



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5738

Introduced 2/16/2012, by Rep. Brandon W. Phelps

SYNOPSIS AS INTRODUCED:

See Index

Amends the Crossing of Railroad Right-of-way Act. Changes the short title to the Crossing and Encroachment of Railroad Right-of-way Act. Defines "encroachment" and "annual payment conversion" and makes changes to the definitions of "special circumstances" and "utility". Provides that a utility shall be deemed to have authorization to commence encroachment activity 90 days after the (i) mailing of the notice, (ii) completion of the engineering specifications, and (iii) payment of the fee. Provides that a utility that locates its facilities within the railroad right-of-way for an encroachment shall pay the rail carrier or land management company \$3,000 for each 1,500 feet or portion thereof of encroachment, unless otherwise agreed to by the parties. Creates a new provision that provides that a utility may pay a rail carrier or land management company an amount equal to 10 times the agreed annual or periodic payment for a crossing or encroachment agreement in effect at the time of request by the utility. Creates a new provision that provides that agreed annual or periodic fees charged to utilities by rail carriers or land management companies for crossing or encroachment agreements may not be increased for the initial 5-year period of the agreement and thereafter may not be increased more than 2% annually. Makes changes in provisions concerning crossing and encroachment fees; powers not limited; conflicting provisions; and applicability.

LRB097 17517 CEL 62721 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

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

4 Section 5. The Crossing of Railroad Right-of-way Act is
5 amended by changing Sections 1, 5, 10, 15, 20, 30, and 35 and
6 by adding Sections 27 and 28 as follows:

7 (220 ILCS 70/1)

8 Sec. 1. Short title. This Act may be cited as the Crossing
9 and Encroachment of Railroad Right-of-way Act.

10 (Source: P.A. 96-595, eff. 8-18-09.)

11 (220 ILCS 70/5)

12 Sec. 5. Definitions. As used in this Act, unless the
13 context otherwise requires:

14 "Crossing" means the construction, operation, repair, or
15 maintenance of a facility over, under, along, or across a
16 railroad right-of-way by a utility when the right-of-way is
17 owned by a land management company or a rail carrier ~~and not a~~
18 ~~registered rail carrier~~.

19 "Encroachment" means the construction, operation, repair,
20 or maintenance of a facility over, under, or along a railroad
21 right-of-way by a utility when the right-of-way is owned by a
22 rail carrier or a land management company, not to exceed 15,000

1 feet in length

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

4 (1) The cost of inspecting and monitoring the crossing
5 site.

6 (2) Administrative and engineering costs for review of
7 specifications and for entering a crossing on the
8 railroad's books, maps, and property records and other
9 reasonable administrative and engineering costs incurred
10 as a result of the crossing.

11 (3) Document and preparation fees associated with a
12 crossing, and any engineering specifications related to
13 the crossing.

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

16 "Facility" means any cable, conduit, wire, pipe, casing
17 pipe, supporting poles and guys, manhole, or other material or
18 equipment, that is used by a utility to furnish any of the
19 following:

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

21 (2) Electricity.

22 (3) Gas by piped system.

23 (4) Sanitary and storm sewer service.

24 (5) Water by piped system.

25 "Land management company" means an entity that is the
26 owner, manager, or agent of a railroad right-of-way and is not

1 a registered rail carrier.

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

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

6 (2) Any other interest in a former railroad
7 right-of-way that has been acquired or is operated by a
8 rail carrier or a land management company or similar
9 entity.

10 "Special circumstances" means either or both of the
11 following:

12 (1) The existence of characteristics of a segment of
13 railroad right-of-way or of a proposed utility facility
14 that increases the direct expenses associated with a
15 proposed crossing. ~~The characteristics of a segment of a~~
16 ~~railroad right of way not found in a typical segment of a~~
17 ~~railroad right of way that enhance the value or increase~~
18 ~~the damages or the engineering or construction expenses for~~
19 ~~the land management company associated with a proposed~~
20 ~~crossing, or to the current or reasonably anticipated use~~
21 ~~by a land management company of the railroad right of way,~~
22 ~~necessitating additional terms and conditions or~~
23 ~~compensation associated with a crossing.~~

24 (2) A proposed crossing that involves (i) a significant
25 and imminent likelihood of danger to the public health or
26 safety, (ii) a serious threat to the safe operations of the

1 railroad, or (iii) the current use of the railroad
2 right-of-way necessitating additional terms and conditions
3 associated with the crossing. ~~Variances from the standard~~
4 ~~specifications requested by the land management company.~~

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

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

23 "Annual payment conversion" means a one-time payment for
24 individual existing crossing and encroachment agreements that
25 have annual or periodic payment terms in effect as of and
26 subsequent to January 1, 2013; such one-time payment converts

1 an agreement to paid-in-full status and shall convey a
2 permanent right to the utility to keep the subject facilities
3 in place.

4 (Source: P.A. 96-595, eff. 8-18-09.)

