

CHAPTER 195.

PUBLIC SERVICE COMMISSION; REGULATION OF RAILROADS, STREET RAILWAYS, INTERURBAN RAILWAYS AND EXPRESS AND TELEGRAPH COMPANIES.

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195.01 **Commission, qualifications.** (1) **CREATION, APPOINTMENT, TERM.** A public service commission is created to be composed of 3 commissioners to be appointed by the governor and confirmed by the senate, but no commissioner shall act until confirmed. The term of office of each member of the public service commission of Wisconsin holding office on September 1, 1963 shall expire on said date. Thereupon appointment shall be made of 3 successor commissioners for terms commencing on the date of appointment, one term to end on October 1, 1963, one term to end on the first Monday in March, 1967, and one term to end on the first Monday in March, 1965. At the time of making such appointments and in odd-numbered years thereafter when a commissioner is appointed the governor shall designate one of the members chairman of the commission who shall serve as such for a term of 2 years from the next first Monday in March. In February of each odd-numbered year beginning in 1953 there shall be so appointed and confirmed one commissioner for the term of 6 years from the first Monday in March of such year. Each commissioner shall hold office until his successor is appointed and qualified.

(2) **INELIGIBILITY.** No commissioner shall be pecuniarily interested in any railroad, public utility or motor carrier, and if any such commissioner shall voluntarily become so interested, his office shall ipso facto become vacant; and if he shall become so interested otherwise than voluntarily he shall within a reasonable time divest himself of such interest; failing so to do, his office shall become vacant.

(4) **FULL TIME OFFICE.** No commissioner shall hold any other office or position of profit, or pursue any other business or vocation, or serve on or under any committee of any political party, but shall devote his entire time to the duties of his office.

(5) **OATH.** Each commissioner shall take and file the official oath and shall in addition thereto swear or affirm that he is not pecuniarily interested in any railroad, and that he holds no other office of profit, nor any position under any political committee or party.

(6) **QUORUM.** On the second Monday of March in each odd-numbered year the commissioners shall meet at the office of the commission. Two of said commissioners shall constitute a quorum, except that a vacancy or vacancies shall not impair the right of the remaining commissioners or commissioner for a period which shall in no case extend beyond 60 days after the commencement of the regular session of the legislature to exercise all the powers of the commission.

(7) **CHAIRMAN, EXECUTIVE POWERS.** The administrative and executive authority of the commission shall be vested in the chairman, to be administered by him under the

statutes and rules of the commission and subject to the policies established by the commission. The commission shall make rules for administering the internal affairs of the commission.

(8) **SECRETARY.** The commission shall appoint a secretary who shall take and file the official oath and shall keep full and correct records of all transactions and proceedings of the commission, and shall perform such other duties as may be required by the commission. Any person ineligible to the office of commissioner shall be ineligible to the office of secretary.

(9) **TITLE, SEAL.** The commission shall be known as "Public Service Commission of Wisconsin," and in that name may sue and be sued. The commission shall have a seal with the words "Public Service Commission of Wisconsin," and such other design as it may prescribe engraved thereon, by which it shall authenticate its proceedings and of which the courts shall take judicial notice.

(10) **OFFICE AT CAPITAL.** The commission shall keep its office at the capital, and shall be provided by the department of administration with suitable rooms, necessary office furniture, supplies, stationery, books, periodicals and maps. The commission may hold sessions at any place for the convenience of the parties.

(11) **DEFINITION.** The word "commission" as used in chapters 184 and 190 to 197 means the public service commission of Wisconsin, unless a different meaning is manifest.

(12) **CONFERENCES.** The commission may confer with any regulatory agency of any other state or of the federal government, or may participate in any proceedings before or with any such agency.

(13) **TRAIN PRIVILEGES.** The commissioners and employes authorized by the commission to perform railroad inspection duties may, in the performance of such duties, ride in and upon any engine, car or train of any class, of any railroad, upon payment of the lawful passenger fare, but such railroad shall not thereby be deemed to become a common carrier of passengers other than on passenger cars.

History: 1963 c. 225; 1965 c. 587.

The provision in (10) that the commission may hold sessions at any place for the convenience of the parties does not require holding a hearing in each community affected by a railroad's proposal to abandon service at over 100 stations. *Cobb v. Public Service Comm.* 12 W (2d) 441, 107 NW (2d) 595. The provision that "no commissioner shall act until confirmed" does not apply to appointments made during a recess of the legislature. *State ex rel. Thompson v. Gibson*, 22 W (2d) 275, 125 NW (2d) 636.

195.02 Definitions, scope of chapter, application of statute. (1) In this chapter, unless a different meaning is manifest: "Railroad" means and embraces all corporations, companies, individuals, associations, their lessees, trustees or receivers that own, operate, manage or control any railroad or part of a railroad as a common carrier in this state, or cars, or other equipment used thereon, or bridges, terminals or sidetracks, used in connection therewith, whether owned by such railroad or otherwise, and all street and interurban railway companies.

(2) "Railroad" also means and embraces express companies, telegraph companies and district telegraph messenger companies, and all duties required of and penalties imposed upon any railroad or any officer or agent thereof shall in so far as the same are applicable be required of and imposed upon express companies, telegraph companies and district telegraph messenger companies and their officers and agents.

(3) This chapter shall apply to the receiving, transmitting and delivering of messages by telegraph, and to all charges connected therewith, and to the transportation of passengers and property between points within this state, and to the receiving, switching, delivering, storing and handling of such property, and to all charges connected therewith, and shall apply to all common carriers engaged in the transportation of passengers or property wholly by rail or partly by rail and partly by water, and to all common carriers of property wholly by water which operate between fixed termini, but shall not apply to transportation of property by water under contract as a private carrier.

(4) This chapter shall not apply to private railroads that are not common carriers.

(5) "Railroad" also means and embraces common carriers of property by water which operate between fixed termini, and all of the duties required of, and penalties imposed upon, any railroad or any agent or officer thereof shall, in so far as the same are applicable, be required of, and imposed upon, such common carriers of property by water.

195.03 Commission; powers and duties, general enumeration. (1) **PRACTICE RULES.** The commission shall have power to adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings; and all hearings shall be open to the public.

