

CHAPTER 195

RAILROAD REGULATION

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195.001 Definitions. In this chapter:

(1) "Commission" means the transportation commission.

(2) "Department" means the department of transportation.

History: 1977 c. 29.

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.

(3) This chapter applies 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 applies 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.

History: 1977 c. 29.

195.03 Commission; powers and duties, general enumeration. (1) **PRACTICE RULES.** The commission may take testimony and administer oaths and may adopt rules to govern its proceedings and to regulate the mode and manner of all hearings. All hearings shall be open to the public.

(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.

(21) EXECUTIVE ASSISTANT. The chairman of the commission may appoint, outside the classified service, an executive assistant to serve at the chairman's pleasure and perform such duties as the chairman prescribes.

(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.

(28) TITLE. The commission may sue and be sued in that name, and may confer with or participate in any proceedings before any regulatory agency of any other state or of the federal government.

(29) 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: 1971 c. 215, 306; 1977 c. 29 ss. 1325, 1328 to 1333, 1654 (9) (e).

195.04 Complaints, investigation, hearings, notice. **(1)** Upon complaint of any person, including any state agency 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 may

direct the department to investigate the complaint and shall set the complaint for hearing. The report of the department shall be presented to the commission only at the hearing on the complaint, if hearing is requested and held. No order may be entered by the commission without a public hearing.

(2) The commission shall, prior to such hearing, notify the railroad complained of that a complaint has been made, and 20 days after such notice has been given the commission may proceed to set a time and place for a hearing.

(3) The commission shall give the railroad and the complainant 20 days' notice of the hearing and the matters to be considered and determined. Both the railroad and complainant shall be entitled to be heard and shall have process to enforce the attendance of witnesses.

(4) The notice provided for in subs. (2) and (3) may be combined but if combined the notice shall not be less than 20 days.

History: 1977 c. 29.

195.041 Separate rate hearings; absence of direct damage. The commission may, when complaint is made of more than one rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately and at such times as it may prescribe. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

History: 1977 c. 29.

195.042 Summary investigations. Whenever the commission believes that any rate or charge may be unreasonable or unjustly discriminatory or that any service is inadequate or cannot be obtained or that an investigation of any matter relating to any railroad should for any reason be made, it may request the department to investigate the same with or without notice.

History: 1977 c. 29.

195.043 Procedure after summary investigation. (1) If, after summary investigation by the department, the commission becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matters investigated, it shall set a time and place for a hearing. The commission shall publish notice of any such investigation in its weekly calendar and the report of the department and all matters considered by the commission with respect thereto shall be available for public inspection upon request.

(2) Notice of the time and place for such hearing shall be given to the railroad, and to such other interested persons as the commission

deems necessary, as provided in s. 195.04, and thereafter proceedings shall be had and conducted in reference to the matter investigated in like manner as though complaint had been filed with the commission relative to the matter investigated, and the same order or orders may be made in reference thereto as if such investigation had been made on complaint.

History: 1977 c. 29.

195.044 Witness fees and mileage. (1)

Each witness who appears before the commission or its agent, by its order, shall receive for attendance the fees and mileage now provided for witnesses in civil cases in courts of record, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers sworn to by such witnesses and approved by the chairman of the commission. Said fees and mileage shall be charged to the appropriation for the commission.

(2) No witness subpoenaed at the instance of parties other than the commission is entitled to compensation from the state for attendance or travel unless the commission certifies that the witness' testimony was material to the matter investigated.

History: 1977 c. 29, 273

195.045 Depositions. The commission or any party may in any hearing cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in circuit courts. Any expense incurred or authorized by the commission in taking such depositions shall be charged to the appropriation for the commission.

History: 1977 c. 29.

195.046 Record. A full and complete record shall be kept of all proceedings before the commission or its hearing examiners.

History: 1977 c. 29.

