

10100275D

HOUSE BILL NO. 474

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend and reenact § 56-16.2 of the Code of Virginia, relating to public utility lines crossing railroad works.*

Patrons—Carrico, Kilgore, Marshall, D.W., Merricks and Ware, R.L.

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 56-16.2 of the Code of Virginia is amended and reenacted as follows:**

§ 56-16.2. Public utility lines crossing railroads.

A. As used in this section:

"Crossing" means the construction, operation, repair, or maintenance by a municipality of a public utility line over, under, or across a railroad right-of-way.

"Direct expenses" does not include a contribution to profit but includes any or all of the following: (i) the cost of inspecting and monitoring the crossing site before, during, or after construction; (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) damages assessed in connection with the rights granted to a municipality with respect to a crossing.

"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.

"Railroad right-of-way" means any interest in real estate that is owned or operated by a railroad company.

"Special circumstances" means either or both of:

1. The existence of characteristics of a segment of railroad right-of-way or of a proposed public utility line that increase the direct expenses associated with a proposed crossing or that enhance the segment's value above that of a typical segment of railroad right-of-way; or

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.

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. The municipality shall submit to the railroad company a notice of intent to construct, which shall include (i) the one-time standard crossing fee described in subsection C unless otherwise agreed by the municipality and the railroad company and (ii) a specification exhibit that shows the location of the crossing, the railroad right-of-way, the railroad company's tracks, wires, and other improvements that the municipality's public utility line will cross. The notice and exhibit shall be submitted to the railroad company by certified mail, return receipt requested. The municipality shall use its best efforts to submit the specification exhibit on a form provided or approved by the railroad company. The specification exhibit shall constitute the municipality's warranty that the public utility line that is the subject of the exhibit will be constructed and installed as shown on the exhibit. By August 1, 2010, each railroad company shall submit for Commission review and approval proposed specification exhibit forms for use with notifications by municipalities of intent to construct. Approved specification exhibit forms shall not subsequently be revised or amended by a railroad company without Commission approval.

C. Unless otherwise agreed to by the municipality and the railroad company, a municipality that locates its public utility line within a railroad right-of-way shall compensate the railroad company \$500

INTRODUCED

HB474

59 for each crossing. The payment shall be a one-time payment, in lieu of any license fees, to reimburse
60 the railroad company for direct expenses incurred by the railroad company as a result of the
61 construction of the public utility line and, if applicable, to compensate the railroad company for the
62 locating of the public utility line within the railroad right-of way. Unless otherwise agreed to by the
63 municipality and the railroad company, the one-time payment shall not apply to any public utility line
64 that was located within a railroad right-of-way on July 1, 2010.

65 D. If the railroad company and the municipality cannot agree on compensation and the railroad
66 company believes special circumstances exist for a particular crossing, the railroad company may
67 petition the Commission for relief. If a petition for relief is filed, the Commission shall determine
68 whether special circumstances exist that necessitate either a modification of the direct expenses to be
69 paid or the need for additional terms and conditions. The Commission may make any necessary findings
70 of fact and determinations related to the existence of special circumstances, as well as any relief to be
71 granted, including any amount to which the railroad company is entitled in excess of the one-time
72 payment prescribed in subsection C. A determination of the Commission shall be considered a final
73 action that may be appealed as provided in § 12.1-40. The Commission shall assess the costs associated
74 with a petition for relief equitably against the parties. The Commission may, as provided in § 56-19,
75 employ experts to advise it with reference to such a petition.

76 E. If grade crossing markings or signs are damaged during construction of a public utility line, the
77 party responsible for the damage shall pay the replacement costs, unless otherwise agreed to by the
78 parties.

