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State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-118714 4  
ARG:cjs/cmh/kg:rs

RMR

DOA:.....Vail - BB0269, Eliminate office of commissioner of railroads  
FOR 2003-05 BUDGET - NOT READY FOR INTRODUCTION

D-Note

1 AN ACT <sup>Don't</sup> <sub>mean</sub> relating to: eliminating the Office of the Commissioner of Railroads  
2 and transferring the office's duties to the Department of Transportation,  
3 making an appropriation, and granting rule-making authority.

*Analysis by the Legislative Reference Bureau*  
**TRANSPORTATION**  
**RAIL AND AIR TRANSPORTATION**

***Office of Commissioner of Railroads eliminated***

Under current law, the Office of the Commissioner of Railroads (office) regulates railroad activities in Wisconsin. This bill eliminates the office, effective July 1, 2004, and provides for the elimination and transfer of its functions as follows:

1. The office is currently authorized to regulate railroads to prevent "unreasonable or unjustly discriminatory" rates and inadequate services within the state. The bill eliminates this authority.
2. Currently, before constructing any new track in the state, a railroad must have a certificate which is issued only after a hearing and a finding of "public convenience and necessity" by the office. Under this bill, the certificate is issued by DOT, the hearing is discretionary, and the public convenience and necessity standard is abolished.
3. Under current law, the office is authorized to control the issuance of, and impose special restrictions on, railroad corporation securities, including stock and

debt instruments. The office must approve issuance of railroad securities, may determine their number, character, purpose, and issuing value, and may impose other restrictions. The bill eliminates this authority.

4. Under current law, the office may order railroads to install protective devices at crossings or make other safety improvements and may determine the type of grade crossing used where a railroad intersects a street or another railroad. The bill transfers this authority to DOT and authorizes DOT to issue orders in these matters without a hearing, based on investigation and application of safety, programming, and cost allocation criteria promulgated by rule. The bill provides for review of DOT orders in these matters by the Division of Hearings and Appeals (division) in DOA.

5. The office is currently assigned various other functions relating to railroads. In most cases, those regulatory functions not eliminated in the bill are transferred to DOT, and functions having the character of contested case resolution are transferred to the division. The bill requires the division to give due weight to the experience, technical competence, and specialized knowledge of DOT in transportation hearings and reviews.

6. The bill transfers certain functions of the office relating to railroad organization to the department of financial institutions.

7. The bill transfers 4.0 FTE positions to DOT and 1.0 FTE position to the division.

For further information see the *state and local* 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 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

1 so established shall be such that when brought to the established grade the railroad  
2 tracks will cross the streets and highways above or below the same. Such order shall  
3 not necessarily require a present change in grade but the ~~office~~ department may at  
4 any time order the railroad track or tracks and the street and highways brought to  
5 the grade established or any street or highways closed by the order, in accordance  
6 with sub. (1), and may, at the time of making the order, apportion the cost of  
7 separating the grades as provided in sub. (2).

8 **SECTION 161.** 195.29 (5) of the statutes is amended to read:

9 195.29 (5) ELIMINATION OF GRADE CROSSINGS, COSTS. ~~Upon~~ If, upon its own motion  
10 or upon petition of the ~~department, or of the~~ common council or board of any city,  
11 village, town<sup>2</sup> (or county, alleging that one or more of them have undertaken or propose  
12 to undertake to relocate or improve an existing highway or to construct a new  
13 highway in such manner as to eliminate a highway grade crossing with any railroad  
14 or so as to permanently divert a material portion of the highway traffic from a  
15 highway grade crossing with any railroad, the ~~office shall issue notice of~~  
16 ~~investigation and hearing, as provided in s. 195.04. If upon such hearing the office~~  
17 department finds that the public safety will be promoted by the highway relocation,  
18 improvement<sup>2</sup> (or new construction, the ~~office~~ department shall order the old crossings  
19 closed and new crossings opened as are deemed necessary for public safety. The  
20 department may issue an appropriate order without a public hearing. The order  
21 shall require the railroad company or companies to pay to the interested  
22 municipality or municipalities such sum as the ~~office~~ department finds to be an  
23 equitable portion of the cost of the highway relocation, improvement<sup>2</sup> (or new <sup>strike</sup>  
24 construction, if the work is performed by the municipalities; or to the ~~state treasurer~~  
25 if the work is performed by the state; or to the proper county treasurer if the work

secretary of administration

1 is performed by the county. The sum shall be added to the joint fund available for  
2 the improvement and may be expended in like manner as the other portions of the  
3 fund.

4 **SECTION 162.** 195.29 (6) of the statutes is amended to read:

5 **195.29 (6) VIEW AT CROSSINGS; TREES AND BRUSH NEAR CROSSINGS; FORFEITURE.**

6 Every railroad shall keep its right-of-way clear of brush or trees for a distance of not  
7 less than 330 feet in each direction from the center of its intersection at grade with  
8 any public highway, and for such further distance as is necessary to provide an  
9 adequate view of approaching trains, from the highway. Every municipality shall  
10 keep the public highways within its jurisdiction clear of brush and shall adequately  
11 trim all trees within 330 feet of the center of any railroad highway grade crossing.  
12 Every person or corporation owning or occupying any land adjacent to any railroad  
13 highway grade crossing shall keep all brush cut and adequately trim all trees on the  
14 land within the triangles bounded on 2 sides by the railway and the highway, and on  
15 the 3rd side by a line connecting points on the center lines of the railway and the  
16 highway, 330 feet from the intersection of the center lines. The ~~office~~ department,  
17 upon its own motion, or upon any complaint to the effect that any work required by  
18 this subsection has not been performed, after due notice and hearing, may order the  
19 corporation, municipality or person at fault to perform the work; provided, however,  
20 that if the physical conditions at any crossing are such that the performance of the  
21 required work will not materially improve the view for highway traffic, or, if  
22 unreasonable loss would be caused thereby, the ~~office~~ department may excuse the  
23 party in interest from performing the same. The ~~office~~ department may also order  
24 the cutting of brush and the trimming of trees at private farm crossings as may be  
25 necessary and reasonable. If any person shall violate any provision of this section,

✓  
Ment  
48-33

1 and other services under this subsection, 90% of the costs determined shall be costs  
2 of the ~~office~~ department and 10% of the costs determined shall be costs of state  
3 government operations.

