

4/5/01 Dotase

REPRINTED

COMMERCE

FILED MAR 29 '01

SENATE FILE 515  
BY IVERSON and GRONSTAL

Passed Senate, Date 4-9-01 Passed House, Date 5/3/01 (P.1815)  
Vote: Ayes 46 Nays 0 Vote: Ayes 97 Nays 0  
Approved May 16, 2001

A BILL FOR

1 An Act providing for the crossing of railroad rights-of-way by  
2 public utilities, and providing applicability dates.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

SF 515  
COMMERCE

1 Section 1. NEW SECTION. 476.27 PUBLIC UTILITY CROSSING

2 -- RAILROAD RIGHTS-OF-WAY.

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

5 a. "Board" means the Iowa utilities board.

6 b. "Crossing" means the construction, operation, repair,  
7 or maintenance of a facility over, under, or across a railroad  
8 right-of-way by a public utility.

9 c. "Direct expenses" includes, but is not limited to, any  
10 or all of the following:

11 (1) The cost of inspecting and monitoring the crossing  
12 site.

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

18 (3) Document and preparation fees associated with a  
19 crossing, and any engineering specifications related to the  
20 crossing.

21 (4) Damages assessed in connection with the rights granted  
22 to a public utility with respect to a crossing.

23 d. "Facility" means any cable, conduit, wire, pipe, casing  
24 pipe, supporting poles and guys, manhole, or other material  
25 and equipment, that is used by a public utility to furnish any  
26 of the following:

27 (1) Communications services.

28 (2) Electricity.

29 (3) Gas by piped system.

30 (4) Water, other than storm water, by piped system.

31 e. "Public utility" means a public utility as defined in  
32 section 476.1, except that, for purposes of this section,  
33 "public utility" also includes all mutual telephone companies,  
34 municipally owned facilities, unincorporated villages,  
35 waterworks, municipally owned waterworks, joint water

1 utilities, rural water districts incorporated under chapter  
2 357A or 504A, cooperative water associations, franchise cable  
3 television operators, and persons furnishing electricity to  
4 five or fewer persons.

5 f. "Railroad" or "railroad corporation" means a railroad  
6 corporation as defined in section 321.1, which is the owner,  
7 operator, occupant, manager, or agent of a railroad right-of-  
8 way or such person's successor in interest. "Railroad" and  
9 "railroad corporation" include an interurban railway.

10 g. "Railroad right-of-way" means one of the following:

11 (1) A right-of-way or other interest in real estate that  
12 is owned or operated by a railroad corporation, the trustees  
13 of a railroad corporation, or the successor in interest of a  
14 railroad corporation.

15 (2) A right-of-way or other interest in real estate that  
16 is occupied or managed by or on behalf of a railroad  
17 corporation, the trustees of a railroad corporation, or the  
18 successor in interest of a railroad corporation, including an  
19 abandoned railroad right-of-way that has not otherwise  
20 reverted pursuant to chapter 327G.

21 (3) Another interest in a former railroad right-of-way  
22 that has been acquired or is operated by a land management  
23 company or similar entity.

24 h. "Special circumstances" means either of the following:

25 (1) The existence of characteristics of a segment of  
26 railroad right-of-way or of a proposed utility facility that  
27 increase the direct expenses associated with a proposed  
28 crossing.

29 (2) A proposed crossing that involves a significant and  
30 imminent likelihood of danger to the public health or safety,  
31 or that is a serious threat to the safe operations of the  
32 railroad, or to the current use of the railroad right-of-way,  
33 necessitating additional terms and conditions associated with  
34 the crossing.

35 2. RULEMAKING AND STANDARD CROSSING FEE. The board shall

1 adopt rules pursuant to chapter 17A prescribing the terms and  
2 conditions for a crossing. The rules shall provide that any  
3 crossing be consistent with the public convenience and  
4 necessity, and reasonable service to the public. The rules,  
5 at a minimum, shall address the following:

6 a. The terms and conditions applicable to a crossing  
7 including, but not limited to, the following:

8 (1) Notification required prior to the commencement of any  
9 crossing activity.

10 (2) A requirement that the railroad and the public utility  
11 each maintain and repair the person's own property within the  
12 railroad right-of-way, and bear responsibility for each  
13 person's own acts and omissions; except that the public  
14 utility shall be responsible for any bodily injury or property  
15 damage that typically would be covered under a standard  
16 railroad protective liability insurance policy.

17 (3) The amount and scope of insurance or self-insurance  
18 required to cover risks associated with a crossing.

19 (4) A procedure to address the payment of costs associated  
20 with the relocation of public utility facilities within the  
21 railroad right-of-way necessary to accommodate railroad  
22 operations.

