

# Chapter 763

## 1983 REPLACEMENT PART

### Railroad Crossings

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**GENERAL PROVISIONS**

**763.010 Definitions.** As used in this chapter, unless the context requires otherwise:

(1) "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.

(2) "Installation costs," when used in the context of protective devices, includes costs of acquiring, assembling and rendering operational the device and its attendant controls, circuitry and fail-safe mechanisms.

(3) "Maintenance costs," when used in the context of protective devices, includes preventive maintenance, repair and replacement of the device and its attendant controls, circuitry and fail-safe mechanisms.

(4) "Protective device" means a sign, signal, gate or other device to warn or protect the public, installed at a railroad-highway crossing.

(5) "Public authority in interest" means the state, county, municipal or other governmental body with jurisdiction over the highway crossing the railroad track.

(6) "Railroad" has the meaning given that term in ORS 760.005, and includes logging and other private railroads.

(7) "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. [Amended by 1971 c.655 §141; 1973 c.717 §1; 1975 c.537 §1]

**763.013 Policy; authority vested in state and commissioner.** It is the policy of this state to achieve uniform and coordinated regulation of railroad-highway crossings and to eliminate crossings at grade wherever possible. To these ends, authority to control and regulate the construction, alteration, and protection of railroad-highway crossings is vested exclusively in the state, and in the Public Utility Commissioner as provided in this chapter. [1973 c.615 §7]

*Note:* 763.013 and 763.110 to 763.130 were enacted into law by the Legislative Assembly and were added to and made a part of ORS chapter 763 but not to any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**763.015** [Repealed by 1969 c.352 §1]

**763.020 Authority to construct grade crossings; protective devices.** (1) Except for the repair of lawfully existing roads and highways or the replacement of 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 application setting forth the objections and difficulties of making such crossing either above or below the grade of the existing highway or railroad.

(3) Upon receipt of the above application the commissioner, after hearing, unless a hearing is not required under ORS 763.080, shall:

(a) Determine whether the public safety, public convenience and general welfare require a grade separation; and

(b) In the event a grade separation is not required, determine whether the application should be refused or granted, and upon what terms and conditions.

(4) If the grade crossing application is granted, the commissioner shall determine and prescribe the manner of construction, maintenance, use and protection, including the number, kind and location of protective devices and stop signs to be installed at the crossing, the allocation of costs and the place of the crossing. [Amended by 1963 c.118 §1; 1971 c.655 §142; 1973 c.717 §2]

**763.030 Elimination, relocation or alteration of grade crossing; installation or alteration of protective devices.** (1) The commissioner, upon application by a railroad, the public authority in interest, the Department of Transportation, or upon the commissioner's own motion, subsequent to a hearing, unless a hearing is not required under ORS 763.080, and upon finding that such action is required by the public safety, necessity, convenience and general welfare may:

(a) Eliminate a grade crossing by relocation of the highway;

(b) Alter or abolish any grade crossing or change the location thereof, or require a separation of grades at any such crossing;

(c) Alter or change any existing crossing at separated grades; and

(d) Require installation or alteration of protective devices.

(2) The commissioner shall prescribe the time and manner of such alteration, change, installation or alteration, and the terms and

conditions thereof. [Amended by 1963 c.118 §2; 1971 c.655 §143; 1973 c.717 §3; 1979 c.122 §1]

**763.035 Authority to fix speeds and regulate sounding of train warning devices at crossings.** (1) The power to fix and regulate the speed of railway trains and to regulate the sounding of railway train warning devices at public railroad-highway crossings is vested exclusively in the state.

(2) Upon petition of any public authority in interest or of any railroad or upon the commissioner's own motion, the commissioner shall, after due investigation and hearing, unless a hearing is not required under ORS 763.080 enter an order fixing and regulating the speed of railway trains or regulating the sounding of railway train warning devices.

