



Sen. William R. Haine

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LRB094 09486 MKM 44785 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7 (Section scheduled to be repealed on July 1, 2005)

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

9 (a) The General Assembly finds that:

10 (1) universally available high-speed
11 telecommunications services are essential to the
12 prosperity of all Illinois citizens; and

13 (2) telecommunications carriers should be allowed
14 access to railroad rights-of-way for the deployment of high
15 speed telecommunications services via reasonable
16 procedures, subject to reasonable costs, and in a timely
17 fashion.

18 (b) As used in this Section, unless the context otherwise
19 requires:

20 "Crossing" means the construction, operation, repair, or
21 maintenance by a telecommunications carrier of reasonably
22 necessary facilities that cross entirely over, on, or under a
23 railroad right-of-way from side to side of the railroad
24 right-of-way at no less than a 60 degree angle.

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

3 (1) The cost of inspecting and monitoring the crossing
4 site.

5 (2) Administrative and engineering costs for review of
6 specifications and for entering a crossing on the
7 railroad's books, maps, and property records and other
8 reasonable administrative and engineering costs incurred
9 as a result of the crossing.

10 (3) Document and preparation fees associated with a
11 crossing, and any engineering specifications related to
12 the crossing.

13 (4) Damages assessed in connection with the rights
14 granted to a telecommunications carrier with respect to a
15 crossing.

16 "Facilities" means any cables, conduits, wires, and other
17 appurtenant materials and equipment, excluding (i) all surface
18 installations other than supporting poles and guys and manholes
19 and (ii) empty conduits.

20 "Railroad" or "railroad corporation" means (i) a railroad
21 corporation that is the owner, operator, occupant, manager, or
22 agent of a railroad right-of-way or the railroad corporation's
23 successor in interest and (ii) a "transportation system", as
24 defined in Section 2 of the Metropolitan Transportation
25 Authority Act. "Railroad" and "railroad corporation" includes
26 an interurban railway.

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

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

31 (2) A right-of-way or other interest in real estate
32 that is owned or operated by a railroad corporation, the
33 trustees of a railroad corporation, or the successor in
34 interest of a railroad corporation.

1 (3) A right-of-way or other interest in real estate
2 that is occupied or managed by or on behalf of a railroad
3 corporation, the trustees of a railroad corporation, or the
4 successor in interest of a railroad corporation, including
5 an abandoned railroad right-of-way that has not otherwise
6 reverted.

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

10 "Special circumstances" means either or both of the
11 following:

12 (1) The existence of unique characteristics of a
13 segment of railroad right-of-way or of a proposed utility
14 facility that increases the direct expenses associated
15 with a proposed crossing.

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

22 (c) Notification by a telecommunications carrier to a
23 railroad required prior to the commencement of any crossing
24 activity shall not exceed 30 days.

25 (d) The railroad and the telecommunications carrier must
26 maintain and repair its own property within the railroad
27 right-of-way and bear responsibility for its own acts and
28 omissions.

29 (e) A telecommunications carrier shall have immediate
30 access to a crossing for repair and maintenance of existing
31 facilities in case of emergency.

32 (f) Applicable engineering standards shall be complied
33 with for facilities crossing railroad rights-of-way.

34 (g) The telecommunications carrier shall be provided an

1 expedited crossing, absent a claim of special circumstances,
2 after payment by the telecommunications carrier of the standard
3 crossing fee, if applicable, and submission of completed
4 engineering specifications to the railroad.

5 (h) The telecommunications carrier and the railroad may
6 agree to other terms and conditions necessary to provide for
7 reasonable use of a railroad right-of-way by a
8 telecommunications carrier.

9 (i) The Commission shall adopt rules prescribing terms and
10 conditions in addition to those contained in this Section for a
11 crossing to ensure that any crossing be consistent with the
12 public convenience and necessity and reasonable service to the
13 public.

14 (j) Unless otherwise agreed by the parties and subject to
15 subsection (k), a telecommunications carrier that locates its
16 facilities within the railroad right-of-way for a crossing,
17 other than a crossing along the public roads of the State
18 pursuant to the Telephone Line Right of Way Act, shall pay the
19 railroad a one-time standard crossing fee of \$2,000 for each
20 crossing. The standard crossing fee shall be in lieu of any
21 license or any other fees or charges to reimburse the railroad
22 for the direct expenses incurred by the railroad as a result of
23 the crossing. The telecommunications carrier shall also
24 reimburse the railroad for any actual flagging expenses
25 associated with a crossing in addition to the standard crossing
26 fee.

27 (k) Notwithstanding subsections (c) through (i), rules
28 adopted by the Commission shall not prevent a railroad and a
29 telecommunications carrier from otherwise negotiating the
30 terms and conditions applicable to a crossing or the resolution
31 of any disputes relating to the crossing.

32 (l) Notwithstanding subsection (k), This Section shall not
33 impair the authority of a telecommunications carrier to secure
34 crossing rights by easement pursuant to the exercise of the

1 power of eminent domain.

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

16 (n) Pending Commission resolution of a claim of special
17 circumstances raised in a petition, a telecommunications
18 carrier may, upon securing the payment of the standard fee and
19 upon submission of completed engineering specifications to the
20 railroad, proceed with a crossing in accordance with the rules
21 adopted by the Commission, unless the Commission, upon
22 application for emergency relief, determines that there is a
23 reasonable likelihood that either of the following conditions
24 exist:

25 (1) That the proposed crossing involves a significant
26 and imminent likelihood of danger to the public health or
27 safety.

28 (2) That the proposed crossing is a serious threat to
29 the safe operations of the railroad or to the current use
30 of the railroad right-of-way.

31 If the Commission determines that there is a reasonable
32 likelihood that the proposed crossing meets either condition,
33 then the Commission shall immediately intervene to prevent the
34 crossing until a factual determination is made.

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

5 (p) This Section applies to (i) a crossing commenced prior
6 to the effective date of this Section if an agreement
7 concerning the crossing has expired or is terminated and (ii) a
8 crossing commenced on or after the effective date of this
9 Section."