

RAILROAD CROSSING MAINTENANCE AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the allocation of duties between the Public Service Commission and the Department of Transportation pertaining to safety oversight of railroads and crossings.

Highlighted Provisions:

This bill:

- ▶ amends provisions related to the allocation of duties between the Public Service Commission and the Department of Transportation pertaining to safety oversight of railroads and crossings to remove confusion caused by outdated references;
- ▶ allows the Department of Transportation to allocate certain safety responsibilities between the Public Service Commission and the railroad;
- ▶ amends other provisions related to the safety and maintenance of railroads and crossings; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 **54-1-2**, as last amended by Laws of Utah 1987, Chapter 92
- 29 **54-2-1**, as last amended by Laws of Utah 2020, Chapter 217
- 30 **54-3-8**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 4
- 31 **54-4-1**, as last amended by Laws of Utah 1975, First Special Session, Chapter 9
- 32 **54-4-2**, as last amended by Laws of Utah 2019, Chapter 460
- 33 **54-4-14**, as last amended by Laws of Utah 1975, First Special Session, Chapter 9
- 34 **54-4-15**, as last amended by Laws of Utah 1999, Chapter 190

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **54-1-2** is amended to read:

54-1-2. Powers and duties.

(1) The Public Service Commission shall succeed to all powers and discharge all duties and perform all the functions which by existing and continuing law are conferred upon and required to be discharged or performed by the Public Utilities Commission of Utah.

(2) Whenever any existing and continuing law refers to or names the Public Utilities Commission of Utah or any officer, agent, or employee of such commission, the same shall be construed to mean, refer to, and name the Public Service Commission of Utah or the corresponding officer, agent, or employee of such Public Service Commission[~~; provided, however, that the Department of Transportation shall have jurisdiction over those safety functions transferred to it by the Department of Transportation Act~~].

Section 2. Section **54-2-1** is amended to read:

54-2-1. Definitions.

As used in this title:

(1) "Avoided costs" means the incremental costs to an electrical corporation of electric energy or capacity or both that, due to the purchase of electric energy or capacity or both from small power production or cogeneration facilities, the electrical corporation would not have to generate itself or purchase from another electrical corporation.

(2) "Clean coal technology" means a technology that may be researched, developed, or used for reducing emissions or the rate of emissions from a thermal electric generation plant that uses coal as a fuel source.

(3) "Cogeneration facility":

- 59 (a) means a facility that produces:
- 60 (i) electric energy; and
- 61 (ii) steam or forms of useful energy, including heat, that are used for industrial,
- 62 commercial, heating, or cooling purposes; and
- 63 (b) is a qualifying cogeneration facility under federal law.
- 64 (4) "Commission" means the Public Service Commission.
- 65 (5) "Commissioner" means a member of the commission.
- 66 (6) (a) "Corporation" includes an association and a joint stock company having any
- 67 powers or privileges not possessed by individuals or partnerships.
- 68 (b) "Corporation" does not include towns, cities, counties, conservancy districts,
- 69 improvement districts, or other governmental units created or organized under any general or
- 70 special law of this state.
- 71 (7) "Department" means the Department of Transportation created in Section [72-1-201](#).
- 72 ~~(7)~~ (8) "Distribution electrical cooperative" includes an electrical corporation that:
- 73 (a) is a cooperative;
- 74 (b) conducts a business that includes the retail distribution of electricity the cooperative
- 75 purchases or generates for the cooperative's members; and
- 76 (c) is required to allocate or distribute savings in excess of additions to reserves and
- 77 surplus on the basis of patronage to the cooperative's:
- 78 (i) members; or
- 79 (ii) patrons.
- 80 ~~(8)~~ (9) (a) "Electrical corporation" includes every corporation, cooperative
- 81 association, and person, their lessees, trustees, and receivers, owning, controlling, operating, or
- 82 managing any electric plant, or in any way furnishing electric power for public service or to its
- 83 consumers or members for domestic, commercial, or industrial use, within this state.
- 84 (b) "Electrical corporation" does not include:
- 85 (i) an independent energy producer;
- 86 (ii) where electricity is generated on or distributed by the producer solely for the
- 87 producer's own use, or the use of the producer's tenants, or the use of members of an
- 88 association of unit owners formed under Title 57, Chapter 8, Condominium Ownership Act,
- 89 and not for sale to the public generally;

90 (iii) an eligible customer who provides electricity for the eligible customer's own use or
91 the use of the eligible customer's tenant or affiliate; or

92 (iv) a nonutility energy supplier who sells or provides electricity to:

93 (A) an eligible customer who has transferred the eligible customer's service to the
94 nonutility energy supplier in accordance with Section 54-3-32; or

95 (B) the eligible customer's tenant or affiliate.