(3) The speed limits fixed by the commissioner shall be maximum speed limits and shall be commensurate with the hazards presented and the practical operation of the trains. [Formerly 760.050; 1983 c.750 §1]

Note: Section 2, chapter 750, Oregon Laws 1983, provides:

Sec. 2. Notwithstanding the amendments to ORS 763.035 by section 1 of this Act, any ordinance of a political subdivision of this state that regulates the sounding of railway train warning devices and that is in effect on the effective date of this Act [August 4, 1983] shall remain in effect and shall not be preempted by ORS 763.035 as amended by section 1 of this Act until the Public Utility Commissioner, after the effective date of this Act, first enters an order establishing regulation of railway train warning devices under the authority granted by the amendments to ORS 763.035 by section 1 of this Act.

**763.040 Construction and alteration of crossings above or below grade.** 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, unless hearing is not required under ORS 763.080, prescribe the terms and conditions upon which such crossing shall be made and shall allocate the cost of construction and maintenance. [Amended by 1971 c.655 §144; 1973 c.717 §4]

**763.050** [Amended by 1963 c.118 §3; 1971 c.655 §145; 1973 c.717 §5; renumbered 763.250]

**763.055 Specifications for construction and maintenance of crossings; application of specifications; priorities; compliance.** (1) The commissioner shall adopt regulations prescribing specifications for the construction and maintenance of railroad-highway cross-

ings, both at grade level and at separated grades. The specifications shall be developed in consultation with the Department of Transportation and representatives of cities and counties, and shall conform to nationally recognized and commonly used standards to insure that the crossings are constructed and maintained in a manner that conforms to the public safety, necessity, convenience and general welfare, including but not limited to the projected transportation needs.

(2) Specifications for separate crossings adopted under subsection (1) of this section do not apply to crossings in existence on the effective date of the regulation prescribing the specifications. However, within a reasonable period after the effective date, crossings shall be altered or reconstructed to comply with the regulations in effect at the time of the alteration or reconstruction.

(3) Priorities for such alterations or reconstruction shall be established by the commissioner, based upon the expressed need of the public authority in interest, and upon such other factors as danger or inconvenience to motorists, age of the structure, frequency of reported accidents and degree of noncompliance with regulations.

(4) If the public authority in interest or the railroad company fails to so alter or reconstruct a crossing, the commissioner, after notice and hearing, shall order the alteration or reconstruction and proceed in accordance with ORS 763.090. [1973 c.717 §14]

**763.060** [Amended by 1971 c.655 §146; 1973 c.717 §6; renumbered 763.260]

**763.070** [Amended by 1963 c.118 §4; renumbered 763.320]

**763.080 Procedure to obtain permission for crossings.** (1) Proceedings to carry out ORS 763.010, 763.020, 763.030, 763.040 to 763.100, 763.170 to 763.190, 763.250, 763.260 and 763.320, including the right to review any order of the commissioner, shall be substantially the same as that prescribed in ORS chapter 756. If the final order of the commissioner, in a proceeding initiated under ORS 763.030 or 763.170 by a city or county is appealed and the city or county prevails, it shall be entitled to costs and reasonable attorney fees.

(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, 763.020, 763.030, 763.040 to 763.100, 763.170 to 763.190, 763.250, 763.260 and 763.320. Upon good cause appearing there-

for and when no issue has been raised by the parties to the proceeding, or when all issues raised have been resolved between the parties, the commissioner may, 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.

(3) The authority granted the commissioner by this chapter is in addition to and not in lieu of the authority of the Department of Transportation or of any city, county or other political subdivision of the state to use other remedies and procedures to provide public highways for the traveling public. [Amended by 1963 c.118 §5; 1971 c.655 §147; 1973 c.717 §7]

**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, 763.020, 763.030, 763.040 to 763.100, 763.170 to 763.190, 763.250, 763.260 and 763.320, 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 Court of Appeals 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; 1971 c.655 §148]

**763.100 Work and materials furnished by railroad company; supervision of work.** All work and the material for work done under ORS 763.010, 763.020, 763.030, 763.040 to 763.100, 763.170 to 763.190, 763.250, 763.260 and 763.320 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]

**763.110 Advance warning signs.** The commissioner may prescribe the number, kind and location of advance warning signs to be installed on the highway in advance of a railroad-highway grade crossing. Such signs shall conform to standards adopted by the Department of Transportation. [1973 c.615 §8]

Note: See note under 763.013.

