

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HOUSE BILL 2020

AN ACT

AMENDING SECTIONS 40-321 AND 40-809, ARIZONA REVISED STATUTES; RELATING TO RAILROADS.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 40-321, Arizona Revised Statutes, is amended to read:

START_STATUTE40-321. Power of commission to determine adequacy of service rendered by public service corporation; enforcement by order or regulation; duty of compliance by corporation; railroad eminent domain review; railroad review fund

A. When the commission finds that the equipment, appliances, facilities or service of any public service corporation, or the methods of manufacture, distribution, transmission, storage or supply employed by it are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine what is just, reasonable, safe, proper, adequate or sufficient, and shall enforce its determination by order or regulation.

B. The commission shall prescribe regulations for the performance of any service or the furnishing of any commodity and ~~upon~~ ON proper demand and tender of rates, the public service corporation shall furnish the commodity or render the service within the time and ~~upon~~ ON the conditions prescribed.

C. THE COMMISSION SHALL REVIEW ANY PROPOSAL BY A RAILROAD TO ACQUIRE LAND OR MATERIALS BY EMINENT DOMAIN, BY THREAT OF EMINENT DOMAIN OR AT AUCTION TO ENSURE THAT THE RAILROAD HAS EXAMINED ALTERNATIVE LOCATIONS AND HAS CHOSEN A SITE OR ROUTE THAT MINIMIZES ENVIRONMENTAL, NATURAL RESOURCE, WATER AND ECONOMIC IMPACTS AND IMPACTS ON HISTORICAL, ARCHEOLOGICAL OR GEOGRAPHIC LAND MARKS. THE RAILROAD SHALL CONTRACT FOR ASSESSMENT BY QUALIFIED THIRD PARTIES ON THE ENVIRONMENTAL, NATURAL RESOURCE, WATER AND ECONOMIC IMPACTS, IMPACTS ON PRIVATE PROPERTY AND IMPACTS ON HISTORICAL, ARCHEOLOGICAL OR GEOGRAPHIC LANDMARKS IN CONSIDERATION OF ALTERNATIVES TO THE LOCATION OF THE LAND OR THE MATERIALS TO BE ACQUIRED BY EMINENT DOMAIN, BY THREAT OF EMINENT DOMAIN OR AT AUCTION AND SHALL DETERMINE THAT THE ACQUISITION MINIMIZES NEGATIVE ENVIRONMENTAL, NATURAL RESOURCE, WATER AND ECONOMIC IMPACTS AND IMPACTS ON HISTORICAL, ARCHEOLOGICAL OR GEOGRAPHIC LANDMARKS. THE RAILROAD SHALL PRESENT THE ASSESSMENTS AND DETERMINATION TO THE COMMISSION FOR REVIEW. THE COMMISSION MAY SUGGEST ONE OR MORE LOCATIONS IN THE AREA THAT WOULD HAVE LESSER IMPACTS AND THAT COULD ACCOMMODATE THE RAILROAD. THE COMMISSION MAY ASSESS AND COLLECT FROM THE RAILROAD FEES FOR REVIEW AND ANY OTHER NECESSARY COSTS INCURRED BY THE COMMISSION PURSUANT TO THIS SUBSECTION. THE RAILROAD REVIEW FUND IS ESTABLISHED CONSISTING OF FEES COLLECTED BY THE COMMISSION PURSUANT TO THIS SUBSECTION. THE COMMISSION SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED TO THE COMMISSION FOR PURPOSES OF THIS SUBSECTION. THE COMMISSION SHALL REFUND TO THE RAILROAD ANY UNUSED PORTION OF THE FEES COLLECTED. THE CORPORATION COMMISSION SHALL HOLD AT LEAST ONE PUBLIC HEARING AND CONSIDER PUBLIC COMMENTS ON SUCH IMPACTS IN COMMUNITIES AFFECTED BY A RAILROAD PROPOSAL THAT IS SUBJECT TO REVIEW PURSUANT TO THIS SUBSECTION. END_STATUTE

Sec. 2. Section 40-809, Arizona Revised Statutes, is amended to read:

START_STATUTE40-809. Specific powers of railroad corporations

A. Railroad corporations may:

1. Make surveys and select routes for railroad and telegraph lines, and for that purpose, enter upon private and public lands and waters, subject to responsibility for all damage caused thereby.

2. Lay out the railroad not exceeding two hundred feet wide, and construct and maintain it with single or double track, with facilities the directors deem necessary for the convenient use thereof.

3. Construct the railroad and telegraph lines across, along or upon any stream of water, ~~water-course~~ WATERCOURSE, street or highway, or across any railway, canal, ditch or flume which the lines intersect, cross or run along. The corporation shall restore them to their former state as near as possible in order not to impair their use or injure the franchises of others unnecessarily.

4. Cross, intersect or unite the railroad with any other railroad theretofore constructed at any points on the route thereof, and upon the premises of the other railroad, with the ~~turn-out~~ TURNOUT, sidings, switches and other conveniences necessary to make and complete the intersections and connections. The railroads shall unite in making the intersections and connections and the facilities therefor upon terms agreed upon between them, but, if they are unable to agree upon the compensation therefor, or the points at which, or the manner in which the intersections and connections shall be made, the compensation shall be ascertained and declared in the manner provided by law relating to eminent domain for taking private property for use of such corporations.

5. Take lands and materials to be used in the construction and maintenance of railroad and telegraph lines in the manner provided by law relating to eminent domain in the event such lands and materials cannot be obtained by agreement with the owners thereof. **IF LAND OR MATERIALS ARE TO BE TAKEN BY EMINENT DOMAIN, BY THREAT OF EMINENT DOMAIN OR AUCTION, THE RAILROAD SHALL SUBMIT A PROPOSAL TO THE CORPORATION COMMISSION PURSUANT TO SECTION 40-321, SUBSECTION C.**

6. Transport persons and property on their railroad and collect compensation therefor.

7. Take and enjoy by purchase, donation or condemnation as provided by law relating to eminent domain, natural springs and streams of water, or as much thereof as necessary in operating the railroad, together with the right-of-way thereto for pipes, ditches, canals and aqueducts for transporting the water thereof.

8. Regulate the speed of locomotives or other machinery used on the railroad, and establish, execute and enforce all useful regulations for management of its trains and business, and for securing the comfort, safety and good behavior of passengers, employees and agents, and for prevention and suppression of gambling on its cars.

9. Expel from its cars, using no more force than necessary, any passenger who upon demand refuses to pay his fare or who behaves in a rude, riotous or disorderly manner toward other passengers or the employees of the corporation in charge of the cars, or, upon his attention being called thereto, persists in violating the rules of the corporation against gambling on the cars.

B. For the purposes of making embankments, excavations, ditches, drains, culverts and similar works, and of procuring timber, stone, gravel and other materials for the construction and security of the railroad, the corporation may take and occupy as much more land as necessary or convenient for such purposes.

C. If a railroad company's right-of-way, track or roadbed upon its right of way passes through a canyon, pass or defile, it shall not prevent any other railroad from occupancy and use of the canyon, pass or defile in common with the railroad first located, or the crossing of other railroads at grades. Necessary expenses shall be equitably divided between the railroads occupying and using the same canyon, pass or defile.END_STATUTE

Sec. 3. Exemption from rule making

For the purposes of this act, the corporation commission is exempt from the rule making requirements of title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this act.