23 (5) Terms and conditions for securing the payment of any  
24 damages by the public utility before it proceeds with a  
25 crossing.

26 (6) Immediate access to a crossing for repair and  
27 maintenance of existing facilities in case of emergency.

28 (7) Engineering standards for utility facilities crossing  
29 railroad rights-of-way.

30 (8) Provision for expedited construction, absent a claim  
31 of special circumstances, after payment by the public utility  
32 of the standard crossing fee and submission of completed  
33 engineering specifications to the railroad.

34 (9) Other terms and conditions necessary to provide for  
35 the safe and reasonable use of a railroad right-of-way by a

1 public utility, and consistent with rules adopted by the  
2 board, including any complaint procedures adopted by the board  
3 to enforce the rules.

4 b. Unless otherwise agreed by the parties and subject to  
5 subsection 4, a public utility that locates its facilities  
6 within the railroad right-of-way shall pay the railroad a one-  
7 time standard crossing fee of seven hundred fifty dollars for  
8 each crossing. The standard crossing fee shall be in lieu of  
9 any license or any other fees or charges to reimburse the  
10 railroad for the direct expenses incurred by the railroad as a  
11 result of the construction of the facilities. The public  
12 utility shall also reimburse the railroad for any actual  
13 flagging expenses associated with a crossing in addition to  
14 the standard crossing fee.

15 3. POWERS NOT LIMITED. a. Notwithstanding subsection 2,  
16 rules adopted by the board shall not prevent a railroad and a  
17 public utility from otherwise negotiating the terms and  
18 conditions applicable to a crossing or the resolution of any  
19 disputes relating to such crossing.

20 b. Notwithstanding paragraph "a", neither this subsection  
21 nor this section shall impair the authority of a public  
22 utility to secure crossing rights by easement pursuant to the  
23 exercise of the power of eminent domain.

24 4. SPECIAL CIRCUMSTANCES. a. A railroad or public  
25 utility that believes special circumstances exist for a  
26 particular crossing may petition the board for relief.

27 (1) If a petition for relief is filed, the board shall  
28 determine whether special circumstances exist that necessitate  
29 either a modification of the direct expenses to be paid, or  
30 the need for additional terms and conditions.

31 (2) The board may make any necessary findings of fact and  
32 determinations related to the existence of special  
33 circumstances, as well as any relief to be granted.

34 (3) A determination of the board, except for a  
35 determination on the issue of damages for the rights granted

1 to a public utility with respect to a crossing, shall be  
2 considered final agency action subject to judicial review  
3 under chapter 17A.

4 (4) The board shall assess the costs associated with a  
5 petition for relief equitably against the parties.

6 b. A railroad or public utility that claims to be  
7 aggrieved by a determination of the board on the issue of  
8 damages for the rights granted to a public utility with  
9 respect to a crossing may seek judicial review as provided in  
10 subsection 5.

11 5. APPEALS. a. A railroad or public utility that claims  
12 to be aggrieved by the board's determination of damages for  
13 rights granted to a public utility may appeal the board's  
14 determination to the district court in the same manner as  
15 provided in section 6B.18 and sections 6B.21 through 6B.23.  
16 In any appeal of the determination of damages, the public  
17 utility shall be considered the applicant, and the railroad  
18 shall be considered the condemnee. References in sections  
19 6B.18 and 6B.21 to "compensation commission" mean the board as  
20 defined in this section, or appointees of the board.

21 b. An appeal of any determination of the board other than  
22 the issues of damages for rights granted to a public utility  
23 shall be pursuant to chapter 17A.

24 6. AUTHORITY TO CROSS -- EMERGENCY RELIEF. Pending board  
25 resolution of a claim of special circumstances raised in a  
26 petition, a public utility may, upon securing the payment of  
27 any damages, and upon submission of completed engineering  
28 specifications to the railroad, proceed with a crossing in  
29 accordance with the rules adopted by the board, unless the  
30 board, upon application for emergency relief, determines that  
31 there is a reasonable likelihood that either of the following  
32 conditions exist:

33 a. That the proposed crossing involves a significant and  
34 imminent likelihood of danger to the public health or safety.

35 b. That the proposed crossing is a serious threat to the

1 safe operations of the railroad or to the current use of the  
2 railroad right-of-way.

3 If the board determines that there is a reasonable  
4 likelihood that the proposed crossing meets either condition,  
5 then the board shall immediately intervene to prevent the  
6 crossing until a factual determination is made.

