Chapter 760

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Railroad Regulation Generally

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DEFINITIONS; GENERAL PROVISIONS

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

(1) "Class I railroad" has the meaning given that term in rules adopted by the Public Utility Commission. The definition of "Class I railroad" in rules adopted by the Public Utility Commission shall be consistent, insofar as practicable, with the definition of the term under federal law and regulations.

(2) "Railroad" means all corporations, municipal corporations, counties, companies, individuals, associations of individuals and their lessees, trustees or receivers, that:

(a) Own, operate by steam, electric or other motive power, manage or control all or part of any railroad or interurban railroad as a common or for hire carrier in this state, or cars or other equipment used thereon, or bridges, terminals or sidetracks used in connection therewith, whether owned or operated under a contract, agreement, lease or otherwise.

(b) Are engaged in the ownership, management or control of terminals in this state, which corporations, municipal corporations, counties, companies, individuals and associations hereby are declared to be common and for hire carriers, or the transportation of property within this state by express. [Amended by 1971 c 655 §104; 1983 c.131 §1; 1983 c.272 §1; 1985 c 541 §4]

760.010 Companies affected by provisions of ORS chapters 760, 761 and 763. (1) This chapter and ORS chapters 761 and 763 apply to:

(a) The transportation of passengers and property.

(b) The receiving, delivering, switching, storing, elevation and transfer in transit, ventilation, refrigeration or icing, and handling of such property, and all charges connected therewith.

(c) All railroad, terminal, car, tank line, freight and freight line companies.

(d) All associations of persons, whether incorporated or otherwise, that do business as common or for hire carriers upon or over any line of railroad within this state.

(e) Any common or for hire carrier engaged in the transportation of passengers or property wholly by rail or partly by rail and partly by water.

(2) This chapter does not apply to logging or other private railroads not doing business as common carriers. [Amended by 1971 c 655 §105; 1975 c.318 §3; 1983 c.272 §2]

760.015 Reasonable charges and adequate facilities required of railroads. Every railroad shall furnish reasonably adequate service, equipment and facilities; and the charges made for any service rendered or to be rendered in the transportation of property or for any service in connection therewith, or for the receiving, switching, delivering, storing, elevation and transfer in transit, ventilation, refrigeration or icing or handling of property, or for terminal facilities, shall be reasonable and just. [Amended by 1971 c 655 §105a; 1983 c 272 §3]

760.020 [Repealed by 1971 c 655 §250]

760.021 Regulation of railroads consistent with federal law. The commission shall exercise the authority granted under this chapter to regulate railroads in a manner consistent with the Staggers Rail Act of 1980 and in a manner that allows this state to continue to regulate railroad rates to the maximum allowable extent under federal law and to be certified, in accordance with 49 U.S.C. 11501 by the Federal Government to continue such regulation. In compliance with this section, the commission, in addition to other procedures established by the commission, shall administer the following provisions of this chapter as nearly as practicable in accordance with the described provisions of federal law:

(1) ORS 760.026 shall be administered consistently with 49 U.S.C. 10505.

(2) The provisions and procedures under ORS 760.131 shall be administered in accordance with 49 U.S.C. 10707.

(3) In determining market dominance and maximum reasonable rates under ORS 760.126, the commission shall comply with guidelines and revenue to variable cost percentages set forth in or adopted under 49 U.S.C. 10709.

(4) ORS 760.140 and 760.143 shall be administered consistently with 49 U.S.C. 10713. [1983 c.198 §14]

760.025 [Repealed by 1971 c.655 §250]

760.026 Exemption from regulation; procedure. (1) The commission may exempt persons, classes of persons, transactions or service from the provisions of this chapter as the commission determines appropriate and in the public interest and consistent with ORS 760.021.

(2) The commission may begin a proceeding to establish an exemption under this section on the commission's own motion or upon the motion of any person.

(3) Exemptions established under this section may be temporary, may be subject to revocation or may be subject to any other conditions the commission determines are required in the public interest. [1983 c.198 §9]

760.027 [1957 c.415 §11; repealed by 1971 c 655 §250]

760.030 [Repealed by 1971 c.655 §250]

760.035 [Repealed by 1971 c 655 §250]

760.040 [Repealed by 1971 c 655 §250]

760.045 [Amended by 1971 c 655 §26, renumbered 756.200]

760.050 [Amended by 1971 c.655 §106, 1973 c.615 §2; renumbered 763.035]

760.055 [Repealed by 1983 c.292 §16]

760.060 Procedure for construction of side lines and extensions. If any railway company owning or operating a railway within this state desires to construct any branch line or side line, or to build an extension of the main line, its board of directors shall adopt a resolution defining the branch, side line or extension, and designating the termini thereof, and shall cause a copy of such resolution, certified by its secretary, to be filed in the office of the Secretary of State, and in the office of each county clerk in or through whose county such branch or side line or extension is to be constructed. Thereupon such corporation has the right to build and construct such branch, side line or extension, and to exercise the right of eminent domain as provided by law, and the termini so designated in such resolution shall be a sufficient designation thereof for the purpose of exercising such right of eminent domain.

