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## SENATE BILL NO. 1029

## FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Stanley  
on January 31, 2023)

(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; 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. "Railroad company" does not include federally designated Class III railroads.

"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) 300 feet or less; (ii) 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; (iii) supported by permanent and proper structures and fixtures; and (iv) 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. Such notice shall also be provided to the electric utility servicing the area where the crossing is located. The written notice shall include (i) the standard cumulative crossing fee described in subsection D; (ii) preliminary construction plans that show the location of the crossing, including whether it is located in a public right-of-way; (iii) the proposed date of commencement of work; (iv) the anticipated duration of the crossing, and (v) the contact information of the broadband service provider's point of contact. The 30-day period shall commence upon the submission of all the aforementioned materials; 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 the 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

60 construction. The broadband service provider shall be responsible for ensuring that the crossing is  
61 constructed and operated in accordance with accepted industry standards, including standards  
62 established by the National Electric Safety Code and joint use processes of electric utilities.

63 D. The cost of any such crossing shall be borne by the broadband service provider. A broadband  
64 service provider that locates its fiber optic broadband line within a railroad right-of-way shall pay the  
65 railroad company for the right to make a crossing of the railroad company's works a one-time standard  
66 cumulative crossing fee of \$2,500 for each crossing unless (i) otherwise agreed to by the broadband  
67 service provider and the railroad company or (ii) the railroad company has petitioned the Commission  
68 as described in subsection E and the Commission has issued a subsequent order so stating. In no case  
69 shall a broadband service provider be required to pay a standard cumulative crossing fee for the right  
70 to make a crossing of the railroad company's works within a public right-of-way. The broadband service  
71 provider shall reimburse the railroad company for any actual flagging expenses associated with a  
72 crossing in addition to the standard crossing fee if the railroad company schedules the flaggers on or  
73 before the proposed crossing date. If the railroad company fails to schedule flaggers on or before the  
74 proposed crossing date, then the railroad company shall not be reimbursed for any actual flagging  
75 expenses associated with the crossing. The railroad company shall substantiate the actual flagging  
76 expenses incurred to qualify for reimbursement. The establishment of a standardized cumulative crossing  
77 fee by the Commonwealth is an exercise of its stated policy to promote the rapid deployment of  
78 broadband in the Commonwealth.

79 E. If the railroad company asserts that (i) the one-time standard cumulative crossing fee is not  
80 adequate compensation for the specified crossing, (ii) the proposed crossing will cause undue hardship  
81 on the railroad company, or (iii) the proposed crossing will create the imminent likelihood of danger to  
82 public health or safety, then the railroad company may petition the Commission for relief within 15 days  
83 from the date the broadband service provider provided notice of the intended crossing. Within 30 days  
84 from the date of such notice, the Commission, in its discretion, may, by notice served upon both parties,  
85 suspend work on such crossing for a reasonable time, not to exceed 60 days. The Commission may  
86 make any necessary findings of fact and determinations related to the adequacy of compensation, the  
87 existence of undue hardship on the railroad company, or the imminent likelihood of danger to public  
88 health or safety, as well as any relief to be granted, including any amount to which the railroad  
89 company is entitled in excess of the standard cumulative crossing fee prescribed in subsection D. If the  
90 railroad company asserts only that the one-time standard cumulative crossing fee is not adequate  
91 compensation for the specified crossing, then the issue of compensation may be considered by the  
92 Commission after the commencement of the work. The broadband service provider may petition the  
93 Commission for relief if the railroad company does not comply with this section. The Commission may,  
94 in its discretion, employ expert engineers, to be paid equally by both companies, at a cost not exceeding  
95 \$500 per company, to advise the Commission or a representative of the Commission in (a) examining  
96 the location, plans, specifications, and descriptions of appliances and the methods proposed to be  
97 employed; (b) hearing any objections and considering any modifications that the railroad company  
98 desires to offer; and (c) within such time as the Commission may determine, rejecting, approving, or  
99 modifying such plans and specifications. A determination of the Commission shall be considered a final  
100 action that may be appealed as provided in § 12.1-40.

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

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

117 H. The Commonwealth shall grant a right-of-way to any broadband service provider seeking to use  
118 the right-of-way for broadband deployment to the extent that the Commonwealth owns any interest in  
119 any real property crossed by a railroad or manages any real property not owned by the Commonwealth  
120 that is crossed by a railroad.

121 I. The broadband service provider shall maintain a general liability insurance policy or railroad

122 *protective liability insurance policy that (i) does not exclude work within 50 feet of a railroad*  
123 *right-of-way, (ii) includes the railroad company as an additional insured, and (iii) remains in effect as*  
124 *long as project personnel, construction equipment, or facilities remain in the crossing.*  
125 *J. The provisions of this section shall apply notwithstanding any contrary provision of law.*