5 (220 ILCS 70/10)

6 Sec. 10. Terms and conditions for a crossing or
7 encroachment.

8 (a) After 30 days from (1) the mailing of the notice, (2)
9 completing the engineering specifications, and (3) payment of
10 the fee if applicable, the utility, ~~absent a claim of special~~
11 ~~circumstances,~~ shall be deemed to have authorization to
12 commence the crossing activity.

13 (a-5) The utility shall be deemed to have authorization to
14 commence the encroachment activity 90 days after the (i)
15 mailing of the notice, (ii) completion of the engineering
16 specifications, and (iii) payment of the fee.

17 (b) The rail carrier or the land management company and the
18 utility must maintain and repair its own property within the
19 railroad right-of-way and bear responsibility for its own acts
20 and omissions, except that the utility shall be responsible for
21 any bodily injury or property damage that typically would be
22 covered under a standard railroad protective liability
23 insurance policy.

24 (c) A utility shall have immediate access to a crossing and
25 an encroachment for repair and maintenance of existing

1 facilities in case of emergency.

2 (d) Applicable engineering standards shall be complied
3 with for utility facilities crossing or encroaching upon
4 railroad rights-of-way.

5 (e) The utility shall be provided an expedited crossing or
6 encroachment, ~~absent a claim of special circumstances~~, after
7 payment by the utility of the standard crossing or encroachment
8 fee, if applicable, and submission of completed engineering
9 specifications to the rail carrier or land management company.
10 The engineering specifications shall address the applicable
11 clearance requirements as established by the National
12 Electrical Safety Code.

13 (f) The utility and the rail carrier or land management
14 company may agree to other terms and conditions necessary to
15 provide for reasonable use of a railroad right-of-way by a
16 utility.

17 (Source: P.A. 96-595, eff. 8-18-09.)

18 (220 ILCS 70/15)

19 Sec. 15. Crossing and encroachment fees ~~fee~~. Unless
20 otherwise agreed by the parties and subject to Section 20, a
21 utility that locates its facilities within the railroad
22 right-of-way for a crossing, other than a crossing along ~~the~~
23 public streets, roads, alleys, and other public ways ~~roads of~~
24 ~~the State pursuant to the Telephone Line Right of Way Act,~~
25 shall pay the rail carrier or land management company a

1 one-time standard crossing fee of \$1,500 for each crossing.
2 Unless otherwise agreed by the parties and subject to Section
3 20, a utility that locates its facilities within the railroad
4 right-of-way for an encroachment shall pay the rail carrier or
5 land management company \$3,000 for each 1,500 feet or portion
6 thereof of encroachment ~~plus the costs associated with~~
7 ~~modifications to existing insurance contracts of the utility~~
8 ~~and the land management company.~~ The standard crossing or
9 encroachment fees ~~fee~~ shall be in lieu of any license, permit,
10 application, or any other fees or charges to reimburse the rail
11 carrier or land management company for the direct expenses
12 incurred by the rail carrier or land management company as a
13 result of the crossing or encroachment. The utility shall also
14 reimburse the rail carrier or land management company for any
15 actual flagging expenses associated with a crossing or
16 encroachment in addition to the standard crossing or
17 encroachment fee.

18 (Source: P.A. 96-595, eff. 8-18-09.)

19 (220 ILCS 70/20)

20 Sec. 20. Powers not limited.

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

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

5 (Source: P.A. 96-595, eff. 8-18-09.)

6 (220 ILCS 70/27 new)

7 Sec. 27. Annual payment conversion. A utility may pay to
8 the rail carrier or land management company an amount equal to
9 10 times the agreed annual or periodic payment for a crossing
10 or encroachment agreement in effect at the time of request by
11 the utility. The rail carrier or land management company shall
12 then, within 45 days, provide the utility a permanent right for
13 the subject agreement facilities to remain in place.

14 (220 ILCS 70/28 new)

15 Sec. 28. Increase in existing annual or periodic fees.
16 Agreed annual or periodic fees charged to utilities by rail
17 carriers or land management companies for crossing or
18 encroachment agreements may not be increased for the initial
19 5-year period of the agreement and thereafter may not be
20 increased more than 2% annually.

21 (220 ILCS 70/30)

22 Sec. 30. Conflicting provisions. Notwithstanding any
23 provision law to the contrary, this Act shall apply in all

1 crossings and encroachments of railroad rights-of-way
2 involving a rail carrier or a land management company and a
3 utility and shall govern in the event of any conflict with any
4 other provision of law.

5 (Source: P.A. 96-595, eff. 8-18-09.)

6 (220 ILCS 70/35)

7 Sec. 35. Applicability. This Act applies to (i) a crossing
8 or encroachment commenced prior to the effective date of this
9 Act if an agreement concerning the crossing or encroachment has
10 expired or is terminated and (ii) a crossing or encroachment
11 commenced on or after the effective date of this Act.

12 (Source: P.A. 96-595, eff. 8-18-09.)

1 INDEX

2 Statutes amended in order of appearance

3 220 ILCS 70/1

4 220 ILCS 70/5

5 220 ILCS 70/10

6 220 ILCS 70/15

7 220 ILCS 70/20

8 220 ILCS 70/27 new

9 220 ILCS 70/28 new

10 220 ILCS 70/30

11 220 ILCS 70/35