

SENATE BILL No. 439

By Committee on Utilities

2-2

1 AN ACT concerning railroads; enacting the utility railroad crossing act;
2 relating to utility facilities crossing or parallel to railroads; requiring a
3 process for utilities to construct, maintain, operate or alter utility
4 facilities crossing or parallel to a railroad right-of-way; requiring notice
5 and certain information regarding the proposed utility facility or
6 changes to such facility be provided to railroads; permitting railroads to
7 request certain items for the construction, maintenance, operation or
8 alteration of utility facilities in such railroad's right-of-way; providing
9 for objections to utility facilities and resolution of such objections
10 through the state corporation commission.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) Sections 1 through 16, and amendments thereto, shall
14 be known and may be cited as the utility railroad crossing act.

15 (b) The purpose of this act is to establish a consistent process for the
16 placement, laying, construction, maintenance, alteration, inspection, repair,
17 replacement, relocation, operation and removal of utility facilities that
18 cross or parallel a railroad right-of-way.

19 (c) This act shall apply to a crossing or paralleling that is:

20 (1) Subject to an agreement in existence before July 1, 2026, if the
21 agreement has expired or been terminated; or

22 (2) placed, laid, constructed, maintained, altered, inspected, repaired,
23 replaced, protected, relocated, operated or removed on or after July 1,
24 2026.

25 Sec. 2. As used in the utility railroad crossing act:

26 (a) "Crossing" means a facility located over, across or under a
27 railroad right-of-way. "Crossing" does not include a longitudinal
28 occupancy of a railroad right-of-way.

29 (b) "Facility" means any personal property owned, operated or
30 maintained by a utility that is used in the distribution, transmission, storage
31 or conveyance of: (1) Water; (2) sewage; (3) electronic, telephone, data or
32 broadband communications; (4) fiber optics; (5) cable television; (6)
33 electric energy; (7) oil; (8) natural gas; or (9) hazardous liquids. "Facility"
34 includes, but is not limited to, pipes, pipelines, sewers, conduits, cables,
35 valves, lines, wires, poles, manholes, attachments and other infrastructure
36 or equipment appurtenant thereto.

1 (c) "Parallel" or "paralleling" means a facility that runs adjacent to,
2 alongside and within a railroad right-of-way for not more than one mile, or
3 a greater distance agreed to by the parties, and then the facility crosses,
4 terminates or exits the railroad right-of-way.

5 (d) "Public right-of-way" means the full width and length of a right-
6 of-way that is:

7 (1) Dedicated to public use, including, but not limited to, streets,
8 roads, bridges, highways, sidewalks or other lands dedicated to public use;
9 or

10 (2) a location identified on a United States department of
11 transportation crossing inventory form as any crossing type designated as a
12 public or private crossing with public access.

13 (e) "Utility" means any person, firm, corporation or municipality and
14 any contractors or agents thereof that provides services to the public.

15 (f) "Railroad" means a railroad company as defined in K.S.A. 66-
16 2,123, and amendments thereto, and any successor in interest thereto.

17 (g) "Railroad right-of-way" means one or more of the following:

18 (1) A right-of-way that is owned or operated by a railroad and used
19 for railroad operations, including, but not limited to, strips of land,
20 easements or corridors, whether acquired by public grant, private grant,
21 conveyance or through the exercise of eminent domain, including any
22 parcel or tract acquired by a railroad adjacent to the railroad's right-of-way
23 that is used to aid in the construction, maintenance or accommodation of
24 the railroad's railway;

25 (2) a right-of-way that is occupied or managed by or on behalf of a
26 railroad, including an abandoned railroad right-of-way that has not
27 otherwise reverted pursuant to K.S.A. 66-525, and amendments thereto; or

28 (3) another interest in a former railroad right-of-way that has been
29 acquired or is operated by a land management company or similar entity.

30 Sec. 3. (a) Subject to the provisions of this act, when a utility
31 intends to place, lay, construct, maintain, alter, inspect, repair, replace,
32 relocate, operate or remove a crossing or paralleling located in a public
33 right-of-way, the utility shall provide the railroad a written notice of such
34 intent 30 days before the utility takes the action. The notice shall include:

35 (1) An engineering design that conforms with any applicable
36 guidelines published in the 2023 national electric safety code or the 2025
37 manual for railway engineering of the American railway engineering and
38 maintenance-of-way association and shows the location of the proposed
39 crossing or paralleling; and

40 (2) an address for correspondence with the utility.

