

1 HB70  
2 195616-2  
3 By Representative Standridge  
4 RFD: Transportation, Utilities and Infrastructure  
5 First Read: 05-MAR-19  
6 PFD: 03/04/2019

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: This bill would provide a procedure for the  
9 deployment and investment of broadband  
10 infrastructure and other telecommunications  
11 services near the right-of-way of railroads,  
12 including railroad crossings.

13  
14 A BILL  
15 TO BE ENTITLED  
16 AN ACT

17  
18 Relating to broadband services; to provide a  
19 procedure for the deployment and investment of broadband  
20 infrastructure and other telecommunications services near a  
21 railroad right-of-way.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. In this act the following words shall  
24 have the following meanings:

25 (1) ANTENNA. Telecommunications equipment that  
26 transmits or receives, or both, over-the-air electromagnetic  
27 signals used in the provision of wireless services.

1           (2) APPLICATION. A written request submitted by an  
2 applicant to an authority for a permit to do either of the  
3 following:

4           a. Locate or collocate, or modify, a  
5 telecommunications facility underground or on any existing  
6 support structure, pole, or tower.

7           b. Construct, modify, or replace a new support  
8 structure, pole, tower, or any other structure on which a  
9 telecommunications network facility will be collocated.

10          (3) AUTHORITY. A state, county, municipality,  
11 district, local authority, or other subdivision thereof,  
12 authorized by applicable law to make legislative,  
13 quasi-judicial, or administrative decisions, including  
14 concerning an application, but shall not include state courts  
15 having jurisdiction over an authority or any entities that do  
16 not have zoning or permitting authority jurisdiction.

17          (4) BROADBAND SERVICES. Any high-speed  
18 telecommunications capability that enables users to originate  
19 and receive high-quality voice, data, graphics, and video  
20 telecommunications using any transmission media or technology.  
21 At a minimum, the term shall do either of the following:

22           a. Meet the definition of advanced  
23 telecommunications capability, as determined by the FCC from  
24 time to time.

25           b. In unserved, underserved, or rural areas, all of  
26 the following:

1                   1. Meet the definition of advanced  
2 telecommunications capability, as determined by the FCC from  
3 time to time, regardless of technology.

4                   2. Ensure that latency does not exceed 100  
5 milliseconds round trip.

6                   3. Provide a minimum usage allowance of 150  
7 gigabytes per month.

8                   (5) COLLOCATE or COLLOCATION. To install, mount,  
9 maintain, modify, operate, or replace a telecommunications  
10 facility on an existing support structure, pole, tower, or any  
11 other structure capable of supporting the telecommunications  
12 network facility. The term does not include the installation  
13 of a new pole, tower, or telecommunications network support  
14 structure in the public right-of-way.

15                   (6) CONDUIT. A structure containing one or more  
16 ducts, usually placed in the ground, in which cables or wires  
17 may be installed.

18                   (7) CROSSING. A facility constructed over, under, or  
19 across a railroad right-of-way. The term does not include  
20 longitudinal occupancy of a railroad right-of-way.

21                   (8) DARK FIBER. Fiber within an existing fiber optic  
22 cable that has not yet been activated through optronics to  
23 render it capable of carrying communications services.

24                   (9) DUCT. A single enclosed raceway for conductors,  
25 cable, or wire.

26                   (10) FACILITY. Any network support infrastructure or  
27 item of private property placed over, across, or underground

1 for use in connection with the storage or conveyance of any of  
2 the following:

3 a. Water.

4 b. Sewage.

5 c. Electronic, telephonic, or telegraphic  
6 communications.

7 d. Fiber.

8 e. Cable television.

9 f. Electric energy.

10 g. Oil.

11 h. Natural gas.

12 i. Hazardous liquids.

13 (11) FCC. The Federal Communications Commission of  
14 the United States.

15 (12) FIBER. A technology that converts electrical  
16 signals carrying data to light and sends the light through  
17 transparent glass fibers to provide broadband services.

18 (13) LOCAL GOVERNING BODY. The city council for the  
19 municipality in which the crossing at issue is located or, if  
20 outside a municipal jurisdiction, the county commission of the  
21 county in which the crossing at issue is located.

22 (14) NETWORK. A network support infrastructure used  
23 or authorized to be used by a telecommunications provider or  
24 network support infrastructure owner to provider network  
25 services.

