

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1234

Introduced by Friesen, 34.

Read first time January 20, 2022

Committee: Transportation and Telecommunications

- 1 A BILL FOR AN ACT relating to telecommunications; to amend section
- 2 86-164, Reissue Revised Statutes of Nebraska; to provide for an
- 3 expedited wire-crossing permit relating to a railroad right-of-way
- 4 as prescribed; to harmonize provisions; and to repeal the original
- 5 section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 86-164, Reissue Revised Statutes of Nebraska, is
2 amended to read:

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

15 (b) Except as provided in subdivision (a) of this subsection in the
16 case of good faith negotiation or hearing, if a railroad carrier does not
17 respond to a completed crossing application by a telecommunications
18 carrier in writing within thirty days after receipt of such application,
19 the telecommunications carrier may petition the commission to enter an
20 order for an expedited wire-crossing permit. The commission shall enter
21 such order within fifteen days after the petition is filed, with notice
22 of such order issued to the railroad carrier and telecommunications
23 carrier. The expedited wire-crossing permit shall allow a
24 telecommunications carrier to place a line, wire, or cable across the
25 railroad right-of-way in a manner that is not unreasonable or against the
26 public interest, taking into account safety, engineering, and access
27 requirements of the railroad carrier as such requirements are prescribed
28 by the Federal Railroad Administration and established by rail industry
29 standards.

30 (2)(a) Unless otherwise agreed to by all parties, the commission
31 shall, after providing proper notice, hold and complete the such hearing

1 provided for under subdivision (1)(a) of this section within sixty days
2 after receipt of the petition. The commission shall issue an order of its
3 decision within thirty days after the hearing. In rendering its decision,
4 the commission shall consider whether the terms and conditions at issue
5 are unreasonable or against the public interest, taking into account
6 safety, engineering, and access requirements of the railroad carrier as
7 such requirements are prescribed by the Federal Railroad Administration
8 and established rail industry standards.

9 (b) Upon issuance of an order by the commission under subdivision
10 (a) of this subsection, the railroad carrier and the telecommunications
11 carrier shall have fifteen days after the date of issuance to file a
12 conforming wire-crossing agreement with the commission. The commission
13 shall have fifteen days after the date of such filing to approve or
14 reject the agreement. If the commission does not issue an approval or
15 rejection of such agreement within the fifteen-day requirement, the
16 agreement shall be deemed approved. The commission may reject a wire-
17 crossing agreement if it finds that the agreement does not conform to the
18 order issued by the commission. If the commission enters such a finding,
19 the parties shall revise the agreement to comply with the commission's
20 order and shall refile the agreement to the commission for further
21 review. If the commission does not approve or reject the revised
22 agreement within fifteen days after the date of refiling, the agreement
23 shall be deemed approved.

24 (3)(a) Except as provided in subsection (4) of this section or as
25 otherwise agreed to by all parties, if a telecommunications carrier
26 places a line, wire, or cable across a railroad right-of-way pursuant to
27 this section, it shall pay the railroad carrier, owner, manager, agent,
28 or representative of the railroad carrier a one-time standard crossing
29 fee of one thousand two hundred fifty dollars for each applicable
30 crossing. In addition to the standard crossing fee, the
31 telecommunications carrier shall reimburse the railroad carrier for any

1 actual flagging expenses associated with the placement of the line, wire,
2 or cable.

3 (b) The standard crossing fee shall be in lieu of any license fee or
4 any other fees or charges to reimburse the railroad carrier for any
5 direct expense incurred as a result of the placement of the line, wire,
6 or cable.

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

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

22 (6)(a) A wire-crossing agreement between a railroad carrier and a
23 telecommunications carrier that includes a provision, clause, covenant,
24 or agreement contained in, collateral to, or affecting such wire-crossing
25 agreement that purports to indemnify, defend, or hold harmless the
26 railroad carrier from any liability for loss or damage resulting from the
27 negligence or willful and wanton misconduct of the carrier or its agents,
28 employees, or independent contractors who are directly responsible to
29 such carrier or has the effect of indemnifying, defending, or holding
30 harmless such carrier from the negligence or willful and wanton
31 misconduct of the carrier or its agents, employees, or independent

1 contractors who are directly responsible to the carrier is against the
2 public policy of this state and is unenforceable.

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

11 (7) For purposes of this section:

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

13 (b) Telecommunications carrier means a telecommunications common
14 carrier as defined in section 86-118 or a telecommunications contract
15 carrier as defined in section 86-120.

16 Sec. 2. Original section 86-164, Reissue Revised Statutes of
17 Nebraska, is repealed.