

SB0259S01 compared with SB0259

~~{deleted text}~~ shows text that was in SB0259 but was deleted in SB0259S01.

Inserted text shows text that was not in SB0259 but was inserted into SB0259S01.

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Senator Daniel Hemmert proposes the following substitute bill:

RAILROAD ~~{RIGHT-OF-WAY}~~RIGHT-OF-WAY AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel Hemmert

House Sponsor: ~~{_____}~~Carl R. Albrecht

LONG TITLE

General Description:

This bill enacts provisions related to ~~{utility}~~fiber optic carrier crossings of railroad rights-of-way.

Highlighted Provisions:

This bill:

- ▶ requires a ~~{utility}~~fiber optic carrier 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}~~fiber optic carrier to request permission from a railroad;
- ▶ allows railroads to impose certain requirements prior to granting permission for a ~~{utility}~~fiber optic carrier crossing of a railroad right-of-way;

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- ▶ establishes a standard fee that may be charged for each facility placed by a ~~{utility}~~fiber optic carrier across a railroad right-of-way;
- ▶ allows a ~~{utility}~~fiber optic carrier 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:

ENACTS:

54-23-101, Utah Code Annotated 1953

54-23-102, Utah Code Annotated 1953

54-23-103, Utah Code Annotated 1953

54-23-104, Utah Code Annotated 1953

54-23-105, Utah Code Annotated 1953

54-23-106, Utah Code Annotated 1953

54-23-107, Utah Code Annotated 1953

54-23-108, Utah Code Annotated 1953

~~{~~ ~~**54-23-109**, Utah Code Annotated 1953~~

~~—~~ ~~**54-23-110**, Utah Code Annotated 1953~~

~~}~~

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

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

CHAPTER 23. CROSSING RAILROAD RIGHTS-OF-WAY BY ~~{UTILITIES}~~FIBER
OPTIC CARRIERS

54-23-101. Title.

This chapter is known as "Crossing Railroad Rights-of-Way by ~~{Utilities}~~Fiber Optic Carriers."

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

54-23-102. Definitions.

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As used in this chapter:

(1) "Consumer price index" means the Consumer Price Index for All Urban Consumers: All Items Less Food & Energy, as published by the Bureau of Labor Statistics of the United States Department of Labor.

(2) (a) "Crossing" means a ~~{utility}~~ telecommunications facility constructed over, under, or across a railroad right-of-way ~~{,;}~~:

(i) at an angle between 80 degrees and 100 degrees;

(ii) with a minimum depth of 10 feet; and

(iii) within a county that is not a county of the first class.

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

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

~~—— (i) water;~~

~~—— (ii) sewage;~~

~~—— (iii) electronic, telephone, or telegraphic communications;~~

~~—— (iv) fiber optics;~~

~~—— (v) cable television;~~

~~—— (vi) electric energy;~~

~~—— (vii) oil;~~

~~—— (viii) natural gas; or~~

~~—— (ix) hazardous liquids;~~

~~—— (b) Facility includes:~~

~~—— (i) pipes;~~

~~—— (ii) sewers;~~

~~—— (iii) conduits;~~

~~—— (iv) cables;~~

~~—— (v) valves;~~

~~—— (vi) lines;~~

~~—— (vii) wires;~~

~~—— (viii) manholes; and~~

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~~_____ (ix) attachments;~~

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

~~_____ (5) (a) "Utility" means any cooperative electric association, electric utility, public utility, transmission company, gas utility, municipal utility, municipal power agency, municipality, joint action agency, pipeline company, rural water system, or telephone, telegraph, } fiber optics or related conduit installed in a crossing.~~

(4) "Fiber optic carrier" means a telecommunications } cable, or fiber optic carrier.

~~_____ (b) "Utility" includes contractors or agents } corporation or a telecommunications corporation's contractor or agent.~~

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

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

(1) (a) Any ~~{utility}~~ fiber optic carrier that intends to place a facility across or upon a railroad right-of-way shall submit a request for permission from the railroad prior to placing a facility.

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

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

~~{ _____ (ii) be sent to the railroad by certified mail, with return receipt requested;~~

~~† (}iii}ii) include an engineering design that:~~

(A) shows the location of the proposed crossing and the railroad's property, tracks, and wires that the ~~{utility}~~ telecommunications facility will cross; and

(B) conforms with guidelines published in the most recent edition of the National Electric Safety Code ~~{ or Manual for Railway Engineering of the American Railway Engineering and Maintenance-of-Way Association;~~

~~_____ (iv} } and~~

(iii) include the standard crossing fee specified in Section {54-23-106;}54-23-105.

~~{v}2) {include evidence of insurance as described in Section 54-23-107; and~~

~~_____ (vi) if available, be on a form provided or approved by the railroad.~~

~~_____ (2) Within 15} }Unless the railroad provides written or electronic notice to the utility~~

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that the proposed crossing is a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way, the railroad shall approve the application within 35 calendar days ~~of receipt of an application that is not complete, the railroad shall inform the applicant regarding any additional necessary information and submittals~~ after the receipt of a completed application for a crossing.

