

State of New Jersey

# NJLRC

**New Jersey Law Revision Commission**

## **FINAL REPORT**

relating to

**PUBLIC TRANSPORTATION**

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**NEW JERSEY LAW REVISION COMMISSION**

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## INTRODUCTION

This Report was undertaken as part of the project to revise the laws relating to transportation. It includes all of subject matter on public transportation now found in Title 48 - Public Utilities. All of the proposed statutes on public transportation are new. The current statutes on public transportation in Title 48 -- Public Utilities is intermixed with statutes on kinds of public utility unrelated to transportation. Much of the current statutory material is old. It contains detailed regulation by statute on subjects that are not now of primary importance. At the time that many of the statutes in this area were enacted, public transportation companies were powerful economic forces. The situation has changed; there is now little to regulate. Most rail and bus service is provided by governmental entities or interstate operations acting by federal authority. There are some bus companies and a few rail companies subject to state regulation. These chapters provide authority for the Department of Transportation to require licenses for those public transportation operations and to regulate those companies as to safety, service and rates. For the most part, these chapters do not require particular kinds of regulation if those regulations no longer serve any public purpose.

## CHAPTER 31 - PUBLIC TRANSPORTATION, GENERALLY

### **27A:31-2. Free transportation of police**

Any public transportation company shall transport police officers and prosecutor's detectives engaged in the performance of their duties without fare.

Source: 48:3-32

#### COMMENT

This section is substantially similar to its source.

### **27A:31-3. Transportation of guide for blind person**

Any public transportation company shall transport a blind person and that person's guide for the ordinary fare charged for a single person.

Source: 48:3-34

#### COMMENT

This section is substantially identical to its source.

## **27A:31-4. Regulations**

The commissioner may issue regulations to effect the purposes of this subtitle.

Source: 48:2-12

### **COMMENT**

This section grants general regulatory power to the commissioner. Similar power was given to the Board of Public Utility Commissioners.

## **CHAPTER 32 - PUBLIC HIGHWAY TRANSPORTATION**

### **27A:32-1. Definitions**

As used in this chapter,

a. "bus" means a public transportation vehicle other than:

(1) a taxi;

(2) a limousine;

(3) a jitney;

(4) a vehicle used exclusively for the transportation of hotel patrons to or from airports, railroad stations or other transportation facilities;

(5) a vehicle used for the transportation of children to or from a school, camp, school or camp connected activity, child care center, pre-school center or other similar place of education, including "School Vehicle Type I" and "School Vehicle Type II" as defined in R.S. 39:1-1;

(6) a vehicle used in a ridesharing arrangement;

(7) a vehicle owned and operated by an employer and used exclusively for the transportation of its employees;

(8) a vehicle operated by authority of the New Jersey Public Transit Corporation.

b. "bus company" means any person holding a certificate of public convenience for the operation of a bus.

c. "jitney" means a public transportation vehicle carrying not more than 20 passengers and operated under municipal consent on an established route wholly in no more than four contiguous municipalities, which route is not, in whole or in part, on the same street as a bus route;

d. "limousine" means a public transportation vehicle with a carrying capacity of not more than nine passengers, not including the driver, which is hired by charter or for a particular contract, or for a fixed time period, or to transport passengers to a specified place or places, or which charges a price agreed upon in advance between the operator

and the passenger. "Limousine" does not include a vehicle that is providing regular service or is held out to be providing regular service between stated termini. "Limousine" does not include a taxicab, hotel bus or school bus;

e. "taxi" means an automobile operated as a public transportation vehicle under municipal consent available for hire on the street and not providing regular service between stated termini;

f. "public transportation vehicle" means any motor vehicle operated over public highways in this State for the transportation of passengers for hire in intrastate business, whether or not it is also used in interstate commerce.

Source: 48:4-1; 48:16-1; 48:16-23

#### COMMENT

Subsection (a) and (b), the definitions of "bus" and "bus company" are derived from 48:4-1 but have been simplified and clarified. Subsection (c), the definition of "jitney" is derived from 48:16-23. Subsection (d), the definition of "limousine" and subsection (e), the definition of "taxi" are derived from 48:16-1. Subsection (f), the definition of "public transportation vehicle" is new.