INSPECTORS

760.070 Railway inspectors required; powers and duties. (1) The commission shall employ at least three full-time railroad inspectors to assist the commission as the commission may prescribe in:

(a) Inquiring into any neglect or violation of and enforcing any law of this state or any law or ordinance of any municipality thereof relating to railroad safety;

(b) Inquiring into any neglect or violation of and enforcing any rule, regulation, requirement, order, term or condition issued by the commission relating to railroad safety; and

(c) Conducting any investigative, surveillance and enforcement activities that the commission is authorized to conduct under federal law in connection with any federal law, rule, regulation, order or standard relating to railroad safety.

(2) A railroad inspector may stop and detain any train and the contents thereof that the railroad inspector reasonably believes is being operated in violation of any law, ordinance, rule, regulation, requirement, order, standard, term or condition referred to in subsection (1) of this section. [1973 c.169 §2]

760.075 Qualifications of inspectors. A person employed by the commission as a railroad inspector shall:

(1) Have passed an examination, which the commission shall prescribe, concerning physical fitness, mental fitness, the rules of the commission and the laws of this state relating to railroads; and

(2) Have at least five years of experience as a railroad train service or engine service employee on a class I railroad or a combination of four years of such experience and two years of experience in a nonoperating position in mechanical or maintenance of way. College education with major work in engineering may be substituted for not more than two years of the required experience on the basis of two years of college being equivalent to one year of experience. [1973 c.169 §3]

RATES

760.105 Publishing and filing of schedules; contents of schedules. (1) Every railroad shall print in plain type and file with the commission within a time to be fixed by the commission, schedules, which shall be open to public inspection, showing all rates for the transportation of property, or use of terminals, and any service in connection therewith, which it has established and which are in force at the time between all points in this state upon its line, or any line controlled or operated by it.

(2) Such schedules shall plainly state the places upon its line or any line controlled or operated by it in this state between which property will be carried.

(3) Every railroad shall publish with and as a part of such schedules all rules and regulations that in any manner affect the rates charged or to be charged for the transportation of property, also the charges for delay in loading or unloading cars, for tract and car service or rental and for demurrage, switching, terminal or transfer service, or for rendering any other service in connection with the transportation of property.

(4) When property is transported over connecting lines in this state operated by more than one railroad, and the several railroads operating such lines establish joint rates, a schedule of joint rates shall in like manner be printed.

(5) All tariffs issued by any railroad relating to interstate traffic in this state shall be filed, upon issuance, with the commission. [Amended by 1971 c.655 §107; 1983 c.272 §4]

760.110 Provisions relating to schedule changes. (1) No change shall be made in the rates or any schedule, or in any classification, which has been filed and published by

any railroad, except upon notice to the commission and to the public as required by the commission by rule, which shall state plainly the changes proposed to be made in the schedule then in force and the time when the changed rates will go into effect.

(2) The proposed changes shall be shown by printing new schedules, or shall be indicated plainly upon the schedules in force at the time and kept open to public inspection. Copies of all new schedules shall be filed as provided in ORS 760.105.

(3) The commission, for good cause shown, may allow changes upon less than the notice required by the commission under this section, or may modify the requirements of this section in respect to publishing, posting and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions. The commission may make suitable rules and regulations for the simplification of schedules of rates and classifications and permit in such rules and regulations the filing of an amendment of or change in any rate or classification without filing complete schedules covering rates or classifications not changed, if, in the commission's judgment, not inconsistent with the public interest.

(4) The names of the several carriers which are parties to any joint tariffs shall be provided therein, and each of the parties thereto, other than the one filing the schedule, shall file with the commission such evidence of concurrence therein or acceptance thereof, as may be required or approved by the commission. Where such evidence of concurrence or acceptance is filed it is not necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.

(5) On request of the commission every railroad shall file with the commission copies of all contracts, agreements or arrangements with other for hire carriers in relation to any intrastate traffic affected by this chapter to which they may be parties.

(6) The schedules filed shall be published and filed in such form and manner as the commission, by rule, shall prescribe. The commission may reject any schedule filed with the commission which is not in accordance with this section and with such rules or which does not give lawful notice of the effective date. Any schedule so rejected by the commission is void and its use is unlawful.

