so shall acquire such lands, rights or easements pursuant to the eminent domain procedure law, under the charter of or other special act applicable to such municipal corporation or, in the case of a county to which no special act is applicable, of sections one hundred eighteen to one hundred twenty-four, inclusive, of the highway law. The railroad shall have notice of any such proceedings and the right to be heard therein.

The owner or owners of any claim for the value of property acquired pursuant to the highway law, where a claim has been filed with the court of claims, shall cause a copy of such claim to be served upon the municipal corporation and the railroad corporation and such municipal corporation and railroad corporation shall have the right to be heard before said court. No adjustment of claim pursuant to such law shall be effective without the approval of the municipal corporation and the railroad corporation. The cost of lands, rights or easements acquired for the purposes of this section shall be considered a part of the cost of the project and shall be apportioned in the manner provided in section ninety-four.

After acceptance of the completed work, the railroad corporation shall make an application to the commissioner of transportation for conveyance to it of any lands, rights or easements, acquired by said commissioner as aforesaid, and/or any other lands, rights or easements owned by the state which lands, rights or easements are under the jurisdiction of said commissioner and which are used to accomplish the purposes of this section, necessary for the proper operation and maintenance of the railroad. If it shall appear to the commissioner of transportation that such application is reasonable and the lands, rights or easements are necessary for the proper operation and maintenance of such railroad and such lands, rights or easements are not necessary for highway, road or street purposes, said commissioner shall grant and convey such lands, rights or easements to such railroad corporation upon such terms and conditions as he may prescribe. The commissioner of transportation shall direct the municipal corporation to convey and the municipal corporation shall convey to the railroad corporation such lands, rights or easements necessary for the proper operation and maintenance of the railroad which

the municipal corporation has acquired for purposes of this section. Lands, rights or easements which the commissioner of transportation has acquired for construction of a project pursuant to this section, other than those necessary for the operation and maintenance of the railroad, shall be conveyed by said commissioner to the municipality having jurisdiction over the street, avenue, highway or road on which the crossing is located. The commissioner of transportation in determining the shares of the respective parties in the cost of the project shall take into consideration the value of all lands, rights or easements conveyed hereunder.

§ 93. Repair of bridges and subways at crossings. When a highway crosses a railroad by an overhead bridge, the framework of the bridge and its abutments shall be maintained and kept in repair by the railroad corporation, and the roadway thereover and the approaches thereto shall be maintained and kept in repair by the municipality having jurisdiction over and in which the same are situated unless such municipality shall be a village of less than twelve hundred inhabitants, in which case the town board of the town in which such village, roadway and approaches are situated may, by resolution, vote to maintain and repair the same at the expense of such town, notwithstanding any provision of law limiting or providing the amount which such town board may levy and collect for such purposes without the vote of a town meeting, but the property within such village shall be subject to the levy and collection of the tax imposed for such maintenance and repair; except that in the case of an overhead bridge constructed prior to the first day of July, eighteen hundred and ninety-seven, the roadway over and the approaches to which the railroad corporation was under obligation to maintain and repair, such obligation shall continue, provided the railroad corporation shall have at least ten days' notice of any defect in the roadway thereover and the approaches thereto, which notice must be given in writing by the town superintendent of highways or other duly constituted authority, and the railroad corporation shall not be liable by reason of any such defect unless it shall have failed to make repairs within ten days after the service of such notice upon it. When a highway passes under a railroad, the bridge and its abutments shall be maintained and kept in

repair by the railroad corporation, and the subway and its approaches shall be maintained and kept in repair by the municipality having jurisdiction over and in which the same are situated, unless such municipality shall be a village of less than twelve hundred inhabitants, in which case the town board of the town in which such village, subway and approaches are situated, may, by resolution, vote to maintain and repair the same at the expense of such town, notwithstanding any provision of law limiting or providing the amount which such town board may levy and collect for such purposes without the vote of a town meeting, but the property within such village shall be subject to the levy and collection of the tax imposed for such maintenance and repair. Where the roadway over a railroad, or the subway underneath the same, or the approaches thereto have been improved by the state as a part of a state or county highway, such roadway or subway, or approaches only, as have been so improved shall thereafter be maintained and kept in repair by the commissioner of transportation in the manner provided in the highway law for the maintenance and repair of state and county highways.

When the roadway over or subway under a railroad and the approaches thereto, for the maintenance of which a town or village is liable, shall have been taken over for improvement by a county as a part of a county road, such roadway or subway or approaches, for so long as the county shall remain liable for the maintenance of such county road, shall be maintained and kept in repair by the county superintendent of such county as a part of such county road in the manner provided in the highway law for the maintenance and repair of county roads, and out of any funds provided for that purpose, but to the extent only to which the town or village was liable under the provisions of the railroad law.

For the purposes of this section, railroad and railroad corporation shall include the national railroad passenger corporation created pursuant to subchapter II of chapter fourteen, forty-five United States code (Amtrak) and the consolidated rail corporation created pursuant to subchapter III of chapter sixteen, forty-five United States code (Conrail).

§ 93-a. Maintenance and removal of highway-railroad crossing at grade.

The responsibility of a railroad corporation to maintain and keep in repair highway-railroad crossings at grade as provided by law shall not terminate upon the abandonment of the railroad or a portion thereof, but such responsibility with respect to state highways shall continue, unless otherwise agreed upon by the railroad corporation and the state, and with respect to highways other than state highways, shall continue unless otherwise agreed upon by the governing body, or its designee, of the municipality having jurisdiction over the highway. Such responsibility shall continue until the crossing at grade has been removed and the highway pavement restored by the railroad corporation and/or pursuant to agreement with the railroad corporation by the state or municipality having jurisdiction over the highway, to such usable condition as the commissioner or the municipality having jurisdiction over the highway, respectively, shall deem reasonable. Such responsibility to maintain and remove may be transferred with the approval of the commissioner, and shall thereafter pass to the transferee of the railroad corporation or successor in interest to the abandoned railroad right-of-way. If such approval is not obtained, the responsibility for maintenance and removal shall continue with the railroad. Upon failure to remove abandoned railroad facilities at a highway-railroad crossing at grade within one year after the date of the abandonment by the railroad corporation, the municipality having jurisdiction over the highway may petition the commissioner for an order to compel removal. The commissioner upon receipt of such a petition, or on its own motion with respect to state highways, shall serve notice upon the party responsible for the removal of the highway-railroad crossing at grade that a hearing, at a specified date, will be held to determine whether the highway-railroad crossing at grade should be removed. After conclusion of such hearings, the commissioner shall, by order, determine whether it is in the public interest to require removal of the crossing at grade. If the commissioner determines that the crossing at grade should be removed, the order shall direct such removal and describe the manner of removal and the party responsible for such removal and may establish a penalty for non-compliance with such order at a sum equalling the actual cost, considering salvage, of such removal to be paid to the state with respect to state highways or to the

municipality having jurisdiction over the highway with respect to highways other than state highways. Any funds so paid shall be utilized to effect such removal. Any person aggrieved by such decision, and who was a party to said proceeding, may within sixty days after the service of such decision appeal therefrom to the appellate division of the supreme court in the department in which such crossing is located, 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.

§ 93-b. Maintenance and removal of highway-railroad separation structures. The responsibility of a railroad corporation to maintain and keep in repair highway-railroad separation structures as provided by law shall not terminate upon the abandonment of the railroad or a portion thereof, but such responsibility, with respect to state highways, shall continue unless otherwise agreed upon by the railroad corporation and the state, and shall continue with respect to highways other than state highways unless otherwise agreed upon by the governing body or its designee, of the municipality having jurisdiction over the highway, until the separation structure is removed as hereinafter provided. When a structure remains which separates a highway and an abandoned railroad, the railroad, or the transferee of the abandoned railroad right-of-way when the transfer of such responsibility has been approved by the commissioner, and the state, or the municipal corporation having jurisdiction over the highway, may mutually agree as to their allocations of the expenses of removal of the structures and its supports and restoration of the highway. If such approval is not obtained, the responsibility for maintenance and removal continue with the railroad. In the event that the interested parties are unable to agree as to the necessity to remove a grade separation structure, the manner of removal or the division of cost or the division of performance of the removal work within one year after the date of the abandonment by the railroad corporation, either such railroad or such transferee of the railroad rights-of-way or the municipality having jurisdiction over the highway may petition the commissioner to hold a hearing in order to consider such matter. The commissioner upon receipt of such a petition, or on his own motion with respect to state highways, shall designate a

time and place for a hearing to consider the matter. After such a hearing has been held, the commissioner shall determine by order whether it is in the public interest to require either removal of or the retention of the structure and its supports, in whole or in part, and shall direct the manner of accomplishing any such removal and the manner that the cost and expenses of any such removal or the performance of any such removal work shall be divided. The division of cost to the railroad or transferee shall be limited to the cost of structure removal only, including superstructure and substructure elements. Material so removed shall become the property of the railroad, or the value gained from the salvage disposition of such material shall be returned to the railroad. The cost of any embankment removal or placement, or highway restoration, shall be borne by the state, or the municipal corporation having jurisdiction over the highway. The decision of the commissioner rendered in any proceeding under this section shall be communicated after final hearing, to the petitioner, the railroad corporation or transferee, the municipal corporation and all other parties who appeared at said hearing by counsel or in person. Any person aggrieved by such decision, and who was a party to said proceeding, may within sixty days after the service of such decision appeal therefrom to the appellate division of the supreme court in the department in which such separation structure is located, 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.

§ 94. Performance of work; division of expenses; accounting; claims for damages; valuation. 1. Whenever under section eighty-nine a new railroad is constructed across an existing highway, the expense of crossing above or below the grade of the highway including any expense incurred in altering or changing the highway under a determination of the commissioner of transportation shall be paid entirely by the railroad corporation.

2. Whenever under section ninety a new street, avenue, highway or road or new portion or additional lane of a street, avenue, highway or road is constructed across an existing railroad, the railroad corporation

shall pay one-half and the municipal corporation having jurisdiction over such street, avenue, highway, or road or new portion or additional lane of a street, avenue, highway or road shall pay the remaining one-half. However, where such new street, avenue, highway or road or new portion or additional lane of a street, avenue, highway or road crosses a navigable stream or water adjacent to or near an existing railroad, which crossing of such navigable stream or water by a bridge or tunnel necessarily increases the height above or the depth below the crossing of such railroad or the length of the approaches to such bridge or tunnel, the railroad corporation shall pay such part or portion of the expense of making such crossing above or below the grade of the railroad as may be agreed to between the railroad corporation and the municipal corporation having jurisdiction over such street, avenue, highway or road or new portion or additional lane of a street, avenue, highway or road, and such municipal corporation shall bear and pay the remaining part of such expense. In case of the failure or inability of the railroad corporation and the municipal corporation to agree upon the part or portion of such expense to be paid by the railroad corporation, the railroad corporation shall pay such part or portion of the expense of making such crossing above or below the grade of the railroad as the commissioner of transportation shall, after a hearing on at least ten days' notice to the railroad corporation, fix and determine, which shall be one-half of the cost as estimated of a bridge or structure and its approaches that would be required if such navigable stream or water did not so intervene as to affect the height or depth of such bridge or structure or the length of the approaches thereto to carry such street, avenue, highway or road or new portion or additional lane of such street, avenue, highway or road across such railroad, and the municipal corporation shall bear and pay the remaining part of such expense.

3. Whenever a change is made to an existing crossing other than a change made to an existing structure in accordance with the provisions of section ninety-one, fifty per centum of the expense thereof shall be borne by the railroad corporation and twenty-five per centum by the municipal corporation and twenty-five per centum by the state; except that whenever an existing crossing other than an existing structure in which a change is made under section ninety-one, is located wholly or

partly within an incorporated village having not to exceed twelve hundred inhabitants, the portion of expense herein required to be borne by the municipal corporation shall be borne by the town or towns in which such crossing is situated. The expense of every change made in an existing structure in accordance with and ordered pursuant to the provisions of section ninety-one shall be borne eighty-five per centum by the state, and fifteen per centum by the municipal corporation. Provided, however, that a county may contribute funds to a city, town or village towards its fifteen per centum share of the cost of reconstructing a railroad bridge whether or not the road, of which the bridge is a part is under the jurisdiction of a city, village, town or county and regardless of who performs the work.

4. Whenever in carrying out sections ninety or ninety-one, two or more lines of steam surface railroad, owned and operated by different corporations cross a highway at a point where a change in grade is made, each corporation shall pay such proportion of fifty per centum of the expense thereof as shall be determined by the commissioner of transportation.

4-a. If moneys of the federal government are or may reasonably be expected to be available for the purposes of this subdivision, the commissioner of transportation is authorized to use such moneys to implement this subdivision. Within and to the extent of funds appropriated by the Legislature for the state's share of the cost, the commissioner of transportation may authorize or direct a railroad corporation or the department of transportation to install grade crossing facilities and appurtenances, which shall include but not be limited to protective devices and crossing surfaces, the cost of which including all accessories, labor and material shall be borne not more than ten per centum by the state and ninety per centum or more with use of the federal moneys. Installations so authorized or directed shall be completed by the department of transportation or the railroad corporation or corporations involved. Upon approval by the commissioner of transportation of the completed project by the railroad corporation or corporations, reimbursement of the state and federal shares of the cost thereof shall be effected by the comptroller upon vouchers approved

by the commissioner. Whenever in carrying out the provisions of this subdivision, two or more lines of railroad owned and operated by different corporations cross a highway at a point where such installation is made, each corporation or the department of transportation shall perform such portion of the work as shall be determined by the commissioner of transportation. Such crossing facilities and appurtenances shall be maintained and operated by and at the expense of the railroad corporation or corporations. In the event that state funds appropriated for the purposes of this subdivision are inadequate or are fully committed or exhausted, the authority herein contained shall not be deemed to restrict, limit or supersede the authority of the commissioner of transportation to order such installations under and pursuant to subdivision one of section fifty-three of this chapter.

5. In carrying out sections eighty-nine, ninety and ninety-one the commissioner of transportation shall cause to be prepared or may direct the municipal corporation or the railroad corporation to prepare plans, specifications and estimates of cost for the work. Plans, specifications and estimates of cost for the work prepared by the municipal corporation or the railroad corporation shall be submitted to the commissioner of transportation for his approval. The work shall be performed by the municipal corporation, the railroad corporation or the department of transportation as the commissioner of transportation shall direct. In all cases, except where the entire expense is paid by the railroad corporation, the expense of construction shall be paid in the first instance by the party directed by the commissioner of transportation to progress the work and the expense of acquiring lands, rights or easements shall be paid in the first instance by the party directed by the commissioner of transportation, or otherwise required by this chapter, to acquire such lands, rights or easements. When a municipal corporation or railroad corporation has been directed or authorized to take competitive bids for all or a portion of the work, it shall, prior to the award of a contract therefor, submit to the commissioner of transportation a tabulation of bids received, together with a recommendation for award, and if he concurs with the recommendation, he shall approve such award and submit the tabulation and recommendation to

the state comptroller for his approval. If the commissioner of transportation does not concur with such recommendation or determines that the bids are excessive, he may require that the work be rebid. Work which the municipal corporation or the railroad corporation is directed to perform shall be subject to the supervision and approval of the commissioner of transportation. All work performed by the department of transportation, the municipal corporation or their agents upon or affecting railroad property, right of way or facilities shall be subject to the supervision and approval of the railroad corporation. No work upon or affecting railroad property, right of way or facilities shall be performed without the approval of the railroad corporation. The commissioner of transportation may employ temporarily such experts and engineers as may be necessary properly to supervise any work that may be undertaken under sections eighty-nine, ninety and ninety-one, the expenses thereof to be paid by the comptroller upon the requisition and certificate of the commissioner of transportation and included in the cost of the project and finally apportioned in the manner provided in this section. Upon the completion of work undertaken pursuant to section eighty-nine, ninety or ninety-one, the commissioner of transportation shall cause the same to be inspected and if he approves, accept the work and make an order certifying its completion.

6. Upon the completion of the work and its approval by the commissioner of transportation an accounting shall be had between the railroad corporation and the municipal corporation or the commissioner of transportation of the amount expended by each with interest, and if it shall appear that the railroad corporation or the municipal corporation or the commissioner of transportation has expended more than its or his proportion of the expense of the crossing as herein provided a settlement shall be forthwith made in accordance with this section. At any time after the work has commenced the commissioner of transportation may, upon its own motion or upon the petition of the railroad corporation or of any municipality interested, make an order for an intermediate settlement and direct payments to be made in connection therewith as in this section provided for a final accounting. All items of expenditures shall be verified under oath. In case of a dispute between the railroad corporation and the municipal corporation as to the

amount expended which dispute does not involve the nature or character of the work performed, any judge of the supreme court in the judicial district in which the municipality or the state or county highway is situated may appoint a referee to take testimony as to the amount expended, and the confirmation of the report of the referee shall be final. In the event of the failure or refusal of the railroad corporation to pay its proportion of the expense, the same with interest from the date of such accounting may be levied and assessed upon the railroad corporation and collected in the same manner that taxes and assessments are now collected by the municipal corporations within which the work is done; and in the event of failure or refusal of the municipal corporation to pay its proportion of the expense an action may be maintained by the railroad corporation for the collection of the same with interest from the date of such accounting, or the railroad corporation may offset such amount with interest against any taxes levied or assessed against it or its property by such municipal corporation.

7. In the event of the appropriation made by the state in any one year being insufficient to pay the state's proportion of the expense of any change that may be ordered the first payment from the appropriation of the succeeding year shall be on account of said change, and no payment shall be made on account of any subsequent change that may be ordered, nor shall any subsequent change be ordered, until the obligation of the state on account of the first named change in grade has been fully discharged, unless the same shall be provided for by an additional appropriation to be made by the legislature. The state's proportion of the expense of changing any existing grade crossing or the structure of any existing crossing above or below grade shall be paid from the state treasury on the audit and warrant of the comptroller, to which shall be appended the certificate of the commissioner of transportation to the effect that the work has been properly performed and a statement showing the situation of the crossing or structure that has been changed, the total cost and the proportionate expense thereof; and the money shall be paid in whole or in part to the railroad corporation or to the municipal corporation as the commissioner of transportation may direct, subject, however, to the rights of the respective parties as they appear from the

accounting or intermediate accounting to be had as hereinbefore provided for.

8. No claim for damages to property on account of the change or elimination of any crossing or change in structure or approaches under this article shall be allowed unless notice of such claim is filed with the commissioner of transportation within six months after completion of the work necessary for such change or elimination.

9. Upon the acquisition of any railroad by the public, under the right of eminent domain or by and under any statute providing for the acquisition, use or operation thereof, any and all sums of money paid and contributed by the state or any political subdivision thereof toward the expense of constructing new crossings as in this article provided, shall be credited, allowed and deducted in determining the value of such property or the basis of computing or allowing compensation therefor.