96 (c) "Electrical corporation" does not include an entity that sells electric vehicle battery
97 charging services:

98 (i) if the entity obtains the electricity for the electric vehicle battery charging service,
99 including any electricity from an electricity storage device:

100 (A) from an electrical corporation in whose service area the electric vehicle battery
101 charging service is located; and

102 (B) under an established tariff for rates, charges, and conditions of service; and

103 (ii) unless the entity conducts another activity in the state that subjects the entity to the
104 jurisdiction and regulation of the commission as an electrical corporation.

105 [~~9~~] (10) "Electric plant" includes all real estate, fixtures, and personal property
106 owned, controlled, operated, or managed in connection with or to facilitate the production,
107 generation, transmission, delivery, or furnishing of electricity for light, heat, or power, and all
108 conduits, ducts, or other devices, materials, apparatus, or property for containing, holding, or
109 carrying conductors used or to be used for the transmission of electricity for light, heat, or
110 power.

111 [~~10~~] (11) "Eligible customer" means a person who:

112 (a) on December 31, 2013:

113 (i) was a customer of a public utility that, on December 31, 2013, had more than
114 200,000 retail customers in this state; and

115 (ii) owned an electric plant that is an electric generation plant that, on December 31,
116 2013, had a generation name plate capacity of greater than 150 megawatts; and

117 (b) produces electricity:

118 (i) from a qualifying power production facility for sale to a public utility in this state;

119 (ii) primarily for the eligible customer's own use; or

120 (iii) for the use of the eligible customer's tenant or affiliate.

121 ~~[(11)]~~ (12) "Eligible customer's tenant or affiliate" means one or more tenants or
122 affiliates:

123 (a) of an eligible customer; and

124 (b) who are primarily engaged in an activity:

125 (i) related to the eligible customer's core mining or industrial businesses; and

126 (ii) performed on real property that is:

127 (A) within a 25-mile radius of the electric plant described in Subsection ~~[(10)]~~

128 (11)(a)(ii); and

129 (B) owned by, controlled by, or under common control with, the eligible customer.

130 ~~[(12)]~~ (13) "Gas corporation" includes every corporation and person, their lessees,
131 trustees, and receivers, owning, controlling, operating, or managing any gas plant for public
132 service within this state or for the selling or furnishing of natural gas to any consumer or
133 consumers within the state for domestic, commercial, or industrial use, except in the situation
134 that:

135 (a) gas is made or produced on, and distributed by the maker or producer through,
136 private property:

137 (i) solely for the maker's or producer's own use or the use of the maker's or producer's
138 tenants; and

139 (ii) not for sale to others;

140 (b) gas is compressed on private property solely for the owner's own use or the use of
141 the owner's employees as a motor vehicle fuel; or

142 (c) gas is compressed by a retailer of motor vehicle fuel on the retailer's property solely
143 for sale as a motor vehicle fuel.

144 ~~[(13)]~~ (14) "Gas plant" includes all real estate, fixtures, and personal property owned,
145 controlled, operated, or managed in connection with or to facilitate the production, generation,
146 transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.

147 ~~[(14)]~~ (15) "Heat corporation" includes every corporation and person, their lessees,
148 trustees, and receivers, owning, controlling, operating, or managing any heating plant for public
149 service within this state.

150 ~~[(15)]~~ (16) (a) "Heating plant" includes all real estate, fixtures, machinery, appliances,
151 and personal property controlled, operated, or managed in connection with or to facilitate the

152 production, generation, transmission, delivery, or furnishing of artificial heat.

153 (b) "Heating plant" does not include either small power production facilities or
154 cogeneration facilities.

155 [~~(16)~~] (17) "Independent energy producer" means every electrical corporation, person,
156 corporation, or government entity, their lessees, trustees, or receivers, that own, operate,
157 control, or manage an independent power production or cogeneration facility.

