

2009 DRAFTING REQUEST

Bill

Received: **12/22/2009**

Received By: **agary**

Wanted: **As time permits**

Companion to LRB:

For: **Daniel Knodl (608) 266-3796**

By/Representing: **BJ Dembach**

May Contact:

Drafter: **agary**

Subject: **Transportation - mass trnst/rail**

Addl. Drafters:

Extra Copies: **EVM**

Submit via email: **YES**

Requester's email: **Rep.Knodl@legis.wisconsin.gov**

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Eliminate office of commissioner of railroads

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 01/11/2010	csicilia 01/20/2010		_____			S&L
/P1			mduchek 01/20/2010	_____	lparisi 01/20/2010		S&L
/1	agary 01/28/2010	csicilia 02/03/2010	phenry 02/03/2010	_____	lparisi 02/03/2010	mbarman 04/20/2010	

FE Sent For: *atintro*
4/23

<END>

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/?	agary 01/11/2010	csicilia 01/20/2010					S&L
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/P1			mduchek 01/20/2010	2/3	lparisi 01/20/2010		
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FE Sent For:

Handwritten notes and signatures:

- 1 g/s 2/3 10
- 3 PH
- MD
- <END>
- 2/3

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/?	agary						
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Handwritten notes:
P1 g's 1/20 10 12/20/09
PH
<END> 1/20

FE Sent For:

Gary, Aaron

From: Dernbach, BJ
Sent: Tuesday, December 22, 2009 2:38 PM
To: Gary, Aaron
Subject: Commissioner of Railroads
Attachments: 640 Knodl Redraft.pdf

Aaron,

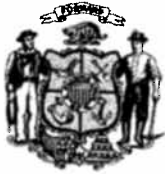
Rep. Knodl would like to put together a bill that would eliminate the commish of railroads. I've attached a Fiscal Bureau memo from 2003 that we would like updated and then drafted into a bill. I've put some notes in the .pdf for some changes that we would like.

Please let me know if this is enough information.

Thanks.

BJ Dernbach
Office of Representative Dan Knodl
24th Assembly District
(608) 266-3796

12/22/2009



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

April 23, 2003

Joint Committee on Finance

Paper #640

Elimination of the Office of the Commissioner of Railroads (PSC -- Office of the Commissioner of Railroads)

[LFB 2003-05 Budget Summary: Page 33, #6, Page 178, #8; Page 362, #1; and Page 418, #3]

CURRENT LAW

The Office of the Commissioner of Railroads (OCR) regulates railroads and monitors the safety of railroad crossings. The Railroad Commissioner may order the closing of a railroad crossing or the installation of a safety improvement, such as crossing gates or lights. OCR conducts formal hearings on certain matters before issuing a decision, including any proposal to change the alignment of a crossing, create a new crossing, or close an existing crossing. Hearings are not required to order the installation of a railroad crossing protection device, unless an interested party objects to the Commissioner's order.

The office has 7.0 FTE positions, including 1.0 program assistant, 4.0 railroad safety analysts, 2.0 attorneys, who serve as hearing examiners for the Office, and the Railroad Commissioner, who is appointed by the Governor for a six-year term. The operations of the Office are funded through assessments on railroads. The assessment is capped at 1.85% of railroads' prior-year, intrastate revenues. Base funding for the agency is \$558,700 PR. OCR is attached, for limited administrative purposes, to the Public Service Commission.

GOVERNOR

Eliminate the Office of the Commissioner of Railroads (OCR) and delete \$588,800 PR (base plus standard budget adjustments) annually on the effective date of the bill. In addition, delete the position of the Commissioner of Railroads and two other PR positions. Eliminate certain functions of OCR and transfer other functions, funding, and the 4.0 PR remaining positions to other state agencies, as follows:

Abolish OCR. Repeal all statutory provisions creating OCR, attaching OCR administratively to the PSC, describing the powers and duties of OCR, providing for a Commissioner of Railroads, setting the term and manner of appointment of the Commissioner, and assigning the Commissioner to an executive salary group.

Transfer Railroad Regulatory Functions to the Department of Transportation (DOT). Provide that DOT shall be responsible for railroad regulatory matters with respect to the following general statutory provisions: Chapter 191 (railroad construction activity); Chapter 192 (railroad regulations and liabilities); Chapter 195 (railroad regulation); and other statutory provisions relating to harbor railroads (Chapter 30), railroad grade crossing improvements (Chapters 84 and 86), authority of turnpike corporations to relocate railroads (Chapter 182), the allocation of costs of railroad industrial spur tracks (Chapter 190), sole, rather than joint, involvement in certain determinations related to discharge into nonfederal wetlands (Chapter 281), and snowmobile rail crossings (Chapter 350). In general, these changes would be accomplished by replacing all references to OCR's duties and responsibilities with corresponding references to DOT.

Transfer Resolution of Contested Railroad Cases to the Division of Hearings and Appeals. For the purpose of resolving contested matters relating to railroad regulation, transfer this authority to the Division of Hearings and Appeals (Division) in DOA. Specify that administrative hearing procedures under Chapter 227 of the statutes would generally apply to these proceedings. Require the Administrator of the Division to assign a hearing examiner to preside over any hearing or review relating to the regulation of any of the following matters: adequacy of railroad fire protection devices; allocation of costs of railroad crossing improvements; adequacy of bridges, culverts, and drainage facilities near railroad rights-of-way; allocation of costs when two railroads intersect and the appropriate type of grade separation, if any, at proposed intersections; allocation of costs of railroad industrial spur tracks; safety and adequacy of railroad bridges, drawbridges, and fences; removal or transfer of railroad terminals, shops, stations, and agency service; adequacy and cost allocations of grade and highway crossing protections; exemption for vehicles otherwise required to stop at railroad crossings from stopping at a specified crossing; views, trees, and brush near crossings; and the determination of direct and remainder assessments for the costs of railroad regulation. Specify that existing penalties for failure to provide necessary documents or information to OCR or for violating OCR orders would now apply with respect to the Division.

Provide that in hearing these matters, the Division must give due weight to the experience, technical competence, and specialized knowledge of DOT as well as to the discretionary authority conferred upon DOT. Require the Division to give great weight to DOT's interpretation of the statutes and the rules that it administers. Provide that if there is a conflict between this new provision and any other statute relating to a hearing or review conducted by the Division, these new procedures take precedence.

Require that DOT pay the costs of the hearing examiner in accordance with a schedule of fees developed by the Division. Specify that any appeals arising from examiners' decisions be heard by the Administrator of the Division, and that the determination of the Administrator is the final decision of DOA. Allow appeal of the Administrator's decision for judicial review.

Transfer Railroad Corporate Registration Functions to the Department of Financial Institutions (DFI). Require railroad corporations to file the following types of documents with DFI, rather than with OCR, as is currently required: all books of account or stock books as may be required by DFI; designation of a principal office within the state; the annual report to the railroad's stockholders; and certificates issued by DOT for railroad construction or route alteration. Re-assign the approval of route maps for proposed railroads from DFI to DOT.

~~*Modify Railroad Regulatory Authority.* In transferring railroad regulatory functions to other agencies, make the following changes to the current level of railroad regulation:~~

~~Repeal the requirement that, before any railroad track construction may proceed in the state, the railroad must have a certificate that is issued only after a public hearing and upon a finding of "public convenience and necessity." Under the bill, a certificate authorizing construction would be issued by DOT, but a hearing would be discretionary, and there would be no public convenience and necessity standard required. Also, repeal that standard for issuance of certificates of authority for ferry operations:~~

~~Eliminate the current OCR role in authorizing the issuance and disposition of railroad corporation securities, including stock and debt instruments, and instead, allow all such activities authorized by DFI or, in the case of railroads engaged in or proposing interstate commerce, the Federal Surface Transportation Board. [The reference to the Federal Surface Transportation Board replaces an outdated reference under current law to the former Interstate Commerce Commission. The bill would also update a second reference to the Interstate Commerce Commission under provisions regarding forms for the state to use in obtaining information from railroad companies.]~~

~~Additionally, repeal:~~

~~• The authority and the procedures to investigate and remedy complaints of unreasonable or unjustly discriminatory rates, including interstate rates, and of inadequate service within the state;~~

~~• The requirement that railroads furnish reasonably adequate service and facilities and that the charges made be reasonable and just;~~

- ~~The prohibitions against discriminatory rates, undue or unreasonable carrier preferences, and rebates and concessions received in the furtherance of discriminatory rates;~~
- ~~The standards with respect to providing free transportation, reduced rates, and passes;~~
- ~~The authority to prescribe the time and form of rate schedule filings, use of free passes by shippers, rates and charges at elevators and warehouses upon railroad ground, and the manner of providing railroad car service to shippers, including weighing and testing railroad cars and freight;~~
- ~~The authority to collect information on railroad income and expenditures, construction costs, and debt level;~~
- ~~The authority to investigate complaints about freight charges and the correctness of freight bills;~~
- ~~The requirements that railroads maintain transportation contracts and pass lists for certain periods of time and make them available for inspection, as required; and~~
- ~~Penalties for failure to meet time requirements for erecting overhead warning devices ("telltails") to alert workers of low clearances.~~

