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CHAPTER 53B. JURISDICTIONAL ASSIGNMENTS FOR RAILROAD OVERHEAD BRIDGES

CHAPTER EXPIRATION DATE:

Expires on January 24, 2024.

SUBCHAPTER 1. PURPOSE AND SCOPE

16:53B-1.1 Purpose

(a) Pursuant to N.J.S.A. 27:5G-5 through 27:5G-19, the Railroad Overhead Bridge Act of 1988, the purposes of this chapter are to assign jurisdiction over abandoned railroad overhead bridges, provide for orderly and equitable allocation of responsibilities for assigned railroad overhead bridges, avoid contentious deliberations over the responsibility of these bridges, and provide for reasonable and timely allocations of bridge responsibilities.

(b) This chapter shall not be interpreted or applied in a manner which would impede any responsible party from undertaking necessary or emergent bridge repairs, or impede the establishment of supplemental agreements which may be necessary to implement interagency coordination or project review or approvals.

16:53B-1.2 Scope

(a) This chapter is applicable to abandoned railroad overhead bridges and includes, but is not limited to, the roads carried by or leading onto those bridges.

(b) Each railroad overhead bridge that is to be rehabilitated or replaced, or is determined to be in a state of good repair, can be assigned to the jurisdiction of a public entity.

(c) In determining the allocation of responsibilities, emphasis will be put upon obtaining workable and cooperative jurisdictional responsibilities.

(d) If a railroad overhead bridge carries a private road, the Commissioner shall assign the bridge to the jurisdiction of the owner of the road.

(e) The provisions of Chapter 12 of Title 48 of the Revised Statutes shall not apply to any railroad overhead bridge assigned a jurisdiction under this chapter.

16:53B-1.3 (Reserved)

16:53B-1.4 (Reserved)

16:53B-1.5 (Reserved)

16:53B-1.6 (Reserved)

16:53B-1.7 (Reserved)

SUBCHAPTER 2. DEFINITIONS

16:53B-2.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Commissioner" means the Commissioner of the New Jersey Department of Transportation or such person as the Commissioner may designate, when legally permissible.

"Department" means the New Jersey Department of Transportation.

"Emergent situation" means a sudden, urgent, or unexpected occurrence or occasion that interferes with the free and safe movement of traffic over a railroad overhead bridge, which requires immediate action.

"Good repair" means that the structure is found by the Commissioner to be in safe and serviceable condition for the purposes and uses to be permitted, based upon sound engineering principles, standards or techniques, which may include those that were acceptable at the time of original construction or at the time of any reconstructions.

"Jurisdiction" means control and responsibility for maintenance, rehabilitation, replacement and inspection as may be ordered by the Commissioner under provisions of this chapter.

"Private entity" means a person or any entity that is not a unit of government including, but not limited to, a corporation, partnership, company, nonprofit organization, or other legal entity.

"Public entity" means a unit of government including, but not limited to, a public transit agency or any officers, department, board, commission, division, agency, authority, or instrumentality of the State or of any county or municipality.

"Railroad overhead bridge" or "bridge" means any bridge carrying any public or private road over and across a railroad, subway, or street traction, or electric railway, or over and across the right-of-way of a railroad, subway, or railway.

"Sidewalk" means that portion of a highway, including roadways carried by bridges and approach roadways, intended for use by pedestrians, between the curb line or the lateral line of a shoulder, or if none, the lateral line of the roadway and the adjacent right-of-way line.

SUBCHAPTER 3. GENERAL PROVISIONS

16:53B-3.1 General provisions

(a) All parties potentially affected by a bridge jurisdiction assignment may present evidence of maintenance, repair, reconstruction, inspection or other work to the Department.

(b) Each assignment of jurisdiction shall be made by written order of the Commissioner.

(c) Jurisdiction over a railroad overhead bridge assigned under this chapter may be transferred to another party by voluntary agreement between the parties, provided that the Commissioner approves the agreement by written order.

(d) A written order assigning jurisdiction over a railroad overhead bridge under the provisions of this chapter shall not relieve any party of any tort or contractual liability existing prior to the issuance of that order.

