

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 47

Introduced by Fischer, 43.

Read first time January 06, 2011

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to railroad carriers; to amend section 86-164,
2 Revised Statutes Cumulative Supplement, 2010; to include
3 certain third parties in the definition of railroad
4 carrier; and to repeal the original section.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 86-164, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 86-164 (1) Any telecommunications carrier that intends to
4 place a line, wire, or cable across a railroad right-of-way shall
5 request permission for such placement from the railroad carrier. The
6 request shall be in the form of a completed crossing application,
7 including engineering specifications. Upon receipt of such
8 application, the railroad carrier and the telecommunications carrier
9 may enter into a binding wire-crossing agreement. If the railroad
10 carrier and the telecommunications carrier are unable to negotiate a
11 binding wire-crossing agreement within sixty days after receipt of
12 the crossing application by the railroad carrier, either party may
13 submit a petition to the commission for a hearing on the disputed
14 terms and conditions of the purported wire-crossing agreement.

15 (2)(a) Unless otherwise agreed to by all parties, the
16 commission shall, after providing proper notice, hold and complete
17 such hearing within sixty days after receipt of the petition. The
18 commission shall issue an order of its decision within thirty days
19 after the hearing. In rendering its decision, the commission shall
20 consider whether the terms and conditions at issue are unreasonable
21 or against the public interest, taking into account safety,
22 engineering, and access requirements of the railroad carrier as such
23 requirements are prescribed by the Federal Railroad Administration
24 and established rail industry standards.

25 (b) Upon issuance of an order by the commission under

1 subdivision (a) of this subsection, the railroad carrier and the
2 telecommunications carrier shall have fifteen days after the date of
3 issuance to file a conforming wire-crossing agreement with the
4 commission. The commission shall have fifteen days after the date of
5 such filing to approve or reject the agreement. If the commission
6 does not issue an approval or rejection of such agreement within the
7 fifteen-day requirement, the agreement shall be deemed approved. The
8 commission may reject a wire-crossing agreement if it finds that the
9 agreement does not conform to the order issued by the commission. If
10 the commission enters such a finding, the parties shall revise the
11 agreement to comply with the commission's order and shall refile the
12 agreement to the commission for further review. If the commission
13 does not approve or reject the revised agreement within fifteen days
14 after the date of refiling, the agreement shall be deemed approved.

15 (3)(a) Except as provided in subsection (4) of this
16 section or as otherwise agreed to by all parties, if a
17 telecommunications carrier places a line, wire, or cable across a
18 railroad right-of-way pursuant to this section, it shall pay the
19 railroad carrier, owner, manager, agent, or representative of the
20 railroad carrier a one-time standard crossing fee of one thousand two
21 hundred fifty dollars for each applicable crossing. In addition to
22 the standard crossing fee, the telecommunications carrier shall
23 reimburse the railroad carrier for any actual flagging expenses
24 associated with the placement of the line, wire, or cable.

25 (b) The standard crossing fee shall be in lieu of any

1 license fee or any other fees or charges to reimburse the railroad
2 carrier for any direct expense incurred as a result of the placement
3 of the line, wire, or cable.

4 (4) If a railroad carrier or telecommunications carrier
5 believes a special circumstance exists for the placement of a line,
6 wire, or cable across a railroad right-of-way, the railroad carrier
7 or telecommunications carrier may petition the commission for
8 additional requirements or for modification of the standard crossing
9 fee in its initial petition to the commission pursuant to subsection
10 (1) of this section. If the petition is filed with the request for
11 additional requirements or modification, the commission shall
12 determine if a special circumstance exists that necessitates
13 additional requirements for such placement or a modification of the
14 standard crossing fee.

15 (5) This section applies to any telecommunications
16 carrier certified by the commission pursuant to section 86-128. This
17 section does not apply to any longitudinal encumbrance or any line,
18 wire, or cable within any public right-of-way and does not change,
19 modify, or supersede any rights or obligations created pursuant to
20 sections 86-701 to 86-707.

21 (6)(a) A wire-crossing agreement between a railroad
22 carrier and a telecommunications carrier that includes a provision,
23 clause, covenant, or agreement contained in, collateral to, or
24 affecting such wire-crossing agreement that purports to indemnify,
25 defend, or hold harmless the railroad carrier from any liability for

1 loss or damage resulting from the negligence or willful and wanton
2 misconduct of the carrier or its agents, employees, or independent
3 contractors who are directly responsible to such carrier or has the
4 effect of indemnifying, defending, or holding harmless such carrier
5 from the negligence or willful and wanton misconduct of the carrier
6 or its agents, employees, or independent contractors who are directly
7 responsible to the carrier is against the public policy of this state
8 and is unenforceable.

9 (b) Nothing in this section shall affect a provision,
10 clause, covenant, or agreement in which the telecommunications
11 carrier indemnifies, defends, or holds harmless a railroad carrier
12 against liability for loss or damage to the extent that the loss or
13 damage results from the negligence or willful and wanton misconduct
14 of the telecommunications carrier or its agents, employees, or
15 independent contractors who are directly responsible to the
16 telecommunications carrier.

17 (7) For purposes of this section:

18 (a) Railroad carrier has the same meaning as in section
19 75-402; and

20 (b) Telecommunications carrier means a telecommunications
21 common carrier as defined in section 86-118 or a telecommunications
22 contract carrier as defined in section 86-120.

23 Sec. 2. Original section 86-164, Revised Statutes
24 Cumulative Supplement, 2010, is repealed.