(2) COMMISSION INITIATIVE. The commission may upon its own motion initiate and investigate and order a hearing upon such notice as it deems proper, unless a statute prescribes in a particular case a specific manner of giving notice, in every case in which it is authorized to investigate and hear upon complaint or petition or in which it is authorized to investigate or act without complaint or petition and may exercise therein the same jurisdiction as upon complaints filed. The authority herein conferred extends to all matters within the jurisdiction of the commission in whatever chapter of the statutes set forth.

(3) EMPLOY COUNSEL. The commission may employ counsel in any proceeding, investigation, hearing or trial had by it or in which it shall be a party, and the expenses thereby incurred shall be charged to the commission's appropriation.

(4) PRACTICE STATUTES. All of the practice and procedure provisions contained in sections 196.33 to 196.36 and 196.48 shall apply to investigations and hearings under chapters 190 to 195, and the orders of the commission made under said chapters shall be subject to review in the manner provided in chapter 227.

(5) TECHNICALITIES DISREGARDED. A substantial compliance with the requirements of the statutes shall be sufficient to give effect to all rules, orders, acts and regulations of the commission and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

(6) EXPRESS AND TELEGRAPH COMPANIES. The commission shall have supervision and control of express companies, telegraph companies and district telegraph messenger companies to the same extent as of railroads.

(7) STUDY CARRIER BUSINESS, DEMAND INFORMATION. The commission may inquire into the management of the business of all railroads, and shall keep itself informed as to the manner in which the same is conducted, and may obtain from any railroad all necessary information to enable the commission to perform the duties and carry out the objects for which it was created.

(8) QUESTIONNAIRES, ANSWERS COMPULSORY. The commission shall prepare blanks for the purpose of obtaining the information which it may deem necessary or useful to the proper exercise of its functions, which shall conform as nearly as practicable to the forms prescribed by the interstate commerce commission, and shall furnish such blanks to railroads, and every railroad receiving such blanks, shall cause the same to be properly filled out and verified under oath by its proper officer and returned to the commission within the time fixed by the commission.

(9) EXAMINE BOOKS AND FILES OF CARRIERS. The commission or any commissioner or any person employed by the commission for that purpose shall, upon demand, have the right to inspect the books and papers of any railroad and to examine under oath any officer, agent or employe of such railroad in relation to its business and affairs; provided that any person other than one of said commissioners who shall make such demand shall produce his authority under the hand and seal of the commission.

(10) PRODUCTION OF RECORDS AND FILES KEPT OUT OF STATE. The commission may by an order or subpoena to be served in the manner that a circuit court summons is served require the production within this state, at such time and place as it may designate, of any books, papers or accounts kept by any railroad without the state, or verified copies in lieu thereof, if the commission shall so order.

(11) UNIFORM SYSTEM OF ACCOUNTING. The commission may prescribe a uniform system of keeping and rendering accounts of all railroad business transacted in Wisconsin, and the time within which railroads shall adopt such system; provided that all forms of accounts which may be prescribed by the commission shall conform as nearly as practicable to similar forms prescribed by federal authority.

(12) TIME FOR FILING RATE TARIFFS. The commission shall fix the time for filing railroad schedules relative to the transportation of passengers and property and of any service in connection therewith.

(13) SCHEDULE FORMS. The commission may prescribe the forms for railroad schedules.

(14) PASSES TO SHIPPERS. The commission may prescribe regulations for free transportation of attendants upon shipments of live stock.

(15) ELEVATORS AND WAREHOUSES. The commission may prescribe rules and regulations covering the charges and manner of conducting the business of public elevators and warehouses upon railroad ground.

(16) CAR SERVICE. The commission may make reasonable regulations for furnishing cars to shippers, and for moving, loading and unloading cars and for weighing cars and freight, and to test railroad weights and scales used in weighing freight or cars.

(17) PRIVATE TRACKS. The commission shall have control of private railroad tracks in so far as the same are used by common carriers for the transportation of freight, in all respects the same as though such tracks were part of a public railroad.

(18) SAFETY DEVICES. The commission may make reasonable rules, regulations, specifications and standards for the installation, operation and maintenance of all safety devices and measures.

(19) RAILROAD STRUCTURES. The commission may order the repair or reconstruction of any inadequate or unsafe railroad track or structure.

(20) ORDERS, WHEN OPERATIVE; COPIES TO PARTIES. The commission shall deliver a certified copy of any order issued under section 195.05 or 196.37 to an officer or agent of the railroad or public utility affected thereby, and said order shall become operative twenty days after such delivery unless a different time is provided in the order.

(21) SWITCHING CREWS. The commission shall investigate and determine the conditions of employment and the number employed in switching crews and may make orders relative thereto.

(22) REPORTS BY COMMISSION. The commission shall, on or before the first Monday in December in each even-numbered year, make a report to the governor of the transactions of its office for the two preceding fiscal years, and containing such information, suggestions or recommendations in respect to the matters under its charge as it may deem proper.

(25) DISTRIBUTION OF ORDERS. The commission shall upon application furnish certified copies, under its seal, of any order made by it, which shall be prima facie evidence of the facts stated therein.

(26) COMMISSION NOTICES; CERTIFICATIONS. Notices of investigation or hearing or certifications to copies of the records of the commission may be issued or certified by any member of the commission or by its secretary or its assistant secretary.

195.04 Visitation, investigation, hearings, orders. Upon complaint of any person, firm, corporation, association, society, body politic or railroad that any railroad rate, fare, charge or classification or any regulation or practice whatever affecting the transportation of persons or property, or any service in connection therewith, is in any respect unreasonable or unjustly discriminatory or that any service is inadequate the commission shall proceed in the manner provided in sections 196.26 to 196.29. If the thing complained of shall be found to be true, in whole or in part, the commission shall fix and order substituted therefor such rate, fare, charge or classification as it shall determine to be just and reasonable and which shall be charged, imposed and followed in the future, and shall also make such orders respecting such regulation, practice or service as it shall determine to be reasonable and which shall be observed and followed in the future.

