

CHAPTER 53B**JURISDICTIONAL ASSIGNMENTS FOR
RAILROAD OVERHEAD BRIDGES****Authority**

N.J.S.A. 27:1A-5, 27:1A-6, 27:5G-1 et seq. and 52:14B-4(3).

Source and Effective Date

R.1994 d.232, effective April 15, 1994.
See: 26 N.J.R. 1203(a), 26 N.J.R. 2146(b).

Executive Order No. 66(1978) Expiration Date

Chapter 53B, Jurisdictional Assignments for Railroad Overhead Bridges, expires on April 15, 1999.

Chapter Historical Note

All provisions of the Chapter 53B, Commuter Operating Agency, were adopted pursuant to authority of N.J.S.A. 27:1A-1(d) and were filed and became effective on August 21, 1979 as R.1979 d.334. See: 11 N.J.R. 301(c), 11 N.J.R. 523(b).

This chapter expired on August 21, 1984 pursuant to Executive Order No. 66(1978).

NJ Transit allowed the Chapter 53B to expire since it has been incorporated in Chapter 25 Utility Accommodation, New Jersey Public Transportation Act of 1979, the statute that created NJ Transit. Chapter 53B was adopted as a new rule by R.1989 d.356, effective July 3, 1989. See: 21 N.J.R. 1103(a), 21 N.J.R. 1833(b).

Pursuant to Executive Order No. 66(1978), Chapter 53B was re-adopted as R.1994 d.232. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS**SUBCHAPTER 1. GENERAL PROVISIONS**

- 16:53B-1.1 Purpose and general policies
- 16:53B-1.2 Definitions
- 16:53B-1.3 General provisions
- 16:53B-1.4 Assignment of jurisdictions
- 16:53B-1.5 Hearings and procedures
- 16:53B-1.6 Railroad responsibilities
- 16:53B-1.7 (Reserved)

SUBCHAPTER 1. GENERAL PROVISIONS**16:53B-1.1 Purpose and general policies**

(a) As a result of the bankruptcy and Federal reorganization of the major railroads serving New Jersey, it became increasingly difficult under New Jersey law to determine who had primary responsibility for many bridges carrying roads over rail rights of way.

(b) The lack of definitive jurisdictions for many railroad overhead bridges has complicated the process of ongoing repair, rehabilitation and replacement of these bridges. Resolving jurisdictional questions is absolutely necessary.

(c) The Legislature recognized the importance of this matter and enacted the Railroad Overhead Bridge Act of 1988, P.L. 1988, c.171 (N.J.S.A. 27:5G-5 to 27:5G-19) (referred to herein as the Act) to address many of the questions confronted in this issue. That Act, and this chapter, are established to provide for orderly and equitable allocation of responsibilities for railroad overhead bridges. It is the express purpose of this chapter to avoid contentious deliberations pertaining to the jurisdiction of these bridges and to provide for reasonable and timely allocations of bridge responsibilities to the applicable parties.

(d) In the allocation of responsibilities under this chapter, emphasis will be put upon fashioning workable and cooperative jurisdictions and responsibilities. The resources and expertise of each of the applicable parties will be carefully considered under the provisions and procedures prescribed by this chapter.

(e) The purpose of this chapter is to resolve jurisdictional problems pertaining to railroad overhead bridges. The provisions herein shall not be applied in a manner contrary to the intent of the Railroad Overhead Bridge Act of 1988, the purpose of which is to provide for equitable allocation of bridge responsibility when jurisdictions are uncertain.

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

16:53B-1.2 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 Department of Transportation.

“Department” means the New Jersey Department of Transportation.

“Good repair” means that the structure is found by the Commissioner to be in safe and serviceable adequate 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.

"Public entity" includes, but is not limited to, 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 a highway or private road over and across a railroad, subway, or street traction, or electric railway, or over and across the right-of-way of such a railroad, subway, or railway.

16:53B-1.3 General provisions

(a) The provisions of chapter 12 of Title 48 of the Revised Statutes (N.J.S.A. 48:12-1 et seq.) have proven inadequate to ensure that each highway bridge crossing a railroad is under the jurisdiction of an agency which is ready, willing, and able to assume responsibility for the maintenance, inspection and, where necessary, the rehabilitation or replacement of the bridge.

(b) Under this chapter, a mechanism is established whereby each railroad overhead bridge which is to be rehabilitated or replaced, or which is determined to be in a state of good repair, can be assigned to the jurisdiction of a public entity. Under the provisions of this chapter, all parties potentially affected by a bridge jurisdiction assignment may present evidence to the Department. Each assignment shall be made by written order of the Commissioner.

