

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

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SENATE BILL NO. 127

Introduced by: Senators Brown, Ewing, Heinert, Monroe, Parsley, Peterson (Jim), Soholt, Solano, Sutton, Tieszen, and White and Representatives Westra, Bartling, Brunner, Gosch, Haggar (Don), Harrison, Hawley, Rounds, Schaefer, Stalzer, Stevens, Werner, and Zikmund

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the requirements for
2 placement of a utility facility across a railroad right-of-way.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 49-16A-100.2 be amended to read:

5 49-16A-100.2. Terms used in §§ 49-16A-100.2 to 49-16A-100.10, inclusive, mean:

- 6 (1) "Railroad," any association or corporation, or other entity, engaged in operating a
7 common carrier by rail or any other entity responsible for the management of
8 crossings or collection of fees for the railroad;
- 9 (2) "Rural water system," an entity engaged in the treatment, distribution, and sale of
10 water to rural consumers that was created by chapters 34A-5, 46A-3A, or 46A-9 or
11 any nonprofit corporation engaged in such activity;
- 12 (3) "Utility," electric utility, public utility, gas utility, municipal utility, municipal power
13 agency, joint action agency, consumers power district, pipeline company,
14 telecommunications company, and rural water system;



1 (4) "Crossing," the construction, operation, repair, or maintenance of a facility, over,
 2 under, or across a railroad right-of-way by a utility. The term does not include
 3 longitudinal occupancy of railroad right-of-way;

4 (5) "Facility," any item of personal property placed over, across, or underground for use
 5 in connection with the storage or conveyance of water; sewage; electronic, telephone,
 6 or telegraphic communications; fiber optics; cablevision; electric energy; oil; gas;
 7 hazardous liquids; or other substances including pipes, sewers, conduits, cables,
 8 valves, lines, wires, manholes, or attachments;

9 (6) "Special circumstances," includes the railroad crossing's relationship to other
 10 property, location of the crossing in urban or other developed areas, the existence of
 11 unique topography or natural resources, or other dangers inherent in the particular
 12 crossing.

13 Section 2. That § 49-16A-100.3 be amended to read:

14 49-16A-100.3. Any utility that intends to place a facility across a railroad right-of-way shall
 15 ~~request prior permission for such~~ provide to the railroad notice of the placement at least thirty
 16 days before the placement from the railroad. The request notice shall be in the form of include
 17 ~~a completed~~ crossing application, including a drawing showing the location of the proposed
 18 crossing and the railroad's property, tracks, and wires that the utility will cross. The utility ~~shall~~
 19 may submit the crossing application on a form provided ~~or approved~~ by the railroad, if available.
 20 The crossing application shall be sent to the railroad by certified mail, return receipt requested.
 21 The application shall be accompanied by the crossing fee as set forth in § 49-16A-100.5, and
 22 a certificate of insurance as required by § 49-16A-100.6.

23 Section 3. That § 49-16A-100.4 be amended to read:

24 49-16A-100.4. ~~Beginning thirty~~ Thirty days after the receipt by the railroad of the ~~completed~~

1 crossing application, the fee, and certificate of insurance, the utility may commence the
2 construction of the crossing, ~~unless the railroad notifies the utility in writing that the information~~
3 ~~contained in the crossing application is incomplete or inadequate or that special circumstances~~
4 ~~exist. For purposes of §§ 49-16A-100.2 to 49-16A-100.10, inclusive, special circumstances~~
5 ~~include the railroad crossing's relationship to other property, location of the crossing in urban~~
6 ~~or other developed areas, the existence of unique topography or natural resources, or other~~
7 ~~dangers inherent in the particular crossing~~ and the utility shall be deemed to have authorization
8 to commence construction of the facility.

9 Section 4. That § 49-16A-100.5 be amended to read:

10 49-16A-100.5. Unless otherwise agreed by the parties, a utility that crosses a railroad right-
11 of-way, other than a crossing within the public right-of-way, shall pay the railroad a one-time
12 standard crossing fee of seven hundred fifty dollars for each crossing. The standard crossing fee
13 is in lieu of any license, permit, application, processing fee, or any other fees or charges to
14 reimburse the railroad for the direct expenses incurred by the railroad as a result of the crossing.
15 No other fee may be assessed by the railroad or by any railroad agent, contractor, or assignee
16 to the utility or to any agent or contractor of the utility. The utility shall also reimburse the
17 railroad for any reasonable and necessary flagging expense associated with a crossing, based on
18 the railroad traffic at the crossing, in addition to the standard crossing fee. No crossing fee is
19 required if the crossing is located within a public right-of-way.

20 Section 5. That § 49-16A-100.6 be amended to read:

21 49-16A-100.6. The certificate of insurance or coverage submitted by a municipality shall
22 include commercial general liability insurance or equivalent form with a limit of not less than
23 one million dollars for each occurrence and an aggregate of not less than two million dollars.
24 The certificate of insurance submitted by any other utility other than a gas or hazardous

1 materials pipeline utility shall include commercial general liability insurance with a combined
2 single limit of a minimum of two million dollars for each occurrence and an aggregate limit of
3 at least four million dollars. The certificate of insurance submitted by a gas or hazardous
4 materials pipeline utility shall include commercial general liability insurance with a combined
5 single limit of a minimum of five million dollars for each occurrence and an aggregate limit of
6 at least ten million dollars. The railroad may require protective liability insurance with a
7 combined single limit of two million dollars for each occurrence and four million dollars
8 aggregate. The coverage may be provided by a blanket railroad protective liability insurance
9 policy if the coverage, including the coverage limits, applies separately to each individual
10 crossing. The coverage shall be required only during the period of construction, repair, or
11 replacement of the facility.

12 Section 6. That § 49-16A-100.7 be amended to read:

13 49-16A-100.7. If a railroad objects to the adequacy of the information contained in the
14 crossing application or asserts that special circumstances exist, the railroad shall provide notice
15 of the objection and the specific basis of the objection to the utility by certified mail, return
16 receipt requested. If the parties are unable to resolve the objection, either party may petition the
17 Public Utilities Commission for additional requirements ~~or for modification of the standard~~
18 ~~crossing fee~~ within sixty days from receipt of the objection. Before filing a petition, the parties
19 shall confer in good faith in an attempt to resolve the objection. If a petition is filed, the Public
20 Utilities Commission shall determine, after notice and opportunity for hearing, whether special
21 circumstances exist that necessitate additional requirements for the placement ~~or modification~~
22 ~~of the standard crossing fee~~ of the facility within one hundred twenty days of filing of the
23 petition. The order may be appealed pursuant to chapter 1-26. The Public Utilities Commission
24 shall assess its costs associated with a petition equitably against the parties.