

SECTION 84

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1 **SECTION 84.** 192.53 (4) (b) of the statutes is amended to read:
 2 192.53 (4) (b) The ~~office~~ department shall make the findings described in par.
 3 (a) only upon written application to it to exempt the construction or reconstruction
 4 of a structure from the requirements of this section, setting forth fully the grounds
 5 therefor, and only after public hearing. The ~~office's~~ department's findings and order
 6 granting the exemption shall be in writing and shall contain complete provisions and
 7 requirements as to the horizontal clearance to be maintained in the construction or
 8 reconstruction. The structure shall be constructed or reconstructed only in
 9 compliance with the ~~office's~~ department's order.

10 **SECTION 85.** 192.53 (5) (a) (intro.) of the statutes is amended to read:

11 192.53 (5) (a) (intro.) Except as otherwise provided in this section and subject
 12 to the power of the ~~office~~ department to make exceptions to this section in a manner
 13 similar to the power given it in sub. (4), no railroad or shipper may do any of the
 14 following:

15 **SECTION 86.** 192.53 (6) of the statutes is amended to read:

16 192.53 (6) Any railroad or shipper to which this section applies, who violates
 17 any provision of this section or who fails, neglects or refuses to obey any lawful order
 18 made by the ~~office~~ department under this section, shall be fined not more than \$100
 19 or imprisoned for not more than 60 days or both.

20 **SECTION 87.** 192.55 (5) of the statutes is repealed.

21 **SECTION 88.** 192.56 (1) of the statutes is amended to read:

22 192.56 (1) It is unlawful for any railroad company owning or operating any
 23 railroad in whole or in part in this state, to abandon any station in any town, village
 24 or city on its line of railroad, within this state, or to remove the depot therefrom, or

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1 to withdraw agency service therefrom, without first obtaining from the office division
2 of hearings and appeals an order authorizing such action.

3 **SECTION 89.** 192.56 (2) of the statutes is amended to read:

4 192.56 (2) At a station where agency service is provided the application to the
5 office division of hearings and appeals for such authorizing order shall set forth the
6 facts showing the necessity for such action by the railroad company, and if the office
7 division of hearings and appeals finds that the application is sufficient
8 presumptively to justify the order prayed for, it shall enter an order fixing the time
9 and place of hearing on the application, which time shall not be less than 20 days
10 after the posting provided for in sub. (3).

11 **SECTION 90.** 192.56 (3) of the statutes is amended to read:

12 192.56 (3) Notice of the time and place of the hearing and of the purpose thereof
13 shall be given, by the office division of hearings and appeals, by posting the notice
14 in 5 conspicuous places in the town or village.

15 **SECTION 91.** 192.56 (5) of the statutes is amended to read:

16 192.56 (5) The hearing shall be held as other hearings before the office division
17 of hearings and appeals are held as far as applicable. The office division of hearings
18 and appeals may dismiss the application or may grant it in whole or in part and under
19 such conditions as it may deem equitable.

20 **SECTION 92.** 192.56 (6) of the statutes is amended to read:

21 192.56 (6) At a station where no agency service is provided, the application to
22 the office division of hearings and appeals for such authorizing order shall set forth
23 the facts showing the necessity for such action by the railroad company. Notice of
24 proposed removal or abandonment shall be given by the office division of hearings
25 and appeals by posting notice in 5 conspicuous places in the town or village

1 concerned; and if within 20 days after the posting of notice no objections in writing
 2 are filed with the office division of hearings and appeals by persons directly affected,
 3 an order authorizing the abandonment of the station may be issued by the office
 4 division of hearings and appeals. If such objections to the granting of the order are
 5 filed with the office division of hearings and appeals, the office division of hearings
 6 and appeals shall proceed to hold a hearing in the matter as provided in subs. (4) and
 7 (5).

8 **SECTION 93.** 195.001 (1r) of the statutes is created to read:

9 195.001 (1r) "Division of hearings and appeals" means the division of hearings
 10 and appeals in the department of administration.

11 **SECTION 94.** 195.001 (2) of the statutes is repealed. / X

12 **SECTION 95.** 195.001 (3) of the statutes is created to read: X

13 195.001 (3) "Secretary" means the secretary of transportation. /

14 **SECTION 96.** 195.03 (title) of the statutes is amended to read: //

15 **195.03** (title) **Office Department; powers and duties, general**
 16 **enumeration.**

17 **SECTION 97.** 195.03 (1) of the statutes is amended to read: //

18 195.03 (1) PRACTICE RULES. The office department may take testimony and
 19 administer oaths and may promulgate rules to govern its proceedings and to regulate
 20 the mode and manner of all hearings. All hearings shall be open to the public. /

21 **SECTION 98.** 195.03 (2) of the statutes is amended to read: //

22 195.03 (2) OFFICE DEPARTMENT INITIATIVE. In any matter within its jurisdiction
 23 under ch. 192 or this chapter, the office department may initiate, investigate and
 24 order a hearing at its discretion upon such notice as it considers proper.

25 **SECTION 99.** 195.03 (7) of the statutes is amended to read:

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1 195.03 (7) STUDY CARRIER BUSINESS, DEMAND INFORMATION. The office
2 department may inquire into the management of the business of all railroads, and
3 shall keep itself informed as to the manner in which the same is conducted, and may
4 obtain from any railroad all necessary information to enable the office department
5 to perform the duties and carry out the objects for which it is responsible.

6 **SECTION 100.** 195.03 (8) of the statutes is amended to read:

7 195.03 (8) QUESTIONNAIRES, ANSWERS COMPULSORY. The office department shall
8 prepare forms for the purpose of obtaining the information which it may deem
9 necessary or useful to the proper exercise of its functions, which shall conform as
10 nearly as practicable to the forms prescribed by the ~~interstate commerce commission~~
11 federal surface transportation board, and shall furnish the forms to railroads, and
12 every railroad receiving the forms shall cause the forms to be properly completed and
13 verified under oath by its proper officer and returned to the office department within
14 the time fixed by the office department.

15 **SECTION 101.** 195.03 (9) of the statutes is amended to read:

16 195.03 (9) EXAMINE BOOKS AND FILES OF CARRIERS. The ~~commissioner of railroads~~
17 secretary or any person employed by the office department for that purpose shall,
18 upon demand, have the right to inspect the books and papers of any railroad and to
19 examine under oath any officer, agent or employee of such railroad in relation to its
20 business and affairs; provided that any person other than than the commissioner of
21 railroads secretary who makes such demand shall produce his or her authority under
22 the hand and seal of the office secretary.

23 **SECTION 102.** 195.03 (10) of the statutes is amended to read:

24 195.03 (10) PRODUCTION OF RECORDS AND FILES KEPT OUT OF STATE. The office
25 department may, by an order or subpoena to be served in the manner that a circuit

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1 court summons is served, require the production within this state, at such time and
2 place as it may designate, of any books, papers or accounts kept by any railroad
3 without the state, or verified copies in lieu thereof, if the office department shall so
4 order.

