



Rep. Jay Hoffman

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LRB098 15621 RPS 58329 a

1 AMENDMENT TO HOUSE BILL 4064

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 4064 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Crossing of Railroad Right-of-way Act is  
5 amended by changing Sections 1, 5, 10, 15, 20, 25, 30, and 35  
6 and by adding Section 40 as follows:

7 (220 ILCS 70/1)

8 Sec. 1. Short title. This Act may be cited as the Crossing  
9 and Encroachment of Railroad Right-of-way Act.

10 (Source: P.A. 96-595, eff. 8-18-09.)

11 (220 ILCS 70/5)

12 Sec. 5. Definitions. As used in this Act, unless the  
13 context otherwise requires:

14 "Commission" means the Illinois Commerce Commission.

15 "Crossing" means the construction, operation, repair, or

1 maintenance of a facility that is at, above, or below grade in  
2 ~~ever, under, or across~~ a railroad right-of-way and that crosses  
3 active railroad tracks ~~by a utility when the right-of-way is~~  
4 ~~owned by a land management company and not a registered rail~~  
5 ~~carrier.~~

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

8 (1) The cost of inspecting and monitoring the crossing  
9 site.

10 (2) Administrative and engineering costs for review of  
11 specifications and for entering a crossing on the  
12 railroad's books, maps, and property records and other  
13 reasonable administrative and engineering costs incurred  
14 as a result of the crossing.

15 (3) Document and preparation fees associated with a  
16 crossing, and any engineering specifications related to  
17 the crossing.

18 (4) (Blank). ~~Damages assessed in connection with the~~  
19 ~~rights granted to a utility with respect to a crossing.~~

20 "Encroachment" means the construction, operation, repair,  
21 or maintenance of a facility that is at, above, or below grade  
22 in a railroad right-of-way, does not cross active railroad  
23 tracks, and does not exceed 5,000 feet in length.

24 "Facility" means any cable, conduit, wire, pipe, casing  
25 pipe, supporting poles and guys, manhole, electronic testing or  
26 monitoring equipment, cathodic protection, or other material

1 or equipment, that is used by a utility to furnish any of the  
2 following:

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

4 (2) Electricity.

5 (3) Gas by piped system.

6 (4) Sanitary and storm sewer service.

7 (5) Water by piped system.

8 "Land management company" means an entity that is the  
9 owner, manager, or agent of a railroad right-of-way and is not  
10 a registered rail carrier.

11 "Notice" means a written or electronic document delivered  
12 by the utility to the registered agent or designated electronic  
13 service address for receiving such notices of the rail carrier  
14 or land management company that includes the following  
15 information:

16 (1) The date of the proposed construction, operation,  
17 repair, or maintenance associated with a crossing or  
18 encroachment and projected length of time required to  
19 complete such construction, operation, repair, or  
20 maintenance.

21 (2) The manner and method of such construction,  
22 operation, repair, or maintenance associated with a  
23 crossing or encroachment.

24 (3) The exact location of the proposed entry and path  
25 of facilities associated with a crossing or encroachment to  
26 be constructed, placed, repaired, or maintained upon the

1       railroad right-of-way.

2       "Rail carrier" has the meaning ascribed to that term in  
3       Section 18c-1104 of the Illinois Vehicle Code. "Rail carrier"  
4       includes the Northeast Illinois Regional Commuter Railroad  
5       Corporation, created under subsection (a) of Section 2.20 of  
6       the Regional Transportation Authority Act.

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

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

11          (2) Any other interest in a former railroad  
12          right-of-way that has been acquired or is operated by a  
13          rail carrier or a land management company or similar  
14          entity.

15       "Special circumstances" means either or both of the  
16       following:

17           (1) The characteristics of a segment of a railroad  
18           right-of-way not found in a typical segment of a railroad  
19           right-of-way that enhance the value or increase the damages  
20           or the engineering or construction expenses for the rail  
21           carrier or the land management company associated with a  
22           proposed crossing or encroachment, or to the current or  
23           reasonably anticipated use by a rail carrier or a land  
24           management company of the railroad right-of-way,  
25           necessitating additional ~~terms and conditions~~ or  
26           compensation associated with a crossing or encroachment.

1           (2) Variances from the standard specifications  
2 requested by the rail carrier or the land management  
3 company.

