



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB3835

Introduced 2/25/2009, by Rep. Julie Hamos

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 \$1,500 for each crossing. Provides special circumstances under which the standard crossing fee is not imposed. Provides that, if the parties cannot agree that special circumstances exist, the dispute shall be submitted to non-binding arbitration. Provides procedures for the non-binding arbitration and provides that, 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. Effective immediately.

LRB096 09361 MJR 19518 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 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
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.

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

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

7 (1) Communications services.

8 (2) Electricity.

9 (3) Gas by piped system.

10 (4) Sanitary and storm sewer service.

11 (5) Water by piped system.

12 "Railroad" or "railroad corporation" means a railroad
13 corporation that is the owner, operator, occupant, manager, or
14 agent of a railroad right-of-way or the railroad corporation's
15 successor in interest.

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

17 (1) A right-of-way or other interest in real estate
18 that is owned or operated by a railroad corporation, the
19 trustees of a railroad corporation, or the successor in
20 interest of a railroad corporation.

21 (2) A right-of-way or other interest in real estate
22 that is occupied or managed by or on behalf of a railroad
23 corporation, the trustees of a railroad corporation, or the
24 successor in interest of a railroad corporation, including
25 an abandoned railroad right-of-way that has not otherwise
26 reverted.

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

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

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

18 (2) Variances from the standard specifications
19 requested by either the railroad or licensee.

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

26 "Utility" shall include (1) public utilities as defined in

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

11 Section 10. Terms and conditions for a crossing.

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

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

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

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

3 (e) The utility shall be provided an expedited crossing,
4 absent a claim of special circumstances, after payment by the
5 utility of the standard crossing fee, if applicable, and
6 submission of completed engineering specifications to the
7 railroad. The engineering specifications shall address the
8 applicable clearance requirements as established by the
9 National Electrical Safety Code as adopted by the Commission.

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

13 (g) The Commission may adopt rules prescribing terms and
14 conditions in addition to those contained in this Section for a
15 crossing to ensure that any crossing be consistent with the
16 public convenience and necessity and reasonable service to the
17 public.

18 Section 15. Crossing fee. Unless otherwise agreed by the
19 parties and subject to Section 20, a utility that locates its
20 facilities within the railroad right-of-way for a crossing,
21 other than a crossing along the public roads of the State
22 pursuant to the Telephone Line Right of Way Act, shall pay the
23 railroad a one-time standard crossing fee of \$1,500 for each
24 crossing plus the costs associated with modifications to
25 existing insurance contracts of the utility and the railroad.

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

7 Section 20. Powers not limited.

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

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

17 Section 25. Special circumstances.

18 (a) If the parties cannot agree that special circumstances
19 exist, the dispute shall be submitted to non-binding
20 arbitration (informal arbitration). Any party proposing
21 informal arbitration shall serve an arbitration notice
22 detailing a description of the dispute, including, without
23 limitation, the position and proposed resolution of the party
24 requesting arbitration and shall name one arbitrator chosen by

1 that party. Within 20 days after receipt of an arbitration
2 notice, the receiving party shall serve a written notice on the
3 other party containing (i) a detailed response to the claim
4 giving the position and proposed resolution of the receiving
5 party, and (ii) an acceptance of the arbitrator designated in
6 the arbitration notice or rejection of same and suggestion of
7 no less than 2 other alternatives (reply notice). The informal
8 arbitration shall be decided by a single arbitrator. In the
9 event that the parties do not agree on the selection of an
10 arbitrator within 7 business days after service of the reply
11 notice, either party may apply to the American Arbitration
12 Association for the purpose of appointing an independent
13 arbitrator. To the extent practicable, the arbitrator shall be
14 a person with expertise in the principal areas of dispute.

15 (b) A conference shall be commenced by the arbitrator
16 within 15 calendar days after the appointment of the arbitrator
17 and a recommendation regarding the matter submitted shall be
18 rendered within 10 business days after the conference or as
19 soon as practicable thereafter. During the 30 calendar days
20 following the filing of the arbitration notice, the parties
21 will meet and confer to attempt to resolve the dispute. The
22 decision of the arbitrator and the rationale for its decision
23 shall be in writing and signed by the arbitrator; provided,
24 however, that such written recommendation shall have no
25 evidentiary value and shall not be deemed to set forth any
26 findings of fact for purposes of any future proceedings. Except

1 as otherwise provided in this Section, the informal arbitration
2 shall be held in accordance with the rules and procedures of
3 the American Arbitration Association. Each party shall bear its
4 own expenses, including, without limitation, legal and
5 accounting fees, and the cost of the arbitrator shall be shared
6 equally by each party. The parties may or may not elect to
7 abide by the decision of the arbitrator.

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

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

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

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

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.