

## CHAPTER 190

## RAILROADS; ORGANIZATION AND MANAGEMENT

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**190.001 Definitions.** In this chapter:

(1) "Office" means the office of the commissioner of transportation.

**History:** 1977 c. 29; 1981 c. 347.

**190.01 Who may organize; articles; fee. (1)**

Any number of persons, not less than five, may form a corporation for the purpose of constructing, maintaining and operating a railroad for public use by making articles of organization in which shall be stated:

(a) The name of the corporation.

(b) The places from and to which such railroad is to be constructed or maintained and operated.

(c) The length of such railroad and the name of each county in this state through or into which it is made or intended to be made.

(d) The aggregate number of shares which the corporation shall have authority to issue; if said shares are to consist of one class only, the par value of each of said shares, or a statement that all of said shares are without par value; or, if said shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value.

(e) The names and residences of the directors of the corporation who shall manage its affairs for the first year and until others are chosen in their places, and who shall not be less than five; and each such person shall subscribe thereto his name, place of residence and the number of shares of stock he agrees to take in such corporation. There shall be annexed to such articles an affidavit of at least three of the directors therein named that the signatures thereto are genuine and that it is intended in good faith to construct or maintain and operate the railroad therein mentioned.

(2) The articles of incorporation and amendments thereto shall be filed with the secretary of state; in the case of articles, the secretary of state shall thereupon issue a certificate of incorporation and the corporation then has legal existence. The articles of incorporation or special charter of any railroad company may be amended by a majority vote of all the stock in the respects and for the purposes provided in s. 180.50. The fees for filing articles and amendments thereto are as provided in s. 180.87 except that the fees for filing an amendment which authorizes the issuance of redeemable preference shares for sale to the U.S. secretary of transportation under sections 505 and 506 of P.L. 94-210 is \$15 for the amendment and an additional sum equal to \$1 for each \$100,000 or fraction thereof of par value redeemable preference shares authorized by the amendment.

(3) When a railroad corporation is organized to acquire or take over the property of another railroad corporation which is sold in judicial proceedings, or when any railroad corporation is reorganized under section 77 of the act of July 1, 1898, entitled "An Act to establish a uniform system of bankruptcy throughout the United States, as amended," and such corporation under a plan of reorganization as confirmed pursuant to said act, shall have been authorized to put into effect and carry out said plan, or when any new railroad corporation shall be organized for the like purpose, the fees for filing a copy of the plan of reorganization or any amendments to the articles of incorporation of such existing railroad corporation increasing or changing the amount of its authorized capital stock, or for filing the articles of incorporation of such new railroad corporation so to be organized, shall be computed and paid only upon the excess of the aggregate authorized

capital stock of such reorganized or such new corporation over the authorized aggregate capital stock of the old corporation upon which filing fees previously have been paid. In case any such excess shall consist of no par common stock, the fee to be paid on account of each such excess share shall be as prescribed in s. 180.87.

History: 1977 c. 29, 63, 203.

**190.015 Directors, election, eligibility, classes, term, powers.** The stock, property, affairs and business of every such railroad corporation shall be managed by directors who shall be chosen by the stockholders from among their number, at such time and place as shall be provided by the articles of organization or the by-laws, and shall hold for the term provided therein and until their respective successors are chosen. The directors may be divided into three classes, each of which shall be composed, as nearly as may be, of one-third of the directors; the term of office of the first class to expire in one year, of the second in two years; and of the third in three years. At each annual election thereafter a number of directors shall be elected for three years equal to the number whose term of office shall then expire; all other vacancies to be filled in accordance with the by-laws. The directors shall choose one of their number president and such other officers as the corporate articles and by-laws require, for such term as shall be prescribed thereby; and may fill any vacancy in their board, happening after any regular annual election, until the next succeeding election.

**190.016 Stockholders' meetings. (1) TIME AND PLACE.** The time and place of annual meetings of the stockholders of every railroad corporation shall be fixed by its articles or bylaws. If not so fixed, the annual meetings shall be on the anniversaries of the first corporate meeting.

