

CHAPTER 22.

[S. B. 63.]

RAILROAD AND HIGHWAY CROSSINGS.

AN ACT relating to railroad and highway crossings and to the changing and elimination of grade crossings and separations; amending sections 3, 4, 5, 6, 7, 13 and 14 of chapter 30 of the Session Laws of 1913, as amended (sections 10513, 10514, 10515, 10516, 10517, 10523 and 10524, Remington's Revised Statutes), and repealing sections 8 and 9 of chapter 30 of the Session Laws of 1913, as amended (sections 10518 and 10519, Remington's Revised Statutes), and declaring an emergency.

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

Amends
§ 10513, Rem.
Rev. Stat.
(§ 5640 P. C.)

SECTION 1. That section 3 of chapter 30 of the Session Laws of 1913 (section 10513 Remington's Revised Statutes), be amended to read as follows:

Petition for
grade
crossing.

Section 3. 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, or state parks committee, 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 or parkway, the director of highways or state

Investiga-
tion.

Hearing.

parks committee 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 or denying the application and right to construct a grade crossing *in toto*. 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-crossing 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

Commission
may author-
ize grade
crossing.

Supple-
mental
hearing.

Adjoining
owner to be
notified.

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 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.

Property
damaged.

Necessity
established.

Findings
conclusive.

Amends
§ 10514, Rem.
Rev. Stat.
(§ 5641 P. C.)

SEC. 2. That section 4 of chapter 30 of the Session Laws of 1913, as amended (section 10514 Rem-

ington's Revised Statutes), be amended to read as follows:

Section 4. The mayor and city council, or other governing body of any city or town, or the county commissioners of any county within which there exists any under-crossing, over-crossing or grade crossing, or where any street or highway is proposed to be located or established across 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 required the establishment of an under-crossing or over-crossing, or an alteration in the method and manner of an existing crossing, and its approaches, or in the style and nature of construction of any existing over-crossing, under-crossing or grade crossing, or a change in the location of an existing 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. If the existing or proposed crossing is on a state road, highway or parkway, the petition may be filed by the director of highways or state parks committee. 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 or parkway, like notice shall be given to the director of highways or state parks committee. If the change petitioned for requires that private lands, property, or property rights be taken, damaged, or injuriously affected to open up

Petition to
change
crossings.

Notice of
hearing.

Publication
of notice.

Findings.

Order.

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 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 in its existing location or at some other point, and whether an over-crossing or under-crossing shall be established at the proposed location of any street or highway or at some other point, or whether the style and nature of construction of an existing crossing shall be changed, 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: *Provided*, That in an emergency where a highway is relocated to avoid a grade crossing, or a new crossing is constructed in the vicinity of an existing crossing in the interest of

public safety, the commission may order such existing crossing closed without notice or hearing as specified herein. 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.

Necessity.

Any petition herein authorized 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.

Hereafter, no building, loading platform, or other structure which will tend to obstruct the vision of travelers on a highway or parkway, of approaching railway traffic, shall be erected or placed on railroad or public highway rights of way within a distance of 100 feet of any grade crossing located outside the corporate limits of any city or town unless authorized by the commission, and hereafter no railway cars or equipment shall be spotted less than 100 feet from such crossing except to serve existing facilities of industries.

Obstruction of view prohibited.

The commission shall have the power to specify the minimum vertical and horizontal clearance of under-crossings hereafter constructed, repaired or reconstructed, except as to primary state highways.

Minimum clearance.

SEC. 3. That section 5 of chapter 30 of the Session Laws of 1913 (section 10515 Remington's Revised Statutes) be amended to read as follows:

Amends § 10515, Rem. Rev. Stat. (§ 5642 P. C.)

Section 5. When a highway crosses a railroad by an over-crossing or under-crossing, the framework 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

Maintenance of crossing.

repair by the county or municipality in which the same are situated, or if the highway is a state road or parkway, 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 and parkways.