(e) The Commissioner shall not make an order assigning jurisdiction for a railroad overhead bridge, which does not carry a State highway unless:

1. The bridge is the subject of an improvement project financed in whole or in part by State funds, in which case the Commissioner may make the order contingent upon satisfactory completion of work;

2. The order assigns jurisdiction to a party who has requested jurisdiction over the bridge by written petition to the Commissioner; or

3. The Commissioner accepts a written petition for assignment from an affected party other than the party to whom jurisdiction would be otherwise assigned under N.J.A.C. 16:53B-4.1, when the Commissioner determines that the assignment would be in the public interest, and the Commissioner further determines that the bridge is in good repair.

SUBCHAPTER 4. ASSIGNMENT OF JURISDICTION

16:53B-4.1 Assignment of jurisdiction

(a) Assignment of jurisdiction shall be made by the Commissioner as follows:

1. All bridges carrying State highways are under the jurisdiction of the Department.

2. If a railroad overhead bridge carries a private road, the Commissioner shall assign the bridge to the jurisdiction of the owner of the road.

3. Each railroad overhead bridge carrying a highway, other than a State highway, over and across a right-of-way owned by New Jersey Transit, is under the jurisdiction of that entity, unless the Commissioner determines, subject to the provisions of this subchapter, that the bridge should be assigned to the jurisdiction of another public entity.

4. Following a review of available statutes, regulations, local ordinances, maintenance agreements, records concerning improvement projects and maintenance activities, and any other applicable evidence, and based upon a preponderance of all the evidence reviewed, if the Commissioner determines that a county, municipality, or public entity other than the Department or New Jersey Transit has assumed effective control or responsibility over a bridge, the Commissioner shall assign the bridge to the jurisdiction of that entity.

5. In order to encourage entities to maintain the safety of bridges for which the responsibility has yet to be ascertained, evidence of maintenance, repair, reconstruction, inspection, or other work done following the December 5, 1988 effective date of the Railroad Overhead Bridge Act of 1988, shall not be considered for the purpose of assigning a bridge to an entity under this section.

6. Evidence of emergency repairs that were necessary for the immediate safety and welfare of the public and which predate December 5, 1988, shall not be used as the only factor for assessing past jurisdictional responsibilities.

16:53B-4.2 Joint jurisdiction and joint jurisdictional orders

(a) If the provisions of N.J.A.C. 16:53B-4.1 fail to identify jurisdiction for a railroad overhead bridge, the Commissioner may order the assignment of joint jurisdiction for the railroad overhead bridge to the Department or New Jersey Transit and public or private entities. The joint jurisdictional order of the Commissioner shall allocate specific jurisdictional responsibilities to the applicable parties. This may include specific responsibilities pertaining to interagency coordination, approvals, and inspection responsibilities.

(b) In general, joint jurisdictional orders shall be constructed in accordance with (b)1 and 2 below as follows:

1. The Department will assume responsibility for the principal structural elements, bridge decks, and abutments of the bridge, which shall include structural repair, maintenance, rehabilitation, and replacement.

2. The entity assigned jurisdiction for the approaching roadways shall have responsibility for routine maintenance of the surface roadway carried by the bridge, including, but not limited to, snow removal, sidewalk and guiderail repair, lighting, appurtenances, striping, signing, patching, and resurfacing. They shall also have responsibility for all load posting signage on approach roadways and advance load posting signage on the last safe exit preceding the bridge. Routine maintenance responsibilities shall not extend to the structural support components or the bridge decks of any railroad overhead bridge under the jurisdiction of the Department or New Jersey Transit.

16:53B-4.3 County and municipal jurisdiction

(a) Any county or municipality having jurisdiction over a highway carried by or leading onto a railroad overhead bridge assigned to the jurisdiction of New Jersey Transit or the Department shall have responsibility for routine maintenance of the surface roadway carried by the bridge, including, but not limited to, snow removal, sidewalk and guiderail repair, lighting, appurtenances, striping, signing, patching, and resurfacing. They shall also have responsibility for all load posting signage on approach roadways and advance load posting signage on the last safe exit preceding the bridge. Routine maintenance responsibilities of a county or municipality shall not extend to the structural support components or the bridge decks of any railroad overhead bridge under the jurisdiction of the Department or New Jersey Transit.