**(2) NOTICE.** Meetings of railroad corporations shall be called and noticed as prescribed by the articles or bylaws; but if no provision therefor is made, meetings of any railroad corporation may be called by the board of directors or trustees at any time, and shall be called by the secretary when requested by the owners of one-fifth of the outstanding shares of voting stock on 10 days' notice; and such notice to stockholders may be served by publishing the same as a class 2 notice, under ch. 985, at or nearest to the location of the corporation, or by personal service or by mailing a copy thereof to each stockholder directed to his last post-office address as it appears in the records of the corporation.

**190.02 Powers of railroads.** Every public railroad corporation shall have the powers conferred on corporations in ch. 180 and in addition thereto shall have power:

**(1) SURVEY OF ROUTE.** To cause such examination and surveys for its proposed railroad to be made as may be necessary to the selection of the most advantageous route, and for such purpose to enter upon the lands of any person, but subject to responsibility for all damage which shall be done thereto.

**(2) DONATIONS TO RAILROADS.** To take and hold grants of aid; but the real estate received by voluntary grant shall be held and used for the purpose of the grant only.

**(3) ACQUIRE PROPERTY; LEASE AND ALIENATE.** To acquire all property necessary for the construction, maintenance and operation of its railroad and the stations, depot grounds, yards, roundhouses; shops, warehouses, elevators, docks and other accommodations reasonably necessary to accomplish the objects of its incorporation; to lease or otherwise dispose of any part thereof or to sell the same when no longer necessary to its use.

**(4) ACQUIRE LANDS FOR CUTS, FILLS, MATERIALS.** For the purposes of cuttings and embankments and of obtaining gravel or other material, to take as much land as may be necessary for the proper construction, operation and security of the road, and to remove any trees that may be in danger of falling on the road, making compensation therefor as provided for lands taken for the use of the corporation.

**(5) CROSS HIGHWAYS, STREETS, STREAMS; HIGHWAY BRIDGES.** To construct its railroad across, over, under, along or upon any stream, watercourse, street, highway, road or canal; to carry any highway, street or road which it shall intersect over or under its tracks as may be most expedient for the public good; to change the course and direction of any highway, street or road when made necessary or desirable by the construction of the railroad and acquire land necessary therefor; provided, such highway or road be not so changed from its original course more than six rods, nor its distance thereby lengthened more than five rods; and provided, further, that every bridge erected over any highway or street shall leave a clear passageway at least twenty feet wide or two passageways, each not less than fourteen feet in width.

**(6) RAILROAD INTERSECTIONS.** To cross, intersect, join or unite its railroad with any other railroad, at any point, with the necessary turn-outs, sidings and switches and other conveniences in furtherance of the objects of its connections. And if the 2 corporations cannot agree upon the amount of compensation to be

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made therefor or the points and manner of such crossings and connections the same shall be ascertained by the office on application of either corporation.

**(7) MOTIVE POWER.** To operate its railroad by any power; and to do all the business incident to railroad corporations.

**(8) STRUCTURES.** To erect and maintain all necessary and convenient buildings, stations, fixtures and machinery for the accommodation and use of passengers, freight and business.

**(9) BORROWING.** (a) To borrow money upon such terms as the corporation or board of directors shall authorize as necessary or expedient, and to execute trust deeds or mortgages on any railroads or parts thereof constructed or in process of construction, for amounts borrowed or owing by the corporation and thereby transfer or mortgage its property, rights, privileges, franchises, immunities, exemptions and appurtenances, used in connection with such railroads, then belonging to the corporation or which may thereafter belong to it, as security for any debt therein mentioned in such manner as the corporation or directors shall think proper.

(b) In case of sale by virtue of any such trust deed or mortgage the purchasers and their associates, successors and assigns shall thereafter have, exercise and enjoy all rights, privileges, grants, franchises, immunities and advantages mentioned in such instruments which were possessed by such corporation, so far as the same relate or appertain to that portion or line of road purchased at such sale, as fully and absolutely in all respects as such corporation might have done if such sale had not taken place.