~~Repeal current law specifications with respect to railroad grade crossing and safety signage. Provide, instead, that such signs would have to be consistent with DOT's required uniform system of signs manual. Allow the use of existing signs until they are replaced or relocated.~~

~~Provide that DOT may issue orders on the following matters without holding a public hearing: (a) the installation of protective devices, signs, or safety improvements at railroad crossings; (b) the determination of the type of grade crossing to be used where a railroad intersects a street or another railroad; (c) the granting of an exemption for vehicles otherwise required to stop at railroad crossings from stopping at a specified crossing; (d) the elimination of existing highway grade crossings associated with highway relocation, improvement, or new construction; and (e) the safety and adequacy of railroad bridges and drawbridges. Provide that DOT shall issue orders based on its investigation and criteria promulgated by rule with respect to such issues (however, specific rule authority is not provided with respect to "(e)"), and that the Division shall hear related appeals. Under current law, a public hearing must be held on all of these matters. Specify that the rule related to the installment of protective devices at railroad crossings may include programming criteria relating to prioritizing those crossings needing~~

~~protection. Specify that the rule related to highway grade crossings shall include criteria to apportion expenses.~~

~~Create a requirement that the Department, notwithstanding its other duties related to grade crossings, must monitor and investigate all such crossings and determine, for each crossing, whether any warning devices, advance warning signs, or other warning measures are required to protect and promote public safety. Specify that DOT may make this determination without a hearing, but also provide that any order may be appealed to the Division. Provide that any device, sign, or other measure at a crossing that conforms to a DOT determination, or, if DOT has not made a determination, that was approved by OCR or the Office of the Commissioner of Transportation, is considered adequate and appropriate warning for the crossing.~~

Railroad Assessments. On the effective date of the transfer, delete the existing PR appropriation for state funds for OCR and create a new, PR appropriation under DOT to support the transferred railroad regulation activities. Also, authorize the use of the existing segregated appropriation for railroad crossing improvement and protection maintenance, funded from the transportation fund, for purposes of the transferred railroad regulation activities.

Authorize DOT, rather than OCR, to collect direct and remainder assessments from railroads sufficient to support railroad regulatory activities. ~~Specify that 10% of the total amounts collected be deposited in the general fund for the costs of state government operations and the remaining 90% be deposited in the general fund and credited to the new, PR appropriation described above.~~ Clarify that, although collected by DOT, the funds collected from direct and remainder assessments to support railroad regulatory activities would not be deposited in the transportation fund. Delete the provision that specifies that federal funds received for the regulation of railroads are credited to OCR's FED appropriation, rather than being part of the transportation fund.

Transition Provisions. On the effective date of the bill:

Transfer from OCR 4.0 PR positions and the incumbent employees, as identified by the Secretary of DOT, to DOT. These positions include one program assistant position and three regulation compliance investigator positions.

Delete the remaining 3.0 PR positions of OCR not transferred, including the positions of the Commissioner of Railroads and the two attorneys.

Specify that: (a) all persons transferred would retain the same rights and employee status they held prior to the transfer; and (b) no employee who had attained permanent status in his or her classified position would be required to serve a new probationary period. Finally, include transitional provisions transferring all assets and liabilities, tangible personal property, contracts,

rules and orders, and all pending matters from OCR to DOT. Provide that in the event of any disagreements between the Commissioner and the Secretary of DOT with respect to tangible personal property, contracts, rules and orders, and pending matters, the Secretary of DOA would be required to determine the matter and develop a plan for an orderly transfer.

The net effect of the funding and position transfers and deletions associated with this item is as follows:

<u>Agency</u>	<u>Annual Funding Change</u>	<u>Annual Position Change</u>
PSC	-\$588,800	-7.00
DOT	588,800	4.00
DOA	<u>200,000</u>	<u>0.00</u>
Total	\$200,000	-3.00

Additional Provisions. In addition, make the followings changes: (a) when referring to signs and instruments for safety purposes, generally replace the word "protection" with the word "warning;" (b) delete language authorizing OCR to sue and be sued in that name, as there are no provisions preventing such actions with respect to the state agencies to which the responsibilities of OCR would be transferred under the bill; and (c) delete other statutory references to sections that would be deleted under these provisions.

DISCUSSION POINTS

1. The Department of Transportation proposed eliminating the Office of the Commissioner of Railroads and transferring its functions to DOT and DOA in its agency budget request. In submitting this proposal, the Department argued that the regulation of railroad crossing issues, which is the primary responsibility of OCR, could be done more effectively and efficiently by DOT since it would allow for better coordination of highway and railroad crossing decisions. In addition, DOT indicates that Department staff are currently involved with OCR staff in many of the same crossing investigations, particularly if they involve state highways.

2. Opponents of the Governor's proposal to eliminate OCR argue that having a railroad regulatory authority independent of DOT is necessary to ensure that issues involving railroad-highway crossings are resolved fairly. They argue that since OCR is often in a position of issuing orders in which DOT is an interested party, the Department could not be expected to assume this role and remain objective in such cases. For instance, OCR is responsible for allocating the cost of improvements at a crossing, such as the improvements required when the highway is widened, between the various parties. In such cases where DOT is the highway authority, there is concern that the Department would ask the railroad to pay a disproportionate share of the costs. In calendar

years 2001 and 2002, slightly over 20% of OCR petitions originated with DOT, indicating that the Department could have an interest in the outcome of these cases.

3. The functions of OCR would be transferred to DOT under the bill, but the mechanism for funding the functions would remain the same. DOT, like OCR currently, would assess railroads directly for administrative costs that can be attributed to a single railroad, such as the investigation and associated hearings on a particular crossing. For administrative costs that can not be attributed directly to a single railroad, DOT (as OCR does currently) would assess a remainder assessment on all railroads' intrastate revenues. The bill would create a program revenue appropriation in DOT, similar to OCR's current appropriation, to collect assessments and account for expenditures. In his testimony before the Joint Committee on Finance, the Railroad Commissioner noted that since OCR does not expend GPR funds, the elimination of the Office would not result in general fund savings.

4. When public hearings on railroad matters are required under current law, one of OCR's two attorneys conducts the hearing. (One of the attorneys is a project position that expires in 2005-06, while the other is a permanent position.) Under the bill, hearings would be conducted by a hearing examiner at the Division of Hearings and Appeals in DOA. DOT would be billed for DOA's costs of conducting the hearing, which would be paid out of the Department's newly-created PR appropriation for railroad regulatory costs. The bill would increase PR expenditure authority in the Division of Hearings and Appeals by \$200,000 to reflect the additional workload associated with railroad hearings. DOA indicates that the \$200,000 figure was estimated by adding the salary and fringe benefit costs of one of OCR's attorneys and one-half of the salary and fringe benefit costs of the Commissioner, which together total \$156,700, plus an additional \$43,300 in supplies and services costs.

5. Although the bill includes an estimate of \$200,000 for hearing-related costs, OCR indicates that the Office's total costs associated with hearings is lower than \$200,000. The Office does not account for the costs associated with hearings independent of other costs, but based on OCR's estimates and the rates charged by DOA for hearing examiner's time, it is estimated that the actual amount that would be charged if DOA did OCR's hearings would be \$75,000 to \$100,000. Furthermore, the bill would modify the procedures for issuing orders and conducting hearings in a way that may reduce the number of hearings held. First, the bill would allow DOT to issue orders on physical changes to crossings (including the creation of a new crossing or the closing of an existing crossing) without holding a public hearing, whereas OCR is currently required to hold a hearing in these cases. These cases, which constitute the majority of OCR's hearings, would only require a hearing if an interested party files an objection to the order within 20 days of the order. Second, in any hearing proceeding, the hearing examiner would be required to give "due weight" to the experience, technical competence, and specialized knowledge of DOT and give "great weight" to the Department's interpretation of statutes and rules that it administers. The fact that the bill would place these requirements on the examiner may discourage interested parties from filing objections to the Department's orders, since they may reduce the chance that a DOT order can be successfully challenged.

6. Although DOT would not be required to hold hearings on many issues where OCR is currently required to hold a hearing, DOT indicates that the Department's intention is to seek public input on decisions. If a decision is made to adopt the Governor's recommendation to eliminate OCR and transfer its duties to DOT and DOA, the Committee could modify the provision to continue to require a public hearing in cases where hearings are currently required. In addition, since DOA hearing examiners are not required to give "due weight" to other agencies' technical expertise or "great weight" to other agencies' statutory and rule interpretations, the Committee could decide to eliminate the preferential treatment provided for DOT in this regard.

