CHAPTER 191

RAILROADS; CONSTRUCTION

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191.001 Definition. In this chapter, "office" means the office of the commissioner of railroads.

History: 1977 c. 29; 1981 c. 347; 1993 a. 16, 123; 2001 a. 103.

191.01 General provisions. (1) SCOPE OF THIS CHAPTER. This chapter applies to all railroads.

(2) CONSTRUCTION, CERTIFICATE FROM OFFICE PREREQUISITE. No railroad corporation shall begin the construction of any proposed line of railroad in this state until it shall have obtained from the office a certificate that public convenience and a necessity require the construction of the railroad, and the certificate shall constitute the license from this state to the company to build its proposed railroad.

History: 1981 c. 347 s. 80 (1); 1981 c. 390; 1985 a. 187; 1993 a. 16, 123.

191.02 Application for certificate of necessity. Application for a certificate required by s. 191.01 shall be made within 6 months after the publication of the railroad corporation's corporate articles.

History: 1997 a. 254.

191.03 Articles; publication prerequisite to certificate. No railroad corporation shall make application for a certificate unless it has caused a copy of its corporate articles to be published as a class 2 notice, under ch. 985, in each county in which the railroad is proposed to be located within 6 months next prior to the time of making such application, and files satisfactory proof thereof with the office.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

191.05 Maps and profiles with application; changes. Complete maps and profiles of the proposed railroad shall be filed with the application for a certificate of convenience and necessity. The office may permit errors, omissions or defects in the application, maps and profiles to be supplied or corrected, and permit changes in the proposed route to be made.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

191.06 Railroad extensions; certificate and notice necessary. If any railroad company organized prior to July 1, 1907, shall desire to extend its lines in this state or to build branches connected therewith, or to construct any portion of its authorized line of railroad, it shall, before beginning construction thereof, obtain a certificate of convenience and necessity authorizing the construction; but it shall not be necessary to publish the articles of such railroad.

191.07 Hearing of applicants; notice. Upon receiving such application the office shall set a time and place for a hearing, which time shall not be less than 3 weeks nor more than 8 weeks from the date of filing the application, and the place shall be at the city of Madison, or at some place along the line of the proposed railroad, if the office deems the latter more convenient, and shall give to the applicant notice thereof, which notice shall be published by the applicant, as a class 2 notice, under ch. 985, in each county in which the railroad, extension or branch is proposed to be located, and proof of such publication shall be filed with the office.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

191.09 Procedures under this chapter. (1) BEFORE THE OFFICE. The provisions of ch. 195 relating to the subpoenaing of witnesses, the production of books, documents and papers, the administration of oaths, punishment for disobedience of an order of the office of the commissioner of railroads, or of a subpoena, or for refusal of a witness to be sworn or to testify, witness fees, taking depositions, the keeping of a record of the proceedings, the taking of testimony, transcribing the evidence, or relating to the procedure before the office not inconsistent with this chapter shall apply to all proceedings under this chapter.

(2) COURT REVIEW OF ORDERS. Orders of the office under this chapter shall be subject to review in the manner provided in ch. 227.

History: 1981 c. 347 ss. 27, 80 (1); 1981 c. 390; 1993 a. 16, 123; 1995 a. 417.

191.10 Certificate of necessity. (1) ISSUANCE, FILING, RECORDING, CONDEMNATION. If the office of the commissioner of railroads finds that the proposed railroad would be a public convenience and that a necessity requires its construction, the office of the commissioner of railroads shall enter an order to that effect and issue to the applicant a certificate that public convenience and a necessity require the construction of the railroad as proposed. The certificate shall be filed in the office of the department of financial institutions and the department of financial institutions shall approve the map showing the route of the railroad. The applicant shall record the map certified by the office of the commissioner of railroads in the office of the register of deeds in each county in which the railroad shall be located. The filing of the certificate with the department of financial institutions and the recording of the map, as above provided, are conditions precedent to the right of the applicant to institute condemnation proceedings.

(2) CERTIFICATE FOR PART OF LINE. Whenever it shall appear to the office that public convenience and a necessity do not require the construction of the railroad as proposed in the application, but do require the construction of a part thereof, the office may issue a certificate for the construction of such part of the railroad as public convenience and necessity require.

(3) REFUSAL OF CERTIFICATE; RENEWAL OF APPLICATION. If the office shall determine that the proposed railroad is not a necessity or is not required by public convenience, the office shall by order refuse to grant a certificate, stating the reasons for the refusal. The application may be renewed after 2 years from the date of the refusal, but not sooner.

History: 1981 c. 347 ss. 28, 80 (1); 1993 a. 16, 123, 301, 491; 1995 a. 27.

191.11 Revocation of certificate. If any railroad company after obtaining a certificate that public convenience and a necessity require the construction of the whole or part of its railroad fails to begin construction within one year from the date of the certificate, or having begun such construction, fails to prosecute the same, the office may inquire into the reasons for such failure and

may revoke the certificate, if the office finds, after notice and hearing, that such failure is unreasonable.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

191.13 Temporary railroad extensions. (1) Any railroad corporation may build, maintain and operate temporary branches or extensions to and upon any timber lands, sand pit, gravel pit, stone quarry or agricultural enterprise, with all sidetracks, storage tracks, wyes, turnouts and connections necessary or convenient to the use of the same.

