

Representative Mike Schultz proposes the following substitute bill:

RAILROAD CROSSING MAINTENANCE AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the duties of the Public Service Commission and the Department of Transportation pertaining to safety oversight of railroads and crossings.

Highlighted Provisions:

This bill:

- ▶ amends provisions related to the duties of the Public Service Commission and the Department of Transportation pertaining to safety oversight of railroads and crossings to remove confusion caused by outdated references;

- ▶ allows the Department of Transportation to allocate certain safety responsibilities between the relevant public agency and the railroad;

- ▶ amends other provisions related to the safety and maintenance of railroads and crossings;

- ▶ amends provisions related to railroad company participation and approval of proposed improvements to a railroad crossing; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **54-1-2**, as last amended by Laws of Utah 1987, Chapter 92

31 **54-2-1**, as last amended by Laws of Utah 2020, Chapter 217

32 **54-3-8**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 4

33 **54-4-1**, as last amended by Laws of Utah 1975, First Special Session, Chapter 9

34 **54-4-2**, as last amended by Laws of Utah 2019, Chapter 460

35 **54-4-14**, as last amended by Laws of Utah 1975, First Special Session, Chapter 9

36 **54-4-15**, as last amended by Laws of Utah 1999, Chapter 190

37

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

39 Section 1. Section **54-1-2** is amended to read:

40 **54-1-2. Powers and duties.**

41 (1) The Public Service Commission shall succeed to all powers and discharge all duties
42 and perform all the functions which by existing and continuing law are conferred upon and
43 required to be discharged or performed by the Public Utilities Commission of Utah.

44 (2) Whenever any existing and continuing law refers to or names the Public Utilities
45 Commission of Utah or any officer, agent, or employee of such commission, the same shall be
46 construed to mean, refer to, and name the Public Service Commission of Utah or the
47 corresponding officer, agent, or employee of such Public Service Commission[~~; provided,~~
48 ~~however, that the Department of Transportation shall have jurisdiction over those safety~~
49 ~~functions transferred to it by the Department of Transportation Act].~~

50 Section 2. Section **54-2-1** is amended to read:

51 **54-2-1. Definitions.**

52 As used in this title:

53 (1) "Avoided costs" means the incremental costs to an electrical corporation of electric
54 energy or capacity or both that, due to the purchase of electric energy or capacity or both from
55 small power production or cogeneration facilities, the electrical corporation would not have to
56 generate itself or purchase from another electrical corporation.

57 (2) "Clean coal technology" means a technology that may be researched, developed, or
58 used for reducing emissions or the rate of emissions from a thermal electric generation plant
59 that uses coal as a fuel source.

60 (3) "Cogeneration facility":

61 (a) means a facility that produces:

62 (i) electric energy; and

63 (ii) steam or forms of useful energy, including heat, that are used for industrial,
64 commercial, heating, or cooling purposes; and

65 (b) is a qualifying cogeneration facility under federal law.

66 (4) "Commission" means the Public Service Commission.

67 (5) "Commissioner" means a member of the commission.

68 (6) (a) "Corporation" includes an association and a joint stock company having any
69 powers or privileges not possessed by individuals or partnerships.

70 (b) "Corporation" does not include towns, cities, counties, conservancy districts,
71 improvement districts, or other governmental units created or organized under any general or
72 special law of this state.

73 (7) "Department" means the Department of Transportation created in Section [72-1-201](#).

74 [~~(7)~~] (8) "Distribution electrical cooperative" includes an electrical corporation that:

75 (a) is a cooperative;

76 (b) conducts a business that includes the retail distribution of electricity the cooperative
77 purchases or generates for the cooperative's members; and

78 (c) is required to allocate or distribute savings in excess of additions to reserves and
79 surplus on the basis of patronage to the cooperative's:

80 (i) members; or

81 (ii) patrons.

82 [~~(8)~~] (9) (a) "Electrical corporation" includes every corporation, cooperative
83 association, and person, their lessees, trustees, and receivers, owning, controlling, operating, or
84 managing any electric plant, or in any way furnishing electric power for public service or to its
85 consumers or members for domestic, commercial, or industrial use, within this state.

