

RAILROAD RIGHT-OF-WAY AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel Hemmert

House Sponsor: _____

LONG TITLE

General Description:

This bill enacts provisions related to utility crossings of railroad rights-of-way.

Highlighted Provisions:

This bill:

- ▶ requires a utility that intends to place a facility across or upon a railroad right-of-way to submit a request for permission from the railroad prior to placing a facility;
- ▶ establishes procedures for a utility to request permission from a railroad;
- ▶ allows railroads to impose certain requirements prior to granting permission for a utility crossing of a railroad right-of-way;
- ▶ establishes a standard fee that may be charged for each facility placed by a utility across a railroad right-of-way;
- ▶ allows a utility or railroad to petition the Public Service Commission if the parties are unable to resolve an objection; and
- ▶ defines terms.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

S.B. 259



28 ENACTS:

29 **54-23-101**, Utah Code Annotated 1953

30 **54-23-102**, Utah Code Annotated 1953

31 **54-23-103**, Utah Code Annotated 1953

32 **54-23-104**, Utah Code Annotated 1953

33 **54-23-105**, Utah Code Annotated 1953

34 **54-23-106**, Utah Code Annotated 1953

35 **54-23-107**, Utah Code Annotated 1953

36 **54-23-108**, Utah Code Annotated 1953

37 **54-23-109**, Utah Code Annotated 1953

38 **54-23-110**, Utah Code Annotated 1953

39

40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section **54-23-101** is enacted to read:

42 **CHAPTER 23. CROSSING RAILROAD RIGHTS-OF-WAY BY UTILITIES**

43 **54-23-101. Title.**

44 This chapter is known as "Crossing Railroad Rights-of-Way by Utilities."

45 Section 2. Section **54-23-102** is enacted to read:

46 **54-23-102. Definitions.**

47 As used in this chapter:

48 (1) "Consumer price index" means the Consumer Price Index for All Urban

49 Consumers: All Items Less Food & Energy, as published by the Bureau of Labor Statistics of
50 the United States Department of Labor.

51 (2) (a) "Crossing" means a utility facility constructed over, under, or across a railroad
52 right-of-way.

53 (b) "Crossing" does not include longitudinal occupancy of railroad right-of-way.

54 (3) (a) "Facility" or "utility facility" means any item of personal property placed over,
55 across, or underground for use in connection with the storage or conveyance of:

56 (i) water;

57 (ii) sewage;

58 (iii) electronic, telephone, or telegraphic communications;

- 59 (iv) fiber optics;
- 60 (v) cable television;
- 61 (vi) electric energy;
- 62 (vii) oil;
- 63 (viii) natural gas; or
- 64 (ix) hazardous liquids.

65 (b) Facility includes:

- 66 (i) pipes;
- 67 (ii) sewers;
- 68 (iii) conduits;
- 69 (iv) cables;
- 70 (v) valves;
- 71 (vi) lines;
- 72 (vii) wires;
- 73 (viii) manholes; and
- 74 (ix) attachments.

75 (4) "Parallel" or "paralleling" means a utility facility that runs adjacent to and
76 alongside the lines of a railroad for no more than one mile, or another distance agreed
77 to by the parties, after which the utility facility crosses the railroad lines, terminates, or
78 exits the railroad right-of-way.

79 (5) (a) "Utility" means any cooperative electric association, electric utility, public
80 utility, transmission company, gas utility, municipal utility, municipal power agency,
81 municipality, joint action agency, pipeline company, rural water system, or telephone,
82 telegraph, telecommunications, cable, or fiber optic carrier.

83 (b) "Utility" includes contractors or agents.

84 Section 3. Section **54-23-103** is enacted to read:

85 **54-23-103. Right-of-way crossing -- application for permission.**

86 (1) (a) Any utility that intends to place a facility across or upon a railroad right-of-way
87 shall submit a request for permission from the railroad prior to placing a facility.

88 (b) A request under this Subsection (1) shall:

- 89 (i) be in the form of a completed crossing application;

- 90 (ii) be sent to the railroad by certified mail, with return receipt requested;
91 (iii) include an engineering design that:
92 (A) shows the location of the proposed crossing and the railroad's property, tracks, and
93 wires that the utility will cross; and
94 (B) conforms with guidelines published in the most recent edition of the National
95 Electric Safety Code or Manual for Railway Engineering of the American Railway Engineering
96 and Maintenance-of-Way Association;
97 (iv) include the standard crossing fee specified in Section [54-23-106](#);
98 (v) include evidence of insurance as described in Section [54-23-107](#); and
99 (vi) if available, be on a form provided or approved by the railroad.

