

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 3059

By Delegates Reynolds, Dean, Bridges, Linville,
Worrell, Willis, Honaker, Zatezalo, Barnhart,
Burkhammer and Holstein

[Introduced January 25, 2023; Referred to the
Committee on Technology and Infrastructure]

1 A BILL to amend and reenact §31-2A-2 of the Code of West Virginia, 1931, as amended; and to
2 amend said Code by adding thereto a new article, designated §24-2G-1, §24-2G-2, §24-
3 2G-3, §24-2G-4, §24-2G-5, §24-2G-6, §24-2G-7, §24-2G-8, §24-2G-9, §24-2G-10, §24-
4 2G-11, §24-2G-12, §24-2G-13, §24-2G-14, §24-2G-15, §24-2G-16, §24-2G-17, §24-2G-
5 18, and §24-2G-19; and to amend said Code by adding thereto a new section designated
6 as §54-1-9a, all relating to railroads; relating to railroad administration powers of the Public
7 Service Commission; providing a definition; clarifying regulation of service applicable to
8 railroads; providing exceptions; allowing for inquiries into management of railroads and
9 investigation into violations of interstate commerce law; allowing for inquiries into neglect
10 or violations of law; authorizing examinations and production of books and papers;
11 providing for forfeiture for refusal to comply with subpoena; requiring annual statement to
12 commission and identification of officers and directors; providing a prohibition against
13 directing a violation of law; creating a duty to provide adequate service and facilities;
14 directing that charges conform to schedule; requiring maintenance of depots, switches,
15 and sidetracks; recognizing commission's authority over private tracks; prohibiting
16 unlawful preference; prohibiting violations of article; providing rulemaking authority;
17 requiring railroad companies to provide alternative entry and exit ways in certain
18 circumstances; regulating fiber optic broadband lines crossing railroads; legislative
19 findings and purpose; definitions; notice of intent to cross; conditions of crossing; one-time
20 standard cumulative crossing fee; flagging expenses; crossing within another public right
21 of way; crossing abandoned track; petition by railroad to circuit court for relief; petition by
22 broadband provider for relief; and broadband provider crossing of state property that is
23 crossed by a railroad or property managed by the state that is crossed by a railroad.

Be it enacted by the Legislature of West Virginia:

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2G. PUBLIC SERVICE COMMISSION – RAILROAD POWERS.

§24-2G-1. Definition.

1 Notwithstanding any other provision of code to the contrary, the following definition shall
2 apply to this article:

3 "Railroad" includes any corporation, company, individual, or association of individuals, or
4 its lessees, trustees, or receivers appointed by a court, which owns, operates, manages, or
5 controls a railroad or part of a railroad as a common carrier in this state, or which owns, operates,
6 manages, or controls any cars or other equipment used on such a railroad, or which owns,
7 operates, manages, or controls any bridges, terminals, union depots, sidetracks, docks, wharves,
8 or storage elevators used in connection with such a railroad, whether owned by such railroad or
9 otherwise, and means and includes express companies, water transportation companies, freight-
10 line companies, sleeping car companies, and interurban railroad companies, and all persons and
11 association of persons, whether incorporated or not, operating such agencies for public use in the
12 conveyance of persons or property within this state.

§24-2G-2. Regulation of service applicable to railroads.

1 (a) Regulation of service applicable to railroads shall include:

2 (1) The transportation of passengers and property between points within the state;

3 (2) The receiving, switching, delivering, storing, and handling of such property;

4 (3) All charges connected with this section of code, including icing charges and mileage
5 charges;

6 (4) All railroad companies, sleeping car companies, equipment companies, express
7 companies, car companies, freight and freight-line companies, and all associations of persons,
8 incorporated or otherwise, which do business as common carriers, upon or over a line of railroad
9 within this state;

10 (5) A common carrier engaged in the transportation of passengers or property wholly by
11 rail, partly by rail and partly by water, or wholly by water;

12 (6) The regulation of all other duties, services, practices, and charges of the railroad
13 company, incident to the shipping and receiving of freight, which are proper subjects of regulation.