4 **SECTION 183.** 195.60 (2) of the statutes is amended to read:

5 195.60 (2) The ~~office~~ department shall annually, within 90 days after the close  
6 of each fiscal year, ascertain the total of its expenditures during such year which are  
7 reasonably attributable to the performance of its duties relating to railroads. For  
8 purposes of such calculation, 90% of the expenditures so determined shall be  
9 expenditures of the ~~office~~ department and 10% of the expenditures so determined  
10 shall be expenditures for state government operations. The ~~office~~ department shall  
11 deduct therefrom all amounts chargeable to railroads under sub. (1) ~~and s. 201.10 (3).~~  
12 A sum equal to the remainder plus 10% of the remainder shall be assessed by the  
13 ~~office~~ department to the several railroads in proportion to their respective gross  
14 operating revenues during the last calendar year, derived from intrastate  
15 operations. Such assessment shall be paid within 30 days after the bill has been  
16 mailed to the several railroads, which bill shall constitute notice of assessment and  
17 demand of payment thereof. The total amount which may be assessed to the  
18 railroads under authority of this subsection shall not exceed 1.85% of the total gross  
19 operating revenues of such railroads, during such calendar year, derived from  
20 intrastate operations. Ninety percent of the payment shall be deposited in the  
21 general fund and credited to the appropriation account under s. ~~20.155 (2) (g)~~ 20.395  
22 (2) (gg). The railroads shall furnish such financial information as the ~~office~~  
23 department requires.

24 ~~SECTION 184.~~ 195.60 (3) <sup>✓</sup> of the statutes is ~~amended~~ to read:

1 195.60 (3) If any railroad against which a bill has been rendered under sub. (1)  
2 or (2) within 30 days after the rendering of such bill neglects or refuses to pay the  
3 same or fails to file objections to the bill with the office division of hearings and  
4 appeals, the office department shall transmit to the state treasurer a certified copy  
5 of the bill, together with notice of neglect or refusal to pay the bill, and on the same  
6 day the office department shall mail to the railroad against which the bill has been  
7 rendered a copy of the notice which it has transmitted to the state treasurer. Within  
8 10 days after the receipt of such notice and certified copy of such bill, the state  
9 treasurer shall levy the amount stated on such bill to be due, with interest, by  
10 distress and sale of any goods and chattels, including stocks, securities, bank  
11 accounts, evidences of debt, and accounts receivable belonging to such delinquent  
12 railroad. Such levy by distress and sale shall be governed by the provisions of s.  
13 74.10, 1985 stats., except that it shall be made by the state treasurer and that said  
14 goods and chattels anywhere within the state may be levied upon.

15 **SECTION 185.** 195.60 (4) (a) of the statutes is amended to read:

16 195.60 (4) (a) Within 30 days after the date of the mailing of any bill as provided  
17 by subs. (1) and (2), the railroad against which such bill has been rendered may file  
18 with the office division of hearings and appeals objections setting out in detail the  
19 grounds upon which the objector regards the bill to be excessive, erroneous, unlawful  
20 or invalid. The office division of hearings and appeals, after notice to the objector and  
21 the department, shall hold a hearing upon such objections, not less than 5 nor more  
22 than 10 days after such notice. If after such hearing the office division of hearings  
23 and appeals finds any part of the bill to be excessive, erroneous, unlawful or invalid  
24 it shall record its findings upon its minutes with respect to the objections and  
25 transmit to the objector and the department an amended bill, in accordance with

1 such findings. The amended bill shall have in all ways the same force and effect  
2 under this section as an original bill rendered under subs. (1) and (2).

3 **SECTION 186.** 195.60 (4) (b) of the statutes is amended to read:

4 195.60 (4) (b) If after the hearing the ~~office~~ division of hearings and appeals  
5 finds the entire bill unlawful or invalid, it shall notify the objector and the  
6 department of such determination, in which case the original bill shall be deemed  
7 void.

8 **SECTION 187.** 195.60 (4) (c) of the statutes is amended to read:

9 195.60 (4) (c) If after the hearing the ~~office~~ division of hearings and appeals  
10 finds that the bill as rendered is neither excessive, erroneous, unlawful or invalid,  
11 either in whole or in part, it shall record such findings ~~upon its minutes~~ with respect  
12 to the objections, and transmit to the objector and the department notice of such  
13 finding.

14 **SECTION 188.** 195.60 (4) (d) of the statutes is amended to read:

15 195.60 (4) (d) If any bill against which objections have been filed is not paid  
16 within 10 days after notice of a finding that such objections have been overruled and  
17 disallowed by the ~~office~~ division of hearings and appeals has been mailed to the  
18 objector, the ~~office~~ department shall give notice of such delinquency to the state  
19 treasurer and to the objector, in the manner provided in sub. (3). The state treasurer  
20 shall then proceed to collect the amount of the bill as provided in sub. (3). If an  
21 amended bill is not paid within 10 days after a copy thereof is mailed to the objector  
22 by registered mail, the ~~office~~ department shall notify the state treasurer and the  
23 objector as in the case of delinquency in the payment of an original bill. The state  
24 treasurer shall then proceed to collect the amount of the bill as provided in the case  
25 of an original bill.

**SECTION 189**

1           **SECTION 189.** 195.60 (5) of the statutes is amended to read:

2           195.60 (5) No suit or proceeding shall be maintained in any court for the  
3           purpose of restraining or in any way delaying the collection or payment of any bill  
4           rendered under subs. (1) and (2). Every railroad against which a bill is rendered shall  
5           pay the amount thereof, and after such payment may in the manner herein provided,  
6           at any time within 2 years from the date the payment was made, sue the state in an  
7           action at law to recover the amount paid with legal interest thereon from the date  
8           of payment, upon the ground that the assessment was excessive, erroneous,  
9           unlawful or invalid in whole or in part. If it is finally determined in such action that  
10          any part of the bill for which payment was made was excessive, erroneous, unlawful  
11          or invalid, the state treasurer shall make a refund to the claimant as directed by the  
12          court, which shall be charged to the appropriations to the ~~office~~ department.

13          **SECTION 190.** 195.60 (6) of the statutes is amended to read:

14          195.60 (6) No action for recovery of any amount paid under this section shall  
15          be maintained in any court unless objections have been filed with the ~~office~~ division  
16          of hearings and appeals as provided in this section. In any action for recovery of any  
17          payments made under this section the claimant shall be entitled to raise every  
18          relevant issue of law, but the ~~office's~~ findings of fact of the division of hearings and  
19          appeals made pursuant to this section shall be prima facie evidence of the facts  
20          therein stated.

21          **SECTION 191.** 195.60 (7) (intro.) of the statutes is repealed.

22          **SECTION 192.** 195.60 (7) (a) of the statutes is renumbered 195.60 (7) and  
23          amended to read:



1 SECTION 211. 350.1395 (2) (b) 2. of the statutes is amended to read:

2 350.1395 (2) (b) 2. The department shall hold a hearing on a petition filed under  
3 subd. 1. after giving notice of the hearing to the rail authority, the snowmobile  
4 organization, and the ~~office of the commissioner of railroads~~ department of  
5 transportation. The hearing shall be a contested case hearing under ch. 227. The  
6 ~~department's~~ department of natural resources' order shall be a final order subject to  
7 judicial review under ch. 227.

