

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Introduced**

### **House Bill 3265**

**FISCAL  
NOTE**

By Delegates Linville and G. Howell

[Introduced March 07, 2025; referred to the  
Committee on Energy and Public Works]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,  
2 designated §5B-2Q-1, §5B-2Q-2, §5B-2Q-3, §5B-2Q-4, §5B-2Q-5, §5B-2Q-6, §5B-2Q-7,  
3 §5B-2Q-8, §5B-2Q-9, §5B-2Q-10, and §5B-2Q-11, relating to fiber optic broadband lines  
4 crossing railroads; providing legislative findings and purpose; providing definitions;  
5 establishing requirements for broadband service provider to cross railroad company  
6 property; establishing one-time standard cumulative crossing fee; establishing  
7 responsibilities of broadband service provider and railroad during construction; requiring  
8 broadband service provider reimburse railroad for flagging expenses; creating exception to  
9 fee for construction of crossing within public right-of-way; establishing requirements for  
10 construction crossing abandoned track; creating civil remedies for railroad or broadband  
11 provider for relief in certain circumstances; providing for state to grant right of way in  
12 certain circumstances; and providing for application of section.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 2Q. FIBER OPTIC BROADBAND LINES CROSSING RAILROADS.**

**§5B-2Q-1. Fiber optic broadband lines crossing railroads.**

1 The establishment of a standardized cumulative crossing fee by the legislature under this  
2 section is an exercise of its policy to promote the rapid deployment of broadband in the state.

**§5B-2Q-2. Definitions.**

1 For the purposes of this section:

2 "Actual flagging expenses" means expenses directly attributable to the cost of maintaining  
3 flaggers at the point of the crossing during the period of time construction is actually occurring.

4 "Actual flagging expenses" shall be considered pass-through expenses and shall not exceed the  
5 expense incurred by the railroad company.

6 "Broadband service provider" means an entity that provides broadband service, including  
7 voice-over-internet protocol service, through the utilization of a fiber optic line, coaxial cable, or  
8 other wireline system.

9 "Direct expenses" includes (1) the cost of inspecting and monitoring the crossing site; (2)  
10 administrative and engineering costs for review of specifications and for entering a crossing on the  
11 railroad's books, maps, and property records, and other reasonable administrative and  
12 engineering costs incurred as a result of the crossing; and (3) document and preparation fees  
13 associated with a crossing and any engineering specifications related to the crossing.

14 "Fiber optic line" means a fiber optic cable consisting of one or more thin flexible fibers with  
15 a glass core through which light signals can transmit data as pulses, a coaxial cable, or other  
16 wireline system of technology used for broadband communications.

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

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

**§5B-2Q-3. Notice of intent to cross.**

1 If a broadband service provider deems it necessary in the construction of its systems to  
2 cross the works of a railroad company, including its tracks, bridges, facilities, and all railroad  
3 company rights-of-way or easements, then the broadband service provider may do so, *Provided,*  
4 That:

5 (1) Such crossing shall be:

6 (A) 300 feet or less;

7 (B) Located, constructed, and operated so as not to impair, impede, or obstruct, in any  
8 material degree, the works and operations of the railroad to be crossed;

9 (C) Supported by permanent and proper structures and fixtures; and

10 (D) Controlled by customary and approved appliances, methods, and regulations to  
11 prevent damage to the works of the railroad and ensure the safety of its passengers.

12 (2) The broadband service provider shall give the railroad company written notice of the  
13 provider's intent to cross the works of such railroad company at least 30 days before the desired  
14 crossing date. The written notice shall include:

15 (A) The standard cumulative crossing fee described in §5B-2Q-4 of this code;

16 (B) Preliminary construction plans that show the location of the crossing, including whether  
17 it is located in a public right-of-way;

18 (C) The proposed date of commencement of work;

19 (D) The anticipated duration of the crossing; and

20 (E) The contact information of the broadband service provider's point of contact.

**§5B-2Q-4. Construction of broadband service.**

1 The broadband service provider shall be responsible for all aspects of the implementation  
2 of the physical crossing, including the construction and installation of the broadband lines and all  
3 related equipment, attachments, and infrastructure. The railroad company shall be responsible for  
4 flagging operations and other protective measures that it deems appropriate during the period of  
5 broadband line construction. The broadband service provider shall be responsible for ensuring  
6 that the crossing is constructed and operated in accordance with accepted industry standards,  
7 including standards established by the National Electrical Safety Code and joint use processes of  
8 electric utilities.

