

Chapter 763

Railroad Crossings

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CROSS REFERENCES

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See Cross References to ORS 763.170

763.010 Definitions for ORS 763.010 to 763.100. As used in ORS 763.010 to 763.100:

(1) "Commissioner" means the Public Utilities Commissioner.

(2) "Highway" includes all roads, streets, alleys, avenues, boulevards, parkways and other places in this state actually open and in use, or to be opened and used for travel by the public.

(3) "Public authority" means the state, county, municipality or other public authority.

(4) "Railroad" means every railroad, including interurban and suburban railroads, by whatsoever power operated, with all bridges, ferries, tunnels, equipment, switches, spurs, sidings, tracks, stations and terminal facilities of every kind, used, operated, controlled, managed or owned by or in connection therewith, but "railroad" does not include street railways operating within the limits of any incorporated city.

(5) "Railroad company" includes every corporation, company, association, joint stock association, partnership or person, and their lessees, trustees or receivers, appointed by any court whatsoever, owning, operating, controlling or managing any railroad.

763.015 Application and construction of ORS 763.010 to 763.100. ORS 763.010 to 763.100 do not apply to cities of 100,000 population or over and shall not be construed as taking away the powers and duties of the commissioner, as defined in ORS 763.150 and 763.160.

763.020 Grade crossing to be constructed only with permission of commissioner after hearing; ex parte authorization of side tracks and spurs. (1) Except for the replacement of lawfully existing roads, highways and tracks, no highway shall be constructed across the track of any railroad company at grade, nor shall the track of any railroad company be constructed across a highway at grade, without having first secured the permission of the commissioner.

(2) The commissioner may, after a hearing:

(a) Refuse or grant permission upon such terms and conditions as he prescribes.

(b) Determine and prescribe the manner, maintenance, use and protection of each grade crossing, and prescribe the place of crossing.

(3) However, the commissioner, upon good cause appearing therefor, and upon such conditions as he may prescribe, by ex

parte order, and without the hearing required by this section, may authorize the establishment of side tracks or industrial spurs across existing highways.

763.030 Elimination and alteration of grade crossing. (1) The commissioner may also, after a hearing upon a petition filed by the public authority in interest, eliminate a grade crossing by a relocation of the highway when, in his opinion, the public safety, public convenience and general welfare require such alteration or change.

(2) The commissioner may also, after a hearing:

(a) Alter or abolish any grade crossing or change the location of such crossing when, in his opinion, the public safety, public convenience and the general welfare require such alteration, abolition or change, or require a separation of grades at any such crossing; and

(b) Prescribe the terms upon which such separation, alteration or change shall be made.

763.040 Construction and alteration of crossings above or below grade. (1) No highway shall be constructed across the track of any railroad company above or below grade, nor shall the track of any railroad company be constructed across a highway above or below grade, without having first secured the permission of the commissioner. If permission is granted, the commissioner shall, after a hearing, prescribe the terms and conditions upon which such crossing shall be made.

(2) The commissioner may also, after a hearing, alter or change any crossing constructed where a highway crosses the track of a railroad company above or below grade, or where the track of a railroad company crosses a highway above or below grade, when, in his opinion, the public safety, public convenience and the general welfare require such alteration or change. The commissioner shall prescribe the manner in which such alteration or change shall be made.

763.050 Division of crossing expenses between railroad and public authority. The following expenses shall be divided between the railroad companies and the public authority in interest in such a manner and in such proportion as the commissioner deems just and reasonable under the circumstances:

(1) That portion of the expense of any alteration or change resulting in the elimi-

nation of a grade crossing under subsection (1) of ORS 763.030 by reason of relocation of the highway which is directly chargeable to the grade elimination.

(2) The expense of any alteration, abolition or change of any grade crossings and their separation and maintenance under subsection (2) of ORS 763.030.

(3) The expenses of construction, maintenance and alteration of crossings above or below grade made under ORS 763.040.

763.060 Payment of expenses from state highway funds and from county funds.

(1) As to all crossings above or below grade constructed on state highways, the proportion of expense to be borne by public authority shall be paid from the state highway funds.

(2) Any county, acting through its county court or board of county commissioners, may, at its option, by agreement with the State Highway Commission, bear a share of the expense of constructing any railroad crossing above or below grade on a state highway within said county.

763.070 Expense contributed by public held in trust by railroad company. Any portion of the cost or expense that is contributed or borne by any public authority under ORS 763.010 to 763.100 shall forever be considered as held in trust by the railroad company receiving the same or the benefits thereof, and no part thereof shall be considered a part of the value of the property of the railroad company upon which it is entitled to receive a return.

763.080 Procedure to obtain permission for crossings. (1) The procedure to carry out ORS 763.010 to 763.100, including the right to review any order of the commissioner shall be substantially the same as that prescribed in ORS chapter 760.

(2) However, any railroad company or the federal, state, county, city or town authorities authorized to lay out and construct highways, may, when said railroad company desires to lay out and construct any railroad or the public authority desires to lay out and construct any highway, file a petition with the commissioner for permission to cross any existing railroad or highway, either at grade, or above or below grade, or to alter or abolish any grade crossing or to change the location of any such grade crossing, or for separation of grades, or to alter or change any such separation of grades.

The commissioner may adopt rules to govern the procedure, and to regulate the mode and manner of all investigations and hearings under ORS 763.010 to 763.100.

763.090 Procedure to compel compliance with orders. (1) The railroad company, public authority or person to whom the order of the commissioner is directed under ORS 763.010 to 763.100, shall comply with such order. In case of failure to comply, the commissioner shall thereupon take proceedings to compel obedience to such order.

