

**RAILROAD CROSSING MAINTENANCE AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Cutler**

Senate Sponsor: Wayne A. Harper

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**LONG TITLE****General Description:**

This bill amends provisions related to railroad and highway crossings and repeals sections of code related to railroad crossings.

**Highlighted Provisions:**

This bill:

- ▶ repeals statutory provisions in the Public Utilities code related to the Public Service Commission's oversight of the responsibilities of railroads and highway authorities at grade crossings;
- ▶ establishes a process for the Department of Transportation to oversee grade crossings, including assigning responsibilities and costs among highway authorities and railroads;
- ▶ maintains jurisdiction of the Public Service Commission over dispute resolution between a highway authority and a railroad; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



28       **54-4-1**, as last amended by Laws of Utah 2022, Chapter 314  
29       **54-4-14**, as last amended by Laws of Utah 2022, Chapter 314  
30       **72-7-102**, as last amended by Laws of Utah 2018, Chapters 283, 403

31 ENACTS:

32       **72-7-601**, Utah Code Annotated 1953  
33       **72-7-602**, Utah Code Annotated 1953

34 REPEALS:

35       **54-4-15**, as last amended by Laws of Utah 2022, Chapter 314  
36       **54-4-15.1**, as last amended by Laws of Utah 1975, First Special Session, Chapter 9  
37       **54-4-15.2**, as last amended by Laws of Utah 2011, Chapter 342  
38       **54-4-15.3**, as last amended by Laws of Utah 1975, First Special Session, Chapter 9  
39       **54-4-15.4**, as last amended by Laws of Utah 1975, First Special Session, Chapter 9

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

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

43       **54-4-1. General jurisdiction.**

44       The commission is hereby vested with power and jurisdiction to supervise and regulate  
45 every public utility in this state, and to supervise all of the business of every such public utility  
46 in this state, and to do all things, whether herein specifically designated or in addition thereto,  
47 which are necessary or convenient in the exercise of such power and jurisdiction; provided,  
48 however, that the Department of Transportation shall have jurisdiction over safety functions of  
49 public utilities as granted [~~by Subsections 54-4-15(1) through (3) and~~] in Title 72,  
50 Transportation Code.

51       Section 2. Section **54-4-14** is amended to read:

52       **54-4-14. Safety regulation.**

53       The commission shall have power, by general or special orders, rules or regulations, or  
54 otherwise, to require every public utility to construct, maintain and operate its line, plant,  
55 system, equipment, apparatus, tracks and premises in such manner as to promote and safeguard  
56 the health and safety of its employees, passengers, customers and the public, and to this end to  
57 prescribe, among other things, the installation, use, maintenance and operation of appropriate  
58 safety or other devices or appliances including interlocking and other protective devices at

grade crossings or junctions, and block or other system of signaling, and to establish uniform or other standards of construction and equipment, and to require the performance of any other acts which the health or safety of its employees, passengers, customers or the public may demand, provided, however, that the department of transportation shall have jurisdiction over safety functions of public utilities as granted ~~[by Subsections 54-4-15(1) through (3) and]~~ in Title 72, Transportation Code.

Section 3. Section **72-7-102** is amended to read:

**72-7-102. Excavations, structures, or objects prohibited within right-of-way except in accordance with law -- Permit and fee requirements -- Rulemaking -- Penalty for violation.**

(1) As used in this section, "management costs" means the reasonable, direct, and actual costs a highway authority incurs in exercising authority over the highways under the highway authority's jurisdiction.

(2) Except as provided in Subsection (3) and Section ~~[54-4-15]~~ [72-7-602](#), a person may not:

(a) dig or excavate, within the right-of-way of any state highway, county road, or city street; or

(b) place, construct, or maintain any approach road, driveway, pole, pipeline, conduit, sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or character within the right-of-way.

(3) (a) (i) A highway authority having jurisdiction over the right-of-way may allow excavating, installation of utilities and other facilities or access under rules made by the highway authority and in compliance with federal, state, and local law as applicable.

(ii) Notwithstanding Subsection (3)(a)(i), a highway authority may not allow excavating, installation of utilities and other facilities, or access to any portion of a state highway, including portions thereof within a municipality, without the prior written approval of the department. The department may, by written agreement with a municipality, waive the requirement of its approval for certain types and categories of excavations, installations, and access.

(b) (i) The rules may require a permit for any excavation or installation and may require a surety bond or other security.

