

**178.355 Procedure for ordering elimination of grade crossings or change of existing overhead or underpass structure crossing county road.**

- (1) Whenever the fiscal court considers it reasonably necessary for the public safety, it may in the manner hereinafter provided, order any railroad company, either steam or electric, owning or operating a railroad in its county, to eliminate any existing grade crossing or change any existing overhead or underpass structure where any county road crosses the railroad tracks of such company.
- (2) The fiscal court shall give at least ten (10) days' notice by certified mail, return receipt requested to the railroad company of a hearing to be held at a time and place stated in the notice, at which hearing it shall consider whether or not the proposed grade separation or change is reasonably necessary and the most advantageous method of effecting the grade separation or change. In determining whether the proposed grade separation or change is reasonably necessary, the fiscal court shall receive evidence of, and shall consider, all relevant facts, including the present and prospective density of highway traffic and the present and prospective frequency and speed of train movements over the crossing, the adequacy of existing or proposed signals or warning devices for the protection of highway traffic at the grade crossings, the possibility and probability of personal injury to the public using the highway and to employees and passengers of the railroad company and damage to property, and the cost of the grade separation or change in relation to benefits resulting from the proposed construction. If the fiscal court finds that the grade separation or change is reasonably necessary, it shall make an order to that effect and furnish a copy thereof by certified mail, return receipt requested to the railroad company. The order shall specify a general plan for the new or changed grade separation. The order shall direct the railroad company to prepare plans, specifications and estimates of cost for the grade separation or change in accordance with the general plan prescribed by the order, or may provide that the plans, specifications and estimates of cost shall be prepared by the county if the grade separation structure shall pass over the railroad tracks. The plans, specifications and estimates of cost may, if requested by any public utility, provide facilities for such public utility.
- (3) Within ninety (90) days after the entry of an order directing a grade separation or change, and the preparation of plans, specifications and estimates of cost by the railroad company, the railroad company shall present to the fiscal court, plans, specifications and estimates of cost for the grade separation or change, including the necessary approaches thereto.
- (4) After receipt of the plans, specifications and estimates of cost from the railroad company the fiscal court shall give at least ten (10) days' notice by certified mail, return receipt requested to the railroad company of a time and place for final hearing with respect to the grade separation or change. If the fiscal court elects to prepare plans, specifications and estimates of cost, it shall furnish copies thereof to the railroad company prior to or at the time it gives notice of a final hearing. At the final hearing the fiscal court shall consider whether or not the plans make reasonably adequate provision for present and future safety and convenience of

highway traffic and present and future safety and efficiency of operation of trains of the railroad company, its employees and passengers, and for the development of highway and railroad facilities, and shall approve or modify the plans and specifications. It shall then consider and determine the method of doing the work, whether by the railroad company or by the county, or partly by one and partly by the other, and whether by contract or by the employees of the county or the railroad company, or both, or by any combination of these methods, and if by contract, the method and manner of advertising for bids, the time and place of opening the bids, the time when work shall be begun and completed, and all similar matters of an administrative nature. The fiscal court shall embody its conclusions in a final order, a copy of which shall be sent by certified mail, return receipt requested to the railroad company.

- (5) The fiscal court may reject or order the rejection of all bids submitted for the work, or any part thereof, and require a readvertisement for bids. The fiscal court may reject all bids and elect to do the work itself, or partly by itself and by the railroad company, or by contractors, or by a combination of these methods. If the work includes a structure to support the railroad tracks, the railroad company shall have the right to supervise the construction of that part of the work. If the fiscal court elects to do the work itself there shall not be charged to the railroad company any sum in excess of that it would have been required to pay had the contract been let to the lowest bidder.
- (6) In all cases where the work is let by the railroad company on contract, the work shall be done under the general supervision of the county road engineer.
- (7) The cost of all work incident to or occasioned by the elimination of the grade crossing and the construction of a substituted crossing, or the reconstruction of an existing overhead or underpass structure, including, without limitation of the generality of the foregoing, the cost of preparing plans and specifications, the cost of acquisition of necessary property and property damage, if any, the construction of approaches, drainage structures, and streets and pavements, shall be paid in the proportion of fifteen percent (15%) by the railroad company and eighty-five percent (85%) by the county.
- (8) As the work progresses the fiscal court shall furnish to the railroad company, and the railroad company shall furnish to the fiscal court, a monthly statement showing in detail all amounts expended in connection with the work. On or about the fifteenth of each month, the county road engineer shall prepare a statement showing the total amount expended to the close of the preceding month, the amount paid or expended by each party up to that time, and the amount due from the county to the railroad company or from the railroad company to the county. Upon receipt of the statement each party shall pay to the other the amounts shown to be due thereby.
- (9) All payments made on such monthly statements shall be considered only payments on account, and upon final completion of the work the county road engineer shall prepare and furnish to the railroad company a statement showing the total cost of the work, the amount paid or expended by the county or the railroad company, and the amount due from one to the other. Each party shall be afforded reasonable

opportunities to verify the statements of expenditures by the other, and the balance due as certified by the county road engineer in his final statement shall be paid by one party to the other promptly upon receipt of such final statement.

- (10) The fiscal court and any railroad company may agree by contract as to the method of eliminating any grade crossing or changing any existing overhead or underpass structure. In event of such agreement all notices, hearings and proceedings shall be deemed to have been waived, and the work of eliminating the grade crossing or making the change shall be performed in accordance with the terms of the contract, with the same effect as though the work were being performed pursuant to a final order of the fiscal court.

**Effective:** July 15, 1980

**History:** Amended 1980 Ky. Acts ch. 114, sec. 31, effective July 15, 1980. -- Amended 1974 Ky. Acts ch. 315, sec. 23. -- Created 1952 Ky. Acts ch. 187, sec. 2, effective June 19, 1952.