7 7. CONFLICTING PROVISIONS. Notwithstanding any provision  
8 of the Code to the contrary, this section shall apply in all  
9 crossings of railroad rights-of-way involving a public utility  
10 as defined in this section, and shall govern in the event of  
11 any conflict with any other provision of law.

12 Sec. 2. APPLICABILITY. This Act applies to the following:

13 1. A crossing commenced prior to July 1, 2001, if an  
14 agreement concerning the crossing has expired or is  
15 terminated.

16 2. A crossing commenced on or after July 1, 2001.

17 EXPLANATION

18 This bill creates new Code section 476.27 providing  
19 definitions and procedures for crossings of railroad rights-  
20 of-way by public utilities.

21 The bill directs the Iowa utilities board to adopt rules  
22 prescribing the terms and conditions for such a crossing. The  
23 rules are to address notification requirements, maintenance  
24 and repair requirements, insurance requirements, procedures  
25 for payment of certain costs and damages, emergency repair and  
26 maintenance requirements, engineering standards, expedited  
27 construction, and other necessary terms and conditions. The  
28 bill provides that the railroad and public utility each bear  
29 responsibility for each person's own acts and omissions,  
30 except that the public utility shall be responsible for any  
31 bodily injury or property damage typically covered by a  
32 standard railroad protective liability insurance policy.

33 A standard crossing fee of \$750 is established to cover the  
34 direct expenses of a railroad, to be paid by a public utility  
35 seeking to commence a crossing. The fee is a one-time charge

1 per crossing in lieu of any license or other fee or charge.  
2 The utility shall also reimburse the railroad for any actual  
3 flagging expenses in addition to the standard crossing fee.

4 The bill provides that any rules adopted by the Iowa  
5 utilities board shall not prevent a railroad and a public  
6 utility from negotiating different terms and conditions  
7 applicable to a crossing. The bill states that the new  
8 provisions shall not impair the authority of a public utility  
9 to secure crossing rights by easement pursuant to the exercise  
10 of the power of eminent domain.

11 The bill allows a railroad or public utility that believes  
12 special circumstances exist for a particular crossing to  
13 petition the Iowa utilities board for relief, pursuant to  
14 which the board shall determine whether special circumstances  
15 exist that necessitate either a modification of the direct  
16 expenses to be paid, or the need for additional terms and  
17 conditions for the crossing. A railroad or public utility  
18 that claims to be aggrieved by a determination of the board on  
19 the issue of damages for the rights granted to a public  
20 utility with respect to a crossing may appeal in essentially  
21 the same procedural manner as a party may appeal an  
22 appraisal of damages by a county compensation commission  
23 under the procedures in Code chapter 6B for eminent domain.  
24 An appeal of any other determination regarding crossings by  
25 the Iowa utilities board shall proceed pursuant to the  
26 provisions of the Iowa administrative procedure Act in Code  
27 chapter 17A.

28 The bill provides that, pending resolution of a claim of  
29 special circumstances by the Iowa utilities board, a public  
30 utility, upon securing the payment of any damages, may proceed  
31 with a crossing in accordance with rules adopted by the board  
32 unless the board determines, upon application for emergency  
33 relief, that intervention is necessary either to prevent a  
34 crossing that involves a significant and imminent likelihood  
35 of danger to the public health or safety, or to prevent a



1 crossing that is a serious threat to the safe operation of the  
2 railroad or to the current use of the railroad right-of-way.

3 The bill also provides that new Code section 476.27 applies  
4 to all public utility crossings, and that the provision  
5 governs over any other conflicting provision of law.

6 The bill applies to a crossing commenced prior to July 1,  
7 2001, if an agreement concerning the crossing has expired or  
8 is terminated, and to a crossing commenced on or after July 1,  
9 2001.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

**SENATE FILE 515****S-3310**

1 Amend Senate File 515 as follows:  
2 1. Page 1, by inserting after line 29 the  
3 following:  
4 "( ) Sanitary and storm sewer service."  
5 2. Page 1, by striking line 30, and inserting the  
6 following:  
7 "( ) Water by piped system."  
8 3. Page 2, line 8, by striking the words "such  
9 person's" and inserting the following: "the railroad  
10 corporation's".  
11 4. Page 2, line 10, by inserting after the word  
12 "one" the following: "or more".  
13 5. Page 2, line 24, by inserting after the word  
14 "either" the following: "or both".  
15 6. Page 3, line 30, by striking the word  
16 "construction" and inserting the following:  
17 "crossing".  
18 7. Page 4, line 11, by striking the words  
19 "construction of the facilities" and inserting the  
20 following: "crossing".  
21 8. By renumbering, redesignating, and correcting  
22 internal references as necessary.