The railings of over-crossings shall be considered a part of the roadway. Whenever a highway intersects a railroad at common grade, the roadway approaches within one foot of the outside of either rail shall be maintained and kept in repair by highway authority, and the planking or other materials between the rails and for one foot on the outside thereof shall be installed and maintained by the railroad company. At crossings involving more than one track, maintenance by the railroad company shall include that portion of the crossing between and for one foot on the outside of each outside rail. The minimum length of such planking or other materials shall be 20 feet on future installation or repairs.

Amends
§ 10516, Rem.
Rev. Stat.
(§ 5643 P. C.)

SEC. 4. That section 6 of chapter 30 of the Session Laws of 1913, as amended (section 10516, Remington's Revised Statutes), be amended to read as follows:

Section 6. Apportionment of Cost of Crossings.

SUBDIVISION A.

Railroads 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.

Whenever, under the provisions of this act, a new highway is constructed across a railroad, or an existing grade crossing is eliminated or changed (or the style or nature of construction of an existing crossing is changed), the entire expense of constructing a new grade crossing, an over-crossing, under-crossing, or safer grade crossing, or changing the nature and style of construction of an existing crossing, including the expense of constructing approaches to such crossing and the expense of securing rights of way for such approaches, 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 or parkway, between the railroad and the state, in such manner as justice may require, regard being had for all facts relating to the establishment, reason for, and construction of said improvement. If the highway involved is a state road or parkway, the amount not apportioned to the railroad company shall be paid as provided by law for constructing such state road or parkway.

Commission
to apportion
costs.

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, and the expense of constructing and maintaining such signals, warnings, flagmen, interlocking devices, or other devices or means to secure the safety of the public and the employees of the railroad company, as the commission may require to be constructed and maintained, shall be apportioned

Apportion-
ment of costs
between
roads.

between said railroad companies by the commission in such manner as justice may require, regard being had for all facts relating to the establishment, reason for, and construction of said improvement, 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.

Amends
§ 10517, Rem.
Rev. Stat.
(§ 5644 P. C.)

SEC. 5. That section 7 of chapter 30 of the Session Laws of 1913 (section 10517, Remington's Revised Statutes) be amended to read as follows:

Section 7. Payment of Costs and Apportionment of Construction Work.

New rail-
roads to bear
whole cost,
when.

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 company 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 or parkway, shall be paid in the manner provided by

Stipulations.

Work on
right-of-
way.

law for paying the cost of acquiring lands, rights or easements for the construction of state roads or parkways. 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.

Finding of commission conclusive.

SEC. 6. That section 13 of chapter 30 of the Session Laws of 1913 (section 10523 Remington's Revised Statutes) be amended to read as follows:

Amends
§ 10523, Rem.
Rev. Stat.
(§ 5650 P. C.)

Section 13. Review and Appeal.

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

Appeals.

provided, may be reviewed in the superior court of the county wherein the crossing is situated, 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 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.

Amends
§ 10524, Rem.
Rev. Stat.
(§ 5651 P. C.)

SEC. 7. That section 14 of chapter 30 of the Laws of 1913 (section 10524, Remington's Revised Statutes) be amended to read as follows:

Section 14. Employment of Engineers and Other Employees.

Employment
of engineers.

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.

The commission may also employ such engineers and other persons as permanent employees as may be necessary to properly administer this act.

Repeals
§§ 10518 and
10519, Rem.
Rev. Stat.
(§§ 5645-5646
P. C.)

SEC. 8. That sections 8 and 9 of chapter 30 of the Session Laws of 1913, as amended (sections 10518 and 10519, Remington's Revised Statutes) are hereby repealed.

Effective
immediately.

SEC. 9. This act is necessary for the immediate preservation of the public peace, health, and safety, and shall take effect immediately.

Passed the Senate February 9, 1937.

Passed the House February 17, 1937.

Approved by the Governor February 24, 1937.