

HOUSE**AMENDMENT NO. _____****Offered by _____****of _____**

1 AMEND House Committee Substitute for House Bill No. 345, Page 1,
 2 Section A, Line 3, by inserting after all of said line the
 3 following:

4 "67.1830. As used in sections 67.1830 to 67.1846, the
 5 following terms shall mean:

6 (1) "Abandoned equipment or facilities", any equipment
 7 materials, apparatuses, devices or facilities that are:

8 (a) Declared abandoned by the owner of such equipment or
 9 facilities;

10 (b) No longer in active use, physically disconnected from a
 11 portion of the operating facility or any other facility that is
 12 in use or in service, and no longer capable of being used for the
 13 same or similar purpose for which the equipment, apparatuses or
 14 facilities were installed; or

15 (c) No longer in active use and the owner of such equipment
 16 or facilities fails to respond within thirty days to a written
 17 notice sent by a political subdivision;

18 (2) "Degradation", the actual or deemed reduction in the
 19 useful life of the public right-of-way resulting from the
 20 cutting, excavation or restoration of the public right-of-way;

21 (3) "Emergency", includes but is not limited to the
 22 following:

23 (a) An unexpected or unplanned outage, cut, rupture, leak
 24 or any other failure of a public utility facility that prevents
 25 or significantly jeopardizes the ability of a public utility to
 26 provide service to customers;

27 (b) An unexpected or unplanned outage, cut, rupture, leak
 28 or any other failure of a public utility facility that results or
 29 could result in danger to the public or a material delay or

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1 hindrance to the provision of service to the public if the
2 outage, cut, rupture, leak or any other such failure of public
3 utility facilities is not immediately repaired, controlled,
4 stabilized or rectified; or

5 (c) Any occurrence involving a public utility facility that
6 a reasonable person could conclude under the circumstances that
7 immediate and undelayed action by the public utility is necessary
8 and warranted;

9 (4) "Excavation", any act by which earth, asphalt,
10 concrete, sand, gravel, rock or any other material in or on the
11 ground is cut into, dug, uncovered, removed, or otherwise
12 displaced, by means of any tools, equipment or explosives, except
13 that the following shall not be deemed excavation:

14 (a) Any de minimis displacement or movement of ground
15 caused by pedestrian or vehicular traffic;

16 (b) The replacement of utility poles and related equipment
17 at the existing general location that does not involve either a
18 street or sidewalk cut; or

19 (c) Any other activity which does not disturb or displace
20 surface conditions of the earth, asphalt, concrete, sand, gravel,
21 rock or any other material in or on the ground;

22 (5) "Management costs" or "rights-of-way management costs",
23 the actual costs a political subdivision reasonably incurs in
24 managing its public rights-of-way, including such costs, if
25 incurred, as those associated with the following:

26 (a) Issuing, processing and verifying right-of-way permit
27 applications;

28 (b) Inspecting job sites and restoration projects;

29 (c) Protecting or moving public utility right-of-way user
30 construction equipment after reasonable notification to the
31 public utility right-of-way user during public right-of-way work;

32 (d) Determining the adequacy of public right-of-way
33 restoration;

34 (e) Restoring work inadequately performed after providing
35 notice and the opportunity to correct the work; and

36 (f) Revoking right-of-way permits.
37

1 Right-of-way management costs shall be the same for all entities
2 doing similar work. Management costs or rights-of-way management
3 costs shall not include payment by a public utility right-of-way
4 user for the use or rent of the public right-of-way, degradation
5 of the public right-of-way or any costs as outlined in paragraphs
6 (a) to (h) of this subdivision which are incurred by the
7 political subdivision as a result of use by users other than
8 public utilities, the attorneys' fees and cost of litigation
9 relating to the interpretation of this section or section
10 67.1832, or litigation, interpretation or development of any
11 ordinance enacted pursuant to this section or section 67.1832, or
12 attorneys' fees and costs in connection with issuing, processing,
13 or verifying right-of-way permit or other applications or
14 agreements, or the political subdivision's fees and costs related
15 to appeals taken pursuant to section 67.1838. In granting or
16 renewing a franchise for a cable television system, a political
17 subdivision may impose a franchise fee and other terms and
18 conditions permitted by federal law;

