
THE GENERAL ASSEMBLY OF PENNSYLVANIA

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CERRATO AND CONKLIN, MAY 18, 2023

REFERRED TO COMMITTEE ON CONSUMER PROTECTION, TECHNOLOGY AND
UTILITIES, MAY 18, 2023

AN ACT

1 Amending Title 68 (Real and Personal Property) of the
2 Pennsylvania Consolidated Statutes, in broadband services,
3 further providing for definitions and providing for
4 application for crossing, for review and approval of
5 application for crossing, for procedures for crossing, for
6 fees and costs associated with crossing, for petition to
7 commission, for duties of commission and for miscellaneous
8 provisions.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Section 8201 of Title 68 of the Pennsylvania
12 Consolidated Statutes is amended by adding definitions to read:

13 § 8201. Definitions.

14 The following words and phrases when used in this chapter
15 shall have the meanings given to them in this section unless the
16 context clearly indicates otherwise:

17 "Actual flagging expenses." Expenses directly attributable
18 to the cost of maintaining flaggers at the point of crossing
19 during the period of time work by a broadband service provider
20 is actually occurring.

1 * * *

2 "Broadband service provider." An electricity,
3 telecommunications, cable operator or Internet supplier or
4 affiliate or an electric cooperative corporation or an affiliate
5 of an electric cooperative corporation that constructs, owns or
6 installs broadband facilities to provide broadband services.

7 * * *

8 "Commission." The Pennsylvania Public Utility Commission.

9 "Crossing." The construction, installation, operation,
10 repair or maintenance of broadband facilities over, under or
11 across railroad property by a broadband service provider.

12 "Direct expenses." Expenses incurred by a railroad,
13 including:

14 (1) The cost of inspecting and monitoring the crossing
15 site.

16 (2) Administrative and engineering costs for review of
17 specifications and for entering a crossing site on the
18 railroad's books, maps and property records and other
19 reasonable administrative and engineering costs incurred as a
20 result of the crossing.

21 (3) Document and preparation fees associated with a
22 crossing and any engineering specifications related to the
23 crossing.

24 (4) Actual flagging expenses associated with the
25 crossing which shall not exceed the expense incurred by the
26 railroad company.

27 * * *

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

1 "Railroad." Any form of nonhighway ground transportation
2 that runs on rails or electromagnetic guideways, including:

3 (1) Commuter or other short-haul railroad passenger
4 service in a metropolitan or suburban area.

5 (2) High-speed ground transportation systems that
6 connect metropolitan areas, but not rapid transit operations
7 in an urban area that are not connected to the general
8 railroad system of transportation.

9 "Railroad company." A person that owns, leases or operates a
10 railroad or owns or leases the land upon which a railroad is
11 operated, or its agents or assigns, including a person to which
12 a railroad company has granted rights to collect or retain all
13 or a portion of any revenue stream owed by a third party for use
14 of or access to railroad property.

15 "Railroad property." All real property owned, leased or
16 operated by a railroad company, including a bridge, depot,
17 easement, facility, right-of-way, terminal, track, trestle,
18 tunnel, viaduct, yard or any other land owned, leased or used
19 for railroad service in the operation of a railroad company.
20 The term does not include a railroad company's administrative
21 building or offices, office equipment or intangible property
22 such as computer software or other information.

23 Section 2. Title 68 is amended by adding sections to read:
24 § 8203. Application for crossing.

25 (a) General.--If a broadband service provider deems it
26 necessary in the construction or installation of broadband
27 facilities to cross railroad property, the broadband service
28 provider shall submit an application for the crossing to the
29 railroad company.

30 (b) Contents of application.--The broadband service

1 provider's application for a crossing shall include:

2 (1) The license fee described in section 8206 (relating
3 to fees and costs associated with crossing).

4 (2) The location of the crossing site.

5 (3) The proposed date of commencement of work at the
6 crossing site.

7 (4) The anticipated duration of the work at the crossing
8 site.

9 (5) The anticipated areas surrounding the crossing site
10 in which the project personnel will work.

11 (6) The contact information of the broadband service
12 provider's point of contact.

13 (7) A copy of a certificate of the broadband service
14 provider's commercial general liability insurance policy or
15 railroad protective liability insurance policy.