### **27A:32-2. Insurance**

a. No person may operate a public transportation vehicle or a horse-drawn vehicle in the business of carrying passengers for hire unless the owner of the vehicle has filed:

(1) a copy of an insurance policy issued by an insurance company licensed in this state against liability of the vehicle owner for damages for bodily injury or death of any person resulting from an accident involving the vehicle; and

(2) a power of attorney appointing the municipality attorney, if the filing is with a municipality, or the Commissioner of Transportation, if the filing is with the Department of Transportation, for receipt of process served on the owner as the result of an accident involving the vehicle.

b. When the requirements of subsection (a) are satisfied, a certificate in duplicate shall issue for each vehicle covered by the insurance policy and power of attorney stating the name of the insurance company, the number and date of expiration of the policy or bond and a description of the vehicle insured. The original certificate shall be posted in a conspicuous place within the vehicle.

c. If the vehicle is a bus, the filing shall be with the Department of Transportation, and that department shall issue the certificates.

d. If the vehicle is a taxi, horse-drawn vehicle, limousine or jitney the filing shall be with the clerk of the municipality in which the vehicle is operated, and that clerk shall issue the certificates. If a vehicle operates in more than one municipality, the filing shall be with the clerk of the municipality in which the owner has the principal place of business, and copies of the certificates issued by that clerk shall be filed with the clerk of each municipality in which the vehicle is operated.

e. The amount and type of insurance required for each class of vehicles for the transportation of passengers shall be set by the commissioner by regulation.

Source: 48:4-12; 48:4-19; 48:4-36; 48:4-37; 48:4-38; 48:4-40; 48:4-41; 48:4-47; 48:4-48; 48:4-49; 48:4-51; 48:4-52; 48:16-3; 48:16-4; 48:16-5; 48:16-6; 48:16-7; 48:16-14; 48:16-16; 48:16-17; 48:16-18; 48-16A-2; 48-16A-3; 48-16A-4; 48-16A-5; 48-16A-6

#### COMMENT

This section requires that public transportation vehicles and horse drawn vehicles used to carry passengers for hire carry liability insurance, register that insurance with a public authority and constitute that public authority an agent for service of process. These requirements are now made separately for each kind of vehicle. This section consolidates the requirements as well as simplifying and regularizing them. One distinction among kinds of vehicle made by the prior law is preserved: certain vehicles are regulated by municipalities, others by the Department of Transportation. Prior law specified the amount of insurance each kind of vehicle was required to carry. These amounts formed no discernible pattern; they have been replaced by subsection (e) which gives the Department of Transportation the authority to set amounts by regulation.

### **27A:32-3. Self-insurance**

a. The Commissioner of Insurance, by written order, pursuant to regulations of the Department of Insurance, may permit a corporation to carry its own liability insurance. The company may file a copy of the order with a sworn statement that the corporation is the owner of vehicles in lieu of an insurance policy or bond.

b. Permission for self-insurance may be revoked by the Commissioner of Insurance if, after notice and a hearing, it appears that the corporation no longer is able to pay damages which may result from an accident involving vehicles owned by it.

Source: 48:4-13; 48:4-39; 48:4-50; 48:16-8; 48:16-9; 48:16-19; 48:16-20; 48:16A-7; 48:16A-8

#### COMMENT

This section replaces a group of source sections which deal separately with the issue of self-insurance for each kind of vehicle. The section gives authority to the Commissioner of Insurance to decide when a company could self-insure.

### **27A:32-4. Penalty**

a. A person who operates a bus which is not at that time covered by insurance as required by this chapter or which does not display a valid permit, or who as owner permits such a vehicle to be operated, shall be subject to a penalty of up to \$1000. The penalty may be collected pursuant to the Penalty Enforcement Act in an action initiated by the Commissioner in the Superior Court or a municipal court.

b. A person who operates any public transportation vehicle other than a bus or operates a horse-drawn vehicle in the business of carrying passengers for hire which is not at that time covered by insurance as required by this chapter or which does not display

a valid permit, or who as owner permits such a vehicle to be operated, shall be guilty of a petty disorderly persons offense.

Source: 48:4-42; 48:4-43; 48:4-53, 48:4-54; 48:16-22; 48:16A-9

#### COMMENT

This section replaces a group of source sections which separately provide penalties for each kind of vehicle for failure to have insurance or to display the certificate issued by the regulating authority. If the vehicle is a bus, the penalty is administrative and imposed by the regulatory authority for buses, the Department of Transportation. In other cases, since enforcement will be by the municipality, the failure is made a petty disorderly persons offense.

