

FIRST REGULAR SESSION

SENATE BILL NO. 418

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LAGER.

Read 1st time February 27, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1694S.02I

AN ACT

To amend chapter 389, RSMo, by adding thereto six new sections relating to the crossing of railroad right-of-ways by certain utilities.

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

Section A. Chapter 389, RSMo, is amended by adding thereto six new sections, to be known as sections 389.585, 389.586, 389.587, 389.588, 389.589, and 389.591, to read as follows:

389.585. 1. As used in this section, the following terms 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 registered rail carrier;

(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:

(a) Communications, video, or information services;

21 **(b) Electricity;**

22 **(c) Gas by piped system;**

23 **(d) Sanitary and storm sewer service;**

24 **(e) Water by piped system;**

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

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

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

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

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

42 **(7) "Special circumstances", includes either or both of the**
43 **following:**

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

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

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

58 particular crossing or segment of the railroad right-of-way;

59 (8) "Utility", shall include:

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

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

68 (c) Any rural electric cooperative, and

69 (d) Any municipally owned utility.

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

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

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

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

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

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

389.587. Unless otherwise agreed by the parties and subject to
2 section 389.588, a utility that locates its facilities within the railroad

3 right-of-way for a crossing, other than a crossing along a state highway,
4 shall pay the land management company a one-time standard crossing
5 fee of one thousand five hundred dollars for each crossing plus the
6 costs associated with modifications to existing insurance contracts of
7 the utility and the land management company. The standard crossing
8 fee shall be in lieu of any license, permit, application, or any other fees
9 or charges to reimburse the land management company for the direct
10 expenses incurred by the land management company as a result of the
11 crossing. The utility shall also reimburse the land management
12 company for any actual flagging expenses associated with a crossing in
13 addition to the standard crossing fee.

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

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

389.589. 1. If the parties cannot agree that special circumstances
2 exist, the dispute shall be submitted to non-binding arbitration. Any
3 party proposing informal arbitration shall serve an arbitration notice
4 detailing a description of the dispute, including, without limitation, the
5 position and proposed resolution of the party requesting arbitration
6 and shall name one arbitrator chosen by that party. Within twenty
7 days after receipt of an arbitration notice, the receiving party shall
8 serve a written notice on the other party containing a detailed response
9 to the claim giving the position and proposed resolution of the
10 receiving party, and an acceptance of the arbitrator designated in the
11 arbitration notice or rejection of same and suggestion of no less than
12 two other alternatives. The informal arbitration shall be decided by a
13 single arbitrator. In the event that the parties do not agree on the
14 selection of an arbitrator within seven business days after service of
15 the reply notice, either party may apply to the American Arbitration
16 Association for the purpose of appointing an independent arbitrator. To
17 the extent practicable, the arbitrator shall be a person with expertise
18 in the principal areas of dispute.

19 2. A conference shall be commenced by the arbitrator within
20 fifteen calendar days after the appointment of the arbitrator and a
21 recommendation regarding the matter submitted shall be rendered
22 within ten business days after the conference or as soon as practicable
23 thereafter. During the thirty calendar days following the filing of the
24 arbitration notice, the parties shall meet and confer to attempt to
25 resolve the dispute. The decision of the arbitrator and the rationale for
26 its decision shall be in writing and signed by the arbitrator; provided,
27 however, that such written recommendation shall have no evidentiary
28 value and shall not be deemed to set forth any findings of fact for
29 purposes of any future proceedings. Except as otherwise provided in
30 this section, the informal arbitration shall be held in accordance with
31 the rules and procedures of the American Arbitration
32 Association. Each party shall bear its own expenses, including, without
33 limitation, legal and accounting fees, and the cost of the arbitrator
34 shall be shared equally by each party. The parties may or may not elect
35 to abide by the decision of the arbitrator.

36 3. If the parties cannot resolve their dispute based on the
37 arbitrator's recommendation within thirty days, either party may, upon
38 the expiration of the thirty day period, give written notice to the other
39 party of the commencement of a binding arbitration proceeding in
40 accordance with the commercial rules of Arbitration in the American
41 Arbitration Association. Any decision by the board of arbitration shall
42 be final, binding, and conclusive as to the parties. Nothing provided in
43 this section shall prevent either party from submission of disputes to
44 the court, limited to requests for injunctive or equitable relief in
45 advance of a breach or threatened breach of this agreement, if
46 necessary to prevent serious and irreparable injury to such party or
47 the public and if such injury cannot be appropriately addressed by
48 informal or formal arbitration.

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

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

5 law.

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

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Unofficial

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