16 (8) Engineering design plans, construction plans, bore
17 plans, fraction mitigation plans, dewatering plans, rigging
18 and lifting plans and any other pertinent plans deemed
19 necessary and prepared by a registered professional engineer.

20 (9) An attestation of the date that the broadband
21 service provider provided notice of the crossing, including
22 the information specified in paragraphs (2), (3), (4), (5)
23 and (6), to the commission and the Pennsylvania One Call
24 System.

25 § 8204. Review and approval of application for crossing.

26 (a) Acknowledgment.--Upon receipt of a broadband service
27 provider's application for a crossing, the railroad company
28 shall acknowledge receipt of the application.

29 (b) Review.--The railroad company shall review the
30 application and may request additional information or

1 clarification from the broadband service provider within 20 days
2 from receipt of the application.

3 (c) Response time.--If additional information or
4 clarification is requested by the railroad company, the
5 broadband service provider shall respond within 10 days from the
6 receipt of the request.

7 (d) Time for approval.--The railroad company shall approve
8 the broadband service provider's application for a crossing
9 within 45 days from receipt of the application unless the
10 railroad company petitions the commission under section 8207
11 (relating to petition to commission).

12 § 8205. Procedures for crossing.

13 (a) Procedure.--A proposed crossing shall be:

14 (1) Located, constructed and operated so as not to
15 impair, impede or obstruct the operations of the railroad to
16 be crossed.

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

19 (3) Controlled by customary and approved appliances,
20 methods and regulations to prevent damage to the operations
21 of the railroad and ensure the safety of passengers.

22 (b) Coordination.--The railroad company and the broadband
23 service provider shall coordinate to schedule the date for
24 commencement of the crossing, which shall be within 30 days of
25 the approval of the application for a crossing, or at a later
26 date as indicated in the application or mutually agreed upon.

27 (c) Implementation.--The broadband service provider shall be
28 responsible for all aspects of the implementation of the
29 physical crossing, including construction and installation of
30 the broadband facilities and all related equipment, structures,

1 fixtures and infrastructure.

2 (d) Standards and practices.--The broadband service provider
3 shall be responsible for ensuring that all construction,
4 installation, maintenance, operation or repair of broadband
5 facilities over, under or across railroad property is performed
6 in accordance with accepted industry standards and good utility
7 practices.

8 (e) Protective measures.--The railroad company shall be
9 responsible for flagging operations and other protective
10 measures that the railroad company deems appropriate during the
11 actual construction, installation, maintenance or repair of
12 broadband facilities over, under or across railroad property.

13 § 8206. Fees and costs associated with crossing.

14 (a) Fee.--A broadband service provider that submits an
15 application for a crossing shall pay to the railroad company a
16 license fee of \$2,000 for each crossing.

17 (b) Reimbursement.--

18 (1) In addition to the license fee, the broadband
19 service provider shall reimburse the railroad company for
20 direct expenses.

21 (2) Direct expenses shall not exceed \$8,000 unless:

22 (i) an additional expense amount is agreed to by the
23 broadband service provider; or

24 (ii) the railroad company petitions the commission
25 for additional reimbursement and the commission has
26 issued a subsequent order directing an additional
27 reimbursement by the broadband service provider.

28 (c) Documentation.--To qualify for reimbursement of direct
29 expenses, the railroad company shall provide documentation and
30 other direct evidence of the direct expenses incurred to the

1 broadband service provider.

2 (d) Abandoned property.--Notwithstanding the provisions of
3 subsection (a), if the broadband service provider submits an
4 application to a railroad company for a crossing site on
5 railroad property that has been legally abandoned pursuant to an
6 order of a Federal or State agency having jurisdiction over the
7 railroad property and is not being used for railroad service,
8 the license fee shall be \$1,000.

9 § 8207. Petition to commission.

