



## Ohio Revised Code

### Section 5523.08 Costs chargeable to the improvement - proportion of costs.

Effective: July 1, 1985

Legislation: House Bill 201 - 116th General Assembly

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The cost of constructing the improvement authorized, including the making of ways, crossings, or viaducts, above or below the railroad tracks, together with sufficient approaches thereto, necessary guardrails, and adequate drainage, shall be part of and chargeable to the improvement. If the improvement replaces a portion of highway which prior to the improvement was unimproved, the surface chargeable to the improvement outside the limits of the right-of-way of the railroad company, the costs of which are to be shared by such company, shall not exceed in cost the costs of a traffic bond surface of sufficient thickness to sustain highway traffic. If the improvement replaces a portion of the highway or extension which has an improved surface, the cost of a new pavement, of equivalent width and of sufficient type to sustain highway traffic, shall be chargeable to the improvement on that portion outside the limits of the right-of-way of the company. The cost of the pavement on bridges for the full width of the roadway thereon shall be chargeable to the improvement. Within the limits of the right-of-way of the company, the pavement shall be chargeable to the improvement and shall be of such extent as the director of transportation determines.

The raising or lowering of the grades of the railroad tracks, sidetracks, and switches for such distance required, and as provided in the plans and made necessary by such improvement, including the cost of moving or changing existing structures, sheriff's fees, and other incidental expenses, together with the cost of land or property purchased or appropriated and damages to owners of abutting or other property, shall be chargeable to the improvement. All costs and things made chargeable to the improvement by this section shall be borne, unless otherwise agreed upon, eighty-five per cent by the state and fifteen per cent by such company. The state has the right of action against any such company for the recovery of the fifteen per cent, or other agreed proportion of such cost payable by it, with interest from the time that it became due. The director and the company involved may agree as to what part of the work shall be done by the company and also fix the amount or agree upon a method or basis for calculating and ascertaining the amount to be allowed or accredited to the company for doing such work. Such company shall be entitled to deduct from the fifteen per cent, or other agreed proportion of the cost of the improvement to be paid by such company, the expense



incurred by it in the change of its grade required by the director or made necessary by him under the plans, but only in case the amount of the expense or method for calculating it has been agreed upon in writing between the director and the company. If the amount of work done by the company or made necessary by reason of such change of grade or raising or lowering its tracks exceeds fifteen per cent, or other agreed proportion of the cost of the improvement to be paid by such company, then such excess shall be payable to the company by the director.

In connection with such improvement the director and the company involved may agree as to the portion of such construction the cost of which is to be shared and upon the percentage of the cost to be borne by the state and such company, but if such agreement is not made, this section shall apply. In the event that two or more railroad companies or interurban railway companies are required to cooperate in the improvement, and such companies are unable, for any reason, after three months from the date of the formal submission of the plans and estimates for the improvement, to agree among themselves as to what proportion of the costs to be paid by all companies is to be paid by each company, but the companies have agreed upon all other phases and details of the improvement, either of such companies or the director may petition the court of common pleas of the county in which such improvement is to be made, making the other companies defendants and asking for the apportionment of the costs which each shall bear, on which petition summons shall issue as in civil actions. After hearing the court shall determine and adjudge the proper proportions to be paid by the companies in the manner provided for in section 5523.07 of the Revised Code, pending which determination the director may fix tentatively the proportion of the cost which each railroad company or interurban railway company shall bear, and the companies and director shall execute an agreement based upon the plans, specifications, and estimates and such tentative distribution of cost, pending a final agreement among such railroad companies or interurban companies and the director or a decision of the courts in the matter, saving to such companies the right to prosecute error or appeal. The director may make requisition upon such companies in accordance with his tentative apportionment of costs. Each company shall promptly pay such requisitions according to their tenor, and the proceeding with the work shall not be delayed on account of the failure of the companies to agree upon an apportionment of costs between or among them. After the proportion of costs to be paid by each company has been finally determined, by agreement between them or by a judgment of court, the director shall make requisition in accordance with such agreement or judgment, and any of such companies shall have a right of action against any other such company to adjust the payment of costs in accordance with such agreement or judgment. Such tentative distribution shall be



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inadmissible as evidence in the hearing to determine final distribution and shall in no way affect such final distribution.