

# SENATE AMENDMENT NO. \_\_\_\_\_

Offered by \_\_\_\_\_ of \_\_\_\_\_

Amend SS/SCS/HCS/House Bill No. 1867, Page 32, Section 319.041, Line 13

2 of said page, by inserting after all of said line the following:

3            "[389.585. As used in sections 389.585 to  
 4            389.591, the following terms mean:  
 5            (1) "Crossing", the construction, operation,  
 6            repair, or maintenance of a facility over, under, or  
 7            across a railroad right-of-way by a utility when the  
 8            right-of-way is owned by a land management company and  
 9            not a railroad or railroad corporation;  
 10           (2) "Direct expenses", includes, but is not  
 11           limited to, any or all of the following:  
 12           (a) The cost of inspecting and monitoring the  
 13           crossing site;  
 14           (b) Administrative and engineering costs for  
 15           review of specifications and for entering a crossing on  
 16           the railroad's books, maps, and property records and  
 17           other reasonable administrative and engineering costs  
 18           incurred as a result of the crossing;  
 19           (c) Document and preparation fees associated with  
 20           a crossing and any engineering specifications related  
 21           to the crossing;  
 22           (d) Damages assessed in connection with the  
 23           rights granted to a utility with respect to a crossing;  
 24           (3) "Facility", any cable, conduit, wire, pipe,  
 25           casing pipe, supporting poles and guys, manhole, or  
 26           other material or equipment that is used by a utility  
 27           to furnish any of the following:  
 28           (a) Communications, communications-related,  
 29           wireless communications, video, or information  
 30           services;  
 31           (b) Electricity;  
 32           (c) Gas by piped system;  
 33           (d) Petroleum or petroleum products by piped  
 34           system;  
 35           (e) Sanitary and storm sewer service;  
 36           (f) Water by piped system;  
 37           (4) "Land management company", an entity that

owns, leases, holds by easement, holds by adverse possession or otherwise possesses a corridor which is used for rail transportation purposes and is not a railroad or railroad corporation;

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

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

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

(6) "Notice", a written description of the proposed project. Such notice shall include, at a minimum: a description of 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

1 expenses for the land management company associated  
2 with a proposed crossing, or to the current or  
3 reasonably anticipated use by a land management company  
4 of the railroad right-of-way, necessitating additional  
5 terms and conditions or compensation associated with a  
6 crossing;

7 (b) Variances from the standard specifications  
8 requested by the land management company;  
9 "Special circumstances" may include, but is not limited  
10 to, the railroad right-of-way segment's relationship to  
11 other property, location in urban or other developed  
12 areas, the existence of unique topography or natural  
13 resources, or other characteristics or dangers inherent  
14 in the particular crossing or segment of the railroad  
15 right-of-way;

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

22 (11) "Utility", shall include:

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

25 (b) Providers of telecommunications service,  
26 wireless communications, or other  
27 communications-related service;

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

36 (d) Any rural electric cooperative; and

37 (e) Any municipally owned utility.]

38  
39 [389.586. 1. After the land management company  
40 receives a copy of the notice from the utility, the  
41 land management company shall send a complete copy of  
42 that notice, by certified mail or by private delivery  
43 service which requires a return receipt, to the  
44 railroad or railroad corporation within two business  
45 days. No utility may commence a crossing until the  
46 railroad or railroad corporation has approved the  
47 crossing. The railroad or railroad corporation shall  
48 have thirty days from the receipt of the notice to  
49 review and approve or reject the proposed crossing.  
50 The railroad or railroad corporation shall reject a  
51 proposed crossing only if special circumstances exist.  
52 If the railroad or railroad corporation rejects a

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

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

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

43 4. The utility shall be provided a crossing,  
44 absent a claim of special circumstances, after payment  
45 by the utility of the standard crossing fee, submission  
46 of completed engineering specifications to the land  
47 management company, and approval of the crossing by the  
48 railroad or railroad corporation. The engineering  
49 specifications shall comply with the clearance  
50 requirements as established by the National Electrical  
51 Safety Code, the American Railway Engineering and  
52 Maintenance of Way Association and the standards of the

1 applicable railroad or railroad corporation which are  
2 in effect and which apply to conditions at a particular  
3 crossing. The land management company and utility  
4 shall further be responsible for any modifications,  
5 upgrades or other changes which may be needed to comply  
6 with changes in said standards.

7 5. The utility, the railroad or railroad  
8 corporation, and the land management company shall  
9 agree to such other terms and conditions as may be  
10 necessary to provide for reasonable use of a land  
11 management corridor by a utility.]  
12

13 [389.587. Unless otherwise agreed by the parties  
14 and subject to section 389.588, a utility that locates  
15 its facilities within the railroad right-of-way for a  
16 crossing, other than a crossing along a state highway  
17 or other public road, shall pay the land management  
18 company a one-time standard crossing fee of one  
19 thousand five hundred dollars for each crossing plus  
20 the costs associated with modifications to existing  
21 insurance contracts of the land management company.  
22 The standard crossing fee shall be in lieu of any  
23 license, permit, application, plan review, or any other  
24 fees or charges to reimburse the land management  
25 company for the direct expenses incurred by the land  
26 management company as a result of the crossing. The  
27 utility shall also reimburse the land management  
28 company for any actual flagging expenses associated  
29 with a crossing in addition to the standard crossing  
30 fee. The railroad or railroad corporation has the  
31 right to halt work at the crossing if the flagging does  
32 not meet the standards of the railroad or railroad  
33 corporation. Nothing in this section is intended to  
34 otherwise restrict or limit any authority or right a  
35 utility may have to locate facilities at a crossing  
36 along a state highway or any other public road or to  
37 otherwise enter upon lands where authorized by law.]  
38

39 [389.588. 1. Notwithstanding the provisions of  
40 section 389.586, nothing shall prevent a land  
41 management company and a utility from otherwise  
42 negotiating the terms and conditions applicable to a  
43 crossing or the resolution of any disputes relating to  
44 the crossing so long as they do not interfere with the  
45 rights of a railroad or railroad corporation. No  
46 agreement between a land management company and a  
47 utility shall affect the rights, interests or  
48 operations of a railroad or railroad corporation.

49 2. Notwithstanding subsection 1 of this section,  
50 the provisions of this section shall not impair the  
51 authority of a utility to secure crossing rights by  
52 easement pursuant to the exercise of the power of

1 eminent domain.]

2  
3 [389.589. 1. If the parties cannot agree that  
4 special circumstances exist, the dispute shall be  
5 submitted to binding arbitration.

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

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

23  
24 [389.591. 1. Notwithstanding any provision of  
25 law to the contrary, sections 389.585 to 389.591 shall  
26 apply in all crossings of land management corridors  
27 involving a land management company and a utility and  
28 shall govern in the event of any conflict with any  
29 other provision of law, except that sections 389.585 to  
30 389.591 shall not override or nullify the condemnation  
31 laws of this state nor confer the power of eminent  
32 domain on any entity not granted such power prior to  
33 August 28, 2013.

34 2. The provisions of sections 389.585 to 389.591  
35 shall apply to a crossing commenced after August 28,  
36 2013. These provisions shall also apply to a crossing  
37 commenced before August 28, 2013, but only upon the  
38 expiration or termination of the agreement for such  
39 crossing.]" ; and

40  
41 Further amend the title and enacting clause accordingly.