

2020 Regular Session

HOUSE BILL NO. 651

BY REPRESENTATIVE DESHOTEL

RAILROADS: Provides with respect to broadband service providers access to railroad right of way

1 AN ACT

2 To enact Chapter 14 of Title 45 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 45:1611 through 1613, relative to broadband service; to provide definitions;
4 to provide right to use public property; to provide for the installation of broadband
5 system lines; to provide right to cross railroad tracks; to provide requirements for
6 crossing; to provide for a fee to the railroad; to provide for removal of abandoned
7 lines; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Chapter 14 of Title 45 of the Louisiana Revised Statutes of 1950,
10 comprised of R.S. 45:1611 through 1613, is hereby enacted to read as follows:

11 CHAPTER 14. BROADBAND SERVICES

12 §1611. Definitions

13 As used in this Chapter, the following terms have the meaning ascribed to
14 them in this Section unless the context clearly indicates otherwise:

15 (1)(a) "Broadband service" means any service that consists of or includes the
16 provision of or connectivity to a high-speed, high-capacity transmission medium that
17 can carry signals from or to multiple sources, and either of the following:

18 (i) Is used to provide access to the internet.

1 (ii) Provides computer processing, information storage, information content
2 or protocol conversion, including any service applications or information service
3 provided over the high-speed access service.

4 (b) As used in this Chapter, "broadband service" also includes video
5 services, voice over Internet protocol services, and internet protocol-enabled
6 services.

7 (2) "Broadband service provider" means an entity that provides broadband
8 services to others on a wholesale basis or to end-use customers on a retail basis.

9 (3) "Broadband system" means any cable, conduit, line, wire, pipe, casting
10 pipe, supporting poles and guys, manhole, or other materials and equipment used or
11 useful to furnish broadband service.

12 (4) "Crossing" means the construction, operation, repair, or maintenance of
13 a broadband system over, under, or across a railroad right-of-way by a broadband
14 service provider.

15 (5) "Direct expenses" are limited to the following:

16 (a) Document and preparation fees associated with the crossing, and any
17 engineering specifications related to the crossing.

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

21 (c) Actual cost of flagging, if required for safety.

22 (d) Actual cost to inspect and monitor the crossing site.

23 (6) "Railroad" or "railroad corporation" means a railroad corporation which
24 is the owner, operator, occupant, manager, or agent of a railroad right-of-way or the
25 railroad corporation's successor in interest.

26 (7) "Railroad right-of-way" means one or more of the following:

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

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

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

7 §1612. Broadband lines; right to use public property; right to cross railroad
8 tracks

9 A.(1) A broadband service provider may construct and maintain a broadband
10 system to provide broadband services along all public roads or public works, and
11 along and parallel to any of the railroads in the state, and along and over the waters
12 of the state, if the ordinary use of the roads, works, railroads, and waters are not
13 obstructed, and along the streets of any city, with the consent of the city council or
14 trustees. The broadband service provider shall be entitled to the right of way over
15 all lands belonging to the state and over the lands, privileges and servitudes of other
16 persons, and to the right to erect poles, piers, abutments, and other works necessary
17 for constructing and maintaining broadband systems, upon making just compensation
18 therefor. If the broadband service provider fails to secure such right by consent,
19 contract or agreement upon just and reasonable terms, then the broadband service
20 provider has the right to proceed to expropriate as provided by law for railroads and
21 other works of public utility, but shall not impede the full use of the highways,
22 navigable waters, or the drainage or natural servitudes of the land over which the
23 right of way may be exercised. No broadband service provider, operating pursuant
24 to the provisions of this Chapter, shall contract with the owners of land or with any
25 other corporation for the right to erect and maintain any broadband system over its
26 lands, privileges or servitudes, to the exclusion of the lines of other companies
27 operating pursuant to the provisions of this Title.

1 (2) Nothing provided in Paragraph (1) of this Subsection shall affect the right
2 granted to parish governing authorities to grant franchises for the regulation of cable
3 television outside municipalities as set forth in R.S. 45:781.

4 B. In addition to the right to install a broadband system necessary to provide
5 broadband services along and parallel to any of the railroads in the state as set forth
6 in Subsection A of this Section, a broadband service provider may construct, install,
7 and maintain broadband systems that cross under or over the tracks of railroads in
8 a manner that does not obstruct the ordinary use of the railroad.

9 C.(1) If the proposed crossing is to be placed within the right-of-way of a
10 highway or public road that crosses the railroad tracks, the broadband service
11 provider seeking to install the broadband system shall not be required to pay any
12 compensation to the railroad other than the direct expenses associated with the
13 proposed crossing, not to exceed five hundred dollars.

