

Chapter 81.53 RCW
RAILROADS—CROSSINGS

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- 81.53.900 Effective date—1975 1st ex.s. c 189.

Counties, signs, signals, etc.: RCW 36.86.040.

Railroad intersections, crossings, etc.: State Constitution Art. 12 s 13.

Traffic devices required by utilities and transportation commission: RCW 47.36.050.

Underpasses, overpasses constructed with federal funds, maintenance cost apportionment for: RCW 47.28.150.

RCW 81.53.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the utilities and transportation commission of Washington.

(2) "Grade crossing" means any point or place where a railroad crosses a highway or a highway crosses a railroad or one railroad crosses another, at a common grade.

(3) "Highway" includes all state and county roads, streets, alleys, avenues, boulevards, parkways, and other public places actually open and in use, or to be opened and used, for travel by the public.

(4) "Over-crossing" means any point or place where a highway crosses a railroad by passing above the same. "Over-crossing" also means any point or place where one railroad crosses another railroad not at grade.

(5) "Private crossing" means any point or place where a railroad crosses a private road at grade or a private road crosses a railroad at grade, where the private road is not a highway.

(6) "Railroad" means every railroad, including interurban and suburban electric railroads, by whatsoever power operated, for the public use in the conveyance of persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, sidings, tracks, stations, and terminal facilities of every kind, used, operated, controlled, managed, or owned by or in connection therewith. The term also includes every logging and other industrial railway owned or operated primarily for the purpose of carrying the property of its owners or operators or of a limited class of persons, with all tracks, spurs, and sidings used in connection therewith. The term does not include street railways operating within the limits of any incorporated city or town.

(7) "Railroad company" includes every corporation, company, association, joint stock association, partnership, or person, its, their, or his or her lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing any railroad.

(8) "Under-crossing" means any point or place where a highway crosses a railroad by passing under the same. "Under-crossing" also means any point or place where one railroad crosses another railroad not at grade. [2015 c 274 s 20; 2013 c 23 s 302; 1961 c 14 s 81.53.010. Prior: 1959 c 283 s 2; prior: (i) 1913 c 30 s 1; RRS s 10511. (ii) 1941 c 161 s 1; Rem. Supp. 1941 s 10511-1. Formerly RCW 81.52.080, part.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2015 c 274: See note following RCW 90.56.005.

RCW 81.53.020 Grade separation required where practicable. All railroads and extensions of railroads hereafter constructed shall cross existing railroads and highways by passing either over or under the same, when practicable, and shall in no instance cross any railroad or highway at grade without authority first being obtained from the commission to do so. All highways and extensions of highways hereafter laid out and constructed shall cross existing railroads by passing either over or under the same, when practicable, and shall in no instance cross any railroad at grade without authority first being obtained from the commission to do so: PROVIDED, That this section shall not be construed to prohibit a railroad company from constructing tracks at grade across other tracks owned or operated by it within established yard limits. In determining whether a separation of grades is practicable, the commission shall take into consideration the amount and character of travel on the railroad and on the highway; the grade and alignment of the railroad and the highway; the cost of separating grades; the topography of the country, and all other circumstances and conditions naturally involved in such an inquiry. [1961 c 14 s 81.53.020. Prior: 1913 c 30 s 2; RRS s 10512. Formerly RCW 81.52.090.]

RCW 81.53.030 Petition for crossing—Hearing—Order. Whenever a railroad company desires to cross a highway or railroad at grade, it shall file a written petition with the commission setting forth the reasons why the crossing cannot be made either above or below grade. Whenever the legislative authority of a county, or the municipal authorities of a city, or the state officers authorized to lay out and construct state roads, or the state parks and recreation commission, desire to extend a highway across a railroad at grade, they shall file a written petition with the commission, setting forth the reasons why the crossing cannot be made either above or below grade. Upon receiving the petition, the commission shall immediately investigate it, giving at least ten days' notice to the railroad company and the county or city affected thereby, of the time and place of the investigation, to the end that all parties interested may be present and heard. If the highway involved is a state road or parkway, the secretary of transportation or the state parks and recreation commission shall be notified of the time and place of hearing. The evidence introduced shall be reduced to writing and be filed by the commission. If it finds that it is not practicable to cross the railroad or highway either above or below grade, the commission shall enter a written order in the cause, either granting or denying the

right to construct a grade crossing at the point in question. The commission may provide in the order authorizing a grade crossing, or at any subsequent time, that the railroad company shall install and maintain proper signals, warnings, flaggers, interlocking devices, or other devices or means to secure the safety of the public and its employees. In respect to existing railroad grade crossings over highways the construction of which grade crossings was accomplished other than under a commission order authorizing it, the commission may in any event require the railroad company to install and maintain, at or near each crossing, on both sides of it, a sign known as the sawbuck crossing sign with the lettering "Railroad Crossing" inscribed thereon with a suitable inscription indicating the number of tracks. The sign shall be of standard design conforming to specifications furnished by the Washington state department of transportation. [2013 c 23 s 303; 1984 c 7 s 373; 1961 c 14 s 81.53.030. Prior: 1959 c 283 s 1; 1955 c 310 s 3; prior: 1937 c 22 s 1, part; 1913 c 30 s 3, part; RRS s 10513, part. Formerly RCW 81.52.100.]

