

(Mar. 3, 1875, ch. 152, § 6, 18 Stat. 483.)

#### REPEAL OF SECTION

*Section repealed by Pub. L. 94-579, title VII, § 706(a), Oct. 21, 1976, 90 Stat. 2793, effective on and after Oct. 21, 1976, insofar as applicable to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System.*

#### SAVINGS PROVISION

Repeal by Pub. L. 94-579 insofar as applicable to the issuance of rights-of-way not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see section 701 of Pub. L. 94-579, set out as a note under section 1701 of this title.

#### § 940. Forfeiture of rights where railroad not constructed in five years after location

Each and every grant of right of way and station grounds made prior to February 25, 1909, to any railroad corporation under sections 934 to 939 of this title, where such railroad had not been constructed and the period of five years next following the location of said road, or any section thereof, had on that date expired, is declared forfeited to the United States, to the extent of any portion of such located line then remaining unconstructed, and the United States resumes the full title to the lands covered thereby free and discharged from such easement, and the forfeiture declared shall, without need of further assurance or conveyance, inure to the benefit of any owner or owners of land conveyed by the United States prior to such date subject to any such grant of right of way or station grounds: *Provided*, That no right of way on which construction was progressing in good faith on February 25, 1909, shall be in any wise affected, validated, or invalidated, by the provisions of this section.

(June 26, 1906, ch. 3350, 34 Stat. 482; Feb. 25, 1909, ch. 191, 35 Stat. 647.)

#### § 941. Railroad stations on rights of way granted

All railroad companies operating railroads through the Territories of the United States over a right of way obtained under any grant or Act of Congress giving to said railroad companies the right of way over the public lands of the United States shall be required to establish and maintain passenger stations and freight depots at or within one-fourth of a mile of the boundary limits of all town sites established prior to August 8, 1894, in said Territories on the line of said railroads by authority of the Interior Department.

(Aug. 8, 1894, ch. 236, § 1, 28 Stat. 263.)

#### § 942. Omitted

#### CODIFICATION

Section, act Aug. 8, 1894, ch. 236, § 2, 28 Stat. 263, required railroad companies to establish within three months after Aug. 8, 1894, passenger and freight stations in all towns.

#### § 942-1. Rights of way in Alaska; railroad rights of way; reservations; water transportation connections; State title to submerged lands; Federal repossession as trustee; "navigable waters" defined; posting schedules of rates; changes in rates

The right of way through the lands of the United States in Alaska is granted to any railroad company, duly organized under the laws of any State or Territory or by the Congress of the United States, which may on and after May 14, 1898, file for record with the Secretary of the Interior a copy of its articles of incorporation and due proofs of its organization under the same, to the extent of one hundred feet on each side of the center line of said road; also the right to take from the lands of the United States adjacent to the line of said road, material, earth, stone, and timber necessary for the construction of said railroad; also the right to take for railroad uses, subject to the reservation of all minerals and coal therein, public lands adjacent to said right of way for station buildings, depots, machine shops, side tracks, turn-outs, water stations, and terminals, and other legitimate railroad purposes, not to exceed in amount twenty acres for each station, to the extent of one station for each ten miles of its road, excepting at terminals and junction points, which may include additional forty acres, to be limited on navigable waters to eighty rods on the shore line, and with the right to use such additional ground as may in the opinion of the Secretary of the Interior be necessary where there are heavy cuts or fills: *Provided*, That nothing herein contained shall be so construed as to give to such railroad company, its lessees, grantees, or assigns the ownership or use of minerals, including coal, within the limits of its right of way, or of the lands granted: *Provided further*, That all mining operations prosecuted or undertaken within the limits of such right of way or of the lands granted shall under rules and regulations to be prescribed by the Secretary of the Interior, be so conducted as not to injure or interfere with the property or operations of the road over its said lands or right of way. And when such railway shall connect with any navigable stream or tide water such company shall have power to construct and maintain necessary piers and wharves for connection with water transportation, subject to the supervision of the Secretary of the Treasury: *Provided*, That nothing in sections 687a, 687a-2 to 687a-5,<sup>1</sup> and 942-1 to 942-9 of this title and sections 607a and 615a of title 16 contained shall be construed as impairing in any degree the title of any State that may hereafter be erected out of the Territory of Alaska, or any part thereof, to tide lands and beds of any of its navigable waters, or the right of such State to regulate the use thereof, nor the right of the United States to resume possession of such lands, it being declared that all such rights shall continue to be held by the United States in trust for the people of any State or States which may on and after May 14, 1898, be erected out of said Territory. The term "navigable waters," as herein used, shall be held

<sup>1</sup> See References in Text note below.

to include all tidal waters up to the line of ordinary high tide and all nontidal waters navigable in fact up to the line of ordinary high-water mark. All charges for the transportation of freight and passengers on railroads in Alaska shall be printed and posted as required by section 10762<sup>1</sup> of title 49, and such rates shall be subject to revision and modification by the Secretary of the Interior.