14 (2) If the crossing is to cross railroad tracks located outside of the right-of-
15 way of a highway or public road, the broadband service provider seeking to install
16 the broadband system shall not be required to pay any compensation to the railroad
17 other than the direct expenses associated with each crossing, not to exceed five
18 hundred dollars and a one-time standard crossing fee, not to exceed five hundred
19 dollars. The standard crossing fee shall be in lieu of any license or any other fees or
20 charges to reimburse the railroad for the direct expenses incurred by the railroad as
21 a result of the crossing.

22 D.(1) At least thirty days before beginning a crossing, a broadband service
23 provider shall provide a railroad with the following information by certified mail:

24 (a) Notification of the proposed crossing.

25 (b) A statement that indicates that the railroad and broadband service
26 provider shall each maintain and repair its own respective property within the
27 railroad right-of-way and that each bear responsibility for its own acts and
28 omissions; except that the broadband service provider shall be responsible for any

1 bodily injury or property damage that typically would be covered under a standard
2 railroad protective liability insurance policy.

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

6 (d) An engineering design showing the location of the proposed crossing and
7 the railroad's property, tracks, and wires that the broadband service provider will
8 cross. The engineering design shall conform to the guidelines published in the most
9 recent edition of either the National Electric Safety Code or the Manual for Railway
10 Engineering of the American Railway Engineering and Maintenance-of-Way
11 Association.

12 (2) A railroad shall not adopt any additional processes or regulate a
13 broadband service provider's crossing activity beyond the perimeters established by
14 this Chapter.

15 E.(1) Any review of a proposed crossing shall be completed by the railroad
16 within thirty days after notice is provided by the broadband service provider and the
17 proposed crossing shall be permitted unless it presents a serious threat to the safe
18 operations of the railroad or to the current use of the railroad right-of-way.

19 (2) If a serious threat does exist, the railroad shall notify the broadband
20 service provider of the threat with reasonable documentation describing the threat
21 and how it may be corrected, by certified mail, with return receipt requested.

22 F. If a mutually agreeable time for the proposed crossing is not established
23 between the broadband service provider and the railroad within sixty days of
24 providing notice, the broadband service provider may proceed with the proposed
25 crossing as stated in its notice.

26 G.(1) Disputes pursuant to the provisions of this Chapter may be heard by
27 a court of competent jurisdiction.

28 (2) A railroad shall prove by clear and convincing evidence that a proposed
29 crossing fails to comply with the terms of this Chapter.

1 §1613. Removal of abandoned broadband system; liability

2 A. The broadband service provider which constructed a broadband system

3 pursuant to the provisions of this Chapter, may allow another person or company to

4 remove a broadband system which has been abandoned.

5 B. The broadband service provider which constructed a broadband system

6 pursuant to the provisions of this Chapter, shall not be liable for damages or injuries

7 sustained during the removal by another person or company of the broadband system

8 which has been abandoned provided that the abandoned broadband system lies

9 within a right of way provided for the exclusive use of the broadband service

10 provider.

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 651 Original

2020 Regular Session

Deshotel

Abstract: Provides for broadband service provider right of use over public property to construct and maintain broadband systems and provides for the crossing of broadband systems near, under, and above railroad tracks and rights-of-way.

Proposed law provides definitions for the clarification of proposed law.

Proposed law establishes that broadband service providers 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.

Further, proposed law provides that a broadband service provider may construct broadband systems that cross under or over the tracks of railroads in a manner that does not obstruct the use of the railroad.

Proposed law provides that if a broadband system is to be placed within the right-of-way of a highway or road that crosses the railroad tracks, the broadband service provider shall not be required to pay the railroad any compensation other than the direct expenses related to the proposed crossing, not to exceed \$500.

Proposed law provides that if the broadband service provider constructs a broadband system outside a right-of-way then the broadband service provider shall not be required to pay the railroad any compensation other than the direct expenses related to each crossing, not to exceed \$500, plus a one-time standard crossing fee, not to exceed \$500.

Proposed law provides that the standard crossing fee shall be in lieu of any license or any other fees or charges to reimburse the railroad for the direct expenses.

Proposed law requires a broadband service provider to notify a railroad of the following by certified mail at least 30 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 broadband service provider, 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 \$2,000,000 of insurance.
- (4) An engineering design for the placement of the crossing within recent accepted guidelines.

Proposed law does not allow a railroad to adopt any additional processes or regulations regarding the broadband service provider'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. Further, proposed law provides that if a threat exists, the railroad company shall notify the broadband service provider 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 broadband service provider 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. 45:1611 - 1613)