### **27A:32-5. Standards for vehicles**

a. The commissioner may adopt regulations applicable to the construction, equipment, maintenance and vehicle emission standards of vehicles for the transportation of passengers and shall provide for the inspection of those vehicles to assure compliance. Regulations concerning vehicle emission standards shall be adopted in consultation with the Division of Motor Vehicles and the Department of Environmental Protection. For the purpose of implementing this section, Department inspectors may enter all vehicles for the transportation of passengers and all premises on which those vehicles are located. The commissioner may order the immediate discontinuance of the operation of a vehicle not in compliance with regulations and that vehicle shall not be restored to service without approval. Regulations adopted under this subsection may be made applicable to buses carrying passengers between points in this state and points in other states.

b. Any person, who, without the approval of the commissioner, removes or defaces a notice of discontinuance that has been affixed to a vehicle or who operates a public transportation vehicle without a valid certificate of inspection issued by the commissioner is subject to a penalty of up to \$1000. The penalty may be collected pursuant to the Penalty Enforcement Act in an action initiated by the Commissioner in the Superior Court or a municipal court.

c. The commissioner may provide by regulation, for the inspection of public transportation vehicles. Any person who owns or operates a vehicle required to be inspected which does not display a valid certificate of inspection issued by the commissioner is subject to a penalty of up to \$1000. The penalty may be collected pursuant to the Penalty Enforcement Act in an action initiated by the Commissioner in the Superior Court or a municipal court.

Source: 48:4-2.1a; 48:4-2.1b; 48:4-18

#### COMMENT

This section continues the authority of the commissioner to regulate the construction, equipment, maintenance and emission standards for public transportation vehicles. This authority is now given generally by 48:4-2.1a and in regard to emission standards by 48:4-2.1b. Similar authority was given to the Board of Public Utility Commissioners by 48:4-18.

Subsection (c) provides for required inspection of public transportation vehicles. It is a continuation of 48:4-2.1a(d) and (e).

## **27A:32-6. Certificate of public convenience**

a. A person may not operate a bus carrying passengers for hire within this state unless that operation is:

- (1) conducted by a public entity or under contract with a public entity;
- (2) exempt by other law from regulation by the Department of Transportation; or
- (3) permitted by a certificate of public convenience issued by the commissioner.

b. A certificate of public convenience shall be issued by the commissioner unless it appears that its issuance is not in the interest of public convenience, the promotion of public transportation, and the promotion of regular route bus service.

c. Each certificate may be limited to a particular class of operation. Classes of operation for which certificates may be granted are:

- (1) regular route bus service, operation between fixed termini, on a regular schedule and with provision for convenient one-way transportation in either direction;
- (2) special bus service, operation not on a regular schedule, on a special trip arranged and designated by a bus company for a fixed charge for each passenger;
- (3) commuter van service, operation with a seating arrangement designed to carry 8 to 15 adult passengers commuting on a daily basis to and from work;
- (4) charter bus service, operation not on a regular schedule and pursuant to an arrangement in which a company agrees to furnish a bus and a driver for a fixed charge per trip, per bus or per mile;
- (5) casino bus service, operation to or from any casino licensed under the "Casino Control Act," P.L. 1977, c.110 (C. 5:12-1 et seq.), unless that operation has been determined by the commissioner to be regular route bus service; and
- (6) other classes of service as defined by regulation

d. Certificates may be limited by conditions as to the area of operation, equipment, maintenance, service or any other conditions related to public convenience, the promotion of public transportation and regular route bus service. The commissioner may, upon notice and hearing, change the terms and conditions of any certificate.

e. The commissioner may exempt certain classes of bus operation from the certificate requirement established by this section where it appears that those classes do not have a significant impact on transportation or are subject to other regulatory control which make Department licensing unnecessary.

Source: 48:4-1.2; 48:4-2.25, 48:4-3; 48:4-3.1

### **COMMENT**

This section establishes the basic authority of the commissioner to regulate buses, authority now given by the source sections. The approach of subsection (b), limiting certificates to particular classes of bus service, reflects current practice. However, the section is new in one aspect of its approach to bus regulation. Current law assumes that an individual certificate is issued for each bus. See, e.g., 48:4-8. This

section provides for certificates for each operation. Regulatory authority was extended to casino, charter, and special bus operation by 48:4-2.25. Subsection (c) is derived from 48:4-3.1.

