

1 HOUSE BILL NO. 1752
 2 AMENDMENT IN THE NATURE OF A SUBSTITUTE
 3 (Proposed by the House Committee on Commerce and Energy
 4 on _____)
 5 (Patron Prior to Substitute--Delegate Head)

6 A BILL to amend the Code of Virginia by adding a section numbered 56-16.3, relating to public utilities;
 7 fiber optic broadband lines crossing railroads.

8 **Be it enacted by the General Assembly of Virginia:**

9 **1. That the Code of Virginia is amended by adding a section numbered 56-16.3 as follows:**

10 **§ 56-16.3. Fiber optic broadband lines crossing railroads.**

11 A. For the purposes of this section:

12 "Broadband service provider" means (i) an entity that provides broadband service through the
 13 utilization of a fiber optic broadband line, coaxial cable, or other wireline system or (ii) a Phase I or Phase
 14 II Utility, as those terms are defined in subdivision A 1 of § 56-585.1, or a cooperative, as defined in §
 15 56-231.15, that provides middle-mile infrastructure to Internet service providers in areas of the
 16 Commonwealth unserved by broadband.

17 "Direct expenses" includes (i) the cost of inspecting and monitoring the crossing site; (ii)
 18 administrative and engineering costs for review of specifications and for entering a crossing on the
 19 railroad's books, maps, and property records, and other reasonable administrative and engineering costs
 20 incurred as a result of the crossing; and (iii) document and preparation fees associated with a crossing and
 21 any engineering specifications related to the crossing.

22 "Fiber optic broadband line" means (i) a fiber optic cable consisting of one or more thin flexible
 23 fibers with a glass core through which light signals can transmit data as pulses, a coaxial cable, or other
 24 wireline system of technology used for broadband distribution or (ii) the middle-mile infrastructure to
 25 Internet service providers in areas of the Commonwealth unserved by broadband.

26 "Railroad company" includes any company, trustee, or other person that owns, leases, or operates
27 a railroad or owns or leases the land upon which a railroad is operated, and any company, trustee, or other
28 person to which a railroad company has granted rights to collect or retain all or a portion of any revenue
29 stream owed by a third party for use of or access to such railroad company's facilities or property.

30 "Standard cumulative crossing fee" means a one-time payment to reimburse the railroad company
31 for all direct expenses, and in lieu of any license, application, risk, or occupancy fees. Such fee shall
32 include any personnel costs such as administrative or engineering reviews of a crossing notice or flagging
33 operation.

34 B. If a broadband service provider deems it necessary in the construction of its systems to cross
35 the works of a railroad company, including its tracks, bridges, facilities, and all railroad company rights
36 of way or easements, then the broadband service provider may do so, provided that:

37 1. Such crossing shall be (i) located, constructed, and operated so as not to impair, impede, or
38 obstruct, in any material degree, the works and operations of the railroad to be crossed; (ii) supported by
39 permanent and proper structures and fixtures; and (iii) controlled by customary and approved appliances,
40 methods, and regulations to prevent damage to the works of the railroad and ensure the safety of its
41 passengers;

42 2. The broadband service provider shall give the railroad company written notice of the provider's
43 intent to cross the works of such railroad company at least 30 days before the desired crossing date. If the
44 broadband service provider desires to cross at a location where an electric transmission line crossing
45 already exists, then the broadband service provider shall be required to give notice 20 days before the
46 desired crossing date. Such notice shall also be provided to the electric utility servicing the area where the
47 crossing is located. The written notice shall include the standard cumulative crossing fee described in
48 subsection D and preliminary construction plans that show the location of the crossing, the railroad right-
49 of-way, and the railroad company's tracks, wires, and other improvements that the fiber optic broadband
50 line will cross; and

51 3. The Commission does not issue a notice of suspension of the work pursuant to subsection E
52 within the applicable notice period described in subdivision 2.