100 (2) Within 15 calendar days of receipt of an application that is not complete, the
101 railroad shall inform the applicant regarding any additional necessary information and
102 submittals.

103 (3) This section applies to:

104 (a) any crossing in existence before May 14, 2019, if an agreement concerning the
105 crossing has expired or has been terminated; and

106 (b) any crossing commenced on or after May 14, 2019.

107 (4) If an applicant that intends to place a facility across or upon a railroad right-of-way
108 at a crossing described in Subsection (3)(a) has paid a collective amount that equals or exceeds
109 the standard crossing fee established under Section [54-23-106](#) to the railroad during the
110 existence of the crossing, no additional fee may be required.

111 Section 4. Section **54-23-104** is enacted to read:

112 **54-23-104. Inductive interference study.**

113 (1) Prior to approving a request to place a facility across or upon a railroad
114 right-of-way submitted by an electric utility under Section [54-23-103](#), a railroad may require
115 the electric utility to conduct an inductive interference study performed by a qualified engineer
116 approved by the railroad if:

117 (a) the facility is for an electric energy transmission line of at least 125 kilovolts; and

118 (b) in accordance with guidelines in the National Electric Safety Code and the Manual
119 for Railway Engineering of the American Railway Engineering and Maintenance-of-Way
120 Association, the railroad reasonably determines that the proposed facility poses a material

121 possibility of creating induction issues or interference with railroad property.

122 (2) Prior to approving a request to place a facility across or upon a railroad
123 right-of-way submitted by an electric utility under Section 54-23-103, a railroad may require
124 the electric utility to:

125 (a) arrange and pay for the study described in Subsection (1);

126 (b) perform and pay for any costs of modifications to the proposed facility identified in
127 the study; and

128 (c) pay for any costs of modifications to railroad property identified in the study that
129 are necessary to ensure safe and reliable railroad operations.

130 (3) (a) A utility facility for which an inductive interference study has been performed
131 under this section may not be energized until at least 30 calendar days after the railroad
132 receives notice from the utility that the facility is ready to be energized.

133 (b) Within 30 days of receiving notice that the facility is ready to be energized, the
134 railroad shall conduct any appropriate tests to ensure that there will not be any interference with
135 safe operation of the railroad following energization.

136 Section 5. Section **54-23-105** is enacted to read:

137 **54-23-105. Right-of-way crossing -- Construction.**

138 (1) For a utility not required to complete a conductive inference study under Section
139 54-23-104, beginning 35 calendar days after the receipt by the railroad of a completed crossing
140 application, the utility may commence the construction of the crossing unless the railroad
141 notifies the utility in writing that the proposed crossing or paralleling is a serious threat to the
142 safe operations of the railroad or to the current use of the railroad right-of-way.

143 (2) For a utility required to complete a conductive inference study under Section
144 54-23-104, beginning 35 calendar days after the receipt by the railroad of a completed
145 conductive inference study, the utility may commence the construction of the crossing unless
146 the railroad notifies the utility in writing that the proposed crossing or paralleling is a serious
147 threat to the safe operations of the railroad or to the current use of the railroad right-of-way.

148 Section 6. Section **54-23-106** is enacted to read:

149 **54-23-106. Standard crossing fee.**

150 (1) Unless otherwise agreed by the parties, a utility that crosses a railroad right-of-way,
151 other than a crossing within a public right-of-way, shall pay the railroad a one-time standard

152 crossing fee of \$1,250, adjusted as provided in Subsection (6), for each crossing.

153 (2) (a) Except as otherwise provided in this chapter, the standard crossing fee is paid in
154 lieu of any license, permit, application, processing fee, or any other fee or charge to reimburse
155 the railroad for direct expenses incurred by the railroad as a result of the crossing.

156 (b) Except as otherwise provided in this chapter, no other fee or charge related to the
157 crossing may be assessed to the utility by the railroad.

158 (3) In addition to the standard crossing fee, the utility shall also reimburse the railroad
159 for any reasonable and necessary flagging expense associated with a crossing, based on the
160 railroad traffic at the crossing.

161 (4) No crossing fee may be required if the crossing is located within a public
162 right-of-way.

163 (5) (a) The placement of a single conduit and the conduit's contents is a single facility.

164 (b) No additional fees are payable based on the individual fibers, wires, lines, or other
165 items contained within a single conduit.

166 (6) On January 1 of each year, the standard crossing fee under Subsection (1) shall be
167 adjusted by multiplying the current standard crossing fee by the sum of:

168 (a) one; and

169 (b) the actual percent change of the consumer price index during the most recent
170 12-month period for which data is available.

