

**1999 DRAFTING REQUEST**

**Bill**

Received: **01/27/99**

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-8593**

By/Representing: **Holden**

This file may be shown to any legislator: **NO**

Drafter: **nilsepe**

May Contact:

Alt. Drafters:

Subject: **Transportation - railroads**

Extra Copies: **PEN**

**Topic:**

DOA:.....Holden - Administrative changes to office of commissioner of railroads

**Instructions:**

See Attached

**Drafting History:**

| <u>Vers.</u> | <u>Drafted</u>  | <u>Reviewed</u>                            | <u>Typed</u>         | <u>Proofed</u> | <u>Submitted</u>         | <u>Jacketed</u> | <u>Required</u> |
|--------------|---|--|----------------------|----------------|--------------------------|-----------------|-----------------|
| /1           | kunkemd<br>01/27/99<br>nilsepe<br>01/28/99<br>nilsepe<br>01/30/99 | jgeller<br>01/28/99<br>jgeller<br>01/31/99 | martykr<br>01/28/99  | _____          | lrb_docadmin<br>01/28/99 |                 | State           |
| /2           |   |  | jfrantze<br>01/31/99 | _____          | lrb_docadmin<br>01/31/99 |                 | State           |

FE Sent For:

<END>

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1/2 1/31 jlg  
 1/31  
 1/31  
 <END>

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|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| 1/?          | kunkemd        | 1/28 jg         | Km 1/28      | LP<br>Km 1/28  |                  |                 |                 |

FE Sent For:

<END>

-2028

**Miller, Steve**

---

**From:** Holden, Kerry  
**Sent:** Saturday, January 23, 1999 4:04 PM  
**To:** Miller, Steve  
**Cc:** LaBelle, Vicky  
**Subject:** New draft: administrative changes to OCR

Please draft for inclusion the attached statutory language request regarding administrative changes to the Office of the Commissioner of Railroads. Thanks!

Kerry Holden  
Tax, Finance & Local Government Team  
State Budget Office  
(608)266-8593



STATE OF WISCONSIN  
 DEPARTMENT OF ADMINISTRATION  
 101 East Wilson Street, Madison, Wisconsin

Mailing Address:  
 Post Office Box 7864  
 Madison, WI 53707-7864



TOMMY G. THOMPSON  
 GOVERNOR  
 MARK D. BUGHER  
 SECRETARY

cc: PEN ?

**Date:** January 23, 1999  
**To:** Steve Miller  
 Legislative Reference Bureau  
**From:** Kerry Holden, SBO, 6-8593  
**Subject:** Draft for Governor's 1999-2001 Budget Bill - Administrative Changes to the Office of the Commissioner of Railroads

Please draft for inclusion in the Governor's 1999-2001 budget bill statutory language that would make the following administrative changes to the Office of the Commissioner of Railroads:

- 1) Amend the last sentence of s. 15.03 to state "...except that with respect to the office of the commissioner of railroads, all personnel and biennial budget requests by the office of the commissioner of railroads shall be processed by the department of transportation and properly forwarded by the public service commission without change except as requested and concurred in by the office of the commissioner of railroads."
- 2) Amend ss. 20.395(2) (gr), (gv) and (gx) to remove reference to s. 195.28 so the OCR does not claim that these are its funds. - neey?
- 3) Amend s. 195.28(1) to include, "No installation shall be eligible for costs under sub. 2 unless prior to any office decision, the crossing committee reviews and recommends that the public highway and railroad grade crossing for consideration by the office. The office may waive this requirement of the crossing committee review and recommendation in emergency situations if required and so found for the preservation of the public safety. Upon petition of the department...."
- 4) Create s. 195.28(2m) to provide, "The crossing committee shall be a joint committee of the office and the department. It may review and recommend public highway and railroad grade crossings for consideration by the office. The committee shall be responsible for oversight of a crossing data base, establishing threshold requirements for crossing projects and recommending funding levels for the railroad crossing improvement program. The office and the department shall have an equal number of voting members. However if the committee is unable to reach a recommendation on a crossing, the secretary of the department may make the recommendation to the office of the commissioner of railroads for the committee." Council

Please call me with any questions. Thank you.

Per Kerry Holden 1/28/99

allow body to have powers - (board)

Petitions for improvements go directly to board

board consists of 4 DOT, 3 OLR appointees

board makes recommendations to OLR, who  
makes recommendation to DOT, who  
makes ultimate decision

DOT ~~lets~~

All new ~~admit~~ ~~studies~~ to board

84.30 (31) Rail crossing protection board



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-2028/1

PEN.....