41 (b) A utility shall request permission from a railroad to place, lay,
42 construct, maintain, alter, inspect, repair, replace, relocate, operate or
43 remove a crossing or paralleling located outside of any public right-of-

1 way. The request shall be in the form of a completed crossing application
2 as provided or approved by the railroad, if possible, and include:

3 (1) An engineering design that conforms with any applicable
4 guidelines published in the 2023 national electric safety code or the 2025
5 manual for railway engineering of the American railway engineering and
6 maintenance-of-way association and shows the location of the proposed
7 crossing or paralleling;

8 (2) the standard fee as required in section 5, and amendments thereto;

9 (3) evidence of insurance as required in section 6, and amendments
10 thereto; and

11 (4) an address for correspondence with the utility.

12 (c) Within 15 calendar days after receipt of a notification or request
13 made pursuant to this section, a railroad shall inform the utility whether
14 the submission is incomplete and of any additional necessary information
15 and submissions.

16 (d) Subject to the provisions of this act, a utility may perform the
17 following without providing notice or submitting a request to the railroad:

18 (1) Activities that do not require excavation within railroad right-of-
19 way;

20 (2) leak surveys performed on a crossing or paralleling by a natural
21 gas utility, including, but not limited to, bar hole tests; and

22 (3) the marking of an underground crossing or paralleling in
23 accordance with the Kansas underground utility damage prevention act.

24 (e) A utility shall provide a railroad notice 72 hours before any
25 activities that involve the insertion, maintenance, replacement or removal
26 of a facility within an existing conduit if any excavation will be performed
27 outside the railroad right-of-way, but shall not be required to submit any
28 other notification or request.

29 (f) (1) In the event a utility or railroad needs to perform emergency or
30 nonroutine maintenance or repair on a crossing or paralleling within a
31 railroad right-of-way and the maintenance or repair may affect the
32 operations of the other entity, immediate notification of the maintenance or
33 repair being performed shall be given to the other entity.

34 (2) A utility with a crossing or paralleling shall establish a mechanism
35 or plan for receiving emergency notifications 24 hours per day, seven days
36 per week.

37 (3) Unless permission from the affected railroad or utility has been
38 received, the railroad or utility may only perform maintenance or repair
39 work on their own respective property. If the emergency maintenance or
40 repair performed by the railroad or utility causes reasonable expenses to be
41 incurred by the other entity, those reasonable expenses shall be reimbursed
42 by the railroad or utility conducting the maintenance or repair.

43 (g) A utility operating any crossing or paralleling as of the effective

1 date of this act may continue to operate the crossing or paralleling in
2 accordance with this act.

3 (h) Unless the railroad notifies the utility, in accordance with section
4 7, and amendments thereto, that a proposed crossing or paralleling will
5 impede railroad operations or pose undue public safety risks where the
6 crossing or paralleling is proposed, 30 calendar days after a utility submits
7 a notification or request required by this section the utility may commence
8 with the construction, maintenance, alteration, inspection, repair,
9 replacement, protection, relocation or removal of the crossing or
10 paralleling. In all other instances, the utility shall be deemed to have
11 authorization to perform the requested work. A railroad shall not impose
12 additional requirements on a crossing or paralleling located in a public
13 right-of-way.

14 (i) A natural gas utility or the owner or operator of a pipeline
15 transporting hazardous liquids shall not be required to install casing unless
16 required by 49 C.F.R. Part 192, as adopted by K.A.R. 82-11-4 and 29
17 C.F.R. Part 195.

18 Sec. 4. (a) A railroad may require an electric utility to conduct an
19 inductive interference study if:

20 (1) The facility is an electric transmission line of at least 125 kilovolts
21 and parallel to railroad tracks for distances exceeding 50 yards; and

22 (2) in accordance with guidelines in the 2023 national electric safety
23 code and the 2025 manual for railway engineering of the American railway
24 engineering and maintenance-of-way association, the railroad reasonably
25 determines that the proposed electric utility facility poses a material
26 possibility of creating induction issues or interference with railroad
27 property.

28 (b) An electric utility shall arrange and pay for the inductive
29 interference study, for any costs of modifications to the proposed facility
30 and any costs of modifications to railroad property that are necessary for
31 the safe and reliable operation of the railroad. The inductive interference
32 study shall be performed by a qualified engineer approved by the railroad.

