

ing a notice in the office of the Clerk of the District Court, setting forth the grounds of appeal, together with a bond in the sum of \$250.00, which shall be for the payment of costs of said appeal in the event said action of the Governor shall be affirmed; said bond to be approved as to form by the State's Attorney of said county and as to its sufficiency by the Clerk of the District Court. Said notice and bond shall be filed within fifteen days after the date of the order by the Governor. Thereupon the Clerk of the District Court shall notify the Governor of the filing of said appeal by registered mail and the Governor shall within ten days after the receipt of said notice, mail to the Clerk of said court the testimony in said removal proceedings, together with a copy of any order made by him in said proceedings. Said appeal shall be heard by the Judge of said court upon the record in said proceeding, without a jury, at the next regular term of said court or prior to said term, in the discretion of the Judge of said court. After such hearing by the district judge, he shall make his order affirming the order of the Governor or an order reinstating the defendant officer.

Approved March 7, 1927.

RAILROAD COMMISSIONERS

CHAPTER 231

(S. B. No. 74—Sathre)

APPOINTMENT OF EXAMINERS BY RAILROAD COMMISSIONERS

An Act Authorizing and Empowering the Board of Railroad Commissioners to Appoint Examiners for the Purpose of Holding Hearings, and Prescribing the Powers and Duties of Such Examiners.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. The Board of Railroad Commissioners of North Dakota is hereby authorized and empowered to designate the special assistant attorney general appointed by the Attorney General as commerce counsel of said Board the Chief Statistician or the Chief Engineer of said Board, as an examiner for the purpose of holding any hearing or hearings which the said Board, or any member thereof, has power and authority to hold. Such examiner, when so appointed, shall have the power to administer oaths and affirmations, issue subpoenas, compel attendance and testimony of witnesses, the production of papers, books, accounts and documents, examine witnesses, and to act in and about such hearing or hearings with the same power and authority that has been or will be invested by law in said Board

or any member thereof. The proceedings at such hearings shall be taken in shorthand by a stenographer, reduced to writing, and, together with the exhibits introduced, certified to the Board by such examiner as a true, correct and complete record of such hearing. All such hearings so held shall be taken and deemed to be hearings before said Board of Railroad Commissioners, and the decision of the Board in such matters shall be based upon the record as made before any such examiner and certified to by him; provided, that further testimony may be taken if the Board deems it advisable and so orders.

Approved February 19, 1927.

CHAPTER 232
(H. B. No. 177—Veitch)

RAILROAD COMMISSIONERS AUTHORIZATION EXTENSION
ELECTRIC TRANSMISSION LINES

An Act Authorizing the Board of Railroad Commissioners to Require the Extension of Electric Transmission Lines, and the Service Furnished Thereby, to Cities, Towns, Villages and the Inhabitants Thereof, Within or Contiguous to the Territory Served by Such Transmission Lines, and to Fix the Rates and Charges for Such Service, and the Rules and Regulations to Be Observed in Connection Therewith.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Whenever any city, town or village, or the inhabitants thereof, within or contiguous to the territory served by an electric transmission line operated by a public utility subject to the jurisdiction of the Board of Railroad Commissioners, desire to obtain the service furnished by such public utility, the proper authorities of such city, town or village, or fifteen per cent of the inhabitants thereof, may petition the Board of Railroad Commissioners for the extension of such transmission line and service to, into or through such municipality. The Board of Railroad Commissioners shall thereupon enter into an investigation concerning the practicability and reasonableness of such proposed extension and service and the public convenience and necessity to be subserved thereby, and if, after notice and hearing, such Board finds that such extension of line and service is practicable and can reasonably be made, taking into consideration, among other things which might lawfully be considered, the amount of revenue likely to be derived therefrom, and the prospect for a reasonable return to the utility upon the value of such extension, and further finds that public convenience and necessity will be subserved thereby, such Board is hereby authorized,

by its order, to require the extension of such line and service, for the purpose of serving such municipality and the inhabitants thereof, upon condition that a franchise for such operation be granted to such utility by the proper authorities of such municipality, and upon such other terms and conditions as may be just and reasonable. A certified copy of such order, when filed with the auditor or clerk of such municipality, shall have the same force and effect as an application by the utility for a franchise. The Board of Railroad Commissioners shall fix just and reasonable rates for such service and such reasonable rules and regulations as may be necessary pertaining thereto.