RCW 81.53.040 Supplemental hearing—Change of route. If the commission finds that it is impracticable to construct an over-crossing or under-crossing on the established or proposed highway, and shall find that by deflecting the established or proposed highway a practicable and feasible over-crossing or under-crossing or a safer grade crossing can be provided, it shall continue the hearing and hold a supplemental hearing thereon. At least ten days' notice of the time and place of the supplemental hearing shall be given to all landowners that may be affected by the proposed change in location of the highways. At the supplemental hearing the commission shall inquire into the propriety and necessity of changing and deflecting the highway as proposed. If the proposed change in route of the highway involves the abandonment and vacation of a portion of an established highway, the owners of land contiguous to the portion of the highway to be vacated shall, in like manner, be notified of the time and place of the supplemental hearing. At the conclusion of the hearing, the commission shall enter its findings in writing, and shall determine the location of the crossing which may be constructed, and whether it shall be an under-crossing, over-crossing or grade crossing, and shall determine whether or not any proposed change in the route of an existing highway, or the abandonment of a portion thereof is advisable or necessary to secure an over-crossing, under-crossing, or safer grade crossing. [1961 c 14 s 81.53.040. Prior: 1955 c 310 s 4; prior: 1937 c 22 s 1, part; 1913 c 30 s 3, part; RRS s 10513, part. Formerly RCW 81.52.110.]

RCW 81.53.050 Requirements of order on change of route. If the commission finds and determines that a change in route of an existing highway, or vacation of a portion thereof, is necessary or advisable, it shall further find and determine what private property or property rights it is necessary to take, damage, or injuriously affect for the purpose of constructing the highway along a new route, and what private property or property rights, will be affected by the proposed vacation of a portion of an existing highway. The property and property rights found necessary to be taken, damaged, or affected shall be described in the findings with reasonable accuracy. In any

action brought to acquire the right to take or damage any such property or property rights, the findings of the commission shall be conclusive as to the necessity therefor. A copy of the findings shall be served upon all parties to the cause. [1961 c 14 s 81.53.050. Prior: 1955 c 310 s 5; 1937 c 22 s 1, part; 1913 c 30 s 3, part; RRS s 10513, part. Formerly RCW 81.52.120.]

RCW 81.53.060 Petition for alteration of crossing—Closure of grade crossing without hearing. The mayor and city council, or other governing body of any city or town, or the legislative authority of any county within which there exists any under-crossing, over-crossing, or grade crossing, or where any street or highway is proposed to be located or established across any railroad, or any railroad company whose road is crossed by any highway, may file with the commission their or its petition in writing, alleging that the public safety requires the establishment of an under-crossing or over-crossing, or an alteration in the method and manner of an existing crossing and its approaches, or in the style and nature of construction of an existing over-crossing, under-crossing, or grade crossing, or a change in the location of an existing highway or crossing, the closing or discontinuance of an existing highway crossing, and the diversion of travel thereon to another highway or crossing, or if not practicable, to change the crossing from grade or to close and discontinue the crossing, the opening of an additional crossing for the partial diversion of travel, and praying that this relief may be ordered. If the existing or proposed crossing is on a state road, highway, or parkway, the petition may be filed by the secretary of transportation or the state parks and recreation commission. If the existing crossing is adjacent to a project funded in part or in full by the state of Washington and managed by the department of transportation, and closure of the crossing is part of the project, the petition may be filed by the secretary of transportation or the secretary's designee, or if the petition is filed by another entity, the secretary of transportation or the secretary's designee shall intervene as a party in any hearing at which the closure of the crossing is contested. If the department of transportation is not a lead agency under chapter 43.21C RCW, a lead agency shall also intervene as a party in any hearing at which the closure of the crossing is contested. Upon the petition being filed, the commission shall fix a time and place for hearing the petition and shall give not less than twenty days' notice to the petitioner, the railroad company, and the municipality or county in which the crossing is situated. If the highway involved is a state highway or parkway, or if the crossing is adjacent to a project funded in part or in full by the state of Washington and managed by the department of transportation and closure of the crossing is part of the project, like notice shall be given to the secretary of transportation or the state parks and recreation commission. If the change petitioned for requires that private lands, property, or property rights be taken, damaged, or injuriously affected to open up a new route for the highway, or requires that any portion of any existing highway be vacated and abandoned, twenty days' notice of the hearing shall be given to the owner or owners of the private lands, property, and property rights which it is necessary to take, damage, or injuriously affect, and to the owner or owners of the private lands, property, or

property rights that will be affected by the proposed vacation and abandonment of the existing highway. The commission shall also cause notice of the hearing to be published once in a newspaper of general circulation in the community where the crossing is situated, which publication shall appear at least two days before the date of hearing. At the time and place fixed in the notice, all persons and parties interested are entitled to be heard and introduce evidence. In the case of a petition for closure of a grade crossing the commission may order the grade crossing closed without hearing where: (1) Notice of the filing of the petition is posted at, or as near as practical to, the crossing; (2) notice of the filing of the petition is published once in a newspaper of general circulation in the community or area where the crossing is situated, which publication shall appear within the same week that the notice referred to in subsection (1) of this section is posted; and (3) no objections are received by the commission within twenty days from the date of the publication of the notice. [2010 c 82 s 1; 1984 c 7 s 374; 1969 ex.s. c 210 s 8; 1961 c 14 s 81.53.060. Prior: 1937 c 22 s 2, part; 1921 c 138 s 1, part; 1913 c 30 s 4, part; RRS s 10514, part. Formerly RCW 81.52.130.]