19 (6) "Managing the public right-of-way", the actions a
20 political subdivision takes, through reasonable exercise of its
21 police powers, to impose rights, duties and obligations on all
22 users of the right-of-way, including the political subdivision,
23 in a reasonable, competitively neutral and nondiscriminatory and
24 uniform manner, reflecting the distinct engineering,
25 construction, operation, maintenance and public work and safety
26 requirements applicable to the various users of the public
27 right-of-way, provided that such rights, duties and obligations
28 shall not conflict with any federal law or regulation. In
29 managing the public right-of-way, a political subdivision may:

30 (a) Require construction performance bonds or insurance
31 coverage or demonstration of self-insurance at the option of the
32 political subdivision or if the public utility right-of-way user
33 has twenty-five million dollars in net assets and does not have a
34 history of permitting noncompliance within the political
35 subdivision as defined by the political subdivision, then the
36 public utility right-of-way user shall not be required to provide
37 such bonds or insurance;

1 (b) Establish coordination and timing requirements that do
2 not impose a barrier to entry;

3 (c) Require public utility right-of-way users to submit,
4 for right-of-way projects commenced after August 28, 2001,
5 requiring excavation within the public right-of-way, whether
6 initiated by a political subdivision or any public utility
7 right-of-way user, project data in the form maintained by the
8 user and in a reasonable time after receipt of the request based
9 on the amount of data requested;

10 (d) Establish right-of-way permitting requirements for
11 street excavation;

12 (e) Establish removal requirements for abandoned equipment
13 or facilities, if the existence of such facilities prevents or
14 significantly impairs right-of-way use, repair, excavation or
15 construction;

16 (f) Establish permitting requirements for towers and other
17 structures or equipment for wireless communications facilities in
18 the public right-of-way, notwithstanding the provisions of
19 section 67.1832;

20 (g) Establish standards for street restoration in order to
21 lessen the impact of degradation to the public right-of-way; and

22 (h) Impose permit conditions to protect public safety;

23 (7) "Political subdivision", a city, town, village, county
24 of the first classification or county of the second
25 classification;

26 (8) "Public right-of-way", the area on, below or above a
27 public roadway, highway, street or alleyway in which the
28 political subdivision has an ownership interest, but not
29 including:

30 (a) The airwaves above a public right-of-way with regard to
31 cellular or other nonwire telecommunications or broadcast
32 service;

33 (b) Easements obtained by utilities or private easements in
34 platted subdivisions or tracts;

35 (c) Railroad rights-of-way and ground utilized or acquired
36 for railroad facilities; or

37 (d) [Poles,] Pipes, cables, conduits, wires, optical

1 cables, or other means of transmission, collection or exchange of
2 communications, information, substances, data, or electronic or
3 electrical current or impulses utilized by a municipally owned or
4 operated utility pursuant to chapter 91 or pursuant to a charter
5 form of government;

6 (9) "Public utility", every cable television service
7 provider, every pipeline corporation, gas corporation, electrical
8 corporation, rural electric cooperative, telecommunications
9 company, water corporation, heating or refrigerating corporation
10 or sewer corporation under the jurisdiction of the public service
11 commission; every municipally owned or operated utility pursuant
12 to chapter 91 or pursuant to a charter form of government or
13 cooperatively owned or operated utility pursuant to chapter 394;
14 every street light maintenance district; every privately owned
15 utility; and every other entity, regardless of its form of
16 organization or governance, whether for profit or not, which in
17 providing a public utility type of service for members of the
18 general public, utilizes pipes, cables, conduits, wires, optical
19 cables, or other means of transmission, collection or exchange of
20 communications, information, substances, data, or electronic or
21 electrical current or impulses, in the collection, exchange or
22 dissemination of its product or services through the public
23 rights-of-way;

24 (10) "Public utility right-of-way user", a public utility
25 owning or controlling a facility in the public right-of-way; and

26 (11) "Right-of-way permit", a permit issued by a political
27 subdivision authorizing the performance of excavation work in a
28 public right-of-way.