(May 14, 1898, ch. 299, § 2, 30 Stat. 409.)

#### REPEAL OF SECTION

*Section repealed by Pub. L. 94-579, title VII, § 706(a), Oct. 21, 1976, 90 Stat. 2793, effective on and after Oct. 21, 1976, insofar as applicable to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System.*

#### REFERENCES IN TEXT

Sections 687a and 687a-2 to 687a-5 of this title, referred to in text, were repealed by Pub. L. 94-579, title VII, §§ 703(a), 704(a), Oct. 21, 1976, 90 Stat. 2789, 2792.

Section 10762 of title 49, referred to in text, was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104-88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804. Previously, "section 10762 of title 49" was substituted in text for "section 6 of an Act to regulate commerce as amended on March second, eighteen hundred and eighty-nine [49 U.S.C. 6]" on authority of Pub. L. 95-473, § 3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49.

#### CODIFICATION

Section was formerly classified to section 411 of Title 48, Territories and Insular Possessions.

#### SHORT TITLE

Sections 942-1 to 942-9 of this title are popularly known as the "Alaska Right of Way Act".

#### SAVINGS PROVISION

Repeal by Pub. L. 94-579 insofar as applicable to the issuance of rights-of-way not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see section 701 of Pub. L. 94-579, set out as a note under section 1701 of this title.

#### ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959. 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

### § 942-2. Rights of several roads through canyons

Any railroad company whose right of way, or whose track or roadbed upon such right of way, passes through any canyon, pass, or defile shall not prevent any other railroad company from the use and occupancy of said canyon, pass, or defile for the purposes of its road, in common with the road first located, or the crossing of other railroads at grade; and the location of such right of way through any canyon, pass, or defile shall not cause the disuse of any tramway, wagon road, or other public highway now located therein, nor prevent the location through the same of any such tramway, wagon road, or highway where such tramway, wagon road, or highway may be necessary for the public accommodation; and where any change in the location

of such tramway, wagon road, or highway is necessary to permit the passage of such railroad through any canyon, pass, or defile, said railroad company shall, before entering upon the ground occupied by such tramway, wagon road, or highway, cause the same to be reconstructed at its own expense in the most favorable location, and in as perfect a manner as the original road or tramway: *Provided*, That such expenses shall be equitably divided between any number of railroad companies occupying and using the same canyon, pass, or defile, and that where the space is limited the United States district court shall require the road first constructed to allow any other railroad or tramway to pass over its track or tracks through such canyon, pass, or defile on such equitable basis as the said court may prescribe; and all shippers shall be entitled to equal accommodations as to the movement of their freight and without discrimination in favor of any person or corporation: *Provided*, That nothing herein shall be construed as depriving Congress of the right to regulate the charges for freight, passengers and wharfage.

(May 14, 1898, ch. 299, § 3, 30 Stat. 410.)

#### REPEAL OF SECTION

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#### CODIFICATION

Section was formerly classified to section 412 of Title 48, Territories and Insular Possessions.

#### SAVINGS PROVISION

Repeal by Pub. L. 94-579 insofar as applicable to the issuance of rights-of-way not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see section 701 of Pub. L. 94-579, set out as a note under section 1701 of this title.

### § 942-3. Condemnation of land

Where any company, the right of way to which is granted by sections 687a, 687a-2 to 687a-5,<sup>1</sup> and 942-1 to 942-9 of this title and sections 607a and 615a of title 16, shall in the course of construction find it necessary to pass over private lands or possessory claims on lands of the United States, condemnation of a right of way across the same may be made in the following manner: In case the owner or claimant of such lands or premises and such company can not agree as to the damages, the amount shall be determined by the appraisal of three disinterested commissioners, who may be appointed upon application by any party to any judge of a court of record in Alaska; and said commissioners, in their assessments of damages, shall appraise such premises at what would have been the value thereof if the road had not been built; and upon return into court of such appraisal, and upon the payment to the clerk thereof of the amount so awarded by the commissioners for the use and benefit of the owner thereof, said premises shall be deemed to be taken by said company, which

<sup>1</sup> See References in Text note below.