TODAY

↑  
JG

DOA:.....Holden - Administrative changes to office of commissioner of railroads

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

do not

do not gen

1 AN ACT ...; relating to: the budget and granting rule-making authority.

*Analysis by the Legislative Reference Bureau*

**TRANSPORTATION** ✓

**RAIL AND AIR TRANSPORTATION** ✓

Under current law, the department of transportation (DOT), ✓ local governmental bodies, local residents or railroad companies may petition the office of the commissioner of railroads (OCR) ✓ for a determination of whether a public highway and railroad crossing (rail crossing) protects and promotes public safety. OCR may investigate and determine the adequacy of the rail crossing and may order the railroad to keep flagmen at the rail crossing or to install or relocate automatic warning signals or other suitable safety device at the rail crossing. The costs of installing the warning signals or safety devices are paid from the transportation fund.

This bill creates a railroad grade crossings board, consisting of <sup>three</sup> ~~4~~ members appointed by the secretary of transportation and <sup>four</sup> ~~2~~ members appointed by OCR. The bill directs all petitions for determination of rail crossing safety to the board, which may investigate and make recommendations to OCR. The bill prohibits OCR from making an order in response to the petition and recommendation unless the secretary of transportation approves of the order.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 15.03<sup>✓</sup> of the statutes is amended to read:

2           **15.03 Attachment for limited purposes.** Any division, office, commission,  
3 council or board attached under this section to a department or independent agency  
4 or a specified division thereof shall be a distinct unit of that department, independent  
5 agency or specified division. Any division, office, commission, council or board so  
6 attached shall exercise its powers, duties and functions prescribed by law, including  
7 rule making, licensing and regulation, and operational planning within the area of  
8 program responsibility of the division, office, commission, council or board,  
9 independently of the head of the department or independent agency, but budgeting,  
10 program coordination and related management functions shall be performed under  
11 the direction and supervision of the head of the department or independent agency,  
12 except that with respect to the office of the commissioner of railroads, all personnel  
13 and <sup>✓</sup>biennial budget requests by the office of the commissioner of railroads shall be  
14 processed and properly forwarded by the public service commission without change  
15 except as requested and concurred in by the office of the commissioner of railroads  
16 by the department of transportation✓

17           History: 1981 c. 347; 1983 a. 27; 1993 a. 123.

17           **SECTION 2.** 15.465 (3)<sup>✓</sup> of the statutes is created to read:

18           **15.465 (3) RAILROAD GRADE CROSSINGS BOARD.**✓ There is created in the  
19 department of transportation a railroad ~~grade~~ crossings board. The board shall  
20 consist of 4<sup>✓</sup> members appointed by the secretary of transportation and 3<sup>✓</sup> members  
21 appointed by the commissioner of railroads.



1           **SECTION 3.** 195.28 (1)<sup>X</sup> of the statutes is amended to read:

2           195.28 (1) PETITION; HEARING; ORDER. ~~Upon petition of the~~ The department, or  
3           any city council, village board, town board, superintendent of highways or by, any 5  
4           or more electors in any town, village or city, or of any railroad corporation or railroad  
5           historical society, may petition the railroad grade crossings board<sup>✓</sup> to determine  
6           whether a public highway and railroad grade crossing protects and promotes public  
7           safety, ~~the office.~~ The railroad grade crossings board may investigate and issue an  
8           appropriate ~~order~~ recommendation to the office<sup>✓</sup> without a public hearing. Upon  
9           receiving the recommendation, the office may investigate and may, with the approval  
10          of the secretary of transportation, issue an appropriate order without a public  
11          hearing. If the petitioner, railroad, railroad historical society or any interested party  
12          objects to the order and requests a hearing within 20 days after the date that the  
13          order is issued, the office shall proceed under s. 195.04. Notice of an investigation  
14          or hearing shall be served upon the department, which shall be an interested party,  
15          and any recommendation it may file with the office at or prior to a hearing, if there  
16          is one, regarding crossing protection shall be considered as evidence in the  
17          proceeding. The office shall determine whether the existing warning devices at such  
18          crossing are adequate to protect and promote public safety. If the office determines,  
19          either without or after a hearing, that protection is not adequate, it may<sup>e</sup>, with the  
20          approval of the secretary of transportation, order the railroad company or railroad  
21          historical society to keep a flagman at the crossing or to install automatic signals or  
22          other suitable safety device at specific locations at such crossing. The office may, with  
23          the approval of the secretary of transportation, order the relocation of existing  
24          signals and devices to improve protection at a crossing. Any crossing protection

1 installed or maintained as approved by the office, whether by order or otherwise,  
2 shall be ~~deemed~~ considered <sup>✓</sup> adequate and appropriate protection for the crossing.