86 (b) "Electrical corporation" does not include:

87 (i) an independent energy producer;

88 (ii) where electricity is generated on or distributed by the producer solely for the
89 producer's own use, or the use of the producer's tenants, or the use of members of an
90 association of unit owners formed under Title 57, Chapter 8, Condominium Ownership Act,
91 and not for sale to the public generally;

92 (iii) an eligible customer who provides electricity for the eligible customer's own use or
93 the use of the eligible customer's tenant or affiliate; or

94 (iv) a nonutility energy supplier who sells or provides electricity to:

95 (A) an eligible customer who has transferred the eligible customer's service to the
96 nonutility energy supplier in accordance with Section 54-3-32; or

97 (B) the eligible customer's tenant or affiliate.

98 (c) "Electrical corporation" does not include an entity that sells electric vehicle battery
99 charging services:

100 (i) if the entity obtains the electricity for the electric vehicle battery charging service,
101 including any electricity from an electricity storage device:

102 (A) from an electrical corporation in whose service area the electric vehicle battery
103 charging service is located; and

104 (B) under an established tariff for rates, charges, and conditions of service; and

105 (ii) unless the entity conducts another activity in the state that subjects the entity to the
106 jurisdiction and regulation of the commission as an electrical corporation.

107 ~~[(9)]~~ (10) "Electric plant" includes all real estate, fixtures, and personal property
108 owned, controlled, operated, or managed in connection with or to facilitate the production,
109 generation, transmission, delivery, or furnishing of electricity for light, heat, or power, and all
110 conduits, ducts, or other devices, materials, apparatus, or property for containing, holding, or
111 carrying conductors used or to be used for the transmission of electricity for light, heat, or
112 power.

113 ~~[(10)]~~ (11) "Eligible customer" means a person who:

114 (a) on December 31, 2013:

115 (i) was a customer of a public utility that, on December 31, 2013, had more than
116 200,000 retail customers in this state; and

117 (ii) owned an electric plant that is an electric generation plant that, on December 31,
118 2013, had a generation name plate capacity of greater than 150 megawatts; and

- 119 (b) produces electricity:
- 120 (i) from a qualifying power production facility for sale to a public utility in this state;
- 121 (ii) primarily for the eligible customer's own use; or
- 122 (iii) for the use of the eligible customer's tenant or affiliate.
- 123 ~~[(11)]~~ (12) "Eligible customer's tenant or affiliate" means one or more tenants or
- 124 affiliates:
- 125 (a) of an eligible customer; and
- 126 (b) who are primarily engaged in an activity:
- 127 (i) related to the eligible customer's core mining or industrial businesses; and
- 128 (ii) performed on real property that is:
- 129 (A) within a 25-mile radius of the electric plant described in Subsection ~~[(10)]~~
- 130 ~~(11)~~(a)(ii); and
- 131 (B) owned by, controlled by, or under common control with, the eligible customer.
- 132 ~~[(12)]~~ (13) "Gas corporation" includes every corporation and person, their lessees,
- 133 trustees, and receivers, owning, controlling, operating, or managing any gas plant for public
- 134 service within this state or for the selling or furnishing of natural gas to any consumer or
- 135 consumers within the state for domestic, commercial, or industrial use, except in the situation
- 136 that:
- 137 (a) gas is made or produced on, and distributed by the maker or producer through,
- 138 private property:
- 139 (i) solely for the maker's or producer's own use or the use of the maker's or producer's
- 140 tenants; and
- 141 (ii) not for sale to others;
- 142 (b) gas is compressed on private property solely for the owner's own use or the use of
- 143 the owner's employees as a motor vehicle fuel; or
- 144 (c) gas is compressed by a retailer of motor vehicle fuel on the retailer's property solely
- 145 for sale as a motor vehicle fuel.
- 146 ~~[(13)]~~ (14) "Gas plant" includes all real estate, fixtures, and personal property owned,
- 147 controlled, operated, or managed in connection with or to facilitate the production, generation,
- 148 transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.
- 149 ~~[(14)]~~ (15) "Heat corporation" includes every corporation and person, their lessees,

150 trustees, and receivers, owning, controlling, operating, or managing any heating plant for public
151 service within this state.

152 ~~[(15)]~~ (16) (a) "Heating plant" includes all real estate, fixtures, machinery, appliances,
153 and personal property controlled, operated, or managed in connection with or to facilitate the
154 production, generation, transmission, delivery, or furnishing of artificial heat.

155 (b) "Heating plant" does not include either small power production facilities or
156 cogeneration facilities.

157 ~~[(16)]~~ (17) "Independent energy producer" means every electrical corporation, person,
158 corporation, or government entity, their lessees, trustees, or receivers, that own, operate,
159 control, or manage an independent power production or cogeneration facility.