5 **SECTION 103.** 195.03 (11) of the statutes is amended to read:

6 195.03 (11) UNIFORM SYSTEM OF ACCOUNTING. The office department may
7 prescribe a uniform system of keeping and rendering accounts of all railroad
8 business transacted in this state, and the time within which railroads shall adopt
9 such system; provided that all forms of accounts which may be prescribed by the
10 office department shall conform as nearly as practicable to similar forms prescribed
11 by federal authority.

12 **SECTION 104.** 195.03 (12) of the statutes is repealed.

13 **SECTION 105.** 195.03 (13) of the statutes is repealed.

14 **SECTION 106.** 195.03 (14) of the statutes is repealed.

15 **SECTION 107.** 195.03 (15) of the statutes is repealed.

16 **SECTION 108.** 195.03 (16) of the statutes is repealed.

17 **SECTION 109.** 195.03 (17) of the statutes is amended to read:

18 195.03 (17) PRIVATE TRACKS. The office department shall have control of private
19 railroad tracks insofar as the same are used by common carriers for the
20 transportation of freight, in all respects the same as though such tracks were part
21 of a public railroad.

22 **SECTION 110.** 195.03 (18) of the statutes is amended to read:

23 195.03 (18) SAFETY DEVICES. The office department may make reasonable rules,
24 regulations, specifications and standards for the installation, operation and
25 maintenance of all safety devices and measures.

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1 **SECTION 111.** 195.03 (19) of the statutes is amended to read:
2 195.03 (19) RAILROAD STRUCTURES. The office department may order the repair
3 or reconstruction of any inadequate or unsafe railroad track or structure.

4 **SECTION 112.** 195.03 (25) of the statutes is amended to read:
5 195.03 (25) DISTRIBUTION OF ORDERS. The office department shall upon
6 application furnish certified copies, under its seal, of any order made by it, which
7 shall be prima facie evidence of the facts stated therein.

8 **SECTION 113.** 195.03 (28) of the statutes is amended to read:
9 195.03 (28) LEGAL ACTIONS. The office may sue and be sued in that name, and
10 department may confer with or participate in any proceedings before any regulatory
11 agency of any other state or of the federal government.

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12 **SECTION 114.** 195.03 (29) of the statutes is amended to read:
13 195.03 (29) TRAIN PRIVILEGES. The employees authorized by the office
14 department to perform railroad inspection duties may, in the performance of such
15 duties, ride in and upon any engine, car or train of any class, of any railroad, upon
16 payment of the lawful passenger fare, but such railroad shall not thereby be deemed
17 to become a common carrier of passengers other than on passenger cars.

18 **SECTION 115.** 195.03 (30) (a) of the statutes is amended to read:
19 195.03 (30) (a) The office department shall give testimony at the hearing under
20 s. 350.138 (4) (b), or shall submit a written report for introduction into the hearing
21 record, on the factors stated in s. 350.138 (4) (d) 1., 2., 3., and 4.

22 **SECTION 116.** 195.03 (30) (b) of the statutes is amended to read:
23 195.03 (30) (b) The office department shall give the department of natural
24 resources the office's department's opinion on whether the snowmobile crossing

1 should be closed or removed in testimony at the hearing under s. 350.1395 (2) (b) 2.
2 or in a written report for introduction into the hearing record.

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~~SECTION 117. 195.04 of the statutes is repealed.~~
~~SECTION 118. 195.041 of the statutes is repealed.~~
~~SECTION 119. 195.042 of the statutes is repealed.~~
~~SECTION 120. 195.043 of the statutes is repealed.~~
~~SECTION 121. 195.044 of the statutes is repealed.~~
~~SECTION 122. 195.045 of the statutes is repealed.~~
~~SECTION 123. 195.046 of the statutes is repealed.~~
~~SECTION 124. 195.047 of the statutes is repealed.~~
~~SECTION 125. 195.05 of the statutes is repealed.~~

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*195.325
Subject to s. 195.325, all*

12 SECTION 126. 195.055 of the statutes is amended to read:

13 **195.055 Judicial review.** ~~All~~ orders and determinations of the office
14 department under this chapter are subject to judicial review under ch. 227.

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~~SECTION 127. 195.06 of the statutes is repealed.~~
~~SECTION 128. 195.07 (1) of the statutes is repealed.~~
~~SECTION 129. 195.07 (2) of the statutes is amended to read:~~
~~195.07 (2) ATTORNEY GENERAL AND DISTRICT ATTORNEY TO PROSECUTE. Upon request of the office department, the attorney general or the district attorney of the proper county shall aid in any investigation, hearing or trial had under, and shall institute and prosecute all necessary actions or proceedings for the enforcement of, laws relating to railroads.~~
~~SECTION 130. 195.08 of the statutes is repealed.~~
~~SECTION 131. 195.09 of the statutes is repealed.~~
~~SECTION 132. 195.10 of the statutes is repealed.~~

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~~SECTION 133. 195.11 of the statutes is repealed.~~

~~SECTION 134. 195.12 of the statutes is repealed.~~

~~SECTION 135. 195.13 of the statutes is repealed.~~

~~SECTION 136. 195.14 of the statutes is repealed.~~

~~SECTION 137. 195.15 of the statutes is repealed.~~

~~SECTION 138. 195.16 of the statutes is repealed.~~

~~SECTION 139. 195.17 of the statutes is repealed.~~

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~~SECTION 140. 195.19 (1) of the statutes is amended to read:~~

~~195.19 (1) PASSENGER. Every railroad shall provide and maintain adequate passenger depots equipped with proper toilet facilities at its regular stations for the accommodation of passengers, and said depots shall be kept clean, well-lighted and warmed, for the comfort and accommodation of the traveling public, and shall be kept open continuously from not less than 20 minutes before any train carrying passengers is scheduled to arrive and until such train has departed and for such longer period in any case as the office department may determine is necessary for the convenience and accommodation of the public. Where the office department determines that the service of certain trains in making stops on signals is in excess of reasonably adequate service, the provisions of this section shall not apply in connection with the rendition of such service.~~

~~SECTION 141. 195.19 (3) of the statutes is amended to read:~~

~~195.19 (3) UNION DEPOT. In every city, village or town in which 2 or more railroads maintain passenger depots, it shall be the duty of such railroads to construct, maintain and use an adequate union passenger depot, whenever practical and required by public convenience and necessity. If, after investigation, the office department shall determine that it is practicable and that public convenience and~~

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1 necessity required the construction, maintenance and use of a union passenger depot
 2 in any such city, village or town the office department may order such railroads to
 3 construct, maintain and use an adequate union passenger depot, and shall in such
 4 order fix the location of such depot. If the railroads shall be unable to agree upon an
 5 apportionment of the original cost of such union passenger depot, and the expense
 6 of maintaining the same, within 20 days after the service of such order, the office
 7 department may, after a hearing, issue a supplemental order declaring the
 8 apportionment of such original cost and the expense of maintaining such depot.