29 67.1836. 1. A political subdivision may deny an
30 application for a right-of-way permit if:

31 (1) The public utility right-of-way user fails to provide
32 all the necessary information requested by the political
33 subdivision for managing the public right-of-way;

34 (2) The public utility right-of-way user has failed to
35 return the public right-of-way to its previous condition under a
36 previous permit;

37 (3) The political subdivision has provided the public

1 utility right-of-way user with a reasonable, competitively
2 neutral, and nondiscriminatory justification for requiring an
3 alternative method for performing the work identified in the
4 permit application or a reasonable alternative route that will
5 result in neither additional installation expense up to ten
6 percent to the public utility right-of-way user nor a declination
7 of service quality;

8 (4) The political subdivision determines that the denial is
9 necessary to protect the public health and safety, provided that
10 the authority of the political subdivision does not extend to
11 those items under the jurisdiction of the public service
12 commission, such denial shall not interfere with a public
13 utility's right of eminent domain of private property, and such
14 denials shall only be imposed on a competitively neutral and
15 nondiscriminatory basis; or

16 (5) The area is environmentally sensitive as defined by
17 state statute or federal law or is a historic district as defined
18 by local ordinance.

19 2. A political subdivision may, after reasonable notice and
20 an opportunity to cure, revoke a right-of-way permit granted to a
21 public utility right-of-way user, with or without fee refund,
22 and/or impose a penalty as established by the political
23 subdivision until the breach is cured, but only in the event of a
24 substantial breach of the terms and material conditions of the
25 permit. A substantial breach by a permittee includes but is not
26 limited to:

27 (1) A material violation of a provision of the right-of-way
28 permit;

29 (2) An evasion or attempt to evade any material provision
30 of the right-of-way permit, or the perpetration or attempt to
31 perpetrate any fraud or deceit upon the political subdivision or
32 its citizens;

33 (3) A material misrepresentation of fact in the
34 right-of-way permit application;

35 (4) A failure to complete work by the date specified in the
36 right-of-way permit, unless a permit extension is obtained or
37 unless the failure to complete the work is due to reasons beyond

1 the permittee's control; and

2 (5) A failure to correct, within the time specified by the
3 political subdivision, work that does not conform to applicable
4 national safety codes, industry construction standards, or local
5 safety codes that are no more stringent than national safety
6 codes, upon inspection and notification by the political
7 subdivision of the faulty condition.

8 3. Any political subdivision that requires public utility
9 right-of-way users to obtain a right-of-way permit, except in an
10 emergency, prior to performing excavation work within a public
11 right-of-way shall promptly, but not longer than thirty-one days,
12 process all completed permit applications. If a political
13 subdivision fails to act on an application for a right-of-way
14 permit within thirty-one days, the application shall be deemed
15 approved. In order to avoid excessive processing and accounting
16 costs to either the political subdivision or the public utility
17 right-of-way user, the political subdivision may establish
18 procedures for bulk processing of permits and periodic payment of
19 permit fees.

20 67.1838. [1.] A public utility right-of-way user that has
21 been denied a right-of-way permit, has had its right-of-way
22 permit revoked, believes that the fees imposed on the public
23 right-of-way user by the political subdivision do not conform to
24 the requirements of section 67.1840, believes the political
25 subdivision has violated any provision of sections 67.1830 to
26 67.1848, or asserts any other issues related to the use of the
27 public right-of-way, [shall have, upon written request, such
28 denials, revocations, fee impositions, or other disputes reviewed
29 by the governing body of the political subdivision or an entity
30 assigned by the governing body for this purpose. The governing
31 body of the political subdivision or its delegated entity shall
32 specify, in its permit processing schedules, the maximum number
33 of days by which the review request shall be filed in order to be
34 reviewed by the governing body of the political subdivision or
35 its delegated entity. A decision affirming the denial,
36 revocation, fee imposition or dispute resolution shall be in
37 writing and supported by written findings establishing the

1 reasonableness of the decision.

2 2. Upon affirmation by the governing body of the denial,
3 revocation, fee imposition or dispute resolution, the public
4 utility right-of-way user may, in addition to all other remedies
5 and if both parties agree, have the right to have the matter
6 resolved by mediation or binding arbitration. Binding
7 arbitration shall be before an arbitrator agreed to by both the
8 political subdivision and the public utility right-of-way user.
9 The costs and fees of a single arbitrator shall be borne equally
10 by the political subdivision and the public utility right-of-way
11 user.

