

SENATE BILL NO. 1029

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Commerce and Labor

on _____)

(Patron Prior to Substitute--Senator Stanley)

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

Be it enacted by the General Assembly of Virginia:

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

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

A. For the purposes of this section:

"Actual flagging expenses" means expenses directly attributable to the cost of maintaining flaggers at the point of the crossing during the period of time construction is actually occurring. "Actual flagging expenses" shall be considered pass-through expenses and shall not exceed the expense incurred by the railroad company.

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

"Direct expenses" includes (i) the cost of inspecting and monitoring the crossing site; (ii) administrative and engineering costs for review of specifications and 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; (iii) document and preparation fees associated with a crossing and any engineering specifications related to the crossing; and (iv) actual flagging expenses associated with the crossing.

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

30 "License fee" means the fee to be paid by the broadband service provider to the railroad company
31 for the crossing, including all occupancy or real property rights.

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

36 B. If a broadband service provider deems it necessary in the construction of its systems to cross
37 the works of a railroad company, including its tracks, bridges, facilities, and all railroad company rights
38 of way or easements, then the broadband service provider shall submit an application for such crossing to
39 the railroad company.

40 C. The procedure for a crossing shall be as follows:

41 1. The broadband service provider's application shall include (i) the license fee described in
42 subsection G; (ii) engineering design plans, construction plans, bore plans, fraction mitigation plans,
43 dewatering plans, rigging and lifting plans, and any other pertinent plans deemed necessary and prepared
44 by a registered professional engineer; (iii) the location of the crossing, including whether it is located in a
45 public right-of-way; (iv) the proposed date of commencement of work; (v) the anticipated duration of the
46 work in the crossing; (vi) the areas in which the project personnel will work; and (vii) the contact
47 information of the broadband service provider's point of contact. Notice shall also be provided to the
48 electric utility in whose certificated service territory the crossing is proposed to be located.

49 2. Upon receipt of the broadband service provider's crossing application, the railroad company
50 shall acknowledge receipt of such application.

51 3. The railroad company shall review the application and may request additional information or
52 clarification from the broadband service provider within 15 days from receipt of the application. If

53 additional information or clarification is requested, the broadband service provider shall respond within
54 10 days from the receipt of the request.

55 4. The railroad company shall approve the broadband service provider's crossing application
56 within 35 days after the application is received unless the railroad company petitions the Commission
57 pursuant to subsection H.

58 D. Any proposed crossing shall be (i) located, constructed, and operated so as not to impair,
59 impede, or obstruct, in any material degree, the works and operations of the railroad to be crossed; (ii)
60 supported by permanent and proper structures and fixtures; and (iii) controlled by customary and approved
61 appliances, methods, and regulations to prevent damage to the works of the railroad and ensure the safety
62 of its passengers.

63 E. The railroad company and the broadband service provider shall coordinate to schedule the
64 crossing date, which shall be within 30 days of the approval of the crossing application, or such later date
65 as indicated in the application or mutually agreed upon.

66 F. The broadband service provider shall be responsible for all aspects of the implementation of the
67 physical crossing, including the construction and installation of the fiber optic broadband lines and all
68 related equipment, conduit, wire masts, poles, towers, attachments, and infrastructure. The railroad
69 company shall be responsible for flagging operations and other protective measures that it deems
70 appropriate during the actual construction of fiber optic broadband lines. The broadband service provider
71 shall be responsible for ensuring that the crossing is constructed and operated in accordance with accepted
72 industry standards, including standards established by the National Electrical Safety Code, good utility
73 practice, and industry-standard joint use processes of electric utilities.

74 G. The cost of any such crossing shall be borne by the broadband service provider. A broadband
75 service provider that locates its fiber optic broadband line within a railroad right-of-way shall pay the
76 railroad company for the right to make a crossing of the railroad company's works a license fee of \$2,000
77 for each crossing unless (i) otherwise agreed to by the broadband service provider and the railroad
78 company or (ii) the railroad company has petitioned the Commission as described in subsection H and the
79 Commission has issued a subsequent order so stating. The broadband service provider shall reimburse the

80 railroad company for direct expenses in addition to the license fee. Direct expenses shall not exceed \$5,000
81 unless (a) otherwise agreed to by the broadband service provider and the railroad company or (b) the
82 railroad company petitions the Commission for additional reimbursement and the Commission has issued
83 a subsequent order so stating. The railroad company shall substantiate with documentation and other direct
84 evidence of the direct expenses incurred to qualify for reimbursement. The establishment of a license fee
85 cap by the Commonwealth is an exercise of its stated policy to promote the rapid deployment of broadband
86 throughout the Commonwealth.

87 H. If the railroad company asserts that (i) the license fee is not adequate compensation for the
88 proposed crossing, (ii) the proposed crossing will cause undue hardship on the railroad company, or (iii)
89 the proposed crossing will create the imminent likelihood of danger to public health or safety, then the
90 railroad company may petition the Commission for relief and provide simultaneous notice to the
91 broadband service provider within 35 days from the date of the broadband service provider's application.
92 The Commission may make any necessary findings of fact and determinations related to the adequacy of
93 compensation, the existence of undue hardship on the railroad company, or the imminent likelihood of
94 danger to public health or safety, as well as any relief to be granted, including any amount to which the
95 railroad company is entitled in excess of the license fee prescribed in subsection G. If the railroad company
96 asserts only that the license fee is not adequate compensation for the specified crossing, then the issue of
97 compensation may be considered by the Commission after the commencement or completion of the work.
98 The broadband service provider may petition the Commission for relief if the railroad company does not
99 comply with this section or has otherwise wrongfully rejected or delayed its application. The Commission
100 may, in its discretion, employ expert engineers, to be paid equally by both companies to advise the
101 Commission or a representative of the Commission in (a) examining the location, plans, specifications,
102 and descriptions of appliances and the methods proposed to be employed; (b) hearing any objections and
103 considering any modifications that the railroad company desires to offer; and (c) within such time as the
104 Commission may determine, rejecting, approving, or modifying such plans and specifications. The
105 Commission shall adjudicate any petition by the railroad company or broadband service provider and issue
106 a final order within 90 days of the petition's initial filing. The Commission shall have sole jurisdiction to

107 hear and resolve claims between railroad companies and broadband service providers concerning
108 crossings and this section.

109 I. Notwithstanding the provisions of subsection G, if the broadband service provider submits an
110 application to the railroad company to cross a section of track that has been legally abandoned pursuant
111 to an order of a federal or state agency having jurisdiction over the track and is not being used for railroad
112 service, then the license fee shall not exceed \$1,000.

113 J. The Commonwealth shall grant a right-of-way to any broadband service provider seeking to use
114 the right-of-way for broadband deployment to the extent that the Commonwealth owns any interest in any
115 real property crossed by a railroad or manages any real property not owned by the Commonwealth that is
116 crossed by a railroad.

117 K. Notwithstanding the provisions of subsection G, in no case shall a broadband service provider
118 be required to pay a license fee for the right to make a crossing of the railroad company's works within a
119 public right-of-way.

120 L. The broadband service provider shall maintain a commercial general liability insurance policy
121 or railroad protective liability insurance policy that (i) does not exclude work within 50 feet of a railroad
122 right-of-way, (ii) includes the railroad company as an additional insured, and (iii) remains in effect during
123 the period of time construction is actually occurring.

124 M. The provisions of this section shall apply notwithstanding any contrary or other provision of
125 law.

126 N. The provisions of this section shall be liberally construed and shall be construed in favor of
127 broadband expansion.

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