26 (15) NETWORK ACCESS POINT. A physical connection  
27 point located inside or outside any building or infrastructure

1 that enables telecommunications providers to access the  
2 necessary network support infrastructure so as to be able to  
3 provide network services to subscribers, but does not include  
4 access to inside wiring.

5 (16) NETWORK SERVICES. Services that  
6 telecommunications providers or network support infrastructure  
7 owners provide or are authorized to provide to subscribers.

8 (17) NETWORK SUPPORT INFRASTRUCTURE. Any of the  
9 following:

10 a. Any aspect of the physical infrastructure used or  
11 authorized to be used by a network support infrastructure  
12 owner to provide network services; provided, however, that the  
13 physical infrastructure carries, contains, houses, or supports  
14 the active component of the network service being provided  
15 without itself becoming an active component of the network,  
16 including, but not limited to, antenna installations,  
17 cabinets, communications exchanges, conduits, ducts,  
18 inspection chambers, manholes, masts, network access points,  
19 network components within cabinets, pipes, poles, roads,  
20 railways, towers, transportation networks, utility networks,  
21 poles, waterways networks, equipment for transmitting wireless  
22 or satellite signals, or any other physical part of a network  
23 or any legal rights to use, share, or access the network.

24 b. The active components of a telecommunications  
25 network, including, but not limited to, cables conveying  
26 electricity, dark fiber conveying optical signals, fiber optic  
27 cables, and antennas conveying wireless or radio frequencies.

1 Components used or intended to be used for carrying drinking  
2 water for human consumption shall be excluded from this  
3 definition of network support infrastructure.

4 (18) NETWORK SUPPORT INFRASTRUCTURE OWNER. An  
5 authority providing or authorized to provide networks,  
6 including any of the following:

7 a. Utility networks, including any physical  
8 infrastructure used or authorized to be used to provide the  
9 service, transport, or distribution of telecommunications,  
10 drainage, gas, electricity, public lighting, hazardous  
11 liquids, heating, water, or sewage.

12 b. Transportation networks, including any physical  
13 infrastructure used or authorized to be used to provide  
14 transportation services. The term includes bridges, railways,  
15 roads, ports, and airports.

16 c. Waterways networks. The term includes canals,  
17 rivers, viaducts, navigation channels, and other waterways.

18 (19) OWNER. A person owning or operating a pole or  
19 similar structure in the public right-of-way on which  
20 facilities for the distribution of electricity or  
21 telecommunications are or may be located.

22 (20) PARALLELING. A network infrastructure that runs  
23 adjacent to and alongside the lines of a railroad for no more  
24 than one mile, or another distance agreed to by the parties,  
25 after which the network support infrastructure crosses the  
26 railroad lines, terminates, or exits the railroad  
27 right-of-way.

1           (21) PERMIT. A written authorization, in electronic  
2 or hard copy format, required by an authority to initiate,  
3 continue, or complete installation of a telecommunications  
4 facility or an associated support structure, pole, or tower.

5           (22) PERSON. An individual, corporation, limited  
6 liability company, partnership, association, trust, or other  
7 entity or organization, including an authority.

8           (23) POLE. A pole, such as a utility, lighting,  
9 traffic, or similar pole, made of wood, concrete, metal, or  
10 other material, located or to be located within the public  
11 right-of-way or utility easement. The term includes the  
12 vertical support structure for traffic lights, but does not  
13 include a horizontal structure to which signal lights or other  
14 traffic control devices are attached. The term does not  
15 include electric transmission poles, structures, towers, or  
16 support structure.

17           (24) PUBLIC RIGHT-OF-WAY. The area on, below, or  
18 above property that has been designated for use as or is used  
19 for a public roadway, highway, street, sidewalk, alley, or  
20 similar purpose. The term does not include a federal  
21 interstate highway or other area not within legal jurisdiction  
22 or legal ownership or control of the authority.

23           (25) RAILROAD. Any association, corporation, or  
24 other entity engaged in operating a common carrier by rail, or  
25 its agents or assigns, including any entity responsible for  
26 the management of crossing or collection of crossing fees.



1           (26) RURAL. A county with an average population  
2 density of less than 300 persons per square mile, excluding  
3 the incorporated communities with a population of 20,000 or  
4 greater within the county.

