

Application. *provided further*, That the provisions of this act shall only apply to sales of timber made prior to June 15th, 1909.

Passed the House February 13, 1913.

Passed the Senate February 26, 1913.

Approved by the Governor March 6, 1913.

## CHAPTER 30.

[H. B. 385.]

### RELATING TO GRADE CROSSINGS.

[This act takes the place of and repeals ch. 162, L. '109; Rem.-Bal. §§ 8733-35; Pierce's Code, 1912, 433 §§ 33-37.]

AN ACT relating to railroad and highway crossings and to the changing and elimination of grade crossings; providing penalties for the violation of this act, making an appropriation, and repealing chapter 162, Laws of 1909, relating to railroad crossings, and providing for the exercise of the power of eminent domain to carry the purposes of this act into effect.

*Be it enacted by the Legislature of the State of Washington:*

Definitions. SECTION 1. *Definitions.*

"Commission." The term "commission," when used in this act, means The Public Service Commission of Washington.

"Highway." The term "highway," when used in this act, includes all state and county roads, streets, alleys, avenues, boulevards, parkways, and other public places actually open and in use, or to be opened and used, for travel by the public.

"Railroad." The term "railroad," when used in this act, means every railroad, including interurban and suburban electric railroads, by whatsoever power operated, for the public use in the conveyance of persons or property for hire, 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. The said term shall also include every logging and other industrial railway owned or operated primarily for the purpose of carrying the property of its owners or operators or of a limited class of persons, with all tracks, spurs and sidings used in connection therewith. The said term shall not include street

railways operating within the limits of any incorporated city or town.

The term "railroad company," when used in this act, includes every corporation, company, association, joint stock association, partnership or person, its, their or his lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any railroad, as that term is defined in this section.

"Railroad company."

The term "over-crossing," when used in this act, means any point or place where a highway crosses a railroad by passing above the same.

"Over-crossing."

The term "under crossing," when used in this act, means any point or place where a highway crosses a railroad by passing under the same.

"Under crossing."

The term "over-crossing" or "under-crossing," shall also mean any point or place where one railroad crosses another railroad not at grade.

Over or under crossings further defined.

The term "grade crossing," when used in this act, means any point or place where a railroad crosses a highway or a highway crosses a railroad or one railroad crosses another, at a common grade.

"Grade crossing."

SEC. 2. *Grade Crossing Prohibited.*

All railroads and extensions of railroads hereafter constructed shall cross existing railroads and highways by passing either over or under the same, when practicable, and shall in no instance cross any railroad or highway at grade without authority first being obtained from the commission to do so. All highways and extensions of highways hereafter laid out and constructed shall cross existing railroads by passing either over or under the same, when practicable, and shall in no instance cross any railroad at grade without authority first being obtained from the commission to do so: *Provided*, That this section shall not be construed to prohibit a railroad company from constructing tracks at grade across other tracks owned or operated by it within established yard limits. In determining whether a separation of grades is practicable, the commission shall take into consideration the amount

Grade crossing prohibited.

and character of travel on the railroad and on the highway; the grade and alignment of the railroad and the highway; the cost of separating grades; the topography of the country, and all other circumstances and conditions naturally involved in such an inquiry.

SEC. 3. *Petitions for New Crossings.*

Petition for  
grade  
crossings.

Whenever any railroad company desires to cross any highway or railroad at grade, it shall file a written petition with the commission setting forth the reasons why the crossing cannot be made either above or below grade, and whenever the county commissioners of any county, or the municipal authorities of any city or town, or the state officers authorized to lay out and construct state roads, desire to lay out or extend any highway across any railroad at grade, they shall file a written petition with the commission, setting forth the reasons why the crossing cannot be made either above or below grade. Upon receiving such petition the commission shall immediately investigate the same, giving at least ten days' notice to the railroad company or companies 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 be heard. If the highway involved is a state road, the state highway commissioner shall be notified of the time and place of hearing. The evidence introduced shall be reduced to writing and be filed by the commission. If the commission finds that it is not practicable to cross the railroad or highway either above or below grade, it shall make and file a written order in the cause, granting the right and privilege to construct a grade crossing. The commission, in its discretion, may provide in the order authorizing the construction of a grade crossing, or at any subsequent time, that the railroad company shall install and maintain proper signals, warnings, flagmen, interlocking devices, or other devices or means to secure the safety of the public and its employees. If upon investigation the commission shall find that it is impracticable to construct an over-crossing or under-cross-

Hearing.

