

CHAPTER 193

STREET AND INTERURBAN RAILWAYS

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193.01 Street railways; formation, powers; franchises. (1) Corporations for constructing, maintaining and operating street railways may be formed under ch. 180, and shall have powers and be governed accordingly. Any municipality or county may grant to such corporation, under whatever law formed, or to any person who has the right to operate street railways, the use, upon such terms as it determines, of any streets, parkways or bridges within its limits for the purpose of laying tracks and running cars thereon, or of running cars without tracks by overhead trolley, and auxiliary vehicles operated by internal combustion engines, for the carriage of freight and passengers, to be propelled by such power as shall be agreed on, with all necessary curves, turnouts, switches and other conveniences. Every such road shall be constructed upon the most approved plan and be subject to such reasonable rules and the payment of such license fees as the grantor may by ordinance prescribe. Transportation systems employing overhead trolley structures for the propulsion of cars without tracks shall be deemed railroads subject to ch. 195. The cars used for the operation of any such trackless trolley system shall not be deemed motor vehicles within the meaning of ch. 194.

(2) Whenever any city shall determine that public travel requires the use of space beneath or over the surface of any street, alley or public ground, it may authorize, subject to the provisions of sections 193.33 to 193.46, any

street or interurban railway corporation, on such terms as may be agreed upon, to construct and maintain, for the operation of its cars and trains thereon or therein, elevated structures above and subways beneath the surface of any street, alley or public ground, including approaches, entrances, sidings, stations and connections. Any city may provide any such elevated or subway structure and may authorize the use thereof by a street or interurban railway corporation on such terms as may be agreed upon.

193.02 Street railway may buy like road; holding stock; payment; sale or lease. Any corporation which owns or controls a street railway may, when authorized by its articles of incorporation, purchase, take and hold all or any part of the real and personal property, rights, privileges, ordinances and franchises of any other street railway company, or of any corporations, formed for the purpose of generating electricity, and may, when so authorized, purchase, take and hold stock in and become a subscriber to the capital stock of any other similar street railway or any electrical corporation; the consideration for such purchase may be paid in the stock or bonds, or both, of the purchasing company; the conveyance of property shall be by deed or bill of sale, or both, in the usual form, and be authorized by the affirmative vote of a majority of the outstanding stock entitled to vote of the selling company. The electrical power so acquired may be sold or

leased for any purpose to all persons and corporations for cash or for the stock or bonds, or both, of any corporation to which the same is furnished. All electric light companies shall have all the rights, powers and privileges conferred by this section on street railway corporations.

193.05 Interurban railways; organization; depots, location, construction. (1) Corporations may be formed and governed as provided in section 193.01 for the purpose of building, maintaining and operating interurban railways in any city, village or town, or to extend from any point in one city, village or town to, into or through any other city, village or town, and for running cars for the carriage of either passengers or freight; and for that purpose, with the consent of the common council of any city or the board of any village or town in or through which such railway may extend, may lay and operate their railways upon, across and along any highway, but not so as to obstruct the public travel thereon. The consent of the common council or board shall be given by ordinance, and upon such terms and subject to such rules and regulations and the payment of such license fees as the common council or board may from time to time prescribe; provided, that the common council or board shall not alter or change the license fee prescribed for any such corporation oftener than once in each five years.

(2) Every interurban railway company shall provide a suitable depot or waiting room at every city or village, whether incorporated or not, to which its railway shall extend, and at every junction point where it shall transfer passengers. Upon petition therefor to any interurban railway company by any town board or by twenty-five residents of any town, such railway company shall provide a suitable waiting room or shelter at any highway crossing within such town where it receives and discharges passengers. The commission shall have power to relieve any company from the duty of constructing such waiting room or shelter at highway crossings, or at any other place along its line, when it shall be made to appear that the volume of traffic or the proximity to such crossing or other place of a suitable shelter is such that the construction of such waiting room or shelter is not necessary for the adequate protection of passengers. The commission may determine whether any depot or waiting room so provided is suitable in construction or location; and in case of the failure of connecting lines to agree on the place of location or division of expense of erection or maintenance of such depot or waiting room at junction points, said commission shall have the power to determine all matters in dispute in reference thereto on application of either party.