195.047 Transcripts as evidence. A transcribed copy of the evidence and proceedings or any specific part thereof, on any hearing under this chapter taken by the stenographer, being certified by such stenographer to be a true and correct transcript of all the testimony or of a particular witness, or of other specific part thereof, carefully compared with the original notes, and to be a correct statement of the evidence and proceedings had on such hearing so purporting to be taken and transcribed, shall be received in evidence with the same effect as if such reporter were present and testified to the fact so certified. A copy of such transcript shall

be furnished on demand free of cost to any party to such hearing.

History: 1977 c. 29.

195.048 Incriminating evidence. No person may be excused from testifying or from producing books, accounts and papers in any proceeding based upon or growing out of any violation of this chapter on the ground or for the reason that the testimony or evidence may tend to incriminate or subject the person to penalty or forfeiture, but no person having so testified may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which the person has testified or produced. No person so testifying may be exempted from prosecution or punishment for perjury in testifying.

History: 1977 c. 29, 273

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.

195.055 Judicial review. All orders and determinations of the commission are subject to judicial review under ch. 227.

History: 1977 c. 29.

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 s. 227.11 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 ch. 227.

History: 1975 c. 414 s. 28.

195.07 Law enforcement. (1) POWERS. The commission may request the department to inquire into the neglect or violation of the laws of this state by railroads, or by the officers, agents or employes thereof, or by persons operating railroads, and the department may report violations to the attorney general.

(2) ATTORNEY GENERAL AND DISTRICT ATTORNEY TO PROSECUTE. Upon request of the department, the attorney general or the district attorney of the proper county shall aid in any investigation, hearing or trial had under, and shall institute and prosecute all necessary actions or proceedings for the enforcement of, laws relating to railroads.

(3) ACTIONS, CHARACTER, VENUE. Any forfeiture, fine or other penalty provided in chs. 192 to 195 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 s. 801.50.

History: 1977 c. 29

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, the commission shall give notice to the railroad that complaint has been made, may direct the department to investigate the same and shall set the complaint for hearing. Any report of the department shall be presented to the commission only at the hearing on the complaint. 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 the change complained of is found unreasonable or unjustly discriminatory such change shall not take effect, and if the change has become effective 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. Procedure and notice shall be as provided in s. 195.04 (2) to (4).

(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".

History: 1977 c. 29.

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 commission upon reasonable notice during such period of 2 years.

History: 1977 c. 29 s. 1654 (9) (e).

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.

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.

195.195 Reorganization subject to commission approval. Reorganizations of all railroads shall be subject to the supervision and control of the commission, and no such reorganization shall be had or given effect without the written approval of the commission. No plan of reorganization shall be approved by the commission unless the applicant establishes that the plan of reorganization is consistent with the public interest.

History: 1977 c. 29.

195.196 Consolidation or merger. (1) With the consent and approval of the commission:

(a) Any 2 or more railroads may merge or consolidate with one another.

(b) Any railroad may acquire the stock of any other railroad or any part thereof.

(c) Any railroad may consolidate or merge with any corporation substantially all of whose assets consist of the entire stock of such railroad. The total of the resulting securities outstanding of the possessor corporation if not theretofore authorized pursuant to ch. 184, shall require such authorization as a condition precedent to such merger.

(d) Any railroad may sell, acquire, lease or rent any property constituting an operating unit or system.

(2) Application for the approval and consent of the commission shall be made by the interested railroad, and shall contain a concise statement of the proposed action, the reasons therefor and such other information as may be required by the commission. Upon the filing of such application the commission shall request the department to investigate the same. After the report of the department is received, the commission may conduct a public hearing upon such notice as the commission may require, and if it finds that the proposed action is consistent with the public interest it shall give its consent and approval in writing. In reaching its determination the commission shall take into consideration the reasonable value of the property and assets of the corporation to be acquired or merged.

(3) Any transaction required by this section to be submitted to the commission for its consent and approval shall be void unless the commission gives its consent and approval in writing.

(4) Nothing in this section shall be construed as affecting or limiting the operation of ss. 197.01 to 197.10 or of ss. 66.06 to 66.078.

History: 1977 c. 29.