3 SECTION 4. 195.28 (2m) <sup>✓</sup> of the statutes is created to read:

4 195.28 (2m) DUTIES OF THE RAILROAD GRADE CROSSINGS BOARD. In addition to its  
5 duties under sub. (1) <sup>✓</sup>, the railroad grade crossings board shall do all of the following:

6 (a) Establish and maintain a railroad crossing database. The database shall be  
7 available to the office and the <sup>✓</sup> department.

8 (b) Establish threshold requirements for railroad crossing projects.

9 (c) Recommend to the office and to the department of ~~transportation~~ <sup>transportation</sup> desirable  
10 funding levels for railroad crossing protection installation and maintenance under  
11 subs. (2) and (3) <sup>✓</sup>.

12 SECTION 9350. <sup>✓</sup> Initial applicability; transportation.

13 (1) RAILROAD GRADE CROSSINGS. <sup>✓</sup> The treatment of section 195.28 <sup>1</sup> ~~(2)~~ of the  
14 statutes first applies to petitions submitted after the effective date of this subsection.

History: 1973 c. 155; 1973 c. 243 s. 82; 1975 c. 135; 1977 c. 29 ss. 1654 (8) (b), 1656 (43); 1979 c. 34; 1981 c. 20 ss. 1504, 2202 (51) (c); 1981 c. 347 s. 80 (1); 1985 a. 29 s. 3202 (51); 1987 a. 27; 1989 a. 31; 1991 a. 269; 1993 a. 16, 123; 1997 a. 135.

15 (END) ✓

*(Handwritten initials)*

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2028/1dn

PEN.....

↑  
jlg

January 28, 1999

I created a "board" instead of a "committee" because of the ongoing operations of the body and its powers. See s. 15.01 (1r) and (4). If you do now want this body to have powers (including rule-making powers, or powers specified under proposed s. 195.28 (2m)), the body may be created as a council. If a council is created, the council may only make recommendations to OCR or DOT, who must have the decision-making authority.

Because the board is attached to DOT, its expenses will be paid from DOT's general program operations (or other appropriate existing appropriation). Do you want to create an appropriation for this board?

The railroad grade crossings board may promulgate rules. See ss. 227.01 (1) and 227.11 (2). Ok?

It is not necessary to amend s. 20.395 (2) (gr), (gv) or (gx) so the OCR does not claim these are its funds. Section 20.395 (2) (gr) and (gv) may be expended only for purposes of s. 195.28 (2), which may only be paid by the department of transportation. While s. 20.395 (2) (gx) may be expended for any purpose under s. 195.28, money from the transportation may only be expended at the direction of the secretary of transportation (absent a specific exception). See s. 25.40 (2) (a). That section applies also to s. 20.395 (2) (gr) and (gv). The OCR has no authority to expend moneys from these appropriations. Removing the reference to s. 195.28 would allow these appropriations to be used for "railroad crossing protection improvements" regardless of the authority under which the improvements are made.

I did not specify railroad "grade" crossings in the board's duties under proposed s. 195.28 (2m) to apply the duties to all crossings. This seems consistent with the request.

Ok?  
Check ~~the treatment of~~ <sup>existing</sup> s. 84.05. <sup>That</sup> This section is broader than just railroad grade crossings, but it currently ties in with s. 195.28. Do you want to treat <sup>that</sup> this section to interpose the board between DOT and OCR? Similarly, see s. 192.29 (2).

If this draft does not meet your intent, please provide me with a narrative description of what you are trying to accomplish.

Paul E. Nilsen  
Legislative Attorney  
Phone: (608) 261-6926

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2028/1dn  
PEN:jlg:km

January 28, 1999

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Check existing s. 84.05. That section is broader than just railroad grade crossings, but it currently ties in with s. 195.28. Do you want to treat that section to interpose the board between DOT and OCR? Similarly, see s. 192.29 (2).

If this draft does not meet your intent, please provide me with a narrative description of what you are trying to accomplish.

Paul E. Nilsen  
Legislative Attorney  
Phone: (608) 261-6926

## Nilsen, Paul

---

**From:** Lepeska, Allyn  
**Sent:** Thursday, January 28, 1999 4:40 PM  
**To:** Nilsen, Paul  
**Subject:** FW: Crossing committee tie breaker

Here is the language that I sent to Terry.