Commission  
may author-  
ize grade  
crossings.

ing on the established or proposed highway, and shall find that by deflecting the established or proposed highway a practicable and feasible over-crossing or under-crossing or a safer grade crossing can be provided, it shall continue the hearing on the petition and hold a supplemental hearing thereon. At least ten days' notice of the time and place of such supplemental hearing shall be given to all land owners that may be affected by the proposed change in location of the highway. At such supplemental hearing the commission shall inquire into the propriety, advisability and necessity of changing and deflecting the highway as proposed for the purpose of securing an over-crossing, under-crossing, or safer grade crossing. If the proposed change in route of the highway involves the abandonment and vacation of a portion of an established highway, the owners of land contiguous to the portion of the highway to be vacated and abandoned shall, in like manner, be notified of the time and place of the supplemental hearing. At the conclusion of the hearing on the petition, the commission shall make and file its findings of fact in writing concerning the matters inquired into, and shall determine the location of the crossing which may be constructed, and whether the same shall be an under-crossing, over-crossing, or grade crossing, and shall determine whether or not any proposed change in the route of an existing highway, or the abandonment of a portion thereof is advisable or necessary to secure an over-crossing, under-crossing, or safer grade crossing. If the commission shall find and determine that a change in route of an existing highway, or abandonment and vacation of a portion thereof is necessary or advisable, it shall further find and determine what private lands, property, or property rights, if any, it is necessary to take, damage, or injuriously affect, for the purpose of laying out and constructing the highway along a new route, and what private lands, property, or property rights, if any, will be affected by the proposed abandonment and vacation of a portion of an existing highway. The lands, property, and property

Supplemental  
hearing.

Adjoining  
land owner  
to be notified.

Property  
damaged.

Necessity  
established.

(As to the  
power of the  
commission  
to determine  
necessity, see  
Constitution,  
art. I, § 16.)

rights found necessary to be taken, damaged, or affected shall be described in said findings with reasonable accuracy, and the right to take, damage or injuriously affect the same shall be acquired as hereinafter provided. In any action brought to acquire the right to take, damage, or injuriously affect any such lands, property, or property rights, the findings of the commission shall be conclusive as to the necessity for taking, damaging, or injuriously affecting the same. A copy of said findings shall be served upon all parties to the cause.

SEC. 4. *Petitions for Change in Existing Crossings.*

Petition to  
change  
crossing.

The mayor and city council, or other governing body of any city or town, or the county commissioners of any county within which any highway is crossed by any railroad, or any railroad company whose road is crossed by any highway, may file with the commission their or its petition in writing, alleging that the public safety requires an alteration in the method and manner of such crossing, and its approaches, the location of the highway or crossing, the closing or discontinuance of an existing highway crossing, and the diversion of travel thereon to another highway or crossing, or if not practicable to change such crossing from grade or to close and discontinue the same, the opening of an additional crossing for the partial diversion of travel and praying that the same may be ordered. Upon such petition being filed, the commission shall fix a time and place for hearing the petition and shall give not less than ten days' notice thereof to the petitioner, the railroad company and the municipality or county in which the crossing is situate. If the highway involved is a state highway, like notice shall be given to the state highway commissioner. If the change petitioned for requires that private lands, property, or property rights be taken, damaged, or injuriously affected to open up a new route for the highway, or requires that any portion of any existing highway be vacated and abandoned, ten days' notice of the hearing shall be given to the owner or owners of the private lands, property, and property rights which

Notice of  
hearing.