12 3. If the parties cannot agree on an arbitrator, the matter
13 shall be resolved by a three-person arbitration panel consisting
14 of one arbitrator selected by the political subdivision, one
15 arbitrator selected by the public utility right-of-way user, and
16 one person selected by the other two arbitrators. In the event
17 that a three-person arbitrator panel is necessary, each party
18 shall bear the expense of its own arbitrator and shall jointly
19 and equally bear with the other party the expense of the third
20 arbitrator and of the arbitration.

21 4. Each party to the arbitration shall pay its own costs,
22 disbursements and attorney fees] may bring an action for review
23 in any court of competent jurisdiction. The court shall rule on
24 any such petition for review within forty-five days of service.
25 The petition for review shall be deemed granted if the court
26 fails to rule within the forty-five-day time period.

27 67.1842. 1. In managing the public right-of-way and in
28 imposing fees pursuant to sections 67.1830 to 67.1846, no
29 political subdivision shall:

30 (1) Unlawfully discriminate among public utility
31 right-of-way users;

32 (2) Grant a preference to any public utility right-of-way
33 user;

34 (3) Create or erect any unreasonable requirement for entry
35 to the public right-of-way by public utility right-of-way users;

36 (4) Require a telecommunications company to obtain a
37 franchise or require a public utility right-of-way user to pay

1 for the use of the public right-of-way, except as provided in
2 sections 67.1830 to 67.1846; [or]

3 (5) Enter into a contract or any other agreement for
4 providing for an exclusive use, occupancy or access to any public
5 right-of-way; or

6 (6) Require any public utility that has legally been
7 granted access to the political subdivision's right-of-way prior
8 to August 28, 2001, to enter into an agreement or obtain a permit
9 for general access to or the right to remain in the right-of-way
10 of the political subdivision.

11 2. A public utility right-of-way user shall not be required
12 to apply for or obtain right-of-way permits for projects
13 commenced prior to August 28, 2001, requiring excavation within
14 the public right-of-way, for which the user has obtained the
15 required consent of the political subdivision, or that are
16 otherwise lawfully occupying or performing work within the public
17 right-of-way. The public utility right-of-way user may be
18 required to obtain right-of-way permits prior to any excavation
19 work performed within the public right-of-way after August 28,
20 2001.

21 3. A political subdivision shall not collect a fee imposed
22 pursuant to section 67.1840 through the provision of in-kind
23 services by a public utility right-of-way user, nor require the
24 provision of in-kind services as a condition of consent to use
25 the political subdivision's public right-of-way; however, nothing
26 in this subsection shall preclude requiring services of a cable
27 television operator, open video system provider or other video
28 programming provider as permitted by federal law."; and
29

30 Further amend said bill, Page 2, Section 67.5092, Line 42,
31 by inserting after the word "codes," the words "National Electric
32 Safety Codes, and recognized industry standards for structural
33 safety, capacity, reliability, and engineering,"; and
34

35 Further amend said bill, Page 3, Section 67.5092, Line 65,
36 by inserting after the word "county," the words "municipality,
37 municipal utility board,"; and

1 Further amend said bill, Page 3, Section 67.5092, Line 66,
2 by inserting after the word "electric," the words "natural gas,
3 water, waste water,"; and
4

5 Further amend said bill, Page 3, Section 67.5092, Line 67,
6 by inserting after the word "telecommunications" the words "or
7 internet protocol-related"; and
8

9 Further amend said bill, Page 3, Section 67.5092, Lines 74
10 to 80, by deleting all of said lines and inserting in lieu
11 thereof the following:

12 "(17) "Wireless facility", the set of equipment and network
13 components, exclusive of the underlying wireless support
14 structure, including, but not limited to, antennas, accessory
15 equipment, transmitters, receivers, power supplies, cabling and
16 associated equipment necessary to provide wireless communications
17 services;

18 (18) "Wireless support structure", a structure, such as a
19 monopole, tower, or building capable of supporting wireless
20 facilities. This definition does not include utility poles."
21 and
22

23 Further amend said bill, Page 4, Section 67.5094, Line 17,
24 by deleting "FCC's" and inserting in lieu thereof "Federal
25 Communication Commission's"; and
26

27 Further amend said bill, Page 5, Section 67.5094, Line 56,
28 by deleting the word "unreasonable"; and
29

30 Further amend said bill, Page 5, Section 67.5094, Line 59,
31 by inserting after the word "facilities" the words "if such
32 regulations or obligations are unreasonable"; and
33

