

Lamberti
Jensen
Hansen

SSB-3029

Commerce

Succeeded By
SF/2407

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
COMMERCE BILL BY
CHAIRPERSON JENSEN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to public utilities crossing railroad right-of-
2 way.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 476.27 CROSSING -- RAILROAD
2 RIGHT-OF-WAY.

3 1. DEFINITIONS. As used in this section unless the
4 context otherwise requires:

5 a. "Cross" or "crossing" means the construction,
6 operation, repair, and maintenance of reasonably necessary
7 facilities over, under, or across a railroad right-of-way by
8 public utilities.

9 b. "Direct expenses" includes, but is not limited to, the
10 following:

11 (1) The cost of inspecting the crossing site before,
12 during, or after construction.

13 (2) Administrative costs including the costs of entering
14 the new crossing on the railroad's books, maps, and property
15 records.

16 (3) All document and preparation fees associated with the
17 crossing.

18 (4) The cost of flagging related to crossing activities.

19 (5) Other reasonable costs incurred due to crossing
20 activities.

21 c. "Railroad" means the owner, operator, occupant,
22 manager, or agent of a railroad right-of-way or such person's
23 successor in interest.

24 d. "Railroad right-of-way" means right-of-way or other
25 interest in real estate that is owned or operated by a
26 railroad corporation, including an interurban railway, its
27 trustees, or successor in interest; or which is occupied or
28 managed by or on behalf of such corporation, trustees, or
29 successor in interest, including an abandoned railroad right-
30 of-way which has not otherwise reverted pursuant to chapter
31 327G; or other interest in a former railroad right-of-way that
32 has been acquired or is operated by a land management company
33 or similar entity.

34 e. "Special circumstances" means unique characteristics of
35 a parcel of property which materially increase the direct

1 expenses associated with a crossing, or situations in which a
 2 crossing involves a significant and imminent likelihood of
 3 danger to the public health or safety, or is a serious threat
 4 to the safe operations of the railroad or to the current use
 5 of railroad right-of-way necessitating additional terms and
 6 conditions associated with a crossing. "Special
 7 circumstances" may include the parcel's relationship to other
 8 property, the existence of unique topography or natural
 9 resources, or other unusual characteristics or dangers
 10 inherent to the particular crossing.

11 2. APPLICABILITY. Notwithstanding section 476.1 or any
 12 other provision of this chapter which exempts a public utility
 13 in whole or in part from regulation by the board, this section
 14 applies to a public utility as defined in section 476.1. This
 15 section is applicable to both of the following:

16 a. A crossing existing on the effective date of this Act
 17 if an agreement concerning such crossing does not exist, has
 18 expired, or is terminated.

19 b. A crossing of a railroad right-of-way which crossing is
 20 first constructed or operated on or after the effective date
 21 of this Act.

22 3. RULEMAKING -- CROSSING COMPENSATION. The board shall
 23 adopt rules pursuant to chapter 17A prescribing the terms,
 24 conditions, and compensation for a crossing. The rules shall
 25 provide for a public utility to cross a railroad right-of-way
 26 consistent with the public convenience and necessity, and the
 27 provision of reasonable service to the public. However, the
 28 rules shall not prevent a railroad and a public utility from
 29 otherwise negotiating the terms and conditions covering a
 30 crossing.

31 The rules shall address issues as the board deems
 32 necessary, including both of the following:

33 a. The terms and conditions under which a public utility
 34 may cross a railroad right-of-way. Such terms and conditions
 35 shall include, but are not limited to, the following:

1 (1) A notice prior to the commencement of any crossing
2 activity, as well as relocation and removal activities
3 relating to public utility facilities located on railroad
4 right-of-way. The rules shall provide for immediate access to
5 a crossing for repair and maintenance of existing public
6 utility facilities in case of emergency, provided notice is
7 given as soon as practical after such access occurs.

8 (2) A requirement that each party shall maintain and
9 repair its property within the railroad right-of-way.

10 (3) A requirement that each party shall indemnify the
11 other for damages resulting from the use of the railroad
12 right-of-way and a determination of the amount and scope of
13 insurance or self-insurance required to cover risks associated
14 with a crossing.

15 (4) A procedure to address the payment of costs associated
16 with the relocation of public utility facilities necessary to
17 accommodate railroad operations.

18 (5) Other terms and conditions necessary to provide for
19 the safe and reasonable use of a railroad right-of-way by a
20 public utility and consistent with rules adopted by the board.

21 b. The development of a standard fee to cover the direct
22 expenses of a railroad to be paid by a public utility seeking
23 to cross a railroad right-of-way which is to be a one-time
24 charge per crossing.