5           (27) SERIOUS THREAT. The installation of  
6 telecommunications infrastructure in such a manner that it  
7 would impede or interfere with the operation of the railroad  
8 or obstruct or otherwise disturb the use or integrity of the  
9 railway track or ballast bed on which the railway track is  
10 laid.

11           (28) SUBSCRIBER. A person who uses or is authorized  
12 to use a network service, whether of value or otherwise.

13           (29) TELECOMMUNICATIONS NETWORK. A network used or  
14 authorized to be used to transmit electronic, optical, or  
15 radio signals, including, but not limited to, sounds, images,  
16 and data, which may be transmitted through a wired, wireless,  
17 or radio network.

18           (30) TELECOMMUNICATIONS PROVIDER. Any of the  
19 following:

20           a. A cable operator, as defined in 47 U.S.C. §  
21 522(5).

22           b. A provider of information service, as defined in  
23 47 U.S.C. § 153(24).

24           c. A provider of telecommunications service, as  
25 defined in 47 U.S.C. § 153(53).

26           d. A provider of fixed wireless or other wireless  
27 services, as defined in 47 U.S.C. § 332(c)(7)(C)(i).

1 (31) TELECOMMUNICATIONS SERVICES. Any of the  
2 following:

- 3 a. Cable service, as defined in 47 U.S.C. § 522(6).
- 4 b. Broadband services, as defined in this section.
- 5 c. Telecommunications service, as defined in 47  
6 U.S.C. § 153(53).
- 7 d. Wireless services, as defined in this section.
- 8 e. Satellite communications services.

9 (32) UNDERSERVED. An area in which less than 10  
10 percent of the persons in the area have access to broadband  
11 services.

12 (33) UNSERVED. An area that is not served by  
13 broadband services.

14 (34) UTILITY. A company, electric cooperative, or  
15 other entity that owns or operates facilities used for  
16 generation and transmission or distribution of electricity,  
17 gas, water, sewage, or telecommunications services to the  
18 general public. The term does not include wireless services  
19 providers or telecommunications infrastructure providers.

20 (35) WIRELESS SERVICES. Any wireless services,  
21 including, but not limited to, personal wireless services, as  
22 that term is defined in 47 U.S.C. § 332(c)(7)(C)(i); fixed  
23 wireless services; and other wireless services.

24 Section 2. Title of public right-of-way for railroad  
25 crossings.

26 (a) Notwithstanding any other provision of law to  
27 the contrary, when a railroad operation crosses a public

1 right-of-way owned by the state or a local governing body, the  
2 local governing body retains its title or interest in the  
3 public right-of-way for future transportation purposes and any  
4 other purpose not inconsistent with future transportation  
5 purposes.

6 (b) (1) Except as provided in subdivision (2), the  
7 local governing body with title to or an interest in a public  
8 right-of-way crossed by a railroad operation may deny or  
9 restrict access to the public right-of-way by members of the  
10 general public.

11 (2) The local governing body shall allow abutting  
12 farm operations to use the land over which the public  
13 right-of-way passes for agricultural purposes.

14 (c) Unless the use and occupancy of a railroad  
15 right-of-way adversely affects railroad safety, broadband  
16 facilities and wireless and other telecommunications  
17 facilities that are installed along or within the railroad  
18 right-of-way in compliance with applicable operations and  
19 safety standards at the time of installation are deemed to be  
20 consistent with existing and future transportation purposes  
21 and requirements.

22 Section 3. Application.

23 This act applies to both of the following:

24 (1) Any crossing in existence before the effective  
25 date of this act if an agreement concerning the crossing has  
26 expired or has been terminated. In such instance, if an amount  
27 that equals or exceeds the standard crossing fee under Section

1 6 has been paid to the railroad during the existence of the  
2 crossing, no additional fee is required.

3 (2) Any crossing in existence on or after the  
4 effective date of this act.

5 Section 4. Railroad right-of-way crossing;  
6 application for permission.

7 (a) A telecommunications provider or network support  
8 infrastructure owner may not place a facility across or upon a  
9 railroad right-of-way unless the provider or owner submits a  
10 request and receives permission from the railroad.

11 (b) The request must be in the form of a completed  
12 crossing application. The application must be submitted  
13 electronically on a form provided or approved by the railroad  
14 and shall include an engineering design showing the location  
15 of the proposed crossing and the railroad's property, tracks,  
16 and wires that the telecommunications provider or network  
17 support infrastructure owner will cross. The engineering  
18 design must conform with guidelines published in the most  
19 recent edition of either the National Electric Safety Code or  
20 Manual for Railway Engineering of the American Railway  
21 Engineering and Maintenance-of-Way Association.

