



Sen. Mike Jacobs

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1 AMENDMENT TO SENATE BILL 880

2 AMENDMENT NO. _____. Amend Senate Bill 880 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 "Crossing" means the construction, operation, repair, or
9 maintenance of a facility over, under, or across a railroad
10 right-of-way by a utility.

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

13 (1) The cost of inspecting and monitoring the crossing
14 site.

15 (2) Administrative and engineering costs for review of
16 specifications and for entering a crossing on the

1 railroad's books, maps, and property records and other
2 reasonable administrative and engineering costs incurred
3 as a result of the crossing.

4 (3) Document and preparation fees associated with a
5 crossing, and any engineering specifications related to
6 the crossing.

7 (4) Damages assessed in connection with the rights
8 granted to a utility with respect to a crossing.

9 "Facility" means any cable, conduit, wire, pipe, casing
10 pipe, supporting poles and guys, manhole, or other material or
11 equipment, that is used by a utility to furnish any of the
12 following:

13 (1) Communications, video, or information services.

14 (2) Electricity.

15 (3) Gas by piped system.

16 (4) Sanitary and storm sewer service.

17 (5) Water by piped system.

18 "Railroad" or "railroad corporation" means a railroad
19 corporation that is the owner, operator, occupant, manager, or
20 agent of a railroad right-of-way or the railroad corporation's
21 successor in interest.

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

23 (1) A right-of-way or other interest in real estate
24 that is owned or operated by a railroad corporation, the
25 trustees of a railroad corporation, or the successor in
26 interest of a railroad corporation.

1 (2) 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 (3) 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 characteristics of a segment of a railroad
13 right-of-way not found in a typical segment of a railroad
14 right-of-way that enhance the value or increase the damages
15 or the engineering or construction expenses for the
16 railroad associated with a proposed crossing, or
17 situations in which a proposed crossing involves the
18 likelihood of danger to the public health or safety or is a
19 threat to the safe and effective operation of the railroad
20 or to the current or reasonably anticipated use by the
21 railroad of the railroad right-of-way, necessitating
22 additional terms and conditions or compensation associated
23 with a crossing.

24 (2) Variances from the standard specifications
25 requested by either the railroad or licensee.

26 "Special circumstances" may include, but is not limited to,

1 the railroad right-of-way segment's relationship to other
2 property, location in urban or other developed areas, the
3 existence of unique topography or natural resources, or other
4 characteristics or dangers inherent in the particular crossing
5 or segment of the railroad right-of-way.

6 "Utility" shall include (1) public utilities as defined in
7 Section 3-105 of the Public Utilities Act, (2)
8 telecommunications carriers as defined in Section 13-202 of the
9 Public Utilities Act, (3) electric cooperatives as defined in
10 Section 3.4 of the Electric Supplier Act, (4) telephone or
11 telecommunications cooperatives as defined in Section 13-212
12 of the Public Utilities Act, (5) rural water or waste water
13 systems with 10,000 connections or less, (6) a holder as
14 defined in Section 21-201 of the Public Utilities Act, and (7)
15 municipalities owning or operating utility systems consisting
16 of public utilities as that term is defined in Section 11-117-2
17 of the Illinois Municipal Code.

18 Section 10. Terms and conditions for a crossing.

19 (a) After 30 days from (1) the mailing of the notice, (2)
20 completing the engineering specifications, and (3) payment of
21 the fee, the utility, absent a claim of special circumstances,
22 shall be deemed to have authorization to commence the crossing
23 activity.

24 (b) The railroad and the utility must maintain and repair
25 its own property within the railroad right-of-way and bear

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

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

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

10 (e) The utility shall be provided an expedited crossing,
11 absent a claim of special circumstances, after payment by the
12 utility of the standard crossing fee, if applicable, and
13 submission of completed engineering specifications to the
14 railroad. The engineering specifications shall address the
15 applicable clearance requirements as established by the
16 National Electrical Safety Code.