10. In carrying out sections eighty-nine, ninety, and ninety-one, if a railroad corporation, state department, agency or commission, public authority or municipal corporation in which the work is located, desires to make or cause to have made changes or additions which in the opinion of the commissioner of transportation are not necessary to accomplish the work, such changes or additions may be embodied in an order containing findings specifying such changes or additions. Such order shall state an estimated cost of such desired changes or additions and the portions therefore chargeable respectively to the railroad corporation or state department, agency or commission, public authority or municipal corporation. Before any contract is let the state department, agency or commission, public authority or municipal corporation shall certify to the commissioner of transportation that the necessary funds are available.

11. Notwithstanding any conflicting provisions of this chapter, a railroad and a municipal corporation having jurisdiction may mutually agree as to the allocation of their proportion of the expenses of: construction and reconstruction of a new street, avenue, highway or road or new portion or additional lane of a street, avenue, highway or road,

or county highway or county road deviating from the line of an existing street, avenue, highway or road to be constructed at, above, or below grade, across a steam surface railroad, including the cost of the installation of automatic flashing light signals with automatic gates or automatic flashing light signals alone and all accessories, appurtenances and circuits; or the alteration in the manner which a railroad crosses or is crossed by a street, avenue, highway or road at, above, or below grade, including, 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 including the cost of the installation, alteration or relocation of automatic flashing light signals with automatic gates or automatic flashing light signals alone, and all accessories, appurtenances and circuits, whether in connection with such construction or otherwise.

The agreement shall not be entered into until a public hearing has been held by the governing body of the municipal corporation involved. Notice of the hearing shall be published at least once in at least one newspaper having a general circulation within the municipal corporation. The notice shall specify the time when and the place where the hearing will be held, and describe in general terms the proposed agreement. The first publication shall be at least ten days prior to the day specified for the hearing.

§ 95. Proceedings by commissioner of transportation for alteration of existing crossings. The commissioner of transportation may, in the absence of any application therefor, when in his opinion public interest requires an alteration in an existing grade crossing or a change in any existing structure above or below grade, institute proceedings on his own motion for any alteration in an existing grade crossing or structure

for which a municipal corporation may petition under section ninety-one, upon such notice as he shall deem reasonable, of not less than ten days however, to the railroad company, the municipal corporation and the person or persons interested, and proceedings shall be conducted as provided in section ninety-one. Notwithstanding any other provision of law the commissioner of transportation shall not, within areas which were within the jurisdiction of the transit commission on March thirty-first, nineteen hundred forty-three, order the elevation of any railroad running longitudinally on a right-of-way in, upon or along a street, avenue, highway or road without the concurrent approval of the local authorities of the city on which the railroad or such part thereof is located. The changes in existing grade crossings or structures authorized or required by the commissioner of transportation in any one year shall be so distributed and apportioned over and among the railroads and the municipalities of the state as to produce such equality of burden upon them for their proportionate part of the expenses as herein provided for as the nature and circumstances of the cases before it will permit.

§ 96. Proceedings to enforce orders of commissioner of transportation.

It shall be the duty of the corporation, municipality or person or persons to whom the decisions or orders of the commissioner of transportation are directed, as provided in sections eighty-nine, ninety, ninety-one and ninety-five, to comply with such decisions and orders, and in case of their failure so to do the commissioner of transportation shall thereupon commence an action or special proceeding to compel obedience to the decisions and orders of the commissioner of transportation. The supreme court at a special term shall have the power in all cases of such decisions and orders by the commissioner of transportation to compel compliance therewith, or under the transportation law, subject to appeal to the appellate division of the supreme court and the court of appeals in the same manner and with like effect as is provided in case of appeals from a judgment of the supreme court.

§ 97. Intercity rail passenger service. 1. As used in this section, unless a different meaning clearly appears from the context, the term:

a. "Intercity rail passenger service" shall mean any intercity rail passenger transportation operation where rail passenger trains operate on a regular scheduled basis.

b. "Intercity rail passenger service corridor" shall mean a continuous railroad route which contains one or more segments of railroad track or tracks where intercity rail passenger service is in operation by the national rail passenger corporation.

c. "Public rail crossing" shall mean a crossing where a highway, roadway or similar facility, which is owned by a government, either federal, state or local, a public authority or a public agency, crosses a railroad track or tracks, is open to the public and has been designated as such by order of the commissioner, or recognized as having been a public at-grade crossing prior to eighteen hundred ninety-seven.

d. "Private rail crossing" shall mean a crossing which traverses a railroad track or tracks and may be used by the owner of the right-of-way, the owner's invitees and others, including the public, but has not been declared or recognized as a public rail crossing by the commissioner.

e. "Railroad" shall mean a private or public railroad operating in the state of New York carrying either freight or passengers or freight and passengers including, but not limited to, those operated by the metropolitan transportation authority and its subsidiaries, including the Long Island Rail Road or operated by any other public authority or local government.

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 conduct a hearing 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 crossing. 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. In order to insure public safety, the commissioner may, if he or she determines it appropriate, 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 conduct a hearing 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. 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.

4. The commissioner shall prepare and promulgate standards and specifications for the design and protection of private rail crossings in an intercity rail passenger service corridor and is authorized to adopt and promulgate such rules and regulations to accomplish this as shall be deemed necessary.

5. The commissioner shall have the power to acquire any real property, easements, rights-of-way or similar rights necessary for the purposes of this article in the same manner as property is acquired for state highway purposes pursuant to the provisions of section thirty of the highway law.

§ 97-a. Commuter rail service. 1. As used in this section, unless a different meaning clearly appears from the context, the term:

a. "Commuter rail service" shall mean any rail passenger transportation operation where heavy rail passenger trains provide scheduled passenger service for weekday commuters between a city or cities and adjacent areas.

b. "Commuter rail service corridor" shall mean a railroad route which contains one or more segments of railroad track where commuter rail service is in operation.

c. "Private rail crossing" shall have the same meaning as such term is defined in section ninety-seven of this article.

d. "Railroad" shall have the same meaning as such term is defined in section ninety-seven of this article.

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 conduct a hearing 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. 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.

3. a. In order to insure public safety, the commissioner may, if he or she determines it appropriate, 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 conduct a hearing 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.

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 a private rail crossing. No private rail 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.

4. The commissioner shall prepare and promulgate standards and specifications for the design and protection of private rail crossings in a commuter rail service corridor and, in consultation with the metropolitan transportation authority, is authorized to adopt and promulgate such rules and regulations as may be necessary to implement the provisions of this section. Except as otherwise provided by law, said rules and regulations shall include guidelines for the allocation of responsibility for the costs associated with establishment of any new private crossings pursuant to subdivision two of this section or the closing or improvement of existing private crossings pursuant to subdivision three of this section and shall recognize that the private

interests seeking or using a crossing shall be generally responsible for such costs as well as all costs associated with the inspection and maintenance of such improvements; and, that the arrangement between the railroad and the owners or occupants of the adjoining properties shall be formalized in an agreement.

5. The commissioner shall have the power to acquire any real property, easements, rights-of-way or similar rights necessary for the purposes of this article in the same manner as property is acquired for state highway purposes pursuant to the provisions of section thirty of the highway law.

§ 98. Intersection of railroads. All steam railroads hereafter constructed across the tracks of any other railroad and any street surface railroad hereafter constructed across a steam railroad shall be above, below, or at grade of such existing railroad as the commissioner of transportation shall determine, and the commissioner of transportation shall in such determination fix the proportion of expense of such crossing to be paid by each railroad.

§ 99. Application of foregoing section. The provisions of sections eighty-nine to ninety-eight, inclusive, of this chapter shall also apply to all steam surface railroads existing on the first day of July, eighteen hundred and ninety-seven, or thereafter, on which, after said date, electricity or some other agency than steam shall be substituted as a motive power. None of the provisions of said sections shall apply to crossings in the city of Syracuse under the jurisdiction of the Syracuse grade crossing commission. The terms "municipality" and "municipal corporation" as used in said sections shall include cities, villages, towns and counties.

§ 100. Temporary leave granted by court to a street surface railroad; bond. Whenever the railroad or route of any street surface railroad corporation shall intersect and cross, or shall cross the tracks and

roadbed of any railroad, operated by locomotive, steam or other power, which are laid in, across or upon the surface of any street, avenue, road or highway in any city, town or village of the state, having less than five hundred thousand inhabitants and such street surface railroad corporation having been unable to agree with the corporation owning the tracks and roadbed so intersected or to be intersected and crossed, as to the line or lines, grade or grades, points or manner of such intersection and crossing, or upon the compensation to be made therefor, shall have applied to the court by petition to appoint commissioners to determine the same, the court shall upon application made by such street surface railroad corporation, at, or after, the time of the appointment of such commissioners, or if an answer to the petition of such street surface railroad corporation has been interposed, at any time thereafter, direct that such street surface railroad corporation be permitted to lay its tracks across, and to intersect, upon the surface of the street, avenue, road or highway, the tracks and roadbed of such railroad operated by locomotive steam or other power, provided such street surface railroad corporation shall at the time of obtaining such order, make and file with the clerk of said court, its bond or undertaking in writing, in an amount and with surety or sureties to be approved by the court, conditioned for the full and faithful performance by such street surface railroad corporation of any and all conditions and requirements which may be imposed by said commissioners and be affirmed by the court, in determining the line or lines, grade or grades, points or manner of such intersection and crossing and as to the amount of compensation to be paid therefor, and also conditioned to conform such crossing and intersection made by virtue of such order of the court to the requirements made by said commissioners as affirmed by the court.

§ 101. Consent of commissioner of transportation in certain cases. No street surface railroad shall be allowed to lay its tracks at grade across the tracks or roadbed of any railroad operated by locomotive steam power at any point where there are three or more tracks of the steam road proposed to be crossed, which tracks have been constructed and in operation at least two years, unless the written consent of the

commissioner of transportation be first obtained for such crossing at grade. But this section shall not affect the operation of the preceding section in any suit or proceeding pending on the twenty-ninth day of March, eighteen hundred and ninety-three, nor any renewals of said pending suit or proceeding brought for any cause.

§ 102. Ventilation of tunnels. The commissioner of transportation is hereby authorized, empowered and given full and complete authority to require and compel all tunnels used or to be used by railroads operated by any form of power in this state to be properly ventilated, in such manner and by such means and mechanical appliances as said commissioner of transportation may direct.

§ 103. Lighting of tunnels. The commissioner of transportation is also hereby authorized, empowered and given full and complete authority to require and compel all tunnels used or to be used by railroads operated by any form of power in this state, to be properly lighted by electricity or otherwise, or by such means or in such manner as said commissioner of transportation may direct.

§ 104. Compliance with orders of commissioner of transportation. Whenever the commissioner of transportation shall cause to be personally served upon any railroad corporation controlling any tunnel or part of a tunnel in this state for the purpose of operating a railroad or moving, hauling or propelling cars therein by steam, by delivering a copy personally to the president, general manager or any director of said corporation of a notice or order of said commissioner of transportation, stating and specifying the structures to be erected, the manner, means, mechanical appliances and apparatus to be used in lighting or ventilating any tunnel or tunnels used by said corporation for the purpose of moving, hauling or propelling cars by steam therein as aforesaid, said corporation shall, within thirty days from and after the service of said notice or order as aforesaid, cause said tunnel or tunnels so used by it as aforesaid to be lighted or ventilated, or both,

in the manner and by the means and use of the mechanical apparatus and appliances specified and pointed out in said notice or order.

§ 105. Enforcement. After the expiration of thirty days from the service of said order or notice specified in the preceding section, as therein directed, if said corporation shall not have fully complied with said notice or order, the commissioner of transportation may commence an action or special proceeding hereunder, or under the transportation law, in the supreme court for a judgment to compel said corporation or corporations so neglecting or refusing to obey and comply with said order or notice to comply with and obey said notice or order, and said court shall have full power and authority to hear and determine said matter, and after giving the corporation or corporations proceeded against an opportunity to be heard in its or their defense, to compel said corporation or corporations so proceeded against to obey said order or notice, and forthwith comply with and carry out the provisions and requirements therein contained.

§ 106. Penalty for violation. Every corporation violating any of the provisions of the preceding four sections shall be guilty of a misdemeanor and may be indicted therefor, and may be compelled to appear and plead to an indictment therefor in the person of its president, secretary, treasurer or any director thereof, and a bench warrant may issue out of any competent court to compel such attendance and pleading, and, upon conviction thereof, such corporations shall be punished by a fine of one thousand dollars, and an additional fine of five hundred dollars a day for each and every day or part of a day after thirty days from the due service of said notice or order that said corporation shall refuse or neglect to obey and carry out the requirements and provisions of the same, and duly sentenced to pay the same.

§ 107. Judgment-roll. It shall be the duty of the district attorney prosecuting any corporation for a violation of any of the provisions of sections one hundred and three, one hundred and four and one hundred and

five, that shall be convicted thereof and sentenced to pay a fine therefor, to cause a judgment-roll to be made up, consisting of the indictment, orders and sentence of the court and a formal judgment, to be prepared by him, which judgment shall be duly signed by the clerk of the county in which said trial took place; said judgment-roll shall be filed by said county clerk and said judgment shall be duly recorded in the book of judgments in said county and duly entered and docketed by said county clerk in said county the same as if said judgment had been obtained in a civil action, and said judgment so duly entered and docketed shall become and be a lien upon all of the real estate of said corporation against which the same is obtained, and the collection thereof may be enforced by execution to be issued and signed by the district attorney of the county where the trial of said indictment took place, in the same manner and to the same extent as executions are collected in civil actions.

§ 108. Approval of appliances in cities having a population of one million inhabitants or over. In cities in this state having a population of one million inhabitants or over, where tunnels are or may hereafter be operated or controlled by any railroad corporation, such portions of any mechanical or other devices or appliances as may be required under the provisions of the preceding six sections to be constructed on or above the surface of any streets, avenues or other places under which such tunnels may be built, shall be subject as to form, material and construction, to the approval of the local authorities of such cities, except that in the city of New York such approval shall be by a majority vote of the mayor, the comptroller, the commissioner of parks and recreation of said city and the president of the borough of said city in which such mechanical or other device or appliance is to be constructed.

ARTICLE 4

CONSOLIDATION, LEASE, SALE AND REORGANIZATION

Section 140. Consolidation or merger of corporations owning or leasing continuous lines; abandonment of parallel lines; merger of subsidiary corporations.

- 141. Mergers and consolidations of certain railroad corporations.
- 144. Assessment of property of new or surviving corporation.
- 145. Stocks of municipal corporations, how represented.
- 146. Foreclosure of mortgages made by consolidated railroads partly in the state.
- 147. Powers of corporations organized to acquire and operate railroads partly in the state.
- 148. Lease and conveyance of road.
- 151. Mortgagee may purchase at foreclosure sale.
- 162. Acquisition and maintenance of railroad built, owned or operated by a corporation not organized under this chapter.

§ 140. Consolidation or merger of corporations owning or leasing continuous lines; abandonment of parallel lines; merger of subsidiary corporations. 1. Any railroad or other corporation, organized under the laws of this state, or of this state and any other state or states, and owning or operating a railroad, bridge or tunnel, either wholly within or partly within and partly without the state, or whose lines or routes of road have been located but not constructed, may consolidate its capital stock, franchises and property with the capital stock, franchises and property of any other railroad, tunnel or bridge corporation or corporations organized under the laws of this state or of this state and any other state or states, or under the laws of any other state or states, or may merge or be merged into any such other corporation in accordance with the procedure and with the effect set forth in article nine of the business corporation law, whenever the two or more railroads of the companies or corporations so to be consolidated, or merged, their tunnels, bridges or branches or any part thereof, or the lines or routes of their road, if not constructed, shall or may form a continuous or connected line of railroad with each other or by means of any intervening railroad bridge, tunnel or ferry, or by means of a right under an agreement, lease or otherwise to operate cars over any intervening railroad subject to the jurisdiction of the commissioner of transportation, and any such consolidated or surviving

corporation may thereupon construct or finish the construction of such continuous line of railroad, if not previously constructed, and operate the same, subject to all provisions of law applicable to such railroad corporation; provided, however, that nothing in this section shall be deemed to authorize any such corporation organized under the laws of this state or of this state and any other state or states to be merged into any other corporation that is not organized under the laws of this state or of this state and some other state or states, unless the corporation into which it is proposed to merge any such corporation is in possession of and holds under lease all of the railroad and franchises of the corporation to be merged and operates the same as part of the railroad or system of the corporation into which it is proposed to merge any such corporation. Where the road to be operated is in whole or in part a tunnel or sub-surface road, authorized by section twenty-eight of this chapter, its consolidation with or merger into another road or roads under the provisions of this section shall not prevent any connecting railroad from having equal rights of transit for its passengers and freight through or over the tunnel or bridge of any such road, upon the same equitable terms, nor shall such consolidation or merger be made where such tunnel or sub-surface road exceeds five miles in length.

2. Any railroad corporation, which by consolidation or merger under any provision of law, now owns, or shall hereafter own, parallel or substantially parallel lines of railroad between any two points or stations, shall have the right, upon obtaining the consent of the commissioner of transportation, to abandon such portion of its railroad and its franchise to own, maintain and operate the same on either of the said parallel lines, as shall, in the opinion of the said commissioner of transportation, be no longer necessary to furnish proper and adequate service to the public in the transportation of passengers and freight within the jurisdiction of the commissioner of transportation. Such application for abandonment shall not be made until after it shall have been authorized by resolution of the board of directors of the corporation under its seal, and such resolution shall have been submitted to the stockholders thereof at a meeting called and conducted in the manner required by law. If the stockholders shall at such meeting

ratify such action of the directors, the secretary of the corporation shall so certify under the seal of the corporation, upon such resolution. If approved by the commissioner of transportation, such approval shall be indorsed upon such resolution and annexed thereto, and such resolution shall thereupon be filed in the office of the department of state and the date of such abandonment shall be as of the date of such filing. The property of any person, taken, affected or damaged by such abandonment, shall be deemed to be required for a public purpose, and if such corporation, before making application to the commissioner of transportation, shall have been unable to agree with any person damaged or claiming to be damaged as a result of such abandonment, as to the compensation, if any, which should justly be made therefor, such property, when paid for by such corporation as hereinafter provided, shall be deemed to have been taken by acquisition, and the proceeding thereon, shall be pursuant to the eminent domain procedure law. Any such railroad corporation shall have the right within thirty days after filing such resolution and approval, to make application by verified petition to a special term of the supreme court in and for the county or one of the counties in which the portion of the route to be abandoned may be located, to ascertain and determine the compensation, if any, which shall justly be made for the property of any person so taken, affected or damaged and such abandonment shall not be deemed to be effective against such person unless and until said corporation shall have filed in the office of the clerk of the county in which said application shall have been made, an undertaking in an amount approved by the court that it will pay to the person or persons determined to be damaged by the abandonment the amounts, if any, finally awarded to him or them in the proceedings; notice of the application shall be published once a week for four successive weeks in two newspapers published in said county or counties, and affidavits of such publication and the filing of such undertaking shall be filed in the office of the commissioner of transportation. If such corporation shall fail to file such petition within said period of thirty days, any person or persons claiming to be damaged, may by separate petition apply to the court to ascertain and determine the said compensation with like effect as if such corporation had filed its petition. Nothing in this act shall be construed to impair or affect the rights of any lienor or mortgagee in

and to the portion of the property of said railroad or railroads affected by said abandonment, and no such abandonment shall be consented to as herein provided unless such liens or mortgages shall have first been discharged of record.

