



Mr. Speaker: I am instructed by the Senate to inform the House of Representatives that the Senate has taken up and passed

SS SCS HCS HB 1867 entitled:

AN ACT

To repeal sections 319.015, 319.016, 319.022, 319.024, 319.025, 319.026, 319.027, 319.028, 319.029, 319.030, 319.035, 319.040, 319.041, 319.045, and 319.050, RSMo, and to enact in lieu thereof thirteen new sections relating to underground facility safety, with an effective date.

With SA 1

In which the concurrence of the House is respectfully requested.

Respectfully,

Terry L. Spieler
Secretary of the Senate

MAY 15 2014

SENATE AMENDMENT NO. 1Offered by Luger of 12thAmend SS/SCS/HCS/House Bill No. 1867, Page 32, Section 319.041, Line 13

2 of said page, by inserting after all of said line the following:

- 3 "[389.585. As used in sections 389.585 to
 4 389.591, the following terms mean:
 5 (1) "Crossing", the construction, operation,
 6 repair, or maintenance of a facility over, under, or
 7 across a railroad right-of-way by a utility when the
 8 right-of-way is owned by a land management company and
 9 not a railroad or railroad corporation;
 10 (2) "Direct expenses", includes, but is not
 11 limited to, any or all of the following:
 12 (a) The cost of inspecting and monitoring the
 13 crossing site;
 14 (b) Administrative and engineering costs for
 15 review of specifications and for entering a crossing on
 16 the railroad's books, maps, and property records and
 17 other reasonable administrative and engineering costs
 18 incurred as a result of the crossing;
 19 (c) Document and preparation fees associated with
 20 a crossing and any engineering specifications related
 21 to the crossing;
 22 (d) Damages assessed in connection with the
 23 rights granted to a utility with respect to a crossing;
 24 (3) "Facility", any cable, conduit, wire, pipe,
 25 casing pipe, supporting poles and guys, manhole, or
 26 other material or equipment that is used by a utility
 27 to furnish any of the following:
 28 (a) Communications, communications-related,
 29 wireless communications, video, or information
 30 services;
 31 (b) Electricity;
 32 (c) Gas by piped system;
 33 (d) Petroleum or petroleum products by piped
 34 system;
 35 (e) Sanitary and storm sewer service;
 36 (f) Water by piped system;
 37 (4) "Land management company", an entity that

Offered 5/15/14
 Adopted 5/15/14

owns, leases, holds by easement, holds by adverse possession or otherwise possesses a corridor which is used for rail transportation purposes and is not a railroad or railroad corporation;

(5) "Land management corridor", includes one or more of the following:

(a) A right-of-way or other interest in real estate that is owned, leased, held by easement, held by adverse possession or otherwise possessed by a land management company and not a railroad or railroad corporation; and which is used for rail transportation purposes. "Land management corridor" does not include yards, terminals or stations. "Land management corridor" also does not include railroad tracks or lines which have been legally abandoned;

(b) Any other interest in a right-of-way formerly owned by a railroad or railroad corporation that has been acquired by a land management company or similar entity and which is used for rail transportation purposes;

(6) "Notice", a written description of the proposed project. Such notice shall include, at a minimum: a description of the proposed crossing including blueprints or plats, print copies of the engineering specifications for the crossing, a proposed time line for the commencement and completion of work at the crossing, a narrative description of the work to be performed at the crossing, proof of insurance for the work to be done and other reasonable requirements necessary for the processing of an application;

(7) "Railroad" or "railroad corporation", a railroad corporation organized and operating under chapter 388, or any other corporation, trustees of a railroad corporation, company, affiliate, association, joint stock association or company, firm, partnership, or individual, which is an owner, operator, occupant, lessee, manager, or railroad right-of-way agent acting on behalf of a railroad or railroad corporation;

(8) "Railroad right-of-way", includes one or more of the following:

(a) A right-of-way or other interest in real estate that is owned or operated by a land management company and not a railroad or railroad corporation;

(b) Any other interest in a former railroad right-of-way that has been acquired or is operated by a land management company or similar entity;

(9) "Special circumstances", includes either or both of the following:

(a) The characteristics of a segment of a railroad right-of-way not found in a typical segment of a railroad right-of-way that enhance the value or increase the damages or the engineering or construction

1 expenses for the land management company associated
2 with a proposed crossing, or to the current or
3 reasonably anticipated use by a land management company
4 of the railroad right-of-way, necessitating additional
5 terms and conditions or compensation associated with a
6 crossing;

7 (b) Variances from the standard specifications
8 requested by the land management company;
9 "Special circumstances" may include, but is not limited
10 to, the railroad right-of-way segment's relationship to
11 other property, location in urban or other developed
12 areas, the existence of unique topography or natural
13 resources, or other characteristics or dangers inherent
14 in the particular crossing or segment of the railroad
15 right-of-way;

16 (10) "Telecommunications service", the
17 transmission of information by wire, radio, optical
18 cable, electronic impulses, or other similar means. As
19 used in this definition, "information" means knowledge
20 or intelligence represented by any form of writing,
21 signs, signals, pictures, sounds, or any other symbols;

22 (11) "Utility", shall include:

23 (a) Any public utility subject to the
24 jurisdiction of the public service commission;

25 (b) Providers of telecommunications service,
26 wireless communications, or other
27 communications-related service;

28 (c) Any electrical corporation which is required
29 by its bylaws to operate on the not-for-profit
30 cooperative business plan, with its consumers who
31 receive service as the stockholders of such
32 corporation, and which holds a certificate of public
33 convenience and necessity to serve a majority of its
34 customer-owners in counties of the third classification
35 as of August 28, 2003;

36 (d) Any rural electric cooperative; and

37 (e) Any municipally owned utility.]

38
39 [389.586. 1. After the land management company
40 receives a copy of the notice from the utility, the
41 land management company shall send a complete copy of
42 that notice, by certified mail or by private delivery
43 service which requires a return receipt, to the
44 railroad or railroad corporation within two business
45 days. No utility may commence a crossing until the
46 railroad or railroad corporation has approved the
47 crossing. The railroad or railroad corporation shall
48 have thirty days from the receipt of the notice to
49 review and approve or reject the proposed crossing.
50 The railroad or railroad corporation shall reject a
51 proposed crossing only if special circumstances exist.
52 If the railroad or railroad corporation rejects a

1 proposed crossing, the utility may submit an amended
2 proposal for a crossing. The railroad or railroad
3 corporation shall have an additional thirty days from
4 receipt of the amended proposal to review and approve
5 or reject the amended crossing proposal. The railroad
6 or railroad corporation shall not unreasonably withhold
7 approval. Once the railroad or railroad corporation
8 grants such approval, and upon payment of the fee and
9 any other payments authorized pursuant to sections
10 389.586 or 389.587, the utility shall be deemed to have
11 authorization to commence the crossing activity. The
12 utility shall provide the railroad or railroad
13 corporation with written notification of the
14 commencement of the crossing activity before beginning
15 such activity.

16 2. The land management company and the utility
17 shall maintain and repair its own property within the
18 land management corridor and each shall bear
19 responsibility for its own acts and omissions, except
20 that the utility shall be responsible for any bodily
21 injury or property damage arising from the
22 installation, maintenance, repair and its use of the
23 crossing. The railroad or railroad corporation may
24 require the utility and the land management company to
25 obtain reasonable amounts of comprehensive general
26 liability insurance and railroad protective liability
27 insurance coverage for a crossing, and that this
28 insurance coverage name the railroad or railroad
29 corporation as an insured. Further, the land
30 management company and the utility shall provide the
31 railroad or railroad corporation with proof that they
32 have liability insurance coverage which meets such
33 requirements, if any.

34 3. A utility shall have immediate access to a
35 crossing for repair and maintenance of existing
36 facilities in case of an immediate threat to life and
37 upon notification to the applicable railroad or
38 railroad corporation. Before commencing any such work,
39 the utility must first contact the railroad or railroad
40 corporation's dispatch center, command center or other
41 facility which is designated to receive emergency
42 communications.