34 Further amend said bill, Page 6, Section 67.5096, Line 3, by
35 deleting the words "this act" and inserting in lieu thereof
36 "sections 67.5090 to 67.5104"; and
37

1 Further amend said bill, Page 6, Section 67.5096, Line 4, by
2 deleting the word "hereof"; and

3
4 Further amend said bill, Page 6, Section 67.5096, Line 7, by
5 deleting the words "this act" and inserting in lieu thereof
6 "sections 67.5090 to 67.5104"; and

7
8 Further amend said bill, Page 6, Section 67.5096, Lines 13
9 and 14, by deleting all of said lines and inserting in lieu
10 thereof the following: "including but not limited to documents
11 and electronic data, shall be subject to chapter 610."; and

12
13 Further amend said bill, Page 6, Section 67.5096, Line 15,
14 by deleting the words "one hundred fifty" and inserting in lieu
15 thereof the word "ninety"; and

16
17 Further amend said bill, Page 6, Section 67.5096, Line 25,
18 by deleting the words "one hundred fifty" and inserting in lieu
19 thereof the word "ninety"; and

20
21 Further amend said bill, Page 6, Section 67.5096, Line 27,
22 by deleting the words "one hundred fifty" and inserting in lieu
23 thereof the word "ninety"; and

24
25 Further amend said bill, Page 6, Section 67.5096, Line 32,
26 by deleting the words "one hundred fifty" and inserting in lieu
27 thereof the word "ninety"; and

28
29 Further amend said bill, Page 7, Section 67.5098, Lines 3
30 and 4, by deleting all of said lines and inserting in lieu
31 thereof the following: "substantial modifications of wireless
32 support structures, subject to the provisions of sections 67.5090
33 to 67.5104, including without limitation section 67.5094, and
34 subject to federal law."; and

35
36 Further amend said bill, Page 7, Section 67.5098, Lines 13
37 and 14, by deleting all of said lines and inserting in lieu

1 thereof the following: "including but not limited to documents
2 and electronic data, shall be subject to chapter 610."; and

3
4 Further amend said bill, Page 8, Section 67.5100, Line 1, by
5 deleting the words "this act," and inserting in lieu thereof
6 "sections 67.5090 to 67.5104, including section 67.5094,"; and

7
8 Further amend said bill, Page 8, Section 67.5100, Line 3, by
9 inserting after the word "requirements," the words "National
10 Electric Safety Codes, and recognized industry standards for
11 structural safety, capacity, reliability, and engineering,"; and

12
13 Further amend said bill, Page 8, Section 67.5100, Line 7, by
14 inserting after the word "application" the words "or application
15 for replacement of wireless facilities"; and

16
17 Further amend said bill, Page 8, Section 67.5100, Line 10,
18 by deleting the words "this act" and inserting in lieu thereof
19 "sections 67.5090 to 67.5104"; and

20
21 Further amend said bill, Page 8, Section 67.5100, Line 22,
22 by deleting the word "facilities" and inserting in lieu thereof
23 the word "facilities"; and

24
25 Further amend said bill, Page 8, Section 67.5100, Line 27,
26 by deleting all of said line and inserting in lieu thereof the
27 following:

28 "4. Except as provided in section 67.5104, the provisions
29 of sections 67.5090 to 67.5104 shall not:"; and

30
31 Further amend said bill, Page 8, Section 67.5100, Line 28,
32 by deleting "(a)" and inserting in lieu thereof "(1)"; and

33
34 Further amend said bill, Page 8, Section 67.5100, Line 30,
35 by deleting all of said line and inserting in lieu thereof the
36 following: "wireless facility on new, existing, or replacement
37 poles owned or operated by a utility;"; and

1 Further amend said bill, Page 8, Section 67.5100, Line 31,
2 by deleting all of said line and inserting in lieu thereof the
3 following:

4 "(2) Expand the power of an authority to regulate any
5 utility; or

6 (3) Restrict any utility's rights or authority, or negate
7 any utility's agreement, regarding requested access to, or the
8 rates and terms applicable to placement of any wireless facility
9 on new, existing, or replacement poles, structures, or existing
10 structures owned or operated by a utility."; and
11