195.05 Commission; rates, regulations, service, procedure. (1) ORDERS FOR RATES AND SERVICE. Whenever the commission shall find any existing rate, fare, charge, or classification, or any joint rate, or any regulation or practice affecting the transportation of persons or property, or any service in connection therewith is unreasonable or unjustly discriminatory or any service is inadequate it shall determine and by order fix a reasonable rate, fare, charge, classification, joint rate, regulation, practice or service to be imposed, observed and followed in the future, in lieu of that found to be unreasonable or unjustly discriminatory or inadequate.

(2) TIME TO COMPLY WITH ORDERS. Where the order made relates to service, and the same cannot, in the judgment of the commission, be complied with within twenty days the commission may prescribe such additional time as in its judgment is reasonably necessary to comply with the order and may on application and for good cause shown further extend the time.

(3) RATES NOT CHANGED BY RAILROAD. All railroads to which the order applies shall make such changes in their schedule on file as may be necessary to make the same conform to said order, and no change shall thereafter be made by any railroad in any such rates, fares or charges, or in any joint rates except as provided in section 195.08.

(4) MODIFICATION OF ORDERS. The commission may by order at any time, upon notice to the railroad and after opportunity to be heard, rescind, alter or amend any order fixing any rate or rates, fares, charges or classification, or any other order made by the commission.

(5) JOINT RATES APPORTIONED. Whenever the rate ordered substituted by the commission shall be a joint rate or charge, and the railroads shall fail to agree upon the apportionment thereof within twenty days after the service of such order, the commission may, after a like hearing, issue a supplemental order declaring the apportionment of such joint rate or charge and the same shall take effect as a part of the original order.

(6) **JOINT RATES ORDERED.** Whenever the railroads shall refuse or neglect to establish joint rates the commission may, upon notice to the railroads and after opportunity to be heard, fix and establish such joint rates, and if the railroads shall fail to agree upon the apportionment thereof within twenty days after service of such order, the commission may, upon a like hearing, issue a supplemental order declaring the apportionment of such joint rates and the same shall take effect as part of the original order.

(7) **STREET CAR TRANSFERS.** Whenever the commission shall find any regulation or practice with respect to the issuing of transfers by any street or interurban railway company to be unreasonable, it shall determine and by order fix a reasonable regulation to be observed and followed in the future, in lieu of the regulation found to be unreasonable.

195.06 Commission orders prima facie lawful. All orders, determinations and decisions made by the commission shall be in force and effective 20 days after the same has been served as required by section 227.14 unless the commission shall specify a different date upon which the same shall be effective, and shall be prima facie lawful, and all regulations, practices and service prescribed by the commission shall be in force and shall be prima facie lawful and reasonable, until finally found otherwise upon judicial review thereof instituted pursuant to chapter 227.

195.07 Law enforcement. (1) DUTY OF COMMISSION. The commission shall inquire into the neglect or violation of the laws of this state by railroads and public utilities (as defined in chapters 195 and 196), or by the officers, agents or employes thereof, or by persons operating railroads or public utilities, and shall have the power, and it shall be its duty, to enforce all laws relating to railroads or public utilities, and report all violations thereof to the attorney-general.

(2) **ATTORNEY-GENERAL AND DISTRICT ATTORNEY TO PROSECUTE.** Upon request of the commission, the attorney-general or the district attorney of the proper county shall aid in any investigation, hearing or trial had under the provisions of those chapters, and shall institute and prosecute all necessary actions or proceedings for the enforcement of all laws relating to railroads or public utilities, and for the punishment of all violations thereof.

(3) **ACTIONS, CHARACTER, VENUE.** Any forfeiture, fine or other penalty provided in chapters 192 to 196 may be recovered as a forfeiture in a civil action brought in the name of the state in the circuit court of Dane county, or in the county that would be the proper place of trial under section 261.01.

195.08 Railroad rates, schedules, service. (1) SERVICE RATES TO BE ADEQUATE AND JUST. Every railroad shall furnish reasonably adequate service and facilities, and the charges made for the transportation of passengers or property or for any service in connection therewith, or for the receiving, switching, delivering, storing or handling of property shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

(2) **SCHEDULES; PUBLICATION.** Every railroad shall print in plain type and file with the commission schedules which shall be open to public inspection showing all rates, fares and charges for the transportation of passengers and property 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. The schedules shall plainly state the places upon its line or any line controlled or operated by it in this state between which passengers and property will be carried, and there shall be filed therewith the classification of freight in force.

(3) **SAME, RULES AND REGULATIONS.** 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 passengers or property, its charges for delay in loading or unloading cars, for track 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 persons or property.

(4) **SAME, COPIES IN DEPOTS.** Two copies of said schedules for the use of the public shall be kept in every depot, station and office of such railroad in such form and place as to be easily accessible to the public.

(5) **SAME, JOINT RATES.** When passengers or property are transported over connecting lines in this state, and the several railroads operating such lines establish joint rates, fares and charges, a schedule thereof shall in like manner be printed and filed with the commission and in every depot, station and office of such railroads.

(7) **CHANGES IN SCHEDULE.** No change shall be made in any schedule, or in any classification, unless such change shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof, thirty days prior to the time the same are to take effect.

Copies of all new schedules shall be filed as hereinbefore provided in every depot, station and office of such railroad at places to or from which the rates in such schedules apply, thirty days prior to the time the same are to take effect, unless the commission shall prescribe a less time.

(9) **COMPLAINT AGAINST CHANGE IN SCHEDULES.** Whenever a complaint is filed with the commission before any change in any schedule, or in any classification, rule, regulation or practice becomes effective to the effect that such change is unreasonable or unjustly discriminatory, it shall be the duty of the commission to give notice to the railroad that complaint has been made, and to proceed to investigate the same and to order a hearing thereon in the usual manner, and the commission may, in its discretion, by order, stay such change pending the determination of the matters investigated at any time before said change shall take effect. If upon such investigation the change complained of shall be found unreasonable or unjustly discriminatory such change shall not take effect if the same have been stayed and in case such change has become effective pending such investigation the commission shall order the discontinuance thereof. The commission may fix and order substituted for any such change such rates, joint rates, fares, charges, classification, rule, regulation, practice or service as it shall have determined to be just and reasonable and which shall be charged, imposed or followed in the future, and shall make such order respecting such rule, regulation, practice or service as it shall determine to be reasonable and which shall be observed and followed in the future.

