

1 HOUSE BILL NO. 933

2 INTRODUCED BY N. DURAM

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING UTILITIES TO CROSS OR PLACE
5 INFRASTRUCTURE WITHIN A RAILROAD'S RIGHT-OF-WAY AND ADJACENT RAILROAD LAND;
6 ESTABLISHING REQUIREMENTS AND FEES RELATED TO THE RIGHT OF UTILITIES TO CROSS AND
7 PLACE INFRASTRUCTURE WITHIN A RAILROAD RIGHT-OF-WAY AND ADJACENT RAILROAD LAND;
8 REQUIRING APPLICATIONS FOR CROSSINGS AND INFRASTRUCTURE; ESTABLISHING CROSSING
9 FEES AND INSURANCE COVERAGE; ALLOWING FOR OBJECTIONS; PROVIDING FOR THE
10 ASSIGNMENT OF CROSSING RIGHTS; PROHIBITING MECHANIC'S LIENS; PROVIDING DEFINITIONS;
11 PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN
12 APPLICABILITY DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 NEW SECTION. **Section 1. Short title.** [Sections 1 through 15] may be cited as the "Montana
17 Railroad Crossing Clarity Act".

18
19 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 15], unless the context
20 clearly indicates otherwise, the following definitions apply:

21 (1) (a) "Annual fee" means an exact and specific price established in an annual fee agreement that
22 the utility agrees to pay annually to the railroad as consideration for a crossing of the railroad right-of-way or
23 railroad land.

24 (b) Existing annual fees are limited to the first annual fee in the original executed agreement
25 between the railroad and utility.

26 (c) If a railroad requests an annual fee, the annual fee is limited to 10% of the original crossing fee
27 or \$300.

28 (d) The term does not include:

1 (i) any increases to the exact and specific price established in the annual fee agreement, unless
2 the exact and specific amount or percentage of increase is established in the annual fee agreement; or

3 (ii) increases that are at the railroad's discretion.

4 (2) "Annual fee agreement" is a signed, written agreement that establishes an annual fee.

5 (3) (a) "Crossing" means the construction, operation, repair, or maintenance of a facility over,
6 under, or across a railroad right-of-way.

7 (b) The term includes the construction, operation, repair, or maintenance of a facility that runs
8 adjacent to and alongside the lines of a railroad within a railroad right-of-way without disturbing railroad lines or
9 operations, after which the facility crosses the railroad lines, terminates, or exits the railroad right-of-way.

10 (4) "Crossing fee" is a one-time payment from a utility to a railroad, not to exceed the greater of
11 \$3,000 or 10 dollars for each linear foot for the length of the railroad right-of-way occupied by the crossing.

12 (5) "Disused rail crossing" means the railroad line of the crossing:

13 (a) is not capable of operation due to the long-term removal of ties or track; or

14 (b) is abandoned.

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

18 (a) water;

19 (b) sewage;

20 (c) electronic, telephone, or telegraphic communications;

21 (d) fiber optics;

22 (e) cable television;

23 (f) electric energy;

24 (g) oil;

25 (h) natural gas; or

26 (i) hazardous liquids.

27 (7) "Prescriptive easement" means a right to cross a railroad if the property of another is acquired
28 by open, exclusive, notorious, hostile, adverse, continuous, and uninterrupted use for a period of 5 years.

(8) "Public right-of-way" means the area adjacent to, along, and on any public roads, streets, or highways in accordance with 69-4-101.

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

(10) "Railroad land" means land adjacent to railroad lines and owned or controlled, in whole or in part, by a railroad, its subsidiaries, affiliated businesses, lessees, agents, or other entity controlled in whole or in part by the railroad or the railroad's parent company.

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

(b) The term includes contractors and agents hired by a utility.

NEW SECTION. Section 3. Existing agreements. (1) Nothing in [sections 1 through 15] impairs the existing authority of a utility to secure crossing rights by easement through the power of eminent domain in accordance with Title 70, chapter 30

(2) A utility is not required to undertake a crossing in accordance with [sections 1 through 15].

NEW SECTION. Section 4. Rights of utilities -- crossings. When the placement of a facility is outside the public right-of-way, a utility may place a crossing subject to [sections 1 through 15].

NEW SECTION. Section 5. Notice and application for placement of facilities. (1) A utility that intends to place a crossing shall provide notice of the placement to the railroad at least 30 calendar days prior to placement.

(2) The notice must be in the form of a completed crossing application, including a drawing showing the location of the proposed crossing, and the railroad's property, tracks, and wires in relation to where the utility will cross.