12 Further amend said bill, Page 9, Section 67.5102, Line 5, by
13 deleting all of said line and inserting in lieu thereof the
14 following: "wireless support structures, or collocations if such
15 moratorium exceeds six months in length and if the legislative
16 act establishing it fails to state reasonable grounds and good
17 cause for such moratorium. No such moratorium shall affect an
18 already pending application;"; and
19

20 Further amend said bill, Page 9, Section 67.5102, Line 14,
21 by inserting after the word "appraisers" the words "licensed
22 under chapter 339"; and
23

24 Further amend said bill, Page 9, Section 67.5102, Line 22,
25 by deleting the words "one hundred fifty" and inserting in lieu
26 thereof the word "ninety"; and
27

28 Further amend said bill, Page 9, Section 67.5102, Line 31,
29 by deleting "." and inserting in lieu thereof ";"; and
30

31 Further amend said bill, Page 9, Section 67.5102, Line 35,
32 by inserting after all of said line the following:

33 "67.5103. Notwithstanding any provision of sections 67.5090
34 to 67.5102, nothing herein shall provide any applicant the power
35 of eminent domain or the right to compel any private or public
36 property owner, or the department of conservation or department
37 of natural resources to:

1 (1) Lease or sell property for the construction of a new
2 wireless support structure; or

3 (2) Locate or cause the collocation of a wireless facility
4 on any existing structure or wireless support structure."; and
5

6 Further amend said bill, Page 9, Section 67.5104, Lines 1 to
7 3, by deleting all of said lines and inserting in lieu thereof
8 the following:

9 "67.5104. Any pole attachment rates, terms, and conditions,
10 including those related to the granting or denial of access,
11 demanding by a municipal utility pole owner or controlling
12 authority of a municipality shall be nondiscriminatory, just and
13 reasonable and shall not be subject to any required franchise
14 authority or government entity permitting. An annual pole
15 attachment rental rate shall be calculated on a per pole basis
16 and shall be considered just and reasonable"; and
17

18 Further amend said bill, Page 10, Section 67.5104, Line 6,
19 by deleting the word "any" and inserting in lieu thereof the word
20 "an"; and
21

22 Further amend said bill, Page 10, Section 67.5104, Line 7,
23 by deleting all of said line and inserting in lieu thereof the
24 following: "provider, or by a telecommunications, wireless
25 communications or other communications-related service provider
26 or municipal utility pole owner, to a pole. A service provider
27 may seek review of any rate, term, or"; and
28

29 Further amend said bill, Page 10, Section 67.5104, Line 8 by
30 deleting the word "district" and inserting in lieu thereof the
31 word "circuit"; and
32

33 Further amend said bill, Page 10, Section 67.5104, Line 8,
34 by inserting after the word "court" the following: "if that
35 entity believes the rates, terms, and conditions are not fair,
36 just, and reasonable"; and
37

1 Further amend said bill, Page 10, Section 67.5104, Line 8,
2 by inserting after all of said line the following:

3 "389.585. 1. As used in sections 389.585 to 389.591, the
4 following terms mean:

5 (1) "Crossing", the construction, operation, repair, or
6 maintenance of a facility over, under, or across a railroad
7 right-of-way by a utility when the right-of-way is owned by a
8 land management company and not a registered rail carrier;

9 (2) "Direct expenses", includes, but is not limited to, any
10 or all of the following:

11 (a) The cost of inspecting and monitoring the crossing
12 site;

13 (b) Administrative and engineering costs for review of
14 specifications and for entering a crossing on the railroad's
15 books, maps, and property records and other reasonable
16 administrative and engineering costs incurred as a result of the
17 crossing;

18 (c) Document and preparation fees associated with a
19 crossing and any engineering specifications related to the
20 crossing;

21 (d) Damages assessed in connection with the rights granted
22 to a utility with respect to a crossing;

23 (3) "Facility", any cable, conduit, wire, pipe, casing
24 pipe, supporting poles and guys, manhole, or other material or
25 equipment that is used by a utility to furnish any of the
26 following:

27 (a) Communications, communications-related, wireless
28 communications, video, or information services;

29 (b) Electricity;

30 (c) Gas by piped system;

31 (d) Petroleum or petroleum products by piped system;

32 (e) Sanitary and storm sewer service;

33 (f) Water by piped system;

34 (4) "Land management company", an entity that is the owner,
35 manager, or agent of a railroad right-of-way and is not a
36 registered rail carrier;

