

State of South Dakota

EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2014

327V0455

HOUSE BILL NO. 1194

Introduced by: Representatives Hoffman, Cronin, Hunhoff (Bernie), Novstrup (David), Parsley, and Verchio and Senators Brown, Frerichs, Holien, and Lederman

1 FOR AN ACT ENTITLED, An Act to establish certain requirements relating to the crossing of
2 railroad rights-of-way by rural water system lines.

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

4 Section 1. Any rural water system that intends to place a water line across a railroad right
5 of way shall request prior permission for such placement from the railroad carrier. The request
6 shall be in the form of a completed crossing application, including engineering specifications
7 and location of the crossing. The rural water system shall submit the crossing application on a
8 form provided or approved by the railroad, if available. The crossing application shall be sent
9 to the railroad by certified mail, return receipt requested. For purposes of this Act, the term,
10 rural water system, means an entity engaged in the treatment, distribution, and sale of water to
11 rural consumers that was created by chapters 34A-5, 46A-3A, or 46A-9 or any nonprofit
12 corporation engaged in such activity.

13 Section 2. Beginning thirty days after the rural water system has mailed the completed
14 crossing application, paid the fee required in section 3 of this Act, and provided a certificate of
15 insurance confirming existence of general liability insurance with limits of two million dollars



1 per occurrence and an aggregate of four million dollars covering construction activities of the
2 affected rural water system, the rural water system may commence the construction of the
3 crossing activity, unless there is an objection by the railroad that the information contained in
4 the crossing application is incomplete or inadequate or an objection that special circumstances
5 exist. For purposes of this Act, special circumstances include the railroad crossing's relationship
6 to other property, location of the crossing in urban or other developed areas, the existence of
7 unique topography or natural resources, or other dangers inherent in the particular crossing.

8 Section 3. Unless otherwise agreed by the parties, a rural water system that crosses a railroad
9 right-of-way, other than a crossing within the public roads of the state, shall pay the railroad a
10 one-time standard crossing fee of seven hundred fifty dollars for each crossing. The standard
11 crossing fee is in lieu of any license, permit, application, or any other fees or charges to
12 reimburse the railroad for the direct expenses incurred by the railroad as a result of the crossing.

13 Section 4. If a railroad objects to the adequacy of the information contained in the crossing
14 application or asserts that special circumstances exist, the railroad shall provide notice of the
15 objection and the specific basis of the objection to the rural water system by certified mail,
16 return receipt requested. If the parties are unable to resolve the objection, either party may
17 petition the Public Utilities Commission for additional requirements or for modification of the
18 standard crossing fee within sixty days from receipt of the objection. Before filing a petition,
19 the parties shall confer in good faith in an attempt to resolve the objection. If a petition is filed,
20 the Public Utilities Commission shall determine, after notice and opportunity for hearing,
21 whether special circumstances exist that necessitate additional requirements for the placement
22 or modification of the standard crossing fee 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 the costs associated with a petition equitably against the parties.

1 Section 5. Nothing in this Act prevents a railroad company and a rural water system from
2 otherwise negotiating the terms and conditions applicable to a crossing or the resolution of any
3 disputes relating to the crossing. Nothing in this Act impairs the authority of a rural water
4 system to secure crossing rights by easement pursuant to the exercise of the power of eminent
5 domain.

6 Section 6. This Act applies to:

- 7 (1) Any crossing in existence before the effective date of this Act if an agreement
8 concerning the crossing has expired or is terminated. In such instance, if the
9 collective amount of seven hundred fifty dollars has been paid to the railroad during
10 the existence of the crossing, no additional fee is required; and
11 (2) Any crossing commenced on or after the effective date of this Act.