



Sen. Mike Jacobs

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LRB095 18179 MJR 50790 a

1 AMENDMENT TO HOUSE BILL 5086

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5086 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 50. The Public Utilities Act is amended by changing  
19 Section 8-205 as follows:

20 (220 ILCS 5/8-205) (from Ch. 111 2/3, par. 8-205)

21 Sec. 8-205. (a) Termination of gas and electric utility  
22 service to all residential users, including all tenants of

1 mastermeters apartment buildings, for nonpayment of bills,  
2 where gas or electricity is used as the only source of space  
3 heating or to control or operate the only space heating  
4 equipment at the residence is prohibited,

5 (1) ~~1.~~ on any day when the National Weather Service  
6 forecast for the following 24 hours covering the area of  
7 the utility in which the residence is located includes a  
8 forecast that the temperature will be 32 degrees Fahrenheit  
9 or below; or

10 (2) ~~2.~~ on any day preceding a holiday or a weekend when  
11 such a forecast indicated that the temperature will be 32  
12 degrees Fahrenheit or below during the holiday or weekend.

13 (b) If gas or electricity is used as the only source of  
14 space cooling or to control or operate the only space cooling  
15 equipment at a residence, then a utility with over 100,000  
16 residential customers may not terminate gas or electric utility  
17 service to the residential user, including all tenants of  
18 mastermeters apartment buildings:

19 (1) on any day when the National Weather Service  
20 forecast for the following 24 hours covering the area of  
21 the utility in which the residence is located includes a  
22 forecast that the temperature will be 95 degrees Fahrenheit  
23 or above; or

24 (2) on any day preceding a holiday or weekend when a  
25 forecast indicates that the temperature will be 95 degrees  
26 Fahrenheit or above during the holiday or weekend.

1 (Source: P.A. 84-617.)

2 Section 99. Effective date. This Act takes effect upon  
3 becoming law."