**763.120 Authority over duration that grade crossing may be blocked; penalty.**

(1) The power to fix and regulate the length of time a public railroad-highway grade crossing may be blocked by railroad equipment is vested exclusively in the state.

(2) Upon petition of the public authority in interest, or of any railroad or upon the commissioner's own motion, the commissioner shall, after due investigation and hearing, unless hearing is not required under ORS 763.080, enter an order fixing and regulating the length of time a public railroad-highway grade crossing may be blocked by railroad equipment.

(3) The time limits fixed by the commissioner shall be maximum time limits and shall be commensurate with reasonable requirements of train and vehicular traffic operations.

(4) Violation of a time limit fixed by the commissioner under this section is punishable, upon conviction, by a fine of not less than \$100 nor more than \$3,000 for each offense. [1973 c.615 §9; 1979 c.415 §2]

Note: See note under 763.013.

**763.130 When stop signs are to be installed by railroad; exemption.** (1) At every farm or private grade crossing of a railroad where no automatic grade crossing protective device is installed, the railroad shall cause to be installed and maintained, as a means of protecting the crossing, one or more stop signs.

(2) The commissioner shall, after hearing, unless hearing is not required under ORS 763.080, prescribe the number, type and location of the stop signs and may exempt a farm or private crossing if he finds that the installation of such sign or signs at the crossing would create a hazard or dangerous condition that would not otherwise exist. [1973 c.615 §10]

Note: See note under 763.013

**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 protective 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 residents and taxpayers in any city, 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 company, 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 756.500 to 756.610.

(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 the crossing closed or order and direct the railroad to install and maintain proper protective devices, and establish a date by which such devices are to be installed and placed into operation. The commissioner shall apportion the installation and maintenance costs thereof in accordance with ORS 763.270 (1), and shall suspend the effective date of his said order until the public authority in interest has consented to said apportionment and has agreed to comply therewith. [Amended by 1961 c.88 §1; 1971 c.655 §149; 1973 c.717 §8; 1975 c.537 §2]

**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 756.500 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; 1971 c.655 §149a]

**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 756.500 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; 1971 c.655 §149b]

**763.200 Forfeiture for noncompliance.** 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. [Amended by 1971 c.655 §150; 1973 c.717 §17; 1975 c.318 §4; 1975 c.537 §3]

**763.210 Use of findings of commissioner regarding hazards at crossings.** The determinations of the commissioner under this chapter as to hazards at crossings shall not be admissible in any civil action for damages. [1971 c.655 §151]

## COST ALLOCATIONS

**763.250 Division of costs between railroad and public authority.** The following costs shall be divided between the railroad and the public authority in interest in such proportion as the commissioner finds just and equitable under the circumstances in each case:

(1) That portion of the cost of any alteration or change resulting in the elimination of a grade crossing under ORS 763.030 (1) by reason of relocation of the highway which is directly chargeable to the grade elimination.

(2) The costs of construction, change, alteration, abolition and relocation of any grade crossing involved in a proceeding arising under ORS 763.020, 763.030, or 763.170.

(3) The costs of maintenance of crossings above or below grade under ORS 763.030 and 763.040.

(4) Any cost otherwise apportionable under the terms of ORS 763.270 (1)(a) or 763.280 (1) to the extent that funds are not available from the Grade Crossing Protection Account. [Formerly 763.050; 1975 c.537 §4]

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

(2) Any public authority in interest acting through its governing body may, at its option, by agreement with the Department of Transportation, bear a share of the expense of constructing any railroad crossing above or below grade on a state highway.