(c) Any railroad corporation organized to, and which shall acquire, directly or by mesne conveyances, the property of another railroad corporation sold in judicial proceedings, or any railroad corporation reorganized under the provisions of section 77 of the act of July 1, 1898, entitled "An Act to establish a uniform system of bankruptcy throughout the United States, as amended," which corporation under a plan of reorganization as confirmed pursuant to said act, shall have been authorized to put into effect and carry out said plan, or any new railroad corporation which shall be organized for the like purpose, shall have all powers by law conferred upon railroad corporations, and may, at such times, in such amounts, for such considerations and upon such terms and conditions as the board of directors of said corporation shall determine, and as shall be authorized by the office, or in the case of a railroad corporation organized for the purpose of ac-

quiring a railroad engaged in interstate commerce, or any existing railroad corporation reorganized under said section 77 and acquiring railroad property used in interstate commerce, by the interstate commerce commission, as the case may be, issue, sell, pledge or otherwise dispose of its evidences of debt, which may be convertible, at the option of the holder, into stock, and shares of stock, which shares may have such nominal or par value or if the same be common stock, be without nominal or par value, and may be of such classes, with such rights and voting powers as may be expressed in its articles or any amendment thereto. In the case of a railroad corporation reorganized as aforesaid, the filing with the secretary of state of a certified copy of the plan of reorganization as confirmed pursuant to said bankruptcy act, if it shall so elect, shall accomplish and evidence the amendment of its charter or articles of incorporation without the necessity for any other or further action, corporate or otherwise, with respect thereto. Such reorganized railroad corporation shall thereupon have all powers necessary to put into effect and carry out such plan of reorganization in all respects but such filing of the plan of reorganization shall not preclude such existing corporation from amending its charter or articles in the manner now provided by law. The fees for filing such copy of plan of reorganization shall be the same as prescribed in s. 190.01 (3).

**(10) INSURANCE.** To procure insurance in its own behalf on all the property upon its route for which it may be liable in damages for injury caused thereto by fires set or caused by the operation of its road.

**(11) OPERATE BUSES.** Any railroad company may own and operate motor vehicles for the purpose of transporting persons and property upon the public highways, for hire, subject to ch. 194; and may also own and operate equipment for, and engage in, aerial transportation. Any railroad company may purchase and own the capital stock and securities of corporations organized for, or engaged in, the business specified in this subsection.

**(12) GUARANTEE SECURITIES.** Any railroad corporation organized and existing under the laws of this state or existing by consolidation of different railroad corporations under the laws of this state and any other state, and which owns singly or with other railroad corporations more than fifty per cent of the capital stock of another corporation, the capital stock of which it is authorized to own, is authorized by action of its board of directors to guarantee the payment of the principal and interest of bonds or other obligations of such other corporation, the

capital stock of which is so owned by it, and to join with such other railroad corporations in guaranteeing the payment of principal and interest of bonds or other obligations of such other corporation, more than fifty per cent of the capital stock of which is owned by it and such other railroad corporations.

**History:** 1977 c. 29 ss. 1294, 1654 (9) (e); 1981 c. 347 ss. 25, 80 (1).

Mineral estates reserved by railroad corporations from lands received from public domain discussed. 69 Atty. Gen 204.

**190.03 Office in state; books produced.** Any railroad corporation existing under the laws of this state shall produce before the office, the legislature, or any committee of either house, or any court of record, its books of account and stock books, or so many and such parts thereof as may be required by either of them, or in the discretion of such office, legislature, committee or court, transcripts from such books, or such parts thereof as may be called for, duly authenticated; and each such railroad corporation shall designate some office within this state as its principal office and inform the office of such designation, and shall keep there or at the office of its transfer agents or registrars a list of its stockholders, giving the names and addresses of its stockholders, together with a statement of the number and class of shares of its stock held by each of them, as shown by its books. A failure or refusal to comply with any of the foregoing provisions shall be cause of forfeiture of its franchises.

**History:** 1977 c. 29 s. 1654 (9) (e); 1981 c. 347 s. 80 (1).

**190.04 Special charter rights.** All railroad corporations shall have all peculiar rights and privileges granted to them respectively by their charters or any special law, not inconsistent with these statutes.