RCW 81.53.070 Hearing. At the conclusion of the hearing the commission shall make and file its written findings of fact concerning the matters inquired into in like manner as provided for findings of fact upon petition for new crossings. The commission shall also enter its order based upon said findings of fact, which shall specify whether the highway shall continue at grade or whether it shall be changed to cross over or under the railroad in its existing location or at some other point, and whether an over-crossing or under-crossing shall be established at the proposed location of any street or highway or at some other point, or whether the style and nature of construction of an existing crossing shall be changed, or whether said highway shall be closed and travel thereon diverted to another channel, or any other change that the commission may find advisable or necessary: PROVIDED, That in an emergency where a highway is relocated to avoid a grade crossing, or a new crossing is constructed in the vicinity of an existing crossing in the interest of public safety, the commission may order such existing crossing closed without notice or hearing as specified herein. In case the order made requires that private lands, property, or property rights be taken, damaged or injuriously affected, the right to take, damage or injuriously affect the same shall be acquired as hereinafter provided.

Any petition herein authorized may be filed by the commission on its own motion, and proceedings thereon shall be the same as herein provided for the hearing and determination of a petition filed by a railroad company. [1961 c 14 s 81.53.070. Prior: 1937 c 22 s 2, part; 1921 c 138 s 1, part; 1913 c 30 s 4, part; RRS s 10514, part. Formerly RCW 81.52.140.]

RCW 81.53.080 Restrictions on structures, railway equipment, in proximity of crossings—Minimum clearance for under-crossings. After February 24, 1937, no building, loading platform, or other structure which will tend to obstruct the vision of travelers on a highway or parkway, of approaching railway traffic, shall be erected or placed on railroad or public highway rights-of-way within a distance of one

hundred feet of any grade crossing located outside the corporate limits of any city or town unless authorized by the commission, and no trains, railway cars or equipment shall be spotted less than one hundred feet from any grade crossing within or without the corporate limits of any city or town except to serve station facilities and existing facilities of industries.

The commission shall have the power to specify the minimum vertical and horizontal clearance of under-crossings constructed, repaired or reconstructed after February 24, 1937, except as to primary state highways. [1969 ex.s. c 210 s 9; 1961 c 14 s 81.53.080. Prior: 1937 c 22 s 2, part; 1921 c 138 s 1, part; 1913 c 30 s 4, part; RRS s 10514, part. Formerly RCW 81.52.150.]

RCW 81.53.090 Duty to maintain crossings. When a highway crosses a railroad by an over-crossing or under-crossing, the framework and abutments of the over-crossing or under-crossing, as the case may be, shall be maintained and kept in repair by the railroad company, and the roadway thereover or thereunder and approaches thereto shall be maintained and kept in repair by the county or municipality in which the same are situated, or if the highway is a state road or parkway, the roadway over or under the railroad shall be maintained and kept in repair as provided by law for the maintenance and repair of state roads and parkways.

The railings of over-crossings shall be considered a part of the roadway. Whenever a highway intersects a railroad at common grade, the roadway approaches within one foot of the outside of either rail shall be maintained and kept in repair by highway authority, and the planking or other materials between the rails and for one foot on the outside thereof shall be installed and maintained by the railroad company. At crossings involving more than one track, maintenance by the railroad company shall include that portion of the crossing between and for one foot on the outside of each outside rail. The minimum length of such planking or other materials shall be twenty feet on installation or repairs made after February 24, 1937. [1961 c 14 s 81.53.090. Prior: 1937 c 22 s 3; 1913 c 30 s 5; RRS s 10515. Formerly RCW 81.52.160.]

RCW 81.53.100 Cost when railroad crosses highway. Whenever, under the provisions of this chapter, new railroads are constructed across existing highways, or highway changes are made either for the purpose of avoiding grade crossings on such new railroads, or for the purpose of crossing at a safer and more accessible point than otherwise available, the entire expense of crossing above or below the grade of the existing highway, or changing the route thereof, for the purpose mentioned in this section, shall be paid by the railroad company. [1961 c 14 s 81.53.100. Prior: 1937 c 22 s 4A; 1925 ex.s. c 73 s 1A; 1921 c 138 s 2A; 1913 c 30 s 6A; RRS s 10516A. Formerly RCW 81.52.170.]

RCW 81.53.110 Cost when highway crosses railroad. Whenever, under the provisions of this chapter, a new highway is constructed across a railroad, or an existing grade crossing is eliminated or changed (or the style or nature of construction of an existing crossing is changed), the entire expense of constructing a new grade

crossing, an overcrossing, under-crossing, or safer grade crossing, or changing the nature and style of construction of an existing crossing, including the expense of constructing approaches to such crossing and the expense of securing rights-of-way for such approaches, as the case may be, shall be apportioned by the commission between the railroad, municipality or county affected, or if the highway is a state road or parkway, between the railroad and the state, in such manner as justice may require, regard being had for all facts relating to the establishment, reason for, and construction of said improvement. If the highway involved is a state road or parkway, the amount not apportioned to the railroad company shall be paid as provided by law for constructing such state road or parkway. [1961 c 14 s 81.53.110. Prior: 1937 c 22 s 4B; 1925 ex.s. c 73 s 1B; 1921 c 138 s 2B; 1913 c 30 s 6B; RRS s 10516B. Formerly RCW 81.52.180.]

