

SB0259S02 compared with SB0259S01

~~{deleted text}~~ shows text that was in SB0259S01 but was deleted in SB0259S02.

Inserted text shows text that was not in SB0259S01 but was inserted into SB0259S02.

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~~{Senator Daniel Hemmert}~~Representative Carl R. Albrecht proposes the following substitute bill:

RAILROAD 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 fiber optic carrier crossings of railroad rights-of-way.

Highlighted Provisions:

This bill:

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

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 FIBER
OPTIC CARRIERS**

54-23-101. Title.

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

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

54-23-102. Definitions.

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

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the United States Department of Labor.

(2) (a) "Crossing" means a 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:

(A) 10 feet below rail level for nonhorizontal directional drilling; or

(B) 15 feet below rail for horizontal directional drilling; 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) "Facility" or "telecommunications facility" means fiber optics or related conduit installed in a crossing.

(4) "Fiber optic carrier" means a telecommunications 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 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 **railroad** form of a completed crossing application;

(ii) include an engineering design that:

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

(B) conforms with guidelines published in the most recent edition of the National Electric Safety Code **and American Railway Engineering and Maintenance-of-Way Association standards;** and

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

(2) Unless the railroad provides written or electronic notice to the ~~facility~~ **fiber optic carrier** that the proposed crossing is a serious threat to the safe operations of the railroad or to the current or future use of the railroad right-of-way, would violate any federal law or regulation applicable to a public transit district, or would violate an agreement between a public transit district and the federal government, the railroad shall approve the application

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within 35 calendar days 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 54-23-105 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. 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 or to the current or future use of the railroad right-of-way, would violate any federal law or regulation applicable to a public transit district, or would violate an agreement between a public transit district and the federal government, the railroad shall issue the ~~contractor's right of entry~~ permit or crossing agreement 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. Standard crossing fee.

(1) Unless otherwise agreed by the parties, a 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~~5), for each 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 fiber optic carrier by the railroad.

(3) In addition to the standard crossing fee, the 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.

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~~{ (4) A railroad may not require a crossing fee if:~~

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

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

‡ ~~(5)4~~ (a) The placement of a single conduit is limited to a single applicant, and the conduit's contents 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)5~~ 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 6. Section **54-23-106** is enacted to read:

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 or future use of the railroad right-of-way, a violation of any federal law or regulation applicable to a public transit district, or a violation of an agreement between a public transit district and the federal government, 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 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 7. Section **54-23-107** is enacted to read:

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54-23-107. **Objections -- petition to Public Service Commission by a fiber optic carrier.**

(1) (a) If a railroad imposes additional requirements on a 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 or future use of the railroad right-of-way, a violation of any federal law or regulation applicable to a public transit district, or a violation of an agreement between a public transit district and the federal government, the fiber optic carrier may object to one or more of the requirements.

(b) The fiber optic carrier shall provide written or electronic notice of the objection and the specific basis for the objection to the railroad.

(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 8. Section **54-23-108** is enacted to read:

54-23-108. **Existing agreements.**

Nothing in this chapter prevents a railroad and a 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.