195.199 Acquisition of abandoned property. (1) DEFINITIONS. As used in this section:

(a) "Railroad" has the meaning designated under s. 195.02 (1).

(b) "Railway" means a corporation described in s. 193.01.

(c) "State agency" means state departments and independent agencies.

(d) "System diagram map" means the map required under federal law to be filed with the department by the railroad operating in this state that indicates rail lines in the process of abandonment, rail lines the railroad expects to abandon and the rail lines that are under study by the railroad for possible abandonment in the future.

(2) The department shall have the first right to acquire, for present or future transportation, recreational or scenic purposes, any property used in operating a railroad or railway including rights-of-way and rails, ties, switches, trestles, bridges and the like located thereon, which has been abandoned. Acquisition may be by gift, purchase or condemnation in accordance with the procedure under s. 32.05. No person owning such abandoned property, including any person to whom ownership reverts upon abandonment, may convey or dispose of any abandoned property without first obtaining a written statement from the department indicating that it does not intend to exercise its right to acquire the property. No railroad or railway may convey any such property prior to abandonment if that property is part of a rail line shown on the railroad's system map as in the process of abandonment, expected to be abandoned or under study for possible abandonment unless the conveyance or disposal is for the purpose of providing continued rail service under another company or agency. Any conveyance made without obtaining such release is void. The department's first right of acquisition under this subsection does not apply to any railroad property declared by the department to be abandoned before January 1, 1977. The department may acquire any abandoned property under this section regardless of the date of its abandonment.

(3) For purposes of this section, railroad or railway property shall be deemed abandoned if:

(a) A certificate or approval of abandonment has been issued by the interstate commerce commission or any other federal or state agency having jurisdiction over the abandonment of such property and operations have been terminated in accordance with the certificate or approval; or

(b) Such certificate or approval of abandonment is not required and the use of such property for railroad or railway purposes has been discontinued with the intent not to resume. Intent not to resume may be inferred from circumstances including, but not limited to, the following:

1. If the property is not used for railroad purposes for 2 consecutive years.

2. If the facilities on the property are removed or rendered unfit for service.

3. If the property is used for other than railroad purposes.

(4) Upon its own initiative, the department may determine at any time whether the property of the railroad or railway is abandoned, and whether it is in the best interest of the state to acquire such property. Within 90 days after being requested by any state agency, any railroad or railway, or any county or municipality in which the property is located, the department shall make a determination of the abandonment status and, if found to be abandoned, shall determine whether it is in the best interest of the public to acquire the property. If it is determined to acquire the property or any part or interest therein, the department shall, within 180 days of the determination of its abandoned status, or the interstate commerce commission's final order permitting the abandonment, or the termination of any efforts to negotiate an agreement for continual operation of rail service on the line, whichever occurs last, determine the fair market value of the property and acquire the property at a price deemed reasonable by the department or make a relocation order under s. 32.05. In making its determination, the department shall consider long-range potential for use of such property for restoration of railroad service and for public transit. The department shall solicit the opinions of appropriate state agencies, affected counties and municipalities and other interested persons. The department shall give due consideration to an expressed desire by a state agency or an affected county or municipality to acquire, in whole or in part, the property under consideration. All or part of any interest in abandoned property acquired by the department under this section or under s. 66.941 (7), 1975 stats., may be subsequently conveyed to another state agency or a county or municipality for transportation, recreational or scenic purposes, and the department may make such conveyances for such purposes. Any determination of the department under this section that property is not abandoned shall not preclude the undertaking of a subsequent investigation and determination concerning the same property or any portion thereof. If at any time subsequent to the acquisition of property under this section the department determines that the property is not suitable for transportation, recreational or scenic purposes, or that the property or any interest therein may be conveyed to any other person on terms which are not inconsistent with the potential use of the property for transportation, recreational or scenic purposes or which

yield a benefit, including financial benefits, to the state which outweighs the benefit derived from the property if used for transportation, recreational or scenic purposes, the department may convey the property or such interest therein. The department shall give notice of its intention to make the conveyance, and state and local units of government shall have the first 6 months in which to exercise their opportunity to acquire the property or interest therein. The railroad or railway from which the property was acquired shall have the next 6 months in which to exercise their opportunity to acquire the property or interest therein. The department may adopt such rules as it deems necessary to accomplish the purposes of this section.