9 SECTION 142. 195.20 of the statutes is amended to read:

10 **195.20 Joint use of railroad property.** Whenever, upon complaint and after

11 hearing had, the office department finds that ~~public convenience and necessity~~

12 require the use by one or more railroads of the tracks, wires, poles, rights-of-way,

13 switches, bridges or other property belonging to another railroad over or on any

14 street, railroad, railway, right-of-way, bridge or viaduct, upon or over which said

15 railroads have a right to operate, and that such use will not prevent the owners or

16 other users thereof from performing their public duties, nor result in irreparable

17 injury to such owners or other users thereof, the office department may, by order,

18 direct that such use be permitted, and prescribe a reasonable compensation and

19 reasonable terms and conditions for such joint use.

20 SECTION 143. 195.21 of the statutes is amended to read:

21 **195.21 Warehouses.** Any person proposing to erect or maintain a public

22 elevator or public warehouse for the purchase, sale, storage, receiving or shipping of

23 grain, or other personal property, to be received from or transported upon any

24 railroad, shall be furnished by such railroad at a reasonable rental, a site upon its

25 ~~right-of-way or depot grounds, within the yard limits of any station or terminal of~~

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1 and any private elevator or warehouse situated upon such grounds
 2 may be converted into a public elevator or warehouse at the option of the owner, upon
 3 notice in writing to the railroad and thereby be permitted to remain thereon under
 4 the same conditions as provided herein for a public elevator or warehouse; and the
 5 office department shall, upon application by such owner, if the public interest so
 6 requires, by order, direct the railroad to furnish such site and the office department
 7 shall make reasonable regulations therefor and in case of disagreement, the office
 8 department shall determine the rental therefor. Elevators and warehouses erected
 9 or maintained under the foregoing provisions of this section shall be subject to such
 10 rules and regulations as to charges and the manner of conducting business as the
 11 office department shall prescribe.

SECTION 144. 195.26 of the statutes is amended to read:

13 **195.26 Safety devices; block system.** Every railroad shall adopt reasonably
 14 adequate safety measures and install, operate and maintain reasonably adequate
 15 safety devices for the protection of life and property. If after investigation the office
 16 department shall determine that public safety requires it, the office department may
 17 order the railroad to install, operate and maintain a block system or other safety
 18 device or measure as may be necessary to render the operation of such railroad
 19 reasonably safe.

SECTION 145. 195.27 of the statutes is amended to read:

21 **195.27 Safe tracks and bridges.** Every railroad shall construct and
 22 maintain its tracks, bridges and line structures in a reasonably adequate and safe
 23 manner. The office may direct the department to investigate complaints in the
 24 manner provided by s. 195.04. If, upon complaint or upon its own motion and after
 25 hearing, the office the department determines that the track or structures of any

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1 railroad are inadequate or unsafe for the operation of its railroad, the office
2 department shall order the railroad to reconstruct or repair the inadequate or unsafe
3 track or structures.

4 **SECTION 146.** 195.28 (1) of the statutes is amended to read:

5 195.28 (1) PETITION; HEARING; ORDER. Upon petition of the department, city a
6 city council, village board, town board, superintendent of highways or by 5 or more
7 electors in any town, village or city, or of any railroad corporation or railroad
8 historical society, to determine whether a public highway and railroad grade crossing
9 protects and promotes public safety, or upon its own motion, the office department
10 may investigate and issue an appropriate order without a public hearing. The
11 department shall issue its order on the basis of investigation and criteria
12 promulgated by rule with respect to the adequacy of grade crossing protection. The
13 rule may include programming criteria relating to the priority of grade crossings in
14 need of protection. If the petitioner, railroad, railroad historical society or any
15 interested party objects to the order and requests a hearing within 20 days after the
16 date that the order is issued, the office shall proceed under s. 195.04. Notice of an
17 investigation or hearing shall be served upon the department, which shall be an
18 interested party, and any recommendation it may file with the office at or prior to a
19 hearing, if there is one, regarding crossing protection shall be considered as evidence
20 in the proceeding department shall refer the order to the division of hearings and
21 appeals for review as provided in s. 195.325. The office department or the division
22 of hearings and appeals shall determine whether the existing warning devices at
23 such crossing are adequate to protect and promote public safety. If the office
24 department or division of hearings and appeals determines, either without or after
25 a hearing, that protection any such warning device is not adequate, it may order the

1 railroad company or railroad historical society to keep a flagman at the crossing or
 2 to install automatic signals or other suitable safety device at specific locations at
 3 such crossing. The office department or the division of hearings and appeals may
 4 order the relocation of existing signals and devices to improve protection at a
 5 crossing. Any crossing protection warning device installed or maintained as
 6 approved by the office department or the division of hearings and appeals, whether
 7 by order or otherwise, shall be deemed adequate and appropriate protection for the
 8 crossing.

9 **SECTION 147.** 195.28 (3) of the statutes is amended to read:

10 195.28 (3) MAINTENANCE COSTS. Except as otherwise provided in this
 11 subsection, the cost of maintaining crossing protection ~~warning~~ ^{plain} devices ordered
 12 under sub. (1) shall be the responsibility of the railroad or railroad historical society.

13 Any railroad company or railroad historical society that incurs expenses for
 14 maintenance of signals or other safety devices may file a claim for reimbursement
 15 with the department regardless of the date of installation of the signals or devices.

16 At the close of each fiscal year the department shall reimburse claimants under this
 17 subsection for ~~50%~~ ^{strike 2} 50 percent of the costs, as determined by the office department, incurred for

18 maintenance of railroad crossing protection ~~warning~~ ^{plain} devices from the
 19 appropriations under s. 20.395 (2) (gj) and (gq). If the amount in the appropriations
 20 under s. 20.395 (2) (gj) and (gq) is not adequate to fund maintenance reimbursement
 21 under this subsection, the amount shall be prorated in the manner determined by
 22 the office department.

23 **SECTION 148.** 195.28 (4) of the statutes is amended to read:

1 195.28 (4) PREVIOUS OFFICE ORDERS. Subsection (3) applies to maintenance costs
 2 for all crossing ^{plaint} ~~protection~~ ~~warnings~~ devices regardless of any prior order of the office
 3 apportioning maintenance costs.

4 **SECTION 149.** 195.285 (1) of the statutes is amended to read:

5 195.285 (1) Upon If, upon its own motion or upon the petition of a railroad
 6 corporation, the department, or the governing body of any city, village, town or
 7 county asserting that the stopping of vehicles under s. 346.45 at a railroad crossing
 8 is hazardous to human life, the office shall hold a hearing on the matter as provided
 9 under s. 195.04. ~~Notice of petition shall be served upon the department, which shall~~
 10 ~~be an interested party, and any recommendations it may file with the office regarding~~
 11 ~~the hazardous effect of vehicles stopping at such crossings shall be considered as~~
 12 ~~evidence in the proceedings. Upon the recommendation of the department and~~
 13 ~~concurrence by the office, the petition may be dismissed without holding a hearing.~~
 14 ~~If, upon the public hearing, the office department~~ determines that it would be in the
 15 public interest to exempt vehicles specified in s. 346.45 from stopping at such grade
 16 crossing, it may, without a hearing, order the public body having jurisdiction over the
 17 highway to erect signs, signals, markings or other devices exempting such vehicles
 18 from stopping at the crossing. If a petitioner or interested party objects to an order
 19 under this subsection within 20 days after the date that the order is issued, the
 20 department shall refer the order to the division of hearings and appeals for review
 21 as provided in s. 195.325.