-----Original Message-----

**From:** Lepeska, Allyn  
**Sent:** Friday, January 22, 1999 2:39 PM  
**To:** Mulcahy, Terry  
**Subject:** RE: Crossing committee tie breaker

-----Original Message-----

**From:** Lepeska, Allyn  
**Sent:** Friday, January 22, 1999 1:08 PM  
**To:** Mulcahy, Terry  
**Cc:** Dresser, Joseph; Mansfield, Mark; Adams, Ron; Thiel, Jim  
**Subject:** RE: Crossing committee tie breaker

With that direction, I would propose the following:

### **Section 15.03 Attachment for limited purposes. ....**

Any division, office, commission, council or board so attached shall exercise its powers, duties and functions prescribed by law, including rule making, licensing and regulation, and operational planning within the area of program responsibility of the division, office, commission, council or board, independently of the head of the department or independent agency, but budgeting, program coordination and related management functions shall be performed under the direction and supervision of the head of the department or independent agency, except that with respect to the office of the commissioner of railroads, all personnel and [biennial-delete] budget requests by the office of the commissioner of railroads shall be processed by the department of transportation [and properly forwarded by the public service commission without change except as requested and concurred in by the office of the commissioner of railroads-delete].

Mark Mansfield also suggested that we amend sections 20.395(2) (gr), (gv) and (gx) to remove reference to s. 195.28 so the OCR does not claim that these are its funds.

In addition Joe Dresser had a couple of clarifications to 195.28(1) and (2m). As I edited them, they are as follows:

**195.28 Protecting grade crossing (1) REVIEW; PETITION; HEARING; ORDER** No installation shall be eligible for costs under sub. 2 unless [new-prior to any office decision, the crossing committee reviews and recommends that the public highway and railroad grade crossing for consideration by the office.] The office may waive this requirement of the crossing committee review and recommendation in emergency situations if required and so found for the preservation of the public safety . Upon petition of the department ....

**(2m) CROSSING COMMITTEE.** The crossing committee shall be a joint committee of the office and the department. It may review and recommend public highway and railroad grade crossings [new-for consideration by the office.] The committee shall be responsible for oversight of a crossing data base, establishing threshold requirements for crossing projects and recommending funding levels for the railroad crossing improvement program. The office and the department shall have an equal number of voting members. However if the committee is unable to reach a recommendation on a crossing . the secretary of the department may make the recommendation [new-to the commission] for the committee.

-----Original Message-----

**From:** Mulcahy, Terry  
**Sent:** Friday, January 22, 1999 12:08 PM  
**To:** Lepeska, Allyn

**Subject:** RE: Crossing committee tie breaker

Yes ... and I am not very concerned about the the "independent state agency"

-----Original Message-----

**From:** Lepeska, Allyn  
**Sent:** Friday, January 22, 1999 11:47 AM  
**To:** Mulcahy, Terry  
**Subject:** RE: Crossing committee tie breaker

Section 15.03 provides that the OCR is attached to the DOA. It further provides:

Any division, office, commission, council or board so attached shall exercise its powers, duties and functions prescribed by law, including rule making, licensing and regulation, and operational planning within the area of program responsibility of the division, office, commission, council or board, independently of the head of the department or independent agency, but budgeting, program coordination and related management functions shall be performed under the direction and supervision of the head of the department or independent agency, except that with respect to the office of the commissioner of railroads, all personnel and biennial budget requests by the office of the commissioner of railroads shall be processed and properly forwarded by the public service commission without change except as requested and concurred in by the office of the commissioner of railroads.

We could provide that all OCR personnel and biennial budget requests shall be processed and properly forwarded by the department of transportation without change except as requested and concurred in by the office of commission of railroads. We could provide that the requests be reviewed and approved or we can reserve to review and approve only certain budget requests. We probably want the OCR to have some independence on the budget as they are to be an independent state agency.

What do you want DOT to do with OCR's budget requests?

-----Original Message-----

**From:** Mulcahy, Terry  
**Sent:** Friday, January 22, 1999 8:24 AM  
**To:** Lepeska, Allyn  
**Subject:** RE: Crossing committee tie breaker

Ok... on this issue. on another point [somewhat similar] can we insure through language changes that budget requests from OCR must go through DOT.. my concern is the 1310 request of last yr where the Commissioner put us in a pickle w/ the legislature in as much as he did not advise us until the request was public...

-----Original Message-----

**From:** Lepeska, Allyn  
**Sent:** Thursday, January 21, 1999 4:04 PM  
**To:** Mulcahy, Terry  
**Subject:** RE: Crossing committee tie breaker

I used recommendation in (2m) because I used recommendation in (1). We could change it to make the **decision on recommendation for consideration**. We can also change recommendation to decision.