22 (c) The application must be accompanied by the  
23 standard crossing fee specified in Section 6 and evidence of  
24 insurance as required in Section 7.

25 (d) Within 15 calendar days of receipt of an  
26 application that is not complete, the railroad shall inform

1 the applicant regarding any additional necessary information  
2 and required submissions.

3 Section 5. Railroad right-of-way crossing;  
4 construction.

5 Beginning 35 calendar days after the receipt by the  
6 railroad of a completed crossing application, standard  
7 crossing fee, and certificate of insurance, the  
8 telecommunications provider or network support infrastructure  
9 owner may commence construction of the crossing, facility, or  
10 other structure. Notwithstanding any provision of law to the  
11 contrary, in no event shall designs for construction of a  
12 crossing, facility, or other structure subject to this act of  
13 the telecommunications provider or network support  
14 infrastructure owner be required to be dated, stamped, or  
15 signed by a licensed engineer or licensed architect.

16 Section 6. Standard crossing fee.

17 (a) Unless otherwise agreed by the parties, a  
18 telecommunications provider or network support infrastructure  
19 owner that crosses a railroad right-of-way, other than a  
20 crossing within a public right-of-way, shall pay the railroad  
21 a one-time standard crossing fee of five hundred dollars  
22 (\$500) for each crossing. The crossing fee shall be adjusted  
23 as provided in subsection (e). Except as otherwise provided in  
24 this section, the standard crossing fee is paid in lieu of any  
25 license, permit, application, processing fee, or any other fee  
26 or charge to reimburse the railroad for direct expenses  
27 incurred by the railroad as a result of the crossing. No other

1 fee or charge may be assessed to the telecommunications  
2 provider or network support infrastructure owner by the  
3 railroad.

4 (b) In addition to the standard crossing fee, the  
5 telecommunications provider or network support infrastructure  
6 owner shall also reimburse the railroad for any reasonable and  
7 necessary flagging expense associated with a crossing, based  
8 on the railroad traffic at the crossing.

9 (c) No crossing fee is required if the crossing is  
10 located within a public right-of-way.

11 (d) The placement of a single conduit and its  
12 content is a single facility. No additional fees are payable  
13 based on the individual fibers, wires, lines, or other items  
14 contained within the conduit.

15 (e) Annually, the standard crossing fee levied under  
16 subsection (a) shall be adjusted based on the percentage  
17 change in the annual average producer price index for the  
18 preceding year compared to the year prior to the preceding  
19 year. Each adjustment is effective for applications submitted  
20 on or after July 1. The producer price index is final demand,  
21 finished consumer energy goods, as prepared by the Bureau of  
22 Labor Statistics of the United States Department of Labor.

### 23 Section 7. Certificate of insurance; coverage.

24 (a) The certificate of insurance or coverage  
25 submitted by a utility providing natural gas service shall  
26 include commercial general liability insurance with a combined  
27 single limit of at least five million dollars (\$5,000,000) for

1 each occurrence and an aggregate limit of at least ten million  
2 dollars (\$10,000,000). The certificate of insurance or  
3 coverage may not contain an exclusion or limitation related to  
4 railroads or to activities within 50 feet of railroad  
5 property.

6 (b) The certificate of insurance or coverage  
7 submitted by a telecommunications provider or network support  
8 infrastructure owner not specified in subsection (a) shall  
9 include commercial general liability insurance with a combined  
10 single limit of at least two million dollars (\$2,000,000) for  
11 each occurrence and an aggregate limit of at least six million  
12 dollars (\$6,000,000).

13 (c) The certificate of insurance or coverage  
14 submitted by the railroad may require protective liability  
15 insurance with a combined single limit of two million dollars  
16 (\$2,000,000) for each occurrence and an aggregate of six  
17 million dollars (\$6,000,000). The coverage may be provided by  
18 a blanket railroad protective liability insurance policy if  
19 the coverage, including the coverage limits, applies  
20 separately to each individual crossing. The coverage is  
21 required only during the period of construction, repair, or  
22 replacement of the facility.

