

No. 216, S.]

[Published July 1, 1907.]

**CHAPTER 453.**

AN ACT to create section 925—xx of the statutes, and to provide a public school teachers' retirement fund in cities of the first class.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. There is hereby added to the statutes, a new section to be known as section 925—xx, to read as follows:

\* \* \* \* \*

SECTION 2. All laws or parts of laws which are inconsistent with this act, or any of the provisions thereof, are hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its passage and publication.

Approved June 25, 1907.

No. 156, S.]

[Published June, 29, 1907.]

**CHAPTER 454.**

AN ACT to create sections 1797—39 to 1797—60, inclusive, of the statutes, regulating the construction and operation of railways in the state of Wisconsin.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. There are added to the statutes twenty-two new sections, numbered 1797—39 to 1797—60, inclusive, to read:

SECTION 2. All acts or parts of acts conflicting with the provisions of this act are hereby repealed insofar as they are inconsistent herewith.

Approved June 29, 1907.

(In effect from and after date of publication.)

have been a reasonable rate or charge for the service complained of. \* \* \* If the rate or charge so found shall be less than the charge exacted the carrier shall have the right to refund to the person paying such charge the amount so found to be excessive. In case of the refusal of the carrier to make such refund, the party aggrieved thereby may maintain an action in the courts of this state, to recover the amount of such excessive charge as found by said commission, and in the trial thereof the findings of the commission shall be prima facie evidence of the truth of the facts found by it and no carrier shall be permitted to avail itself of the defense in such action that the shipment involved was in fact made on the published tariff rate in force at the time such shipment was made, but no carrier making a refund upon the order of the commission or pursuant to a judgment of court as herein provided, shall be liable for any penalty or forfeiture, or subject to any prosecution under the laws of this state, on account of making such refund.

(Ch. 582, 1907.)

**Railroad commission: publication of opinions and decisions; annual report.** SECTION 1797—37n. Said railroad commission is hereby authorized to print and publish for distribution in bound volumes of convenient size, its opinions and decisions, which shall be suitably indexed, for convenient reference to the subjects treated therein. Not to exceed twenty-five hundred copies of any volume shall be so published. Said commission is likewise authorized to print for distribution in pamphlet form a suitable number of its opinions and decisions as the same are from time to time announced. The commission shall, on or before the first Monday in December, in each year, make a report to the governor for the preceding year containing such information, suggestions or recommendations as they may deem proper.

(Ch. 582, 1907.)

**Road construction certificate from commission requisite.** SECTION 1797—39. No railroad corporation hereafter organized shall exercise the powers conferred upon it by the laws of Wisconsin, nor begin the construction of any proposed line of railroad in this state, until it shall have obtained from the railroad commission of Wisconsin, a certificate that public convenience and a necessity require the construction of said

railroad as proposed in the articles of association of said railroad company, and such certificate shall constitute the license from this state to the company to build its said proposed railroad.

(Ch. 454, 1907.)

**Application for certificate.** SECTION 1797—40. Application for the foregoing certificate shall be made within six months from and after the publication of the articles of association of the company applying in the manner hereinafter set forth.

(Ch. 454, 1907.)

**Articles: publication prerequisite to license.** SECTION 1797—41. No railroad corporation shall make application for such certificate unless it shall have caused a copy of its articles of association to be published in one or more newspapers in each county in which the road is proposed to be located at least once in each week for two successive weeks and within six months next prior to the time of making such application, and shall file satisfactory proof thereof with the said railroad commission.

(Ch. 454, 1907.)

**But railroad may survey route.** SECTION 1797—42. Nothing in this act shall prevent any railroad corporation from causing such examination and surveys for its proposed railroad to be made as may be necessary in order to select the best and most advantageous route, and for that purpose to enter upon the lands of any owner, but subject to responsibility for any damage that may be done thereto.

(Ch. 454, 1907.)