160 ~~[(17)]~~ (18) "Independent power production facility" means a facility that:

161 (a) produces electric energy solely by the use, as a primary energy source, of biomass,
162 waste, a renewable resource, a geothermal resource, or any combination of the preceding
163 sources; or

164 (b) is a qualifying power production facility.

165 ~~[(18)]~~ (19) "Large-scale electric utility" means a public utility that provides retail
166 electric service to more than 200,000 retail customers in the state.

167 ~~[(19)]~~ (20) "Large-scale natural gas utility" means a public utility that provides retail
168 natural gas service to more than 200,000 retail customers in the state.

169 ~~[(20)]~~ (21) "Nonutility energy supplier" means a person that:

170 (a) has received market-based rate authority from the Federal Energy Regulatory
171 Commission in accordance with 16 U.S.C. Sec. 824d, 18 C.F.R. Part 35, Filing of Rate
172 Schedules and Tariffs, or applicable Federal Energy Regulatory Commission orders; or

173 (b) owns, leases, operates, or manages an electric plant that is an electric generation
174 plant that:

175 (i) has a capacity of greater than 100 megawatts; and

176 (ii) is hosted on the site of an eligible customer that consumes the output of the electric
177 plant, in whole or in part, for the eligible customer's own use or the use of the eligible
178 customer's tenant or affiliate.

179 ~~[(21)]~~ (22) "Private telecommunications system" includes all facilities for the
180 transmission of signs, signals, writing, images, sounds, messages, data, or other information of

181 any nature by wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio
182 facilities, that are owned, controlled, operated, or managed by a corporation or person,
183 including their lessees, trustees, receivers, or trustees appointed by any court, for the use of that
184 corporation or person and not for the shared use with or resale to any other corporation or
185 person on a regular basis.

186 ~~[(22)]~~ (23) (a) "Public utility" includes every railroad corporation, gas corporation,
187 electrical corporation, distribution electrical cooperative, wholesale electrical cooperative,
188 telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat
189 corporation, and independent energy producer not described in Section 54-2-201 where the
190 service is performed for, or the commodity delivered to, the public generally, or in the case of a
191 gas corporation or electrical corporation where the gas or electricity is sold or furnished to any
192 member or consumers within the state for domestic, commercial, or industrial use.

193 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone
194 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
195 or independent energy producer not described in Section 54-2-201, performs a service for or
196 delivers a commodity to the public, it is considered to be a public utility, subject to the
197 jurisdiction and regulation of the commission and this title.

198 (ii) If a gas corporation, independent energy producer not described in Section
199 54-2-201, or electrical corporation sells or furnishes gas or electricity to any member or
200 consumers within the state, for domestic, commercial, or industrial use, for which any
201 compensation or payment is received, it is considered to be a public utility, subject to the
202 jurisdiction and regulation of the commission and this title.

203 (c) Any corporation or person not engaged in business exclusively as a public utility as
204 defined in this section is governed by this title in respect only to the public utility owned,
205 controlled, operated, or managed by the corporation or person, and not in respect to any other
206 business or pursuit.

207 (d) Any person or corporation defined as an electrical corporation or public utility
208 under this section may continue to serve its existing customers subject to any order or future
209 determination of the commission in reference to the right to serve those customers.

210 (e) (i) "Public utility" does not include any person that is otherwise considered a public
211 utility under this Subsection ~~[(22)]~~ (23) solely because of that person's ownership of an interest

212 in an electric plant, cogeneration facility, or small power production facility in this state if all of
213 the following conditions are met:

214 (A) the ownership interest in the electric plant, cogeneration facility, or small power
215 production facility is leased to:

216 (I) a public utility, and that lease has been approved by the commission;

217 (II) a person or government entity that is exempt from commission regulation as a
218 public utility; or

219 (III) a combination of Subsections [~~(22)~~] (23)(e)(i)(A)(I) and (II);

220 (B) the lessor of the ownership interest identified in Subsection [~~(22)~~] (23)(e)(i)(A) is:

221 (I) primarily engaged in a business other than the business of a public utility; or

222 (II) a person whose total equity or beneficial ownership is held directly or indirectly by
223 another person engaged in a business other than the business of a public utility; and

224 (C) the rent reserved under the lease does not include any amount based on or
225 determined by revenues or income of the lessee.