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

10           "Utility" shall include (1) public utilities as defined in  
11 Section 3-105 of the Public Utilities Act and their affiliate  
12 companies, (2) telecommunications carriers as defined in  
13 Section 13-202 of the Public Utilities Act, (3) electric  
14 cooperatives as defined in Section 3.4 of the Electric Supplier  
15 Act, (4) telephone or telecommunications cooperatives as  
16 defined in Section 13-212 of the Public Utilities Act, (5)  
17 rural water or waste water systems with 10,000 connections or  
18 less, (6) a holder as defined in Section 21-201 of the Public  
19 Utilities Act, (7) a cable operator providing cable service  
20 pursuant to a county or municipal franchise issued pursuant to  
21 Section 5-1095 of the Counties Code or Section 11-42-11 of the  
22 Illinois Municipal Code, and (8) ~~(7)~~ municipalities owning or  
23 operating utility systems consisting of public utilities as  
24 that term is defined in Section 11-117-2 of the Illinois  
25 Municipal Code.

26           (Source: P.A. 96-595, eff. 8-18-09.)

1 (220 ILCS 70/10)

2 Sec. 10. Terms and conditions for a crossing or  
3 encroachment.

4 (a) After 35 ~~30~~ days from (1) the mailing or electronic  
5 submission of the notice and, (2) ~~completing~~ the completion of  
6 the rail carrier's engineering specifications, so long as the  
7 utility has paid the direct expenses and the agreed upon value  
8 of the use of the property or the dispute fee described in  
9 Section 25 of this Act, if applicable, and the rail carrier has  
10 approved the engineering specifications and (3) ~~payment of the~~  
11 ~~fee~~, the utility shall provide notice as required under  
12 subsection (e-5) of this Section. Upon fulfillment of the  
13 requirements under subsection (e-5), the utility ~~absent a claim~~  
14 ~~of special circumstances~~, shall be deemed to have authorization  
15 to commence the crossing or encroachment activity. In the  
16 absence of an agreement within the 35-day period on (1) the  
17 direct expenses of the crossing or encroachment or the value of  
18 the use of the property or (2) the rail carrier's engineering  
19 specifications associated with the crossing or encroachment, a  
20 utility may proceed under Section 25.

21 (b) The rail carrier or the land management company and the  
22 utility must maintain and repair its own property within the  
23 railroad right-of-way and bear responsibility for its own acts  
24 and omissions, except that the utility shall be responsible for  
25 any bodily injury or property damage that typically would be

1 covered under a standard railroad protective liability  
2 insurance policy. A utility shall indemnify a rail carrier or  
3 land management company for damages resulting from its own  
4 negligence related to the presence of the utility facilities  
5 within the railroad right-of-way. In addition, a utility shall  
6 be liable to a railroad employee for any damages resulting from  
7 the utility's negligence either in whole or in part. Railroad  
8 employees shall not be held responsible in any manner if an  
9 incident or accident occurs within the railroad right-of-way  
10 that was, in whole or in part, a result of a utility's  
11 non-compliance with any required notification process.

12 (c) A utility shall have expedited ~~immediate~~ access to a  
13 crossing or encroachment for repair ~~and maintenance~~ of existing  
14 facilities in case of emergency after the utility provides the  
15 rail carrier or the land management company immediate  
16 notification of the emergency repair needed to be performed and  
17 obtains approval to perform the repair from the rail carrier or  
18 the land management company. Such notification is intended to  
19 enable the rail carrier to make any appropriate flagging or  
20 other safety arrangements using qualified railroad employees  
21 that are familiar with railroad operations. A utility shall  
22 provide the rail carrier or the land management company the  
23 emergency notification by the means provided by the rail  
24 carrier or the land management company for receiving the  
25 emergency notification, including, but not limited to, the use  
26 of a designated emergency phone number.

1           (d) Reasonable and applicable railroad and utility  
2 industry ~~Applicable~~ engineering standards shall be complied  
3 with for utility facilities crossing or encroaching upon a  
4 railroad right-of-way ~~rights-of-way~~. The engineering  
5 specifications shall address the applicable clearance  
6 requirements as established by the rail carrier's engineering  
7 standards.