**190.05 Railroads; powers in other states.** Any domestic railroad corporation may exercise all its rights, franchises and privileges in any other state and may accept from any other state and use any additional or other powers or privileges applicable to the doings of said corporation in said state.

**190.051 Branches and extensions. (1)** Any railroad corporation may extend its road from any point named in its charter or articles of organization, or may build branch roads from any point on its line or from any point on the line of any other road connected or to be connected with its road, the use of which other road between such points and the connection with its own road such corporation shall have secured for a term of not less than ten years.

Before making such extension or building any such branch road such corporation shall, by resolution of its directors, to be entered in the record of its proceedings, designate the route of such proposed extension or branch, and file, for record, a copy of such record, certified by the president and secretary, in the office of the secretary of state. Thereupon such corporation shall have all the rights and privileges to make such extension or build such branch and receive aid thereto which it would have had if it had been authorized in its charter or articles of organization.

**(2)** The requirements of this section shall not apply to permanent branches or extensions not exceeding five miles in length nor to temporary branches or extensions not exceeding ten miles in length.

**190.06 Railroad consolidation; sale or lease of property. (1)** Any railroad corporation existing under the laws of this state, or by consolidation under said laws and the laws of other states, may consolidate with any other railroad corporation, and possess all of the powers, franchises and immunities, and be subject to all the liabilities and restrictions of railroad corporations generally, and such, in addition, as the combining corporations peculiarly possessed or were subject to at the time of consolidation. Articles of consolidation shall be approved by each corporation, by a vote of a majority of the stock at an annual meeting or at a special meeting called for that purpose or by the consent in writing of the holders of a majority of the stock annexed to such articles; and such articles, with a copy of the records of such approval or such consent and accompanied by lists of the stockholders and the number of shares held by each, duly certified by their respective presidents and secretaries, shall be filed for record in the office of the secretary of state before any such consolidation shall have validity or effect.

**(2)** Any such railroad corporation may upon like approval lease, or purchase the railroad, franchises and immunities, and all other property, and the stocks or bonds, or both, of any railroad corporation, or any portion thereof, when the road so purchased or leased will constitute a branch or feeder of, or be connected with or intersected by any line maintained or operated by such purchasing or leasing corporation, or which it is authorized to build, own, or maintain and operate. Any corporation taking such conveyance or lease shall have all the rights, privileges and immunities, and be subject to all the duties and restrictions of the lessor or grantor.

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(3) Any domestic railroad corporation may purchase and may upon like approval purchase and hold the stock or bonds of any other railroad corporation described in this section, or may purchase and hold the stock or bonds of any railway company to which it has furnished the money for the construction of its railway; or for money so furnished, or for such other consideration, as may be agreed upon between the companies, by their respective boards of directors, and take a conveyance of the whole or any portion of the franchises of any other such corporation and of the railway, property and appurtenances thereof. Any stock or bonds which shall have been issued by any purchasing corporation in consideration of any property by it purchased as authorized by this section, shall be deemed fully paid, but securities hereunder shall be issued only upon compliance with the law which requires a permit or certificate of authority.

(4) All acts and purchases and conveyances made prior to April 24, 1897, by or to any domestic railway company which are authorized by this section, and all conditions and agreements upon which the stock and bonds of any such corporation have been and are to be issued including any and all terms and conditions as to price, voting power, dividends and trustees or otherwise, and as between different classes of stock or otherwise and all issues of stocks and bonds in accordance with such terms, conditions and agreements, are hereby in all things legalized, ratified and confirmed.

(5) But no railroad corporation shall consolidate with, or lease or purchase, or in any way become owner of or control any other corporation, or any stock, franchises, rights or property thereof which owns or controls a parallel and competing railroad to and with the railroad owned or controlled and operated by such purchasing railroad corporation, to be determined by jury.

**190.07 Railroad ferries on Lake Michigan.** Any railroad corporation in this state may contract with the owner or operator of any railroad terminating on the eastern shore of Lake Michigan, within the state of Michigan, for the joint operation of their roads; and may build or buy, and operate vessels to facilitate transportation.

