

§ 104. Proceedings to lay out public way across railroad

A public way may be laid out across a railroad previously constructed, if the county commissioners, or the department of public works in the case of a state highway, adjudge that public necessity and convenience so require; and in such case, after notice to the railroad corporation and a hearing of all parties interested, said commissioners or department, or a city or town by authority of the county commissioners granted upon petition of its board of aldermen or selectmen, may thus lay out a way across a railroad, in such manner as not to injure or obstruct the railroad, and otherwise in conformity with sections ninety-seven and ninety-eight. A public way shall not be permitted to cross at a level with the railroad unless it is determined by the department of public works, in the case of a state highway, or the county commissioners, in the case of any other public way, after notice to all persons interested and a hearing, that public necessity so requires, and the department of public utilities consents thereto in writing. If it is necessary in the laying out, construction or alteration of a state highway across a railroad to alter or relocate the railroad, the department of public works may take by eminent domain under chapter seventy-nine, on behalf of the railroad corporation, land or rights in land necessary for such alteration or relocation with the written approval of the department of public utilities. Charges and expenses for such alteration or relocation shall be paid by the department of public works. A copy of the proceedings of the department of public works in laying out a state highway under this section, including a copy of the plan of so much of said way as lies within the location of the railroad, shall be filed in the office of the county commissioners of the county where such way is located.

Amended by St.1933, c. 176; St.1955, c. 231.

Historical Note

R.S.1836, c. 39, § 69.	St.1874, c. 372, § 92.	R.L.1902, c. 111, § 130.
St.1857, c. 287, §§ 1 to 5.	St.1876, c. 73.	St.1906, c. 463, pt. 2, §§ 113,
G.S.1860, c. 63, §§ 57 to 59.	P.S.1860, c. 112, § 125.	258.

St.1933, c. 176, inserted "or the department of public works in the case of a state highway" in the first sentence, and made other changes in terminology in the section.	St.1955, c. 231, an emergency act, approved April 1, 1955, inserted the third and fourth sentences.
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Cross References

Eminent domain, measure of damages, see c. 79, § 12.
 Laying out, etc., of public ways, see c. 82, § 1 et seq.
 Laying out of state highways, see c. 81, § 4 et seq.

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Comm. from Paul E. Healy, City Clerk, transmitting for informational purposes a copy of Chapter 160, Sub-section 104 of the Mass. General Laws entitled "Proceedings to lay out public way across railroad".

In City Council,

March 4, 1985

*Referred to the
Hearing scheduled
for 3/14/85 at 7:00 PM
Placed on file
Copy for Hearing
3/14/85 at 7:00 PM*