3. Any domestic railroad corporation or any foreign railroad corporation authorized to do business in this state owning at least ninety-five percent of the outstanding shares of each class of any domestic corporation or corporations authorized to engage in business similar or incidental to the business which the possessor corporation is authorized to engage in, and any domestic railroad corporation owning at least ninety-five percent of the outstanding shares of each class of any foreign railroad corporation authorized to do business in this state and also authorized to engage in business similar or incidental to the business which the possessor corporation is authorized to engage in, may merge such corporation or corporations into itself without the authorization of the shareholders of any such corporation, in accordance with the procedure and with the effect set forth in article nine of the business corporation law for the merger of subsidiary corporations.

Any bridge corporation may be merged under this paragraph with any railroad corporation which shall have acquired the right by contract to run its cars over the bridge of such bridge corporation.

Any omnibus corporation may be merged under this paragraph with any railroad corporation, provided such railroad corporation shall have substituted stages, buses or motor vehicles for cars or trains upon tracks on any portion of its route in accordance with section one hundred twenty-one of the transportation law.

§ 141. Mergers and consolidations of certain railroad corporations.
With the consent and approval of the commissioner of transportation pursuant to section one hundred eighty-eight of the transportation law, a railroad corporation all of whose outstanding shares of each class are owned by a corporation, domestic or foreign, which has as its purpose or among its purposes a purpose for which a corporation may be formed under

the business corporation law, may merge into or consolidate with such owning corporation, following the procedure and with the effect set out in article nine of the business corporation law; provided, however, that upon such merger or consolidation the surviving or consolidated corporation, if a domestic corporation, shall not possess any of the rights, privileges, immunities, powers and purposes of such railroad corporation which could not be lawfully possessed by a corporation formed under the business corporation law.

§ 144. Assessment of property of new or surviving corporation. The real estate of such new or surviving corporation, situate within this state, shall be assessed and taxed in the several towns and cities where the same shall be situated in like manner as the real estate of other railroad corporations is or may be taxed and assessed, and such proportion of the capital stock and personal property of such new or surviving corporation shall in like manner be assessed and taxed in this state, as the number of miles of its railroad situate in this state bears to the total number of miles of its railroad.

§ 145. Stocks of municipal corporations, how represented. At any meeting of the stockholders of any railroad corporation to consider any agreement or proposition of consolidation, merger, lease or conveyance, or other matter, the commissioners or other officers of any municipal corporation holding or having charge of any of the capital stock of such railroad corporation shall represent such municipal corporation, and may act and vote in person or by proxy on all matters relating to such consolidation or lease in the same manner as individual stockholders.

§ 146. Foreclosure of mortgages made by consolidated railroads partly in the state. Whenever a railroad corporation of this or of any other state or states whose line of road lies partly in this state and partly in another state or states, shall have executed a mortgage upon its entire line of railroad, and a sale of the entire line of road under such mortgage shall have been or may hereafter be ordered, adjudged and

decreed by a court of competent jurisdiction of the state or states, or by a court of the United States sitting within the state or states in which the greater part of such line of railroad may be situated, upon the confirmation of such judgment or decree, and of the sale made thereunder, by the supreme court of this state or by the circuit court of the United States in the judicial district in which some part of such line of road is situated, such sale shall operate to pass title to the purchaser, of that part of the line of railroad lying in this state, together with its appurtenances and franchises, with the same force and effect as if the judgment or decree under which such sale is had, had been made by a court of competent jurisdiction of this state. Such judgment or decree and sale may be so ordered, adjudged, decreed or confirmed in any action or proceeding heretofore or hereafter brought in the supreme court, or in a court of the United States sitting in this state, for the foreclosure of such mortgage, or in aid of an action for that purpose in such other state or states, if it shall appear that such confirmation is for the interest of the public and of the parties, due and lawful provision being made for and in respect of any liens upon that part of the line of road or other property sold situate in this state, and for such costs, expenses and charges as may appear to be just and lawful. If a receiver of the entire line of such railroad shall have been, or may hereafter be appointed by such court of competent jurisdiction of the state in which the greater part of the line of railroad is situated, or by a court of the United States sitting in such other state, such receiver may perform, within this state, the duties of his office not inconsistent with the laws of this state, and may sue and be sued in the courts of this state.

§ 147. Powers of corporations organized to acquire and operate railroads partly in the state. A railroad corporation created under the laws of the state or states in which the greater part of the line of its railroad may be situated, or a railroad corporation heretofore or hereafter created under this chapter or other statutes of this state, for the purpose of taking title to, and operating, the line of road as so sold, under a judgment or decree of a court of this state, or of a court of the United States sitting in this state, for the foreclosure of

a mortgage, with its franchises and appurtenances, may hold, possess and operate not only those parts of the railroad lying in other states, but also that part of the line of such railroad lying in this state, and shall be subject to the duties and liabilities to which such corporation was, by the laws of this state, subject, and to such further or other duties and liabilities as are now or may hereafter be imposed by law upon railroad corporations of this state, and to the provisions of any other statute of this state concerning the reorganization of corporations. An exemplified copy of the certificate or certificates of incorporation, under and by virtue of which any such corporation is created in any other state, and a certified copy of the judgment or decree of any court sitting in any other state, under which said railroad shall have been sold, and a certified copy of the order or judgment or decree of confirmation and approval required by the preceding section, or of the order, judgment or decree of the court of this state, or of the United States in this state, which decreed the sale, confirming the same, shall be filed in the office of the department of state for this state, and in the office of the county clerk of the county where its principal business office in this state is or shall be located.

This section and the preceding one shall apply in respect of decrees, foreclosures, sales, confirmations, reorganizations and incorporations, whether heretofore or hereafter made, provided, however, that nothing in either of said sections shall affect any action or proceeding pending in any court, on or before the first day of April, eighteen hundred and ninety-six, to establish the invalidity of any foreclosure or reorganization theretofore had, or to enforce any judgment or claim arising before such foreclosure or reorganization.

§ 148. Lease and conveyance of road. A railroad corporation may not contract, by way of lease, agreement to convey or otherwise, with any other such corporation for the use of their respective roads or routes, or any part thereof, situated within this state, without the permission and approval of the commissioner of transportation.

§ 151. Mortgagee may purchase at foreclosure sale. Any mortgagee of the property and franchises of any railroad corporation may become the purchaser of the same at any sale thereof under the mortgage, upon foreclosure by advertisement, or under a judgment, or decree, or otherwise, and hold and use the same, with all the rights and privileges belonging thereto or connected therewith for the period of six months, and convey the same to any railroad corporation.

§ 162. Acquisition and maintenance of railroad built, owned or operated by a corporation not organized under this chapter. No railroad corporation organized under subdivision three of section five of this chapter shall acquire, purchase or lease or maintain and operate a railroad already built, owned and operated by a corporation of this state not organized under the railroad law, unless the commissioner of transportation shall consent thereto.

ARTICLE 5

STREET SURFACE RAILROADS

- Section 170. Street surface railroads; general provisions.
- 171. Consent of property owners and local authorities.
 - 172. Consent of local authorities; how procured.
 - 173. Condition upon which consent shall be given; sale of franchise at public auction.
 - 173-a.
 - 173-b.
 - 173-c.
 - 173-d.
 - 173-e.
 - 173-f.
 - 173-g. Approval of permit or amendment by commissioner of transportation.
 - 173-h. Existing license, grant, franchise, permit or consent reinstated on invalidity of amendment.
 - 174. Proceedings if property owners do not consent.

175. Percentage of gross receipts to be paid in cities or villages; report of officers.
176. Extension of route over rivers; terminus in other counties; when property owners withhold consent; supreme court may appoint commissioners.
177. Use of tracks of other roads.
178. Repair of streets; rate of speed; removal of ice and snow.
- 178-a. Headlights.
179. Within what time road to be built.
180. Motive power.
181. Rate of fare.
182. Collection of fare.
183. Construction of road in street where other road is built.
184. Abandonment of part of route.
185. Effect of dissolution of charter as to consents.
186. Corporate rights saved in case of failure to complete road; right to operate branches; conditions; former consents ratified; limitations.
187. Extensions and franchises confirmed.
188. Certain consents of local authorities confirmed.
189. Time extended for payment of percentage based on gross receipts.
191. Road not to be constructed upon ground occupied by public buildings or in public parks.
192. Center-bearing rails prohibited.
- 192-a. Relocation of tracks.
193. Right to cross bridge substituted for a bridge crossed for five years.
194. Protection of employees.
195. Platforms on new cars, how constructed.
196. Protection to employees in the counties of Albany and Rensselaer.
197. Protection of employees in the counties of Kings and Queens.
198. Contracts for the adjustment of payments due certain cities.

- 201. Construction of park railroads in cities having a population of one million five hundred thousand or upwards.
- 202. Consents of property owners.
- 203. Expense of construction and operation.
- 204. Agreements for payment of cost of construction by instalments.
- 205. Disposition of income.
- 206. Motive power.
- 207. Railroads in parks in New York city, by whom constructed.
- 209. Change of motive power authorized.
- 210. New streets across other than steam surface railroads.

§ 170. Street surface railroads; general provisions. The provisions of this article shall apply to every corporation which, under the provisions thereof, or of any other law, has constructed or shall construct or operate, or has been or shall be organized to construct or operate, a street surface railroad, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons and property for compensation, upon and along any street, avenue, road, highway, or private property, in any city, town or village, or in any two or more civil divisions of the state, and every such corporation must comply with the provisions of this article. Any street surface railroad corporation, at any time proposing to extend its road or to construct branches thereof, may, from time to time, make and file in each of the offices in which its certificate of incorporation is filed, a statement of the name and description of the streets, roads, avenues, highways and private property in or upon which it is proposed to construct, maintain or operate such extensions or branches. Upon filing any such statement and upon complying with the conditions set forth in section one hundred and seventy-one of this chapter, every such corporation shall have the power and privilege to construct, extend, operate and maintain such road, extensions or branches, upon and along the streets, avenues, roads, highways and private property named and described in its certificate of incorporation or in such statement. Every such corporation, before constructing any part of its road upon or

through any private property described in its articles of association or certificate of incorporation or statement, and before instituting any proceeding for the acquisition of any real property, shall make a map and profile of the route adopted by it upon or through any private property, which map and profile shall be certified by the president and engineer of the company, or a majority of its directors, and shall be filed in the office of the clerk of the county in which the road is to be constructed, and all provisions of section sixteen of this chapter so far as applicable shall apply to the route so located. If any such street surface railroad company is unable to agree for the purchase of any such real property, or of any right or easement therein required for the purpose of its railroad, or if the owner thereof shall be incapable of selling the same, or if, after diligent search and inquiry, the name and residence of such owner cannot be ascertained, it shall have the right to acquire title thereto in the manner and by the proceedings provided by the eminent domain procedure law. Nothing in this section shall be deemed to authorize a street railroad corporation whose railroad is mainly, upon, along, above or below streets and highways to acquire real property within a city, but nothing in this section shall apply to or affect rapid transit railways constructed, maintained or operated under any rapid transit act.

§ 171. Consent of property owners and local authorities. A street surface railroad, or extensions or branches thereof, shall not be built, extended or operated unless the consent in writing acknowledged or proved as are deeds entitled to be recorded, of the owners in cities and villages of one-half in value, and in towns, not within the corporate limits of a city or village, of the owners of two-thirds in value, of the property bounded on and also the consent of the local authorities having control of that portion of a street or highway upon which it is proposed to build or operate such railroad, extension or branch shall have been first obtained. Such consents of property owners in the county of Kings which shall be hereafter executed, may be forfeited unless within sixty days after the execution thereof, the same shall be recorded in the office of the register of such county. Such register is hereby directed upon the payment of the proper fees to record all

consents left with him for that purpose in books to be provided by him and paid for out of the funds provided to meet the expenses of said office. Such books shall be indexed according to the names of the consenting property owners and also according to the names of the streets, roads or other highways upon which the property to which the consent relates shall be bounded. In case the recording of such consents shall be hindered, delayed or prevented by legal proceedings in any court or from any other or different cause not within the control of the corporation upon which such requirement is imposed, the time for the performance of such act is hereby and shall be deemed to be extended for the period covered by such hindrance, delay or prevention. The consents of property owners in one city, village or town, or in any other civil division of the state, shall not be of any effect in any other city, village or town or other civil divisions of the state. Consents of property owners heretofore obtained to the building, extending, operating or change of motive power shall be effectual for the purposes herein mentioned and may be deemed to be sufficiently proved and shall be entitled to be recorded, wherever such consents shall have been signed, executed or acknowledged before an officer authorized by law to take acknowledgments of deeds, or before or in the presence of a subscribing witness, and without regard to whether or not the subscribing witness shall have affixed his signature in the presence of the subscriber, provided that the proof of such signing, execution or acknowledgment shall have been made by such subscribing witness in the manner prescribed by section three hundred and four of the real property law. In cities the common council, acting subject to the power now possessed by the mayor to veto ordinances; in villages the board of trustees; and in towns the superintendent of highways and the town board shall be the local authorities referred to, except that in villages where the control of the streets is vested in any other board or authorities, such other board or authorities shall be the local authorities referred to, and the consent of such other board or authorities hereafter or heretofore obtained shall be sufficient; if in any city or county the exclusive control of any street, avenue or other property which is to be used or occupied by any such railroad, extension or branch, is vested in any other authority, the consent of such authority shall also be first obtained. The value of the property above

specified shall be ascertained and determined by the assessment-roll of the city, village or town in which it is situated, completed last before the local authorities shall have given their consent, except property owned by such city, village or town, or by the state of New York, or the United States of America, the value of which shall be ascertained and determined by making the value thereof to be the same as is shown by such assessment-roll to be the value of the equivalent in size and frontage of the adjacent property on the same street or highway; and the consent of the local authorities shall operate as consent of such city, village or town as the owners of such property. Whenever heretofore or hereafter a railroad has been or shall be constructed and put in operation for one year or the motive power thereof has been or shall be changed and put in operation for a similar length of time, such facts shall be presumptive evidence that the requisite consents of local authorities, property owners and other authority to the construction, maintenance and operation of such railroad or change of motive power have been duly obtained. No consent of local authorities given prior to May second, nineteen hundred and one, shall be deemed invalid because of any portion of the road or route consented to not being connected with an existing road or route of the corporation obtaining or acquiring such consent and all statements of extension filed under section one hundred and seventy of this article in reference to the route or part thereof described in any consent of local authorities are hereby ratified and confirmed, whether the same were filed before or after the obtaining or acquiring of such consents, provided, however, that nothing herein contained shall be construed to affect any portion of a street surface railroad which is now in or upon any portion of a street which is under the jurisdiction of a park department in any city containing a population of over twelve hundred thousand inhabitants.

§ 172. Consent of local authorities; how procured. The application for the consent of the local authorities shall be in writing and before acting thereon such authorities shall give public notice thereof and of the time and place when it will first be considered, which notice shall be published daily in any city for at least fourteen days in two of its daily newspapers if there be two, if not, in one, to be designated by

the mayor, and in any village or town for at least fourteen days in a newspaper published therein, if any there shall be, and if none, then daily in two daily newspapers if there be two, if not, one published in the city nearest such village or town. Upon application for such consent, the local authorities shall also give written notice of the filing of such application to all common carriers operating in the town, village or city to the local authorities of which such application is made. Such consent must be upon the expressed condition that the provisions of this article pertinent thereto shall be complied with, and shall be filed in the office of the clerk of the county in which such railroad is located. Whenever the consent of the common council of a city is applied for, the first consideration, of which notice is hereby required, may be by committee of such common council. Any such notice, publication or consideration heretofore or hereafter given, made or had in substantial conformity with the requirements of this section, is and shall be sufficient notice, publication and consideration for all the purposes hereof notwithstanding any conflicting provision of any local or special act or charter.

§ 173. Condition upon which consent shall be given; sale of franchise at public auction. The consent of the local authorities in any city having a population of three hundred thousand or more must contain the condition that the right, franchise and privilege of using any street, road, highway, avenue, park or public place shall be sold at public auction to the bidder who will agree to give the city the largest percentage per annum of the gross receipts of such corporation, with a bond or undertaking in such form and amount and with such conditions and sureties as may be required and approved by the comptroller or other chief fiscal officer of the city, for the fulfillment of such agreement and for the commencement and completion of its railroad within the time designated by law and for the performance of such additional conditions as the local authorities in their discretion may prescribe. Whenever such consent shall provide for the sale at public auction of the right to construct and operate a branch or extension of an existing railroad, such consent shall provide that but one fare shall be exacted for passage over such branch or extension and over the line of road which

shall have applied therefor; and further, that if such right shall be purchased by any corporation other than the applicant, the gross receipts from joint business shall be divided in the proportion that the length of such extension or branch so sold shall bear to the entire length of the road whether owned or leased which shall have applied therefor and of such branch or extension, and that if such right shall be purchased by the applicant, the percentage to be paid shall be calculated on such portion of its gross receipts as shall bear the same proportion to the whole value thereof as the length of such extension or branch shall bear to the entire length of its road, whether owned or leased. The bidder to which such right, franchise and privilege may be sold must be a duly incorporated railroad corporation of this state, organized to construct, maintain and operate a street railroad in the city for which such consent may be given; but no such corporation shall be entitled to bid at such sale unless at least five days prior to the day fixed for such sale, or five days prior to the day to which such sale shall have been duly adjourned, the corporation shall have filed with the comptroller or other chief fiscal officer of the city, a bond in writing and under seal, with sufficient sureties, to be approved by such comptroller or officer, conditioned that if such right, franchise and privilege shall be sold to such corporation, to pay to the city where such railroad is situated the sum of fifty thousand dollars as liquidated damages and not by way of penalty in the event of the failure of such bidder to fulfill the terms of sale, comply with the provisions of this article pertinent thereto, and complete and operate its railroad according to the plan or plans and upon the route or routes fixed for its construction within the time hereinafter designated for the construction and completion of its railroad, and also conditioned to pay to the corporation first applying for the consent, if it shall not be the successful bidder, the necessary expenses incurred by such corporation prior to the sale pursuant to the requirements and direction of the local authorities, within twenty days after such sale and upon the certificate of the comptroller or other officer conducting the same as to the sum or amount to be paid. Notice of the time, place and terms of sale, and of the route or routes to be sold, and the conditions upon which the consent of the local authorities to the construction, operation and extension of such street railroad will be given, must be