22 **SECTION 150.** 195.285 (2) of the statutes is amended to read:

23 195.285 (2) Signs placed upon the order of the office department ~~or the division~~
 24 ~~of hearings and appeals~~ under this section shall exempt vehicles from stopping as

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1 required under s. 346.45, unless a train or engine is occupying or approaching the
2 crossing.

3 **SECTION 151.** 195.285 (3) of the statutes is amended to read:

4 195.285 (3) The department shall establish standards for the type of signs,
5 signals, markings or other devices for exempting vehicles from stopping as required
6 under s. 346.45 and their location in relation to the highway and railroad track. The
7 office department may upon petition or its own motion, with or without a hearing,
8 order the removal of a sign exempting vehicles from stopping at a crossing.

9 **SECTION 152.** 195.286 (2) of the statutes is repealed and recreated to read:

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10 195.286 (2) DESCRIPTION AND LOCATION. The signs shall be constructed, erected
11 and located as specified by the manual adopted by the department under s. 84.02 (4)
12 (e). This subsection does not apply to any sign complying with s. 195.286 (2) and (3),
13 2001 stats., on the effective date of this subsection [revisor inserts date], until such
14 time as the sign is replaced or relocated.

15 **SECTION 153.** 195.286 (3) of the statutes is repealed.

16 **SECTION 154.** 195.286 (5) of the statutes is amended to read:

17 195.286 (5) OTHER SIGNS PROHIBITED. No other sign of the general size or
18 appearance of the signs provided for in this section shall be placed or permitted upon
19 any highway, nor any sign between such advance signs except signs or signals now
20 required by law or permitted by the office for protection at railway crossings.

21 **SECTION 155.** 195.286 (6) (title) of the statutes is amended to read:

22 195.286 (6) (title) PENALTIES RELATING TO FENCES SIGNS.

23 **SECTION 156.** 195.286 (8) of the statutes is amended to read:

24 195.286 (8) PROSECUTIONS. The district attorney shall prosecute any person
25 violating this section, or begin and maintain any civil action necessary for its

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1 enforcement upon the demand of any county highway commissioner; or the
2 department, ~~or the office.~~

3 ~~SECTION 157.~~ 195.29 (1) of the statutes is amended to read:

4 195.29 (1) PETITION, HEARING, PUBLIC SAFETY, ORDER. Upon ~~if~~, upon its own
5 motion or upon petition by the common council or board of any city, village, town or
6 county within or bordering upon which a highway or street crosses a railroad, or a
7 highway or street is proposed to be laid out across a railroad, or a public highway
8 bridge across a railroad is required to connect existing streets or highways, or upon
9 petition by any railroad whose track crosses or is about to cross, or is crossed or about
10 to be crossed by a street or highway, or ~~upon petition by the department,~~ in cases
11 where provision has been made for the improvement of the highway adjacent to such
12 crossing under any state aid or federal aid law, the department determines that
13 public safety requires an alteration in such crossing, its approaches, the method of
14 crossing, the location of the highway or crossing, or the closing of the crossing, and
15 the substitution of another therefor at grade or not at grade, or the removal of
16 obstructions to the view at such crossing, the relocation of the highway, or requires
17 the determination of the manner of making such new crossing, or of making the
18 proposed improvement or promoting the public safety or public convenience through
19 any other reasonable method, and ~~praying that the same may be ordered, the office~~
20 ~~shall give notice to the parties in interest and proceed to investigate the same and~~
21 ~~to order a hearing thereon in the manner provided by s. 195.04. The office shall~~
22 determine the department may issue an appropriate order without a public hearing.
23 The department shall make its determination on the basis of investigation and the
24 criteria relating to the requirements of public safety promulgated under sub. (9). The
25 order shall state what, if anything, shall be done to promote the public safety and the

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1 means by which it shall be accomplished, whether by the relocation of the highway,
2 the alteration in such crossing, approaches, mode of crossing, location of highway
3 crossing, closing of highway crossing, with or without the substitution of another
4 therefor, the construction of a public highway bridge, the removal of obstructions to
5 sight at crossing, or by the use of other reasonable methods, and by whom the same
6 shall be made, and in case of new crossings the advisability of allowing such crossings
7 to be established and manner of making them.

8 **SECTION 158.** 195.29 (2) of the statutes is amended to read:

9 195.29 (2) APPORTIONMENT OF EXPENSE. The office department shall fix the
10 proportion of the cost and expense of alterations, removals and new crossings, or any
11 other work ordered, including the damages to any person whose land is taken, and
12 the special damages which the owner of any land adjoining the public street or
13 highway shall sustain by reason of a change in the grade of such street or highway,
14 or by reason of the removal of obstructions to view at such crossings, to be paid or
15 borne by the railroad companies and the municipalities in interest. In fixing such
16 proportion, the office department may order such cost and expense so apportioned
17 to be paid by the parties against which the apportionment shall be made.

18 **SECTION 159.** 195.29 (3) of the statutes is amended to read:

19 195.29 (3) RESTORATION OF SPUR TRACKS. Whenever the office department shall
20 have ordered a separation of the grade of a railway from the grade of a street or
21 highway, it may, if safe and practicable and if a necessity exists therefor, order the
22 alteration, restoration and connection of any track serving an industry. Demand for
23 such restoration shall be in writing and filed with the office department within 90
24 days after the date of the order for the separation of grades, and any such track for
25 which no such demand shall have been made shall be deemed abandoned. If the

1 office department shall order the alteration, restoration and connection of any such
2 track, it shall by its order apportion the cost thereof between the owner of the
3 industry served and the railway company, in such proportion as to the office
4 department may seem just and equitable; and the office department shall in its order
5 prescribe the terms and conditions for securing the payment of such cost.

6 **SECTION 160.** 195.29 (4) of the statutes is amended to read:

7 195.29 (4) GRADE SEPARATION IN MILWAUKEE COUNTY. The office department may
8 upon petition of any town, city or village, or upon its own motion, when the interests
9 of the public demand it and it is found practicable so to do, establish the grade of the
10 tracks of any railroad, or of all the railroads throughout any county having a
11 population of 500,000 or more, or any part thereof, and the grades of the streets or
12 highways, or any of them, where they cross such railroad track or tracks, in
13 anticipation of the future separation of grades of the railroad tracks from the grades
14 of such streets or highways. The office department, before making any such order,
15 shall mail notice to the railroad company or companies affected, the owners or
16 occupants of any building abutting on that part of the railroad the grade of which is
17 to be established, all 1st class cities in the county, and if the grades to be established
18 are outside the 1st class city, the towns, cities or villages in which such grades are
19 to be established, of the filing of such petition or that the office department
20 contemplates establishing such grades, and fixing a time at which the 1st class cities
21 and such other towns, cities or villages and the railroad company or companies
22 affected thereby and any other person or corporation interested therein may be
23 heard. The grades so established under this subsection shall be described by
24 reference to a base or datum line to be established by the office department, from
25 which all elevations and the height of all grades shall be measured, and the grades

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 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 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 or new
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

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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,

1 or shall fail, neglect or refuse to obey any order made by the ~~office~~ department under
2 this section, or any judgment, order, or decree made by the division of hearings and
3 appeals or any court upon such an order, for every such violation, failure or refusal
4 such person shall forfeit not less than \$25 nor more than \$150.