§ 2. Any municipality, public utility or person affected by the order of the Board of Railroad Commissioners may prosecute and conduct an appeal to the courts in the same manner as an appeal lies from any other order or decision of the Board.

§ 3. An emergency is hereby declared to exist and does exist, and this Act shall be in force and effect from and after its passage and approval.

Approved March 1, 1927.

CHAPTER 233
(H. B. No. 230—Cox)

RAILROAD CROSSINGS

An Act to Amend and Re-enact Section 10 of Chapter 181 of the Session Laws of 1925, Relating to the Establishment of Railroad Crossings.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] That Section 10 of Chapter 181 of the Session Laws of 1925 is amended and re-enacted to read as follows:

§ 10. Whenever it is desired, either by the public officials having the necessary authority or by the railway company operating the railroad, to establish, vacate or re-locate any crossing of a public highway and a railroad, or separate grades, and an agreement cannot be reached between such public officials and the railway company, either as to the necessity for establishing, vacating or re-locating or separating of grades as to place, manner of construction or a reasonable division of the expense in the case of establishing, re-locating or separating of grades, either party may file a petition with the Commission, setting forth the facts and submitting the matter to it for determination; whereupon the Commission, after such notice as it shall deem reasonable, shall conduct a hearing and

issue its order determining whether there should be an establishment, vacation or re-location of the crossing in question, or a separation of grades, and dividing the expense of such establishment, vacation, re-location or separation of grades.

Provided that whenever a railroad crossing of any kind has been established, or re-located, in order to eliminate an adjacent or nearby crossing deemed by the Board of Railroad Commissioners to be dangerous, the said Board shall have the power to order said dangerous crossing closed.

Approved March 3, 1927.

CHAPTER 234
(H. B. No. 225—Ehr)

INVESTIGATION, FIXING OF RATES FOR TRANSPORTATION OF
FUELS, PROCEEDINGS, ETC., BY RAILROAD COMMISSIONERS

An Act Requiring the Board of Railroad Commissioners to Investigate and Fix Rates, Charges, Practices, Rules and Regulations of Carriers and Railroad Corporations for the Transportation of Fuel, Specifying the Proceedings Therefor, Making an Appropriation for Such Purpose and for the Defense of Such Rates, and Repealing Sections 4798a1 to 4798a5, Inclusive, of the Supplement to the Compiled Laws 1913, and Repealing Sections 4795a1 to 4795a11, Inclusive, of the Supplement to the Compiled Laws of 1913, So Far as the Same is Applicable to Rates for the Transportation of Fuel.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. The Board of Railroad Commissioners of the State of North Dakota (hereinafter termed the board), is hereby directed, authorized and required as soon as this act takes effect, to enter upon, continue from time to time and from place to place both within and without this state, and complete as expeditiously as shall be practicable, a proceeding, hearing and investigation (hereinafter termed investigation) into the lawfulness in general, the reasonableness, the preferential and discriminatory character of: (a) rates, charges, practices, rules and regulations (hereinafter termed rates) of carriers and railroad corporations (hereinafter termed carriers) applicable to the intrastate transportation, and of rates applicable to the interstate transportation, of any and every kind of fuel, including bituminous and anthracite coal, lignite, wood, coke, oil, and the like (hereinafter termed fuel); and (b) the rates prescribed by the Nineteenth Legislative Assembly of North Dakota, Session Laws 1925, Chapter 180. .

§ 2. In conducting the investigation required by Section one (1) of this act, the board shall procure, obtain, receive in evidence

and consider any and all competent, relevant and material information, facts and evidence (hereinafter termed evidence) of any and every kind and character whatsoever, whether oral, documentary, or otherwise, (including such as said board and similar state and interstate commissions usually and customarily procure, obtain, receive and consider in similar investigations).