(3) This section applies to:

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

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

(4) If an applicant that intends to place a facility across or upon a railroad right-of-way at a crossing described in Subsection (3)(a) has paid a collective amount that equals or exceeds the standard crossing fee established under Section ~~54-23-106~~ 54-23-105 to the railroad during the existence of the crossing, no additional fee may be required.

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

54-23-104. ~~Inductive interference study.~~

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

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

~~(b) in accordance with guidelines in the National Electric Safety Code and the Manual for Railway Engineering of the American Railway Engineering and Maintenance-of-Way Association, the railroad reasonably determines that the proposed facility poses a material possibility of creating induction issues or interference with railroad property.~~

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

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

~~(b) perform and pay for any costs of modifications to the proposed facility~~

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identified in the study; and

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

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

~~_____ (b) Within 30 days of receiving notice that the facility is ready to be energized, the railroad shall conduct any appropriate tests to ensure that there will not be any interference with}~~ **Right-of-way crossing -- Construction.**

Unless the railroad notifies the fiber optic carrier in writing or electronically that the approved crossing is a serious threat to the safe operation of the railroad {following energization} or to the current use of the railroad right-of-way, the railroad shall issue the contractor's right of entry and schedule flagging to occur within 45 calendar days of the approved application.

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

~~{ _____~~ **54-23-105. Right-of-way crossing -- Construction.**

~~_____ (1) For a utility not required to complete a conductive inference study under Section 54-23-104, beginning 35 calendar days after the receipt by the railroad of a completed crossing application, 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.~~

~~_____ (2) For a utility required to complete a conductive inference study under Section 54-23-104, beginning 35 calendar days after the receipt by the railroad of a completed conductive inference study, 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.~~

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

~~† {~~ **54-23-105. Standard crossing fee.**

(1) Unless otherwise agreed by the parties, a {utility} fiber optic carrier that crosses a railroad right-of-way, other than a crossing within a public right-of-way, shall pay the railroad a one-time standard crossing fee of \$1,250, adjusted as provided in Subsection (6), for each

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crossing.

(2) (a) Except as otherwise provided in this chapter, the standard crossing fee is paid 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.

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

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

(4) ~~No~~ A railroad may not require a crossing fee ~~may be required~~ if:

(a) the crossing is ~~located~~ within a public right-of-way; and

(b) the property is not owned by the railroad.

(5) (a) The placement of a single conduit ~~is limited to a single applicant~~, and the conduit's contents ~~is~~ are a single facility.

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

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

(a) one; and

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

Section ~~{7}~~6. Section ~~{54-23-107}~~54-23-106 is enacted to read:

~~54-23-107. Certificate of insurance.~~

~~(1) A certificate of insurance or coverage required under Section 54-23-103 shall:~~

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

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

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

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

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

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

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

~~(3) The insurance coverage}~~ 54-23-106. Objections -- petition to Public Service Commission by a railroad.

(1) If a railroad objects to the proposed crossing due to the proposal being a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way, the railroad shall provide written or electronic notice to the fiber optic carrier of the objection and the specific basis for the objection.

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

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

(3) If a petition is filed under {Subsections (1) and (2):

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

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

~~Section 8}~~ Subsection (2), the commission shall issue an order within 120 days of filing of the petition.

(4) An order issued under Subsection (3) may be appealed in accordance with Chapter

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7, Hearings, Practice, and Procedure.

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

Section 7. Section ~~{54-23-108}~~54-23-107 is enacted to read:

~~{54-23-108}~~54-23-107. **Objections -- petition to Public Service Commission by a {railroad:**

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

~~—— (b) The railroad shall provide notice of the objection to the utility by certified mail, with return receipt requested:~~

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

~~—— (b) The petition shall be filed within 60 days of receipt of the objection:~~

~~—— (3) If a petition is filed under Subsection (2), the commission shall issue an order within 120 days of filing of the petition:~~

~~—— (4) An order issued under Subsection (3) may be appealed in accordance with Chapter 7, Hearings, Practice, and Procedure:~~

~~—— (5) The commission shall assess the costs associated with a petition equitably among the parties:~~

~~—— Section 9. Section 54-23-109 is enacted to read:~~

~~—— 54-23-109. Objections -- petition to Public Service Commission by a utility.~~
~~**fiber optic carrier.**~~

(1) (a) If a railroad imposes additional requirements on a ~~{utility}~~fiber optic carrier for crossing the railroad's lines, other than the proposed crossing being a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way, the ~~{utility}~~fiber optic carrier may object to one or more of the requirements.

(b) The ~~{utility}~~fiber optic carrier shall provide written or electronic notice of the objection and the specific basis for the objection to the railroad ~~{by certified mail, with return~~

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receipt requested.

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

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

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

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

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

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

Section ~~{10}~~8. Section ~~{54-23-110}~~54-23-108 is enacted to read:

~~{54-23-110}~~54-23-108. **Existing agreements.**

~~{(1)}~~ Nothing in this chapter prevents a railroad and a ~~{utility}~~ fiber optic carrier from continuing under an existing agreement, or from otherwise negotiating the terms and conditions applicable to a crossing or the resolution of any disputes relating to the crossing.

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

~~}~~