

2003 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB837)

Received: 02/26/2004

Received By: agary

Wanted: Soon

Identical to LRB:

For: Steven Foti (608) 266-2401

By/Representing: Phil Cardis - LC

This file may be shown to any legislator: NO

Drafter: agary

May Contact:

Addl. Drafters:

Subject: **Transportation - railroads**

Extra Copies: **PJH**

Submit via email: YES

Requester's email: **Rep.Foti@legis.state.wi.us**

Carbon copy (CC:) to: **Philip.Cardis@legis.state.wi.us**
Joel.Kleefisch@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Review of office of commissioner of railroads decisions by review panel

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>
/?	agary 02/27/2004	wjackson 03/01/2004		_____			
/P1			jfrantze 03/01/2004	_____	Inorthro 03/01/2004		

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/1	agary 03/01/2004	wjackson 03/01/2004	chaugen 03/01/2004	_____	lemery 03/01/2004	lemery 03/01/2004	

FE Sent For:

<END>

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/P1		1/wj 3/1	jfrantze 03/01/2004	<i>[Handwritten initials]</i>	Inorthro 03/01/2004		

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/?	agary	/pl Wly 3H	3/11	Jo/Pg 3/11			

FE Sent For:

<END>

2/26/04

He a/ Phil

- new sub
- 3 person panel - same review of OCR by examiner - same as other sub - same framework

- member
 1. chair of ass trans. cante or his or her designee
 2. commissioner of OCR
 3. by examiner of DOT appointed by ~~the~~ sec. of admin. - chair

- majority decision governs:
 - same determine whether to grant review of OCR by examiner decision

• same selective review

Needed
by 3/1
end of
day

**ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2003 ASSEMBLY BILL 837**

Regan

1 AN ACT *to amend* 84.05, 86.13 (3), 189.02 (1), 195.03 (1), 195.03 (2), 195.03 (25),
2 195.04 (1), 195.043 (1), 195.05 (1), 195.05 (4), 195.06, 195.28 (1), 195.285 (1) and
3 (3), 195.29 (1), 195.29 (2), 195.29 (4), 195.29 (5) and 195.29 (6); and *to create*
4 195.001 (1r), 195.065, 227.43 (1) (bm), 227.43 (2) (bm), 227.43 (3) (bm) and
5 227.43 (4) (bm) of the statutes; **relating to:** review of office of the commissioner
6 of railroads' hearing examiner decisions related to railroad highway crossings.

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

7 SECTION 1. 84.05 of the statutes is amended to read:

8 **84.05 Railroad crossing improvements.** On a highway which the
9 department has authority to construct and which crosses a railroad, if the
10 department determines that the construction or reconstruction of a grade separation
11 or the rearrangement or elimination of a grade crossing or other rearrangement of
12 the highway or tracks is necessary in the interest of public safety or for convenience

1 of public travel, the department shall make a plan of the construction proposed and
2 an estimate of the cost thereof, including the cost of needed right-of-way; and shall
3 endeavor to make an arrangement with all persons concerned as to all matters
4 involved in the plan, including the portion of the cost of the contemplated work which
5 the persons shall defray. If the department is unable to contract with the persons
6 concerned as to the distribution and payment of the cost of the work or the
7 maintenance thereof, the department shall lay the matter before the office of the
8 commissioner of railroads, and, subject to s. 195.065, the office of the commissioner
9 of railroads shall review the proceedings and hold a hearing thereon in accordance
10 with ss. 195.28 and 195.29, and shall fix the portion of the cost of the construction
11 and of the maintenance which is to be paid by the persons or corporations concerned,
12 and the portion of the cost, if any, to be paid by the public, which portion shall be paid
13 from the transportation fund. The office of the commissioner of railroads shall
14 determine the benefits, if any, which will inure to other highways, and apportion and
15 charge to the units of government responsible for the construction of such other
16 highways a fair portion of the cost.

17 **SECTION 2.** 86.13 (3) of the statutes is amended to read:

18 86.13 (3) If any railroad company fails to grade, construct, pave, surface or
19 otherwise improve or maintain in good and safe condition for public travel as
20 required by this section any street or highway crossing after having been notified so
21 to do by the officer in charge thereof or of the highway improvement for 30 days after
22 such notification, the highway authorities may file a complaint with the office. ~~The~~
23 Subject to s. 195.065, the office shall investigate and determine the matter in
24 controversy as provided in ch. 195. An order issued by the office under this
25 subsection has the same effect as an order in a proceeding brought under ch. 195.

1 **SECTION 3.** 189.02 (1) of the statutes is amended to read:

2 189.02 (1) The office may adopt rules to govern its proceedings and, subject to
3 s. 195.065, to regulate the mode and manner of hearings.

4 ~~**SECTION 4.** 195.001 (1r) of the statutes is created to read:~~

5 ~~195.001 (1r) "Division of hearings and appeals" means the division of hearings~~
6 ~~and appeals in the department of administration.~~

7 **SECTION 5.** 195.03 (1) of the statutes is amended to read:

8 195.03 (1) PRACTICE RULES. The office may take testimony and administer oaths
9 and may, subject to s. 195.065, promulgate rules to govern its proceedings and to
10 regulate the mode and manner of all hearings. All hearings shall be open to the
11 public.

12 **SECTION 6.** 195.03 (2) of the statutes is amended to read:

13 195.03 (2) OFFICE INITIATIVE. ~~In~~ Subject to s. 195.065, in any matter within its
14 jurisdiction under ch. 192 or this chapter, the office may initiate, investigate and
15 order a hearing at its discretion upon such notice as it considers proper.

16 **SECTION 7.** 195.03 (25) of the statutes is amended to read:

17 195.03 (25) DISTRIBUTION OF ORDERS. The office shall upon application furnish
18 certified copies, under its seal, of any order made by it, which shall, except as
19 provided in s. 195.065, be prima facie evidence of the facts stated therein.