The legislative drafting attorney version will make some changes consistent with our intent. As I understand your intent, I do not believe that there is that much difference if we have the secretary making the decision or the recommendation because without a recommendation, funds are not available.

-----Original Message-----

**From:** Mulcahy, Terry  
**Sent:** Thursday, January 21, 1999 2:42 PM  
**To:** Lepeska, Allyn  
**Subject:** RE: Crossing committee tie breaker

YES... however, you may want to insert a stronger phase than "make the recommendation" i.e. make the Decision

-----Original Message-----

## **Nilsen, Paul**

---

**From:** Lepeska, Allyn  
**Sent:** Thursday, January 28, 1999 4:47 PM  
**To:** Nilsen, Paul  
**Subject:** Joint Committee Review

Here was my original email. I will contact you tomorrow on the legislation.

> -----Original Message-----

> From: Lepeska, Allyn  
> Sent: Thursday, January 14, 1999 12:04 PM  
> To: 'woodd@psc.state.wi.us'  
> Subject: Joint Review of Crossing Projects Legislation

>  
> As the result of Joe Dresser's project, Terry Mulchahy recommended that a  
> Joint OCR/DOT project review committee be established to review projects  
> before OCR issues and order and implicitly authorizes funding from  
> appropriations under sec. 20.395(2)(gr) and (gx). The OCR would have  
> limited funds to respond to emergency situations.

>  
> Terry asked that we draft legislation to implement the changes.

>  
> One way would be to amend section 195.28(1) by beginning with:

>  
> No installation shall be eligible for costs under sub. 2 unless the public  
> highway and railroad grade crossing has been reviewed and approved by a  
> joint committee of the office and the department responsible for  
> maintaining a crossing data base, establishing threshold requirements for  
> crossing projects and recommending funding levels for railroad crossing  
> safety program. The office may waive this requirement in emergency  
> situations [ if required for the preservation of the public peace, health,  
> safety or welfare].

>  
> Please call to discuss.

>  
>

Allyn Lepeska  
WisDOT-OGC  
608-266-0253  
allyn.lepeska@dot.state.wi.us

---

**Nilsen, Paul**

---

**From:** Lepeska, Allyn  
**Sent:** Thursday, January 28, 1999 4:41 PM  
**To:** Nilsen, Paul  
**Subject:** FW: Crossing committee statute

Here is part of the explanation:

-----Original Message-----

From: Lepeska, Allyn  
Sent: Wednesday, January 27, 1999 3:03 PM  
To: 'Wood Doug'  
Cc: Dresser, Joseph; Mansfield, Mark; Adams, Ron  
Subject: RE: Crossing committee statute

The committee does not have the final say on funding but funding under sec. 20.395(20(gr) or (gx) is not available for installation costs unless the committee makes the recommendation or the waiver applies.

Your answer in the example is correct but the committee does not make a recommendation of funding it only makes a recommendation that the crossing should be considered for signal or other crossing protection devices. The purpose is to establish some long-term planning in protecting grade crossings. I suppose that the office could order the railroad to pay for the protection device.

-----Original Message-----

From: Wood Doug [mailto:WoodD@psc.state.wi.us]  
Sent: Friday, January 22, 1999 1:52 PM  
To: 'Allyn Lepeska'  
Subject: Crossing committee statute

Allyn, For your convenience I copied the proposed text below. I added Joe Dresser's comments, except I changed "Commissioner" to "office"

195.28 Protecting grade crossing (1) REVIEW; PETITION; HEARING; ORDER No installation shall be eligible for costs under sub. 2 unless the public highway and railroad grade crossing has been reviewed and a recommendation is made by the crossing committee to the office prior to the office's decision on the project. The office may waive this requirement of the crossing committee review and recommendation in emergency situations if required and so found for the preservation of the public safety . Upon petition of the department ....

(2m) CROSSING COMMITTEE. The crossing committee shall be a joint committee of the office and the department. The committee shall be responsible for oversight of a crossing data base, establishing threshold requirements for crossing projects and recommending funding levels for the railroad crossing improvement program. The office and the department shall have an equal number of voting members. However if the committee is unable to reach a recommendation on a crossing, the secretary of the department may make the recommendation to the office for the committee.

My question is whether the committee would have the final say on the availability of funding. For example, say the committee reviews a crossing and determines that signals are not needed. The commissioner then investigates the crossing and determines that signals are needed. Could funds under 195.28 (2) be used to pay for the signal installation even though the committee recommended that signals not be installed? My understanding is that you said, "No, but the commissioner could still issue



---

the order and try to get funds somewhere else". That is my reading of the language. If this reading is correct, shouldn't "recommendation" be changed to "decision"? Or perhaps you could insert a sentence that simply says, "The committee's recommendation on the availability of funding under 195.28 (2) is final and binding." Could you please clarify that point?

