

1 AN ACT concerning utilities.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Crossing of Railroad Right-of-way Act.

6 Section 5. Definitions. As used in this Act, unless the  
7 context otherwise requires:

8 "Crossing" means the construction, operation, repair, or  
9 maintenance of a facility over, under, or across a railroad  
10 right-of-way by a utility when the right-of-way is owned by a  
11 land management company and not a registered rail carrier.

12 "Direct expenses" includes, but is not limited to, any or  
13 all of the following:

14 (1) The cost of inspecting and monitoring the crossing  
15 site.

16 (2) Administrative and engineering costs for review of  
17 specifications and for entering a crossing on the  
18 railroad's books, maps, and property records and other  
19 reasonable administrative and engineering costs incurred  
20 as a result of the crossing.

21 (3) Document and preparation fees associated with a  
22 crossing, and any engineering specifications related to  
23 the crossing.

1           (4) Damages assessed in connection with the rights  
2 granted to a utility with respect to a crossing.

3           "Facility" means any cable, conduit, wire, pipe, casing  
4 pipe, supporting poles and guys, manhole, or other material or  
5 equipment, that is used by a utility to furnish any of the  
6 following:

7           (1) Communications, video, or information services.

8           (2) Electricity.

9           (3) Gas by piped system.

10          (4) Sanitary and storm sewer service.

11          (5) Water by piped system.

12          "Land management company" means an entity that is the  
13 owner, manager, or agent of a railroad right-of-way and is not  
14 a registered rail carrier.

15          "Railroad right-of-way" means one or more of the following:

16           (1) A right-of-way or other interest in real estate  
17 that is owned or operated by a land management company and  
18 not a registered rail carrier.

19           (2) Any other interest in a former railroad  
20 right-of-way that has been acquired or is operated by a  
21 land management company or similar entity.

22          "Special circumstances" means either or both of the  
23 following:

24           (1) The characteristics of a segment of a railroad  
25 right-of-way not found in a typical segment of a railroad  
26 right-of-way that enhance the value or increase the damages

1 or the engineering or construction expenses for the land  
2 management company associated with a proposed crossing, or  
3 to the current or reasonably anticipated use by a land  
4 management company of the railroad right-of-way,  
5 necessitating additional terms and conditions or  
6 compensation associated with a crossing.

7 (2) Variances from the standard specifications  
8 requested by the land management company.

9 "Special circumstances" may include, but is not limited to,  
10 the railroad right-of-way segment's relationship to other  
11 property, location in urban or other developed areas, the  
12 existence of unique topography or natural resources, or other  
13 characteristics or dangers inherent in the particular crossing  
14 or segment of the railroad right-of-way.

15 "Utility" shall include (1) public utilities as defined in  
16 Section 3-105 of the Public Utilities Act, (2)  
17 telecommunications carriers as defined in Section 13-202 of the  
18 Public Utilities Act, (3) electric cooperatives as defined in  
19 Section 3.4 of the Electric Supplier Act, (4) telephone or  
20 telecommunications cooperatives as defined in Section 13-212  
21 of the Public Utilities Act, (5) rural water or waste water  
22 systems with 10,000 connections or less, (6) a holder as  
23 defined in Section 21-201 of the Public Utilities Act, and (7)  
24 municipalities owning or operating utility systems consisting  
25 of public utilities as that term is defined in Section 11-117-2  
26 of the Illinois Municipal Code.

1 Section 10. Terms and conditions for a crossing.

2 (a) After 30 days from (1) the mailing of the notice, (2)  
3 completing the engineering specifications, and (3) payment of  
4 the fee, the utility, absent a claim of special circumstances,  
5 shall be deemed to have authorization to commence the crossing  
6 activity.

7 (b) The land management company and the utility must  
8 maintain and repair its own property within the railroad  
9 right-of-way and bear responsibility for its own acts and  
10 omissions, except that the utility shall be responsible for any  
11 bodily injury or property damage that typically would be  
12 covered under a standard railroad protective liability  
13 insurance policy.

14 (c) A utility shall have immediate access to a crossing for  
15 repair and maintenance of existing facilities in case of  
16 emergency.

17 (d) Applicable engineering standards shall be complied  
18 with for utility facilities crossing railroad rights-of-way.

19 (e) The utility shall be provided an expedited crossing,  
20 absent a claim of special circumstances, after payment by the  
21 utility of the standard crossing fee, if applicable, and  
22 submission of completed engineering specifications to the land  
23 management company. The engineering specifications shall  
24 address the applicable clearance requirements as established  
25 by the National Electrical Safety Code.

1           (f) The utility and the land management company may agree  
2 to other terms and conditions necessary to provide for  
3 reasonable use of a railroad right-of-way by a utility.

