

Senate Study Bill 3029

Bill Text

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1 1 Section 1. NEW SECTION. 476.27 CROSSING -- RAILROAD
1 2 RIGHT-OF-WAY.
1 3 1. DEFINITIONS. As used in this section unless the
1 4 context otherwise requires:
1 5 a. "Cross" or "crossing" means the construction,
1 6 operation, repair, and maintenance of reasonably necessary
1 7 facilities over, under, or across a railroad right-of-way by
1 8 public utilities.
1 9 b. "Direct expenses" includes, but is not limited to, the
1 10 following:
1 11 (1) The cost of inspecting the crossing site before,
1 12 during, or after construction.
1 13 (2) Administrative costs including the costs of entering
1 14 the new crossing on the railroad's books, maps, and property
1 15 records.
1 16 (3) All document and preparation fees associated with the
1 17 crossing.
1 18 (4) The cost of flagging related to crossing activities.
1 19 (5) Other reasonable costs incurred due to crossing
1 20 activities.
1 21 c. "Railroad" means the owner, operator, occupant,
1 22 manager, or agent of a railroad right-of-way or such person's
1 23 successor in interest.
1 24 d. "Railroad right-of-way" means right-of-way or other
1 25 interest in real estate that is owned or operated by a
1 26 railroad corporation, including an interurban railway, its
1 27 trustees, or successor in interest; or which is occupied or
1 28 managed by or on behalf of such corporation, trustees, or
1 29 successor in interest, including an abandoned railroad right-
1 30 of-way which has not otherwise reverted pursuant to chapter
1 31 327G; or other interest in a former railroad right-of-way that
1 32 has been acquired or is operated by a land management company
1 33 or similar entity.
1 34 e. "Special circumstances" means unique characteristics of
1 35 a parcel of property which materially increase the direct
2 1 expenses associated with a crossing, or situations in which a
2 2 crossing involves a significant and imminent likelihood of
2 3 danger to the public health or safety, or is a serious threat
2 4 to the safe operations of the railroad or to the current use
2 5 of railroad right-of-way necessitating additional terms and
2 6 conditions associated with a crossing. "Special
2 7 circumstances" may include the parcel's relationship to other
2 8 property, the existence of unique topography or natural
2 9 resources, or other unusual characteristics or dangers
2 10 inherent to the particular crossing.
2 11 2. APPLICABILITY. Notwithstanding section 476.1 or any
2 12 other provision of this chapter which exempts a public utility
2 13 in whole or in part from regulation by the board, this section
2 14 applies to a public utility as defined in section 476.1. This
2 15 section is applicable to both of the following:
2 16 a. A crossing existing on the effective date of this Act
2 17 if an agreement concerning such crossing does not exist, has
2 18 expired, or is terminated.
2 19 b. A crossing of a railroad right-of-way which crossing is
2 20 first constructed or operated on or after the effective date
2 21 of this Act.

2 22 3. RULEMAKING CROSSING COMPENSATION. The board shall
2 23 adopt rules pursuant to chapter 17A prescribing the terms,
2 24 conditions, and compensation for a crossing. The rules shall
2 25 provide for a public utility to cross a railroad right-of-way
2 26 consistent with the public convenience and necessity, and the
2 27 provision of reasonable service to the public. However, the
2 28 rules shall not prevent a railroad and a public utility from
2 29 otherwise negotiating the terms and conditions covering a
2 30 crossing.

2 31 The rules shall address issues as the board deems
2 32 necessary, including both of the following:

2 33 a. The terms and conditions under which a public utility
2 34 may cross a railroad right-of-way. Such terms and conditions
2 35 shall include, but are not limited to, the following:

3 1 (1) A notice prior to the commencement of any crossing
3 2 activity, as well as relocation and removal activities
3 3 relating to public utility facilities located on railroad
3 4 right-of-way. The rules shall provide for immediate access to
3 5 a crossing for repair and maintenance of existing public
3 6 utility facilities in case of emergency, provided notice is
3 7 given as soon as practical after such access occurs.

3 8 (2) A requirement that each party shall maintain and
3 9 repair its property within the railroad right-of-way.

3 10 (3) A requirement that each party shall indemnify the
3 11 other for damages resulting from the use of the railroad
3 12 right-of-way and a determination of the amount and scope of
3 13 insurance or self-insurance required to cover risks associated
3 14 with a crossing.

3 15 (4) A procedure to address the payment of costs associated
3 16 with the relocation of public utility facilities necessary to
3 17 accommodate railroad operations.

3 18 (5) Other terms and conditions necessary to provide for
3 19 the safe and reasonable use of a railroad right-of-way by a
3 20 public utility and consistent with rules adopted by the board.

3 21 b. The development of a standard fee to cover the direct
3 22 expenses of a railroad to be paid by a public utility seeking
3 23 to cross a railroad right-of-way which is to be a one-time
3 24 charge per crossing.

3 25 4. COMPENSATION UNDER SPECIAL CIRCUMSTANCES. If a
3 26 railroad or public utility believes that special circumstances
3 27 exist for a particular crossing, either party may petition the
3 28 board for relief. If a petition is filed, the board shall
3 29 determine whether special circumstances exist necessitating a
3 30 modification of the compensation to be paid or the need for
3 31 additional terms and conditions. The board shall have the
3 32 authority to make all necessary findings of fact and
3 33 determinations related to the applicability of special
3 34 circumstances and any relief to be granted, and its
3 35 determination shall be considered final agency action under
4 1 chapter 17A. The board shall assess the costs of
4 2 administration of the requested action equitably against the
4 3 parties. A railroad or public utility that claims to be
4 4 aggrieved by such agency action may seek judicial review as
4 5 provided in chapter 17A.

4 6 5. AUTHORITY TO CROSS EMERGENCY RELIEF. Pending board
4 7 resolution of a claim of special circumstances raised in a
4 8 petition, a public utility may proceed with the construction
4 9 of a crossing in accordance with the rules adopted by the
4 10 board, unless the board, upon application for emergency relief
4 11 determines that the proposed construction involves a
4 12 significant and imminent likelihood of danger to the public
4 13 health or safety or is a serious threat to the safe operations
4 14 of the railroad or to the current use of the railroad right-
4 15 of-way, and necessitates immediate intervention to prevent
4 16 such crossing until a factual determination is made.

4 17 EXPLANATION

4 18 This bill establishes a new Code section 476.27 relating to

4 19 public utilities crossing railroad rights-of-way. The bill
4 20 requires that the utilities board adopt rules prescribing the
4 21 terms, conditions, and compensation for a crossing. The rules
4 22 are to provide for a public utility to cross a railroad right-
4 23 of-way consistent with the public convenience and necessity,
4 24 and the provision of reasonable service to the public. The
4 25 bill sets forth the issues which the board's rules are to
4 26 address including the terms and conditions under which a
4 27 public utility may cross a railroad right-of-way, and the
4 28 development of a standard fee to cover the direct expenses of
4 29 a railroad to be paid by a public utility seeking to cross a
4 30 railroad right-of-way which is to be a one-time charge per
4 31 crossing. The bill provides that the rules are not to prevent
4 32 a railroad and a public utility from otherwise negotiating the
4 33 terms and conditions covering a crossing. The bill provides
4 34 for an appeal process pursuant to Code chapter 17A if either
4 35 the railroad or the public utility believes that special
5 1 circumstances exist for a particular crossing. The bill
5 2 provides that the new Code section is applicable to existing
5 3 and future crossings.
5 4 LSB 5896SC 78
5 5 mj/cls/14