Doug Wood, OCR  
266-9536

**From:** Lepeska, Allyn  
**Sent:** Thursday, January 21, 1999 11:15 AM  
**To:** Mulcahy, Terry  
**Subject:** Crossing committee tie breaker

**Is this what you had in mind?**

**195.28 Protecting grade crossing (1) REVIEW; PETITION; HEARING; ORDER** No installation shall be eligible for costs under sub. 2 unless the public highway and railroad grade crossing has been reviewed and recommended for consideration by the crossing committee. The office may waive this requirement of the crossing committee review and recommendation in emergency situations if required and so found for the preservation of the public safety. Upon petition of the department ...

**(2m) CROSSING COMMITTEE.** The crossing committee shall be a joint committee of the office and the department. The committee shall be responsible for oversight of a crossing data base, establishing threshold requirements for crossing projects and recommending funding levels for the railroad crossing improvement program. The office and the department shall have an equal number of voting members. However if the committee is unable to reach a decision on a crossing, the secretary of the department may make the recommendation for the committee.

Allyn Lepeska  
WisDOT-OGC  
608-266-0253  
allyn.lepeska@dot.state.wi.us

Request by Allan Lefesta  
(DOT OGC)

Council in constant 7/1/2002

~~petitions~~ to council, except emergencies

"advise Dept. on"

2 ~~attn~~ members each

Secy of DOT may make rec.

no funding unless council reqs.

2002 -  
1965 }  
8  
1994 8 years  
1965 } birthday  
29 -

~~may petition~~

OCR may forward petitions to

require council to review crossing in state &  
recommend ~~those that may need signals or~~  
~~crossing present in dept~~  
crossings that may be reviewed by OCR

No funding for OCR orders unless reviewed & rec'd  
recommended by it OCR determines  
public safety <sup>2</sup>



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-20287  
PEN:jlg:km

1 n seq

5

DOA:.....Holden - Administrative changes to office of commissioner of railroads

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

#28 The bill requires the committee to review every railroad grade crossing in this state and recommend crossings for improvements. The bill prohibits DOT from paying for improvements to railroad grade crossings ordered by OCR unless the committee first recommended improvements to the crossing or OCR determines that immediate improvements are necessary to protect public health.

1 AN ACT ...; relating to: the budget and granting rule-making authority.

Analysis by the Legislative Reference Bureau

TRANSPORTATION

RAIL AND AIR TRANSPORTATION

Under current law, the department of transportation (DOT), local governmental bodies, local residents or railroad companies may petition the office of the commissioner of railroads (OCR) for a determination of whether a public highway and railroad crossing (rail crossing) protects and promotes public safety. OCR may investigate and determine the adequacy of the rail crossing and may order the railroad to keep flagmen at the rail crossing or to install or relocate automatic warning signals or other suitable safety device at the rail crossing. The costs of installing the warning signals or safety devices are paid from the transportation fund.

This bill creates a railroad grade crossings ~~board~~ committee consisting of ~~two~~ two members appointed by the secretary of transportation and ~~three~~ two members appointed by OCR. ~~The bill directs all petitions for determination of rail crossing safety to the board, which may investigate and make recommendations to OCR. The bill prohibits OCR from making an order in response to the petition and recommendation unless the secretary of transportation approves of the order.~~

by DOT



For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 15.03 of the statutes is amended to read:

2           **15.03 Attachment for limited purposes.** Any division, office, commission,  
3 council or board attached under this section to a department or independent agency  
4 or a specified division thereof shall be a distinct unit of that department, independent  
5 agency or specified division. Any division, office, commission, council or board so  
6 attached shall exercise its powers, duties and functions prescribed by law, including  
7 rule making, licensing and regulation, and operational planning within the area of  
8 program responsibility of the division, office, commission, council or board,  
9 independently of the head of the department or independent agency, but budgeting,  
10 program coordination and related management functions shall be performed under  
11 the direction and supervision of the head of the department or independent agency,  
12 except that with respect to the office of the commissioner of railroads, all personnel  
13 and biennial budget requests by the office of the commissioner of railroads shall be  
14 processed and properly forwarded by the public service commission without change  
15 except as requested and concurred in by the office of the commissioner of railroads  
16 by the department of transportation.

