

## **CHAPTER 49-09**

### **ACQUIRING AND TRANSFERRING UTILITY PROPERTY**

**49-09-01. Right of way through state lands - Conditions.** Every railroad corporation duly organized under the laws of any state or territory, or of the United States, and authorized to build and operate a railroad within this state, which shall have filed with the secretary of state a copy of its articles of incorporation, properly certified, shall have the right to take, hold, and use for the purposes of a railroad a strip of land one hundred feet [30.48 meters] wide, fifty feet [15.24 meters] on each side of the centerline of such railroad, through each and every tract of public land owned or held by the state across which its road shall be located or constructed. When it shall be necessary to protect such railroad from snow, or to use extra width in its construction, such corporation shall have the right to take, hold, and use a strip of land not exceeding two hundred feet [60.96 meters] in width, one hundred feet [30.48 meters] on each side of such centerline, through such public lands. At all its regular stations established upon such land, such company shall have the right to take a strip of land one thousand six hundred feet [487.68 meters] long and three hundred feet [91.44 meters] wide for station purposes.

**49-09-02. School lands to be taken at appraised value.** Whenever any school or state lands are taken for railway purposes as provided in section 49-09-01, the railway corporation taking such lands shall pay to the state treasurer the appraised value thereof but in no case any sum less than ten dollars per acre [.40 hectare] for all such lands so taken.

**49-09-03. How right of way obtained from board of university and school lands.** Any railway company desiring to secure the benefits of section 49-09-01, within ninety days after the definite location of its road across any section of such lands, shall file in the office of the board of university and school lands a plat of such section of land, showing the location of such road through the same and all stations located thereon. Thereafter all such lands over which such roads shall pass shall be disposed of subject to such grant and every certificate or patent for such lands thereafter sold shall contain an express reservation to the use of such corporation of all lands which it shall have appropriated in accordance with the provisions of this chapter. If such road shall not be completed across any such section within five years after the location of the same thereon, the rights herein granted shall be forfeited as to such section.

**49-09-04. When right of way reverts to state.** If any railway corporation appropriating any public lands by virtue of section 49-09-01 at any time shall abandon the use thereof for railway purposes for a period of one year, the same shall revert to the state.

**49-09-04.1. Abandonment of railway lines - Public service commission authority - Trust agreement - Term - Reversion of property.** Repealed by S.L. 1997, ch. 284, § 8.

**49-09-04.2. Abandoned railroad right of way - Sale - Priority of purchasers.**

1. When service is discontinued on any railroad right of way in the state and the property is offered for sale, lease, exchange, or other disposal by the railroad or an affiliated entity, the property must first be offered to the following persons in the order of priority as follows:
  - a. The present owner or operator-lessee of fixed assets located on the property;
  - b. A person owning land contiguous to the right of way on opposite sides of the right of way;
  - c. A person presenting a reasonable plan for public recreational use of the abandoned property which includes the continuation of current private and public crossings; and
  - d. The adjoining landowner if the adjoining land, at the time of abandonment, is assessed for tax purposes as agricultural land.

2. The railroad company shall provide written notice to present owners and operator-lessees of fixed assets located on the property and shall publish notice of its intent to dispose of railroad right of way in two consecutive issues of the official county newspaper in each county in which the property is located. A railroad company is not required to give a priority party an option to purchase the property unless the party provides a written statement of interest to purchase the property within thirty days after final publication of notice of the railroad company's intent to dispose of the property. The sale price of abandoned railroad property must be equitable.
3. When abandoned railroad right of way is offered for wildlife programs or projects, the proposed acquisitions must first be approved by the board of county commissioners of the county or counties in which the right of way is located under section 20.1-02-17.1 if offered to the state game and fish department or under section 20.1-02-18.1 if offered to the United States department of the interior.
4. If a railroad complies with subsections 1 and 2 and five years have passed since abandonment or since service was discontinued, the railroad may deed the right of way to the county in which the right of way is located upon the acceptance of the county.