it is necessary to take, damage or injuriously affect, and to the owner or owners of the private lands, property, or property rights that will be affected by the proposed vacation and abandonment of the existing highway. The commission shall also cause said notice of hearing to be published once in some newspaper of general circulation in the community where such crossing is situate, which publication shall appear at least two days prior to the date of hearing. At the time and place fixed in the notice, all persons and parties interested shall be entitled to be heard and introduce evidence. At the conclusion of the hearing the commission shall make and file its written findings of fact concerning the matters inquired into in like manner as provided in the preceding section for findings of fact upon petition for new crossings. The commission shall also enter its order based upon said findings of fact, which shall specify whether the highway shall continue at grade or whether it shall be changed to cross over or under the railroad or whether said highway shall be closed and travel thereon diverted to another channel, or any other change that the commission may find advisable or necessary. In case the order made requires that private lands, property, or property rights be taken, damaged, or injuriously affected, the right to take, damage, or injuriously affect the same shall be acquired as hereinafter provided.

Publication  
of notice.

Findings.

Order.

Petition for the change in any existing grade crossing, or for the elimination thereof, may be filed by the commission on its own motion, and proceedings thereon shall be the same as herein provided for the hearing and determination of a petition filed by a railroad company.

Commission  
may originate  
action.

#### SEC. 5. *Duty to Maintain Crossings.*

When a highway crosses a railroad by an over-crossing or under-crossing, the frame work and abutments of the over-crossing or under-crossing, as the case may be, shall be maintained and kept in repair by the railroad company, and the roadway thereover or thereunder and approaches thereto shall be maintained and kept in repair by the county

Maintenance  
of crossings.

or municipality in which the same are situated, or if the highway is a state road, the roadway over or under the railroad shall be maintained and kept in repair as provided by law for the maintenance and repair of state roads: *Provided, however,* That this section shall not apply to over-crossings or under-crossings constructed prior to the passage of this act under special contracts between a railroad company and any county, municipality, or the state, in which different provisions is made for the maintenance and repair of the under-crossing or over-crossing.

Exceptions.

SEC. 6. *Apportionment of Cost of Crossings.*

SUBDIVISION A.

Railroad to pay cost of construction.

Whenever, under the provisions of this act, new railroads are constructed across existing highways, or highway changes are made either for the purpose of avoiding grade crossings on such new railroads, or for the purpose of crossing at a safer and more accessible point than otherwise available, the entire expense of crossing above or below the grade of the existing highway, or changing the route thereof, for the purpose mentioned in this subdivision, shall be paid by the railroad company.

SUBDIVISION B.

Railroad to pay part, when.

Whenever, under the provisions of this act, a new highway is constructed across a railroad, or an existing grade crossing is eliminated or changed, the entire expense of constructing an over-crossing, under-crossing, or safer grade crossing, as the case may be, shall be apportioned by the commission between the railroad, municipality or county affected, or if the highway is a state road, between the railroad and the state, as justice may require, regard being had for the benefits accruing to the railroad, municipality, county, or state by reason of the improvement. If the highway involved is a state road, the amount not apportioned to the railroad company shall be paid as provided by law for constructing such state road. When an existing grade crossing is ordered eliminated by the construction of an over-crossing or under-crossing, the commission may in its discretion pay an amount not to

State to pay part of costs.

exceed ten per cent. of the cost thereof out of the appropriation provided in this act, and in such cases the state auditor is hereby authorized and required upon the requisition of the commission, to draw warrants on the state treasury payable to the party designated by the commission for such amount, and the state treasurer is hereby authorized and required to pay such warrants on presentation.

SUBDIVISION C.

Whenever two or more lines of railroad owned or operated by different companies cross a highway, or each other, by an over-crossing, under-crossing or grade crossing required or permitted by this act or by an order of the commission, the portion of the expense of making such crossing not chargeable to any municipality, county, or to the state, shall be apportioned between said railroad companies by the commission unless said companies shall mutually agree upon an apportionment. If it becomes necessary for the commission to make an apportionment between the railroad companies, a hearing for that purpose shall be held, at least ten days' notice of which shall be given.

