

## **CHAPTER 60-06 PUBLIC WAREHOUSES ON RAILROAD RIGHT OF WAY**

**60-06-01. Who may make application for warehouse or elevator on railroad right of way.** Any person, firm, corporation, or limited liability company desirous of erecting and operating at or contiguous to any railroad station or siding a warehouse or elevator for the purchase, sale, shipment, or storage of grain or potatoes for the public for hire, may make application in writing to the person, firm, corporation, or limited liability company owning, leasing, or operating the railway at such station or siding for the right, privilege, and easement of erecting and maintaining a public warehouse.

**60-06-02. Public warehouse on railroad right of way - Application - Contents.** A written application by a person, firm, corporation, or limited liability company desirous of erecting and operating a public warehouse on a railroad right of way shall contain the following provisions:

1. A description of that portion of the right of way of said railroad on which said person, firm, corporation, or limited liability company desires to erect a warehouse or elevator.
2. The size and capacity of the warehouse or elevator proposed to be erected.
3. The time for which it is desired to maintain said warehouse or elevator.
4. The amount the applicant deems a reasonable compensation for the right, privilege, and easement the applicant desires to acquire.

**60-06-03. When applicant is entitled to erect public warehouse.** Upon the payment or tender of money which the applicant deems reasonable compensation for the right, privilege, and easement to erect a public warehouse on a railroad right of way, the applicant immediately shall be entitled to erect, absolutely and unconditionally, the applicant's warehouse or elevator on such right of way for the time specified in the application made by the applicant and shall become invested immediately with the said right, privilege, and easement. The person, firm, corporation, or limited liability company owning, leasing, or operating said railway at such station or siding immediately shall render the applicant the same service the applicant would be entitled to had the said person, firm, corporation, or limited liability company sold or leased said site to the applicant.

**60-06-04. Compensation for right, privilege, and easement - Notice to applicant.** In case the sum tendered under section 60-06-03 is not accepted and the parties cannot agree upon the amount to pay for such right, privilege, and easement, the same shall be ascertained, assessed, and determined by proceedings in the district court of the county in which the station or siding at which the right, privilege, and easement sought is situated. Such court at all times shall be deemed open and in session for the purposes of this chapter. Any person, firm, corporation, or limited liability company to whom application is made for the right to erect and maintain an elevator or warehouse under the provisions of this chapter, within ten days after the receipt of the application, shall notify the applicant in writing of the acceptance or rejection of the amount offered as compensation for the right, privilege, and easement sought to be acquired. Failure to notify the applicant within such time shall be deemed an acceptance of said amount but whether it is accepted or not, the applicant for the site shall be deemed to have acquired the right, privilege, and easement asked for.

**60-06-05. Sidetracks to be provided by railroad company on its land.** Every railroad company or corporation organized under the laws of this state or doing business therein, upon application in writing, shall provide reasonable sidetrack facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right of way at such stations. Every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its sidetracks to and from any warehouse or elevator without reference to its size, cost, or capacity, where grain or potatoes are or may be stored. The railroad company is not required to construct or furnish any sidetracks except upon its own land

or right of way. Such elevators and warehouses may not be constructed within one hundred feet [30.48 meters] of any existing structure and must be at safe fire distance from the station buildings so as not to conflict essentially with the safe and convenient operation of the road. Where stations are ten miles [16.09 kilometers] or more apart the railroad company, when required so to do by the public service commission, shall construct and maintain a sidetrack for the use of shippers between such stations.

**60-06-06. Penalty for violation of applicant's rights.** Repealed by S.L. 1975, ch. 106, § 673.

**60-06-06.1. Determination - Appropriation.** Any party may petition the public service commission to determine rights governed under this chapter. The commission shall determine the matter in accordance with chapter 28-32 and the parties' rights of appeal are as limited by chapter 28-32. The value of a leaseholder's improvements may not be considered in determining a reasonable lease rate or selling price. The parties to such a proceeding shall pay the expenses of the proceeding, as determined by the commission, directly to the entities owed. The commission may adopt rules to carry out this section.