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

16           (e-5) Except for emergency repair situations, once notice  
17 has been submitted and the 35-day period required in subsection  
18 (a) has expired, so long as the utility has paid the direct  
19 expenses and the agreed upon value of the use of the property  
20 or the dispute fee described in Section 25 of this Act, if  
21 applicable, and the rail carrier has approved the engineering  
22 specifications, a utility shall provide the rail carrier or  
23 land management company a written or electronic notification at  
24 least 10 days prior to the commencement of any construction,  
25 operation, repair, or maintenance of facilities within the  
26 railroad right-of-way. The rail carrier or land management



1 company must provide a written or electronic acknowledgement of  
2 receipt of this notification. Such notification is intended to  
3 enable the rail carrier to make any appropriate flagging or  
4 other safety arrangements using qualified railroad employees  
5 or contractors that are familiar with railroad operations.

6 (f) The utility and the rail carrier or ~~and the~~ land  
7 management company may agree to other terms and conditions  
8 necessary to provide for reasonable use of a railroad  
9 right-of-way by a utility.

10 (g) Utility facilities may remain in a railroad  
11 right-of-way unless the Commission approves the abandonment of  
12 the facilities, if Commission approval is required by law, and  
13 orders the abandoned facilities to be removed.

14 (Source: P.A. 96-595, eff. 8-18-09.)

15 (220 ILCS 70/15)

16 Sec. 15. Crossing and encroachment fees ~~fee~~.

17 (a) A utility that locates its facilities within the  
18 railroad right-of-way for a crossing or encroachment along,  
19 over, or under a public highway, street, road, alley, or other  
20 public way shall not pay the rail carrier or land management  
21 company the value of the use of the property.

22 (b) A utility that locates its facilities within the  
23 railroad right-of-way for a crossing or encroachment, other  
24 than a crossing or encroachment along, over, or under a public  
25 highway, street, road, alley, or other public way, shall pay

1 the rail carrier or land management company a single crossing  
2 or encroachment fee agreed to between the utility and the rail  
3 carrier or land management company. The crossing or  
4 encroachment fee is intended to reimburse the rail carrier or  
5 the land management company for the direct expenses incurred by  
6 the rail carrier or the land management company as a result of  
7 the crossing or encroachment and the value of the use of the  
8 property. Utilities shall not be subject to any additional  
9 application fees, engineering review fees, permit fees, or any  
10 other fees imposed by a rail carrier or land management company  
11 for crossing or encroachments, except that the utility shall  
12 also reimburse the rail carrier or the land management company  
13 for any actual flagging expenses associated with a crossing or  
14 encroachment. Unless otherwise agreed by the parties and  
15 ~~subject to Section 20, a utility that locates its facilities~~  
16 ~~within the railroad right of way for a crossing, other than a~~  
17 ~~crossing along the public roads of the State pursuant to the~~  
18 ~~Telephone Line Right of Way Act, shall pay the land management~~  
19 ~~company a one time standard crossing fee of \$1,500 for each~~  
20 ~~crossing plus the costs associated with modifications to~~  
21 ~~existing insurance contracts of the utility and the land~~  
22 ~~management company. The standard crossing fee shall be in lieu~~  
23 ~~of any license, permit, application, or any other fees or~~  
24 ~~charges to reimburse the land management company for the direct~~  
25 ~~expenses incurred by the land management company as a result of~~  
26 ~~the crossing. The utility shall also reimburse the land~~

1 ~~management company for any actual flagging expenses associated~~  
2 ~~with a crossing in addition to the standard crossing fee.~~

3 (Source: P.A. 96-595, eff. 8-18-09.)

4 (220 ILCS 70/20)

5 Sec. 20. Powers not limited.

6 (a) Notwithstanding Section 10, nothing shall prevent a  
7 rail carrier or land management company and a utility from  
8 otherwise negotiating the terms and conditions applicable to a  
9 crossing or encroachment or the resolution of any disputes  
10 relating to the crossing or encroachment.

11 (b) Notwithstanding subsection (a), this Section shall not  
12 impair the authority of a utility to secure crossing  
13 encroachment rights by easement pursuant to the exercise of the  
14 power of eminent domain or pursuant to any existing statute or  
15 provision of law.

16 (Source: P.A. 96-595, eff. 8-18-09.)