(ii) The application for a permit for excavation or installation on a state highway shall be accompanied by a fee established under Subsection (4)(f).

(iii) The permit may be revoked and the surety bond or other security may be forfeited for cause.

(iv) Any portion of the right-of-way disturbed by a project permitted under this section shall be repaired using construction standards established by the highway authority with jurisdiction over the disturbed portion of the right-of-way.

(c) (i) For a portion of a state highway right-of-way for which a municipality has jurisdiction, and upon request of the municipality, the department shall grant permission for the municipality to issue permits within the state highway right-of-way, provided that:

(A) the municipality gives the department seven calendar days to review and provide comments on the permit; and

(B) upon the request of the department, the municipality incorporates changes to the permit as jointly agreed upon by the municipality and the department.

(ii) If the department fails to provide a response as described in Subsection (3)(c)(i) within seven calendar days, the municipality may issue the permit.

(4) (a) Except as provided in Section 72-7-108 with respect to the department concerning the interstate highway system, a highway authority may require compensation from a utility service provider for access to the right-of-way of a highway only as provided in this section.

(b) A highway authority may recover from a utility service provider, only those management costs caused by the utility service provider's activities in the right-of-way of a highway under the jurisdiction of the highway authority.

(c) (i) A highway authority shall impose a fee or other compensation under this Subsection (4) on a competitively neutral basis.

(ii) (A) If a highway authority's management costs cannot be attributed to only one entity, the highway authority shall allocate the management costs among all privately owned and government agencies using the highway right-of-way for utility service purposes, including the highway authority itself.

(B) The allocation shall reflect proportionately the management costs incurred by the highway authority as a result of the various utility uses of the highway.

(d) A highway authority may not use the compensation authority granted under this Subsection (4) as a basis for generating revenue for the highway authority that is in addition to the highway authority's management costs.

(e) (i) A utility service provider that is assessed management costs or a franchise fee by a highway authority is entitled to recover those management costs.

(ii) If the highway authority that assesses the management costs or franchise fees is a political subdivision of the state and the utility service provider serves customers within the boundaries of that highway authority, the management costs may be recovered from those customers.

(f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall adopt a schedule of fees to be assessed for management costs incurred in connection with issuing and administering a permit on a state highway under this section.

(g) In addition to the requirements of this Subsection (4), a telecommunications tax or fee imposed by a municipality on a telecommunications provider, as defined in Section 10-1-402, is subject to Section 10-1-406.

(5) Permit fees collected by the department under this section shall be deposited with the state treasurer and credited to the Transportation Fund.

(6) Nothing in this section shall affect the authority of a municipality under:

(a) Section 10-1-203 or 10-1-203.5;

(b) Section 11-26-201;

(c) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or

(d) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.

(7) A person who violates the provisions of Subsection (2) is guilty of a class B misdemeanor.

Section 4. Section 72-7-601 is enacted to read:

#### **Part 6. Regulation of Highway-Railroad Grade Crossings**

##### **72-7-601. Definitions.**

As used in this part:

(1) "Highway-railroad grade crossing" means:

(a) an intersection where a railroad track crosses a highway at the same level; or

(b) an intersection where the railroad track of a railroad entity crosses the railroad track

of another railroad entity at the same level.

(2) "Public Service Commission" means the Public Service Commission of Utah created in Section 54-1-1.

(3) "Railroad entity" means an entity, a company, a person, or a public transit provider that owns, controls, operates, or manages a railroad.

Section 5. Section 72-7-602 is enacted to read:

**72-7-602. Regulation of highway-railroad grade crossings.**

(1) A railroad entity may not construct a new highway-railroad grade crossing without first obtaining written authorization from the department.

(2) Subject to Subsection (4), the department may:

(a) determine and prescribe:

(i) the specific location of each highway-railroad grade crossing in the state; and

(ii) the terms of installation, operation, maintenance, use, and protection of each highway-railroad grade crossing in the state;

(b) alter or abolish any highway-railroad grade crossing upon such terms and conditions as the department prescribes;

(c) restrict the use of any highway-railroad grade crossing to certain types of traffic in the interest of public safety;

(d) when practicable, as determined by the department, require a separation of grades at any existing highway-railroad grade crossing in the state, and prescribe the terms of any separation of grades at an existing highway-railroad grade crossing; and

(e) allocate responsibilities, including costs, for the alteration, abolition, or separation of any highway-railroad grade crossing in the state between each affected railroad entity and highway authority.

