

AN ACT

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

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

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

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

- (1) "Railroad," any nonpublic association or corporation, or other entity, engaged in operating a common carrier by rail or any other entity responsible for the management of crossings or collection of fees for the railroad;
- (2) "Rural water system," an entity engaged in the treatment, distribution, and sale of water to rural consumers that was created by chapters 34A-5, 46A-3A, or 46A-9 or any nonprofit corporation engaged in such activity;
- (3) "Utility," electric utility, public utility, gas utility, municipal utility, municipal power agency, joint action agency, consumers power district, pipeline company, telecommunications company, and rural water system;
- (4) "Crossing," the construction, operation, repair, or maintenance of a facility, over, under, or across a railroad right-of-way by a utility. The term does not include longitudinal occupancy of railroad right-of-way;
- (5) "Facility," any item of personal property placed over, across, or underground for use in connection with the storage or conveyance of water; sewage; electronic, telephone, or telegraphic communications; fiber optics; cablevision; electric energy; oil; gas; hazardous liquids; or other substances including pipes, sewers, conduits, cables, valves, lines, wires, manholes, or attachments;
- (6) "Special circumstances," includes the railroad crossing's relationship to other property,

location of the crossing in urban or other developed areas, the existence of unique topography or natural resources, or other dangers inherent in the particular crossing.

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

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

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

49-16A-100.4. Thirty days after the receipt by the railroad of the completed crossing application, the fee, and certificate of insurance, the utility may commence the construction of the crossing, unless the railroad notifies the utility in writing that the proposed crossing is a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way. In all other instances the utility shall be deemed to have authorization to commence construction of the facility.

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

49-16A-100.5. Unless otherwise agreed by the parties, a utility that crosses a railroad right-of-way, other than a crossing within the public right-of-way, shall pay the railroad a one-time standard crossing fee of seven hundred fifty dollars for each crossing. The standard crossing fee is in lieu of any license, permit, application, processing fee, or any other fees or charges to reimburse the railroad for the direct expenses incurred by the railroad as a result of the crossing. No other fee may be assessed by the railroad or by any railroad agent, contractor, or assignee to the utility or to any agent

or contractor of the utility. The utility shall also reimburse the railroad for any reasonable and necessary flagging expense associated with a crossing, based on the railroad traffic at the crossing, in addition to the standard crossing fee. No crossing fee is required if the crossing is located within a public right-of-way.

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

49-16A-100.6. The certificate of insurance or coverage submitted by a municipality shall include commercial general liability insurance or equivalent form with a limit of not less than one million dollars for each occurrence and an aggregate of not less than two million dollars. The certificate of insurance submitted by any other utility other than a gas or hazardous materials pipeline utility shall include commercial general liability insurance with a combined single limit of a minimum of two million dollars for each occurrence and an aggregate limit of at least four million dollars. The certificate of insurance submitted by a gas or hazardous materials pipeline utility shall include commercial general liability insurance with a combined single limit of a minimum of five million dollars for each occurrence and an aggregate limit of at least ten million dollars. The railroad may require protective liability insurance with a combined single limit of two million dollars for each occurrence and four million dollars aggregate. The coverage may be provided by a blanket railroad protective liability insurance policy if the coverage, including the coverage limits, applies separately to each individual crossing. The coverage shall be required only during the period of construction, repair, or replacement of the facility.

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

49-16A-100.7. If a railroad objects to the proposed crossing due to the proposal being a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way, the railroad shall provide notice of the objection and the specific basis of the objection to the utility by certified mail, return receipt requested. If the parties are unable to resolve the objection, either party

may petition the Public Utilities Commission for resolution of the disputed crossing application within thirty days from receipt of the objection. Before filing a petition, the parties shall confer in good faith in an attempt to resolve the objection. If a petition is filed, the Public Utilities Commission, after notice and opportunity for hearing, must issue an order within sixty days of filing of the petition, during which time the crossing shall be stayed. The order may be appealed pursuant to chapter 1-26. The Public Utilities Commission shall assess its costs associated with a petition equitably against the parties.

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

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

An Act to revise certain provisions regarding the requirements for placement of a utility facility across a railroad right-of-way.

=====

I certify that the attached Act originated in the

SENATE as Bill No. 127

Secretary of the Senate

=====

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 127
File No. _____
Chapter No. _____

=====

Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

=====

The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

=====

STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State