158 [~~(17)~~] (18) "Independent power production facility" means a facility that:

159 (a) produces electric energy solely by the use, as a primary energy source, of biomass,
160 waste, a renewable resource, a geothermal resource, or any combination of the preceding
161 sources; or

162 (b) is a qualifying power production facility.

163 [~~(18)~~] (19) "Large-scale electric utility" means a public utility that provides retail
164 electric service to more than 200,000 retail customers in the state.

165 [~~(19)~~] (20) "Large-scale natural gas utility" means a public utility that provides retail
166 natural gas service to more than 200,000 retail customers in the state.

167 [~~(20)~~] (21) "Nonutility energy supplier" means a person that:

168 (a) has received market-based rate authority from the Federal Energy Regulatory
169 Commission in accordance with 16 U.S.C. Sec. 824d, 18 C.F.R. Part 35, Filing of Rate
170 Schedules and Tariffs, or applicable Federal Energy Regulatory Commission orders; or

171 (b) owns, leases, operates, or manages an electric plant that is an electric generation
172 plant that:

173 (i) has a capacity of greater than 100 megawatts; and

174 (ii) is hosted on the site of an eligible customer that consumes the output of the electric
175 plant, in whole or in part, for the eligible customer's own use or the use of the eligible
176 customer's tenant or affiliate.

177 [~~(21)~~] (22) "Private telecommunications system" includes all facilities for the
178 transmission of signs, signals, writing, images, sounds, messages, data, or other information of
179 any nature by wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio
180 facilities, that are owned, controlled, operated, or managed by a corporation or person,
181 including their lessees, trustees, receivers, or trustees appointed by any court, for the use of that
182 corporation or person and not for the shared use with or resale to any other corporation or

183 person on a regular basis.

184 ~~[(22)]~~ (23) (a) "Public utility" includes every railroad corporation, gas corporation,
185 electrical corporation, distribution electrical cooperative, wholesale electrical cooperative,
186 telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat
187 corporation, and independent energy producer not described in Section 54-2-201 where the
188 service is performed for, or the commodity delivered to, the public generally, or in the case of a
189 gas corporation or electrical corporation where the gas or electricity is sold or furnished to any
190 member or consumers within the state for domestic, commercial, or industrial use.

191 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone
192 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
193 or independent energy producer not described in Section 54-2-201, performs a service for or
194 delivers a commodity to the public, it is considered to be a public utility, subject to the
195 jurisdiction and regulation of the commission and this title.

196 (ii) If a gas corporation, independent energy producer not described in Section
197 54-2-201, or electrical corporation sells or furnishes gas or electricity to any member or
198 consumers within the state, for domestic, commercial, or industrial use, for which any
199 compensation or payment is received, it is considered to be a public utility, subject to the
200 jurisdiction and regulation of the commission and this title.

201 (c) Any corporation or person not engaged in business exclusively as a public utility as
202 defined in this section is governed by this title in respect only to the public utility owned,
203 controlled, operated, or managed by the corporation or person, and not in respect to any other
204 business or pursuit.

205 (d) Any person or corporation defined as an electrical corporation or public utility
206 under this section may continue to serve its existing customers subject to any order or future
207 determination of the commission in reference to the right to serve those customers.

208 (e) (i) "Public utility" does not include any person that is otherwise considered a public
209 utility under this Subsection ~~[(22)]~~ (23) solely because of that person's ownership of an interest
210 in an electric plant, cogeneration facility, or small power production facility in this state if all of
211 the following conditions are met:

212 (A) the ownership interest in the electric plant, cogeneration facility, or small power
213 production facility is leased to:

214 (I) a public utility, and that lease has been approved by the commission;
215 (II) a person or government entity that is exempt from commission regulation as a
216 public utility; or
217 (III) a combination of Subsections [~~(22)~~] (23)(e)(i)(A)(I) and (II);
218 (B) the lessor of the ownership interest identified in Subsection [~~(22)~~] (23)(e)(i)(A) is:
219 (I) primarily engaged in a business other than the business of a public utility; or
220 (II) a person whose total equity or beneficial ownership is held directly or indirectly by
221 another person engaged in a business other than the business of a public utility; and
222 (C) the rent reserved under the lease does not include any amount based on or
223 determined by revenues or income of the lessee.
224 (ii) Any person that is exempt from classification as a public utility under Subsection
225 [~~(22)~~] (23)(e)(i) shall continue to be so exempt from classification following termination of the
226 lessee's right to possession or use of the electric plant for so long as the former lessor does not
227 operate the electric plant or sell electricity from the electric plant. If the former lessor operates
228 the electric plant or sells electricity, the former lessor shall continue to be so exempt for a
229 period of 90 days following termination, or for a longer period that is ordered by the
230 commission. This period may not exceed one year. A change in rates that would otherwise
231 require commission approval may not be effective during the 90-day or extended period
232 without commission approval.
233 (f) "Public utility" does not include any person that provides financing for, but has no
234 ownership interest in an electric plant, small power production facility, or cogeneration facility.
235 In the event of a foreclosure in which an ownership interest in an electric plant, small power
236 production facility, or cogeneration facility is transferred to a third-party financier of an electric
237 plant, small power production facility, or cogeneration facility, then that third-party financier is
238 exempt from classification as a public utility for 90 days following the foreclosure, or for a
239 longer period that is ordered by the commission. This period may not exceed one year.
240 (g) (i) The distribution or transportation of natural gas for use as a motor vehicle fuel
241 does not cause the distributor or transporter to be a "public utility," unless the commission,
242 after notice and a public hearing, determines by rule that it is in the public interest to regulate
243 the distributors or transporters, but the retail sale alone of compressed natural gas as a motor
244 vehicle fuel may not cause the seller to be a "public utility."

245 (ii) In determining whether it is in the public interest to regulate the distributors or
246 transporters, the commission shall consider, among other things, the impact of the regulation
247 on the availability and price of natural gas for use as a motor fuel.

248 (h) "Public utility" does not include:

249 (i) an eligible customer who provides electricity for the eligible customer's own use or
250 the use of the eligible customer's tenant or affiliate; or

251 (ii) a nonutility energy supplier that sells or provides electricity to:

252 (A) an eligible customer who has transferred the eligible customer's service to the
253 nonutility energy supplier in accordance with Section 54-3-32; or

254 (B) the eligible customer's tenant or affiliate.

255 (i) "Public utility" does not include an entity that sells electric vehicle battery charging
256 services:

257 (i) if the entity obtains the electricity for the electric vehicle battery charging service,
258 including any electricity from an electricity storage device:

259 (A) from a large-scale electric utility or an electrical corporation in whose service area
260 the electric vehicle battery charging service is located; and

261 (B) under an established tariff for rates, charges, and conditions of service; and

262 (ii) unless the entity conducts another activity in the state that subjects the entity to the
263 jurisdiction and regulation of the commission as a public utility.

264 (j) "Public utility" does not include an independent energy producer that is not subject
265 to regulation by the commission as a public utility under Section 54-2-201.

266 ~~[(23)]~~ (24) "Purchasing utility" means any electrical corporation that is required to
267 purchase electricity from small power production or cogeneration facilities pursuant to the
268 Public Utility Regulatory Policies Act, 16 U.S.C. Sec. 824a-3.

269 ~~[(24)]~~ (25) "Qualifying power producer" means a corporation, cooperative association,
270 or person, or the lessee, trustee, and receiver of the corporation, cooperative association, or
271 person, who owns, controls, operates, or manages any qualifying power production facility or
272 cogeneration facility.

273 ~~[(25)]~~ (26) "Qualifying power production facility" means a facility that:

274 (a) produces electrical energy solely by the use, as a primary energy source, of biomass,
275 waste, a renewable resource, a geothermal resource, or any combination of the preceding

276 sources;

277 (b) has a power production capacity that, together with any other facilities located at
278 the same site, is no greater than 80 megawatts; and

279 (c) is a qualifying small power production facility under federal law.

280 [~~(26)~~] (27) "Railroad" includes every commercial, interurban, and other railway, other
281 than a street railway, and each branch or extension of a railway, by any power operated,
282 together with all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots,
283 union depots, yards, grounds, terminals, terminal facilities, structures, and equipment, and all
284 other real estate, fixtures, and personal property of every kind used in connection with a
285 railway owned, controlled, operated, or managed for public service in the transportation of
286 persons or property.

287 [~~(27)~~] (28) "Railroad corporation" includes every corporation and person, their lessees,
288 trustees, and receivers, owning, controlling, operating, or managing any railroad for public
289 service within this state.