RCW 81.53.120 Cost when railroad crosses railroad. Whenever two or more lines of railroad owned or operated by different companies cross a highway, or each other, by an over-crossing, under-crossing, or grade crossing required or permitted by this chapter or by an order of the commission, the portion of the expense of making such crossing not chargeable to any municipality, county, or to the state, and the expense of constructing and maintaining such signals, warnings, flaggers, interlocking devices, or other devices or means to secure the safety of the public and the employees of the railroad company, as the commission may require to be constructed and maintained, shall be apportioned between said railroad companies by the commission in such manner as justice may require, regard being had for all facts relating to the establishment, reason for, and construction of said improvement, unless said companies shall mutually agree upon an apportionment. If it becomes necessary for the commission to make an apportionment between the railroad companies, a hearing for that purpose shall be held, at least ten days' notice of which shall be given. [2013 c 23 s 304; 1961 c 14 s 81.53.120. Prior: 1937 c 22 s 4C; 1925 ex.s. c 73 s 1C; 1921 c 138 s 2C; 1913 c 30 s 6C; RRS s 10516C. Formerly RCW 81.52.190.]

RCW 81.53.130 Apportionment of cost. In the construction of new railroads across existing highways, the railroads shall do or cause to be done all the work of constructing the crossings and road changes that may be required, and shall acquire and furnish whatever property or easements may be necessary, and shall pay, as provided in RCW 81.53.100 through 81.53.120, the entire expense of such work including all compensation or damages for property or property rights taken, damaged or injuriously affected. In all other cases the construction work may be apportioned by the commission between the parties who may be required to contribute to the cost thereof as the parties may agree, or as the commission may consider advisable. All work within the limits of railroad rights-of-way shall in every case be done by the railroad company owning or operating the same. The cost of acquiring additional lands, rights or easements to provide for the change of existing crossings shall, unless the parties otherwise agree, in the first instance be paid by the municipality or county within which the crossing is located; or in the case of a state road or parkway, shall be paid in the manner provided by law for paying the cost of acquiring lands, rights or easements for the construction of

state roads or parkways. The expense accruing on account of property taken or damaged shall be divided and paid in the manner provided for dividing and paying other costs of construction. Upon the completion of the work and its approval by the commission, an accounting shall be had, and if it shall appear that any party has expended more than its proportion of the total cost, a settlement shall be forthwith made. If the parties shall be unable to agree upon a settlement, the commission shall arbitrate, adjust and settle the account after notice to the parties. In the event of failure and refusal of any party to pay its proportion of the expense, the sum with interest from the date of the settlement may be recovered in a civil action by the party entitled thereto. In cases where the commission has settled the account, the finding of the commission as to the amount due shall be conclusive in any civil action brought to recover the same if such finding has not been reviewed or appealed from as herein provided, and the time for review or appeal has expired. If any party shall seek review of any finding or order of the commission apportioning the cost between the parties liable therefor, the superior court, the court of appeals, or the supreme court, as the case may be, shall cause judgment to be entered in such review proceedings for such sum or sums as may be found lawfully or justly due by one party to another. [1988 c 202 s 65; 1971 c 81 s 144; 1961 c 14 s 81.53.130. Prior: 1937 c 22 s 5; 1913 c 30 s 7; RRS s 10517. Formerly RCW 81.52.200.]

Severability—1988 c 202: See note following RCW 2.24.050.

RCW 81.53.140 Time for performance. The commission, in any order requiring work to be done, shall have power to fix the time within which the same shall be performed and completed: PROVIDED, That if any party having a duty to perform within a fixed time under any order of the commission shall make it appear to the commission that the order cannot reasonably be complied with within the time fixed by reason either of facts arising after the entry of the order or of facts existing prior to the entry thereof that were not presented, and with reasonable diligence could not have been sooner presented to the commission, such party shall be entitled to a reasonable extension of time within which to perform the work. An order of the commission refusing to grant an extension of time may be reviewed as provided for the review of other orders of the commission. [1961 c 14 s 81.53.140. Prior: 1913 c 30 s 10; RRS s 10520. Formerly RCW 81.52.210.]

RCW 81.53.150 Practice and procedure. Modes of procedure under this chapter, unless otherwise provided in this chapter, shall be as provided in other provisions of this title. The commission is hereby given power to adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings under this chapter. [1961 c 14 s 81.53.150. Prior: 1913 c 30 s 11; RRS s 10521. Formerly RCW 81.52.220.]

RCW 81.53.160 Service of process. All notices required to be served by this chapter shall be in writing, and shall briefly state the nature of the matter to be inquired into and investigated. Notices may be served in the manner provided by law for the service of summons

in civil cases, or by registered United States mail. When service is made by registered mail, the receipt of the receiving post office shall be sufficient proof of service. When, under the provisions of this chapter, it is necessary to serve notice of hearings before the commission on owners of private lands, property, or property rights, and such owners cannot be found, service may be made by publication in the manner provided by law for the publication of summons in civil actions, except that publication need be made but once each week for three consecutive weeks, and the hearing may be held at any time after the expiration of thirty days from the date of the first publication of the notice. [1961 c 14 s 81.53.160. Prior: 1913 c 30 s 12; RRS s 10522. Formerly RCW 81.52.230.]