5 SECTION 163. 195.29 (7) of the statutes is amended to read:

6 195.29 (7) STRUCTURE REQUIREMENTS. Whenever the ~~office~~ department shall
7 order the construction or reconstruction of a crossing not at grade, it may direct that
8 the structure required shall be of such character and constructed of such materials
9 as it shall deem appropriate to the situation and necessary for the public interest.

10 SECTION 164. 195.29 (9) of the statutes is created to read:

11 195.29 (9) RULES. The department shall promulgate a rule establishing criteria
12 for determining the requirements of public safety with respect to railroad highway
13 crossings under this section. The rule shall include criteria for apportioning
14 expenses under this section.

15 SECTION 165. 195.29 (10) of the statutes is created to read:

16 195.29 (10) REVIEW OF DEPARTMENT ORDERS. If a petitioner, railroad or any
17 interested party objects to an order under this section within 20 days after the date
18 that the order is issued, the department shall refer the order to the division of
19 hearings and appeals for review as provided in s. 195.325.

20 SECTION 166. 195.295 of the statutes is created to read:

21 195.295 Highway crossings; public warning. Notwithstanding ss. 195.28,
22 195.285, 195.286, 195.29, and 195.30, the department shall monitor and investigate
23 all railroad highway grade crossings in this state, and determine, by order, rule or
24 otherwise, for each crossing whether any warning devices, advance warning signs
25 or other warning measures shall be required to protect and promote public safety.

1 The department may make a determination under this section without a hearing.
2 Any device, sign, or other measure, installed or maintained at a crossing, that
3 conforms to a determination of the department under this section or, if no such
4 determination has been made, that was approved by the office of the commissioner
5 of transportation under ch. 195, 1991 stats., or the office of the commissioner of
6 railroads under ch. 195, 2001 stats., before the effective date of this section ...
7 [revisor inserts date], whether by order or otherwise, shall be considered adequate
8 and appropriate warning for the crossing. If a railroad or interested party objects
9 to an order under this section within 20 days after the date that the order is issued,
10 the department shall refer the order to the division of hearings and appeals for
11 review as provided in s. 195.325.

12 **SECTION 167.** 195.30 (1) of the statutes is amended to read:

13 195.30 (1) Upon a petition by the common council of any city, or the board of
14 any village, town or county within which a railroad crosses another railroad at grade,
15 or by any such railroad, that public safety requires an alteration in the crossing or
16 the installation of protective appliances, ~~the office shall give notice to the parties in~~
17 ~~interest, and proceed to investigate the same and may order a hearing on the matter.~~
18 ~~The office shall determine what alteration in such crossing, if any, shall or on its own~~
19 ~~motion, the department may investigate the matter and determine what alteration~~
20 ~~in the crossing, if any, is necessary. The department shall make its determination~~
21 ~~on the basis of the criteria for public safety requirements promulgated as rules under~~
22 ~~ss. 84.05 and 195.28. The department may issue an order, with or without a hearing,~~
23 ~~specifying an alteration to be made, and by whom made and maintained, or what~~
24 ~~protective appliances shall be installed, operated and maintained at the crossing and~~
25 ~~by whom installed, operated and maintained. The office department's order shall fix~~

1 the proportion of the cost and expense of such change in grade and maintenance of
2 the crossing or of the installation, operation and maintenance of the safety appliance
3 which shall be paid by the railroad companies, respectively. If an interested party
4 objects to the order and requests a hearing within 20 days after the date on which
5 the order is issued, the department shall refer the matter to the division of hearings
6 and appeals for review as provided in s. 195.325.

7 **SECTION 168.** 195.305 of the statutes is amended to read:

8 **195.305 Railroad crossings; grade; expense.** Whenever a railroad
9 proposes to cross, intersect, join or unite its track with another railroad track, the
10 surface road of the proposed track shall be above, below or at grade of the tracks
11 proposed to be crossed as the ~~office~~ division of hearings and appeals determines after
12 hearing the parties upon reasonable notice. In its determination, the ~~office~~ division
13 of hearings and appeals shall fix the proportion of the expense of originally
14 constructing, operating, and maintaining such crossing, intersecting, joining or
15 uniting which shall be paid by the owners of the tracks respectively.

16 **SECTION 169.** 195.31 of the statutes is amended to read:

17 **195.31 Bridges made safe.** Whenever a complaint is lodged with the ~~office~~
18 department by the common council of any city, the village board of any village, a
19 member of a town board, or a supervisor of highways, or by 5 or more electors and
20 taxpayers in any town, or 5 or more electors of the county in which such bridge is
21 located, and who are users of such bridge or railway, to the effect that a bridge erected
22 over a stream intersecting a public highway or highways upon which a railway is
23 constructed and operated, is unsafe and dangerous to travelers over such highway
24 or highways or bridge or railroad, and that public safety requires the alteration, the
25 repair or reconstruction of such bridge, or the substitution of another bridge therefor,

1 ~~it shall be the duty of the office to give notice to the party or parties in interest, other~~
2 ~~than the petitioners, of the filing of such complaint, and to furnish a copy of the~~
3 ~~complaint to the party or parties in interest other than the petitioners, and to order~~
4 ~~a hearing thereon, in the manner provided for hearings in ss. 195.04 to 195.043. The~~
5 ~~office the department shall investigate the matter. The department may proceed in~~
6 ~~a similar manner in the absence of a petition when, in the opinion of the office~~
7 ~~department, public safety requires the alteration, repair or reconstruction of a bridge~~
8 ~~or the substitution of another bridge for the bridge in question. After the hearing,~~
9 ~~the office The department shall determine what alteration or repair or~~
10 ~~reconstruction of such bridge, and the approaches thereto, shall be made, or if it shall~~
11 ~~determine determines that public safety requires the substitution of a new bridge,~~
12 ~~it shall determine the character, manner of construction and location of such bridge~~
13 ~~and the approaches thereto. The office department shall fix the proportion of the cost~~
14 ~~and expense of such alteration, repair, reconstruction or substitution of a new bridge,~~
15 ~~including the damage to any person whose land is taken, and the special damage~~
16 ~~which the owner of any land adjoining the approaches to said bridge shall sustain~~
17 ~~by reason of the alteration, repair, reconstruction or substitution of a new bridge, to~~
18 ~~be paid by the railroad company and the city, village or town in interest. The~~
19 ~~department may issue appropriate orders incorporating its determinations and may~~
20 ~~proceed without a hearing on the matter. The department shall make its~~
21 ~~determinations on the basis of investigation and criteria for bridge safety~~
22 ~~promulgated by rule. If a petitioner or interested party objects to an order under this~~
23 ~~section within 20 days after the date that the order is issued, the department shall~~
24 ~~refer the order to the division of hearings and appeals for review as provided in s.~~
25 ~~195.325.~~