**190.08 Streams, highways, restored.** Every corporation constructing, owning or operating a railroad shall restore every watercourse, street, highway, road or canal across, along or upon which such railroad may be constructed to its former state or to such condition that its

usefulness shall not be materially impaired and thereafter maintain the same in such condition against any effects in any manner produced by such railroad. And may acquire any lands required to change or restore any highway, street, canal or watercourse, and lands so taken shall become a part of such highway or street. This section shall not apply to sloughs or bayous closed by the government prior to April 14, 1893, to aid the navigation of rivers; but in case such sloughs or bayous are thereafter closed by any railroad company such company shall be liable in damages to any person owning lands thereon injured thereby. The statutes for acquiring land by right of eminent domain shall apply in assessing damages for such closing.

Under this section, the railroad was under no responsibility to pay for the construction of a new railroad bridge necessitated by the channel alteration of the Kinnickinnic River as part of the improvement project, since the statute imposes only a duty to "restore" against effects "produced by such railroad," and the conditions necessitating the alteration were in no way produced by the railroad. Under both 190.08 and the common law the railroad was liable for the cost of replacing the Lincoln Creek bridge, which impeded the creek's flow and hindered its drainage function, since under the statute the railroad had a duty to restore the stream "to such condition that its usefulness shall not be materially impaired," and under the common law its duty was to continually maintain the bridge so as not to materially interfere with the water's natural flow. *Metro. Sew. Dist. v. Chicago, M., St. P. & P. RR.* 69 W (2d) 387, 230 NW (2d) 651.

In absence of sufficient proof that old bridge was inadequate to carry increased water flow, railroad was not liable for cost of new bridge. *Metropolitan Sew. Dist. v. Chgo. & N. W. Ry. Co.* 78 W (2d) 119, 254 NW (2d) 190

**190.085 Clearance of wrecks or derailments; restoration of damaged property.**

Every corporation constructing, owning or operating a railroad shall clear any railroad wreck or derailment from the right-of-way and adjoining property and restore or repair the right-of-way and adjoining property damaged by the wreck or derailment within 180 days after its occurrence. Any such corporation which violates this section shall forfeit to the state \$100 for each violation and each day that the violation continues constitutes a separate offense.

**History:** 1979 c 186

**190.09 Railroad cattle pass, abandonment.**

No railroad corporation shall close or obstruct any cattle pass or opening which shall have been used as a passageway for live stock across its right of way for a period of five years without having first secured the consent in writing of the abutting landowners.

**190.10 Railroad fixtures, after-acquired property, lien on.**

All rolling stock, locomotives, cars, automotive and motor vehicles, machinery, tools, equipment, fuel, supplies, materials, and other personal property of any railroad corporation used and employed in connection with the maintenance and operation of its

railroad, for all purposes of this section and s. 190.11, are hereby defined and declared to be appurtenant to such railroad as real property; and all such property and all additional rights of way, depot grounds and other real property acquired subsequently to the execution of any trust deed or mortgage which shall have been described or provided for therein shall be subject to the lien thereof to the same extent as the real property therein described which the corporation owned at the time of its execution.

**190.11 Railroad conveyances, how executed and filed.** (1) Every conveyance or lease, deed of trust, mortgage or satisfaction thereof made by any railroad corporation shall be executed and acknowledged in the manner in which conveyances of real estate by corporations are required to be to entitle the same to be recorded, and shall be filed in the office of the secretary of state, who shall endorse thereon "filed" and the date of filing.

(2) A record of filing under sub. (1) shall from the time of reception of the instrument have the same effect as to any property in this state described therein as the record of any similar instrument in the office of a register of deeds has as to property in his or her county, and shall be notice of the rights and interest of the grantee, lessee or mortgagee by such instrument to the same extent as if it were recorded in all of the counties in which any property therein described may be situated.

(3) The secretary of state shall collect a fee of 25 cents per folio filed under sub. (1).

History: 1981 c 20

**190.12 Stock; sale to employes and subsidiaries.** (1) Any railroad company existing in whole or part under the laws of this state may, with the consent of the stockholders as hereinafter stated, issue and sell, under such restrictions and terms, and for such consideration as the stockholders shall authorize, any part or all of its unissued stock, or additional stock authorized pursuant to this section, to employes of the corporation or any subsidiary corporation, without first offering such stock for subscription to its stockholders. Such consent and authorization may be given at any annual or special meeting of the stockholders by a majority vote of all its stock, upon the same notice to stockholders as is provided in s. 190.016. If any stockholder not voting in favor of said issue and sale of stock to employes so desires, he may, at such meeting, or within 20 days thereafter, object thereto by written notice filed with the secretary of the corporation and demand payment for the stock held by him at the time of such meeting, in which case such stockholders

or the corporation may at any time within 60 days after such meeting file a petition in either the circuit court of Dane county or the circuit court of the county in which the principal office of the corporation within this state is located, asking for the condemnation of the shares of such dissenting stockholder and a finding and determination of the fair value thereof at the date of such stockholders' meeting.

(2) The taking of shares of such dissenting stockholders in order to promote employe ownership in railroad enterprises is hereby declared to be a taking for a public use and the necessity therefor shall in all cases be determined by the railroad company. The circuit courts of the several counties in this state are hereby vested with jurisdiction to hear and determine condemnation proceedings instituted by such petition and to determine the fair value of such shares of stock, and to render judgment against the corporation for the said value thereof. Any and all such dissenting stockholders may join, or may be joined, in all such proceedings and the fair value of such shares of stock shall be equal to their market value, which in the case of stocks listed upon any stock exchange shall be the average price for which like shares of stock were sold upon such exchange during the week in which was held the stockholders' meeting aforesaid. Upon payment by the corporation to the said stockholder, or to the clerk of said court, of the value of such shares of stock so determined, such stockholder shall cease to have any interest in such shares or in the property of the corporation, and his shares of stock shall be transferred to, and may be held and disposed of by the corporation as treasury stock. The corporation shall be liable for and shall pay to any such objecting stockholder the value of his shares of stock so determined. In case of failure or refusal of such stockholder to surrender for transfer the certificates representing such shares of stock, the filing with the secretary of said railroad company of a certified copy of the circuit court's order determining the value thereof together with a receipt from the clerk of said court showing full payment therefor by the railroad company, shall constitute full authority for the said company to issue new certificates in lieu of those in the hands of such dissenting stockholder, and such outstanding certificates shall thereupon be null and void.

(3) Any such corporation may, at any such annual or special meeting of its stockholders held pursuant to the notice aforesaid, increase its capital stock in such amount as may be determined by like vote of its stockholders at such meeting to provide additional stock for issue and sale to such employes.

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(4) In the event such corporation by like vote of its stockholders at a subsequent meeting held pursuant to notice as specified in sub. (1), shall, before the trial of any such condemnation proceeding, rescind the previous action respecting such issue and sale of stock to employes and determine not to sell such stock without first offering it to existing stockholders, then such condemnation proceeding shall be, upon application of either party, dismissed, and all court costs be paid by the railroad company.

**190.13 Report to stockholders.** Every railroad corporation shall make an annual report to its stockholders of its operations for the preceding calendar year, or for its fiscal year, as the case may be, which report shall contain a balance sheet showing its assets and liabilities, its capital stock, and funded debt, and an income account showing its operating revenues, operating expenses, gross and net income, as the result of its traffic or business operations, and such other information in respect of its affairs as the board of directors shall deem advisable. A copy of each such report shall be kept on file in its principal office in this state, shall be mailed to each stockholder whose post-office address is known and shall be filed with the office.

**History:** 1977 c. 29 s. 1654 (9) (e); 1981 c. 347 s. 80 (1).

**190.14 Inspection of books.** The official custodian of the books, records and papers or other property of every railroad corporation shall keep the same in his possession and at all times during business hours have the same ready to be exhibited to any officer, director or any committee appointed by the stockholders, representing one-tenth of all the subscribed stock, on request, and furnish them or either of them transcripts from the records or proceedings of the board of directors, under his official hand and seal, on the payment to him of the same fee as that required by law to be paid to the register of deeds for transcripts. And said custodian shall on vacating his office make over all such books, records, papers and property in his possession to his successor in office, and where no successor has been elected to the board of directors, or to the person appointed therefor by the stockholders.

**190.15 Right of way through public lands.** The commissioners of public lands may sell and convey to any railroad corporation for such compensation and upon such terms as they may fix, a strip of land one hundred feet wide, or more, if needed, through lands owned by the state which the commissioners have power to sell, and across which a railroad has been or

shall be located or constructed, but such corporation shall, as soon as the route of its road shall be definitely fixed, deposit in the office of the commissioners of public lands, a plat exhibiting all such lands and the location of such route through the same and shall have no right to take or use any such lands prior to depositing such plat. Every deed or patent for any such lands shall contain an express reservation unto the state of the title of such lands except as to the use of the same by such corporation or its successors or assigns for railroad purposes.

**190.16 Industrial spur tracks. (1) AT CORPORATION EXPENSE.** Any railway company may build, maintain and operate spur tracks from its road to and upon the grounds of any industry or enterprise, with all sidetracks, wyes, turnouts and connections necessary or convenient to the use of the same; and any such company may acquire in the manner provided for the acquisition of real estate, other than for its main track, all necessary roadways and rights of way for such spur tracks and for wyes, turnouts and connections. Section 190.051 shall not apply if the spur tracks mentioned in this subsection shall not exceed 5 miles in length.

**(2) CITY'S CONSENT.** No such spur tracks shall be constructed across, 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 spur track.

**(3) PRIVATE CONSTRUCTION.** The owner of any elevator, warehouse, manufacturing plant or mill, or of any lumber, coal or wood yard located within one-half mile of any railroad or any sidetrack thereof may at his own expense construct a spur track therefrom to a point on the right of way within the terminal or yard limits of such railroad and the railroad shall connect the same with its tracks within such terminal or yard limits. Such spur track shall at all times be under the control and management of and be kept in repair and operated by such railroad, but the cost of maintaining and operating shall be paid monthly by the owner thereof, and in case of neglect to pay the same upon demand, the obligation of this subsection upon any such railroad shall cease until such charges are paid.

**(4) WHEN COMPULSORY.** (a) Every railroad shall acquire the necessary right of way for and shall construct, connect, maintain and operate a reasonably adequate spur track whenever such spur track does not necessarily exceed three miles in length, is practically indispensable to the successful operation of any existing or pro-

posed industry or enterprise, and its construction and operation is not unusually dangerous, and is not unreasonably harmful to public interest, and any person aggrieved by the failure of any railroad to fully perform such obligation may prosecute proceedings before the office to compel compliance therewith.

(b) Such railroad may require the person primarily to be served thereby to pay the legitimate cost and expense of acquiring the necessary right of way for such spur track, and of constructing the same, the cost to be estimated in separate items by the office, and deposited with the railroad, before it shall be required to incur any expense whatever therefor; but such person, in lieu of depositing the total estimated cost may offer in writing to construct such spur track, the offer to be accompanied by a surety company bond, running to such railroad, and conditioned upon the construction of such spur track in a good and workmanlike manner, according to the plans and specifications of such railroad, approved by the office, and deposit with such railroad the estimated cost of the necessary right of way. Provided that before the railroad shall be required to incur any expense whatever in the construction of such spur track, the person primarily to be served

thereby shall give the railroad a bond to be approved by the office as to form, amount and surety, securing the railroad against loss on account of any expense incurred beyond the estimated cost.

(c) Whenever a spur track is so constructed at the expense of the owner of any industry or enterprise, and any other person shall desire a connection with such spur track, application therefor shall be made to the office, and such other person shall be required to pay to such owner an equitable proportion of the cost thereof, to be determined by the office.

**(5) REMOVAL, WHEN.** Except where a spur track was constructed prior to June 16, 1925, at the expense of the railroad company, no spur track shall be removed, dismantled or otherwise rendered unfit for service except upon order of the office made after hearing held upon notice to all parties interested, and for good cause shown; provided that if no objection has been filed with the office within 20 days from the original publication of such notice, the office may without hearing authorize such spur track removed, dismantled or otherwise rendered unfit for service.

**History:** 1973 c. 157; 1977 c. 203; 1981 c. 347 s. 80 (1)