**§5B-2Q-5. One-time standard cumulative crossing fee.**

1 A broadband service provider that locates its fiber optic broadband line within a railroad  
2 right-of-way shall pay the railroad company for the right to make a crossing of the railroad  
3 company's works a one-time standard cumulative crossing fee of \$1,500 dollars for each crossing  
4 unless (1) otherwise agreed to by the broadband service provider and the railroad company, or (2)

5 the railroad company has petitioned for inverse condemnation in the circuit court of the county in  
6 which the crossing is to be located in accordance with this section. The broadband service  
7 provider shall reimburse the railroad company for any actual flagging expenses associated with a  
8 crossing in addition to the standard crossing fee if the railroad company schedules the flaggers on  
9 or before the proposed crossing date. If the railroad company fails to schedule flaggers on or  
10 before the proposed crossing date, then the railroad company shall not be reimbursed for any  
11 actual flagging expenses associated with the crossing. The railroad company shall substantiate  
12 the actual flagging expenses incurred to qualify for reimbursement.

**§5B-2Q-6. Flagging expenses.**

1 The broadband service provider shall reimburse the railroad company for any actual  
2 flagging expenses associated with a crossing in addition to the standard crossing fee if the railroad  
3 company schedules the flaggers on or before the proposed crossing date. If the railroad company  
4 fails to schedule flaggers on or before the proposed crossing date, then the railroad company shall  
5 not be reimbursed for any actual flagging expenses associated with the crossing. The railroad  
6 company shall substantiate the actual flagging expenses incurred to qualify for reimbursement.

**§5B-2Q-7. Fee exceptions.**

1 In no case shall a broadband service provider be required to pay a standard cumulative  
2 crossing fee for the right to make a crossing of the railroad company's works within a public right-  
3 of-way.

**§5B-2Q-8. Crossing abandoned track.**

1 If the broadband service provider gives notice to the railroad company to cross a section of  
2 track that has been legally abandoned pursuant to an order of a federal or state agency having  
3 jurisdiction over the track and is not being used for railroad service, then the railroad company  
4 shall notify the broadband service provider that the specified section of track is legally abandoned  
5 within 30 days of such notice. A broadband service provider seeking to cross a legally abandoned  
6 section of track shall be subject to a reduced one-time standard cumulative crossing fee of \$1,000.

**§5B-2Q-9. Civil remedies.**

1           (a) If the railroad company asserts that:

2           (1) The one-time standard cumulative crossing fee is not adequate compensation for the  
3 specified crossing;

4           (2) The proposed crossing will cause undue hardship on the railroad company; or

5           (3) The proposed crossing will create the imminent likelihood of danger to public health or  
6 safety, then the railroad company may petition the circuit court of the county in which the crossing  
7 is to be located for inverse condemnation and any other relief pursuant to this section within 15  
8 days from the date the broadband service provider provided notice of the intended crossing.

9           Within 30 days from the date of such notice, the court, in its discretion, may, by notice  
10 served upon both parties, suspend work on such crossing for a reasonable time, not to exceed 60  
11 days, upon a showing by the railroad sufficient to obtain injunctive relief under the rules of civil  
12 procedure on the grounds that:

13           (A) The proposed crossing will cause undue hardship on the railroad company; or

14           (B) The proposed crossing will create the imminent likelihood of danger to public health or  
15 safety.

16           (b) A broadband provider may petition the circuit court in the county in which the crossing is  
17 to be located for injunctive and other relief under the rules of civil procedure.

**§5B-2Q-10. Right-of-way.**

1           The state shall grant a right-of-way or permit to any broadband service provider seeking to  
2 use the right-of-way or permit for broadband deployment to the extent that the state owns any  
3 interest in any real property crossed by a railroad or manages any real property not owned by the  
4 state that is crossed by a railroad.

**§5B-2Q-11.****Application.**

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

NOTE: The purpose of this bill is to provide clarification on the process of fiber optic broadband lines crossing railroads and to establish a one-time standard cumulative crossing fee.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.