20 **SECTION 8.** 195.04 (1) of the statutes is amended to read:

21 195.04 (1) Upon complaint of any person, including any state agency or
22 railroad, that any railroad rate, fare, charge, or classification or any regulation or
23 practice whatever affecting the transportation of persons or property, or any service
24 in connection therewith, is in any respect unreasonable or unjustly discriminatory
25 or that any service is inadequate, the office may direct the department to investigate

1 the complaint and shall, subject to s. 195.065, set the complaint for hearing. The
2 report of the department shall be presented to the office only at the hearing on the
3 complaint, if hearing is requested and held. No order may be entered by the office
4 without a public hearing.

5 **SECTION 9.** 195.043 (1) of the statutes is amended to read:

6 195.043 (1) If, after summary investigation by the department, the office
7 becomes satisfied that sufficient grounds exist to warrant a formal hearing being
8 ordered as to the matters investigated, it shall, subject to s. 195.065, set a time and
9 place for a hearing. The office shall publish notice of any such investigation in its
10 weekly calendar and the report of the department and all matters considered by the
11 office with respect thereto shall be available for public inspection upon request.

12 **SECTION 10.** 195.05 (1) of the statutes is amended to read:

13 195.05 (1) ORDERS FOR RATES AND SERVICE. Whenever the office shall find that
14 any existing rate, fare, charge, or classification, or any joint rate, or any regulation
15 or practice affecting the transportation of persons or property, or any service in
16 connection therewith is unreasonable or unjustly discriminatory or that any service
17 is inadequate, it shall, subject to s. 195.065, determine and by order fix a reasonable
18 rate, fare, charge, classification, joint rate, regulation, practice or service to be
19 imposed, observed and followed in the future, in lieu of that found to be unreasonable
20 or unjustly discriminatory or inadequate.

21 **SECTION 11.** 195.05 (4) of the statutes is amended to read:

22 195.05 (4) MODIFICATION OF ORDERS. The Subject to s. 195.065, the office may
23 by order at any time, upon notice to the railroad and after opportunity to be heard,
24 rescind, alter, or amend any order fixing any rate or rates, fares, charges, or
25 classification, or any other order made by the office, except that the office may not

1 rescind, alter, or amend any order affected by a decision of the division of hearings
2 and appeals under s. 195.065.

3 SECTION 12. 195.06 of the statutes is amended to read:

4 **195.06 Office orders prima facie lawful.** All orders, determinations, and
5 decisions made by the office shall be in force and effective 20 days after the same
6 order, determination, or decision has been served as required by s. 227.48 unless
7 review is initiated under s. 195.065 (3) or the office shall specify a different
8 date, not less than 15 days after the date of the order, determination, or decision,
9 upon which the same order, determination, or decision shall be effective, and, except
10 as provided in s. 195.065, the order, determination, or decision shall be prima facie
11 lawful, and all regulations, practices, and service prescribed by the office shall be in
12 force and shall be prima facie lawful and reasonable, until finally found otherwise
13 upon review under s. 195.065 or judicial review thereof instituted pursuant to ch.
14 227.

15 SECTION 13. 195.065 of the statutes is created to read:

16 **195.065 Proceedings related to railroad highway crossings.** (1) In this
17 section:

18 (a) "Decision" means any decision, order, approval, or other determination
19 ~~the office~~ in a proceeding under s. 84.05, 86.13 (3), 195.28, 195.285, or 195.29.

20 (b) "Division hearing examiner" means a hearing examiner of the division of
21 hearings and appeals assigned under s. 227.43 (1) (bm).

22 OK → (c) "~~Office~~ hearing examiner" means a hearing examiner of the office.

23 (2) ~~in~~ any proceeding before the office under s. 84.05, 86.13 (3), 195.28, 195.285,
24 or 195.29, whether conducted with or without a hearing, the matter shall be
25 considered and, if applicable, heard by, and any decision shall be rendered by, ~~the~~

Subject to subo (3), in
=

Insert 6-1

Insert 6-3

Insert 6-10

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~~the~~ hearing examiner, ~~the~~ decision of the ~~the~~ hearing examiner shall be the ~~the~~ decision of the office on the matter.

(3) ~~Any~~ ^(b) Any person aggrieved by a ~~the~~ ^{hearing examiner} decision ~~of the office~~ under sub. (2) is entitled, upon written request to the office within 15 days of the date of the decision, to review by the ~~division of hearings and appeals of the decision~~ ^{review panel under this subsection}. The request for review shall state all objections to the decision and the reasons and authorities for each objection. Review by the ~~division of hearings and appeals under this paragraph~~ ^{review panel} is not a condition precedent to judicial review under ch. 227 ⁶ of a hearing examiner decision.

(c) ~~Upon~~ ^(b) Upon receipt of a request for review under par. ^(b) (a), the office shall transmit the request and the final decision to the ~~division of hearings and appeals~~ ^{of the request} within 15 days of receipt ~~of the decision of hearings and appeals, a division hearing examiner~~ ^{hearing examiner} shall either deny review or grant review of the decision. If a timely request for review is made under par. ^(b) (a), the effective date of the decision shall be suspended until the ~~division hearing examiners~~ ^{review panel's} order granting or denying review of the decision. If the ~~division hearing examiner~~ ^{review panel} grants review of the decision, the ~~division hearing examiner~~ ^{review panel} shall, in ~~his or her~~ ^{its} order granting review, establish the schedule and procedure for review and state whether the decision shall continue to be suspended or shall become effective during the period of review by the ~~division hearing examiner~~ ^{review panel}.

(d) ~~If~~ ^(b) If the ~~division hearing examiners~~ ^{review panel} grants review of the decision, the ~~division hearing examiner~~ ^{review panel} shall ^{INSERT 6-21} decide the matter under review ^{in accordance with} procedures established by the ~~division of hearings and appeals~~ and make a determination in writing, which may affirm, modify, or reverse all or any part of the ~~decision~~ ^{hearing examiner's}, including any finding of fact, conclusion of law, ultimate conclusion on a material issue, or order specifying any party's duty, any apportionment of costs, or

1 any other award of relief. The ~~division hearing examiner~~^g *review panel* may request and review
 2 the transcript of, and any other evidence introduced in, the proceeding before the
 3 ~~division~~ hearing examiner, or may make a determination solely upon review of the
 4 decision itself, but may not conduct a new hearing. Notwithstanding ss. 195.03 (25)
 5 and 195.06, the ~~division hearing examiner~~^g *review panel*, in reviewing the ~~decision~~^g *hearing examiners*, is not required
 6 to accept the decision as prima facie evidence of any facts in the proceeding or of the
 7 lawfulness or reasonableness of any conclusion or relief provided for in the decision.

