

§7231. Petition; damages; expenses; temporary ways

The municipal officers in instances of town ways crossing or crossed by a railroad, whether the crossing be at grade or otherwise, or any railroad corporation may petition the Department of Transportation alleging that public safety or public convenience either to the traveling public or in the operation of the railroad services requires abolishment of or reconstruction of or alteration of crossings or its approaches; or change in the method of crossing a public way; or the closing of a crossing and the substitution of another; or the removal of obstructions to the sight at the crossing and requesting the situation be remedied. The Department of Transportation shall appoint a time and place for a hearing after notice of not less than 10 days to the petitioners, the railroad corporation, the municipality in which the crossing is situated, the owners or occupants of the land adjoining the crossing or adjoining that part of the way to be changed in grade. After notice and hearing, the Department of Transportation shall make its determination to insure safety or public convenience and by whom the abolishment, reconstruction, alteration, change or removal shall be made. The jurisdiction of the Department of Transportation shall exist whether the change or alterations in the crossing is within or without the limits of a public way. To facilitate the abolishment, reconstruction, alterations, changes or removals, highways and other ways may be raised or lowered or the courses of the same way may be altered to permit a railroad to pass at the side thereof. For the purposes aforesaid land may be taken and damages awarded as provided for laying out highways. The Department of Transportation shall determine how much land may be taken and shall fix the damages sustained by any person whose land is taken and the special damages which the owner of land adjoining the public way may sustain by reason of any change in the grade of the way. [PL 1989, c. 398, §8 (NEW).]

Appeal from any decision, order or award of the commission may be had as provided in section 7233. The Department of Transportation shall apportion the expenses pertaining thereto and damages as follows: If the way involved is a state highway, 50% to the department and 50% to the railroad corporation; if the way involved is a state aid highway, 50% to the department and the municipality or municipalities in which the way is located, the pro rata share being determined by the percentage of state aid granted on the way involved and 50% to the railroad corporation; if the way involved is a town way, 35% to the State, to be paid out of the General Fund, 15% to the town, or in cases under the last paragraph of this section 15% to the county commissioners of the county in which the way is located and over which the county commissioners have jurisdiction, and 50% to the railroad corporation, provided that the department may vary the aforesaid percentages of expense and damages as it may deem proper after due consideration of the relative benefits to be derived from the abolishment, alteration or reconstruction, and provided that the amount ordered to be paid by the railroad corporation shall not in any event exceed 50% of the expenses and damages. The Department of Transportation may approve agreements made by the railroad corporation and other parties in interest in respect to the work or varying the percentages, provided the amount to be paid by the town shall not exceed the 15% specified unless the town shall vote otherwise, as to any elimination or alteration made under this section, the department may determine what work fairly and properly should be regarded as highway construction. [PL 1989, c. 398, §8 (NEW).]

Notwithstanding the preceding paragraph, the cost of reconstruction of railroad grade separation structures carrying the highway over the railroad, including the alterations to the approaches to said structure, on nonfederal aid state aid highways shall be apportioned as follows: 70% to the Department of Transportation, 10% to the railroad corporation and 20% to the municipality or the county having jurisdiction of the roads in any unorganized township in which said structure is located, provided that the department may vary the aforesaid percentages of cost as it may deem proper after due consideration of the relative benefits to be derived from the reconstruction. [PL 1989, c. 398, §8 (NEW).]

The Department of Transportation may make an order relative to the maintenance of crossings at grade or otherwise as it may deem necessary, and may determine whether expense shall be borne by the railroad corporation, by the municipality in which any crossing is located or by the State by or

through the department; or the department may apportion the expense equitably between the railroad corporation, the municipality and the State by or through the Department of Transportation. [PL 1989, c. 398, §8 (NEW).]

While the use of any way is obstructed in carrying out the foregoing provisions of this section, such temporary way shall be provided as the department may order. The Department of Transportation shall not make any order on any petition filed under this section until they are satisfied, by investigation or otherwise, that the financial condition of the corporation operating the railroad in question will enable the corporation to comply with the order, and that the probable benefit to the public will warrant the order and the probable expense resulting from the order, and that the order can be complied with without exceeding the state appropriation available. [PL 1989, c. 398, §8 (NEW).]

The county commissioners shall have the same right of petition under this section, with respect to roads in unorganized places laid out by them under section 4001, as have municipal officers of a municipality under the provisions of this section. In case a petition is filed by them, all parties interested in the subject matter of the petition shall be notified by the Department of Transportation of the filing of the petition and given opportunity to appear and be heard. [PL 1989, c. 398, §8 (NEW).]

SECTION HISTORY

PL 1989, c. 398, §8 (NEW).

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