**Maps and profiles with application—changes.** SECTION 1797—43. Every application for a certificate of convenience and necessity under the provisions hereof shall be accompanied by complete maps and profiles of the line of the proposed road, which maps and profiles shall be filed with the application by said railroad commission. Prior to the granting or refusing of said certificate the commission shall have the right to permit errors, omissions or defects in the application, maps and profiles to be supplied or corrected, and also to permit changes

in the proposed route to be made where the same are deemed desirable.

(Ch. 454, 1907.)

**Railroad extensions; certificate and public notice necessary.** SECTION 1797—44. If any railroad company heretofore organized shall hereafter desire to extend its line or lines of railroad in this state or to build extensions or branches connected therewith, or to construct any unconstructed portion of its authorized line of railroad, or any line of railroad whatever for which the right-of-way and local consents and franchises have not been procured, it shall, before beginning construction thereof, make application to the railroad commission for a certificate of convenience and necessity authorizing the construction of such extension or branch or lines in the manner hereinbefore provided; except that it shall not be necessary to publish the articles of association of such railroad but only to publish the notice of hearing of such application at least once in each week for two successive weeks preceding such hearing in one or more newspapers in each county in which said extension, branch or line is to be built.

(Ch. 454, 1907.)

**Commission's hearing of applicants; public notices thereof.** SECTION 1797—45. Upon receiving an application under the provisions of this act, the railroad commission shall forthwith set a time and place for the hearing of such application, which time shall not be less than three weeks nor more than eight weeks from the date of filing such application, and the place shall be at the city of Madison, or at some place along the line of the proposed railroad if the commission shall deem the latter more convenient. The commission shall thereupon give to the applicant a notice of the time and place of said hearing, which notice shall be published by the applicant at least once each week for two successive weeks preceding such hearing in one or more newspapers in each county in which the road is proposed to be located, and satisfactory proof of such publication shall be filed by the applicant with said railroad commission.

(Ch. 454, 1907.)

**Arguments for and against license.** SECTION 1797—46. At such hearing or any adjournment thereof the commission

shall carefully consider such application and shall hear such applicant by counsel or agents in support thereof and any person or corporation in person or by counsel or agents in opposition thereto and upon demand of the applicant or any person or corporation appearing in opposition, take evidence and testimony orally or by deposition in support of the application or in opposition thereto.

(Ch. 454, 1907.)

**Commission's powers relative to witnesses and papers.**

SECTION 1797—47. All provisions of chapter 362 of the laws of 1905, or any act amendatory thereof, relating to the subpoenaing of witnesses, the production of books, documents and papers, the administration of oaths, punishment for disobedience of an order of the commission or any commissioner, or of a subpoena, or for refusal of a witness to be sworn or to testify, witness fees, the payment thereof, taking depositions, the keeping of a record of the proceedings, the taking of testimony, transcribing copies of evidence and testimony, or relating to the procedure before said commission not inconsistent with this act, shall apply to all proceedings under this act.

(Ch. 454, 1907.)

**Condemnation proceedings; filing of certificates and maps preliminary.** SECTION 1797—48. Upon the conclusion of the hearings of said application as above provided, said commission shall carefully consider all the evidence submitted, and if the said commission, or a majority of them, shall find that the proposed railroad would be a public convenience and that a necessity requires the construction of said proposed railroad, the said railroad commission shall forthwith grant and issue to the applicant a certificate that public convenience and a necessity require the construction of said railroad as proposed. Such certificate shall be filed in the office of the secretary of state, and a copy thereof, certified to by the secretary of state, shall be evidence of the facts therein stated. Said commission shall also approve the map showing the proposed route of said railroad and shall file the same in their office. The applicant shall cause a copy of such map certified by the secretary of said commission to be a copy of the original, with the seal of said commission affixed, to be filed in the office of the register of deeds in each county in which said railroad shall be located. The filing of said certificate with the secre-

tary of state and the filing of a copy of said map showing said proposed route, as above provided, shall be a condition precedent to the right of said applicant railroad to institute and maintain condemnation proceedings for the acquirement of land for the right of way, stations and other necessary uses of said railroad.

(Ch. 454, 1907.)