(3) The utility shall submit the crossing application on a form provided or approved by the railroad,

1 if available, or provided by the railroad and made available to utilities within 30 calendar days of submission of
2 an application.

3 (4) The crossing application must be sent to the railroad by registered or certified mail or by means
4 of mutually agreed electronic confirmation of receipt.

5 (5) The crossing application must be accompanied by a certificate of insurance and the crossing
6 fee, if the crossing fee is required in accordance with [section 7].

7 (6) (a) If a railroad terminates an annual fee agreement or other crossing agreement or otherwise
8 orders removal of a crossing without good cause, the utility may notify the railroad, in accordance with this
9 section, that the utility will maintain the crossing and continue to use the crossing, with the following exceptions:

10 (i) the crossing fee to maintain an existing crossing is set at \$100; and

11 (ii) a certificate of insurance is not required.

12 (b) Good cause exists if a facility damages or is likely to damage the railroad or its structures or
13 any other property on the premises of the railroad, or if a facility endangers the safety of the railroad's operation
14 or is likely to cause injury or death to a person.

15

16 **NEW SECTION. Section 6. Right-of-way crossing -- construction.** (1) Except as provided in
17 subsection (2), a utility may commence the construction of the crossing 30 calendar days after the railroad
18 receives a completed crossing application, certificate of insurance, and crossing fee, if a crossing fee is
19 permitted in accordance with [section 7].

20 (2) (a) If a railroad objects to a utility's proposed crossing because the proposal is a serious threat
21 to the safe operations of the railroad or to the current use of the railroad right-of-way, the railroad shall notify the
22 utility of the objection and the specific basis for the objection within 15 days after receipt of the utility's
23 application by registered or certified mail or by means of mutually agreed electronic confirmation of receipt.

24 (b) If the parties are unable to agree on a resolution to a railroad's objection under subsection
25 (2)(a), the dispute must be resolved in accordance with [section 10] prior to construction.

26

27 **NEW SECTION. Section 7. Permissible fees -- crossing fees and annual fees.** (1) Unless
28 otherwise agreed to by the parties and subject to [section 9(2)] and subsections (2) through (7) of this section, a

1 utility that places a crossing shall pay the railroad a crossing fee for each crossing.

2 (2) The crossing fee is in lieu of any license, permit, application, or processing fee, or any other
3 fees or charges to reimburse the railroad for the direct expenses or diminution of railroad land value incurred by
4 the railroad as a result of the crossing. Except as provided in subsections (3) through (7), any additional fee or
5 financial charge may not be assessed by the railroad or by any railroad agent, contractor, or assignee to the
6 utility or to any agent or contractor of the utility.

7 (3) (a) A crossing fee may not be imposed for:

8 (i) the replacement or upgrade of existing utility facilities in a railroad right-of-way and adjacent
9 railroad land;

10 (ii) disused rail crossings;

11 (iii) an extension of utility service to buildings or other facilities owned or operated by the railroad or
12 its lessees;

13 (iv) an extension of utility service at the request of the railroad, its agents or lessees, or other
14 occupants of railroad land; or

15 (v) any crossing where the railroad or its predecessor in the affected right-of-way has agreed, in
16 writing, to provide, at no cost to the utility, easements, licenses, or other authorization to place crossings or
17 facilities or related improvements or systems.

18 (b) The crossing fee is a lifetime fee and does not expire for the duration of the crossing.

19 (4) (a) A utility may request a copy of an annual fee agreement from a railroad if the railroad seeks
20 to collect an annual fee. If the railroad cannot produce a copy of the original signed annual fee agreement, the
21 railroad may not charge, assess, or collect an annual fee.

22 (b) If an annual fee agreement was executed prior to December 31, 2024, and remains in effect,
23 the railroad may only assess and collect a fee equal to the amount collected in 2024 for an annual fee, but only
24 for the timeframe that the annual fee agreement remains in effect.

25 (c) If an annual fee agreement was executed after December 31, 2024, and prior to [the effective
26 date of this act] and remains in effect, the railroad may only assess and collect a fee equal to the amount it
27 collected in the first year of the annual fee agreement for that annual fee, but only for the timeframe that the
28 annual fee agreement remains in effect.

(d) Annual fees may not be applied to any crossing made after the date that the annual fee is enacted unless agreed to in the annual fee agreement.

(e) Nothing in this subsection (4) prevents parties from eliminating annual fees based on a renegotiation of the terms of an agreement.

