



Sen. Mike Jacobs

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1 AMENDMENT TO SENATE BILL 880

2 AMENDMENT NO. _____. Amend Senate Bill 880 by replacing
3 everything after the enacting clause with the following:

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 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

1 specifications and for entering a crossing on the
2 railroad's books, maps, and property records and other
3 reasonable administrative and engineering costs incurred
4 as a result of the crossing.

5 (3) Document and preparation fees associated with a
6 crossing, and any engineering specifications related to
7 the crossing.

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

10 "Facility" means any cable, conduit, wire, pipe, casing
11 pipe, supporting poles and guys, manhole, or other material or
12 equipment, that is used by a utility to furnish any of the
13 following:

14 (1) Communications services.

15 (2) Electricity.

16 (3) Gas by piped system.

17 (4) Sanitary and storm sewer service.

18 (5) Water by piped system.

19 "Railroad" or "railroad corporation" means a railroad
20 corporation that is the owner, operator, occupant, manager, or
21 agent of a railroad right-of-way or the railroad corporation's
22 successor in interest.

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

24 (1) A right-of-way or other interest in real estate
25 that is owned or operated by a railroad corporation, the
26 trustees of a railroad corporation, or the successor in

1 interest of a railroad corporation.

2 (2) A right-of-way or other interest in real estate
3 that is occupied or managed by or on behalf of a railroad
4 corporation, the trustees of a railroad corporation, or the
5 successor in interest of a railroad corporation, including
6 an abandoned railroad right-of-way that has not otherwise
7 reverted.

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

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

13 (1) The characteristics of a segment of a railroad
14 right-of-way not found in a typical segment of a railroad
15 right-of-way that enhance the value or increase the damages
16 or the engineering or construction expenses for the
17 railroad associated with a proposed crossing, or
18 situations in which a proposed crossing involves the
19 likelihood of danger to the public health or safety or is a
20 threat to the safe and effective operation of the railroad
21 or to the current or reasonably anticipated use by the
22 railroad of the railroad right-of-way, necessitating
23 additional terms and conditions or compensation associated
24 with a crossing.

25 (2) Variances from the standard specifications
26 requested by either the railroad or licensee.

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

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

18 Section 10. Terms and conditions for a crossing.

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

24 (b) The railroad and the utility must maintain and repair
25 its own property within the railroad right-of-way and bear

1 responsibility for its own acts and omissions, except that the
2 utility shall be responsible for any bodily injury or property
3 damage that typically would be covered under a standard
4 railroad protective liability insurance policy.

5 (c) A utility shall have immediate access to a crossing for
6 repair and maintenance of existing facilities in case of
7 emergency.

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

10 (e) The utility shall be provided an expedited crossing,
11 absent a claim of special circumstances, after payment by the
12 utility of the standard crossing fee, if applicable, and
13 submission of completed engineering specifications to the
14 railroad. The engineering specifications shall address the
15 applicable clearance requirements as established by the
16 National Electrical Safety Code as adopted by the Commission.

17 (f) The utility and the railroad may agree to other terms
18 and conditions necessary to provide for reasonable use of a
19 railroad right-of-way by a utility.

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

25 Section 15. Crossing fee. Unless otherwise agreed by the

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

14 Section 20. Powers not limited.

15 (a) Notwithstanding Section 10, rules adopted by the
16 Commission shall not prevent a railroad and a utility from
17 otherwise negotiating the terms and conditions applicable to a
18 crossing or the resolution of any disputes relating to the
19 crossing.

20 (b) Notwithstanding subsection (a), This Section shall not
21 impair the authority of a utility to secure crossing rights by
22 easement pursuant to the exercise of the power of eminent
23 domain.

24 Section 25. Special circumstances.

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

22 (b) A conference shall be commenced by the arbitrator
23 within 15 calendar days after the appointment of the arbitrator
24 and a recommendation regarding the matter submitted shall be
25 rendered within 10 business days after the conference or as
26 soon as practicable thereafter. During the 30 calendar days

1 following the filing of the arbitration notice, the parties
2 will meet and confer to attempt to resolve the dispute. The
3 decision of the arbitrator and the rationale for its decision
4 shall be in writing and signed by the arbitrator; provided,
5 however, that such written recommendation shall have no
6 evidentiary value and shall not be deemed to set forth any
7 findings of fact for purposes of any future proceedings. Except
8 as otherwise provided in this Section, the informal arbitration
9 shall be held in accordance with the rules and procedures of
10 the American Arbitration Association. Each party shall bear its
11 own expenses, including, without limitation, legal and
12 accounting fees, and the cost of the arbitrator shall be shared
13 equally by each party. The parties may or may not elect to
14 abide by the decision of the arbitrator.

15 (c) If the parties cannot resolve their dispute based on
16 the arbitrator's recommendation within 30 days, either party
17 may, upon the expiration of the 30-day period, give written
18 notice to the other party of the commencement of a binding
19 arbitration proceeding in the accordance with the Commercial
20 Rules of Arbitration in the American Arbitration Association
21 (formal arbitration). Any decision by the Board of Arbitration
22 shall be final, binding, and conclusive as to the parties.
23 Nothing provided in this Section shall prevent either party
24 from submission of disputes to the court, limited to requests
25 for injunctive or equitable relief in advance of a breach or
26 threatened breach of this Agreement, if necessary to prevent

1 serious and irreparable injury to such party or the public and
2 if such injury cannot be appropriately addressed by informal or
3 formal arbitration.

4 (d) If the dispute over special circumstances concerns only
5 the compensation associated with a crossing, then the licensee
6 may proceed with installation of the crossing during the
7 pendency of the arbitration.

8 Section 30. Conflicting provisions. Notwithstanding any
9 provision law to the contrary, this Act shall apply in all
10 crossings of railroad rights-of-way involving a utility and
11 shall govern in the event of any conflict with any other
12 provision of law.

13 Section 35. Applicability. This Act applies to (i) a
14 crossing commenced prior to the effective date of this Act if
15 an agreement concerning the crossing has expired or is
16 terminated and (ii) a crossing commenced on or after the
17 effective date of this Act.

18 Section 99. Effective date. This Act takes effect upon
19 becoming law."