79 F. Every such application notice of intent to construct submitted pursuant to subsection B shall, in
80 addition to the plans and specifications required in § 56-18 specification exhibit described therein, set
81 forth (i) the means the applicant municipality proposes to employ to protect persons and property on the
82 premises of the railroad company; (ii) standard railroad liability protection evidence of insurance to
83 safeguard the railroad from damage or destruction of persons or property resulting from such crossing,
84 including a provision to save the railroad harmless from claims arising as a result of such crossing
85 coverage as may be required pursuant to regulations adopted by the Commission pursuant to
86 subdivisions 1 2 and 1 3; (iii) the conditions under which usage of the crossing will terminate and all
87 interests revert to the railroad company; and (iv) the means which the applicant municipality proposes to
88 employ to prevent interference with the unlimited use of the property railroad right-of-way by the
89 railroad company including, but without limitation, the communication and transportation system on the
90 property proposed to be crossed railroad right-of-way. The Commission may, at its discretion, require
91 the applicant to provide a bond or insurance conditioned to save the railroad harmless from claims
92 arising as a result of such crossing. The Commission may, as provided in § 56-19, employ experts to
93 advise it with reference to such application.

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

101 EG. Construction shall not begin until permitted under an order provided for in subsection D unless
102 the parties agree thereto; however, the Commission may allow construction to proceed pending the
103 determination of the fee and damages, if any. After 35 days from the mailing by the municipality of the
104 notice of intent to construct, specification exhibit, and fee, as provided in subsection B, the municipality,
105 absent a claim by the railroad company of special circumstances or a claim that the information
106 contained in the specification exhibit is inadequate or incomplete, shall be deemed to have authorization
107 to commence construction of the public utility line that is the subject of the specification exhibit. If the
108 municipality does not commence construction within 120 days from the later of (i) the date that the
109 municipality is deemed to have authorization to commence construction of the public utility line, or the
110 mailing of the notice of intent to construct, specification exhibit, and fee, or (ii) the date that the
111 municipality provides to the railroad company changes to the specification exhibit that address the
112 railroad company's claim that the information contained in the specification exhibit is inadequate or
113 incomplete, the authorization to commence construction shall expire and the fee may be retained by the
114 railroad company. If the municipality subsequently desires to proceed with construction of the public
115 utility line that was the subject of the petition, the municipality shall comply again with the notice,
116 specification exhibit, and fee requirements of subsection B.

117 H. Pending the Commission's resolution of a claim of special circumstances raised in a petition filed
118 pursuant to subsection D, a municipality, upon compliance with all other applicable provisions of this
119 section and securing, in a manner approved by the Commission, the payment of an amount sufficient for
120 the removal of the public utility line constructed by the municipality, may proceed with construction of

121 *the public utility line unless the Commission intervenes to enjoin its construction.*

122 *I. The Commission shall adopt regulations prescribing the terms and conditions for a crossing. The*
123 *regulations shall provide that any crossing be consistent with the public convenience and necessity and*
124 *reasonable service to the public. In addition, the regulations shall address the following:*

125 *1. Notification required prior to the commencement of any crossing activity;*

126 *2. A requirement that the railroad company and the municipality each maintain and repair the*
127 *person's own property within the railroad right-of-way, and bear responsibility for each person's own*
128 *acts and omissions; except that the municipality shall be responsible for any bodily injury or property*
129 *damage that typically would be covered under a standard railroad protective liability insurance policy;*

130 *3. The amount and scope of insurance or self-insurance required to cover risks associated with a*
131 *crossing;*

132 *4. A procedure to address the payment of costs associated with the relocation of public utility lines*
133 *within the railroad right-of-way necessary to accommodate railroad operations;*

134 *5. Terms and conditions for securing the payment of any damages by the municipality before it*
135 *proceeds with a crossing;*

136 *6. Immediate access to a crossing for repair and maintenance of existing facilities in case of*
137 *emergency;*

138 *7. Engineering standards for public utility lines crossing railroad rights-of-way; and*

139 *8. Other terms and conditions necessary to provide for the safe and reasonable use of a railroad*
140 *right-of-way by a municipality, and consistent with rules adopted by the Commission, including any*
141 *complaint procedures adopted by the Commission to enforce the regulations.*

142 *J. Regulations adopted by the Commission pursuant to subsection I shall not prevent a railroad*
143 *company and a municipality from otherwise negotiating the terms and conditions applicable to a*
144 *crossing or the resolution of any disputes relating to such crossing.*