8 ~~(d)~~ Notwithstanding ss. 227.46, 227.47, and 227.483 to 227.49, a division
 9 hearing examiner assigned under s. 227.43 (1) (bm) shall be limited in authority in
 10 the manner specified under this paragraph. Any final determination of ~~a division~~
 11 ~~hearing examiner assigned under s. 227.43 (1) (bm)~~^g *the review panel* shall be subject to judicial review
 12 under ~~section~~^g *ch 227*

13 (e) A person aggrieved by a ~~final~~^g *of the office* decision rendered prior to the effective date
 14 of this paragraph [revisor inserts date], may institute a new proceeding before the
 15 office on the same matter and obtain another ~~final~~^g decision and request review of the
 16 ~~final~~^g *by the review panel* decision ~~from a division hearing examiner~~^g

17 SECTION 14. 195.28 (1) of the statutes is amended to read:

18 195.28 (1) PETITION; HEARING; ORDER. Upon petition of the department, city
 19 council, village board, town board, superintendent of highways or by 5 or more
 20 electors in any town, village or city, or of any railroad corporation or railroad
 21 historical society, to determine whether a public highway and railroad grade crossing
 22 protects and promotes public safety, the office may investigate and, subject to s.
 23 195.065, issue an appropriate order without a public hearing. If the petitioner,
 24 railroad, railroad historical society or any interested party objects to the order and
 25 requests a hearing within 20 days after the date that the order is issued, the office

1 shall, subject to s. 195.065, proceed under s. 195.04. Notice of an investigation or
2 hearing shall be served upon the department, which shall be an interested party, and
3 any recommendation it may file with the office at or prior to a hearing, if there is one,
4 regarding crossing protection shall be considered as evidence in the proceeding. The
5 Subject to s. 195.065, the office shall determine whether the existing warning devices
6 at such crossing are adequate to protect and promote public safety. If the office
7 determines, either without or after a hearing, that protection is not adequate, it may
8 order the railroad company or railroad historical society to keep a flagman at the
9 crossing or to install automatic signals or other suitable safety device at specific
10 locations at such crossing. The office may order the relocation of existing signals and
11 devices to improve protection at a crossing. Any crossing protection installed or
12 maintained as approved by the office, whether by order or otherwise, shall ~~subject~~
13 ~~to s. 195.065~~ be deemed adequate and appropriate protection for the crossing.

14 SECTION 15. 195.285 (1) and (3) of the statutes are amended to read:

15 195.285 (1) Upon the petition of a railroad corporation, the department, or the
16 governing body of any city, village, town or county asserting that the stopping of
17 vehicles under s. 346.45 at a railroad crossing is hazardous to human life, the office
18 shall, subject to s. 195.065, hold a hearing on the matter as provided under s. 195.04.
19 Notice of petition shall be served upon the department, which shall be an interested
20 party, and any recommendations it may file with the office regarding the hazardous
21 effect of vehicles stopping at such crossings shall be considered as evidence in the
22 proceedings. Upon the recommendation of the department and concurrence by the
23 office, the petition may be dismissed without holding a hearing. If, upon the public
24 hearing, the office determines that it would be in the public interest to exempt
25 vehicles specified in s. 346.45 from stopping at such grade crossing, it may, subject

1 to s. 195.065, order the public body having jurisdiction over the highway to erect
2 signs, signals, markings or other devices exempting such vehicles from stopping at
3 the crossing.

4 (3) The department shall establish standards for the type of signs, signals,
5 markings or other devices for exempting vehicles from stopping as required under
6 s. 346.45 and their location in relation to the highway and railroad track. The office
7 may upon petition or its own motion, with or without a hearing, and subject to s.
8 195.065, order the removal of a sign exempting vehicles from stopping at a crossing.

9 **SECTION 16.** 195.29 (1) of the statutes is amended to read:

10 195.29 (1) PETITION, HEARING, ORDER. Upon petition by the common council or
11 board of any city, village, town or county within or bordering upon which a highway
12 or street crosses a railroad, or a highway or street is proposed to be laid out across
13 a railroad, or a public highway bridge across a railroad is required to connect existing
14 streets or highways, or upon petition by any railroad whose track crosses or is about
15 to cross, or is crossed or about to be crossed by a street or highway, or upon petition
16 by the department, in cases where provision has been made for the improvement of
17 the highway adjacent to such crossing under any state aid or federal aid law, that
18 public safety requires an alteration in such crossing, its approaches, the method of
19 crossing, the location of the highway or crossing, or the closing of the crossing, and
20 the substitution of another therefor at grade or not at grade, or the removal of
21 obstructions to the view at such crossing, the relocation of the highway, or requires
22 the determination of the manner of making such new crossing, or of making the
23 proposed improvement or promoting the public safety or public convenience through
24 any other reasonable method, and praying that the same may be ordered, the office
25 shall give notice to the parties in interest and proceed to investigate the same and,

1 subject to s. 195.065, to order a hearing thereon in the manner provided by s. 195.04.
2 The office shall, subject to s. 195.065, determine what, if anything, shall be done to
3 promote the public safety and the means by which it shall be accomplished, whether
4 by the relocation of the highway, the alteration in such crossing, approaches, mode
5 of crossing, location of highway crossing, closing of highway crossing, with or without
6 the substitution of another therefor, the construction of a public highway bridge, the
7 removal of obstructions to sight at crossing, or by the use of other reasonable
8 methods, and by whom the same shall be made, and in case of new crossings the
9 advisability of allowing such crossings to be established and manner of making them.

