

SECOND REGULAR SESSION

SENATE BILL NO. 652

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LAGER.

Pre-filed December 23, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

5008S.011

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Section A. Sections 389.585, 389.586, 389.587, 389.588, 389.589, and 389.591, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 389.585, 389.586, 389.587, 389.588, 389.589, and 389.591, to read as follows: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

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

17 with respect to a crossing;

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

21 (a) Communications, communications-related, wireless communications,
22 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, leases, holds by
29 easement, holds by adverse possession or otherwise possesses a corridor which is
30 used for rail transportation purposes and is not a railroad or railroad corporation;

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

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

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

41 (6) "Notice", a written description of the proposed project. Such notice
42 shall include, at a minimum: a description of the proposed crossing including
43 blueprints or plats, print copies of the engineering specifications for the crossing,
44 a proposed time line for the commencement and completion of work at the
45 crossing, a narrative description of the work to be performed at the crossing, proof
46 of insurance for the work to be done and other reasonable requirements necessary
47 for the processing of an application;

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

53 corporation;

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

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

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

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

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

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

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

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

79 (11) "Utility", shall include:

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

82 (b) Providers of telecommunications service, wireless communications, or
83 other communications-related service;

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

89 (d) Any rural electric cooperative; and

90 (e) Any municipally owned utility.

389.586. 1. After the land management company receives a copy of the
2 notice from the utility, the land management company shall send a complete copy
3 of that notice, by certified mail or by private delivery service which requires a
4 return receipt, to the railroad or railroad corporation within two business days.
5 No utility may commence a crossing until the railroad or railroad corporation has
6 approved the crossing. The railroad or railroad corporation shall have thirty days
7 from the receipt of the notice to review and approve or reject the proposed
8 crossing. The railroad or railroad corporation shall **only** reject a proposed
9 crossing [only] if special circumstances exist. If the railroad or railroad
10 corporation rejects a proposed crossing, the utility may submit an amended
11 proposal for a crossing. The railroad or railroad corporation shall have an
12 additional thirty days from receipt of the amended proposal to review and
13 approve or reject the amended crossing proposal. The railroad or railroad
14 corporation shall not unreasonably withhold approval. Once the railroad or
15 railroad corporation grants such approval, and upon payment of the fee and any
16 other payments authorized pursuant to sections 389.586 or 389.587, the utility
17 shall be deemed to have authorization to commence the crossing activity. The
18 utility shall provide the railroad or railroad corporation with written notification
19 of the commencement of the crossing activity before beginning such activity.

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

32 3. A utility shall have immediate access to a crossing for repair and
33 maintenance of existing facilities in case of an immediate threat to life and upon
34 notification to the applicable railroad or railroad corporation. Before commencing

35 any such work, the utility must first contact the railroad or railroad corporation's
36 dispatch center, command center or other facility which is designated to receive
37 emergency communications.

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

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

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

389.588. 1. Notwithstanding the provisions of section 389.586, nothing

2 shall prevent a land management company and a utility from otherwise
3 negotiating the terms and conditions applicable to a crossing or the resolution of
4 any disputes relating to the crossing, so long as they do not interfere with the
5 rights of a railroad or railroad corporation. No agreement between a land
6 management company and a utility shall affect the rights, interests or operations
7 of a railroad or railroad corporation.

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

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

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

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

389.591. 1. Notwithstanding any provision of law to the contrary, sections
2 389.585 to 389.591 shall apply in all crossings of land management corridors
3 involving a land management company and a utility and shall govern in the event
4 of any conflict with any other provision of law, except that sections 389.585 to
5 389.591 shall not override or nullify the condemnation laws of this state nor
6 confer the power of eminent domain on any entity not granted such power prior
7 to August 28, [2013] **2014**.

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