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SECTION 170. 195.32 of the statutes is amended to read:

~~195.32 Safety gates on drawbridges. Whenever a complaint is filed with the office department to the effect that any drawbridge is not equipped with gates or other safety devices, the office department may notify the proper party or parties in interest of the complaint, and may proceed to investigate the complaint and to hold a hearing on the matter in the manner provided for hearings in ss. 195.04 to 195.043 matter. If after the investigation the office department determines that public safety requires the erection and maintenance of gates or other safety devices at the points mentioned in the complaint, it may order the county, city, village, town, corporation or person whose duty it is to maintain such bridge to erect and maintain at such points such gates or other safety devices as the office department prescribes. The office department may conduct the investigations, hold the hearings and make the orders provided for in this section upon its own motion in the same manner and with the same effect as though a complaint were filed. The department shall make its determination on the basis of the investigation and criteria for drawbridge safety promulgated by rule. If an interested party objects to an order under this section within 20 days after the date that the order is issued, the department shall refer the order to the division of hearings and appeals for review as provided in s. 195.325.~~

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SECTION 171. 195.325 of the statutes is created to read:

195.325 Review of ~~department orders on crossings and bridges~~ ^{of certain orders of the} department. If an order of the department under s. 84.05, 192.3245, 195.28, 195.285, 195.29, 195.295, 195.30, 195.31, 195.32, or 195.38 is referred to the division of hearings and appeals for review, the division of hearings and appeals shall review the order ~~under~~ s. 85.013 (3) ^{in accordance with} of the application of the criteria relating to the matter promulgated as rules by the ~~department~~.

applying the same standards applicable to the department and

X

1 ~~SECTION 172. 195.33 of the statutes is repealed.~~

2 SECTION 173. 195.34 of the statutes is amended to read:

3 **195.34 Reports of accidents, investigation.** Every railroad shall report to
4 the office department all collisions, derailments or other accidents resulting in injury
5 to persons, equipment or roadway arising from its operation. The office department
6 may issue rules concerning the reporting of accidents and may also, if public
7 interests require, cause an investigation of any accident.

8 SECTION 174. 195.36 of the statutes is amended to read:

9 **195.36 General penalty upon railroads.** If any railroad shall violate any
10 provision of this chapter, or shall do any act herein prohibited, or shall fail or refuse
11 to perform any duty enjoined upon it, for which a penalty has not been provided, or
12 shall fail, neglect or refuse to obey any lawful requirement or order made by the office
13 department or division of hearings and appeals, or any judgment or decree made by
14 any court upon its application, for every such violation, failure or refusal in respect
15 to any matter prescribed by this chapter such railroad shall forfeit not less than \$100
16 nor more than \$10,000. The act, omission or failure of any officer, agent or other
17 person employed by any railroad, acting within the scope of his or her employment,
18 shall be deemed to be the act, omission or failure of such railroad.

19 SECTION 175. 195.37 of the statutes is repealed. X

20 SECTION 176. 195.38 of the statutes is repealed. X

21 SECTION 177. 195.45 (1) of the statutes is amended to read:

22 195.45 (1) No person shall operate as a common carrier of passengers or
23 property by water except in accordance with the terms and conditions of a certificate
24 of public convenience and necessity issued by the office. The office shall issue any

1 ~~certificate upon a finding that the service proposed to be performed is in the public~~
2 ~~interest and required by public convenience and necessity department.~~

3 ~~**SECTION 178.** 195.45 (2) of the statutes is amended to read:~~

4 ~~195.45 (2) Application for the certificate shall be made on forms furnished by~~
5 ~~the office department and shall contain such information as the office department~~
6 ~~requires.~~

7 ~~**SECTION 179.** 195.45 (4) of the statutes is amended to read:~~

8 ~~195.45 (4) The office department may promulgate rules for the operation of this~~
9 ~~section.~~

10 ~~**SECTION 180.** 195.50 (1) of the statutes is amended to read:~~

11 ~~195.50 (1) Any officer, agent or employee of any railroad who fails to fill out and~~
12 ~~return any forms required by this chapter, or fails to answer any question therein,~~
13 ~~or knowingly gives a false answer to any such question, or evades the answer to any~~
14 ~~such question where the fact inquired of is within his or her knowledge, or who, upon~~
15 ~~proper demand, fails to exhibit to the office or department or the division of hearings~~
16 ~~and appeals or any person authorized to examine the same, any book, paper, account,~~
17 ~~record or memoranda of such railroad which is in the possession or under control of~~
18 ~~the officer, agent or employee, or who fails to properly use and keep the system of~~
19 ~~accounting prescribed by the office department, or who refuses to do any act or thing~~
20 ~~in connection with such system of accounting when so directed by the office or its~~
21 ~~department, the division of hearings and appeals, or their authorized~~
22 ~~representatives, shall forfeit not less than \$100 nor more than \$1,000 for each~~
23 ~~offense.~~

24 ~~**SECTION 181.** 195.60 (title) of the statutes is amended to read:~~

25 ~~**195.60 (title) Payment of office department expenses by railroads.**~~

SECTION 182

1 **SECTION 182.** 195.60 (1) of the statutes is amended to read:

2 195.60 (1) Whenever the office department in a proceeding upon its own
3 motion, on complaint, or upon an application to it deems it necessary in order to carry
4 out the duties imposed upon it by law to investigate the books, accounts, practices
5 and activities of, or make appraisals of the property of any railroad or to render any
6 engineering or accounting services to any railroad, the railroad shall pay the
7 expenses attributable to such investigation, appraisal or service. The office
8 department shall ascertain such expenses, ~~including all expenses incurred by the~~
9 ~~department at the request or direction of the office~~ and shall render a bill therefor,
10 by mail, to the railroad, either at the conclusion of the investigation, appraisal or
11 services, or during its progress. The bill shall constitute notice of assessment and
12 demand of payment thereof. The railroad shall, within 30 days after the mailing
13 thereof, pay to the office department the amount of the special expense for which it
14 is billed. Ninety percent of the payment shall be deposited in the general fund and
15 credited to the appropriation account under s. 20.155 (2) (g) 20.395 (2) (gg). The total
16 amount, in any one calendar year, for which any railroad becomes liable, by reason
17 of costs incurred by the office department within such calendar year, shall not exceed
18 four-fifths of one percent of its gross operating revenues derived from intrastate
19 operations in the last preceding calendar year. Where, under this subsection, costs
20 are incurred within any calendar year, which are in excess of four-fifths of one
21 percent of such gross operating revenues, the excess costs shall not be chargeable as
22 part of the remainder under sub. (2) but shall be paid out of the general appropriation
23 to the office department. Nothing in this subsection shall prevent the office
24 department from rendering bills in one calendar year for costs incurred within a
25 previous year. For the purpose of calculating the costs of investigations, appraisals

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) of the statutes is amended to read:

SECTION 184

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.