14 (7) Such regulation shall not include or apply to the regulation of commerce with foreign
15 nations, commerce among the several states, and commerce with the Indian tribes.

§24-2G-3. Exceptions.

1 This article does not apply to street and electric railways engaged solely in the
2 transportation of passengers within the limits of cities, or to other private railroads not doing
3 business as common carriers.

§24-2G-4. Inquiry into management of railroads.

1 The Public Service Commission ("commission") may inquire into the management of the
2 business of any railroad, and shall keep itself informed as to the manner and method in which it is
3 conducted. It may obtain from a railroad the information necessary to enable it to perform the
4 duties and carry out the objects for which it was created.

§24-2G-5. Inquiry into neglect or violations of laws.

1 (a) The commission shall inquire into any neglect or violation of the laws of this state by a
2 railroad doing business in this state, by its officers, agents, or employees, or by any person
3 operating a railroad. The commission shall enforce this article, as well as other laws relating to
4 railroads, and report violations thereof to the attorney general.

5 (b) If, upon complaint or otherwise, the commission has reason to believe that a railroad or
6 any officer, agent, or employee of a railroad has violated or is violating any law of this state, or if it
7 has reason to believe that differences have arisen between citizens of the state and any railroad
8 operating as a common carrier within this state, it shall examine the matter.

§24-2G-6. Power of commission to regulate in cases not designated.

1 If, after hearing and investigation under this chapter, the commission finds any charges,
2 regulation, or practice affecting the intrastate transportation of passengers or property, or any

3 service in connection therewith, not specifically designated, unreasonable or unjustly
4 discriminatory, it shall by order fix reasonable charges, regulation or practice in lieu of those found
5 to be unreasonable or unjustly discriminatory.

§24-2G-7. Commission may make examinations.

1 Upon demand, the commission or any commissioner, or any person employed by the
2 commission for that purpose, may inspect the books and papers of a railroad and examine under
3 oath any officer, agent, or employee of a railroad, in relation to any matter which is the subject of
4 complaint and investigation.

§24-2G-8. Commission may require production of books and papers.

1 By order or subpoena served on a railroad, the commission may require, at such time and
2 place within this state as it designates, the production of books, papers, or accounts relating to any
3 matter which is the subject of complaint or investigation, kept by such railroad in any office or place
4 outside of this state, or verified copies thereof, in order that an examination of such books, papers,
5 or accounts may be made by the commission or under its direction

§24-2G-9. Forfeiture for refusal to comply with subpoena.

1 A railroad, or any officer or agent of a railroad, that fails or refuses to comply within a
2 reasonable time with an order or subpoena from the commission issued under this article shall be
3 subject to the penalties set forth in 24-4-1 et seq.

§24-2G-10. Annual statement under oath to commission.

1 Every railroad company, incorporated or doing business in this state, shall file with the
2 Public Service Commission a full and true statement of the affairs of such railroad relative to this
3 state, covering the yearly period fixed by the commission. Such statement shall be made under
4 oath of the proper officers of such company and shall be similar in character and detail to the
5 annual report required to be made by railroad companies to the National Surface Transportation
6 Board. [If any such report is defective or erroneous, the Public Service Commission may order it to
7 be amended within a prescribed time. Such annual reports shall be preserved in the office of the

8 commission, which commission may require specific answers to questions upon which it desires
9 information.

§24-2G-11. List of officers and directors.

1 Within 30 days after the election of the directors of a railroad doing business in the state,
2 the railroad shall forward to the commission a list of the officers and directors thereof, giving the
3 place of residence and post-office address of each. If a change occurs in the organization of the
4 officers or board of directors of a railroad, the railroad shall notify the commission of such change
5 and the residence and post-office address of each of the officers and directors within 30 days of
6 such change.

§24-2G-12. Prohibition against directing violation.