published by such local authorities for a least three successive weeks, at least three times a week in two daily newspapers of the city to be designated by the mayor. The comptroller or other chief fiscal officer of the city shall attend and conduct such sale and may adjourn the same from time to time, but not more than four weeks in all, unless further adjournments should, in his discretion, be necessary by reason of the pendency of legal proceedings, and shall cancel any bid if in excess of the gross receipts, leaving in force the highest bid not in excess, or if the bidder shall not have furnished adequate security entitling such bidder to bid, or shall otherwise fail to comply with the terms and conditions of sale, and shall resell the consent and license in the same manner as hereinbefore provided for the first sale. The bidder who may build and operate such railroad shall at all times keep accurate books of account of the business and earnings of such railroad, which books shall at all times be subject to the inspection of the local authorities. In the event of the failure or refusal of the corporation operating or using such railroad to pay the rental or percentages of gross earnings agreed upon, and after notice of not less than sixty days to pay the same, the local authorities interested therein may apply to any court having jurisdiction upon at least twenty days' notice to such corporation, and after it shall have had an opportunity to be heard in its defense, for judgment declaring the consent and right to operate and use such railroad forfeited and authorizing the sale again of the same in the manner hereinbefore prescribed, provided, however, that no such resale of any such consent and right heretofore granted shall be authorized except upon the condition that the same shall be subject to all liens and incumbrances existing on said railroads at the time such forfeiture may have been declared. All consents hereafter given by the local authorities, unless it be otherwise provided in such consent or in some renewal thereof, may be forfeited at the expiration of two years thereafter. The board of sinking fund commissioners of any city shall have power to reduce, compromise or release any obligation or liability to the mayor, aldermen and commonalty of such city under the provisions of chapter six hundred and forty-two of the laws of eighteen hundred and eighty-six, or of this chapter, whenever, in the opinion of such board, such release or compromise shall be just or equitable, or for the public interest, the reason for any such release or compromise to be stated in

the recorded proceedings of such board. No lease by any company organized under section five of this chapter and owning a right, privilege or franchise of using any street, avenue, highway or public place for railroad purposes, which was sold prior to May nineteenth, nineteen hundred and eight, under the provisions of this section, made after said date to any street surface railroad company which is not subject to the payment of any percentage pursuant to this section, and which is not organized for the purpose of operating a railroad in a city having a population of three hundred thousand or more, shall be valid until the lessee company shall have filed in the office of the department of state and in the office of the clerk of the county where its certificate of incorporation is filed, its acceptance in writing and under its corporate seal of the provisions of this section as now amended; and upon such acceptance being filed, the total percentage amount thereafter to be paid annually under this section and under section one hundred and seventy-five of this chapter, shall be at the rate of five per centum of the gross receipts derived from the operation of the roads of the lessor and lessee companies considered as one system. The lessee company, at the time of filing its acceptance aforesaid, shall also file in the same offices a bond to the people of the state, executed in duplicate by it and a surety company authorized by law to act as surety on bonds and undertakings, in the penal sum of fifty thousand dollars, and conditioned for the faithful payment annually of the total percentage aforesaid, and such bond shall be deemed to be a full compliance with the condition for a bond or undertaking required by this section to be provided for in the conditions of the consent of the local authorities and shall supersede any such bond or undertaking theretofore given. Whenever it shall be desired to unite two street surface railroad routes at some point not over one-half mile from such respective lines or routes, and establish by the construction of such connection a new route for public travel, and the corporation or corporations owning or using such railroads shall consent to operate such connection as a part of a continuous route for one fare, and it shall appear to the local authorities that such connection cannot be operated as an independent railroad without inconvenience to the public, but that it is to the public advantage that the same should be operated as a continuous line or route, with existing

railroads, or whenever for the purpose of connecting with any ferry or railroad depot, it shall be desired to construct an extension or branch not more than one-half mile in length, of any street surface railroad corporation, no sale of such franchise shall be made as provided in this section, but any consent of the local authorities for the construction and operation of such connection, extension or branch shall provide that the corporation or corporations operating such connection, extension or branch shall pay into the treasury of said city annually the percentage provided for extensions or branches in section one hundred and seventy-five of this chapter, for the purposes, at the times, in the manner and upon the conditions set forth in such section. Nothing herein contained shall be construed as superseding, repealing or modifying any provision of the charter of any city, village or town, nor as modifying or affecting the terms of a certain contract bearing date January first, eighteen hundred and ninety-two, entered into by and between the city of Buffalo and the various street surface railroad corporations therein named in said contract, nor as modifying or affecting the terms of a certain contract bearing date the twenty-fifth day of February, eighteen hundred and ninety, entered into by and between the city of Rochester and the street surface railroad corporation therein named, nor as modifying or affecting any contract heretofore entered into between a street surface railroad corporation and any city having a population of less than fifty thousand, town or village regulating the payment of percentages or paving of streets, and any such city, town or village, is hereby authorized to enter into any such form of contract with any street surface railroad corporation, and any such contract entered into before said date is hereby ratified and confirmed. The local authorities may, in their discretion, make their consent to depend upon any further conditions respecting other or further security, or deposit, suitable to secure the construction, completion and operation of the railroad within any time not exceeding the period prescribed in this article and respecting the character, quality or motive power of the road to be completed and respecting the grouping of streets, avenues and highways into one route, or into several routes, for the purpose of a single sale of the franchise, right or privilege for all the routes collectively, or of the separate sale for each route or street, as said local authorities may think expedient, and respecting the payment of the percentage agreed

to be paid at the sale upon all the lines operated by the successful bidder within the city and respecting any matter involved in or affecting the computation of percentage payments and respecting the use of the railroads to be constructed under the consent by any other company and respecting the interchange of traffic and division of fares between the company operating such railroads and any other company, and respecting the application of any provision herein contained as to carriage of passengers for single fare and the division of gross receipts and the payment of percentages to the line leased or operated under contract by the applicant for an extension, and also respecting any other matter concerning which, in their judgment, further conditions would be for the public interest. Nothing herein contained shall apply to, or affect any grant hereafter made under the provisions of title one, chapter three of chapter three hundred and seventy-eight of the laws of eighteen hundred and ninety-seven and the amendments thereto known as the Greater New York charter.

§ 173-a. The term "terminable permit" as used in this article shall mean and embrace every grant from a city, town or village of power, right or privilege to occupy or use any of the streets, roads, highways, avenues, parks or public places of such city, town or village for the construction and operation of a street surface railroad, until such time as the city, town or village shall exercise its right to purchase the property, plant and equipment of such street surface railroad in accordance with the provisions of sections one hundred and seventy-three-a to one hundred and seventy-three-h, both inclusive, of this article, or until it shall be otherwise terminated according to law.

§ 173-b. Every city, town and village of this state, in addition to such powers as it may have relating to the granting of rights, privileges, franchises, powers or consents to use the streets, roads, highways, avenues, parks or public places for the construction and operation of street surface railroads within its corporate limits, shall have power, subject to the provisions of sections one hundred and

seventy-three-a to one hundred and seventy-three-h, both inclusive, of this article, to grant to a duly incorporated railroad corporation of this state, organized to construct, maintain and operate a street surface railroad, a terminable permit to occupy or use any of the streets, roads, highways, avenues, parks or public places of such city, town or village for the construction and operation of a street surface railroad, and to agree upon and contract for the terms and conditions thereof; provided that no street surface railroad or extensions or branches thereof shall be built, extended or operated unless the conditions set forth in section one hundred and seventy-one of this article have been complied with.

§ 173-c. Every city, town and village of this state shall have power, subject to the provisions of sections one hundred and seventy-three-a to one hundred and seventy-three-h, both inclusive, of this article, to enter into an agreement for the purchase of and to acquire by purchase all or any part of the property, plant and equipment of a street surface railroad, actually used and useful for the convenience of the public, operating under any terminable permit as herein provided, and upon the purchase thereof to operate such street surface railroad or part thereof, or to contract with any person, firm or corporation for the equipment, maintenance and operation thereof.

§ 173-d. Whenever any street surface railroad is or may be operated along or upon any of the streets, roads, highways, avenues, parks or public places of any city, town or village, as to the construction and operation of which railroad the conditions set forth in section one hundred and seventy-one of this article have been complied with, or as to which such conditions are inapplicable, every such city, town or village shall have power to amend any existing license, grant, franchise or permit, or any of the terms, provisions or conditions thereof, whether granted by municipal authority or directly or indirectly by the state or otherwise, or any consent of local authorities, or any of the terms, provisions or conditions thereof, relating to the construction and operation of such railroad; and every city, town and village of this

state shall have power by amendment to incorporate in any such license, grant, franchise, permit or consent all or any of the terms, agreements, stipulations and conditions of a terminable permit as herein authorized and defined; provided, however, that the amendment of any such license, grant, franchise, permit or consent shall only be made with the consent and agreement of the person, firm or corporation owning such license, grant, franchise, permit or consent or operating the street surface railroad thereunder.

§ 173-e. The acceptance of a terminable permit, or the acceptance of an amendment to any existing license, grant, franchise, permit or consent incorporating therein the terms of a terminable permit, shall constitute a consent by the street surface railroad corporation or corporations, or other person, firm or corporation so accepting the same to the purchase by the city, town or village of all or any part of the street surface railroad property, plant and equipment actually used and useful for the public and situated within the corporate limits of the city, town or village, as provided for in this article.

§ 173-f. Every terminable permit, and every amendment to any existing license, grant, franchise, permit or consent incorporating therein the terms of a terminable permit, shall contain an irrevocable option for the purchase by the city, town or village, either directly or through its nominee or nominees, of all or any part of the property, plant and equipment of the street surface railroad at any time, at a price agreed upon or to be ascertained and determined in a manner agreed upon at the time of the granting of the permit or amendment and to be set forth therein. Any such permit or amendment may contain provisions for amortizing out of earnings or in accordance with an amortization schedule or schedules to be set forth therein, over a period not exceeding fifty years, the price to be paid for all or such part of the property, plant and equipment of the street surface railroad and for any additions thereto or betterments or improvements thereof, so that upon the exercise of the option the city, town or village, or its nominee or nominees, shall be required to pay only the unamortized portion of such

price, and may contain any other terms, agreements, stipulations and conditions as may be authorized by any statute of the state, or as the city, town or village may deem proper and in the public interest, and may provide for the termination thereof for any legal cause.

§ 173-g. Approval of permit or amendment by commissioner of transportation. No terminable permit and no amendment to any existing license, grant, franchise, permit or consent incorporating therein the provisions of a terminable permit, shall become operative or effective until it shall have been approved by the commissioner of transportation. The commissioner of transportation shall have power to approve any such terminable permit or amendment, and, upon approval by him, every such terminable permit or amendment shall be valid and binding as between the parties thereto as of, from and on the day of the date of the execution thereof, in all respects and for all purposes therein expressed.

§ 173-h. Existing license, grant, franchise, permit or consent reinstated on invalidity of amendment. In the event that an amendment to any existing license, grant, franchise, permit or consent shall subsequently be declared invalid for any reason, or in the event of the failure of the approval thereof by the commissioner of transportation under the transportation law, the existing license, grant, franchise, permit or consent amended thereby shall, by operation of law be reinstated in full force and with like effect as though the same had not been amended.

§ 174. Proceedings if property owners do not consent. If the consent of property owners required by any provision of this article can not be obtained, the corporation failing to obtain such consents may apply to the appellate division of the supreme court held in the department in which it is proposed to construct its road for the appointment of three commissioners to determine whether such railroad ought to be constructed and operated. Notice of such application must, at least ten days prior thereto, be served, personally, upon each nonconsenting property owner

by delivering the same to the person to whom such property is assessed upon such assessment-roll or by duly mailing the same, properly folded and directed, to such property owner at his post-office address with the postage prepaid thereon. If the person upon whom service is to be made is unknown, or his residence and post-office address are unknown and can not by reasonable diligence be ascertained, service of such notice may be made by publishing the same in such newspaper of the county as the court may direct, at least once a week for two successive weeks. Upon due proof of service of such notice the court to which the application is made shall appoint three disinterested persons, who shall act as commissioners, and who shall, within ten days after their appointment, cause public notice to be given of their first meeting in the manner directed by the court, and may adjourn from time to time, until all their business is completed. Vacancies may be filled by the court after such notice to parties interested as it may deem proper to be given; and the evidence taken before as well as after the happening of the vacancy shall be deemed to be properly before such commissioners. After a public hearing of all parties interested, the commissioners shall determine whether such railroad ought to be constructed and operated, and shall make a report thereon, together with the evidence taken, to the appellate division, within sixty days after appointment, unless the court, or a judge thereof, for good cause shown, shall extend such time; and their determination that such road ought to be constructed and operated, confirmed by such court, shall be taken in lieu of the consent of the property owners hereinbefore required. The commissioners shall each receive ten dollars for each day spent in the performance of their duties and their necessary expenses and disbursements, which shall be paid by the corporation applying for their appointment.

§ 175. Percentage of gross receipts to be paid in cities or villages; report of officers. Every corporation building or operating a railroad or branch or extension thereof, under the provisions of this article, or of chapter two hundred and fifty-two of the laws of eighteen hundred and eighty-four, within any city of the state having a population of twelve hundred thousand or more, shall, for and during the first five years after the commencement of the operation of any portion of its railroad

annually, on November first, pay into the treasury of the city in which its road is located, to the credit of the sinking fund thereof, three per centum of its gross receipts for and during the year ending September thirtieth next preceding; and after the expiration of such five years, make a like annual payment into the treasury of the city to the credit of the same fund, of five per centum of its gross receipts. If a street surface railroad corporation existing and operating any such railroad in any such city on May sixth, eighteen hundred and eighty-four, shall have thereafter extended its tracks or constructed branches therefrom, and shall operate such branches or extensions under the provisions of chapter two hundred and fifty-two of the laws of eighteen hundred and eighty-four, or of this article, such corporation shall pay such percentages only upon such portions of its gross receipts as shall bear the same proportion to its whole gross receipts as the length of such extension or branches shall bear to the entire length of its line. In any other incorporated city or village the local authorities shall have the right to require, as a condition to their consent to the construction, operation or extension of a railroad under the provisions of this article, the payment annually of such percentage of gross receipts, not exceeding three per centum, into the treasury of the city or village as they may deem proper. In case of extension the amount to be paid shall be ascertained in the manner heretofore provided. The corporation failing to pay such percentage of its gross earnings shall, after November first, pay in addition thereto five per centum a month on such percentage until paid. The president and treasurer of any corporation required by the provisions of this article to make a payment annually upon its gross receipts shall, on or before November first in each year, make a verified report to the comptroller or chief fiscal officer of the city of the gross amount of its receipts for the year ending September thirtieth, next preceding, and the books of such corporation shall be open to inspection and examination by such comptroller or officer, or his duly appointed agent, for the purpose of ascertaining the correctness of its report as to its gross receipts. The corporate rights, privileges and franchises acquired under this article or such chapter by any corporation, which shall fail to comply with all the provisions of this section, shall be forfeited to the people of the state, and upon judgment of forfeiture rendered in an

action brought in the name of the people by the attorney-general, shall cease and determine.

§ 176. Extension of route over rivers; terminus in other counties; when property owners withhold consent; supreme court may appoint commissioners. Any street railroad in operation in this state, which shall, by a two-thirds vote of its directors, decide to extend the route of its road, so as to cross a river over and by any bridge now or hereafter constructed under the provisions of any law of this state, may so extend its route over and across such bridge upon such terms as may be mutually agreed upon between it and such bridge company, and may locate the terminus of its road in the county adjoining the one in which its road is now located and in operation, upon first obtaining the consent of such bridge company or its lessees, and the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of that portion of a street or highway upon which it is proposed to construct or operate such railroad, or in case the consent of such property owners can not be obtained the appellate division of the supreme court in the district in which it is proposed to be constructed may, upon application, appoint three commissioners, who shall determine after a hearing of all parties interested, whether such railroad ought to be constructed, or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners. Whenever a terminus of any public viaduct, bridge or bridges, or public viaduct connected with any bridge or bridges, heretofore or hereafter constructed in and owned and maintained by any city having a population of three hundred thousand or more, or by any town adjoining the same, is or shall be located at or adjacent to or within one-half mile of the route of any existing street surface railroad, the corporation owning or operating such railroad may, irrespective of any provisions otherwise applicable thereto contained in any general or local act, upon obtaining the consent of the local authorities and property owners as above provided, and upon complying with the provisions of this chapter applicable thereto, extend its road or route and construct and operate its railroad, to, upon and across such viaduct, bridge or bridges and approaches thereto for the purpose

of connecting with another railroad route not more than one-half mile distant from such bridge or viaduct so as to afford a continuous ride for one fare, subject to the provisions of this chapter, or for the purpose of reaching the depot, station or terminus of another railroad not more than one-half mile distant from such bridge or viaduct. This section shall not apply to any bridge over the Hudson or East rivers in the counties of New York and Kings, nor to any bridge or viaduct constructed under the provisions of any so-called grade crossing law.

§ 177. Use of tracks of other roads. Any railroad corporation in this state, whose cars are run and operated by horses or other motive power, authorized by this article, upon the surface of the street, excepting in the county of New York, may, for the purpose of enabling it to connect with and run and operate its cars between its tracks, and a depot or car-house owned by it, run upon, intersect, and use, for not exceeding five hundred feet, the tracks of any other railroad corporation, the cars of which are run and operated in like manner with the necessary connections and switches for the proper working and accommodation of the cars upon such tracks, and in connection with such depot or car-house, upon paying therefor such compensation as it may agree upon with the corporation owning the tracks to be so run upon, intersected, and used; and in case such corporations can not agree upon the amount of such compensation, the same shall be ascertained and determined in the manner prescribed in the eminent domain procedure law.

§ 178. Repair of streets; rate of speed; removal of ice and snow. Every street surface railroad corporation, so long as it shall continue to use or maintain any of its tracks in any street, avenue or public place in any city or village, shall have and keep in permanent repair that portion of such street, avenue or public place between its tracks, the rails of its tracks, and two feet in width outside of its tracks, under the supervision of the proper local authorities, and whenever required by them to do so, and in such manner as they may prescribe; but nothing contained in this section shall require any street railroad corporation to make pavements or repairs over openings made in the

streets by any person, municipality or corporation other than such street railroad corporation, for any purpose other than the pavement or repavement of the street. In case of the neglect of any corporation to make pavements or repairs after the expiration of twenty days' notice to do so, the local authorities may make the same at the expense of such corporation, and such authorities may make such reasonable regulations and ordinances as to the rate of speed, mode and use of tracks, and removal of ice and snow, as the interest or convenience of the public may require. A corporation whose agents or servants wilfully or negligently violate such an ordinance or regulation shall be liable to such city or village for a penalty not exceeding five hundred dollars, to be specified in such ordinance or regulation.

§ 178-a. Headlights. Whenever the tracks of any street surface railway shall be laid upon the side of the roadway of any public highway or street, the headlights of such street surface railway shall be so arranged, adjusted and operated that no dazzling or dangerous beams of light shall be thrown upon the traveling portion of such highway. Whenever the rails of such street surface railway are laid upon any portion of the improved roadway, such headlights shall be so arranged, adjusted and operated that no dangerous or dazzling light, when measured seventy-five feet or more ahead of the lamp or car, shall rise above forty-two inches on the level surface upon which the car stands. Any person or corporation violating the provisions of this section shall be liable to a penalty of one hundred dollars for each day such violation continues.