(10) **REASONABLE JOINT RATES.** Whenever passengers or property are transported over connecting lines of railroad between points in this state, and the railroads have made joint rates for the transportation of the same, such rates and all charges in connection therewith shall be just and reasonable; provided, that a less charge by any of said railroads for its proportion of such joint rates than is made locally between the same points on their respective lines shall not for that reason be construed as a violation of law.

(11) **FREIGHT CLASSIFICATION.** There shall be but one classification of freight which shall be uniform on all railroads.

(12) The word "schedules" as used in this section does not include "time tables."

195.09 Commodity rates. Concentration, commodity, transit and other special contract rates are permitted, but all such rates shall be open to all shippers for a like kind of traffic under similar circumstances and conditions, and shall be subject to the provisions of this chapter.

195.10 Emergency rates. The commission shall have power, when deemed by it necessary to prevent injury to the business or interests of the people or railroads of this state in consequence of interstate rate wars, or in case of any other emergency to be judged of by the commission, to temporarily alter, amend, or, with the consent of the railroad company concerned, suspend any existing passenger rates, freight rates, schedules and orders on any railroad or part of railroad in this state. Such 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.

195.11 Discriminations prohibited. (1) If any railroad, or any agent or officer thereof, shall directly or indirectly, or by any device whatsoever, charge, demand, collect or receive a greater, less or different compensation for the transportation of persons or property or of any service in connection therewith than that prescribed in the tariffs then in force, or than it charges, demands, collects or receives from any other person, firm or corporation for a like and contemporaneous service, such railroad shall be deemed guilty of unjust discrimination, which is hereby prohibited.

(2) It shall be unlawful for any railroad to demand, charge, collect or receive from any shipper a less compensation for the transportation of property or for any service rendered or to be rendered by said railroad, in consideration of said shipper furnishing any part of the facilities incident thereto; but any railroad may rent any facilities incident to transportation and pay a reasonable rental therefor, but no payment shall be made by any carrier to an industry for performing any part of the service incident to the origination or determination of carload line haul shipments which the carriers have assumed to perform under the provisions of the bill of lading.

195.12 Preference by carriers prohibited. If any railroad shall make or give any undue or unreasonable preference or advantage to any person, firm or corporation, or shall subject any person, firm or corporation to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, such railroad shall be deemed guilty of unjust discrimination, which is hereby prohibited.

195.13 Rebates and concessions, unlawful to accept. It shall be unlawful for any person, firm or corporation knowingly to accept or receive any rebate, concession or discrimination in respect to transportation of property wholly within this state, or for any service in connection therewith, whereby any such property shall, by any device whatsoever, be transported at a less rate than that named in the tariffs in force, or whereby any service or advantage is received other than is therein specified. Any person, firm or corporation violating the provisions of this section shall be fined not less than fifty dollars nor more than one thousand dollars for each offense.

195.14 Free transportation; reduced rates, passes, limitations. (1) This chapter does not prohibit the carriage, storage or handling of freight free or at reduced rates for the United States, the state, or any municipality thereof, or for charitable purposes, or to and from fairs and expositions for exhibition thereat, or household goods the property of railway employes, or commodities shipped by employes for their exclusive use or consumption; or the issuance of mileage, commutation, party or excursion passengers' tickets; or the sale of such tickets as were usually and customarily sold at reduced rates prior to June 15, 1905; provided the same are issued and sold without discrimination to all persons applying therefor under like circumstances and conditions.

(2) Railroads may give free transportation or reduced rates therefor to any minister of the gospel, officers or agent of incorporated colleges, inmates of soldiers' homes, regular agents of charitable societies when traveling upon the business of the society only, destitute and homeless persons, railroad officers, attorneys, physicians, directors, employes or members of their families, or to former railroad employes or members of their families where such employes have become disabled in the railway service, or are unable from physical disqualification to continue in the service, or to members of families of deceased railroad employes; and may exchange passes with officers, attorneys, physicians or employes of other railroads and members of their families; but no person holding any public office or position under the laws of this state shall be given free transportation or reduced rates not open to the public, except that notaries public and regular employes of a railroad or other public utility who are candidates for or hold public office for which the annual compensation is not more than three hundred dollars to whom no passes or privileges are extended beyond those which are extended to other regular employes of such corporations may be granted free transportation or reduced rates for the transmission of any message or communication.

(3) Upon any shipment of live stock or other property of such nature as to require the care of an attendant, the railroad may furnish to the shipper or persons designated by him, free transportation for such attendant, including return passage to the point at which the shipment originated; provided, there shall be no discrimination in reference thereto.

(4) Except as provided in this section, no free transportation for intrastate traffic shall be given by any railroad.

195.15 Transportation contracts, filed. Every railroad shall, when required and within the time fixed by the commission, deliver to the commission for its use copies of all contracts which relate to the transportation of persons or property, or any service in connection therewith, made or entered into by it with any other railroad or any shipper or other person doing business with it.

195.16 Pass lists. Every railroad shall keep and for 2 years preserve a record of every railroad ticket, pass or mileage book issued to a resident of this state free or for a money consideration less than that charged the general public. Such record shall consist of the name of the recipient, the amount received, and the reason for issuance, and shall be open to inspection by the public service commission upon reasonable notice during such period of 2 years.

195.17 Interstate rate investigation, petition for relief, tariffs filed. The commission may investigate all freight rates on interstate traffic affecting Wisconsin, and when the same are, in the opinion of the commission, excessive or discriminatory or are levied or laid in violation of the law, or in conflict with the rulings, orders or regulations of the interstate commerce commission, the commission shall present the facts to the interstate carrier, with a request to make such changes as the commission may advise, and if such changes are not made within a reasonable time the commission shall petition the interstate commerce commission for relief. All freight tariffs issued by any railroad relating to interstate traffic in this state shall be filed in the office of the commission when issued.

History: 1961 c. 35.

