



**93RD GENERAL ASSEMBLY**  
**State of Illinois**  
**2003 and 2004**

Introduced 2/6/2004, by William R. Haine

**SYNOPSIS AS INTRODUCED:**

New Act

Creates the Crossing of Railroad Right-of-way Act. Provides terms and conditions for a crossing. Allows the Illinois Commerce Commission to adopt rules prescribing additional terms and conditions to ensure 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 \$750 for each crossing. Provides special circumstances under which the standard crossing fee is not imposed. Provides that, pending Commission resolution of a claim of special circumstances raised in a petition, a public utility may, upon securing the payment of any damages and upon submission of completed engineering specifications to the railroad, proceed with a crossing in accordance with the rules adopted by the Commission, unless the Commission, upon application for emergency relief, determines that there is a reasonable likelihood that the proposed crossing either (i) involves a significant and imminent likelihood of danger to the public health or safety or (ii) is a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way.

LRB093 19924 AMC 45668 b

FISCAL NOTE ACT  
MAY APPLY

**A BILL FOR**

1 AN ACT concerning public utilities.

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

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

30 (1) Communications services.

31 (2) Electricity.

32 (3) Gas by piped system.

1 (4) Sanitary and storm sewer service.

2 (5) Water by piped system.

3 "Public utility" has the meaning given to that term in the  
4 Public Utilities Act.

5 "Railroad" or "railroad corporation" means a railroad  
6 corporation that is the owner, operator, occupant, manager, or  
7 agent of a railroad right-of-way or the railroad corporation's  
8 successor in interest. "Railroad" and "railroad corporation"  
9 includes an interurban railway.

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

11 (1) A right-of-way or other interest in real estate  
12 that is owned or operated by a railroad corporation, the  
13 trustees of a railroad corporation, or the successor in  
14 interest of a railroad corporation.

15 (2) A right-of-way or other interest in real estate  
16 that is occupied or managed by or on behalf of a railroad  
17 corporation, the trustees of a railroad corporation, or the  
18 successor in interest of a railroad corporation, including  
19 an abandoned railroad right-of-way that has not otherwise  
20 reverted.

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

24 "Special circumstances" means either or both of the  
25 following:

26 (1) The existence of characteristics of a segment of  
27 railroad right-of-way or of a proposed utility facility  
28 that increases the direct expenses associated with a  
29 proposed crossing.

30 (2) A proposed crossing that involves a significant and  
31 imminent likelihood of danger to the public health or  
32 safety or that is a serious threat to the safe operations  
33 of the railroad or to the current use of the railroad  
34 right-of-way, necessitating additional terms and  
35 conditions associated with the crossing.

1 Section 10. Terms and conditions for a crossing.

2 (a) Notification by a public utility to a railroad required  
3 prior to the commencement of any crossing activity shall not  
4 exceed 30 days.

5 (b) The railroad and the public utility must maintain and  
6 repair its own property within the railroad right-of-way and  
7 bear responsibility for its own acts and omissions, except that  
8 the public utility shall be responsible for any bodily injury  
9 or property damage that typically would be covered under a  
10 standard railroad protective liability insurance policy.

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

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

16 (e) The public utility shall be provided an expedited  
17 crossing, absent a claim of special circumstances, after  
18 payment by the public utility of the standard crossing fee, if  
19 applicable, and submission of completed engineering  
20 specifications to the railroad.

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

24 (g) The Commission may adopt rules prescribing terms and  
25 conditions in addition to those contained in this Section for a  
26 crossing to ensure that any crossing be consistent with the  
27 public convenience and necessity and reasonable service to the  
28 public.

29 Section 15. Crossing fee. Unless otherwise agreed by the  
30 parties and subject to Section 20, a public utility that  
31 locates its facilities within the railroad right-of-way for a  
32 crossing, other than a crossing along the public roads of the  
33 State pursuant to the Telephone Line Right of Way Act, shall  
34 pay the railroad a one-time standard crossing fee of \$750 for  
35 each crossing plus the costs associated with modifications to

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

8 Section 20. Powers not limited.

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

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

18 Section 25. Special circumstances.

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

34 (b) A railroad or public utility that claims to be

1 aggrieved by a determination of the Commission on the issue of  
2 damages for the rights granted to a public utility with respect  
3 to a crossing may seek judicial review as provided in the  
4 Administrative Review Law.

5 Section 30. Authority to cross; emergency relief. Pending  
6 Commission resolution of a claim of special circumstances  
7 raised in a petition, a public utility may, upon securing the  
8 payment of any damages and upon submission of completed  
9 engineering specifications to the railroad, proceed with a  
10 crossing in accordance with the rules adopted by the  
11 Commission, unless the Commission, upon application for  
12 emergency relief, determines that there is a reasonable  
13 likelihood that either of the following conditions exist:

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

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

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

24 Section 35. Conflicting provisions. Notwithstanding any  
25 provision law to the contrary, this Act shall apply in all  
26 crossings of railroad rights-of-way involving a public utility  
27 and shall govern in the event of any conflict with any other  
28 provision of law.

29 Section 40. Applicability. This Act applies to (i) a  
30 crossing commenced prior to the effective date of this Act if  
31 an agreement concerning the crossing has expired or is  
32 terminated and (ii) a crossing commenced on or after the  
33 effective date of this Act.