25 4. COMPENSATION UNDER SPECIAL CIRCUMSTANCES. If a
26 railroad or public utility believes that special circumstances
27 exist for a particular crossing, either party may petition the
28 board for relief. If a petition is filed, the board shall
29 determine whether special circumstances exist necessitating a
30 modification of the compensation to be paid or the need for
31 additional terms and conditions. The board shall have the
32 authority to make all necessary findings of fact and
33 determinations related to the applicability of special
34 circumstances and any relief to be granted, and its
35 determination shall be considered final agency action under

1 chapter 17A. The board shall assess the costs of
2 administration of the requested action equitably against the
3 parties. A railroad or public utility that claims to be
4 aggrieved by such agency action may seek judicial review as
5 provided in chapter 17A.

6 5. AUTHORITY TO CROSS -- EMERGENCY RELIEF. Pending board
7 resolution of a claim of special circumstances raised in a
8 petition, a public utility may proceed with the construction
9 of a crossing in accordance with the rules adopted by the
10 board, unless the board, upon application for emergency relief
11 determines that the proposed construction involves a
12 significant and imminent likelihood of danger to the public
13 health or safety or is a serious threat to the safe operations
14 of the railroad or to the current use of the railroad right-
15 of-way, and necessitates immediate intervention to prevent
16 such crossing until a factual determination is made.

7 EXPLANATION

18 This bill establishes a new Code section 476.27 relating to
19 public utilities crossing railroad rights-of-way. The bill
20 requires that the utilities board adopt rules prescribing the
21 terms, conditions, and compensation for a crossing. The rules
22 are to provide for a public utility to cross a railroad right-
23 of-way consistent with the public convenience and necessity,
24 and the provision of reasonable service to the public. The
25 bill sets forth the issues which the board's rules are to
26 address including the terms and conditions under which a
27 public utility may cross a railroad right-of-way, and the
28 development of a standard fee to cover the direct expenses of
29 a railroad to be paid by a public utility seeking to cross a
30 railroad right-of-way which is to be a one-time charge per
31 crossing. The bill provides that the rules are not to prevent
32 a railroad and a public utility from otherwise negotiating the
33 terms and conditions covering a crossing. The bill provides
34 for an appeal process pursuant to Code chapter 17A if either
35 the railroad or the public utility believes that special

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1 circumstances exist for a particular crossing. The bill
2 provides that the new Code section is applicable to existing
3 and future crossings.

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3/20/00 Referred back to Commerce

FILED FEB 29 '00

SENATE FILE 2407
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3029)

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Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
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SF 2407

1 Section 1. NEW SECTION. 476.27 CROSSING -- RAILROAD
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4 context otherwise requires:

5 a. "Cross" or "crossing" means the construction,
6 operation, repair, and maintenance of reasonably necessary
7 facilities over, under, or across a railroad right-of-way by
8 public utilities.

9 b. "Direct expenses" includes, but is not limited to, the
10 following:

11 (1) The cost of inspecting the crossing site before,
12 during, or after construction.

13 (2) Administrative costs including the costs of entering
14 the new crossing on the railroad's books, maps, and property
15 records.

16 (3) All document and preparation fees associated with the
17 crossing.

18 (4) The cost of flagging related to crossing activities.

19 (5) Other reasonable costs incurred due to crossing
20 activities.

21 c. "Railroad" means the owner, operator, occupant,
22 manager, or agent of a railroad right-of-way or such person's
23 successor in interest.

24 d. "Railroad right-of-way" means right-of-way or other
25 interest in real estate that is owned or operated by a
26 railroad corporation, including an interurban railway, its
27 trustees, or successor in interest; or which is occupied or
28 managed by or on behalf of such corporation, trustees, or
29 successor in interest, including an abandoned railroad right-
30 of-way which has not otherwise reverted pursuant to chapter
31 327G; or other interest in a former railroad right-of-way that
32 has been acquired or is operated by a land management company
33 or similar entity.

34 e. "Special circumstances" means unique characteristics of
35 a parcel of property which materially increase the direct

1 expenses and damages associated with a crossing, or situations
2 in which a crossing involves a significant and imminent
3 likelihood of danger to the public health or safety, or is a
4 serious threat to the safe operations of the railroad or to
5 the current use of railroad right-of-way necessitating
6 additional terms and conditions associated with a crossing.
7 "Special circumstances" may include the parcel's relationship
8 to other property, the existence of unique topography or
9 natural resources, or other unusual characteristics or dangers
10 inherent in the particular crossing.

