

TITLE 62
RAILROADS AND OTHER PUBLIC UTILITIES

CHAPTER 3
RAILROAD CROSSINGS ON HIGHWAYS

62-301. CROSSINGS OF STATE HIGHWAYS AND RAILROADS -- ELIMINATION OR ALTERATION -- COST. Whenever a state highway crosses or shall hereafter cross one or more railroads, and whenever the Idaho transportation department shall determine that the elimination of a grade crossing, whether by separation of grades or by relocation of the highway or railroad or both, or the reconstruction of an existing structure under or over the railroad or railroads, is necessary for public safety and convenience or for the proper construction or reconstruction of said state highway, the said Idaho transportation department shall have full authority to negotiate with and enter into an agreement with the railroad company or companies, and with any other persons and authorities concerned, to provide for the method of elimination or alteration and for the division of the cost thereof between the state and the railroad company or companies and any other parties to such agreement, such cost to include all changes of highway or railroads made necessary by the existence of the crossing and by the elimination or alteration thereof, and the acquisition of any right of way required therefor.

[(62-301) 1929, ch. 151, sec. 1, p. 274; I.C.A., sec. 60-301; am. 1967, ch. 11, sec. 1, p. 17; am. 1974, ch. 12, sec. 89, p. 61.]

62-302. COMPLAINT TO PUBLIC UTILITIES COMMISSION. If the Idaho transportation department shall be unable to agree with the railroad company or companies upon the elimination or alteration to be made or upon the division of the cost of such elimination or alteration, said department, or railroad company or companies, shall make written complaint to the public utilities commission, setting forth the changes and alteration desired and the necessity therefor.

[(62-302) 1929, ch. 151, sec. 2, p. 274; I.C.A., sec. 60-302; am. 1967, ch. 11, sec. 2, p. 17; am. 1974, ch. 12, sec. 90, p. 61.]

62-303. CROSSINGS NOT ON STATE HIGHWAYS -- ELIMINATION OR ALTERATION. Whenever a highway not a state highway crosses one or more railroads, the local authorities in their respective jurisdictions, or railroad company or companies, shall have the same authority and perform the same duties with respect to the elimination or alteration of such crossing as are granted to and required of the Idaho transportation department and railroad company or companies by this chapter.

[(62-303) 1929, ch. 151, sec. 3, p. 274; I.C.A., sec. 60-303; am. 1967, ch. 11, sec. 3, p. 17; am. 1974, ch. 12, sec. 91, p. 61.]

62-304. HEARING AND ORDER BY PUBLIC UTILITIES COMMISSION. Whenever a complaint is made to the public utilities commission by the Idaho transportation department, or by a railroad company or companies, or upon motion by the Idaho public utilities commission, or local authorities in their respective jurisdictions with respect to the elimination or alteration of a crossing of a highway with one or more railroads the said commission shall and is hereby authorized and empowered to hear and determine such complaint in accordance with the provisions of chapters 1 to 7, inclusive, title 61,

Idaho Code, taking into consideration the necessity for such elimination or alteration and the cost thereof, the location of any crossing and the manner in which it shall be constructed or reconstructed and maintained, or whether a crossing is to be eliminated and the provisions therefor, and shall make such order in relation thereto as shall be equitable, and shall determine what portion of the cost shall be paid by any party to the controversy: provided, that no cost shall be charged to the Idaho public utilities commission, and that no portion of the cost of eliminating or altering a crossing not on a state highway shall be ordered to be paid out of the state highway fund.

[(62-304) 1929, ch. 151, sec. 4, p. 274; I.C.A., sec. 60-304; am. 1967, ch. 11, sec. 4, p. 17; am. 1974, ch. 12, sec. 92, p. 61.]

62-304A. CREATION OF RAILROAD GRADE CROSSING PROTECTION FUND. In order to promote the public safety at railroad grade crossings and public streets, roads or highways and to provide for the payment of all or part of the costs of installing, reconstructing, maintaining or improving automatic or other safety appliances, signals or devices at railroad grade crossings of public streets, roads or highways over the tracks of any railroad company or companies, or to support public education and safety programs which promote awareness of public safety at railroad grade crossings of public streets, roads or highways, there is hereby created in the dedicated fund in the state treasury a fund to be known as the railroad grade crossing protection fund.

