

HB 901 -- Utility Crossings of Railroad Right-of-Ways

Sponsor: Funderburk

This bill establishes procedures for all types of utilities, including electrical corporations, rural electric cooperatives, municipal utilities, and utilities regulated by the Missouri Public Service Commission, to construct a facility as specified in the bill through a railroad right-of-way.

The bill specifies that a utility must be deemed to have authorization to commence a crossing activity 30 days from the mailing of the notice, completing the engineering specifications, and payment of the fee, absent a claim of special circumstances. The land management company and the utility must maintain and repair its own property within the railroad right-of-way and bear responsibility for its own acts and omissions, except that the utility must be responsible for any bodily injury or property damage that typically would be covered under a standard railroad protective liability insurance policy. A utility must have immediate access to a crossing for repair and maintenance of existing facilities in case of emergency. Applicable engineering standards must be complied with for utility facilities crossing railroad rights-of-way. The engineering specifications must address the applicable clearance requirements as established by the National Electrical Safety Code.

Unless otherwise agreed by the parties and subject to Section 389.588, RSMo, a utility that locates its facilities within the railroad right-of-way for a crossing, other than a crossing along a state highway, must pay the land management company a one-time standard crossing fee of \$750 for each crossing plus the costs associated with modifications to existing insurance contracts of the utility and the land management company. The standard crossing fee must be in lieu of any license, permit, application, plan review, or any other fees or charges to reimburse the land management company for the direct expenses incurred by the land management company as a result of the crossing. The utility must also reimburse the land management company for any actual flagging expenses associated with a crossing in addition to the standard crossing fee.

The provisions of the bill cannot prevent a land management company and a utility from otherwise negotiating the terms and conditions applicable to a crossing or the resolution of any disputes relating to the crossing and cannot impair the authority of a utility to secure crossing rights by easement through the exercise of the power of eminent domain.

If a utility and land management company cannot agree that special circumstances exist regarding a particular crossing, the dispute must be submitted to non-binding arbitration. The procedure and required timeframes for the informal arbitration are specified in the bill. If the dispute is not resolved based on the arbitrator's recommendation, either party may give written notice to the other party of the commencement of a binding arbitration proceeding in accordance with the commercial rules of arbitration in the American Arbitration Association. If a dispute involves only compensation associated with a crossing, the utility may proceed with the installation of a crossing during the pendency of the arbitration.

The provisions of the bill apply to a crossing commenced prior to August 28, 2013, if an agreement concerning the crossing has expired or is terminated and to a crossing commenced on or after August 28, 2013.