10 **SECTION 17.** 195.29 (2) of the statutes is amended to read:

11 195.29 (2) APPORTIONMENT OF EXPENSE. The office shall, subject to s. 195.065,
12 fix the proportion of the cost and expense of alterations, removals and new crossings,
13 or any other work ordered, including the damages to any person whose land is taken,
14 and the special damages which the owner of any land adjoining the public street or
15 highway shall sustain by reason of a change in the grade of such street or highway,
16 or by reason of the removal of obstructions to view at such crossings, to be paid or
17 borne by the railroad companies and the municipalities in interest. In fixing such
18 proportion, the office may order such cost and expense so apportioned to be paid by
19 the parties against which the apportionment shall be made.

20 **SECTION 18.** 195.29 (4) of the statutes is amended to read:

21 195.29 (4) GRADE SEPARATION IN MILWAUKEE COUNTY. The office may upon
22 petition of any town, city or village, or upon its own motion, and subject to s. 195.065,
23 when the interests of the public demand it and it is found practicable so to do,
24 establish the grade of the tracks of any railroad, or of all the railroads throughout
25 any county having a population of 500,000 or more, or any part thereof, and the

1 grades of the streets or highways, or any of them, where they cross such railroad
 2 track or tracks, in anticipation of the future separation of grades of the railroad
 3 tracks from the grades of such streets or highways. The office, before making any
 4 such order, shall mail notice to the railroad company or companies affected, the
 5 owners or occupants of any building abutting on that part of the railroad the grade
 6 of which is to be established, all 1st class cities in the county, and if the grades to be
 7 established are outside the 1st class city, the towns, cities or villages in which such
 8 grades are to be established, of the filing of such petition or that the office
 9 contemplates establishing such grades, and fixing a time at which the 1st class cities
 10 and such other towns, cities or villages and the railroad company or companies
 11 affected thereby and any other person or corporation interested therein may be
 12 heard. The grades so established under this subsection shall be described by
 13 reference to a base or datum line to be established by the office, from which all
 14 elevations and the height of all grades shall be measured, and the grades so
 15 established shall be such that when brought to the established grade the railroad
 16 tracks will cross the streets and highways above or below the same. Such order shall
 17 not necessarily require a present change in grade but the office may at any time order
 18 the railroad track or tracks and the street and highways brought to the grade
 19 established or any street or highways closed by the order, in accordance with sub. (1),
 20 and may, at the time of making the order, apportion the cost of separating the grades
 21 as provided in sub. (2).

, as affected by 2003 Wisconsin Act 33,

SECTION 19. 195.29 (5) of the statutes ~~is~~ amended to read:

22 (22) 195.29 (5) ELIMINATION OF GRADE CROSSINGS, COSTS. Upon petition of the
 23 department, or of the common council or board of any city, village, town, or county,
 24 alleging that one or more of them have undertaken or propose to undertake to
 25

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1 relocate or improve an existing highway or to construct a new highway in such
 2 manner as to eliminate a highway grade crossing with any railroad or so as to
 3 permanently divert a material portion of the highway traffic from a highway grade
 4 crossing with any railroad, the office shall, subject to s. 195.065, issue notice of
 5 investigation and hearing, as provided in s. 195.04. If upon such hearing the office
 6 finds that the public safety will be promoted by the highway relocation,
 7 improvement, or new construction, the office shall, subject to s. 195.065, order the
 8 old crossings closed and new crossings opened as are deemed necessary for public
 9 safety. The order shall require the railroad company or companies to pay to the
 10 interested municipality or municipalities such sum as the office finds to be an
 11 equitable portion of the cost of the highway relocation, improvement, or new
 12 construction, if the work is performed by the municipalities; or to the ~~state treasurer~~ ^{secretary of administration}
 13 if the work is performed by the state; or to the proper county treasurer if the work
 14 is performed by the county. The sum shall be added to the joint fund available for
 15 the improvement and may be expended in like manner as the other portions of the
 16 fund.

17 SECTION 20. 195.29 (6) of the statutes is amended to read:

18 195.29 (6) VIEW AT CROSSINGS; TREES AND BRUSH NEAR CROSSINGS; FORFEITURE.

19 Every railroad shall keep its right-of-way clear of brush or trees for a distance of not
 20 less than 330 feet in each direction from the center of its intersection at grade with
 21 any public highway, and for such further distance as is necessary to provide an
 22 adequate view of approaching trains, from the highway. Every municipality shall
 23 keep the public highways within its jurisdiction clear of brush and shall adequately
 24 trim all trees within 330 feet of the center of any railroad highway grade crossing.

25 Every person or corporation owning or occupying any land adjacent to any railroad

1 highway grade crossing shall keep all brush cut and adequately trim all trees on the
2 land within the triangles bounded on 2 sides by the railway and the highway, and on
3 the 3rd side by a line connecting points on the center lines of the railway and the
4 highway, 330 feet from the intersection of the center lines. The office, upon its own
5 motion, or upon any complaint to the effect that any work required by this subsection
6 has not been performed, after due notice and hearing, may, subject to s. 195.065,
7 order the corporation, municipality or person at fault to perform the work; provided,
8 however, that if the physical conditions at any crossing are such that the
9 performance of the required work will not materially improve the view for highway
10 traffic, or, if unreasonable loss would be caused thereby, the office may excuse the
11 party in interest from performing the same. ~~The Subject to s. 195.065, the office may~~
12 also order the cutting of brush and the trimming of trees at private farm crossings
13 as may be necessary and reasonable. If any person shall violate any provision of this
14 section, or shall fail, neglect or refuse to obey any order made by the office under this
15 section, or any ~~determination by the division of hearings and appeals under s.~~
16 ~~195.065 (4)~~ judgment or decree made by any court upon such an order, for every such
17 violation, failure or refusal such person shall forfeit not less than \$25 nor more than
18 \$150.