1 No railroad shall, by itself or by a general officer thereof, by direction, instruction, or
2 request, cause an officer, agent, or employee of such railroad to violate this article or any state law.

§24-2G-13. Adequate service and facilities.

1 Each railroad shall furnish reasonably adequate service and facilities. The charges made
2 for any service rendered or to be rendered in the transportation of passengers or property, for any
3 service in connection therewith, or for the receiving, switching, delivering, storing, or handling of
4 such property, shall be reasonable and just. Every unjust and unreasonable charge for such
5 service is prohibited.

§24-2G-14. Charges shall conform to schedule.

1 No railroad shall charge, demand, collect, or receive a greater or less compensation for the
2 intrastate transportation of passengers or property, or for any service in connection therewith, than
3 is specified in the printed schedules filed with the Federal Railroad Administration or the Surface
4 Transportation Board, including schedules of joint rates, as being then in force. The rates, fares,
5 and charges named in such schedules shall be the lawful rates, fares, and charges until they are
6 changed as provided in this article.

§24-2G-15. Depots, switches, and sidetracks.

1 Each railroad shall provide and maintain adequate depots and depot buildings at its
2 regular stations for the accommodation of passengers. Such depot buildings shall be kept clean,
3 well-lighted, and warmed, for the comfort and accommodation of the traveling public. Each
4 railroad shall provide and maintain adequate and suitable freight depots, buildings, switches, and
5 sidetracks for receiving, handling, and delivering freight, transported or to be transported by such
6 railroad.

§24-2G-16. Control over private tracks.

1 The Public Service Commission has the same control over private tracks, so far as such
2 tracks are used by common carriers in connection with a railroad for the transportation of freight,
3 as it has over the tracks of such railroad.

§24-2G-17. Unlawful preference.

1 No common carrier subject to the provisions of this article shall make or give undue or
2 unreasonable preference or advantage to a particular person, company, firm, corporation, or
3 locality, or to any particular description of traffic, or subject any particular person, company, firm,
4 corporation, or locality, or any particular description of traffic, to any undue or unreasonable
5 prejudice or disadvantage in any respect.

§24-2G-18. Violation.

1 No officer, agent, or employee in an official capacity of a public utility or railroad shall
2 knowingly violate this article, or willfully fail to comply with any lawful order or direction of the Public
3 Service Commission made with respect to any public utility or railroad. Each day's continuance of
4 such failure is a separate offense.

§24-2G-19. Commission authority to issue General Orders.

1 The Public Service Commission may issue General Orders as required to administer any
2 provision of this article.

CHAPTER 31. CORPORATIONS.

ARTICLE

2A.

RAILROAD

CROSSING.

§31-2A-2. Blocking of crossing prohibited; time limit.

1 (a) It is unlawful for any railroad company, except in an emergency, to order, allow or permit
2 the operation of or to operate or to so operate its system so that a train blocks the passage of
3 vehicular traffic over the railroad crossing of any public street, road or highway of this state for a
4 period longer than ten minutes. This section does not apply to an obstruction of any such street,
5 road or highway caused by a continuously moving train or caused by circumstances wholly
6 beyond the control of the railroad, but does apply to all other obstructions as aforesaid, including,
7 but not limited to, those caused by a stopped train or a train engaged in switching, loading or
8 unloading operations: *Provided*, That if any such train is within the jurisdictional limits of any
9 municipality which now has or hereafter shall have in force and effect an ordinance limiting the
10 time a railroad crossing may be blocked by a train, such ordinance shall govern, and the provisions
11 of this article shall not be applicable.

12 (b) Upon receiving notification from a law-enforcement officer, member of a fire
13 department, operator of an emergency medical vehicle, or a member of an emergency services
14 provider that emergency circumstances require the immediate clearing of a public highway
15 railroad grade crossing, the members of the train crew of the train, railroad car or equipment, or
16 engine blocking such crossing shall immediately notify the appropriate railroad dispatcher of the
17 pending emergency situation. Upon receipt of notice of such emergency circumstances by the
18 train crew or dispatcher, the railroad shall immediately clear the crossing, consistent with the safe
19 operation of the train.

