



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRBs0398/1  
ARG:wlj:ch

**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2003 ASSEMBLY BILL 837**

March 4, 2004 – Offered by COMMITTEE ON TRANSPORTATION.

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

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

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

7           **84.05 Railroad crossing improvements.** On a highway which the  
8           department has authority to construct and which crosses a railroad, if the  
9           department determines that the construction or reconstruction of a grade separation  
10          or the rearrangement or elimination of a grade crossing or other rearrangement of  
11          the highway or tracks is necessary in the interest of public safety or for convenience

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

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

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

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

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

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

5           195.03 (1) PRACTICE RULES. The office may take testimony and administer oaths  
6 and may, subject to s. 195.065, promulgate rules to govern its proceedings and to  
7 regulate the mode and manner of all hearings. All hearings shall be open to the  
8 public.

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

10          195.03 (2) OFFICE INITIATIVE. ~~In~~ Subject to s. 195.065, in any matter within its  
11 jurisdiction under ch. 192 or this chapter, the office may initiate, investigate and  
12 order a hearing at its discretion upon such notice as it considers proper.

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

14          195.03 (25) DISTRIBUTION OF ORDERS. The office shall upon application furnish  
15 certified copies, under its seal, of any order made by it, which shall, except as  
16 provided in s. 195.065, be prima facie evidence of the facts stated therein.

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

18          195.04 (1) Upon complaint of any person, including any state agency or  
19 railroad, that any railroad rate, fare, charge, or classification or any regulation or  
20 practice whatever affecting the transportation of persons or property, or any service  
21 in connection therewith, is in any respect unreasonable or unjustly discriminatory  
22 or that any service is inadequate, the office may direct the department to investigate  
23 the complaint and shall, subject to s. 195.065, set the complaint for hearing. The  
24 report of the department shall be presented to the office only at the hearing on the

1 complaint, if hearing is requested and held. No order may be entered by the office  
2 without a public hearing.

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

4 195.043 (1) If, after summary investigation by the department, the office  
5 becomes satisfied that sufficient grounds exist to warrant a formal hearing being  
6 ordered as to the matters investigated, it shall, subject to s. 195.065, set a time and  
7 place for a hearing. The office shall publish notice of any such investigation in its  
8 weekly calendar and the report of the department and all matters considered by the  
9 office with respect thereto shall be available for public inspection upon request.

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

11 195.05 (1) ORDERS FOR RATES AND SERVICE. Whenever the office shall find that  
12 any existing rate, fare, charge, or classification, or any joint rate, or any regulation  
13 or practice affecting the transportation of persons or property, or any service in  
14 connection therewith is unreasonable or unjustly discriminatory or that any service  
15 is inadequate, it shall, subject to s. 195.065, determine and by order fix a reasonable  
16 rate, fare, charge, classification, joint rate, regulation, practice or service to be  
17 imposed, observed and followed in the future, in lieu of that found to be unreasonable  
18 or unjustly discriminatory or inadequate.

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

20 195.05 (4) MODIFICATION OF ORDERS. The Subject to s. 195.065, the office may  
21 by order at any time, upon notice to the railroad and after opportunity to be heard,  
22 rescind, alter, or amend any order fixing any rate or rates, fares, charges, or  
23 classification, or any other order made by the office.

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

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

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

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

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

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

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

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

1           a. The commissioner of railroads.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

24 195.29 (5) **ELIMINATION OF GRADE CROSSINGS, COSTS.** Upon petition of the  
25 department, or of the common council or board of any city, village, town, or county,

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

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

19 **195.29 (6) VIEW AT CROSSINGS; TREES AND BRUSH NEAR CROSSINGS; FORFEITURE.**

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

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

19 **SECTION 20. Nonstatutory provisions.**

20 (1) Notwithstanding the time period specified in section 195.065 (3) (b) of the  
21 statutes, as affected by this act, any person aggrieved by a final decision of the office  
22 of the commissioner of railroads in a proceeding under section 84.05, 86.13 (3),  
23 195.28, 195.285, or 195.29 of the statutes, as affected by this act, rendered between  
24 January 1, 1999 and the effective date of this subsection may, no later than June 30,  
25 2005, request review of the decision by the review panel under section 195.065 (3)

1 of the statutes, as created by this act. Upon such a request for review, the review  
2 panel shall, without a new hearing, conduct a review of the decision in the manner  
3 specified under section 195.065 (3) of the statutes, as created by this act.

4 **SECTION 21. Initial applicability.**

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

7 (END)