19 ~~SECTION 21. 227.43 (1) (bm) of the statutes is created to read:~~

20 ~~227.43 (1) (bm) Assign a hearing examiner to preside over any review under~~
21 ~~s. 195.065 (3).~~

22 ~~SECTION 22. 227.43 (2) (bm) of the statutes is created to read:~~

23 ~~227.43 (2) (bm) The office of the commissioner of railroads shall notify the~~
24 ~~division of hearings and appeals of every pending matter for review for which the~~
25 ~~administrator of the division is required to assign a hearing examiner under sub. (1)~~

1 (bm) after the office of the commissioner of railroads is notified that review on the
2 matter is required.

3 **SECTION 23.** 227.43 (3) (bm) of the statutes is created to read:

4 227.43 (3) (bm) The administrator of the division of hearings and appeals may
5 set the fees to be charged for any services rendered to the office of the commissioner
6 of railroads by a hearing examiner under this section. The fee shall cover the total
7 cost of the services less any costs covered by the appropriation under s. 20.505 (4) (f).

8 **SECTION 24.** 227.43 (4) (bm) of the statutes is created to read:

9 227.43 (4) (bm) The office of the commissioner of railroads shall pay all costs
10 of the services of a hearing examiner assigned under sub. (1) (bm), according to the
11 fees set under sub. (3) (bm).

12 **SECTION 25. Initial applicability.**

13 (1) This act first applies to proceedings pending before the office of the
14 commissioner of railroads on the effective date of this subsection.

15 (END)

INSERT 6-1:

(no P) Subject to sub. (3), the commissioner of railroads shall not participate in any proceeding before the office under s. 84.05, 86.13 (3), 195.28, 195.285, or 195.29, and
a

INSERT 6-3:

(no P) (a) 1. There is created a review panel consisting of the following 3 members:
a. The commissioner of railroads.
b. The chairperson of the assembly standing committee dealing with transportation matters, or his or her designee.
c. A hearing examiner of the division of hearings and appeals in the department of administration, appointed by the secretary of administration, which hearing examiner shall be chairperson of the review panel.
2. The review panel shall perform the duties specified in this subsection. The office shall provide staff services to the review panel and any necessary and reasonable expenses incurred by the review panel shall be paid from the appropriation under s. 20.155 (2) (g).

INSERT 6-10:

(no P) members of the review panel. The review panel shall, by a majority vote within

INSERT 6-21:

(no P) review panel shall, by majority vote and in accordance with procedures established by the review panel by majority vote,

OCU

2/27/04

Plc w/ phil

non-stet re retroactivity :

· Any person aggrieved (see
· 1999

3/1/04

file w/ Joel Kleefisch

- draft looks good; make one
retroactive change per Phil (Fri.)
& send out as //



TODAY

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2003 ASSEMBLY BILL 837

Regan

1 AN ACT *to amend* 84.05, 86.13 (3), 189.02 (1), 195.03 (1), 195.03 (2), 195.03 (25),
2 195.04 (1), 195.043 (1), 195.05 (1), 195.05 (4), 195.06, 195.28 (1), 195.285 (1) and
3 (3), 195.29 (1), 195.29 (2), 195.29 (4), 195.29 (5) and 195.29 (6); and *to create*
4 195.065 of the statutes; **relating to:** review of office of the commissioner of
5 railroads' hearing examiner decisions related to railroad highway crossings.

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

6 SECTION 1. 84.05 of the statutes is amended to read:
7 **84.05 Railroad crossing improvements.** On a highway which the
8 department has authority to construct and which crosses a railroad, if the
9 department determines that the construction or reconstruction of a grade separation
10 or the rearrangement or elimination of a grade crossing or other rearrangement of

1 the highway or tracks is necessary in the interest of public safety or for convenience
2 of public travel, the department shall make a plan of the construction proposed and
3 an estimate of the cost thereof, including the cost of needed right-of-way; and shall
4 endeavor to make an arrangement with all persons concerned as to all matters
5 involved in the plan, including the portion of the cost of the contemplated work which
6 the persons shall defray. If the department is unable to contract with the persons
7 concerned as to the distribution and payment of the cost of the work or the
8 maintenance thereof, the department shall lay the matter before the office of the
9 commissioner of railroads, and, subject to s. 195.065, the office of the commissioner
10 of railroads shall review the proceedings and hold a hearing thereon in accordance
11 with ss. 195.28 and 195.29, and shall fix the portion of the cost of the construction
12 and of the maintenance which is to be paid by the persons or corporations concerned,
13 and the portion of the cost, if any, to be paid by the public, which portion shall be paid
14 from the transportation fund. The office of the commissioner of railroads shall
15 determine the benefits, if any, which will inure to other highways, and apportion and
16 charge to the units of government responsible for the construction of such other
17 highways a fair portion of the cost.

18 **SECTION 2.** 86.13 (3) of the statutes is amended to read:

19 86.13 (3) If any railroad company fails to grade, construct, pave, surface or
20 otherwise improve or maintain in good and safe condition for public travel as
21 required by this section any street or highway crossing after having been notified so
22 to do by the officer in charge thereof or of the highway improvement for 30 days after
23 such notification, the highway authorities may file a complaint with the office. The
24 Subject to s. 195.065, the office shall investigate and determine the matter in

1 controversy as provided in ch. 195. An order issued by the office under this
2 subsection has the same effect as an order in a proceeding brought under ch. 195.

3 **SECTION 3.** 189.02 (1) of the statutes is amended to read:

4 189.02 (1) The office may adopt rules to govern its proceedings and, subject to
5 s. 195.065, to regulate the mode and manner of hearings.

6 **SECTION 4.** 195.03 (1) of the statutes is amended to read:

7 195.03 (1) PRACTICE RULES. The office may take testimony and administer oaths
8 and may, subject to s. 195.065, promulgate rules to govern its proceedings and to
9 regulate the mode and manner of all hearings. All hearings shall be open to the
10 public.

11 **SECTION 5.** 195.03 (2) of the statutes is amended to read:

12 195.03 (2) OFFICE INITIATIVE. ~~In~~ Subject to s. 195.065, in any matter within its
13 jurisdiction under ch. 192 or this chapter, the office may initiate, investigate and
14 order a hearing at its discretion upon such notice as it considers proper.