§ 179. Within what time road to be built. In case any street surface railroad corporation shall not commence the construction of its road, or of any extension or branch thereof, within one year after the consent of the local authorities and property owners or the determination of the appellate division of the supreme court as herein required, shall have been given or renewed, and shall not complete the same within three years after such consents or determination shall have been obtained, its rights, privileges and franchises in respect of such railroad or

extension or branch, as the case may be, may be forfeited. If the performance of any act required by this chapter or any prior acts within the times therein prescribed, is hindered, delayed or prevented by legal proceedings in any court, such court may also extend such time for such period as the court shall deem proper or if the performance of any act required by said statutes within the times therein prescribed is hindered, delayed or prevented by works of public improvement, or from any other or different cause, not within the control of the corporation upon which such requirement is imposed, the time for the performance of such act is hereby and shall be deemed to be extended for the period covered by such hindrance, delay or prevention. The time for compliance with any requirement in this or any former act, by a street surface railroad corporation incorporated for the purpose of constructing a street surface railroad and which has prior to March twenty-fifth, nineteen hundred and two, obtained or shall prior to June thirtieth, nineteen hundred and three, obtain such consents or determination is hereby extended until June thirtieth, nineteen hundred and four.

§ 180. Motive power. Any street surface railroad may operate any portion of its road by cable, electricity, or any power other than locomotive steam power, which said locomotive steam power is primarily generated by the locomotive propelling the cars, and in the use of which either escaping steam or smoke is visible, which may be approved by the commissioner of transportation and consented to by the owners of one-half of the property bounded on that portion of the railroad, with respect to which a change of motive power is proposed; and if the consent of such property owners can not be obtained, the determination of three disinterested commissioners, appointed by the appellate division of the supreme court of the department in which such railroad is located, in favor of such motive power, confirmed by the court, shall be taken in lieu of the consent of the property owners. The consent of the property owners shall be obtained and the proceedings for the appointment and the determination of the commissioners and the confirmation of their report shall be conducted in the manner prescribed in sections one hundred and seventy-one and one hundred and seventy-four of this article, so far as the same can properly be made applicable

thereto. Any railroad corporation making a change in its motive power under this section, may make any changes in the construction of its road or roadbed or other property rendered necessary by the change in its motive power. Where a street surface railroad in the counties of Herkimer and Hamilton is located wholly outside the limits of an incorporated city or village, such railroad may, with the approval of the commissioner of transportation, be operated by locomotive steam power, provided that such steam power is generated by oil from and including April fifteenth to and including November thirtieth, and by either oil or coal from and including December first to and including April fourteenth.

§ 181. Rate of fare. No corporation constructing and operating a railroad under the provisions of this article, or of chapter two hundred and fifty-two of the laws of eighteen hundred and eighty-four, shall charge any passenger more than five cents for one continuous ride from any point on its road, or on any road, line or branch operated by it, or under its control, to any other point thereof, or any connecting branch thereof, within the limits of any incorporated city or village. Not more than one fare shall be charged within the limits of any such city or village, for passage over the main line of road and any branch or extension thereof if the right to construct such branch or extension shall have been acquired under the provisions of such chapter or of this article; except that in any city having a population of less than fifty thousand, or in any incorporated village, it shall be lawful for such corporation to charge and collect as a maximum rate of fare for each passenger, ten cents, where such passenger is carried in a car which overcomes an elevation of at least four hundred and fifty feet within a distance of one and a half miles. This section shall not apply to any part of any road constructed prior to May sixth, eighteen hundred and eighty-four, and then in operation, unless the corporation owning the same shall have acquired the right to extend such road, or to construct branches thereof under such chapter, or shall acquire such right under the provisions of this article, in which event its rate of fare shall not exceed its authorized rate prior to such extension. The legislature expressly reserves the right to regulate and reduce the rate of fare on

any railroad constructed and operated wholly or in part under such chapter or under the provisions of this article; and the commissioner of transportation shall possess the same power, to be exercised as prescribed in the transportation law.

§ 182. Collection of fare. It shall be unlawful for any corporation, or an employee thereof, operating a street surface railroad, or a branch thereof, on which the motive power is electricity, which road or branch is operated wholly or in part in a city having at least one million inhabitants and which crosses the boundaries of such city, to collect fare of a passenger more than once for and during one continuous ride on a single car or train; excepting that fare may be once collected separately outside the city limits for passenger service to or from such limits, and once separately within the city for the service therein. A person or corporation violating the provisions of this section shall be liable to a penalty of twenty-five dollars for each violation, recoverable by the passenger aggrieved thereby.

§ 183. Construction of road in street where other road is built. No street surface railroad corporation shall construct, extend or operate its road or tracks in that portion of any street, avenue, road or highway, in which a street surface railroad is or shall be lawfully constructed, except for necessary crossings, or, in cities, villages and towns of less than one million two hundred and fifty thousand inhabitants over any bridges, without first obtaining the consent of the corporation owning and maintaining the same, except that any street surface railroad company may use the tracks of another street surface railroad company for a distance not exceeding one thousand feet, and if in a city having a population of less than thirty-five thousand inhabitants, for a distance not exceeding fifteen hundred feet, and in cities, villages and towns of less than one million two hundred and fifty thousand inhabitants, shall have the right to lay its tracks upon, and run over and use any bridges used wholly or in part as a footbridge, whenever the court upon an application shall be satisfied that such use is actually necessary to connect main portions of a line to be

constructed or operated as an independent railroad, or to connect said railroad with a ferry, or with another existing railroad, and that the public convenience requires the same, in which event the right to use shall only be given for a compensation to an extent and in a manner to be ascertained and determined by the supreme court pursuant to the provisions of the eminent domain procedure law, or by the commissioner of transportation in cases where the corporations interested shall unite in a request for such commissioner of transportation to act. The supreme court in determining the compensation to be paid for the use by one corporation of the tracks of another shall consider and allow for the use of the tracks for all injury and damage to the corporation whose tracks may be so used. Any street surface railroad corporation may, in pursuance of a unanimous vote of the stockholders voting at a special meeting called for that purpose by notice in writing, signed by a majority of the directors of such corporation, stating the time, place and object of the meeting, and served upon each stockholder appearing as such upon the books of the corporation, personally or by mail, at his last known post office address, at least sixty days prior to such meeting, guarantee the bonds of any other street surface railroad corporation whose road is fully or partly in the same city or town or adjacent cities or towns. Notwithstanding any of the provisions contained in this section, any street surface railroad corporation having a franchise to construct, maintain and operate in any city by underground electric power over any one street or avenue for a distance of more than three miles thereon, and operating under such franchise by underground electric power on such street or avenue over tracks which extend more than four thousand feet on each end of the tracks of another street surface railroad corporation located on such street or avenue and operated by underground electric power, may use the tracks of such other street surface railroad corporation located on such street or avenue for a distance not exceeding two thousand five hundred feet, and shall pay therefor such compensation as may be agreed upon between such street railroad corporations, or if such street railroad corporations can not so agree, such compensation shall be ascertained and determined by the supreme court pursuant to the provisions of the eminent domain procedure law.

§ 184. Abandonment of part of route. Any street surface railroad corporation may declare any portion of its route which it may deem no longer necessary for the successful operation of its road and convenience of the public to be relinquished or abandoned. Such declaration of abandonment must be adopted by the board of directors of the corporation under its seal, which shall be submitted to the stockholders thereof at a meeting called and conducted in the same manner as required by law for meetings of stockholders for the approval of leases by railroad corporations for the use of their respective roads. If the stockholders shall, at such meeting, ratify and adopt such declaration of abandonment, the secretary of the company shall so certify under the seal of the corporation, upon such declaration. Such declaration shall then be submitted to the commissioner of transportation for his approval, and if approved by the commissioner of transportation, such approval shall be indorsed thereon or annexed thereto and the declaration so certified and indorsed shall be filed in the office of the department of state, and from the time of such filing, such portion of the route designated in the declaration shall be deemed to be abandoned.

§ 185. Effect of dissolution of charter as to consents. Whenever any street surface railroad corporation shall have been dissolved or annulled, or its charter repealed by an act of the legislature, the consent of owners of property bounded on, and the consent of the local authorities having the control of that portion of a street or highway upon which the railroad of such corporation shall have been theretofore constructed and operated, and the order of the appellate division confirming the report of any commissioner that such railroad ought to be constructed or operated, shall not, nor shall either thereof, be deemed to be in any way impaired, revoked, terminated or otherwise affected by such act of dissolution, annulment or repeal, but the same and each thereof shall continue in full force, efficacy and being. The right to the further enjoyment and to the use thereof, subsequent to such act of dissolution, annulment or repeal, and of all the powers, privileges and benefits therein or thereby created, shall be sold at public auction by

the local authorities within whose jurisdiction such railroad shall be, in the same manner as is provided in section one hundred and seventy-three of this article. When such sale shall have been so made, the purchaser thereat shall have the right to the further enjoyment and use of such consents and orders, and of each thereof, and of all the powers, privileges and benefits therein or thereby created, in like manner as if such purchaser had been originally named in such consents, reports and orders; if such purchaser shall be otherwise authorized by law to construct, maintain and operate a street surface railroad within the municipality within which such railroad shall be.

§ 186. Corporate rights saved in case of failure to complete road; right to operate branches; conditions; former consents ratified; limitations. The corporate existence and powers of every street surface railroad corporation, which has completed a railroad upon a substantial portion of the route designated in its certificate of incorporation, or of extension, within ten years from the date of filing such certificate in the office of the department of state, and which was operating such completed portion of its railroad on the twenty-third day of March, nineteen hundred and twelve, and had operated a portion of the same continuously for a period of five years immediately preceding said date, shall continue as to the completed portion of said road only with like force and effect, as though it had in all respects complied with the provisions of law with reference to the time when it should have fully completed its road, or such extension. Every such corporation shall have the right to operate any extensions and branches of its railroad, now constructed and operated by it, which had been so constructed and operated by it, for a period of ten years immediately preceding said twenty-third day of March, nineteen hundred and twelve, with like force and effect, as though the route of such extensions and branches were designated in its certificate of incorporation.

But every such street surface railroad corporation is authorized to operate such railroad and any extensions or branches thereof, upon condition that it has heretofore obtained, or shall hereafter obtain, the consent of the local authorities having the control of that portion

of the streets, avenues or highways included in such railroad, or any extension or branch thereof, to the construction and operation of the same, and also upon the condition that it has heretofore obtained or shall hereafter first obtain the consent of the owners of one-half in value of the property bounded on the portion of the streets, avenues or highways included in the route of such railroad, or any extensions or branches thereof, to the construction and operation of the same, or in case the consent of such property owners can not be obtained, the appellate division of the supreme court of the department in which such railroad or any extension or branch thereof is located, may, upon application, appoint three commissioners who shall determine, after a hearing of all the parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners. If any street surface railroad corporation shall have made and filed a statement or statements of proposed extensions or branches embracing a line from the boundary of a city or village to the boundary of another city or village generally parallel with the route specified in its certificate of incorporation and generally distant not more than one-half mile therefrom, and shall have made and filed an agreement of consolidation with some other street surface railroad corporation formed to build a street railroad upon a route continuous or connecting with one or more of the routes described in such statement or statements of proposed extensions or branches, and thereafter there shall have been constructed and operated for a period of four years a street surface railroad from such city or village to such other city or village upon a line embraced in any such proposed extensions or branches, such consolidated corporation may relinquish and abandon any unconstructed route or unconstructed portions of route specified in the certificate of incorporation or in any statements or proposed extensions or branches of such first mentioned corporation by filing in the office of the department of state a copy of a resolution of the board of directors of such consolidated corporation certified by its president and secretary, declaring such unconstructed route or unconstructed portions of route relinquished or abandoned, and thereupon the corporate rights, powers and franchises of such consolidated corporation shall be and continue the same as though the certificate of incorporation of such constituent

corporation had specified the constructed and not the unconstructed portions of such route and proposed extensions and branches. All consents given, or grants made by local authorities having the control of the portion of any street, avenue or highway included in the route of such railroad, or any extensions or branches thereof, to any such street surface railroad corporation, prior to March twenty-third, nineteen hundred and twelve, are hereby ratified and confirmed and declared valid. This section shall not apply to or affect any railroad corporation in the city of New York; nor any special grant made to or authority conferred upon any street surface railroad corporation by any law of this state; nor any litigation pending on March twenty-third, nineteen hundred and twelve; nor shall it impair rights, privileges, or franchises existing on said date of any street surface railroad corporation.

§ 187. Extensions and franchises confirmed. Any street surface railroad corporation which had prior to the tenth day of May, eighteen hundred and ninety-three, constructed and was on that date operating any extension or branch of its railroad along any streets or highways or portion thereof in a city having less than fifty thousand inhabitants, or in any town adjoining such city, and which had prior to said date obtained consent of the owners of one-half in value of the property bounded on, and the consents also of the local authorities having control of that portion of the streets, roads or highways upon which such extension or branch was constructed and being operated to the construction and operation of the same, is hereby authorized to operate and maintain any such branch or extension, upon filing in the office of the secretary of state a certificate, signed by its board of directors, which certificate shall contain a statement of the names of the cities, towns, villages and counties, and the names or description of the streets, avenues and highways in which such extensions or branches have been constructed, the places from and to which the same have been constructed, and are to be maintained and operated and the length thereof, as near as may be; thereupon said extensions and branches shall be deemed and considered a part of the lines of said railroad from the date of the filing thereof, and all corporate action relating to the

construction, maintenance and operation of such extensions or branches, or creating liens upon the same by said corporation, are hereby validated and confirmed. Nothing in this section contained shall affect or impair any vested right or any litigation pending on said tenth day of May, eighteen hundred and ninety-three, nor shall any corporation which shall avail itself of the provisions of this section be deemed thereby to have waived any rights which it therefore had to maintain and operate any branches or extension named in any certificate filed by it hereunder.

§ 188. Certain consents of local authorities confirmed. All consents given since December first, eighteen hundred and ninety-five, and prior to February first, eighteen hundred and ninety-six, by the local authorities of any city having a population of fifty thousand or more, to the construction, operation and maintenance of a street surface railroad in any such city by a railroad corporation which has not complied with the provisions of section nine of this chapter, or has failed to obtain the certificate therein provided for, are hereby validated and confirmed, and any such corporation may construct, operate and maintain a street surface railroad over, along and upon the streets, avenues, highways and public places described in such consent, upon obtaining the consent of the owners of property bounded on such streets, avenues, highways or public places as provided by law.

§ 189. Time extended for payment of percentage based on gross receipts. Every corporation building or operating a street surface railroad, or a branch or extension thereof, under the provisions of this article, or chapter two hundred and fifty-two of the laws of eighteen hundred and eighty-four, which, at any time during the period of six years prior to January first, nineteen hundred and one, became liable to pay any percentage based upon the gross receipts of said corporation, under the provisions of section one hundred and seventy-five of this article, and which heretofore has paid or hereafter shall pay, separately or together, the amount of such percentage and, in addition thereto, interest thereon at the rate of seven per centum per annum,

computed from the time such percentage became due by said section one hundred and seventy-five up to the time such percentage was or shall be paid, by virtue of such payment or payments, shall be discharged of liability with the same force and effect as if the amount of such percentage had been paid upon the date when it first became due under the provisions of the said section of this article.

§ 191. Road not to be constructed upon ground occupied by public buildings or in public parks. No street surface railroad shall be constructed or extended upon ground occupied by buildings belonging to any town, city, county or to the state, or to the United States, or in public parks, except in tunnels to be approved by the local authorities having control of such parks. Provided, however, that the commissioners of the state reservation at Niagara, by and with the consent of the commissioners of the land office, may construct, without expense to the state, street railroad tracks upon and along that part of the riverway, so called, between Falls and Niagara streets, in the city of Niagara Falls, and in their discretion may grant revocable licenses to street surface railroad companies to use such tracks upon such terms as said commissioners may prescribe. And provided, further, that a street railroad may be constructed or extended upon a route or routes with a right of way not exceeding fifty feet in width in the Pelham Bay park in the city of New York, said route or routes to be designated and fixed by the board of estimate and apportionment of said city, with the approval of the park board of said city, and shall constitute the most direct, appropriate route or routes in the opinion of said board of estimate and apportionment and said park board, but no such street surface railroad shall be constructed or extended until a franchise or right therefor shall have been granted by said board of estimate and apportionment, pursuant to the statutes relating to the granting of such franchises or rights, and requiring adequate compensation therefor, and no company or corporation shall be given the exclusive right to operate a street surface railroad upon such route or routes, and no such street surface railroad shall be constructed at grade upon, along or across any of the existing or proposed streets, highways, driveways, parkways or park walks within the limits of said park.

§ 192. Center-bearing rails prohibited. No street surface railroad corporation shall hereafter lay down in the streets of any incorporated city or village of this state what are known as "center-bearing" rails; but in all cases, whether in laying new track or in replacing old rails, shall lay down "grooved" or some other kind of rail not "center-bearing" approved by the local authorities. Such grooved or other rail shall be of such shape and so laid as to permit the paving-stones to come in close contact with the projection which serves to guide the flange to the car wheel. Where in any city, the duty of repairing and repaving streets, as distinguished from the authorization of such paving, repairing and repaving, is by law vested in any local authority other than the common council of such city, such other local authority shall be the local authority referred to in this section.

§ 192-a. Relocation of tracks. In any city having a population of one million or more, the board of estimate of such city, or if there be no board of estimate, the local authorities of such city having control of the streets shall have the power to apply to the commissioner of transportation for an order directing any street railroad corporation to change the location of its tracks within any street or highway forming a part of its route in a borough of such city containing not less than three hundred thousand or more than six hundred thousand inhabitants, where in the judgment of such commissioner of transportation the relocation of such tracks is necessary in connection with the maintenance, widening, change of grade, setting back of curb lines or other proper improvement of such street or highway. Any street railroad corporation operating as aforesaid, shall, at such time as the commissioner of transportation shall direct, start work upon the change of the location of its tracks to the place and in the manner directed by the commissioner of transportation and shall complete such change within a reasonable time thereafter. The relocation of any track in accordance with the provisions of this section shall not limit, change or in any wise affect or prejudice the existing rights or franchises of any street railroad corporation, and such corporation shall have the same right to

operate its railroad on the relocated route in the same manner and to the same extent as it had the right so to do on the original route.

The cost and expense of the relocation of such railroad tracks shall be imposed and borne in such manner as the commissioner of transportation may determine before, during or subsequent to such relocation. In determining such cost and expense, such commissioner of transportation may take into consideration the fact that such road was located before such street was laid out.

§ 193. Right to cross bridge substituted for a bridge crossed for five years. Should any street surface railroad company have crossed any bridge as a part of its route for a period of more than five years and should any other bridge be substituted therefor at any time, such company shall have the right to cross such substituted bridge and to lay and use tracks thereon for the transit of its cars and to make all changes and extensions of its route subject to all the provisions of this chapter, as the convenient operation of its cars and public convenience may require.