RCW 81.53.170 Judicial review. Upon the petition of any party to a proceeding before the commission, any finding or findings, or order or orders of the commission, made under color of authority of this chapter, except as otherwise provided, may be reviewed in the superior court of the county wherein the crossing is situated, and the reasonableness and lawfulness of such finding or findings, order or orders inquired into and determined, as provided in this title for the review of the commission's orders generally. Appellate review of the judgment of the superior court may be sought in like manner as provided in said utilities and transportation commission law for review by the supreme court or the court of appeals. [1988 c 202 s 66; 1971 c 81 s 145; 1961 c 14 s 81.53.170. Prior: 1937 c 22 s 6; 1913 c 30 s 13; RRS s 10523. Formerly RCW 81.52.240.]

Severability—1988 c 202: See note following RCW 2.24.050.

RCW 81.53.180 Eminent domain. Whenever to carry out any work undertaken under this chapter it is necessary to take, damage, or injuriously affect any private lands, property, or property rights, the right so to take, damage, or injuriously affect the same may be acquired by condemnation as hereinafter provided:

(1) In cases where new railroads are constructed and laid out by railroad company authorized to exercise the power of eminent domain, the right to take, damage, or injuriously affect private lands, property, or property rights shall be acquired by the railroad company by a condemnation proceedings brought in its own name and prosecuted as provided by law for the exercise of the power of eminent domain by railroad companies, and the right of eminent domain is hereby conferred on railroad companies for the purpose of carrying out the requirements of this chapter or the requirements of any order of the commission.

(2) In cases where it is necessary to take, damage, or injuriously affect private lands, property, or property rights to permit the opening of a new highway or highway crossing across a railroad, the right to take, damage, or injuriously affect such lands, property, or property rights shall be acquired by the municipality or county petitioning for such new crossing by a condemnation proceeding brought in the name of such municipality or county as provided by law for the exercise of the power of eminent domain by such municipality or county. If the highway involved be a state highway, then the right to take, damage, or injuriously affect private lands, property, or

property rights shall be acquired by a condemnation proceeding prosecuted under the laws relative to the exercise of the power of eminent domain in aid of such state road.

(3) In cases where the commission orders changes in existing crossings to secure an under-crossing, over-crossing, or safer grade crossing, and it is necessary to take, damage, or injuriously affect private lands, property, or property rights to execute the work, the right to take, damage, or injuriously affect such lands, property, or property rights shall be acquired in a condemnation proceeding prosecuted in the name of the state of Washington by the attorney general under the laws relating to the exercise of the power of eminent domain by cities of the first class for street and highway purposes: PROVIDED, That in the cases mentioned in this subdivision the full value of any lands taken shall be awarded, together with damages, if any accruing to the remainder of the land not taken by reason of the severance of the part taken, but in computing the damages to the remainder, if any, the jury shall offset against such damages, if any, the special benefits, if any, accruing to such remainder by reason of the proposed improvement. The right of eminent domain for the purposes mentioned in this subdivision is hereby granted. [1961 c 14 s 81.53.180. Prior: 1913 c 30 s 15; RRS s 10525. Formerly RCW 81.52.250.]

RCW 81.53.190 Abatement of illegal crossings. If an under-crossing, over-crossing, or grade crossing is constructed, maintained, or operated, or is about to be constructed, operated, or maintained, in violation of the provisions of this chapter, or in violation of any order of the commission, such construction, operation, or maintenance may be enjoined, or may be abated, as provided by law for the abatement of nuisances. Suits to enjoin or abate may be brought by the attorney general, or by the prosecuting attorney of the county in which the unauthorized crossing is located. [1961 c 14 s 81.53.190. Prior: 1913 c 30 s 16; RRS s 10526. Formerly RCW 81.52.260.]

RCW 81.53.200 Mandamus to compel performance. If any railroad company, county, municipality, or officers thereof, or other person, shall fail, neglect, or refuse to perform or discharge any duty required of it or them under this chapter or any order of the commission, the performance of such duty may be compelled by mandamus, or other appropriate proceeding, prosecuted by the attorney general upon request of the commission. [1961 c 14 s 81.53.200. Prior: 1913 c 30 s 17; RRS s 10527. Formerly RCW 81.52.270.]

RCW 81.53.210 Penalty. If any railroad company shall fail or neglect to obey, comply with, or carry out the requirements of this chapter, or any order of the commission made under it, such company shall be liable to a penalty not to exceed five thousand dollars, such penalty to be recovered in a civil action brought in the name of the state of Washington by the attorney general. All penalties recovered shall be paid into the state treasury. [1961 c 14 s 81.53.210. Prior: 1913 c 30 s 18; RRS s 10528. Formerly RCW 81.52.280.]

RCW 81.53.220 Obstructions in highways. Whenever, to carry out any work ordered under RCW 81.53.010 through 81.53.281 and 81.54.010, it is necessary to erect and maintain posts, piers, or abutments in a highway, the right and authority to erect and maintain the same is hereby granted: PROVIDED, That, in case of a state highway the same shall be placed only at such points on such state highway as may be approved by the state secretary of transportation and fixed after such approval by order of the commission. [1983 c 3 s 210; 1961 c 14 s 81.53.220. Prior: 1925 ex.s. c 179 s 2; 1913 c 30 s 19; RRS s 10529. Formerly RCW 81.52.290.]

RCW 81.53.230 No new right of action conferred. Nothing contained in this chapter shall be construed as conferring a right of action for the abandonment or vacation of any existing highway or portion thereof in cases where no right of action exists independent of this chapter. [1961 c 14 s 81.53.230. Prior: 1913 c 30 s 20; RRS s 10530.]