(2) No railroad corporation shall exercise such power until it has obtained from the office a certificate that public convenience and necessity require the construction of the temporary railroad, and the certificate shall constitute the license to the company to build its proposed temporary railroad. The certificate shall specify the length of time the railroad may be maintained and operated, and may be renewed from time to time upon application by the railroad company. At the expiration of the time specified in the certificate, or any renewal thereof, the railroad company shall discontinue, dismantle and remove the temporary railroad; and may prior to the expiration of such time, upon order of the office, and after a hearing, upon notice to all parties interested and good cause shown, discontinue, dismantle and remove the railroad.

(3) No such branch or extension shall be constructed across, along or upon any street or alley within any city, until application therefor shall have been made to and acted upon by such city. The city may prescribe any reasonable terms and conditions for the construction of any such branch or extension.

(4) For such temporary railroad, the corporation may acquire any necessary lands or interests in lands. In appraising the damages sustained by any person by reason of the construction and operation of said railroad through and upon the person's land only the injury to the land and improvements thereon within the limits of the right−of−way of such railroad, and the fair annual value of the use of the land within such right−of−way and the fair amount of the annual damage sustained by the landowner to the land from which such right−of−way is severed, shall be considered, which items of damage and value shall be separately found and shall constitute the sole measure of the landowner's right to compensation. Payment of the damages on account of injury to the land and improvements thereon within such right−of−way shall be made as directed in s. 32.06 (9) (b), and payment of the amount found to be the fair annual value of the use of such land, together with the amount so found to be the annual damage to the land from which such right−of−way is taken, shall be made annually by the railroad company so long as such temporary railroad is maintained and operated.

(5) Every corporation constructing and operating such a temporary railroad shall erect and maintain sign boards not over one mile apart along the right−of−way of such railroad, upon which shall be printed the words: "Temporary Railroad".

(6) Any person who falsely represents that a temporary railroad is other than a temporary railroad shall be fined not more than $500 or imprisoned for not more than 6 months or both.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123, 482, 490; 1997 a. 254.

191.16 Construction items submitted to office. Upon receiving the certificate of public convenience and necessity, the applicant shall before commencing construction submit to the office a condensed specification of the character of construction that the applicant proposes to install, showing the kind, quality and weight of the rail proposed to be used, the mode of construction, character, quality, and strength of all bridges, culverts and viaducts, the abutments and approaches proposed to be built, the grade of and proposed method of draining the roadbed, and the kind of power to be used and the plant and appliances to be employed in power production, and such other facts relating to the construction of the proposed railroad as the office requires.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

191.17 Public safety; investigation; approval of plans. Upon receiving the specification required by s. 191.16, the office shall examine the same and shall hear the applicant in support thereof, shall suggest and require modifications of the specification if the public safety so demands, eliminating so far as may be practicable, consistent with reasonable cost, all grade crossings of public highways, shall inspect the route of the proposed railroad if deemed desirable, and shall otherwise investigate and determine that the proposed construction will be adequate for securing public safety in the operation of the railroad, and thereupon the office shall enter an order approving the specification and authorizing the construction of the railroad in accordance therewith and with the provisions of ch. 195.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

191.19 New roads; report; inspection; protective appliances. (1) Upon the completion of the construction of any railroad under the approved specification, the company shall, before operating the same for public service, report to the office; and the office shall inspect the work. If the office finds that the railroad has been constructed in accordance with the approved specification and with the provisions of ch. 195 and is otherwise suitable and properly constructed so as to secure public safety in the operation thereof, the office shall enter an order authorizing its operation, which order shall be presumptive evidence of the sufficiency of such construction.

(2) Said order shall specify in general terms the methods and conditions of such operation and it shall not be lawful for any such railroad to be operated till such order has been granted.

(3) If upon inspection the office shall deem that public safety requires the installation, operation and maintenance of some protective appliance at any grade crossing of railroad tracks the office may, before granting the order, after notice and hearing under s. 195.28, require the installation, operation and maintenance of suitable protective appliances, and shall apportion the expense of constructing, maintaining and operating such protective appliances among the owners of the tracks.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

191.20 Railroad routes; right to alter. Every railroad company may, by the vote of two−thirds of its directors, alter or change the route of its railroad, by making and filing with the office of the commissioner of railroads and also by recording in the office of the register of deeds of the county or counties where the alteration or change is to be made, a surveyed map and certificate of the alteration or change. The alteration or change may not deviate from the original route for a greater distance than one mile at any point. No city or village may be left off the railroad by the change of route. The original end points of the railroad, or the route in any city or village, shall not be changed without the approval of the office of the commissioner of railroads after notice to the municipality.

History: 1979 c. 110; 1981 c. 347; 1993 a. 16, 123.

191.21 Notices in counties without newspapers. If no newspaper is published in any county in which a railroad is proposed to be located, the publications required by this chapter may be made in such manner and at such places as the office shall designate.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123.