17           **SECTION 2.** 15.465 (3) of the statutes is created to read:

18           ~~15.465 (3) RAILROAD GRADE CROSSINGS BOARD. There is created in the~~  
19 ~~department of transportation a railroad grade crossings board. The board shall~~  
20 ~~consist of 4 members appointed by the secretary of transportation and 3 members~~  
21 ~~appointed by the commissioner of railroads.~~

1       **SECTION 3.** ~~195.28 (1) of the statutes is amended to read:~~

2       ~~195.28 (1) PETITION; HEARING; ORDER. Upon petition of the The department, or~~  
3       ~~any city council, village board, town board, superintendent of highways or by, any 5~~  
4       ~~or more electors in any town, village or city, or of any railroad corporation or railroad~~  
5       ~~historical society, may petition the railroad grade crossings board to determine~~  
6       ~~whether a public highway and railroad grade crossing protects and promotes public~~  
7       ~~safety, the office. The railroad grade crossings board may investigate and issue an~~  
8       ~~appropriate order recommendation to the office without a public hearing. Upon~~  
9       ~~receiving the recommendation, the office may investigate and may, with the approval~~  
10       ~~of the secretary of transportation, issue an appropriate order without a public~~  
11       ~~hearing. If the petitioner, railroad, railroad historical society or any interested party~~  
12       ~~objects to the order and requests a hearing within 20 days after the date that the~~  
13       ~~order is issued, the office shall proceed under s. 195.04. Notice of an investigation~~  
14       ~~or hearing shall be served upon the department, which shall be an interested party,~~  
15       ~~and any recommendation it may file with the office at or prior to a hearing, if there~~  
16       ~~is one, regarding crossing protection shall be considered as evidence in the~~  
17       ~~proceeding. The office shall determine whether the existing warning devices at such~~  
18       ~~crossing are adequate to protect and promote public safety. If the office determines,~~  
19       ~~either without or after a hearing, that protection is not adequate, it may, with the~~  
20       ~~approval of the secretary of transportation, order the railroad company or railroad~~  
21       ~~historical society to keep a flagman at the crossing or to install automatic signals or~~  
22       ~~other suitable safety device at specific locations at such crossing. The office may, with~~  
23       ~~the approval of the secretary of transportation, order the relocation of existing~~  
24       ~~signals and devices to improve protection at a crossing. Any crossing protection~~

1 installed or maintained as approved by the office, whether by order or otherwise,  
2 shall be ~~deemed~~ considered adequate and appropriate protection for the crossing.

3 **SECTION 4.** 195.28 (2m) of the statutes is created to read:

4 **195.28 (2m) DUTIES OF THE RAILROAD GRADE CROSSINGS BOARD.** In addition to its  
5 duties under sub. (1), the railroad grade crossings board shall do all of the following:

6 (a) Establish and maintain a railroad crossing database. The database shall be  
7 available to the office and the department.

8 (b) Establish threshold requirements for railroad crossing projects.

9 (c) Recommend to the office and to the department desirable funding levels for  
10 railroad crossing protection installation and maintenance under subs. (2) and (3).

11 **SECTION 9350. Initial applicability; transportation.**

12 (1) **RAILROAD GRADE CROSSINGS.** The treatment of section 195.28 (1) of the  
13 statutes first applies to petitions submitted after the effective date of this subsection.

14 (END)

INSeq

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB2028/2  
PEN.....

1           SECTION 1. 195.28 (2) of the statutes is amended to read:

2           195.28 (2) INSTALLATION COSTS. The cost of any signal or other crossing  
3 protection device which is ordered installed under sub. (1) and the cost of installing  
4 any such device shall be paid by the department from the appropriations under s.  
5 20.395 (2) (gj), (gr) and (gx). This subsection applies only if, prior to the order under  
6 sub. (1), the secretary of transportation or the railroad grade crossings committee  
7 has recommended that the office consider improvements to the railroad grade  
8 crossing as provided in 1999 Wisconsin Act .... (this act), section 9150 <sup>Auto ref A</sup> ~~(a)~~, or if,  
9 regardless of the recommendation concerning the crossing, the office <sup>g</sup> of ~~of~~ determines  
10 that immediate improvements to the crossing are necessary to protect public safety.

History: 1973 c. 155; 1973 c. 243 s. 82; 1975 c. 135; 1977 c. 29 ss. 1654 (8) (b), 1656 (43); 1979 c. 34; 1981 c. 20 ss. 1504, 2202 (51) (c); 1981 c. 347 s. 80 (1); 1985 a. 29 s. 3202 (51); 1987 a. 27; 1989 a. 31; 1991 a. 269; 1993 a. 16. 123; 1997 a. 135.