20 (c) Railroad companies shall provide an alternative entry and exit way when performing
21 maintenance, repairs, and construction when such maintenance, repairs, and construction are
22 done in communities with one road in and out of the community, as a matter of public health and
23 safety.

CHAPTER 54. EMINENT DOMAIN.

ARTICLE 1. RIGHT OF EMINENT DOMAIN.

§54-1-9a. Fiber optic broadband lines crossing railroads.

1 (a) The establishment of a standardized cumulative crossing fee by the legislature
2 under this section is an exercise of its policy to promote the rapid deployment of broadband in
3 the state, and of its authority under the provisions of section 9, Article XI of the Constitution of
4 West Virginia, declaring railways to be public highways of this State.

5 (b) Definitions— For the purposes of this section:

6 "Actual flagging expenses" means expenses directly attributable to the cost of
7 maintaining flaggers at the point of the crossing during the period of time construction is
8 actually occurring. "Actual flagging expenses" shall be considered pass-through expenses and
9 shall not exceed the expense incurred by the railroad company.

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

13 "Direct expenses" includes

14 (i) the cost of inspecting and monitoring the crossing site;

15 (ii) administrative and engineering costs for review of specifications and for entering a
16 crossing on the railroad's books, maps, and property records, and other reasonable
17 administrative and engineering costs incurred as a result of the crossing; and

18 (iii) document and preparation fees associated with a crossing and any engineering
19 specifications related to the crossing.

20 "Fiber optic line" means

21 (i) a fiber optic cable consisting of one or more thin flexible fibers with a glass core
22 through which light signals can transmit data as pulses, a coaxial cable, or

23 (ii) another wireline system of technology used for broadband communications.

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

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

33 (c) If a broadband service provider deems it necessary in the construction of its systems
34 to cross the works of a railroad company, including its tracks, bridges, facilities, and all railroad
35 company rights of way or easements, then the broadband service provider may do so, provided
36 that:

37 (1) Such crossing shall be:

38 (i) three hundred feet or less in length;

39 (ii) located, constructed, and operated so as not to impair, impede, or obstruct, in any
40 material degree, the works and operations of the railroad to be crossed;

41 (iii) supported by permanent and proper structures and fixtures; and

42 (iv) controlled by customary and approved appliances, methods, and regulations to
43 prevent damage to the works of the railroad and ensure the safety of its passengers;

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

47 (i) the standard cumulative crossing fee described in 54-1-9a(d);

48 (ii) preliminary construction plans that show the location of the crossing, including
49 whether it is located in another public right-of-way;

50 (iii) the proposed date of commencement of work;

51 (iv) the anticipated duration of the construction of the crossing, and

52 (v) the contact information of the broadband service provider's point of contact.

53 (d) The broadband service provider shall be responsible for all aspects of the
54 implementation of the physical crossing, including the construction and installation of the
55 broadband lines and all related equipment, attachments, and infrastructure. The railroad
56 company shall be responsible for flagging operations and other protective measures that it
57 deems appropriate during the period of broadband line construction. The broadband service
58 provider shall be responsible for ensuring that the crossing is constructed and operated in
59 accordance with accepted industry standards, including standards established by the National
60 Electrical Safety Code and joint use processes of electric utilities.

61 (e) A broadband service provider that locates its fiber optic broadband line within a
62 railroad right-of-way shall pay the railroad company for the right to make a crossing of the
63 railroad company's works a one-time standard cumulative crossing fee of seven hundred fifty
64 dollars for each crossing unless:

65 (i) otherwise agreed to by the broadband service provider and the railroad company or

66 (ii) the railroad company has petitioned for inverse condemnation in the circuit court of
67 the county in which the crossing is to be located in accordance with this section.