Apportionment of costs between roads.

SEC. 7. *Payment of Costs and Apportionment of Construction Work.*

In the construction of new railroads across existing highways, the railroads shall do or cause to be done all the work of constructing the crossings and road changes that may be required, and shall acquire and furnish whatever property or easements may be necessary, and shall pay, as provided in the preceding section, the entire expense of such work including all compensation or damages for property or property rights taken, damaged or injuriously affected. In all other cases the construction work may be apportioned by the commission between the parties who may be required to contribute to the cost thereof as the parties may agree, or as the commission may consider advisable. All work within the limits of railroad rights of way shall in every case be done by the railroad com-

New railroads to bear whole cost, when.

Stipulations.



Work on  
right-of-way  
done by  
railroad.

pany owning or operating the same. The cost of acquiring additional lands, rights or easements to provide for the change of existing crossings shall, unless the parties otherwise agree, in the first instance be paid by the municipality or county within which the crossing is located; or in the case of a state road, shall be paid in the manner provided by law for paying the cost of acquiring lands, rights or easements for the construction of state roads. The expense accruing on account of property taken or damaged shall be divided and paid in the manner provided for dividing and paying other costs of construction. Upon the completion of the work and its approval by the commission, an accounting shall be had, and if it shall appear that any party has expended more than its proportion of the total cost, a settlement shall be forthwith made. If the parties shall be unable to agree upon a settlement, the commission shall arbitrate, adjust and settle the account after notice to the parties. In the event of failure and refusal of any party to pay its proportion of the expense, the sum with interest from the date of the settlement may be recovered in a civil action by the party entitled thereto. In cases where the commission has settled the account, the finding of the commission as to the amount due shall be conclusive in any civil action brought to recover the same if such finding has not been reviewed or appealed from as herein provided, and the time for review or appeal has expired. If any party shall review or appeal from any finding or order of the commission apportioning the cost between the parties liable therefor, the superior court or the supreme court, as the case may be, shall cause judgment to be entered in such review proceedings for such sum or sums as may be found lawfully or justly due by one party to another.

Commission  
to arbitrate.

Commission's  
judgment  
final.

#### SEC. 8. *Plans and Specifications—Proposals.*

Plan and  
estimated  
costs to be  
approved by  
commission.

Plans and specifications of changes in existing crossings proposed under this act, and an estimate of the expense thereof, shall be submitted to the commission for its approval before the commencement of the work. In case

the work is to be done by contract, the proposals of the contractor shall be submitted to the commission and if it shall determine that the bids are excessive it shall have power to require the submission of new proposals.

SEC. 9. *Temporary Crossings.*

The commission, in its discretion, good cause appearing therefor, and upon such conditions as it may prescribe, shall have power, without notice or hearing, to grant a permit to construct and maintain a temporary grade crossing for a period not exceeding six months, and may revoke such permit at any time: *Provided*, That nothing contained in this section shall be construed to prohibit the commission, after notice and investigation, from permitting the maintenance of a temporary grade crossing for a longer period than six months. Any order granting, refusing to grant, or revoking a permit for a temporary grade crossing shall not be reviewable.

Temporary crossings.

SEC. 10. *The Commission May Fix Time.*

The commission, in any order requiring work to be done, shall have power to fix the time within which the same shall be performed and completed: *Provided*, That if any party having a duty to perform within a fixed time under any order of the commission shall make it appear to the commission that the order cannot reasonably be complied with within the time fixed by reason either of facts arising after the entry of the order or of facts existing prior to the entry thereof that were not presented, and with reasonable diligence could not have been sooner presented to the commission, such party shall be entitled to a reasonable extension of time within which to perform the work. An order of the commission refusing to grant an extension of time may be reviewed as provided for the review of other orders of the commission.

Time limit for completion of work.

SEC. 11. *Practice and Procedure Before Commission.*

Modes of procedure under this act, unless herein otherwise provided, shall be as provided in The Public Service Commission law, being chapter 117, of the laws of 1911

Ch. 117, L. 1911; Pierce's Code, 1912, 431 § 1 et seq.

for procedure under that act. The commission is hereby given power to adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings under this act.