RCW 81.53.240 Scope of chapter. (1) Except to the extent necessary to permit participation by first-class cities in the grade crossing protective fund, when an election to participate is made as provided in RCW 81.53.261 through 81.53.291, or to the extent a first-class city requests to participate in the commission's crossing safety inspection program within the city, this chapter is not operative within the limits of first-class cities, and does not apply to street railway lines operating on or across any street, alley, or other public place within the limits of any city, except that a streetcar line outside of cities of the first class shall not cross a railroad at grade without express authority from the commission. The commission may not change the location of a state highway without the approval of the secretary of transportation, or the location of any crossing thereon adopted or approved by the department of transportation, or grant a railroad authority to cross a state highway at grade without the consent of the secretary of transportation.

(2) Within thirty days of July 1, 2015, first-class cities must provide to the commission a list of all existing public crossings within the limits of a first-class city, including over and under-crossings, including the United States department of transportation number for the crossing. Within thirty days of modifying, closing, or opening a grade crossing within the limits of a first-class city, the city must notify the commission in writing of the action taken, identifying the crossing by United States department of transportation number. [2015 c 274 s 21; 1984 c 7 s 375; 1969 c 134 s 8; 1961 c 14 s 81.53.240. Prior: (i) 1953 c 95 s 15; 1925 ex.s. c 179 s 3; 1913 c 30 s 21; RRS s 10531. (ii) 1959 c 283 s 7. Formerly RCW 81.52.300 and 81.52.380.]

Effective date—2015 c 274: See note following RCW 90.56.005.

RCW 81.53.250 Employment of experts. The commission may employ temporarily such experts, engineers, and inspectors as may be necessary to supervise changes in existing crossings undertaken under this chapter; the expense thereof shall be paid by the railroad upon

the request and certificate of the commission, said expense to be included in the cost of the particular change of grade on account of which it is incurred, and apportioned as provided in this chapter.

The commission may also employ such engineers and other persons as permanent employees as may be necessary to properly administer this chapter. [1961 c 14 s 81.53.250. Prior: 1937 c 22 s 7; 1913 c 30 s 14; RRS s 10524. Formerly RCW 81.52.330.]

RCW 81.53.261 Crossing signals, warning devices—Petition—Hearing—Order—Costs apportionment—Records not evidence for actions—Appeal. Whenever the secretary of transportation or the governing body of any city, town, or county, or any railroad company whose road is crossed by any highway, shall deem that the public safety requires signals or other warning devices, other than sawbuck signs, at any crossing of a railroad at common grade by any state, city, town, or county highway, road, street, alley, avenue, boulevard, parkway, or other public place actually open and in use or to be opened and used for travel by the public, he or she or it shall file with the utilities and transportation commission a petition in writing, alleging that the public safety requires the installation of specified signals or other warning devices at such crossing or specified changes in the method and manner of existing crossing warning devices. Upon receiving such petition, the commission shall promptly set the matter for hearing, giving at least twenty days notice to the railroad company or companies and the county or municipality affected thereby, or the secretary of transportation in the case of a state highway, of the time and place of such hearing. At the time and place fixed in the notice, all persons and parties interested shall be entitled to be heard and introduce evidence, which shall be reduced to writing and filed by the commission. If the commission shall determine from the evidence that public safety does not require the installation of the signal, other warning device or change in the existing warning device specified in the petition, it shall make determinations to that effect and enter an order denying said petition in toto. If the commission shall determine from the evidence that public safety requires the installation of such signals or other warning devices at such crossing or such change in the existing warning devices at said crossing, it shall make determinations to that effect and enter an order directing the installation of such signals or other warning devices or directing that such changes shall be made in existing warning devices. The commission shall also at said hearing apportion the entire cost of installation and maintenance of such signals or other warning devices, other than sawbuck signs, as provided in RCW 81.53.271: PROVIDED, That upon agreement by all parties to waive hearing, the commission shall forthwith enter its order.

No railroad shall be required to install any such signal or other warning device until the public body involved has either paid or executed its promise to pay to the railroad its portion of the estimated cost thereof.

Nothing in this section shall be deemed to foreclose the right of the interested parties to enter into an agreement, franchise, or permit arrangement providing for the installation of signals or other warning devices at any such crossing or for the apportionment of the cost of installation and maintenance thereof, or compliance with an

existing agreement, franchise, or permit arrangement providing for the same.

The hearing and determinations authorized by this section may be instituted by the commission on its own motion, and the proceedings, hearing, and consequences thereof shall be the same as for the hearing and determination of any petition authorized by this section.

No part of the record, or a copy thereof, of the hearing and determination provided for in this section and no finding, conclusion, or order made pursuant thereto shall be used as evidence in any trial, civil or criminal, arising out of an accident at or in the vicinity of any crossing prior to installation of signals or other warning devices pursuant to an order of the commission as a result of any such investigation.

Any order entered by the utilities and transportation commission under this section shall be subject to review, supersedeas, and appeal as provided in chapter 34.05 RCW.

Nothing in this section shall be deemed to relieve any railroad from liability on account of failure to provide adequate protective devices at any such crossing. [2013 c 23 s 305; 2007 c 234 s 99; 1982 c 94 s 1; 1969 c 134 s 1.]

Application—1982 c 94: "The provisions of this act shall not apply to those petitions acted upon by the commission prior to July 10, 1982." [1982 c 94 s 5.]