193.06 Penalty, failure to provide shelter. Any corporation failing to comply with any of the provisions of section 193.05 shall forfeit not less than fifty dollars, nor more than one hundred dollars. Each day that any such railway shall be operated in violation of said provisions shall be deemed a separate offense.

193.08 Forfeiture of franchise for nonuser. (1) When any street railway company shall fail, for a period of five years to operate its cars for regular passenger service over any street in any city, village or town, upon which a franchise or permit shall have been granted it, the common council or the village or town board may, by a two-thirds vote, declare such franchise or permit forfeited as to the street or portion thereof so neglected; provided that tracks upon any street, not exceeding two blocks, used for switching and emergency purposes, may be retained by any such company though cars are not regularly operated thereon.

(2) When any franchise or permit granted to any street railway company contains no limitations as to the time within which the railway should be constructed, such franchise or permit shall terminate at the expiration of five years from the date thereof, as to all streets and portions of streets upon which such railway has not been constructed or has been taken up.

193.09 Interurban cars; heating; thermometer; penalty. (1) It shall be unlawful to operate any interurban or street passenger car between the fifteenth day of October and the succeeding fifteenth day of April, unless such car is provided with a reliable thermometer, placed in a conspicuous place at or about the center of such car, and a suitable heating apparatus, and a temperature of not less than sixty degrees Fahrenheit at or about the center of such car is maintained when reasonably possible so to do.

(2) Any corporation failing to comply with any of the foregoing provisions shall forfeit not less than fifty dollars, nor more than one hundred dollars. Each day that such car is operated in violation of the foregoing provisions shall be deemed a separate offense.

193.10 Extension of lines, interurban roads. Any street railway corporation operating within any municipality shall extend its lines and furnish service thereon whenever, after complaint made and public hearing after notice to all parties interested, the commission shall have found and declared that public convenience and necessity require such extension and such additional service, and that the construction and operation of such extension will not impair the

earnings of the said corporation so as to prevent an adequate or fair return, and such corporation may extend its railway to any point within any town adjoining the municipality from which it derived its franchise, and for such purposes may, with the written consent of a majority of the supervisors of such town, lay and operate its railway upon, across and along any highway, but not so as to obstruct public travel.

193.11 Street and Interurban railways; right of way for road or power line. Any street or interurban railway corporation may lay out its right of way not exceeding one hundred feet in width and acquire the same and construct its railway thereon; and may acquire a right of way not exceeding two rods in width, for the purpose of transmitting electrical current from the power house to the railway system operated thereby, and for the purpose of furnishing light, heat and power for public purposes. Wherever such corporation has constructed its railway on any street or highway under a franchise granted to it by any town or village board or city council, such corporation shall not, during the term of such franchise, abandon or discontinue any part of such railway on a public street or highway without the consent of the proper town or village board or city council.

193.12 Street and Interurban railways; condemnation. For the purpose of cuttings and embankments and of obtaining gravel or other material such railway may take as much more land as may be necessary for the proper construction, operation and security of the road, and cut down trees that may be in danger of falling on the road, making compensation therefor, and any such street or interurban railway corporation may acquire and may hold or use such real estate or other real or personal property as may be necessary for the construction, maintenance and operation of its railroad, elevated and subsurface structures for carrying the tracks thereof, and approaches and entrances thereto and for stations, depot grounds, sidings, connections and other accommodations reasonably necessary to accomplish the objects of incorporation; and when reasonably necessary may acquire the right to run its cars over bridges owned by cities of the second, third and fourth classes, towns and villages, and the approaches thereto on the rails of any other street or electric railway which it may meet, join, intersect or cross.

193.13 Street and Interurban railways; other lines, power to intersect. All of the provisions of subsection (6) of section 190.02 relative to railroad crossings shall apply to street

and interurban railways. The commission shall have power to determine the place at and manner in which grade or other crossings shall be made.