15 **SECTION 6.** 195.03 (25) of the statutes is amended to read:

16 195.03 (25) DISTRIBUTION OF ORDERS. The office shall upon application furnish
17 certified copies, under its seal, of any order made by it, which shall, except as
18 provided in s. 195.065, be prima facie evidence of the facts stated therein.

19 **SECTION 7.** 195.04 (1) of the statutes is amended to read:

20 195.04 (1) Upon complaint of any person, including any state agency or
21 railroad, that any railroad rate, fare, charge, or classification or any regulation or
22 practice whatever affecting the transportation of persons or property, or any service
23 in connection therewith, is in any respect unreasonable or unjustly discriminatory
24 or that any service is inadequate, the office may direct the department to investigate
25 the complaint and shall, subject to s. 195.065, set the complaint for hearing. The

1 report of the department shall be presented to the office only at the hearing on the
2 complaint, if hearing is requested and held. No order may be entered by the office
3 without a public hearing.

4 **SECTION 8.** 195.043 (1) of the statutes is amended to read:

5 195.043 (1) If, after summary investigation by the department, the office
6 becomes satisfied that sufficient grounds exist to warrant a formal hearing being
7 ordered as to the matters investigated, it shall, subject to s. 195.065, set a time and
8 place for a hearing. The office shall publish notice of any such investigation in its
9 weekly calendar and the report of the department and all matters considered by the
10 office with respect thereto shall be available for public inspection upon request.

11 **SECTION 9.** 195.05 (1) of the statutes is amended to read:

12 195.05 (1) ORDERS FOR RATES AND SERVICE. Whenever the office shall find that
13 any existing rate, fare, charge, or classification, or any joint rate, or any regulation
14 or practice affecting the transportation of persons or property, or any service in
15 connection therewith is unreasonable or unjustly discriminatory or that any service
16 is inadequate, it shall, subject to s. 195.065, determine and by order fix a reasonable
17 rate, fare, charge, classification, joint rate, regulation, practice or service to be
18 imposed, observed and followed in the future, in lieu of that found to be unreasonable
19 or unjustly discriminatory or inadequate.

20 **SECTION 10.** 195.05 (4) of the statutes is amended to read:

21 195.05 (4) MODIFICATION OF ORDERS. The Subject to s. 195.065, the office may
22 by order at any time, upon notice to the railroad and after opportunity to be heard,
23 rescind, alter, or amend any order fixing any rate or rates, fares, charges, or
24 classification, or any other order made by the office.

25 **SECTION 11.** 195.06 of the statutes is amended to read:

1 **195.06 Office orders prima facie lawful.** All orders, determinations, and
2 decisions made by the office shall be in force and effective 20 days after the same
3 order, determination, or decision has been served as required by s. 227.48 unless
4 review is initiated under s. 195.065 (3) or the office shall specify specifies a different
5 date, not less than 15 days after the date of the order, determination, or decision,
6 upon which the ~~same~~ order, determination, or decision shall be effective, and, except
7 as provided in s. 195.065, the order, determination, or decision shall be prima facie
8 lawful, and all regulations, practices, and service prescribed by the office shall be in
9 force and shall be prima facie lawful and reasonable, until finally found otherwise
10 upon review under s. 195.065 or judicial review thereof instituted pursuant to ch.
11 227.

12 **SECTION 12.** 195.065 of the statutes is created to read:

13 **195.065 Proceedings related to railroad highway crossings.** (1) In this
14 section:

15 (a) “Decision” means any decision, order, approval, or other determination in
16 a proceeding under s. 84.05, 86.13 (3), 195.28, 195.285, or 195.29.

17 (c) “Hearing examiner” means a hearing examiner of the office.

18 (2) Subject to sub. (3), in any proceeding before the office under s. 84.05, 86.13
19 (3), 195.28, 195.285, or 195.29, whether conducted with or without a hearing, the
20 matter shall be considered and, if applicable, heard by, and any decision shall be
21 rendered by, a hearing examiner. Subject to sub. (3), the commissioner of railroads
22 shall not participate in any proceeding before the office under s. 84.05, 86.13 (3),
23 195.28, 195.285, or 195.29, and a decision of the hearing examiner shall be the
24 decision of the office on the matter.

25 (3) (a) 1. There is created a review panel consisting of the following 3 members:

1 a. The commissioner of railroads.

2 b. The chairperson of the assembly standing committee dealing with
3 transportation matters, or his or her designee.

4 c. A hearing examiner of the division of hearings and appeals in the department
5 of administration, appointed by the secretary of administration, which hearing
6 examiner shall be chairperson of the review panel.

7 2. The review panel shall perform the duties specified in this subsection. The
8 office shall provide staff services to the review panel and any necessary and
9 reasonable expenses incurred by the review panel shall be paid from the
10 appropriation under s. 20.155 (2) (g).

11 (b) Any person aggrieved by a hearing examiner decision under sub. (2) is
12 entitled, upon written request to the office within 15 days of the date of the decision,
13 to review by the review panel under this subsection. The request for review shall
14 state all objections to the decision and the reasons and authorities for each objection.
15 Review by the review panel is not a condition precedent to judicial review under ch.
16 227 of a hearing examiner decision.

17 (c) Upon receipt of a request for review under par. (b), the office shall transmit
18 the request and the final decision to the members of the review panel. The review
19 panel shall, by a majority vote within 15 days of receipt of the request, either deny
20 review or grant review of the hearing examiner's decision. If a timely request for
21 review is made under par. (b), the effective date of the decision shall be suspended
22 until the review panel's order granting or denying review of the decision. If the
23 review panel grants review of the decision, the review panel shall, in its order
24 granting review, establish the schedule and procedure for review and state whether

1 the decision shall continue to be suspended or shall become effective during the
2 period of review by the review panel.