§ 3. Said investigation by said board shall include, among other things, all matters relating to: the kinds, nature and general character of all fuels consumed in this state, the sources and places of production or manufacture thereof, and the methods, means, facilities, and instrumentalities of transportation and routes of movement thereof to this state; the amount of each kind of fuel consumed and produced in the state during each year; the nature and extent of the mineral fuel resources of this state, and the ownership and right to mine the same, carrier and railroad ownership thereof and the relationship, affiliations and dealings of carrier or railroad with producers, shippers, receivers, buyers, sellers, or consumers of fuel; the public interest, social and economic conditions affecting and affected by the rates applicable to, or the use of, each fuel; the value and utility of the several fuels and of the transportation services rendered in connection therewith by carrier; the profits and losses of producer, shipper, receiver, buyer, seller, in connection with production, purchase, and sale, manufacture, or distribution of fuel; the suitability of various fuels for industrial and domestic uses, and the classes of consumers who use them, the purposes for which used, and fluctuations and changes therein over a period of years; the necessity for special equipment, special preparation, or special methods of handling each fuel for use and consumption; the cost of various fuels at the several shipping or producing points and the selling price thereof to the ultimate consumers, together with the elements making up the same and the fluctuations and changes therein over a period of years; the means, methods, and cost of local merchandising and distribution of fuels; the location, owner and operator, of each mine in this state; when said mine was developed and continuity of operation since first production began; the general nature of each mine, and as a slope, drift, shaft or strip mine; the comparative size of each mine; sizes of fuel produced and method of preparation; annual and daily production and capacity for production, and the portion of the year during which mine is operated and the causes of all fluctuations; the amount invested in each mine, its equipment and all appurtenances; the manner of operating the mine and its shipments in detail; the transportation facilities or instrumentalities supplied by producer, shipper, and receiver or consumer and the switching, reconsigning, demurrage, car-service or other charges paid or borne; the nature of community near each mine and the effect of continuance or discontinuance of production on such community, upon the employees of such mine and the state at

large; the number of employees of each mine, their compensation, and the occupations of such employees when not engaged in mining; the attractiveness of fuel traffic to carriers and its relation to, and effect upon, other commodities transported; the concert of action, motive, and general attitude of carrier toward fuel rates and the shippers, receivers, buyers, sellers and consumers thereof; the investment, capitalization and valuation of carrier; car-mile, train-mile, ton-mile revenues received by carrier from fuel traffic; the economical and efficient character of each carrier's management; the cost of service and operation rendered by each carrier of fuel; division of fuel rates between carriers, their earnings and need for revenue; general competition, carrier competition in general, railroad competition, water competition, wagon and motor vehicle competition as they affect fuel traffic; the equalization of commercial conditions, advantages or disadvantages; the equipment furnished, its kind, general character and suitability, the loading thereof, weight and cubic content of loads, and the like; the history of fuel and other pertinent rates; the duration of previous rates, schedules or rate adjustments, in this state, other states, or interstate; pertinent rate comparisons, rate relativity and pertinent and appropriate comparisons of all matters referred to in this act; the natural advantages and disadvantages of the several fuels, their producers, buyers, sellers, consumers, shippers, and receivers; the use and utility of various fuels, their briquetting, carbonization, coking, manufacturing into other products, by-products and the like; the routes of movement of fuels, joint and single line hauls, branch and main-line conditions, service, cost of service, and the like; the interchange of traffic between carriers, the nature, character and extent of facilities and instrumentalities therefor, cost and expense thereof; the nature, character, and kinds of switching, reconsigning, spotting, pick-up, weighing, and terminal service performed by each carrier of fuel and by others than carriers, and the facilities and instrumentalities in connection therewith furnished by each; the origin and destination of fuel traffic, the distance hauled and the like; rates in opposite directions, via competing routes, and the like; the risk connected with fuel traffic, and the nature, extent and amount of loss and damage claims; the volume of fuel traffic, and the changes and fluctuations therein, and any and every other pertinent and appropriate item or matter.

§ 4. The board is hereby empowered and directed to make, for each carrier of fuel, and for each of the railroad corporations, doing business in this state as soon as practicable after the completion of said investigation, a schedule of reasonable maximum rates for the transportation of each fuel, on each of said carriers or railroads and said power shall include the classification and differentiation of said various kinds of fuels and the rates for the transportation of each thereof; and it shall be the duty of said commission to

make such classification and differentiation; and said schedules and classification so made by said commission shall, in all suits or other proceedings brought by or against any such carrier or railroad corporation, be taken in all the courts of this state, and in any other court or tribunal, as prima facie evidence that the rates, schedules, classification and differentiation therein fixed are reasonable and just maximum rates of charges, schedules, differentiation and classification.