7. If the changes outlined in the previous point are adopted, it may be reasonable to expect that the volume of railroad hearings conducted by DOA would be similar to the number currently conducted by OCR. Given that the \$200,000 may be too high for the amount of railroad hearings that DOA would conduct, this amount could be reduced to \$75,000 if the Committee adopts the Governor's recommendation with the modifications to the hearing procedures. If DOA determines that changes in hearing volume or complexity result in this amount being too low, the Department could submit a request to the Joint Committee on Finance under s. 16.515 of the statutes to increase the expenditure authority of the Hearings and Appeals PR appropriation.

8. The bill would fund railroad regulation in DOT at the same level at which OCR would be funded if the Office were to be retained, which is \$588,000 PR annually. However, given that the bill would eliminate some positions, it may be expected that total expenditures would be lower. The bill would eliminate the Railroad Commissioner as well as two attorney positions. These savings would be offset to some extent by the fact that DOT would be charged by DOA for services that are currently performed by the eliminated positions. A reasonable assumption may be that the savings would equal the total cost for the eliminated positions, net of the estimated \$75,000 charge for hearings. Using these assumptions, it is estimated that the savings would be \$247,600 PR annually.

9. It should be noted that while these would be the savings relative to the base, OCR's actual expenditures have been lower than the appropriation base, primarily because the Office has had one or two vacant positions for the past several years. In 2001-02, actual office expenditures were \$453,800, or \$134,200 below the \$588,000 that the bill would provide to DOT for the functions. It should also be noted that any savings associated with the elimination of OCR positions would not result in "unused" program revenue funds. Instead, lower expenditures would result in a lower assessment on railroads.

10. The railroad assessment mechanism that OCR uses to fund office expenses, which is the same mechanism that DOT would use under the bill, requires the Office to collect an amount that exceeds the Office's direct expenditures. The increment above the direct expenditures, which, according to state statute, is for "state government operations," is deposited in the general fund as GPR-Earned. Of the total assessment, 90% is for the Office's direct expenditures and the other 10% is GPR-Earned. (Therefore, the GPR-Earned amount is equal to 11.1% of direct expenditures.) So, for instance, if OCR's expenditures are \$588,000, the Office would actually collect \$653,300 and the GPR-Earned amount would be \$65,300.

11. The bill includes GPR-Earned amounts of \$70,600 in 2003-04 and \$71,800 in 2004-05 from railroad assessments. However, the maximum amount of GPR-Earned that would be generated if DOT had annual, direct expenditures of \$588,000 is \$65,300, which, relative to the bill, would be a reduction of \$5,300 in 2003-04 and \$6,500 in 2004-05. If the DOT railroad regulation appropriation is reduced by \$247,600 annually (as outlined in Point #8), the maximum amount of GPR-Earned that would be generated is \$37,800, which is lower than the amount reflected in the bill by \$32,800 in 2003-04 and \$34,000 in 2004-05.

12. The bill reflects the receipts as GPR-Earned by the PSC. However, the administration has indicated that the estimated receipts should be reflected under DOT, rather than the PSC. If the Governor's recommendation to eliminate OCR is adopted, with or without the modification to reduce DOT's appropriation, this technical adjustment should also be made.

13. In submitting its budget request, DOT recommended that OCR's permanent attorney position be transferred to DOA in order to conduct railroad hearings. The Department indicates that since this person has been in the position for over 15 years and has experience in the area of federal and state railroad law, including conducting railroad hearings, transferring the attorney to DOA would help facilitate the transition to a system in which DOA conducts hearings. The bill, however, would eliminate the attorney position, which would require DOA to conduct the hearings with existing staff. If the Committee adopts the Governor's recommendation to eliminate OCR, the Committee could decide to modify the bill to transfer the attorney position. However, if the volume of railroad hearings remains at current levels, it is possible that the hearing workload would not be enough to support the entire position, in which case DOA would have to absorb the other costs associated with the position.

14. The bill would delete current law authority to investigate and remedy complaints of unreasonable or unjustly discriminatory rates and inadequate service within the state. OCR has not engaged in this type of regulation with respect to railroads due to issues of federal preemption. However, since the statutes define "water carriers" (such as the passenger ferries serving Washington Island and Madeline Island) as railroads, the elimination of the authority to regulate rates and service of railroads would have the effect of eliminating the regulatory authority over water carriers. Water carriers currently operate as regulated monopolies without any comparable competing alternative. If the Committee decides to continue the regulation of water carriers and decides to adopt the Governor's proposal to eliminate OCR, the provision would have to be modified in order to create the authority to regulate water carriers within DOT.

ALTERNATIVES

1. Adopt the Governor's recommendation to eliminate OCR, transfer its duties and responsibilities to DOT, DOA, and DFI, and transfer the funding mechanism for railroad regulatory activities from OCR to DOT. Delete \$588,800 PR annually in OCR and provide \$588,800 PR annually in DOT to reflect these changes. Provide \$200,000 PR annually in DOA's Division of Hearings and Appeals appropriation to reflect charges paid by DOT for railroad hearings. Modify

the Governor's provision to: (a) reduce GPR-Earned amounts by \$5,300 in 2003-04 and \$6,500 in 2004-05 to reflect a reestimate of these amounts; and (b) reflect the receipt of GPR-Earned amounts in DOT rather than in PSC.

<u>Alternative 1</u>	<u>GPR</u>
2003-05 REVENUE (Change to Bill)	- \$11,800

2. Adopt the Governor's recommendation (as modified to reflect the reestimated GPR-Earned amounts and to reflect the receipts in DOT instead of PSC) with one or more of the following modifications:

<u>Alternative 2</u>	<u>GPR</u>
2003-05 REVENUE (Change to Bill)	- \$11,800

a. Require DOA and DOT to conduct hearings on railroad issues in cases where OCR is required to conduct hearings under current law. Delete provisions that require DOA hearing examiners to give due weight to DOT's technical expertise and great weight to DOT's statutory and rule interpretations. Reduce funding provided in DOA's Division and Hearings and Appeals appropriation by \$125,000 PR annually to establish funding for railroad hearings at \$75,000 PR annually.

<u>Alternative 2a</u>	<u>PR</u>
2003-05 FUNDING (Change to Bill)	- \$250,000

b. Reduce the amount of expenditure authority in the DOT railroad regulation appropriation by \$247,600 PR annually to reflect a reestimate of the amount required for railroad regulation. Reduce GPR-Earned by an additional \$27,500 annually to reflect this reduction.

<u>Alternative 2b</u>	<u>GPR</u>	<u>PR</u>
2003-05 FUNDING (Change to Bill)	\$0	- \$495,200
2002-03 REVENUES (Change to Bill)	- \$55,000	\$0

c. Transfer 1.0 PR position annually, on the effective date of the bill, from OCR to DOA's Division of Hearings and Appeals to reflect the transfer of the permanent OCR attorney to DOA. Specify that the incumbent employee in the OCR's attorney position would retain the position and that the employee would have all the rights and the same status under state employment relations provisions that the employee had in OCR immediately prior to the transfer.

Since the bill would eliminate this position, this alternative has the effect, relative to the bill, of creating 1.0 PR position in DOA.

Alternative 2c	PR
2003-05 POSITIONS (Change to Bill)	1.00

d. Authorize DOT to investigate and remedy unreasonable or unjustly discriminatory rates and inadequate service for the purpose of retaining jurisdiction over water carriers.

3. Delete provision. Reduce GPR-Earned by \$5,300 in 2003-04 and \$6,500 in 2004-05 to reflect a reestimate of the amount generated on OCR's railroad assessments.

Alternative 3	GPR	PR
2003-05 REVENUES (change to Bill)	-\$11,800	\$0
2003-05 FUNDING (Change to Bill)	\$0	-\$200,000
2004-05 POSITIONS (Change to Bill)	0.00	3.00

Prepared by: Jon Dyck

P.W.F.

9 10
2003 - 2004 LEGISLATURE

son
From 2003 LRB-1187:
-4043/P1
LRB-1187/3
ARG: cis/WWW:rs
stays
KMNK
b-note

DOA: Vail - BB0269, Eliminate office of commissioner of railroads

FOR 2003-05 BUDGET -- NOT READY FOR INTRODUCTION

the Department of Financial Institutions,
and the Division of Hearings and Appeals in
the Department of Administration

x-refs
SA 03 ✓
SA 05 ✓
SA 07 ✓
SA 09 ✓

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- 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 and 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

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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:

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

15.03 Attachment for limited purposes. Any division, office, commission, council or board attached under this section to a department or independent agency or a specified division thereof shall be a distinct unit of that department, independent agency or specified division. Any division, office, commission, council or board so attached shall exercise its powers, duties and functions prescribed by law, including rule making, licensing and regulation, and operational planning within the area of program responsibility of the division, office, commission, council or board, independently of the head of the department or independent agency, but budgeting, program coordination and related management functions shall be performed under

1 the direction and supervision of the head of the department or independent agency;
2 except that with respect to the office of the commissioner of railroads, all personnel
3 and biennial budget requests by the office of the commissioner of railroads shall be
4 provided to the department of transportation as required under s. 189.02 (7) and
5 shall be processed and properly forwarded by the public service commission without
6 change except as requested and concurred in by the office of the commissioner of
7 railroads.