### **27A:32-7. Suspension or revocation of certificates**

a. The commissioner may, upon notice and hearing, revoke or suspend, for a specified period not to exceed one year, a certificate when the commissioner determines that its holder has failed to comply with any law or regulation or any conditions of the certificate.

b. In the interest of public safety, the commissioner may, upon notice, suspend any certificate pending resolution of any proceeding for suspension or revocation of said certificate under this section.

Source: 48:4-7

#### **COMMENT**

Subsection (a) of this section is substantially identical to the first paragraph of the source section. Subsection (b) is new. It would allow the commissioner to act to suspend a certificate when public safety requires that action.

Current law also allows the revocation of certificates when the demand for bus service is insufficient to support all companies. It seems more appropriate to leave such situations to market forces.

### **27A:32-8. Transfer of certificate**

A certificate for bus operation may be transferred by its holder with the approval of the commissioner. Application for approval may be made by either the transferor or transferee. After transfer, the transferor and transferee shall be jointly and severally liable for any outstanding debt due to the department at the time of transfer.

Source: 48:4-6

#### **COMMENT**

This section is substantially similar to its source.

### **27A:32-9. Penalties**

a. Any person who operates a bus without a certificate of public convenience required by this chapter, or who violates the provisions of a certificate of public convenience, is subject to a penalty of up to \$500 for each day of operation. The penalty may be collected pursuant to the Penalty Enforcement Act in an action initiated by the Commissioner in the Superior Court or a municipal court.

b. The commissioner may bring an action in Superior Court to enjoin a bus operation without a certificate of public convenience or in violation of the provisions of a certificate of public convenience.

c. Any person who operates a bus without a certificate of public convenience required by this chapter shall be liable for damages caused by the operation to the business of any other bus company.

d. When a person is subject to a penalty under this section on more than one occasion, the commissioner may, after notice and hearing, find that that person is an unfit operator and revoke all certificates of public convenience held by that person and bar that person from applying for other certificates. Any order under this subsection may be relaxed by the commissioner in the public interest or to further the purposes of this chapter.

Source: 48:4-11

COMMENT

This section is substantially similar to its source, but specifies the amount of penalty for each day of illegal operation.

**27A:32-11. Accidents**

The commissioner may adopt regulations requiring a bus company to give notice to the Department of any accidents occurring within the State connected with bus operations. The commissioner may investigate any accident and may make any orders or adopt any regulations with respect to safety, specifications or maintenance requirements as may appear to be in the public interest.

Source: 48:2-16

COMMENT

This section is substantially similar to subsections (2)(c) of 48:2-16.

**27A:32-12. Investigations**

The commissioner may investigate any matter within the Department's jurisdiction involving bus operations. The commissioner may inspect and examine all premises and all books, accounts, papers, records and memoranda kept by a bus company in respect of any matter which is within the department's jurisdiction and which would not be privileged in any judicial proceeding.

Source: 48:2-33

COMMENT

This section is substantially similar to its source.

**27A:32-15. Purchase or sale of bus company property**

a. A bus company shall not sell 60% or more of its property within any 12-month period, or agree to a merger or consolidation of its property or business, without obtaining permission from the commissioner.

b. A bus company shall give notice to the department in a manner prescribed by the commissioner, of every sale, purchase or lease of a bus.

Source: 48:3-7

COMMENT

Subsection (a) is substantially similar to 48:3-7, but while the source applies to all public utilities, this section is limited to bus companies. Subsection (b) reflects current practice.

**27A:32-20. Unreasonable practices forbidden**

No bus company may adopt or maintain any regulation or practice which is unjust, unreasonable, unduly preferential, arbitrarily or unjustly discriminatory or in violation of law.

Source: 48:3-2

COMMENT

The restriction on unreasonable regulations is derived from 48:3-2, but while the source applies to regulations of all public utilities, this section is limited to those of bus companies.

**27A:32-21. Municipal fees and charges**

A municipality shall not impose a franchise tax or municipal license fee on driving, owning or operating a bus.

Source: 48:4-2.2; 48:4-14.1; 48:4-14.2

COMMENT

This section is substantially identical to its sources except that it deletes the provision requiring the state to remit to each municipality the amount of franchise taxes it received from bus companies in 1972. No payments have been made under that provision for many years.

