

SECOND REGULAR SESSION

HOUSE BILL NO. 1652

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FUNDERBURK.

5718L.011

D. ADAM CRUMBLISS, Chief Clerk

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 six new sections relating to utility access to railroad right-of-way.

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Section A. Sections 389.585, 389.586, 389.587, 389.588, 389.589, and 389.591, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 389.585, 389.586, 389.587, 389.588, 389.589, and 389.591, to read as follows:

389.585. As used in sections 389.585 to 389.591, the following terms **shall** mean:

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

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

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

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

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

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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 16 (a) Communications, communications-related, wireless communications, video, or
17 information services;
- 18 (b) Electricity;
- 19 (c) Gas by piped system;
- 20 (d) Petroleum or petroleum products by piped system;
- 21 (e) Sanitary and storm sewer service;
- 22 (f) Water by piped system;
- 23 (4) "Land management company", an entity that owns, leases, holds by easement, holds
24 by adverse possession or otherwise possesses a corridor which is used for rail transportation
25 purposes and is not a railroad or railroad corporation;
- 26 (5) "Land management corridor", includes one or more of the following:
- 27 (a) A right-of-way or other interest in real estate that is owned, leased, held by easement,
28 held by adverse possession or otherwise possessed by a land management company and not a
29 railroad or railroad corporation; and which is used for rail transportation purposes. "Land
30 management corridor" does not include yards, terminals or stations. "Land management
31 corridor" also does not include railroad tracks or lines which have been legally abandoned;
- 32 (b) Any other interest in a right-of-way formerly owned by a railroad or railroad
33 corporation that has been acquired by a land management company or similar entity and which
34 is used for rail transportation purposes;
- 35 (6) "Notice", a written description of the proposed project. Such notice shall include,
36 at a minimum: a description of the proposed crossing including blueprints or plats, print copies
37 of the engineering specifications for the crossing, a proposed time line for the commencement
38 and completion of work at the crossing, a narrative description of the work to be performed at
39 the crossing, proof of insurance for the work to be done and other reasonable requirements
40 necessary for the processing of an application;
- 41 (7) "Railroad" or "railroad corporation", a railroad corporation organized and operating
42 under chapter 388, or any other corporation, trustees of a railroad corporation, company, affiliate,
43 association, joint stock association or company, firm, partnership, or individual, which is an
44 owner, operator, occupant, lessee, manager, or railroad right-of-way agent acting on behalf of
45 a railroad or railroad corporation;
- 46 (8) "Railroad right-of-way", includes one or more of the following:
- 47 (a) A right-of-way or other interest in real estate that is owned or operated by a land
48 management company and not a railroad or railroad corporation;
- 49 (b) Any other interest in a former railroad right-of-way that has been acquired or is
50 operated by a land management company or similar entity;
- 51 (9) "Special circumstances", includes either or both of the following:

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

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

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

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

69 (11) "Utility", shall include:

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

71 (b) Providers of telecommunications service, wireless communications, or other
72 communications-related service;

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

78 (d) Any rural electric cooperative; and

79 (e) Any municipally owned utility.

389.586. 1. After the land management company receives a copy of the notice from the
2 utility, the land management company shall send a complete copy of that notice, by certified mail
3 or by private delivery service which requires a return receipt, to the railroad or railroad
4 corporation within two business days. No utility may commence a crossing until the railroad or
5 railroad corporation has approved the crossing. The railroad or railroad corporation shall have
6 thirty days from the receipt of the notice to review and approve or reject the proposed crossing.
7 The railroad or railroad corporation shall **only** reject a proposed crossing [only] if special
8 circumstances exist. If the railroad or railroad corporation rejects a proposed crossing, the utility

9 may submit an amended proposal for a crossing. The railroad or railroad corporation shall have
10 an additional thirty days from receipt of the amended proposal to review and approve or reject
11 the amended crossing proposal. The railroad or railroad corporation shall not unreasonably
12 withhold approval. Once the railroad or railroad corporation grants such approval, and upon
13 payment of the fee and any other payments authorized pursuant to sections 389.586 or 389.587,
14 the utility shall be deemed to have authorization to commence the crossing activity. The utility
15 shall provide the railroad or railroad corporation with written notification of the commencement
16 of the crossing activity before beginning such activity.

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

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

32 4. The utility shall be provided a crossing, absent a claim of special circumstances, after
33 payment by the utility of the standard crossing fee, submission of completed engineering
34 specifications to the land management company, and approval of the crossing by the railroad or
35 railroad corporation. The engineering specifications shall comply with the clearance
36 requirements as established by the National Electrical Safety Code, the American Railway
37 Engineering and Maintenance of Way Association and the standards of the applicable railroad
38 or railroad corporation which are in effect and which apply to conditions at a particular crossing.
39 The land management company and utility shall further be responsible for any modifications,
40 upgrades or other changes which may be needed to comply with changes in said standards.

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

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

389.588. 1. Notwithstanding the provisions of section 389.586, nothing shall prevent a land management company and 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, **or as agreed to by the parties**. 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
2 389.591 shall apply in all crossings of land management corridors involving a land management
3 company and a utility and shall govern in the event of any conflict with any other provision of
4 law, except that sections 389.585 to 389.591 shall not override or nullify the condemnation laws
5 of this state nor confer the power of eminent domain on any entity not granted such power prior
6 to August 28, [2013] **2014**.

7 2. The provisions of sections 389.585 to 389.591 shall apply to a crossing commenced
8 after August 28, [2013] **2014**. These provisions shall also apply to a crossing commenced before
9 August 28, [2013] **2014**, but only upon the expiration or termination of the agreement for such
10 crossing.

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