226 (ii) Any person that is exempt from classification as a public utility under Subsection
227 [~~(22)~~] (23)(e)(i) shall continue to be so exempt from classification following termination of the
228 lessee's right to possession or use of the electric plant for so long as the former lessor does not
229 operate the electric plant or sell electricity from the electric plant. If the former lessor operates
230 the electric plant or sells electricity, the former lessor shall continue to be so exempt for a
231 period of 90 days following termination, or for a longer period that is ordered by the
232 commission. This period may not exceed one year. A change in rates that would otherwise
233 require commission approval may not be effective during the 90-day or extended period
234 without commission approval.

235 (f) "Public utility" does not include any person that provides financing for, but has no
236 ownership interest in an electric plant, small power production facility, or cogeneration facility.
237 In the event of a foreclosure in which an ownership interest in an electric plant, small power
238 production facility, or cogeneration facility is transferred to a third-party financier of an electric
239 plant, small power production facility, or cogeneration facility, then that third-party financier is
240 exempt from classification as a public utility for 90 days following the foreclosure, or for a
241 longer period that is ordered by the commission. This period may not exceed one year.

242 (g) (i) The distribution or transportation of natural gas for use as a motor vehicle fuel

243 does not cause the distributor or transporter to be a "public utility," unless the commission,
244 after notice and a public hearing, determines by rule that it is in the public interest to regulate
245 the distributors or transporters, but the retail sale alone of compressed natural gas as a motor
246 vehicle fuel may not cause the seller to be a "public utility."

247 (ii) In determining whether it is in the public interest to regulate the distributors or
248 transporters, the commission shall consider, among other things, the impact of the regulation
249 on the availability and price of natural gas for use as a motor fuel.

250 (h) "Public utility" does not include:

251 (i) an eligible customer who provides electricity for the eligible customer's own use or
252 the use of the eligible customer's tenant or affiliate; or

253 (ii) a nonutility energy supplier that sells or provides electricity to:

254 (A) an eligible customer who has transferred the eligible customer's service to the
255 nonutility energy supplier in accordance with Section 54-3-32; or

256 (B) the eligible customer's tenant or affiliate.

257 (i) "Public utility" does not include an entity that sells electric vehicle battery charging
258 services:

259 (i) if the entity obtains the electricity for the electric vehicle battery charging service,
260 including any electricity from an electricity storage device:

261 (A) from a large-scale electric utility or an electrical corporation in whose service area
262 the electric vehicle battery charging service is located; and

263 (B) under an established tariff for rates, charges, and conditions of service; and

264 (ii) unless the entity conducts another activity in the state that subjects the entity to the
265 jurisdiction and regulation of the commission as a public utility.

266 (j) "Public utility" does not include an independent energy producer that is not subject
267 to regulation by the commission as a public utility under Section 54-2-201.

268 [~~23~~] (24) "Purchasing utility" means any electrical corporation that is required to
269 purchase electricity from small power production or cogeneration facilities pursuant to the
270 Public Utility Regulatory Policies Act, 16 U.S.C. Sec. 824a-3.

271 [~~24~~] (25) "Qualifying power producer" means a corporation, cooperative association,
272 or person, or the lessee, trustee, and receiver of the corporation, cooperative association, or
273 person, who owns, controls, operates, or manages any qualifying power production facility or

274 cogeneration facility.

275 ~~[(25)]~~ (26) "Qualifying power production facility" means a facility that:

276 (a) produces electrical energy solely by the use, as a primary energy source, of biomass,
277 waste, a renewable resource, a geothermal resource, or any combination of the preceding
278 sources;

279 (b) has a power production capacity that, together with any other facilities located at
280 the same site, is no greater than 80 megawatts; and

281 (c) is a qualifying small power production facility under federal law.

282 ~~[(26)]~~ (27) "Railroad" includes every commercial, interurban, and other railway, other
283 than a street railway, and each branch or extension of a railway, by any power operated,
284 together with all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots,
285 union depots, yards, grounds, terminals, terminal facilities, structures, and equipment, and all
286 other real estate, fixtures, and personal property of every kind used in connection with a
287 railway owned, controlled, operated, or managed for public service in the transportation of
288 persons or property.

289 ~~[(27)]~~ (28) "Railroad corporation" includes every corporation and person, their lessees,
290 trustees, and receivers, owning, controlling, operating, or managing any railroad for public
291 service within this state.

