

2019 Regular Session

HOUSE BILL NO. 436

BY REPRESENTATIVE JAY MORRIS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

UTILITIES: Provides for the installation of telecommunication lines relative to a railroad right-of-way

1 AN ACT

2 To enact R.S. 45:781.2, relative to telecommunications; to provide for the installation of  
3 telecommunication lines; to provide for the authority to cross and install lines near  
4 railroad tracks; to provide definitions; to provide requirements for crossing; to  
5 provide for a fee to the railroad; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 45:781.2 is hereby enacted to read as follows:

8 §781.2. Telecommunication lines; right to cross railroad tracks

9 A. As used in this Section, the following words shall be defined as follows:

10 (1) "Commission" means the Louisiana Public Service Commission.

11 (2) "Crossing" means the construction, operation, repair, or maintenance of  
12 a facility over, under, or across a railroad right-of-way by a telecommunications  
13 company.

14 (3) "Direct expenses" is limited to the following:

15 (a) Engineering cost to review the specifications.

16 (b) Actual cost of flagging, if required for safety.

17 (c) Actual cost to inspect the crossing site.

18 (4) "Facility" means any cable, conduit, wire, pipe, casing pipe, supporting  
19 poles and guys, manhole, or other material and equipment that is used by a  
20 telecommunications company to furnish any communications services.

1           (5) "Railroad" or "railroad corporation" means a railroad corporation which  
2           is the owner, operator, occupant, manager, or agent of a railroad right-of-way or the  
3           railroad corporation's successor in interest.

4           (6) "Railroad right-of-way" means one or more of the following:

5           (a) A servitude, right-of-way, or other interest in immovable property that  
6           is owned or operated by a railroad corporation, the trustees of a railroad corporation,  
7           or the successor in interest of a railroad corporation.

8           (b) A servitude, right-of-way, or other interest in immovable property that  
9           is occupied or managed by or on behalf of a railroad corporation, the trustees of a  
10           railroad corporation, or the successor in interest of a railroad corporation, including  
11           an abandoned railroad right-of-way.

12           (c) Another interest in a former railroad right-of-way that has been acquired  
13           or is operated by a land management company or similar entity.

14           (7) "Telecommunications company" includes an entity providing local  
15           exchange telecommunications, inter-exchange telecommunications, cable or video  
16           services, internet or broadband services, and any entity providing similar services to  
17           the public using fiber-optic facilities.

18           B. In addition to the right to install lines necessary to transmit intelligence  
19           along and parallel to any of the railroads in the state as set forth in R.S. 45:781, a  
20           telecommunication company may construct, install, and maintain lines that cross  
21           under or over the tracks of railroads in a manner that does not obstruct the ordinary  
22           use of the railroad.

23           C.(1) If the proposed crossing is to be placed within the right-of-way of a  
24           highway or public road that crosses the railroad tracks, the telecommunications  
25           company seeking to install lines shall not be required to pay any compensation to the  
26           railroad other than the direct expenses associated with the proposed crossing.

27           (2) If the crossing is to cross railroad tracks located outside of the right-of-  
28           way of a highway or public road, the telecommunications company seeking to install  
29           lines shall pay the railroad a one-time standard crossing fee of no more than five

1 hundred dollars and the direct expenses for each railroad track that is crossed. The  
2 standard crossing fee shall be in lieu of any license or any other fee or charge.

3 (3) A railroad company shall not charge a telecommunications company  
4 more than five hundred dollars for the direct expenses associated with a crossing.

5 D.(1) At least thirty days before beginning a crossing, a telecommunications  
6 company shall provide a railroad with the following information by certified mail:

7 (a) Notification of the proposed crossing.

8 (b) A statement that indicates that the railroad and the telecommunications  
9 company shall each maintain and repair its own respective property within the  
10 railroad right-of-way and that each bear responsibility for its own acts and  
11 omissions; except that the telecommunications company shall be responsible for any  
12 bodily injury or property damage that typically would be covered under a standard  
13 railroad protective liability insurance policy.