(c) Any railroad overhead bridge which has been assigned to a jurisdiction by written order of the Commissioner under this chapter shall not be considered a bridge or passage under N.J.S.A. 48:12-49, and the provisions of chapter 12 of Title 48 shall not apply to it.

(d) 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.

(e) The issuance by the Commissioner of 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.

(f) 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 determined it to be in the public interest to accept 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-1.4 and the Commissioner further determines that the bridge is in good repair.

16:53B-1.4 Assignment of jurisdictions

(a) Railroad overhead bridge jurisdiction assignments made by the Commissioner shall be done under the consideration of the following criteria and in this order of significance:

1. All bridges carrying State highways are transferred to 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 person owning the road.

3. Each railroad overhead bridge carrying a highway, other than a State highway, over and across a right-of-way owned by the New Jersey Transit Corporation is transferred to the jurisdiction of that corporation, unless the Commissioner determines, subject to the provisions of (d) below, 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 preponderance of all the evidence reviewed, if it is determined that a county, municipality or other public entity has assumed effective control or responsibility over a bridge, the Commissioner shall assign the bridge to the jurisdiction of that entity. 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 purpose of assigning a bridge to an entity under this section. Evidence of emergency repairs which were necessary for the immediate safety and welfare of the public and which predate December 5, 1988 shall not be used as a determining factor for assessing past jurisdictional responsibilities. This is done in the interest of encouraging entities to maintain the safety of bridges for which the responsibility has yet to be ascertained.

(b) If the provisions of (a) above fail to readily provide for a prospective jurisdictional assignment for a railroad overhead bridge, the Commissioner may order the assignment of joint jurisdiction for the railroad overhead bridge to various persons and/or public entities. The joint jurisdictional order of the Commissioner shall allocate specific jurisdictional responsibilities to the applicable parties. This may include specific responsibilities pertaining to inter-agency coordination, approvals and inspection responsibilities.

(c) In general, joint jurisdictional orders shall be constructed in the following manner: The Department will assume jurisdictional responsibility for the principal structural elements and abutments of the bridge, which shall include structural repair, maintenance, rehabilitation, and replacement. The entity or entities with jurisdictional responsibility 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. These routine maintenance responsibilities shall not extend to the structural support components of any railroad overhead bridge under the jurisdiction of the Department or the New Jersey Transit Corporation.

(d) Any county or municipality having jurisdiction over a highway carried by or leading onto a railroad overhead bridge assigned to the jurisdiction of the New Jersey Transit Corporation 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. Routine maintenance responsibilities of a county or municipality shall not extend to the structural support components of any railroad overhead bridge under the jurisdiction of the Department or the New Jersey Transit Corporation.

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

Amended by R.1994 d.232, effective May 16, 1994.
See: 26 N.J.R. 1203(a), 26 N.J.R. 2146(b).

16:53B-1.5 Hearings and procedures

(a) Under the provisions of this chapter, only the Commissioner may initiate hearings, for the purpose of assigning bridges. This may be on his or her own 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 the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Before initiating such hearings, the Commissioner shall first determine that the requirements of section 4b of P.L. 1988, c.171, 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. It shall be within the Commissioner's discretion to decide whether or not to initiate hearings based upon such petition.

(c) In any hearing where jurisdiction(s) 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) A final order may be changed or amended by the Commissioner after the Commissioner initiates another hearing, which 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 the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 and upon receipt of the findings and recommendations resulting from such hearing.

(f) In those cases where the Commissioner finds that a bridge is ready under a preexisting jurisdiction, the Commissioner may order continuation of the existing jurisdiction and provide that an allocation of railroad responsibilities as outlined in N.J.A.C. 16:53B-1.6 is not applicable.

16:53B-1.6 Railroad responsibilities

(a) Regarding the inspection, maintenance, rehabilitation, replacement or removal of railroad overhead bridges assigned under this chapter, each person or railroad company owning or controlling a railroad right-of-way shall provide, in the form and in the manner prescribed by the Commissioner, at its own expense and in a timely fashion, the following services to the party with jurisdiction for the bridge over the right-of-way:

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; and
4. 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 the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, if the Commissioner determines that a person or railroad company 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 may, by written order, compel the person or railroad company to provide those services determined to be necessary.

16:53B-1.7 (Reserved)

Repealed by R.1994 d.232, effective May 16, 1994.
See: 26 N.J.R. 1203(a), 26 N.J.R. 2146(b).
Section was "Operative date".