292 ~~[(28)]~~ (29) (a) "Sewerage corporation" includes every corporation and person, their
293 lessees, trustees, and receivers, owning, controlling, operating, or managing any sewerage
294 system for public service within this state.

295 (b) "Sewerage corporation" does not include private sewerage companies engaged in
296 disposing of sewage only for their stockholders, or towns, cities, counties, conservancy
297 districts, improvement districts, or other governmental units created or organized under any
298 general or special law of this state.

299 ~~[(29)]~~ (30) "Telegraph corporation" includes every corporation and person, their
300 lessees, trustees, and receivers, owning, controlling, operating, or managing any telegraph line
301 for public service within this state.

302 ~~[(30)]~~ (31) "Telegraph line" includes all conduits, ducts, poles, wires, cables,
303 instruments, and appliances, and all other real estate, fixtures, and personal property owned,
304 controlled, operated, or managed in connection with or to facilitate communication by

305 telegraph, whether that communication be had with or without the use of transmission wires.

306 [~~(31)~~] (32) "Telephone cooperative" means a telephone corporation that:

307 (a) is a cooperative; and

308 (b) is organized for the purpose of providing telecommunications service to the

309 telephone corporation's members and the public at cost plus a reasonable rate of return.

310 [~~(32)~~] (33) (a) "Telephone corporation" means any corporation or person, and their

311 lessees, trustee, receivers, or trustees appointed by any court, who owns, controls, operates,

312 manages, or resells a public telecommunications service as defined in Section 54-8b-2.

313 (b) "Telephone corporation" does not mean a corporation, partnership, or firm

314 providing:

315 (i) intrastate telephone service offered by a provider of cellular, personal

316 communication systems (PCS), or other commercial mobile radio service as defined in 47

317 U.S.C. Sec. 332 that has been issued a covering license by the Federal Communications

318 Commission;

319 (ii) Internet service; or

320 (iii) resold intrastate toll service.

321 [~~(33)~~] (34) "Telephone line" includes all conduits, ducts, poles, wires, cables,

322 instruments, and appliances, and all other real estate, fixtures, and personal property owned,

323 controlled, operated, or managed in connection with or to facilitate communication by

324 telephone whether that communication is had with or without the use of transmission wires.

325 [~~(34)~~] (35) "Transportation of persons" includes every service in connection with or

326 incidental to the safety, comfort, or convenience of the person transported, and the receipt,

327 carriage, and delivery of that person and that person's baggage.

328 [~~(35)~~] (36) "Transportation of property" includes every service in connection with or

329 incidental to the transportation of property, including in particular its receipt, delivery,

330 elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and

331 hauling, and the transmission of credit by express companies.

332 [~~(36)~~] (37) "Utility-owned vehicle charging infrastructure" means all facilities,

333 equipment, and electrical systems owned and installed by a large-scale electric utility:

334 (a) on the customer's side or the large-scale electric utility's side of the electricity

335 metering equipment; and

336 (b) to facilitate utility vehicle charging service or other electric vehicle battery charging
337 service.

338 [~~(37)~~] (38) "Utility vehicle charging service" means the furnishing of electricity:

339 (a) to an electric vehicle battery charging station;

340 (b) by a public utility in whose service area the charging station is located; and

341 (c) pursuant to a duly established tariff for rates, charges, and conditions of service for
342 the electricity.

343 [~~(38)~~] (39) "Water corporation" includes every corporation and person, their lessees,
344 trustees, and receivers, owning, controlling, operating, or managing any water system for
345 public service within this state. It does not include private irrigation companies engaged in
346 distributing water only to their stockholders, or towns, cities, counties, water conservancy
347 districts, improvement districts, or other governmental units created or organized under any
348 general or special law of this state.

349 [~~(39)~~] (40) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,
350 headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures,
351 and personal property owned, controlled, operated, or managed in connection with or to
352 facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage,
353 appointment, apportionment, or measurement of water for power, fire protection, irrigation,
354 reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.

355 (b) "Water system" does not include private irrigation companies engaged in
356 distributing water only to their stockholders.

357 [~~(40)~~] (41) "Wholesale electrical cooperative" includes every electrical corporation that
358 is:

359 (a) in the business of the wholesale distribution of electricity it has purchased or
360 generated to its members and the public; and

361 (b) required to distribute or allocate savings in excess of additions to reserves and
362 surplus to members or patrons on the basis of patronage.