10 (a) General rule.--Within 40 days from receipt of a
11 broadband service provider's application for a crossing, the
12 railroad company may petition the commission for relief and
13 provide simultaneous notice to the broadband service provider,
14 if the railroad company asserts that:

15 (1) the license fee is not adequate compensation for the
16 proposed crossing;

17 (2) the proposed crossing will cause undue hardship on
18 the railroad company; or

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

21 (b) Petition for additional reimbursement.--After incurring
22 direct expenses, but no later than 120 days following the
23 completion of work associated with a crossing by a broadband
24 service provider, the railroad company may petition the
25 commission for additional reimbursement of direct expenses by
26 the broadband service provider if the direct expenses exceed
27 \$8,000 and the direct expenses have not been agreed to by the
28 broadband service.

29 (c) Costs.--All costs for services rendered by the
30 commission associated with a railroad company's petition for

1 additional reimbursement of direct expenses under subsection (b)
2 shall be borne by the railroad company.

3 (d) Relief.--The broadband service provider may petition the
4 commission for relief if the railroad company does not comply
5 with the applicable provisions of this section and sections 8204
6 (relating to review and approval of application for crossing),
7 8205 (relating to procedures for crossing) and 8206 (relating to
8 fees and costs associated with crossing) or has otherwise
9 wrongfully rejected or delayed the broadband service provider's
10 application.

11 (e) Noncompliance.--The railroad company may petition the
12 commission for relief if the broadband service provider does not
13 comply with the applicable provisions of sections 8203 (relating
14 to application for crossing), 8204, 8205 and 8206.

15 (f) Equal costs.--Except as provided in subsections (b) and
16 (c), all costs for services rendered by the commission
17 associated with a petition filed under subsection (d) or (e)
18 shall be borne equally by the broadband service provider and the
19 railroad company.

20 § 8208. Duties of commission.

21 (a) General rule.--The commission shall promulgate
22 regulations as necessary for the construction and installation
23 of broadband facilities to cross railroad property.

24 (b) Findings and determinations.--

25 (1) The commission may make necessary findings of fact
26 and determinations related to the adequacy of compensation,
27 the existence of undue hardship on the railroad company or
28 the imminent likelihood of danger to public health or safety,
29 as well as any relief to be granted, including any amount to
30 which the railroad company is entitled in excess of the

1 license fee or reimbursement of direct expenses as prescribed
2 in section 8206 (relating to fees and costs associated with
3 crossing).

4 (2) If the railroad company asserts that the license fee
5 is not adequate compensation for the specified crossing, the
6 issue of compensation may be considered by the commission
7 after the commencement or completion of the work by the
8 broadband service provider.

9 (c) Commission powers.--The commission may, in its
10 discretion:

11 (1) Examine the location, plans, specifications and
12 methods proposed to be employed.

13 (2) Hear objections and consider modifications from a
14 railroad company.

15 (3) Within the time that the commission determines,
16 reject, approve or modify the plans and specifications.

17 (d) Adjudication.--The commission shall adjudicate a
18 petition by the railroad company or the broadband service
19 provider and issue a final order within 90 days of the
20 petition's initial filing.

21 (e) Jurisdiction.--The commission shall have sole
22 jurisdiction to hear and resolve claims between railroad
23 companies and broadband service providers concerning railroad
24 crossings under sections 8203 (relating to application for
25 crossing), 8204 (relating to review and approval of application
26 for crossing), 8205 (relating to procedures for crossing), 8206
27 (relating to fees and costs associated with crossing) and 8207
28 (relating to petition to commission).

29 § 8209. Miscellaneous provisions.

30 (a) Findings.--The establishment of a license fee cap and a

1 direct expenses reimbursement cap by the Commonwealth is an
2 exercise of the Commonwealth's policy to promote the rapid
3 deployment of broadband throughout this Commonwealth.

4 (b) Construction.--The provisions of this section shall be
5 construed in favor of broadband expansion.

6 (c) Liability.--The broadband service provider shall
7 maintain a commercial general liability insurance policy or
8 railroad protective liability insurance policy that:

9 (1) Does not exclude work within 50 feet of railroad
10 property.

11 (2) Remains in effect during the period of time work on
12 a crossing is actually occurring.

13 (d) Existing agreements and disputes.--With the exception of
14 section 8202 (relating to broadband services), nothing in this
15 chapter shall prevent a railroad company and a broadband service
16 provider from continuing under an existing agreement or from
17 otherwise negotiating the resolution of any disputes relating to
18 the crossing.

19 Section 3. This act shall take effect in 180 days.