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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 963

02/16/2015 Authored by Kiel, Hamilton, Gunther, Pelowski, Hoppe and others

The bill was read for the first time and referred to the Committee on Job Growth and Energy Affordability Policy and Finance

1.1 A bill for an act
1.2 relating to utilities; establishing requirements relating to crossing railroad
1.3 rights-of-way by utilities; proposing coding for new law in Minnesota Statutes,
1.4 chapter 237.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **[237.045] RAILROAD RIGHTS-OF-WAY; CROSSING.**

1.7 Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms
1.8 have the meanings given them.

1.9 (b) "Crossing" means the construction, operation, repair, or maintenance of a
1.10 utility facility over, under, or across a railroad right-of-way. The term does not include
1.11 longitudinal occupancy of railroad right-of-way.

1.12 (c) "Facility" means any item of personal property placed over, across, or
1.13 underground for use in connection with the storage or conveyance of:

1.14 (1) water;

1.15 (2) sewage;

1.16 (3) electronic, telephone, or telegraphic communications;

1.17 (4) fiber optics;

1.18 (5) cablevision;

1.19 (6) electric energy;

1.20 (7) oil;

1.21 (8) gas;

1.22 (9) hazardous liquids; or

1.23 (10) other substances including pipes, sewers, conduits, cables, valves, lines, wires,
1.24 manholes, or attachments.

2.1 (d) "Railroad" means any association, corporation, or other entity engaged in
2.2 operating a common carrier by rail, or any other entity responsible for the management of
2.3 crossings or collection of fees for the railroad.

2.4 (e) "Utility" means electric utility, public utility, transmission company, gas utility,
2.5 municipal utility, municipal power agency, joint action agency, pipeline company, rural
2.6 water system, or telephone, telegraph, telecommunications, cable, or fiber optic carrier.

2.7 Subd. 2. **Application.** This section applies to:

2.8 (1) any crossing in existence before the effective date of this section if an agreement
2.9 concerning the crossing has expired or has been terminated. In such instance, if the
2.10 collective amount of \$750 has been paid to the railroad during the existence of the
2.11 crossing, no additional fee is required; and

2.12 (2) any crossing commenced on or after the effective date of this section.

2.13 Subd. 3. **Right-of-way crossing; application for permission.** (a) Any utility that
2.14 intends to place a facility across a railroad right-of-way shall request prior permission
2.15 from the railroad.

2.16 (b) The request shall be in the form of a completed crossing application, including a
2.17 drawing showing the location of the proposed crossing and the railroad's property, tracks,
2.18 and wires that the utility will cross. The utility shall submit the crossing application on a
2.19 form provided or approved by the railroad, if available.

2.20 (c) The crossing application shall be sent to the railroad by certified mail, with
2.21 return receipt requested.

2.22 (d) The application shall be accompanied by the crossing fee as set forth in
2.23 subdivision 5, and a certificate of insurance as required by subdivision 6.

2.24 Subd. 4. **Right-of-way crossing; construction.** (a) Beginning 30 days after the
2.25 receipt by the railroad of a completed crossing application, crossing fee, and certificate of
2.26 insurance, the utility may commence the construction of the crossing unless the railroad
2.27 notifies the utility in writing that the information contained in the crossing application is
2.28 incomplete, inadequate, or that special circumstances exist.

2.29 (b) For purposes of this section, special circumstances include the railroad crossing's
2.30 relationship to other property, the location of the crossing in urban or other developed
2.31 areas, the existence of unique topography or natural resources, or other dangers inherent
2.32 in the particular crossing.

2.33 Subd. 5. **Standard crossing fee.** (a) Unless otherwise agreed by the parties or
2.34 determined under section 237.04, a utility that crosses a railroad right-of-way, other than a
2.35 crossing within a public right-of-way, shall pay the railroad a onetime standard crossing
2.36 fee of \$750 for each crossing. The standard crossing fee is in lieu of any license, permit,

3.1 application, processing fee, or any other fee or charge to reimburse the railroad for direct
3.2 expenses incurred by the railroad as a result of the crossing.