363 Section 3. Section 54-3-8 is amended to read:

364 **54-3-8. Preferences forbidden -- Power of commission to determine facts --**

365 **Applicability of section.**

366 (1) Except as provided in Chapter 8b, Public Telecommunications Law, a public utility

367 may not:

368 (a) as to rates, charges, service, facilities or in any other respect, make or grant any
369 preference or advantage to any person, or subject any person to any prejudice or disadvantage;
370 and

371 (b) establish or maintain any unreasonable difference as to rates, charges, service or
372 facilities, or in any other respect, either as between localities or as between classes of service.

373 (2) The commission shall have power to determine any question of fact arising under
374 this section.

375 (3) This section does not apply to, and the commission may not enforce this chapter
376 concerning, a schedule, classification, rate, price, charge, fare, toll, rental, rule, service, facility,
377 or contract of an entity described in Subsection [~~54-2-1(8)(b)(iii) or (iv), (20), or (22)(h)~~]
378 54-2-1(9)(b)(iii) or (iv), (21), or (23)(h), or if the electricity is consumed by an eligible
379 customer for the eligible customer's own use or the use of the eligible customer's tenant or
380 affiliate.

381 Section 4. Section **54-4-1** is amended to read:

382 **54-4-1. General jurisdiction.**

383 The commission is hereby vested with power and jurisdiction to supervise and regulate
384 every public utility in this state, and to supervise all of the business of every such public utility
385 in this state, and to do all things, whether herein specifically designated or in addition thereto,
386 which are necessary or convenient in the exercise of such power and jurisdiction; provided,
387 however, that the Department of Transportation shall have jurisdiction over [~~those safety~~
388 safety functions transferred to it by the Department of Transportation Act] safety functions of public
389 utilities as granted by Subsections 54-4-15(1) through (3) and in Title 72, Transportation Code.

390 Section 5. Section **54-4-2** is amended to read:

391 **54-4-2. Investigations -- Hearings and notice -- Findings -- Applicability of**
392 **chapter.**

393 (1) (a) The commission may conduct an investigation if the commission determines an
394 investigation:

395 (i) is necessary to secure compliance with this title or with an order of the commission;

396 (ii) is in the public interest; or

397 (iii) should be made of any act or omission to act, or of anything accomplished or

398 proposed, or of any schedule, classification, rate, price, charge, fare, toll, rental, rule,
399 regulation, service, or facility of any public utility.

400 (b) If the commission conducts an investigation under Subsection (1)(a), the
401 commission may:

402 (i) establish a time and place for a hearing;

403 (ii) provide notice to the public utility concerning the investigation; and

404 (iii) make findings and orders that are just and reasonable with respect to the
405 investigation.

406 (2) This chapter does not apply to a schedule, classification, rate, price, charge, fare,
407 toll, rental, rule, service, facility, or contract of an entity described in Subsection
408 ~~[54-2-1(8)(b)(iii) or (iv), (20), or (22)(i)]~~ 54-2-1(9)(b)(iii) or (iv), (21), or (23)(i), or if the
409 electricity is consumed by an eligible customer for the eligible customer's own use or the use of
410 the eligible customer's tenant or affiliate.

411 Section 6. Section **54-4-14** is amended to read:

412 **54-4-14. Safety regulation.**

413 The commission shall have power, by general or special orders, rules or regulations, or
414 otherwise, to require every public utility to construct, maintain and operate its line, plant,
415 system, equipment, apparatus, tracks and premises in such manner as to promote and safeguard
416 the health and safety of its employees, passengers, customers and the public, and to this end to
417 prescribe, among other things, the installation, use, maintenance and operation of appropriate
418 safety or other devices or appliances including interlocking and other protective devices at
419 grade crossings or junctions, and block or other system of signaling, and to establish uniform or
420 other standards of construction and equipment, and to require the performance of any other acts
421 which the health or safety of its employees, passengers, customers or the public may demand,
422 provided, however, that the department of transportation shall have jurisdiction over ~~[those~~
423 ~~safety functions transferred to it by the Department of Transportation Act]~~ safety functions of
424 public utilities as granted by Subsections 54-4-15(1) through (3) and in Title 72, Transportation
425 Code.

