

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1140 Session of 2024

INTRODUCED BY COLEMAN, PHILLIPS-HILL, DUSH, CULVER, BREWSTER AND ROTHMAN, APRIL 5, 2024

REFERRED TO COMMUNICATIONS AND TECHNOLOGY, APRIL 5, 2024

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, in railroads, providing for fiber
3 optic broadband line railroad crossing.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 66 of the Pennsylvania Consolidated
7 Statutes is amended by adding a section to read:

8 § 2710. Fiber optic broadband line railroad crossing.

9 (a) Crossing.--If a broadband service provider deems it
10 necessary in the construction of a broadband system to cross the
11 works of a railroad company, including the railroad company's
12 tracks, bridges, facilities and all railroad company rights-of-
13 way or easements, the broadband service provider shall submit an
14 application for the crossing to the commission.

15 (b) Application and review.--

16 (1) A broadband service provider's application shall
17 include:

18 (i) Engineering design plans, construction plans,

1 bore plans, fraction mitigation plans, dewatering plans,
2 rigging and lifting plans and any other pertinent plans
3 deemed necessary and prepared by a registered
4 professional engineer.

5 (ii) The location of the crossing, including whether
6 the crossing is located in a public right-of-way.

7 (iii) The proposed date of commencement of work.

8 (iv) The anticipated duration of the work in the
9 crossing.

10 (v) The areas in which the project personnel shall
11 work.

12 (vi) The contact information of the broadband
13 service provider's point of contact. Notice shall also be
14 provided to the electric utility in whose certificated
15 service territory the crossing is proposed to be located.

16 (2) Upon receipt of the application under paragraph (1),
17 the commission shall acknowledge receipt of the application.

18 (3) The commission shall notify the railroad company by
19 certified letter of the request from the broadband service
20 provider.

21 (4) The railroad company shall review the application
22 and may request additional information or clarification from
23 the broadband service provider within 15 days from receipt of
24 the application. If additional information or clarification
25 is requested under this paragraph, the broadband service
26 provider shall respond within 10 days from the receipt of the
27 request.

28 (5) The railroad company shall approve the broadband
29 service provider's crossing application within 35 days after
30 the application is received unless the railroad company

petitions the commission under subsection (g).

(c) Proposed crossing.--Any proposed crossing shall be:

(1) 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.

(2) Supported by permanent and proper structures and fixtures.

(3) 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.

(d) Schedule.--The railroad company and the broadband service provider shall coordinate to schedule the crossing date, which shall be within 30 days of receipt of the licensing fee by the railroad, or a later date as indicated in the application or mutually agreed upon.

(e) Responsibilities.--The broadband service provider shall be responsible for all aspects of the implementation of the physical crossing, including the construction and installation of the fiber optic broadband lines and all related equipment, conduit, wire masts, poles, towers, attachments and infrastructure. The railroad company shall be responsible for flagging operations and other protective measures that the railroad company deems appropriate during the actual construction of fiber optic broadband lines. The broadband service provider shall be responsible for ensuring that the crossing is constructed and operated in accordance with accepted industry standards, including standards established by the 2017 National Electrical Safety Code, good utility practice and industry-standard joint use processes of electric utilities.

(f) Cost.--The cost of a crossing shall be borne by the

broadband service provider. A broadband service provider that
locates its fiber optic broadband line within a railroad right-
of-way shall pay the railroad company for the right to make a
crossing of the railroad company's works a license fee to be
determined by the broadband service provider and railroad
company. The following shall apply:

(1) The broadband service provider shall reimburse the
railroad company for direct expenses in addition to the
license fee.

(2) The railroad company shall substantiate with
documentation and other direct evidence of the direct
expenses incurred to qualify for reimbursement.

(g) Relief.--If the railroad company asserts any of the
following, the railroad company may petition the commission for
relief and provide simultaneous notice to the broadband service
provider within 35 days from the date of the broadband service
provider's application:

(1) the proposed crossing will cause undue hardship on
the railroad company; or

(2) the proposed crossing will create the imminent
likelihood of danger to public health or safety.

(h) Commission action.--The commission may make any
necessary findings of fact, the existence of undue hardship on
the railroad company or the imminent likelihood of danger to
public health or safety, as well as any relief to be granted,
including any amount to which the railroad company is entitled.
The broadband service provider may petition the commission for
relief if the railroad company does not comply with this section
or has otherwise wrongfully rejected or delayed its application.
The commission may, in its discretion, employ expert engineers,

1 to be paid equally by both companies, to advise the commission
2 or a representative of the commission in:

3 (1) examining the location, plans, specifications and
4 descriptions of appliances and the methods proposed to be
5 employed;

6 (2) hearing any objections and considering any
7 modifications that the railroad company desires to offer; and

8 (3) at such time as the commission may determine,
9 rejecting, approving or modifying the plans and
10 specifications.

11 (i) Adjudication.--The commission shall adjudicate any
12 petition by the railroad company or broadband service provider
13 and issue a final order within 90 days of the petition's initial
14 filing. The commission shall have sole jurisdiction to hear and
15 resolve claims between a railroad company and broadband service
16 provider under this section.

17 (j) Right-of-way.--The Commonwealth shall grant a right-of-
18 way to a broadband service provider seeking to use the right-of-
19 way for broadband deployment to the extent that the Commonwealth
20 owns any interest in any real property crossed by a railroad or
21 manages any real property not owned by the Commonwealth that is
22 crossed by a railroad. Notwithstanding the provisions of
23 subsection (f), in no case shall a broadband service provider be
24 required to pay a license fee for the right to make a crossing
25 of the railroad company's works within a public right-of-way.

26 (k) Insurance.--The broadband service provider shall
27 maintain a commercial general liability insurance policy or
28 railroad protective liability insurance policy that:

29 (1) does not exclude work within 50 feet of a railroad
30 right-of-way;

1 (2) includes the railroad company as an additional
2 insured; and

3 (3) remains in effect during the period of time
4 construction is actually occurring.

5 (1) Applicability.--Notwithstanding any other provision of
6 law, this section shall apply and shall be liberally construed
7 in favor of broadband expansion.

8 (m) Definitions.--As used in this section, the following
9 words and phrases shall have the meanings given to them in this
10 subsection unless the context clearly indicates otherwise:

11 "Actual flagging expenses." Pass-through expenses directly
12 attributable to the cost of maintaining flaggers at the point of
13 the crossing during the period of time construction is actually
14 occurring which do not exceed the expense incurred by the
15 railroad company.

16 "Broadband service provider." An entity that provides
17 broadband service through the utilization of a fiber optic
18 broadband line, coaxial cable or other wireline system.

19 "Commission." The Pennsylvania Public Utility Commission.

20 "Direct expenses." Include:

21 (1) The cost of inspecting and monitoring the crossing
22 site.

23 (2) Administrative and engineering costs for review of
24 specifications and for entering a crossing on the railroad's
25 books, maps and property records and other reasonable
26 administrative and engineering costs incurred as a result of
27 the crossing.

28 (3) Document and preparation fees associated with a
29 crossing and any engineering specifications related to the
30 crossing.

1 (4) Actual flagging expenses associated with the
2 crossing.

3 "Fiber optic broadband line." A fiber optic cable consisting
4 of one or more thin flexible fibers with a glass core through
5 which light signals can transmit data as pulses, a coaxial cable
6 or other wireline system of technology used for broadband
7 distribution or the middle-mile infrastructure to Internet
8 service providers.

9 "License fee." The fee to be paid by the broadband service
10 provider to the railroad company for the crossing, including all
11 occupancy or real property rights.

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

19 Section 2. This act shall take effect in 60 days.