(5) (a) In addition to the standard crossing fee and based on the railroad traffic at the crossing and subject to subsection (5)(b), a utility shall reimburse the railroad for any reasonable and necessary flagging expense, not to exceed \$500 for each day the utility is present and actively engaged in deploying facilities in a railroad right-of-way associated with a crossing.

(b) A flagger fee is not applicable to underground crossings when surface activity is more than 50 feet outside of a railroad right-of-way.

(6) A railroad may charge a fee for reasonable and necessary safety inspections, not to exceed \$170 an hour for each hour the utility is present and actively engaged in deploying facilities within the railroad's right-of-way. Additional fees, charges, assessments, or other terms related to safety may not be imposed by the railroad.

(7) (a) If the railroad alleges a crossing will cause a diminution in railroad land value in an amount greater than the crossing fee provided for in subsection (1), within 15 days after receipt of a completed application, the railroad shall notify the utility in writing and provide an appraisal demonstrating the diminution in value of the entire parcel of railroad property caused by the crossing.

(b) If the parties are unable to resolve the issue of compensation under subsection (7)(a), the dispute must be resolved in accordance with [section 10].

(8) The placement of one or more pipes or conduits and their contents in the same location is a single facility. Additional fees are not payable based on the individual fibers, wires, lines, or other items contained within the pipes or conduits.

(9) The utility is not obligated to pay the railroad any other fees, charges, assessments, or other terms beyond the fees and reimbursements established in this section.

NEW SECTION. Section 8. Certificate of insurance coverage. (1) (a) The certificate of insurance or coverage submitted by a facility owner that is a municipal utility or municipality must include commercial

1 general liability insurance or an equivalent form with a limit of at least \$2 million for each occurrence and an
2 aggregate of at least \$5 million.

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

6 (c) The certificate of insurance or coverage submitted by a facility owner not included in subsection
7 (1)(a) or (1)(b) must include commercial general liability insurance with a combined single limit of at least \$2
8 million for each occurrence and an aggregate limit of at least \$5 million.

9 (2) The railroad may require protective liability insurance with a combined single limit of \$2 million
10 for each occurrence and a \$5 million aggregate limit. The coverage may be provided by a blanket railroad
11 protective liability insurance policy if the coverage, including the coverage limits, applies separately to each
12 individual crossing. The coverage is required only during the period of construction, repair, or replacement of
13 the facility.

14 (3) The insurance coverage under subsections (1) and (2) may be satisfied by the utility using a
15 combination of primary, excess, or self-insurance. The insurance may not contain an exclusion or limitation
16 related to railroads or to activities within 50 feet of railroad property.

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

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

20

21 **NEW SECTION. Section 9. Relocation -- objection to relocation.** (1) (a) Except as provided in
22 subsections (3) and (4), a railroad may require a utility to relocate a facility when:

- 23 (i) the relocation is mutually agreed to by the railroad and the utility within the railroad right-of-way;
24 (ii) the railroad determines that relocation is essential to accommodate railroad operations; and
25 (iii) the relocation is not arbitrary or unreasonable.

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

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

(2) Relocation is at the expense of the utility. Additional crossing fees, flagger fees, safety inspector fees, or any other fee or charges for the relocation may not be assessed by the railroad, a railroad agent, contractor, or assignee to the utility, or to any agent or contractor of the utility.

(3) If a utility objects to the need for relocation, after reviewing the statement and supporting documentation, the utility shall, within 15 days after receipt of the statement and supporting documentation, provide notice of the objection and the specific basis of the objection to the railroad by registered or certified mail or by means of mutually agreed electronic confirmation of receipt.

(4) (a) If the parties are unable to resolve the objection, either party may submit to arbitration in accordance with Title 27, chapter 5, for resolution of the objection within 30 calendar days from receipt of the objection.

(b) Before submitting to arbitration, the parties shall confer in good faith in an attempt to resolve the objection within 30 days after having provided a notice of objection as required in subsection (3).

(5) If a railroad orders the removal of a crossing with good cause, as outlined in [section 5(6)(b)], the railroad shall allow for the relocation of the crossing in accordance with this section.

NEW SECTION. Section 10. Objection to crossing -- additional requirements. (1) (a) If a railroad objects to a utility's proposed crossing because the proposal is a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way, the railroad shall notify the utility of the objection and the specific basis for the objection within 15 days after receipt of the utility's application by registered or certified mail or by means of mutually agreed electronic confirmation of receipt.

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

(c) Notice of objections must be sent by registered or certified mail or by means of mutually agreed electronic confirmation of receipt.