§ 194. Protection of employees. Every corporation operating a street surface railroad in this state, except such as operate a railroad or railroads either in the borough of Manhattan or Brooklyn, in the city of New York, shall cause the front and rear platforms of every passenger car propelled by electricity, cable or compressed air, operated on any division of such railroad which extends in or between towns or outside of city limits, during the months of December, January, February and March, except cars attached to the rear of other cars, to be inclosed from the fronts of the platforms to the fronts of the hoods, so as to afford protection to any person stationed by such corporation on such platforms to perform duties in connection with the operation of such cars. Every corporation or person using and operating a car in violation of this section shall be liable to a penalty of twenty-five dollars per day for each car so used and operated, to be collected in an action brought by the commission or commissioner having jurisdiction and to be

paid into the treasury of the state of New York, or in a suit by the attorney of the municipality in which the violation of the provisions of this section occurs, to be paid into the treasury of such municipality.

§ 195. Platforms on new cars, how constructed. All street surface railroad passenger cars purchased, built or rebuilt after the first day of December, nineteen hundred and four, and operated in the state of New York on and after said date, except those owned by any company operating either in the borough of Manhattan or Brooklyn, in the city of New York, shall be constructed in accordance with the provisions of the preceding section.

§ 196. Protection to employees in the counties of Albany and Rensselaer. Every corporation operating a street surface railroad in the counties of Albany and Rensselaer shall cause the front and rear platforms of every car propelled by electricity, cable or compressed air, during the months of December, January, February and March, except cars attached to the rear of other cars, to be inclosed from the front and at least one side of the platform to the hood, so as to afford protection to any person stationed by such corporation on such platforms to perform duties in connection with the operation of such cars. Platforms on cars on such street surface railroads used more than one mile outside the limits of a city shall be completely inclosed from platform to hood. Every corporation using and operating a car in violation of this section shall be liable to a penalty of twenty-five dollars per day for each car so used and operated, to be collected by the people to the use of the poor of the county in which such corporation has its principal office, in an action brought by the commission or commissioner having jurisdiction or the district attorney of such county. The supreme court may, on the application of a citizen, direct the district attorney to bring such action.

§ 197. Protection of employees in the counties of Kings and Queens. Every corporation operating a street surface railroad in the counties of

Kings or Queens, shall cause the front and rear platforms of every passenger car propelled by electricity, cable or compressed air, operated on any division of such railroad during the months of December, January, February and March, except cars attached to the rear of other cars, to be inclosed from the fronts of the platforms to the fronts of the hoods so as to afford protection to any person stationed by such corporation on such platforms to perform duties connected with the operation of such cars. Every corporation or person using and operating a car in violation of this section shall be liable to a penalty of twenty-five dollars per day for each car used and operated, to be collected in an action brought by the transit commission and to be paid to the treasurer of the city of New York, or in a suit by the district attorney of the counties of Kings or Queens to be paid into the treasury of the city of New York.

§ 198. Contracts for the adjustment of payments due certain cities.

The board of estimate and apportionment, or if such board do not exist, the local authorities which have power to make appropriation of moneys to be raised by taxation, in any city having a population of three hundred thousand or more, shall have the power in their discretion, to enter into a contract or contracts on behalf of the city with any railroad corporation or corporations owning or operating street surface railroads or other railroads in such city, for the purpose of adjusting any or all differences now existing between such corporation or corporations and such city with respect to car license fees, percentages upon gross earnings, rentals and any other payments, other than taxes upon real and personal property, and capital stock, payable or claimed to be payable to the city under existing acts of the legislature, municipal ordinances, grants by, or contracts with, the municipal authorities or otherwise; and any such contract may provide for the payment of an annual amount to be ascertained as in such contract provided in lieu of any or all payments of any of the classes hereinbefore mentioned, other than taxes. Any such contract which shall be with a corporation operating lines of railroad by lease may provide for an annual payment, to be ascertained as in such contract provided, which shall be in lieu of any or all of the payments of any or all of

said classes, other than taxes upon real and personal property and capital stock, which would otherwise be payable in respect of the leased lines so long as the lease or leases thereof shall continue. The annual payments provided for in any contract made under the authority of this section shall, so long as such contract is in force, supersede the payments which would otherwise be payable by the corporation or corporations making such contract and in lieu of which the annual payments provided for in such contract are substituted. Any contract made hereunder may, with the approval of the municipal authorities by whom the contract was made or their successors in office, be modified from time to time by the parties thereto for the purpose of meeting changed conditions. No contract shall be made or modified hereunder without the written consent and approval of the mayor and of the comptroller or other chief financial officer of the city.

§ 201. Construction of park railroads in cities having a population of one million five hundred thousand or upwards. For the purpose of providing for the more speedy transportation of persons across public parks in the cities within the state of New York having a population of one million five hundred thousand or upwards it shall be lawful for the municipal authorities, officers, departments, or boards having control of such parks to construct railroads in and upon tunnels or roads or ways depressed below the surface of said parks in such cities in this state, and to extend the same east or west to connect with any surface railroads in such cities, now in existence, and with railroads which hereafter may be built by companies now chartered and existing, and to contract in the name of such cities, with any person or corporations for the construction thereof, and for the equipment and running of the same either with or without public advertisement upon such terms and conditions, including the rates of fare to be charged to persons using such railroads, for such compensation to be paid to such cities, and subject to such rules, regulations and requirements as may be determined upon in said contract, and as the department or board, or officer having charge of said parks may, from time to time, thereafter establish or impose.

§ 202. Consents of property owners. No railroads shall be constructed, equipped or operated by virtue of the preceding section except upon the condition that the consent of the owners of one-half in value of the property outside of said public parks bounded on and the consent also of the local authorities having the control of that portion of a street or highway upon which it is proposed to construct, operate or extend the said railroads to connect with any surface railroads in such cities be first obtained, or in case the consent of such property owners cannot be obtained, the appellate division of the supreme court in the department in which it is proposed to be constructed may, upon application, appoint three commissioners, who shall determine, after hearing of all parties interested, whether the portion of such railroad outside of said public parks ought to be constructed or operated, and their determination confirmed by the court may be taken in lieu of the consent of the property owners.

§ 203. Expense of construction and operation. Whenever any railroad shall be constructed, equipped or operated under section two hundred and one, the expense of such construction, and in case said railroad shall be equipped and operated by such city, the expense of such equipment and operation shall be paid by the municipal corporation within which such railroad is situate, in the same manner as the other expenses of such municipal corporation are paid and provided for.

§ 204. Agreements for payment of cost of construction by instalments. The department, board or officer having control of such public parks may agree with the person or corporation with whom any contract may be made for the construction, equipment and operation of said railroad that the cost of such construction shall be paid by such cities in instalments out of the compensation which such person or corporation shall agree to pay to such cities under any such contract from time to time as such compensation shall be received.

§ 205. Disposition of income. The compensation or income which shall be received by such cities from such railroad, except as the same may be otherwise applied pursuant to the provisions of the preceding section, shall be paid into the treasury thereof.

§ 206. Motive power. Any portion of any railroad constructed, equipped and operated under section two hundred and one may be operated by cable.

§ 207. Railroads in parks in New York city, by whom constructed. Whenever any railroads shall be constructed in the city of New York, under the provisions of the preceding six sections, such railroads shall be constructed by the department of public parks of said city with the concurrence of the sinking fund commissioners of said city.

§ 209. Change of motive power authorized. Any railroad company having the right to use any railroad now constructed in any public tunnel, road or way depressed below the surface of and wholly within any public park in any city within the state of New York having a population of one million five hundred thousand or upwards, may change the motive power and operate any such railroad by cable power, underground current of electricity, compressed air, or any other motive power other than locomotive steam power that may be consented to by the authorities having control of such park or parks, and by the commissioner of transportation, and may make changes in the construction of the road or roadbed or other property made necessary by the change of motive power. Such reconstruction shall be at the sole cost and expense of the railroad company making such change, and when completed such improved railroad shall be the property of the municipal corporation having control of such public tunnel, road or depressed way.

§ 210. New streets across other than steam surface railroads. 1. When a new street, avenue, highway or road or new portion or additional width

of a street, avenue, highway or road, or a state or county highway or county road deviating from the line of an existing highway or road, shall hereafter be constructed across any railroad, other than steam surface railroads, such street, avenue, highway or road, or new portion or additional width shall pass over or under such railroad or at grade, as the commissioner of transportation shall determine. The proceedings for the opening of the same shall be in all things the same as provided by section ninety of this chapter for the opening of new streets, avenues or roads across steam surface railroads and the commissioner of transportation shall have the same powers and duties in determining the application, with like effect, as though the application were for a new street across a steam surface railroad, and the provisions of such section, so far as applicable, shall apply to applications made pursuant to the provisions of this section.

2. Performance of work; division of expense; accountings. Whenever under the provisions of this chapter a determination is made, the work shall be done, the expense shall be divided, and accountings shall be had in accordance with the provisions of section ninety-four of this chapter.

ARTICLE 6

RAPID TRANSIT ACT OF 1875

Section 220. Application for railroad; commissioners.

221. Oath and bond of commissioners.

222. First meeting of commissioners.

223. Determination of necessity of railroad and route.

224. Adoption of plans, and terms upon which road shall be built.

225. Appraisal of damages and deposit of money as security.

226. Shall prepare certificate of incorporation; proviso as to forfeiture.

227. Organization.

228. Commissioners to deliver certificate; affidavit of directors.

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- 238. Increased deposit, when and how required.
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- 240. Gates or vestibule doors.
- 241. Penalty for violation of two preceding sections.
- 242. Sections to be printed and posted.
- 243. Extension of time.
- 244. Lighting cars on elevated railroads in cities of over twelve hundred thousand inhabitants.

§ 220. Application for railroad; commissioners. Upon the application of at least fifty reputable householders and taxpayers of any county or city, verified upon oath before a justice of the supreme court, that there is need in said county or city of a steam railroad in the streets, avenues and public places thereof for the transportation of passengers, mails or freight, the board of supervisors of such county may, within thirty days thereafter by resolution, approve of the application, and authorize its presentation to the supreme court, and if the railroad is to be built wholly within the limits of a city, upon the application of a like number of householders and taxpayers of the city to the mayor thereof, such mayor may, within thirty days thereafter, indorse upon the application his approval and direction that it may be presented to the supreme court, and if the railroad is to be built partly within the limits of a city and partly without, such application shall be approved, both by the mayor of the city and the board of supervisors of the county, and its presentation to the supreme court authorized by them, and upon the presentation of such application so approved and authorized to a special term of the supreme court, held in the district where such

railroad is to be built, or some part thereof, the court may appoint five commissioners, residents of the city if the railroad is to be built wholly within the city, and of the county, if it is to be built wholly or partly outside of the limits of a city, to determine the necessity of such railroad, the route thereof, the time within which and the conditions upon which it shall be constructed, the damages to the property owners along the line thereof and all the matters lawfully submitted to them, and discharge the duties imposed upon them by law.

§ 221. Oath and bond of commissioners. Within ten days after his appointment, and before entering upon the discharge of any of the duties of his office, each commissioner shall take and subscribe the constitutional oath of office, which shall be filed in the office of the clerk of the county and shall execute a bond to the people of the state in the penal sum of twenty-five thousand dollars, with two or more sureties, to be approved by a justice of the supreme court of the department in which the railroad is to be built and conditioned for the faithful performance of the duties of the office, which bond shall be filed in the office of the clerk of the county.

§ 222. First meeting of commissioners. Within fifteen days after their appointment, the commissioners shall meet in some convenient place in the county or city and organize themselves as a board with appropriate officers.

§ 223. Determination of necessity of railroad and route. The commissioners shall, within thirty days after such organization, determine upon the necessity of such steam railroad, and if they find it to be necessary, they shall, within sixty days after such organization, fix and determine the route therefor, and shall have the exclusive power to locate such route, over, under, through or across the streets, avenues, places or lands in such county or city, and to provide for the connection or junction with any other railroad or bridge, if the consent of the owners of one-half in value of the property bounded on and the

consent of the local authorities having control of that portion of a street or highway upon which it is proposed to construct or operate such railroad have been first obtained. If the consent of such property owners can not be obtained, the determination of three commissioners appointed by the appellate division of the supreme court of the department where the railroad is to be constructed, made after due hearing of all parties interested, and confirmed by the court, that such railroad ought to be constructed and operated, may be taken in lieu of the consent of such property owners. No such railroad shall be located in or upon such portion of any street, avenue, place or lands in such county as are now occupied by an elevated or underground railroad or in which such a railroad has already been authorized by law to be so located and constructed, or which are contained in public parks, or occupied by buildings belonging to the county or the state or the United States, or in or upon the following streets, avenues and public places, viz.: Broadway, Fifth avenue, Fourth avenue above Forty-second street, in the borough of Manhattan, city of New York; Debevoise place, Irving place, Lefferts place, those portions of Grand, Classon and Franklin avenues and Downing street lying between the southerly line of Lexington avenue and the northerly line of Atlantic avenue, that portion of Classon avenue lying between the northerly line of Lexington avenue and the southerly line of Park avenue, and that portion of Washington avenue lying between Park and Atlantic avenues in the borough of Brooklyn; and that portion of the city of Buffalo lying between Michigan and Main streets; but such railroad may be located and constructed across such excepted streets, avenues and places only at their intersection with other streets, avenues and places.

§ 224. Adoption of plans, and terms upon which road shall be built.

The commissioners by such public notice, and under such conditions, and with such inducements as they may prescribe, shall invite a submission of plans for the construction and operation of such railroad, and shall meet at a time and place in such notice named, not more than ninety days after their organization, and decide upon the plans for the construction thereof, with the necessary supports, turnouts, switches, sidings, connections, landing-places, stations, buildings, platforms, stairways,

elevators, telegraph and signal devices, or other requisite appliances, upon the route or location determined upon by them. They shall, upon notice to the local authorities, and after hearing all parties interested, fix and determine what compensation, if any, in a gross sum, or in a certain percentage of receipts, shall annually be paid to the local authorities by the corporation formed for the purpose of constructing, maintaining and operating such railroad for public use in the conveyance of persons and property, for the use and occupation by the corporation of the streets, avenues and highways in and upon which its railroad is to be constructed, and the time when such railroad, or a portion thereof, shall be constructed and ready for operation, and the maximum rates to be paid for transportation and conveyance thereon, and the hours during which special cars or trains shall be run at reduced rates of fare; and the amount of the capital stock of such corporation, and the number of shares into which it shall be divided, and the percentage thereof to be paid in cash on subscribing for such shares.

The commissioners may select two or more routes, upon one of which such railroad may be constructed and operated; and the local authorities may consent to the construction and operation of such railroad upon one or more of such routes, or parts thereof; and the commissioners shall have power to change and re-adopt routes and plans for the construction and operation of such railroad after they have been submitted to the local authorities, in cases where such authorities may recommend such changes, or may not be willing to consent to the construction or operation of the railroad upon the routes and plans adopted, unless such changes are made therein.

§ 225. Appraisal of damages and deposit of money as security. The commissioners shall, within one hundred and ten days after their organization, ascertain and determine the aggregate pecuniary damage arising from the diminution in the value of the property bounded on that portion of such street or streets, highway or highways, upon which it is proposed to construct and operate such railroad to be caused by the construction and operation thereof. For that purpose they shall view the several parcels of real property so bounded, and shall appraise

separately the pecuniary damages arising from such diminution in value of each parcel thereof, and for the purposes of such appraisal they shall give notice of the time and place, when and where they will meet to hear the owners, or persons interested in such real property, which notice shall be published for at least ten days consecutively in at least two newspapers in the county where such railroad is to be constructed, and shall take such material testimony upon the probable diminution in value of any or all such parcels to be so caused as may be offered by or in behalf of any person or party interested therein, and the aggregate sum of the amounts so appraised and determined by them shall be the aggregate pecuniary damage required to be ascertained and determined as above provided. No corporation which shall hereafter be organized under this article shall enter upon any street, highway or lane therein, until it shall first have deposited with some trust company, to be designated by the mayor of the city within which it is proposed to construct the railroad or any part thereof, and by the board of supervisors, when the road does not lie wholly within a city, a sum of money equal to the amount so ascertained and determined by the commissioners to be the aggregate pecuniary damage to such property within the city, or within the county outside of any city, or shall have secured the payment of such amount by depositing with such trust company negotiable securities, equivalent at their par and actual value to such aggregate amount, and approved by the mayor of the city in which such road is wholly or in part located, and by the county treasurer of the county if the road is located wholly or in part outside of the limits of such city. The court may accept in lieu of the deposit of money or securities herein required the bond of the corporation, with two or more sureties, to be approved by the court, to the effect that the corporation before constructing or operating its railroad in front of any premises, shall pay to the owner of the real property all the damages sustained, or which will be sustained by him, as fixed and determined by such commissioners, and the costs allowed, if any. Such bond shall be in a sum double the amount of such damages, and the sureties shall justify in the aggregate to an amount equal to the amount of such bond. Such corporation shall also, at the same time, deposit with such trust company or with the county treasurer, as the commissioners may direct, the sum of five thousand dollars in cash, for

the payment of the expense of apportioning and distributing such fund. Unless such moneys or securities shall be deposited by such corporation within one year after it shall have obtained the consent of the local authorities, and of the property owners, or the confirmation by the appellate division of the supreme court, of the determination of three commissioners in lieu thereof, and in the case of a corporation organized prior to May eighteenth, eighteen hundred and ninety-two, within one year after it shall have obtained the confirmation by the appellate division of the supreme court of the report of three commissioners in lieu of the consent of property owners, or within one year after the commissioners appointed to ascertain and determine the aggregate pecuniary damages as provided in this article shall have made their report, then such corporation shall be deemed not to have accepted the franchises granted. Where the commissioners shall fix and determine different periods of time within which different sections of such railroad shall be constructed and ready for operation, they shall ascertain, determine, and report separately the aggregate pecuniary damage to property bounded upon that portion of such street or streets upon which each of such sections is located. Upon the deposit by the corporation as above provided of moneys or securities equivalent to the aggregate pecuniary damage to be sustained by any one of such sections, or of any bond given in lieu thereof, it shall immediately be vested with the right and privilege to construct its railroad through such section.

§ 226. Shall prepare certificate of incorporation; proviso as to forfeiture. The commissioners shall prepare an appropriate certificate of incorporation for the corporation in the last section mentioned in which shall be set forth and embodied, as component parts thereof, the several conditions, requirements and particulars by such commissioners determined pursuant to the provisions of this article, and which shall also provide for the release and forfeiture to the supervisors of the county, or if the road is to be constructed wholly or partly within a city, to such city, of all rights and franchises acquired by such corporation in case such railroad or railroads shall not be completed within the time and upon the conditions therein provided; and the

commissioners shall thereupon and within one hundred and twenty days after their organization cause a suitable book of subscription to the capital stock of such corporation to be opened pursuant to due public notice at a banking office in such county or city. A failure by any corporation heretofore or hereafter organized under this article to complete its railroad within the time limited in and by its certificate of incorporation shall only work a forfeiture of the franchises of such corporation with respect to that portion of its route which such corporation shall have failed to complete, and shall not affect the rights and franchises of such corporation to construct and operate such part of its railroad which it shall have completed within the term prescribed by its certificate of incorporation, or as to which the time for completion shall not have expired, notwithstanding anything to the contrary in its certificate of incorporation.

