

**68-509. Elimination of grade crossings; division of costs between railroad and county; eminent domain; publication notice; appeal from award; warning signals.** The county engineer and board of county commissioners, in designating the county road system, shall eliminate all steam or electric road grade crossings and all other dangerous places on the highways so far as practicable, by paralleling such steam or electric roads, constructing undergrade or overhead crossings, relocating the highways or using such other means as may be necessary to properly safeguard the traveling public. The expense of eliminating railroad crossings shall be divided between the railroad company and the county, in a fair and equitable proportion determined by the secretary of transportation, who shall determine the necessity for eliminating such crossing.

When the elimination, protection or improvement of a railroad grade crossing, as finally determined to be necessary by the secretary, requires the relocation, laying out, altering, widening or vacating of a highway, the board of county commissioners may purchase or acquire by donation any land required and, by order of the board, cause the highway to be relocated, laid out, altered, widened or vacated. Such order of the board of county commissioners shall cause any land so procured to become a public highway without further action. If the owner of any land required for the relocation, laying out, altering or widening of a highway for the purposes mentioned in this section refuses to sell or donate such land, the board of county commissioners shall exercise the right of eminent domain in the following manner:

The board of county commissioners by order shall determine the nature of the changes required in such road, the approximate amount and location of land required to be taken therefor and the time and place at which the road will be viewed. The board shall publish a notice once in the official county paper, not less than 15 days and not more than 25 days before the viewing of the road. A similar notice shall be sent by certified mail to the owners of lands affected by such change, at the address where the owner's tax statement is sent. Such notice shall set out the substance of the order and its date, the time and place the commissioners will begin to view the road and give all parties a hearing.

The board shall direct the county engineer to meet with it at such time and place, unless the new locations of roads made necessary by the changes have already been definitely surveyed and located. Upon the day stated in the notice, or on the following day, the county commissioners shall meet at the place stated in the notice and proceed to view the road and changes required; shall view all lands required to be taken for the relocation, laying out, altering or widening of the highway for the purposes described in this section; and shall appraise the value thereof and assess the damages thereto. The county commissioners shall forthwith file in the office of the county clerk of the county a written report of their findings, along with the plat of the road as changed. All applications for damages must be filed in writing with the county clerk on or before the first day of the next regular session of the board following the filing of the report. The board at such session shall finally determine the amount to be paid as damages to any owner of the land. The amounts so allowed shall be paid from the general fund or the road fund of the county.

The right of appeal from the award of damages made by the board of county commissioners shall be the same as is now provided by law in other road cases, but such appeal shall not delay any work upon or in relation to the road. If lands are appropriated for the relocation of any county or township road, which relocation is deemed necessary to avoid one or more railroad crossings or other dangerous places, the railroad company shall pay such part of the cost, not less than 1/2 or more than 3/4, as determined by the secretary of transportation. Such part of the cost shall be paid by the railroad company to the county and shall be used to reimburse the funds from which the cost of land and damages were paid. The secretary of transportation, upon the request of any county or township board, may require suitable safety devices or warning signals at dangerous or obscure railroad crossings to indicate the approach of trains, which shall be installed and maintained by the railroad company. The secretary may require the removal of spoil banks and other obstructions to view and the grading of approaches to the tracks, the cost of which shall be borne by the railroad company and county or township jointly or severally in the proportions determined by the secretary. The secretary may require the construction of suitable warning signs at a distance of 200 to 300 feet on both sides of all railroad grade crossings if, in the judgment of the secretary, signs are necessary for the safety of travel. All such warning signs on township roads shall be erected by the townships and those on the county roads by the county.

**History:** L. 1917, ch. 264, § 18; L. 1919, ch. 245, § 5; R.S. 1923, 68-509; L. 1975, ch. 427, § 119; L. 1981, ch. 173, § 69; July 1.