33 (c) If an electric utility conducts an inductive interference study, such
34 transmission line may not be energized until at least 30 calendar days after
35 the railroad receives notice from the electric utility that the transmission
36 line is ready to be energized. Within 30 days of receiving notice that the
37 transmission line is ready to be energized, the railroad shall conduct any
38 appropriate tests to ensure that there will not be any interference with safe
39 operation of the railroad.

40 Sec. 5. (a) Unless otherwise agreed by the parties, a utility that
41 crosses or parallels railroad right-of-way located anywhere outside of the
42 public right-of-way shall pay the railroad a one time standard fee of \$1,250
43 as adjusted by subsection (e), for each crossing or paralleling. Except as

1 otherwise provided in this section, the standard fee shall be paid in lieu of
2 any license, permit, application, processing fee or any other fee or charge.
3 Such fee shall reimburse the railroad for direct expenses incurred by the
4 railroad as a result of the crossing or paralleling. No other fee or charge
5 may be assessed by the railroad to the utility.

6 (b) Notwithstanding subsection (a), a utility shall reimburse a railroad
7 for any verifiable, reasonable and necessary flagging expense associated
8 with a crossing or paralleling, based on the railroad traffic at the crossing
9 or paralleling. A utility may, at the utility's expense and to the extent the
10 utility deems necessary, hire flaggers and if so, the utility shall not be
11 required to reimburse a railroad for duplicative flagging expense.

12 (c) No standard fee of any kind shall be required or collected if the
13 crossing or paralleling is located within a public right-of-way.

14 (d) The standard fee established in subsection (a) shall be inclusive of
15 all the utility's facilities located within the crossing or paralleling. No
16 additional fees shall be payable based on the number of conduits, fibers,
17 wires, lines, pipelines or other items installed by the utility as part of the
18 crossing or paralleling.

19 (e) Annually on May 1, the fee established under subsection (a) shall
20 be adjusted based on the percentage change in the annual average producer
21 price index for the preceding year. Each adjustment is effective for
22 requests submitted on or after June 1 of the year that the fee is adjusted.
23 The producer price index used shall be the final demand finished consumer
24 energy goods as prepared by the bureau of labor statistics of the United
25 States department of labor.

26 (f) If a railroad alleges a crossing or paralleling will cause a
27 diminution in land value in an amount greater than the fee in subsection (a)
28 because of special circumstances unique to the crossing or paralleling,
29 within 30 days of a notice or request from a utility, the railroad shall notify
30 the utility and provide a certified appraisal demonstrating the diminution
31 in value of the entire parcel of railroad property caused by the crossing or
32 paralleling. If the railroad and utility are unable to resolve the issue of
33 compensation under this subsection, the dispute shall be resolved in
34 accordance with section 9, and amendments thereto. This subsection shall
35 not be construed to eliminate the right of a railroad to pursue eminent
36 domain through a proceeding commenced under K.S.A. 26-501, et seq.,
37 and amendments thereto, seeking just compensation for inverse
38 condemnation if a railroad is still aggrieved after exhausting all
39 administrative remedies specified in section 9, and amendments thereto.

40 (g) The standard fee for a request submitted under section 3(b), and
41 amendments thereto, regarding a crossing or paralleling in existence
42 before July 1, 2026, shall be the amount established in subsection (a) as
43 offset and reduced by any prior amount the utility previously remitted to

1 the railroad for the crossing or paralleling.

2 Sec. 6. (a) For any utility that crosses or parallels a railroad right-of-
3 way located outside of a public right-of-way, the railroad may require such
4 utility to provide evidence of a certificate of insurance. Such certificate
5 shall comply with the following minimum policy:

6 (1) A municipal utility or municipality shall maintain commercial
7 general liability insurance or an equivalent form with a limit of at least
8 \$2,000,000 for each occurrence and an aggregate limit of at least
9 \$6,000,000;

10 (2) a natural gas utility shall maintain commercial general liability
11 insurance with a combined single limit of at least \$5,000,000 for each
12 occurrence and an aggregate limit of at least \$10,000,000; or

13 (3) any other utility shall maintain commercial general liability
14 insurance with a combined single limit of at least \$2,000,000 for each
15 occurrence and an aggregate limit of at least \$6,000,000.

