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HOUSE BILL NO. 1752

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Energy
on January 31, 2023)

(Patron Prior to Substitute—Delegate Head)

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:

"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 in areas of the Commonwealth unserved by broadband.

"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; and (iii) document and preparation fees associated with a crossing and any engineering specifications related to the crossing.

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

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

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

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

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

2. The broadband service provider shall give the railroad company written notice of the provider's intent to cross the works of such railroad company at least 30 days before the desired crossing date. If the broadband service provider desires to cross at a location where an electric transmission line crossing already exists, then the broadband service provider shall be required to give notice 20 days before the desired crossing date. Such notice shall also be provided to the electric utility servicing the area where the crossing is located. The written notice shall include the standard cumulative crossing fee described in subsection D and preliminary construction plans that show 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; and

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

C. The broadband service provider shall be responsible for all aspects of the implementation of the physical crossing, including construction and installation of the broadband lines and all related equipment, attachments, and infrastructure. The railroad company shall be responsible for flagging operations and other protective measures that it deems appropriate during the period of broadband line construction. The broadband service provider shall be responsible for ensuring that the crossing is constructed and operated in accordance with accepted industry standards, including standards

60 established by the National Electric Safety Code, joint use processes of electric utilities, and railroad
61 engineering requirements.

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

71 E. If the railroad company asserts that the crossing will cause undue hardship on the railroad
72 company or create the imminent likelihood of danger to public health or safety, then the railroad
73 company may petition the Commission for relief within 15 days from the date the broadband service
74 provider provided notice of the intended crossing. Within 30 days from the date of such notice, the
75 Commission, in its discretion, may, by notice served upon both parties, suspend work on such crossing
76 for a reasonable time, not to exceed 60 days. The Commission may make any necessary findings of fact
77 and determinations related to the existence of undue hardship on the railroad company or the imminent
78 likelihood of danger to public health or safety, as well as any relief to be granted, including any amount
79 to which the railroad company is entitled in excess of the standard cumulative crossing fee prescribed in
80 subsection D. The Commission may, in its discretion, employ expert engineers, to be paid equally by
81 both companies, at a cost not exceeding \$500, to advise the Commission or a representative of the
82 Commission in (i) examining the location, plans, specifications, and descriptions of appliances and the
83 methods proposed to be employed; (ii) hearing any objections and consider any modifications that the
84 railroad company desires to offer; and (iii) within such time as the Commission may determine,
85 rejecting, approving, or modifying such plans and specifications. A determination of the Commission
86 shall be considered a final action that may be appealed as provided in § 12.1-40.

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

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

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

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