(2) If the parties are unable to resolve an objection made in accordance with subsection (1), either party may submit to arbitration in accordance with Title 27, chapter 5, for resolution of the disputed crossing

1 application within 30 calendar days from receipt of the objection.

2 (3) Before submitting to arbitration, the parties shall confer in good faith in an attempt to resolve
3 the objection.

4 (4) (a) If arbitration is sought, the arbitrators shall issue a notice of hearing or notice of opportunity
5 for hearing within 15 calendar days after filing for arbitration and issue an order within 30 calendar days after
6 the hearing.

7 (b) A utility may not proceed with construction of a crossing during the 45-calendar-day period for
8 which notice of a hearing is issued or until expiration of the period during which a hearing could be requested.

9 (c) The arbitrators shall assess costs associated with arbitration equitably against the parties. The
10 parties shall pay the costs within 30 calendar days after receipt of a bill for payment for the arbitrators.

11 (d) The order may be appealed in accordance with Title 25.

12

13 **NEW SECTION. Section 11. Removal of equipment.** On completion of any facility, the utility shall
14 remove all tools, equipment, or other property used in the construction of the facility and, if railroad property
15 was moved or disturbed, restore that property to the condition of the property before being moved or disturbed.

16

17 **NEW SECTION. Section 12. Assignment.** (1) (a) Except as provided in subsection (1)(b), a utility
18 may assign or otherwise transfer any rights to cross a railroad right-of-way to:

19 (i) a financially responsible entity controlled by, controlling, or under common control of the utility;

20 (ii) an entity with which the utility is merged or consolidated; or

21 (iii) an entity that acquires ownership or control of all or substantially all of the transmission assets
22 of the utility.

23 (b) A transfer or assignment not included under subsection (1)(a) may not take place without the
24 written permission of the railroad. Written permission may not be unreasonably withheld.

25 (2) The utility shall notify the railroad of an assignment made in accordance with subsection (1)(a)
26 within 30 calendar days.

27

28 **NEW SECTION. Section 13. Prohibition against mechanic's lien.** (1) A utility may not create,

1 permit, or cause a mechanic's lien or other lien to be created or enforced against the railroad's property for any
2 work performed by the utility in connection with the utility's facilities located in the railroad's right-of-way.

3 (2) A railroad may not create, permit, or suffer a mechanic's lien or other lien of any kind or any
4 nature to be created or enforced against a utility's property located in the railroad's right-of-way for any work
5 performed by the railroad in connection with the railroad's facilities.

6
7 **NEW SECTION. Section 14. Taxes.** (1) A utility shall promptly pay or discharge all taxes and
8 charges levied on a utility's facilities located in the railroad's right-of-way.

9 (2) If any taxes or charges cannot be separately made or assessed to the utility, but are included
10 in the taxes or charges assessed to the railroad, the utility shall pay to the railroad an equitable portion of the
11 taxes, determined by the value of the utility's facilities located on the railroad right-of-way, as compared to the
12 entire value of the railroad property.

13
14 **NEW SECTION. Section 15. Reporting requirement -- fee -- rulemaking.** (1) Beginning January 1,
15 2026, and each year after, a facility owner that constructs a crossing and pays a crossing fee or annual fee in
16 accordance with [sections 1 through 15] shall file a construction completion report with the department of
17 transportation summarizing:

18 (a) crossing agreements, insurance coverage submitted by the facility owner; and

19 (b) fees paid to a railroad within 60 days after facility completion.

20 (2) (a) The report must be accompanied by a filing fee commensurate with the crossing fee paid to
21 the railroad in accordance with [sections 1 through 15].

22 (b) The fee must be deposited in the state special revenue fund to the credit of the local road and
23 bridge account and used for the purposes provided in 15-70-132.

24 (3) The department may adopt rules establishing the requirements of reports filed in accordance
25 with this section.

26
27 **NEW SECTION. Section 16. Codification instruction.** [Sections 1 through 15] are intended to be
28 codified as an integral part of Title 69, chapter 14, and the provisions of Title 69, chapter 14, apply to [sections

1 1 through 15].

2

3 NEW SECTION. Section 17. Saving clause. [This act] does not affect rights and duties that
4 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

5

6 NEW SECTION. Section 18. Severability. If a part of [this act] is invalid, all valid parts that are
7 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
8 the part remains in effect in all valid applications that are severable from the invalid applications.

9

10 NEW SECTION. Section 19. Effective date. [This act] is effective on passage and approval.

11

12 NEW SECTION. Section 20. Applicability. [This act] applies to crossings:

13 (1) in existence prior to October 1, 2025; and

14 (2) commenced after September 30, 2025.

15 - END -