**27A:32-22. Annual assessments; tax on interstate buses**

a. The commissioner shall make an annual assessment against each bus company of not more than 1/4 of one percent of the bus company's gross operating revenues derived from intrastate operations during the preceding calendar year. The total of the annual assessments shall not exceed the amount of appropriations to the department used for the regulation of buses.

b. A person who operates a bus carrying passengers on highways in this State in interstate commerce, the revenues from that operation not being subject to the assessment provided in subsection (a), shall pay to the commissioner an excise tax for the use of the highways of one-half cent for each mile that the bus is operated on highways in this State. Excise tax receipts shall be used for the construction and maintenance of highways. No excise tax shall be due on the mileage traversed in:

(1) providing regular route commuter bus service between a point in the State and a point outside the State;

(2) providing bus service under contract with the New Jersey Transit Corporation; or

(3) providing special or rural transportation bus service under a contract with a county subject to the jurisdiction of the New Jersey Transit Corporation pursuant to P.L. 1979, c. 150 (C. 27:25-1 et seq.).

c. By regulation, the commissioner shall provide procedures for the calculation and collection of assessments and excise tax, and may require persons subject to assessments or excise tax to file reports containing relevant information.

Source: 48:2-59 to 72; 48:4-20 to 34

COMMENT

This section is substantially identical to its sources.

**27A:32-23. Municipal taxi permits**

a. A taxi may not accept a passenger in a municipality unless the taxi has been issued a permit by the municipality. A municipality may not require fees or other charges in excess of \$50.00 per year for a permit to operate a taxi.

b. A taxi permit may be revoked by the municipality, after notice and hearing, if it appears that the person to whom it was granted has failed to comply with any terms or conditions of the permit, or any law.

c. Any person who operates a taxi without the permit required by this section is guilty of a petty disorderly persons offense.

Source: 48:16-2, 48:16-10, 48:16-12

COMMENT

This section is substantially identical to its sources.

**27A:32-24. City jitney permits; fee or franchise tax**

a. A jitney may not be operated in any municipality unless the jitney has been issued a permit by the municipality.

b. A permit may be revoked by the municipality, after notice and hearing, if it appears that the person to whom it was granted has failed to comply with any terms or conditions of the permit, or any law.

c. A municipality may require fees and other charges of not more than \$100.00 per year for a permit to operate a jitney, or in lieu of fees and charges, may assess a monthly franchise tax of not more than five per cent of gross revenues. If the jitney is operated in part outside of the municipality, the tax shall be assessed on the proportion of

the revenues equal to the proportion of the jitney route which is in the municipality. If a franchise tax is imposed by a municipality, every person operating a jitney in that municipality shall file a monthly revenue statement.

d. Any person who operates a jitney without the permit required by this section or who fails to file a revenue statement required by this section is guilty of a petty disorderly persons offense.

Source: 48:16-24, 48:16-25, 48:16-27, 48:16-28

COMMENT

This section is substantially identical to its sources.

**27A:32-25. Other motor vehicle laws applicable**

Nothing in this chapter exempts a person who owns or operates a vehicle from complying with the law relating to the ownership, registration and operation of motor vehicles in this state.

Source: 48:4-2; 16-11; 16-21; 16-26

COMMENT

This section is substantially identical to its sources.

**CHAPTER 33 - RAILROADS**

**27A:33-1. Railroad defined**

For purposes of this chapter, "railroad" means any mode of transportation, the route of which is fixed by a track of any sort over which a vehicle moves, or by electrified rail, wires, or other power source to which a vehicle is attached. "Railroad" includes a street railway, trolley, trolley bus, trackless trolley, monorail. A railroad which is exempt from regulation because of federal or other state law, to the extent of that exemption, is not subject to this chapter.

Source: New

COMMENT

The definition of "railroad" is new. This chapter covers not only systems traditionally known as railroads but also other forms of vehicles traveling on a fixed guideway or traveling attached to a fixed power line. Such vehicles traditionally have included trolleys and trolley buses. While few such vehicles now operate, changes in technology make new kinds feasible. Since, at present, very few rail transportation systems subject to department regulatory power are operating, and all of these systems present similar issues, it is convenient to provide a single regulatory system for all of them. As a result, this chapter replaces both the chapter on railroads, 48:12-1 to 48:12-167, and the chapter on street railroads, 48:15-1 to 48:15-67.