By MICHAEL E. GRONSTAL  
STEWART IVERSON, Jr.

**S-3310** FILED APRIL 9, 2001

ADOPTED

(P1021)



1 Section 1. NEW SECTION. 476.27 PUBLIC UTILITY CROSSING  
2 -- RAILROAD RIGHTS-OF-WAY.

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

5 a. "Board" means the Iowa utilities board.

6 b. "Crossing" means the construction, operation, repair,  
7 or maintenance of a facility over, under, or across a railroad  
8 right-of-way by a public utility.

9 c. "Direct expenses" includes, but is not limited to, any  
10 or all of the following:

11 (1) The cost of inspecting and monitoring the crossing  
12 site.

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

18 (3) Document and preparation fees associated with a  
19 crossing, and any engineering specifications related to the  
20 crossing.

21 (4) Damages assessed in connection with the rights granted  
22 to a public utility with respect to a crossing.

23 d. "Facility" means any cable, conduit, wire, pipe, casing  
24 pipe, supporting poles and guys, manhole, or other material  
25 and equipment, that is used by a public utility to furnish any  
26 of the following:

27 (1) Communications services.

28 (2) Electricity.

29 (3) Gas by piped system.

30 (4) Sanitary and storm sewer service.

31 (5) Water by piped system.

32 e. "Public utility" means a public utility as defined in  
33 section 476.1, except that, for purposes of this section,  
34 "public utility" also includes all mutual telephone companies,  
35 municipally owned facilities, unincorporated villages,

1 waterworks, municipally owned waterworks, joint water  
2 utilities, rural water districts incorporated under chapter  
3 357A or 504A, cooperative water associations, franchise cable  
4 television operators, and persons furnishing electricity to  
5 five or fewer persons.

6 f. "Railroad" or "railroad corporation" means a railroad  
7 corporation as defined in section 321.1, which is the owner,  
8 operator, occupant, manager, or agent of a railroad right-of-  
9 way or the railroad corporation's successor in interest.  
10 "Railroad" and "railroad corporation" include an interurban  
11 railway.

12 g. "Railroad right-of-way" means one or more of the  
13 following:

14 (1) A right-of-way or other interest in real estate that  
15 is owned or operated by a railroad corporation, the trustees  
16 of a railroad corporation, or the successor in interest of a  
17 railroad corporation.

18 (2) A right-of-way or other interest in real estate that  
19 is occupied or managed by or on behalf of a railroad  
20 corporation, the trustees of a railroad corporation, or the  
21 successor in interest of a railroad corporation, including an  
22 abandoned railroad right-of-way that has not otherwise  
23 reverted pursuant to chapter 327G.

24 (3) Another interest in a former railroad right-of-way  
25 that has been acquired or is operated by a land management  
26 company or similar entity.

27 h. "Special circumstances" means either or both of the  
28 following:

29 (1) The existence of characteristics of a segment of  
30 railroad right-of-way or of a proposed utility facility that  
31 increase the direct expenses associated with a proposed  
32 crossing.

33 (2) A proposed crossing that involves a significant and  
34 imminent likelihood of danger to the public health or safety,  
35 or that is a serious threat to the safe operations of the

1 railroad, or to the current use of the railroad right-of-way,  
2 necessitating additional terms and conditions associated with  
3 the crossing.

4 2. RULEMAKING AND STANDARD CROSSING FEE. The board shall  
5 adopt rules pursuant to chapter 17A prescribing the terms and  
6 conditions for a crossing. The rules shall provide that any  
7 crossing be consistent with the public convenience and  
8 necessity, and reasonable service to the public. The rules,  
9 at a minimum, shall address the following:

10 a. The terms and conditions applicable to a crossing  
11 including, but not limited to, the following:

12 (1) Notification required prior to the commencement of any  
13 crossing activity.

14 (2) A requirement that the railroad and the public utility  
15 each maintain and repair the person's own property within the  
16 railroad right-of-way, and bear responsibility for each  
17 person's own acts and omissions; except that the public  
18 utility shall be responsible for any bodily injury or property  
19 damage that typically would be covered under a standard  
20 railroad protective liability insurance policy.

21 (3) The amount and scope of insurance or self-insurance  
22 required to cover risks associated with a crossing.

23 (4) A procedure to address the payment of costs associated  
24 with the relocation of public utility facilities within the  
25 railroad right-of-way necessary to accommodate railroad  
26 operations.

27 (5) Terms and conditions for securing the payment of any  
28 damages by the public utility before it proceeds with a  
29 crossing.

30 (6) Immediate access to a crossing for repair and  
31 maintenance of existing facilities in case of emergency.

