

## CHAPTER 350

---

**PUBLIC UTILITIES**

---

**HOUSE BILL 02-1319**

BY REPRESENTATIVE(S) Webster, Alexander, Chavez, Coleman, Hoppe, Jahn, Kester, Mace, Plant, Rhodes, Rippy, Spradley, Vigil, and White;  
also SENATOR(S) Takis and Isgar.

**AN ACT****CONCERNING THE ACQUISITION OF RIGHTS TO A NONINTERFERING USE OF RAILROAD RIGHTS-OF-WAY.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1. Legislative declaration.** The general assembly hereby finds and declares that continued growth within the state of Colorado requires the installation of extensive utility infrastructure to provide electricity, gas, water, steam, telecommunications, and other services to Colorado homes and businesses. As growth occurs, land readily available for installation of these facilities diminishes. The general assembly further finds and declares that railroads are public highways under the Colorado constitution and public utilities under title 40 of the Colorado Revised Statutes, and that railroad rights-of-way, which are ubiquitous throughout the state of Colorado, provide opportunities for placement of electric, gas, water, steam, telecommunications, and other facilities in a manner that does not materially interfere with railroad operations. Recently, railroad companies have demanded substantial increases in license and permit fees for the use of railroad rights-of-way. Such fees appear to have no rational relation to the burden placed on the railroad for the use of the railroad rights-of-way. The public interest requires that these railroad rights-of-way be made available for public crossing in exchange for reasonable compensation. Therefore, in order to preserve the public health, safety, and welfare, and to provide safe and efficient use of these rights-of-way, the general assembly hereby declares that the public utilities commission shall be authorized to set reasonable compensation for crossing of railroad rights-of-way by other public utilities in a manner similar to the current joint use provisions of public utilities law.

**SECTION 2.** 40-4-105, Colorado Revised Statutes, is amended to read:

---

*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

**40-4-105. Joint use of equipment and facilities.** (1) Whenever the commission, after a hearing upon its own motion or upon complaint of a public utility affected, finds that the public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes, or other equipment, or any part thereof on, over, or under any street or highway ~~which~~ THAT belongs to another public utility, OR THE CROSSING OF A RAILROAD RIGHT-OF-WAY BY A PUBLIC UTILITY FOR INSTALLATION OF ITS OWN FACILITIES IN A MANNER AND IN A LOCATION THAT IS COMPATIBLE WITH THE USE FOR RAILROAD PURPOSES, and that such use will not result in irreparable injury to the owners or other users of such conduits, subways, wires, tracks, poles, pipes, or other equipment OR TO THE RAILROAD'S USE OF THE RIGHT-OF-WAY, or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the commission by order may direct that such use be permitted and prescribe reasonable compensation and reasonable terms and conditions for the joint use. If such use is directed, the public utility to whom the use is permitted shall be liable to the owner or other users of such conduits, subways, tracks, wires, poles, pipes, ~~or~~ other equipment, OR RAILROAD RIGHT-OF-WAY, for such damage as may result therefrom to the property of such owners or other users thereof.

(2) IN PROCEEDINGS ARISING OUT OF A COMPLAINT REQUESTING THE COMMISSION TO AUTHORIZE AND DETERMINE APPROPRIATE COMPENSATION TO BE PAID BY A PUBLIC UTILITY TO INSTALL ITS OWN FACILITIES ACROSS A RAILROAD RIGHT-OF-WAY IN A MANNER AND LOCATION COMPATIBLE WITH RAILROAD USE OF THE RIGHT-OF-WAY, THE COMMISSION MAY REQUIRE THE PARTIES INVOLVED IN THE PROCEEDING TO REIMBURSE THE COMMISSION FOR THE REASONABLE EXPENSES, ATTORNEY FEES, AND EXPERT WITNESS FEES THE COMMISSION INCURS IN MAKING ITS DETERMINATION. ANY FEE COLLECTED PURSUANT TO THIS SECTION SHALL BE REMITTED TO THE STATE TREASURER, WHO SHALL CREDIT SUCH FEE TO THE PUBLIC UTILITIES COMMISSION FIXED UTILITY FUND CREATED PURSUANT TO SECTION 40-2-114.

(3) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE RIGHT OF A PUBLIC UTILITY TO EXERCISE THE POWER OF EMINENT DOMAIN TO ACQUIRE PROPERTY PURSUANT TO APPLICABLE LAW.

(4) FOR PURPOSES OF THIS SECTION, WITH RESPECT TO CROSSING OF RAILROAD RIGHTS-OF-WAY BY A PUBLIC UTILITY, THE TERM "PUBLIC UTILITY" SHALL INCLUDE POWER AUTHORITIES ORGANIZED UNDER SECTION 29-1-204, C.R.S. THE TERM "PUBLIC UTILITY" SHALL ALSO INCLUDE MUNICIPAL UTILITIES AND COOPERATIVE ELECTRIC ASSOCIATIONS OTHERWISE EXEMPT FROM THIS ARTICLE.

**SECTION 3.** 40-3.5-101 (1), Colorado Revised Statutes, is amended to read:

**40-3.5-101. Application - reasonable charges - adequate service.** (1) This article shall be applicable within the authorized electric and natural gas service areas of each municipal utility ~~which~~ THAT lie outside the jurisdictional limits of such municipality. Insofar as municipal utilities establish rates, charges, and tariffs and any regulations pertaining thereto in accordance with the provisions of this article, the provisions of section 40-1-104 and articles 4, 6, and 7 of this title shall not apply; EXCEPT THAT SECTION 40-4-105 SHALL APPLY WITH RESPECT TO THE CROSSING OF RAILROAD RIGHTS-OF-WAY. Nothing in this article shall be construed as limiting the applicability of article 5 of this title.

**SECTION 4.** 40-9.5-112, Colorado Revised Statutes, is amended to read:

**40-9.5-112. Provisions applicable to cooperative electric associations.** Except as otherwise provided in this part 1, the provisions of article 55 of title 7, C.R.S., shall apply to cooperative electric associations. SECTION 40-4-105 SHALL APPLY TO COOPERATIVE ELECTRIC ASSOCIATIONS WITH RESPECT TO CROSSING OF RAILROAD RIGHTS-OF-WAY.

**SECTION 5.** 29-1-204 (3), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**29-1-204. Establishment of separate governmental entity.** (3) The general powers of such entity shall include the following powers:

(o) TO ACQUIRE OR CROSS RAILROAD RIGHTS-OF-WAY IN THE MANNER SET FORTH IN SECTION 40-5-105, C.R.S.

**SECTION 6. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Became Law: June 8, 2002