8 SECTION 2. 15.06 (1) (ar) of the statutes is repealed.

9 SECTION 3. 15.79 of the statutes is amended to read:

10 **15.79 Public service commission; creation.** There is created a public
11 service commission. No member of the commission may have a financial interest in
12 a railroad or public utility. If any member voluntarily becomes so interested, the
13 member's office shall become vacant. If the member involuntarily becomes so
14 interested, the member's office shall become vacant unless the member divests
15 himself or herself of the interest within a reasonable time. No commissioner may
16 serve on or under any committee of a political party. Each commissioner shall hold
17 office until a successor is appointed and qualified.

18 SECTION 4. 15.795 of the statutes is repealed.

19 SECTION 5. 20.155 (intro.) of the statutes is amended to read:

20 **20.155 Public service commission.** (intro.) There is appropriated to the
21 public service commission for the following programs program:

22 SECTION 6. 20.155 (2) of the statutes is repealed.

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

23 SECTION 7. 20.395 (2) (gg) of the statutes is created to read:

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SECTION 7

1 20.395 (2) (gg) *Railroad payments*. From the general fund, all moneys received
2 from railroads under s. 195.60 and credited to this appropriation account for
3 activities related to railroad regulation under chs. 190 to 195, for such purposes.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

4 **SECTION 8.** 20.395 (2) (gg) of the statutes is amended to read:

5 20.395 (2) (gg) *Railroad crossing improvement and protection maintenance*
6 and railroad regulation, state funds. The amounts in the schedule to pay the costs
7 for railroad crossing protection maintenance under s. 195.28 (3) and for activities
8 related to railroad regulation under chs. 190 to 195.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

9 **SECTION 9.** 20.923 (4) (e) 11. of the statutes is repealed.

10 **SECTION 10.** 25.40 (1) (a) 12m. of the statutes is created to read:

11 25.40 (1) (a) 12m. Moneys collected under s. 195.60 that are deposited in the
12 general fund, 90 percent of which are credited to the appropriation under s. 20.395 (2) (gg).

13 **SECTION 11.** 25.40 (1) (f) 1. of the statutes is repealed.

14 **SECTION 12.** 26.20 (3) of the statutes is amended to read:

15 26.20 (3) LOCOMOTIVE INSPECTOR; POWERS. Any locomotive inspector designated
16 by the department shall have the power to reject from service immediately any
17 locomotive, donkey, traction, or portable engine which, in the opinion of the inspector,
18 is deficient in adequate design, construction, or maintenance of the fire protective
19 devices designated in sub. (2), and any such locomotive, donkey, traction, or portable
20 engine so rejected from service shall not be returned to service until such defects have
21 been remedied to the satisfaction of the locomotive inspector. In case of disagreement
22 between the inspector and the owner of the locomotive, donkey, traction, or portable

1 engine so rejected from service as to the efficiency or proper maintenance of said
2 protective devices, then the owner of the locomotive, donkey, traction, or portable
3 engine may appeal to the ~~office of the commissioner of railroads~~ division of hearings
4 and appeals in the department of administration for a decision of said matter, but
5 pending such decision the locomotive, donkey, traction, or portable engine shall not
6 be returned to service.

7 **SECTION 13.** 26.20 (10) of the statutes is amended to read:

8 26.20 (10) APPEAL TO ~~OFFICE OF THE COMMISSIONER OF RAILROADS~~ DIVISION OF
9 HEARINGS AND APPEALS. In case the department and any person operating any
10 locomotive, donkey, or threshing engine, or any engine, boiler, or locomotive cannot
11 agree as to the most practicable device or devices for preventing the escape of sparks,
12 cinders, or fire from smokestacks, ash pans or fire boxes, then the same shall be
13 determined by the ~~office of the commissioner of railroads~~ division of hearings and
14 appeals in the department of administration.

15 **SECTION 14.** 30.33 (1) of the statutes is amended to read:

16 30.33 (1) BOARD TO HAVE POWERS OF RAILROAD CORPORATION. Any municipality
17 operating a public harbor through a board of harbor commissioners may, through
18 such board, construct, maintain or operate railway facilities or a harbor belt line
19 connecting various harbor facilities with one another or with other railroads within
20 the municipality or its vicinity. The board of harbor commissioners is granted all of
21 the rights, powers and privileges conferred upon railroad corporations by ss. 190.02
22 and 190.025 (3), except such rights, powers and privileges as are conferred upon
23 railroad corporations by s. 190.02 (9). Such facilities or belt line may be constructed,
24 maintained or operated partly outside the corporate limits of the municipality. In
25 constructing, maintaining or operating such facilities or belt line, the board of harbor

SECTION 14

1 commissioners has the powers and privileges of railroad corporations and shall be
2 subject to the same restrictions as railroad corporations and to the supervision of the
3 ~~office of the commissioner of railroads~~ department of transportation, except as to the
4 system of accounting and the payment of wages to employees.

5 **SECTION 15.** 30.33 (2) of the statutes is amended to read:

6 30.33 (2) MUNICIPALITY MAY ORGANIZE HARBOR RAILWAY CORPORATION. Any
7 municipality mentioned in sub. (1) may, with the consent of its board of harbor
8 commissioners, organize a railroad corporation for the purpose of constructing,
9 maintaining or operating a harbor belt line or may subscribe for stock in an existing
10 railroad corporation organized for such purpose. If the municipality decides to
11 organize a railroad corporation for such purpose, the governing body thereof may, by
12 resolution, authorize the chief executive officer or presiding officer of such
13 municipality to act, together with 4 citizens to be designated by the officer, as
14 incorporators of such company. Such incorporators shall proceed to incorporate the
15 railroad corporation in accordance with chs. 190 to 192, so far as applicable. Such
16 harbor railroad corporation is subject to the supervisory and regulatory powers of the
17 ~~office of the commissioner of railroads~~ department of transportation to the same
18 extent as other railroad corporations. The municipality may subscribe to the stock
19 of such harbor railroad corporation and may pay for such stock out of any funds it
20 may lawfully have available for that purpose, including the proceeds of harbor
21 improvement bonds.

22 **SECTION 16.** 66.0801 (2) of the statutes is amended to read:

23 66.0801 (2) Sections 66.0803 to 66.0825 do not deprive the ~~office of the~~
24 ~~commissioner of railroads,~~ department of transportation or public service
25 ~~commission of any power under ss. 195.05 and~~ 197.01 to 197.10 and ch. 196.

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SECTION 17. 84.05 of the statutes is amended to read:

84.05 Railroad crossing improvements. On a highway which the department has authority to construct and which crosses a railroad, if the department determines that the construction or reconstruction of a grade separation or the rearrangement or elimination of a grade crossing or other rearrangement of the highway or tracks is necessary in the interest of public safety or for convenience of public travel, the department shall make a plan of the construction proposed and an estimate of the cost thereof, including the cost of needed right-of-way; and shall endeavor to make an arrangement with all persons concerned as to all matters involved in the plan, including the portion of the cost of the contemplated work which the persons shall defray. If the department is unable to contract with the persons concerned as to the distribution and payment of the cost of the work or the maintenance thereof, the department shall lay the matter before the office of the commissioner of railroads, and the office of the commissioner of railroads shall review the proceedings and hold a hearing thereon in accordance with ss. 195.28 and 195.29, and shall fix the portion of the cost of the construction and of the maintenance which is to be paid by the persons or corporations concerned, and the portion of the cost, if any, to be paid by the public, which portion shall be paid from the transportation fund, and issue an appropriate order. The office of the commissioner of railroads department shall determine the benefits, if any, which will inure to other highways, and apportion and charge to the units of government responsible for the construction of such other highways a fair portion of the cost. The department shall promulgate a rule establishing criteria with respect to the allocation of costs under this section. A person who is aggrieved by an order of the department under this section may, within 20 days after the date that the order is issued, request review of

~~the order by the division of hearings and appeals. The division of hearings and appeals shall review the order in the manner provided in s. 195.325.~~

SECTION 18. 85.013 (3) of the statutes is created to read:

85.013 (3) The division of hearings and appeals shall, in conducting any hearing or review for the department under s. 227.43 (1) (bk), give due weight to the experience, technical competence, and specialized knowledge of the department as well as discretionary authority conferred upon the department, and great weight to the department's interpretation of the statutes that it administers and rules promulgated under those statutes. If there is a conflict between this subsection and any other statute relating to any hearing or review conducted by the division of hearings and appeals for the department under s. 227.43 (1) (bk), the provisions of this subsection control.

SECTION 19. 86.001 (2m) of the statutes is repealed.

