

Representative Carl R. Albrecht proposes the following substitute bill:

RAILROAD RIGHT-OF-WAY AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel Hemmert

House Sponsor: Carl R. Albrecht

LONG TITLE

General Description:

This bill enacts provisions related to fiber optic carrier crossings of railroad rights-of-way.

Highlighted Provisions:

This bill:

- ▶ requires a fiber optic carrier that intends to place a facility across or upon a railroad right-of-way to submit a request for permission from the railroad prior to placing a facility;
- ▶ establishes procedures for a fiber optic carrier to request permission from a railroad;
- ▶ allows railroads to impose certain requirements prior to granting permission for a fiber optic carrier crossing of a railroad right-of-way;
- ▶ establishes a standard fee that may be charged for each facility placed by a fiber optic carrier across a railroad right-of-way;
- ▶ allows a fiber optic carrier or railroad to petition the Public Service Commission if the parties are unable to resolve an objection; and
- ▶ defines terms.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 ENACTS:

30 **54-23-101**, Utah Code Annotated 1953

31 **54-23-102**, Utah Code Annotated 1953

32 **54-23-103**, Utah Code Annotated 1953

33 **54-23-104**, Utah Code Annotated 1953

34 **54-23-105**, Utah Code Annotated 1953

35 **54-23-106**, Utah Code Annotated 1953

36 **54-23-107**, Utah Code Annotated 1953

37 **54-23-108**, Utah Code Annotated 1953



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

40 Section 1. Section **54-23-101** is enacted to read:

41 **CHAPTER 23. CROSSING RAILROAD RIGHTS-OF-WAY BY FIBER**
42 **OPTIC CARRIERS**

43 **54-23-101. Title.**

44 This chapter is known as "Crossing Railroad Rights-of-Way by Fiber Optic Carriers."

45 Section 2. Section **54-23-102** is enacted to read:

46 **54-23-102. Definitions.**

47 As used in this chapter:

48 (1) "Consumer price index" means the Consumer Price Index for All Urban
49 Consumers: All Items Less Food & Energy, as published by the Bureau of Labor Statistics of
50 the United States Department of Labor.

51 (2) (a) "Crossing" means a telecommunications facility constructed under or across a
52 railroad right-of-way:

53 (i) at an angle between 80 degrees and 100 degrees;

54 (ii) with a minimum depth of:

55 (A) 10 feet below rail level for nonhorizontal directional drilling; or

56 (B) 15 feet below rail for horizontal directional drilling; and

57 (iii) within a county that is not a county of the first class.

58 (b) "Crossing" does not include longitudinal occupancy of railroad right-of-way.

59 (3) "Facility" or "telecommunications facility" means fiber optics or related conduit
60 installed in a crossing.

61 (4) "Fiber optic carrier" means a telecommunications corporation or a
62 telecommunications corporation's contractor or agent.

63 Section 3. Section **54-23-103** is enacted to read:

64 **54-23-103. Right-of-way crossing -- application for permission.**

65 (1) (a) Any fiber optic carrier that intends to place a facility across or upon a railroad
66 right-of-way shall submit a request for permission from the railroad prior to placing a facility.

67 (b) A request under this Subsection (1) shall:

68 (i) be in the railroad form of a completed crossing application;

69 (ii) include an engineering design that:

70 (A) shows the location of the proposed crossing and the railroad's property, tracks, and
71 wires that the telecommunications facility will cross; and

72 (B) conforms with guidelines published in the most recent edition of the National
73 Electric Safety Code and American Railway Engineering and Maintenance-of-Way Association
74 standards; and

75 (iii) include the standard crossing fee specified in Section [54-23-105](#).

76 (2) Unless the railroad provides written or electronic notice to the fiber optic carrier
77 that the proposed crossing is a serious threat to the safe operations of the railroad or to the
78 current or future use of the railroad right-of-way, would violate any federal law or regulation
79 applicable to a public transit district, or would violate an agreement between a public transit
80 district and the federal government, the railroad shall approve the application within 35
81 calendar days after the receipt of a completed application for a crossing.

82 (3) This section applies to:

83 (a) any crossing in existence before May 14, 2019, if an agreement concerning the
84 crossing has expired or has been terminated; and

85 (b) any crossing commenced on or after May 14, 2019.

86 (4) If an applicant that intends to place a facility across or upon a railroad right-of-way
87 at a crossing described in Subsection (3)(a) has paid a collective amount that equals or exceeds

88 the standard crossing fee established under Section 54-23-105 to the railroad during the
89 existence of the crossing, no additional fee may be required.

90 Section 4. Section 54-23-104 is enacted to read:

91 **54-23-104. Right-of-way crossing -- Construction.**

92 Unless the railroad notifies the fiber optic carrier in writing or electronically that the
93 approved crossing is a serious threat to the safe operation of the railroad or to the current or
94 future use of the railroad right-of-way, would violate any federal law or regulation applicable to
95 a public transit district, or would violate an agreement between a public transit district and the
96 federal government, the railroad shall issue the permit or crossing agreement and schedule
97 flagging to occur within 45 calendar days of the approved application.