195.18 Railroad telephone service. Upon complaint to the commission that telephonic service with any railroad is inadequate or in any respect unreasonably or unjustly

discriminatory or that such service cannot be had, it shall be the duty of the commission to investigate the same and if upon investigation the commission shall find that any telephonic service is inadequate or unreasonably or unjustly discriminatory or that such service cannot be had it shall determine and by order fix a reasonable regulation, practice or service to be installed, imposed, observed and followed in the future.

195.19 Depots; relocation of facilities. (1) **PASSENGER.** Every railroad shall provide and maintain adequate passenger depots equipped with proper toilet facilities at its regular stations for the accommodation of passengers, and said depots shall be kept clean, well-lighted and warmed, for the comfort and accommodation of the traveling public, and shall be kept open continuously from not less than 20 minutes before any train carrying passengers is scheduled to arrive and until such train has departed and for such longer period in any case as the commission may determine necessary for the convenience and accommodation of the public. Where the commission determines that the service of certain trains in making stops on signals is in excess of reasonably adequate service, the provisions of this section shall not apply in connection with the rendition of such service.

(2) **FREIGHT.** All railroads shall keep and maintain adequate and suitable freight depots, buildings, switches and sidetracks for the receiving, handling and delivering of freight transported or to be transported by such railroads.

(3) **UNION DEPOT.** In every city or village or town in which two or more railroads maintain passenger depots, it shall be the duty of such railroads to construct, maintain and use an adequate union passenger depot, whenever practical and required by public convenience and necessity. If, after investigation, the commission shall determine that it is practicable and that public convenience and necessity required the construction, maintenance and use of a union passenger depot in any such city or village or town the commission may order such railroads to construct, maintain and use an adequate union passenger depot, and shall in such order fix the location of such depot. If the railroads shall be unable to agree upon an apportionment of the original cost of such union passenger depot, and the expense of maintaining the same, within twenty days after the service of such order, the commission may, after a hearing, issue a supplemental order declaring the apportionment of such original cost and the expense of maintaining such depot.

(4) **RELOCATION OF RAILROAD FACILITIES.** Cities may co-operate with a railroad or railroads in grade crossing elimination or relocation, elimination or relocation of switchyards, roundhouses or terminals and may appropriate or borrow money therefor.

195.20 Joint use of railroad property. Whenever, upon complaint and after hearing had, the commission shall find that public convenience and necessity require the use by one or more railroads of the tracks, wires, poles, rights of way, switches, bridges or other property belonging to another railroad over or on any street, railroad, railway, right of way, bridge or viaduct, upon or over which said railroads have a right to operate, and that such use will not prevent the owners or other users thereof from performing their public duties, nor result in irreparable injury to such owners or other users thereof, the commission may, by order, direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for such joint use.

195.21 Warehouses. Any person proposing to erect or maintain a public elevator or public warehouse for the purchase, sale, storage, receiving or shipping of grain, or other personal property, to be received from or transported upon any railroad, shall be furnished by such railroad at a reasonable rental, a site upon its right of way or depot grounds, within the yard limits of any station or terminal of such railroad; and any private elevator or warehouse situated upon such grounds may be converted into a public elevator or warehouse at the option of the owner, upon notice in writing to the railroad and thereby be permitted to remain thereon under the same conditions as provided herein for a public elevator or warehouse; and the commission shall, upon application by such owner, if the public interest so requires, by order, direct the railroad to furnish such site and the commission shall make reasonable regulations therefor and in case of disagreement, the commission shall determine the rental therefor. Elevators and warehouses erected or maintained under the foregoing provisions of this section shall be subject to such rules and regulations as to charges and the manner of conducting business as the commission shall prescribe.

195.22 Car supply and freight delivery. (1) Every railroad shall, when possible and upon application and reasonable notice, furnish suitable cars to all persons for the transportation of freight in carload lots and shall use reasonable diligence in moving freight and making delivery thereof.

(2) In case of insufficiency of cars at any time to meet all requirements, such cars as are available shall be distributed among the several applicants therefor in proportion to their respective immediate requirements without discrimination between shippers or places; but preference may be given to shipments of live stock and perishable property.

195.23 Live stock scales. At every point at which any railroad maintains a stockyard and an agent, from which point twenty-five carloads or more of stock were shipped during each of the four preceding years, such railroad shall maintain a suitable platform scales properly housed and available for the weighing of live stock. The capacity of such scales may be prescribed by the commission upon the application of the railroad or of any person shipping live stock from such point during the preceding year; provided that upon such notice as the commission may prescribe to each person who shipped live stock during the preceding year from any such point upon its line, any railroad may apply to the commission for and may obtain an order exempting such point from the operation of this section upon proof that the probable benefit to accrue to shippers in their dealings with the railroad will not warrant the financial burden that would be imposed upon it by the installation of such scales, and in the determination of such benefits or burdens the commission shall not consider any benefit that might accrue to shippers in their dealings with other than the carrier concerned.

195.24 Interchange of traffic. All railroads shall afford reasonable and proper facilities for the interchange of traffic between their respective lines for forwarding and delivering passengers and freight, and shall transfer, switch for a reasonable compensation, and deliver without unreasonable delay or discrimination any freight or cars destined to any point on its tracks or any connecting lines; and shall give precedence over other freight to live stock and perishable freight.

195.25 Medical supplies on trains. (1) No steam railroad company shall operate any train that is not equipped with at least one medical emergency case with suitable equipment which shall be at all times kept in a definitely fixed, convenient and accessible place on such trains.

(2) Any such railroad violating this section shall forfeit not less than twenty-five dollars nor more than one hundred dollars, and any person who shall remove or destroy or cause the removal or destruction of such articles after the railroad company has supplied them shall be subject to the same penalty.

195.26 Safety devices; block system. Every railroad shall adopt reasonably adequate safety measures and install, operate and maintain reasonably adequate safety devices for the protection of life and property. If after investigation the commission shall determine that public safety requires it, the commission may order the railroad to install, operate and maintain a block system or other safety device or measure as may be necessary to render the operation of such railroad reasonably safe.

195.27 Safe tracks and bridges. Every railroad shall construct and maintain its tracks, bridges and line structures in a reasonably adequate and safe manner. If upon complaint the commission after making inspection shall determine that the track or structures of any railroad are inadequate or unsafe for the operation of its railroad, the commission shall after notice and hearing order such railroad to reconstruct or repair such inadequate or unsafe track or structures.