17 (220 ILCS 70/25)

18 Sec. 25. Dispute resolution ~~Special circumstances~~.

19 (a) In the event a utility cannot come to agreement with a  
20 rail carrier or land management company concerning the direct  
21 expenses of the crossing or encroachment or the value of the  
22 use of the property, after 35 days from the mailing or  
23 electronic submission of the notice, a utility may, upon  
24 approval by the rail carrier of the rail carrier's engineering

1 specifications, payment of a \$1,500 dispute fee to the rail  
2 carrier or land management company, and submission of  
3 notification at least 10 days prior to commencing any  
4 construction, operation, repair, or maintenance, proceed with  
5 a crossing or encroachment. If the utility, rail carrier, or  
6 land management company does not believe the dispute fee  
7 properly or adequately compensates the rail carrier or land  
8 management company for the direct expenses of the crossing or  
9 encroachment and the value of the use of the property, the  
10 utility, the rail carrier, or the land management company may  
11 proceed with dispute resolution, as provided in subsection (c).

12 (b) If, after 35 days from the initial mailing or  
13 electronic submission of notice, a utility cannot come to  
14 agreement with a rail carrier or land management company  
15 concerning the rail carrier's engineering specifications  
16 associated with the crossing or encroachment or the rail  
17 carrier has failed to approve the engineering specifications,  
18 the utility, the rail carrier, or the land management company  
19 may proceed with dispute resolution, as provided in subsection  
20 (c). Under this subsection (b), the utility may not proceed  
21 with a crossing or encroachment during the pendency of the  
22 dispute resolution.

23 (c) (1) A ~~(a) If the parties cannot agree that special~~  
24 ~~circumstances exist, the dispute~~ under subsection (a) or  
25 subsection (b) of this Section shall be submitted to  
26 non-binding arbitration (informal arbitration). Any party

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

21 (2) ~~(b)~~ A conference shall be commenced by the  
22 arbitrator within 15 calendar days after the appointment of  
23 the arbitrator and a recommendation regarding the matter  
24 submitted shall be rendered within 10 business days after  
25 the conference or as soon as practicable thereafter. The  
26 arbitrator shall take into account any special

1       circumstances when developing a recommendation concerning  
2       the direct expenses of the crossing or encroachment or the  
3       value of the use of the property. During the 30 calendar  
4       days following the filing of the arbitration notice, the  
5       parties will meet and confer to attempt to resolve the  
6       dispute. The decision of the arbitrator and the rationale  
7       for its decision shall be in writing and signed by the  
8       arbitrator; provided, however, that such written  
9       recommendation shall have no evidentiary value and shall  
10      not be deemed to set forth any findings of fact for  
11      purposes of any future proceedings. Except as otherwise  
12      provided in this Section, the informal arbitration shall be  
13      held in accordance with the rules and procedures of the  
14      American Arbitration Association. Each party shall bear  
15      its own expenses, including, without limitation, legal and  
16      accounting fees, and the cost of the arbitrator shall be  
17      shared equally by each party. The parties may or may not  
18      elect to abide by the decision of the arbitrator.

19       (3) ~~(e)~~ If the parties cannot resolve their dispute  
20      based on the arbitrator's recommendation within 30 days,  
21      either party may, upon the expiration of the 30-day period,  
22      give written notice to the other party of the commencement  
23      of a binding arbitration proceeding in accordance with the  
24      Commercial Rules of Arbitration in the American  
25      Arbitration Association (formal arbitration). Any decision  
26      by the Board of Arbitration shall be final, binding, and

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

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

13 (Source: P.A. 96-595, eff. 8-18-09.)

14 (220 ILCS 70/30)

15 Sec. 30. Conflicting provisions. Notwithstanding any  
16 provision of law to the contrary, this Act shall apply in all  
17 crossings and encroachments of railroad rights-of-way  
18 involving a rail carrier or a land management company and a  
19 utility and shall govern in the event of any conflict with any  
20 other provision of law, except that nothing in this Act shall  
21 be construed to supersede, abrogate, or diminish the rights and  
22 obligations under the provisions of Section 5-1096 of the  
23 Counties Code or Section 11-42-11.1 of the Illinois Municipal  
24 Code.

25 (Source: P.A. 96-595, eff. 8-18-09.)

1 (220 ILCS 70/35)

2 Sec. 35. Applicability. This Act applies to (i) a crossing  
3 or encroachment commenced prior to the effective date of this  
4 Act if an agreement concerning the crossing or encroachment has  
5 expired or is terminated and (ii) a crossing or encroachment  
6 commenced on or after the effective date of this Act.

7 (Source: P.A. 96-595, eff. 8-18-09.)

8 (220 ILCS 70/40 new)

9 Sec. 40. Construction. Nothing in this Act shall be  
10 construed to limit a railroad employee's rights under the  
11 Federal Employers Liability Act.

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