(7) No railroad, unless otherwise provided by this chapter, shall engage or participate in the transportation of property, unless the rates upon which the same are transported by such carrier, have been filed and published in accordance with this section and ORS 760.105.

(8) Failure or refusal on the part of any railroad to comply with the terms of any regulation adopted or promulgated, or any order made by the commission under this section, makes such carrier liable to a penalty of $500 for each such offense and $25 for every day of the continuance of such offense, which shall accrue to the State of Oregon and may be recovered in civil actions brought by the commission in this state. [Amended by 1971 c.655 §108, 1983 c 198 §2, 1983 c 272 §5]

760.115 [Repealed by 1971 c 655 §250]

760.120 Railroads required to follow schedules; refunds and remittances. (1) No railroad shall charge, demand, collect or receive a greater or less or different compensation for the transportation of property or for any service in connection therewith than is specified in such printed tariff schedules, including schedules of joint rates, as may at the time be in force, and the rates named therein shall be the lawful rates until they are changed as provided in ORS 760.110 or by the commission.

(2) Except as provided by rule of the commission, no railroad shall refund or remit in any manner or by any means any portion of any such rate. The commission shall adopt rules that provide for the manner of establishing allowable refunds and remittances. [Amended by 1971 c 655 §109; 1983 c 198 §3; 1983 c.272 §6]

760.125 [Repealed by 1971 c 655 §250]

760.126 Reasonableness of rates; standard and procedures. (1) This section establishes the standard and the procedures for a determination of whether a rate of a railroad is unreasonably high. The commission shall use the standard and procedures established in this section in making any determination of the reasonableness when acting upon any complaint or protest or in any proceeding concerning any railroad's rate or classification, rule or practice related to a rate that is subject to regulation under this chapter.

(2) The commission shall not hold any railroad rate to be unreasonably high unless the commission determines that both of the following apply:

(a) There is an absence of effective competition from other carriers or modes of transportation for the transportation to which the rate applies so that the railroad has market dominance; and

(b) The rate exceeds a maximum reasonable level for the transportation to which the rate applies.

(3) In making a determination of the reasonableness of any railroad rate under this

chapter, the commission shall proceed as follows:

(a) Before the commission determines whether the rate exceeds a maximum reasonable level for the transportation to which the rate applies, the commission must first determine whether the railroad has market dominance as described in this section.

(b) A determination of market dominance must be made within 90 days of the filing of a complaint or protest against the rate or, if a proceeding is at the commission's own initiative, within 90 days of the date the commission initiates the proceeding.

(c) If the commission finds that the railroad does not have market dominance over the transportation to which the rate applies, the commission shall not make a determination on the issue of reasonableness.

(d) If the commission finds that the railroad has market dominance, the commission shall then proceed to determine whether the rate exceeds a maximum reasonable level for that transportation.

(4) The following apply to the commission's consideration and determination of market dominance under this section:

(a) A finding that a railroad does not have market dominance is determinative in a proceeding to determine the reasonableness of the rate unless changed or set aside by the commission or a court of competent jurisdiction.

(b) A finding of market dominance does not establish a presumption that the proposed rate exceeds a maximum reasonable level for that transportation.

(c) In determining whether a railroad has market dominance over transportation to which a rate applies, the commission shall find that the railroad does not have market dominance if the railroad proves that the rate charged results in a revenue-variable cost percentage that is less than a revenue-variable cost percentage established by the commission as a guideline.

(d) A finding that a rate has a revenue-variable cost percentage equal to or greater than that established by the commission does not establish a presumption of market dominance or a presumption that the rate exceeds the maximum reasonable level for that transportation. [1983 c.198 §10]

760.130 [Amended by 1971 c.655 §110; repealed by 1983 c 198 §16]

760.131 Rate suspension procedure. This section establishes procedures and requirements relating to the suspension of a new or increased individual or joint rate or individual or joint classification, rule or practice related to a rate pending a determination of whether the rate, classification, rule or practice violates this chapter. The commission must comply with the following procedures and requirements relating to such suspension:

(1) A suspension may be imposed only on complaint of an interested party.

(2) The commission must give reasonable notice to interested parties before imposing the suspension, but may act without allowing an interested party to file an answer or other formal pleading in response to the decision of the commission.

(3) The commission may only suspend under this section during a proceeding to determine whether a rate, classification, rule or practice violates this chapter and if the commission determines from specific facts shown by verified statement that all of the following apply:

(a) It is substantially likely that the protestant will prevail on the merits;

(b) Without suspension the proposed rate or increase will cause substantial injury to the protestant or to the party represented by the protestant; and

(c) Because of the peculiar economic circumstances of the protestant the requirements of this section that provide for a railroad to refund moneys in excess of amounts found to be reasonable do not protect the protestant.