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

20 Section 15. Crossing fee. Unless otherwise agreed by the
21 parties and subject to Section 20, a utility that locates its
22 facilities within the railroad right-of-way for a crossing,
23 other than a crossing along the public roads of the State
24 pursuant to the Telephone Line Right of Way Act, shall pay the
25 railroad a one-time standard crossing fee of \$1,500 for each

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

9 Section 20. Powers not limited.

10 (a) Notwithstanding Section 10, nothing shall prevent a
11 railroad and a utility from otherwise negotiating the terms and
12 conditions applicable to a crossing or the resolution of any
13 disputes relating to the crossing.

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

18 Section 25. Special circumstances.

19 (a) If the parties cannot agree that special circumstances
20 exist, the dispute shall be submitted to non-binding
21 arbitration (informal arbitration). Any party proposing
22 informal arbitration shall serve an arbitration notice
23 detailing a description of the dispute, including, without
24 limitation, the position and proposed resolution of the party

1 requesting arbitration and shall name one arbitrator chosen by
2 that party. Within 20 days after receipt of an arbitration
3 notice, the receiving party shall serve a written notice on the
4 other party containing (i) a detailed response to the claim
5 giving the position and proposed resolution of the receiving
6 party, and (ii) an acceptance of the arbitrator designated in
7 the arbitration notice or rejection of same and suggestion of
8 no less than 2 other alternatives (reply notice). The informal
9 arbitration shall be decided by a single arbitrator. In the
10 event that the parties do not agree on the selection of an
11 arbitrator within 7 business days after service of the reply
12 notice, either party may apply to the American Arbitration
13 Association for the purpose of appointing an independent
14 arbitrator. To the extent practicable, the arbitrator shall be
15 a person with expertise in the principal areas of dispute.

16 (b) A conference shall be commenced by the arbitrator
17 within 15 calendar days after the appointment of the arbitrator
18 and a recommendation regarding the matter submitted shall be
19 rendered within 10 business days after the conference or as
20 soon as practicable thereafter. During the 30 calendar days
21 following the filing of the arbitration notice, the parties
22 will meet and confer to attempt to resolve the dispute. The
23 decision of the arbitrator and the rationale for its decision
24 shall be in writing and signed by the arbitrator; provided,
25 however, that such written recommendation shall have no
26 evidentiary value and shall not be deemed to set forth any

1 findings of fact for purposes of any future proceedings. Except
2 as otherwise provided in this Section, the informal arbitration
3 shall be held in accordance with the rules and procedures of
4 the American Arbitration Association. Each party shall bear its
5 own expenses, including, without limitation, legal and
6 accounting fees, and the cost of the arbitrator shall be shared
7 equally by each party. The parties may or may not elect to
8 abide by the decision of the arbitrator.

9 (c) If the parties cannot resolve their dispute based on
10 the arbitrator's recommendation within 30 days, either party
11 may, upon the expiration of the 30-day period, give written
12 notice to the other party of the commencement of a binding
13 arbitration proceeding in the accordance with the Commercial
14 Rules of Arbitration in the American Arbitration Association
15 (formal arbitration). Any decision by the Board of Arbitration
16 shall be final, binding, and conclusive as to the parties.
17 Nothing provided in this Section shall prevent either party
18 from submission of disputes to the court, limited to requests
19 for injunctive or equitable relief in advance of a breach or
20 threatened breach of this Agreement, if necessary to prevent
21 serious and irreparable injury to such party or the public and
22 if such injury cannot be appropriately addressed by informal or
23 formal arbitration.

24 (d) If the dispute over special circumstances concerns only
25 the compensation associated with a crossing, then the licensee
26 may proceed with installation of the crossing during the

1 pendency of the arbitration.

2 Section 30. Conflicting provisions. Notwithstanding any
3 provision law to the contrary, this Act shall apply in all
4 crossings of railroad rights-of-way involving a utility and
5 shall govern in the event of any conflict with any other
6 provision of law.

7 Section 35. Applicability. This Act applies to (i) a
8 crossing commenced prior to the effective date of this Act if
9 an agreement concerning the crossing has expired or is
10 terminated and (ii) a crossing commenced on or after the
11 effective date of this Act.

12 Section 99. Effective date. This Act takes effect upon
13 becoming law."