68 The broadband service provider shall reimburse the railroad company for any actual
69 flagging expenses associated with a crossing in addition to the standard crossing fee if the
70 railroad company schedules the flaggers on or before the proposed crossing date. If the
71 railroad company fails to schedule flaggers on or before the proposed crossing date, then the
72 railroad company shall not be reimbursed for any actual flagging expenses associated with the

73 crossing. The railroad company shall substantiate the actual flagging expenses incurred to
74 qualify for reimbursement.

75 (f) The broadband service provider shall reimburse the railroad company for any actual
76 flagging expenses associated with a crossing in addition to the standard crossing fee if the
77 railroad company schedules the flaggers on or before the proposed crossing date. If the
78 railroad company fails to schedule flaggers on or before the proposed crossing date, then the
79 railroad company shall not be reimbursed for any actual flagging expenses associated with the
80 crossing. The railroad company shall substantiate the actual flagging expenses incurred to
81 qualify for reimbursement.

82 (g) In no case shall a broadband service provider be required to pay a standard
83 cumulative crossing fee for the right to make a crossing of the railroad company's works within
84 another public right-of-way.

85 (h) If the broadband service provider gives notice to the railroad company to cross a
86 section of track that has been legally abandoned pursuant to an order of a federal or state
87 agency having jurisdiction over the track and is not being used for railroad service, then the
88 railroad company shall notify the broadband service provider that the specified section of track
89 is legally abandoned within thirty days of such notice. A broadband service provider seeking to
90 cross a legally abandoned section of track shall be subject to a reduced one-time standard
91 cumulative crossing fee of five hundred dollars.

92 (i) If the railroad company asserts that:

93 (i) the one-time standard cumulative crossing fee is not adequate compensation for the
94 specified crossing;

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

96 (iii) the proposed crossing will create the imminent likelihood of danger to public health
97 or safety;

98 then the railroad company may petition the circuit court of the county in which the
99 crossing is to be located for inverse condemnation and any other relief pursuant to this section
100 within fifteen days from the date the broadband service provider provided notice of the intended
101 crossing. Within thirty days from the date of such notice, the court, in its discretion, may, by
102 notice served upon both parties, suspend work on such crossing for a reasonable time, not to
103 exceed sixty days, upon a showing by the railroad sufficient to obtain injunctive relief under the
104 rules of civil procedure on the grounds that:

105 (i) the proposed crossing will cause undue hardship on the railroad company; or
106 (ii) the proposed crossing will create the imminent likelihood of danger to public health
107 or safety.

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

110 (k) The state shall grant a right-of-way or permit to any broadband service provider
111 seeking to use the right-of-way or permit for broadband deployment to the extent that the state
112 owns any interest in any real property crossed by a railroad or manages any real property not
113 owned by the state that is crossed by a railroad.

114 (l) The provisions of this section shall apply notwithstanding any contrary provision of
115 law.

NOTE: The purpose of this bill is to provide for railroad regulation generally. It relates to railroad powers of the Public Service Commission. It provides a definition; clarifies regulation of service applicable to railroads; provides exceptions; allows for inquiries into management of railroads; allows for inquiries into neglect or violations of law; authorizes examinations and production of books and papers; requires annual statement to commission and identification of officers and directors; provides a prohibition against directing a violation of law; requires maintenance of depots, switches, and sidetracks; recognizes commission's authority over private tracks; prohibits unlawful preference; prohibits violations of article; and provides authority to administer provisions of the article. It requires railroad companies to provide an alternative entry and exit way to one road communities when performing maintenance, repairs, and construction as a matter of public health and safety. It further provides for the regulation of fiber optic broadband lines crossing railroads; sets forth legislative findings and purpose; defines terms; requires a notice of intent to cross; defines conditions of crossing; imposes a one-time standard cumulative crossing fee; sets flagging expenses; delineates crossings within public right of way and crossings of abandoned track; permits a petition by railroad to circuit court for relief

and a petition by broadband provider for relief; and sets forth conditions for a broadband provider crossing of state property that is crossed by a railroad or property managed by the state that is crossed by a railroad

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