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:

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1 195.60 (7) Determinations of fact expressed in bills rendered under this
2 section; and shall be considered to be findings of fact of the ~~financial hearings and~~^{department}
3 ~~appeals~~ within the meaning of this section.

4 **SECTION 193.** 195.60 (7) (b) of the statutes is repealed. X

5 **SECTION 194.** 197.10 (4) of the statutes is amended to read:

6 197.10 (4) Insofar as the use, operation, service, management, control, sale,
7 lease, purchase, extension, improvement, rates, value or earnings of the properties
8 of the public utility or provisions looking toward the ultimate acquisition of the same
9 are made subject to the terms of any contract provided for in sub. (1), and so long as
10 said contract remains in force, the following sections of the statutes shall be
11 inapplicable to the same: ss. ~~195.05, 195.10,~~ 196.02 (1) and (2), 196.05, 196.09,
12 196.10, 196.11, 196.15, 196.16, 196.19 (6), 196.20, 196.21, 196.22, 196.26, 196.28,
13 196.30, 196.37, 196.39, 196.40, 196.58, 196.70, 197.01 (2) to (4), 197.02, 197.03,
14 197.04, 197.05, 197.06, 197.08 and 197.09; provided that nothing in any contract
15 made hereunder shall operate to prevent an appeal to the public service commission
16 by any person, other than a party to said contract, upon any complaint alleging that
17 any rate, fare, charge or classification, or any joint rate, or any regulation, act or
18 practice relating to the production, transmission, delivery or furnishing of gas, heat,
19 light or power, or any service in connection therewith, is unjustly discriminatory, or
20 that any such service is inadequate or cannot be obtained. Upon said appeal the
21 commission shall, as provided by law, determine and by order fix a rate, fare, charge,
22 classification, joint rate or regulation, act or practice or service to be imposed,
23 observed or followed in the future in lieu of that found to be unjustly discriminatory
24 or inadequate.

25 **SECTION 195.** 201.01 (1) of the statutes is amended to read:

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1 ~~201.01 (1) "Commission" means the office of the commissioner of railroads in~~
2 ~~the case of railroads and the public service commission in the case of other public~~
3 ~~service corporations.~~

4 **SECTION 196.** 201.01 (2) of the statutes is amended to read:

5 201.01 (2) "Public service corporation" means and embraces every corporation,
6 except municipalities and other political subdivisions, which is a public utility as
7 defined in s. 196.01, and every corporation which is a railroad as defined in s. 195.02,
8 but shall not include a public utility corporation receiving an annual gross revenue
9 of less than \$1,000 for the calendar year next preceding the issuance of any securities
10 by it. "Public service corporation" includes a holding company, as defined under s.
11 196.795 (1) (h), which is a public utility, as defined under s. 196.01 (5). "Public service
12 corporation" does not include a telecommunications utility, as defined in s. 196.01
13 (10). "Public service corporation" does not include any other holding company unless
14 the holding company was formed after November 28, 1985, and unless the
15 commission has determined, under s. 196.795 (7) (a), that each nonutility affiliate,
16 as defined under s. 196.795 (1) (j), does not and cannot reasonably be expected to do
17 at least one of the items specified in s. 196.795 (7) (a). "Public service corporation"
18 does not include a company, as defined in s. 196.795 (1) (f), which owns, operates,
19 manages or controls a telecommunications utility, as defined in s. 196.01 (10), unless
20 such company also owns, operates, manages or controls a public utility which is not
21 a telecommunications utility. "Public service corporation" does not include a
22 transmission company, as defined in s. 196.485 (1) (g).

23 **SECTION 197.** 201.10 (3) of the statutes is amended to read:

24 201.10 (3) Whenever the commission deems it necessary to make an
25 investigation of the books, accounts and practices or to make an appraisal of the

1 property of any public service corporation which has filed an application for
2 authority to issue any securities to which this chapter is applicable, such public
3 service corporation shall pay all expenses reasonably attributable to such special
4 investigation, or to such an appraisal of the property. For the purpose of calculating
5 investigative and appraisal expenses of the commission, 90% of the costs determined
6 shall be costs of the commission and 10% of the costs determined shall be costs of
7 state government operations. The procedure set up by s. 195.60 or 196.85, whichever
8 is appropriate, for the rendering and collection of bills shall be in all ways applicable
9 to the rendering and collection of bills under this section. Ninety percent of the
10 amounts paid to the public service commission under authority of this subsection
11 shall be credited to the appropriation account under s. 20.155 (1) (g).

12 **SECTION 198.** 201.13 of the statutes is amended to read:

13 **201.13 Stock.** Subject to the regulatory jurisdiction of the commission under
14 this chapter and to all other applicable provisions of law relating to railroad or other
15 special types of corporations, all classes and series of stock of a public service
16 corporation shall be governed by the provisions of ch. 180.

17 **SECTION 199.** 226.025 (3) of the statutes is amended to read:

18 226.025 (3) The appointment of the department of financial institutions or the
19 designation of a resident agent as attorney for the service of summons, notice,
20 pleadings or process under s. 180.1507 shall be applicable only to actions or
21 proceedings against the foreign corporations described in this section (unless such
22 corporations have been admitted to this state for purposes other than those
23 mentioned in this section) where the cause of action or proceeding arises out of
24 transactions between such foreign corporations and public utilities operating in this
25 state with which such foreign corporations are affiliated; and to actions or

SECTION 199

1 proceedings by or before the public service commission ~~or office of the commissioner~~
2 ~~of railroads~~ involving the transactions described in sub. (1), or involving the relation
3 between such foreign corporations and public utilities operating in this state with
4 which they are affiliated.

5 **SECTION 200.** 227.01 (13) (s) of the statutes is amended to read:

6 227.01 (13) (s) Prescribes or relates to a uniform system of accounts for any
7 person, including a municipality, that is regulated by the ~~office of the commissioner~~
8 ~~of railroads or the public service commission.~~

9 **SECTION 201.** 227.43 (1) (bk) of the statutes is created to read:

10 227.43 (1) (bk) Assign a hearing examiner to preside over any hearing or review
11 under ss. 26.20 (3) and (10), 84.05, 88.66 (2), 88.87 (4), 88.88 (2), 190.02 (6), 190.16
12 (4) and (5), 192.324, 192.34, 192.52, 192.56, 195.28 (1), 195.285 (1), 195.29 (1),
13 195.295, 195.30 (1), 195.305, 195.31, 195.32, 195.325, and 195.60.
14 *(Handwritten notes: 195.37(1), 195.38, (1), and checkmarks)*

14 **SECTION 202.** 227.43 (4) (b) of the statutes is amended to read:

15 227.43 (4) (b) The department of transportation shall pay all costs of the
16 services of a hearing examiner assigned under sub. (1) (bg) or (bk) or assigned to the
17 department under sub. (1) (br), according to the fees set under sub. (3) (b).