98 Section 5. Section 54-23-105 is enacted to read:

99 **54-23-105. Standard crossing fee.**

100 (1) Unless otherwise agreed by the parties, a fiber optic carrier that crosses a railroad
101 right-of-way ~~to~~ ~~or~~ ~~crosses~~ ~~the~~ ~~right-of-way~~ ~~of~~ ~~the~~ ~~carrier~~ ~~at~~ ~~the~~ ~~crossing~~ ~~and~~ ~~the~~ ~~carrier~~ ~~shall~~ ~~pay~~ ~~the~~ ~~railroad~~ ~~a~~
102 one-time standard crossing fee of \$1,250, adjusted as provided in Subsection (5), for each
103 crossing.

104 (2) (a) Except as otherwise provided in this chapter, the standard crossing fee is paid in
105 lieu of any license, permit, application, processing fee, or any other fee or charge to reimburse
106 the railroad for direct expenses incurred by the railroad as a result of the crossing.

107 (b) Except as otherwise provided in this chapter, no other fee or charge related to the
108 crossing may be assessed to the fiber optic carrier by the railroad.

109 (3) In addition to the standard crossing fee, the fiber optic carrier shall also reimburse
110 the railroad for any reasonable and necessary flagging expense associated with a crossing,
111 based on the railroad traffic at the crossing.

112 (4) (a) The placement of a single conduit is limited to a single applicant, and the
113 conduit's contents are a single facility.

114 (b) No additional fees are payable based on the individual fibers, wires, lines, or other
115 items contained within a single conduit.

116 (5) On January 1 of each year, the standard crossing fee under Subsection (1) shall be
117 adjusted by multiplying the current standard crossing fee by the sum of:

118 (a) one; and

119 (b) the actual percent change of the consumer price index during the most recent
120 12-month period for which data is available.

121 Section 6. Section **54-23-106** is enacted to read:

122 **54-23-106. Objections -- petition to Public Service Commission by a railroad.**

123 (1) If a railroad objects to the proposed crossing due to the proposal being a serious
124 threat to the safe operations of the railroad or to the current or future use of the railroad
125 right-of-way, a violation of any federal law or regulation applicable to a public transit district,
126 or a violation of an agreement between a public transit district and the federal government, the
127 railroad shall provide written or electronic notice to the fiber optic carrier of the objection and
128 the specific basis for the objection.

129 (2) (a) If the parties make good faith efforts to resolve the objection, and are unable to
130 resolve the objection, either party may petition the commission for assistance via mediation or
131 arbitration of the disputed crossing application.

132 (b) The petition shall be filed within 60 days of receipt of the objection.

133 (3) If a petition is filed under Subsection (2), the commission shall issue an order
134 within 120 days of filing of the petition.

135 (4) An order issued under Subsection (3) may be appealed in accordance with Chapter
136 7, Hearings, Practice, and Procedure.

137 (5) The commission shall assess the costs associated with a petition equitably among
138 the parties.

139 Section 7. Section **54-23-107** is enacted to read:

140 **54-23-107. Objections -- petition to Public Service Commission by a fiber optic**
141 **carrier.**

142 (1) (a) If a railroad imposes additional requirements on a fiber optic carrier for crossing
143 the railroad's lines, other than the proposed crossing being a serious threat to the safe
144 operations of the railroad or to the current or future use of the railroad right-of-way, a violation
145 of any federal law or regulation applicable to a public transit district, or a violation of an
146 agreement between a public transit district and the federal government, the fiber optic carrier
147 may object to one or more of the requirements.

148 (b) The fiber optic carrier shall provide written or electronic notice of the objection and
149 the specific basis for the objection to the railroad.

150 (2) (a) If the parties make good faith efforts to resolve the objection, and are unable to
151 resolve the objection, either party may petition the commission for resolution or modification
152 of the additional requirements.

153 (b) The petition shall be filed within 60 days of receipt of the objection.

154 (3) (a) If a petition is filed under Subsection (2), the commission shall determine, after
155 notice and opportunity for hearing, whether special circumstances exist that necessitate
156 additional requirements for the placement of the crossing.

157 (b) The commission shall issue an order within 120 days of filing of the petition.

158 (4) An order issued under Subsection (3) may be appealed in accordance with Chapter
159 7, Hearings, Practice, and Procedure.

160 (5) The commission shall assess the costs associated with a petition equitably among
161 the parties.

162 Section 8. Section **54-23-108** is enacted to read:

163 **54-23-108. Existing agreements.**

164 Nothing in this chapter prevents a railroad and a fiber optic carrier from continuing
165 under an existing agreement, or from otherwise negotiating the terms and conditions applicable
166 to a crossing or the resolution of any disputes relating to the crossing.