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HOUSE BILL NO. 1697

Offered January 17, 2020

A BILL to amend the Code of Virginia by adding a section numbered 56-16.3, relating to broadband service providers; fiber optic broadband lines; railroad crossings.

Patron—Byron

Referred to Committee on Labor and Commerce

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. As used in this section:

"Broadband service" means high-speed Internet service that is delivered through a fiber optic broadband line.

"Broadband service provider" means an entity that provides broadband service through utilization of a fiber optic broadband line and that has obtained all governmental approvals required for the provision of broadband service.

"Crossing" means the construction, operation, repair, or maintenance by a broadband service provider of a fiber optic broadband line over, under, or across a railroad right-of-way.

"Fiber optic broadband line" means the medium used in the transmission of data as pulses of light through a strand or fiber medium made of glass or plastic.

"Notice of intent to construct" means a notice submitted by a broadband service provider to a railroad company establishing the broadband service provider's desire to cross the works of a railroad company. A "notice of intent to construct" shall include (i) the one-time standard crossing fee described in subsection C, unless another fee is agreed to by the broadband service provider and the railroad company, and (ii) a specification exhibit.

"Special circumstances" means the existence of characteristics of a segment of railroad right-of-way or of a proposed fiber optic broadband line that (i) 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, (ii) involve a significant and imminent likelihood of danger to the public health or safety, (iii) create a serious threat to the safe operations of the railroad, or (iv) create a serious threat to the current use of the railroad right-of-way, necessitating additional terms and conditions associated with the crossing.

"Specification exhibit" means a set of documents that shows the location of the crossing, the railroad right-of-way, and the railroad company's tracks, wires, and other improvements that the fiber optic broadband line will cross.

B. If a broadband service provider desires to cross the works of a railroad company and the parties thereto cannot agree on the manner of the crossing or the compensation to be paid or the damages, if any, occasioned by such crossing, then the broadband service provider may acquire the rights to make a crossing of such works by submitting to the railroad company a notice of intent to construct. The notice, including the specification exhibit shall be submitted to the railroad company by certified mail, return receipt requested. The broadband service provider shall use its best efforts to submit the specification exhibit on a form provided or approved by the railroad company and approved by the Commission pursuant to subsection K. The specification exhibit included with the notice to construct shall constitute the broadband service provider's warranty that the fiber optic broadband line that is the subject of the specification exhibit will be constructed and installed as shown on the specification exhibit.

C. Unless otherwise agreed to by the broadband service provider and the railroad company, or unless a special circumstance exists, a broadband service provider that locates its fiber optic broadband line within a railroad right-of-way shall pay to the railroad company for the right to make a crossing of the railroad company's works a standard crossing fee of \$800 for each crossing. The payment shall be a one-time payment, in lieu of any license fees, to reimburse the railroad company for direct expenses incurred by the railroad company as a result of the construction of the fiber optic broadband line and, if applicable, to compensate the railroad company for the locating of the fiber optic broadband line within the railroad right-of-way. Unless otherwise agreed to by the broadband service provider and the railroad company, the one-time payment shall not apply to any fiber optic broadband line that was located within a railroad right-of-way before July 1, 2020.

D. If the railroad company asserts that special circumstances exist for a particular crossing, the railroad company may petition the Commission for relief. If a petition for relief is filed, the Commission

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HB1697

59 shall determine whether special circumstances exist that necessitate either the payment of compensation
60 in addition to the standard crossing fee or the need for additional terms and conditions. The
61 Commission may make any necessary findings of fact and determinations related to the existence of
62 special circumstances, as well as any relief to be granted, including any amount to which the railroad
63 company is entitled in excess of the one-time standard crossing fee prescribed in subsection C. A
64 determination of the Commission shall be considered a final action that may be appealed as provided in
65 § 12.1-40. The Commission shall assess the costs associated with a petition for relief equitably against
66 the parties. The Commission may employ expert engineers, at a cost not exceeding \$500, to be paid
67 equally by the railroad company and the broadband services provider, who shall, with the Commission,
68 or some member thereof, or such person as the Commission may designate, (i) examine the notice of
69 intent to construct, location, plans, specifications, and methods proposed to be employed and (ii) hear
70 any objections and consider any modifications that the railroad company whose works are to be crossed
71 desires to offer.