32 (7) Engineering standards for utility facilities crossing  
33 railroad rights-of-way.

34 (8) Provision for expedited crossing, absent a claim of  
35 special circumstances, after payment by the public utility of

1 the standard crossing fee and submission of completed  
2 engineering specifications to the railroad.

3 (9) Other terms and conditions necessary to provide for  
4 the safe and reasonable use of a railroad right-of-way by a  
5 public utility, and consistent with rules adopted by the  
6 board, including any complaint procedures adopted by the board  
7 to enforce the rules.

8 b. Unless otherwise agreed by the parties and subject to  
9 subsection 4, a public utility that locates its facilities  
10 within the railroad right-of-way shall pay the railroad a one-  
11 time standard crossing fee of seven hundred fifty dollars for  
12 each crossing. The standard crossing fee shall be in lieu of  
13 any license or any other fees or charges to reimburse the  
14 railroad for the direct expenses incurred by the railroad as a  
15 result of the crossing. The public utility shall also  
16 reimburse the railroad for any actual flagging expenses  
17 associated with a crossing in addition to the standard  
18 crossing fee.

19 3. POWERS NOT LIMITED. a. Notwithstanding subsection 2,  
20 rules adopted by the board shall not prevent a railroad and a  
21 public utility from otherwise negotiating the terms and  
22 conditions applicable to a crossing or the resolution of any  
23 disputes relating to such crossing.

24 b. Notwithstanding paragraph "a", neither this subsection  
25 nor this section shall impair the authority of a public  
26 utility to secure crossing rights by easement pursuant to the  
27 exercise of the power of eminent domain.

28 4. SPECIAL CIRCUMSTANCES. a. A railroad or public  
29 utility that believes special circumstances exist for a  
30 particular crossing may petition the board for relief.

31 (1) If a petition for relief is filed, the board shall  
32 determine whether special circumstances exist that necessitate  
33 either a modification of the direct expenses to be paid, or  
34 the need for additional terms and conditions.

35 (2) The board may make any necessary findings of fact and

1 determinations related to the existence of special  
2 circumstances, as well as any relief to be granted.

3 (3) A determination of the board, except for a  
4 determination on the issue of damages for the rights granted  
5 to a public utility with respect to a crossing, shall be  
6 considered final agency action subject to judicial review  
7 under chapter 17A.

8 (4) The board shall assess the costs associated with a  
9 petition for relief equitably against the parties.

10 b. A railroad or public utility that claims to be  
11 aggrieved by a determination of the board on the issue of  
12 damages for the rights granted to a public utility with  
13 respect to a crossing may seek judicial review as provided in  
14 subsection 5.

15 5. APPEALS. a. A railroad or public utility that claims  
16 to be aggrieved by the board's determination of damages for  
17 rights granted to a public utility may appeal the board's  
18 determination to the district court in the same manner as  
19 provided in section 6B.18 and sections 6B.21 through 6B.23.  
20 In any appeal of the determination of damages, the public  
21 utility shall be considered the applicant, and the railroad  
22 shall be considered the condemnee. References in sections  
23 6B.18 and 6B.21 to "compensation commission" mean the board as  
24 defined in this section, or appointees of the board.

25 b. An appeal of any determination of the board other than  
26 the issues of damages for rights granted to a public utility  
27 shall be pursuant to chapter 17A.

28 6. AUTHORITY TO CROSS -- EMERGENCY RELIEF. Pending board  
29 resolution of a claim of special circumstances raised in a  
30 petition, a public utility may, upon securing the payment of  
31 any damages, and upon submission of completed engineering  
32 specifications to the railroad, proceed with a crossing in  
33 accordance with the rules adopted by the board, unless the  
34 board, upon application for emergency relief, determines that  
35 there is a reasonable likelihood that either of the following



1 conditions exist:

2 a. That the proposed crossing involves a significant and  
3 imminent likelihood of danger to the public health or safety.

4 b. That the proposed crossing is a serious threat to the  
5 safe operations of the railroad or to the current use of the  
6 railroad right-of-way.

7 If the board determines that there is a reasonable  
8 likelihood that the proposed crossing meets either condition,  
9 then the board shall immediately intervene to prevent the  
10 crossing until a factual determination is made.

11 7. CONFLICTING PROVISIONS. Notwithstanding any provision  
12 of the Code to the contrary, this section shall apply in all  
13 crossings of railroad rights-of-way involving a public utility  
14 as defined in this section, and shall govern in the event of  
15 any conflict with any other provision of law.

16 Sec. 2. APPLICABILITY. This Act applies to the following:

17 1. A crossing commenced prior to July 1, 2001, if an  
18 agreement concerning the crossing has expired or is  
19 terminated.

