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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

04/01/2016 Adoption of Report: Amended and re-referred to the Committee on Transportation 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; amending Minnesota Statutes 2014, section 216B.62,
1.4 by adding a subdivision; proposing coding for new law in Minnesota Statutes,
1.5 chapter 237.

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

1.7 Section 1. Minnesota Statutes 2014, section 216B.62, is amended by adding a
1.8 subdivision to read:

1.9 Subd. 5b. Assessments for certain right-of-way proceedings. The commission
1.10 and department may charge a railroad, as defined in section 237.045, subdivision 1,
1.11 paragraph (e), and a utility as defined in section 237.045, subdivision 1, paragraph (f), for
1.12 their proportionate share of expenses incurred by the commission and department in the
1.13 review and disposition of disputes contained in petitions filed under section 237.045. A
1.14 railroad or utility that objects to an assessment of the commission or department made
1.15 under this subdivision has the same right to appeal the assessment under subdivision 4
1.16 as does a public utility.

1.17 Sec. 2. [237.045] RAILROAD RIGHTS-OF-WAY; CROSSING OR
1.18 PARALLELING BY UTILITIES.

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

1.21 (b) "Crossing" means the construction, operation, repair, or maintenance of a utility
1.22 facility over, under, or across a railroad right-of-way. The term includes longitudinal
1.23 occupancy of railroad right-of-way.

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

(1) water;

(2) sewage;

(3) electronic, telephone, or telegraphic communications;

(4) fiber optics;

(5) cablevision;

(6) electric energy;

(7) oil;

(8) gas;

(9) hazardous liquids; or

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

(d) "Parallel" or "paralleling" means that the relevant utility facilities run adjacent to and alongside the lines of a railroad for no more than one mile, or another distance agreed to by the parties, before the utility facilities cross the railroad lines, terminate, or exit the railroad right-of-way.

(e) "Railroad" means any association, corporation, or other entity engaged in operating a common carrier by rail, or its agents or assigns, including any entity responsible for the management of crossings or collection of crossing fees.

(f) "Utility" means cooperative electric association, electric utility, public utility, transmission company, gas utility, municipal utility, municipal power agency, joint action agency, pipeline company, rural water system, or telephone, telegraph, telecommunications, cable, or fiber optic carrier or their contractors or agents.

Subd. 2. Application. This section applies to:

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

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

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

(b) The request shall be in the form of a completed crossing application, including a drawing showing the location of the proposed crossing and the railroad's property, tracks,

and wires that the utility will cross. The utility shall submit the crossing application on a form provided or approved by the railroad, if available.

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

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

Subd. 4. Right-of-way crossing; construction. Beginning 30 days after the receipt by the railroad of a completed crossing application, crossing fee, and certificate of insurance, the utility may commence the construction of the crossing unless the railroad notifies the utility in writing that the proposed crossing or paralleling is a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way.

Subd. 5. Standard crossing fee. (a) Unless otherwise agreed by the parties or determined under section 237.04, a utility that crosses a railroad right-of-way, other than a crossing within a public right-of-way, shall pay the railroad a onetime standard crossing fee of \$750 for each crossing. The standard crossing fee is in lieu of any license, permit, application, processing fee, or any other fee or charge to reimburse the railroad for direct expenses incurred by the railroad as a result of the crossing. No other fee or charge may be assessed to the utility by the railroad.

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

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

(d) The placement of a single conduit and its content shall be considered a single facility. No additional fees are payable based on the individual fibers, wires, lines, or other items contained within the conduit.

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

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

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

4.1 (d) The railroad may require protective liability insurance with a combined single
4.2 limit of \$2,000,000 for each occurrence and \$4,000,000 aggregate. The coverage may be
4.3 provided by a blanket railroad protective liability insurance policy if the coverage, including
4.4 the coverage limits, applies separately to each individual crossing. The coverage shall be
4.5 required only during the period of construction, repair, or replacement of the facility.

4.6 (e) The certificate of insurance shall be from an insurer of the utility's choosing.

4.7 Subd. 7. **Objection to crossing; petition to Public Utilities Commission.** (a) If
4.8 a railroad objects to the proposed crossing or paralleling due to the proposal being a
4.9 serious threat to the safe operations of the railroad or to the current use of the railroad
4.10 right-of-way, the railroad shall provide to the utility notice of the objection and the specific
4.11 basis for the objection. The railroad shall send the notice of objection to the utility by
4.12 certified mail, with return receipt requested.

4.13 (b) If the parties are unable to resolve the objection, either party may petition the
4.14 Public Utilities Commission for their assistance via mediation or arbitration of the disputed
4.15 crossing application. The petition must be filed within 60 days of receipt of the objection.
4.16 Before filing a petition, the parties shall make good faith efforts to resolve the objection.

4.17 (c) If a petition is filed, the Public Utilities Commission must issue an order within
4.18 120 days of filing of the petition. The order may be appealed under chapter 14 and section
4.19 216B.27. The Public Utilities Commission shall assess the costs associated with a petition
4.20 equitably among the parties.

4.21 Subd. 8. **Additional requirements; objection and petition to Public Utilities**
4.22 **Commission.** (a) If a railroad imposes additional requirements on a utility for crossing its
4.23 lines, other than the proposed crossing being a serious threat to the safe operations of the
4.24 railroad or to the current use of the railroad right-of-way, the utility may object to one or
4.25 more of the requirements. If it objects, the utility shall provide notice of the objection
4.26 and the specific basis for the objection to the railroad by certified mail, with return receipt
4.27 requested.

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

4.32 (c) If a petition is filed, the Public Utilities Commission shall determine, after notice
4.33 and opportunity for hearing, whether special circumstances exist that necessitate additional
4.34 requirements for the placement of the crossing. The Public Utilities Commission must
4.35 issue an order within 120 days of filing of the petition. The order may be appealed under

5.1 chapter 14 and section 216B.27. The Public Utilities Commission shall assess the costs
5.2 associated with a petition equitably among the parties.

5.3 Subd. 9. **Existing agreements.** Nothing in this section prevents a railroad and a
5.4 utility from continuing under an existing agreement, or from otherwise negotiating the
5.5 terms and conditions applicable to a crossing or the resolution of any disputes relating
5.6 to the crossing. The use of this section or section 237.04 is optional. Nothing in this
5.7 section impairs the authority of a utility to secure crossing rights by easement through
5.8 exercise of the power of eminent domain.