



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
SB2472

Introduced 2/3/2004, by William R. Haine

SYNOPSIS AS INTRODUCED:

New Act

Creates the Crossing of Railroad Right-of-way Act. Provides that the Illinois Commerce Commission, in consultation with the Department of Transportation, shall adopt rules prescribing the terms and conditions for a crossing and that the rules shall provide that any crossing be consistent with the public convenience and necessity and reasonable service to the public. Provides that public utilities that locate their facilities within the railroad right-of-way for a crossing shall pay the railroad a one-time standard crossing fee of \$750 for each crossing. Provides special circumstances under which the standard crossing fee is not imposed. Provides that, pending Commission resolution of a claim of special circumstances raised in a petition, a public utility may, upon securing the payment of any damages and upon submission of completed engineering specifications to the railroad, proceed with a crossing in accordance with the rules adopted by the Commission, unless the Commission, upon application for emergency relief, determines that there is a reasonable likelihood that the proposed crossing either (i) involves a significant and imminent likelihood of danger to the public health or safety or (ii) is a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way.

LRB093 16383 AMC 42021 b

1 AN ACT concerning public 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 "Commission" means the Illinois Commerce Commission.

9 "Crossing" means the construction, operation, repair, or
10 maintenance of a facility over, under, or across a railroad
11 right-of-way by a public utility.

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.

24 (4) Damages assessed in connection with the rights
25 granted to a public utility with respect to a crossing.

26 "Facility" means any cable, conduit, wire, pipe, casing
27 pipe, supporting poles and guys, manhole, or other material or
28 equipment, that is used by a public utility to furnish any of
29 the following:

30 (1) Communications services.

31 (2) Electricity.

32 (3) Gas by piped system.

1 (4) Sanitary and storm sewer service.

2 (5) Water by piped system.

3 "Public utility" has the meaning given to that term in the
4 Public Utilities Act.

5 "Railroad" or "railroad corporation" means a railroad
6 corporation that is the owner, operator, occupant, manager, or
7 agent of a railroad right-of-way or the railroad corporation's
8 successor in interest. "Railroad" and "railroad corporation"
9 includes an interurban railway.

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

11 (1) A right-of-way or other interest in real estate
12 that is owned or operated by a railroad corporation, the
13 trustees of a railroad corporation, or the successor in
14 interest of a railroad corporation.

15 (2) A right-of-way or other interest in real estate
16 that is occupied or managed by or on behalf of a railroad
17 corporation, the trustees of a railroad corporation, or the
18 successor in interest of a railroad corporation, including
19 an abandoned railroad right-of-way that has not otherwise
20 reverted.

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

24 "Special circumstances" means either or both of the
25 following:

26 (1) The existence of characteristics of a segment of
27 railroad right-of-way or of a proposed utility facility
28 that increases the direct expenses associated with a
29 proposed crossing.

30 (2) A proposed crossing that involves a significant and
31 imminent likelihood of danger to the public health or
32 safety or that is a serious threat to the safe operations
33 of the railroad or to the current use of the railroad
34 right-of-way, necessitating additional terms and
35 conditions associated with the crossing.

1 Section 10. Terms and conditions for a crossing.

2 (a) Notification by a public utility to a railroad required
3 prior to the commencement of any crossing activity shall not
4 exceed 30 days.

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

11 (c) A public utility shall have immediate access to a
12 crossing for repair and maintenance of existing facilities in
13 case of emergency.

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

16 (e) The public utility shall be provided an expedited
17 crossing, absent a claim of special circumstances, after
18 payment by the public utility of the standard crossing fee, if
19 applicable, and submission of completed engineering
20 specifications to the railroad.

21 (f) The public utility and the railroad may agree to other
22 terms and conditions necessary to provide for reasonable use of
23 a railroad right-of-way by a public utility.

24 (g) The Commission may adopt rules prescribing terms and
25 conditions in addition to those contained in this Section for a
26 crossing to ensure that any crossing be consistent with the
27 public convenience and necessity and reasonable service to the
28 public.

29 Section 15. Crossing fee. Unless otherwise agreed by the
30 parties and subject to Section 20, a public utility that
31 locates its facilities within the railroad right-of-way for a
32 crossing, other than a crossing along the public roads of the
33 State pursuant to the Telephone Line Right of Way Act, shall
34 pay the railroad a one-time standard crossing fee of \$750 for
35 each crossing plus the costs associated with modifications to

1 existing insurance contracts of the public utility and the
2 railroad. The standard crossing fee shall be in lieu of any
3 license or any other fees or charges to reimburse the railroad
4 for the direct expenses incurred by the railroad as a result of
5 the crossing. The public utility shall also reimburse the
6 railroad for any actual flagging expenses associated with a
7 crossing in addition to the standard crossing fee.

8 Section 20. Powers not limited.

9 (a) Notwithstanding Section 10, rules adopted by the
10 Commission shall not prevent a railroad and a public utility
11 from otherwise negotiating the terms and conditions applicable
12 to a crossing or the resolution of any disputes relating to the
13 crossing.

14 (b) Notwithstanding subsection (a), This Section shall not
15 impair the authority of a public utility to secure crossing
16 rights by easement pursuant to the exercise of the power of
17 eminent domain.

18 Section 25. Special circumstances.

19 (a) A railroad or public utility that believes special
20 circumstances exist for a particular crossing may petition the
21 Commission for relief. If a petition for relief is filed, the
22 Commission shall determine whether special circumstances exist
23 that necessitate either a modification of the direct expenses
24 to be paid or the need for additional terms and conditions. The
25 Commission may make any necessary findings of fact and
26 determinations related to the existence of special
27 circumstances, as well as any relief to be granted. A
28 determination of the Commission, except for a determination on
29 the issue of damages for the rights granted to a public utility
30 with respect to a crossing, shall be considered final agency
31 action subject to judicial review under the Administrative
32 Review Law. The Commission shall assess the costs associated
33 with a petition for relief equitably against the parties.

34 (b) A railroad or public utility that claims to be

1 aggrieved by a determination of the Commission on the issue of
2 damages for the rights granted to a public utility with respect
3 to a crossing may seek judicial review as provided in the
4 Administrative Review Law.

5 Section 30. Authority to cross; emergency relief. Pending
6 Commission resolution of a claim of special circumstances
7 raised in a petition, a public utility may, upon securing the
8 payment of any damages and upon submission of completed
9 engineering specifications to the railroad, proceed with a
10 crossing in accordance with the rules adopted by the
11 Commission, unless the Commission, upon application for
12 emergency relief, determines that there is a reasonable
13 likelihood that either of the following conditions exist:

14 (1) That the proposed crossing involves a significant
15 and imminent likelihood of danger to the public health or
16 safety.

17 (2) That the proposed crossing is a serious threat to
18 the safe operations of the railroad or to the current use
19 of the railroad right-of-way.

20 If the Commission determines that there is a reasonable
21 likelihood that the proposed crossing meets either condition,
22 then the Commission shall immediately intervene to prevent the
23 crossing until a factual determination is made.

24 Section 35. Conflicting provisions. Notwithstanding any
25 provision law to the contrary, this Act shall apply in all
26 crossings of railroad rights-of-way involving a public utility
27 and shall govern in the event of any conflict with any other
28 provision of law.

29 Section 40. Applicability. This Act applies to (i) a
30 crossing commenced prior to the effective date of this Act if
31 an agreement concerning the crossing has expired or is
32 terminated and (ii) a crossing commenced on or after the
33 effective date of this Act.