

HOUSE BILL NO. 530

INTRODUCED BY N. DURAM

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A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING REQUIREMENTS AND FEES RELATED TO THE RIGHT OF UTILITIES TO CROSS A RAILROAD RIGHT-OF-WAY; REQUIRING APPLICATIONS FOR CROSSINGS; ESTABLISHING CROSSING FEES AND INSURANCE COVERAGE; ALLOWING FOR OBJECTIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** For the purposes of [sections 1 through 8], the following definitions apply:

(1) "Certified appraisal" means an appraisal conducted by an appraiser who is certified by the Montana board of real estate appraisers. The appraisal must be conducted in accordance with current uniform standards of professional appraisal practice established for certified real estate appraisers in 37-54-403.

(2) (a) "Crossing" means the construction, operation, repair, or maintenance of a facility over, under, or across a railroad right-of-way. The term includes the construction, operation, repair, or maintenance of a facility that runs adjacent to and alongside the lines of a railroad for no more than 1 mile, or another distance agreed to by the parties, after which the facility crosses the railroad lines, terminates, or exits the railroad right-of-way.

(b) The term does not include longitudinal occupancy of railroad right-of-way.

(3) "Facility" includes but is not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments. Facility means any item of personal property placed over, across, or underground for use in connection with the storage or conveyance of:

- (a) water;
- (b) sewage;
- (c) electronic, telephone, or telegraphic communications;
- (d) fiber optics;
- (e) cable television;
- (f) electric energy;
- (g) oil;

1 (h) natural gas; or

2 (i) hazardous liquids.

3 (4) "Parallel" or "paralleling" refers to a facility that runs adjacent to and alongside the lines of a railroad
4 for no more than one mile, or another distance agreed to by the parties, after which the facility crosses the
5 railroad lines, terminates, or exits the railroad right-of-way.

6 (5) "Railroad" means any association, corporation, or other entity engaged in operating a common carrier
7 by rail, or its agents or assigns, including any entity responsible for the management of crossings or collection
8 of crossing fees.

9 (6) (a) "Utility" means a public utility, transmission company, gas utility, municipal utility, municipal power
10 utility, municipality, pipeline company, rural water system, or telephone, telegraph, telecommunications, cable,
11 or fiber optic provider.

12 (b) The term includes contractors and agents hired by a utility as defined in subsection (6)(a).

13
14 **NEW SECTION. Section 2. Application -- existing agreements.** (1) Except as provided in subsections
15 (2) and (3), [sections 1 through 8] apply to:

16 (a) any crossing in existence before [the effective date of this act], if an agreement concerning the
17 crossing has expired or has been terminated; and

18 (b) any crossing commenced on or after [the effective date of this act].

19 (2) Nothing in [sections 1 through 8]:

20 (a) prevents a railroad and a utility from continuing under an existing agreement, or from negotiating the
21 terms and conditions applicable to a crossing or the resolution of any disputes relating to the crossing; or

22 (b) impairs the existing authority of a utility to secure crossing rights by easement through the power of
23 eminent domain in accordance with Title 70, chapter 30.

24 (3) A utility is not required to undertake a crossing or paralleling in accordance with [sections 1 through
25 8].

26
27 **NEW SECTION. Section 3. Railroad rights-of-way -- crossing or paralleling by utilities.** (1) (a) If
28 a utility intends to place a facility across or on a railroad right-of-way, the utility shall request prior permission from
29 the railroad.

30 (b) The request must be in the form of a completed crossing application, including an engineering design

1 showing the location of the proposed crossing and the railroad's property, tracks, and wires that the utility will
2 cross. The engineering design must conform with guidelines published in the most recent edition of:

3 (i) the national electrical safety code; or

4 (ii) the Manual for Railway Engineering of the American railway engineering and maintenance-of-way
5 association.

6 (c) The utility shall submit the crossing application on a form provided or approved by the railroad, if
7 available.

8 (2) The application must be accompanied by the standard crossing fee in accordance with [section 5]
9 and evidence of insurance as required in [section 6]. The utility shall send the application to the railroad by
10 certified or registered mail, with return receipt requested.

11 (3) Within 15 calendar days of receipt of an application that is not complete, the railroad shall inform the
12 applicant regarding any additional necessary information or requirement.

13
14 **NEW SECTION. Section 4. Right-of-way crossing -- construction.** Unless the railroad notifies a utility
15 in writing that a proposed crossing or paralleling is a legitimate threat to the safe operation of the railroad or to
16 the current use of the railroad right-of-way, the utility may commence the construction of the crossing 30 calendar
17 days after the railroad receives a completed crossing application, crossing fee, and certificate of insurance.

18
19 **NEW SECTION. Section 5. Standard crossing fee.** (1) (a) Unless otherwise agreed to by the parties
20 and except as provided in subsection (1)(c) and [section 7(2)], a utility that crosses a railroad right-of-way shall
21 pay the railroad a one-time standard crossing fee of \$1,000 for each crossing.