### **27A:33-2. Licenses**

a. No person may operate a railroad in this State without an appropriate license as provided by this section.

b. The commissioner may establish classes of railroad operation requiring a license, and establish requirements, application procedures and fees for each type of license.

c. The commissioner may exempt certain classes of railroad operation from the licensing requirement established by this section where it appears that those classes do not have a significant impact on transportation or are subject to other regulatory control which make Department licensing unnecessary.

Source: Various

#### COMMENT

While there is no single source for this section, it is clear that a franchise is required for the operation of a railroad. The existence of franchises is assumed by the whole current statutory scheme. There is a reference to franchises in 48:12-2, exercise of a franchise without authority is made punishable by 48:12-157, and a railroad is not permitted to collect any passenger fares or freight charges unless those charges are authorized by the regulatory authority. See, 48:12-100 and 48:12-117.

### **27A:33-3. Safety regulations**

a. The commissioner may regulate the operation, maintenance, and equipment of railroads and of their rights of way to assure the safety of the public. The commissioner may also regulate the amounts and kinds of liability insurance required for railroad operations.

b. If any person is dissatisfied with the safety protection at a railroad crossing, that person may petition the commissioner to require appropriate safety protection.

Source: Various; 48:12-55

#### COMMENT

At present, there are many statutes specifying particular safety requirements for railroads. See, e.g. Duty to erect fences, 48:12-46, Bells and whistles on locomotives, 48:12-57, Spark arresters on engines, 48:12-85. Subsection (a) is a generalization of these requirements. It authorizes the department to enact regulations where public safety requires. The regulatory process is more flexible than the enactment of particular statutory safety requirements, and that flexibility will allow the regulations to follow current needs more closely.

### **27A:33-4. Service regulations**

a. The Department may regulate the service provided by railroads, including the railroad's routes and schedules, the kinds of services provided, and rates charged for those services. By regulation, the Department may require that a railroad receive a Department permit to commence, change, or discontinue service or to change rates charged. The commissioner may attach conditions on any permit required pursuant to this section.

b. If a railroad is required to maintain a particular service and fails to maintain it, the commissioner may appoint an administrator to manage the railroad and provide the service. The cost of the administrator and of any operations of the railroad while under administration shall be charged to the railroad.

Source: 48:12-99 to 48:12-108; 48:12-117 to 48:12-125; 48:12-145 to 150

#### COMMENT

This section is a generalization of three groups of current provisions. Sections 48:12-99 to 48:12-108 regulate the fares and other conditions of passenger service; 48:12-117 to 48:12-125 regulate freight charges; 48:12-145 to 150 provides a remedy if a railroad fails to run trains. This section is permissive; the department may choose to regulate on some or all of the subjects. It need not do so.

### **27A:33-5. Power of eminent domain**

a. When authorized by the commissioner, a railroad may take property in the exercise of the power of eminent domain. Except as limited by this section, when the construction of a route of a railroad is approved by the commissioner, that approval shall be deemed authorization for the exercise of the power of eminent domain insofar as that power is necessary for construction of that route or any station on it.

b. Any authorization to take any of the following kinds of property in the exercise of the power of eminent domain shall specifically identify the property and include a finding that the public need for railroad use of the property outweighs the current public use of the property:

- 1) public property devoted to public use;
- 2) property of a public utility;
- 3) property of another railroad.

c. The commissioner shall not authorize the taking of State land less than 25 feet under the bed of a body of water without the consent of the Commissioner of Environmental Protection.

Source: 48:12-35.1; 48:12-41; 48:15-16.1; 48:15-49

#### COMMENT

This section differs from its sources in one important respect: this section requires specific authorization by the commissioner for any exercise of eminent domain authority.

### **27A:33-6. Railroads on public rights of way**

The commissioner may authorize a railroad to operate on public property or right of way with the approval of the public body having control of that property or right of way. Any approval by a public body having control of property or right of way shall have the force of contract between that body and the railroad.

Source: 48:15-3; 48:15-29; 48:15-30

COMMENT

The sources for this section allow a municipality to grant to a street railway company the right to run trolleys on its streets. In accord with the increased state role in transportation, this section requires permission from both the Department of Transportation and the public entity with control of the highway.