11           **SECTION 9150. Nonstatutory provisions; transportation.**

12           <sup>Auto ref A</sup> (1) RAILROAD GRADE CROSSINGS COMMITTEE. There is created a railroad grade  
13 crossings committee consisting of 2 <sup>g</sup> members appointed by the secretary of  
14 transportation and 2 members appointed by the office of commissioner of railroads.  
15 Members shall be appointed within 45 days after the effective date of this subsection.  
16 The committee shall review each railroad grade crossing in this state and, if the  
17 committee determines that existing warning or safety devices or other conditions at  
18 the railroad grade crossing do not adequately protect and promote public safety, may  
19 recommend that the office of commissioner of railroads consider improvements to the  
20 railroad grade crossing. Committee recommendations shall be made by a majority  
21 of the committee members. If no majority of committee members agree on whether  
22 to recommend a railroad grade crossing for improvements, the secretary of  
23 transportation shall make that recommendation. A majority of committee members



1 may reverse a recommendation made under this subsection<sup>✓</sup> by providing notice of the  
2 reversal to the office of commissioner of railroads and the secretary of transportation.  
3 The committee shall maintain a railroad grade crossings database, shall establish  
4 threshold requirements for recommendations under this subsection<sup>✓</sup> and shall  
5 recommend to the secretary of transportation desirable funding levels for the  
6 railroad crossing improvement program. The committee shall cease to exist when  
7 the committee has reviewed every railroad grade crossing in this state and made its  
8 final recommendations, or on July 1, 2002<sup>✓</sup>, whichever occurs sooner.

9 **SECTION 9350<sup>✓</sup>. Initial applicability; transportation.**

10 (1) RAILROAD GRADE CROSSINGS COMMITTEE<sup>✓</sup>. The treatment of section<sup>✓</sup> 195.28 (2)  
11 of the statutes first applies to orders under section<sup>✓</sup> 195.28 (1) of the statutes on the  
12 effective date of this subsection.<sup>✓</sup>

(end insert)



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-2028/2

PEN:jlj:jf

DOA:.....Holden - Administrative changes to office of commissioner of  
railroads

FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget and granting rule-making authority.

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**TRANSPORTATION**

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This bill creates a railroad grade crossings committee, consisting of two members appointed by the secretary of transportation and two members appointed by OCR. The bill requires the committee to review every railroad grade crossing in this state to recommend crossings for improvements. The bill prohibits DOT from paying for improvements to railroad grade crossings ordered by OCR unless the committee first recommended improvements to the crossing or OCR determines that immediate improvements are necessary to protect public health.

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9 independently of the head of the department or independent agency, but budgeting,  
10 program coordination and related management functions shall be performed under  
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20 any such device shall be paid by the department from the appropriations under s.  
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1 sub. (1), the secretary of transportation or the railroad grade crossings committee  
2 has recommended that the office consider improvements to the railroad grade  
3 crossing as provided in 1999 Wisconsin Act ... (this act), section 9150 (1), or if,  
4 regardless of the recommendation concerning the crossing, the office determines  
5 that immediate improvements to the crossing are necessary to protect public safety.

6 **SECTION 9150. Nonstatutory provisions; transportation.**

7 (1) RAILROAD GRADE CROSSINGS COMMITTEE. There is created a railroad grade  
8 crossings committee consisting of 2 members appointed by the secretary of  
9 transportation and 2 members appointed by the office of commissioner of railroads.  
10 Members shall be appointed within 45 days after the effective date of this subsection.  
11 The committee shall review each railroad grade crossing in this state and, if the  
12 committee determines that existing warning or safety devices or other conditions at  
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14 recommend that the office of commissioner of railroads consider improvements to the  
15 railroad grade crossing. Committee recommendations shall be made by a majority  
16 of the committee members. If no majority of committee members agree on whether  
17 to recommend a railroad grade crossing for improvements, the secretary of  
18 transportation shall make that recommendation. A majority of committee members  
19 may reverse a recommendation made under this subsection by providing notice of the  
20 reversal to the office of commissioner of railroads and the secretary of transportation.  
21 The committee shall maintain a railroad grade crossings database, shall establish  
22 threshold requirements for recommendations under this subsection and shall  
23 recommend to the secretary of transportation desirable funding levels for the  
24 railroad crossing improvement program. The committee shall cease to exist when

1 the committee has reviewed every railroad grade crossing in this state and made its  
2 final recommendations, or on July 1, 2002, whichever occurs sooner.

3 **SECTION 9350. Initial applicability; transportation.**

4 (1) RAILROAD GRADE CROSSINGS COMMITTEE. The treatment of section 195.28 (2)  
5 of the statutes first applies to orders under section 195.28 (1) of the statutes on the  
6 effective date of this subsection.

7 (END)