53 C. The broadband service provider shall be responsible for all aspects of the implementation of the
54 physical crossing, including construction and installation of the broadband lines and all related equipment,
55 attachments, and infrastructure. The railroad company shall be responsible for flagging operations and
56 other protective measures that it deems appropriate during the period of broadband line construction. The
57 broadband service provider shall be responsible for ensuring that the crossing is constructed and operated
58 in accordance with accepted industry standards, including standards established by the National Electric
59 Safety Code, joint use processes of electric utilities, and railroad engineering requirements.

60 D. The cost of any such crossing shall be borne by the broadband service provider. A broadband
61 service provider that locates its fiber optic broadband line within a railroad right-of-way shall pay the
62 railroad company for the right to make a crossing of the railroad company's works a one-time standard
63 cumulative crossing fee of \$2,000 for each crossing unless (i) otherwise agreed to by the broadband service
64 provider and the railroad company or (ii) the railroad company has submitted a petition alleging that the
65 crossing will cause undue hardship on the railroad company or create an imminent likelihood of danger
66 to public health or safety and the Commission has issued a subsequent order so stating. The broadband
67 service provider shall reimburse the railroad company for any actual flagging expenses associated with a
68 crossing in addition to the standard crossing fee.

69 E. If the railroad company asserts that the crossing will cause undue hardship on the railroad
70 company or create the imminent likelihood of danger to public health or safety, then the railroad company
71 may petition the Commission for relief within 15 days from the date the broadband service provider
72 provided notice of the intended crossing. Within 30 days from the date of such notice, the Commission,
73 in its discretion, may, by notice served upon both parties, suspend work on such crossing for a reasonable
74 time, not to exceed 60 days. The Commission may make any necessary findings of fact and determinations
75 related to the existence of undue hardship on the railroad company or the imminent likelihood of danger
76 to public health or safety, as well as any relief to be granted, including any amount to which the railroad
77 company is entitled in excess of the standard cumulative crossing fee prescribed in subsection D. The
78 Commission may, in its discretion, employ expert engineers, to be paid equally by both companies, at a
79 cost not exceeding \$500, to advise the Commission or a representative of the Commission in (i) examining

80 the location, plans, specifications, and descriptions of appliances and the methods proposed to be
81 employed; (ii) hearing any objections and consider any modifications that the railroad company desires to
82 offer; and (iii) within such time as the Commission may determine, rejecting, approving, or modifying
83 such plans and specifications. A determination of the Commission shall be considered a final action that
84 may be appealed as provided in § 12.1-40.

85 F. If the broadband service provider gives notice to the railroad company to cross a section of track
86 that has been legally abandoned pursuant to an order of a federal or state agency having jurisdiction over
87 the track and is not being used for railroad service, then the railroad company shall notify the broadband
88 service provider that the specified section of track is legally abandoned within 30 days of such notice. If
89 the specified section of track has been legally abandoned, then the railroad company shall not have the
90 opportunity to petition the Commission as described in subsection E, unless the legally abandoned section
91 of track was acquired by the railroad company during the five years prior to issuing a notice of crossing.
92 Notwithstanding the provisions of subsection D, a broadband service provider seeking to cross a legally
93 abandoned section of track shall be subject to a reduced one-time standard cumulative crossing fee of
94 \$1,000.

95 G. In the absence of a notice of the suspension of work from the Commission within 30 days after
96 providing written notice to a railroad company of the broadband service provider's intent to cross, and in
97 the absence of the Commission's rejection of any modification of the desired crossing or any pending
98 appeal related thereto, no injunction or order shall be made by any court to stay such proceedings or
99 prohibit a broadband service provider from constructing and operating a crossing pursuant to this section
100 and commencing such work on the desired crossing date.

101 H. The broadband service provider shall maintain a railroad protective liability insurance policy
102 that (i) does not exclude work within 50 feet of a railroad right-of-way, (ii) includes the railroad company
103 as an additional insured, and (iii) remains in effect as long as project personnel, construction equipment,
104 or facilities remain in the crossing.

105 I. The provisions of this section shall apply notwithstanding any contrary provision of law.

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