SEC. 12. *Notices—Form and Manner of Service.*

Process.

All notices required to be served by this act shall be in writing, and shall briefly state the nature of the matter to be inquired into and investigated. Notices may be served in the manner provided by law for the service of summons in civil cases, or by registered United States mail. When service is made by registered mail, the receipt of the receiving postoffice shall be sufficient proof of service. When, under the provisions of this act, it is necessary to serve notice of hearings before the commission on owners of private lands, property, or property rights, and such owners cannot be found, service may be made by publication in the manner provided by law for the publication of summons in civil actions, except that publication need be made but once each week for three consecutive weeks, and the hearing may be held at any time after the expiration of thirty days from the date of the first publication of the notice.

SEC. 13. *Review and Appeal.*

Appeals.

Upon the petition of any party to a proceeding before the commission, any finding or findings, or order or orders of the commission, made under color of authority of this act, except as otherwise provided in section 9, may be reviewed in the superior court of the county in which the crossing is located, and the reasonableness and lawfulness of such finding or findings, order or orders inquired into and determined, as provided in The Public Service Commission law (Ch. 117, Laws 1911) for the review of findings and orders made under that act. An appeal may be taken to the supreme court from the judgment of the superior court in like manner as provided in said public service commission law for appeals to the supreme court.

Ch. 117, L.  
1911; Pierce's  
Code, 1912,  
431 § 1  
et seq.

SEC. 14. *Employment of Engineers and Other Employees.*

The commission may employ temporarily such experts, engineers, and inspectors as may be necessary to supervise changes in existing crossings undertaken under this act; the expense thereof shall be paid by the railroad upon the request and certificate of the commission, said expense to be included in the cost of the particular change of grade on account of which it is incurred, and apportioned as provided in this act.

Commission  
to supervise  
work.

The commission may also employ such engineers and other persons as permanent employees as may be necessary to properly administer this act, and the expense thereof shall be paid out of the appropriation herein provided.

Engineers  
to enforce  
act.

SEC. 15. *Eminent Domain.*

Whenever to carry out any work undertaken under this act it is necessary to take, damage, or injuriously affect any private lands, property, or property rights, the right so to take, damage, or injuriously affect the same may be acquired by condemnation as hereinafter provided.

Eminent  
domain.

SUBDIVISION A.

In cases where new railroads are constructed and laid out by railroad company authorized to exercise the power of eminent domain, the right to take, damage, or injuriously affect private lands, property, or property rights shall be acquired by the railroad company by a condemnation proceedings brought in its own name and prosecuted as provided by law for the exercise of the power of eminent domain by railroad companies, and the right of eminent domain is hereby conferred on railroad companies for the purpose of carrying out the requirements of this act or the requirements of any order of the commission.

Railroads.

SUBDIVISION B.

In cases where it is necessary to take, damage, or injuriously affect private lands, property, or property rights to permit the opening of a new highway or highway

Municipality  
may condemn.

crossing across a railroad, the right to take, damage, or injuriously affect such lands, property, or property rights shall be acquired by the municipality or county petitioning for such new crossing by a condemnation proceeding brought in the name of such municipality or county as provided by law for the exercise of the power of eminent domain by such municipality or county. If the highway involved be a state highway, then the right to take, damage, or injuriously affect private lands, property, or property rights shall be acquired by a condemnation proceeding prosecuted under the laws relative to the exercise of the power of eminent domain in aid of such state road.

State to  
take, when.