History: 1977 c. 29, 418.

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 livestock and perishable property.

History: 1973 c. 157; 1977 c. 203.

195.23 Livestock 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 livestock. The capacity of such scales may be prescribed by the commission upon the application of the railroad or of any person shipping livestock from such point during the preceding year; provided that upon such notice as the commission may prescribe to each person who shipped livestock 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 livestock 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. The commission may direct the department to investigate complaints in the manner provided by s. 195.04. If upon hearing, the commission determines that the track or structures of any railroad are inadequate or unsafe for the operation of its railroad, the commission shall order the railroad to reconstruct or repair the inadequate or unsafe track or structures.

History: 1977 c. 418.

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 protects and promotes public safety, the commission may investigate and issue an appropriate order without a public hearing. If the petitioner, railroad or any interested party objects to the order and requests a hearing within 20 days after the date the order is issued, the commission shall proceed under s. 195.04. Notice of an investigation or hearing shall be served upon the department, which shall be an interested party, and any recommendation it may file with the commission at or prior to a hearing, if there is one, 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 to protect and promote public safety. If the commission determines, either without or after a hearing, that protection is not adequate, it may order the railroad company to keep a flagman at the crossing or to install automatic signals or other suitable safety device at specific locations at such crossing. The commission may order the relocation of existing signals and devices to improve protection at a crossing. Any crossing protection installed or maintained as approved by the commission, whether by order or otherwise, shall be deemed adequate and appropriate protection for such crossing. The cost of such protection 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 (1) (td).

History: 1973 c. 155; 1973 c. 243 s. 82; 1975 c. 135; 1977 c. 29 ss. 1654 (8) (b), 1656 (43).

195.285 Exempt railroad crossings. (1)

Upon the petition of a railroad corporation, the department, or the governing body of any city, village, town or county asserting that the stopping of vehicles under s. 346.45 at a railroad crossing is hazardous to human life, the transportation commission shall hold a hearing on the matter as provided under s. 195.04. Notice of petition shall be served upon the department, which shall be an interested party, and any recommendations it may file with the transportation commission regarding the hazardous effect of vehicles stopping at such crossings shall be considered as evidence in the proceedings. Upon the recommendation of the department and concurrence by the transportation commission, the petition may be dismissed without holding a hearing. If upon the public hearing the department determines that it would be in the public interest to exempt vehicles specified in s. 346.45 from stopping at such grade crossing, it may order the public body having jurisdiction over the highway to erect signs, signals, markings or other devices exempting such vehicles from stopping at the crossing.

(2) Signs placed upon the order of the commission under this section shall exempt vehicles from stopping as required under s. 346.45, unless a train or engine is occupying or approaching the crossing.

(3) The department shall establish standards for the type of signs, signals, markings or other devices for exempting vehicles from stopping as required under s. 346.45 and their location in relation to the highway and railroad track. The

transportation commission may upon petition or its own motion, with or without a hearing, order the removal of a sign exempting vehicles from stopping at a crossing.

History: 1975 c. 63; 1977 c. 29 ss. 1654 (8) (a), (9) (f), 1656 (43).

195.286 Highway crossings, advance warning signs. (1) RAILROADS TO FURNISH; PLACEMENT.

Each railroad company shall furnish to each county in which it operates, upon request of the county highway commissioner, a sufficient quantity of advance warning signs to enable the county and town to comply with this section. The county highway commissioner on roads maintained by the county and the town board on roads maintained by the town shall immediately install and thereafter maintain such signs in good condition, near each grade crossing (other than state trunk highway crossings and crossings within the limits of cities and incorporated villages). The town board shall requisition its needs for advance warning signs from the county highway commissioner. The cost of such installation and maintenance shall be paid out of moneys received by the county or town, as the case may be, for highway maintenance. The department shall provide, install and maintain advance warning signs at all railroad grade crossings on the state trunk highway system outside of cities and incorporated villages. The department, upon petition and upon investigation and finding that such signs are impracticable or unnecessary on any highway, may release the town, county or state from the provisions of this section as to such highway.