3.3 (b) In addition to the standard crossing fee, the utility shall also reimburse the
3.4 railroad for any reasonable flagging expense associated with a crossing.

3.5 (c) No crossing fee is required if the crossing is located within a public right-of-way.

3.6 Subd. 6. **Certificate of insurance; coverage.** (a) The certificate of insurance or
3.7 coverage submitted by a municipality shall include commercial general liability insurance
3.8 or an equivalent form with a limit of not less than \$1,000,000 for each occurrence and
3.9 an aggregate of not less than \$2,000,000.

3.10 (b) The certificate of insurance submitted by any other utility, except a gas or
3.11 hazardous materials pipeline utility, shall include commercial general liability insurance
3.12 with a combined single limit of a minimum of \$2,000,000 for each occurrence and an
3.13 aggregate limit of at least \$4,000,000.

3.14 (c) The certificate of insurance submitted by a gas or hazardous materials pipeline
3.15 utility shall include commercial general liability insurance with a combined single limit of a
3.16 minimum of \$5,000,000 for each occurrence and an aggregate limit of at least \$10,000,000.

3.17 Subd. 7. **Objection to crossing; petition to Public Utilities Commission.** (a) If a
3.18 railroad objects to the adequacy of the information contained in the crossing application or
3.19 asserts that special circumstances exist, the railroad shall provide to the utility notice of
3.20 the objection and the specific basis for the objection. The railroad shall send the notice of
3.21 objection to the utility by certified mail, with return receipt requested.

3.22 (b) If the parties are unable to resolve the objection, either party may petition the
3.23 Public Utilities Commission for additional requirements for placement of the crossing
3.24 or modification of the standard crossing fee. The petition must be filed within 60 days
3.25 of receipt of the objection. Before filing a petition, the parties shall make good faith
3.26 efforts to resolve the objection.

3.27 (c) If a petition is filed, the Public Utilities Commission shall determine, after
3.28 notice and opportunity for hearing, whether special circumstances exist that necessitate
3.29 (1) additional requirements for the placement of the crossing, or (2) modification of the
3.30 standard crossing fee. The Public Utilities Commission must issue an order within 120
3.31 days of filing of the petition. The order may be appealed under chapter 14 and section
3.32 216B.27. The Public Utilities Commission shall assess the costs associated with a petition
3.33 equitably among the parties.

3.34 Subd. 8. **Additional requirements; objection and petition to Public Utilities**
3.35 **Commission.** (a) If a railroad imposes additional requirements on a utility for crossing its
3.36 lines, the utility may object to one or more of the requirements. If it objects, the utility

4.1 shall provide notice of the objection and the specific basis for the objection to the railroad
4.2 by certified mail, with return receipt requested.

4.3 (b) If the parties are unable to resolve the objection, either party may petition the
4.4 Public Utilities Commission for resolution or modification of the additional requirements.
4.5 The petition must be filed within 60 days of receipt of the objection. Before filing a
4.6 petition, the parties shall make good faith efforts to resolve the objection.

4.7 (c) If a petition is filed, the Public Utilities Commission shall determine, after notice
4.8 and opportunity for hearing, whether special circumstances exist that necessitate additional
4.9 requirements for the placement of the crossing. The Public Utilities Commission must
4.10 issue an order within 120 days of filing of the petition. The order may be appealed under
4.11 chapter 14 and section 216B.27. The Public Utilities Commission shall assess the costs
4.12 associated with a petition equitably among the parties.

4.13 Subd. 9. **Existing agreements.** Nothing in this section prevents a railroad and a
4.14 utility from continuing under an existing agreement, or from otherwise negotiating the
4.15 terms and conditions applicable to a crossing or the resolution of any disputes relating to
4.16 the crossing. Nothing in this section impairs the authority of a utility to secure crossing
4.17 rights by easement through exercise of the power of eminent domain.