

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for House Bill 345, Page 10, Section 67.5104, Line 8, by
2 inserting after all of said line the following:

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

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

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

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

10 (b) Administrative and engineering costs for review of specifications and for entering a
11 crossing on the railroad's books, maps, and property records and other reasonable administrative and
12 engineering costs incurred as a result of the crossing;

13 (c) Document and preparation fees associated with a crossing and any engineering
14 specifications related to the crossing;

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

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

19 (a) Communications, communications-related, wireless communications, video, or
20 information services;

21 (b) Electricity;

22 (c) Gas by piped system;

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

24 (e) Sanitary and storm sewer service;

25 (f) Water by piped system;

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

28 (5) "Railroad" or "railroad corporation", a railroad corporation organized and operating
29 under chapter 388, or any other corporation, trustees of a railroad corporation, company, affiliate,
30 association, joint stock association or company, firm, partnership, or individual, which is an owner,
31 operator, occupant, lessee, manager, or railroad right-of-way agent, or the railroad or railroad
32 corporation's successor in interest;

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

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

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

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

7 (a) The characteristics of a segment of a railroad right-of-way not found in a typical segment
 8 of a railroad right-of-way that enhance the value or increase the damages or the engineering or
 9 construction expenses for the land management company associated with a proposed crossing, or to
 10 the current or reasonably anticipated use by a land management company of the railroad
 11 right-of-way, necessitating additional terms and conditions or compensation associated with a
 12 crossing;

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

14
 15 "Special circumstances" may include, but is not limited to, the railroad right-of-way segment's
 16 relationship to other property, location in urban or other developed areas, the existence of unique
 17 topography or natural resources, or other characteristics or dangers inherent in the particular crossing
 18 or segment of the railroad right-of-way;

19 (8) "Telecommunications service", the transmission of information by wire, radio, optical
 20 cable, electronic impulses, or other similar means. As used in this definition, "information" means
 21 knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any
 22 other symbols;

23 (9) "Utility", shall include:

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

25 (b) Providers of telecommunications service, wireless communications, or other
 26 communications-related service;

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

31 (d) Any rural electric cooperative; and

32 (e) Any municipally owned utility.

33 389.586. 1. After thirty days from the mailing of the notice, completing the engineering
 34 specifications, and payment of the fee, the utility, absent a claim of special circumstances, shall be
 35 deemed to have authorization to commence the crossing activity.

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

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

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

3 5. The utility shall be provided an expedited crossing, absent a claim of special
4 circumstances, after payment by the utility of the standard crossing fee, if applicable, and submission
5 of completed engineering specifications to the land management company. The engineering
6 specifications shall address the applicable clearance requirements as established by the National
7 Electrical Safety Code.

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

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

22 389.588. 1. Notwithstanding the provisions of section 389.586, nothing shall prevent a land
23 management company and a utility from otherwise negotiating the terms and conditions applicable
24 to a crossing or the resolution of any disputes relating to the crossing.

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

28 389.589. 1. If the parties cannot agree that special circumstances exist, the dispute shall be
29 submitted to nonbinding arbitration. Any party proposing informal arbitration shall serve an
30 arbitration notice detailing a description of the dispute, including, without limitation, the position
31 and proposed resolution of the party requesting arbitration and shall name one arbitrator chosen by
32 that party. Within twenty days after receipt of an arbitration notice, the receiving party shall serve a
33 written notice on the other party containing a detailed response to the claim giving the position and
34 proposed resolution of the receiving party, and an acceptance of the arbitrator designated in the
35 arbitration notice or rejection of same and suggestion of no less than two other alternatives. The
36 informal arbitration shall be decided by a single arbitrator. In the event that the parties do not agree
37 on the selection of an arbitrator within seven business days after service of the reply notice, either
38 party may apply to the American Arbitration Association for the purpose of appointing an
39 independent arbitrator. To the extent practicable, the arbitrator shall be a person with expertise in the
40 principal areas of dispute.

41 2. A conference shall be commenced by the arbitrator within fifteen calendar days after the

1 appointment of the arbitrator and a recommendation regarding the matter submitted shall be
2 rendered within ten business days after the conference or as soon as practicable thereafter. During
3 the thirty calendar days following the filing of the arbitration notice, the parties shall meet and confer
4 to attempt to resolve the dispute. The decision of the arbitrator and the rationale for its decision shall
5 be in writing and signed by the arbitrator; provided, however, that such written recommendation
6 shall have no evidentiary value and shall not be deemed to set forth any findings of fact for purposes
7 of any future proceedings. Except as otherwise provided in this section, the informal arbitration
8 shall be held in accordance with the rules and procedures of the American Arbitration Association.
9 Each party shall bear its own expenses, including, without limitation, legal and accounting fees, and
10 the cost of the arbitrator shall be shared equally by each party. The parties may or may not elect to
11 abide by the decision of the arbitrator.

12 3. If the parties cannot resolve their dispute based on the arbitrator's recommendation within
13 thirty days, either party may, upon the expiration of the thirty-day period, give written notice to the
14 other party of the commencement of a binding arbitration proceeding in accordance with the
15 commercial rules of Arbitration in the American Arbitration Association. Any decision by the board
16 of arbitration shall be final, binding, and conclusive as to the parties. Nothing provided in this
17 section shall prevent either party from submission of disputes to the court, limited to requests for
18 injunctive or equitable relief in advance of a breach or threatened breach of this agreement, if
19 necessary to prevent serious and irreparable injury to such party or the public and if such injury
20 cannot be appropriately addressed by informal or formal arbitration.

21 4. If the dispute over special circumstances concerns only the compensation associated with
22 a crossing, then the utility may proceed with installation of the crossing during the pendency of the
23 arbitration.

24 389.591. 1. Notwithstanding any provision of law to the contrary, sections 389.585 to
25 389.591 shall apply in all crossings of railroad rights-of-way involving a land management company
26 and a utility and shall govern in the event of any conflict with any other provision of law.

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

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31 Further amend said bill by amending the title, enacting clause, and intersectional references
32 accordingly.