RCW 81.53.271 Crossing signals, warning devices—Petition contents—Apportionment of installation and maintenance costs. The petition shall set forth by description the location of the crossing or crossings, the type of signal or other warning device to be installed, the necessity from the standpoint of public safety for such installation, the approximate cost of installation and related work, and the approximate annual cost of maintenance. If the commission directs the installation of a grade crossing protective device, and a federal-aid funding program is available to participate in the costs of such installation, installation and maintenance costs of the device shall be apportioned in accordance with the provisions of RCW 81.53.295. Otherwise if installation is directed by the commission, it shall apportion the cost of installation and maintenance as provided in this section:

(1) Installation: (a) The first twenty thousand dollars shall be apportioned to the grade crossing protective fund created by RCW 81.53.281; and

(b) The remainder of the cost shall be apportioned as follows:

(i) Sixty percent to the grade crossing protective fund, created by RCW 81.53.281;

(ii) Thirty percent to the city, town, county, or state; and

(iii) Ten percent to the railroad:

PROVIDED, That, if the proposed installation is located at a new crossing requested by a city, town, county, or state, forty percent of the cost shall be apportioned to the city, town, county, or state, and none to the railroad. If the proposed installation is located at a new crossing requested by a railroad, then the entire cost shall be apportioned to the railroad. In the event the city, town, county, or state should concurrently petition the commission and secure an order authorizing the closure of an existing crossing or crossings in

proximity to the crossing for which installation of signals or other warning devices shall have been directed, the apportionment to the petitioning city, town, county, or state shall be reduced by ten percent of the total cost for each crossing ordered closed and the apportionment from the grade crossing protective fund increased accordingly. This exception shall not be construed to permit a charge to the grade crossing protective fund in an amount greater than the total cost otherwise apportionable to the city, town, county, or state. No reduction shall be applied where one crossing is closed and another opened in lieu thereof, nor to crossings of a private nature.

(2) Maintenance: (a) Twenty-five percent to the grade crossing protective fund, created by RCW 81.53.281; and

(b) Seventy-five percent to the railroad:

PROVIDED, That if the proposed installation is located at a new crossing requested by a railroad, then the entire cost shall be apportioned to the railroad. [2003 c 190 s 2; 1982 c 94 s 2; 1975 1st ex.s. c 189 s 1; 1973 1st ex.s. c 77 s 1; 1969 c 134 s 2.]

Findings—2003 c 190: "The legislature finds that grade crossing, rail trespass, and other safety issues continue to present a public safety problem.

The legislature further finds that with the increased importance of rail to freight and commuter mobility, there is a direct public benefit in assisting local communities and railroads to work together to address rail-related public safety concerns." [2003 c 190 s 1.]

Application—1982 c 94: See note following RCW 81.53.261.

RCW 81.53.275 Crossing signals, warning devices—Apportionment when funds not available from grade crossing protective fund. In the event funds are not available from the grade crossing protective fund, the commission shall apportion to the parties on the basis of the benefits to be derived by the public and the railroad, respectively, that part of the cost which would otherwise be assigned to the fund: PROVIDED, That in such instances the city, town, county or state shall not be assessed more than sixty percent of the total cost of installation on other than federal aid designated highway projects: AND PROVIDED FURTHER, That in such instances the entire cost of maintenance shall be apportioned to the railroad. [1969 ex.s. c 281 s 18; 1969 c 134 s 7.]

RCW 81.53.281 Crossing signals, warning devices—Grade crossing protective fund—Use and transfer of funds—Allocation of costs—Procedure—Federal funding. There is hereby created in the state treasury a "grade crossing protective fund" to carry out the provisions of RCW 81.53.261, 81.53.271, 81.53.281, 81.53.291, and 81.53.295; for grants and/or subsidies to public, private, and nonprofit entities for rail safety projects authorized or ordered by the commission; and for personnel and associated costs related to supervising and administering rail safety grants and/or subsidies. During the 2013-2015 fiscal biennium, funds in this account may also be used to conduct the study required under section 102, chapter 222, Laws of 2014. The commission shall transfer from the public service revolving fund's miscellaneous fees and penalties accounts moneys

appropriated for these purposes as needed. At the time the commission makes each allocation of cost to said grade crossing protective fund, it shall certify that such cost shall be payable out of said fund. When federal-aid highway funds are involved, the department of transportation shall, upon entry of an order by the commission requiring the installation or upgrading of a grade crossing protective device, submit to the commission an estimate for the cost of the proposed installation and related work. Upon receipt of the estimate the commission shall pay to the department of transportation the percentage of the estimate specified in RCW 81.53.295, as now or hereafter amended, to be used as the grade crossing protective fund portion of the cost of the installation and related work.

The commission may adopt rules for the allocation of money from the grade crossing protective fund. During the 2015-2017 and 2017-2019 fiscal biennia, the commission may waive rules regarding local matching fund requirements, maximum awards for individual projects, and other application requirements as necessary to expedite the allocation of money from the grade crossing protective fund to address underprotected grade crossings as identified by the commission. [2017 c 313 s 715; 2016 c 14 s 701; 2014 c 222 s 702; 2003 c 190 s 3; 1998 c 245 s 166; 1987 c 257 s 1; 1985 c 405 s 509; 1982 c 94 s 3; 1975 1st ex.s. c 189 s 2; 1973 c 115 s 4; 1969 c 134 s 3.]

Effective date—2017 c 313: See note following RCW 43.19.642.