4           Section 15. Crossing fee. Unless otherwise agreed by the  
5 parties and subject to Section 20, a utility that locates its  
6 facilities within the railroad right-of-way for a crossing,  
7 other than a crossing along the public roads of the State  
8 pursuant to the Telephone Line Right of Way Act, shall pay the  
9 land management company a one-time standard crossing fee of  
10 \$1,500 for each crossing plus the costs associated with  
11 modifications to existing insurance contracts of the utility  
12 and the land management company. The standard crossing fee  
13 shall be in lieu of any license, permit, application, or any  
14 other fees or charges to reimburse the land management company  
15 for the direct expenses incurred by the land management company  
16 as a result of the crossing. The utility shall also reimburse  
17 the land management company for any actual flagging expenses  
18 associated with a crossing in addition to the standard crossing  
19 fee.

20           Section 20. Powers not limited.

21           (a) Notwithstanding Section 10, nothing shall prevent a  
22 land management company and a utility from otherwise  
23 negotiating the terms and conditions applicable to a crossing  
24 or the resolution of any disputes relating to the crossing.

1           (b) Notwithstanding subsection (a), this Section shall not  
2     impair the authority of a utility to secure crossing rights by  
3     easement pursuant to the exercise of the power of eminent  
4     domain.

5           Section 25. Special circumstances.

6           (a) If the parties cannot agree that special circumstances  
7     exist, the dispute shall be submitted to non-binding  
8     arbitration (informal arbitration). Any party proposing  
9     informal arbitration shall serve an arbitration notice  
10    detailing a description of the dispute, including, without  
11    limitation, the position and proposed resolution of the party  
12    requesting arbitration and shall name one arbitrator chosen by  
13    that party. Within 20 days after receipt of an arbitration  
14    notice, the receiving party shall serve a written notice on the  
15    other party containing (i) a detailed response to the claim  
16    giving the position and proposed resolution of the receiving  
17    party, and (ii) an acceptance of the arbitrator designated in  
18    the arbitration notice or rejection of same and suggestion of  
19    no less than 2 other alternatives (reply notice). The informal  
20    arbitration shall be decided by a single arbitrator. In the  
21    event that the parties do not agree on the selection of an  
22    arbitrator within 7 business days after service of the reply  
23    notice, either party may apply to the American Arbitration  
24    Association for the purpose of appointing an independent  
25    arbitrator. To the extent practicable, the arbitrator shall be

1 a person with expertise in the principal areas of dispute.

2 (b) A conference shall be commenced by the arbitrator  
3 within 15 calendar days after the appointment of the arbitrator  
4 and a recommendation regarding the matter submitted shall be  
5 rendered within 10 business days after the conference or as  
6 soon as practicable thereafter. During the 30 calendar days  
7 following the filing of the arbitration notice, the parties  
8 will meet and confer to attempt to resolve the dispute. The  
9 decision of the arbitrator and the rationale for its decision  
10 shall be in writing and signed by the arbitrator; provided,  
11 however, that such written recommendation shall have no  
12 evidentiary value and shall not be deemed to set forth any  
13 findings of fact for purposes of any future proceedings. Except  
14 as otherwise provided in this Section, the informal arbitration  
15 shall be held in accordance with the rules and procedures of  
16 the American Arbitration Association. Each party shall bear its  
17 own expenses, including, without limitation, legal and  
18 accounting fees, and the cost of the arbitrator shall be shared  
19 equally by each party. The parties may or may not elect to  
20 abide by the decision of the arbitrator.

21 (c) If the parties cannot resolve their dispute based on  
22 the arbitrator's recommendation within 30 days, either party  
23 may, upon the expiration of the 30-day period, give written  
24 notice to the other party of the commencement of a binding  
25 arbitration proceeding in accordance with the Commercial Rules  
26 of Arbitration in the American Arbitration Association (formal

1 arbitration). Any decision by the Board of Arbitration shall be  
2 final, binding, and conclusive as to the parties. Nothing  
3 provided in this Section shall prevent either party from  
4 submission of disputes to the court, limited to requests for  
5 injunctive or equitable relief in advance of a breach or  
6 threatened breach of this Agreement, if necessary to prevent  
7 serious and irreparable injury to such party or the public and  
8 if such injury cannot be appropriately addressed by informal or  
9 formal arbitration.

10 (d) If the dispute over special circumstances concerns only  
11 the compensation associated with a crossing, then the licensee  
12 may proceed with installation of the crossing during the  
13 pendency of the arbitration.

14 Section 30. Conflicting provisions. Notwithstanding any  
15 provision law to the contrary, this Act shall apply in all  
16 crossings of railroad rights-of-way involving a land  
17 management company and a utility and shall govern in the event  
18 of any conflict with any other provision of law.

19 Section 35. Applicability. This Act applies to (i) a  
20 crossing commenced prior to the effective date of this Act if  
21 an agreement concerning the crossing has expired or is  
22 terminated and (ii) a crossing commenced on or after the  
23 effective date of this Act.

24 Section 99. Effective date. This Act takes effect upon



1 becoming law.