195.28 Protecting grade crossings. Upon petition of the city council, village board, member of town board, superintendent of highways or by 5 or more freeholders in any town, village or city, or of any railroad corporation to determine whether a public highway and railroad grade crossing is dangerous to human life, the commission shall proceed as provided in s. 196.26. Notice of hearing shall be served upon the highway commission, which shall be an interested party, and any recommendation it may file with the public service commission at or prior to the hearing regarding crossing protection or apportionment of the cost thereof shall be considered as evidence in the proceeding. The commission shall determine whether the existing warning devices at such crossing are adequate, and if the crossing complained of is dangerous to human life, the commission may order the railroad company to keep a flagman there, or may order the installation of gates, electric signals or other suitable safety device at such crossing. The cost of such protection, excluding the cost of maintenance or flagmen, shall be apportioned by the commission between the railroad and the state on the basis of benefits received by the railroad and the public, respectively. The public's portion shall be paid by the state from the appropriation in s. 20.395 (4) (v). In no case shall the state's share exceed 70% of the cost.

History: 1963 c. 358; 1965 c. 432 s. 6; 1967 c. 291 s. 14.

195.29 Railroad highway crossings. (1) **PETITION, HEARING, ORDER.** Upon petition by the common council or board of any city, village, town or county within or bordering upon which a highway or street crosses a railroad, or a highway or street is proposed to be laid out across a railroad, or a public highway bridge across a railroad is required to connect existing streets or highways, or upon petition by any railroad whose track crosses or is about to cross, or is crossed or about to be crossed by a street or highway, or upon petition by the state highway commission, in cases where provision has been made for the improvement of the highway adjacent to such crossing under any state aid or federal aid law, that public safety requires an alteration in such crossing, its approaches, the method of crossing, the location of the highway or crossing, or the closing of the crossing, and the substitution of another therefor at grade or not at grade, or the removal of obstructions to the view at such crossing, the relocation of the highway, or requires the determination of the manner of making such new crossing, or of making the proposed improvement or promoting the public safety or public convenience through any other reasonable method, and praying that the same may be ordered, the commission shall give notice to the parties in interest and proceed to investigate the same and to order a hearing thereon in the manner provided by section 196.26; and the commission shall determine what, if anything, shall be done to promote the public safety and the means by which it shall be accomplished, whether by the relocation of the highway, the alteration in such crossing, approaches, mode of crossing, location of highway crossing, closing of highway crossing, with or without the substitution of another therefor, the construction of a public highway bridge, the removal of obstructions to sight at crossing, or by the use of other reasonable methods, and by whom the same shall be made, and in case of new crossings the advisability of allowing such crossings to be established and manner of making them.

(2) **APPORTIONMENT OF EXPENSE.** The commission shall fix the proportion of the cost and expense of alterations, removals and new crossings, or any other work ordered, including the damages to any person whose land is taken, and the special damages which the owner of any land adjoining the public street or highway shall sustain by reason of a change in the grade of such street or highway, or by reason of the removal of obstructions to view at such crossings, to be paid or borne by the railroad companies and the municipalities in interest. In fixing such proportion, the commission may order such cost and expense so apportioned to be paid by the parties against which the apportionment shall be made.

(3) **RESTORATION OF SPUR TRACKS.** Whenever the commission shall have ordered a separation of the grade of a railway from the grade of a street or highway, it may, if safe and practicable and if a necessity exist therefor, order the alteration, restoration and connection of any track serving an industry. Demand for such restoration shall be in writing and filed with the commission within ninety days after the date of the order for the separation of grades, and any such track for which no such demand shall have been made shall be deemed abandoned. If the commission shall order the alteration, restoration and connection of any such track, it shall by its order apportion the cost thereof between the owner of the industry served and the railway company, in such proportion as to the commission may seem just and equitable; and the commission shall in its order prescribe the terms and conditions for securing the payment of such cost.

(4) **GRADE SEPARATION IN MILWAUKEE COUNTY.** The commission may upon petition of any town, city or village, or upon its own motion, when the interests of the public demand it and it is found practicable so to do, establish the grade of the tracks of any railroad, or of all the railroads throughout any county having a population of 500,000 or more, or any part thereof, and the grades of the streets or highways, or any of them, where they cross such railroad track or tracks, in anticipation of the future separation of grades of the railroad tracks from the grades of such streets or highways. The commission, before making any such order, shall mail notice to the railroad company or companies affected, the owners or occupants of any building abutting on that part of the railroad the grade of which is to be established, all cities of the first class in said county, and if the grades to be established are outside such city of the first class, the towns, cities or villages in which such grades are to be established, of the filing of such petition or that the commission contemplates establishing such grades, and fixing a time at which such cities of the first class and such other towns, cities or villages and the railroad company or companies affected thereby and any other person or corporation interested therein may be heard. The grades so established under this subsection shall be described by reference to a base or datum line to be established by the commission, from which all elevations and the height of all grades shall be measured, and the grades so established shall be such that when brought to the established grade the railroad tracks will cross the streets and highways above or below the same. Such order shall not necessarily require a present change in grade but the commission may at any time order the railroad track or tracks and the

street and highways brought to the grade established or any street or highways closed by said order, in accordance with sub. (1) of this section, and may, at the time of making said order, apportion the cost of separating the grades as provided in sub. (2) hereof.

(5) **ELIMINATION OF GRADE CROSSINGS, COSTS.** Upon petition of the state highway commission, or of the common council or board of any city, village, town or county, alleging that one or more of them have undertaken or propose to undertake to relocate or improve an existing highway or to construct a new highway in such manner as to eliminate a highway grade crossing with any railroad or so as to permanently divert a material portion of the highway traffic from a highway grade crossing with any railroad, the commission shall issue notice of investigation and hearing, as provided in section 196.26. If upon such hearing the commission finds that the public safety will be promoted by said highway relocation, improvement or new construction, the commission shall order the old crossings closed and new crossings opened as are deemed necessary for public safety; and shall order the railroad company or companies to pay to the interested municipality or municipalities such sum as the commission finds to be an equitable portion of the cost of the highway relocation, improvement or new construction, if the work is performed by the municipalities; or to the state treasurer if the work is performed by the state; or to the proper county treasurer if the work is performed by the county. Said sum shall be added to the joint fund available for the improvement and may be expended in like manner as the other portions of said fund.