22 (b) The crossing fee is in lieu of any license, permit, application, or processing fee or any other fees or
23 charges to reimburse the railroad for the direct expenses or diminution of land value incurred by the railroad as
24 a result of the crossing. Except as provided in subsection (2), an additional fee may not be assessed by the
25 railroad or by any railroad agent, contractor, or assignee to the utility or to any agent or contractor of the utility.

26 (c) A crossing fee is not required if the crossing is located within a public right-of-way.

27 (2) In addition to the standard crossing fee and based on the railroad traffic at the crossing, a utility shall
28 reimburse the railroad for any reasonable and necessary flagging expense associated with a crossing.

29 (3) (a) If the railroad alleges a crossing will cause a diminution in land value in an amount greater than
30 the crossing fee provided for in subsection (1), the railroad shall notify the utility and provide a certified appraisal

1 demonstrating the diminution in value of the entire parcel of railroad property caused by the crossing before the
2 date for commencement of construction in accordance with [section 4].

3 (b) If the parties are unable to resolve the issue of compensation under subsection (3)(a), the dispute
4 must be resolved in accordance with [section 8].

5 (4) The placement of a single conduit and its content is a single facility. Additional fees are not payable
6 based on the individual fibers, wires, lines, or other items contained within the conduit.

7

8 **NEW SECTION. Section 6. Certificate of insurance coverage.** (1) (a) The certificate of insurance or
9 coverage submitted by a facility owner that is a municipal utility or municipality must include commercial general
10 liability insurance or an equivalent form with a limit of at least \$1 million for each occurrence and an aggregate
11 of at least \$2 million.

12 (b) The certificate of insurance or coverage submitted by a facility owner that provides natural gas
13 service must include commercial general liability insurance with a combined single limit of at least \$5 million for
14 each occurrence and an aggregate limit of at least \$10 million.

15 (c) The certificate of insurance or coverage submitted by a facility owner not included in subsection (1)(a)
16 or (1)(b) must include commercial general liability insurance with a combined single limit of at least \$2 million for
17 each occurrence and an aggregate limit of at least \$6 million.

18 (2) The railroad may require protective liability insurance with a combined single limit of \$2 million for
19 each occurrence and a \$6 million aggregate limit. The coverage may be provided by a blanket railroad protective
20 liability insurance policy if the coverage, including the coverage limits, applies separately to each individual
21 crossing. The coverage is required only during the period of construction, repair, or replacement of the facility.

22 (3) The insurance coverage under subsections (1) and (2) may not contain an exclusion or limitation
23 related to railroads or to activities within 50 feet of railroad property.

24 (4) The certificate of insurance must be from an insurer of the utility's choosing.

25 (5) The coverage is required only during the period of construction, repair, or replacement of the facility.

26

27 **NEW SECTION. Section 7. Relocation.** (1) (a) A railroad may require a utility to relocate a facility
28 when:

29 (i) the relocation is mutually agreed to by the railroad and the utility within the railroad right-of-way;

30 (ii) the railroad determines that relocation is essential to accommodate railroad operations; and

1 (iii) the relocation is not arbitrary or unreasonable.

2 (b) Before agreeing to a relocation, a utility may require a railroad to provide a statement and supporting
3 documentation identifying the operational necessity for requesting the relocation.

4 (c) A utility shall perform the relocation within a reasonable period of time following the agreement.

5 (2) Relocation is at the expense of the utility. A crossing fee under [section 5] may not be imposed for
6 relocation.

7

8 **NEW SECTION. Section 8. Objection to crossing or additional requirements.** (1) (a) If a railroad
9 objects to a utility's proposed crossing or paralleling because the proposal is a legitimate threat to the safe
10 operations of the railroad or to the current use of the railroad right-of-way, the railroad shall notify the utility of the
11 objection and the specific basis for the objection within 15 days of receipt of the utility's application.

12 (b) If the railroad imposes additional requirements on a utility for crossing its lines, other than the
13 proposed crossing being a legitimate threat to the safe operations of the railroad or to the current use of the
14 railroad right-of-way, the utility may object to the requirements.

15 (c) Notice of objections must be sent by certified or registered mail, with return receipt requested.

16 (2) If the parties are unable to resolve an objection made in accordance with subsection (1), either party
17 may petition the district court in whose jurisdiction the utility lies.

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19 **NEW SECTION. Section 9. Codification instruction.** [Sections 1 through 8] are intended to be codified
20 as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 8].

21

22 **NEW SECTION. Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are
23 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
24 the part remains in effect in all valid applications that are severable from the invalid applications.

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26 **NEW SECTION. Section 11. Saving clause.** [This act] does not affect rights and duties that matured,
27 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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29 **NEW SECTION. Section 12. Effective date.** [This act] is effective on passage and approval.

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