Effective date—2016 c 14: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 25, 2016]." [2016 c 14 s 802.]

Effective date—2014 c 222: See note following RCW 47.28.030.

Findings—2003 c 190: See note following RCW 81.53.271.

Severability—1985 c 405: See note following RCW 9.46.100.

Application—1982 c 94: See note following RCW 81.53.261.

RCW 81.53.291 Crossing signals, warning devices—Operational scope—Election by first-class cities—Procedure. RCW 81.53.261 through 81.53.291 shall be operative within the limits of all cities, towns and counties, except cities of the first class. Cities of the first class may elect as to each particular crossing whether RCW 81.53.261 through 81.53.291 shall apply. Such election shall be made by the filing by such city of a petition as provided for in RCW 81.53.261 with the utilities and transportation commission, or by a statement filed with the commission accepting jurisdiction, when such petition is filed by others. [1969 c 134 s 4.]

RCW 81.53.295 Crossing signals, warning devices, etc.—Federal funds used to pay installation costs—Grade crossing protective fund—State and local authorities to pay remaining installation costs—Railroad to pay maintenance costs. Whenever federal-aid highway funds are available and are used to pay a portion of the cost of installing

a grade crossing protective device, and related work, at a railroad crossing of any state highway, city or town street, or county road at the then prevailing federal-aid matching rate, the grade crossing protective fund shall pay ten percent of the remaining cost of such installation and related work. The state or local authority having jurisdiction of such highway, street, or road shall pay the balance of the remaining cost of such installation and related work. The railroad whose road is crossed by the highway, street, or road shall thereafter pay the entire cost of maintaining the device. [1982 c 94 s 4; 1975 1st ex.s. c 189 s 3.]

Application—1982 c 94: See note following RCW 81.53.261.

RCW 81.53.400 Traffic control devices during construction, repair, etc. of crossing or overpass—Required. Whenever any railroad company engages in the construction, maintenance, or repair of a crossing or overpass, the company shall install and maintain traffic control devices adequate to protect the public and railroad employees, subject to the requirements of RCW 81.53.410 and 81.53.420. [1977 ex.s. c 168 s 1.]

RCW 81.53.410 Traffic control devices during construction, repair, etc. of crossing or overpass—Standards and conditions. All traffic control devices used under RCW 81.53.400 shall be subject to the following conditions:

- (1) Any traffic control devices shall be used at a repair or construction site only so long as the devices are needed or applicable. Any devices that are no longer needed or applicable shall be removed or inactivated so as to prevent confusion;
- (2) All barricades, signs, and similar devices shall be constructed and installed in a workmanlike manner;
- (3) Bushes, weeds, or any other material or object shall not be allowed to obscure any traffic control devices;
- (4) All signs, barricades, and other control devices intended for use during hours of darkness shall be adequately illuminated or reflectorized, with precautions taken to protect motorists from glare; and
- (5) Flagpersons shall be provided where necessary to adequately protect the public and railroad employees. The flagpersons shall be responsible and competent and possess at least average intelligence, vision, and hearing. They shall be neat in appearance and courteous to the public. [1977 ex.s. c 168 s 2.]

RCW 81.53.420 Traffic control devices during construction, repair, etc. of crossing or overpass—Rules. The utilities and transportation commission shall adopt rules to implement the provisions of RCW 81.53.400 and 81.53.410 pursuant to chapter 34.05 RCW. The commission shall invite the participation of all interested parties in any hearings or proceedings taken under this section, including any parties who request notice of any proceedings.

Any rules adopted under this section and any devices employed under RCW 81.53.410 shall conform to the national standards established by the current manual, including any future revisions, on

the Uniform Traffic Control Devices as approved by the American national standards institute as adopted by the federal highway administrator of the United States department of transportation.

Rules adopted by the commission shall specifically prescribe the duties, procedures, and equipment to be used by the flagpersons required by RCW 81.53.410.

RCW 81.53.400 through 81.53.420 and rules adopted thereunder shall be enforced by the commission under the provisions of chapter 81.04 RCW: PROVIDED, That rules adopted by the commission shall recognize that cities with a population in excess of four hundred thousand are responsible for specific public thoroughfares and have the specific responsibility and authority for determining the practices relating to safeguarding the public during construction, repair, and maintenance activities. [1977 ex.s. c 168 s 3.]

RCW 81.53.430 Safety standards for private crossings along railroad tracks over which crude oil is transported—Adoption of rules. (1) To address the potential public safety hazards presented by private crossings in the state and by the transportation of hazardous materials in the state, including crude oil, the commission is authorized to and must adopt rules governing safety standards for private crossings along the railroad tracks over which crude oil is transported in the state. The commission is also authorized to conduct inspections of the private crossings subject to this section, to order the railroads to make improvements at the private crossings, and enforce the orders.

(2) The commission must adopt rules governing private crossings along railroad tracks over which crude oil is transported in the state, establishing:

(a) Minimum safety standards for the private crossings subject to this section, including, but not limited to, requirements for signage; and

(b) Criteria for prioritizing the inspection and improvements of the private crossings subject to this section.

(3) Nothing in this section modifies existing agreements between the railroad company and the landowner governing liability for injuries or damages occurring at the private crossing. [2015 c 274 s 22.]

Effective date—2015 c 274: See note following RCW 90.56.005.

RCW 81.53.900 Effective date—1975 1st ex.s. c 189. This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975. [1975 1st ex.s. c 189 s 4.]