#### SUBDIVISION C.

In cases where the commission orders changes in existing crossings to secure an under-crossing, over-crossing, or safer grade crossing, and it is necessary to take, damage, or injuriously affect private lands, property, or property rights to execute the work, the right to take, damage, or injuriously affect such lands, property, or property rights shall be acquired in a condemnation proceeding prosecuted in the name of the State of Washington by the attorney general under the laws relating to the exercise of the power of eminent domain by cities of the first class for street and highway purposes: *Provided, however,* That in the cases mentioned in this subdivision the full value of any lands taken shall be awarded, together with damages, if any accruing to the remainder of the land not taken by reason of the severance of the part taken, but in computing the damages to the remainder, if any, the jury shall offset against such damages, if any, the special benefits, if any, accruing to such remainder by reason of the proposed improvement. The right of eminent domain for the purposes mentioned in this subdivision is hereby granted.

When com-  
mission orders  
changes,  
state to  
condemn.

(As to right  
to offset  
benefits, see  
Constitution,  
art. I, § 16.)

#### SEC. 16. *Illegal Crossings May Be Enjoined or Abated as Nuisances.*

If an under-crossing, over-crossing, or grade crossing is constructed, maintained, or operated, or is about to be

constructed, operated, or maintained, in violation of the provisions of this act, or in violation of any order of the commission, such construction, operation, or maintenance may be enjoined, or may be abated, as provided by law for the abatement of nuisances. Suits to enjoin or abate may be brought by the attorney general, or by the prosecuting attorney of the county in which the unauthorized crossing is located.

Injunction.

Attorney  
General to  
bring action.

SEC. 17. *Mandamus.*

If any railroad company, county, municipality, or officers thereof, or other person, shall fail, neglect, or refuse to perform or discharge any duty required of it or them under this act or any order of the commission, the performance of such duty may be compelled by mandamus, or other appropriate proceeding, prosecuted by the attorney general upon the request of the commission.

Mandamus.

SEC. 18. *Penalty for Violation by Railroad.*

If any railroad company shall fail or neglect to obey, comply with, or carry out the requirements of this act, or any order of the commission made under it, such company shall be liable to a penalty not to exceed \$5,000.00, such penalty to be recovered in a civil action brought in the name of the State of Washington by the attorney general. All penalties recovered shall be paid into the state treasury.

Penalty.

SEC. 19. *Erection and Maintenance of Posts, Piers and Abutments in Highways.*

Whenever, to carry out any work ordered under this act, it is necessary to erect and maintain posts, piers, or abutments in a highway, the right and authority to erect and maintain the same is hereby granted.

Obstructions  
in highway  
authorized.

SEC. 20. *No New Right of Action Conferred.*

Nothing contained in this act shall be construed as conferring a right of action for the abandonment or vacation of any existing highway or portion thereof in cases where no right of action exists independent of this act.

Vacation of  
highway  
authorized.

SEC. 21. *Act When Not Operative.*

Application  
of act to  
cities.

This act shall not be operative within the limits of cities authorized to frame their own charters, and it shall not be construed to apply to street railway lines operating in, on, through, along, over, or across any street, alley or other public place within the limits of any incorporated city or town, except that no street car line outside of cities authorized to frame their own charters shall cross a railroad at grade without express authority from the commission.

SEC. 22. *Constitutionality.*

Validity  
of act.

If any section, subdivision, sentence, or clause of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

SEC. 23. *Repeal.*

This repeals  
ch. 162, L.  
1909; Rem-  
Bal., §§ 8733-  
8735; Pierce's  
Code, 1912,  
433  
§§ 33-37.

Chapter 162 of the Laws of 1909, entitled, "An act to regulate the manner in which railroads shall cross highways and other railroads and the manner in which highways shall cross railroads in the State of Washington," approved March 17, 1909, and all other acts and parts of acts in conflict with this act, are hereby repealed: *Provided, however,* That proceedings on applications for grade crossings pending before the commission at the time this act takes effect may be concluded and determined under existing laws.

SEC. 24. *Appropriation.*

Appropriation  
\$25,000.00.

There is hereby appropriated out of the general fund the sum of twenty-five thousand (\$25,000.00) dollars or so much thereof as may be necessary to pay the cost of administering this act and the state's proportion of the cost of grade separation made under the provisions of this act.

Passed the House February 17, 1913.

Passed the Senate February 26, 1913.

Approved by the Governor March 6, 1913.