

CHAPTER 273
RAILWAY LAW

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" **§273-1 Franchise.** The comptroller, by and with the consent of the governor, may enter into contract with any association of persons who may associate themselves together under the general corporation law of the State, and by the general law in relation to corporations and subject to all the provisions thereof, for the purpose of building and operating a railroad or railroads in any part of the State. [L 1878, c 29, §1; RL 1925, §877; RL 1935, §1783; RL 1945, §5041; RL 1955, §106-1; am L Sp 1959 2d, c 1, §12; HRS §273-1]

Case Notes

Right of eminent domain conferred only upon such corporations as have entered into a contract with the Minister of Interior for the purpose of building and operating railroad and not upon all corporations that have incorporated under general corporation law for such purpose. 11 H. 479.

Right of eminent domain delegated to O.R. & L. Co. does not carry with it the right to condemn public land in Honolulu Harbor. 11 H. 717.

Cited: 21 H. 375, 377.

" **§273-2 Granting public lands, etc.** The department of land and natural resources, with the consent of the governor, may grant a right-of-way, not greater than forty feet in width, through all public lands, to any corporation as aforesaid for the purpose of building the railroad or railroads. With like consent and approval, the department may grant the use of such public lands, lying alongside and abutting such right-of-way, as may be reasonably necessary for buildings, stations, depots, or other structures, for railroad purposes only. [L 1878, c 29, §2; am L 1913, c 64, §1; RL 1925, §878; RL 1935, §1784; RL 1945, §5042; RL 1955, §106-2; am L Sp 1959 2d, c 1, §21; am L 1961, c 132, §2; HRS §273-2]

" **§273-3 Special powers.** For the purposes and subject to the provisions and restrictions of this chapter, the corporation may, from time to time, exercise any of the following powers:

It may enter upon any lands which may adjoin upon the line of any railway which may be authorized by charter to be made, and may bore, dig, cut, trench, embank, and drain, and may remove or lay, take, carry away, and use any earth, gravel, stone, timber, or other things dug or obtained therein or otherwise in the execution of any powers hereafter in this chapter given, and which may be proper for the making, maintaining, altering, repairing, or using any railway lawfully

authorized, or which may obstruct the making, maintaining, altering, repairing, or using of the same;

It may make, in, upon, across, under, or over any such lands, or any street, roads, ways, railroads, tramways, hills, valleys, rivers, canals, watercourses, or waters, such temporary or permanent inclined planes, tunnels, cuttings, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, fences, and other work and conveniences as it thinks proper;

It may alter the course of any rivers not navigable, canals, brooks, streams, or watercourses during such times as is necessary for constructing or maintaining tunnels, bridges, or other works over, under, or affecting the same; and may temporarily or permanently alter the course of any rivers or streams, or raise or sink the level of any rivers or streams, streets, roads, or ways, to carry more conveniently the same over or under or by the side of any railway;

It may make drains or conduits into, through, or under any lands adjoining the railway for the purpose of conveying water from or to the railway, and upon the railway, or any lands adjoining or near thereto;

It may make such piers, jetties, stations, sidings, wharves, warehouses, tollhouses, and other houses, yards, engines, machinery, signal posts, and other apparatus, works, and conveniences whatsoever connected with the railway as the corporation may think proper, and may from time to time alter, repair, or discontinue any such apparatus, works, and conveniences, and substitute others in their stead;

It may fell or remove any timber or other trees being within two hundred feet from either side of the railway which, by their liability to fall or otherwise, might obstruct or injure the railway;

It may also fell or cut down and remove any trees or wood, whether timber or other trees, or scrub or underwood, which, by reason of the line making a curve or otherwise, may obstruct or impede a view of any signal post from any portion of the line which shall be within one mile in a right line from any such signal post;

It may enter upon and use any existing private road, being a road graveled or formed with stones or other hard material, and not being an avenue or approach to any dwelling house;

It may enter upon and take, purchase, and hold all such lands, tenements, and hereditaments as may be required for the purposes of the railway and works connected therewith;

It may do all other things necessary or convenient for making, maintaining, altering, or repairing and using the railway.

But nothing in this chapter shall be construed to authorize any corporation to enter upon or take any tidewaters, nor in any way to hinder, obstruct, or interfere with navigation in or upon any public navigable waters nor to erect, build, or maintain any pier, jetty, or wharf in, upon, or over any harbor, bay, or river beyond high watermark. [L 1878, c 29, §3; am L 1898, c 52, §1; RL 1925, §879; RL 1935, §1785; RL 1945, §5043; RL 1955, §106-3; HRS §273-3]

Case Notes

Wharves and warehouses are fairly necessary for reasonable operation of the road. 14 H. 126.

Cited: 20 H. 122.

" **§273-4 Compensation to be made.** In the exercise of the powers mentioned in section 273-3, the corporation shall do as little damage as can be; and shall make full compensation in the manner provided in chapter 101, to all parties interested for all damage sustained by reason of the exercise of such power. [L 1878, c 29, §4; RL 1925, §880; RL 1935, §1786; RL 1945, §5044; am L 1951, c 12, §3; RL 1955, §106-4; HRS §273-4]

" **§273-5 Width of land taken.** The lands to be taken or used for the line of any railway lawfully authorized, shall not exceed one hundred feet in width, except where greater width is necessary for engines or carriages to turn, stand in, or pass each other, or for stations, or for raising embankments, or for crossing valleys or low grades, or for cutting through high grounds, or for the erection or establishment of any fixed or permanent wharf, warehouse, tollhouse, machinery, or other building or erection, or for excavating, removing, or depositing earth or other material. [L 1878, c 29, §5; RL 1925, §881; RL 1935, §1787; RL 1945, §5045; RL 1955, §106-5; HRS §273-5]

