



Sen. William R. Haine

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1 AMENDMENT TO SENATE BILL 1731

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1731 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 public 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.

24 (4) Damages assessed in connection with the rights

1 granted to a public utility with respect to a crossing.

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

- 6 (1) Communications services.
- 7 (2) Electricity.
- 8 (3) Gas by piped system.
- 9 (4) Sanitary and storm sewer service.
- 10 (5) Water by piped system.

11 "Public utility" has the meaning given to that term in the  
12 Public Utilities Act.

13 "Railroad" or "railroad corporation" means a railroad  
14 corporation that is the owner, operator, occupant, manager, or  
15 agent of a railroad right-of-way or the railroad corporation's  
16 successor in interest. "Railroad" and "railroad corporation"  
17 includes an interurban railway.

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

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

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

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

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

34 (1) The existence of characteristics of a segment of

1 railroad right-of-way or of a proposed utility facility  
2 that increases the direct expenses associated with a  
3 proposed crossing.

4 (2) A proposed crossing that involves a significant and  
5 imminent likelihood of danger to the public health or  
6 safety or that is a serious threat to the safe operations  
7 of the railroad or to the current use of the railroad  
8 right-of-way, necessitating additional terms and  
9 conditions associated with the crossing.

10 Section 10. Terms and conditions for a crossing.

11 (a) Notification by a public utility to a railroad required  
12 prior to the commencement of any crossing activity shall not  
13 exceed 30 days.

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

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

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

25 (e) The public utility shall be provided an expedited  
26 crossing, absent a claim of special circumstances, after  
27 payment by the public utility of the standard crossing fee, if  
28 applicable, and submission of completed engineering  
29 specifications to the railroad.

30 (f) The public utility and the railroad may agree to other  
31 terms and conditions necessary to provide for reasonable use of  
32 a railroad right-of-way by a public utility.

33 (g) The Commission may adopt rules prescribing terms and

1 conditions in addition to those contained in this Section for a  
2 crossing to ensure that any crossing be consistent with the  
3 public convenience and necessity and reasonable service to the  
4 public.

5 Section 15. Crossing fee. Unless otherwise agreed by the  
6 parties and subject to Section 20, a public utility that  
7 locates its facilities within the railroad right-of-way for a  
8 crossing, other than a crossing along the public roads of the  
9 State pursuant to the Telephone Line Right of Way Act, shall  
10 pay the railroad a one-time standard crossing fee of \$750 for  
11 each crossing plus the costs associated with modifications to  
12 existing insurance contracts of the public utility and the  
13 railroad. The standard crossing fee shall be in lieu of any  
14 license or any other fees or charges to reimburse the railroad  
15 for the direct expenses incurred by the railroad as a result of  
16 the crossing. The public utility shall also reimburse the  
17 railroad for any actual flagging expenses associated with a  
18 crossing in addition to the standard crossing fee.

19 Section 20. Powers not limited.

20 (a) Notwithstanding Section 10, rules adopted by the  
21 Commission shall not prevent a railroad and a public utility  
22 from otherwise negotiating the terms and conditions applicable  
23 to a crossing or the resolution of any disputes relating to the  
24 crossing.

25 (b) Notwithstanding subsection (a), This Section shall not  
26 impair the authority of a public utility to secure crossing  
27 rights by easement pursuant to the exercise of the power of  
28 eminent domain.

29 Section 25. Special circumstances.

30 (a) A railroad or public utility that believes special  
31 circumstances exist for a particular crossing may petition the

1 Commission for relief. If a petition for relief is filed, the  
2 Commission shall determine whether special circumstances exist  
3 that necessitate either a modification of the direct expenses  
4 to be paid or the need for additional terms and conditions. The  
5 Commission may make any necessary findings of fact and  
6 determinations related to the existence of special  
7 circumstances, as well as any relief to be granted. A  
8 determination of the Commission, except for a determination on  
9 the issue of damages for the rights granted to a public utility  
10 with respect to a crossing, shall be considered final agency  
11 action subject to judicial review under the Administrative  
12 Review Law. The Commission shall assess the costs associated  
13 with a petition for relief equitably against the parties.

14 (b) A railroad or public utility that claims to be  
15 aggrieved by a determination of the Commission on the issue of  
16 damages for the rights granted to a public utility with respect  
17 to a crossing may seek judicial review as provided in the  
18 Administrative Review Law.

19 Section 30. Authority to cross; emergency relief. Pending  
20 Commission resolution of a claim of special circumstances  
21 raised in a petition, a public utility may, upon securing the  
22 payment of any damages and upon submission of completed  
23 engineering specifications to the railroad, proceed with a  
24 crossing in accordance with the rules adopted by the  
25 Commission, unless the Commission, upon application for  
26 emergency relief, determines that there is a reasonable  
27 likelihood that either of the following conditions exist:

28 (1) That the proposed crossing involves a significant  
29 and imminent likelihood of danger to the public health or  
30 safety.

31 (2) That the proposed crossing is a serious threat to  
32 the safe operations of the railroad or to the current use  
33 of the railroad right-of-way.

1           If the Commission determines that there is a reasonable  
2           likelihood that the proposed crossing meets either condition,  
3           then the Commission shall immediately intervene to prevent the  
4           crossing until a factual determination is made.

5           Section 35. Conflicting provisions. Notwithstanding any  
6           provision law to the contrary, this Act shall apply in all  
7           crossings of railroad rights-of-way involving a public utility  
8           and shall govern in the event of any conflict with any other  
9           provision of law.

10          Section 40. Applicability. This Act applies to (i) a  
11          crossing commenced prior to the effective date of this Act if  
12          an agreement concerning the crossing has expired or is  
13          terminated and (ii) a crossing commenced on or after the  
14          effective date of this Act."