193.14 Street and Interurban railways; surveys. Street and interurban railway companies shall have the power to cause such examination and surveys for a proposed railroad to be made as may be necessary to the selection of the most advantageous route, and for such purpose may enter upon any lands or waters, but subject to responsibility for all damages which shall be done thereto.

193.15 Condemnation, limitation on. The right of condemnation by a street or interurban railway company shall not extend to any park, boulevard, street, alley, bridge or viaduct in any municipality unless the use thereof shall first be granted, upon such terms and conditions as the proper authorities shall determine, to it by a franchise duly passed by the board of trustees or common council.

193.17 Consolidation of railroads. Any domestic street or interurban railway corporation may consolidate with any other street or interurban railway company in the manner provided in section 190.06 and with the effect there declared, except that a certified copy of the documents required by said section to be filed for record with the secretary of state shall also be recorded in the office of the register of deeds of each county in this state in which the constituent corporations had their principal place of business and in the home county of the consolidated corporation.

193.22 May borrow money; mortgages. Any street railway corporation organized under any law may, by a vote of the stockholders owning three-fourths of the capital stock, borrow money and execute any mortgage or deed of trust, under ss. 190.02 (9) and 190.11, embracing therein any and all of its property; and may therein provide for the disposal and replacing or substitution of its cars, motor vehicles or other property which becomes old, worn or unfit for use; and such substituted or after-acquired property shall then be subject to the terms of such instrument. Any such corporation having heretofore executed any such mortgage or deed of trust embracing any or all of its property, and having since the execution of such mortgage or deed of trust engaged in the operation of motor vehicles for the transportation of passengers or property for hire as a part of its business, may, at its option, execute a supplemental mortgage or deed of trust providing for the inclusion of any or all of the motor

vehicles owned and operated by such corporation within the terms of the original mortgage or deed of trust, with the same effect as though such motor vehicle had been specifically therein described in the first instance. Any such instrument or supplemental instrument may be recorded in the office of the register of deeds of the county wherein such corporation has its principal office in this state, and such record shall be as valid and effectual as if filed in the proper office as a chattel mortgage or equivalent security interest under the commercial code, and so remain until satisfied or discharged without any further affidavit or proceeding whatever on the part of the mortgagee or any holder of the bonds or evidences of debt thereby secured. No such corporation shall be allowed to make the defense of usury against the holder of any indebtedness so secured.

193.24 Street car transfers; illegal use.

(1) No transfer or ticket purporting to give the right of transfer from one public conveyance to another public conveyance shall be issued, sold or given by any street railroad except to a passenger lawfully entitled thereto.

(2) Any person not lawfully entitled thereto who shall receive and use, or offer for passage, any such transfer ticket, or who shall sell or give away such transfer ticket to another with intent to have such transfer ticket used, or offered for passage after the time limit for its use shall have expired, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars nor more than ten dollars for each such offense.

193.27 Interurban cars; drinking tank; toilet room. Every closed interurban car shall be provided with a drinking tank and a toilet room sufficient for the comfort and convenience of passengers upon such cars, and such drinking tank and toilet room shall be at all times maintained in a sanitary condition; provided, that such toilet room may be locked while such car is within a city. Any person owning or operating an interurban railway, or the managing or superintending officer or agent thereof, who shall fail to comply with the provisions of this section, shall be punished by a fine of not less than \$50 nor more than \$100. Each day that such car shall be operated in violation of the provisions of this section shall be a separate offense; provided, that the provisions of this section relating to drinking tanks shall not apply to interurban railroad operations of less than 15 miles in length and the provisions of this section relating to toilets shall not apply to interurban operations of less than 25 miles in length.

193.29 Street and interurban cars; air brakes. (1) Every street or interurban motor car weighing over forty thousand pounds, net weight, used for transportation shall be equipped with air brakes of modern design, to be approved by the commission.

(2) The commission may order air brakes upon other cars.