(2) **SIGNS DESCRIBED.** Such signs shall be round and of a size, color and message as specified by the department and approved by the commission. Any change in these signs shall not be retroactive.

(3) **LOCATION.** Such signs shall be placed in conspicuous locations beside every highway which crosses a railroad at grade (outside of cities and incorporated villages) as near as practicable to the traveled portion of the highway on each side of such crossing, at a location and in a manner to be prescribed by the department, the county highway commissioner or the town board, or, if the crossing is so near city or village limits that the sign will be within such limits, by the city council or the village board, as the case may be.

(4) **DUPLICATES.** In case any sign installed as provided in this section, other than that on the state trunk highway system, is destroyed or becomes illegible by any cause whatsoever, the railroad company, upon request from the county highway commissioner, shall forthwith deliver another such sign at the crossing near which it is

to be installed; neither the installation of said signs nor the failure to install or maintain the same shall render the town, county or state liable for any accident that may occur by reason of such installation or neglect.

(5) OTHER SIGNS PROHIBITED. No other sign of the general size or appearance of the signs provided for in this section shall be placed or permitted upon any highway, nor any sign between such advance signs except signs or signals now required by law or permitted by the commission for protection at railway crossings.

(6) PENALTIES. Any person who removes, throws down, injures or defaces any sign required by this section shall, upon conviction, be fined not to exceed twenty-five dollars.

(7) PENALTIES. Any person or corporation upon conviction for the violation of any of the provisions of this section, except subsection (6), shall be fined not less than ten dollars nor more than fifty dollars for each violation.

(8) PROSECUTIONS. The district attorney shall prosecute any person violating this section, or begin and maintain any civil action necessary for its enforcement upon the demand of any county highway commissioner, the department, or the commission.

History: 1977 c. 29 ss 1301, 1654 (8) (b), (9) (e); 1977 c. 272.

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 department, 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 195.04; 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 department, 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 195.04. 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: 1977 c. 29 ss. 1654 (8) (b), 1656 (43).

See note to 195.291, citing *Gamble-Skogmos v. Chgo. & N. W. Transp.* 71 W (2d) 767, 238 NW (2d) 744

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 department 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.

History: 1977 c. 29 s. 1654 (8) (b).

PSC's pro forma approval of railroad's proposed signal installation does not immunize railroad from liability for negligence regarding such crossing protection devices. *Gamble-Skogmos v. Chgo. & N. W. Transp.* 71 W (2d) 767, 238 NW (2d) 744

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.

195.305 Railroad crossings; grade; expense. Whenever a railroad proposes to cross, intersect, join or unite its track with another railroad track, the surface road of the proposed track shall be above, below or at grade of the tracks proposed to be crossed as the commission shall determine after hearing the parties upon reasonable notice. In its determination, the commission shall fix the proportion of the expense of originally constructing, operating, and maintaining such crossing, intersecting, joining

or uniting which shall be paid by the owners of said tracks respectively.

History: 1977 c. 29 s. 1296

195.31 Bridges made safe. Whenever a complaint is lodged with the 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 195.04 to 195.043, 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 195.04 to 195.043, proceed in like manner as upon a complaint duly filed.

History: 1977 c. 29 ss. 1654 (9) (e), 1656 (43).

195.32 Safety gates on drawbridges. Whenever a complaint is filed with the 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 195.04 to 195.043. 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.

History: 1977 c. 29 ss. 1654 (9) (e), 1656 (43).

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 revenue.

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

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.

A treble damage claim is no longer a separate cause of action because gross negligence is to be compared like all other negligence *Kania v. C. & N. W. Ry. Co.* 57 W (2d) 761.

