Chapter 763

1969 REPLACEMENT PART

Railroad Crossings

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Judicial proceedings to enforce this section, 760.027

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

(1) "Commissioner" means the Public Utility 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763.015 [Repealed by 1969 c.352 §1]

763.020 Grade crossings to be constructed only with permission of commissioner after petition and hearing; ex parte authorization of side tracks and spurs; warning devices. (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) Whenever any railroad company desires to cross any established and existing highway at grade or any public authority desires to lay out and extend any highway over and across any established and existing railroad at grade, it shall file with the commissioner its petition setting forth the objections and difficulties of making such crossing either above or below the grade of the existing highway or railroad.

(3) The commissioner may, after a hearing, if he finds that he ought not to require such railroad or highway to be so constructed as to cross above or below the grade of the existing highway or railroad:

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

(b) Determine and prescribe the manner of construction, maintenance, use and protection, including the number, kind and location of warning signs, signal devices and stop signs to be installed at each grade crossing, the allocation of costs thereof, and prescribe the place of crossing.

(4) 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.

[Amended by 1963 c.118 §1]

763.030 Elimination, relocation and alteration of grade crossing. (1) The commissioner may, 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 elimination and relocation.

(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, abolition or change shall be made including the number, kind and location of warning signs, signal devices and stop signs to be installed at the grade crossing.

[Amended by 1963 c.118 §2]

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 elimination 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 including signalization and other warning devices at 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.

[Amended by 1963 c.118 §3]

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 763.170 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.

[Amended by 1963 c.118 §4]

763.080 Procedure to obtain permission for crossings. (1) The procedure to carry out ORS 763.010 to 763.190, including the right to review any order of the commissioner shall be substantially the same as that prescribed in ORS chapter 756.

(2) 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 763.190. The commissioner may, upon good cause appearing therefor and when no issue has been raised by any public authority in interest or railroad company, and upon such conditions as he may prescribe, enter an order granting or denying the authority or relief requested without the hearing otherwise required under this chapter.

[Amended by 1963 c.118 §5]

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 763.190, 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.

[Amended by 1963 c.118 §6]

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 763.190 within the limits of railroad rights of way 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; provided, that with respect to state highways, the work shall be done under the direct supervision of the Highway Division of the Department of Transportation.

[Amended by 1953 c.190 §2; 1963 c.118 §7]

763.150 [Repealed by 1963 c.118 §10]

763.160 [Repealed by 1963 c.118 §10]

763.170 Dangerous grade crossings; notice; hearing; order to install warning devices; allocation of cost. (1) The Public Utility Commissioner on his own motion may, or upon complaint 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, county or road district to the effect that a public highway and a railroad cross one another in such city, county or road district at the same level, and that such grade crossing is unsafe and dangerous to travelers over such highway or railroad, 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, subject to the provisions of subsection (3) of this section, order and direct the railroad to install and maintain proper signals, warnings, gates or other devices to warn and protect the public, and establish a date by which such signals, warnings, gates or other devices are to be installed and placed into operation.

(3) The commissioner shall apportion the cost and expense of the installation thereof between the public and the railroad in such manner as shall be just and equitable, taking into consideration the relative benefits received under the circumstances surrounding each case, and shall suspend the effective date of his said order until the public agency or agencies in interest, as determined by the commissioner, have consented to said apportionment and have agreed to comply therewith; provided, however, that in no case shall the commissioner allocate more than 50 percent of said cost to the public.
[Amended by 1961 c.88 §1]

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 756.505 to 756.610, 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.
[Amended by 1963 c.118 §8]

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 common 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 756.505 to 756.610, 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.
[Amended by 1963 c.118 §9]

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.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1969.

Robert W. Lundy
Legislative Counsel