171 Section 7. Section **54-23-107** is enacted to read:

172 **54-23-107. Certificate of insurance.**

173 (1) A certificate of insurance or coverage required under Section [54-23-103](#) shall:

174 (a) for a municipal utility or municipality, except for a utility described in Subsection
175 (1)(b), include commercial general liability insurance or an equivalent form with a limit of at
176 least \$1,000,000 for each occurrence and an aggregate of at least \$2,000,000;

177 (b) for a utility providing natural gas service, include commercial general liability
178 insurance with a combined single limit of at least \$5,000,000 for each occurrence and an
179 aggregate limit of at least \$10,000,000; or

180 (c) for a utility not described in Subsection (1)(a) or (b), include commercial general
181 liability insurance with a combined single limit of at least \$2,000,000 for each occurrence and
182 an aggregate limit of at least \$6,000,000.

183 (2) (a) In addition to the certificate of insurance or coverage described in Subsection
184 (1), prior to approving an application under Section 54-23-103, a railroad may require a utility
185 to submit a certificate of insurance or coverage that includes protective liability insurance with
186 a combined single limit of \$2,000,000 for each occurrence and \$6,000,000 aggregate.

187 (b) The coverage described in Subsection (2)(a):

188 (i) may be provided by a blanket railroad protective liability insurance policy if the
189 coverage, including the coverage limits, applies separately to each individual crossing; and

190 (ii) may only be required during the period of construction, repair, or replacement of
191 the facility.

192 (3) The insurance coverage under Subsections (1) and (2):

193 (a) may not contain an exclusion or limitation related to railroads or to activities within
194 50 feet of railroad property; and

195 (b) may be from an insurer of the utility's choosing.

196 Section 8. Section **54-23-108** is enacted to read:

197 **54-23-108. Objections -- petition to Public Service Commission by a railroad.**

198 (1) (a) If a railroad objects to the proposed crossing or paralleling due to the proposal
199 being a serious threat to the safe operations of the railroad or to the current use of the railroad
200 right-of-way, the railroad shall notify the utility of the objection and the specific basis for the
201 objection.

202 (b) The railroad shall provide notice of the objection to the utility by certified mail,
203 with return receipt requested.

204 (2) (a) If the parties make good faith efforts to resolve the objection, and are unable to
205 resolve the objection, either party may petition the commission for assistance via mediation or
206 arbitration of the disputed crossing application.

207 (b) The petition shall be filed within 60 days of receipt of the objection.

208 (3) If a petition is filed under Subsection (2), the commission shall issue an order
209 within 120 days of filing of the petition.

210 (4) An order issued under Subsection (3) may be appealed in accordance with Chapter
211 7, Hearings, Practice, and Procedure.

212 (5) The commission shall assess the costs associated with a petition equitably among
213 the parties.

214 Section 9. Section **54-23-109** is enacted to read:

215 **54-23-109. Objections -- petition to Public Service Commission by a utility.**

216 (1) (a) If a railroad imposes additional requirements on a utility for crossing the
217 railroad's lines, other than the proposed crossing being a serious threat to the safe operations of
218 the railroad or to the current use of the railroad right-of-way, the utility may object to one or
219 more of the requirements.

220 (b) The utility shall provide notice of the objection and the specific basis for the
221 objection to the railroad by certified mail, with return receipt requested.

222 (2) (a) If the parties make good faith efforts to resolve the objection, and are unable to
223 resolve the objection, either party may petition the commission for resolution or modification
224 of the additional requirements.

225 (b) The petition shall be filed within 60 days of receipt of the objection.

226 (3) (a) If a petition is filed under Subsection (2), the commission shall determine, after
227 notice and opportunity for hearing, whether special circumstances exist that necessitate
228 additional requirements for the placement of the crossing.

229 (b) The commission shall issue an order within 120 days of filing of the petition.

230 (4) An order issued under Subsection (3) may be appealed in accordance with Chapter
231 7, Hearings, Practice, and Procedure.

232 (5) The commission shall assess the costs associated with a petition equitably among
233 the parties.

234 Section 10. Section **54-23-110** is enacted to read:

235 **54-23-110. Existing agreements.**

236 (1) Nothing in this chapter prevents a railroad and a utility from continuing under an
237 existing agreement, or from otherwise negotiating the terms and conditions applicable to a
238 crossing or the resolution of any disputes relating to the crossing.

239 (2) Nothing in this chapter impairs the authority of a utility to secure crossing rights by
240 easement through exercise of the power of eminent domain.