" **§273-6 Superfluous lands to be sold.** Where lands are acquired by the corporation under the exercise of eminent domain, but are not required for its purposes, the corporation, within the prescribed period, or if no period is prescribed, within ten years after the expiration of the time limited by the charter for the completion of the works, shall absolutely sell and dispose of all superfluous lands and apply the purchase money arising from the sale to the purpose of the charter, and in default thereof, all superfluous lands remaining unsold at the expiration of this period, shall thereupon vest in and become the property of the owners of the lands adjoining thereto in proportion to the extent of their lands respectively

adjoining the same. [L 1878, c 29, §19; RL 1925, §893; RL 1935, §1799; RL 1945, §5057; am L 1951, c 12, §4; RL 1955, §106-6; HRS §273-6]

" **§273-7 Offered to adjoining owners first.** Before the corporation disposes of any superfluous lands, it shall, unless the lands are situated within a town, or are lands built upon, or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if the person refuses to purchase the same, or cannot, after diligent inquiry, be found, then the like offer shall be made to the person, or to the several persons whose lands immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of the lands; and when more than one person is entitled to the right of preemption, the offer shall be made to these persons in succession, one after another, in such order as the corporation shall think fit. [L 1878, c 29, §20; RL 1925, §894; RL 1935, §1800; RL 1945, §5058; RL 1955, §106-7; HRS §273-7]

" **§273-8 Acceptance of offer.** If any such persons are desirous of purchasing such lands, then within six weeks after such offer of sale, they shall signify their desire to purchase the lands, to the corporation; or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of preemption of every such person so declining or neglecting in respect of the lands included in the offer shall cease; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that the offer was made and was refused or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of preemption were out of the country, or could not, after diligent inquiry, be found, or were not capable of entering into a contract for the purchase of the lands, shall, in all courts, be sufficient evidence of the facts therein stated. [L 1878, c 29, §21; RL 1925, §895; RL 1935, §1801; RL 1945, §5059; RL 1955, §106-8; HRS §273-8]

" **§273-9 Arbitration of price.** If any person entitled to such preemption desires to purchase the lands, and the person and the corporation do not agree to the price thereof, then the price shall be ascertained by arbitration. The cost of the arbitration shall be in the discretion of the arbitrators. [L 1878, c 29, §22; RL 1925, §896; RL 1935, §1802; RL 1945, §5060; RL 1955, §106-9; HRS §273-9]

" **§273-10 Nature of motive power allowable.** All railroad companies authorized under the laws of the State to operate their railroads by steam power may operate their railroads or any portion of the same by electric power, either by overhead or underground wires or by storage batteries, or by such other methods as may be an improvement upon either; or by compressed air; or by such other motive power as the railroad companies may from time to time elect; provided that a part of the railroad may be operated by one motive power while another or other portions thereof may be operated by another or other motive powers. [L 1907, c 88, §1; RL 1925, §897; RL 1935, §1803; RL 1945, §5061; RL 1955, §106-10; HRS §273-10]

" **§273-11 Right to provide same, subject to rights of others.** Such railroad companies with the consent of the comptroller may provide, construct and install, maintain, change, and repair such means for the transmission and return of electric, compressed air, or other motive power for such motive purposes along, upon, and over such highways, streets, or roads upon which they have rights of way by franchise as may from time to time be necessary for the operation of the railroads; provided that the railroad companies shall so exercise this right that unnecessary injury or deterioration shall not occur nor be done to the water pipes, sewer pipes, gas pipes, or other property of the State, or of any person and shall save the State, or any person harmless and indemnified from all loss, cost, damage, and expense by reason thereof. [L 1907, c 88, §2; RL 1925, §898; RL 1935, §1804; RL 1945, §5062; RL 1955, §106-11; am L Sp 1959 2d, c 1, §12; HRS §273-11]

" **§273-12 Railway to be fenced.** The corporation shall fence in the line of railway with a good and sufficient legal fence. [L 1878, c 29, §23; RL 1915, §899; RL 1935, §1805; RL 1945, §5063; RL 1955, §106-12; HRS §273-12]

" **§273-13 Bylaws, regulations.** The corporation may from time to time make bylaws and regulations for the management and control of the railway, and for regulating the traffic thereon; and the bylaws and regulations on being approved by the governor, shall have the force of law. The corporation shall, at all times, cause a copy of the bylaws and regulations to be posted and exhibited at the principal stations on the line of railway. [L 1878, c 29, §24; RL 1925, §900; RL 1935, §1806; RL 1945, §5064; RL 1955, §106-13; HRS §273-13]

" **§273-14 Penalty for violating.** Any person violating any bylaw or regulation approved in section 273-13, shall be fined not more than \$25 and costs; and in default of payment, shall be imprisoned not more than three months. [L 1878, c 29, §25; RL 1925, §901; RL 1935, §1807; RL 1945, §5065; RL 1955, §106-14; HRS §273-14]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.

" **§273-15 Bonds.** Any corporation which may be organized, and undertake the building of any railroad or railroads, in pursuance of the authority of this chapter, and in accordance with it, may issue bonds to raise money for the construction of such railroad or railroads, in such sums as may be convenient. [L 1878, c 29, §30; RL 1925, §902; RL 1935, §1808; RL 1945, §5066; RL 1955, §106-15; HRS §273-15]

" **§273-16 Aid to public railroads only.** The aid by this chapter contemplated shall be extended only to railroads of public utility, and not to railroads of mere private or limited convenience. [L 1878, c 29, §31; RL 1925, §903; RL 1935, §1809; RL 1945, §5067; RL 1955, §106-16; HRS §273-16]