(3) (a) The department shall allocate maintenance responsibilities, including costs, for each highway-railroad grade crossing in the state, including the maintenance of related safety devices and crossing materials, between each railroad entity and highway authority affected by the highway-railroad grade crossing.

(b) The department may base the allocation of maintenance responsibilities, including costs, on ownership and control of the right-of-way, crossing materials, signals and devices, or other factors the department determines are appropriate to protect public safety.

183 (c) If a railroad entity or a highway authority disagrees with the department's allocation  
184 of maintenance responsibilities, including costs, for a specific highway-railroad grade crossing:

185 (i) the railroad entity or highway authority may provide a written request to the  
186 department for a review of the allocation describing reasons for modification of the allocation;  
187 and

188 (ii) the department:

189 (A) shall conduct a review of the allocation; and

190 (B) at the department's discretion, may modify the allocation.

191 (d) Unless the department provides prior written approval, responsibility for the costs  
192 of maintenance at a highway-railroad grade crossing as allocated by the department may not be  
193 modified or waived by agreement between a railroad entity and a local highway authority.

194 (e) Unless the department enters into a written agreement with a railroad entity stating  
195 otherwise, the relevant railroad entity is responsible for using railroad employees to perform  
196 the physical maintenance and labor at a highway-railroad grade crossing and shall comply with  
197 Code of Federal Regulations, Title 49, Transportation.

198 (4) (a) The department may require or authorize the construction of a new  
199 highway-railroad grade crossing or the improvement of an existing highway-railroad grade  
200 crossing if:

201 (i) the new or improved highway-railroad grade crossing is to be funded solely by  
202 non-federal funds; and

203 (ii) the department determines, after consultation with any affected railroad entities and  
204 highway authorities, that the new or improved highway-railroad grade crossing will improve  
205 the safety of the public in accordance with requirements established by the department to  
206 determine the need, design, and impacts of the new or improved highway-railroad grade  
207 crossing.

208 (b) The railroad entity affected by the new or improved highway-railroad grade  
209 crossing shall timely enter into a written agreement with the department regarding the design  
210 and installation of the new or improved highway-railroad grade crossing.

211 (c) If a railroad entity does not make reasonable efforts to participate in determining the  
212 need, design, and impacts of a new or improved crossing, does not timely enter into an  
213 agreement with the department, or fails to timely provide a design and install improvements as

described in an agreement, the department may impose and the railroad shall pay a penalty consistent with Section [54-7-25](#).

(5) A railroad entity affected by a new or improved highway-railroad grade crossing may not require up-front payment of costs as a condition for the railroad entity's review, approval, or inspection of a new or improved highway-railroad grade crossing.

(6) If the department determines that public convenience and necessity demand the establishment, creation, or construction of a crossing of a street or highway over, under, or upon the tracks or lines of any public utility, the department may by order, decision, rule, or decree require the establishment, construction, or creation of such crossing, and such crossing shall thereupon become a public highway and crossing.

(7) (a) The Public Service Commission retains exclusive jurisdiction for the resolution of any dispute upon petition by any person aggrieved by any action of the department pursuant to this section, except as provided under Subsection (7)(b).

(b) If a petition is filed by a person or entity engaged in a subject activity, as defined in Section [19-3-318](#), the Public Service Commission's decision under Subsection (7)(a) regarding resolution of a dispute requires the concurrence of the governor and the Legislature in order to take effect.

(c) The department may:

(i) direct commencement of an action as provided for in Section [54-7-24](#) in the name of the state to stop or prevent a violation of a department order issued to protect public safety by a railroad entity; and

(ii) petition the Public Service Commission to assess and bring an action as provided for in Section [54-7-21](#) to recover penalties for failure of a railroad entity to comply with a final order of the department issued pursuant to the department's authority under this section.

#### Section 6. **Repealer.**

This bill repeals:

Section [54-4-15](#), **Establishment and regulation of grade crossings.**

Section [54-4-15.1](#), **Signals or devices at grade crossings -- Duty to provide.**

Section [54-4-15.2](#), **Signals or devices at grade crossings -- Funds for payment of costs.**

Section [54-4-15.3](#), **Signals or devices at grade crossings -- Apportionment of costs.**



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Section 54-4-15.4, Signals or devices at grade crossings -- Provision of costs.