**49-09-04.3. Abandoned railway lines - Removal of abandoned materials - Charge by city, county, or state.** Unless otherwise allowed by the commission, any railroad corporation abandoning the use of any railway line in this state shall remove and clear all rail, ties, materials, supplies, and debris from the railway line and leave the surface in a condition easily traversable by a motor vehicle, and shall control noxious weeds on the railway line right of way within a reasonable time. On request of a city or county in which there is an abandoned line, the commission shall require the railroad corporation, as to railway line right of way in that city or county, within a reasonable time, to take the action required by this section. On request of any state agency having an interest in any property abutting an abandoned railway line right of way, the commission shall require the railroad corporation, as to that railway line right of way, within a reasonable time, to take the action required by this section. The commission shall take all action necessary and appropriate, including the adoption of rules under chapter 28-32, to enforce this section. If a railroad corporation fails to take action required by this section, the requesting entity may do the work on the parts of the abandoned railway line right of way under that entity's jurisdiction. A county may do the work on the parts of the abandoned railway line right of way in the county, regardless of whether those parts are inside city limits. The entity doing the work may charge the railroad corporation the reasonable expense of doing the work. If the charges remain unpaid after ninety days, the entity may certify to the county auditor the amount of the charges imposed under this section. These charges become part of the taxes levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes and placed to the credit of the jurisdiction entitled to the charges. The taxpayer's right to appeal the assessment is governed by chapter 57-23.

**49-09-04.4. Railroad abandonment - Records to be open to commission.** A railway corporation or railroad holding company having identified a railroad line in North Dakota for abandonment pursuant to 49 U.S.C. 10904(e)(2)(B) shall provide the commission or its designated representatives with access to all records directly relating to the railroad line to be abandoned so an accurate assessment can be made of the line's revenues, profits, and losses. After notice of intent to abandon is given to the governor by the railway corporation or railroad holding company, the commission or its representatives may examine the railway corporation's or railroad holding company's records that are directly related to the railroad line to be abandoned to determine the accuracy of the claims concerning the railway line and to determine whether an abandonment protest should be filed with the surface transportation board.

**49-09-05. Securing right of way over land of decedent or ward.** Repealed by S.L. 1997, ch. 284, § 8.

**49-09-06. Petition for right of way over land of decedent or ward.** Repealed by S.L. 1973, ch. 257, § 82.

**49-09-07. County court to approve petition for right of way over land of decedent or ward - Conveyance.** Repealed by S.L. 1973, ch. 257, § 82.

**49-09-08. Trust deeds and mortgages of railroad property.** Repealed by S.L. 1997, ch. 284, § 8.

**49-09-09. Sale under trust deed or upon mortgage foreclosure.** Repealed by S.L. 1997, ch. 284, § 8.

**49-09-10. Title acquired under sale.** Whenever the persons securing title under a trust deed or mortgage foreclosure sale shall own or represent a majority in amount of the bonds or other evidences of debt secured by any such trust deed or mortgage, and also shall include the persons who owned a majority in amount of the capital stock of such mortgagor corporation at the time of the sale, such purchasers and such corporation as they shall organize also shall have, possess, and enjoy any exemption, privilege, or immunity previously granted by any law to such former corporation relating to any of the property so acquired to the same extent as if such latter corporation had been named in such law as the grantee thereof.

**49-09-10.1. Identification of railroad rights of way - Duties of commission.** Repealed by S.L. 1989, ch. 569, § 3.

**49-09-10.2. Identification of right of way to be acquired, leased, or transferred.**

1. Each carrier or other entity intending to acquire, lease, or transfer an operating railroad right of way shall file a notice of intent to do so with the commission, if any of the following applies:
  - a. The acquisition or lease would be by a party that is not a railroad carrier and would be of rail property that would be operated by a third party.
  - b. The operation would be by a new carrier and of rail property acquired or leased by a third party.
  - c. There would be a change of operators on the line.
2. The notice required under subsection 1 must designate the complete private or corporate identity of the acquiring or leasing party, the complete identity of the divesting carrier, and a thorough description of the line involved. The notice must include financial information as to the acquiring or leasing entity. These documents are confidential and may not be divulged by the commission to any party.
3. An acquiring, leasing, or divesting carrier shall attend conferences with the commission on reasonable notice, and shall respond to all questions and requests for information which are reasonably related, or may lead to information reasonably related, to the issue of whether the proposed transaction is consistent with law.

