

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 217**

Introduced by Louden, 49; Karpisek, 32; Schilz, 47; Stuthman, 22.

Read first time January 13, 2009

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to railroad rights-of-way; to amend section  
2 70-306, Reissue Revised Statutes of Nebraska; to provide  
3 requirements for electrical entities placing wires across  
4 rights-of-way as prescribed; to provide powers and  
5 duties; to define a term; and to repeal the original  
6 section.  
7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 70-306, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           70-306 (1) Any electric wire shall be placed at least  
4 eighteen feet above all road crossings. Any electric poles and  
5 wires shall be so placed as not to interfere with the public use of  
6 such highways, and if practicable, the poles shall be set upon the  
7 line of such highways.

8           (2) If any person engaged in distributing, generating,  
9 or transmitting electric current for power or other purposes by  
10 means of wires seeks to construct an electric wire over and across  
11 any railroad tracks, telegraph wires, or rights-of-way of any  
12 railroad company in this state and the electric wire intersects and  
13 crosses streets, highways, alleys, and other public thoroughfares,  
14 or elsewhere, such person and railroad company shall first endeavor  
15 to agree by a contract as to the manner and kind of crossing to be  
16 constructed. The contract shall at a minimum meet the requirements  
17 of sections 75-706 and 75-707 as to terms and conditions of such  
18 construction or placement and shall include the compensation, if  
19 any, to be awarded as damages. If no contract is reached, the  
20 person may proceed to have the ~~same~~ equivalent of such contract  
21 ascertained and determined in the manner set forth in sections  
22 76-704 to 76-724.

23           (3)(a) Except as provided in subsection (4) of this  
24 section or as otherwise agreed to by all parties, if an electrical  
25 entity places a wire across a railroad right-of-way pursuant to

1 this section, it shall pay the railroad company a one-time standard  
2 crossing fee of one thousand two hundred fifty dollars for each  
3 applicable crossing. In addition to the standard crossing fee,  
4 the electrical entity shall reimburse the railroad company for any  
5 actual flagging expenses associated with the placement of the wire.

6 (b) The standard crossing fee shall be in lieu of any  
7 other fees or charges to reimburse the railroad company for any  
8 direct expense incurred as a result of the placement of the wire.

9 (4) If a railroad company or electrical entity believes  
10 a special circumstance exists for the placement of a wire across  
11 a railroad right-of-way, the railroad company or electrical entity  
12 may petition the other party for additional requirements or for  
13 relief from the standard crossing fee, whichever is applicable.  
14 The parties shall determine if a special circumstance exists  
15 that necessitates additional requirements for such placement or a  
16 modification of the standard crossing fee and shall come to an  
17 agreement on such requirements or modification.

18 (5)(a) A contract or its equivalent between a railroad  
19 company and an electrical entity that includes a provision, clause,  
20 covenant, or agreement contained in, collateral to, or affecting  
21 such contract or equivalent that purports to indemnify, defend,  
22 or hold harmless the railroad company from any liability for  
23 loss or damage resulting from the negligence or intentional acts  
24 or omissions of the company or any of its agents, employees,  
25 or independent contractors who are directly responsible to such

1 company or has the effect of indemnifying, defending, or holding  
2 harmless such company is against the public policy of this state  
3 and is unenforceable.

4 (b) No contract or its equivalent between a railroad  
5 company and an electrical entity shall include a provision, clause,  
6 covenant, or agreement contained in, collateral to, or affecting  
7 such contract or equivalent that requires the purchase or evidence  
8 of insurance of the electrical entity as a condition of the  
9 contract or its equivalent unless the railroad company establishes  
10 a history of risk or liability on the part of the entity.

11 (6) For purposes of subsections (3) through (5) of  
12 this section, electrical entity means a person or political  
13 subdivision engaged in distributing, generating, or transmitting  
14 electric current for power or other purposes through the use of  
15 wires that grosses no more than fifty million dollars annually.

16 Sec. 2. Original section 70-306, Reissue Revised Statutes  
17 of Nebraska, is repealed.