(4) The commission may impose a suspension for a period of time determined appropriate by the commission, but in no instance for a period longer than the end of the fifth month after the rate, classification, rule or practice was to become effective. At the end of the fifth month after the rate, classification, rule or practice was to become effective it shall:

(a) If suspended, take effect and not be subject to further suspension unless the commission sets it aside upon the commission's finding that it violates this chapter.

(b) If in effect, remain in effect and not be subject to suspension unless the commission sets it aside upon the commission's finding that it violates this chapter.

(5) In lieu of imposing a suspension, the commission may require a railroad to account for all amounts received under the increase until the commission completes the proceeding to determine whether there is a violation of this chapter. The accounting shall specify by whom and for whom the amounts are paid. When the commission makes a final determination, the commission shall require refund of such amounts as provided under subsection (6) of this section.

(6) When the commission takes final action on a determination of whether a rate is in violation of this chapter and the commission determines the rate:

(a) Was in violation of this chapter, the commission shall require the carrier to refund to the person from whom the amounts were paid that part of the increased rate found to be unreasonable plus interest at a rate established under this section.

(b) Was not in violation of this chapter, the carrier shall collect from each person using the transportation to which the rate applies the difference between the original rate and any portion of the rate that was suspended and found to be reasonable for any services performed during the period of suspension plus interest at a rate established under this section. Notwithstanding any other provision of this chapter, the commission, by rule, shall establish standards and procedures permitting a railroad to waive the collection of amounts under this paragraph if the amounts are insignificant.

(7) When interest is required to be paid under subsection (6) of this section the interest shall be paid at a rate equal to the average yield, on the date the statement is filed, of marketable securities of the Federal Government having a duration of 90 days. [1983 c.198 §11]

760.135 Requirements as to reasonableness of joint rates. Whenever property is transported over two or more connecting lines of railroad between points in this state, and the railroad companies have made joint rates for the transportation of the same, such rates and all charges in connection therewith shall be just and reasonable, and every unjust and unreasonable charge is prohibited. However, a lower charge by each of the railroads for its proportion of such joint rate than is made locally between the same points on their respective lines shall not for that reason be construed as a violation of this chapter. [Amended by 1983 c 272 §7]

760.140 Special contract rates permitted. (1) A carrier may provide for concentration, commodity, transit and other special contract rates without violation of this chapter if:

(a) The contract meets the requirements under this section; and

(b) The contract is approved by the commission.

(2) Contracts subject to this section must be filed with the commission. The commission shall approve any contract filed under this section unless the commission, in a proceeding described under ORS 760.143, determines that the contract does any of the following:

(a) Unduly impairs the ability of the contracting carrier or carriers to meet their common carrier obligations. This paragraph applies to contracts for transportation of any commodity.

(b) Harms a port because violation of ORS 760.175 causes unjust discrimination against the port. This paragraph applies to contracts for transportation of any commodity.

(c) Unjustly discriminates against a shipper in violation of ORS 760.175 by refusing to enter into a contract with the shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue. A contract only violates this paragraph if the shipper was ready, willing and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered. This paragraph applies only to contracts for the transportation of agricultural commodities, including forest products and paper.

(d) Provides for rates, services or other practices that the commission determines would be destructive to competition. In making a determination of violation of this paragraph, the commission shall consider the difference between the contract rates and any published single car rates. This paragraph applies only to contracts for the transportation of agricultural commodities, including forest products and paper.

(e) Requires the use of more than 40 percent of the capacity of the railroad's owned or leased equipment, by major car type, in performance of the terms of the contract, except that in a proposed contract between a Class I railroad and a shipper originating an average of 1,000 or more cars each year during the prior three-year period by major car type on a particular carrier, not more than 40 percent of such carrier owned or leased equipment used on the average during the prior three-year period may be used for such contract without prior authorization of the commission. The commission, on request of a railroad or other party or on its own initiative, may grant relief from the limitations of this paragraph, if the commission determines that making additional equipment available does not impair the railroad's ability to meet its common carrier obligations. This paragraph applies only to contracts for the transportation of agricultural commodities and forest products, but not including wood pulp, woodchips, pulpwood or paper.

(3) Approval of a contract filed with the commission under this section shall be effective as follows:

(a) At any date within 60 days after the filing of the contract determined by the commission; or

(b) If the contract has not been disapproved in a proceeding under ORS 760.143, 60 days after filing.

