

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1305

97TH GENERAL ASSEMBLY

Reported from the Committee on Transportation and Infrastructure, May 14, 2014, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

5117S.02C

AN ACT

To repeal sections 389.585, 389.586, 389.587, 389.588, 389.589, and 389.591, RSMo, and to enact in lieu thereof one new section relating to railroads.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 389.585, 389.586, 389.587, 389.588, 389.589, and
2 389.591, RSMo, are repealed and one new section enacted in lieu thereof, to be
3 known as section 389.065, to read as follows:

**389.065. An engineer, conductor, brakeman, or any other member
2 of the crew of a locomotive or train being operated upon rails,
3 including operation on a railroad crossing over a public street, road,
4 or highway, shall not be required to display a driver's license to any
5 law enforcement officer in connection with the operation of a
6 locomotive or train within this state.**

[389.585. As used in sections 389.585 to 389.591, the
2 following terms mean:

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

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

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

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

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

13 and engineering costs incurred as a result of the crossing;

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

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

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

21 (a) Communications, communications-related, wireless
22 communications, video, or information services;

23 (b) Electricity;

24 (c) Gas by piped system;

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

26 (e) Sanitary and storm sewer service;

27 (f) Water by piped system;

28 (4) "Land management company", an entity that owns,
29 leases, holds by easement, holds by adverse possession or otherwise
30 possesses a corridor which is used for rail transportation purposes
31 and is not a railroad or railroad corporation;

32 (5) "Land management corridor", includes one or more of
33 the following:

34 (a) A right-of-way or other interest in real estate that is
35 owned, leased, held by easement, held by adverse possession or
36 otherwise possessed by a land management company and not a
37 railroad or railroad corporation; and which is used for rail
38 transportation purposes. "Land management corridor" does not
39 include yards, terminals or stations. "Land management corridor"
40 also does not include railroad tracks or lines which have been
41 legally abandoned;

42 (b) Any other interest in a right-of-way formerly owned by
43 a railroad or railroad corporation that has been acquired by a land
44 management company or similar entity and which is used for rail
45 transportation purposes;

46 (6) "Notice", a written description of the proposed
47 project. Such notice shall include, at a minimum: a description of
48 the proposed crossing including blueprints or plats, print copies of

the engineering specifications for the crossing, a proposed time line for the commencement and completion of work at the crossing, a narrative description of the work to be performed at the crossing, proof of insurance for the work to be done and other reasonable requirements necessary for the processing of an application;

(7) "Railroad" or "railroad corporation", a railroad corporation organized and operating under chapter 388, or any other corporation, trustees of a railroad corporation, company, affiliate, association, joint stock association or company, firm, partnership, or individual, which is an owner, operator, occupant, lessee, manager, or railroad right-of-way agent acting on behalf of a railroad or railroad corporation;

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

(a) A right-of-way or other interest in real estate that is owned or operated by a land management company and not a railroad or railroad corporation;

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

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

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

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

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

85 inherent in the particular crossing or segment of the railroad
86 right-of-way;

87 (10) "Telecommunications service", the transmission of
88 information by wire, radio, optical cable, electronic impulses, or
89 other similar means. As used in this definition, "information"
90 means knowledge or intelligence represented by any form of
91 writing, signs, signals, pictures, sounds, or any other symbols;

92 (11) "Utility", shall include:

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

95 (b) Providers of telecommunications service, wireless
96 communications, or other communications-related service;

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

103 (d) Any rural electric cooperative; and

104 (e) Any municipally owned utility.]

[389.586. 1. After the land management company receives
2 a copy of the notice from the utility, the land management company
3 shall send a complete copy of that notice, by certified mail or by
4 private delivery service which requires a return receipt, to the
5 railroad or railroad corporation within two business days. No
6 utility may commence a crossing until the railroad or railroad
7 corporation has approved the crossing. The railroad or railroad
8 corporation shall have thirty days from the receipt of the notice to
9 review and approve or reject the proposed crossing. The railroad
10 or railroad corporation shall reject a proposed crossing only if
11 special circumstances exist. If the railroad or railroad corporation
12 rejects a proposed crossing, the utility may submit an amended
13 proposal for a crossing. The railroad or railroad corporation shall
14 have an additional thirty days from receipt of the amended
15 proposal to review and approve or reject the amended crossing
16 proposal. The railroad or railroad corporation shall not

unreasonably withhold approval. Once the railroad or railroad corporation grants such approval, and upon payment of the fee and any other payments authorized pursuant to sections 389.586 or 389.587, the utility shall be deemed to have authorization to commence the crossing activity. The utility shall provide the railroad or railroad corporation with written notification of the commencement of the crossing activity before beginning such activity.