SECTION 20. 86.12 (2) of the statutes is amended to read:

86.12 (2) If a railroad company fails to comply with the resolution in sub. (1) within 30 days after service of the resolution, the county board, common council, village board or town board may file a complaint with the office department alleging the failure. The office department shall investigate and determine the matter in controversy ~~as provided in ch. 195. An order issued by the~~ office under this subsection has the same effect as an order in a proceeding brought under ch. 195, and may issue an appropriate order.

SECTION 21. 86.13 (3) of the statutes is amended to read:

86.13 (3) If any railroad company fails to grade, construct, pave, surface or otherwise improve or maintain in good and safe condition for public travel as required by this section any street or highway crossing after having been notified so

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1 to do by the officer in charge thereof or of the highway improvement for 30 days after
2 such notification, the highway authorities may file a complaint with the office
3 department. The office department shall investigate and determine the matter in
4 controversy as provided in ch. 195. An order issued by the office under this
5 subsection has the same effect as an order in a proceeding brought under ch. 195, and
6 may issue an appropriate order.

7 **SECTION 22.** 88.66 (2) of the statutes is amended to read:

8 88.66 (2) Every district whose drains cross the right-of-way of a railway
9 company is liable to such company for the reasonable cost of opening its right-of-way
10 and also for the cost of the culverts and bridges made necessary by such drain. The
11 drainage board shall include such costs in its cost of construction, as set forth in its
12 report of benefits and damages, and shall award them as damages to the railway
13 company. The bridge or culvert shall be designed by the district's engineer and the
14 design submitted to the railway company for approval. If a dispute arises as to the
15 adequacy of the design, either party may submit the dispute to the office of the
16 ~~commissioner of railroads~~ division of hearings and appeals in the department of
17 administration by filing with the office division of hearings
18 and appeals shall investigate and determine the matter in controversy in accordance
19 with ch. 195, and any order it makes in such proceeding has the same effect as an
20 order in any other proceeding properly brought under ch. 195.

21 **SECTION 23.** 88.87 (4) of the statutes is amended to read:

22 88.87 (4) If a railway company fails to comply with sub. (2), any person
23 aggrieved thereby may file a complaint with the office of the commissioner of
24 railroads division of hearings and appeals in the department of administration
25

1 setting forth the facts. The ~~office~~ division of hearings and appeals shall investigate
2 and determine the matter in controversy ~~in accordance with ch. 195, and any order~~
3 ~~it makes in such proceeding has the same effect as an order in any other proceeding~~
4 ~~properly brought under ch. 195.~~

5 SECTION 24. 88.88 (2) of the statutes is amended to read:

6 88.88 (2) If the railway company fails to comply with sub. (1), the person
7 aggrieved thereby may file a complaint with the ~~office of the commissioner of~~
8 railroads division of hearings and appeals in the department of administration
9 setting forth the facts. The ~~office~~ division of hearings and appeals shall investigate
10 and determine the matter in controversy ~~in accordance with ch. 195, and any order~~
11 ~~it makes in such proceeding has the same effect as an order in any other proceeding~~
12 ~~properly brought under ch. 195.~~

13 SECTION 25. 182.36 (3) of the statutes is amended to read:

14 182.36 (3) The corporation may enter into contracts with public utilities,
15 ~~including~~ and railroads, for the removal or change in location of the lines of such
16 public utilities and railroads where the same is deemed necessary by the corporation
17 in the construction of the project. Such contracts shall be for the payment of damages
18 caused the utilities and railroads by the relocation of their lines. In the event the
19 corporation and the utility or railroad are unable to reach an agreement, the public
20 service commission in the case of a utility or the department of transportation in the
21 case of a railroad shall direct the manner, location and time allowed for the change
22 in the utility or railroad line and the corporation shall be liable for the reasonable
23 costs of such change. In the event the public utility or railroad fails to comply with
24 the order of the public service commission or department of transportation it shall
25 be liable to the corporation for all damages occasioned by such failure.

1 **SECTION 26.** Chapter 189 of the statutes is repealed. ✓

2 **SECTION 27.** 190.001 of the statutes is repealed and recreated to read: ✓

3 **190.001 Definition.** In this chapter, "division of hearings and appeals" means
4 the division of hearings and appeals in the department of administration.

5 **SECTION 28.** 190.02 (6) of the statutes is amended to read:

6 190.02 (6) RAILROAD INTERSECTIONS. To cross, intersect, join or unite its railroad
7 with any other railroad, at any point, with the necessary turnouts, sidings and
8 switches and other conveniences in furtherance of the objects of its connections. And
9 if the 2 corporations cannot agree upon the amount of compensation to be made
10 therefor or the points and manner of such crossings and connections the same shall
11 be ascertained by the office division of hearings and appeals on application of either
12 corporation.

13 **SECTION 29.** 190.025 (2) (b) of the statutes is amended to read:

14 190.025 (2) (b) A railroad corporation that is subject to this subsection shall
15 have all powers conferred by law upon railroad corporations. The railroad
16 corporation may issue, sell, pledge or otherwise dispose of its evidences of debt, at
17 such times, in such amounts, for such considerations and upon such terms and
18 conditions as the board of directors of the corporation shall determine, and as shall
19 be authorized by the office department of financial institutions, or the interstate

20 commerce commission federal surface transportation board in the case of a railroad
21 corporation organized for the purpose of acquiring a railroad engaged in interstate
22 commerce, or any existing railroad corporation reorganized under the act and
23 acquiring railroad property used in interstate commerce. The evidences of debt may
24 be convertible, at the option of the holder, into stock, and shares of stock. The shares
25 may have a nominal or par value or, if the shares are shares of common stock, be

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1 without nominal or par value. The shares may be of such classes, with such rights
2 and voting powers as may be expressed in the corporation's articles or any
3 amendment thereto.

4 **SECTION 30.** 190.03 of the statutes is amended to read:

5 **190.03 Office in state; books produced.** Any railroad corporation existing
6 under the laws of this state shall produce before the ~~office of the commissioner of~~
7 ~~railroads~~ department of financial institutions, the legislature, or any committee of
8 either house, or any court of record, its books of account and stock books, or so many
9 and such parts thereof as may be required by them, or in the discretion of the ~~office~~
10 ~~of the commissioner of railroads~~ department of financial institutions, legislature,
11 committee or court, transcripts from such books, or such parts thereof as may be
12 called for, duly authenticated; and each such railroad corporation shall designate
13 some office within this state as its principal office and inform the ~~office of the~~
14 ~~commissioner of railroads~~ department of financial institutions of such designation,
15 and shall keep there or at the office of its transfer agents or registrars a list of its
16 stockholders, giving the names and addresses of its stockholders, together with a
17 statement of the number and class of shares of its stock held by each of them, as
18 shown by its books. A failure or refusal to comply with any of the foregoing provisions
19 shall be cause of forfeiture of its franchises.

20 **SECTION 31.** 190.13 of the statutes is amended to read:

21 **190.13 Report to stockholders.** Every railroad corporation shall make an
22 annual report to its stockholders of its operations for the preceding calendar year, or
23 for its fiscal year, as the case may be, which report shall contain a balance sheet
24 showing its assets and liabilities, its capital stock, and funded debt, and an income
25 account showing its operating revenues, operating expenses, gross and net income,

1 as the result of its traffic or business operations, and such other information in
 2 respect of its affairs as the board of directors shall deem advisable. A copy of each
 3 such report shall be kept on file in its principal office in this state, shall be mailed
 4 to each stockholder whose post-office address is known and shall be filed with the
 5 office of the commissioner of railroads department of financial institutions.

6 **SECTION 32.** 190.16 (4) (a) of the statutes is amended to read:

7 190.16 (4) (a) Every railroad shall acquire the necessary right-of-way for and
 8 shall construct, connect, maintain and operate a reasonably adequate spur track
 9 whenever such spur track does not necessarily exceed 3 miles in length, is practically
 10 indispensable to the successful operation of any existing or proposed industry or
 11 enterprise, and its construction and operation is not unusually dangerous, and is not
 12 unreasonably harmful to public interest, and any person aggrieved by the failure of
 13 any railroad to fully perform such obligation may prosecute proceedings before the
 14 office division of hearings and appeals to compel compliance therewith.

15 **SECTION 33.** 190.16 (4) (b) of the statutes is amended to read:

16 190.16 (4) (b) Such railroad may require the person primarily to be served
 17 thereby to pay the legitimate cost and expense of acquiring the necessary
 18 right-of-way for such spur track, and of constructing the same, the cost to be
 19 estimated in separate items by the office department of transportation or the division
 20 of hearings and appeals, and deposited with the railroad, before it shall be required
 21 to incur any expense whatever therefor; but such person, in lieu of depositing the
 22 total estimated cost may offer in writing to construct such spur track, the offer to be
 23 accompanied by a surety company bond, running to such railroad, and conditioned
 24 upon the construction of such spur track in a good and workmanlike manner,
 25 according to the plans and specifications of such railroad, approved by the office

SECTION 33

1 ~~department of transportation or the division of hearings and appeals~~, and deposit
 2 with such railroad the estimated cost of the necessary right-of-way. Provided that
 3 before the railroad shall be required to incur any expense whatever in the
 4 construction of such spur track, the person primarily to be served thereby shall give
 5 the railroad a bond to be approved by the ~~office~~ department of transportation or the
 6 division of hearings and appeals as to form, amount and surety, securing the railroad
 7 against loss on account of any expense incurred beyond the estimated cost.