426 Section 7. Section **54-4-15** is amended to read:

427 **54-4-15. Establishment and regulation of grade crossings.**

428 (1) (a) No track of any railroad shall be constructed across a public road, highway or

429 street at grade, nor shall the track of any railroad corporation be constructed across the track of
430 any other railroad or street railroad corporation at grade, nor shall the track of a street railroad
431 corporation be constructed across the track of a railroad corporation at grade, without the
432 permission of the Department of Transportation having first been secured; provided, that this
433 subsection shall not apply to the replacement of lawfully existing tracks.

434 (b) The department shall have the right to refuse its permission or to grant it upon such
435 terms and conditions as it may prescribe.

436 (2) The department shall have the power to determine and prescribe the manner,
437 including the particular point of crossing, and the terms of installation, operation, maintenance,
438 use and protection of each crossing of one railroad by another railroad or street railroad, and of
439 a street railroad by a railroad and of each crossing of a public road or highway by a railroad or
440 street railroad, and of a street by a railroad or vice versa, and to alter or abolish any such
441 crossing, to restrict the use of such crossings to certain types of traffic in the interest of public
442 safety and is vested with power and it shall be its duty to designate the railroad crossings to be
443 traversed by school buses and motor vehicles carrying passengers for hire, and to require,
444 where in its judgment it would be practicable, a separation of grades at any such crossing
445 heretofore or hereafter established, and to prescribe the terms upon which such separation shall
446 be made and the proportions in which the expense of the alteration or abolition of such
447 crossings or the separation of such grades shall be divided between the railroad or street
448 railroad corporations affected, or between such corporations and the state, county, municipality
449 or other public authority in interest.

450 (3) (a) The department shall allocate responsibility for maintenance of railroad
451 crossings, including maintenance of safety devices and crossing materials, between the railroad
452 and the public agency involved, including allocating which entity is responsible for the costs of
453 maintenance.

454 (b) The department's allocation may be based on ownership and control of the
455 right-of-way, crossing materials, signals and devices, or other factors as appropriate to protect
456 the public safety.

457 (c) The allocation of maintenance responsibilities for a railroad crossing shall be
458 determined by the department unless a written request for review of the determination for a
459 specific railroad crossing is made to the department, in which case the department shall

460 conduct a review of the maintenance allocations for the railroad crossing, and may modify the
461 allocation.

462 (d) Responsibility for maintenance as determined by the department shall not be
463 subject to modification or waiver by agreement between the railroad and the highway authority
464 without department approval.

465 (4) (a) Railroad crossing improvements and new crossings which are funded solely by
466 non-federal funds may be required or authorized by the department based on a determination
467 that the improvement or new crossing will improve the overall safety of the public, which
468 determination shall be made after coordination with the railroad, affected highway authority,
469 and communities in accordance with requirements established to determine the need, design,
470 and impacts of the new or improved crossing.

471 (b) The railroad company affected by the improvement shall timely enter into a written
472 agreement with the department to design and install improvements as determined necessary.

473 (c) If a railroad company does not make reasonable efforts to participate in determining
474 the need, design, and impacts of a new or improved crossing, does not timely enter into an
475 agreement with the department, or fails to timely provide a design and install improvements as
476 determined necessary, the department may proceed without the railroad company's
477 participation.

478 ~~[(3)]~~ (5) Whenever the department shall find that public convenience and necessity
479 demand the establishment, creation or construction of a crossing of a street or highway over,
480 under or upon the tracks or lines of any public utility, the department may by order, decision,
481 rule or decree require the establishment, construction or creation of such crossing, and such
482 crossing shall thereupon become a public highway and crossing.

483 ~~[(4)]~~ (6) (a) The commission retains exclusive jurisdiction for the resolution of any
484 dispute upon petition by any person aggrieved by any action of the department pursuant to this
485 section, except as provided under Subsection ~~[(4)]~~ (6)(b).

486 (b) If a petition is filed by a person or entity engaged in a subject activity, as defined in
487 Section [19-3-318](#), the commission's decision under Subsection ~~[(4)]~~ (6)(a) regarding resolution
488 of a dispute requires the concurrence of the governor and the Legislature in order to take effect.

489 (c) The department may:

490 (i) direct commencement of an action as provided for in Section [54-7-24](#) in the name of

491 the state to stop or prevent a violation of a department order issued to protect public safety by a
492 railroad company, person, or entity; and
493 (ii) petition the commission to assess and bring an action as provided for in Section
494 54-7-21 to recover penalties for failure of a railroad company, person, or entity to comply with
495 a final order of the department issued pursuant to the department's authority under this section.