16 (b) The railroad may require the utility to acquire protective liability
17 insurance with a combined single limit of \$2,000,000 for each occurrence
18 and aggregate limit of at least \$6,000,000. The coverage may be provided
19 by a blanket railroad protective liability insurance policy if the coverage,
20 including the coverage limits, applies separately to each individual
21 crossing or paralleling. The coverage shall be required during the period of
22 construction, maintenance, alteration, inspection, repair, replacement,
23 protection, relocation or removal of a crossing or paralleling. A utility shall
24 not be required to provide evidence of such coverage in the utility's
25 notification or request.

26 (c) The insurance coverage under subsection (a) and (b) shall not
27 contain an exclusion or limitation related to railroads or to activities
28 conducted within 50 feet of railroad property.

29 (d) The certificate of insurance shall be from an insurer of the utility's
30 choosing.

31 (e) The insurance obligations required under this section may be
32 satisfied by the utility using any combination of primary, excess or self
33 insurance.

34 Sec. 7. (a) (1) If a railroad objects to a proposed crossing or
35 paralleling due to the proposal impeding railroad operations or posing
36 undue public safety risks where the crossing or paralleling is proposed to
37 be located, the railroad shall notify the utility of the objection and the
38 specific basis for the objection.

39 (2) The railroad shall notify the utility of any changes to the proposed
40 crossing or paralleling necessary for the railroad to withdraw the objection.
41 The railroad shall send the notice of objection and any changes to the
42 utility by certified mail with a return receipt requested.

43 (3) If the utility agrees to implement the railroad's changes to the

1 proposed crossing or paralleling, the utility may proceed with the
2 construction, maintenance, alteration, inspection, repair, replacement,
3 relocation, or removal of the crossing or paralleling after providing notice
4 to the railroad 15 days before the utility's action.

5 (b) (1) If a railroad imposes additional requirements on a utility for
6 crossing or paralleling a railroad right-of-way located outside a public
7 right-of-way, other than requirements necessary to protect against
8 impeding railroad operations or undue public safety risks where the
9 crossing or paralleling is proposed, the utility may object to any of the
10 requirements. The utility shall provide notice of the objection and the
11 specific basis for the objection to the railroad by certified mail with a
12 return receipt requested. If any objections or proposed changes by a
13 railroad are not mutually resolved by the utility and railroad, the dispute
14 may be resolved in accordance with section 9, and amendments thereto.

15 (2) If the utility agrees to implement the railroad's additional
16 requirements to the proposed crossing or paralleling and provides the
17 railroad 15-day advance notice, the utility may proceed with the
18 construction, maintenance, alteration, inspection, repair, replacement,
19 relocation, or removal of the crossing or paralleling.

20 Sec. 8. (a) A railroad may require a utility to relocate a crossing or
21 paralleling if the railroad determines that relocation is essential to
22 accommodate railroad operations and the relocation is not arbitrary or
23 unreasonable. Before the relocation, a utility may require a railroad to
24 provide a statement and supporting documentation identifying the
25 operational necessity for requesting the relocation. A utility shall perform
26 the relocation within a reasonable period of time after receiving a request
27 to relocate from a railroad.

28 (b) If the crossing or paralleling to be relocated is located within a
29 public right-of-way and the relocation will be made outside of the public
30 right-of-way, the relocation shall be performed to a location mutually
31 agreed upon by the railroad and the utility. Such relocated crossing or
32 paralleling shall be treated as if the crossing or paralleling were located
33 within a public right-of-way when applying this act.

34 (c) Operational relocations performed pursuant to subsection (a) shall
35 be performed at the utility's expense.

36 (d) Relocations performed by a natural gas utility shall be deemed a
37 facility relocation and natural gas utility plant project as such terms are
38 used in the Kansas gas safety and reliability policy act, K.S.A. 66-2201 et
39 seq., and amendments thereto.

40 (e) The crossing or paralleling fee established in section 5, and
41 amendments thereto, shall not be imposed for any relocation.

42 (f) Nothing in this section shall be construed to prohibit a railroad
43 from requesting a utility to relocate the utility's crossing or paralleling for

1 any other non-operational reason. If a railroad requests a utility to relocate
2 the utility's crossing or paralleling for a non-operational reason, the
3 railroad shall provide an alternative location within the railroad's right-of-
4 way for the relocated crossing or paralleling and reimburse the utility for
5 the costs of performing the relocation. A utility shall perform the requested
6 relocation within a reasonable period of time after receiving a relocation
7 request from a railroad.