(4) A contract that is authorized under this section is not subject to this chapter except as provided in this section and ORS 760.143. A contract that is approved by the commission under this section, and transportation under such contract may not be subsequently challenged before the commission or in any court on the grounds that the contract violates a provision of this chapter. The exclusive remedy for any alleged breach of a contract entered into under this section is an action in an appropriate state or federal court, unless the parties otherwise agree.

(5) The following all apply to a contract that is subject to this section:

(a) Each contract filed with the commission under this section is confidential and exempt from public disclosure as provided under ORS 192.501 to 192.505.

(b) A carrier making a filing of a contract under this section shall include with the contract a summary of such nonconfidential information as the commission shall prescribe by rule. The commission shall maintain a copy of the nonconfidential summary in the commission's files and shall make the summary available for public inspection.

(c) The commission may not require a railroad to violate the terms of a contract that has been approved under this section except to the extent necessary to comply with federal law.

(d) A party to a contract entered into under this section shall have no duty in connection with services provided under the contract other than those duties specified by the terms of the contract.

(e) The commission shall treat service under a contract approved under this section as a separate and distinct class of service.

(f) Equipment used in the fulfillment of a contract approved under this section is not subject to car service decisions rendered by the commission. [Amended by 1971 c 655 §112, 1983 c 198 §12, 1985 c 541 §5]

760.142 [Repealed by 1971 c 655 §250]

760.143 Proceedings for rates under 760.140. The commission may hold proceedings to review a contract filed with the commission under ORS 760.140, but any such proceedings must comply with the following:

(1) The proceedings must begin no later than 30 days after the date of the filing of the contract under ORS 760.140.

(2) A proceeding may be initiated by the commission or as provided in the following:

(a) A shipper may initiate a proceeding to determine whether a contract violates ORS 760.140 (2)(a), (c) or (d) but only upon a showing that the shipper individually will be harmed by the violation.

(b) A port may initiate a proceeding to determine whether a contract violates ORS 760.140 (2)(b) but only upon a showing that the port will be individually harmed because of the violation.

(c) Any person the commission determines has an interest may initiate a proceeding for purposes of ORS 760.140 (2)(e).

(3) If a proceeding is initiated under this section, the commission must determine whether the contract is in violation of ORS 760.140 within 30 days after the date the proceeding is commenced or within a shorter period established by the commission.

(4) If the commission determines that the contract does not violate ORS 760.140, the contract shall take effect as provided by the commission or under ORS 760.140.

(5) If the commission determines that the contract violates ORS 760.140, the commission shall do the following:

(a) Disapprove the contract unless the contract is in violation of ORS 760.140 (2)(c).

(b) If the contract is in violation of ORS 760.140 (2)(c), the commission shall either:

(A) Disapprove the contract;

(B) Allow the carriers to cancel the contract; or

(C) Subject to the provisions of ORS 760.140, order the carrier to provide rates and service substantially similar to the contract at issue with such differentials in terms and conditions as are justified by the evidence at the proceeding. [1983 c 198 §13, 1985 c.541 §6]

760.145 Special freight rates permitted. This chapter does not prevent the carriage, storage or handling of freight free, or at reduced rates:

(1) For the United States, the state or any municipality thereof.

(2) For charitable purposes.

(3) To and from fairs and expositions for exhibition thereat.

(4) Consisting of household goods, the property of railway employees, or commodities shipped by such employees for their own exclusive use or consumption. [Amended by 1971 c 655 §113, 1983 c.272 §8]

760.147 [1971 c 655 §111; repealed by 1983 c 198 §16]

760.150 [Amended by 1971 c 655 §114, repealed by 1983 c 272 §16]

760.155 [Repealed by 1983 c 272 §16]

760.160 [Amended by 1971 c.655 §115; repealed by 1983 c 272 §16]

760.165 Fixing emergency rates. The commission may, when deemed by the commission necessary to prevent injury to the business or interests of the people or railroads of this state in case of any emergency, temporarily alter, amend or, with the consent of the railroad company concerned, suspend any existing freight rates, schedules and orders on any railroad or part of railroad in this state. Rates so made by the commission shall apply on one or more of the railroads in this state or any portion thereof as may be directed by the commission, and shall take effect at such time and remain in force for such length of time as may be prescribed by the commission. [Amended by 1971 c.655 §116, 1983 c 272 §9]

760.170 Excessive charges as unjust discrimination. (1) Except as provided in ORS 760.026, 760.140 and 760.145, no railroad or any agent or officer thereof shall, directly or indirectly, by any special rate, rebate or drawback or by means of any false billing, false classification, false weighing or by any other device, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by it for the transportation of property or for any service in connection therewith, than that prescribed in the published tariffs then in force, or established as provided in ORS 760.105 and 760.110, or than it charges, demands, collects or receives from any other person for a like and contemporaneous service under substantially similar circumstances and conditions; nor shall any railroad extend to any person any privilege or facilities in the transportation of property unless such privileges and facilities are specified in the tariff schedules then in effect.