**60-06-07. Procedure in district court by applicant.** Proceedings in district court shall be instituted and carried on as follows:

1. The corporation to which the application for the right to maintain and operate an elevator or warehouse on the railroad right of way is made shall present to and file with the district court a petition in writing and under oath specifying and describing:
  - a. The right, privilege, and easement sought and attained.
  - b. The time for which the same was sought and attained.
  - c. The fact that the parties to the proceedings are unable to agree upon the amount of the compensation therefor.
2. A copy of the application for such privilege shall be attached to said petition and thereupon the court at once by its order in writing shall fix a place and a time, not more than twenty days thereafter, where and when the court will try such proceeding and determine the amount of such compensation.
3. A certified copy of this order shall be served at least fifteen days before the time so fixed upon the party who sought and attained the right, privilege, and easement, as a summons is served in a civil action in said court. Such service when made shall be ample notice to and summons for the party so served to appear and join in the proceedings and shall give the court full jurisdiction over the party against whom the proceedings are instituted and the property involved in the proceedings.

**60-06-08. Procedure on trial.** At the time and place fixed for determining the compensation for an applicant's right, privilege, and easement, the court shall proceed immediately to try said matter, without a jury, if the parties consent. If they do not consent and if the time and place fixed for said hearing is at a general or special term of said court where a petit jury has been summoned, the court shall proceed to a hearing of such matter with a jury. In case said proceedings are made returnable at any time other than at a term where a petit jury shall have been summoned, the court shall make an order requiring the selection of twenty-four jurors. Such jury shall be drawn and selected in the manner provided by law for the drawing of jurors for general terms of the district court. From the jurors so returned, a jury shall be selected the same as in civil actions and the trial shall proceed after the manner of trials in civil actions.

**60-06-09. Election of gross sum or annual rental.** The court or jury, as the case may be, shall find and assess compensation both in the form of an annual rental and in the form of a gross sum for the right, privilege, and easement sought. Immediately after the finding or verdict has been made, the party against whom the proceedings have been taken shall elect whether to

receive the annual rental or the gross sum found. In case such election is not made by such party, then the other party to the proceedings may make such election.

**60-06-10. Judgment - What it shall contain.** After election is made as provided in section 60-06-09, judgment shall be rendered adjudging among other things that upon payment of the gross sum found or the annual rental found yearly in advance, as the case may be, the party in whose favor said judgment is rendered shall be entitled to a writ of execution in proper form to invest such party immediately with the right, privilege, and easement of the applicant.

**60-06-11. Forfeiture of right, privilege, and easement by applicant.** In case the annual rental method of payment is elected, the same shall be paid yearly in advance, and if not so paid, after a default of thirty days, the right, privilege, and easement shall be forfeited absolutely.

**60-06-12. Appeal from judgment.** Within thirty days after the entry of judgment an appeal may be taken by either party to the supreme court. Such appeal shall not stay nor hinder the use or enjoyment to the fullest extent of the right, privilege, and easement asked for by the petition or conferred by the judgment, if the party instituting the proceedings shall make and file a bond with sureties, to be approved by the court, in an amount double the gross sum or annual rental, conditioned to pay such sum or rental and to abide and satisfy any judgment the supreme court may render in the premises.

**60-06-13. Costs and disbursements of actions.** Costs and disbursements shall be paid by the unsuccessful party in each court as in civil actions. If the finding of the court or jury is for a less, or the same, amount as was tendered by the applicant before the owner of the railway at such station or siding instituted the proceedings, then the applicant shall be deemed the successful party. If the amount found is larger than the sum tendered, then the owner of the railway at such station or siding shall be deemed to be the successful party.

**60-06-14. Erection of warehouses after judgment.** Any person, firm, corporation, or limited liability company taking advantage of the provisions of this chapter, within sixty days after the amount to be paid for the easement acquired thereunder finally is determined, by agreement or by proceedings in court, shall commence the erection of the warehouse or elevator stated in the application referred to in section 60-06-02 and shall complete the same within ninety days thereafter. In case of failure to comply with the provisions of this section, such person, firm, corporation, or limited liability company shall be deemed to have abandoned the right, privilege, and easement acquired, and the part or portion of the railroad right of way described in the application shall be subject to selection by other applicants who may desire to avail themselves of the provisions of this chapter.

**60-06-15. Application to existing leaseholds.** The provisions of this chapter apply to the renewal or sale of existing leaseholds on railroad rights of way, and to existing leaseholds on lands that have ceased to be used for railroad rights of way after the leasehold was first created, and so long thereafter as the lease site remains under the ownership or control of the railroad or an entity that was or is under common ownership or control of the railroad. The value of a leaseholder's improvements may not be considered in determining annual rental or the gross sum for the right, privilege, and easement sought.