8 SECTION 212. 350.1395 (2) (b) 3. (intro.) of the statutes is amended to read:

9 350.1395 (2) (b) 3. (intro.) The department shall grant a rail authority's petition  
10 under subd. 2. to close or remove a snowmobile rail crossing if, after a hearing under  
11 subd. 2., and after giving substantial weight to the ~~office of the commissioner of~~  
12 ~~railroads'~~ department of transportation's testimony or report given under s. 195.03  
13 (30) (b), the department of natural resources finds that any of the following applies:

14 SECTION 213. 350.1395 (4) (b) of the statutes is amended to read:

15 350.1395 (4) (b) The department may not promulgate a rule under this  
16 subsection without first consulting with each rail authority in this state that has  
17 furnished the department with the information required under s. 350.138 (2m), an  
18 established snowmobile association that represents snowmobile clubs, as defined in  
19 s. 350.138 (1) (e), in this state, and the ~~office of the commissioner of railroads~~  
20 department of transportation.

21 SECTION 214. 552.23 (1) of the statutes <sup>as affected by 2003 Wisconsin Act. ... (this act),</sup> is amended to read:  
*auto. ref. "KA"; see 72*

22 552.23 (1) If the target company is an insurance company subject to regulation  
23 by the commissioner of insurance, a banking corporation ~~subject to regulation by the~~  
24 ~~division of banking~~ (savings bank) or savings and loan association subject to  
25 regulation by the division of ~~savings institutions~~ <sup>banking</sup>, or a company subject to regulation

*Plain comma*

*File copy*

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by the public service commission, ~~or the department of transportation or the office of the commissioner of railroads,~~ <sup>→ strike comma</sup> the division of securities shall promptly furnish a copy of the registration statement filed under this chapter to the regulatory agency having supervision of the target company. Any hearing under this chapter involving any such target company shall be held jointly with the regulatory agency having supervision, and any determination following the hearing shall be made jointly with that regulatory agency.

*Insert 68-7*

8

**SECTION 215.** 945.06 of the statutes is amended to read:

9

**945.06 Public utilities to cease service.** When any public utility, common carrier, contract carrier, or railroad, subject to the jurisdiction of the public service commission, ~~office of the commissioner of railroads~~ or department of transportation of this state, is notified in writing by a federal, state or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in violation of the laws of this state it shall discontinue or refuse the leasing, furnishing or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any such public utility, common carrier, contract carrier or railroad, for any act done in compliance with any notice received from a law enforcement agency under this section. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination as otherwise provided by law in any court or tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

24

**SECTION 9143. Nonstatutory provisions; public service commission.**

1           2. All orders issued by the office that are in effect on the effective date of this  
2 subdivision remain in effect until their specified expiration date or until modified or  
3 rescinded by the department.

4           (g) *Pending matters.* Any matter pending with the office on the effective date  
5 of this paragraph is transferred to the department and all materials submitted to or  
6 actions taken by the office with respect to the pending matter are considered as  
7 having been submitted to or taken by the department.

8           (h) *Department of administration to arbitrate disputes.* In the case of  
9 disagreement between the secretary of transportation and the commissioner of  
10 railroads with respect to any matter specified in paragraph (d), (e), (f), or (g), the  
11 department of administration shall determine the matter and shall develop a plan  
12 for an orderly transfer.

13           **SECTION 9443. Effective dates; public service commission.**

14           (1) ABOLISHING THE OFFICE OF COMMISSIONER OF RAILROADS. The treatment of  
15 sections 15.03, 15.06 (1) (ar), 15.79, 15.795, 20.155 (intro.) and (2), 20.395 (2) (gg) and  
16 (gq), 20.923 (4) (e) 11., 25.40 (1) (a) 12m., 26.20 (3) and (10), 30.33 (1) and (2), 66.0801  
17 (2), 84.05, 85.013 (3), 86.001 (2m), 86.12 (2), 86.13 (3), 88.66 (2), 88.87 (4), 88.88 (2),  
18 182.36 (3), 190.001, 190.02 (6), 190.025 (2) (b), 190.03, 190.13, 190.16 (4) (a), (b), and  
19 (c) and (5), 191.001, 191.01 (2), 191.02 (title), 191.03, 191.05, 191.06, 191.07, 191.09,  
20 191.10 (title), (1), (2), and (3), 191.11, 191.13 (2), 191.16, 191.17, 191.19 (1) and (3),  
21 191.20, 191.21, 192.001 (1r) and (2), 192.14 (10) and (12), 192.15 (14), 192.25 (3) (a),  
22 192.27 (1), 192.29 (1), (2), (4), and (5), 192.31 (1), (2), (4), and (5), 192.324, 192.327  
23 (3), (4), (5), (6), and (7), 192.33 (5), 192.34, 192.47, 192.52 (3), (4), and (5), 192.53 (4)  
24 (a) and (b), (5) (a) (intro.), and (6), 192.55 (5), 192.56 (1), (2), (3), (5), and (6), 195.001  
25 (1r), (2), and (3), 195.03 (title), (1), (2), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16),

1 (17), (18), (19), (25), (28), (29), and (30) (a) and (b), 195.04, 195.041, 195.042, 195.043,  
 2 195.044, 195.045, 195.046, 195.047, 195.05, 195.055, 195.06, 195.07 (1) and (2),  
 3 195.08, 195.09, 195.10, 195.11, 195.12, 195.13, 195.14, 195.15, 195.16, 195.17, 195.19  
 4 (1) and (3), 195.20, 195.21, 195.26, 195.27, 195.28 (1), (3), and (4), 195.285 (1), (2), and  
 5 (3), 195.286 (2), (3), (5), and (8), 195.29 (1), (2), (3), (4), (5), (6), (7), (9), and (10),  
 6 195.295, 195.30 (1), 195.305, 195.31, 195.32, 195.325, 195.33, 195.34, 195.36, 195.37,  
 7 195.38, 195.45 (1), (2), and (4), 195.50 (1), 195.60 (title), (1), (2), ~~(3)~~ <sup>and</sup> (4) (a), (b), ~~(c)~~ <sup>and</sup>  
 8 ~~(d)~~, ~~(e)~~ (6), and (7) (intro.), (a), and (b), 197.10 (4), 201.01 (1) and (2), 201.10 (3),  
 9 201.13, 226.025 (3), 227.01 (13) (s), 227.43 (1) (bk) and (4) (b), 227.46 (2m) and (3)  
 10 (intro.), 281.36 (1) (cr), 346.45 (3) (d), 350.137 (1), 350.138 (4) (c) and (9), 350.139 (5),  
 11 350.1395 (2) (b) 2. and 3. (intro.) and (4) (b), 552.23 (1), and 945.06 and chapter 189  
 12 of the statutes and SECTION 9143 (1) (b), (c) 1., 2., 3., 4., and 5., (d), (e), (f), and (g) of  
 13 this act take effect on July 1, 2004.