(2) No railroad shall demand, charge, collect or receive from any person a less compensation for the transportation of property or for any service rendered or to be rendered by the railroad, in consideration of such person furnishing any part of the facilities incident thereto; but this does not prohibit any railroad from renting any facilities incident to transportation and paying a reasonable rental therefor.

(3) Except as provided in subsections (4) and (5) of this section, no railroad shall charge or receive any greater compensation in the aggregate for the transportation of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates.

(4) A railroad operating over a circuitous line or route may, subject to other requirements of lawfulness provided in this chapter, and without further authorization, meet the rates of another railroad operating over a more direct line or route to or from the competitive points. Any rate thus established over a circuitous line or route shall not be evidence on the issue of the compensatory character of rates involved in other proceedings.

(5) After investigation and for cause shown, the commission may permit the collection of a greater sum for a shorter than for a longer distance over the same line. [Amended by 1971 c.655 §117, 1983 c.198 §4; 1983 c 272 §10]

760.175 Preferences to particular persons or localities as unjust discrimination. (1) No railroad shall:

(a) Make or give any undue or unreasonable preference or advantage to any particular person.

(b) Subject any particular person or particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect.

(c) Make or give any undue or unreasonable preference or advantage to any particular locality, or subject any particular locality to any undue unreasonable prejudice or disadvantage in any respect.

(2) This section does not prohibit any railroad from giving necessary preference to livestock and perishable freight over other freight.

(3) Any railroad violating this section is guilty of unjust discrimination. [Amended by 1971 c 655 §118; 1983 c 272 §11]

760.180 Acceptance of rebate prohibited. No person shall knowingly accept or receive any rebate, concession or discrimination in respect to transportation of any property wholly within this state, or for any service in connection therewith, whereby any property is transported at a less rate than that named in the published tariffs in force, or whereby any service or advantage is received other than is therein specified. [Amended by 1983 c.272 §12]

760.205 [1957 c.415 §1; 1971 c.655 §118a; repealed by 1983 c.272 §16]

760.210 [1957 c.415 §2; 1971 c.655 §119; repealed by 1983 c.272 §16]

760.215 [1957 c.415 §3; 1971 c.655 §120, repealed by 1983 c.272 §16]

760.220 [1957 c.415 §4; repealed by 1971 c.655 §250]

760.225 [1957 c.415 §7(2); 1971 c.655 §121; repealed by 1983 c.272 §16]

760.230 [1957 c 415 §5, 1971 c.655 §122; repealed by 1983 c.272 §16]

760.235 [1957 c.415 §8, 1971 c.655 §123, repealed by 1983 c 272 §16]

760.240 [1957 c 415 §6; 1971 c.655 §124; repealed by 1983 c 272 §16]

760.245 [1957 c.415 §7(1); repealed by 1971 c 655 §250]

760.250 [1957 c.415 §9, 1971 c.655 §124a, repealed by 1983 c 272 §16]

760.255 [1957 c.415 §10; 1971 c.655 §125, repealed by 1983 c 272 §16]

REPORTS AND ACCOUNTS

760.305 Annual report to commission. (1) Every railroad shall annually, on or before May 1, unless additional time is granted, file with the commission a report verified by a duly authorized officer, in such form and containing such information as the commission shall prescribe, covering the year ending December 31 next preceding.

(2) Any railroad failing to make such report shall forfeit to the state, for each day's default, a sum not to exceed $100, to be recovered in a civil action in the name of the State of Oregon. [Amended by 1971 c 655 §126, 1977 c.512 §1]

760.310 [Repealed by 1971 c.655 §250]

760.315 [Repealed by 1971 c.655 §250]

760.320 [Repealed by 1971 c.655 §250]

760.325 Prescribing of uniform system of accounting. The commission may prescribe a uniform system of rendering accounts of business transacted in Oregon by all railroads. The commission may also prescribe the manner in which such accounts may be kept, and the time within such railroads shall adopt such system. All forms of accounts prescribed by the commission shall conform as nearly as practicable to similar forms prescribed by federal authority.