(3) Any corporation failing to comply with this section shall forfeit not less than twenty-five dollars nor more than one hundred dollars, and each day's operation shall be considered a separate act.

193.30 Cars stop at railroad crossing. (1) Every street or interurban railway car shall come to a standstill at least twenty feet from the nearest rail of the track of any steam railroad to be crossed at grade, and such car shall not cross such track until an employe of such railway shall have ascertained from a position on such track that it is safe to proceed, unless such crossing shall be equipped with appliances which render it safe to cross without stopping, and the plan of such appliances has been filed with and approved by the commission.

(2) A petition may be filed with the commission by any street or interurban railway corporation requesting that it be relieved of the duty imposed by subsection (1) as to specified crossings, stating the reasons therefor. Thereupon said commission shall order a hearing and give notice to all interested persons, including the town or village board or city council, in which any such crossing is located. If upon such hearing it shall appear to the satisfaction of the commission that arrangements have been made which will protect the traveling public at said crossings it shall grant the request. If arrangements have not been made satisfactory to said commission; it may make an order granting the request under such conditions as it may prescribe.

(3) Any corporation neglecting or refusing to comply with any of the provisions of this section shall forfeit not less than fifty dollars nor more than five hundred dollars.

193.31 Window cleaners on cars. (1) Every motor driven street or interurban car shall be equipped with a suitable mechanical device approved by the commission, and designed for the removal of snow and water from a sufficient portion of the window in front of the motorman to afford an unobstructed view, and attached so as to permit its being used by the motorman without leaving his position while operating the car.

(2) Any corporation failing to comply with the provisions of this section shall forfeit not less

than twenty-five dollars nor more than one hundred dollars.

193.32 Car fenders. (1) All street or interurban cars, except trackless trolley busses, operated singly, and the front car in all trains, shall be equipped with suitable fenders or pilots so arranged and constructed as to protect pedestrians against injury.

(2) Any corporation which shall fail to comply with the provisions of this section shall forfeit not less than fifty dollars nor more than one hundred dollars for each day during which such neglect or failure continues, and the manager of such railway who causes such violation or permits same shall be likewise liable.

193.33 Street railway franchises; definitions. As used in sections 193.33 to 193.44 "municipal council" means the common council, or the town or village board of any municipality; "municipality" means any town, village or city wherein any property of a street railway company is located; "indeterminate permit" means and embraces every grant, directly or indirectly, from the state, to any street railway company, of power, right or privilege to own, operate or control any street railway plant or equipment or any part thereof, which permit shall continue in force until such time as the municipality shall exercise its option to purchase, or until it shall be otherwise terminated according to law.

193.34 Street railway franchise, indeterminate; municipal acquisition. Every license, permit or franchise granted to any street railway company shall have the effect of an indeterminate permit. Any municipality in which the major part of its property is situated may purchase the property of such street railway company actually used and useful for the convenience of the public at any time, the price to be determined and the terms and conditions fixed by the commission.

193.35 Street and Interurban railways, Indeterminate permits. Any street railway or interurban company operating under an existing license, permit or franchise shall, upon filing at any time prior to the expiration of such license, permit or franchise, with the clerk of the municipality which granted such franchise and with the commission, a written declaration legally executed that it surrenders such license, permit or franchise, receive by operation of law in lieu thereof an indeterminate permit as provided in section 193.33. Any street or interurban railway system in this state, which shall have elected not to accept an indeterminate

permit for its system, as provided by section 193.46, shall have the right to withdraw such election at any time prior to the expiration of such license, permit or franchise upon filing the written declaration provided for in this section.

193.36 Street railway; municipal acquisition; implied consent and waiver. Any street railway company accepting or operating under any indeterminate permit shall, by acceptance of such indeterminate permit, consent to a purchase of its property actually used and useful for the convenience of the public, by the municipality in which the major part of it is situated for the compensation and under the terms and conditions determined by the commission, and shall thereby waive the right of requiring the necessity of such taking to be established by the verdict of a jury, and waive all other remedies and rights relative to condemnation by such municipality, except such rights and remedies as are provided in sections 193.33 and 193.44.