**27A:33-7. Crossing highways, other railroads, bodies of water**

a. A railroad may construct its route across a public highway or the route of another railroad provided that the crossing is constructed in the manner allowed by Department regulations and provided that the crossing does not prevent or unnecessarily impede the use of the highway or railroad crossed

b. A railroad may construct its route across bodies of water, but any bridge, tunnel or other crossing shall be constructed in the manner allowed by Department regulations.

Source: 48:12-20; 48:12-36; 48:12-41

COMMENT

This section continues the policy of the source statutes, but it is written in more general terms than its sources.

**27A:33-8. Ownership and maintenance of highway crossings**

a. If a railroad grade crossing is not properly maintained, and as a result presents a hazard to the safety of the public, the municipality in which the crossing is located may perform necessary maintenance and petition the commissioner to order payment by the railroad or other responsible party.

b. If there is a dispute concerning the responsibility for maintenance of a bridge carrying a railroad over a highway, the commissioner may determine who has that responsibility. The commissioner shall assign that duty to the railroad unless it appears from review of applicable statutes, regulations, local ordinances, maintenance agreements, records concerning improvement projects and maintenance activities, and other applicable evidence that the preponderance of evidence indicates that the entity with responsibility for the highway has assumed effective control or responsibility for the bridge.

Source: 48:12-52; 48:12-75

COMMENT

Subsection (a) continues the power given to municipalities to maintain crossings which pose a danger to the public. The source section applies to bridges as well. Bridges carries a highway over a railroad are now handled in a more comprehensive way by sections 27:5G-6 through 27:5G-19. Bridges carrying a railroad over a highway are covered by subsection (b) which is patterned after 27:5G-10.

### **27A:33-9. Elimination of grade crossings**

To the extent of available funds, the commissioner may engage in a program of elimination of grade crossings. In furtherance of this program, the commissioner may identify crossings for elimination and order route changes or the construction of overpasses to eliminate these grade crossings.

Source: 48:12-61 to 48:12-78

#### COMMENT

The source sections establish a variety of programs to eliminate grade crossings. Some of these programs call for the division of cost between the state and the railroad. See 48:12-70 calling for 95% of the cost to be borne by the State. This section gives the general authority to eliminate grade crossings to the Department of Transportation. Matters concerning division of cost and responsibility for resulting structures are left to agreements among interested parties.

### **27A:33-11. Abandonment of service**

When a railroad abandons service on any part of its route, it shall inform the department and the governing bodies of each municipality in which the abandoned parts of the route are located. If the abandoned parts of the route include any grade crossings, the Department shall inform the public body having control of each highway crossed, and assure that the warning signs and signals for the crossing are removed and replaced with appropriate signs saying: "abandoned grade crossing".

Source: 48:12-58.1; 48:12-125.1 to 125.3

#### COMMENT

This section is substantially identical to its sources.

### **27A:33-12. Operating railroad vehicle while impaired**

No person shall operate a railroad vehicle while under the influence of or using intoxicating liquor or controlled dangerous substance as defined by NJS. 2C:35-2.

Source: 48:12-163

#### COMMENT

The source for this section penalizes only operating a railroad vehicle while intoxicated. This section has been broadened to include operating a railroad vehicle while under the influence of a controlled dangerous substance.

### **27A:33-13. Violations**

Any person who violates a provision of this chapter or a regulation issued pursuant to it shall be subject to a penalty of up to \$1000. The penalty may be collected pursuant to the Penalty Enforcement Act in an action initiated by the Commissioner in the Superior Court or a municipal court.

Source: Various

COMMENT

Many of the sections in the chapters of Title 48 which regulate railroads and street railways specify particular penalties for violations. This section provides a single penalty for violations of any of the provisions of the chapter.

**27A:33-14. Railroad police**

a. Any railroad may establish a police department.

b. A person shall not be employed as a railroad police officer unless approved by the Superintendent of State Police. The Superintendent of State Police shall investigate the character, competence, integrity, and fitness of persons applying to be railroad police officers and shall certify those approved.

c. Officers certified by the Superintendent of State Police and employed by a railroad police department shall have the powers of a municipal police officer. While on duty, a railroad police officer shall carry a badge with the words "railroad police" and the name of the railroad company by which the officer is employed. If the officer is in uniform, the officer shall wear the badge.

Source: 48:3-38

COMMENT

This section continues the substance of its source, but in a simplified form.