(3) If federal funds allocated specifically for removal of hazards at hazardous railroad-highway crossings are available for any part of the work to be performed, the commissioner shall cause such funds to be used for such purposes. [Formerly 763.060]

**763.270 Apportionment of costs of protective devices.** (1) In any grade crossing proceeding arising under ORS 763.020, 763.030, or 763.170, unless the parties agree otherwise, installation and maintenance costs of protective devices shall be apportioned as follows:

(a) At an existing or relocated crossing: 75 percent of the installation costs to the Grade Crossing Protection Account and all remaining installation costs to the public authority in interest and the railroad company as is just and equitable under the circumstances in each case, but not more than 5 percent shall be apportioned to the public authority in interest, and all maintenance costs to the railroad company.

(b) At a new crossing requested by a public authority: All installation costs to the public authority in interest, and all maintenance costs to the railroad company.

(c) At a new crossing requested by a railroad company: All installation and maintenance costs to the railroad company.

(2) As a condition precedent to the issuance of an order in any such proceeding, the commissioner may require the closure of any existing crossing in the area and shall apportion to the railroad company, for each crossing closed, not less than 5 percent of the total cost of installation of the protective devices. Such additional portion shall reduce the share otherwise apportionable to the public authority in interest. [1973 c.717 §10; 1975 c.537 §5]

**763.280 Allocations for crossings above or below grade.** In any proceeding involving a crossing above or below grade arising under ORS 763.030 or 763.040, unless the parties agree otherwise, the cost of construction, reconstruction, or alteration of such crossings shall be apportioned as follows:

(1) At existing crossings above or below grade: 10 percent of the cost of reconstruction or alteration to the public authority in interest and all remaining costs of reconstruction or alteration to the Grade Crossing Protection Account and the railroad in interest as is just and equitable under the circumstances in each case.

(2) At a new crossing requested by a public authority: All construction costs to the public authority in interest.

(3) At a new crossing requested by a railroad company: All construction costs to the railroad company. [1973 c.717 §11; 1975 c.537 §6]

**763.290 Apportionment where federal funds available.** In the event any protective device is to be installed or altered at an existing or relocated crossing or any reconstruction or alteration is made at an existing separation structure, with the aid of any federal funds administered by the Federal Highway Administration of the United States Department of Transportation, the commissioner shall, unless the parties agree otherwise:

(1) Apportion the amount of such federal funds to payment of installation, reconstruction, or alteration costs; and

(2) Apportion the remaining costs of installation, reconstruction, alteration, and maintenance as provided by ORS 763.250, 763.270 and 763.280; however, in a case where the federal fund assistance equals or exceeds 85 percent of the cost of installing, altering and reconstructing protective devices at an existing or relocated crossing, the remaining costs, except for maintenance costs, may be allocated entirely to the Grade Crossing Protection Account. [1973 c.717 §12; 1975 c.537 §7; 1977 c.336 §1; 1983 c.23 §1]

**763.300 Procedure where disagreement as to allocation exists.** (1) In any proceeding under ORS 763.030 or 763.170, where the application to the commissioner states that the parties are not in agreement as to apportionment of costs, but the applicant is willing to advance the amount of money reasonably necessary to enable the respondent to complete the work which must be done by it or the amount reasonably necessary is available and can be advanced from the Grade Crossing Protection Account, the commissioner shall set the applica-

tion for hearing as soon as his calendar permits on the questions of:

(a) The necessity for the project;

(b) The approval of the location and the engineering plans, including provisions for handling traffic during construction and the work to be performed by each party; and

(c) The sum to be advanced by the applicant or the account for the work to be done by the respondent.

(2) The commissioner shall render as promptly as possible an interim order, effective within 20 days on such questions, reserving for later hearing and decision the question of the apportionment of costs. The interim order shall also direct the respondent to proceed upon receipt of the sum to be advanced by the applicant or the account without delay to perform the work to be done by respondent, integrating the work with that of the applicant or its contractor in such manner that neither will unreasonably obstruct or delay the work of the other, to the end that the people of the state may have the use of the project at the earliest possible date.