290 [~~(28)~~] (29) (a) "Sewerage corporation" includes every corporation and person, their
291 lessees, trustees, and receivers, owning, controlling, operating, or managing any sewerage
292 system for public service within this state.

293 (b) "Sewerage corporation" does not include private sewerage companies engaged in
294 disposing of sewage only for their stockholders, or towns, cities, counties, conservancy
295 districts, improvement districts, or other governmental units created or organized under any
296 general or special law of this state.

297 [~~(29)~~] (30) "Telegraph corporation" includes every corporation and person, their
298 lessees, trustees, and receivers, owning, controlling, operating, or managing any telegraph line
299 for public service within this state.

300 [~~(30)~~] (31) "Telegraph line" includes all conduits, ducts, poles, wires, cables,
301 instruments, and appliances, and all other real estate, fixtures, and personal property owned,
302 controlled, operated, or managed in connection with or to facilitate communication by
303 telegraph, whether that communication be had with or without the use of transmission wires.

304 [~~(31)~~] (32) "Telephone cooperative" means a telephone corporation that:

305 (a) is a cooperative; and

306 (b) is organized for the purpose of providing telecommunications service to the

307 telephone corporation's members and the public at cost plus a reasonable rate of return.

308 ~~[(32)]~~ (33) (a) "Telephone corporation" means any corporation or person, and their
309 lessees, trustee, receivers, or trustees appointed by any court, who owns, controls, operates,
310 manages, or resells a public telecommunications service as defined in Section 54-8b-2.

311 (b) "Telephone corporation" does not mean a corporation, partnership, or firm
312 providing:

313 (i) intrastate telephone service offered by a provider of cellular, personal
314 communication systems (PCS), or other commercial mobile radio service as defined in 47
315 U.S.C. Sec. 332 that has been issued a covering license by the Federal Communications
316 Commission;

317 (ii) Internet service; or

318 (iii) resold intrastate toll service.

319 ~~[(33)]~~ (34) "Telephone line" includes all conduits, ducts, poles, wires, cables,
320 instruments, and appliances, and all other real estate, fixtures, and personal property owned,
321 controlled, operated, or managed in connection with or to facilitate communication by
322 telephone whether that communication is had with or without the use of transmission wires.

323 ~~[(34)]~~ (35) "Transportation of persons" includes every service in connection with or
324 incidental to the safety, comfort, or convenience of the person transported, and the receipt,
325 carriage, and delivery of that person and that person's baggage.

326 ~~[(35)]~~ (36) "Transportation of property" includes every service in connection with or
327 incidental to the transportation of property, including in particular its receipt, delivery,
328 elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and
329 hauling, and the transmission of credit by express companies.

330 ~~[(36)]~~ (37) "Utility-owned vehicle charging infrastructure" means all facilities,
331 equipment, and electrical systems owned and installed by a large-scale electric utility:

332 (a) on the customer's side or the large-scale electric utility's side of the electricity
333 metering equipment; and

334 (b) to facilitate utility vehicle charging service or other electric vehicle battery charging
335 service.

336 ~~[(37)]~~ (38) "Utility vehicle charging service" means the furnishing of electricity:

337 (a) to an electric vehicle battery charging station;

338 (b) by a public utility in whose service area the charging station is located; and
339 (c) pursuant to a duly established tariff for rates, charges, and conditions of service for
340 the electricity.

341 [~~(38)~~] (39) "Water corporation" includes every corporation and person, their lessees,
342 trustees, and receivers, owning, controlling, operating, or managing any water system for
343 public service within this state. It does not include private irrigation companies engaged in
344 distributing water only to their stockholders, or towns, cities, counties, water conservancy
345 districts, improvement districts, or other governmental units created or organized under any
346 general or special law of this state.

347 [~~(39)~~] (40) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,
348 headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures,
349 and personal property owned, controlled, operated, or managed in connection with or to
350 facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage,
351 appointment, apportionment, or measurement of water for power, fire protection, irrigation,
352 reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.

353 (b) "Water system" does not include private irrigation companies engaged in
354 distributing water only to their stockholders.

355 [~~(40)~~] (41) "Wholesale electrical cooperative" includes every electrical corporation that
356 is:

357 (a) in the business of the wholesale distribution of electricity it has purchased or
358 generated to its members and the public; and

359 (b) required to distribute or allocate savings in excess of additions to reserves and
360 surplus to members or patrons on the basis of patronage.

