

State of South Dakota

EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2014

327V0455

SENATE STATE AFFAIRS
ENGROSSED NO. **HB 1194** - 03/10/2014

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 crossings
2 of railroad rights-of-way by utilities.

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

4 Section 1. Any utility that intends to place a facility across a railroad right of way shall
5 request prior permission for such placement from the railroad. The request shall be in the form
6 of a completed crossing application, including a drawing showing the location of the proposed
7 crossing and the railroad's property, tracks, and wires that the utility will cross. The utility shall
8 submit the crossing application on a form provided or approved by the railroad, if available. The
9 crossing application shall be sent to the railroad by certified mail, return receipt requested. The
10 application shall be accompanied by the crossing fee as set forth in section 3 of this Act, and a
11 certificate of insurance as required by section 4 of this Act.

12 Section 2. Beginning thirty days after the receipt by the railroad of the completed crossing
13 application, the fee, and certificate of insurance, the utility may commence the construction of
14 the crossing, unless the railroad notifies the utility in writing that the information contained in



1 the crossing application is incomplete or inadequate or that special circumstances exist. For
2 purposes of this Act, special circumstances include the railroad crossing's relationship to other
3 property, location of the crossing in urban or other developed areas, the existence of unique
4 topography or natural resources, or other dangers inherent in the particular crossing.

5 Section 3. Unless otherwise agreed by the parties, a utility that crosses a railroad
6 right-of-way, other than a crossing within the public right-of-way, shall pay the railroad a
7 one-time standard crossing fee of seven hundred fifty dollars for each crossing. The standard
8 crossing fee is in lieu of any license, permit, application, processing fee, or any other fees or
9 charges to reimburse the railroad for the direct expenses incurred by the railroad as a result of
10 the crossing. The utility shall also reimburse the railroad for any reasonable flagging expense
11 associated with a crossing in addition to the standard crossing fee. No crossing fee is required
12 if the crossing is located within a public right-of-way.

13 Section 4. The certificate of insurance or coverage submitted by a municipality shall include
14 commercial general liability insurance or equivalent form with a limit of not less than one
15 million dollars for each occurrence and an aggregate of not less than two million dollars. The
16 certificate of insurance submitted by any other utility other than a gas or hazardous materials
17 pipeline utility shall include commercial general liability insurance with a combined single limit
18 of a minimum of two million dollars for each occurrence and an aggregate limit of at least four
19 million dollars. The certificate of insurance submitted by a gas or hazardous materials pipeline
20 utility shall include commercial general liability insurance with a combined single limit of a
21 minimum of five million dollars for each occurrence and an aggregate limit of at least ten
22 million dollars.

23 Section 5. If a railroad objects to the adequacy of the information contained in the crossing
24 application or asserts that special circumstances exist, the railroad shall provide notice of the

1 objection and the specific basis of the objection to the utility by certified mail, return receipt
2 requested. If the parties are unable to resolve the objection, either party may petition the Public
3 Utilities Commission for additional requirements or for modification of the standard crossing
4 fee within sixty days from receipt of the objection. Before filing a petition, the parties shall
5 confer in good faith in an attempt to resolve the objection. If a petition is filed, the Public
6 Utilities Commission shall determine, after notice and opportunity for hearing, whether special
7 circumstances exist that necessitate additional requirements for the placement or modification
8 of the standard crossing fee within one hundred twenty days of filing of the petition. The order
9 may be appealed pursuant to chapter 1-26. The Public Utilities Commission shall assess its costs
10 associated with a petition equitably against the parties.

11 Section 6. If a railroad imposes additional requirements upon a utility for crossing its lines,
12 the utility may object to one or more of the requirements. In such event, the utility shall provide
13 notice of the objection and the specific basis of the objection to the railroad by certified mail,
14 return receipt requested. If the parties are unable to resolve the objection, either party may
15 petition the Public Utilities Commission for resolution or modification of the additional
16 requirements within sixty days from receipt of the objection. Before filing a petition, the parties
17 shall confer in good faith in an attempt to resolve the objection. If a petition is filed, the Public
18 Utilities Commission, within one hundred twenty days of filing the petition, shall determine,
19 after notice and opportunity for hearing, whether special circumstances exist that necessitate
20 additional requirements for the placement of the crossing. The order may be appealed pursuant
21 to chapter 1-26. The Public Utilities Commission shall assess its costs associated with a petition
22 equitably against the parties.

23 Section 7. Nothing in this Act prevents a railroad and a utility from continuing under an
24 existing agreement or otherwise negotiating the terms and conditions applicable to a crossing

1 or the resolution of any disputes relating to the crossing. Nothing in this Act impairs the
2 authority of a utility to secure crossing rights by easement pursuant to the exercise of the power
3 of eminent domain.

4 Section 8. This Act applies to:

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

10 Section 9. Terms used in this Act mean:

- 11 (1) "Railroad," any association or corporation, or other entity, engaged in operating a
12 common carrier by rail or any other entity responsible for the management of
13 crossings or collection of fees for the railroad;
- 14 (2) "Rural water system," an entity engaged in the treatment, distribution, and sale of
15 water to rural consumers that was created by chapters 34A-5, 46A-3A, or 46A-9 or
16 any nonprofit corporation engaged in such activity;
- 17 (3) "Utility," electric utility, public utility, gas utility, municipal utility, municipal power
18 agency, joint action agency, consumers power district, pipeline company,
19 telecommunications company, and rural water system;
- 20 (4) "Crossing," the construction, operation, repair, or maintenance of a facility, over,
21 under, or across a railroad right-of-way by a utility. The term does not include
22 longitudinal occupancy of railroad right-of-way;
- 23 (5) "Facility," any item of personal property placed over, across, or underground for use
24 in connection with the storage or conveyance of water; sewage; electronic, telephone,

1 or telegraphic communications; fiber optics; cablevision; electric energy; oil; gas;
2 hazardous liquids; or other substances including pipes, sewers, conduits, cables,
3 valves, lines, wires, manholes, or attachments.