(b) Any jurisdictional order made under the provisions of this chapter may include specific provisions that apply to interagency coordination, review of plans or projects, or any other administrative matter of significance in carrying out the terms of an order.

16:53B-4.4 Assignment of bridge to Department

If the Commissioner determines that a bridge cannot be assigned to a public entity under N.J.A.C. 16:53B-4.1(a)4; to the New Jersey Transit Corporation under N.J.A.C. 16:53B-4.1(a)3; or to the owner of a private road under N.J.A.C. 16:53B-4.1(a)2; the Commissioner shall assign the bridge to the jurisdiction of the Department and it shall be treated in all respects as if it were a State highway bridge assigned to the Department under N.J.A.C. 16:53B-4.1(a)1.

SUBCHAPTER 5. HEARINGS

16:53B-5.1 Hearings and procedures

(a) Only the Commissioner may initiate hearings, for the purpose of assigning bridges, either on the Commissioner's motion or in response to a petition. The hearings will be conducted by the Office of Administrative Law pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Before initiating such hearings, the Commissioner shall first determine that the requirements of N.J.A.C. 16:53B-3.1(e), as applicable, have been satisfied.

(b) Any party seeking the assignment of jurisdiction over a bridge may petition the Commissioner in writing to initiate hearings. The Commissioner shall have the discretion to decide whether or not to initiate hearings based upon such petition.

(c) In any hearing where the jurisdiction of a bridge is in question or dispute, the preponderance of the evidence shall serve as the standard for the trier of fact.

(d) Upon receiving the findings and recommendations of the Office of Administrative Law, the Commissioner may issue a final order assigning jurisdiction over a bridge, with such conditions as the Commissioner may deem desirable in the interest of protecting the public safety and welfare.

(e) When the Commissioner finds that a bridge is already under an existing jurisdiction, the Commissioner may order continuation of the existing jurisdiction without an allocation of railroad responsibilities as provided in N.J.A.C. 16:53B-6.1.

SUBCHAPTER 6. RAILROAD RIGHT-OF-WAY REQUIREMENTS

16:53B-6.1 Railroad responsibilities

(a) Regarding the inspection, maintenance, rehabilitation, replacement, or removal of railroad overhead bridges assigned under this chapter, the entity owning or controlling a railroad right-of-way shall provide the following services to the party with jurisdiction for the bridge over the right-of-way. Those services must be provided in the form and manner prescribed by the Commissioner, at the entity's own expense, and within a specified timeframe as determined by the Commissioner.

1. Necessary and sufficient access to railroad property and right-of-way, including applicable insurance;

2. Necessary track safety personnel and services, such as flag protection and de-energizing/energizing electric power lines;

3. Review of plans and specifications;

4. Consultants' fees; and

5. Any other incidental railroad services required to enable the party with jurisdiction over the railroad overhead bridge to undertake its applicable responsibilities, such as release of all appropriate records and plans related to a bridge.

(b) Following notice and a public hearing held pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, if the Commissioner determines that the entity has failed to provide the services required under this chapter with respect to a specific project for the repair, inspection, rehabilitation, or replacement of a bridge, and further determines that the project is in the public interest, the Commissioner shall, by written order, compel the entity to provide those services determined to be necessary, at whatever times and in whatever manner the Commissioner so determines.

SUBCHAPTER 7. EMERGENT SITUATIONS

16:53B-7.1 Emergent situations

(a) Emergent situations may require the immediate inspection, maintenance, rehabilitation, replacement, or removal of a railroad overhead bridge assigned under this chapter.

(b) When the Department determines that an emergent situation exists on a railroad overhead bridge, it shall notify the entity owning or controlling the railroad right-of-way.

(c) The entity owning or controlling a railroad right-of-way shall provide to the Department, in the form and in the manner prescribed by the Commissioner, at its own expense and within 24 hours of being notified of the emergent situation, the following:

1. Necessary and sufficient access to railroad property and right-of-way, including applicable insurance;
2. Necessary track safety personnel and services, such as flag protection and de-energizing or energizing electric power lines;
3. Review of plans and specifications;
4. Consultants' fees; and
5. Any other incidental railroad services required to enable the Department to remedy the emergent situation including, but not limited to, release of all appropriate records and plans related to a bridge.