8 Sec. 9. (a) If the railroad and utility are unable to resolve an objection
9 pursuant to this act, either party may file a complaint with the state
10 corporation commission regarding the objection. The complaint shall be
11 filed within 60 days after receipt of the objection. Before filing a
12 complaint, the railroad and utility shall make a good faith attempt to
13 resolve the objection.

14 (b) If a complaint is filed, the state corporation commission shall
15 conduct a hearing in accordance with the provisions of the Kansas
16 administrative procedure act to resolve the objection. The state corporation
17 commission shall issue an order within 120 days after the filing of the
18 complaint. The state corporation commission shall assess the costs
19 associated with a complaint equally among the railroad and utility.

20 (c) Any order of the state corporation commission pursuant to this
21 subsection is subject to review in accordance with the Kansas judicial
22 review act.

23 Sec. 10. Upon completing the placement, laying, construction,
24 maintenance, alteration, inspection, repair, replacement, relocation,
25 operation or removal of a crossing or paralleling, the utility shall remove
26 or cause to be removed all tools, equipment or other materials used in
27 performing the work. If railroad property was moved or disturbed, the
28 utility shall restore such property to the condition that such property
29 existed before being moved or disturbed.

30 Sec. 11. (a) A utility may assign or otherwise transfer any rights to a
31 crossing or paralleling to any other successor utility, including, but not
32 limited to, any entity that the utility is merged or consolidated with or
33 acquires ownership or control of substantially all of the assets of the utility.

34 (b) A utility shall provide notice of the assignment or transfer to the
35 railroad within 90 days after the assignment or transfer. Failure to provide
36 such notice shall not invalidate the assignment or transfer.

37 Sec. 12. (a) A utility shall not create, permit or cause a mechanic's
38 lien or other lien to be created or enforced against a railroad's property for
39 any work performed by the utility in connection with the utility's crossing
40 or paralleling located within the railroad's right-of-way.

41 (b) A railroad shall not create, permit or cause a mechanic's lien or
42 other lien to be created or enforced against a utility's property located in
43 the railroad's right-of-way for any work performed by the railroad in

1 connection with the railroad's property.

2 Sec. 13. (a) Nothing in this act shall be construed to prevent a railroad
3 and a utility from continuing under an existing agreement or from
4 otherwise negotiating the terms and conditions applicable to a crossing or
5 paralleling or resolving any disputes relating to a crossing or paralleling.

6 (b) Nothing in this act shall be construed to impair the authority of a
7 utility to secure crossing or paralleling rights by easement through an
8 exercise of the power of eminent domain.

9 (c) Notwithstanding subsection (a), in the event an agreement
10 concerning a crossing or paralleling is terminated or expires, a utility may
11 continue to operate and maintain the crossing or paralleling in accordance
12 with this act.

13 (d) Nothing in this act shall be construed to limit the authority of
14 municipalities to require a utility to enter into a contract pursuant to any
15 franchise ordinance.

16 Sec. 14. The provisions of this act are severable. If any portion of this
17 act is held by a court to be unconstitutional or invalid, or the application of
18 any portion of this act to any person or circumstance is held by a court to
19 be unconstitutional or invalid, the invalidity shall not affect other portions
20 of this act that can be given effect without the invalid portion or
21 application, and the applicability of such other portions of this act to any
22 person or circumstance remains valid and enforceable.

23 Sec. 15. Each railroad and utility shall maintain and repair the
24 railroad or utility's own respective property located in the railroad right-of-
25 way and the railroad and utility shall bear responsibility for each entity's
26 own acts and omissions, except the utility shall be responsible for any
27 bodily injury or property damage that typically would be covered under a
28 standard railroad protective liability insurance policy during the period of
29 construction, maintenance, alteration, inspection, repair, replacement,
30 protection, relocation or removal of the crossing or paralleling.

31 Sec. 16. A utility shall promptly pay or discharge all taxes and
32 charges levied on the utility's facilities located in a railroad's right-of-way.
33 If any taxes or charges cannot be separately made or assessed to the utility
34 but are included in the taxes or charges assessed to the railroad, the utility
35 shall pay to the railroad an equitable portion of the taxes as determined by
36 the value of the utility's facilities located on the railroad's right-of-way as
37 compared to the entire value of the railroad's property.

38 Sec. 17. This act shall take effect and be in force from and after its
39 publication in the statute book.