8 **SECTION 34.** 190.16 (4) (c) of the statutes is amended to read:

9 190.16 (4) (c) Whenever a spur track is so constructed at the expense of the
 10 owner of any industry or enterprise, and any other person shall desire a connection
 11 with such spur track, application therefor shall be made to the ~~office~~ department of
 12 transportation or the division of hearings and appeals, and such other person shall
 13 be required to pay to such owner an equitable proportion of the cost thereof, to be
 14 determined by the ~~office~~ department of transportation or the division of hearings and
 15 appeals.

16 **SECTION 35.** 190.16 (5) of the statutes is amended to read:

17 190.16 (5) REMOVAL, WHEN. Except where a spur track was constructed prior
 18 to June 16, 1925, at the expense of the railroad company, no spur track shall be
 19 removed, dismantled or otherwise rendered unfit for service except upon order of the
 20 ~~office~~ department of transportation or the division of hearings and appeals made
 21 after hearing held upon notice to all parties interested, and for good cause shown;
 22 provided that if no objection has been filed with the ~~office~~ department of
 23 transportation or the division of hearings and appeals within 20 days from the
 24 original publication of such notice, the ~~office~~ department of transportation or the

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1 ~~division of hearings and appeals~~ may without hearing authorize such spur track
2 removed, dismantled or otherwise rendered unfit for service.

3 **SECTION 36.** 191.001 of the statutes is amended to read:

4 **191.001 Definition.** In this chapter, "office" "department" means the office of
5 the commissioner of railroads department of transportation.

6 **SECTION 37.** 191.01 (2) of the statutes is amended to read:

7 191.01 (2) CONSTRUCTION, CERTIFICATE FROM OFFICE DEPARTMENT PREREQUISITE.

8 No railroad corporation shall begin the construction of any proposed line of railroad
9 in this state until it shall have obtained from the office department a certificate that

10 ~~public convenience and a necessity require~~ authorizing the construction of the

11 ~~railroad, and the certificate shall constitute the license from this state to the~~

12 ~~company to build its~~ proposed railroad.

13 **SECTION 38.** 191.02 (title) of the statutes is amended to read:

14 **191.02 (title) Application for certificate of necessity.**

15 **SECTION 39.** 191.03 of the statutes is amended to read:

16 **191.03 Articles; publication prerequisite to certificate.** No railroad

17 corporation shall make application for a certificate authorizing construction of a

18 railroad unless it has caused a copy of its corporate articles to be published as a class

19 2 notice, under ch. 985, in each county in which the railroad is proposed to be located

20 within 6 months next prior to the time of making such application, and files

21 satisfactory proof thereof with the office department.

22 **SECTION 40.** 191.05 of the statutes is amended to read:

23 **191.05 Maps and profiles with application; changes.** Complete maps and

24 profiles of the proposed railroad shall be filed with the application for a certificate

25 ~~of convenience and necessity~~ authorizing construction. The office department may

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1 permit errors, omissions or defects in the application, maps and profiles to be
2 supplied or corrected, and permit changes in the proposed route to be made.

3 ~~SECTION 41. 191.06 of the statutes is amended to read:~~

4 ~~**191.06 Railroad extensions; certificate and notice necessary.** If any
5 railroad company organized prior to July 1, 1907, shall desire to extend its lines in
6 this state or to build branches connected therewith, or to construct any portion of its
7 authorized line of railroad, it shall, before beginning construction thereof, obtain a
8 certificate of convenience and necessity authorizing the construction; but it shall not
9 be necessary to publish the articles of such railroad~~

10 ~~SECTION 42. 191.07 of the statutes is amended to read:~~

11 ~~**191.07 Hearing of applicants; notice.** Upon receiving such an application
12 for a certificate authorizing construction, the office shall department may set a time
13 and place for a hearing, which time shall not be less than 3 weeks nor more than 8
14 weeks from the date of filing the application, and the place shall be at the city of
15 Madison, or at some place along the line of the proposed railroad, if the office
16 department deems the latter more convenient, and, If the department sets a hearing,
17 the department shall give to the applicant notice thereof, which notice shall be
18 published by the applicant, as a class 2 notice, under ch. 985, in each county in which
19 the railroad, extension or branch is proposed to be located, and proof of such
20 publication shall be filed with the office department.~~

21 ~~SECTION 43. 191.09 of the statutes is repealed and recreated to read:~~

22 ~~**191.09 Procedures before the department.** Chapter 227 applies to all
23 proceedings under this chapter.~~

24 ~~SECTION 44. 191.10 (title) of the statutes is amended to read:~~

25 ~~**191.10 (title) Certificate of necessity.**~~

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1 **SECTION 45.** 191.10 (1) of the statutes is amended to read:

2 191.10 (1) ISSUANCE, FILING, RECORDING, CONDEMNATION. ~~If the office of the~~
3 ~~commissioner of railroads finds that the proposed railroad would be a public~~
4 ~~convenience and that a necessity requires its construction, the office of the~~
5 ~~commissioner of railroads shall enter an order to that effect and issue department~~
6 ~~issues to the applicant a certificate that public convenience and a necessity require~~
7 ~~the construction of the railroad as proposed. The certificate shall be filed in the office~~
8 ~~of the department of financial institutions and the department of financial~~
9 ~~institutions under this chapter, the applicant shall file the certificate with the~~
10 ~~department of financial institutions. The department of transportation shall~~
11 ~~approve the map showing the route of the railroad. The applicant shall record the~~
12 ~~map certified by the office of the commissioner of railroads department of~~
13 ~~transportation in the office of the register of deeds in each county in which the~~
14 ~~railroad shall be located. The filing of the certificate with the department of financial~~
15 ~~institutions and the recording of the map, as above provided, are conditions~~
16 ~~precedent to the right of the applicant to institute condemnation proceedings.~~

17 **SECTION 46.** 191.10 (2) of the statutes is amended to read:

18 191.10 (2) CERTIFICATE FOR PART OF LINE. ~~Whenever it shall appear to the office~~
19 ~~that public convenience and a necessity do not require the construction of the~~
20 ~~railroad as proposed in the application, but do require the construction of a part~~
21 ~~thereof, the office The department may issue a certificate for the construction of such~~
22 ~~part of the railroad as public convenience and necessity require proposed in the~~
23 ~~application.~~

24 **SECTION 47.** 191.10 (3) of the statutes is amended to read:

SECTION 47

1 191.10 (3) REFUSAL OF CERTIFICATE; RENEWAL OF APPLICATION. If the office shall
 2 determine that the proposed railroad is not a necessity or is not required by public
 3 convenience, the office shall by order refuse to grant a certificate, department denies
 4 the application for a certificate, the department shall issue an order refusing the
 5 certificate and stating the reasons for the refusal. The application may be renewed
 6 after 2 years from the date of the refusal, but not sooner.

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7 SECTION 48. 191.11 of the statutes is amended to read:

8 191.11 Revocation of certificate. If any railroad company after obtaining
 9 a certificate ~~that public convenience and a necessity require~~ ^{plain - delete strike} ~~authorizing~~ the
 10 construction of the whole or part of its railroad fails to begin construction within one
 11 year from the date of the certificate, or having begun such construction, fails to
 12 prosecute the same, the office department may inquire into the reasons for such
 13 failure and may revoke the certificate, if the office department finds, after notice and
 14 hearing, that such failure is unreasonable.

15 SECTION 49. 191.13 (2) of the statutes is amended to read:

16 191.13 (2) No railroad corporation shall exercise such power until it has
 17 obtained from the office department a certificate ~~that public convenience and~~
 18 ~~necessity require~~ ~~authorizing~~ the construction of the temporary railroad, and the
 19 certificate shall constitute the license to the company to build its proposed temporary
 20 railroad. The certificate shall specify the length of time the railroad may be
 21 maintained and operated, and may be renewed from time to time upon application
 22 by the railroad company. At the expiration of the time specified in the certificate, or
 23 any renewal thereof, the railroad company shall discontinue, dismantle and remove
 24 the temporary railroad; and may prior to the expiration of such time, upon order of

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1 the ~~office~~ department, and after a hearing, upon notice to all parties interested and
2 good cause shown, discontinue, dismantle and remove the railroad.