20 2. A crossing commenced on or after July 1, 2001.

21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

SENATE FILE 515

H-1742

- 1 Amend Senate File 515, as amended, passed, and  
2 reprinted by the Senate, as follows:  
3 1. Page 3, line 4, by inserting after the word  
4 "board" the following: ", in consultation with the  
5 state department of transportation,".  
6 2. Page 4, line 1, by inserting after the word  
7 "fee" the following: ", if applicable,".  
8 3. Page 4, line 10, by inserting after the word  
9 "right-of-way" the following: "for a crossing, other  
10 than a crossing along the public roads of the state  
11 pursuant to chapter 477,".  
12 4. By renumbering, redesignating, and correcting  
13 internal references as necessary.

By COMMITTEE ON COMMERCE AND REGULATION  
HANSEN of Pottawattamie, Chairperson

H-1742 FILED APRIL 26, 2001

*Adopted 5/3/01 (p. 1815)*

HOUSE AMENDMENT TO  
SENATE FILE 515

S-3633

- 1 Amend Senate File 515, as amended, passed, and  
2 reprinted by the Senate, as follows:  
3 1. Page 3, line 4, by inserting after the word  
4 "board" the following: ", in consultation with the  
5 state department of transportation,".  
6 2. Page 4, line 1, by inserting after the word  
7 "fee" the following: ", if applicable,".  
8 3. Page 4, line 10, by inserting after the word  
9 "right-of-way" the following: "for a crossing, other  
10 than a crossing along the public roads of the state  
11 pursuant to chapter 477,".  
12 4. By renumbering, redesignating, and correcting  
13 internal references as necessary.

RECEIVED FROM THE HOUSE

S-3633 FILED MAY 3, 2001

CONCURRED *(p. 1503)*

## SENATE FILE 515

H-1748

1 Amend Senate File 515, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting before line 1 the  
4 following:

5 "Section 1. NEW SECTION. 327F.21 RAILROAD TRAIN  
6 CREWS.

7 1. As used in this section, unless the context  
8 otherwise requires:

9 a. "Cab" means the crew compartment of the engine  
10 of a railroad train or locomotive.

11 b. "Department" means the state department of  
12 transportation.

13 c. "Director" means the director of transportation  
14 or the director's designee.

15 d. "Qualified railroad locomotive engineer" means  
16 a person who has successfully completed a railroad  
17 carrier's training program for a train service  
18 engineer, locomotive servicing engineer, or student  
19 engineer and passed an examination on railroad  
20 operation rules.

21 e. "Qualified railroad trainperson" means a person  
22 who has successfully completed a railroad carrier's  
23 training program and passed an examination on railroad  
24 operation rules.

25 2. Any person operating or controlling a railroad  
26 in this state shall not allow the operation of any  
27 railroad train or locomotive in this state unless the  
28 railroad train or locomotive has a crew of at least  
29 two individuals. One of the individuals shall be a  
30 qualified railroad locomotive engineer. The other  
31 individual shall be either a qualified railroad  
32 locomotive engineer or a qualified railroad  
33 trainperson. The qualified railroad locomotive  
34 engineer shall be present in the cab and operate the  
35 control locomotive at all times that the railroad  
36 train or locomotive is in motion. The other crew  
37 member shall be present in the cab at all times the  
38 railroad train or locomotive is in motion, but may  
39 dismount the railroad train or locomotive when  
40 necessary to perform switching activities and other  
41 job-related duties. However, this subsection shall  
42 not apply to the extent that it is contrary to or  
43 inconsistent with a regulation or order of the federal  
44 railroad administration.

45 3. The director may, pursuant to rules adopted by  
46 the department, grant an exception to the requirements  
47 of subsection 2 if the director determines that the  
48 exception will not endanger the life or property of  
any person.

49 4. A person who violates this section is, upon

H-1748

**H-1748**

Page 2

1 conviction for a first offense, subject to a schedule  
2 "one" penalty as provided under section 327C.5. A  
3 person who violates this section is, upon conviction  
4 for a second offense committed within three years of  
5 the first offense, subject to a schedule "two" penalty  
6 as provided under section 327C.5. A person who  
7 violates this section is, upon conviction for a third  
8 or subsequent offense committed within three years of  
9 the first offense, subject to a schedule "three"  
10 penalty as provided under section 327C.5."

11 2. Title page, line 1, by inserting after the  
12 word "Act" the following: "relating to railroads,  
13 by".

14 3. Title page, line 2, by inserting after the  
15 word "utilities," the following: "addressing railroad  
16 crew safety, providing penalties,".