193.37 Street railway; municipalities may acquire. At any time prior to the expiration of the term of the license, permit or franchise under which any street railway was operating on July 14, 1907, any municipality shall have the power to acquire the property of such street railway company, actually used and useful for the convenience of the public.

193.38 Acquisition of street railways by municipalities. The municipal council of any municipality in which the major part of the property of any street railway company is situated, may by resolution adopted by a majority of all the members thereof, submit to the electors of the municipality at any general or municipal election, or at any special election called for that purpose, the question of acquiring the property of such street railway company actually used and useful for the convenience of the public. Such question shall be submitted in substantially the following form: "Shall the (name of municipality) acquire the property actually used and useful for the convenience of the public of the (name of the railway company)?"

193.39 Same. If a majority of the electors voting on such question shall vote in favor of acquiring said property, the municipal council shall, if said railway company is not operating under an indeterminate permit, adopt a resolution stating that the municipality has determined to acquire said property and fixing the place and time not less than twenty nor more than thirty days after the passage of such resolution when the municipality will apply to the judge of the

circuit court for the county wherein such municipality is situated, for a jury to determine the necessity for the taking of said property. The municipal clerk shall thereupon issue a notice of the adoption of such resolution embracing a copy thereof. Such notice shall be served upon the street railway company in the manner a circuit court summons is served, at least one week before the time fixed for the application. The provisions of s. 801.58 shall apply to such proceedings except that no change shall be made as to the place of trial. No notice of the pendency of the proceeding need be filed.

History: Sup. Ct. Order, 67 W (2d) 775.

193.40 Trial jury; verdict. At the time and place fixed for the trial, a copy of the resolution and notice and proof of service thereof shall be filed with the judge and thereupon, in the presence of the judge of said court and of the parties, the clerk of said circuit court shall draw from the list of petit jurors prepared for said court by the jury commissioners of said county such number of jurors as the judge shall direct, who shall be summoned to appear at a time and place fixed, to which time and place the proceedings shall be adjourned. The procedure in empaneling the jury, in trying the issue, and in rendering the verdict of the jury shall be the same as in actions tried in circuit court. The form of the verdict shall be substantially as follows: "Is the street railway property described in the resolution useful and convenient and a benefit to the public of sufficient importance to warrant the expense of acquiring said property"?

193.41 Papers certified to commission. If the jury shall render an affirmative verdict the clerk of the circuit court of the county wherein the hearing was had shall transmit a certified copy of the verdict and a copy of the resolution and notice filed at the hearing, to the public service commission.

193.42 Election to acquire street railway, certification of papers. If the municipality shall determine by a majority vote of the electors to acquire the property actually used and useful for the convenience of the public of a street railway company which shall have accepted an indeterminate permit, the municipal clerk shall transmit to the commission a certified copy of the official canvass of the vote at the election and a certified copy of the resolution submitting the question to the electors.

193.43 Street railway, acquisition, compensation; direct tax; vests title. Upon receipt of the certified copies of the official canvass and resolution submitting to the electors

the question of acquiring the property or of the verdict and resolution for condemnation, as the case may be, the commission shall proceed to determine the compensation to be paid for the property, which determination shall be made as of the date of the filing with the commission of said certified copies, and all the provisions of section 197.05 shall apply to the proceedings before the commission except that all notices provided for by said section shall be given by the commission. The commission shall by order determine the compensation to be paid and all other terms and all conditions of acquisition which it shall ascertain to be reasonable and shall notify the municipality of the provisions of said order. The municipality shall within ninety days after being so notified provide for the collection of a direct annual tax sufficient to pay the interest on the debt incurred by the acquisition of such property as it falls due and also to pay and discharge the principal thereof within twenty years from the time of contracting the same unless the municipality shall within said ninety-day period discontinue the proceedings. At the end of said ninety-day period the commission shall, if the proceedings shall not have been discontinued, certify the order to the clerk of the municipality, to the street railway company and to any bondholder, mortgagee, lienor, or any other person having or claiming to have any interest in said street railway property appearing upon such hearing. The compensation and other terms and other conditions of acquisition shall constitute the compensation, terms and conditions to be paid, followed and observed in the acquisition of such property from such street railway company. Upon the filing of such certified copy of the order with the clerk of such municipality the exclusive use of said property shall vest in the municipality. The order of the commission may be reviewed as provided in section 197.06.