§ 5. In conducting said investigation said board shall have, and in respect of any classification and schedule of reasonable maximum rates which said board may make, publish and declare as provided in this act, each officer, court or other tribunal of this state shall have, and there is hereby expressly conferred upon each of them, respectively, and so far as is pertinent and appropriate to the subjects of this act, the full and complete jurisdiction, and each and every power, right, duty, privilege and obligation now vested in, conferred upon, or possessed by said board, said officer, said court or other tribunal by any law of this state in respect of any general or special proceeding, hearing, inquiry, or investigation; including in respect of the investigation herein required, and of said rates, schedule, or classification, all jurisdiction, power, right, duty, or privilege provided by, or enumerated in, and all amendments of (so far as the same is applicable, pertinent and relevant to the subjects of this act): Session Laws 1879, Chapter 46; Session Laws 1889, Chapter 110a; Session Laws 1890, Chapter 17a; Session Laws 1897, Chapter 115; Session Laws 1899, Chapter 115; Session Laws 1911, Chapter 255; Session Laws 1917, Chapter 188; Session Laws 1919, Chapter 192 and Chapter 194; Revised Code 1899, Sections 2964, 3008, 3012, 3013, 3017, 3031, 3032, 3033, 3034, 3035, 3036, 3041, 3042, 3043, 3044, 3045, 3046, 3047, 3048, 3049, 3050, 3051, 3052, 3053, 3065; Compiled Laws of 1913, Sections 585, 588, 589, 591, 595, 596, 597, 598, 599, 600, 601, 4630, 4709, 4713, 4728, 4729, 4730, 4731, 4732, 4733, 4738, 4739, 4740, 4741, 4742, 4743, 4744, 4745, 4746, 4747, 4748, 4749, 4750, 4762, 4783, 4797; and there is hereby required of every person, firm or corporation, specified, enumerated and referred to in any of the foregoing laws, the performance with respect of the various matters covered by this act of each and every duty or obligation imposed upon or required of, and by, each of them in respect of the subject matter of each of said foregoing acts.

§ 6. There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated the sum of Ten Thousand Dollars (\$10,000), or so much thereof as may be necessary for the use of the Board of Railroad Commissioners to carry out the purposes of this act, and to maintain the rates as fixed by said Board for the transportation of fuel in conformity to this act.

§ 7. Session Laws, 1925, Chapter 180, and Session Laws 1917, Chapter 188, so far as the same relates or is applicable to rates for transportation of fuel are hereby repealed, said repeal to take effect when the schedule of reasonable maximum rates and the classification, fixed by said board pursuant to the directions of this act shall become effective and applicable for the transportation of lignite within this state.

§ 8. Nothing in this act contained shall be construed as limiting or abridging the powers now vested by law in the board, but on the contrary shall be deemed to be supplemental and in addition thereto, and after rates have so been fixed for the transportation of fuel by the Board of Railroad Commissioners, said board shall have the same duties and the same powers relative to rates for transporting lignite as it now or hereafter shall have relative to other freight rates.

§ 9. Should any court declare any section, clause, or item of this act invalid or unconstitutional, such decision shall affect only the section, clause or item so declared to be invalid or unconstitutional, and shall not affect any other clause or item of this act.

§ 10. This act is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval.

Approved March 3, 1927.

CHAPTER 235
(S. B. No. 73—Sathre)