361 Section 3. Section **54-3-8** is amended to read:

362 **54-3-8. Preferences forbidden -- Power of commission to determine facts --**
363 **Applicability of section.**

364 (1) Except as provided in Chapter 8b, Public Telecommunications Law, a public utility
365 may not:

366 (a) as to rates, charges, service, facilities or in any other respect, make or grant any
367 preference or advantage to any person, or subject any person to any prejudice or disadvantage;
368 and

369 (b) establish or maintain any unreasonable difference as to rates, charges, service or
370 facilities, or in any other respect, either as between localities or as between classes of service.

371 (2) The commission shall have power to determine any question of fact arising under
372 this section.

373 (3) This section does not apply to, and the commission may not enforce this chapter
374 concerning, a schedule, classification, rate, price, charge, fare, toll, rental, rule, service, facility,
375 or contract of an entity described in Subsection [~~54-2-1(8)(b)(iii) or (iv), (20), or (22)(h)~~]
376 54-2-1(9)(b)(iii) or (iv), (21), or (23)(h), or if the electricity is consumed by an eligible
377 customer for the eligible customer's own use or the use of the eligible customer's tenant or
378 affiliate.

379 Section 4. Section **54-4-1** is amended to read:

380 **54-4-1. General jurisdiction.**

381 The commission is hereby vested with power and jurisdiction to supervise and regulate
382 every public utility in this state, and to supervise all of the business of every such public utility
383 in this state, and to do all things, whether herein specifically designated or in addition thereto,
384 which are necessary or convenient in the exercise of such power and jurisdiction; provided,
385 however, that the Department of Transportation shall have jurisdiction over [~~those safety~~
386 ~~functions transferred to it by the Department of Transportation Act]~~ safety functions of public
387 utilities as granted by Subsections 54-4-15(1) through (3) and in Title 72, Transportation Code.

388 Section 5. Section **54-4-2** is amended to read:

389 **54-4-2. Investigations -- Hearings and notice -- Findings -- Applicability of**
390 **chapter.**

391 (1) (a) The commission may conduct an investigation if the commission determines an
392 investigation:

393 (i) is necessary to secure compliance with this title or with an order of the commission;

394 (ii) is in the public interest; or

395 (iii) should be made of any act or omission to act, or of anything accomplished or
396 proposed, or of any schedule, classification, rate, price, charge, fare, toll, rental, rule,
397 regulation, service, or facility of any public utility.

398 (b) If the commission conducts an investigation under Subsection (1)(a), the
399 commission may:

400 (i) establish a time and place for a hearing;
401 (ii) provide notice to the public utility concerning the investigation; and
402 (iii) make findings and orders that are just and reasonable with respect to the
403 investigation.

404 (2) This chapter does not apply to a schedule, classification, rate, price, charge, fare,
405 toll, rental, rule, service, facility, or contract of an entity described in Subsection
406 [~~54-2-1(8)(b)(iii) or (iv), (20), or (22)(i)~~] 54-2-1(9)(b)(iii) or (iv), (21), or (23)(i), or if the
407 electricity is consumed by an eligible customer for the eligible customer's own use or the use of
408 the eligible customer's tenant or affiliate.

409 Section 6. Section **54-4-14** is amended to read:

410 **54-4-14. Safety regulation.**

411 The commission shall have power, by general or special orders, rules or regulations, or
412 otherwise, to require every public utility to construct, maintain and operate its line, plant,
413 system, equipment, apparatus, tracks and premises in such manner as to promote and safeguard
414 the health and safety of its employees, passengers, customers and the public, and to this end to
415 prescribe, among other things, the installation, use, maintenance and operation of appropriate
416 safety or other devices or appliances including interlocking and other protective devices at
417 grade crossings or junctions, and block or other system of signaling, and to establish uniform or
418 other standards of construction and equipment, and to require the performance of any other acts
419 which the health or safety of its employees, passengers, customers or the public may demand,
420 provided, however, that the department of transportation shall have jurisdiction over [~~those~~
421 safety functions transferred to it by the Department of Transportation Act] safety functions of
422 public utilities as granted by Subsections 54-4-15(1) through (3) and in Title 72, Transportation
423 Code.