37 (5) "Railroad" or "railroad corporation", a railroad

1 corporation organized and operating under chapter 388, or any
2 other corporation, trustees of a railroad corporation, company,
3 affiliate, association, joint stock association or company, firm,
4 partnership, or individual, which is an owner, operator,
5 occupant, lessee, manager, or railroad right-of-way agent, or the
6 railroad or railroad corporation's successor in interest;

7 (6) "Railroad right-of-way", includes one or more of the
8 following:

9 (a) A right-of-way or other interest in real estate that is
10 owned or operated by a land management company and not a
11 registered rail carrier;

12 (b) Any other interest in a former railroad right-of-way
13 that has been acquired or is operated by a land management
14 company or similar entity;

15 (7) "Special circumstances", includes either or both of the
16 following:

17 (a) The characteristics of a segment of a railroad
18 right-of-way not found in a typical segment of a railroad
19 right-of-way that enhance the value or increase the damages or
20 the engineering or construction expenses for the land management
21 company associated with a proposed crossing, or to the current or
22 reasonably anticipated use by a land management company of the
23 railroad right-of-way, necessitating additional terms and
24 conditions or compensation associated with a crossing;

25 (b) Variances from the standard specifications requested by
26 the land management company;

27
28 "Special circumstances" may include, but is not limited to, the
29 railroad right-of-way segment's relationship to other property,
30 location in urban or other developed areas, the existence of
31 unique topography or natural resources, or other characteristics
32 or dangers inherent in the particular crossing or segment of the
33 railroad right-of-way;

34 (8) "Telecommunications service", the transmission of
35 information by wire, radio, optical cable, electronic impulses,
36 or other similar means. As used in this definition,
37 "information" means knowledge or intelligence represented by any

1 form of writing, signs, signals, pictures, sounds, or any other
2 symbols;

3 (9) "Utility", shall include:

4 (a) Any public utility subject to the jurisdiction of the
5 public service commission;

6 (b) Providers of telecommunications service, wireless
7 communications, or other communications-related service;

8 (c) Any electrical corporation which is required by its
9 bylaws to operate on the not-for-profit cooperative business
10 plan, with its consumers who receive service as the stockholders
11 of such corporation, and which holds a certificate of public
12 convenience and necessity to serve a majority of its customer-
13 owners in counties of the third classification as of August 28,
14 2003;

15 (d) Any rural electric cooperative; and

16 (e) Any municipally owned utility.

17 389.586. 1. After thirty days from the mailing of the
18 notice, completing the engineering specifications, and payment of
19 the fee, the utility, absent a claim of special circumstances,
20 shall be deemed to have authorization to commence the crossing
21 activity.

22 2. The land management company and the utility shall
23 maintain and repair its own property within the railroad
24 right-of-way and bear responsibility for its own acts and
25 omissions, except that the utility shall be responsible for any
26 bodily injury or property damage that typically would be covered
27 under a standard railroad protective liability insurance policy.

28 3. A utility shall have immediate access to a crossing for
29 repair and maintenance of existing facilities in case of
30 emergency.

31 4. Applicable engineering standards shall be complied with
32 for utility facilities crossing railroad rights-of-way.

33 5. The utility shall be provided an expedited crossing,
34 absent a claim of special circumstances, after payment by the
35 utility of the standard crossing fee, if applicable, and
36 submission of completed engineering specifications to the land
37 management company. The engineering specifications shall address

1 the applicable clearance requirements as established by the
2 National Electrical Safety Code.

3 6. The utility and the land management company may agree to
4 other terms and conditions necessary to provide for reasonable
5 use of a railroad right-of-way by a utility.

6 389.587. Unless otherwise agreed by the parties and subject
7 to section 389.588, a utility that locates its facilities within
8 the railroad right-of-way for a crossing, other than a crossing
9 along a state highway or other public road, shall pay the land
10 management company a one-time standard crossing fee of one
11 thousand five hundred dollars for each crossing plus the costs
12 associated with modifications to existing insurance contracts of
13 the utility and the land management company. The standard
14 crossing fee shall be in lieu of any license, permit,
15 application, plan review, or any other fees or charges to
16 reimburse the land management company for the direct expenses
17 incurred by the land management company as a result of the
18 crossing. The utility shall also reimburse the land management
19 company for any actual flagging expenses associated with a
20 crossing in addition to the standard crossing fee. Nothing in
21 this section is intended to restrict or otherwise limit any
22 authority or right a utility may have to locate facilities at a
23 crossing along a state highway or any other public road or to
24 otherwise enter upon lands where authorized by law.