(END)

(by SECTION 9143)

auto ref. "KA";  
see p. 67

D-note

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1187/4ins  
ARG:.....

insert  
48-3

\*\*\*\*NOTE: This is reconciled s. 195.29 (5). This SECTION has been affected by drafts with the following LRB numbers: LRB-1187 and LRB-0529.

insert  
68-7

\*\*\*\*NOTE: This is reconciled s. 552.23 (1). This SECTION has been affected by drafts with the following LRB numbers: LRB-1187 and LRB-1431.

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

LRB-1187/4dn

ARG: j.j...



ATTN: Benjamin Vail and Kirsten Grinde

This draft reconciles LRB-1187, LRB-1431, and LRB-0529. All of these drafts should continue to appear in the compiled bill. The treatment of s. 195.29 (5) that formerly appeared in LRB-0529 has been incorporated into LRB-1187. The treatment of s. 552.23 (1) has been modified to incorporate the amendment (with an earlier effective date) of this section in LRB-1431. The treatment of s. 195.60 (3), (4) (d), and (5) has been deleted from LRB-1187 and incorporated into LRB-0529.

Aaron R. Gary  
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Phone: (608) 261-6926  
E-mail: aaron.gary@legis.state.wi.us

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

LRB-1187/4dn  
ARG:kmg:pg

February 6, 2003

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2003 - 2004 LEGISLATURE

LRB-11871/5  
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3 not necessarily require a present change in grade but the ~~office~~ department may at  
4 any time order the railroad track or tracks and the street and highways brought to  
5 the grade established or any street or highways closed by the order, in accordance  
6 with sub. (1), and may, at the time of making the order, apportion the cost of  
7 separating the grades as provided in sub. (2).

8 **SECTION 161.** 195.29 (5) of the statutes is amended to read:

9 195.29 (5) ELIMINATION OF GRADE CROSSINGS, COSTS. ~~Upon~~ If, upon its own motion  
10 or upon petition of the ~~department, or of the~~ common council or board of any city,  
11 village, town <sup>or</sup> or county, alleging that one or more of them have undertaken or  
12 propose to undertake to relocate or improve an existing highway or to construct a new  
13 highway in such manner as to eliminate a highway grade crossing with any railroad  
14 or so as to permanently divert a material portion of the highway traffic from a  
15 highway grade crossing with any railroad, the ~~office shall issue notice of~~  
16 ~~investigation and hearing, as provided in s. 195.04. If upon such hearing the office~~  
17 department finds that the public safety will be promoted by the highway relocation,  
18 improvement <sup>or</sup> or new construction, the ~~office~~ department shall order the old  
19 crossings closed and new crossings opened as are deemed necessary for public safety.  
20 The department may issue an appropriate order without a public hearing. The order  
21 shall require the railroad company or companies to pay to the interested  
22 municipality or municipalities such sum as the ~~office~~ department finds to be an  
23 equitable portion of the cost of the highway relocation, improvement <sup>or</sup> or new  
24 construction, if the work is performed by the municipalities; or to the ~~(state treasurer)~~  
25 secretary of administration if the work is performed by the state; or to the proper

delete plain  
strike

1 county treasurer if the work is performed by the county. The sum shall be added to  
2 the joint fund available for the improvement and may be expended in like manner  
3 as the other portions of the fund.

> ~~\*\*\*\*NOTE: This is reconciled s. 195.29 (5). This SECTION has been affected by drafts  
with the following LRB numbers: LRB-1187 and LRB-0529.~~

4 **SECTION 162.** 195.29 (6) of the statutes is amended to read:

5 **195.29 (6) VIEW AT CROSSINGS; TREES AND BRUSH NEAR CROSSINGS; FORFEITURE.**

6 Every railroad shall keep its right-of-way clear of brush or trees for a distance of not  
7 less than 330 feet in each direction from the center of its intersection at grade with  
8 any public highway, and for such further distance as is necessary to provide an  
9 adequate view of approaching trains, from the highway. Every municipality shall  
10 keep the public highways within its jurisdiction clear of brush and shall adequately  
11 trim all trees within 330 feet of the center of any railroad highway grade crossing.  
12 Every person or corporation owning or occupying any land adjacent to any railroad  
13 highway grade crossing shall keep all brush cut and adequately trim all trees on the  
14 land within the triangles bounded on 2 sides by the railway and the highway, and on  
15 the 3rd side by a line connecting points on the center lines of the railway and the  
16 highway, 330 feet from the intersection of the center lines. The ~~office~~ department,  
17 upon its own motion, or upon any complaint to the effect that any work required by  
18 this subsection has not been performed, after due notice and hearing, may order the  
19 corporation, municipality or person at fault to perform the work; provided, however,  
20 that if the physical conditions at any crossing are such that the performance of the  
21 required work will not materially improve the view for highway traffic, or, if  
22 unreasonable loss would be caused thereby, the ~~office~~ department may excuse the  
23 party in interest from performing the same. The ~~office~~ department may also order

1 previous year. For the purpose of calculating the costs of investigations, appraisals  
2 and other services under this subsection, 90% of the costs determined shall be costs  
3 of the ~~office~~ department and 10% of the costs determined shall be costs of state  
4 government operations.

5 SECTION 183. 195.60 (2) of the statutes is amended to read:

6 195.60 (2) The ~~office~~ department shall annually, within 90 days after the close  
7 of each fiscal year, ascertain the total of its expenditures during such year which are  
8 reasonably attributable to the performance of its duties relating to railroads. For  
9 purposes of such calculation, 90% of the expenditures so determined shall be  
10 expenditures of the ~~office~~ department and 10% of the expenditures so determined  
11 shall be expenditures for state government operations. The ~~office~~ department shall  
12 deduct therefrom all amounts chargeable to railroads under sub. (1) ~~and s. 201.10 (3)~~.  
13 A sum equal to the remainder plus 10% of the remainder shall be assessed by the  
14 ~~office~~ department to the several railroads in proportion to their respective gross  
15 operating revenues during the last calendar year, derived from intrastate  
16 operations. Such assessment shall be paid within 30 days after the bill has been  
17 mailed to the several railroads, which bill shall constitute notice of assessment and  
18 demand of payment thereof. The total amount which may be assessed to the  
19 railroads under authority of this subsection shall not exceed 1.85% of the total gross  
20 operating revenues of such railroads, during such calendar year, derived from  
21 intrastate operations. Ninety percent of the payment shall be deposited in the  
22 general fund and credited to the appropriation account under s. 20.155 (2) (g) 20.395  
23 (2) (gg). The railroads shall furnish such financial information as the ~~office~~  
24 department requires.

