



Sen. William R. Haine

Filed: 4/7/2005

09400SB0467sam002

LRB094 09486 MKM 44639 a

1 AMENDMENT TO SENATE BILL 467

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 467 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Public Utilities Act is amended by adding  
5 Section 13-714 as follows:

6 (220 ILCS 5/13-714 new)

7 Sec. 13-714. Crossing of railroad right-of-way.

8 (a) As used in this Section, unless the context otherwise  
9 requires:

10 "Crossing" means the construction, operation, repair, or  
11 maintenance of a facility over, under, or across a railroad  
12 right-of-way by a telecommunications carrier.

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

15 (1) The cost of inspecting and monitoring the crossing  
16 site.

17 (2) Administrative and engineering costs for review of  
18 specifications and for entering a crossing on the  
19 railroad's books, maps, and property records and other  
20 reasonable administrative and engineering costs incurred  
21 as a result of the crossing.

22 (3) Document and preparation fees associated with a  
23 crossing, and any engineering specifications related to  
24 the crossing.

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

4           "Facility" means any cable, conduit, wire, pipe, casing  
5           pipe, supporting poles and guys, manhole, or other material or  
6           equipment, that is used by a telecommunications carrier to  
7           furnish communications services.

8           "Railroad" or "railroad corporation" means (i) a railroad  
9           corporation that is the owner, operator, occupant, manager, or  
10           agent of a railroad right-of-way or the railroad corporation's  
11           successor in interest and (ii) a "transportation system", as  
12           defined in Section 2 of the Metropolitan Transportation  
13           Authority Act. "Railroad" and "railroad corporation" includes  
14           an interurban railway.

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

16           (1) A fee, easement, right-of-way, license, or  
17           interest in real estate on which a railroad is located or  
18           on which a located was located in the past.

19           (2) 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           (3) 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           (4) 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 unique characteristics of a

1 segment of railroad right-of-way or of a proposed utility  
2 facility that increases the direct expenses associated  
3 with a 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 (b) Notification by a telecommunications carrier to a  
11 railroad required prior to the commencement of any crossing  
12 activity shall not exceed 30 days.

13 (c) The railroad and the telecommunications carrier must  
14 maintain and repair its own property within the railroad  
15 right-of-way and bear responsibility for its own acts and  
16 omissions.

17 (d) A telecommunications carrier shall have immediate  
18 access to a crossing for repair and maintenance of existing  
19 facilities in case of emergency.

20 (e) Applicable engineering standards shall be complied  
21 with for facilities crossing railroad rights-of-way.

22 (f) The telecommunications carrier shall be provided an  
23 expedited crossing, absent a claim of special circumstances,  
24 after payment by the telecommunications carrier of the standard  
25 crossing fee, if applicable, and submission of completed  
26 engineering specifications to the railroad.

27 (g) The telecommunications carrier and the railroad may  
28 agree to other terms and conditions necessary to provide for  
29 reasonable use of a railroad right-of-way by a  
30 telecommunications carrier.

31 (h) The Commission shall adopt rules prescribing terms and  
32 conditions in addition to those contained in this Section for a  
33 crossing to ensure that any crossing be consistent with the  
34 public convenience and necessity and reasonable service to the

1 public.

2 (i) Unless otherwise agreed by the parties and subject to  
3 subsection (j), a telecommunications carrier that locates its  
4 facilities within the railroad right-of-way for a crossing,  
5 other than a crossing along the public roads of the State  
6 pursuant to the Telephone Line Right of Way Act, shall pay the  
7 railroad a one-time standard crossing fee of \$2,000 for each  
8 crossing. The standard crossing fee shall be in lieu of any  
9 license or any other fees or charges to reimburse the railroad  
10 for the direct expenses incurred by the railroad as a result of  
11 the crossing. The telecommunications carrier shall also  
12 reimburse the railroad for any actual flagging expenses  
13 associated with a crossing in addition to the standard crossing  
14 fee.

15 (j) Notwithstanding subsections (b) through (h), rules  
16 adopted by the Commission shall not prevent a railroad and a  
17 telecommunications carrier from otherwise negotiating the  
18 terms and conditions applicable to a crossing or the resolution  
19 of any disputes relating to the crossing.

20 (k) Notwithstanding subsection (j), This Section shall not  
21 impair the authority of a telecommunications carrier to secure  
22 crossing rights by easement pursuant to the exercise of the  
23 power of eminent domain.

24 (l) A railroad or telecommunications carrier that believes  
25 special circumstances exist for a particular crossing may  
26 petition the Commission for relief. If a petition for relief is  
27 filed, the Commission shall determine whether special  
28 circumstances exist that necessitate either a modification of  
29 the direct expenses to be paid or the need for additional terms  
30 and conditions. The Commission may make any necessary findings  
31 of fact and determinations related to the existence of special  
32 circumstances, as well as any relief to be granted. A final  
33 determination of the Commission on the issue of special  
34 circumstances shall be considered final agency action subject

1 to judicial review under the Administrative Review Law. The  
2 Commission shall assess the costs associated with a petition  
3 for relief equitably against the parties.

4 (m) Pending Commission resolution of a claim of special  
5 circumstances raised in a petition, a telecommunications  
6 carrier may, upon securing the payment of the standard fee and  
7 upon submission of completed engineering specifications to the  
8 railroad, proceed with a crossing in accordance with the rules  
9 adopted by the Commission, unless the Commission, upon  
10 application for emergency relief, determines that there is a  
11 reasonable likelihood that either of the following conditions  
12 exist:

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

16 (2) That the proposed crossing is a serious threat to  
17 the safe operations of the railroad or to the current use  
18 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 the  
22 crossing until a factual determination is made.

23 (o) Notwithstanding any provision law to the contrary, this  
24 Act shall apply in all crossings of railroad rights-of-way  
25 involving a telecommunications carrier and shall govern in the  
26 event of any conflict with any other provision of law.

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