193.44 Discontinuance of proceedings to acquire street railway. A municipality may at any time within thirty days after being so notified of the order of the commission, by a resolution adopted by a majority of all the members of the municipal council, discontinue the proceedings, but such resolution shall not be in force until thirty days after its passage. If within said thirty-day period a petition shall be filed with the clerk of the municipality, signed by electors equal in number, in cities of the first class, to five per cent of the total number of votes cast for mayor at the last preceding election and in other municipalities signed by electors equal in number to ten per cent of the total number of votes cast for mayor, president or chairman at the last municipal election, requesting that the

question of discontinuing said proceedings to acquire such street railway property be submitted to the electors, the municipal council shall submit the same at a special election called for that purpose within thirty days from the date of filing the petition, or the municipal council may submit such question at a general, municipal or special election within thirty days after the filing of such certified order of the commission without any petition therefor being filed. When such question shall have been submitted to the electors as aforesaid the resolution discontinuing the proceedings shall not have force and effect unless a majority of the votes on such question shall be in favor thereof. Such election shall be noticed, held and conducted and the returns thereof canvassed and the result determined in the manner provided for regular or special elections. Upon the discontinuance of such proceeding no like proceeding shall be instituted until four years shall have elapsed from the date of the discontinuance of the last proceeding.

193.45 Interurbans, indeterminate permits; other regulations. Any interurban railway company operating under a license, permit or franchise which does not contain a provision prohibiting such surrender, shall, upon filing at any time prior to five years before the expiration of such license, permit or franchise, or prior to January 1, 1920, with the clerk of the municipality which granted such license, permit or franchise and with the commission a written declaration, that it surrenders such license, permit or franchise, receive by operation of law in lieu thereof an indeterminate permit under the same terms, conditions and limitations as indeterminate permits for street railroads are held, and the acceptance of such indeterminate permit shall constitute a consent by such interurban railway company to the purchase by any such municipality of the property of such company actually used and useful for the public situated within the corporate limits of the municipality and so much of the property of such interurban railway company situated without the corporate limits of such municipality as the

commission may find public convenience and necessity demand be operated by such municipality; and if such interurban railway company shall surrender such licenses, permits or franchises granted by adjoining municipalities, as between such municipalities, the one first exercising the option of purchase shall have the right of purchase of property of the interurban company in such adjoining municipality if the commission shall determine that public convenience and necessity require it. At the time of fixing the compensation and other terms and conditions of sale and purchase, as provided in s. 193.43, the commission shall determine whether public convenience and necessity require the interurban company to continue to operate over the tracks and to continue to use the plant of the interurban company so acquired by the municipality, and if so, the compensation to be paid therefor and the terms and conditions under which said interurban company may continue to operate over said tracks and use said plant, such terms and conditions and such compensation for the use of said tracks and plant being subject to review from time to time by the commission upon written application of either party.

193.46 Franchises surrendered in toto.

(1) No company owning a street or interurban railway system shall receive an indeterminate permit for only a portion of such system; and the surrender of any existing license, permit or franchise covering any portion of such system in exchange for an indeterminate permit shall have the effect of a surrender of all licenses, permits or franchises for such system and the acceptance of an indeterminate permit in lieu thereof.

(2) Every company owning a street or interurban railway system in this state shall be deemed to have surrendered all existing licenses, permits or franchises and to have accepted in lieu thereof an indeterminate permit pursuant to sections 193.33 to 193.44, unless on or before January 1, 1920, such company filed with the commission a notice that it elected not to accept an indeterminate permit for its system.