

# State of South Dakota

NINETY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2016

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## SENATE ENGROSSED NO. **SB 127** - 02/24/2016

Introduced by: Senators Brown, Ewing, Heinert, Monroe, Parsley, Peterson (Jim), Soholt, Solano, Sutton, Tieszen, and White and Representatives Westra, Bartling, Brunner, Gosch, Hagggar (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 nonpublic association or corporation, or other entity, engaged in  
7 operating a common carrier by rail or any other entity responsible for the  
8 management of 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 submit the crossing application on a form provided or approved by the railroad, if available. The  
 20 crossing application shall be sent to the railroad by certified mail, return receipt requested. The  
 21 application shall be accompanied by the crossing fee as set forth in § 49-16A-100.5, and a  
 22 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~~ proposed crossing is a serious threat to the safe  
8 operations of the railroad or to the current use of the railroad right-of-way. In all other instances  
9 the utility shall be deemed to have authorization to commence construction of the facility.

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

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

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

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

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

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

14 49-16A-100.7. If a railroad objects to the ~~adequacy of the information contained in the~~  
15 ~~crossing application or asserts that special circumstances exist~~ proposed crossing due to the  
16 proposal being a serious threat to the safe operations of the railroad or to the current use of the  
17 railroad right-of-way, the railroad shall provide notice of the objection and the specific basis of  
18 the objection to the utility by certified mail, return receipt requested. If the parties are unable to  
19 resolve the objection, either party may petition the Public Utilities Commission for ~~additional~~  
20 ~~requirements or for modification of the standard crossing fee~~ resolution of the disputed crossing  
21 application within ~~sixty~~ thirty days from receipt of the objection. Before filing a petition, the  
22 parties shall confer in good faith in an attempt to resolve the objection. If a petition is filed, the  
23 Public Utilities Commission ~~shall determine~~, after notice and opportunity for hearing, ~~whether~~  
24 ~~special circumstances exist that necessitate additional requirements for the placement or~~

1 ~~modification of the standard crossing fee~~ must issue an order within ~~one hundred twenty six~~  
2 days of filing of the petition, during which time the crossing shall be stayed. The order may be  
3 appealed pursuant to chapter 1-26. The Public Utilities Commission shall assess its costs  
4 associated with a petition equitably against the parties.

5 Section 7. That § 49-16A-100.8 be amended to read:

6 49-16A-100.8. If a railroad asserts in writing by certified mail return receipt requested that  
7 special circumstances exist, or imposes additional requirements upon a utility for crossing its  
8 lines, other than the proposed crossing being a serious threat to the safe operations of the  
9 railroad or to the current use of the railroad right-of-way, the utility may object to one or more  
10 of the requirements. In such event, the utility shall provide notice of the objection and the  
11 specific basis of the objection to the railroad by certified mail, return receipt requested. If the  
12 parties are unable to resolve the objection, either party may petition the Public Utilities  
13 Commission for resolution ~~or modification of the additional requirements~~ objection within ~~sixty~~  
14 thirty days from receipt of the objection. Before filing a petition, the parties shall confer in good  
15 faith in an attempt to resolve the objection. If a petition is filed, the Public Utilities Commission,  
16 within ~~one hundred twenty~~ ninety days of filing the petition, shall determine, after notice and  
17 opportunity for hearing, whether special circumstances exist that necessitate additional  
18 requirements for the placement of the crossing. The order may be appealed pursuant to chapter  
19 1-26. The Public Utilities Commission shall assess its costs associated with a petition equitably  
20 against the parties.