(3) In the final order apportioning costs, the sum advanced by the applicant or the account shall be credited against its share of the costs. In the final order there shall also be credited against applicant's share of the costs any increase in the costs found by the commissioner to be directly attributable to respondent's wilful failure or refusal, after the effective date of the interim order, to proceed with its own work or to integrate the work with that of applicant or its contractor. [1973 c.717 §13]

**763.310 Reimbursement procedure for railroad and public authority.** (1) Upon issuance of an order apportioning costs to the Grade Crossing Protection Account, the railroad company or the public authority in interest may submit to the commissioner progress claims, not to exceed 80 percent of the apportionment, for reimbursement for the cost of labor, and other services provided to date of billing, and for the costs of materials stockpiled at the project site or specifically purchased and delivered for use on the project. Upon completion of the construction, reconstruction or alteration of a crossing, or of the installation or alteration of grade crossing warning or safety devices at a crossing, the railroad company or the public authority in interest shall present to the commissioner for approval its claim for reimbursement for the costs thereof in the amount apportioned to the Grade Crossing Protection Account less progress payments previously made. The commissioner shall, if he approves the claim, certify to the

Department of Transportation that such cost is payable from the account and, when a claim is so approved and certified by the commissioner, the Department of Transportation shall, as funds become available, order it paid from the account.

(2) The commissioner may make such audit as he considers necessary before or after each such disbursement for the purpose of determining that the money is expended for the purposes and under the conditions authorized by ORS 763.270 and 763.280. By presentation of its claim, the railroad company and the public authority consent to make pertinent records showing costs of labor and materials available to the commissioner. [1973 c.717 §16; 1977 c.512 §2]

**763.320 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, 763.020, 763.030, 763.040 to 763.100 and 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. [Formerly 763.070]

**763.330 Grade Crossing Protection Account; use; limits.** There is established in the State Highway Fund an account to be known as the Grade Crossing Protection Account. There shall be credited to the account each fiscal year, from funds received by the State Highway Fund under ORS chapters 481 and 482, the sum of \$600,000. State-shared highway fund revenues for cities and counties, as well as Highway Division expenditures for the elimination of hazardous railroad-highway crossings, shall be computed and allocated prior to any appropriation or transfer to the account. Money credited to the account is continuously appropriated and shall be expended for railroad-highway crossing safety as authorized by ORS 763.270 and 763.280. No more than \$100,000 in the aggregate shall be allocated from the account in any one fiscal year for costs of construction, reconstruction, alteration or relocation of separated crossings; provided however the unapportioned amount in the Grade Crossing Protection Account at the end of each fiscal year may be allocated for costs of reconstruction, alteration or relocation of separated crossings. [1973 c.717 §15; 1975 c.318 §5; 1975 c.537 §8]

**PENALTIES**

**763.900 Civil penalties.** (1) In addition to all other penalties provided by law, every person who violates or who procures, aids or abets in the violation of any order, rule or decision of the commissioner promulgated pursuant to ORS 763.035 shall incur a penalty of not more than \$1,000 for every such violation.

(2) Each such violation shall be a separate offense and in case of a continuing violation every day's continuance is a separate violation. Every act of commission or omission which procures, aids or abets in the violation is a violation under this section and subject to the penalty provided in this section.

(3) Such penalty shall not be imposed except by order following complaint as provided in ORS 756.500 to 756.610. Such proceeding shall be commenced within two years following the date of the violation complained of.

(4) The commissioner may reduce any penalty provided for in this section on such terms as the commissioner considers proper if:

(a) The defendant admits the violations alleged in the complaint and makes timely request for reduction of the penalty; or

(b) The defendant submits to the commissioner a written request for reduction of the penalty within 15 days from the date the penalty order is served.

(5) If the amount of such penalty is not paid to the commissioner, the Attorney General, at the request of the commissioner, shall bring an action in the name of the State of Oregon in the Circuit Court of Marion County to recover such penalty. The action shall not be commenced until after the time has expired for an appeal from the findings, conclusions and order of the commissioner. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this chapter. [1979 c.279 §4]