25 389.588. 1. Notwithstanding the provisions of section
26 389.586, nothing shall prevent a land management company and a
27 utility from otherwise negotiating the terms and conditions
28 applicable to a crossing or the resolution of any disputes
29 relating to the crossing.

30 2. Notwithstanding subsection 1 of this section, the
31 provisions of this section shall not impair the authority of a
32 utility to secure crossing rights by easement pursuant to the
33 exercise of the power of eminent domain.

34 389.589. 1. If the parties cannot agree that special
35 circumstances exist, the dispute shall be submitted to nonbinding
36 arbitration. Any party proposing informal arbitration shall
37 serve an arbitration notice detailing a description of the

1 dispute, including, without limitation, the position and proposed
2 resolution of the party requesting arbitration and shall name one
3 arbitrator chosen by that party. Within twenty days after
4 receipt of an arbitration notice, the receiving party shall serve
5 a written notice on the other party containing a detailed
6 response to the claim giving the position and proposed resolution
7 of the receiving party, and an acceptance of the arbitrator
8 designated in the arbitration notice or rejection of same and
9 suggestion of no less than two other alternatives. The informal
10 arbitration shall be decided by a single arbitrator. In the
11 event that the parties do not agree on the selection of an
12 arbitrator within seven business days after service of the reply
13 notice, either party may apply to the American Arbitration
14 Association for the purpose of appointing an independent
15 arbitrator. To the extent practicable, the arbitrator shall be a
16 person with expertise in the principal areas of dispute.

17 2. A conference shall be commenced by the arbitrator within
18 fifteen calendar days after the appointment of the arbitrator and
19 a recommendation regarding the matter submitted shall be rendered
20 within ten business days after the conference or as soon as
21 practicable thereafter. During the thirty calendar days
22 following the filing of the arbitration notice, the parties shall
23 meet and confer to attempt to resolve the dispute. The decision
24 of the arbitrator and the rationale for its decision shall be in
25 writing and signed by the arbitrator; provided, however, that
26 such written recommendation shall have no evidentiary value and
27 shall not be deemed to set forth any findings of fact for
28 purposes of any future proceedings. Except as otherwise provided
29 in this section, the informal arbitration shall be held in
30 accordance with the rules and procedures of the American
31 Arbitration Association. Each party shall bear its own expenses,
32 including, without limitation, legal and accounting fees, and the
33 cost of the arbitrator shall be shared equally by each party.
34 The parties may or may not elect to abide by the decision of the
35 arbitrator.

36 3. If the parties cannot resolve their dispute based on the
37 arbitrator's recommendation within thirty days, either party may,

1 upon the expiration of the thirty-day period, give written notice
2 to the other party of the commencement of a binding arbitration
3 proceeding in accordance with the commercial rules of Arbitration
4 in the American Arbitration Association. Any decision by the
5 board of arbitration shall be final, binding, and conclusive as
6 to the parties. Nothing provided in this section shall prevent
7 either party from submission of disputes to the court, limited to
8 requests for injunctive or equitable relief in advance of a
9 breach or threatened breach of this agreement, if necessary to
10 prevent serious and irreparable injury to such party or the
11 public and if such injury cannot be appropriately addressed by
12 informal or formal arbitration.

13 4. If the dispute over special circumstances concerns only
14 the compensation associated with a crossing, then the utility may
15 proceed with installation of the crossing during the pendency of
16 the arbitration.

17 389.591. 1. Notwithstanding any provision of law to the
18 contrary, sections 389.585 to 389.591 shall apply in all
19 crossings of railroad rights-of-way involving a land management
20 company and a utility and shall govern in the event of any
21 conflict with any other provision of law.

22 2. The provisions of sections 389.585 to 389.591 shall
23 apply to a crossing commenced prior to August 28, 2013, if an
24 agreement concerning the crossing has expired or is terminated
25 and to a crossing commenced on or after August 28, 2013."; and
26

27 Further amend said title, enacting clause and intersectional
28 references accordingly.