CERTIFICATES OF PUBLIC CONVENIENCE OF PUBLIC UTILITIES

An Act Requiring Public Utilities to Obtain from the Board of Railroad Commissioners Certificates of Public Convenience and Necessity Before Beginning the Construction or Operation of Public Utility Plants or Systems or the Exercising of Any Rights or Privileges Under Any Franchise or Certificate Hereafter Granted, or Under Any Franchise Heretofore Granted, the Exercise of Which Has Not Been Commenced Within One Year from the Granting Thereof, or Has Been Suspended or Discontinued for More Than One Year, and Prescribing the Procedure to Be Followed in Such Matters.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. No public utility, as defined in Section 4609c2, Supplement to the 1913 Compiled Laws of North Dakota, shall henceforth begin the construction or operation of a public utility plant or system, or of any extension thereof, without first obtaining from the Board of Railroad Commissioners of this state a certificate that public convenience and necessity require or will require such construction and operation; Provided, that this section shall not be construed to require any such public utility to secure such certificate for an extension within any municipality or district within which it has heretofore lawfully commenced operations, or for an extension within or to territory already served by it necessary in the ordinary course of its business, or for an extension into territory contiguous to that already occupied by it and not receiving similar service from another utility, or for which no certificate of public convenience and necessity has been issued to any other public utility; but if any public utility in constructing or extending its line, plant or system, unreasonably interferes with or is about to unreasonably interfere with the service or system of any other public utility, the Board of Railroad Commissioners on complaint of the public utility claiming to be injuriously affected may, after notice and hearing, make such order and prescribe such terms and conditions as are just and reasonable.

§ 2. No such public utility shall henceforth exercise any right or privilege under any franchise or certificate hereafter granted, or under any franchise heretofore granted, the exercise of which has been suspended or discontinued for more than one year, or if within one year from the granting of such franchise it has not commenced construction under such franchise, without first obtaining from said Board of Railroad Commissioners a certificate that public convenience and necessity require the exercises of such right or privilege.

§ 3. Before any certificate may issue under this Act, a certified copy of the articles of incorporation or charter of the utility, if the applicant be a corporation, shall be filed with said Board of Railroad Commissioners, and upon the hearing on said application shall submit evidence showing that such applicant has received the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, if required, or has or is about to make application therefor. The Board shall have the power, after notice and hearing, to issue such certificate as prayed for or to refuse to issue the same, or to issue it for the construction or operation of a portion only of the contemplated facility, line, plant or system, or extension thereof, or for the partial exercise only of said right or privilege, conditioned upon the applicant having secured or securing the consent, franchise, permit, or ordinance or other authority of the proper municipality or other public authority, and may attach to the exercise of the rights granted by any certificate such terms and conditions as in its judgment the public convenience and necessity may require. Whenever a public utility engages or is about to engage in the construction or operation as described in this Act, without having secured a certificate of public convenience and necessity as required by the provisions hereof, any interested municipality, other public authority, utility or person may file a complaint with the Board of Railroad Commissioners. The Board may thereupon, or upon its own motion without complaint, with or without notice, make its order requiring the public utility complained of to cease and desist from such construction or operation until the Board makes and files its decision, or until further order of the Board. The Board may, after notice and hearing, make such order and prescribe such terms and conditions as are just and reasonable.

§ 4. Any municipality, other public authority, utility or person affected by the order of the Board of Railroad Commissioners in any matter relating to the subject matter of this Act may prosecute and conduct an appeal to the courts in the same manner as an appeal lies from any other order or decision of the Board, as provided in Sections 4609c34, 4609c35, and 4609c36, Supplement to the 1913 Compiled Laws of North Dakota.

§5. All acts and parts of Acts in conflict with this Act are hereby repealed.

Approved Feb. 10, 1927.

CHAPTER 236
(H. B. No. 95—Holthusen)

HEARING ON PUBLIC UTILITIES

An Act to Amend and Re-enact Section 4609c30 of the Supplement to the Compiled Laws of 1913.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] That Section 4609c30 of the Supplement to the Compiled Laws of 1913, be and it is hereby amended and re-enacted to read as follows:

§ 4609c30. COMPLAINT; HEARING ON.] Complaint may be made by the commissioners of its own motion or by any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization or any body politic or municipal corporation, by petition or complaint in writing, setting forth any fact or thing done or omitted to be done by any public utility, including any rule, regulation or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation of any provision of law of any order or rule of the commissioners.

The commissioners shall fix the time when and place where a hearing will be had upon the complaint and shall serve notice thereof upon the complainant and the utility affected thereby not less than ten days before the time set for such hearing, unless the commissioners shall find that public necessity requires that such hearing be held at an earlier date, provided, that no complaint shall be entertained by the commissioners, except on its own motion, as to the reasonableness of any rates or charges, of any heat, gas, electrical, water or telephone utility, unless the same be signed by the mayor, council, commission or other legislative body of the county, city or village, if any, within which the alleged violation occurred, or not less than ten per cent of the consumers or purchasers of such heat, gas, electrical, water or telephone service.

Approved February 9, 1927.