23 Section 8. Objection to crossing.

24 (a) A railroad may object to a proposed crossing or  
25 paralleling due to the proposal being a serious threat to the  
26 safe operations of the railroad or to the current use of the  
27 railroad right-of-way by notifying the telecommunications

1 provider or network support infrastructure owner of the  
2 objection and the specific basis for the objection. The  
3 telecommunications provider or network support infrastructure  
4 owner may not commence construction until and unless the  
5 railroad retracts its objection or until the circuit court  
6 authorizes the construction pursuant to subsection (c). The  
7 notice of objection must be sent to the telecommunications  
8 provider or network support infrastructure owner by certified  
9 mail, return receipt requested, no later than 30 days after  
10 the railroad's receipt of the proposal.

11 (b) If the parties are unable to resolve the  
12 objection, either party may petition the circuit court for the  
13 county in which the crossing is located for resolution or  
14 modification of the proposed crossing or paralleling. The  
15 petition must be filed within 60 days of receipt of the  
16 objection. Before filing a petition, the parties shall make a  
17 good faith effort to resolve the objection.

18 (c) If a petition is filed, the circuit court for  
19 the county in which the crossing is located, after notice and  
20 opportunity for hearing, shall determine whether the proposal  
21 poses a serious threat to the safe operations of the railroad  
22 or the current use of the railroad right-of-way. The circuit  
23 court shall issue an order within 21 days of the filing of the  
24 petition.

25 Section 9. Additional requirements; objection and  
26 petition to the circuit court.



1           (a) If a railroad imposes additional requirements on  
2 a telecommunications provider or network support  
3 infrastructure owner for crossing its lines, other than the  
4 proposed crossing being a serious threat to the safe  
5 operations of the railroad or to the current use of the  
6 railroad right-of-way, the telecommunications provider or  
7 network support infrastructure owner may object to one or more  
8 of the requirements. If it objects, the telecommunications  
9 provider or network support infrastructure owner shall provide  
10 notice of the objection and the specific basis for the  
11 objection to the railroad by certified mail, return receipt  
12 requested.

13           (b) If the parties are unable to resolve the  
14 objection, either party may petition the circuit court for  
15 resolution or modification of the additional requirements. The  
16 petition must be filed within 60 days of receipt of the  
17 objection. Before filing a petition, the parties shall make a  
18 good faith effort to resolve the objection.

19           (c) If a petition is filed, the circuit court, after  
20 notice and opportunity for hearing, shall determine whether  
21 special circumstances exist that necessitate the additional  
22 requirements for the placement of the crossing. The court  
23 shall issue an order within 21 days of the filing of the  
24 petition.

25           Section 10. Operational relocation.

26           (a) A railroad may require a telecommunications  
27 provider or network support infrastructure owner to relocate a

1 facility when the railroad determines that relocation is  
2 essential to accommodate railroad operations and the  
3 relocation is not arbitrary or unreasonable. Before agreeing  
4 to the relocation, a telecommunications provider or network  
5 support infrastructure owner may require a railroad to provide  
6 a statement and supporting documentation identifying the  
7 operational necessity for requesting the relocation. The  
8 telecommunications provider or network support infrastructure  
9 owner shall perform the relocation within a reasonable period  
10 of time following the agreement.

11 (b) Unless the railroad failed to provide notice of  
12 the relocation after the receipt by the railroad of a  
13 completed crossing application, as provided in Section 8, the  
14 relocation is at the expense of the telecommunications  
15 provider or network support infrastructure owner. A standard  
16 fee under Section 6 may not be imposed for relocation. The  
17 relocation is at the expense of the railroad if construction  
18 of the crossing has properly started.

19 Section 11. Existing agreements.

20 (a) Nothing in this act shall prohibit a railroad  
21 and telecommunications provider or network support  
22 infrastructure owner from continuing under an existing  
23 agreement or from otherwise negotiating the terms and  
24 conditions applicable to a crossing or the resolution of any  
25 disputes relating to the crossing.

26 (b) A telecommunications provider or network support  
27 infrastructure owner under an existing agreement with a

1 railroad may elect to undertake a crossing or paralleling  
2 under this act.

3 (c) Nothing in this act shall impair the authority  
4 of a telecommunications provider or network support  
5 infrastructure owner from securing crossing rights by easement  
6 through exercise of the power of eminent domain.

7 Section 12. This act shall become effective on the  
8 first day of the third month following its passage and  
9 approval by the Governor, or its otherwise becoming law.