11 2. APPLICABILITY. Notwithstanding section 476.1 or any
12 other provision of this chapter which exempts a public utility
13 in whole or in part from regulation by the board, this section
14 applies to a public utility as defined in section 476.1 and
15 franchise cable television operators. This section is
16 applicable to both of the following:

17 a. A crossing existing on the effective date of this Act
18 if an agreement concerning such crossing does not exist, has
19 expired, or is terminated.

20 b. A crossing of a railroad right-of-way which crossing is
21 first constructed or operated on or after the effective date
22 of this Act.

23 3. RULEMAKING -- CROSSING DAMAGES. The board shall adopt
24 rules pursuant to chapter 17A prescribing the terms,
25 conditions, and damages for a crossing. The rules shall
26 provide for a public utility to cross a railroad right-of-way
27 consistent with the public convenience and necessity, and the
28 provision of reasonable service to the public. However, the
29 rules shall not prevent a railroad and a public utility from
30 otherwise negotiating the terms and conditions covering a
31 crossing.

32 The rules shall address issues as the board deems
33 necessary, including both of the following:

34 a. The terms and conditions under which a public utility
35 may cross a railroad right-of-way. Such terms and conditions

1 shall include, but are not limited to, the following:

2 (1) A notice prior to the commencement of any crossing
3 activity, as well as relocation and removal activities
4 relating to public utility facilities located on railroad
5 right-of-way. The rules shall provide for immediate access to
6 a crossing for repair and maintenance of existing facilities
7 in case of emergency, provided notice is given as soon as
8 practical after such access occurs.

9 (2) A requirement that each party shall maintain and
10 repair its property within the railroad right-of-way.

11 (3) A requirement that each party shall determine the
12 amount and scope of insurance or self-insurance required to
13 cover risks associated with a crossing.

14 (4) A procedure to address the payment of costs associated
15 with the relocation of public utility facilities necessary to
16 accommodate railroad operations.

17 (5) Terms and conditions for securing the payment of any
18 damages by the public utility before it proceeds with
19 construction, but pending final determination of a claim or an
20 appeal pursuant to this section.

21 (6) Other terms and conditions necessary to provide for
22 the safe and reasonable use of a railroad right-of-way by a
23 public utility and consistent with rules adopted by the board.

24 b. The development of standard fees to cover the direct
25 expenses or damages of a railroad to be paid by a public
26 utility seeking to cross a railroad right-of-way. The fee
27 established by the board is intended to be a one-time charge
28 per crossing, however, the fee may be periodically reviewed by
29 the board.

30 4. DAMAGES UNDER SPECIAL CIRCUMSTANCES. If a railroad or
31 public utility believes that special circumstances exist for a
32 particular crossing, either party may petition the board for
33 relief. If a petition is filed, the board shall determine
34 whether special circumstances exist necessitating a
35 modification of the damages to be paid or the need for

1 additional terms and conditions. The board shall have the
2 authority to make all necessary findings of fact and
3 determinations related to the applicability of special
4 circumstances and any relief to be granted, and, except on the
5 issue of damages, its determination shall be considered final
6 agency action under chapter 17A. The board shall assess the
7 costs of administration of the requested action equitably
8 against the parties. A railroad or public utility that claims
9 to be aggrieved by such agency action may seek judicial review
10 as provided in subsection 5 or chapter 17A, as the case may
11 be.

12 5. APPEAL OF DAMAGES. A railroad or public utility that
13 claims to be aggrieved by the board's appraisalment of damages
14 may appeal such appraisalment to the district court in the same
15 manner as provided in section 6B.18 and sections 6B.21 through
16 6B.23. In any appeal of the appraisalment, the public utility
17 shall be considered the applicant, and the railroad shall be
18 considered the condemnee. References in sections 6B.18 and
19 6B.21 to "compensation commission" mean the board as defined
20 in this chapter or appointees of the board. Unless
21 inconsistent with this section or the rules of civil
22 procedure, the appeal on the issue of damages shall otherwise
23 be conducted as provided in chapter 6B. An appeal for any
24 other issues shall be pursuant to chapter 17A.

25 6. AUTHORITY TO CROSS -- EMERGENCY RELIEF. Pending board
26 resolution of a claim of special circumstances raised in a
27 petition, a public utility, upon securing the payment of any
28 damages, may proceed with the construction of a crossing in
29 accordance with the rules adopted by the board, unless the
30 board, upon application for emergency relief determines that
31 the proposed construction involves a significant and imminent
32 likelihood of danger to the public health or safety or is a
33 serious threat to the safe operations of the railroad or to
34 the current use of the railroad right-of-way, and necessitates
35 immediate intervention to prevent such crossing until a

1 factual determination is made.

2 EXPLANATION

3 This bill establishes a new Code section 476.27 relating to
4 public utilities crossing railroad rights-of-way. The bill
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