25 SECTION 184. 195.60 (4) (a) of the statutes is amended to read:

insert  
57-24

1           195.60 (4) (a) Within 30 days after the date of the mailing of any bill as provided  
2 by subs. (1) and (2), the railroad against which such bill has been rendered may file  
3 with the ~~office~~ division of hearings and appeals objections setting out in detail the  
4 grounds upon which the objector regards the bill to be excessive, erroneous, unlawful  
5 or invalid. The ~~office~~ division of hearings and appeals, after notice to the objector and  
6 the department, shall hold a hearing upon such objections, not less than 5 nor more  
7 than 10 days after such notice. If after such hearing the ~~office~~ division of hearings  
8 and appeals finds any part of the bill to be excessive, erroneous, unlawful or invalid  
9 it shall record its findings ~~upon its minutes~~ with respect to the objections and  
10 transmit to the objector and the department an amended bill, in accordance with  
11 such findings. The amended bill shall have in all ways the same force and effect  
12 under this section as an original bill rendered under subs. (1) and (2).

13           **SECTION 185.** 195.60 (4) (b) of the statutes is amended to read:

14           195.60 (4) (b) If after the hearing the ~~office~~ division of hearings and appeals  
15 finds the entire bill unlawful or invalid, it shall notify the objector and the  
16 department of such determination, in which case the original bill shall be deemed  
17 void.

18           **SECTION 186.** 195.60 (4) (c) of the statutes is amended to read:

19           195.60 (4) (c) If after the hearing the ~~office~~ division of hearings and appeals  
20 finds that the bill as rendered is neither excessive, erroneous, unlawful or invalid,  
21 either in whole or in part, it shall record such findings ~~upon its minutes~~ with respect  
22 to the objections, and transmit to the objector and the department notice of such  
23 finding.

24           **SECTION 187.** 195.60 (6) of the statutes is amended to read:

Insert 58-23 ↓

1           195.60 (6) No action for recovery of any amount paid under this section shall  
2 be maintained in any court unless objections have been filed with the ~~office~~ division  
3 of hearings and appeals as provided in this section. In any action for recovery of any  
4 payments made under this section the claimant shall be entitled to raise every  
5 relevant issue of law, but the ~~office's~~ findings of fact of the division of hearings and  
6 appeals made pursuant to this section shall be prima facie evidence of the facts  
7 therein stated.

8           **SECTION 188.** 195.60 (7) (intro.) of the statutes is repealed.

9           **SECTION 189.** 195.60 (7) (a) of the statutes is renumbered 195.60 (7) and  
10 amended to read:

11           195.60 (7) Determinations of fact expressed in bills rendered under this  
12 section; ~~and shall be considered to be findings of fact of the division of hearings and~~  
13 appeals, within the meaning of this section.

14           **SECTION 190.** 195.60 (7) (b) of the statutes is repealed.

15           **SECTION 191.** 197.10 (4) of the statutes is amended to read:

16           197.10 (4) Insofar as the use, operation, service, management, control, sale,  
17 lease, purchase, extension, improvement, rates, value or earnings of the properties  
18 of the public utility or provisions looking toward the ultimate acquisition of the same  
19 are made subject to the terms of any contract provided for in sub. (1), and so long as  
20 said contract remains in force, the following sections of the statutes shall be  
21 inapplicable to the same: ss. ~~195.05, 195.10,~~ 196.02 (1) and (2), 196.05, 196.09,  
22 196.10, 196.11, 196.15, 196.16, 196.19 (6), 196.20, 196.21, 196.22, 196.26, 196.28,  
23 196.30, 196.37, 196.39, 196.40, 196.58, 196.70, 197.01 (2) to (4), 197.02, 197.03,  
24 197.04, 197.05, 197.06, 197.08 and 197.09; provided that nothing in any contract  
25 made hereunder shall operate to prevent an appeal to the public service commission

1           350.138 (9) INSPECTION AUTHORIZED. The department or the ~~office of the~~  
2 ~~commissioner of railroads~~ department of transportation may inspect the site of a  
3 proposed snowmobile rail crossing or the site of a snowmobile rail crossing for which  
4 a permit has been issued to determine whether there are grounds to refuse to issue  
5 a permit under sub. (4) or to revoke a permit under sub. (8).

6           **SECTION 207.** 350.139 (5) of the statutes is amended to read:

7           350.139 (5) INSPECTION AUTHORIZED. The department or the ~~office of the~~  
8 ~~commissioner of railroads~~ department of transportation may inspect an established  
9 snowmobile rail crossing to determine whether the snowmobile organization  
10 maintaining the crossing is in compliance with the requirements imposed under sub.  
11 (4).

12           **SECTION 208.** 350.1395 (2) (b) 2. of the statutes is amended to read:

13           350.1395 (2) (b) 2. The department shall hold a hearing on a petition filed under  
14 subd. 1. after giving notice of the hearing to the rail authority, the snowmobile  
15 organization, and the ~~office of the commissioner of railroads~~ department of  
16 transportation. The hearing shall be a contested case hearing under ch. 227. The  
17 ~~department's~~ department of natural resources' order shall be a final order subject to  
18 judicial review under ch. 227.

19           **SECTION 209.** 350.1395 (2) (b) 3. (intro.) of the statutes is amended to read:

20           350.1395 (2) (b) 3. (intro.) The department shall grant a rail authority's petition  
21 under subd. 2. to close or remove a snowmobile rail crossing if, after a hearing under  
22 subd. 2., and after giving substantial weight to the ~~office of the commissioner of~~  
23 ~~railroads'~~ department of transportation's testimony or report given under s. 195.03  
24 (30) (b), the department of natural resources finds that any of the following applies:

25           **SECTION 210.** 350.1395 (4) (b) of the statutes is amended to read:

1           350.1395 (4) (b) The department may not promulgate a rule under this  
2 subsection without first consulting with each rail authority in this state that has  
3 furnished the department with the information required under s. 350.138 (2m), an  
4 established snowmobile association that represents snowmobile clubs, as defined in  
5 s. 350.138 (1) (e), in this state, and the ~~office of the commissioner of railroads~~  
6 department of transportation.

7           **SECTION 211.** 552.23 (1) of the statutes, as affected by 2003 Wisconsin Act ....

8 (this act), is amended to read:

9           552.23 (1) If the target company is an insurance company subject to regulation  
10 by the commissioner of insurance, a banking corporation, savings bank, or savings  
11 and loan association subject to regulation by the division of banking, or a company  
12 subject to regulation by the public service commission, or the department of  
13 transportation, ~~or the office of the commissioner of railroads~~, the division of  
14 securities shall promptly furnish a copy of the registration statement filed under this  
15 chapter to the regulatory agency having supervision of the target company. Any  
16 hearing under this chapter involving any such target company shall be held jointly  
17 with the regulatory agency having supervision, and any determination following the  
18 hearing shall be made jointly with that regulatory agency.