[62-304A, added 1979, ch. 218, sec. 5, p. 605; am. 2002, ch. 76, sec. 1, p. 173.]

62-304B. ADMINISTRATION OF THE RAILROAD GRADE CROSSING PROTECTION ACCOUNT. Subject to the provisions of section 62-304, Idaho Code, the Idaho transportation department is charged with sole and exclusive administration of the railroad grade crossing protection account.

[62-304B, added 1979, ch. 218, sec. 6, p. 605.]

62-304C. APPORTIONMENT OF COSTS. The Idaho transportation department shall follow federal guidelines on such grade crossing improvement projects as are to be funded in whole or in part under any federal act, and where the project is not funded entirely by federal funds, the Idaho transportation department may use moneys in the railroad grade crossing protection fund to pay all or a portion of the matching funds required.

On projects where federal-aid funds are not being utilized in whole or in part, the Idaho transportation department shall apportion the entire cost of the engineering, installation, reconstruction or improvement of any signal or device as described in section 62-304A, Idaho Code, between the railroad company or companies and the Idaho transportation department or the local authority, in proportion to the respective benefits to be derived. The Idaho transportation department may use moneys in the railroad grade crossing protection fund to pay all or a portion of the cost apportioned to the Idaho transportation department or local authority involved.

The railroad company or companies owning the track or tracks upon which the improvement shall be made shall perform all construction and maintenance of the signals or devices and shall be reimbursed for such part of said costs not to be borne by it, but in allocating said costs and dividing the same among the parties involved, the Idaho transportation department shall limit the amount to be charged against the railroad company or companies to a max-

imum of ten percent (10%) of the total cost of such construction, unless the crossing is a new one proposed by the railroad company or companies, in which case the entire cost of construction shall be apportioned to said railroad company or companies.

Upon application to the Idaho transportation department, and with the approval of the Idaho transportation board, a maximum of twenty-five thousand dollars (\$25,000) annually may be provided from the railroad grade crossing protection fund to support public education and safety programs which promote awareness of public safety at railroad grade crossings of public streets, roads or highways over the tracks of any railroad company or companies.

[62-304C, added 1979, ch. 218, sec. 7, p. 606; am. 1994, ch. 315, sec. 2, p. 1005; am. 2002, ch. 76, sec. 2, p. 174.]

62-304D. ESTABLISHING PRIORITIES FOR HAZARDOUS RAILROAD LOCATIONS -- ACCIDENT REPORTS TO BE FILED WITH IDAHO TRANSPORTATION DEPARTMENT. In its administration of the railroad grade crossing protection account, the Idaho transportation department shall establish a priority rating for railroad crossings, assigning priority first to the most hazardous railroad crossing locations, giving proper weight to traffic volume over such crossings by school buses and vehicles transporting dangerous commodities and if the Idaho transportation department determines from all of the evidence that public safety does not require installation of protective signals or devices at a crossing under consideration, it may refuse to order the installation of signals or devices or may defer their installation until more hazardous crossings have been protected. Every railroad company shall file with the Idaho transportation department a copy of each report of accident which is filed with the Idaho public utilities commission pursuant to the provisions of section 61-517, Idaho Code, for the Idaho transportation department to consider in making its determination. No part of any report filed with the Idaho transportation department as required in this section, or of any record, or a copy thereof, of any hearing held under the provisions of this act or of the determination provided for in this section and no finding, conclusion or order made by the Idaho transportation department in the administration of this act 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 Idaho transportation department as a result of any such investigation or proceeding.

[62-304D, added 1979, ch. 218, sec. 8, p. 606.]

