

AN ACT concerning utilities.

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

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

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

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

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

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

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

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

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

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

- (1) Communications, video, or information services.
- (2) Electricity.
- (3) Gas by piped system.
- (4) Sanitary and storm sewer service.
- (5) Water by piped system.

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

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

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

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

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

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

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

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

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

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

Section 10. Terms and conditions for a crossing.

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

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

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

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

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

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

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

Section 20. Powers not limited.

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

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

Section 25. Special circumstances.

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

a person with expertise in the principal areas of dispute.

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

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

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

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

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

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

Section 99. Effective date. This Act takes effect upon

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becoming law.