3 (d) If the review panel grants review of the decision, the review panel shall, by
4 majority vote and in accordance with procedures established by the review panel by
5 majority vote, decide the matter under review and make a determination in writing,
6 which may affirm, modify, or reverse all or any part of the hearing examiner's
7 decision, including any finding of fact, conclusion of law, ultimate conclusion on a
8 material issue, or order specifying any party's duty, any apportionment of costs, or
9 any other award of relief. The review panel may request and review the transcript
10 of, and any other evidence introduced in, the proceeding before the hearing examiner,
11 or may make a determination solely upon review of the decision itself, but may not
12 conduct a new hearing. Notwithstanding ss. 195.03 (25) and 195.06, the review
13 panel, in reviewing the hearing examiner's decision, is not required to accept the
14 decision as prima facie evidence of any facts in the proceeding or of the lawfulness
15 or reasonableness of any conclusion or relief provided for in the decision. Any final
16 determination of the review panel shall be subject to judicial review under ch. 227.

17 ~~(e) A person aggrieved by a decision of the office rendered prior to the effective~~
18 ~~date of this paragraph ... [revisor inserts date], may institute a new proceeding~~
19 ~~before the office on the same matter and obtain another decision and request review~~
20 ~~of the decision by the review panel.~~

21 **SECTION 13.** 195.28 (1) of the statutes is amended to read:

22 195.28 (1) PETITION; HEARING; ORDER. Upon petition of the department, city
23 council, village board, town board, superintendent of highways or by 5 or more
24 electors in any town, village or city, or of any railroad corporation or railroad
25 historical society, to determine whether a public highway and railroad grade crossing

1 protects and promotes public safety, the office may investigate and, subject to s.
2 195.065, issue an appropriate order without a public hearing. If the petitioner,
3 railroad, railroad historical society or any interested party objects to the order and
4 requests a hearing within 20 days after the date that the order is issued, the office
5 shall, subject to s. 195.065, proceed under s. 195.04. Notice of an investigation or
6 hearing shall be served upon the department, which shall be an interested party, and
7 any recommendation it may file with the office at or prior to a hearing, if there is one,
8 regarding crossing protection shall be considered as evidence in the proceeding. The
9 Subject to s. 195.065, the office shall determine whether the existing warning devices
10 at such crossing are adequate to protect and promote public safety. If the office
11 determines, either without or after a hearing, that protection is not adequate, it may
12 order the railroad company or railroad historical society to keep a flagman at the
13 crossing or to install automatic signals or other suitable safety device at specific
14 locations at such crossing. The office may order the relocation of existing signals and
15 devices to improve protection at a crossing. Any crossing protection installed or
16 maintained as approved by the office, whether by order or otherwise, shall be deemed
17 adequate and appropriate protection for the crossing.

18 **SECTION 14.** 195.285 (1) and (3) of the statutes are amended to read:

19 195.285 (1) Upon the petition of a railroad corporation, the department, or the
20 governing body of any city, village, town or county asserting that the stopping of
21 vehicles under s. 346.45 at a railroad crossing is hazardous to human life, the office
22 shall, subject to s. 195.065, hold a hearing on the matter as provided under s. 195.04.
23 Notice of petition shall be served upon the department, which shall be an interested
24 party, and any recommendations it may file with the office regarding the hazardous
25 effect of vehicles stopping at such crossings shall be considered as evidence in the

1 proceedings. Upon the recommendation of the department and concurrence by the
2 office, the petition may be dismissed without holding a hearing. If, upon the public
3 hearing, the office determines that it would be in the public interest to exempt
4 vehicles specified in s. 346.45 from stopping at such grade crossing, it may, subject
5 to s. 195.065, order the public body having jurisdiction over the highway to erect
6 signs, signals, markings or other devices exempting such vehicles from stopping at
7 the crossing.

8 (3) The department shall establish standards for the type of signs, signals,
9 markings or other devices for exempting vehicles from stopping as required under
10 s. 346.45 and their location in relation to the highway and railroad track. The office
11 may upon petition or its own motion, with or without a hearing, and subject to s.
12 195.065, order the removal of a sign exempting vehicles from stopping at a crossing.

13 **SECTION 15.** 195.29 (1) of the statutes is amended to read:

14 195.29 (1) PETITION, HEARING, ORDER. Upon petition by the common council or
15 board of any city, village, town or county within or bordering upon which a highway
16 or street crosses a railroad, or a highway or street is proposed to be laid out across
17 a railroad, or a public highway bridge across a railroad is required to connect existing
18 streets or highways, or upon petition by any railroad whose track crosses or is about
19 to cross, or is crossed or about to be crossed by a street or highway, or upon petition
20 by the department, in cases where provision has been made for the improvement of
21 the highway adjacent to such crossing under any state aid or federal aid law, that
22 public safety requires an alteration in such crossing, its approaches, the method of
23 crossing, the location of the highway or crossing, or the closing of the crossing, and
24 the substitution of another therefor at grade or not at grade, or the removal of
25 obstructions to the view at such crossing, the relocation of the highway, or requires

1 the determination of the manner of making such new crossing, or of making the
2 proposed improvement or promoting the public safety or public convenience through
3 any other reasonable method, and praying that the same may be ordered, the office
4 shall give notice to the parties in interest and proceed to investigate the same and,
5 subject to s. 195.065, to order a hearing thereon in the manner provided by s. 195.04.
6 The office shall, subject to s. 195.065, determine what, if anything, shall be done to
7 promote the public safety and the means by which it shall be accomplished, whether
8 by the relocation of the highway, the alteration in such crossing, approaches, mode
9 of crossing, location of highway crossing, closing of highway crossing, with or without
10 the substitution of another therefor, the construction of a public highway bridge, the
11 removal of obstructions to sight at crossing, or by the use of other reasonable
12 methods, and by whom the same shall be made, and in case of new crossings the
13 advisability of allowing such crossings to be established and manner of making them.

14 **SECTION 16.** 195.29 (2) of the statutes is amended to read:

15 195.29 (2) APPORTIONMENT OF EXPENSE. The office shall, subject to s. 195.065,
16 fix the proportion of the cost and expense of alterations, removals and new crossings,
17 or any other work ordered, including the damages to any person whose land is taken,
18 and the special damages which the owner of any land adjoining the public street or
19 highway shall sustain by reason of a change in the grade of such street or highway,
20 or by reason of the removal of obstructions to view at such crossings, to be paid or
21 borne by the railroad companies and the municipalities in interest. In fixing such
22 proportion, the office may order such cost and expense so apportioned to be paid by
23 the parties against which the apportionment shall be made.