43 4. The utility shall be provided a crossing,
44 absent a claim of special circumstances, after payment
45 by the utility of the standard crossing fee, submission
46 of completed engineering specifications to the land
47 management company, and approval of the crossing by the
48 railroad or railroad corporation. The engineering
49 specifications shall comply with the clearance
50 requirements as established by the National Electrical
51 Safety Code, the American Railway Engineering and
52 Maintenance of Way Association and the standards of the

1 applicable railroad or railroad corporation which are
2 in effect and which apply to conditions at a particular
3 crossing. The land management company and utility
4 shall further be responsible for any modifications,
5 upgrades or other changes which may be needed to comply
6 with changes in said standards.

7 5. The utility, the railroad or railroad
8 corporation, and the land management company shall
9 agree to such other terms and conditions as may be
10 necessary to provide for reasonable use of a land
11 management corridor by a utility.]
12

13 [389.587. Unless otherwise agreed by the parties
14 and subject to section 389.588, a utility that locates
15 its facilities within the railroad right-of-way for a
16 crossing, other than a crossing along a state highway
17 or other public road, shall pay the land management
18 company a one-time standard crossing fee of one
19 thousand five hundred dollars for each crossing plus
20 the costs associated with modifications to existing
21 insurance contracts of the land management company.
22 The standard crossing fee shall be in lieu of any
23 license, permit, application, plan review, or any other
24 fees or charges to reimburse the land management
25 company for the direct expenses incurred by the land
26 management company as a result of the crossing. The
27 utility shall also reimburse the land management
28 company for any actual flagging expenses associated
29 with a crossing in addition to the standard crossing
30 fee. The railroad or railroad corporation has the
31 right to halt work at the crossing if the flagging does
32 not meet the standards of the railroad or railroad
33 corporation. Nothing in this section is intended to
34 otherwise restrict or limit any authority or right a
35 utility may have to locate facilities at a crossing
36 along a state highway or any other public road or to
37 otherwise enter upon lands where authorized by law.]
38

39 [389.588. 1. Notwithstanding the provisions of
40 section 389.586, nothing shall prevent a land
41 management company and a utility from otherwise
42 negotiating the terms and conditions applicable to a
43 crossing or the resolution of any disputes relating to
44 the crossing so long as they do not interfere with the
45 rights of a railroad or railroad corporation. No
46 agreement between a land management company and a
47 utility shall affect the rights, interests or
48 operations of a railroad or railroad corporation.

49 2. Notwithstanding subsection 1 of this section,
50 the provisions of this section shall not impair the
51 authority of a utility to secure crossing rights by
52 easement pursuant to the exercise of the power of

1 eminent domain.]

2
3 [389.589. 1. If the parties cannot agree that
4 special circumstances exist, the dispute shall be
5 submitted to binding arbitration.

6 2. Either party may give written notice to the
7 other party of the commencement of a binding
8 arbitration proceeding in accordance with the
9 commercial rules of arbitration in the American
10 Arbitration Association. Any decision by the board of
11 arbitration shall be final, binding and conclusive as
12 to the parties. Nothing provided in this section shall
13 prevent either party from submission of disputes to the
14 courts. Land management companies and utilities may
15 seek enforcement of sections 389.586 through 389.591 in
16 a court of proper jurisdiction and shall be entitled to
17 reasonable attorney fees if they prevail.

18 3. If the dispute over special circumstances
19 concerns only the compensation associated with a
20 crossing, then the utility may proceed with
21 installation of the crossing during the pendency of the
22 arbitration.]

23
24 [389.591. 1. Notwithstanding any provision of
25 law to the contrary, sections 389.585 to 389.591 shall
26 apply in all crossings of land management corridors
27 involving a land management company and a utility and
28 shall govern in the event of any conflict with any
29 other provision of law, except that sections 389.585 to
30 389.591 shall not override or nullify the condemnation
31 laws of this state nor confer the power of eminent
32 domain on any entity not granted such power prior to
33 August 28, 2013.

34 2. The provisions of sections 389.585 to 389.591
35 shall apply to a crossing commenced after August 28,
36 2013. These provisions shall also apply to a crossing
37 commenced before August 28, 2013, but only upon the
38 expiration or termination of the agreement for such
39 crossing.]; and

40
41 Further amend the title and enacting clause accordingly.