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SENATE BILL NO. 688

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 6, 2006)

(Patron Prior to Substitute—Senator Wampler)

A *BILL to amend the Code of Virginia by adding a section numbered 56-16.2, relating to public utility 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 56-16.2 as follows:

§ 56-16.2. Public utility lines crossing railroads.

A. As used in this section:

"Municipality" means a city, county, town, authority, or other political subdivision of the Commonwealth.

"Public utility line" means any line, wire, pipe, or conduit that is used in connection with the provision of water, sewer, or telecommunications service by a municipality, and includes any poles and other appurtenant fixtures and structures that are necessary and appropriate for the operation and support of such line, wire, pipe, or conduit.

B. If a municipality desires to cross the works of a railroad company with a public utility line and the municipality and railroad company cannot agree on the manner of the crossing or the compensation to be paid or the damages, if any, occasioned by such crossing, then either party, after complying with the provisions of §§ 56-17 and 56-18, insofar as they are applicable, may apply to the Commission within 30 days after the submission of the plans and specifications required in § 56-18 to inquire into the necessity for such crossing, the propriety of the proposed location, all matters pertaining to its construction and operation, and a fee for such crossing and damages, if any, to be paid to the railroad company.

C. Every such application shall, in addition to the plans and specifications required in § 56-18, set forth (i) the means the applicant proposes to employ to protect persons and property on the premises of the railroad; (ii) standard railroad liability protection insurance to safeguard the railroad from damage or destruction of persons or property resulting from such crossing, including a provision to save the railroad harmless from claims arising as a result of such crossing; (iii) the conditions under which usage of the crossing will terminate and all interests revert to the railroad; and (iv) the means which the applicant proposes to employ to prevent interference with the unlimited use of the property by the railroad including, but without limitation, the communication and transportation system on the property proposed to be crossed. The Commission may, at its discretion, require the applicant to provide a bond or insurance conditioned to save the railroad harmless from claims arising as a result of such crossing. The Commission may, as provided in § 56-19, employ experts to advise it with reference to such application.

D. If the Commission grants such application in whole or in part, the order of the Commission shall require the railroad to grant to the municipality a license for such crossing upon compliance with the terms of the order, and shall fix a fee for the crossing and determine the damages, if any. The amount of the fee for the crossing fixed by the Commission shall not exceed the actual costs reasonably expected to be incurred by the railroad company as a result of the crossing and the periodic inspection of such works but shall take into consideration the system-wide administrative and other costs of the railroad to implement utility crossing agreements.

E. Construction shall not begin until permitted under an order provided for in subsection D unless the parties agree thereto; however, the Commission may allow construction to proceed pending the determination of the fee and damages, if any.