**Refusal of certificate.** SECTION 1797—49. If upon the conclusion of said hearing of said application said commissioners or a majority of them shall find and determine that said proposed railroad is not a necessity or is not required by public convenience either because already existing railroads or other means of transportation adequately provide for the necessities and requirements of the public, or for any other reason, then said railroad commission shall refuse to grant said certificate and shall make such refusal a matter of record in the proceedings, stating their reasons for such refusal, and shall give the applicant a copy of such refusal. If said certificate is refused no further proceedings shall be had before said railroad commission in the matter, but the application may be renewed after two years from the date of such refusal.

(Ch. 454, 1907.)

**Railroad's remedies upon refusal.** SECTION 1797—50. Any railroad corporation or other party in interest, having appeared before said commission upon the hearing of such application and being dissatisfied with the action of the railroad commission in granting or refusing to grant such certificate, may file written notice thereof with said commission, whereupon said commission shall immediately certify and deliver to and file with the clerk of the circuit court of Dane county the application and all maps, profiles, testimony, evidence, depositions and all other records, papers and proceedings on file in its office relating to said application and a copy of its findings and decision thereon, which shall constitute a record in said court in said matter. The party filing such written notice of dissatisfaction with the commission shall thereupon and upon such record be entitled to an order to show cause, to be granted by the presiding judge at any time within thirty days after the filing of said record with said clerk. Said order to show cause shall be served upon all persons and corporations who have appeared before the railroad commission in such matter in such manner as shall be prescribed by said presiding judge.

Upon the hearing of such order to show cause the court shall examine said record, findings and decisions and determine the legality of the proceedings before said commission and of the order of said commission and the grounds thereof and shall have power to enter such judgment or order as may be proper and just. An appeal from the order or judgment of the circuit court may be taken by any party aggrieved thereby to the supreme court of this state by the service of a notice of such appeal upon all parties or their attorneys who appeared in the circuit court in such matter and on the clerk of such court within thirty days from the date of the service upon such party of a copy of such order or judgment. Such appeal shall be perfected and proceedings stayed by the service and filing of an undertaking on such appeal as is now provided by law in cases of appeal from an order.

(Ch. 454, 1907.)

**Certificate for building part of line.** SECTION 1797—51. Whenever an application is made by a railroad company for a certificate of public convenience and necessity, as required by this act, and it shall appear to the railroad commission after an examination of the proposed route of the applicant company that public convenience and a necessity do not require the construction of said railroad as proposed in its application, but do require the construction of a part of said proposed railroad, the said railroad commission may issue a certificate for the construction of such part of said proposed railroad as seems to them to be required by public convenience and necessity.

(Ch. 454, 1907.)

**Revocation of certificate.** SECTION 1797—52. In case any railroad company hereafter obtaining a certificate from the railroad commission that public convenience and a necessity require the construction of the whole or part of its proposed railroad shall fail to begin such construction within one year from the date of the issuing of said certificate, or having begun such construction, shall fail to prosecute the same, the railroad commission may inquire into the reasons for such failure and may revoke the said certificate, if it shall appear after notice and hearing that such failure is unreasonable.

(Ch. 454, 1907.)

**Roads coming under act.** SECTION 1797—53. The provisions of this act shall apply to all steam, electric and other

surface railroads in this state, except construction or extension of electric railroads in cities, and to railroads for the construction of which municipal aid has heretofore been voted and now available upon completion.

(Ch. 454, 1907.)

**Construction items to be submitted to commission.** SECTION 1797—54. Upon receiving the certificate of public convenience and necessity, the applicant railroad shall before commencing construction of its railroad or any extension or branch thereof, submit to the railroad commission a condensed specification of the kind and character of construction that it proposes to install, which specification shall show the kind, quality and weight of the rail proposed to be used, the mode of construction, character, quality and strength of all bridges, culverts and viaducts, including abutments and approaches proposed to be built, the grade of and proposed method of draining the road-bed, and kind of power to be used and the power plant and appliances to be employed in power production, and such other salient facts relating to the construction of said proposed railroad as the commission under the rules to be prescribed by them may require.

(Ch. 454, 1907.)

