

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

The Committee on **Utilities** recommends **SB 439** be amended on page 1, in line 13, by striking "16" and inserting "17"; in line 15, after "the" by inserting ":

(1)";

Also on page 1, in line 18, by striking "or parallel"; also in line 18, after "right-of-way" by inserting "; and

(2) maintenance, alteration, inspection, repair, replacement, relocation, operation and removal of utility facilities that are parallel to a railroad right-of-way";

Also on page 1, in line 26, after "located" by inserting "or proposed to be located";

On page 2, in line 1, after "that" by inserting "has been placed, laid or constructed in a railroad right-of-way and"; in line 14, after the period by inserting "'Utility" does not include a cooperative as defined in K.S.A. 66-104d, and amendments thereto, or an entity that is a not-for-profit wholly owned subsidiary of a corporation organized under the electric cooperative act, K.S.A. 17-4601 et seq., and amendments thereto, and provides retail electric service to customers in this state, unless such cooperative or entity has elected to be subject to the provisions of this act pursuant to section 3, and amendments thereto."; following line 29, by inserting:

"New Sec. 3. (a) The board of trustees of a cooperative as defined in K.S.A. 66-104d, and amendments thereto, or an entity that is a not-for-profit wholly owned subsidiary of a corporation organized under the electric cooperative act, K.S.A. 17-4601 et seq., and amendments thereto, and provides retail electric service to customers in this state may elect to be subject to the provisions of this act by notifying the state corporation commission in writing of

such election.

(b) The state corporation commission shall maintain records of any such written notification and disclose such records when requested by a railroad to verify such cooperative or entity's election.

(c) Upon notification to the state corporation commission, such cooperative or entity shall be subject to the provisions of this act.";

Also on page 2, in line 30, after "(a)" by inserting "(1)"; in line 31, after "to" by inserting "(A)";

Also on page 2, in line 32, by striking "or paralleling"; in line 34, by striking "30" and inserting "60"; also in line 34, after "action" by inserting "; or

(B) maintain, alter, inspect, repair, replace, relocate, operate or remove a paralleling located in a public right-of-way, the utility shall provide the railroad a written notice of such intent 120 days before the utility takes the action";

Also on page 2, also in line 34, after the period by inserting:

"(2)";

Also on page 2, in line 35, by striking "(1)" and inserting "(A)"; in line 39, after "paralleling" by inserting "activities"; in line 40, by striking "(2)" and inserting "(B)"; in line 43, by striking "or paralleling";

On page 3, in line 1, after "way" by inserting "or maintain, alter, inspect, repair, replace, relocate, operate or remove a paralleling located outside of any public right-of-way"; also in line 1, after "crossing" by inserting "or paralleling"; in line 7, after "paralleling" by inserting "activities"; in line 8, by striking "5" and inserting "6"; in line 9, by striking "6" and inserting "7";

On page 4, in line 3, after "(h)" by inserting "(1)"; in line 4, by striking "7" and inserting

"8"; also in line 4, by striking "a"; also in line 4, by striking "or paralleling" and inserting "activities"; in line 6, by striking "or paralleling is" and inserting "activities are"; also in line 6, by striking "30" and inserting "60"; in line 7, after "section" by inserting a comma; in line 8, after "the" by inserting "placement, laying,"; in line 9, by striking the second "or"; in line 10, by striking "paralleling"; in line 12, by striking "or paralleling"; following line 13, by inserting:

"(2) Unless the railroad notifies the utility, in accordance with section 8, and amendments thereto, that a proposed paralleling activity will impede railroad operations or pose undue public safety risks where the paralleling activity is proposed, 120 calendar days after a utility submits a notification or request required by this section, the utility may commence with the maintenance, alteration, inspection, repair, replacement, relocation, operation or removal of the paralleling. In all other instances, the utility shall be deemed to have authorization to perform the requested work. A railroad shall not impose additional requirements on a paralleling located in a public right-of-way.";

Also on page 4, following line 17, by inserting:

"(j) A railroad may require that any flagging for crossing or paralleling activities conducted under this act be done by an individual who is a federally certified conductor, employed or contracted by the railroad and current on all territorial familiarization requirements as prescribed by the federal railroad administration of the United States department of transportation. Such individual shall coordinate the safe movement of trains where the crossing or paralleling activities are being performed, including coordination between railroad train dispatching, on-train operating crews, railroad maintenance-of-way personnel, railroad signal personnel and the utility personnel, contractors or agents. Such flagging shall be performed in accordance with any controlling labor agreements that apply to the railroad. The railroad shall arrange for such individual to be present at the site to enable the utility to perform and complete

any such activities within a reasonable timeline.

(k) A utility that is conducting activities in a railroad right-of-way pursuant to this act shall comply with any applicable federal rail safety laws and rules and regulations, including, but not limited to, the rail safety improvement act of 2008 and any rail safety rules and regulations promulgated by the federal railroad administration of the United States department of transportation.";

And by redesignating subsections, paragraphs, subparagraphs and clauses accordingly;

Also on page 4, in line 41, after "or" by inserting "conducts activities on any facility that";

On page 5, in line 4, after "paralleling" by inserting "activities"; in line 8, by striking "a"; also in line 8, after "paralleling" by inserting "activities"; in line 9, after the period by inserting "Subject to the provisions of section 3(j), and amendments thereto,"; in line 26, by striking the second "a"; also in line 26, after "paralleling" by inserting "activities"; in line 29, by striking all before "the"; in line 32, after "paralleling" by inserting "activities. The railroad shall notify the utility and provide such appraisal within 60 days after receipt of a notice or request from a utility for any crossing and within 120 days after receipt of a notice or request from a utility for any paralleling"; in line 34, by striking "9" and inserting "10"; in line 39, by striking "9" and inserting "10"; in line 40, by striking "3" and inserting "4";

On page 6, in line 2, after "or" by inserting "conducts activities on any facility that"; in line 21, after "of" by inserting "placement, laying,"; in line 23, after the second "or" by inserting "during the period of the maintenance, alteration, inspection, repair, replacement, relocation, operation or removal of the"; in line 34, by striking the second "a"; in line 35, after "paralleling" by inserting "activities"; in line 36, by striking "is" and inserting "activities are"; also in line 36, by striking "to"; in line 37, by striking all before the comma; in line 40, after "paralleling" by inserting "activities";

On page 7, in line 1, after "paralleling" by inserting "activities"; also in line 1, after the second "the" by inserting "placement, laying,"; in line 3, after the second "or" by inserting "may proceed with the maintenance, alteration, inspection, repair, replacement, relocation, operation or removal of the"; in line 6, after "paralleling" by inserting "activities that are proposed to occur in"; in line 9, by striking "is" and inserting "activities are"; in line 14, by striking "9" and inserting "10"; in line 16, by striking "to the proposed crossing or paralleling"; in line 17, after the second "the" by inserting "placement, laying,"; in line 19, after the second "or" by inserting "may proceed with the maintenance, alteration, inspection, repair, replacement, relocation, operation or removal of the"; in line 40, by striking "5" and inserting "6";

On page 8, in line 25, after the second "or" by inserting "the maintenance, alteration, inspection, repair, replacement, relocation, operation or removal of a";

On page 9, following line 15, by inserting:

"(e) Nothing in this act shall be construed to expand, diminish or alter any property right, title or interest held by a railroad with respect to the railroad right-of-way.";

Also on page 9, in line 28, after "of" by inserting "placement, laying,"; in line 30, after the second "or" by inserting "the maintenance, alteration, inspection, repair, replacement, relocation, operation or removal of the";

And by renumbering sections accordingly; and the bill be passed as amended.

Chairperson