\*\*\*\*NOTE: This is reconciled s. 552.23 (1). This SECTION has been affected by drafts  
with the following LRB numbers: LRB-1187 and LRB-1431.

19           **SECTION 212.** 945.06 of the statutes is amended to read:

20           **945.06 Public utilities to cease service.** When any public utility, common  
21 carrier, contract carrier, or railroad, subject to the jurisdiction of the public service  
22 commission, ~~office of the commissioner of railroads~~ or department of transportation  
23 of this state, is notified in writing by a federal, state or local law enforcement agency,



1 department of administration shall determine the matter and shall develop a plan  
2 for an orderly transfer.

3 **SECTION 9443. Effective dates; public service commission.**

4 (1) ABOLISHING THE OFFICE OF COMMISSIONER OF RAILROADS. The treatment of  
5 sections 15.03, 15.06 (1) (ar), 15.79, 15.795, 20.155 (intro.) and (2), 20.395 (2) (gg) and  
6 (gq), 20.923 (4) (e) 11., 25.40 (1) (a) 12m., 26.20 (3) and (10), 30.33 (1) and (2), 66.0801  
7 (2), 84.05, 85.013 (3), 86.001 (2m), 86.12 (2), 86.13 (3), 88.66 (2), 88.87 (4), 88.88 (2),  
8 182.36 (3), 190.001, 190.02 (6), 190.025 (2) (b), 190.03, 190.13, 190.16 (4) (a), (b), and  
9 (c) and (5), 191.001, 191.01 (2), 191.02 (title), 191.03, 191.05, 191.06, 191.07, 191.09,  
10 191.10 (title), (1), (2), and (3), 191.11, 191.13 (2), 191.16, 191.17, 191.19 (1) and (3),  
11 191.20, 191.21, 192.001 (1r) and (2), 192.14 (10) and (12), 192.15 (14), 192.25 (3) (a),  
12 192.27 (1), 192.29 (1), (2), (4), and (5), 192.31 (1), (2), (4), and (5), 192.324, 192.327  
13 (3), (4), (5), (6), and (7), 192.33 (5), 192.34, 192.47, 192.52 (3), (4), and (5), 192.53 (4)  
14 (a) and (b), (5) (a) (intro.), and (6), 192.55 (5), 192.56 (1), (2), (3), (5), and (6), 195.001  
15 (1r), (2), and (3), 195.03 (title), (1), (2), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16),  
16 (17), (18), (19), (25), (28), (29), and (30) (a) and (b), 195.04, 195.041, 195.042, 195.043,  
17 195.044, 195.045, 195.046, 195.047, 195.05, 195.055, 195.06, 195.07 (1) and (2),  
18 195.08, 195.09, 195.10, 195.11, 195.12, 195.13, 195.14, 195.15, 195.16, 195.17, 195.19  
19 (1) and (3), 195.20, 195.21, 195.26, 195.27, 195.28 (1), (3), and (4), 195.285 (1), (2), and  
20 (3), 195.286 (2), (3), (5), and (8), 195.29 (1), (2), (3), (4), (5), (6), (7), (9), and (10),  
21 195.295, 195.30 (1), 195.305, 195.31, 195.32, 195.325, 195.33, 195.34, 195.36, 195.37,  
22 195.38, 195.45 (1), (2), and (4), 195.50 (1), 195.60 (title), (1), (2), (4) (a), (b), and (c),  
23 (6), and (7) (intro.), (a), and (b), 197.10 (4), 201.01 (1) and (2), 201.10 (3), 201.13,  
24 226.025 (3), 227.01 (13) (s), 227.43 (1) (bk) and (4) (b), 227.46 (2m) and (3) (intro.),  
25 281.36 (1) (cr), 346.45 (3) (d), 350.137 (1), 350.138 (4) (c) and (9), 350.139 (5), 350.1395

1     ~~(2) (b) 2. and 3. (intro.) and (4) (b), 552.23 (1) (by SECTION (211)), and 945.06 and~~  
2     ~~chapter 189 of the statutes and SECTION 9143 (1) (b), (c) 1., 2., 3., 4., and 5., (d), (e),~~  
3     ~~(f), and (g) of this act take effect on July 1, 2004.~~

4

(END)

*D - Note*

1 and other services under this subsection, 90% of the costs determined shall be costs  
2 of the office department and 10% of the costs determined shall be costs of state  
3 government operations.

4 SECTION 183. 195.60 (2) of the statutes is amended to read:

5 195.60 (2) The office department shall annually, within 90 days after the close  
6 of each fiscal year, ascertain the total of its expenditures during such year which are  
7 reasonably attributable to the performance of its duties relating to railroads. For  
8 purposes of such calculation, 90% of the expenditures so determined shall be  
9 expenditures of the office department and 10% of the expenditures so determined  
10 shall be expenditures for state government operations. The office department shall  
11 deduct therefrom all amounts chargeable to railroads under sub. (1) and s. 201.10 (3).  
12 A sum equal to the remainder plus 10% of the remainder shall be assessed by the  
13 office department to the several railroads in proportion to their respective gross  
14 operating revenues during the last calendar year, derived from intrastate  
15 operations. Such assessment shall be paid within 30 days after the bill has been  
16 mailed to the several railroads, which bill shall constitute notice of assessment and  
17 demand of payment thereof. The total amount which may be assessed to the  
18 railroads under authority of this subsection shall not exceed 1.85% of the total gross  
19 operating revenues of such railroads, during such calendar year, derived from  
20 intrastate operations. Ninety percent of the payment shall be deposited in the  
21 general fund and credited to the appropriation account under s. 20.155 (2) (g) 20.395  
22 (2) (gg). The railroads shall furnish such financial information as the office  
23 department requires.

*183A#*

24 SECTION 184. 195.60 (3) of the statutes is amended to read:

*183A#  
57-24*

1 195.60 (3) If any railroad against which a bill has been rendered under sub. (1)  
2 or (2) within 30 days after the rendering of such bill neglects or refuses to pay the  
3 same or fails to file objections to the bill with the ~~office~~ division of hearings and  
4 appeals, the ~~office~~ department shall transmit to the state treasurer a certified copy  
5 of the bill, together with notice of neglect or refusal to pay the bill, and on the same  
6 day the ~~office~~ department shall mail to the railroad against which the bill has been  
7 rendered a copy of the notice which it has transmitted to the state treasurer. Within  
8 10 days after the receipt of such notice and certified copy of such bill, the state  
9 treasurer shall levy the amount stated on such bill to be due, with interest, by  
10 distress and sale of any goods and chattels, including stocks, securities, bank  
11 accounts, evidences of debt, and accounts receivable belonging to such delinquent  
12 railroad. Such levy by distress and sale shall be governed by the provisions of s.  
13 74.10, 1985 stats., except that it shall be made by the state treasurer and that said  
14 goods and chattels anywhere within the state may be levied upon.