17 4. By renumbering as necessary.

By T. TAYLOR of Linn

**H-1748** FILED APRIL 27, 2001  
*w/d 5/3/01 (p.1815)*

**SENATE FILE 515****H-1749**

1 Amend Senate File 515, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting before line 1 the  
4 following:

5 "Section 1. NEW SECTION. 327F.8 CLOSE-CLEARANCE  
6 WARNING DEVICES.

7 1. A railroad company shall place a warning device  
8 at a location where the close-clearance between a  
9 railway owned by the railroad company and a building,  
10 machinery, trees, brush, or other object is such that  
11 the building, machinery, trees, brush, or other object  
12 physically impedes a person who is lawfully riding the  
13 side of the train in the course of the person's duties  
14 in service to the railroad company from clearing the  
15 building, machinery, trees, brush, or other object.

16 2. The warning device shall be placed in a  
17 location which provides adequate notice to a person  
18 riding the side of a train so that the person may  
19 prepare for the close-clearance.

20 3. Placement of a warning device pursuant to this  
21 section does not relieve a railroad company from any  
22 duties required under chapter 317 or section 327F.27.

23 4. A violation of this section is punishable as a  
24 schedule "one" penalty under section 327C.5."

25 2. Title page, line 1, by inserting after the  
26 word "Act" the following: "relating to railroads,  
27 by".

28 3. Title page, line 2, by inserting after the  
29 word "utilities," the following: "providing for  
30 certain warning devices,".

31 4. By renumbering as necessary.

By T. TAYLOR of Linn *w/d 5/3/01 (p.1815)*

SENATE FILE 515

AN ACT  
PROVIDING FOR THE CROSSING OF RAILROAD RIGHTS-OF-WAY BY PUBLIC  
UTILITIES, AND PROVIDING APPLICABILITY DATES.

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

Section 1. NEW SECTION. 476.27 PUBLIC UTILITY CROSSING  
-- RAILROAD RIGHTS-OF-WAY.

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

- a. "Board" means the Iowa utilities board.
- b. "Crossing" means the construction, operation, repair,  
or maintenance of a facility over, under, or across a railroad  
right-of-way by a public utility.
- c. "Direct expenses" includes, but is not limited to, any  
or all of the following:
  - (1) The cost of inspecting and monitoring the crossing  
site.
  - (2) Administrative and engineering costs for review of  
specifications; for entering a crossing on the railroad's  
books, maps, and property records; and other reasonable  
administrative and engineering costs incurred as a result of  
the crossing.

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

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

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

- (1) Communications services.
- (2) Electricity.
- (3) Gas by piped system.
- (4) Sanitary and storm sewer service.
- (5) Water by piped system.

e. "Public utility" means a public utility as defined in  
section 476.1, except that, for purposes of this section,  
"public utility" also includes all mutual telephone companies,  
municipally owned facilities, unincorporated villages,  
waterworks, municipally owned waterworks, joint water  
utilities, rural water districts incorporated under chapter  
357A or 504A, cooperative water associations, franchise cable  
television operators, and persons furnishing electricity to  
five or fewer persons.

f. "Railroad" or "railroad corporation" means a railroad  
corporation as defined in section 321.1, which is the owner,  
operator, occupant, manager, or agent of a railroad right-of-  
way or the railroad corporation's successor in interest.  
"Railroad" and "railroad corporation" include an interurban  
railway.

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

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

(2) A right-of-way or other interest in real estate that is occupied or managed by or on behalf of a railroad corporation, the trustees of a railroad corporation, or the successor in interest of a railroad corporation, including an abandoned railroad right-of-way that has not otherwise reverted pursuant to chapter 327G.

(3) Another interest in a former railroad right-of-way that has been acquired or is operated by a land management company or similar entity.

h. "Special circumstances" means either or both of the following:

(1) The existence of characteristics of a segment of railroad right-of-way or of a proposed utility facility that increase the direct expenses associated with a proposed crossing.

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

2. RULEMAKING AND STANDARD CROSSING FEE. The board, in consultation with the state department of transportation, shall adopt rules pursuant to chapter 17A prescribing the terms and conditions for a crossing. The rules shall provide that any crossing be consistent with the public convenience and necessity, and reasonable service to the public. The rules, at a minimum, shall address the following:

a. The terms and conditions applicable to a crossing including, but not limited to, the following:

(1) Notification required prior to the commencement of any crossing activity.

(2) A requirement that the railroad and the public utility each maintain and repair the person's own property within the railroad right-of-way, and bear responsibility for each

person's own acts and omissions; except that the public utility shall be responsible for any bodily injury or property damage that typically would be covered under a standard railroad protective liability insurance policy.