§ 227. Organization. Whenever the whole capital stock of such corporation or an amount of such capital stock proportioned to the part of such railroad directed by the commissioners to be constructed, shall have been subscribed by not less than fifteen persons, and the fixed percentage of such subscriptions shall have been paid, in cash, the commissioners shall, by written or printed notice of ten days, served personally or by mail, call a meeting of such subscribers for organization, and appoint the inspectors of election to serve thereat. At such meeting, or at any subsequent one to which the same may be adjourned, a majority in number and amount of such subscribers may elect persons, of a number to be theretofore determined by the commissioners not less than nine, who shall be directors for one year of the corporation formed for the purposes of constructing and operating such railroad.

§ 228. Commissioners to deliver certificate; affidavit of directors. Within ten days after the election of such directors the commissioners shall deliver to them a certificate in duplicate, verified by the oath of three commissioners, before a justice of the supreme court, setting forth the certificate of incorporation and the organization of the

corporation for the purposes therein mentioned, and within five days after the reception by them of such certificates, three of the directors so elected shall make affidavit in duplicate that the full amount of stock has been subscribed in good faith to construct, maintain and operate the railroad or railroads in such certificate of incorporation mentioned, and such directors shall file such affidavits and certificate in the office of the secretary of state, and a duplicate of the same in the office of the clerk of the county wherein such railroad shall be located; and thereupon the persons who have so subscribed such certificate of incorporation and all persons who shall become stockholders in such corporation shall be a corporation by the name specified in such certificate, and be subject to the duties, liabilities and restrictions of such corporations.

§ 229. Powers. Subject to the provisions of the transportation law, every such corporation shall have power, in addition to the powers conferred by the business corporation law and by subdivisions four and six of section eight of this chapter:

1. To take and convey persons and property on its railroad by the power or force of steam or by any motor other than animal power, and to receive compensation therefor.

2. To enter upon and underneath the several streets, avenues and public places and lands designated by the commissioners, and enter into and upon the soil of the same, to construct, maintain, operate and use in accordance with the plan adopted by the commissioners, a railroad upon the route or routes and to the points decided upon and to secure the necessary foundations and erect the columns, piers and other structures which may be required to secure safety and stability in the construction and maintenance of the railroad constructed upon such plan and for operating the same; and to make such excavations and openings along the route through which such railroad shall be constructed as shall be necessary from time to time. In all cases the surface of the streets around such foundations, piers and columns shall be restored to the condition in which they were before such excavations were made, as

near as may be, and any interference with or change in the water mains, or in the sewers or lamp posts, except such changes as may be made with the concurrence of the proper department or authority, shall be avoided; and the use of the streets, avenues, places and lands designated by the commissioners and the right of way through the same for the purpose of a railroad, as herein authorized, shall be considered and is hereby declared to be a public use, consistent with the uses for which the roads, streets, avenues and public places are publicly held. No such corporation shall have the right to acquire the use or occupancy of public parks or squares in any such city or county, or the use or occupancy of any of the streets or avenues, except such as may have been designated for the route or routes of such railroad, and except such temporary privileges as the proper authorities may grant to such corporations to facilitate such construction, and no such railroad shall be constructed across the track of any steam railroad now in actual operation at the grade thereof, nor shall any piers or supports for any elevated railroad be erected upon a railroad track now actually in use in any street or avenue; and no such corporation shall construct a street surface railroad to run in whole or in part upon the surface of any street or highway under the provisions of this article.

§ 231. Where route coincides with another route. Whenever the route or routes determined upon by the commissioners coincide with the route or routes covered by the charter of an existing corporation, formed for the purpose of constructing and operating such a railroad, and it has not forfeited its charter or failed to comply with the provisions thereof, requiring the construction of a road or roads within the time therein prescribed, such corporation shall have the like power to construct and operate such railroad upon the fulfillment of the like requirements and conditions imposed by the commissioners as a corporation specially formed under this article, and the commissioners may fix and determine the route or routes by which any elevated steam railroad now in actual operation may connect with other steam railroads or the depots thereof, or with steam ferries, upon making compensation therefor, and in case such corporations can not agree with the owners of such steam railroads, depots or ferries upon the amount of such compensation, and such owners

may be entitled to compensation therefor, the amount of such compensation shall be ascertained and paid in the manner prescribed in the condemnation law, and upon fulfillment by such elevated railroad corporation, so far as it relates to such connection, of the requirements and conditions imposed by this article, it shall possess all the powers conferred by section two hundred and twenty-nine of this article, and when any connecting route or routes shall be so designated, such elevated railroad corporation may construct such connection with all the rights and with like effect as though the same had been part of the original route of such railroad.

§ 232. Commissioners to transfer plans. Within one month after such corporation shall have been formed and organized in the manner hereinbefore provided, the commissioners shall transfer and deliver to the corporation all plans, specifications, drawings, maps, books and papers in their possession, and they shall, within the like period of one month after the organization of such corporation, cause to be paid to the treasurer thereof all money collected under the provisions of this article, after deducting therefrom the necessary expenses incurred by the commissioners and the amounts due to them for their salaries.

§ 233. Commissioners to file report; confirmation thereof. The commissioners shall within one hundred and forty days after their appointment, make a report to a special term of the supreme court of the department in which such railroad may be located, of the amount of the pecuniary damages arising from the diminution of value of each parcel of property bounded on that portion of the street or streets, highway or highways, upon which it is proposed to construct such railroad or railroads, which will be caused by the construction, maintenance and operation thereof. The name and place of residence of the owner or owners of each parcel shall be stated if the same are known, or can be ascertained, and if not known the name of the person or persons appearing by the certificate of the clerk or register of the county to have the title thereto from the records in his office, and a specific description of each parcel of property with reasonable certainty. The

testimony, if any, taken by the commissioners as to the amount of such damage, shall accompany their report. Within thirty days after filing and recording its certificate of incorporation, the corporation authorized to construct and operate such railroad or railroads shall move to confirm such report by giving notice of such motion to the property owners in the manner in which notice of the time and place of hearing before the commissioners is required by section two hundred and twenty-five of this article to be given, and if the corporation fails to so move, any property owner may make the motion; and thereafter the proceedings shall be conducted in the manner prescribed in the condemnation law.

Before constructing and operating its railroad in front of any real property bounded upon any street, avenue or public place wherein the corporation is authorized by the certificate and report of the commissioners to construct and operate its road, such corporation shall pay to the owner of the real property the damages sustained or which will be sustained by him in consequence thereof, as finally fixed and ascertained, and the costs allowed him, if any, and the court may direct that such damages be paid out of the moneys deposited pursuant to the provisions of section two hundred and twenty-five of this article, or in case negotiable securities shall have been deposited in lieu of money, that so much of such securities shall be sold as may be necessary to raise the amount required to be paid to such owner for damages and costs if any. If a bond shall have been executed in lieu of such deposit, the court may order the sureties in such bond to pay the damages so fixed and ascertained, and in default thereof may cause them to be proceeded against and punished as for a contempt of court.

§ 234. Pay of commissioners. Each of the commissioners shall be paid for his services at the rate of ten dollars per day for each day of actual service as such commissioner, and all expenses necessarily incurred by him in the discharge of his duties, to be paid by such corporation, but if a sufficient amount of capital stock shall not be subscribed within one year after the appointment of such commissioners to authorize the formation of such corporation, the commissioners shall

receive no salary, and shall cause to be returned to the subscribers for such stock the amounts paid in by them, after deducting therefrom the necessary expenses incurred by the commissioners, but the time, if any, unavoidably consumed by the pendency of legal proceedings shall not be deemed a part of any period of time limited by this article.

§ 235. Quorum; term of office; removal; vacancies in board of commissioners. A majority of the members of any board of commissioners appointed under this article shall be a quorum for the transaction of any business or the performance of any duty or function, or the exercise of any power, conferred or enjoined upon them. Any commissioner may be removed for cause at any time by the power appointing him, but no commissioner shall be removed without due notice and an opportunity to be heard in defense; and no commissioner thus removed is or shall be eligible to be again appointed to the office of commissioner. In case of the death, resignation or removal from office of any commissioner the vacancy shall be filled by the power appointing him, within thirty days after such removal, or within thirty days after notice in writing to such appointing power given by some member of the board, or by the corporation hereinafter mentioned, of such death or resignation, and a certificate of every such appointment shall be filed as hereinbefore required. Except as otherwise provided by law, the terms of office of the commissioners shall determine and expire with the performance of their functions as hereinabove prescribed.

§ 236. Abandonment or change of route; new commissioners; their powers and proceedings. Any corporation heretofore organized or hereafter to be organized under this article, its successor or assigns, which shall have constructed or put in operation a railroad upon a part and not upon the whole of the route fixed, determined and located for such railroad by a board of commissioners, may at any time apply for authority to abandon any portion of the route upon which the railroad shall not have been theretofore constructed or shall not then be in operation, with or without a change and relocation of such portion, and with or without extension of the portion not abandoned, or of any part thereof. Such

application shall be made by petition in writing, addressed by such corporation to the board of supervisors of the county in which such portion of the route so desired to be changed or abandoned shall be situated, which is not within the limits of any city, or if such route, or any part thereof, shall be within the limits of a city, to the mayor of the city, for the route or portion thereof within such city. Five commissioners may be appointed pursuant to such an application as hereinafter provided, who shall be residents of the county or city and who shall have full power as herein provided. When such application is made by a corporation heretofore organized such commissioners may be appointed within thirty days after presentation of the same by such board of supervisors, or, as the case may be, by such mayor. When such application is made by a corporation hereafter to be organized under this article, such board of supervisors, or, as the case may be, such mayor, may within thirty days after presentation of such application, indorse thereon their or his approval and direction that it may be presented to the supreme court in the manner provided in section two hundred and twenty of this article, and such court may thereupon appoint such commissioners. Within ten days after his appointment each commissioner so appointed shall take, subscribe and file the oath and give and file the bond prescribed by section two hundred and twenty-one of this article; and if any one so appointed shall not comply with this requirement, he shall be deemed to have declined to accept such appointment, and to have made a vacancy which the appointing power shall fill by another appointment as herein provided. Within fifteen days after such appointments shall have been so made, the commissioners shall meet at some convenient place in such county and complete their organization as a board with appropriate officers. Such board shall have all the authority conferred by law upon commissioners appointed, or authorized to be appointed under this article. Before proceeding to hear the application of the corporation, the board shall give such public notice as it may deem most proper and effective of the time and place of the hearing. Within thirty days after completing their organization such board shall hear the application of the corporation, and all parties who may be interested therein, and within sixty days after their organization they shall determine whether any part of such route should be authorized to be abandoned, or should be changed and relocated with

or without extension or extensions. If the board shall determine that no abandonment of any part of the route should be allowed, and that no change and relocation of any part thereof should be effected, and that no extension should be made, the board shall dismiss the application. If the board shall determine that an abandonment of any portion of the route should be allowed, or that any change therein or extension thereof should be made, the board shall proceed to authorize and require the same upon such conditions as to the board shall seem proper, and with or without extension of the remainder of the route or of any part thereof, by fixing, determining and locating the route or routes of the extension or extensions, if any, and by directing the abandonment of the part of the route theretofore located, but by the board allowed to be abandoned, if any, and by fixing, determining and relocating the part of the route theretofore located, but by the board changed, if any; and the board shall cause to be made in duplicate a survey and map of the route as so changed and fixed, determined and located. Neither such corporation nor any assign or successor thereof shall thereafter have any authority, by reason of anything done under this article, to operate or construct any railroad upon any portion of the route by the board so required to be abandoned. The board shall also fix and determine the time within which the railroad by it authorized and required upon any portion of the route so changed, shall be reconstructed and ready for operation. If the railroad on any portion of the route not by the board changed or allowed to be abandoned, shall not have been theretofore constructed and made ready for operation, the board may extend, and fix and determine anew the time within which such railroad shall be completed, but such extension of time shall not be for a longer period than that originally allowed by law for the completion thereof. If the board shall have determined that any portion of the route theretofore located should be allowed to be abandoned, with or without a change or relocation thereof or any part thereof, and with or without extension, or if the board shall have extended the time within which such railroad shall be completed, the board shall make a report in writing in accordance with the determination so made, describing the portion of the route, if any there be, as so fixed, determined and located anew, and the part, if any there be, of the route allowed to be abandoned, and stating the period of time, if any, by the board fixed and determined within which such

corporation shall construct and complete the railroad theretofore authorized or by it authorized to be constructed, and prescribing that a failure by the corporation, its successors or assigns, to complete it within the time, if any, so limited, shall work a forfeiture to the supervisors of the county if no part of the road is within a city, or in any city, to such city, of the rights and franchises of such corporation with respect to that portion of the route so fixed, determined and located anew, and with respect to the then authorized extension or extensions, if any there be of said route, upon which a railroad shall not be constructed within the time so limited; but the time, if any, unavoidably consumed by the pendency of legal proceedings, shall not be deemed a part of any period of time limited in this article, and any recital of any forfeiture of any of the rights or franchises prescribed by any commissioners heretofore appointed, to be to the mayor, aldermen and commonalty of the city of New York, shall be as effectual for any and all purposes as if such forfeiture had been in terms recited to be to the board of supervisors of the county of New York. Such report shall be signed in duplicate by at least a majority of the then members of the board, and there shall be thereto annexed the survey and map as hereinbefore directed, showing the line and location of each and all the routes, with or without the extension or extensions, as fixed, determined and located, and showing also the parts or part, if any there shall be, of the route or routes as theretofore fixed, determined and located, but by the board allowed to be abandoned. Within ten days after so signing such report the board shall cause the same to be filed in the office of the secretary of state, and the duplicate thereof in the office of the clerk of the county wherein such railroad shall be located; and thereupon the corporation making such application, its successors or assigns, is and shall be authorized to construct, maintain and operate a steam railroad for the transportation of passengers, mail and freight, upon the route or routes so fixed, determined and located, and in said report described, but the construction or operation of a railroad upon any new location or selection of route is not and shall not be thus authorized except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having control of that portion of a street or highway upon which it is proposed to construct or operate such

railroad be first obtained, or in case the consent of such property owners cannot be obtained, that the determination of three commissioners, to be upon application appointed by the appellate division of the supreme court in the department in which such railroad is proposed to be constructed, be given after a hearing of all parties interested that such railroad ought to be constructed or operated, which determination, confirmed by the court, may be taken in lieu of the consent of the property owners. Such corporation is and the successors and assigns thereof shall be authorized to maintain and operate all the railroads and the appurtenances thereof by it or them theretofore constructed upon any portion of a route or routes which shall have been located by commissioners under this article, and to complete within the time in and by such report so extended, fixed and determined anew, and thereafter to maintain and operate, the railroad and the appurtenances, upon so much of the route or routes theretofore fixed, determined and located as shall not have been so authorized and required to be abandoned, and with the same rights and effect, in all respects, as if such extended period of time had been originally fixed and determined, and in the original certificate of incorporation of such corporation recited, for completing such railroad and putting it in operation. The other terms and conditions in and by such certificate mentioned and prescribed, except as the same are hereinbefore modified or may be modified by the board as hereinbefore authorized, shall apply to the railroad herein authorized to be constructed and operated upon the route or routes as so changed, fixed, determined and located, with the same force and effect as if such route or routes, as finally so changed and located, had been in and by such articles or certificates themselves prescribed. If a new location or extension of routes shall be fixed and determined by commissioners who shall have been appointed by the court pursuant to this section, they shall also ascertain and determine the aggregate pecuniary damages arising from the diminution of value of the property bounded on that portion of the street or highway upon the line of such new location or extension and of each parcel of real property so bounded, and their proceedings thereupon shall be conducted in the same manner and upon the like notice as the proceedings for that purpose before the commissioners specified in section two hundred and twenty-five and they shall make to the supreme court the report required

by section two hundred and thirty-three, and thereupon the same proceedings shall be had as are provided for in such last named section. Each commissioner shall be paid for his services at the rate of ten dollars per day for each day of actual services as such commissioner, and all reasonable expenses incurred by him in or about any of the matters referred to such board, to be paid by the corporation making the application so heard and determined. No corporation shall be authorized under this section to extend, abandon or change the location of its route, or any part thereof, where the greater portion of the route or routes is or shall be in that portion of the city of New York south or west of Harlem river, or of any route or part thereof in the borough of Brooklyn or county of Kings, or to construct, extend, abandon or change the location of any railroad or route for a railroad over, under, through or across any street, avenues, place or lands south of One Hundred and Twenty-eighth street or west of Third avenue in that portion of the city of New York south or west of Harlem river, or where a railroad might not by law be constructed, or was not by law authorized to be by a board of commissioners located on the fifth day of June, eighteen hundred and eighty-eight.

§ 237. Abandonment of portion of route by elevated railroad. Any company operating an elevated railroad or railroads in any city of this state for the transportation of passengers, mails or freight, and which, prior to the twenty-ninth day of April, eighteen hundred and ninety-one, shall have built and operated six-tenths of its route as set forth and embodied in its articles of incorporation, may declare relinquished and abandoned any portion of its said route, which it may deem no longer necessary for the successful operation of its road and the convenience of the public. Such declaration of abandonment to be valid shall be adopted by the board of directors, under the seal of such company, and shall be submitted to the stockholders thereof at a meeting called for the purpose of taking the same into consideration. Due notice of the time and place of holding said meeting and stating the object thereof shall be given by the company to its stockholders by written or printed notices addressed to each of the persons in whose name the capital stock of the company stands on the books thereof, at the address of such

persons as stated on the books, or as known to the secretary of the company, and delivered or mailed to such persons, or the legal representatives of such persons, respectively, at least thirty days before the time of holding the meeting of such company, and also by a general notice published daily for at least four weeks in some newspaper last designated for the publication of the session laws or of judicial proceedings and legal notices in the county where the route of such company is located; and at the said meeting of stockholders the declaration of the said directors shall be considered and a vote by ballot taken for the adoption or rejection of the same, each share entitling the holder thereof to one vote, and said ballots shall be cast in person or by proxy, and if two-thirds of all the votes of the stockholders cast in person or by proxy at said meeting shall be for the adoption of said declaration of abandonment, then that fact shall be certified thereon by the secretary of the company under the seal thereof, and the declaration so adopted shall be submitted for approval to the commissioner of transportation, and if approved by him, such approval shall be indorsed thereon, and the said declaration so certified and indorsed shall be filed and recorded in the office of the secretary of state, and from the time of such filing such portion of said route designated in such declaration of such company shall be deemed to be abandoned. A copy of such declaration of abandonment, duly certified by the secretary of state under his official seal, shall be presumptive evidence in all courts and places of the facts which it recites, and of the regularity of the proceedings resulting in such abandonment.