15 ~~Section 185.~~ 195.60 (4) (a) of the statutes is amended to read:

16 195.60 (4) (a) Within 30 days after the date of the mailing of any bill as provided  
17 by subs. (1) and (2), the railroad against which such bill has been rendered may file  
18 with the ~~office~~ division of hearings and appeals objections setting out in detail the  
19 grounds upon which the objector regards the bill to be excessive, erroneous, unlawful  
20 or invalid. The ~~office~~ division of hearings and appeals, after notice to the objector and  
21 the department, shall hold a hearing upon such objections, not less than 5 nor more  
22 than 10 days after such notice. If after such hearing the ~~office~~ division of hearings  
23 and appeals finds any part of the bill to be excessive, erroneous, unlawful or invalid  
24 it shall record its findings ~~upon its minutes~~ with respect to the objections and  
25 transmit to the objector and the department an amended bill, in accordance with

insert 57-28 cont'd

1 such findings. ~~The amended bill shall have in all ways the same force and effect~~  
2 ~~under this section as an original bill rendered under subs. (1) and (2).~~

3 **SECTION 186.** 195.60 (4) (b) of the statutes is amended to read:

4 195.60 (4) (b) If after the hearing the office division of hearings and appeals  
5 finds the entire bill unlawful or invalid, it shall notify the objector and the  
6 department of such determination, in which case the original bill shall be deemed  
7 void.

8 **SECTION 187.** 195.60 (4) (c) of the statutes is amended to read:

9 195.60 (4) (c) If after the hearing the office division of hearings and appeals  
10 finds that the bill as rendered is neither excessive, erroneous, unlawful or invalid,  
11 either in whole or in part, it shall record such findings upon its minutes with respect  
12 to the objections, and transmit to the objector and the department notice of such  
13 finding.

14 **SECTION 188.** 195.60 (4) (d) of the statutes is amended to read:

15 195.60 (4) (d) If any bill against which objections have been filed is not paid  
16 within 10 days after notice of a finding that such objections have been overruled and  
17 disallowed by the office division of hearings and appeals has been mailed to the  
18 objector, the office department shall give notice of such delinquency to the state  
19 treasurer and to the objector, in the manner provided in sub. (3). The state treasurer  
20 shall then proceed to collect the amount of the bill as provided in sub. (3). If an  
21 amended bill is not paid within 10 days after a copy thereof is mailed to the objector  
22 by registered mail, the office department shall notify the state treasurer and the  
23 objector as in the case of delinquency in the payment of an original bill. The state  
24 treasurer shall then proceed to collect the amount of the bill as provided in the case  
25 of an original bill.

msmt  
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present 58-85 cm + id

# 189A

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SECTION ~~189~~ 195.60 (5)<sup>✓</sup> of the statutes is amended to read:

195.60 (5) No suit or proceeding shall be maintained in any court for the purpose of restraining or in any way delaying the collection or payment of any bill rendered under subs. (1) and (2). Every railroad against which a bill is rendered shall pay the amount thereof, and after such payment may in the manner herein provided, at any time within 2 years from the date the payment was made, sue the state in an action at law to recover the amount paid with legal interest thereon from the date of payment, upon the ground that the assessment was excessive, erroneous, unlawful or invalid in whole or in part. If it is finally determined in such action that any part of the bill for which payment was made was excessive, erroneous, unlawful or invalid, the state treasurer shall make a refund to the claimant as directed by the court, which shall be charged to the appropriations to the office department.

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~~SECTION 190. 195.60 (6) of the statutes is amended to read:~~

~~195.60 (6) No action for recovery of any amount paid under this section shall be maintained in any court unless objections have been filed with the office division of hearings and appeals as provided in this section. In any action for recovery of any payments made under this section the claimant shall be entitled to raise every relevant issue of law, but the office's findings of fact of the division of hearings and appeals made pursuant to this section shall be prima facie evidence of the facts therein stated.~~

~~SECTION 191. 195.60 (7) (intro.) of the statutes is repealed.~~

~~SECTION 192. 195.60 (7) (a) of the statutes is renumbered 195.60 (7) and amended to read:~~

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

LRB-1187/5dn  
ARG:.....

ATTN: Kirsten Grinde

As you requested, this draft eliminates the delayed effective date. A number of other non-substantive changes were required because this draft had previously been reconciled with other drafts based in part on the delayed effective date. All necessary changes have at this time been made on the LRB "master". This draft re-reconciles LRB-1187, LRB-1431, and LRB-0529, all of which appear in the compiled bill. The treatment of s. 552.23 (1) has been deleted from LRB-1187 and incorporated into LRB-1431/3. The "reconciliation" of s. 195.29 (5) appearing in LRB-1187/4 has been reversed and is now incorporated into LRB-0529/5. The elimination of s. 195.60 (3), (4) (d), and (5), pursuant to "reconciliation," in LRB-1187/4 has also been reversed, and the reconciliation of these provisions also appears in LRB-0529/5.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
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**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1187/5dn  
ARG:wlj:rs

February 17, 2003

ATTN: Kirsten Grinde

As you requested, this draft eliminates the delayed effective date. A number of other non-substantive changes were required because this draft had previously been reconciled with other drafts based in part on the delayed effective date. All necessary changes have at this time been made on the LRB "master." This draft re-reconciles LRB-1187, LRB-1431, and LRB-0529, all of which appear in the compiled bill. The treatment of s. 552.23 (1) has been deleted from LRB-1187 and incorporated into LRB-1431/3. The "reconciliation" of s. 195.29 (5) appearing in LRB-1187/4 has been reversed and is now incorporated into LRB-0529/5. The elimination of s. 195.60 (3), (4) (d), and (5), pursuant to "reconciliation," in LRB-1187/4 has also been reversed, and the reconciliation of these provisions also appears in LRB-0529/5.

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State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-1187/6  
ARG:cjs/cmh/kg/wlj:rs

(KMR)

DOA:.....Vail – BB0269, Eliminate office of commissioner of railroads  
FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

J-Note

check auto-refs.

Don't  
Kern. Cont.

- 1 AN ACT ...; relating to: eliminating the Office of the Commissioner of Railroads
- 2 and transferring the office's duties to the Department of Transportation,
- 3 making an appropriation, and granting rule-making authority.