(3) The amount and scope of insurance or self-insurance required to cover risks associated with a crossing.

(4) A procedure to address the payment of costs associated with the relocation of public utility facilities within the railroad right-of-way necessary to accommodate railroad operations.

(5) Terms and conditions for securing the payment of any damages by the public utility before it proceeds with a crossing.

(6) Immediate access to a crossing for repair and maintenance of existing facilities in case of emergency.

(7) Engineering standards for utility facilities crossing railroad rights-of-way.

(8) Provision for expedited crossing, absent a claim of special circumstances, after payment by the public utility of the standard crossing fee, if applicable, and submission of completed engineering specifications to the railroad.

(9) Other terms and conditions necessary to provide for the safe and reasonable use of a railroad right-of-way by a public utility, and consistent with rules adopted by the board, including any complaint procedures adopted by the board to enforce the rules.

b. Unless otherwise agreed by the parties and subject to subsection 4, a public utility that locates its facilities within the railroad right-of-way for a crossing, other than a crossing along the public roads of the state pursuant to chapter 477, shall pay the railroad a one-time standard crossing fee of seven hundred fifty dollars for each crossing. The standard crossing fee shall be in lieu of any license or any other fees or charges to reimburse the railroad for the direct expenses incurred by the railroad as a result of the

crossing. The public utility shall also reimburse the railroad for any actual flagging expenses associated with a crossing in addition to the standard crossing fee.

3. POWERS NOT LIMITED. a. Notwithstanding subsection 2, rules adopted by the board shall not prevent a railroad and a public utility from otherwise negotiating the terms and conditions applicable to a crossing or the resolution of any disputes relating to such crossing.

b. Notwithstanding paragraph "a", neither this subsection nor this section shall impair the authority of a public utility to secure crossing rights by easement pursuant to the exercise of the power of eminent domain.

4. SPECIAL CIRCUMSTANCES. a. A railroad or public utility that believes special circumstances exist for a particular crossing may petition the board for relief.

(1) If a petition for relief is filed, the board shall determine whether special circumstances exist that necessitate either a modification of the direct expenses to be paid, or the need for additional terms and conditions.

(2) The board may make any necessary findings of fact and determinations related to the existence of special circumstances, as well as any relief to be granted.

(3) A determination of the board, except for a determination on the issue of damages for the rights granted to a public utility with respect to a crossing, shall be considered final agency action subject to judicial review under chapter 17A.

(4) The board shall assess the costs associated with a petition for relief equitably against the parties.

b. A railroad or public utility that claims to be aggrieved by a determination of the board on the issue of damages for the rights granted to a public utility with respect to a crossing may seek judicial review as provided in subsection 5.

5. APPEALS. a. A railroad or public utility that claims to be aggrieved by the board's determination of damages for rights granted to a public utility may appeal the board's determination to the district court in the same manner as provided in section 6B.18 and sections 6B.21 through 6B.23. In any appeal of the determination of damages, the public utility shall be considered the applicant, and the railroad shall be considered the condemnee. References in sections 6B.18 and 6B.21 to "compensation commission" mean the board as defined in this section, or appointees of the board.

b. An appeal of any determination of the board other than the issues of damages for rights granted to a public utility shall be pursuant to chapter 17A.

6. AUTHORITY TO CROSS -- EMERGENCY RELIEF. Pending board resolution of a claim of special circumstances raised in a petition, a public utility may, upon securing the payment of any damages, and upon submission of completed engineering specifications to the railroad, proceed with a crossing in accordance with the rules adopted by the board, unless the board, upon application for emergency relief, determines that there is a reasonable likelihood that either of the following conditions exist:

a. That the proposed crossing involves a significant and imminent likelihood of danger to the public health or safety.

b. That the proposed crossing is a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way.

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

7. CONFLICTING PROVISIONS. Notwithstanding any provision of the Code to the contrary, this section shall apply in all crossings of railroad rights-of-way involving a public utility as defined in this section, and shall govern in the event of any conflict with any other provision of law.

- Sec. 2. APPLICABILITY. This Act applies to the following:
1. A crossing commenced prior to July 1, 2001, if an agreement concerning the crossing has expired or is terminated.
  2. A crossing commenced on or after July 1, 2001.

---

MARY E. KRAMER  
President of the Senate

---

BRENT SIEGRIST  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 515, Seventy-ninth General Assembly.

---

MICHAEL E. MARSHALL  
Secretary of the Senate

Approved 5/16/01, 2001

---

THOMAS J. VILSACK  
Governor