§ 238. Increased deposit, when and how required. In case any of the securities deposited in lieu of money as provided in section two hundred and twenty-five, shall in the opinion of the county treasurer or trust company with whom they may be deposited, fall below their actual value at the time of deposit, the county treasurer or trust company shall call upon such railroad corporation to substitute therefor other securities equivalent at their par or market value to the amount in lieu of which the securities for which they are to be substituted were deposited, and in case such other securities shall not be furnished, the county

treasurer or trust company shall call upon such corporation to furnish as a substitute, and it shall so furnish an amount of money equal to the amount in lieu of which the securities first above referred to were deposited.

§ 239. Trains to come to full stop. All trains upon elevated railroads shall come to a full stop before any passenger shall be permitted to leave such trains; and no train on such railroad shall be permitted to start until every passenger desiring to depart therefrom shall have left the train, provided such passenger has manifested his intention to so depart by moving toward or upon the platform of any car; nor until every passenger upon the platform or station at which such train has stopped, and desiring to board or enter such cars, shall have actually boarded or entered the same, but no person shall be permitted to enter or board any train after due notice from an authorized employee of such corporation that such train is full and that no more passengers can be then received.

§ 240. Gates or vestibule doors. Every car used for passengers upon elevated railroads shall have gates at the outer edge of its platforms so constructed that they shall, when opened, be caught and held open by such catch or spring as will prevent their swinging and obstructing passengers in their egress from or ingress to such cars, or vestibule doors so constructed as to slide into the body of the car; and every such gate or door shall be kept closed while the car is in motion; and when the car has stopped and a gate or door has been opened, the car shall not start until such gate or door is again firmly closed.

§ 241. Penalty for violation of two preceding sections. Any elevated railroad corporation that shall fail or neglect to comply with or enforce the provisions of the two preceding sections, shall upon the petition of any citizen to any court of record, and upon due notice to such corporation, and proof of such failure or neglect, pay to the clerk of the court wherein such petition was made, a sum not less than two

hundred and fifty nor more than one thousand dollars, as such court may direct by its order. The sum so ordered to be paid shall be paid by such clerk of the court to the county treasurer, and shall be distributed by such treasurer equally among the public hospitals of the county in which the proceeding is had, at such time as the board of supervisors or board of aldermen in any such county shall direct. Nothing in this section shall relieve elevated railroad corporations from any liability under which they may now be held by existing laws for damages to persons or property.

§ 242. Sections to be printed and posted. The officers and board of directors of such railroad corporations shall cause copies of sections two hundred and thirty-nine, two hundred and forty and two hundred and forty-one to be printed conspicuously and posted in the depots or stations and in each car belonging to them.

§ 243. Extension of time. The time within which any act is required to be done under the foregoing sections of this article may be extended by the supreme court for good cause shown, for one year, and but one extension will be granted. Any company that has heretofore constructed or is now operating an elevated railroad shall be deemed to have been duly incorporated notwithstanding any failure on the part of commissioners to insert in its articles of association provisions complying with statutory requirements relative to such articles.

§ 244. Lighting cars on elevated railroads in cities of over twelve hundred thousand inhabitants. Every corporation operating an elevated railroad in any city of over twelve hundred thousand inhabitants in this state, computed according to the state enumeration had in eighteen hundred and ninety-two, shall equip all cars used for the transportation of passengers with the most approved system of lighting passenger cars now in use upon railroads, either by electricity or gas of not less than eighteen candle power, and every such corporation is prohibited from using kerosene or coal oils as a means of lighting any of its passenger

cars. Any violation of the provisions of this section shall render any such corporation liable to pay a fine or penalty of fifty dollars for each and every day, for each and every passenger car run over its railroad which is not equipped and lighted as provided herein; and such fine may be recovered by any passenger on such railroad who may sue therefor; and any violation of the provisions of this section on the part of any such railroad corporation shall also be a misdemeanor.

ARTICLE 7
**RAILROAD REDEVELOPMENT
CORPORATIONS**

Section 300. Legislative policy and purposes.

- 301. Qualification.
- 302. Certain directors to be local residents.
- 303. Certificate of approval.
- 304. Limitations upon payments on indebtedness and stock.
- 305. Tax exemption.
- 306. Rates, fares, and charges.
- 307. Fare changes.
- 308. Reductions in fares and charges.
- 309. Reports to the commissioner of transportation.
- 310. Accounting terms.
- 311. Termination of qualification.
- 312. Orders of the commissioner of transportation.
- 313. Application of other laws.

§ 300. Legislative policy and purposes. It is hereby declared to be the policy of the state to encourage and bring about the rehabilitation, improvement, and continued operation by private enterprise of the facilities of any domestic railroad corporation which now or hereafter is a debtor in proceedings under the bankruptcy laws of the United States and which in the calendar year preceding the institution of such proceedings had passenger miles within the state of five hundred million or more, and to encourage and bring about the rehabilitation of such corporations in order to enable them, with private capital and under

private management, to furnish safe, efficient, and adequate transportation service to the people of the state; and it is hereby further found and declared that the rehabilitation and continued operation of such corporations by private enterprise and enabling such bankruptcy proceedings to be terminated are matters of public concern; that it is necessary to create, with adequate safeguards, inducements and opportunities for the employment of private investment in such rehabilitation and continued operation; that a railroad redevelopment corporation qualifying hereunder serves a public purpose; that provision must be made for the granting of partial tax exemption to such corporations; that the commissioner of transportation and any other state agency empowered to act under section three hundred three are hereby declared to be the agencies and instrumentalities of the state to carry out the policy and purposes herein recited; and the necessity in the public interest for the provisions of this article is hereby declared as a matter of legislative determination.

§ 301. Qualification. The certificate of incorporation of any corporation organized for the purpose of acquiring, maintaining, and operating the facilities of a railroad corporation of the kind described in section three hundred may provide that such new corporation elects to qualify as a railroad redevelopment corporation under and pursuant to the provisions of this article; and any railroad corporation of the kind described in section three hundred may, by action pursuant to article eight of the business corporation law, amend its certificate of incorporation to include therein a like provision. The term "certificate of incorporation, " when used in this article, shall include any special law creating a railroad corporation and also the special laws and the certificates filed pursuant to law amendatory of and supplementary to such special law.

Upon the acceptance for filing of such certificate of incorporation or amendment, as the case may be, such corporation shall qualify as and be a railroad redevelopment corporation hereunder, and shall continue as such for twelve years thereafter or until the earlier termination of its qualification pursuant to section three hundred eleven; provided,

however, that the secretary of state shall not accept any such certificate of incorporation or amendment for filing unless it shall be accompanied by a certificate of approval of such qualification executed by the commissioner of transportation and by a certified copy of an order of the bankruptcy court dismissing the pending proceedings in which such corporation is a debtor, subject to such terms and conditions as the court may fix in connection with winding up the proceedings. In the event another state agency shall be authorized by law to execute a certificate of approval for any railroad corporation, the certificate of approval for any such corporation shall also be executed by such agency.

§ 302. Certain directors to be local residents. The certificate of incorporation of any corporation qualifying hereunder shall provide that, during the period of its existence as a railroad redevelopment corporation, one-third of the members of its board of directors shall be residents of the counties served by such corporation and shall be otherwise unaffiliated, directly or indirectly, with such corporation or any stockholder thereof; and that the individuals who are elected initially as such directors shall continue to serve throughout such period, except that, in the event any of them shall die, resign, or become incapable of performing the duties of a director, a successor or successors shall be named by the remaining such directors.

§ 303. Certificate of approval. 1. The commissioner of transportation and other state agency, if any be authorized by law to do so, shall give a certificate of approval of the qualification of a railroad corporation as a railroad redevelopment corporation if, in the judgment of the commissioner of transportation and such other agency, such qualification will carry out the policy and purposes of section three hundred.

2. The certificate of approval shall set forth:

(A) The program for the improvement and rehabilitation of the facilities of such corporation which is necessary and reasonable in order to carry out the policy and purposes of section three hundred;

(B) An estimate of the aggregate amount of funds which will be

required in order to pay the costs of such improvement and rehabilitation program. The term "costs of the improvement and rehabilitation program," when used in this article, shall include the interest and principal payments on any obligations incurred for such purpose;

(C) The amount of working cash which such corporation is entitled to have as a minimum throughout its existence as a railroad redevelopment corporation; and an estimate of the amount of funds, if any, of such corporation which, upon its qualification as a railroad redevelopment corporation, and after provision for such amount of working cash and for the payment of such obligations of the debtor or of its trustee or trustees as shall be specified in the certificate, will be available to pay the costs of such improvement and rehabilitation program, or if there be a deficiency in such funds, an estimate of the amount thereof;

(D) The amount of funds which will be made available to such corporation by its stockholders and the additional amount estimated to become available from other private investors in order to pay the costs of such improvement and rehabilitation program;

(E) The amount of funds which such corporation will require from its operating revenues and other income in each year of its existence as a railroad redevelopment corporation in order to pay the costs of such improvement and rehabilitation program, which yearly amounts shall be prorated for any other period;

(F) The limitations, during the period of its existence as a railroad redevelopment corporation, upon the payment of interest or principal on the bonds or other indebtedness of such corporation consented to by the bondholders or other creditors affected thereby and the limitations, during such period, upon the payment of dividends on the capital stock of such corporation, which are necessary and reasonable to carry out the policy and purposes of section three hundred;

(G) The passenger fares and charges (and the classifications, regulations, and practices pertaining thereto) of such corporation reasonably required when it qualifies as a railroad redevelopment corporation in order to enable it to have sufficient operating revenues and other income to provide for items (1) through (9) enumerated in section three hundred six; and

(H) Provisions that such corporation shall:

(1) apply, as soon as practicable,

(a) the amounts by which its operating revenues and other income during the period of its existence as a railroad redevelopment corporation shall exceed the sums required during such period to provide for items (1) through (8) enumerated in section three hundred six, plus or minus, as the case may be,

(b) the amount of available funds, or of the deficiency therein, determined pursuant to paragraph (C) of subdivision two, plus

(c) the amounts received by such corporation from the sources specified in paragraph (D) of subdivision two, only to maintain the amount of working cash determined pursuant to paragraph (C) of subdivision two and to the payment of the costs of such improvement and rehabilitation program; and if the aggregate of said items (a), (b) and (c) shall be more than sufficient for that purpose, to the payment of the costs of such further additions and betterments of such corporation's facilities as it may be permitted or directed to make by order of the commissioner of transportation;

(2) upon the termination of its existence as a railroad redevelopment corporation, set aside any of the foregoing amounts not so applied during such period in a separate fund to be used only for such purposes; and

(3) in the event it shall sell any of its capital assets, apply, subject to the provisions of any mortgage or deed of trust covering such property, the proceeds thereof received during the period of its existence as a railroad redevelopment corporation, at its option, either to the payment of the costs of such improvement and rehabilitation program or of other additions or betterments of its facilities.

3. The certificate of approval shall be effective only if such corporation has agreed in writing to comply with the terms and conditions of such certificate.

4. The provisions of the certificate of approval referred to in paragraphs (A) through (E) of subdivision two may be amended at any time by the commissioner of transportation, but only with the consent in writing of said corporation, so as to reflect the effects of changes in the estimates of costs and available funds specified therein, or to

permit changes in the improvement and rehabilitation program. The term "certificate of approval," when used in this article, shall mean the certificate of approval as it may be amended from time to time.

5. The passenger fares and charges (and the classifications, regulations, and practices pertaining thereto) specified in the certificate of approval pursuant to paragraph (G) of subdivision two shall be incorporated in tariff schedules filed with the commissioner of transportation to become effective upon the day specified therein, not earlier than the day after such qualification, and shall not be subject to suspension or alteration by the commissioner of transportation except pursuant to section three hundred eight.

6. Nothing in this article shall be construed as requiring such corporation to apply to such improvement and rehabilitation program any amounts in excess of, or to carry out such program to any greater extent than permitted by, the aggregate of the items enumerated in subparagraph (1) of paragraph (H) of subdivision two.

§ 304. Limitations upon payments on indebtedness and stock. A railroad redevelopment corporation shall not declare or pay any dividends on its capital stock or make any payments of interest or principal upon any bonds or other indebtedness of such corporation which its certificate of approval, with the consent of any bondholders or other creditors affected thereby, specifically provides shall not be made. In no event shall any such corporation pay dividends on its stock at a rate in excess of five per centum per annum. No bondholder or creditor or stockholder of such corporation shall receive any payments which are prohibited hereunder.

§ 305. Tax exemption. A railroad redevelopment corporation, during each year of its existence as such corporation, shall be exempt from the payment of any and all taxes (including, without limitation, franchise, organization, income, mortgage recording, excise, sales, and compensating use taxes) to the state, or to any political subdivision

thereof, or to any officers of any thereof, except taxes and assessments levied or imposed upon the real property of such corporation; and, as to such taxes or assessments so levied or imposed, such corporation shall be entitled to the exemption provided in section four hundred seventy-six of the real property tax law.

§ 306. Rates, fares, and charges. A railroad redevelopment corporation shall be entitled to maintain such rates, fares, and charges as will enable such corporation to have sufficient operating revenues and other income in any twelve months of its existence as a railroad redevelopment corporation to provide for the following items during that twelve-month period:

(1) Operating expenses, except (a) accruals and charges for depreciation, amortization, and retirements, and (b) expenses incurred as costs of the improvement and rehabilitation program of such corporation specified in its certificate of approval;

(2) Railway tax accruals;

(3) Equipment and joint facility rents;

(4) Miscellaneous deductions from income;

(5) Rent for leased roads and equipment;

(6) Interest and principal payments on equipment obligations outstanding at the time of its qualification as a railroad redevelopment corporation, and such other deductions and such other payments on its indebtedness and stock as are not prohibited by its certificate of approval;

(7) Expenditures in connection with grade crossing elimination projects, including interest and principal payments on obligations incurred for such purpose before or after the time of its qualification as a railroad redevelopment corporation;

(8) Expenditures for grade crossing protection; bridge construction, reconstruction, and replacement; and similar projects;

(9) The amount, determined by proration if necessary, specified in such corporation's certificate of approval as required in that twelve-month period to pay the costs of such improvement and rehabilitation program; and

(10) The amount of any net deficiency theretofore incurred during its

existence as a railroad redevelopment corporation in the aggregate amount required to provide for items (1) through (9).

§ 307. Fare changes. 1. In the event it appears at any time to a railroad redevelopment corporation that its operating revenues and other income will not be sufficient during the forthcoming twelve months to provide for the items enumerated in section three hundred six, such corporation may make application to the commissioner of transportation for such changes in its passenger fares and charges (and the classifications, regulations, and practices pertaining thereto) as will, in the opinion of such corporation, produce sufficient additional revenues to enable it to provide for such items.

2. Such application shall be filed and determined in the manner provided in the transportation law, and shall be accompanied by a certificate of such corporation setting out:

- (a) the name of such railroad redevelopment corporation;
- (b) the date upon which it qualified under this article;
- (c) that the qualification of such railroad redevelopment corporation has not been terminated;
- (d) the basis upon which such corporation has determined that its revenues and other income during said forthcoming twelve months will not be sufficient to provide for the items enumerated in section three hundred six; and
- (e) the basis upon which such corporation has determined that such changes will produce the additional revenues required to provide for said items.

§ 308. Reductions in fares and charges. In the event that the commissioner of transportation, after a hearing held in his discretion, on his own motion and on reasonable notice, shall determine (1) that a railroad redevelopment corporation, during the most recent twelve-month period for which figures shall be available at the time of such notice, has obtained more operating revenues and other income than were required to provide for the items enumerated in section three hundred six, and

(2) that its operating revenues and other income during the twelve months next succeeding such period will be more than required to provide for the items enumerated in section three hundred six, the commissioner of transportation may order such corporation to eliminate on a twelve-month basis any such anticipated excess amount of revenues. In that event, such corporation shall file new tariff schedules within such reasonable time as may be fixed by the commissioner of transportation, to be effective within ten days after such filing; and said schedules shall make such modifications in its passenger fares and charges (and the classifications, regulations, and practices pertaining thereto) as shall effect such elimination.

§ 309. Reports to the commissioner of transportation. In addition to any reports which railroad corporations are required to file with the commissioner of transportation pursuant to the transportation law, a railroad redevelopment corporation shall file monthly reports with the commissioner of transportation, within sixty days after the close of each month, setting forth a detailed statement of the results of operations in the twelve-month period ending with the close of said month, including all items referred to in section three hundred six and the amounts actually expended during said period on its improvement and rehabilitation program.

§ 310. Accounting terms. The meaning of all accounting terms used in this article, and the calculation of each amount to be computed under any provision of this article, shall be determined in accordance with the uniform system of accounts for railroad companies or other applicable rules, regulations, or orders of the interstate commerce commission, or other federal regulatory agency having jurisdiction at the time over the accounts of the corporation or, to the extent not so governed, in accordance with sound accounting practice.

§ 311. Termination of qualification. 1. The commissioner of transportation shall make and file an order terminating the

qualification of a railroad redevelopment corporation if such corporation or any affiliated corporation files an application for an increase in the passenger fares and charges of such railroad redevelopment corporation either with the commissioner of transportation under section one hundred nineteen of the transportation law, or with the interstate commerce commission under section thirteen of title forty-nine of the United States code, and the acts amendatory thereof or supplementary thereto.

2. A railroad redevelopment corporation, at any time not less than three years after the date upon which it qualified as such, may terminate its qualification by amending its certificate of incorporation, by action pursuant to article eight of the business corporation law, without requiring the consent and approval of the commissioner of transportation, so as to delete therefrom the provision that it elects to be qualified as a railroad redevelopment corporation.

3. Upon the termination of its qualification as a railroad redevelopment corporation, such corporation shall cease to be entitled to the benefits or subject to the obligations of a railroad redevelopment corporation; but such corporation shall continue to comply with its agreement as to the setting aside and use of a separate fund in accordance with subparagraph (2) of paragraph (H) of subdivision two of section three hundred three.

§ 312. Orders of the commissioner of transportation. In addition to its other powers under this article, the commissioner of transportation shall have power, after a hearing held in his discretion, on his own motion and on reasonable notice, to make and file such orders as he may deem necessary or appropriate to direct a corporation which is or has been a railroad redevelopment corporation to comply with any of the terms and conditions contained in its certificate of approval or with any provisions of this article which the commissioner of transportation finds are not being complied with by such corporation.

§ 313. Application of other laws. All provisions of law relating to railroad corporations, as hereafter from time to time amended, shall apply to railroad redevelopment corporations except where such provisions are in conflict with the provisions of this article. Nothing in this article shall be construed to limit the powers of the commissioner of transportation under any other provisions of law not in conflict with the provisions of this article.

ARTICLE 8

LAWS REPEALED; WHEN TO TAKE EFFECT

Section 450. Laws repealed.

451. When to take effect.

§ 450. Laws repealed. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 451. When to take effect. This chapter shall take effect immediately.