24 **SECTION 17.** 195.29 (4) of the statutes is amended to read:

1 195.29 (4) GRADE SEPARATION IN MILWAUKEE COUNTY. The office may upon
2 petition of any town, city or village, or upon its own motion, and subject to s. 195.065,
3 when the interests of the public demand it and it is found practicable so to do,
4 establish the grade of the tracks of any railroad, or of all the railroads throughout
5 any county having a population of 500,000 or more, or any part thereof, and the
6 grades of the streets or highways, or any of them, where they cross such railroad
7 track or tracks, in anticipation of the future separation of grades of the railroad
8 tracks from the grades of such streets or highways. The office, before making any
9 such order, shall mail notice to the railroad company or companies affected, the
10 owners or occupants of any building abutting on that part of the railroad the grade
11 of which is to be established, all 1st class cities in the county, and if the grades to be
12 established are outside the 1st class city, the towns, cities or villages in which such
13 grades are to be established, of the filing of such petition or that the office
14 contemplates establishing such grades, and fixing a time at which the 1st class cities
15 and such other towns, cities or villages and the railroad company or companies
16 affected thereby and any other person or corporation interested therein may be
17 heard. The grades so established under this subsection shall be described by
18 reference to a base or datum line to be established by the office, from which all
19 elevations and the height of all grades shall be measured, and the grades so
20 established shall be such that when brought to the established grade the railroad
21 tracks will cross the streets and highways above or below the same. Such order shall
22 not necessarily require a present change in grade but the office may at any time order
23 the railroad track or tracks and the street and highways brought to the grade
24 established or any street or highways closed by the order, in accordance with sub. (1),

1 and may, at the time of making the order, apportion the cost of separating the grades
2 as provided in sub. (2).

3 **SECTION 18.** 195.29 (5) of the statutes, as affected by 2003 Wisconsin Act 33,
4 is amended to read:

5 195.29 (5) ELIMINATION OF GRADE CROSSINGS, COSTS. Upon petition of the
6 department, or of the common council or board of any city, village, town, or county,
7 alleging that one or more of them have undertaken or propose to undertake to
8 relocate or improve an existing highway or to construct a new highway in such
9 manner as to eliminate a highway grade crossing with any railroad or so as to
10 permanently divert a material portion of the highway traffic from a highway grade
11 crossing with any railroad, the office shall, subject to s. 195.065, issue notice of
12 investigation and hearing, as provided in s. 195.04. If upon such hearing the office
13 finds that the public safety will be promoted by the highway relocation,
14 improvement, or new construction, the office shall, subject to s. 195.065, order the
15 old crossings closed and new crossings opened as are deemed necessary for public
16 safety. The order shall require the railroad company or companies to pay to the
17 interested municipality or municipalities such sum as the office finds to be an
18 equitable portion of the cost of the highway relocation, improvement, or new
19 construction, if the work is performed by the municipalities; or to the secretary of
20 administration if the work is performed by the state; or to the proper county
21 treasurer if the work is performed by the county. The sum shall be added to the joint
22 fund available for the improvement and may be expended in like manner as the other
23 portions of the fund.

24 **SECTION 19.** 195.29 (6) of the statutes is amended to read:

1 195.29 (6) VIEW AT CROSSINGS; TREES AND BRUSH NEAR CROSSINGS; FORFEITURE.
2 Every railroad shall keep its right-of-way clear of brush or trees for a distance of not
3 less than 330 feet in each direction from the center of its intersection at grade with
4 any public highway, and for such further distance as is necessary to provide an
5 adequate view of approaching trains, from the highway. Every municipality shall
6 keep the public highways within its jurisdiction clear of brush and shall adequately
7 trim all trees within 330 feet of the center of any railroad highway grade crossing.
8 Every person or corporation owning or occupying any land adjacent to any railroad
9 highway grade crossing shall keep all brush cut and adequately trim all trees on the
10 land within the triangles bounded on 2 sides by the railway and the highway, and on
11 the 3rd side by a line connecting points on the center lines of the railway and the
12 highway, 330 feet from the intersection of the center lines. The office, upon its own
13 motion, or upon any complaint to the effect that any work required by this subsection
14 has not been performed, after due notice and hearing, may, subject to s. 195.065,
15 order the corporation, municipality or person at fault to perform the work; provided,
16 however, that if the physical conditions at any crossing are such that the
17 performance of the required work will not materially improve the view for highway
18 traffic, or, if unreasonable loss would be caused thereby, the office may excuse the
19 party in interest from performing the same. ~~The~~ Subject to s. 195.065, the office may
20 also order the cutting of brush and the trimming of trees at private farm crossings
21 as may be necessary and reasonable. If any person shall violate any provision of this
22 section, or shall fail, neglect or refuse to obey any order made by the office under this
23 section, or any judgment or decree made by any court upon such an order, for every
24 such violation, failure or refusal such person shall forfeit not less than \$25 nor more
25 than \$150.

insert
13-25 →

INSERT 13-25:

SECTION ~~7~~[#]. Nonstatutory provisions.

7 (1) Notwithstanding the time period specified in section 195.065 (3) (b) of the statutes, as affected by this act, any person aggrieved by a final decision of the office of the commissioner of railroads in a proceeding under section 84.05,[✓] 86.13 (3),[✓] 195.28,[✓] 195.285,[✓] or 195.29[✓] of the statutes, as affected by this act, rendered between January 1, 1999³ and the effective date of this subsection may, no later than June 30, 2005, request review of the decision by the review panel under section 195.065 (3)[✓] of the statutes, as created by this act. Upon such a request for review, the review panel shall, without a new hearing, conduct a review of the decision in the manner specified under section 195.065 (3)[✓] of the statutes, as created by this act.