**Public safety; investigation of plans.** SECTION 1797—55. Upon receiving the specification required by the foregoing section, the said railroad commission shall examine the same and shall hear the applicant railroad in support thereof, shall suggest and require modifications of said specification if in their judgment the public safety so demand, shall visit and inspect the said proposed line of railroad or extension or branch thereof, if deemed desirable, and shall otherwise investigate and determine that the proposed construction will be adequate for securing and protecting the public safety in the operation of said proposed railroad or extension or branch thereof, and thereupon the said commission shall grant to said applicant railroad an order approving said specification as amended—if the same shall be amended—and authorizing the construction of said proposed railroad or extension or branch thereof in accordance therewith.

(Ch. 454, 1907.)

**Crossing grades and appliances: commission to prescribe and to apportion cost.** SECTION 1797—56. Every

crossing of the track of a steam railroad hereafter made by the track of another steam railroad; and every crossing of the track of an electric or street railway surface road hereafter made at points outside the limits of incorporated cities by the tracks of a steam railroad and every crossing of the track of a steam railroad or of any other electric or street railway surface road hereafter made at points outside the limits of incorporated cities by the track of an electric or street railway surface road shall be above, below or at grade of the tracks proposed to be crossed as the railroad commission shall determine after hearing the parties upon reasonable notice prescribed by said commission. In such determination, said railroad commission shall prescribe the kind and character of the protective appliances, if any, to be installed, operated and maintained at such crossings, and they shall also fix the proportion of the expense of originally constructing, operating and maintaining such crossing and of any protective appliances prescribed by them and the proportion of the expense of operating and maintaining the same which shall be paid by the owners of said tracks respectively. In case said commissioners shall not in the first instance require protective appliances to be installed at grade crossings made under this section, they shall after reasonable notice to and hearing of the parties, have power on application of either party interested in maintaining and operating said crossing, or on their own motion to require protective appliances to be installed, operated and maintained at such grade crossings and to fix the basis upon which the parties using such crossings shall bear and pay the cost and expense of constructing, operating and maintaining the same.

(Ch. 454, 1907.)

**Examination after construction; permit to operate.**  
SECTION 1797—57. Upon the completion of the construction of any railroad or extension or branch thereof, under the specification as approved by the railroad commission, the said applicant company shall, before operating said railroad, or extension or branch thereof, excepting for construction purposes, and before opening the same to public service, report the same to said commission and said commission shall thereupon inspect and examine said railroad, or extension or branch thereof, or cause the same to be inspected and examined, and if it shall be found that the same has been constructed in accordance with said specification as approved and is otherwise

suitable and properly constructed so as to conserve and protect the public safety in the operation thereof, said commission shall grant to said applicant railroad an order authorizing it to operate the same, which order shall be presumptive evidence of the sufficiency of such construction. Said order shall specify in general terms the methods and conditions of such operation and it shall not be lawful for any such railroad or extension or branch thereof, to be operated till such order has been so granted and obtained.

(Ch. 454, 1907.)

**Railroad routes: limited right to alter.** SECTION 1797—58. Every railroad company in this state, may, by the vote of two-thirds of all its directors, alter or change the route or any portion of the route of its railroad, whether the same is constructed or in process of construction, if it shall appear to them that by such change the line thereof can be materially improved, by making and filing in the office of the railroad commission and also by recording in the office of the register of deeds of the county or counties where such alteration or change is to be made, a surveyed map and certificate of such alteration or change, provided that such alteration or change shall not deviate from the original route of such railroad as approved by the railroad commission for a greater distance than one mile at any point and provided that no incorporated city or village shall be left off from the line of said railroad by such change of route and also provided that the original termini of said railroad shall not be changed by such alteration or change of route.

(Ch. 454, 1907.)

**Notices in counties without newspapers.** SECTION 1797—59. If no newspapers shall be published in any county in which the road is proposed to be located, the publications required by this act may be made in such manner and at such places as the railroad commission shall designate.

(Ch. 454, 1907.)

**Pending actions: this act not to affect.** SECTION 1797—60. Nothing herein contained shall in any manner affect any suit or prosecution had or commenced in any court prior to May 29th, 1907.

(Ch. 454, 1907.)