*Analysis by the Legislative Reference Bureau*

**TRANSPORTATION**

**RAIL AND AIR TRANSPORTATION**

***Office of Commissioner of Railroads eliminated***

Under current law, the Office of the Commissioner of Railroads (office) regulates railroad activities in Wisconsin. This bill eliminates the office and provides for the elimination and transfer of its functions as follows:

- 1. The office is currently authorized to regulate railroads to prevent "unreasonable or unjustly discriminatory" rates and inadequate services within the state. The bill eliminates this authority.
- 2. Currently, before constructing any new track in the state, a railroad must have a certificate which is issued only after a hearing and a finding of "public convenience and necessity" by the office. Under this bill, the certificate is issued by DOT, the hearing is discretionary, and the public convenience and necessity standard is abolished.
- 3. Under current law, the office is authorized to control the issuance of, and impose special restrictions on, railroad corporation securities, including stock and

debt instruments. The office must approve issuance of railroad securities, may determine their number, character, purpose, and issuing value, and may impose other restrictions. The bill eliminates this authority.

4. Under current law, the office may order railroads to install protective devices at crossings or make other safety improvements and may determine the type of grade crossing used where a railroad intersects a street or another railroad. The bill transfers this authority to DOT and authorizes DOT to issue orders in these matters without a hearing, based on investigation and application of safety, programming, and cost allocation criteria promulgated by rule. The bill provides for review of DOT orders in these matters by the Division of Hearings and Appeals (division) in DOA.

5. The office is currently assigned various other functions relating to railroads. In most cases, those regulatory functions not eliminated in the bill are transferred to DOT, and functions having the character of contested case resolution are transferred to the division. The bill requires the division to give due weight to the experience, technical competence, and specialized knowledge of DOT in transportation hearings and reviews.

6. The bill transfers certain functions of the office relating to railroad organization to the department of financial institutions.

7. The bill transfers 4.0 FTE positions to DOT and ~~1.0 FTE position to the Division~~.

For further information see the *state and local* 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

1 acting within its jurisdiction, that any facility furnished by it is being used or will be  
2 used for the purpose of transmitting or receiving gambling information in violation  
3 of the laws of this state it shall discontinue or refuse the leasing, furnishing or  
4 maintaining of such facility, after reasonable notice to the subscriber, but no  
5 damages, penalty or forfeiture, civil or criminal, shall be found against any such  
6 public utility, common carrier, contract carrier or railroad, for any act done in  
7 compliance with any notice received from a law enforcement agency under this  
8 section. Nothing in this section shall be deemed to prejudice the right of any person  
9 affected thereby to secure an appropriate determination as otherwise provided by  
10 law in any court or tribunal or agency, that such facility should not be discontinued  
11 or removed, or should be restored.

12 **SECTION 9143. Nonstatutory provisions; public service commission.**

13 (1) ABOLISHING THE OFFICE OF COMMISSIONER OF RAILROADS; TRANSITIONAL  
14 PROVISIONS.

15 (a) *Definitions.* In this subsection:

- 16 1. "Department" means the department of transportation.  
17 2. "Division" means the division of hearings and appeals in the department of  
18 administration.  
19 3. "Office" means the office of the commissioner of railroads.

20 (b) *Assets and liabilities.* On the effective date of this paragraph, the assets and  
21 liabilities of the office shall become the assets and liabilities of the department.

22 (c) *Staff.*

- 23 1. On the effective date of this subdivision, the position of the commissioner of  
24 railroads is abolished.

1           2. On the effective date of this subdivision, 1.0 FTE PR hearing examiner  
2 position and the incumbent employee holding that position in the office are  
3 transferred to the division.

4           ~~2.~~ <sup>#</sup>3. On the effective date of this subdivision, the following 4.0 FTE PR positions  
5 and the incumbent employees, identified by the secretary of transportation, holding  
6 those positions in the office are transferred to the department:

- 7           a. One program assistant position.
- 8           b. Three regulation compliance investigator positions.

9           4. a. The employee transferred under subdivision 2. to the division has all of  
10 the rights and the same status under subchapter V of chapter 111 and chapter 230  
11 of the statutes in the division that he or she enjoyed in the office immediately before  
12 the transfer. Notwithstanding section 230.28 (4) of the statutes, the employee so  
13 transferred who has attained permanent status in class is not required to serve a  
14 probationary period.

15           ~~3.~~ <sup>#</sup>3. <sup>2.5 a.p.</sup> Employees transferred under subdivision ~~3.~~ to the department have all of  
16 the rights and the same status under subchapter V of chapter 111 and chapter 230  
17 of the statutes in the department that they enjoyed in the office immediately before  
18 the transfer. Notwithstanding section 230.28 (4) of the statutes, no employee so  
19 transferred who has attained permanent status in class is required to serve a  
20 probationary period.

21           ~~4.~~ <sup>#</sup>4. <sup>9 a.p.</sup> On the effective date of this subdivision, the remaining FTE PR positions of  
22 the office not transferred under subdivisions ~~2.~~ or abolished under subdivision  
23 1. are deauthorized.

1 ~~6. The commissioner of railroads shall, in addition to his or her other duties,~~  
2 ~~assist the department in the orderly transfer of the functions of the office to the~~  
3 ~~department and perform the duties specified in paragraphs (d), (e), (f), and (g).~~

4 (d) *Tangible personal property.* On the effective date of this paragraph, all  
5 tangible personal property, including records, of the office is transferred to the  
6 department.

7 (e) *Contracts.* All contracts entered into by the office in effect on the effective  
8 date of this paragraph remain in effect and are transferred to the department. The  
9 department shall carry out any obligations under such a contract until the contract  
10 is modified or rescinded by the department to the extent allowed under the contract.

11 (f) *Rules and orders.*

12 1. All rules promulgated by the office that are in effect on the effective date of  
13 this subdivision remain in effect until their specified expiration date or until  
14 amended or repealed by the department.

15 2. All orders issued by the office that are in effect on the effective date of this  
16 subdivision remain in effect until their specified expiration date or until modified or  
17 rescinded by the department.

18 (g) *Pending matters.* Any matter pending with the office on the effective date  
19 of this paragraph is transferred to the department and all materials submitted to or  
20 actions taken by the office with respect to the pending matter are considered as  
21 having been submitted to or taken by the department.

22 (h) *Department of administration to arbitrate disputes.* In the case of  
23 disagreement between the secretary of transportation and the commissioner of  
24 railroads with respect to any matter specified in paragraph (d), (e), (f), or (g), the

1 department of administration shall determine the matter and shall develop a plan  
2 for an orderly transfer.

3 (END)

D - Note

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

LRB-1187/6dn

ARG:.....

*King*

ATTN: Kirsten Grinde

(1)  
The attached draft eliminates the transfer of 1.0 FTE PR hearing examiner position to the DOA Division of Hearings and Appeals, and instead deauthorizes this position. The draft makes changes to SECTION 9143(c) 2., 4. a. and b., 5., and 6. of the "/5" draft. This draft continues to reflect the reconciliations identified in the Drafter's Note to the "/5" draft.

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

LRB-1187/6dn  
ARG:kmg:pg

February 17, 2003

ATTN: Kirsten Grinde

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