72 E. If grade crossing markings or signs are damaged during construction of a fiber optic broadband
73 line, the party responsible for the damage shall pay the replacement costs, unless otherwise agreed to
74 by the parties.

75 F. Every notice of intent to construct submitted pursuant to subsection B shall include, in addition to
76 the specification exhibit, (i) a description of the means the broadband service provider proposes to
77 employ to protect persons and property on the premises of the railroad company, (ii) evidence of
78 insurance coverage as may be required pursuant to regulations adopted by the Commission pursuant to
79 subdivisions 1 2 and 3, (iii) a statement of the conditions under which usage of the crossing will
80 terminate and all interests revert to the railroad company, and (iv) a description of the means that the
81 broadband service provider proposes to employ to prevent interference with the unlimited use of the
82 railroad right-of-way by the railroad company, including the communication and transportation systems
83 on the railroad right-of-way.

84 G. After 35 days from the mailing by the broadband service provider of the notice of intent to
85 construct, the broadband service provider, absent a claim by the railroad company of special
86 circumstances or a claim that the information contained in the specification exhibit is inadequate or
87 incomplete, shall be deemed to have authorization to commence construction of the fiber optic
88 broadband line that is the subject of the specification exhibit. If the broadband service provider does not
89 commence construction within 120 days from the later of (i) the date that the broadband service
90 provider is deemed to have authorization to commence construction of the fiber optic broadband line, or
91 (ii) the date that the broadband service provider provides to the railroad company changes to the
92 specification exhibit that address the railroad company's claim that the information contained in the
93 specification exhibit is inadequate or incomplete, the authorization to commence construction shall
94 expire and the fee may be retained by the railroad company. If the broadband service provider
95 subsequently desires to proceed with construction of the fiber optic broadband line that was the subject
96 of the notice of intent to construct, the broadband service provider shall again submit a notice of intent
97 to construct as provided in subsection B.

98 H. Pending the Commission's resolution of a claim of special circumstances raised in a petition filed
99 pursuant to subsection D, a broadband service provider, upon compliance with all other applicable
100 provisions of this section and securing, in a manner approved by the Commission, the payment of an
101 amount sufficient for the removal of the fiber optic broadband line constructed by the broadband service
102 provider, may proceed with construction of the fiber optic broadband line unless the Commission
103 intervenes to enjoin its construction.

104 I. The Commission shall adopt regulations prescribing the terms and conditions for a crossing. The
105 regulations shall provide that any crossing be consistent with the public convenience and necessity and
106 the provision of reasonable service to the public. In addition, the regulations shall address the
107 following:

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

109 2. A requirement that the railroad company and the broadband service provider each maintain and
110 repair the person's own property within the railroad right-of-way, and bear responsibility for each
111 person's own acts and omissions, except that the broadband service provider shall be responsible for
112 any bodily injury or property damage that typically would be covered under a standard railroad
113 protective liability insurance policy;

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

116 4. A procedure to address the payment of costs associated with the relocation of fiber optic
117 broadband lines within the railroad right-of-way necessary to accommodate railroad operations;

118 5. Terms and conditions for securing the payment of any damages by the broadband service provider
119 before it proceeds with a crossing;

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

121 emergency;

122 7. Engineering standards for fiber optic broadband lines crossing railroad rights-of-way; and

123 8. Other terms and conditions necessary to provide for the safe and reasonable use of a railroad
124 right-of-way by a broadband service provider and consistent with rules adopted by the Commission,
125 including any complaint procedures adopted by the Commission to enforce the regulations.

126 J. Regulations adopted by the Commission pursuant to subsection I shall not prevent a railroad
127 company and a broadband service provider from otherwise negotiating the terms and conditions
128 applicable to a crossing or the resolution of any disputes relating to such crossing.

129 K. By August 1, 2020, each railroad company shall submit for Commission review and approval
130 proposed specification exhibit forms for use with notifications by broadband service providers of intent
131 to construct. Approved specification exhibit forms shall not subsequently be revised or amended by a
132 railroad company without Commission approval.