760.330 Delivery of copies of contracts to commission. Every railroad, whenever required by the commission, shall deliver to the commission for the commission's use, within a time to be fixed by the commission, copies of all contracts which relate to the transportation of property, or any service in connection therewith, made or entered into by it with any other railroad, car company, equipment company, express or other transportation company, or any shipper or other person doing business with it. This section does not apply to contracts provided for under ORS 760.140. [Amended by 1983 c.198 §5; 1983 c 272 §13]

760.335 [Repealed by 1971 c.655 §250]

760.340 [Repealed by 1971 c 655 §250]

760.345 [Repealed by 1971 c 655 §250]

760.350 [Repealed by 1971 c 655 §250]

760.405 [Repealed by 1971 c 655 §250]

760.410 [Repealed by 1971 c.655 §250]

760.415 [Repealed by 1971 c.655 §250]

760.420 [Repealed by 1971 c 655 §250]

760.425 [Repealed by 1971 c 655 §250]

760.430 [Repealed by 1971 c.655 §250]

760.505 [Repealed by 1971 c.655 §250]

760.510 [Repealed by 1971 c.655 §250]

760.515 [Repealed by 1971 c.655 §250]

760.520 [Amended by 1957 c.416 §1; repealed by 1971 c 655 §250]

SPECIAL ORDERS; ACTIONS AGAINST CARRIERS

760.525 Special orders for joint rates. (1) Whenever the rate ordered substituted by the commission under ORS 756.515 is a joint rate or a joint rate is established under subsection (2) of this section, and the railroads party thereto fail to agree upon the apportionment thereof within 20 days after the service of such order, the commission may, after a like hearing issue a supplementary order declaring the apportionment of such joint rate, and the same shall take effect of its own force as part of the original order.

(2) Whenever the railroads refuse or neglect to establish a through route or joint rates for the transportation of property, the commission may, upon notice to the railroads and after opportunity to be heard as provided in ORS 756.500 to 756.610, fix and establish such through route or joint rates. [Amended by 1971 c.655 §127, 1983 c.272 §14]

760.530 [Repealed by 1971 c.655 §250]

760.535 Award of damages to persons paying unreasonable rates. If, after hearing on a complaint made as provided in ORS 756.500 and 756.512, with respect to intrastate commerce, the commission determines that any party complainant has suffered a pecuniary loss or damage by reason of the imposition or collection by any common carrier, railroad or transportation company, of rates or charges in violation of ORS 760.015 or 760.135, the commission shall make an order directing the carrier to pay to the complainant on or before the day named the sum found to have been imposed upon or collected from the complainant in violation of said statutes. [Amended by 1971 c.655 §128; 1983 c.272 §15]

760.540 Enforcement of award by court action; attorney fees. (1) If a common carrier, railroad or transportation company does not comply with an order issued under ORS 760.535 within the limit in such order, the complainants, or any person for whose benefit such order was made, may file in any state court of general jurisdiction, within one year from the date of the order, a petition setting forth briefly the causes for which the petitioner claims damages and the order of the commission in the premises.

(2) Such action in the courts of the state shall proceed in all respects like other civil actions for damages, except that:

(a) On the trial of such action the findings and order of the commission are prima facie evidence of the facts therein stated; and

(b) The petitioner is not liable for costs in the circuit court nor for costs at any subsequent stage of the proceedings unless they accrue upon appeal by the petitioner.

(3) If the petitioner finally prevails, the petitioner shall be allowed a reasonable attorney fee at trial and on appeal. [Amended by 1981 c.897 §105]

760.545 Limitations on actions by and against carriers. (1) Subject to subsections (2) and (3) of this section:

(a) All actions at law by any common carrier, railroad or transportation company subject to this chapter, for recovery of tariff charges subject to the commission's jurisdiction, or any part thereof, shall be begun within three years from the time the cause of action accrues.

(b) All complaints against a common carrier, railroad or transportation company for the recovery of damages based on matters within the jurisdiction of the commission shall be filed with the commission within two years from the time the cause of action accrues, unless the carrier, after the expiration of such two years or within 90 days before such expiration, begins an action for recovery of charges that are under the jurisdiction of the commission in respect of the same service, in which case such period of two years shall be extended to 90 days from the time such action by the carrier is begun.

(c) All actions against common carriers, railroads or transportation companies subject to this chapter for the recovery of tariff overcharges subject to the jurisdiction of the commission shall be begun within three years from the time the cause of action accrues.

(2) A cause of action specified in subsection (1) of this section related to the shipment of property accrues upon delivery or tender of delivery thereof by the carrier.