(6) **VIEW AT CROSSINGS; TREES AND BRUSH NEAR CROSSINGS; FORFEITURE.** Every railroad shall keep its right of way clear of brush or trees for a distance of not less than 330 feet in each direction from the center of its intersection at grade with any public highway, and for such further distance as is necessary to provide an adequate view of approaching trains, from such highway. Every municipality shall keep the public highways within its jurisdiction clear of brush and shall adequately trim all trees within 330 feet of the center of any railroad highway grade crossing. Every person or corporation owning or occupying any land adjacent to any railroad highway grade crossing shall keep all brush cut and adequately trim all trees on said land within the triangles bounded on 2 sides by the railway and the highway, and on the third side by a line connecting points on the center lines of the railway and the highway, 330 feet from the intersection of said center lines. The commission, upon its own motion, or upon any complaint to the effect that any work required by this subsection has not been performed, after due notice and hearing, may order the corporation, municipality or person at fault to perform said work; provided, however, that if the physical conditions at any crossing are such that the performance of the required work will not materially improve the view for highway traffic, or, if unreasonable loss would be caused thereby, the commission may excuse the party in interest from performing the same. The commission may also make such order for the cutting of brush and the trimming of trees at private farm crossings as may be necessary and reasonable. If any person shall violate any provision of this section, or shall fail, neglect or refuse to obey any order made by the commission hereunder, or any judgment or decree made by any court upon such an order, for every such violation, failure or refusal such person shall forfeit not less than \$25 nor more than \$150.

(7) **STRUCTURE REQUIREMENTS.** Whenever the commission shall order the construction or reconstruction of a crossing not at grade, it may direct that the structure required shall be of such character and constructed of such materials it shall deem appropriate to the situation and necessary for the public interest.

(8) **ACQUISITION OF LANDS.** Any lands needed to carry out the provisions of this section may be acquired.

History: 1963 c. 506 s. 8.

A city may be held liable if an accident results from the obstruction of view of a railroad crossing by untrimmed trees which the city has an obligation to trim. The defense of sovereign immunity is not available. *Bosin v. M. St. P. & S. S. M. R. Co.* 183 F Supp. 820.

195.291 Public hearing, when not required. In any matter before the commission involving protection for railroad grade crossings, said commission may dispense with a public hearing where the railroad and highway commission or other public agency engaged in laying out or improving highways agree upon the need for crossing protection, the kind of protection or structure necessary and the apportionment of costs therefor among them.

195.30 Railroad crossings; grade separation, safety devices. (1) Upon a petition by the common council of any city, or the board of any village, town or county within which a railroad crosses another railroad at grade, or by any such railroad, that public safety requires an alteration in such crossing or the installation of protective appliances, the commission shall give notice to the parties in interest, and proceed to investigate the

same and may order a hearing thereon. The commission shall determine what alteration in such crossing, if any, shall be made, and by whom made and maintained, or what protective appliances shall be installed, operated and maintained at such crossing and by whom installed, operated and maintained. The commission shall fix the proportion of the cost and expense of such change in grade and maintenance of the crossing or of the installation, operation and maintenance of such safety appliance which shall be paid by the railroad companies, respectively.

(2) The provisions of this section shall apply to drawbridges, junctions and other fouling points on railroads.

195.31 Bridges made safe. Whenever a complaint is lodged with the public service commission by the common council of any city, the village board of any village, a member of a town board, or a supervisor of highways, or by five or more freeholders and taxpayers in any town, or five or more freeholders of the county in which such bridge is located, and who are users of such bridge or railway, to the effect that a bridge erected over a stream intersecting a public highway or highways upon which a railway is constructed and operated, is unsafe and dangerous to travelers over such highway or highways or bridge or railroad, and that public safety requires the alteration, the repair or reconstruction of such bridge, or the substitution of another bridge therefor, it shall be the duty of the said commission to give notice to the party or parties in interest, other than the petitioners, of the filing of such complaint, and to furnish a copy of the same to the party or parties in interest other than the petitioners, and to order a hearing thereon, in the manner provided for hearings in sections 196.26 to 196.29, and after such hearing the commission shall determine what alteration or repair or reconstruction of such bridge, and the approaches thereto, shall be made, or if it shall determine that public safety requires the substitution of a new bridge, it shall determine the character, manner of construction and location of such bridge and the approaches thereto. The commission shall fix the proportion of the cost and expense of such alteration, repair, reconstruction or substitution of a new bridge, including the damage to any person whose land is taken, and the special damage which the owner of any land adjoining the approaches to said bridge shall sustain by reason of such alteration, repair, reconstruction or substitution of a new bridge, to be paid by the railroad company and the city, village or town in interest. The commission may, in the absence of any petition therefor, when in their opinion public safety requires the alteration, repair or reconstruction of any such bridge or the substitution of another bridge therefor, after notice and hearing, as provided in sections 196.26 to 196.29, proceed in like manner as upon a complaint duly filed.

195.32 Safety gates on drawbridges. Whenever a complaint is filed with the public service commission to the effect that any drawbridge is not equipped with gates or other safety devices, the commission may notify the proper party or parties in interest of the complaint, and may proceed to investigate the same and to hold a hearing thereon in the manner provided for hearings in sections 196.26 to 196.29. If after such investigation the commission determines that public safety requires the erection and maintenance of gates or other safety devices at the points mentioned in the complaint, it may order the county, city, village, town, corporation or person whose duty it is to maintain such bridge to erect and maintain at such points such gates or other safety devices as the commission prescribes. The commission may conduct the investigations, hold the hearings and make the orders provided for in this section upon its own motion in the same manner and with the same effect as though complaint were filed.

195.33 Railroad costs; balance sheet, wages, hours; report. (1) The commission shall ascertain, as early as practicable, the amount of money expended in the construction and equipment of every railroad, the amount of money expended to procure the right of way, also the amount of money it would require to secure the right of way, reconstruct the roadbed, track, depots and other facilities for transportation, and to replace all the physical properties belonging to the railroad.