424 Section 7. Section **54-4-15** is amended to read:

425 **54-4-15. Establishment and regulation of grade crossings.**

426 (1) (a) No track of any railroad shall be constructed across a public road, highway or
427 street at grade, nor shall the track of any railroad corporation be constructed across the track of
428 any other railroad or street railroad corporation at grade, nor shall the track of a street railroad
429 corporation be constructed across the track of a railroad corporation at grade, without the
430 permission of the Department of Transportation having first been secured; provided, that this

431 subsection shall not apply to the replacement of lawfully existing tracks.

432 (b) The department shall have the right to refuse its permission or to grant it upon such
433 terms and conditions as it may prescribe.

434 (2) The department shall have the power to determine and prescribe the manner,
435 including the particular point of crossing, and the terms of installation, operation, maintenance,
436 use and protection of each crossing of one railroad by another railroad or street railroad, and of
437 a street railroad by a railroad and of each crossing of a public road or highway by a railroad or
438 street railroad, and of a street by a railroad or vice versa, and to alter or abolish any such
439 crossing, to restrict the use of such crossings to certain types of traffic in the interest of public
440 safety and is vested with power and it shall be its duty to designate the railroad crossings to be
441 traversed by school buses and motor vehicles carrying passengers for hire, and to require,
442 where in its judgment it would be practicable, a separation of grades at any such crossing
443 heretofore or hereafter established, and to prescribe the terms upon which such separation shall
444 be made and the proportions in which the expense of the alteration or abolition of such
445 crossings or the separation of such grades shall be divided between the railroad or street
446 railroad corporations affected, or between such corporations and the state, county, municipality
447 or other public authority in interest.

448 (3) (a) The department shall allocate responsibility for maintenance of railroad
449 crossings, including maintenance of safety devices and crossing materials, between the railroad
450 and the public agency involved, including allocating which entity is responsible for the costs of
451 maintenance.

452 (b) The department's allocation may be based on ownership and control of the
453 right-of-way, crossing materials, signals and devices, or other factors as appropriate to protect
454 the public safety.

455 (c) The allocation of maintenance responsibilities for a railroad crossing shall be
456 determined by the department unless a written request for review of the determination for a
457 specific railroad crossing is made to the department, in which case the department shall
458 conduct a review of the maintenance allocations for the railroad crossing, and may modify the
459 allocation.

460 (d) Responsibility for maintenance as determined by the department shall not be
461 subject to modification or waiver by agreement between the railroad and the highway authority

462 without department approval.

463 (4) (a) Railroad crossing improvements and new crossings which are funded solely by
464 non-federal funds may be required or authorized by the department based on a determination
465 that the improvement or new crossing will improve the overall safety of the public, which
466 determination shall be made after coordination with the railroad, affected highway authority,
467 and communities in accordance with requirements established to determine the need, design,
468 and impacts of the new or improved crossing.

469 (b) The railroad company affected by the improvement shall timely enter into a written
470 agreement with the department to design and install improvements as determined necessary.

471 ~~[(3)]~~ (5) Whenever the department shall find that public convenience and necessity
472 demand the establishment, creation or construction of a crossing of a street or highway over,
473 under or upon the tracks or lines of any public utility, the department may by order, decision,
474 rule or decree require the establishment, construction or creation of such crossing, and such
475 crossing shall thereupon become a public highway and crossing.

476 ~~[(4)]~~ (6) (a) The commission retains exclusive jurisdiction for the resolution of any
477 dispute upon petition by any person aggrieved by any action of the department pursuant to this
478 section, except as provided under Subsection ~~[(4)]~~ (6)(b).

479 (b) If a petition is filed by a person or entity engaged in a subject activity, as defined in
480 Section [19-3-318](#), the commission's decision under Subsection ~~[(4)]~~ (6)(a) regarding resolution
481 of a dispute requires the concurrence of the governor and the Legislature in order to take effect.

482 (c) The department may:

483 (i) direct commencement of an action as provided for in Section [54-7-24](#) in the name of
484 the state to stop or prevent a violation of a department order issued to protect public safety by a
485 railroad company, person, or entity; and

486 (ii) petition the commission to assess and bring an action as provided for in Section
487 [54-7-21](#) to recover penalties for failure of a railroad company, person, or entity to comply with
488 a final order of the department issued pursuant to the department's authority under this section.