



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB3090

Introduced 2/7/2014, by Sen. William R. Haine

SYNOPSIS AS INTRODUCED:

220 ILCS 70/1
220 ILCS 70/5
220 ILCS 70/10
220 ILCS 70/15
220 ILCS 70/20
220 ILCS 70/30
220 ILCS 70/35
220 ILCS 70/25 rep.

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 "rail carrier". Makes changes to other definitions, including "utility". Removes the definition of "special circumstances" and removes all references to "special circumstances". Repeals provisions concerning dispute resolution if the parties cannot agree whether a special circumstance exists. Provides that a utility shall be deemed to have authorization to commence encroachment activity 35 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 a one-time fee of \$1,000 for the first 1,000 feet of encroachment and \$1 per additional 1,000 feet of encroachment, unless otherwise agreed to by the parties. Makes changes in provisions concerning crossing and encroachment fees; powers not limited; conflicting provisions; and applicability. Makes other changes. Effective immediately.

LRB098 15332 RPS 50361 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 as
6 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 "Direct expenses" includes, but is not limited to, any or
20 all of the following:

21 (1) The cost of inspecting and monitoring the crossing
22 site.

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

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

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

11 "Encroachment" means the construction, operation, repair,
12 or maintenance of a facility over, under, or along a railroad
13 right-of-way by a utility when the right-of-way is owned by a
14 rail carrier or a land management company, not to exceed 15,000
15 feet in length.

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 "Rail carrier" has the meaning ascribed to that term in
3 Section 18c-1104 of the Illinois Vehicle Code.

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

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

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

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

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

23 ~~(2) Variances from the standard specifications~~
24 ~~requested by the land management company.~~

25 ~~"Special circumstances" may include, but is not limited to,~~
26 ~~the railroad right of way segment's relationship to other~~

1 ~~property, location in urban or other developed areas, the~~
2 ~~existence of unique topography or natural resources, or other~~
3 ~~characteristics or dangers inherent in the particular crossing~~
4 ~~or segment of the railroad right-of-way.~~

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

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

18 (220 ILCS 70/10)

19 Sec. 10. Terms and conditions for a crossing or
20 encroachment.

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

1 (a-5) The utility shall be deemed to have authorization to
2 commence the encroachment activity 35 days after the (i)
3 mailing of the notice, (ii) completion of the engineering
4 specifications, and (iii) payment of the fee.

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

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

15 (d) Applicable engineering standards shall be complied
16 with for utility facilities crossing or encroaching upon
17 railroad rights-of-way.

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

26 (f) The utility and the rail carrier or land management

1 company may agree to other terms and conditions necessary to
2 provide for reasonable use of a railroad right-of-way by a
3 utility.

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

5 (220 ILCS 70/15)

6 Sec. 15. Crossing and encroachment fees ~~fee~~.

7 (a) Unless otherwise agreed by the parties and subject to
8 Section 20, a utility that locates its facilities within the
9 railroad right-of-way for a crossing, other than a crossing
10 along, over, or under a ~~the~~ public highway, street, road,
11 alley, or other public way ~~roads of the State pursuant to the~~
12 ~~Telephone Line Right of Way Act,~~ shall pay the rail carrier or
13 land management company a one-time standard crossing fee of
14 \$~~1,500~~ 1,000 for each crossing.

15 (b) A utility that locates its facilities within the
16 railroad right-of-way for a crossing along, over, or under a
17 public highway, street, road, alley, or other public way shall
18 not pay the rail carrier or land management company any
19 crossing fee unless the rail carrier or land management company
20 owns the fee over or under which the public highway, street,
21 road, alley, or other public way is located. If the rail
22 carrier or land management company owns the fee over or under
23 which the public highway, street, road, alley, or other public
24 way is located, unless otherwise agreed by the parties and
25 subject to Section 20, the utility shall pay the rail carrier

1 or land management company a one-time standard crossing fee of
2 \$1,500 for each crossing. A rail carrier or land management
3 company claiming to own the fee over or under which the public
4 highway, street, road, alley, or other public way is located
5 shall produce a copy of the deed establishing its fee to the
6 utility within 30 days after the utility has made a written
7 request for the document. If a rail carrier or land management
8 company fails to produce a copy of the deed in response to such
9 a request, the utility shall be deemed to have authorization to
10 commence the crossing activity without the payment of any
11 crossing fee.

12 (c) Unless otherwise agreed by the parties and subject to
13 Section 20, a utility that locates its facilities within the
14 railroad right-of-way for an encroachment shall pay the rail
15 carrier or land management company a one-time fee of \$1,000 for
16 the first 1,000 feet of encroachment and \$1 per additional foot
17 of encroachment ~~plus the costs associated with modifications to~~
18 ~~existing insurance contracts of the utility and the land~~
19 ~~management company.~~

20 (d) The standard crossing or encroachment fees fee shall be
21 in lieu of any license, permit, application, or any other fees
22 or charges to reimburse the rail carrier or land management
23 company for the direct expenses incurred by the rail carrier or
24 land management company as a result of the crossing or
25 encroachment.

26 (e) The utility shall also reimburse the rail carrier or

1 land management company for any actual flagging expenses
2 associated with a crossing or encroachment in addition to the
3 standard crossing or encroachment fee.

4 (f) Utilities shall not be subject to application fees,
5 engineering review fees, permit fees, or any additional fees
6 not listed in this Act for crossing over or under a
7 right-of-way within public streets, roads, alleys, or other
8 public easements.

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

10 (220 ILCS 70/20)

11 Sec. 20. Powers not limited.

12 (a) Notwithstanding Section 10, nothing shall prevent a
13 rail carrier or land management company and a utility from
14 otherwise negotiating the terms and conditions applicable to a
15 crossing or encroachment or the resolution of any disputes
16 relating to the crossing or encroachment.

17 (b) Notwithstanding subsection (a), this Section shall not
18 impair the authority of a utility to secure crossing or
19 encroachment rights by easement pursuant to the exercise of the
20 power of eminent domain.

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

22 (220 ILCS 70/30)

23 Sec. 30. Conflicting provisions. Notwithstanding any
24 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.)

13 (220 ILCS 70/25 rep.)

14 Section 10. The Crossing of Railroad Right-of-way Act is
15 amended by repealing Section 25.

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.