**49-09-11. Compensation for another railroad's property - Determined according to law of eminent domain.** If railroad corporations cannot agree upon an adjustment and the amount of compensation to be paid for the purchase of necessary change of location and removal of any track previously laid, the same shall be ascertained and determined and the common, mutual, and separate rights shall be adjusted in the manner provided by law for the ascertainment and determination of damages for the taking of real property. The court may employ a competent engineer to define, locate, and plat the ground and assign to each corporation the part for the tracks and other conveniences for each and may require the removal or purchase of tracks previously laid so as justly to settle the rights of such corporation upon such ground, the damages to be paid being assessed in accordance with the law on eminent domain.

**49-09-11.1. Negotiations for reopening of railway line - Railroad intending to abandon line.** Repealed by S.L. 1997, ch. 284, § 8.

**49-09-11.2. Negotiations for reopening of railway line - Railroad abandoning line.** Repealed by S.L. 1997, ch. 284, § 8.

**49-09-11.3. Negotiations for sale, transfer, or lease of railroad property - Public service commission authority.** Repealed by S.L. 1997, ch. 284, § 8.

**49-09-11.4. Commission's authority in public interest - Cooperation with other states.** Repealed by S.L. 1997, ch. 284, § 8.

**49-09-11.5. Interstate commerce commission certificate.** Repealed by S.L. 1997, ch. 284, § 8.

**49-09-11.6. Public service commission authorized to conduct periodic meetings concerning future operation of railroads.** Repealed by S.L. 1997, ch. 284, § 8.

**49-09-11.7. Rules for enforcement.** Repealed by S.L. 1997, ch. 284, § 8.

**49-09-12. Sale of railroad equipment under security agreement - How property marked.** Repealed by S.L. 1975, ch. 431, § 9.

**49-09-13. Conditional sale contract - Filing - Marking property.** Repealed by S.L. 1965, ch. 296, § 32.

**49-09-14. Utility property transfers filed with secretary of state.** Every general conveyance, lease, deed of trust, mortgage, assignment, or satisfaction thereof, made by any public utility, corporation, or limited liability company of any franchise, right of way, real estate, fixtures, poles, wires, pipes, conduits, and general equipment used in carrying on the business of a public utility in pursuance of law shall be executed and acknowledged in the manner in which a conveyance of real estate by a corporation or a limited liability company is required to be executed and acknowledged to entitle a copy of the same to be filed. A copy shall be filed in the office of the secretary of state, who shall issue the secretary of state's certificate specifying the day and hour of its reception and where filed, and such certificate shall be evidence of the fact of filing. Every such filing of any copy of the instrument, from the time of reception, shall have the same effect as to any property in this state described therein as the record of any similar instrument in the office of a recorder may have by law as to property in the county in which such recorder holds office and shall be notice of the rights and interests of the grantee, lessee, or mortgagee to the same extent as if it were recorded in each of the several counties in which any property therein described may be situated.

**49-09-15. Conveyance of real property other than right of way - Recording.** Every such conveyance, lease, deed of trust, or mortgage, made by a public utility which covers any real property other than that used by such public utility as a right of way for its railway, telecommunications lines, or gas or oil pipelines, also must, in order to obtain the priority created by section 47-19-41, be recorded in the office of the recorder for each county wherein such other real estate, or any part thereof, is situated.

**49-09-16. Right of way - Telecommunications - Electric light - Gas and oil pipeline systems.** The governing board of any municipal corporation may grant to any person who is a resident of this state, to any corporation or limited liability company organized under the laws of this state, or to any corporation or limited liability company licensed to do business within this state the right of way for the construction and operation of a railway, telecommunications line, electric light system, or a gas or oil pipeline system over or upon any public grounds, streets, alleys, or highways under the care or supervision of the board granting such right of way. Such right of way shall be granted subject to such conditions, restrictions, and regulations as may be prescribed by the board granting the same, relative to the streets, alleys, or highways upon, over, under, or across which the way, line, or system shall be built and operated.