(2) The circuit court has power in case of all such orders by the commissioner to compel obedience therewith by mandamus, brought in the name of the state, subject, however, to appeal to the Supreme Court in the same manner and with like effect as provided in cases of appeal from the order of the circuit court.

763.100 Work and materials furnished by railroad company; supervision of work. All work and the material for work done under ORS 763.010 to 763.100 within the limits of railroad right of ways shall, if the railroad company so desires, be furnished and done by the railroad company. However, the commissioner shall have supervision of the work and may decide the kind of material to be used.

763.110 to 763.140 [Reserved for expansion]

763.150 Petition of railroad company or municipal authority to establish grade crossing. (1) Whenever any railroad company desires to cross any established and existing highway at grade, it shall file with the Public Utilities Commissioner its petition in writing, setting forth the objections and difficulties to making such crossings either above or below the grade of such highway.

(2) Whenever the county court or board of county commissioners of any county or the municipal authorities of any city or town desire to lay out or extend any highway over and across any established and existing railroad at grade, they shall file with the commissioner their petition in writing, setting forth the objections and difficulties of making such crossing either above or below the grade of such railroad.

763.160 Hearing; findings; order to install warning devices; allocation of cost. (1) On receiving a petition under ORS 763.150,

the commissioner shall immediately investigate the same, notifying the railroad company and the county or municipality affected thereby of the time and place of such investigation, to the end that all parties interested may be present and heard at such investigation.

(2) The evidence introduced shall be reduced to writing and filed with the commissioner.

(3) If the commissioner finds that he ought not to require such highway or railroad to be so constructed as to cross above or below the grade of the existing railroad or highway, he shall by orders filed in the cause and duly entered upon its minutes, grant the right and privilege to construct such railroad or highway across such established railroad or highway at grade.

(4) The commissioner may provide that such railroad shall, before operating its trains over any established highway or at any subsequent time, install and maintain proper signals, warnings, gates or other devices to warn and protect the public, and may order the installation and maintenance of proper signals, warnings, gates or other devices to warn and protect the public, before granting permission for such highway to be constructed across the established railroad at grade.

(5) The cost and expense of the installation of such crossing, signals, warnings, gates or other devices and of the maintenance thereof shall be apportioned by the commissioner in such manner as is just and equitable under the circumstances surrounding each case.

763.170 Complaints on dangerous grade crossings; notice; hearing; orders. (1) Whenever a complaint is lodged with the Public Utilities Commissioner by the common council or mayor of any city, or any county judge or county commissioner or county roadmaster, or by five or more freeholders and taxpayers in any town or road district to the effect that a public highway and a railroad cross one another in such city or road district at the same level, and that such grade crossing is unsafe and dangerous to travelers over such highway or railroad, the commissioner shall give notice to the railroad in interest of the filing of such complaint, and furnish a copy of the same to the railroad company, and order a hearing thereon in the manner provided for hearings in ORS 760.510.

(2) If upon such hearing it appears to the satisfaction of the commissioner that the crossing complained of is unsafe and dangerous to human life, he may order and direct the railroad:

(a) To erect gates at the crossing and place an employe in charge to open and close the same when an engine or train passes; or

(b) To station a flagman at such crossing who shall display a flag when an engine or train is about to pass; or

(c) To provide such crossing with an electric signal, or other suitable device as the commissioner determines is required for better security of human life and public travel.

(3) The railroad shall comply with the terms of such order.

763.180 Procedure for determining mode of track crossing of intersecting railroads.

(1) Whenever it becomes necessary for the track of one railroad to cross the track of another railroad, the commissioner shall ascertain and define upon complaint or his own motion and on notice, in the manner provided in ORS 760.510 and 760.515, the mode of such crossing which occasions the least probable injury upon the safety, welfare and interests of the public and the rights of the company owning the road which is intended to be crossed.

(2) The commissioner shall also determine the compensation to be paid by the railroad so seeking to cross the other, if the railroads are unable to agree thereon, and the points and manner of such connection.

(3) If it appears to the commissioner that it is reasonable and practicable to avoid a grade crossing, the commissioner shall by his order prevent the same, and shall prescribe the manner of such crossing.

(4) If any railroad seeks to cross at grade with its tracks the tracks of another railroad, the railroad seeking to cross at grade shall be compelled to pay all damages caused by such crossing, and to interlock or protect such crossing by safety devices to be designated by the commissioner, and to pay all costs of appliances, together with the expenses of putting them in and maintaining them. This requirement does not apply to crossings of sidetracks.

763.190 Installation of protective devices where railroads intersect at grade.

(1) In any case where the tracks of two or more railroads cross each other at a com-

mon grade in this state, the railroads, when ordered by the commissioner upon the complaint or his own motion, upon notice, in the manner provided in ORS 760.510 and 760.515, shall protect such crossings by interlocking or other safety devices, under regulations to be designated by the commissioner, to prevent trains colliding at such crossings.

(2) The commissioner in making such order shall designate the manner of such interlocking protection, and shall apportion the cost of installing and maintaining the

same between the several railroads, if such railroads are unable to agree upon the same between themselves.

763.200 Forfeiture for failure to comply with ORS 763.180 or 763.190. Any company, corporation, person or receiver operating any railroad who neglects to comply with any order made by the commissioner pursuant to ORS 763.180 or 763.190 shall forfeit and pay to the state a penalty of \$500 per week for each week of such neglect. This penalty may be recovered in an action to be brought in the name of the state.