3 SECTION 50. 191.16 of the statutes is amended to read:

4 **191.16 Construction items submitted to office department.** Upon

5 receiving the certificate ~~of public convenience and necessity~~ ^{PLAIN} ~~authorizing~~ ///

6 ~~construction~~ the applicant shall before commencing construction submit to the office
7 department a condensed specification of the character of construction that the
8 applicant proposes to install, showing the kind, quality and weight of the rail
9 proposed to be used, the mode of construction, character, quality, and strength of all
10 bridges, culverts and viaducts, the abutments and approaches proposed to be built,
11 the grade of and proposed method of draining the roadbed, and the kind of power to
12 be used and the plant and appliances to be employed in power production, and such
13 other facts relating to the construction of the proposed railroad as the office
14 department requires. ///

15 SECTION 51. 191.17 of the statutes is amended to read:

16 **191.17 Public safety; investigation; approval of plans.** Upon receiving
17 the specification required by s. 191.16, the office department shall examine the same
18 and shall hear the applicant in support thereof, shall suggest and require
19 modifications of the specification if the public safety so demands, eliminating so far
20 as may be practicable, consistent with reasonable cost, all grade crossings of public
21 highways, shall inspect the route of the proposed railroad if deemed desirable, and
22 shall otherwise investigate and determine that the proposed construction will be
23 adequate for securing public safety in the operation of the railroad, and thereupon
24 the office department shall enter an order approving the specification and
25 authorizing the construction of the railroad in accordance therewith.

and with the provisions of ch. 195
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and with the provisions of ch. 195

///

1 SECTION 52. 191.19 (1) of the statutes is amended to read:

2 191.19 (1) Upon the completion of the construction of any railroad under the
3 approved specification, the company shall, before operating the same for public
4 service, report to the office department; and the office department shall inspect the
5 work. If the office department finds that the railroad has been constructed in
6 accordance with the approved specification and is otherwise suitable and properly
7 constructed so as to secure public safety in the operation thereof, the office
8 department shall enter an order authorizing its operation, which order shall be
9 presumptive evidence of the sufficiency of such construction.

///

10 SECTION 53. 191.19 (3) of the statutes is amended to read:

11 191.19 (3) If upon inspection the office department shall deem that public
12 safety requires the installation, operation and maintenance of some protective
13 appliance at any grade crossing of railroad tracks the office department may, before
14 granting the order, after notice and hearing, require the installation, operation and
15 maintenance of suitable protective appliances, and shall apportion the expense of
16 constructing, maintaining and operating such protective appliances among the
17 owners of the tracks.

under s. 195.28 ← PLAIN

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18 SECTION 54. 191.20 of the statutes is amended to read:

19 **191.20 Railroad routes; right to alter.** Every railroad company may, by the
20 vote of two-thirds of its directors, alter or change the route of its railroad, by making
21 and filing with the office of the commissioner of railroads department and the
22 department of financial institutions and also by recording in the office of the register
23 of deeds of the county or counties where the alteration or change is to be made, a
24 surveyed map and certificate of the alteration or change. The alteration or change
25 may not deviate from the original route for a greater distance than one mile at any

1 point. No city or village may be left off the railroad by the change of route. The
2 original end points of the railroad, or the route in any city or village, shall not be
3 changed without the approval of the ~~office of the commissioner of railroads~~
4 department of transportation after notice to the municipality.

5 **SECTION 55.** 191.21 of the statutes is amended to read:

6 **191.21 Notices in counties without newspapers.** If no newspaper is
7 published in any county in which a railroad is proposed to be located, the publications
8 required by this chapter may be made in such manner and at such places as the ~~office~~
9 department shall designate.

10 **SECTION 56.** 192.001 (1r) of the statutes is created to read:

11 192.001 (1r) "Division of hearings and appeals" means the division of hearings
12 and appeals in the department of administration.

13 **SECTION 57.** 192.001 (2) of the statutes is repealed.

14 **SECTION 58.** 192.14 (10) of the statutes is amended to read:

15 192.14 (10) If in any particular case any temporary exemption from any
16 requirement of this section is deemed necessary by a carrier, the ~~office~~ department
17 shall consider the application of the carrier for temporary exemption and may grant
18 the exemption when accompanied by a full statement of the conditions existing and
19 the reasons for the exemption. Any exemption so granted will be limited to the
20 particular case specified and shall be limited to a stated period of time.

21 **SECTION 59.** 192.14 (12) of the statutes is amended to read:

22 192.14 (12) The ~~office~~ department may after public hearing make rules and
23 establish the standards deemed necessary to carry out the purposes of this section.

24 **SECTION 60.** 192.15 (14) of the statutes is amended to read:

SECTION 60

1 192.15 (14) If in any particular case any exemption from any requirement of
2 this section is deemed necessary by a carrier, the ~~office~~ department shall consider the
3 application of the carrier for exemption and may grant the exemption when
4 accompanied by a full statement of the conditions existing and the reasons for the
5 exemption. Any exemption so granted shall be limited to the particular case specified
6 and shall be limited to a stated period of time. ///

7 **SECTION 61.** 192.25 (3) (a) of the statutes is amended to read:

8 192.25 (3) (a) The ~~office~~ department, by rule, may grant an exception to sub.
9 (2) if the ~~office~~ department determines that the exception will not endanger the life
10 or property of any person. /

11 **SECTION 62.** 192.27 (1) of the statutes is amended to read:

12 192.27 (1) When the track of a railway corporation crosses the track of any
13 other railway corporation at grade, or when their tracks and right-of-way are
14 adjacent, except in counties having a population of at least 150,000, the corporations
15 shall, within 60 days after a written request of the ~~office~~ department or the council
16 or board of the city, town or village within which the tracks so cross or are adjacent,
17 make a track connection within such town, city or village to afford reasonable and
18 proper facilities for the interchange of traffic between their respective lines for
19 forwarding and delivering freight, and the expense thereof shall be borne equally by
20 those corporations, unless otherwise ordered by the ~~office~~ department.

21 ~~**SECTION 63.** 192.29 (1) of the statutes is amended to read:~~

22 ~~192.29 (1) **SETTING MAXIMUM SPEED.** Upon petition to the ~~office~~ department by
23 the governing body of any city or village or by any railroad corporation alleging that
24 any railroad crossing of one or more public highways or streets in the city or village
25 is dangerous to human life and that public safety requires a designation of the~~

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1 maximum speed of a train over such crossing or crossings, or that an order previously
2 made by the ~~office department~~ or, prior to the effective date of this subsection
3 ~~[revisor inserts date]~~, by the office of the commissioner of transportation under ch.
4 ~~195, 1991 stats., or the office of the commissioner of railroads under ch. 195, 2001~~
5 ~~stats.~~ should be modified, the ~~office department~~ shall give notice to the parties in
6 interest and order a hearing thereon in the manner provided by s. 195.04 ~~under ch.~~
7 ~~227~~. If after the hearing the ~~office shall determine~~ ~~department determines~~ that the
8 crossing or crossings described in the petition are dangerous to human life, it may
9 by order determine what maximum speed of a train over the crossing is reasonably
10 required by public safety and is consistent with the public need for adequate and
11 expeditious passenger and freight service by railroad, having due regard for other
12 orders entered by the ~~office department~~ or, prior to the effective date of this
13 subsection ~~[revisor inserts date]~~, by the office of the commissioner of
14 transportation or the office of the commissioner of railroads, and to practical railroad
15 operating conditions. Where the ~~office department~~ has designated the maximum
16 speed of any train or trains over such crossing or crossings, or, prior to the effective
17 date of this subsection ... ~~[revisor inserts date]~~, the office of the commissioner of
18 transportation or the office of the commissioner of railroads has designated the
19 maximum speed of any train or trains over such crossing or crossings and the
20 designation remains unmodified by the department, the rate of speed shall be the
21 lawful maximum speed at which any train affected by the order can be operated over
22 the public highway or street crossing, until changed by subsequent order of the ~~office~~
23 ~~department~~. Every railroad corporation violating any order entered under this
24 subsection shall for every violation forfeit not less than \$10 nor more than \$100. The
25 jurisdiction over train speeds hereby vested in the ~~office department~~ shall be

SECTION 63

1 ~~exclusive, but any order entered by the office department hereunder shall be subject~~
2 ~~to judicial review in the manner provided by ch. 227.~~

3 **SECTION 64.** 192.29 (2) of the statutes is amended to read:

4 192.29 (2) ARTERIAL STOP SIGNS. In any proceeding under sub. (1) or under s.
5 195.28, the office department may by order require that the state or municipality
6 install at any crossing involved in such proceeding an official stop sign.

7 **SECTION 65.** 192.29 (4) of the statutes is amended to read:

8 192.29 (4) HIGHWAYS, WHISTLE, HORN, BELL. No railroad train or locomotive shall
9 run over any public traveled grade highway crossing outside of the limits of
10 municipalities unless the whistle or horn shall be blown 1,320 feet from such crossing
11 and the engine bell rung continuously from thence until the crossing be reached. But
12 the office department may order that the ringing of the bell or the blowing of the
13 whistle, or horn, or both, as required by this subsection shall be omitted at any
14 crossing.