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 direct the department to investigate the complaint of any person aggrieved that the charge exacted for the transportation of property between points in this state, or for any service in connection with transportation of property, 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 and shall set the complaint for hearing as provided in s. 195.04 (2) to (4). If the commission finds 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 is 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 sub. (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 sub. (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.

History: 1977 c. 29.

195.38 Freight bills; examination; refunds. Within 3 years after the delivery of any

shipment of property at destination, any person, firm or corporation may submit to the commission, by mail or in person, any railroad expense bill or receipt showing charges paid for transportation of such property by freight 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 may request the department to make such examination as is necessary, and if it is found that any such weights, rates or charges are incorrect, the commission shall order the 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.

History: 1977 c. 29.

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.

195.45 Common carriers of passengers or property by water; certificate required.

(1) No person shall operate as a common carrier of passengers or property by water except in accordance with the terms and conditions of a certificate of public convenience and necessity issued by the commission. The commission shall issue such certificates upon a finding that the service proposed to be performed is in the public interest and required by public convenience and necessity.

(2) Application for such certificate shall be made on forms furnished by the commission and shall contain such information as the commission requires.

(3) Every application for a certificate under this section shall be accompanied by a filing fee of \$40.

(4) The commission may promulgate rules for the operation of this section.

195.50 Information, papers and accounting.

(1) Any officer, agent or employe of any railroad who fails to fill out and return any forms required by this chapter, or fails to answer any question therein, or knowingly gives a false answer to any such question, or evades the answer to any such question where the fact inquired of is within his or her knowledge, or who, upon proper demand, fails to exhibit to the commission or department or any person authorized to examine the same, any book, paper, account, record or memoranda of such railroad which is in the possession or under control of the

officer, agent or employe, or who fails to properly use and keep the system of accounting prescribed by the commission, or who refuses to do any act or thing in connection with such system of accounting when so directed by the commission or its authorized representative, shall forfeit not less than \$100 nor more than \$1,000 for each offense.

(2) A forfeiture of not less than \$500 nor more than \$1,000 shall be recovered from the railroad for each such offense when such officer, agent or employe acted in obedience to the direction, instruction or request of such railroad or any general officer thereof.

History: 1977 c. 29, 273.

195.60 Payment of commission's expenditures by railroads.

(1) Whenever the commission in a proceeding upon its own motion, on complaint, or upon an application to it deems it necessary in order to carry out the duties imposed upon it by law to investigate the books, accounts, practices and activities of, or make appraisals of the property of any railroad or to render any engineering or accounting services to any railroad, the railroad shall pay the expenses attributable to such investigation, appraisal or service. The commission shall ascertain such expenses, including all expenses incurred by the department at the request or direction of the commission and shall render a bill therefor, by mail, to the railroad, either at the conclusion of the investigation, appraisal or services, or during its progress. The bill shall constitute notice of assessment and demand of payment thereof. The railroad shall, within 30 days after the mailing thereof, pay to the commission the amount of the special expense for which it is billed. The total amount, in any one calendar year, for which any railroad becomes liable, by reason of costs incurred by the commission within such calendar year, shall not exceed four-fifths of one percent of its gross operating revenues derived from intrastate operations in the last preceding calendar year. Where, under this subsection, costs are incurred within any calendar year, which are in excess of four-fifths of one percent of such gross operating revenues, the excess costs shall not be chargeable as part of the remainder under sub. (2) but shall be paid out of the general appropriation to the commission. Nothing in this subsection shall prevent the commission from rendering bills in one calendar year for costs incurred within a previous year.

(2) The commission shall annually, within 90 days after the close of each fiscal year, ascertain the total of its expenditures during such year which are reasonably attributable to

the performance of its duties relating to railroads, and shall deduct therefrom all amounts chargeable to railroads under sub. (1) and s. 184.10 (3). The remainder shall be assessed by the commission to the several railroads in proportion to their respective gross operating revenues during the last calendar year, derived from intrastate operations. Such assessment shall be paid within 30 days after the bill has been mailed to the several railroads, which bill shall constitute notice of assessment and demand of payment thereof. The total amount which may be assessed to the railroads under authority of this subsection shall not exceed one percent of the total gross operating revenues of such railroads, during such calendar year, derived from intrastate operations.