(2) It shall ascertain the outstanding evidences of debts and the amounts respectively thereof, the date when issued, to whom issued, to whom sold, the price paid in cash, property or labor therefor, what disposition was made of the proceeds, by whom the securities are held, the amount due thereon, the floating debt of the railroad, the credits due the railroad, other property on hand belonging to it, the judicial or other sales of said road, its property or franchises, and the amounts paid and in what manner paid therefor.

(3) The commission shall ascertain the gross and net income of the railroad from all sources in detail; the amounts paid for salaries to the officers of the road, and the wages paid to its employes and the maximum hours of continuous service required of each class.

(4) In making such investigation the commission may avail itself of any information in possession of the department of taxation.

(5) When the information required by this section is obtained it shall be printed in the next report of the commission.

History: 1961 c. 33.

195.34 Reports of accidents, investigation. Every railroad shall report to the commission all collisions, derailments or other accidents resulting in injury to persons, equipment or roadway arising from its operation. The commission may issue rules concerning the reporting of accidents and may also if public interests require cause an investigation of any accident.

195.35 Treble damages. If any railroad shall do or cause to be done or permit to be done any matter, act or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing required to be done by it, such railroad shall be liable to the person, firm or corporation injured thereby in treble the amount of damages sustained in consequence of such violation; provided, that any recovery as in this section provided shall in no manner affect a recovery by the state of the penalty prescribed for such violation.

195.36 General penalty upon railroads. If any railroad shall violate any provision of this chapter, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it, for which a penalty has not been provided, or shall fail, neglect or refuse to obey any lawful requirement or order made by the commission, or any judgment or decree made by any court upon its application, for every such violation, failure or refusal in respect to any matter prescribed by this chapter such railroad shall forfeit not less than one hundred dollars nor more than ten thousand dollars. The act, omission or failure of any officer, agent or other person employed by any railroad, acting within the scope of his employment, shall be deemed to be the act, omission or failure of such railroad.

195.37 Freight charges; collection, refund. (1) **COMPLAINTS, INVESTIGATIONS, HEARINGS, FINDINGS, REFUND.** The commission may investigate and hear the complaint of any person aggrieved that the charge exacted for the transportation of property between points in Wisconsin, or for any service in connection therewith, or that the charge exacted for the storage of such property, or that any car service or demurrage charge exacted is erroneous, illegal, unusual or exorbitant. If the commission shall find that the rate or charge exacted is erroneous, illegal, unusual or exorbitant, it shall find what would have been a reasonable rate or charge for such service. If the rate or charge so found shall be less than the charge exacted, the carrier shall refund the excess.

(2) **ACTIONS; FINDINGS AS EVIDENCE, DEFENSES.** In an action to recover the amount of such excess charge 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 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 the judgment of a court shall be liable for any penalty or subject to any prosecution on account of making such refund.

(3) **LIMITATION FOR FILING CLAIM.** All complaints provided for in subsection (1), except those for straight overcharges, shall be filed with the commission within 2 years after delivery of the shipment of property at destination, subject to subsection (6).

(4) **STRAIGHT OVERCHARGES, LIMITATION OF ACTIONS, EXCEPTION.** For recovery of straight overcharges which mean charges in excess of those applicable under the lawful tariffs on file with the commission, neither this section nor section 195.38 shall be deemed exclusive remedies. Complaints for the same may be filed or actions begun within three years from the delivery of the shipment of property at destination, and not after, except that if a claim for the overcharge has been presented in writing to the carrier within the three-year period, said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim or any part thereof.

(5) **ACTIONS BY CARRIERS, LIMITATION.** Actions by carriers for the recovery of charges for the transportation of property between points in Wisconsin, or for any service in connection therewith, or for the storage of such property, or for any car service or demurrage charge, or any part thereof, shall be begun within three years after the delivery of the shipment of property at destination with respect to which such charge is made and not after.

(6) **LIMITATION ACTION, EXTENDED BY CARRIER.** If on or before the expiration of said two-year period of limitation or of said three-year period of limitation carrier shall begin action for the recovery of charges in respect to the same transportation service, or without

bringing action shall collect charges in respect of that service, said periods of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected.

195.38 Freight bills; examination; refunds. Within three years after the delivery of any shipment of property at destination, any person, firm or corporation may submit to the public service commission, by mail or in person, any railroad or express company expense bill or receipt showing charges paid for transportation of such property by freight or express for the purpose of having the same examined with respect to the correctness of weights, rates and charges indicated thereon. Upon receipt of any such expense bill or receipt the commission shall make such examination as is necessary, and if it shall be found that any such weights, rates or charges are incorrect, the commission shall order the express or railroad company in error to refund to the person, firm or corporation which submitted such expense bills or receipts, any over or excessive charges paid by such person, firm or corporation; provided, however, that the public service commission shall not be required to audit or examine more than fifteen such expense bills or receipts from any one shipper or consignee in any one calendar month.

195.39 Interstate commerce. Chapters 190 to 196 apply to interstate commerce only so far as the constitution and laws of the United States permit.

195.40 Reporting operations to artificially influence precipitation. (1) For the purpose of determining the effect of operations designed to influence precipitation of atmospheric moisture by artificial means it is hereby required that all persons engaged in such operations shall comply with the provisions of this section.

(2) Any person who enters into any contract for or engages in any activity designed or intended to affect by artificial means the precipitation of atmospheric moisture in this state shall register each proposed operation with the commission.

(3) The registration shall set forth such data as to time, place and method of each operation as the commission shall reasonably require for the purpose of making a scientific evaluation of each operation and its effect upon the public welfare.

(4) Each registrant shall within 10 days report on the conduct of each operation and shall provide such data as the commission may deem necessary in the public interest.

(5) Any person who violates any of the provisions of this section shall forfeit for each such offense a sum not to exceed \$250 together with the actual costs of all administrative and legal action necessary to collect such forfeiture. Such forfeiture shall be enforced and the proceeds disposed of as prescribed in s. 30.03. Any unregistered operation shall be subject to summary abatement as a public nuisance.