



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

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.

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

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

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

1 or the engineering or construction expenses for the
2 railroad associated with a proposed crossing, or
3 situations in which a proposed crossing involves the
4 likelihood of danger to the public health or safety or is a
5 threat to the safe and effective operation of the railroad
6 or to the current or reasonably anticipated use by the
7 railroad of the railroad right-of-way, necessitating
8 additional terms and conditions or compensation associated
9 with a crossing.

10 (2) Variances from the standard specifications
11 requested by either the railroad or licensee.

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

18 "Utility" shall include (1) public utilities as defined in
19 Section 3-105 of the Public Utilities Act, telecommunications
20 carriers as defined in Section 13-202 of the Public Utilities
21 Act, (3) electric cooperatives as defined in Section 3.4 of the
22 Electric Supplier Act, (4) telephone or telecommunications
23 cooperatives as defined in Section 13-212 of the Public
24 Utilities Act, (5) rural water or waste water systems with
25 10,000 connections or less, and municipalities owning or
26 operating utility systems consisting of public utilities as
27 that term is defined in Section 11-117-2 of the Illinois
28 Municipal Code.

29 Section 10. Terms and conditions for a crossing.

30 (a) Notification by a utility to a railroad required prior
31 to the commencement of any crossing activity shall not exceed
32 30 days.

33 (b) The railroad and the utility must maintain and repair

1 its own property within the railroad right-of-way and bear
2 responsibility for its own acts and omissions, except that the
3 utility shall be responsible for any bodily injury or property
4 damage that typically would be covered under a standard
5 railroad protective liability insurance policy.

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

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

11 (e) The utility shall be provided an expedited crossing,
12 absent a claim of special circumstances, after payment by the
13 utility of the standard crossing fee, if applicable, and
14 submission of completed engineering specifications to the
15 railroad.

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

19 (g) The Commission may adopt rules prescribing terms and
20 conditions in addition to those contained in this Section for a
21 crossing to ensure that any crossing be consistent with the
22 public convenience and necessity and reasonable service to the
23 public.

24 Section 15. Crossing fee. Unless otherwise agreed by the
25 parties and subject to Section 20, a utility that locates its
26 facilities within the railroad right-of-way for a crossing,
27 other than a crossing along the public roads of the State
28 pursuant to the Telephone Line Right of Way Act, shall pay the
29 railroad a one-time standard crossing fee of \$1,500 for each
30 crossing plus the costs associated with modifications to
31 existing insurance contracts of the utility and the railroad.
32 The standard crossing fee shall be in lieu of any license,
33 permit, application, or any other fees or charges to reimburse

1 the railroad for the direct expenses incurred by the railroad
2 as a result of the crossing. The utility shall also reimburse
3 the railroad for any actual flagging expenses associated with a
4 crossing in addition to the standard crossing fee.

5 Section 20. Powers not limited.

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

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

15 Section 25. Special circumstances.

16 (a) If the parties cannot agree that special circumstances
17 exist, the dispute shall be submitted to non-binding
18 arbitration (informal arbitration). Any party proposing
19 informal arbitration shall serve an arbitration notice
20 detailing a description of the dispute, including, without
21 limitation, the position and proposed resolution of the party
22 requesting arbitration and shall name one arbitrator chosen by
23 that party. Within 20 days after receipt of an arbitration
24 notice, the receiving party shall serve a written notice on the
25 other party containing (i) a detailed response to the claim
26 giving the position and proposed resolution of the receiving
27 party, and (ii) an acceptance of the arbitrator designated in
28 the arbitration notice or rejection of same and suggestion of
29 no less than 2 other alternatives (reply notice). The informal
30 arbitration shall be decided by a single arbitrator. In the
31 event that the parties do not agree on the selection of an
32 arbitrator within 7 business days after service of the reply

1 notice, either party may apply to the American Arbitration
2 Association for the purpose of appointing an independent
3 arbitrator. To the extent practicable, the arbitrator shall be
4 a person with expertise in the principal areas of dispute.

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

24 (c) If the parties cannot resolve their dispute based on
25 the arbitrator's recommendation within 30 days, either party
26 may, upon the expiration of the 30-day period, give written
27 notice to the other party of the commencement of a binding
28 arbitration proceeding in the accordance with the Commercial
29 Rules of Arbitration in the American Arbitration Association
30 (formal arbitration). Any decision by the Board of Arbitration
31 shall be final, binding, and conclusive as to the parties.
32 Nothing provided in this Section shall prevent either party
33 from submission of disputes to the court, limited to requests
34 for injunctive or equitable relief in advance of a breach or

1 threatened breach of this Agreement, if necessary to prevent
2 serious and irreparable injury to such party or the public and
3 if such injury cannot be appropriately addressed by informal or
4 formal arbitration.

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

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

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