(3) If any railroad against which a bill has been rendered under sub. (1) or (2) within 30 days after the rendering of such bill a) neglects or refuses to pay the same, or b) fails to file objections to the bill with the commission, the commission shall transmit to the state treasurer a certified copy of the bill, together with notice of neglect or refusal to pay the bill, and on the same day the commission shall mail to the railroad against which the bill has been rendered a copy of the notice which it has transmitted to the state treasurer. Within 10 days after the receipt of such notice and certified copy of such bill the state treasurer shall levy the amount stated on such bill to be due, with interest, by distress and sale of any goods and chattels, including stocks, securities, bank accounts, evidences of debt, and accounts receivable belonging to such delinquent railroad. Such levy by distress and sale shall be governed by the provisions of s. 74.10 except that it shall be made by the state treasurer and that said goods and chattels anywhere within the state may be levied upon.

(4) (a) Within 30 days after the date of the mailing of any bill as provided by subs. (1) and (2) the railroad against which such bill has been rendered may file with the commission objections setting out in detail the grounds upon which the objector regards the bill to be excessive, erroneous, unlawful or invalid. The commission, after notice to the objector, shall hold a hearing upon such objections, not less than 5 nor more than 10 days after such notice. If after such hearing the commission finds any part of the bill to be excessive, erroneous, unlawful or invalid it shall record its findings upon its minutes and transmit to the objector an amended bill, in accordance with such findings. The amended bill shall have in all ways the same force and effect under this section as an original bill rendered under subs. (1) and (2).

(b) If after hearing the commission finds the entire bill unlawful or invalid it shall notify the objector of such determination, in which case the original bill shall be deemed void.

(c) If after hearing the commission finds that the bill as rendered is neither excessive, erroneous, unlawful or invalid either in whole or in part it shall record such findings upon its minutes, and transmit to the objector notice of such finding.

(d) If any bill against which objections have been filed is not paid within 10 days after notice of a finding that such objections have been overruled and disallowed by the commission has been mailed to the objector, the commission shall give notice of such delinquency to the state treasurer and to the objector, in the manner provided in sub. (3). The state treasurer shall then proceed to collect the amount of the bill as provided in sub. (3). If an amended bill is not paid within 10 days after a copy thereof is mailed to the objector by registered mail, the commission shall notify the state treasurer and the objector as in the case of delinquency in the payment of an original bill. The state treasurer shall then proceed to collect the amount of the bill as provided in the case of an original bill.

(5) No suit or proceeding shall be maintained in any court for the purpose of restraining or in any way delaying the collection or payment of any bill rendered under subs. (1) and (2). Every railroad against which a bill is rendered shall pay the amount thereof, and after such payment may in the manner herein provided, at any time within 2 years from the date the payment was made, sue the state in an action at

law to recover the amount paid with legal interest thereon from the date of payment, upon the ground that the assessment was excessive, erroneous, unlawful or invalid in whole or in part. If it is finally determined in such action that any part of the bill for which payment was made was excessive, erroneous, unlawful or invalid, the state treasurer shall make a refund to the claimant as directed by the court, which shall be charged to the appropriations to the commission.

(6) No action for recovery of any amount paid under this section shall be maintained in any court unless objections have been filed with the commission as provided in this section. In any action for recovery of any payments made under this section the claimant shall be entitled to raise every relevant issue of law, but the commission's findings of fact made pursuant to this section shall be prima facie evidence of the facts therein stated.

(7) The following shall be deemed to be findings of fact of the commission, within the meaning of this section:

(a) Determinations of fact expressed in bills rendered under this section; and

(b) Determinations of fact set out in those minutes of the commission which record the action of the commission in passing upon said bills, and in passing upon objections thereto.

(8) The procedure by this section providing for determining the lawfulness of bills and the recovery back of payments made pursuant to such bills shall be exclusive of all other remedies and procedures.

History: 1977 c. 29.