

1 AMENDMENT TO SENATE BILL 876

2 AMENDMENT NO. _____. Amend Senate Bill 876 by replacing
3 the title with the following:

4 "AN ACT concerning public utilities."; and

5 by replacing everything after the enacting clause with the
6 following:

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

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

11 "Commission" means the Illinois Commerce Commission.

12 "Crossing" means the construction, operation, repair, or
13 maintenance of a facility over, under, or across a railroad
14 right-of-way by a public utility.

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

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

19 (2) Administrative and engineering costs for review
20 of specifications and for entering a crossing on the
21 railroad's books, maps, and property records and other

1 reasonable administrative and engineering costs incurred
2 as a result of the crossing.

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

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

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

12 (1) Communications services.

13 (2) Electricity.

14 (3) Gas by piped system.

15 (4) Sanitary and storm sewer service.

16 (5) Water by piped system.

17 "Public utility" has the meaning given to that term in
18 the Public Utilities Act.

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

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

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

30 (2) A right-of-way or other interest in real estate
31 that is occupied or managed by or on behalf of a railroad
32 corporation, the trustees of a railroad corporation, or
33 the successor in interest of a railroad corporation,
34 including an abandoned railroad right-of-way that has not

1 otherwise reverted.

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

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

7 (1) The existence of characteristics of a segment
8 of railroad right-of-way or of a proposed utility
9 facility that increases the direct expenses associated
10 with a proposed crossing.

11 (2) A proposed crossing that involves a significant
12 and imminent likelihood of danger to the public health or
13 safety or that is a serious threat to the safe operations
14 of the railroad or to the current use of the railroad
15 right-of-way, necessitating additional terms and
16 conditions associated with the crossing.

17 Section 10. Rulemaking; crossing fee.

18 (a) The Commission, in consultation with the Department
19 of Transportation, shall adopt rules prescribing the terms
20 and conditions for a crossing. The rules shall provide that
21 any crossing be consistent with the public convenience and
22 necessity and reasonable service to the public. The rules, at
23 a minimum, shall address the terms and conditions applicable
24 to a crossing including, but not limited to, the following:

25 (1) Notification required prior to the commencement
26 of any crossing activity.

27 (2) A requirement that the railroad and the public
28 utility each maintain and repair its own property within
29 the railroad right-of-way and bear responsibility for its
30 own acts and omissions, except that the public utility
31 shall be responsible for any bodily injury or property
32 damage that typically would be covered under a standard
33 railroad protective liability insurance policy.

1 (3) The amount and scope of insurance or
2 self-insurance required to cover risks associated with a
3 crossing.

4 (4) A procedure to address the payment of costs
5 associated with the relocation of public utility
6 facilities within the railroad right-of-way necessary to
7 accommodate railroad operations.

8 (5) Terms and conditions for securing the payment
9 of any damages by the public utility before it proceeds
10 with a crossing.

11 (6) Immediate access to a crossing for repair and
12 maintenance of existing facilities in case of emergency.

13 (7) Engineering standards for utility facilities
14 crossing railroad rights-of-way.

15 (8) Provision for expedited crossing, absent a
16 claim of special circumstances, after payment by the
17 public utility of the standard crossing fee, if
18 applicable, and submission of completed engineering
19 specifications to the railroad.

20 (9) Other terms and conditions necessary to provide
21 for the safe and reasonable use of a railroad
22 right-of-way by a public utility and consistent with
23 rules adopted by the Commission, including any complaint
24 procedures adopted by the Commission to enforce the
25 rules.

26 (b) Unless otherwise agreed by the parties and subject
27 to Section 20, a public utility that locates its facilities
28 within the railroad right-of-way for a crossing, other than a
29 crossing along the public roads of the State pursuant to the
30 Telephone Line Right of Way Act, shall pay the railroad a
31 one-time standard crossing fee of \$750 for each crossing. The
32 standard crossing fee shall be in lieu of any license or any
33 other fees or charges to reimburse the railroad for the
34 direct expenses incurred by the railroad as a result of the

1 crossing. The public utility shall also reimburse the
2 railroad for any actual flagging expenses associated with a
3 crossing in addition to the standard crossing fee.

4 Section 15. Powers not limited.

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

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

14 Section 20. Special circumstances.

15 (a) A railroad or public utility that believes special
16 circumstances exist for a particular crossing may petition
17 the Commission for relief. If a petition for relief is filed,
18 the Commission shall determine whether special circumstances
19 exist that necessitate either a modification of the direct
20 expenses to be paid or the need for additional terms and
21 conditions. The Commission may make any necessary findings of
22 fact and determinations related to the existence of special
23 circumstances, as well as any relief to be granted. A
24 determination of the Commission, except for a determination
25 on the issue of damages for the rights granted to a public
26 utility with respect to a crossing, shall be considered final
27 agency action subject to judicial review under the
28 Administrative Review Law. The Commission shall assess the
29 costs associated with a petition for relief equitably against
30 the parties.

31 (b) A railroad or public utility that claims to be
32 aggrieved by a determination of the Commission on the issue

1 of damages for the rights granted to a public utility with
2 respect to a crossing may seek judicial review as provided in
3 the Administrative Review Law.

4 Section 25. Authority to cross; emergency relief. Pending
5 Commission resolution of a claim of special circumstances
6 raised in a petition, a public utility may, upon securing the
7 payment of any damages and upon submission of completed
8 engineering specifications to the railroad, proceed with a
9 crossing in accordance with the rules adopted by the
10 Commission, unless the Commission, upon application for
11 emergency relief, determines that there is a reasonable
12 likelihood that either of the following conditions exist:

13 (1) That the proposed crossing involves a
14 significant and imminent likelihood of danger to the
15 public health or safety.

16 (2) That the proposed crossing is a serious threat
17 to the safe operations of the railroad or to the current
18 use of the railroad right-of-way.

19 If the Commission determines that there is a reasonable
20 likelihood that the proposed crossing meets either condition,
21 then the Commission shall immediately intervene to prevent
22 the crossing until a factual determination is made.

23 Section 30. Conflicting provisions. Notwithstanding any
24 provision law to the contrary, this Act shall apply in all
25 crossings of railroad rights-of-way involving a public
26 utility and shall govern in the event of any conflict with
27 any other provision of law.

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

1 effective date of this Act.".