



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB1448

Introduced 2/18/2009, by Sen. Mike Jacobs

SYNOPSIS AS INTRODUCED:

New Act

Creates the Crossing of Railroad Right-of-way Act. Applies only to crossings of a railroad right-of-way that is owned by a land management company and not a registered rail carrier. Provides that public utilities that locate their facilities within the railroad right-of-way for a crossing shall pay the land management company a one-time standard crossing fee of \$1,500 for each crossing. Provides special circumstances under which the standard crossing fee is not imposed. Provides that, if the parties cannot agree that special circumstances exist, the dispute shall be submitted to non-binding arbitration. Provides procedures for the non-binding arbitration and provides that, if the parties cannot resolve their dispute based on the arbitrator's recommendation within 30 days, either party may, upon the expiration of the 30-day period, give written notice to the other party of the commencement of a binding arbitration proceeding. Effective immediately.

LRB096 08884 MJR 19019 b

1 AN ACT concerning 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 "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 when the right-of-way is owned by a
11 land management company and not a registered rail carrier.

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.

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

3 "Facility" means any cable, conduit, wire, pipe, casing
4 pipe, supporting poles and guys, manhole, or other material or
5 equipment, that is used by a utility to furnish any of the
6 following:

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

8 (2) Electricity.

9 (3) Gas by piped system.

10 (4) Sanitary and storm sewer service.

11 (5) Water by piped system.

12 "Land management company" means an entity that is the
13 owner, manager, or agent of a railroad right-of-way and is not
14 a registered rail carrier

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

16 (1) A right-of-way or other interest in real estate
17 that is owned or operated by a land management company and
18 not a registered rail carrier.

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

22 "Special circumstances" means either or both of the
23 following:

24 (1) The characteristics of a segment of a railroad
25 right-of-way not found in a typical segment of a railroad
26 right-of-way that enhance the value or increase the damages

1 or the engineering or construction expenses for the land
2 management company associated with a proposed crossing, or
3 to the current or reasonably anticipated use by a land
4 management company of the railroad right-of-way,
5 necessitating additional terms and conditions or
6 compensation associated with a crossing.

7 (2) Variances from the standard specifications
8 requested by the land management company.

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

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

1 Section 10. Terms and conditions for a crossing.

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

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

14 (c) A utility shall have immediate access to a crossing for
15 repair and maintenance of existing facilities in case of
16 emergency.

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

19 (e) The utility shall be provided an expedited crossing,
20 absent a claim of special circumstances, after payment by the
21 utility of the standard crossing fee, if applicable, and
22 submission of completed engineering specifications to the land
23 management company. The engineering specifications shall
24 address the applicable clearance requirements as established
25 by the National Electrical Safety Code.

1 (f) The utility and the land management company may agree
2 to other terms and conditions necessary to provide for
3 reasonable use of a railroad right-of-way by a utility.

4 Section 15. Crossing fee. Unless otherwise agreed by the
5 parties and subject to Section 20, a utility that locates its
6 facilities within the railroad right-of-way for a crossing,
7 other than a crossing along the public roads of the State
8 pursuant to the Telephone Line Right of Way Act, shall pay the
9 land management company a one-time standard crossing fee of
10 \$1,500 for each crossing plus the costs associated with
11 modifications to existing insurance contracts of the utility
12 and the land management company. The standard crossing fee
13 shall be in lieu of any license, permit, application, or any
14 other fees or charges to reimburse the land management company
15 for the direct expenses incurred by the land management company
16 as a result of the crossing. The utility shall also reimburse
17 the land management company for any actual flagging expenses
18 associated with a crossing in addition to the standard crossing
19 fee.

20 Section 20. Powers not limited.

21 (a) Notwithstanding Section 10, nothing shall prevent a
22 land management company and a utility from otherwise
23 negotiating the terms and conditions applicable to a crossing
24 or the resolution of any disputes relating to the crossing.

1 (b) Notwithstanding subsection (a), this Section shall not
2 impair the authority of a utility to secure crossing rights by
3 easement pursuant to the exercise of the power of eminent
4 domain.

5 Section 25. Special circumstances.

6 (a) If the parties cannot agree that special circumstances
7 exist, the dispute shall be submitted to non-binding
8 arbitration (informal arbitration). Any party proposing
9 informal arbitration shall serve an arbitration notice
10 detailing a description of the dispute, including, without
11 limitation, the position and proposed resolution of the party
12 requesting arbitration and shall name one arbitrator chosen by
13 that party. Within 20 days after receipt of an arbitration
14 notice, the receiving party shall serve a written notice on the
15 other party containing (i) a detailed response to the claim
16 giving the position and proposed resolution of the receiving
17 party, and (ii) an acceptance of the arbitrator designated in
18 the arbitration notice or rejection of same and suggestion of
19 no less than 2 other alternatives (reply notice). The informal
20 arbitration shall be decided by a single arbitrator. In the
21 event that the parties do not agree on the selection of an
22 arbitrator within 7 business days after service of the reply
23 notice, either party may apply to the American Arbitration
24 Association for the purpose of appointing an independent
25 arbitrator. To the extent practicable, the arbitrator shall be

1 a person with expertise in the principal areas of dispute.

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

21 (c) If the parties cannot resolve their dispute based on
22 the arbitrator's recommendation within 30 days, either party
23 may, upon the expiration of the 30-day period, give written
24 notice to the other party of the commencement of a binding
25 arbitration proceeding in the accordance with the Commercial
26 Rules of Arbitration in the American Arbitration Association

1 (formal arbitration). Any decision by the Board of Arbitration
2 shall be final, binding, and conclusive as to the parties.
3 Nothing provided in this Section shall prevent either party
4 from submission of disputes to the court, limited to requests
5 for injunctive or equitable relief in advance of a breach or
6 threatened breach of this Agreement, if necessary to prevent
7 serious and irreparable injury to such party or the public and
8 if such injury cannot be appropriately addressed by informal or
9 formal arbitration.

10 (d) If the dispute over special circumstances concerns only
11 the compensation associated with a crossing, then the licensee
12 may proceed with installation of the crossing during the
13 pendency of the arbitration.

14 Section 30. Conflicting provisions. Notwithstanding any
15 provision law to the contrary, this Act shall apply in all
16 crossings of railroad rights-of-way involving a land
17 management company and a utility and shall govern in the event
18 of any conflict with any other provision of law.

19 Section 35. Applicability. This Act applies to (i) a
20 crossing commenced prior to the effective date of this Act if
21 an agreement concerning the crossing has expired or is
22 terminated and (ii) a crossing commenced on or after the
23 effective date of this Act.

24 Section 99. Effective date. This Act takes effect upon

1 becoming law.