62-305. CLOSING AND ABANDONMENT OF CROSSINGS UPON RELOCATION OF HIGHWAYS OR CONSTRUCTION OF UNDERPASSES OR OVERPASSES OR OTHERWISE -- HEARINGS. Wherever and whenever the location of any state highway, or other public street, road or highway, has been or shall be changed, the result of which has changed or will change the location of the place where such street, road or highway crosses any railroad tracks at grade, and a new crossing at grade or an overpass or underpass has been or shall be constructed at such new location, or whenever the closing and abandonment of an existing crossing is in the interest of and reasonably necessary for the public safety, or an existing crossing is no longer reasonably necessary as a public crossing for any reason, then the old grade crossing shall be deemed to be unnecessary and may be eliminated and discontinued. In the event any objection be made to the

elimination and discontinuance of said old grade crossing, the Idaho transportation board or the owners, operators, or lessees of any such railroad, or both, may, upon the completion and placing in operation of said new grade crossing, overpass or underpass, or whenever for any other reason a crossing is to be closed and abandoned, the public authority having jurisdiction over the street, road or highway, or the owners, operators, or lessees of any such railroad, or both, shall petition the public utilities commission for an order eliminating and discontinuing said old grade crossing, whether said change of location has been made or construction of an underpass or overpass completed before or after the passage of this act, and said commission shall be and is hereby authorized and empowered to hear and determine said petition in accordance with the provisions of chapters 1 to 7, inclusive, title 61, Idaho Code, and if upon hearing duly had it shall find and determine that the closing and abandonment of such grade crossing is in the interest of, and reasonably necessary for the public safety, or that said crossing is no longer reasonably needed, it shall make an order authorizing the closing and abandonment of said crossing. Any order made by the commission concerning said matter shall be enforceable and subject to review in the same manner as other orders of the commission. Upon any order of closing and abandonment becoming final, said grade crossing may be closed either by the public authority having jurisdiction over the street, road or highway or by the owner, operator or lessee of such railroad.

[(62-305) I.C.A., sec. 60-304A, as added by 1939, ch. 159, sec. 1, p. 284; am. 1974, ch. 12, sec. 93, p. 61; am. 1976, ch. 221, sec. 1, p. 794.]

62-306. CONSTRUCTION AND MAINTENANCE OF RAILROAD GRADE CROSSINGS. Whenever a state or county highway crosses or shall hereafter cross a railroad at grade, the railroad company shall at its own expense construct and maintain that portion of such highway between the rails and for a distance of not less than two (2) feet outside the outer rails. The crossing shall be planked or surfaced with other suitable material for the full width of the traveled way, including shoulders, and shall be maintained at all times in a smooth and firm condition. Where a public agency having jurisdiction of the highway crossing the railroad wishes to have the crossing surfaced with material of higher quality, the public agency and the railroad company may agree that the railroad company install the material and that the additional cost, over and above the cost of the railroad company's standard installation, may be paid for by the public agency with public funds.

[(62-306) 1929, ch. 151, sec. 5, p. 274; I.C.A., sec. 60-305; am. 1953, ch. 198, sec. 1, p. 308; am. 1977, ch. 79, sec. 1, p. 161.]

62-307. PERMISSION FOR NEW CROSSING OF HIGHWAYS AND RAILROADS. No new railroad and no alteration or extension of an existing railroad shall hereafter cross any highway at grade, and no new highway shall hereafter cross any railroad at grade without the written permission of the Idaho transportation board first having been obtained. Neither a side track, team track, passing track nor house track shall be deemed a railroad within the meaning of this section. The term highway as used in this section shall not include streets and alleys in cities.

[62-307, added 1929, ch. 151, sec. 7, p. 274; I.C.A., sec. 60-307; am. 1974, ch. 12, sec. 94, p. 61.]

62-308. ENFORCEMENT. Except as otherwise herein provided, the provisions of this chapter shall be enforced in the same manner as orders of the public utilities commission in regard to railways are enforced.

[62-308, added 1929, ch. 151, sec. 7, p. 274; I.C.A., sec. 60-307.]

62-309. SEPARABILITY. If any part or parts of this chapter shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this chapter.

[62-309, added 1929, ch. 151, sec. 9, p. 274; I.C.A., sec. 60-308.]