

CHAPTER 53B
JURISDICTIONAL ASSIGNMENTS FOR
RAILROAD OVERHEAD BRIDGES

Authority

N.J.S.A. 27:1A-5, 27:1A-6 and 27:5G-1 et seq.

Source and Effective Date

R.2004 d.296, effective July 2, 2004.
See: 36 N.J.R. 1676(a), 36 N.J.R. 3559(b).

Chapter Expiration Date

Chapter 53B, Jurisdictional Assignments for Railroad Overhead Bridges, expires on July 2, 2009.

Chapter Historical Note

Chapter 53B, Commuter Operating Agency, was adopted as R.1979 d.334, effective August 21, 1979. See: 11 N.J.R. 301(c), 11 N.J.R. 523(b). Pursuant to Executive Order No. 66(1978), Chapter 53B expired on August 21, 1984.

Chapter 53B, Jurisdictional Assignments for Railroad Overhead Bridges, was adopted as new rules 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, Jurisdictional Assignments for Railroad Overhead Bridges, was readopted as R.1994 d.232, effective April 15, 1994. See: 26 N.J.R. 1203(a), 26 N.J.R. 2146(b).

Pursuant to Executive Order No. 66(1978), Chapter 53B, Jurisdictional Assignments for Railroad Overhead Bridges, was readopted as R.1999 d.90, effective February 19, 1999. See: 30 N.J.R. 4334(b), 31 N.J.R. 777(a).

Chapter 53B, Jurisdictional Assignments for Railroad Overhead Bridges, was readopted as R.2004 d.296, effective July 2, 2004. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

16:53B-1.1 Purpose and general policies

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

tions of bridge responsibilities, and to resolve jurisdictional problems pertaining to railroad overhead bridges.

(b) In determining the allocation of responsibilities, emphasis will be put upon obtaining workable and cooperative jurisdictions and responsibilities. The resources and expertise of each party will be carefully considered.

(c) This chapter shall not be applied in a manner contrary to the intent of the Railroad Overhead Bridge Act of 1988.

(d) 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.

(e) Any railroad overhead bridge assigned a jurisdiction 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 of the Revised Statutes shall not apply to it.

Amended by R.2004 d.296, effective August 2, 2004.
See: 35 N.J.R. 1676(a), 36 N.J.R. 3559(b).

Rewrote the section.

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 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 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 such a railroad, subway or railway.

Amended by R.2004 d.296, effective August 2, 2004.

See: 35 N.J.R. 1676(a), 36 N.J.R. 3559(b).

In "Good repair", deleted "adequate" following "serviceable"; in "Railroad overhead bridge", substituted "any public" for "highway".

16:53B-1.3 General provisions

(a) This chapter establishes a procedure 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.

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

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

(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) 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 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-1.4, as being in the public interest, and the Commissioner further determines that the bridge is in good repair.

Amended by R.2004 d.296, effective August 2, 2004.

See: 35 N.J.R. 1676(a), 36 N.J.R. 3559(b).

Rewrote the section.

16:53B-1.4 Assignment of jurisdictions

(a) Assignments of jurisdiction shall be made by the Commissioner 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 a preponderance of all the evidence reviewed, if the Commissioner determines that a county, municipality or public entity other than the Department or the New Jersey Transit Corporation has assumed effective control or responsibility over a bridge, the Commissioner shall assign the bridge to the jurisdiction of that entity. In the interest of encouraging 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 purpose of assigning a bridge to an entity under this section, nor shall evidence of emergency repairs which were necessary for the immediate safety and welfare of the public and which predate December 5, 1988 be used as a determining factor for assessing past jurisdictional responsibilities.

(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 accordance with (c)1 and 2 below. 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: