

CHAPTER 327G

RAILROAD RIGHTS-OF-WAY, CROSSINGS, TRACKS, AND FENCING

	DIVISION I	327G.28	Compulsory establishment.
FENCES, CROSSINGS, AND INTERLOCKING SWITCHES		327G.29	Grade crossing surface repair fund.
327G.1	Definition.	327G.30	Adjustment of expense.
327G.2	Crossings — signs.	327G.31	Disagreement resolved.
327G.3	Railway fences required.	327G.32	Blocking highway crossing.
327G.4	Specifications.	327G.33	through 327G.60 Reserved.
327G.5	Hog-tight fences.		
327G.6	Failure to fence.		
327G.7	Double damages.		
327G.8	Laws and local regulations not applicable.		
			DIVISION II
			PRIVATE BUILDINGS AND SPUR TRACKS
327G.9	Failure to fence — general penalty.	327G.61	Definitions.
327G.10	Killing of stock — interpretative clause.	327G.62	Controversies — hearing — order — review.
327G.11	Private farm crossings.	327G.63	Destruction of buildings.
327G.12	Overhead, underground, or more than one crossing.	327G.64	Spur tracks.
327G.13	Signals at road crossings.	327G.65	Cost of construction.
327G.14	Violations.	327G.66	Bond for construction.
327G.15	Railway and highway crossing at grade.	327G.67	Costs in excess of deposit.
327G.16	Disagreement — application — notice.	327G.68	Failure of company to act.
		327G.69	Connections with original spurs.
		327G.70	through 327G.75 Reserved.
			DIVISION III
			REVERSION TO OWNERS UPON ABANDONMENT
327G.17	Hearing — order.	327G.76	Time of reversion.
327G.18	Railway company to hold in trust.	327G.77	Reversion of railroad right-of-way.
327G.19	Grade crossing fund.		
327G.20	Reserved.	327G.78	Sale of railroad property.
327G.21	Condition after change — temporary ways.	327G.79	Valuing property in controversy.
327G.22	Railway crossings near Mississippi river.	327G.80	Reserved.
327G.23	Grade crossings.		
327G.24	Removal of tracks from crossings.		
327G.25	Closing of crossing for repair or upgrade.		
			DIVISION IV
			ACQUISITION OF RIGHT-OF-WAY
327G.26	and 327G.27 Repealed by 78 Acts, ch 1110, §25.	327G.81	Maintenance of improvements along rights-of-way.

DIVISION I

FENCES, CROSSINGS, AND INTERLOCKING SWITCHES

327G.1 Definition.

As used in this division, unless the context otherwise requires, “*department*” means the state department of transportation.

[C75, §478.37; C77, 79, 81, §327G.1; 81 Acts, ch 22, §22]

86 Acts, ch 1245, §1962

327G.2 Crossings — signs.

Every corporation constructing or operating a railway shall make and construct at all points where such railway crosses any public road good, sufficient, and safe crossings and erect at such points, at a sufficient elevation from such road as to admit a free passage of vehicles of every kind, a sign with large and distinct letters placed thereon, to give notice of the proximity of the railway, and warn persons of the necessity of looking out for trains. Any railway company neglecting or refusing to comply with the provisions of this section shall be liable

for all damages sustained by reason of such refusal or neglect, and it shall only be necessary, in order to recover, for the injured party to prove such neglect or refusal.

[R60, §1331; C73, §1288; C97, §2054; C24, 27, 31, 35, 39, §8000; C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.1; C77, 79, 81, §327G.2]

327G.3 Railway fences required.

All railway corporations owning or operating a line of railway within the state shall construct, maintain, and keep in repair a fence on each side of the right-of-way, to prevent livestock getting upon the tracks.

[C97, §2057; S13, §2057; C24, 27, 31, 35, 39, §8001; C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.2; C77, 79, 81, §327G.3]

327G.4 Specifications.

1. All fences shall be not less than fifty-four inches high and may be of any of the following types:

- a. Not less than five barbed wires, properly spaced.
- b. Not less than three barbed wires above and not less than twenty-four inches of woven wire below.
- c. Entirely of woven wire.
- d. Five boards properly spaced.
- e. Any other type which the fence viewers of any township through which it passes may determine as efficient as any of the above types.

2. Each of the above types shall be securely nailed to posts firmly set, not more than twenty feet apart for the first three types, nor more than eight feet apart for the fourth.

[C97, §2057; S13, §2057; C24, 27, 31, 35, 39, §8003; C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.4; C77, 79, 81, §327G.4]

2010 Acts, ch 1061, §180

[T] Section renumbered pursuant to Code editor directive

327G.5 Hog-tight fences.

When any person owning land abutting on the right-of-way is maintaining a hog-tight fence on all sides thereof or any division of such land except along such right-of-way, the railway company owning such right-of-way shall, on written request of the landowner, make such right-of-way fence along such enclosed land hog-tight by the addition of barbed or woven wire or other equally efficient means.

[S13, §2057; C24, 27, 31, 35, 39, §8004; C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.5; C77, 79, 81, §327G.5]

327G.6 Failure to fence.

Any corporation operating a railway and failing to fence its right-of-way shall be liable to the owner of any stock killed or injured by reason of the want of such fence for the full amount of the damages sustained by the owner, unless it was occasioned by the willful act of such owner or the owner's agent; and to recover the same it shall only be necessary for the owner to prove the loss of or injury to the owner's property.

[C73, §1289; C97, §2055; C24, 27, 31, 35, 39, §8005; C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.6; C77, 79, 81, §327G.6]

327G.7 Double damages.

If such corporation fails or neglects to pay such damages within ninety days after notice in writing that a loss or injury has occurred, accompanied by an affidavit thereof, served upon any officer or station or ticket agent employed by said corporation in the county where such loss or injury occurred, such owner shall be entitled to recover from the corporation double the amount of damages actually sustained by the owner.

[C73, §1289; C97, §2055; C24, 27, 31, 35, 39, §8006; C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.7; C77, 79, 81, §327G.7]

327G.8 Laws and local regulations not applicable.

No law of the state or any local or police regulations of any county, township or city, relating to the restraint of domestic animals, or in relation to the fences of farmers or landowners, shall be applicable to railway rights-of-way, unless specifically so stated in such law and regulation.

[C73, §1289; C97, §2055; C24, 27, 31, 35, 39, §8007; C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.8; C77, 79, 81, §327G.8]

327G.9 Failure to fence — general penalty.

If the railroad corporation refuses or neglects to comply with any provision of this chapter relating to the fencing of the tracks, such railroad corporation shall, upon conviction, be subject to a schedule “two” penalty and every thirty days’ continuance of such refusal or neglect shall constitute a separate and distinct offense.

[C97, §2058; C24, 27, 31, 35, 39, §8009; C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.10; C77, 79, 81, §327G.9]

[P] See §327C.5

327G.10 Killing of stock — interpretative clause.

Nothing herein contained shall be construed to relieve the corporation from liability arising from the killing or maiming of livestock on said track or right-of-way by its negligence or that of its employees, nor shall anything in this chapter interfere with the right of open or private crossings, or with the right of persons to such crossings, nor in any way limit or qualify the liability of any corporation or person owning or operating a railway that fails to fence the same against livestock running at large for any stock injured or killed by reason of the want of such fence.

[C97, §2058; C24, 27, 31, 35, 39, §8010; C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.11; C77, 79, 81, §327G.10]

327G.11 Private farm crossings.

When a person owns farmland on both sides of a railway, or when a railway runs parallel with a public highway thereby separating a farm from such highway, the corporation owning or operating the railway, on request of the owner of the farmland, shall construct and maintain a safe and adequate farm crossing or roadway across the railway and right-of-way at such reasonable place as the owner of the farmland may designate. A private farm crossing established or installed pursuant to this section shall be used solely for farming or agricultural purposes.

[R60, §1329; C73, §1268; C97, §2022; S13, §2022; C24, 27, 31, 35, 39, §8011; C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.12; C77, 79, 81, §327G.11]

90 Acts, ch 1184, §1

327G.12 Overhead, underground, or more than one crossing.

The owner of land may serve upon the railroad corporation a request in writing for more than one private crossing, or for an overhead or underground crossing, accompanied by a plat of the owner’s land designating the location and character of crossing desired. If the railroad corporation refuses or neglects to comply within thirty days of a written request, the owner of the land may make written application to the department to determine the owner’s rights. The department of inspections and appeals, after notice to the railroad corporation, shall hear the application and all objections to the application, and make an order which is reasonable and just, and if it requires the railroad company to construct any crossing or roadway, fix the time for compliance with the order and apportion the costs as appropriate. The order of the department of inspections and appeals is subject to review by the state department of transportation. The decision of the state department of transportation is the final agency action.

[S13, §2022; C24, 27, 31, 35, 39, §8012; C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.13; C77, 79, 81, §327G.12; 81 Acts, ch 22, §22]

89 Acts, ch 273, §34

327G.13 Signals at road crossings.

A bell and a horn shall be placed on each locomotive engine operated on any railway, which horn shall be sounded at least one thousand feet before a road crossing is reached, and after the sounding of the horn the bell shall be rung continuously until the crossing is passed; but at street crossings within the limits of cities the sounding of the horn may be omitted, unless required by ordinance or resolution of the council thereof; and the company shall be liable for all damages which shall be sustained by any person by reason of such neglect.

[C97, §2072; C24, 27, 31, 35, 39, §8018; C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.19; C77, 79, 81, §327G.13]

327G.14 Violations.

Any officer or employee of any railway corporation violating any of the provisions of section 327G.13 shall, upon conviction, be subject to a schedule “two” penalty.

[C97, §2072; C24, 27, 31, 35, 39, §8019; C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.20; C77, 79, 81, §327G.14]

[P] See §327C.5

327G.15 Railway and highway crossing at grade.

1. Wherever a railway track crosses or shall hereafter cross a highway, street or alley, the railway corporation owning such track and the department, in the case of primary highways, the board of supervisors of the county in which such crossing is located, in the case of secondary roads, or the council of the city, in the case of streets and alleys located within a city, may agree upon the location, manner, vacation, physical structure, characteristics and maintenance of the crossing and flasher lights or gate arm signals at the crossing and allocation of costs thereof. The department shall become a party to the agreement if grade crossing safety funds are to be used. Up to seventy-five percent of the maintenance cost of flasher lights or gate arm signals at the crossing and an unlimited portion of the cost of installing flasher lights or gate arm signals at the crossing may be paid from the grade crossing safety fund.

2. Notwithstanding other provisions of this section, maintenance of flasher lights or gate signals installed or ordered to be installed before July 1, 1973, shall be assumed wholly by the railroad corporation.

3. a. Payments from the grade crossing safety fund shall be made by the treasurer of state upon certification by the department that the terms of the agreement have been followed.

b. The department shall promulgate rules according to chapter 17A for processing claims to the grade crossing safety funds.

4. The provisions of this section shall not apply to the repair of the grade crossing surface.

[R60, §1321, 1322; C73, §1262, 1263; C97, §2017, 2018; §SS15, §2017; C24, 27, 31, 35, 39, §8020, 8024, 8025; C46, §478.21, 478.25, 478.26; C50, 54, 58, 62, 66, 71, 73, 75, §478.21; C77, 79, 81, §327G.15]

2010 Acts, ch 1061, §180

[T] Section renumbered pursuant to Code editor directive

327G.16 Disagreement — application — notice.

If the persons specified in section 327G.15 cannot reach an agreement, either party may make written application to the department requesting resolution of the disagreement. The department shall request the department of inspections and appeals to set a date for hearing. The department of inspections and appeals shall give ten days' written notice of the hearing date.

[SS15, §2017; C24, 27, 31, 35, 39, §8021; C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.22; C77, 79, 81, §327G.16; 81 Acts, ch 22, §19]

89 Acts, ch 273, §35

327G.17 Hearing — order.

The department of inspections and appeals shall hear the evidence of each party to the controversy and shall make an order, which may include, pursuant to chapters 6A and 6B, authority to condemn, resolving the controversy. The order shall include the portion of the

expense to be paid by each party to the controversy. In determining what portion of the expense shall be paid by each party the department of inspections and appeals may consider the ratio of the benefits accruing to the railroad or the governmental unit or both, to the general public use and benefit.

The order of the department of inspections and appeals is subject to review by the state department of transportation. The decision of the state department of transportation is the final agency action.

[SS15, §2017; C24, 27, 31, 35, 39, §8022; C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.23; C77, 79, 81, §327G.17; 81 Acts, ch 22, §22]

89 Acts, ch 273, §36

327G.18 Railway company to hold in trust.

Any portion of the expense of making such crossing changes and alterations borne by any municipal corporation or township, the state or any person, shall forever be held in trust by such railroad corporation or its successors, and no part of such funds shall constitute any part of the value of its property on which it is entitled to receive a return.

[SS15, §2017; C24, 27, 31, 35, 39, §8023; C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.24; C77, 79, 81, §327G.18]

327G.19 Grade crossing fund.

There is hereby created a fund which shall be known as the highway grade crossing safety fund and shall be made up of the amount allocated by the state treasurer from the road use tax fund.

[C62, 66, 71, 73, 75, §478.25; C77, 79, 81, §327G.19]

327G.20 Reserved.

327G.21 Condition after change — temporary ways.

When a railroad company changes, alters, or repairs a highway crossing, it shall upon completion of the work leave it free from obstructions to travel and in good condition. If travel will be obstructed while any alterations or repairs are being made, the railroad company shall provide safe and convenient temporary ways for the public to avoid or pass such obstructions.

[R60, §1321, 1324; C73, §1262, 1264; C97, §2017, 2019; SS15, §2017; C24, 27, 31, 35, 39, §8026; C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.27; C77, 79, 81, §327G.21]

327G.22 Railway crossings near Mississippi river.

When in the construction of a railway it becomes necessary to cross another railway near the shore of the Mississippi river, each shall be so constructed and maintained at the point of crossing that the respective roadbeds thereof shall be above high-water mark in such river; but where the crossing occurs within the limits of any city, the council may establish the crossing grade.

[C73, §1290; C97, §2059; C24, 27, 31, 35, 39, §8027; C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.28; C77, 79, 81, §327G.22]

327G.23 Grade crossings.

The department shall have jurisdiction over all crossings at grade of railways within the state. Upon the application of any railway or upon its own motion, the said department may require the trains of any railway to stop at any crossing of such railway tracks at grade or said department may make such rules in relation to speed or other methods of operation at such grade crossings as in its judgment are necessary to protect the public safety.

[C24, 27, 31, 35, 39, §8028; C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.29; C77, 79, 81, §327G.23]

327G.24 Removal of tracks from crossings.

Upon consummation of an abandonment of a railway line authorized under 49 U.S.C. § 10903 adopted as of a specific date by rule by the department, or upon interim use of railroad rights-of-way to establish appropriate trails pursuant to 16 U.S.C. § 1247(d) adopted

as of a specific date by rule by the department, if the railway tracks adjacent to a crossing have been removed, but the railway tracks in the crossing have not been removed, the city, county, or other jurisdiction having authority over the highway, street, or alley containing the crossing may remove the tracks from the crossing. However, this section shall not be construed as reducing the obligation or liability of a railway corporation to remove the railway tracks from the crossing.

90 Acts, ch 1132, §1

327G.25 Closing of crossing for repair or upgrade.

A railway corporation shall not close a railway crossing to the traveling public for more than thirty days for the purpose of repairing or upgrading the crossing. A railway corporation violating this section shall, upon conviction, be subject to a schedule "one" penalty.

2000 Acts, ch 1134, §5

327G.26 and 327G.27 Repealed by 78 Acts, ch 1110, § 25.

327G.28 Compulsory establishment.

Whenever in the judgment of the department it is necessary for the public safety, said department may require the establishment of an interlocking system or other safety device at any railroad crossing, junction or drawbridge.

[C24, 27, 31, 35, 39, §8035; C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.36; C77, 79, 81, §327G.28]

327G.29 Grade crossing surface repair fund.

1. There is established a highway railroad grade crossing surface repair fund in the office of the treasurer of state. The department may credit to this fund:

- a. Moneys appropriated to the department from the general fund of the state.
- b. Moneys appropriated to the department from the road use tax fund or the primary road fund.
- c. Available federal funds.
- d. Moneys acquired by the department from any gift, grant, or contributions from any source.

2. Notwithstanding the provisions of section 8.33, unencumbered funds remaining in the highway railroad grade crossing surface repair fund at the close of each fiscal year ending on June 30 shall revert to the road use tax fund.

[C77, 79, 81, §327G.29]

2010 Acts, ch 1061, §180

[T] Section renumbered pursuant to Code editor directive

327G.30 Adjustment of expense.

1. If a grade crossing surface of a railroad track and a highway, street, or alley shall require repairs or maintenance, the costs for the maintenance may be paid as provided in section 312.2, subsection 2.

2. If the railroad corporation and the jurisdiction having authority agree on the method of crossing maintenance and establish an agreement to each contribute costs as provided in section 312.2, subsection 2, a copy of the agreement shall be filed with the department which shall allocate an amount of the cost for the work if funds are available in the highway railroad grade crossing surface repair fund. The department shall make appropriate notification if the fund is exhausted in which case agreements shall not be made under this section until additional funds are available. The fund shall be administered by the department.

3. Upon completion of the agreed repair work, a statement of costs shall be filed with the department by the railroad corporation in a form and manner prescribed by the department. The department, upon approval of the statement, shall pay to the railroad corporation an amount of the cost of the work from the highway railroad grade crossing surface repair fund

as provided in section 312.2, subsection 2. The owner of the track and the jurisdiction entering into the agreement shall each pay the cost as provided in section 312.2, subsection 2.

[C77, 79, 81, §327G.30]

83 Acts, ch 198, §22; 2009 Acts, ch 133, §240

327G.31 Disagreement resolved.

If a railroad corporation and the jurisdiction having authority cannot reach agreement on grade crossing surface repair and maintenance, either party may appeal to the department of inspections and appeals if prior to disagreement both parties have filed a statement with the state department of transportation to the effect that they have entered into negotiations on grade crossing surface repair and maintenance of a particular crossing. The department of inspections and appeals shall resolve the dispute in the manner provided in section 327G.16 and section 327G.17, except for the allocation of costs.

[C77, 79, 81, §327G.31; 81 Acts, ch 22, §22]

327G.32 Blocking highway crossing.

1. A railroad corporation or its employees shall not operate a train in such a manner as to prevent vehicular use of a highway, street, or alley for a period of time in excess of ten minutes except in any of the following circumstances:

- a. When necessary to comply with signals affecting the safety of the movement of trains.
- b. When necessary to avoid striking an object or person on the track.
- c. When the train is disabled.
- d. When necessary to comply with governmental safety regulations including but not limited to speed ordinances and speed regulations.

2. a. An officer or employee of a railroad corporation violating a provision of this section is, upon conviction, subject to the penalty provided in section 327G.14.

b. An employee is not guilty of a violation if the employee's action was necessary to comply with the direct order or instructions of a railroad corporation or its supervisors. Guilt is then with the railroad corporation.

3. Other portions of this section notwithstanding, a political subdivision may pass an ordinance regulating the length of time a specific crossing may be blocked if the political subdivision demonstrates that an ordinance is necessary for public safety or convenience. If an ordinance is passed, the political subdivision shall, within thirty days of the effective date of the ordinance, notify the department and the railroad corporation using the crossing affected by the ordinance. The ordinance does not become effective unless the department and the railroad corporation are notified within thirty days. The ordinance becomes effective thirty days after notification unless a person files an objection to the ordinance with the department. If an objection is filed the department shall notify the department of inspections and appeals which shall hold a hearing. After a hearing by the department of inspections and appeals, the state department of transportation may disapprove the ordinance if public safety or convenience does not require the ordinance. The decision of the state department of transportation is final agency action. The ordinance approved by the political subdivision is prima facie evidence that the ordinance is adopted to preserve public safety or convenience.

4. The department of inspections and appeals when considering rebuttal evidence shall weigh the benefits accruing to the political subdivision as they affect the general public use compared to the burden placed on the railroad operation. Public safety or convenience may include, but is not limited to, high traffic density at a specific crossing of a main artery or interference with the flow of authorized emergency vehicles.

5. A resolution regulating the length of time a specific crossing may be blocked, which was adopted before July 1, 1989, is an ordinance for the purposes of this section.

[C77, 79, 81, §327G.32; 81 Acts, ch 22, §20, 22]

85 Acts, ch 195, §39; 89 Acts, ch 39, §4, 5; 89 Acts, ch 273, §37; 2010 Acts, ch 1061, §180

[T] Section renumbered pursuant to Code editor directive

327G.33 through 327G.60 Reserved.

DIVISION II
PRIVATE BUILDINGS AND SPUR TRACKS

327G.61 Definitions.

As used in this division:

1. “*Department*” means the state department of transportation.
2. “*Spur track*” means a railroad track located wholly within the state connected to a main or branch line of a railroad and used to originate or terminate traffic at one or more industries or a railroad track not subject to the jurisdiction of the surface transportation board. A spur track shall not include a railroad line used to provide line-haul or intercity transportation.

[C75, §481.9; C77, 79, 81, §327G.61; 81 Acts, ch 22, §22]

86 Acts, ch 1245, §1963; 2003 Acts, ch 108, §65

327G.62 Controversies — hearing — order — review.

When a disagreement arises between a railroad corporation, its grantee, or its successor in interest, and the owner, lessee, or licensee of a building or other improvement, including trackage, used for receiving, storing, transporting, or manufacturing an article of commerce transported or to be transported, situated on a present or former railroad right-of-way or on land owned or controlled by the railroad corporation, its grantee, or its successor in interest, as to the terms and conditions on which the article is to be continued or removed, the railway corporation, its grantee, or its successor in interest, or the owner, lessee, or licensee may make written application to the department. The department shall notify the department of inspections and appeals which shall hear and determine the controversy and make an order which is just and equitable between the parties. That order is subject to review by the state department of transportation. The decision of the state department of transportation is final agency action.

[S13, §2110-l; C24, 27, 31, 35, 39, §8169; C46, 50, 54, 58, 62, 66, 71, 73, 75, §481.1; C77, 79, 81, §327G.62; 81 Acts, ch 22, §22; 82 Acts, ch 1207, §2]

86 Acts, ch 1245, §1964; 89 Acts, ch 273, §38

327G.63 Destruction of buildings.

In the event that any building referred to in section 327G.62, situated on the right-of-way or other land of a railroad company used for railway purposes, shall be injured or destroyed by the negligence of the railroad company, or the servants or agents thereof in the conduct of the business of such company, the railroad company causing such injury or destruction shall be liable therefor to the same extent as if such building used for said purposes was not situated on the right-of-way or other land of such railroad company used for railway purposes, any provision in any lease or contract to the contrary notwithstanding.

[S13, §2110-m; C24, 27, 31, 35, 39, §8170; C46, 50, 54, 58, 62, 66, 71, 73, 75, §481.2; C77, 79, 81, §327G.63]

327G.64 Spur tracks.

1. Every railroad corporation may acquire, by condemnation or purchase, the necessary rights-of-way and may construct, connect, operate and maintain a reasonably adequate and suitable spur track if the construction and operation is not unsafe and is in the public interest.

2. Any party may make application to the department to require a railroad corporation to construct a spur track. The department shall consider the location, necessity and expense of such a track and other equitable considerations.

3. A railroad corporation or any other party may make application to the department for permission to discontinue service on or remove a spur track. The department shall consider the location, necessity and expense of maintaining such track and other equitable considerations. The department may order the railroad company to discontinue service or remove the spur track, and may allocate the cost of removal between the parties in an equitable manner.

4. Any action commenced under the provisions of subsection 2 or 3 shall be completed

within one year from the effective date of the department order. The department shall make a final determination of any action commenced under subsection 2 or 3 within one year from the date of the application.

[C24, 27, 31, 35, 39, §8171; C46, 50, 54, 58, 62, 66, 71, 73, 75, §481.3; C77, 79, 81, §327G.64; 81 Acts, ch 22, §22]

327G.65 Cost of construction.

The railroad corporation may require the person primarily to be served to pay the legitimate cost and expense of acquiring, by condemnation or purchase, the necessary right-of-way for the spur track and of constructing it, as determined in separate items by the department. Except as provided in section 327G.66, the total cost as ascertained by the department shall be deposited with the railroad corporation before it is required to incur expense. If an agreement cannot be reached, the question shall be referred to the department which may, after a hearing conducted by the department of inspections and appeals, issue an order.

[C24, 27, 31, 35, 39, §8172; C46, 50, 54, 58, 62, 66, 71, 73, 75, §481.4; C77, 79, 81, §327G.65; 81 Acts, ch 22, §22]

89 Acts, ch 273, §39

327G.66 Bond for construction.

When the total estimated cost has been ascertained by the department such person, firm, corporation, or association shall have the option to either deposit said amount with the railroad company or to file with such company its written election to build and construct such spur track accompanied by a good and sufficient surety company bond running to such railroad company and conditioned upon the construction of such spur track in a good and skillful manner according to plans and specifications furnished by such railroad company and approved by the department. If such person, firm, corporation, or association so elects to build such spur track it shall only be required to deposit with such railroad company the estimated cost of the necessary right-of-way for such spur track as ascertained by the department, and the total amount stated in such written election.

[C24, 27, 31, 35, 39, §8173; C46, 50, 54, 58, 62, 66, 71, 73, 75, §481.5; C77, 79, 81, §327G.66]

327G.67 Costs in excess of deposit.

In any event before the railroad company shall be required to incur any expense whatever in the construction of such spur track the person, firm, corporation, or association primarily to be served thereby shall give the railroad company a bond to be approved by the department as to form, amount, and surety, securing the railroad company against loss on account of any expense incurred beyond the amount so deposited with the railroad company.

[C24, 27, 31, 35, 39, §8174; C46, 50, 54, 58, 62, 66, 71, 73, 75, §481.6; C77, 79, 81, §327G.67]

327G.68 Failure of company to act.

In case of failure, neglect, or refusal of any railroad company to comply with any of the provisions of sections 327G.65 to 327G.67, the person, firm, corporation, or association primarily to be served thereby may file a complaint with the department setting forth the facts upon which such grievance is based. The said department after reasonable notice to the railroad company shall investigate and determine all matters in controversy and make such order as the facts in relation thereto will warrant. Any such order shall have the same force and effect as other orders made by said department in other proceedings within its jurisdiction and shall be enforced in the same manner.

[C24, 27, 31, 35, 39, §8175; C46, 50, 54, 58, 62, 66, 71, 73, 75, §481.7; C77, 79, 81, §327G.68]

327G.69 Connections with original spurs.

Whenever such spur track is so connected with the main line, as provided in this chapter, at the expense of the owner of such proposed or existing mill, elevator, storehouse, dock, wharf, pier, manufacturing establishment, and any person, firm, corporation, or association shall desire a connection with such spur track, application therefor shall be made to the department, and such person, firm, corporation, or association shall be required to pay

to the person, firm, corporation, or association that shall have paid or contributed to the primary cost and expense of acquiring the right-of-way for such original spur track, and of constructing the same, an equitable proportion thereof, to be determined by the department, upon such application and notice, to the persons, firms, corporations, or associations that have paid or contributed toward the original cost and expense of acquiring the right-of-way and constructing the same.

[C24, 27, 31, 35, 39, §8176; C46, 50, 54, 58, 62, 66, 71, 73, 75, §481.8; C77, 79, 81, §327G.69]

327G.70 through 327G.75 Reserved.

DIVISION III
REVERSION TO OWNERS
UPON ABANDONMENT

327G.76 Time of reversion.

Railroad property rights which are extinguished upon cessation of service by the railroad divest when the department of transportation or the railroad, having obtained authority to abandon the rail line, removes the track materials to the right-of-way. If the department of transportation does not acquire the line and the railway company does not remove the track materials, the property rights which are extinguished upon cessation of service by the railroad divest one year after the railway obtains the final authorization necessary from the proper authority to remove the track materials.

[C24, 27, 31, 35, 39, §7861; C46, 50, 54, 58, 62, 66, 71, 73, 75, §473.1; C77, 79, 81, §327G.76]
83 Acts, ch 121, §5; 2009 Acts, ch 97, §10

327G.77 Reversion of railroad right-of-way.

1. If a railroad easement is extinguished under section 327G.76, the property shall pass to the owners of the adjacent property at the time of abandonment. If there are different owners on either side, each owner will take to the center of the right-of-way. Section 614.24 which requires the filing of a verified claim does not apply to rights granted under this subsection.

2. An adjoining property owner may perfect title under subsection 1 by filing an affidavit of ownership with the county recorder. The affidavit shall include the name of the adjoining property owner, a description of the property, the present name of the railroad, the jurisdiction, docket number, and date of order authorizing the railroad to terminate service, and the approximate date the track materials on the right-of-way were removed. A copy of the affidavit must be mailed by the landowner by certified mail to the railroad. The landowner shall pay taxes on the right-of-way from the date the affidavit is filed.

3. Utility facilities located on abandoned railroad right-of-way shall remain on the right-of-way subject to payment by the utility of the fair market value of an easement for the facilities. The utility shall, within sixty days from the time the property is transferred from the railroad, extend a written offer to the landowner to purchase the easement at fair market value. The landowner shall accept or reject the utility's offer within sixty days from the time of receipt. If a disagreement arises between the parties concerning the price or other terms of the transaction, either party may make written application to a compensation commission as established pursuant to chapter 6B to resolve the disagreement. This application shall be made within sixty days from the time the landowner's response is served upon the utility. The compensation commission shall hear the controversy and make a final determination of the fair market value of the easement and the other terms of the transaction which were in dispute within ninety days after the application is filed. All correspondence shall be by certified mail.

[C73, §1260; C97, §2015; C24, 27, 31, 35, 39, §7862; C46, 50, 54, 58, 62, 66, 71, 73, 75, §473.2; C77, 79, 81, §327G.77; 81 Acts, ch 22, §22]

83 Acts, ch 121, §6

327G.78 Sale of railroad property.

Subject to sections 327G.77 and 6A.16, when a railroad corporation, its trustee, or its successor in interest has interests in real property adjacent to a railroad right-of-way that are abandoned by order of the surface transportation board, reorganization court, bankruptcy court, or the department, or when a railroad corporation, its trustee, or its successor in interest seeks to sell its interests in that property under any other circumstance, the railroad corporation, its trustee, or its successor in interest shall extend a written offer to sell at a fair market value price to the persons holding leases, licenses, or permits upon those properties, allowing sixty days from the time of receipt for a written response. If a disagreement arises between the parties concerning the price or other terms of the sale transaction, either or both parties may make written application to the department to resolve the disagreement. The application shall be made within sixty days from the time an initial written response is served upon the railroad corporation, trustee, or successor in interest by the person wishing to purchase the property. The department shall notify the department of inspections and appeals which shall hear the controversy and make a final determination of the fair market value of the property and the other terms of the transaction which were in dispute, within ninety days after the application is filed. The determination is subject to review by the department and the department's decision is the final agency action. All correspondence shall be by certified mail.

The decision of the department is binding on the parties, except that a person who seeks to purchase the real property may withdraw the offer to purchase within thirty days of the decision of the department. If a withdrawal is made, the railroad corporation, trustee, or successor in interest may sell or dispose of the real property without further order of the department.

This section does not apply when a rail line is being sold for continued railroad use.

[82 Acts, ch 1207, §3]

83 Acts, ch 121, §7; 84 Acts, ch 1067, §34; 86 Acts, ch 1245, §1965; 93 Acts, ch 47, §16; 2003 Acts, ch 108, §66

327G.79 Valuing property in controversy.

The department of inspections and appeals' determination and order shall be just and equitable and in the case of the determination of the fair market value of the property, shall be based in part upon at least three independent appraisals prepared by certified appraisers. Each party shall select one appraiser and each appraisal shall be paid for by the party for whom the appraisal is prepared. The two appraisers shall select a third appraiser and the costs of this appraisal shall be divided equally between the parties. If the appraisers selected by the parties cannot agree on selection of a third appraiser, the state department of transportation shall appoint a third appraiser and the costs of this appraisal shall be divided equally between the parties.

The department of inspections and appeals' determination and order is final for the purpose of administrative review to the district court as provided in chapter 17A. The district court's scope of review shall be confined to whether there is substantial evidence to support the department of inspections and appeals' determination and order.

For purposes of this division, unless the context otherwise requires, "*department*" means the state department of transportation.

[82 Acts, ch 1207, §3]

86 Acts, ch 1245, §1966

327G.80 Reserved.

DIVISION IV
ACQUISITION OF RIGHT-OF-WAY

327G.81 Maintenance of improvements along rights-of-way.

1. A person, including a state agency or political subdivision of the state, who acquires a railroad right-of-way after July 1, 1979, for a purpose other than farming has all of the following responsibilities concerning that right-of-way:

a. Construction, maintenance, and repair of the fence on each side of the property, however, this requirement may be waived by a written agreement with the adjoining landowner.

b. Private crossings as provided for in section 327G.11.

c. Drainage as delineated in chapter 468, subchapter V.

d. Overhead, underground, or multiple crossings in accord with section 327G.12.

e. Weed control in accord with chapter 317.

2. This section does not absolve the property owners of other duties and responsibilities that they may be assigned as property owners by law. Subsection 1, paragraph “a”, does not apply to rights-of-way located on land within the corporate limits of a city except where the acquired right-of-way is contiguous to land assessed as agricultural land.

[C81, §327G.81]

2010 Acts, ch 1061, §122

[T] Section amended