(3) Actions for collections of overcharges or undercharges based upon contracts under ORS 760.140 or services exempt under ORS 760.026 shall be begun within:

(a) The time prescribed in contracts or agreements of the parties; or

(b) The time prescribed for enforcing contracts. [Amended by 1971 c.655 §129, 1983 c.198 §6]

760.550 Joinder of parties in action on award. In suits brought under ORS 760.540, all parties in whose favor the commission has made an award for damages by a single order may be joined as plaintiffs, and all the carriers parties to such order may be joined as defendants. Service of process against any one of such defendants found in the state may be made by the sheriff. In case of such joint action, the recovery, if any, may be by judgment in favor of any one of the plaintiffs against the defendant found to be liable to such plaintiff.

760.555 [Repealed by 1971 c.655 §250]

760.560 [Repealed by 1971 c.655 §250]

760.565 [Amended by 1957 c.473 §1; repealed by 1971 c.655 §250]

760.570 [Repealed by 1971 c.655 §250]

760.575 [Amended by 1971 c.655 §52; renumbered 756.565]

760.580 [Repealed by 1971 c.655 §250]

760.585 [Repealed by 1971 c.655 §250]

760.590 [Repealed by 1971 c.655 §250]

760.595 [Repealed by 1971 c.655 §250]

760.600 [Repealed by 1971 c.655 §250]

760.605 [Repealed by 1971 c.655 §250]

ACQUISITION OF LINES

760.610 Government acquisition of lines; permitted actions. (1) The State of Oregon, a city, county, county service district, mass transit district organized under ORS 267.010 to 267.390, a transportation district organized under ORS 267.510 to 267.650 or a port may acquire, own, reconstruct, rehabilitate, operate or maintain a railroad line for the benefit and use of its inhabitants and for profit.

(2) In the exercise of the power granted under subsection (1) of this section, this state, a city, county, county service district, mass transit district, transportation district or port may:

(a) Acquire, by purchase or otherwise, own, reconstruct, rehabilitate or operate a railroad as described in subsection (1) of this section within and outside its boundaries and the boundaries of this state and running from the city, county, district or port to other points within and outside its boundaries and the boundaries of this state.

(b) Acquire rights of way, easements or real property within and outside its boundaries and the boundaries of this state when necessary or convenient for the acquisition and operation of the railroad line.

(c) Enter into contracts with any person for the reconstruction, rehabilitation, operation or maintenance of the railroad line by such person for the city, county, district or port.

(3) Nothing in this section shall be construed as expanding or diminishing the

power of eminent domain conferred upon public bodies, designated in subsection (1) of this section, by ORS 368.116 or any other provision of law. [1985 c 541 §1; 1987 c 871 §1]

Note: 760.610 and 760 620 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 760 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation

760.620 State Rail Rehabilitation Fund; use; report. (1) The State Rail Rehabilitation Fund is established as an account in the General Fund of the State Treasury. All moneys in the account are appropriated continuously to the Department of Transportation for expenditures for any or all of the following:

(a) Acquisition of a railroad line.

(b) Rehabilitation or improvement of rail properties.

(c) Planning for rail services.

(d) Any other methods of reducing the costs of lost rail service in this state.

(2) The program developed by the Department of Transportation under this section to provide funds for rail projects shall include:

(a) Development of a formula for determining a minimum cost to benefit ratio necessary for project funding;

(b) Supervision and monitoring of railroad acquisitions and the awarding of rehabilitation contracts;

(c) Continuing inspection of all railroad rehabilitation projects; and

(d) Auditing financial records of all railroad acquisition and rehabilitation projects.

(3) The Department of Transportation shall provide funds for railroad projects under this section only with the approval of the Oregon Transportation Commission.

(4) The Department of Transportation shall prepare an annual report relating to its activities under this section. Copies of each report shall be submitted to the Legislative Assembly. [1985 c 541 §2; 1987 c.871 §2]

Note: See note under 760.610.

760.630 Commission to participate in contested abandonment proceedings. The commission shall participate before the appropriate federal agency in all contested railroad line abandonment proceedings involving the proposed abandonment of any railroad line in this state. Prior to such participation, the commission shall consult with public entities and users of railroad service affected by the proposed abandonment. [1985 c.510 §2]

PENALTIES

760.990 Penalties. (1) Any railroad violating ORS 760.170 (1) is guilty of discrimination and shall, upon conviction, forfeit and pay to the State Treasurer not less than $100 nor more than $10,000 for each offense.

(2) Any agent or officer violating ORS 760.170 (1) shall be punished, upon conviction, by a fine of not less than $100 nor more than $1,000 for each offense.

(3) Violation of ORS 760.180 is punishable, upon conviction, by a fine of not less than $50 nor more than $1,000 for each offense. [Amended by 1971 c 655 §130]