18 **SECTION 203.** 227.46 (2m) of the statutes is amended to read:

19 227.46 (2m) In any hearing or review assigned to a hearing examiner under
20 s. 227.43 (1) (bg) or (bk), the hearing examiner presiding at the hearing shall prepare
21 a proposed decision, including findings of fact, conclusions of law, order and opinion,
22 in a form that may be adopted as the final decision in the case. The proposed decision
23 shall be a part of the record and shall be served by the division of hearings and
24 appeals in the department of administration on all parties. Each party adversely
25 affected by the proposed decision shall be given an opportunity to file objections to

1 the proposed decision within 15 days, briefly stating the reasons and authorities for
 2 each objection, and to argue with respect to them before the administrator of the
 3 division of hearings and appeals. The administrator of the division of hearings and
 4 appeals may direct whether such argument shall be written or oral. If the decision
 5 of the administrator of the division of hearings and appeals varies in any respect from
 6 the decision of the hearing examiner, the decision of the administrator of the division
 7 of hearings and appeals shall include an explanation of the basis for each variance.
 8 The decision of the administrator of the division of hearings and appeals is a final
 9 decision of the agency subject to judicial review under s. 227.52. The department of
 10 transportation may petition for judicial review.

11 **SECTION 204.** 227.46 (3) (intro.) of the statutes is amended to read: ///

12 227.46 (3) (intro.) With respect to contested cases except a hearing or review
 13 assigned to a hearing examiner under s. 227.43 (1) (bg) or (bk), an agency may by rule
 14 or in a particular case may by order:

15 **SECTION 205.** 281.36 (1) (cr) of the statutes is amended to read: ///

16 281.36 (1) (cr) "State transportation agency" means the department of
 17 transportation ~~or the office of the commissioner of railroads.~~

18 **SECTION 206.** 346.45 (3) (d) of the statutes is amended to read: ///

19 346.45 (3) (d) A railroad grade crossing which is marked with a sign in
 20 accordance with s. 195.285 (3). Such signs shall be erected by the maintaining

21 authority only upon order of the ~~office of the commissioner of railroads as set forth~~
 22 ~~in department or the division of hearings and appeals in accordance with~~ s. 195.285.

23 **SECTION 207.** 350.137 (1) of the statutes is amended to read: ss.
and
195.325

24 350.137 (1) The department, after having consulted with each rail authority,
 25 as defined in s. 350.138 (1) (b), in this state, that has furnished the department with ///

strike
 → s.

1 the information required under s. 350.138 (2m), an established snowmobile
2 association that represents snowmobile clubs, as defined in s. 350.138 (1) (e), in this
3 state, and the ~~office of the commissioner of railroads~~ department of transportation,
4 shall promulgate rules to establish uniform maintenance standards and uniform
5 design and construction standards for snowmobile rail crossings under ss. 350.138
6 and 350.139.

7 **SECTION 208.** 350.138 (4) (c) of the statutes is amended to read:

8 350.138 (4) (c) The department shall give notice of any hearing scheduled
9 under par. (b) to the applicant, to the applicable rail authority, and to the ~~office of the~~
10 ~~commissioner of railroads~~ department of transportation. The hearing shall be a
11 contested case hearing under ch. 227. The department's department of natural
12 resources' order issuing or denying a permit is a final order subject to judicial review
13 under ch. 227.

14 **SECTION 209.** 350.138 (9) of the statutes is amended to read:

15 350.138 (9) INSPECTION AUTHORIZED. The department or the ~~office of the~~
16 ~~commissioner of railroads~~ department of transportation may inspect the site of a
17 proposed snowmobile rail crossing or the site of a snowmobile rail crossing for which
18 a permit has been issued to determine whether there are grounds to refuse to issue
19 a permit under sub. (4) or to revoke a permit under sub. (8).

20 **SECTION 210.** 350.139 (5) of the statutes is amended to read:

21 350.139 (5) INSPECTION AUTHORIZED. The department or the ~~office of the~~
22 ~~commissioner of railroads~~ department of transportation may inspect an established
23 snowmobile rail crossing to determine whether the snowmobile organization
24 maintaining the crossing is in compliance with the requirements imposed under sub.
25 (4).

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 is amended to read:

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, a savings bank or savings and loan association subject to
25 regulation by the division of ~~savings institutions~~ or a company subject to regulation
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PLAIN -> banking
stays

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PLAN → (5)

1 by the public service commission, ~~or the department of transportation~~ or the office
 2 of the ~~commissioner of railroads~~, the division of securities shall promptly furnish a
 3 copy of the registration statement filed under this chapter to the regulatory agency
 4 having supervision of the target company. Any hearing under this chapter involving
 5 any such target company shall be held jointly with the regulatory agency having
 6 supervision, and any determination following the hearing shall be made jointly with
 7 that regulatory agency.

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

24

SECTION ~~911B~~ [#] Nonstatutory provisions (public service commission).

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

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

4 1. "Department" means the department of transportation.

5 2. "Division" means the division of hearings and appeals in the department of
6 administration.

7 3. "Office" means the office of the commissioner of railroads.

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

10 (c) *Staff.*

11 1. On the effective date of this subdivision, the position of the commissioner of
12 railroads is abolished.

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

16 2. ~~β~~ β. On the effective date of this subdivision, the following 4.0 FTE PR positions
17 and the incumbent employees, identified by the secretary of transportation, holding
18 those positions in the office are transferred to the department:

19 a. One program assistant position.

20 b. Three regulation compliance investigator positions.

21 4. a. The employee transferred under subdivision 2. to the division has all of
22 the rights and the same status under subchapter V of chapter 111 and chapter 230
23 of the statutes in the division that he or she enjoyed in the office immediately before
24 the transfer. Notwithstanding section 230.28 (4) of the statutes, the employee so

1 transferred who has attained permanent status in class is not required to serve a
2 probationary period.

3 3. Employees transferred under subdivision ~~β~~ to the department have all of
4 the rights and the same status under subchapter V of chapter 111 and chapter 230
5 of the statutes in the department that they enjoyed in the office immediately before
6 the transfer. Notwithstanding section 230.28[✓](4) of the statutes, no employee so
7 transferred who has attained permanent status in class is required to serve a
8 probationary period.

9 4. On the effective date of this subdivision, the remaining FTE PR positions of
10 the office not transferred under subdivision ~~2.~~ and ~~3.~~ or abolished under subdivision
11 1. are deauthorized.

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

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

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

22 (f) *Rules and orders.*

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

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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.

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SECTION 9443. Effective dates; public service commission.

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

SECTION 9443

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), (4) (a), (b), (c), and
8 (d), (5), (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 (1) (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.

14 (END)

D-note