14 (c) Proof of the amount and scope of insurance or self-insurance required to  
15 cover risks associated with a crossing, which shall not be less than two million  
16 dollars per incident.

17 (d) An engineering design showing the location of the proposed crossing and  
18 the railroad's property, tracks, and wires that the telecommunications provider or  
19 network support infrastructure owner will cross. The engineering design shall  
20 conform to the guidelines published in the most recent edition of either the National  
21 Electric Safety Code or the Manual for Railway Engineering of the American  
22 Railway Engineering and Maintenance-of-Way Association.

23 (2) A railroad shall not adopt any additional processes or regulate a  
24 telecommunications company's crossing activity beyond the perimeters established  
25 by this Section.

26 E.(1) Any review of a proposed crossing shall be completed by the railroad  
27 within thirty days after notice is provided by the telecommunications company and  
28 the proposed crossing shall be permitted unless it presents a serious threat to the safe  
29 operations of the railroad or to the current use of the railroad right-of-way.

1           (2) If a serious threat does exists, the railroad shall notify the  
2           telecommunications company of the threat with reasonable documentation describing  
3           the threat and how it may be corrected, by certified mail, with return receipt  
4           requested.

5           F. If a mutually agreeable time for the proposed crossing is not established  
6           between the telecommunications company and the railroad within sixty days of  
7           providing notice, the telecommunications company may proceed with the proposed  
8           crossing as stated in its notice.

9           G.(1) Disputes pursuant to the provisions of this Section may be heard by a  
10          court of competent jurisdiction.

11          (2) A railroad shall prove by clear and convincing evidence that a denial of  
12          a proposed crossing fails to comply with the terms of this Section.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 436 Original

2019 Regular Session

Jay Morris

**Abstract:** Provides for the crossing of telecommunication lines near, under, and above railroad tracks and rights-of-way.

Present law (R.S. 45:781) establishes that corporations formed for transmitting intelligence by telegraph, telephone, or other system have the right of use along all public roads or public works, along and parallel to railroads, and along and over the waters of the state if the ordinary use of the roads, works, railroads, and waters are not obstructed, and along city streets with the consent of the city governing authority.

Proposed law retains present law, and also provides that additionally, a telecommunication company may construct lines that cross under or over the tracks of railroads in a manner that does not obstruct use of the railroad.

Proposed law provides that if a telecommunication crossing is to be placed within the right-of-way of a highway or road that crosses the railroad tracks, that the telecommunication company doesn't owe any payment except for their own expenses.

Proposed law provides that if the telecommunications company wishes to construct lines outside of a right-of-way, that they owe the railroad company a one-time crossing fee of up to \$500.

Proposed law requires a telecommunications company to notify a railroad by certified mail at least thirty days before beginning a crossing:

- (1) Notification of the crossing.

- (2) A statement indicating that each party shall maintain and repair its own property and bear responsibility for its own actions or misgivings. The telecommunication company, however, will maintain responsibility for any bodily injury or property damage that would typically be covered under a railroad liability insurance policy.
- (3) Proof of at least two million dollars of insurance.
- (4) An engineering design for the placement of the crossing in conformation with recent accepted guidelines.

Proposed law does not allow a railroad to adopt any additional processes or regulations regarding the telecommunication company's crossing activity.

Proposed law provides that the railroad company has 30 days to review the notice and that they shall allow the construction of the crossing unless they know of a serious threat to safety. Proposed law provides that if a threat exists, the railroad company shall notify the telecommunications company of the threat by certified mail.

Proposed law provides that if the two parties do not agree upon a time of construction within 60 days, that the telecommunication company has a right to commence with the crossing as stated in the notice.

Proposed law provides that complaints can be addressed in district court and that a railroad shall prove that any denial of a proposed crossing fails to comply with proposed law by clear and convincing evidence.

(Adds R.S. 45:781.2)