2. The land management company and the utility shall maintain and repair its own property within the land management corridor and each shall bear responsibility for its own acts and omissions, except that the utility shall be responsible for any bodily injury or property damage arising from the installation, maintenance, repair and its use of the crossing. The railroad or railroad corporation may require the utility and the land management company to obtain reasonable amounts of comprehensive general liability insurance and railroad protective liability insurance coverage for a crossing, and that this insurance coverage name the railroad or railroad corporation as an insured. Further, the land management company and the utility shall provide the railroad or railroad corporation with proof that they have liability insurance coverage which meets such requirements, if any.

3. A utility shall have immediate access to a crossing for repair and maintenance of existing facilities in case of an immediate threat to life and upon notification to the applicable railroad or railroad corporation. Before commencing any such work, the utility must first contact the railroad or railroad corporation's dispatch center, command center or other facility which is designated to receive emergency communications.

4. The utility shall be provided a crossing, absent a claim of special circumstances, after payment by the utility of the standard crossing fee, submission of completed engineering specifications to the land management company, and approval of the crossing by the railroad or railroad corporation. The engineering specifications shall comply with the clearance

53 requirements as established by the National Electrical Safety Code,
54 the American Railway Engineering and Maintenance of Way
55 Association and the standards of the applicable railroad or railroad
56 corporation which are in effect and which apply to conditions at a
57 particular crossing. The land management company and utility
58 shall further be responsible for any modifications, upgrades or
59 other changes which may be needed to comply with changes in said
60 standards.

61 5. The utility, the railroad or railroad corporation, and the
62 land management company shall agree to such other terms and
63 conditions as may be necessary to provide for reasonable use of a
64 land management corridor by a utility.]

[389.587. Unless otherwise agreed by the parties and
2 subject to section 389.588, a utility that locates its facilities within
3 the railroad right-of-way for a crossing, other than a crossing along
4 a state highway or other public road, shall pay the land
5 management company a one-time standard crossing fee of one
6 thousand five hundred dollars for each crossing plus the costs
7 associated with modifications to existing insurance contracts of the
8 land management company. The standard crossing fee shall be in
9 lieu of any license, permit, application, plan review, or any other
10 fees or charges to reimburse the land management company for the
11 direct expenses incurred by the land management company as a
12 result of the crossing. The utility shall also reimburse the land
13 management company for any actual flagging expenses associated
14 with a crossing in addition to the standard crossing fee. The
15 railroad or railroad corporation has the right to halt work at the
16 crossing if the flagging does not meet the standards of the railroad
17 or railroad corporation. Nothing in this section is intended to
18 otherwise restrict or limit any authority or right a utility may have
19 to locate facilities at a crossing along a state highway or any other
20 public road or to otherwise enter upon lands where authorized by
21 law.]

[389.588. 1. Notwithstanding the provisions of section
2 389.586, nothing shall prevent a land management company and
3 a utility from otherwise negotiating the terms and conditions

applicable to a crossing or the resolution of any disputes relating to the crossing so long as they do not interfere with the rights of a railroad or railroad corporation. No agreement between a land management company and a utility shall affect the rights, interests or operations of a railroad or railroad corporation.

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

[389.589. 1. If the parties cannot agree that special circumstances exist, the dispute shall be submitted to binding arbitration.

2. Either party may give written notice to the other party of the commencement of a binding arbitration proceeding in accordance with the commercial rules of arbitration in the American Arbitration Association. Any decision by the board of arbitration shall be final, binding and conclusive as to the parties. Nothing provided in this section shall prevent either party from submission of disputes to the courts. Land management companies and utilities may seek enforcement of sections 389.586 through 389.591 in a court of proper jurisdiction and shall be entitled to reasonable attorney fees if they prevail.

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

[389.591. 1. Notwithstanding any provision of law to the contrary, sections 389.585 to 389.591 shall apply in all crossings of land management corridors involving a land management company and a utility and shall govern in the event of any conflict with any other provision of law, except that sections 389.585 to 389.591 shall not override or nullify the condemnation laws of this state nor confer the power of eminent domain on any entity not granted such power prior to August 28, 2013.

2. The provisions of sections 389.585 to 389.591 shall apply to a crossing commenced after August 28, 2013. These provisions

11 shall also apply to a crossing commenced before August 28, 2013,
12 but only upon the expiration or termination of the agreement for
13 such crossing.]

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