15 **SECTION 66.** 192.29 (5) of the statutes is amended to read:

16 192.29 (5) DANGER WARNING SIGNS. Wherever its track crosses a public highway
17 or street, every railroad corporation shall maintain on each side of the track and near
18 such crossing a large signboard with the following inscription, painted in large
19 letters: "Railroad Crossing," in such manner as to be visible to approaching traffic
20 on the highway or street at least 100 feet distant railroad crossing sign. The sign
21 shall be constructed and erected as provided in the manual adopted by the
22 department under s. 84.02 (4) (e).

23 **SECTION 67.** 192.31 (1) of the statutes is amended to read:

24 192.31 (1) Every railroad corporation shall maintain suitable telltales
25 wherever any overhead structure or any part thereof is less than 23 feet above the

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1 top of rail; except that if the ~~office department~~ finds that the installation of a telltale
 2 at any particular place would be impracticable or would result in an increased
 3 hazard to either the public or an employee and that either or both such factors
 4 outweigh the safety benefit which would result from the installation of a telltale, the
 5 ~~office department~~ may enter an order providing an exemption from this section. The
 6 exemption shall be ordered by the ~~office department~~ only after public hearing under
 7 sub. (4).

8 **SECTION 68.** 192.31 (2) of the statutes is amended to read:

9 192.31 (2) The office department may determine the materials for and the
10 construction and placing of such telltales.

11 **SECTION 69.** 192.31 (4) of the statutes is amended to read:

12 192.31 (4) Upon finding that any such structure will not imperil life or limb,
 13 and that the public interest requires or permits such structure to be constructed or
 14 reconstructed otherwise than as permitted by sub. (3), the office department may
 15 exempt such structure from such provision. Such findings shall be made only upon
 16 written application, setting forth fully the grounds therefor and shall be made only
 17 after public hearing. The findings and order granting exemption shall be in writing
 18 and contain complete provisions and requirements as to the vertical clearance to be
 19 maintained in such construction or reconstruction. Such structure shall be
 20 constructed or reconstructed only in compliance with such order.

21 **SECTION 70.** 192.31 (5) of the statutes is amended to read:

22 192.31 (5) Prior to July 1, in each year every corporation operating a railroad
23 within the state shall file with the office department a verified statement showing
24 the location of every such bridge or other structure over any of its tracks at a height

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SECTION 70

1 of less than 23 feet above the top of rail, together with a statement showing whether
2 or not the provisions of this section have been fully complied with.

3 **SECTION 71.** 192.324 of the statutes is amended to read:

4 **192.324 Railroad bridges to be safe for employees.** Whenever a complaint
5 is lodged with the office department by any person to the effect that a railroad bridge
6 because of its style of construction does not have walks or railings and for that reason
7 is dangerous to the life and limb of railroad employees and the safety of such
8 employees requires the alteration so as to provide for such walks and railings of such

9 bridge, the office department shall give notice to the party in interest, other than the
10 complainant, of the filing of the complaint and furnish such party with a copy thereof,

11 and order a hearing thereon, in the manner provided for hearings in s. 195.31. The

12 office ~~under s. 85.013 (3) and ch. 227 by the division of hearings and appeals.~~ The

13 department may proceed in a similar manner in the absence of a complaint when,

14 in the opinion of the office department, the safety of railroad employees requires the

15 alteration of a railroad bridge. After the hearing, the office ~~division of hearings and~~ department

16 ~~appeals~~ shall determine what alteration, if any, of such bridge, shall be made. The

17 expense of such alteration shall be borne by the railroad company.

18 **SECTION 72.** 192.327 (3) of the statutes is amended to read:

19 192.327 (3) The office department shall make and enforce reasonable rules
20 relating to motor vehicles used to transport workers to and from their places of
21 employment or during the course of their employment.

22 **SECTION 73.** 192.327 (4) of the statutes is repealed. x

23 **SECTION 74.** 192.327 (5) of the statutes is repealed. x

24 **SECTION 75.** 192.327 (6) of the statutes is amended to read:

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1 192.327 (6) The ~~office~~ department may, in enforcing the rules, inspect any
2 motor vehicle used to transport workers to and from their places of employment or
3 during the course of their employment. ~~Upon request of the office, the department~~
4 ~~shall direct its traffic officers to assist the office in those inspections.~~ ///

5 **SECTION 76.** 192.327 (7) of the statutes is amended to read:

6 192.327 (7) Whenever the ~~office~~ department finds that a motor vehicle used to
7 transport workers to and from their places of employment or during the course of
8 their employment violates any provision of the rules, the ~~office~~ department shall
9 make, enter and serve upon the owner of the motor vehicle such order as may be
10 necessary to protect the safety of workers transported in the motor vehicle.

11 **SECTION 77.** 192.33 (5) of the statutes is amended to read: ///

12 192.33 (5) The maintenance of cattle guards may be omitted by the railroad
13 company with the written consent of the ~~office~~ department specifying the particular
14 crossings.

15 **SECTION 78.** 192.34 of the statutes is amended to read: ///


16 **192.34 Fences; complaint of insufficient; hearing; order.** Upon
17 complaint to the division of hearings and appeals by the owner or occupant of any
18 land contiguous to the right-of-way of any railroad that the railroad company
19 operating the line has failed to construct or keep in good repair fences along its
20 right-of-way opposite to the complainant's land as required under s. 192.33, the
21 ~~office~~ division of hearings and appeals shall proceed on the complaint in the manner
22 provided in ~~s. 195.04~~ under ch. 227. If it shall appear that the complaint is well
23 founded, the ~~office~~ division of hearings and appeals may order and direct the railroad
24 company to repair the complained of fences so that the fences will be sufficient or to
25 construct legal fences.

1 **SECTION 79.** 192.47 of the statutes is amended to read:

2 **192.47 Railroad police; oath; powers.** Any railway company may, at its own
3 expense, appoint and employ railroad police officers at the stations or other places
4 on the line of its road within this state as it deems necessary for the protection of its
5 property and the preservation of order on its premises and in and about its cars,
6 depots, depot grounds, yards, buildings or other structures. Each police officer shall
7 take an oath to support the constitution of the United States and claiming to be a
8 citizen of the United States and shall file it with the ~~office~~ department. Each police
9 officer shall, when on duty, wear a shield furnished by the company bearing the
10 words "Railroad Police" and the name of the company. These police officers may
11 arrest, with or without warrant, any person who in their presence commits upon the
12 premises of the company or in or about its cars, depots, depot grounds, yards,
13 buildings or other structures any offense against the laws of this state or the
14 ordinances of any town, city or village, and shall also have the authority of sheriffs
15 in regard to the arrest or apprehension of these offenders in or about the premises
16 or appurtenances. In case of the arrest, by a railroad police officer, of any person
17 without warrant the officer shall immediately take the offender before a judge
18 having jurisdiction and make complaint against the offender. Every railway
19 company shall be responsible for the acts of its police officers.


20 **SECTION 80.** 192.52 (3) of the statutes is amended to read:


21 192.52 (3) No railroad company operating in this state shall remove its shops
22 from the place where the same are now located to any other point within or without
23 this state or permanently close any shops in this state without first having secured
24 ~~the consent and permission of the office~~ an order for such removal from the division
25 of hearings and appeals, after due notice and public hearing, and in all other respects

1 as provided for hearings in ch. ~~195~~ 227. The ~~office~~ division of hearings and appeals
2 shall render its decision within 30 days after such hearing. 

3 **SECTION 81.** 192.52 (4) of the statutes is amended to read:

4 192.52 (4) No railroad company operating in this state shall remove or transfer
5 its terminals or permanently close any terminals in this state without ~~the permission~~
6 ~~or consent of the office~~ an order for such removal, transfer or closing from the division
7 of hearings and appeals after due hearing had on the matter, in compliance with ch.
8 ~~195~~ 227.

9 **SECTION 82.** 192.52 (5) of the statutes is amended to read: 

10 192.52 (5) Before any railroad company operating in this state shall make any
11 removal or transfer of shops or terminals or abandons the same, it shall file notice
12 of intention so to do with the ~~office~~ division of hearings and appeals, and the ~~office~~
13 division of hearings and appeals shall have the power to investigate whether such
14 proposed removal, transfer or abandonment, as the case may be, is in the public
15 interest and is not unreasonable or unfair as to the employees of such railroad
16 company. No such removal or transfer shall be made during such investigation, or
17 thereafter, if the ~~office~~ division of hearings and appeals finds such removal, transfer
18 or abandonment is not in the public interest or is unreasonable or unfair as to the
19 employees of such railroad. 

20 **SECTION 83.** 192.53 (4) (a) of the statutes is amended to read:

21 192.53 (4) (a) Upon finding that any structure that is subject to the provisions
22 of this section will not imperil life or limb, and that the public interest requires or
23 permits the structure to be constructed or reconstructed otherwise than as permitted
24 by the provisions of this section, the ~~office~~ department may exempt the structure
25 from the provisions of this section.